

**VOLUME 8**  
**Titles 61 through 72**

---

**2010**  
**REVISED CODE OF WASHINGTON**

---

**Published under the authority of chapter 1.08 RCW.**

---

Containing all laws of a general and permanent nature through the 2010 special session which adjourned April 13, 2010.

# REVISED CODE OF WASHINGTON

2010 Edition

---

© 2010 State of Washington

---

## CERTIFICATE

The 2010 edition of the Revised Code of Washington, published officially by the Statute Law Committee, is, in accordance with RCW 1.08.037, certified to comply with the current specifications of the committee.



MARTY BROWN, Chair  
STATUTE LAW COMMITTEE

PRINTED ON RECYCLABLE MATERIAL

For recycling information call:

Recycle Hotline  
1-800-732-9253



## PREFACE

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

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

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

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

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

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

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

**Index:** Titles 1 through 91 are indexed in the RCW General Index. A separate index is provided for the State Constitution.

**Sections repealed or decodified; Disposition table:** Information concerning RCW sections repealed or decodified can be found in the table entitled "Disposition of former RCW sections."

**Codification tables:** To convert a session law citation to its RCW number (for Laws of 1999 or later) consult the codification tables. A complete codification table, including Remington's Revised Statutes, is on the Code Reviser web site at <http://www.leg.wa.gov/codereviser>.

**Notes:** Notes that are more than ten years old have been removed from the print publication of the RCW except when retention has been deemed necessary to preserve the full intent of the law. All notes are displayed in the electronic copy of the RCW on the Code Reviser web site at <http://www.leg.wa.gov/codereviser>.

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

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

# TITLES OF THE REVISED CODE OF WASHINGTON

1	General provisions		
	<b>Judicial</b>	46	<b>Highways and motor vehicles</b>
2	Courts of record	47	Motor vehicles
3	District courts—Courts of limited jurisdiction	47	Public highways and transportation
4	Civil procedure	48	<b>Insurance</b>
5	Evidence		<b>Labor</b>
6	Enforcement of judgments	49	Labor regulations
7	Special proceedings and actions	50	Unemployment compensation
8	Eminent domain	51	Industrial insurance
9	Crimes and punishments		<b>Local service districts</b>
9A	Washington Criminal Code	52	Fire protection districts
10	Criminal procedure	53	Port districts
11	Probate and trust law	54	Public utility districts
12	District courts—Civil procedure	55	Sanitary districts
13	Juvenile courts and juvenile offenders	57	Water-sewer districts
14	<b>Aeronautics</b>		<b>Property rights and incidents</b>
	<b>Agriculture</b>	58	Boundaries and plats
15	Agriculture and marketing	59	Landlord and tenant
16	Animals and livestock	60	Liens
17	Weeds, rodents, and pests	61	Mortgages, deeds of trust, and real estate contracts
	<b>Businesses and professions</b>	62A	Uniform Commercial Code
18	Businesses and professions	63	Personal property
19	Business regulations—Miscellaneous	64	Real property and conveyances
20	Commission merchants—Agricultural products	65	Recording, registration, and legal publication
21	Securities and investments		<b>Public health, safety, and welfare</b>
22	Warehousing and deposits	66	Alcoholic beverage control
	<b>Corporations, associations, and partnerships</b>	67	Sports and recreation—Convention facilities
23	Corporations and associations (Profit)	68	Cemeteries, morgues, and human remains
23B	Washington business corporation act	69	Food, drugs, cosmetics, and poisons
24	Corporations and associations (Nonprofit)	70	Public health and safety
25	Partnerships	71	Mental illness
26	<b>Domestic relations</b>	71A	Developmental disabilities
	<b>Education</b>	72	State institutions
27	Libraries, museums, and historical activities	73	Veterans and veterans' affairs
28A	Common school provisions	74	Public assistance
28B	Higher education		<b>Public resources</b>
28C	Vocational education	76	Forests and forest products
29A	<b>Elections</b>	77	Fish and wildlife
	<b>Financial institutions</b>	78	Mines, minerals, and petroleum
30	Banks and trust companies	79	Public lands
31	Miscellaneous loan agencies	79A	Public recreational lands
32	Mutual savings banks		<b>Public service</b>
33	Savings and loan associations	80	Public utilities
	<b>Government</b>	81	Transportation
34	Administrative law		<b>Taxation</b>
35	Cities and towns	82	Excise taxes
35A	Optional Municipal Code	83	Estate taxation
36	Counties	84	Property taxes
37	Federal areas—Indians		<b>Waters</b>
38	Militia and military affairs	85	Diking and drainage
39	Public contracts and indebtedness	86	Flood control
40	Public documents, records, and publications	87	Irrigation
41	Public employment, civil service, and pensions	88	Navigation and harbor improvements
42	Public officers and agencies	89	Reclamation, soil conservation, and land settlement
43	State government—Executive	90	Water rights—Environment
44	State government—Legislative	91	Waterways

# Title 61

## MORTGAGES, DEEDS OF TRUST, AND REAL ESTATE CONTRACTS

### Chapters

- 61.10 Mortgage insurance.**
- 61.12 Foreclosure of real estate mortgages and personal property liens.**
- 61.16 Assignment and satisfaction of real estate and chattel mortgages.**
- 61.24 Deeds of trust.**
- 61.30 Real estate contract forfeitures.**
- 61.34 Distressed property conveyances.**

*Banks, real estate holdings:* RCW 30.04.210.

*Consumer loan act:* Chapter 31.04 RCW.

*Corporate powers of banks and trust companies:* RCW 30.08.140, 30.08.150.

*Credit unions:* Chapter 31.12 RCW.

*Excise tax on real estate sales:* Chapter 82.45 RCW.

*Frauds and swindles—Encumbered, leased or rented personal property:* RCW 9.45.060.

*Fraudulent conveyances:* Chapter 19.40 RCW.

*Insurance companies, investments:* Chapter 48.13 RCW.

*Interest, usury:* Chapter 19.52 RCW.

*Joint tenancies:* Chapter 64.28 RCW.

*Liens:* Title 60 RCW.

*Motor vehicles, certificates of ownership:* Chapter 46.12 RCW.

*Mutual savings banks  
investments:* Chapter 32.20 RCW.  
*powers and duties:* Chapters 32.08, 32.12, 32.16 RCW.

*Negotiable instruments:* Title 62A RCW.

*Possession of real property to collect mortgaged, pledged or assigned rents and profits:* RCW 7.28.230.

*Property taxes:* Title 84 RCW.

*Real estate brokers and salespersons:* Chapter 18.85 RCW.

*Real property and conveyances:* Title 64 RCW.

*Recording master form instruments and mortgages or deeds of trust incorporating master form provisions:* RCW 65.08.160.

*Recording mortgages:* Title 65 RCW.

*Retail installment sales of goods and services:* Chapter 63.14 RCW.

*Savings and loan associations:* Title 33 RCW.

*Statute of frauds:* Chapter 19.36 RCW.

### Chapter 61.10 RCW MORTGAGE INSURANCE

#### Sections

- 61.10.010 Definitions.
- 61.10.020 Condition of residential mortgage transaction—Disclosures—Notices—Harm to borrower—Compliance with federal requirements.
- 61.10.030 Termination of insurance during term of indebtedness—Exception—Required conditions—Application to residential mortgage transactions—Compliance with federal requirements.
- 61.10.040 Not required when loan is less than eighty percent of value—Compliance with federal requirements.
- 61.10.900 Severability—1998 c 255.
- 61.10.901 Effective date—1998 c 255.

(2010 Ed.)

#### **61.10.010 Definitions.** As used in this chapter:

(1) "Institutional third party" means the federal national mortgage association, the federal home loan mortgage corporation, the government national mortgage association, and other substantially similar institutions, whether public or private, provided the institutions establish and adhere to rules applicable to the right of cancellation of mortgage insurance, which are the same or substantially the same as those utilized by the institutions named in this subsection.

(2) "Mortgage insurance" means insurance, including mortgage guarantee insurance, against financial loss by reason of nonpayment of principal, interest, and other sums agreed to be paid in a residential mortgage transaction.

(3) "Residential mortgage transaction" means entering into a loan for personal, family, household, or purchase money purposes that is secured by a deed of trust or mortgage on owner-occupied, one-to-four unit, residential real property located in the state of Washington. [1998 c 255 § 1.]

**61.10.020 Condition of residential mortgage transaction—Disclosures—Notices—Harm to borrower—Compliance with federal requirements.** (1) If a borrower is required to obtain and maintain mortgage insurance as a condition of entering into a residential mortgage transaction, the lender shall disclose to the borrower whether and under what conditions the borrower has the right to cancel the mortgage insurance in the future. This disclosure shall include:

(a) Any identifying loan or insurance information, or other information, necessary to permit the borrower to communicate with the servicer or lender concerning the private mortgage insurance;

(b) The conditions that are required to be satisfied before the mortgage insurance may be canceled; and

(c) The procedures required to be followed by the borrower to cancel the mortgage insurance.

The disclosure required in this subsection shall be made in writing at the time the transaction is entered into.

(2) For residential mortgage transactions with mortgage insurance, the lender, or the person servicing the residential mortgage transaction if it is not the lender, annually shall provide the borrower with:

(a) A notice containing the same information as required to be disclosed under subsection (1) of this section; or

(b) A statement indicating that the borrower may be able to cancel the mortgage insurance and that the borrower may contact the lender or loan servicer at a designated address and phone number to find out whether the insurance can be canceled and the conditions and procedures to effect cancellation.

The notice or statement required by this subsection shall be provided in writing in a clear and conspicuous manner in or with each annual statement of account.

[Title 61 RCW—page 1]

(3) The notices and statements required in this section shall be provided without cost to the borrower.

(4) Any borrower in a residential mortgage transaction who is harmed by a violation of this section may obtain injunctive relief, may recover from the party who caused such harm by failure to comply with this section up to three times the amount of mortgage insurance premiums wrongly collected, and may recover reasonable attorneys' fees and costs of such action.

(5) This section does not apply to any mortgage funded with bond proceeds issued under an indenture requiring mortgage insurance for the life of the loan or to loans insured by the federal housing administration or the veterans administration.

(6) Subsection (1) of this section applies to residential mortgage transactions entered into on or after July 1, 1998. Subsection (2) of this section applies to any residential mortgage transaction existing on July 1, 1998, or entered into on or after July 1, 1998.

(7) A lender or person servicing a residential mortgage transaction who complies with federal requirements, as now or hereafter enacted, prescribing mortgage insurance disclosures and notifications shall be deemed in compliance with this section. [1998 c 255 § 2.]

**61.10.030 Termination of insurance during term of indebtedness—Exception—Required conditions—Application to residential mortgage transactions—Compliance with federal requirements.** (1) Except when a statute, regulation, rule, or written guideline promulgated by an institutional third party applicable to a residential mortgage transaction purchased in whole or in part by an institutional third party specifically prohibits cancellation during the term of indebtedness, the lender or servicer of a residential mortgage transaction may not charge or collect future payments from a borrower for mortgage insurance, and the borrower is not obligated to make such payments, if all of the following conditions are satisfied:

(a) The borrower makes a written request to terminate the obligation to make future payments for mortgage insurance;

(b) The residential mortgage transaction is at least two years old;

(c) The outstanding principal balance of the residential loan is not greater than eighty percent of the current fair market value of the property and is:

(i) For loans made for the purchase of the property, less than eighty percent of the lesser of the sales price or the appraised value at the time the transaction is entered into; or

(ii) For all other residential mortgage transactions, less than eighty percent of the appraised value at the time the residential loan transaction was entered into.

The lender or servicer may request that a current appraisal be done to verify the outstanding principal balance is less than eighty percent of the current fair market value of the property; unless otherwise agreed to in writing, the lender or servicer selects the appraiser and splits the cost with the borrower;

(d) The borrower's scheduled payment of monthly installments or principal, interest, and any escrow obligations is current at the time the borrower requests termination of his

or her obligation to continue to pay for mortgage insurance, those installments have not been more than thirty days late in the last twelve months, and the borrower has not been assessed more than one late penalty over the past twelve months;

(e) A notice of default has not been recorded against the property as the result of a nonmonetary default in the previous twelve months.

(2) This section applies to residential mortgage transactions entered into on or after July 1, 1998.

(3) This section does not apply to:

(a) Any residential mortgage transaction that is funded in whole or in part pursuant to authority granted by statute, regulation, or rule that, as a condition of that funding, prohibits or limits termination of payments for mortgage insurance during the term of the indebtedness; or

(b) Any mortgage funded with bond proceeds issued under an indenture requiring mortgage insurance for the life of the loan.

(4) If the residential mortgage transaction will be or has been sold in whole or in part to an institutional third party, adherence to the institutional third party's standards for termination of future payments for mortgage insurance shall be deemed in compliance with this section.

(5) A lender or person servicing a residential mortgage transaction who complies with federal requirements, as now or hereafter enacted, governing the cancellation of mortgage insurance shall be deemed in compliance with this section. [1998 c 255 § 3.]

**61.10.040 Not required when loan is less than eighty percent of value—Compliance with federal requirements.**

On or after July 1, 1998, no borrower entering into a residential mortgage transaction in which the principal amount of the loan is less than eighty percent of the fair market value of the property shall be required to obtain mortgage insurance. Fair market value for a purchase money loan is the lesser of the sales price or the appraised value. This section shall not apply to residential mortgage transactions in an amount in excess of the maximum limits established by institutional third parties where the borrower and the lender have agreed in writing to mortgage insurance.

A lender or person servicing a residential mortgage transaction who complies with federal requirements, as now or hereafter enacted, governing the requirement of obtaining mortgage insurance shall be deemed in compliance with this section. [1998 c 255 § 4.]

**61.10.900 Severability—1998 c 255.** If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1998 c 255 § 5.]

**61.10.901 Effective date—1998 c 255.** This act takes effect July 1, 1998. [1998 c 255 § 6.]

## Chapter 61.12 RCW

FORECLOSURE OF REAL ESTATE MORTGAGES  
AND PERSONAL PROPERTY LIENS

## Sections

61.12.010	Encumbrances shall be by deed.
61.12.020	Mortgage—Form—Contents—Effect.
61.12.030	Removal of property from mortgaged premises—Penalty.
61.12.040	Foreclosure—Venue.
61.12.050	When remedy confined to mortgaged property.
61.12.060	Judgment—Order of sale—Satisfaction—Upset price.
61.12.061	Exception as to mortgages held by the United States.
61.12.070	Decree to direct deficiency—Waiver in complaint.
61.12.080	Deficiency judgment—How enforced.
61.12.090	Execution on decree—Procedure.
61.12.093	Abandoned improved real estate—Purchaser takes free of redemption rights.
61.12.094	Abandoned improved real estate—Deficiency judgment precluded—Complaint, requisites, service.
61.12.095	Abandoned improved real estate—Not applicable to property used primarily for agricultural purposes.
61.12.100	Levy for deficiency under same execution.
61.12.110	Notice of sale on deficiency.
61.12.120	Concurrent actions prohibited.
61.12.130	Payment of sums due—Stay of proceedings.
61.12.140	Sale in parcels to pay installments due.
61.12.150	Sale of whole property—Disposition of proceeds.
61.12.170	Recording.

*Community realty, encumbering:* RCW 26.16.040.

*Corporate seals, effect of absence from instrument:* RCW 64.04.105.

*Foreclosure by organizations not admitted to transact business in state:* Chapter 23B.18 RCW.

*Mortgagee cannot maintain action for possession:* RCW 7.28.230.

*Mortgaging of decedents' estates:* Chapter 11.56 RCW.

*Notice and sale summary foreclosure of personal property liens:* Chapter 60.10 RCW.

*Partition, sales on credit:* RCW 7.52.290, 7.52.420.

*Possession of real estate to collect mortgaged rents and profits:* RCW 7.28.230.

*Sales under execution and redemption:* Chapter 6.21 RCW.

**61.12.010 Encumbrances shall be by deed.** See RCW 64.04.010.

**61.12.020 Mortgage—Form—Contents—Effect.** Mortgages of land may be made in substantially the following form: The mortgagor (here insert name or names) mortgages to (here insert name or names) to secure the payment of (here insert the nature and amount of indebtedness, showing when due, rate of interest, and whether evidenced by note, bond or other instrument or not) the following described real estate (here insert description) situated in the county of . . . . ., state of Washington.

Dated this . . . . day of . . . . ., 19 . . . .

Every such mortgage, when otherwise properly executed, shall be deemed and held a good and sufficient conveyance and mortgage to secure the payment of the money therein specified. The parties may insert in such mortgage any lawful agreement or condition. [1929 c 33 § 12; RRS § 10555. Prior: 1888 c 26 § 1; 1886 p 179 § 6.]

**61.12.030 Removal of property from mortgaged premises—Penalty.** (1) When any real estate in this state is subject to, or is security for, any mortgage, mortgages, lien or liens, other than general liens arising under personal judgments, it shall be unlawful for any person who is the owner, mortgagor, lessee, or occupant of such real estate to destroy

(2010 Ed.)

or remove or to cause to be destroyed or removed from the real estate any fixtures, buildings, or permanent improvements including a manufactured home whose title has been eliminated under chapter 65.20 RCW, not including crops growing thereon, without having first obtained from the owners or holders of each and all of such mortgages or other liens his, her, or their written consent for such removal or destruction.

(2) Any person willfully violating this section is guilty of a misdemeanor, and upon conviction thereof shall be punished by imprisonment in the county jail for a period not to exceed six months, or by a fine of not more than five hundred dollars, or by both such fine and imprisonment. [2003 c 53 § 288; 1989 c 343 § 21; 1899 c 75 § 1; RRS § 2709, part. FORMER PART OF SECTION: 1899 c 75 § 2 now codified as RCW 61.12.031.]

**Intent—Effective date—2003 c 53:** See notes following RCW 2.48.180.

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**61.12.040 Foreclosure—Venue.** When default is made in the performance of any condition contained in a mortgage, the mortgagee or his assigns may proceed in the superior court of the county where the land, or some part thereof, lies, to foreclose the equity of redemption contained in the mortgage. [Code 1881 § 609; 1877 p 127 § 614; 1869 p 145 § 563; 1854 p 207 § 408; RRS § 1116.]

*Real property, actions concerning to be brought where property is located:* RCW 4.12.010.

**61.12.050 When remedy confined to mortgaged property.** When there is no express agreement in the mortgage nor any separate instrument given for the payment of the sum secured thereby, the remedy of the mortgagee shall be confined to the property mortgaged. [Code 1881 § 610; 1877 p 127 § 615; 1869 p 146 § 564; 1854 p 207 § 409; RRS § 1117.]

**61.12.060 Judgment—Order of sale—Satisfaction—Upset price.** In rendering judgment of foreclosure, the court shall order the mortgaged premises, or so much thereof as may be necessary, to be sold to satisfy the mortgage and costs of the action. The payment of the mortgage debt, with interest and costs, at any time before sale, shall satisfy the judgment. The court, in ordering the sale, may in its discretion, take judicial notice of economic conditions, and after a proper hearing, fix a minimum or upset price to which the mortgaged premises must be bid or sold before confirmation of the sale.

The court may, upon application for the confirmation of a sale, if it has not theretofore fixed an upset price, conduct a hearing, establish the value of the property, and, as a condition to confirmation, require that the fair value of the property be credited upon the foreclosure judgment. If an upset price has been established, the plaintiff may be required to credit this amount upon the judgment as a condition to confirmation. If the fair value as found by the court, when applied to the mortgage debt, discharges it, no deficiency judgment shall be granted. [1935 c 125 § 1; Code 1881 § 611; 1877 p 127 § 616; 1869 p 146 § 565; 1854 p 207 § 410; RRS § 1118.

FORMER PART OF SECTION: 1935 c 125 § 1 1/2 now codified as RCW 61.12.061.]

*Confirmation of sale of land: RCW 6.21.110.*

**61.12.061 Exception as to mortgages held by the United States.** The provisions of \*this act shall not apply to any mortgage while such mortgage is held by the United States or by any agency, department, bureau, board or commission thereof as security or pledge of the maker, its successors or assigns. [1935 c 125 § 1 1/2; RRS § 1118-1. Formerly RCW 61.12.060, part.]

\***Reviser's note:** "this act" appears in 1935 c 125 § 1 1/2; section 1 of the 1935 act amends Code 1881 § 611; the 1935 act is codified as RCW 61.12.060 and 61.12.061.

**61.12.070 Decree to direct deficiency—Waiver in complaint.** When there is an express agreement for the payment of the sum of money secured contained in the mortgage or any separate instrument, the court shall direct in the decree of foreclosure that the balance due on the mortgage, and costs which may remain unsatisfied after the sale of the mortgaged premises, shall be satisfied from any property of the mortgage debtor: PROVIDED, HOWEVER, That in all cases where the mortgagee or other owner of such mortgage has expressly waived any right to a deficiency judgment in the complaint, as provided by RCW 6.23.020, there shall be no such judgment for deficiency, and the remedy of the mortgagee or other owner of the mortgage shall be confined to the sale of the property mortgaged. [1961 c 196 § 4; Code 1881 § 612; 1877 p 127 § 617; 1869 p 146 § 566; 1854 p 208 § 411; RRS § 1119.]

**61.12.080 Deficiency judgment—How enforced.** Judgments over for any deficiency remaining unsatisfied after application of the proceeds of sale of mortgaged property, either real or personal, shall be similar in all respects to other judgments for the recovery of money, and may be made a lien upon the property of a judgment debtor as other judgments, and the collections thereof enforced in the same manner. [Code 1881 § 622; 1877 p 129 § 625; 1869 p 148 § 575; RRS § 1120.]

*Enforcement of judgments: Title 6 RCW.*

**61.12.090 Execution on decree—Procedure.** A decree of foreclosure of mortgage or other lien may be enforced by execution as an ordinary judgment or decree for the payment of money. The execution shall contain a description of the property described in the decree. The sheriff shall endorse upon the execution the time when he receives it, and he shall thereupon forthwith proceed to sell such property, or so much thereof as may be necessary to satisfy the judgment, interest and costs upon giving the notice prescribed in RCW 6.21.030. [1988 c 231 § 36; 1899 c 53 § 1; RRS § 1121. Cf. Code 1881 § 613; 1869 p 146 § 567; 1854 p 208 § 412.]

*Property exempt from execution and attachment: RCW 6.15.010.*

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**61.12.093 Abandoned improved real estate—Purchaser takes free of redemption rights.** In actions to foreclose mortgages on real property improved by structure or

structures, if the court finds that the mortgagor or his successor in interest has abandoned said property for six months or more, the purchaser at the sheriff's sale shall take title in and to such property free from all redemption rights as provided for in RCW 6.23.010 et seq. upon confirmation of the sheriff's sale by the court. Lack of occupancy by, or by authority of, the mortgagor or his successor in interest for a continuous period of six months or more prior to the date of the decree of foreclosure, coupled with failure to make payment upon the mortgage obligation within the said six month period, will be prima facie evidence of abandonment. [1965 c 80 § 1; 1963 c 34 § 1.]

*Deed to issue upon request immediately after confirmation of sale: RCW 6.21.120.*

**61.12.094 Abandoned improved real estate—Deficiency judgment precluded—Complaint, requisites, service.** When proceeding under RCW 61.12.093 through 61.12.095 no deficiency judgment shall be allowed. No mortgagee shall deprive any mortgagor, his successors in interest, or any redemptioner of redemption rights by default decree without alleging such intention in the complaint: PROVIDED, HOWEVER, That such complaint need not be served upon any person who acquired the status of such successor in interest or redemptioner after the recording of lis pendens in such foreclosure action. [1965 c 80 § 2; 1963 c 34 § 2.]

**61.12.095 Abandoned improved real estate—Not applicable to property used primarily for agricultural purposes.** RCW 61.12.093 and 61.12.094 shall not apply to property used primarily for agricultural purposes. [1965 c 80 § 3; 1963 c 34 § 3.]

**61.12.100 Levy for deficiency under same execution.** In all actions of foreclosure where there is a decree for the sale of the mortgaged premises or property, and a judgment over for any deficiency remaining unsatisfied after applying the proceeds of the sale of mortgaged property, further levy and sales upon other property of the judgment debtor may be made under the same execution. In such sales it shall only be necessary to advertise notice for two weeks in a newspaper published in the county where the said property is located, and if there be no newspaper published therein, then in the most convenient newspaper having a circulation in such county. [Code 1881 § 620; 1877 p 129 § 623; 1873 p 151 § 571; 1869 p 148 § 573; RRS § 1123.]

**61.12.110 Notice of sale on deficiency.** When sales of other property not embraced in the mortgage or decree of sale are made under the execution to satisfy any deficiency remaining due upon judgment, two weeks' publication of notice of such sale shall be sufficient. Such notice shall be published in a newspaper printed in the county where the property is situated, and if there be no newspaper published therein, then in the most convenient newspaper having a circulation in said county. [Code 1881 § 621; 1877 p 129 § 624; 1869 p 148 § 574; RRS § 1124.]

*Notice of sales under execution: RCW 6.21.020.*

**61.12.120 Concurrent actions prohibited.** The plaintiff shall not proceed to foreclose his mortgage while he is prosecuting any other action for the same debt or matter which is secured by the mortgage, or while he is seeking to obtain execution of any judgment in such other action; nor shall he prosecute any other action for the same matter while he is foreclosing his mortgage or prosecuting a judgment of foreclosure. [Code 1881 § 614; 1877 p 128 § 619; 1869 p 146 § 568; 1854 p 208 § 413; RRS § 1125.]

**61.12.130 Payment of sums due—Stay of proceedings.** Whenever a complaint is filed for the foreclosure of a mortgage upon which there shall be due any interest or installment of the principal, and there are other installments not due, if the defendant pay into the court the principal and interest due, with costs, at any time before the final judgment, proceedings thereon shall be stayed, subject to be enforced upon a subsequent default in the payment of any installment of the principal or interest thereafter becoming due. In the final judgment, the court shall direct at what time and upon what default any subsequent execution shall issue. [Code 1881 § 615; 1877 p 128 § 620; 1869 p 147 § 569; 1854 p 208 § 414; RRS § 1126.]

**61.12.140 Sale in parcels to pay installments due.** In such cases, after final judgment, the court shall ascertain whether the property can be sold in parcels, and if it can be done without injury to the interests of the parties, the court shall direct so much only of the premises to be sold, as will be sufficient to pay the amount then due on the mortgage with costs, and the judgment shall remain and be enforced upon any subsequent default, unless the amount due shall be paid before execution of the judgment is perfected. [Code 1881 § 616; 1877 p 128 § 620 (2d of 2 sections with same number); 1869 p 147 § 570; 1854 p 208 § 415; RRS § 1127.]

**61.12.150 Sale of whole property—Disposition of proceeds.** If the mortgaged premises cannot be sold in parcels, the court shall order the whole to be sold, and the proceeds of the sale shall be applied first to the payment of the principal due, interest and costs, and then to the residue secured by the mortgage and not due; and if the residue does not bear interest, a deduction shall be made therefrom by discounting the legal interest. In all cases where the proceeds of the sale are more than sufficient to pay the amount due and costs, the surplus shall be applied to all interests in, or liens or claims of liens against, the property eliminated by sale under this section in the order of priority that the interest, lien, or claim attached to the property. Any remaining surplus shall be paid to the mortgage debtor, his or her heirs and assigns. [2009 c 122 § 1; Code 1881 § 617; 1877 p 128 § 621; 1869 p 147 § 571; 1854 p 208 § 416; RRS § 1128.]

**61.12.170 Recording.** See chapter 65.08 RCW.

## Chapter 61.16 RCW

### ASSIGNMENT AND SATISFACTION OF REAL ESTATE AND CHATTEL MORTGAGES

#### Sections

- 61.16.010 Assignments, how made—Satisfaction by assignee.
- 61.16.020 Mortgages, how satisfied of record.
- 61.16.030 Failure to acknowledge satisfaction of mortgage—Damages—Order.

*Effect of recording assignment of mortgage: RCW 65.08.120.*

**61.16.010 Assignments, how made—Satisfaction by assignee.** Any person to whom any real estate mortgage is given, or the assignee of any such mortgage, may, by an instrument in writing, signed and acknowledged in the manner provided by law entitling mortgages to be recorded, assign the same to the person therein named as assignee, and any person to whom any such mortgage has been so assigned, may, after the assignment has been recorded in the office of the auditor of the county wherein such mortgage is of record, acknowledge satisfaction of the mortgage, and discharge the same of record. [1995 c 62 § 13; 1897 c 23 § 1; RRS § 10616.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**61.16.020 Mortgages, how satisfied of record.** Whenever the amount due on any mortgage is paid, the mortgagee or the mortgagee's legal representatives or assigns shall, at the request of any person interested in the property mortgaged, execute an instrument in writing referring to the mortgage by the volume and page of the record or otherwise sufficiently describing it and acknowledging satisfaction in full thereof. Said instrument shall be duly acknowledged, and upon request shall be recorded in the county wherein the mortgaged property is situated. Every instrument of writing heretofore recorded and purporting to be a satisfaction of mortgage, which sufficiently describes the mortgage which it purports to satisfy so that the same may be readily identified, and which has been duly acknowledged before an officer authorized by law to take acknowledgments or oaths, is hereby declared legal and valid, and a certified copy of the record thereof is hereby constituted prima facie evidence of such satisfaction. [1995 c 62 § 14; 1985 c 44 § 13; 1901 c 52 § 1; 1886 p 116 § 1; RRS § 10614.]

**61.16.030 Failure to acknowledge satisfaction of mortgage—Damages—Order.** If the mortgagee fails to acknowledge satisfaction of the mortgage as provided in RCW 61.16.020 sixty days from the date of such request or demand, the mortgagee shall forfeit and pay to the mortgagor damages and a reasonable attorneys' fee, to be recovered in any court having competent jurisdiction, and said court, when convinced that said mortgage has been fully satisfied, shall issue an order in writing, directing the auditor to immediately record the order. [1999 c 233 § 8; 1995 c 62 § 15; 1984 c 14 § 1; 1886 p 117 § 2; RRS § 10615.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

## Chapter 61.24 RCW

## DEEDS OF TRUST

## Sections

61.24.005	Definitions.
61.24.010	Trustee, qualifications—Successor trustee.
61.24.020	Deeds subject to all mortgage laws—Foreclosure—Recording and indexing—Trustee and beneficiary, separate entities, exception.
61.24.025	Application of federal servicemembers civil relief act to deeds of trust.
61.24.030	Requisites to trustee's sale.
61.24.031	Notice of default under RCW 61.24.030(8)—Beneficiary's duties—Borrower's options.
61.24.040	Foreclosure and sale—Notice of sale.
61.24.042	Notice to guarantor—Contents—Failure to provide.
61.24.045	Requests for notice of sale.
61.24.050	Interest conveyed by trustee's deed—Sale is final if acceptance is properly recorded—Redemption precluded after sale.
61.24.060	Rights and remedies of trustee's sale purchaser—Written notice to occupants or tenants.
61.24.070	Trustee's sale, who may bid at—If beneficiary is purchaser—If purchaser is not beneficiary.
61.24.080	Disposition of proceeds of sale—Notices—Surplus funds.
61.24.090	Curing defaults before sale—Discontinuance of proceedings—Notice of discontinuance—Execution and acknowledgment—Payments tendered to trustee.
61.24.100	Deficiency judgments—Foreclosure—Trustee's sale—Application of chapter.
61.24.110	Reconveyance by trustee.
61.24.120	Other foreclosure provisions preserved.
61.24.127	Failure to bring civil action to enjoin foreclosure—Not a waiver of claims.
61.24.130	Restraint of sale by trustee—Conditions—Notice.
61.24.135	Consumer protection act—Unfair or deceptive acts or practices.
61.24.140	Assignment of rents—Collecting payment of rent.
61.24.143	Foreclosure of tenant-occupied property—Notice of trustee's sale.
61.24.146	Foreclosure of tenant-occupied property—Notice to vacate.

*Possession of real property by trustee of deed of trust to collect rents and profits: RCW 7.28.230.*

**61.24.005 Definitions.** The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Affiliate of beneficiary" means any entity which controls, is controlled by, or is under common control with a beneficiary.

(2) "Beneficiary" means the holder of the instrument or document evidencing the obligations secured by the deed of trust, excluding persons holding the same as security for a different obligation.

(3) "Borrower" means a person or a general partner in a partnership, including a joint venture, that is liable for all or part of the obligations secured by the deed of trust under the instrument or other document that is the principal evidence of such obligations, or the person's successors if they are liable for those obligations under a written agreement with the beneficiary.

(4) "Commercial loan" means a loan that is not made primarily for personal, family, or household purposes.

(5) "Fair value" means the value of the property encumbered by a deed of trust that is sold pursuant to a trustee's sale. This value shall be determined by the court or other appropriate adjudicator by reference to the most probable price, as of the date of the trustee's sale, which would be paid in cash or other immediately available funds, after deduction of prior liens and encumbrances with interest to the date of the trustee's sale, for which the property would sell on such

date after reasonable exposure in the market under conditions requisite to a fair sale, with the buyer and seller each acting prudently, knowledgeably, and for self-interest, and assuming that neither is under duress.

(6) "Grantor" means a person, or its successors, who executes a deed of trust to encumber the person's interest in property as security for the performance of all or part of the borrower's obligations.

(7) "Guarantor" means any person and its successors who is not a borrower and who guarantees any of the obligations secured by a deed of trust in any written agreement other than the deed of trust.

(8) "Owner-occupied" means property that is the principal residence of the borrower.

(9) "Person" means any natural person, or legal or governmental entity.

(10) "Record" and "recorded" includes the appropriate registration proceedings, in the instance of registered land.

(11) "Residential real property" means property consisting solely of a single-family residence, a residential condominium unit, or a residential cooperative unit.

(12) "Tenant-occupied property" means property consisting solely of residential real property that is the principal residence of a tenant subject to chapter 59.18 RCW or other building with four or fewer residential units that is the principal residence of a tenant subject to chapter 59.18 RCW. (13) "Trustee" means the person designated as the trustee in the deed of trust or appointed under RCW 61.24.010(2).

(14) "Trustee's sale" means a nonjudicial sale under a deed of trust undertaken pursuant to this chapter. [2009 c 292 § 1; 1998 c 295 § 1.]

**Reviser's note:** The definitions in this section have been alphabetized pursuant to RCW 1.08.015(2)(k).

**61.24.010 Trustee, qualifications—Successor trustee.**

(1) The trustee of a deed of trust under this chapter shall be:

(a) Any domestic corporation incorporated under Title 23B, 30, 31, 32, or 33 RCW of which at least one officer is a Washington resident; or

(b) Any title insurance company authorized to insure title to real property under the laws of this state, or any title insurance agent licensed under chapter 48.17 RCW; or

(c) Any attorney who is an active member of the Washington state bar association at the time the attorney is named trustee; or

(d) Any professional corporation incorporated under chapter 18.100 RCW, any professional limited liability company formed under chapter 25.15 RCW, any general partnership, including limited liability partnerships, formed under chapter 25.04 RCW, all of whose shareholders, members, or partners, respectively, are either licensed attorneys or entities, provided all of the owners of those entities are licensed attorneys, or any domestic corporation wholly owned by any of the entities under this subsection (1)(d); or

(e) Any agency or instrumentality of the United States government; or

(f) Any national bank, savings bank, or savings and loan association chartered under the laws of the United States.

(2) The trustee may resign at its own election or be replaced by the beneficiary. The trustee shall give prompt written notice of its resignation to the beneficiary. The resignation of the trustee shall become effective upon the recording of the notice of resignation in each county in which the deed of trust is recorded. If a trustee is not appointed in the deed of trust, or upon the resignation, incapacity, disability, absence, or death of the trustee, or the election of the beneficiary to replace the trustee, the beneficiary shall appoint a trustee or a successor trustee. Only upon recording the appointment of a successor trustee in each county in which the deed of trust is recorded, the successor trustee shall be vested with all powers of an original trustee.

(3) The trustee or successor trustee shall have no fiduciary duty or fiduciary obligation to the grantor or other persons having an interest in the property subject to the deed of trust.

(4) The trustee or successor trustee has a duty of good faith to the borrower, beneficiary, and grantor. [2009 c 292 § 7; 2008 c 153 § 1; 1998 c 295 § 2; 1991 c 72 § 58; 1987 c 352 § 1; 1981 c 161 § 1; 1975 1st ex.s. c 129 § 1; 1965 c 74 § 1.]

**61.24.020 Deeds subject to all mortgage laws—Foreclosure—Recording and indexing—Trustee and beneficiary, separate entities, exception.** Except as provided in this chapter, a deed of trust is subject to all laws relating to mortgages on real property. A deed conveying real property to a trustee in trust to secure the performance of an obligation of the grantor or another to the beneficiary may be foreclosed by trustee's sale. The county auditor shall record the deed as a mortgage and shall index the name of the grantor as mortgagor and the names of the trustee and beneficiary as mortgagee. No person, corporation or association may be both trustee and beneficiary under the same deed of trust: PROVIDED, That any agency of the United States government may be both trustee and beneficiary under the same deed of trust. A deed of trust conveying real property that is used principally for agricultural purposes may be foreclosed as a mortgage. Pursuant to \*RCW 62A.9-501(4), when a deed of trust encumbers both real and personal property, the trustee is authorized to sell all or any portion of the grantor's interest in that real and personal property at a trustee's sale. [1998 c 295 § 3; 1985 c 193 § 2; 1975 1st ex.s. c 129 § 2; 1965 c 74 § 2.]

**\*Reviser's note:** Article 62A.9 RCW was repealed in its entirety by 2000 c 250 § 9A-901, effective July 1, 2001. For later enactment, see Article 62A.9A RCW.

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**61.24.025 Application of federal servicemembers civil relief act to deeds of trust.** All of the rights, duties, and privileges conveyed under the federal servicemembers civil relief act, P.L. 108-189, are applicable to deeds of trust under Washington law. [2004 c 161 § 5.]

**Effective date—2004 c 161:** See note following RCW 28B.10.270.

**61.24.030 Requisites to trustee's sale.** It shall be requisite to a trustee's sale:

(1) That the deed of trust contains a power of sale;

(2) That the deed of trust contains a statement that the real property conveyed is not used principally for agricultural purposes; provided, if the statement is false on the date the

(2010 Ed.)

deed of trust was granted or amended to include that statement, and false on the date of the trustee's sale, then the deed of trust must be foreclosed judicially. Real property is used for agricultural purposes if it is used in an operation that produces crops, livestock, or aquatic goods;

(3) That a default has occurred in the obligation secured or a covenant of the grantor, which by the terms of the deed of trust makes operative the power to sell;

(4) That no action commenced by the beneficiary of the deed of trust is now pending to seek satisfaction of an obligation secured by the deed of trust in any court by reason of the grantor's default on the obligation secured: PROVIDED, That (a) the seeking of the appointment of a receiver shall not constitute an action for purposes of this chapter; and (b) if a receiver is appointed, the grantor shall be entitled to any rents or profits derived from property subject to a homestead as defined in RCW 6.13.010. If the deed of trust was granted to secure a commercial loan, this subsection shall not apply to actions brought to enforce any other lien or security interest granted to secure the obligation secured by the deed of trust being foreclosed;

(5) That the deed of trust has been recorded in each county in which the land or some part thereof is situated;

(6) That prior to the date of the notice of trustee's sale and continuing thereafter through the date of the trustee's sale, the trustee must maintain a street address in this state where personal service of process may be made, and the trustee must maintain a physical presence and have telephone service at such address;

(7)(a) That, for residential real property, before the notice of trustee's sale is recorded, transmitted, or served, the trustee shall have proof that the beneficiary is the owner of any promissory note or other obligation secured by the deed of trust. A declaration by the beneficiary made under the penalty of perjury stating that the beneficiary is the actual holder of the promissory note or other obligation secured by the deed of trust shall be sufficient proof as required under this subsection.

(b) Unless the trustee has violated his or her duty under RCW 61.24.010(4), the trustee is entitled to rely on the beneficiary's declaration as evidence of proof required under this subsection.

(c) This subsection (7) does not apply to association beneficiaries subject to chapter 64.32, 64.34, or 64.38 RCW; and

(8) That at least thirty days before notice of sale shall be recorded, transmitted or served, written notice of default shall be transmitted by the beneficiary or trustee to the borrower and grantor at their last known addresses by both first-class and either registered or certified mail, return receipt requested, and the beneficiary or trustee shall cause to be posted in a conspicuous place on the premises, a copy of the notice, or personally served on the borrower and grantor. This notice shall contain the following information:

(a) A description of the property which is then subject to the deed of trust;

(b) A statement identifying each county in which the deed of trust is recorded and the document number given to the deed of trust upon recording by each county auditor or recording officer;

(c) A statement that the beneficiary has declared the borrower or grantor to be in default, and a concise statement of the default alleged;

(d) An itemized account of the amount or amounts in arrears if the default alleged is failure to make payments;

(e) An itemized account of all other specific charges, costs, or fees that the borrower, grantor, or any guarantor is or may be obliged to pay to reinstate the deed of trust before the recording of the notice of sale;

(f) A statement showing the total of (d) and (e) of this subsection, designated clearly and conspicuously as the amount necessary to reinstate the note and deed of trust before the recording of the notice of sale;

(g) A statement that failure to cure the alleged default within thirty days of the date of mailing of the notice, or if personally served, within thirty days of the date of personal service thereof, may lead to recordation, transmittal, and publication of a notice of sale, and that the property described in (a) of this subsection may be sold at public auction at a date no less than one hundred twenty days in the future;

(h) A statement that the effect of the recordation, transmittal, and publication of a notice of sale will be to (i) increase the costs and fees and (ii) publicize the default and advertise the grantor's property for sale;

(i) A statement that the effect of the sale of the grantor's property by the trustee will be to deprive the grantor of all their interest in the property described in (a) of this subsection;

(j) A statement that the borrower, grantor, and any guarantor has recourse to the courts pursuant to RCW 61.24.130 to contest the alleged default on any proper ground;

(k) In the event the property secured by the deed of trust is owner-occupied residential real property, a statement, prominently set out at the beginning of the notice, which shall state as follows:

"You should take care to protect your interest in your home. This notice of default (your failure to pay) is the first step in a process that could result in you losing your home. You should carefully review your options. For example:

Can you pay and stop the foreclosure process?

Do you dispute the failure to pay?

Can you sell your property to preserve your equity?

Are you able to refinance this loan or obligation with a new loan or obligation from another lender with payments, terms, and fees that are more affordable?

Do you qualify for any government or private homeowner assistance programs?

Do you know if filing for bankruptcy is an option? What are the pros and cons of doing so?

Do not ignore this notice; because if you do nothing, you could lose your home at a foreclosure sale. (No foreclosure sale can be held any sooner than ninety days after a notice of sale is issued and a notice of sale cannot be issued until thirty days after this notice.) Also, if you do nothing to pay what you owe, be careful of people who claim they can help you. There are many individuals and businesses that watch for the notices of sale in order to unfairly profit as a result of borrowers' distress.

You may feel you need help understanding what to do. There are a number of professional resources available, including home loan counselors and attorneys, who may

assist you. Many legal services are lower-cost or even free, depending on your ability to pay. If you desire legal help in understanding your options or handling this default, you may obtain a referral (at no charge) by contacting the county bar association in the county where your home is located. These legal referral services also provide information about lower-cost or free legal services for those who qualify. You may contact the Department of Financial Institutions or the statewide civil legal aid hotline for possible assistance or referrals; and

(l) In the event the property secured by the deed of trust is residential real property, the name and address of the owner of any promissory notes or other obligations secured by the deed of trust and the name, address, and telephone number of a party acting as a servicer of the obligations secured by the deed of trust." [2009 c 292 § 8. Prior: 2008 c 153 § 2; 2008 c 108 § 22; 1998 c 295 § 4; 1990 c 111 § 1; 1987 c 352 § 2; 1985 c 193 § 3; 1975 1st ex.s. c 129 § 3; 1965 c 74 § 3.]

**Findings—2008 c 108:** See RCW 19.144.005.

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

### **61.24.031 Notice of default under RCW 61.24.030(8)—Beneficiary's duties—Borrower's options.**

**(Expires December 31, 2012.)** (1)(a) A trustee, beneficiary, or authorized agent may not issue a notice of default under RCW 61.24.030(8) until thirty days after initial contact with the borrower is made as required under (b) of this subsection or thirty days after satisfying the due diligence requirements as described in subsection (5) of this section.

(b) A beneficiary or authorized agent shall contact the borrower by letter and by telephone in order to assess the borrower's financial ability to pay the debt secured by the deed of trust and explore options for the borrower to avoid foreclosure. The letter required under this subsection must be mailed in accordance with subsection (5)(a) of this section and must include the information described in subsection (5)(a) and (e)(i) through (iv) of this section.

(c) During the initial contact, the beneficiary or authorized agent shall advise the borrower that he or she has the right to request a subsequent meeting and, if requested, the beneficiary or authorized agent shall schedule the meeting to occur within fourteen days of the request. The assessment of the borrower's financial ability to repay the debt and a discussion of options may occur during the initial contact or at a subsequent meeting scheduled for that purpose. At the initial contact, the borrower must be provided the toll-free telephone number made available by the department to find a department-certified housing counseling agency and the toll-free numbers for the department of financial institutions and the statewide civil legal aid hotline for possible assistance and referrals.

(d) Any meeting under this section may occur telephonically.

(2) A notice of default issued under RCW 61.24.030(8) must include a declaration, as provided in subsection (9) of this section, from the beneficiary or authorized agent that it has contacted the borrower as provided in subsection (1)(b) of this section, it has tried with due diligence to contact the borrower under subsection (5) of this section, or the borrower

has surrendered the property to the trustee, beneficiary, or authorized agent. Unless the trustee has violated his or her duty under RCW 61.24.010(4), the trustee is entitled to rely on the declaration as evidence that the requirements of this section have been satisfied, and the trustee is not liable for the beneficiary's or its authorized agent's failure to comply with the requirements of this section.

(3) A beneficiary's or authorized agent's loss mitigation personnel may participate by telephone during any contact required under this section.

(4) Within fourteen days after the initial contact under subsection (1) of this section, if a borrower has designated a department-certified housing counseling agency, attorney, or other advisor to discuss with the beneficiary or authorized agent, on the borrower's behalf, options for the borrower to avoid foreclosure, the borrower shall inform the beneficiary or authorized agent and provide the contact information. The beneficiary or authorized agent shall contact the designated representative for the borrower for the discussion within fourteen days after the representative is designated by the borrower. Any deed of trust modification or workout plan offered at the meeting with the borrower's designated representative by the beneficiary or authorized agent is subject to approval by the borrower.

(5) A notice of default may be issued under RCW 61.24.030(8) if a beneficiary or authorized agent has not contacted a borrower as required under subsection (1)(b) of this section and the failure to contact the borrower occurred despite the due diligence of the beneficiary or authorized agent. Due diligence requires the following:

(a) A beneficiary or authorized agent shall first attempt to contact a borrower by sending a first-class letter to the address in the beneficiary's records for sending account statements to the borrower and to the address of the property encumbered by the deed of trust. The letter must include the toll-free telephone number made available by the department to find a department-certified housing counseling agency, and the following information:

"You may contact the Department of Financial Institutions, the Washington State Bar Association, or the statewide civil legal aid hotline for possible assistance or referrals."

(b)(i) After the letter has been sent, the beneficiary or authorized agent shall attempt to contact the borrower by telephone at least three times at different hours and on different days. Telephone calls must be made to the primary and secondary telephone numbers on file with the beneficiary or authorized agent.

(ii) A beneficiary or authorized agent may attempt to contact a borrower using an automated system to dial borrowers if the telephone call, when answered, is connected to a live representative of the beneficiary or authorized agent.

(iii) A beneficiary or authorized agent satisfies the telephone contact requirements of this subsection (5)(b) if the beneficiary or authorized agent determines, after attempting contact under this subsection (5)(b), that the borrower's primary telephone number and secondary telephone number or numbers on file, if any, have been disconnected or are not good contact numbers for the borrower.

(c) If the borrower does not respond within fourteen days after the telephone call requirements of (b) of this subsection have been satisfied, the beneficiary or authorized agent shall

send a certified letter, with return receipt requested, to the borrower at the address in the beneficiary's records for sending account statements to the borrower and to the address of the property encumbered by the deed of trust. The letter must include the information described in (e)(i) through (iv) of this subsection.

(d) The beneficiary or authorized agent shall provide a means for the borrower to contact the beneficiary or authorized agent in a timely manner, including a toll-free telephone number or charge-free equivalent that will provide access to a live representative during business hours.

(e) The beneficiary or authorized agent shall post a link on the home page of the beneficiary's or authorized agent's internet web site, if any, to the following information:

(i) Options that may be available to borrowers who are unable to afford their mortgage payments and who wish to avoid foreclosure, and instructions to borrowers advising them on steps to take to explore those options;

(ii) A list of financial documents borrowers should collect and be prepared to present to the beneficiary or authorized agent when discussing options for avoiding foreclosure;

(iii) A toll-free telephone number or charge-free equivalent for borrowers who wish to discuss options for avoiding foreclosure with their beneficiary or authorized agent; and

(iv) The toll-free telephone number or charge-free equivalent made available by the department to find a department-certified housing counseling agency.

(6) Subsections (1) and (5) of this section do not apply if any of the following occurs:

(a) The borrower has surrendered the property as evidenced by either a letter confirming the surrender or delivery of the keys to the property to the trustee, beneficiary, or authorized agent; or

(b) The borrower has filed for bankruptcy, and the bankruptcy stay remains in place, or the borrower has filed for bankruptcy and the bankruptcy court has granted relief from the bankruptcy stay allowing enforcement of the deed of trust.

(7)(a) This section applies only to deeds of trust made from January 1, 2003, to December 31, 2007, inclusive, that are recorded against owner-occupied residential real property. This section does not apply to deeds of trust: (i) Securing a commercial loan; (ii) securing obligations of a grantor who is not the borrower or a guarantor; or (iii) securing a purchaser's obligations under a seller-financed sale.

(b) This section does not apply to association beneficiaries subject to chapter 64.32, 64.34, or 64.38 RCW.

(8) As used in this section:

(a) "Department" means the United States department of housing and urban development.

(b) "Seller-financed sale" means a residential real property transaction where the seller finances all or part of the purchase price, and that financed amount is secured by a deed of trust against the subject residential real property.

(9) The form of declaration to be provided by the beneficiary or authorized agent as required under subsection (2) of this section must be in substantially the following form:

#### **"FORECLOSURE LOSS MITIGATION FORM**

**Please select applicable option(s) below.**

The undersigned beneficiary or authorized agent for the beneficiary hereby represents and declares under the penalty of perjury that [check the applicable box and fill in any blanks so that the trustee can insert, on the beneficiary's behalf, the applicable declaration in the notice of default required under chapter 61.24 RCW]:

(1) [ ] The beneficiary or beneficiary's authorized agent has contacted the borrower under, and has complied with, RCW 61.24.031 (contact provision to "assess the borrower's financial ability to pay the debt secured by the deed of trust and explore options for the borrower to avoid foreclosure").

(2) [ ] The beneficiary or beneficiary's authorized agent has exercised due diligence to contact the borrower as required in RCW 61.24.031(5) and, after waiting fourteen days after the requirements in RCW 61.24.031 were satisfied, the beneficiary or the beneficiary's authorized agent sent to the borrower(s), by certified mail, return receipt requested, the letter required under RCW 61.24.031.

(3) [ ] The borrower has surrendered the secured property as evidenced by either a letter confirming the surrender or by delivery of the keys to the secured property to the beneficiary, the beneficiary's authorized agent or to the trustee.

(4) [ ] Under RCW 61.24.031, the beneficiary or the beneficiary's authorized agent has verified information that, on or before the date of this declaration, the borrower(s) has filed for bankruptcy, and the bankruptcy stay remains in place, or the borrower has filed for bankruptcy and the bankruptcy court has granted relief from the bankruptcy stay allowing the enforcement of the deed of trust." [2009 c 292 § 2.]

**Expiration date—2009 c 292 § 2:** "Section 2 of this act expires December 31, 2012." [2009 c 292 § 13.]

**61.24.040 Foreclosure and sale—Notice of sale.** A deed of trust foreclosed under this chapter shall be foreclosed as follows:

(1) At least ninety days before the sale, the trustee shall:

(a) Record a notice in the form described in (f) of this subsection in the office of the auditor in each county in which the deed of trust is recorded;

(b) To the extent the trustee elects to foreclose its lien or interest, or the beneficiary elects to preserve its right to seek a deficiency judgment against a borrower or grantor under RCW 61.24.100(3)(a), and if their addresses are stated in a recorded instrument evidencing their interest, lien, or claim of lien, or an amendment thereto, or are otherwise known to the trustee, cause a copy of the notice of sale described in (f) of this subsection to be transmitted by both first-class and either certified or registered mail, return receipt requested, to the following persons or their legal representatives, if any, at such address:

(i) The borrower and grantor;

(ii) The beneficiary of any deed of trust or mortgagee of any mortgage, or any person who has a lien or claim of lien against the property, that was recorded subsequent to the recordation of the deed of trust being foreclosed and before the recordation of the notice of sale;

(iii) The vendee in any real estate contract, the lessee in any lease, or the holder of any conveyances of any interest or estate in any portion or all of the property described in such notice, if that contract, lease, or conveyance of such interest

or estate, or a memorandum or other notice thereof, was recorded after the recordation of the deed of trust being foreclosed and before the recordation of the notice of sale;

(iv) The last holder of record of any other lien against or interest in the property that is subject to a subordination to the deed of trust being foreclosed that was recorded before the recordation of the notice of sale;

(v) The last holder of record of the lien of any judgment subordinate to the deed of trust being foreclosed; and

(vi) The occupants of property consisting solely of a single-family residence, or a condominium, cooperative, or other dwelling unit in a multiplex or other building containing fewer than five residential units, whether or not the occupant's rental agreement is recorded, which notice may be a single notice addressed to "occupants" for each unit known to the trustee or beneficiary;

(c) Cause a copy of the notice of sale described in (f) of this subsection to be transmitted by both first-class and either certified or registered mail, return receipt requested, to the plaintiff or the plaintiff's attorney of record, in any court action to foreclose a lien or other encumbrance on all or any part of the property, provided a court action is pending and a lis pendens in connection therewith is recorded in the office of the auditor of any county in which all or part of the property is located on the date the notice is recorded;

(d) Cause a copy of the notice of sale described in (f) of this subsection to be transmitted by both first-class and either certified or registered mail, return receipt requested, to any person who has recorded a request for notice in accordance with RCW 61.24.045, at the address specified in such person's most recently recorded request for notice;

(e) Cause a copy of the notice of sale described in (f) of this subsection to be posted in a conspicuous place on the property, or in lieu of posting, cause a copy of said notice to be served upon any occupant of the property;

(f) The notice shall be in substantially the following form:

#### NOTICE OF TRUSTEE'S SALE

##### I.

NOTICE IS HEREBY GIVEN that the undersigned Trustee will on the . . . . day of . . . . , . . . . , at the hour of . . . . o'clock . . . . M. at . . . . [street address and location if inside a building] in the City of . . . . , State of Washington, sell at public auction to the highest and best bidder, payable at the time of sale, the following described real property, situated in the County(ies) of . . . . , State of Washington, to-wit:

[If any personal property is to be included in the trustee's sale, include a description that reasonably identifies such personal property]

which is subject to that certain Deed of Trust dated . . . . , . . . . , recorded . . . . , . . . . , under Auditor's File No. . . . . , records of . . . . County, Washington, from . . . . , as Grantor, to . . . . , as Trustee, to secure an obligation in favor of . . . . , as Beneficiary, the beneficial interest in which was assigned by . . . . , under an Assignment recorded under Auditor's File No. . . . . [Include recording

information for all counties if the Deed of Trust is recorded in more than one county.]

II.

No action commenced by the Beneficiary of the Deed of Trust is now pending to seek satisfaction of the obligation in any Court by reason of the Borrower's or Grantor's default on the obligation secured by the Deed of Trust.

[If there is another action pending to foreclose other security for all or part of the same debt, qualify the statement and identify the action.]

III.

The default(s) for which this foreclosure is made is/are as follows:

[If default is for other than payment of money, set forth the particulars]

Failure to pay when due the following amounts which are now in arrears:

IV.

The sum owing on the obligation secured by the Deed of Trust is: Principal \$ . . . . ., together with interest as provided in the note or other instrument secured from the . . . . day of . . . . ., . . . , and such other costs and fees as are due under the note or other instrument secured, and as are provided by statute.

V.

The above-described real property will be sold to satisfy the expense of sale and the obligation secured by the Deed of Trust as provided by statute. The sale will be made without warranty, express or implied, regarding title, possession, or encumbrances on the . . . . day of . . . . ., . . . . The default(s) referred to in paragraph III must be cured by the . . . . day of . . . . ., . . . (11 days before the sale date), to cause a discontinuance of the sale. The sale will be discontinued and terminated if at any time on or before the . . . . day of . . . . ., . . . , (11 days before the sale date), the default(s) as set forth in paragraph III is/are cured and the Trustee's fees and costs are paid. The sale may be terminated any time after the . . . . day of . . . . ., . . . (11 days before the sale date), and before the sale by the Borrower, Grantor, any Guarantor, or the holder of any recorded junior lien or encumbrance paying the entire principal and interest secured by the Deed of Trust, plus costs, fees, and advances, if any, made pursuant to the terms of the obligation and/or Deed of Trust, and curing all other defaults.

VI.

A written notice of default was transmitted by the Beneficiary or Trustee to the Borrower and Grantor at the following addresses:

. . . . .  
. . . . .  
. . . . .

by both first-class and certified mail on the . . . . day of . . . . ., . . . , proof of which is in the possession of the Trustee; and the Borrower and Grantor were personally served on the . . . . day of . . . . ., . . . , with said written notice of default or the written notice of default was posted in a conspicuous place on the real property described in paragraph I above, and the Trustee has possession of proof of such service or posting.

VII.

The Trustee whose name and address are set forth below will provide in writing to anyone requesting it, a statement of all costs and fees due at any time prior to the sale.

VIII.

The effect of the sale will be to deprive the Grantor and all those who hold by, through or under the Grantor of all their interest in the above-described property.

IX.

Anyone having any objection to the sale on any grounds whatsoever will be afforded an opportunity to be heard as to those objections if they bring a lawsuit to restrain the sale pursuant to RCW 61.24.130. Failure to bring such a lawsuit may result in a waiver of any proper grounds for invalidating the Trustee's sale.

[Add Part X to this notice if applicable under RCW 61.24.040(9)]

. . . . .  
. . . . ., Trustee  
. . . . . }  
. . . . . } Address  
. . . . . }  
. . . . . } Phone

[Acknowledgment]

(2) In addition to providing the borrower and grantor the notice of sale described in subsection (1)(f) of this section, the trustee shall include with the copy of the notice which is mailed to the grantor, a statement to the grantor in substantially the following form:

NOTICE OF FORECLOSURE  
Pursuant to the Revised Code of Washington,  
Chapter 61.24 RCW

The attached Notice of Trustee's Sale is a consequence of default(s) in the obligation to . . . . ., the Beneficiary of your Deed of Trust and owner of the obligation secured thereby. Unless the default(s) is/are cured, your property will be sold at auction on the . . . . day of . . . . ., . . . .

To cure the default(s), you must bring the payments current, cure any other defaults, and pay accrued late charges and other costs, advances, and attorneys' fees as set forth below by the . . . . day of . . . . ., . . . [11 days before the sale date]. To date, these arrears and costs are as follows:

	Currently due to reinstate on . . . . . . . . . .	Estimated amount that will be due to reinstate on . . . . . . . . . . (11 days before the date set for sale)
Delinquent payments from . . . . ., . . . . . in the amount of \$ . . . . /mo.:	\$ . . . .	\$ . . . .
Late charges in the total amount of:	\$ . . . .	\$ . . . . Estimated Amounts
Attorneys' fees:	\$ . . . .	\$ . . . .
Trustee's fee:	\$ . . . .	\$ . . . .
Trustee's expenses: (Itemization)		
Title report	\$ . . . .	\$ . . . .
Recording fees	\$ . . . .	\$ . . . .
Service/Posting of Notices	\$ . . . .	\$ . . . .
Postage/Copying expense	\$ . . . .	\$ . . . .
Publication	\$ . . . .	\$ . . . .
Telephone charges	\$ . . . .	\$ . . . .
Inspection fees	\$ . . . .	\$ . . . .
. . . . .	\$ . . . .	\$ . . . .
. . . . .	\$ . . . .	\$ . . . .
<b>TOTALS</b>	<b>\$ . . . .</b>	<b>\$ . . . .</b>

To pay off the entire obligation secured by your Deed of Trust as of the . . . . . day of . . . . . you must pay a total of \$ . . . . in principal, \$ . . . . in interest, plus other costs and advances estimated to date in the amount of \$ . . . . . From and after the date of this notice you must submit a written request to the Trustee to obtain the total amount to pay off the entire obligation secured by your Deed of Trust as of the pay-off date.

As to the defaults which do not involve payment of money to the Beneficiary of your Deed of Trust, you must cure each such default. Listed below are the defaults which do not involve payment of money to the Beneficiary of your Deed of Trust. Opposite each such listed default is a brief description of the action necessary to cure the default and a description of the documentation necessary to show that the default has been cured.

Default	Description of Action Required to Cure and Documentation Necessary to Show Cure
. . . . .	. . . . .
. . . . .	. . . . .
. . . . .	. . . . .
. . . . .	. . . . .
. . . . .	. . . . .

You may reinstate your Deed of Trust and the obligation secured thereby at any time up to and including the . . . . day of . . . . ., . . . . [11 days before the sale date], by paying the amount set forth or estimated above and by curing any other defaults described above. Of course, as time passes other payments may become due, and any further payments coming due and any additional late charges must be added to your reinstating payment. Any new defaults not involving payment of money that occur after the date of this notice must also be cured in order to effect reinstatement. In addition, because some of the charges can only be estimated at this time, and because the amount necessary to reinstate or to pay off the entire indebtedness may include presently unknown expenditures required to preserve the property or to comply with state or local law, it will be necessary for you to contact the Trustee before the time you tender reinstatement or the payoff amount so that you may be advised of the exact amount you will be required to pay. Tender of payment or performance must be made to: . . . . ., whose address is . . . . ., telephone ( ) . . . . . AFTER THE . . . . DAY OF . . . . ., . . . ., YOU MAY NOT REINSTATE YOUR DEED OF TRUST BY PAYING THE BACK PAYMENTS AND COSTS AND FEES AND CURING THE OTHER DEFAULTS AS OUTLINED ABOVE. The Trustee will respond to any written request for current payoff or reinstatement amounts within ten days of receipt of your written request. In such a case, you will only be able to stop the sale by paying, before the sale, the total principal balance (\$ . . . . .) plus accrued interest, costs and advances, if any, made pursuant to the terms of the documents and by curing the other defaults as outlined above.

You may contest this default by initiating court action in the Superior Court of the county in which the sale is to be held. In such action, you may raise any legitimate defenses you have to this default. A copy of your Deed of Trust and documents evidencing the obligation secured thereby are enclosed. You may wish to consult a lawyer. Legal action on your part may prevent or restrain the sale, but only if you persuade the court of the merits of your defense. You may contact the Department of Financial Institutions or the statewide civil legal aid hotline for possible assistance or referrals.

The court may grant a restraining order or injunction to restrain a trustee's sale pursuant to RCW 61.24.130 upon five days notice to the trustee of the time when, place where, and the judge before whom the application for the restraining order or injunction is to be made. This notice shall include copies of all pleadings and related documents to be given to the judge. Notice and other process may be served on the trustee at:

NAME: . . . . .  
ADDRESS: . . . . .  
. . . . .  
TELEPHONE NUMBER: . . . . .

If you do not reinstate the secured obligation and your Deed of Trust in the manner set forth above, or if you do not succeed in restraining the sale by court action, your property will be sold. The effect of such sale will be to deprive you and all those who hold by, through or under you of all interest in the property;

(3) In addition, the trustee shall cause a copy of the notice of sale described in subsection (1)(f) of this section (excluding the acknowledgment) to be published in a legal newspaper in each county in which the property or any part thereof is situated, once on or between the thirty-fifth and twenty-eighth day before the date of sale, and once on or between the fourteenth and seventh day before the date of sale;

(4) On the date and at the time designated in the notice of sale, the trustee or its authorized agent shall sell the property at public auction to the highest bidder. The trustee may sell the property in gross or in parcels as the trustee shall deem most advantageous;

(5) The place of sale shall be at any designated public place within the county where the property is located and if the property is in more than one county, the sale may be in any of the counties where the property is located. The sale shall be on Friday, or if Friday is a legal holiday on the following Monday, and during the hours set by statute for the conduct of sales of real estate at execution;

(6) The trustee has no obligation to, but may, for any cause the trustee deems advantageous, continue the sale for a period or periods not exceeding a total of one hundred twenty days by (a) a public proclamation at the time and place fixed for sale in the notice of sale and if the continuance is beyond the date of sale, by giving notice of the new time and place of the sale by both first class and either certified or registered mail, return receipt requested, to the persons specified in subsection (1)(b)(i) and (ii) of this section to be deposited in the mail (i) not less than four days before the new date fixed for the sale if the sale is continued for up to seven days; or (ii) not more than three days after the date of the continuance by oral proclamation if the sale is continued for more than seven days, or, alternatively, (b) by giving notice of the time and place of the postponed sale in the manner and to the persons specified in subsection (1)(b), (c), (d), and (e) of this section and publishing a copy of such notice once in the newspaper(s) described in subsection (3) of this section, more than seven days before the date fixed for sale in the notice of sale. No other notice of the postponed sale need be given;

(7) The purchaser shall forthwith pay the price bid and on payment the trustee shall execute to the purchaser its deed; the deed shall recite the facts showing that the sale was conducted in compliance with all of the requirements of this chapter and of the deed of trust, which recital shall be prima facie evidence of such compliance and conclusive evidence thereof in favor of bona fide purchasers and encumbrancers for value, except that these recitals shall not affect the lien or interest of any person entitled to notice under subsection (1) of this section, if the trustee fails to give the required notice to such person. In such case, the lien or interest of such omitted person shall not be affected by the sale and such omitted person shall be treated as if such person was the holder of the same lien or interest and was omitted as a party defendant in a judicial foreclosure proceeding;

(8) The sale as authorized under this chapter shall not take place less than one hundred ninety days from the date of default in any of the obligations secured;

(9) If the trustee elects to foreclose the interest of any occupant or tenant of property comprised solely of a single-family residence, or a condominium, cooperative, or other

dwelling unit in a multiplex or other building containing fewer than five residential units, the following notice shall be included as Part X of the Notice of Trustee's Sale:

X.

#### NOTICE TO OCCUPANTS OR TENANTS

The purchaser at the trustee's sale is entitled to possession of the property on the 20th day following the sale, as against the grantor under the deed of trust (the owner) and anyone having an interest junior to the deed of trust, including occupants who are not tenants. After the 20th day following the sale the purchaser has the right to evict occupants who are not tenants by summary proceedings under chapter 59.12 RCW. For tenant-occupied property, the purchaser shall provide a tenant with written notice in accordance with RCW 61.24.060;

(10) Only one copy of all notices required by this chapter need be given to a person who is both the borrower and the grantor. All notices required by this chapter that are given to a general partnership are deemed given to each of its general partners, unless otherwise agreed by the parties. [2009 c 292 § 9; 2008 c 153 § 3; 1998 c 295 § 5; 1989 c 361 § 1; 1987 c 352 § 3; 1985 c 193 § 4; 1981 c 161 § 3; 1975 1st ex.s. c 129 § 4; 1967 c 30 § 1; 1965 c 74 § 4.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**61.24.042 Notice to guarantor—Contents—Failure to provide.** The beneficiary may give the notices of default, trustee's sale, and foreclosure referred to in RCW \*61.24.030(7) and 61.24.040 to any one or more of the guarantors of a commercial loan at the time they are given to the grantor. In addition to the information contained in the notices provided to the grantor, these notices shall state that (1) the guarantor may be liable for a deficiency judgment to the extent the sale price obtained at the trustee's sale is less than the debt secured by the deed of trust; (2) the guarantor has the same rights to reinstate the debt, cure the default, or repay the debt as is given to the grantor in order to avoid the trustee's sale; (3) the guarantor will have no right to redeem the property after the trustee's sale; (4) subject to such longer periods as are provided in the Washington deed of trust act, chapter 61.24 RCW, any action brought to enforce a guaranty must be commenced within one year after the trustee's sale, or the last trustee's sale under any deed of trust granted to secure the same debt; and (5) in any action for a deficiency, the guarantor will have the right to establish the fair value of the property as of the date of the trustee's sale, less prior liens and encumbrances, and to limit its liability for a deficiency to the difference between the debt and the greater of such fair value or the sale price paid at the trustee's sale, plus interest and costs. The failure of the beneficiary to provide any guarantor the notice referred to in this section does not invalidate either the notices given to the borrower or the grantor, or the trustee's sale. [1998 c 295 § 6.]

\*Reviser's note: RCW 61.24.030 was amended by 2009 c 292 § 8, changing subsection (7) to subsection (8).

**61.24.045 Requests for notice of sale.** Any person desiring a copy of any notice of sale described in RCW 61.24.040(1)(f) under any deed of trust, other than a person

entitled to receive such a notice under RCW 61.24.040(1) (b) or (c), must, after the recordation of such deed of trust and before the recordation of the notice of sale, cause to be filed for record, in the office of the auditor of any county in which the deed of trust is recorded, a duly acknowledged request for a copy of any notice of sale. The request shall be signed and acknowledged by the person to be notified or such person's agent, attorney, or representative; shall set forth the name, mailing address, and telephone number, if any, of the person or persons to be notified; shall identify the deed of trust by stating the names of the parties thereto, the date the deed of trust was recorded, the legal description of the property encumbered by the deed of trust, and the auditor's file number under which the deed of trust is recorded; and shall be in substantially the following form:

REQUEST FOR NOTICE

Request is hereby made that a copy of any notice of sale described in RCW 61.24.040(1)(f) under that certain Deed of Trust dated . . . . ., 20. . ., recorded on . . . . ., 20. . ., under auditor's file No. . . . ., records of . . . . . County, Washington, from . . . . ., as Grantor, to . . . . ., as Trustee, to secure an obligation in favor of . . . . ., as Beneficiary, and affecting the following described real property:

(Legal Description)

be sent by both first-class and either registered or certified mail, return receipt requested, to . . . . . at . . . . .  
Dated this . . . . day of . . . . ., 20. . .

Signature

(Acknowledgment)

A request for notice under this section shall not affect title to, or be deemed notice to any person that any person has any right, title, interest in, lien or charge upon, the property described in the request for notice. [2008 c 153 § 4; 1985 c 193 § 1.]

Additional notes found at www.leg.wa.gov

**61.24.050 Interest conveyed by trustee's deed—Sale is final if acceptance is properly recorded—Redemption precluded after sale.** When delivered to the purchaser, the trustee's deed shall convey all of the right, title, and interest in the real and personal property sold at the trustee's sale which the grantor had or had the power to convey at the time of the execution of the deed of trust, and such as the grantor may have thereafter acquired. If the trustee accepts a bid, then the trustee's sale is final as of the date and time of such acceptance if the trustee's deed is recorded within fifteen days thereafter. After a trustee's sale, no person shall have any right, by statute or otherwise, to redeem the property sold at the trustee's sale. [1998 c 295 § 7; 1965 c 74 § 5.]

**61.24.060 Rights and remedies of trustee's sale purchaser—Written notice to occupants or tenants.** (1) The purchaser at the trustee's sale shall be entitled to possession of the property on the twentieth day following the sale, as against the borrower and grantor under the deed of trust and anyone having an interest junior to the deed of trust, includ-

ing occupants who are not tenants, who were given all of the notices to which they were entitled under this chapter. The purchaser shall also have a right to the summary proceedings to obtain possession of real property provided in chapter 59.12 RCW.

(2) If the trustee elected to foreclose the interest of any occupant or tenant, the purchaser of tenant-occupied property at the trustee's sale shall provide written notice to the occupants and tenants at the property purchased in substantially the following form:

"NOTICE: The property located at . . . . . was purchased at a trustee's sale by . . . . . on . . . . . (date).

1. If you are the previous owner or an occupant who is not a tenant of the property that was purchased, pursuant to RCW 61.24.060, the purchaser at the trustee's sale is entitled to possession of the property on . . . . . (date), which is the twentieth day following the sale.

2. If you are a tenant or subtenant in possession of the property that was purchased, pursuant to RCW 61.24.146, the purchaser at the trustee's sale may either give you a new rental agreement OR give you a written notice to vacate the property in sixty days or more before the end of the monthly rental period."

(3) The notice required in subsection (2) of this section must be given to the property's occupants and tenants by both first-class mail and either certified or registered mail, return receipt requested. [2009 c 292 § 10; 1998 c 295 § 8; 1967 c 30 § 2; 1965 c 74 § 6.]

**61.24.070 Trustee's sale, who may bid at—If beneficiary is purchaser—If purchaser is not beneficiary.** (1) The trustee may not bid at the trustee's sale. Any other person, including the beneficiary, may bid at the trustee's sale.

(2) The trustee shall, at the request of the beneficiary, credit toward the beneficiary's bid all or any part of the monetary obligations secured by the deed of trust. If the beneficiary is the purchaser, any amount bid by the beneficiary in excess of the amount so credited shall be paid to the trustee in the form of cash, certified check, cashier's check, money order, or funds received by verified electronic transfer, or any combination thereof. If the purchaser is not the beneficiary, the entire bid shall be paid to the trustee in the form of cash, certified check, cashier's check, money order, or funds received by verified electronic transfer, or any combination thereof. [1998 c 295 § 9; 1965 c 74 § 7.]

**61.24.080 Disposition of proceeds of sale—Notices—Surplus funds.** The trustee shall apply the proceeds of the sale as follows:

(1) To the expense of sale, including a reasonable charge by the trustee and by his or her attorney: PROVIDED, That the aggregate of the charges by the trustee and his or her attorney, for their services in the sale, shall not exceed the amount which would, by the superior court of the county in which the trustee's sale occurred, have been deemed a reasonable attorney fee, had the trust deed been foreclosed as a mortgage in a noncontested action in that court;

(2) To the obligation secured by the deed of trust; and

(3) The surplus, if any, less the clerk's filing fee, shall be deposited, together with written notice of the amount of the surplus, a copy of the notice of trustee's sale, and an affidavit of mailing as provided in this subsection, with the clerk of the superior court of the county in which the sale took place. The trustee shall mail copies of the notice of the surplus, the notice of trustee's sale, and the affidavit of mailing to each party to whom the notice of trustee's sale was sent pursuant to RCW 61.24.040(1). The clerk shall index such funds under the name of the grantor as set out in the recorded notice. Upon compliance with this subsection, the trustee shall be discharged from all further responsibilities for the surplus. Interests in, or liens or claims of liens against the property eliminated by sale under this section shall attach to the surplus in the order of priority that it had attached to the property. A party seeking disbursement of the surplus funds shall file a motion requesting disbursement in the superior court for the county in which the surplus funds are deposited. Notice of the motion shall be personally served upon, or mailed in the manner specified in RCW 61.24.040(1)(b), to all parties to whom the trustee mailed notice of the surplus, and any other party who has entered an appearance in the proceeding, not less than twenty days prior to the hearing of the motion. The clerk shall not disburse such surplus except upon order of the superior court of such county. [1998 c 295 § 10; 1981 c 161 § 5; 1967 c 30 § 3; 1965 c 74 § 8.]

**61.24.090 Curing defaults before sale—Discontinuance of proceedings—Notice of discontinuance—Execution and acknowledgment—Payments tendered to trustee.** (1) At any time prior to the eleventh day before the date set by the trustee for the sale in the recorded notice of sale, or in the event the trustee continues the sale pursuant to RCW 61.24.040(6), at any time prior to the eleventh day before the actual sale, the borrower, grantor, any guarantor, any beneficiary under a subordinate deed of trust, or any person having a subordinate lien or encumbrance of record on the trust property or any part thereof, shall be entitled to cause a discontinuance of the sale proceedings by curing the default or defaults set forth in the notice, which in the case of a default by failure to pay, shall be by paying to the trustee:

(a) The entire amount then due under the terms of the deed of trust and the obligation secured thereby, other than such portion of the principal as would not then be due had no default occurred, and

(b) The expenses actually incurred by the trustee enforcing the terms of the note and deed of trust, including a reasonable trustee's fee, together with the trustee's reasonable attorney's fees, together with costs of recording the notice of discontinuance of notice of trustee's sale.

(2) Any person entitled to cause a discontinuance of the sale proceedings shall have the right, before or after reinstatement, to request any court, excluding a small claims court, for disputes within the jurisdictional limits of that court, to determine the reasonableness of any fees demanded or paid as a condition to reinstatement. The court shall make such determination as it deems appropriate, which may include an award to the prevailing party of its costs and reasonable attorneys' fees, and render judgment accordingly. An action to determine fees shall not forestall any sale or affect its validity.

(2010 Ed.)

(3) Upon receipt of such payment the proceedings shall be discontinued, the deed of trust shall be reinstated and the obligation shall remain as though no acceleration had taken place.

(4) In the case of a default which is occasioned by other than failure to make payments, the person or persons causing the said default shall pay the expenses incurred by the trustee and the trustee's fees as set forth in subsection (1)(b) of this section.

(5) Any person having a subordinate lien of record on the trust property and who has cured the default or defaults pursuant to this section shall thereafter have included in his lien all payments made to cure any defaults, including interest thereon at eight percent per annum, payments made for trustees' costs and fees incurred as authorized, and reasonable attorney's fees and costs incurred resulting from any judicial action commenced to enforce his or her rights to advances under this section.

(6) If the default is cured and the obligation and the deed of trust reinstated in the manner provided, the trustee shall properly execute, acknowledge, and cause to be recorded a notice of discontinuance of trustee's sale under that deed of trust. A notice of discontinuance of trustee's sale when so executed and acknowledged is entitled to be recorded and shall be sufficient if it sets forth a record of the deed of trust and the auditor's file number under which the deed of trust is recorded, and a reference to the notice of sale and the auditor's file number under which the notice of sale is recorded, and a notice that the sale is discontinued.

(7) Any payments required under this section as a condition precedent to reinstatement of the deed of trust shall be tendered to the trustee in the form of cash, certified check, cashier's check, money order, or funds received by verified electronic transfer, or any combination thereof. [1998 c 295 § 11; 1987 c 352 § 4; 1981 c 161 § 6; 1975 1st ex.s. c 129 § 5; 1967 c 30 § 4; 1965 c 74 § 9.]

**61.24.100 Deficiency judgments—Foreclosure—Trustee's sale—Application of chapter.** (1) Except to the extent permitted in this section for deeds of trust securing commercial loans, a deficiency judgment shall not be obtained on the obligations secured by a deed of trust against any borrower, grantor, or guarantor after a trustee's sale under that deed of trust.

(2)(a) Nothing in this chapter precludes an action against any person liable on the obligations secured by a deed of trust or any guarantor prior to a notice of trustee's sale being given pursuant to this chapter or after the discontinuance of the trustee's sale.

(b) No action under (a) of this subsection precludes the beneficiary from commencing a judicial foreclosure or trustee's sale under the deed of trust after the completion or dismissal of that action.

(3) This chapter does not preclude any one or more of the following after a trustee's sale under a deed of trust securing a commercial loan executed after June 11, 1998:

(a)(i) To the extent the fair value of the property sold at the trustee's sale to the beneficiary or an affiliate of the beneficiary is less than the unpaid obligation secured by the deed of trust immediately prior to the trustee's sale, an action for a deficiency judgment against the borrower or grantor, if such

person or persons was timely given the notices under RCW 61.24.040, for (A) any decrease in the fair value of the property caused by waste to the property committed by the borrower or grantor, respectively, after the deed of trust is granted, and (B) the wrongful retention of any rents, insurance proceeds, or condemnation awards by the borrower or grantor, respectively, that are otherwise owed to the beneficiary.

(ii) This subsection (3)(a) does not apply to any property that is occupied by the borrower as its principal residence as of the date of the trustee's sale;

(b) Any judicial or nonjudicial foreclosures of any other deeds of trust, mortgages, security agreements, or other security interests or liens covering any real or personal property granted to secure the obligation that was secured by the deed of trust foreclosed; or

(c) Subject to this section, an action for a deficiency judgment against a guarantor if the guarantor is timely given the notices under RCW 61.24.042.

(4) Any action referred to in subsection (3)(a) and (c) of this section shall be commenced within one year after the date of the trustee's sale, or a later date to which the liable party otherwise agrees in writing with the beneficiary after the notice of foreclosure is given, plus any period during which the action is prohibited by a bankruptcy, insolvency, moratorium, or other similar debtor protection statute. If there occurs more than one trustee's sale under a deed of trust securing a commercial loan or if trustee's sales are made pursuant to two or more deeds of trust securing the same commercial loan, the one-year limitation in this section begins on the date of the last of those trustee's sales.

(5) In any action against a guarantor following a trustee's sale under a deed of trust securing a commercial loan, the guarantor may request the court or other appropriate adjudicator to determine, or the court or other appropriate adjudicator may in its discretion determine, the fair value of the property sold at the sale and the deficiency judgment against the guarantor shall be for an amount equal to the sum of the total amount owed to the beneficiary by the guarantor as of the date of the trustee's sale, less the fair value of the property sold at the trustee's sale or the sale price paid at the trustee's sale, whichever is greater, plus interest on the amount of the deficiency from the date of the trustee's sale at the rate provided in the guaranty, the deed of trust, or in any other contracts evidencing the debt secured by the deed of trust, as applicable, and any costs, expenses, and fees that are provided for in any contract evidencing the guarantor's liability for such a judgment. If any other security is sold to satisfy the same debt prior to the entry of a deficiency judgment against the guarantor, the fair value of that security, as calculated in the manner applicable to the property sold at the trustee's sale, shall be added to the fair value of the property sold at the trustee's sale as of the date that additional security is foreclosed. This section is in lieu of any right any guarantor would otherwise have to establish an upset price pursuant to RCW 61.12.060 prior to a trustee's sale.

(6) A guarantor granting a deed of trust to secure its guaranty of a commercial loan shall be subject to a deficiency judgment following a trustee's sale under that deed of trust only to the extent stated in subsection (3)(a)(i) of this section. If the deed of trust encumbers the guarantor's principal resi-

dence, the guarantor shall be entitled to receive an amount up to the homestead exemption set forth in RCW 6.13.030, without regard to the effect of RCW 6.13.080(2), from the bid at the foreclosure or trustee's sale accepted by the sheriff or trustee prior to the application of the bid to the guarantor's obligation.

(7) A beneficiary's acceptance of a deed in lieu of a trustee's sale under a deed of trust securing a commercial loan exonerates the guarantor from any liability for the debt secured thereby except to the extent the guarantor otherwise agrees as part of the deed in lieu transaction.

(8) This chapter does not preclude a beneficiary from foreclosing a deed of trust in the same manner as a real property mortgage and this section does not apply to such a foreclosure.

(9) Any contract, note, deed of trust, or guaranty may, by its express language, prohibit the recovery of any portion or all of a deficiency after the property encumbered by the deed of trust securing a commercial loan is sold at a trustee's sale.

(10) A trustee's sale under a deed of trust securing a commercial loan does not preclude an action to collect or enforce any obligation of a borrower or guarantor if that obligation, or the substantial equivalent of that obligation, was not secured by the deed of trust.

(11) Unless the guarantor otherwise agrees, a trustee's sale shall not impair any right or agreement of a guarantor to be reimbursed by a borrower or grantor for a deficiency judgment against the guarantor.

(12) Notwithstanding anything in this section to the contrary, the rights and obligations of any borrower, grantor, and guarantor following a trustee's sale under a deed of trust securing a commercial loan or any guaranty of such a loan executed prior to June 11, 1998, shall be determined in accordance with the laws existing prior to June 11, 1998. [1998 c 295 § 12; 1990 c 111 § 2; 1965 c 74 § 10.]

**61.24.110 Reconveyance by trustee.** The trustee shall reconvey all or any part of the property encumbered by the deed of trust to the person entitled thereto on written request of the beneficiary, or upon satisfaction of the obligation secured and written request for reconveyance made by the beneficiary or the person entitled thereto. [1998 c 295 § 13; 1981 c 161 § 7; 1965 c 74 § 11.]

**61.24.120 Other foreclosure provisions preserved.** This chapter shall not supersede nor repeal any other provision now made by law for the foreclosure of security interests in real property. [1965 c 74 § 12.]

**61.24.127 Failure to bring civil action to enjoin foreclosure—Not a waiver of claims.** (1) The failure of the borrower or grantor to bring a civil action to enjoin a foreclosure sale under this chapter may not be deemed a waiver of a claim for damages asserting:

- (a) Common law fraud or misrepresentation;
- (b) A violation of Title 19 RCW; or
- (c) Failure of the trustee to materially comply with the provisions of this chapter.

(2) The nonwaived claims listed under subsection (1) of this section are subject to the following limitations:

(a) The claim must be asserted or brought within two years from the date of the foreclosure sale or within the applicable statute of limitations for such claim, whichever expires earlier;

(b) The claim may not seek any remedy at law or in equity other than monetary damages;

(c) The claim may not affect in any way the validity or finality of the foreclosure sale or a subsequent transfer of the property;

(d) A borrower or grantor who files such a claim is prohibited from recording a lis pendens or any other document purporting to create a similar effect, related to the real property foreclosed upon;

(e) The claim may not operate in any way to encumber or cloud the title to the property that was subject to the foreclosure sale, except to the extent that a judgment on the claim in favor of the borrower or grantor may, consistent with RCW 4.56.190, become a judgment lien on real property then owned by the judgment debtor; and

(f) The relief that may be granted for judgment upon the claim is limited to actual damages. However, if the borrower or grantor brings in the same civil action a claim for violation of chapter 19.86 RCW, arising out of the same alleged facts, relief under chapter 19.86 RCW is limited to actual damages, treble damages as provided for in RCW 19.86.090, and the costs of suit, including a reasonable attorney's fee.

(4) [(3)] This section applies only to foreclosures of owner-occupied residential real property.

(5) [(4)] This section does not apply to the foreclosure of a deed of trust used to secure a commercial loan. [2009 c 292 § 6.]

#### **61.24.130 Restraint of sale by trustee—Conditions—**

**Notice.** (1) Nothing contained in this chapter shall prejudice the right of the borrower, grantor, any guarantor, or any person who has an interest in, lien, or claim of lien against the property or some part thereof, to restrain, on any proper legal or equitable ground, a trustee's sale. The court shall require as a condition of granting the restraining order or injunction that the applicant pay to the clerk of the court the sums that would be due on the obligation secured by the deed of trust if the deed of trust was not being foreclosed:

(a) In the case of default in making the periodic payment of principal, interest, and reserves, such sums shall be the periodic payment of principal, interest, and reserves paid to the clerk of the court every thirty days.

(b) In the case of default in making payment of an obligation then fully payable by its terms, such sums shall be the amount of interest accruing monthly on said obligation at the nondefault rate, paid to the clerk of the court every thirty days.

In the case of default in performance of any nonmonetary obligation secured by the deed of trust, the court shall impose such conditions as it deems just.

In addition, the court may condition granting the restraining order or injunction upon the giving of security by the applicant, in such form and amount as the court deems proper, for the payment of such costs and damages, including attorneys' fees, as may be later found by the court to have been incurred or suffered by any party by reason of the restraining order or injunction. The court may consider, upon

proper showing, the grantor's equity in the property in determining the amount of said security.

(2) No court may grant a restraining order or injunction to restrain a trustee's sale unless the person seeking the restraint gives five days notice to the trustee of the time when, place where, and the judge before whom the application for the restraining order or injunction is to be made. This notice shall include copies of all pleadings and related documents to be given to the judge. No judge may act upon such application unless it is accompanied by proof, evidenced by return of a sheriff, the sheriff's deputy, or by any person eighteen years of age or over who is competent to be a witness, that the notice has been served on the trustee.

(3) If the restraining order or injunction is dissolved after the date of the trustee's sale set forth in the notice as provided in RCW 61.24.040(1)(f), the court granting such restraining order or injunction, or before whom the order or injunction is returnable, shall, at the request of the trustee, set a new sale date which shall be not less than forty-five days from the date of the order dissolving the restraining order. The trustee shall:

(a) Comply with the requirements of RCW 61.24.040(1)(a) through (f) at least thirty days before the new sale date; and

(b) Cause a copy of the notice of trustee's sale as provided in RCW 61.24.040(1)(f) to be published in a legal newspaper in each county in which the property or any part thereof is situated once between the thirty-fifth and twenty-eighth day before the sale and once between the fourteenth and seventh day before the sale.

(4) If a trustee's sale has been stayed as a result of the filing of a petition in federal bankruptcy court and an order is entered in federal bankruptcy court granting relief from the stay or closing or dismissing the case, or discharging the debtor with the effect of removing the stay, the trustee may set a new sale date which shall not be less than forty-five days after the date of the bankruptcy court's order. The trustee shall:

(a) Comply with the requirements of RCW 61.24.040(1)(a) through (f) at least thirty days before the new sale date; and

(b) Cause a copy of the notice of trustee's sale as provided in RCW 61.24.040(1)(f) to be published in a legal newspaper in each county in which the property or any part thereof is situated, once between the thirty-fifth and twenty-eighth day before the sale and once between the fourteenth and seventh day before the sale.

(5) Subsections (3) and (4) of this section are permissive only and do not prohibit the trustee from proceeding with a trustee's sale following termination of any injunction or stay on any date to which such sale has been properly continued in accordance with RCW 61.24.040(6).

(6) The issuance of a restraining order or injunction shall not prohibit the trustee from continuing the sale as provided in RCW 61.24.040(6). [2008 c 153 § 5; 1998 c 295 § 14; 1987 c 352 § 5; 1981 c 161 § 8; 1975 1st ex.s. c 129 § 6; 1965 c 74 § 13.]

**61.24.135 Consumer protection act—Unfair or deceptive acts or practices.** It is an unfair or deceptive act or practice under the consumer protection act, chapter 19.86

RCW, for any person, acting alone or in concert with others, to offer, or offer to accept or accept from another, any consideration of any type not to bid, or to reduce a bid, at a sale of property conducted pursuant to a power of sale in a deed of trust. The trustee may decline to complete a sale or deliver the trustee's deed and refund the purchase price, if it appears that the bidding has been collusive or defective, or that the sale might have been void. However, it is not an unfair or deceptive act or practice for any person, including a trustee, to state that a property subject to a recorded notice of trustee's sale or subject to a sale conducted pursuant to this chapter is being sold in an "as-is" condition, or for the beneficiary to arrange to provide financing for a particular bidder or to reach any good faith agreement with the borrower, grantor, any guarantor, or any junior lienholder. [2008 c 153 § 6; 1998 c 295 § 15.]

**61.24.140 Assignment of rents—Collecting payment of rent.** The beneficiary shall not enforce or attempt to enforce an assignment of rents by demanding or collecting rent from a tenant occupying property consisting solely of a single-family residence, or a condominium, cooperative, or other dwelling unit in a multiplex or other building containing fewer than five residential units, without first giving the tenant either a court order authorizing payment of rent to the beneficiary or a written consent by the tenant's landlord to the payment. It is a defense to an eviction based on nonpayment of rent that the tenant paid the rent due to the beneficiary pursuant to a court order or a landlord's written consent. [1998 c 295 § 16.]

**61.24.143 Foreclosure of tenant-occupied property—Notice of trustee's sale.** If the trustee elects to foreclose the interest of any occupant of tenant-occupied property, upon posting a notice of trustee's sale under RCW 61.24.040, the trustee or its authorized agent shall post in the manner required under RCW 61.24.040(1)(e) and shall mail at the same time in an envelope addressed to the "Resident of property subject to foreclosure sale" the following notice:

"The foreclosure process has begun on this property, which may affect your right to continue to live in this property. Ninety days or more after the date of this notice, this property may be sold at foreclosure. If you are renting this property, the new property owner may either give you a new rental agreement or provide you with a sixty-day notice to vacate the property. You may wish to contact a lawyer or your local legal aid or housing counseling agency to discuss any rights that you may have." [2009 c 292 § 3.]

**Application of section—2009 c 292 §§ 3 and 4:** "RCW 61.24.143 and 61.24.146 apply only to the foreclosure of tenant-occupied property." [2009 c 292 § 5.]

**61.24.146 Foreclosure of tenant-occupied property—Notice to vacate.** (1) A tenant or subtenant in possession of a residential real property at the time the property is sold in foreclosure must be given sixty days' written notice to vacate before the tenant or subtenant may be removed from the property as prescribed in chapter 59.12 RCW. Notwithstanding the notice requirement in this subsection, a tenant may be

evicted for waste or nuisance in an unlawful detainer action under chapter 59.12 RCW.

(2) This section does not prohibit the new owner of a property purchased pursuant to a trustee's sale from negotiating a new purchase or rental agreement with a tenant or subtenant.

(3) This section does not apply if the borrower or grantor remains on the property as a tenant, subtenant, or occupant. [2009 c 292 § 4.]

**Application of section—2009 c 292 §§ 3 and 4:** See note following RCW 61.24.143.

## Chapter 61.30 RCW

### REAL ESTATE CONTRACT FORFEITURES

#### Sections

61.30.010	Definitions.
61.30.020	Forfeiture or foreclosure—Notices—Other remedies not limited.
61.30.030	Conditions to forfeiture.
61.30.040	Notices—Persons required to be notified—Recording.
61.30.050	Notices—Form—Method of service.
61.30.060	Notice of intent to forfeit—Declaration of forfeiture—Time limitations.
61.30.070	Notice of intent to forfeit—Declaration of forfeiture—Contents.
61.30.080	Failure to give required notices.
61.30.090	Acceleration of payments—Cure of default.
61.30.100	Effect of forfeiture.
61.30.110	Forfeiture may be restrained or enjoined.
61.30.120	Sale of property in lieu of forfeiture.
61.30.130	Forfeiture may proceed upon expiration of judicial order—Court may award attorneys' fees or impose conditions—Venue.
61.30.140	Action to set aside forfeiture.
61.30.150	False swearing—Penalty—Failure to comply with chapter—Liability.
61.30.160	Priority of actions under chapter.
61.30.900	Short title.
61.30.905	Severability—1985 c 237.
61.30.910	Effective date—Application—1985 c 237.
61.30.911	Application—1988 c 86.

**61.30.010 Definitions.** Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Contract" or "real estate contract" means any written agreement for the sale of real property in which legal title to the property is retained by the seller as security for payment of the purchase price. "Contract" or "real estate contract" does not include earnest money agreements and options to purchase.

(2) "Cure the default" or "cure" means to perform the obligations under the contract which are described in the notice of intent to forfeit and which are in default, to pay the costs and attorneys' fees prescribed in the contract, and, subject to RCW 61.30.090(1), to make all payments of money required of the purchaser by the contract which first become due after the notice of intent to forfeit is given and are due when cure is tendered.

(3) "Declaration of forfeiture" means the notice described in RCW 61.30.070(2).

(4) "Forfeit" or "forfeiture" means to cancel the purchaser's rights under a real estate contract and to terminate all right, title, and interest in the property of the purchaser and of persons claiming by or through the purchaser, all to the extent provided in this chapter, because of a breach of one or more

of the purchaser's obligations under the contract. A judicial foreclosure of a real estate contract as a mortgage shall not be considered a forfeiture under this chapter.

(5) "Notice of intent to forfeit" means the notice described in RCW 61.30.070(1).

(6) "Property" means that portion of the real property which is the subject of a real estate contract, legal title to which has not been conveyed to the purchaser.

(7) "Purchaser" means the person denominated in a real estate contract as the purchaser of the property or an interest therein or, if applicable, the purchaser's successors or assigns in interest to all or any part of the property, whether by voluntary or involuntary transfer or transfer by operation of law. If the purchaser's interest in the property is subject to a proceeding in probate, a receivership, a guardianship, or a proceeding under the federal bankruptcy laws, "purchaser" means the personal representative, the receiver, the guardian, the trustee in bankruptcy, or the debtor in possession, as applicable. However, "purchaser" does not include an assignee or any other person whose only interest or claim is in the nature of a lien or other security interest.

(8) "Required notices" means the notice of intent to forfeit and the declaration of forfeiture.

(9) "Seller" means the person denominated in a real estate contract as the seller of the property or an interest therein or, if applicable, the seller's successors or assigns in interest to all or any part of the property or the contract, whether by voluntary or involuntary transfer or transfer by operation of law. If the seller's interest in the property is subject to a proceeding in probate, a receivership, a guardianship, or a proceeding under the federal bankruptcy laws, "seller" means the personal representative, the receiver, the guardian, the trustee in bankruptcy, or the debtor in possession, as applicable. However, "seller" does not include an assignee or any other person whose only interest or claim is in the nature of a lien or other security interest and does not include an assignee who has not been conveyed legal title to any portion of the property.

(10) "Time for cure" means the time provided in RCW 61.30.070(1)(e) as it may be extended as provided in this chapter or any longer period agreed to by the seller. [1988 c 86 § 1; 1985 c 237 § 1.]

**61.30.020 Forfeiture or foreclosure—Notices—Other remedies not limited.** (1) A purchaser's rights under a real estate contract shall not be forfeited except as provided in this chapter. Forfeiture shall be accomplished by giving and recording the required notices as specified in this chapter. This chapter shall not be construed as prohibiting or limiting any remedy which is not governed or restricted by this chapter and which is otherwise available to the seller or the purchaser. At the seller's option, a real estate contract may be foreclosed in the manner and subject to the law applicable to the foreclosure of a mortgage in this state.

(2) The seller's commencement of an action to foreclose the contract as a mortgage shall not constitute an election of remedies so as to bar the seller from forfeiting the contract under this chapter for the same or different breach. Similarly, the seller's commencement of a forfeiture under this chapter shall not constitute an election of remedies so as to bar the seller from foreclosing the contract as a mortgage. However,

the seller shall not maintain concurrently an action to foreclose the contract and a forfeiture under this chapter whether for the same or different breaches. If, after giving or recording a notice of intent to forfeit, the seller elects to foreclose the contract as a mortgage, the seller shall record a notice cancelling the notice of intent to forfeit which refers to the notice of intent by its recording number. Not later than ten days after the notice of cancellation is recorded, the seller shall mail or serve copies of the notice of cancellation to each person who was mailed or served the notice of intent to forfeit, and shall post it in a conspicuous place on the property if the notice of intent was posted. The seller need not publish the notice of cancellation. [1988 c 86 § 2; 1985 c 237 § 2.]

**61.30.030 Conditions to forfeiture.** It shall be a condition to forfeiture of a real estate contract that:

(1) The contract being forfeited, or a memorandum thereof, is recorded in each county in which any of the property is located;

(2) A breach has occurred in one or more of the purchaser's obligations under the contract and the contract provides that as a result of such breach the seller is entitled to forfeit the contract; and

(3) Except for petitions for the appointment of a receiver, no arbitration or judicial action is pending on a claim made by the seller against the purchaser on any obligation secured by the contract. [1988 c 86 § 3; 1985 c 237 § 3.]

**61.30.040 Notices—Persons required to be notified—Recording.** (1) The required notices shall be given to each purchaser last known to the seller or the seller's agent or attorney giving the notice and to each person who, at the time the notice of intent to forfeit is recorded, is the last holder of record of a purchaser's interest. Failure to comply with this subsection in any material respect shall render any purported forfeiture based upon the required notices void.

(2) The required notices shall also be given to each of the following persons whose interest the seller desires to forfeit if the default is not cured:

(a) The holders and claimants of record at the time the notice of intent to forfeit is recorded of any interests in or liens upon all or any portion of the property derived through the purchaser or which are otherwise subordinate to the seller's interest in the property; and

(b) All persons occupying the property at the time the notice of intent to forfeit is recorded and whose identities are reasonably discoverable by the seller.

Any forfeiture based upon the required notices shall be void as to each person described in this subsection (2) to whom the notices are not given in accordance with this chapter in any material respect.

(3) The required notices shall also be given to each person who at the time the notice of intent to forfeit is recorded has recorded in each county in which any of the property is located a request to receive the required notices, which request (a) identifies the contract being forfeited by reference to its date, the original parties thereto, and a legal description of the property; (b) contains the name and address for notice of the person making the request; and (c) is executed and acknowledged by the requesting person.

(4) Except as otherwise provided in the contract or other agreement with the seller and except as otherwise provided in this section, the seller shall not be required to give any required notice to any person whose interest in the property is not of record or if such interest is first acquired after the time the notice of intent to forfeit is recorded. Subject to subsection (5) of this section, all such persons hold their interest subject to the potential forfeiture described in the recorded notice of intent to forfeit and shall be bound by any forfeiture made pursuant thereto as permitted in this chapter as if the required notices were given to them.

(5) Before the commencement of the time for cure, the notice of intent to forfeit shall be recorded in each county in which any of the property is located. The notice of intent to forfeit shall become ineffective for all purposes one year after the expiration of the time for cure stated in such notice or in any recorded extension thereof executed by the seller or the seller's agent or attorney unless, prior to the end of that year, the declaration of forfeiture based on such notice or a *lis pendens* incident to an action under this chapter is recorded. The time for cure may not be extended in increments of more than one year each, and extensions stated to be for more than one year or for an unstated or indefinite period shall be deemed to be for one year for the purposes of this subsection. Recording a *lis pendens* when a notice of intent to forfeit is effective shall cause such notice to continue in effect until the later of one year after the expiration of the time for cure or thirty days after final disposition of the action evidenced by the *lis pendens*.

(6) The declaration of forfeiture shall be recorded in each county in which any of the property is located after the time for cure has expired without the default having been cured. [1988 c 86 § 4; 1985 c 237 § 4.]

**61.30.050 Notices—Form—Method of service.** (1) The required notices shall be given in writing. The notice of intent to forfeit shall be signed by the seller or by the seller's agent or attorney. The declaration of forfeiture shall be signed and sworn to by the seller. The seller may execute the declaration of forfeiture through an agent under a power of attorney which is of record at the time the declaration of forfeiture is recorded, but in so doing the seller shall be subject to liability under RCW 61.30.150 to the same extent as if the seller had personally signed and sworn to the declaration.

(2) The required notices shall be given:

(a) In any manner provided in the contract or other agreement with the seller; and

(b) By either personal service in the manner required for civil actions in any county in which any of the property is located or by mailing a copy to the person for whom it is intended, postage prepaid, by certified or registered mail with return receipt requested and by regular first-class mail, addressed to the person at the person's address last known to the seller or the seller's agent or attorney giving the notice. For the purposes of this subsection, the seller or the seller's agent or attorney giving the notice may rely upon the address stated in any recorded document which entitles a person to receive the required notices unless the seller or the seller's agent or attorney giving the notice knows such address to be incorrect.

If the address or identity of a person for whom the required notices are intended is not known to or reasonably discoverable at the time the notice is given by the seller or the seller's agent or attorney giving the notice, the required notices shall be given to such person by posting a copy in a conspicuous place on the property and publishing a copy thereof. The notice shall be directed to the attention of all persons for whom the notice is intended, including the names of the persons, if so known or reasonably discoverable. The publication shall be made in a newspaper approved pursuant to RCW 65.16.040 and published in each county in which any of the property is located or, if no approved newspaper is published in the county, in an adjoining county, and if no approved newspaper is published in the county or adjoining county, then in an approved newspaper published in the capital of the state. The notice of intent to forfeit shall be published once a week for two consecutive weeks. The declaration of forfeiture shall be published once. [1988 c 86 § 5; 1985 c 237 § 5.]

**61.30.060 Notice of intent to forfeit—Declaration of forfeiture—Time limitations.** The notice of intent to forfeit shall be given not later than ten days after it is recorded. The declaration of forfeiture shall be given not later than three days after it is recorded. Either required notice may be given before it is recorded, but the declaration of forfeiture may not be given before the time for cure has expired. Notices which are served or mailed are given for the purposes of this section when served or mailed. Notices which must be posted and published as provided in RCW 61.30.050(2)(b) are given for the purposes of this section when both posted and first published. [1988 c 86 § 6; 1985 c 237 § 6.]

**61.30.070 Notice of intent to forfeit—Declaration of forfeiture—Contents.** (1) The notice of intent to forfeit shall contain the following:

(a) The name, address, and telephone number of the seller and, if any, the seller's agent or attorney giving the notice;

(b) A description of the contract, including the names of the original parties to the contract, the date of the contract, and the recording number of the contract or memorandum thereof;

(c) A legal description of the property;

(d) A description of each default under the contract on which the notice is based;

(e) A statement that the contract will be forfeited if all defaults are not cured by a date stated in the notice which is not less than ninety days after the notice of intent to forfeit is recorded or any longer period specified in the contract or other agreement with the seller;

(f) A statement of the effect of forfeiture, including, to the extent applicable that: (i) All right, title, and interest in the property of the purchaser and, to the extent elected by the seller, of all persons claiming through the purchaser or whose interests are otherwise subordinate to the seller's interest in the property shall be terminated; (ii) the purchaser's rights under the contract shall be canceled; (iii) all sums previously paid under the contract shall belong to and be retained by the seller or other person to whom paid and entitled thereto; (iv)

all of the purchaser's rights in all improvements made to the property and in unharvested crops and timber thereon shall belong to the seller; and (v) the purchaser and all other persons occupying the property whose interests are forfeited shall be required to surrender possession of the property, improvements, and unharvested crops and timber to the seller ten days after the declaration of forfeiture is recorded;

(g) An itemized statement or, to the extent not known at the time the notice of intent to forfeit is given or recorded, a reasonable estimate of all payments of money in default and, for defaults not involving the failure to pay money, a statement of the action required to cure the default;

(h) An itemized statement of all other payments, charges, fees, and costs, if any, or, to the extent not known at the time the notice of intent is given or recorded, a reasonable estimate thereof, that are or may be required to cure the defaults;

(i) A statement that the person to whom the notice is given may have the right to contest the forfeiture, or to seek an extension of time to cure the default if the default does not involve a failure to pay money, or both, by commencing a court action by filing and serving the summons and complaint before the declaration of forfeiture is recorded;

(j) A statement that the person to whom the notice is given may have the right to request a court to order a public sale of the property; that such public sale will be ordered only if the court finds that the fair market value of the property substantially exceeds the debt owed under the contract and any other liens having priority over the seller's interest in the property; that the excess, if any, of the highest bid at the sale over the debt owed under the contract will be applied to the liens eliminated by the sale and the balance, if any, paid to the purchaser; that the court will require the person who requests the sale to deposit the anticipated sale costs with the clerk of the court; and that any action to obtain an order for public sale must be commenced by filing and serving the summons and complaint before the declaration of forfeiture is recorded;

(k) A statement that the seller is not required to give any person any other notice of default before the declaration which completes the forfeiture is given, or, if the contract or other agreement requires such notice, the identification of such notice and a statement of to whom, when, and how it is required to be given; and

(l) Any additional information required by the contract or other agreement with the seller.

(2) If the default is not cured before the time for cure has expired, the seller may forfeit the contract by giving and recording a declaration of forfeiture which contains the following:

(a) The name, address, and telephone number of the seller;

(b) A description of the contract, including the names of the original parties to the contract, the date of the contract, and the recording number of the contract or memorandum thereof;

(c) A legal description of the property;

(d) To the extent applicable, a statement that all the purchaser's rights under the contract are canceled and all right, title, and interest in the property of the purchaser and of all persons claiming an interest in all or any portion of the property through the purchaser or which is otherwise subordinate to the seller's interest in the property are terminated except to

the extent otherwise stated in the declaration of forfeiture as to persons or claims named, identified, or described;

(e) To the extent applicable, a statement that all persons whose rights in the property have been terminated and who are in or come into possession of any portion of the property (including improvements and unharvested crops and timber) are required to surrender such possession to the seller not later than a specified date, which shall not be less than ten days after the declaration of forfeiture is recorded or such longer period provided in the contract or other agreement with the seller;

(f) A statement that the forfeiture was conducted in compliance with all requirements of this chapter in all material respects and applicable provisions of the contract;

(g) A statement that the purchaser and any person claiming any interest in the purchaser's rights under the contract or in the property who are given the notice of intent to forfeit and the declaration of forfeiture have the right to commence a court action to set the forfeiture aside by filing and serving the summons and complaint within sixty days after the date the declaration of forfeiture is recorded if the seller did not have the right to forfeit the contract or fails to comply with this chapter in any material respect; and

(h) Any additional information required by the contract or other agreement with the seller.

(3) The seller may include in either or both required notices any additional information the seller elects to include which is consistent with this chapter and with the contract or other agreement with the seller. [1988 c 86 § 7; 1985 c 237 § 7.]

**61.30.080 Failure to give required notices.** (1) If the seller fails to give any required notice within the time required by this chapter, the seller may record and give a subsequent notice of intent to forfeit or declaration of forfeiture, as applicable. Any such subsequent notice shall (a) include revised dates and information to the extent necessary to conform to this chapter as if the superseded notice had not been given or recorded; (b) state that it supersedes the notice being replaced; and (c) render void the previous notice which it replaces.

(2) If the seller fails to give the notice of intent to forfeit to all persons whose interests the seller desires to forfeit or to record such notice as required by this chapter, and if the declaration of forfeiture has not been given or recorded, the seller may give and record a new set of notices as required by this chapter. However, the new notices shall contain a statement that they supersede and replace the earlier notices and shall provide a new time for cure.

(3) If the seller fails to give any required notice to all persons whose interests the seller desires to forfeit or to record such notice as required by this chapter, and if the declaration of forfeiture has been given or recorded, the seller may apply for a court order setting aside the forfeiture previously made, and to the extent such order is entered, the seller may proceed as if no forfeiture had been commenced. However, no such order may be obtained without joinder and service upon the persons who were given the required notices and all other persons whose interests the seller desires to forfeit. [1988 c 86 § 8; 1985 c 237 § 8.]

**61.30.090 Acceleration of payments—Cure of default.** (1) Even if the contract contains a provision allowing the seller, because of a default in the purchaser's obligations under the contract, to accelerate the due date of some or all payments to be made or other obligations to be performed by the purchaser under the contract, the seller may not require payment of the accelerated payments or performance of the accelerated obligations as a condition to curing the default in order to avoid forfeiture except to the extent the payments or performance would be due without the acceleration. This subsection shall not apply to an acceleration because of a transfer, encumbrance, or conveyance of any or all of the purchaser's interest in any portion or all of the property if the contract being forfeited contains a provision accelerating the unpaid balance because of such transfer, encumbrance, or conveyance and such provision is enforceable under applicable law.

(2) All persons described in RCW 61.30.040 (1) and (2), regardless of whether given the notice of intent to forfeit, and any guarantor of or any surety for the purchaser's performance may cure the default. These persons may cure the default at any time before expiration of the time for cure and may act alone or in any combination. Any person having a lien of record against the property which would be eliminated in whole or in part by the forfeiture and who cures the purchaser's default pursuant to this section shall have included in its lien all payments made to effect such cure, including interest thereon at the rate specified in or otherwise applicable to the obligations secured by such lien.

(3) The seller may, but shall not be required to, accept tender of cure after the expiration of the time for cure and before the declaration of forfeiture is recorded. The seller may accept a partial cure. If the tender of such partial cure to the seller or the seller's agent or attorney is not accompanied by a written statement of the person making the tender acknowledging that such payment or other action does not fully cure the default, the seller shall notify such person in writing of the insufficiency and the amount or character thereof, which notice shall include an offer to refund any partial tender of money paid to the seller or the seller's agent or attorney upon written request. The notice of insufficiency may state that, by statute, such request must be made by a specified date, which date may not be less than ninety days after the notice of insufficiency is served or mailed. The request must be made in writing and delivered or mailed to the seller or the person who gave the notice of insufficiency or the notice of intent to forfeit and, if the notice of insufficiency properly specifies a date by which such request must be made, by the date so specified. The seller shall refund such amount promptly following receipt of such written request, if timely made, and the seller shall be liable to the person to whom such amount is due for that person's reasonable attorneys' fees and other costs incurred in an action brought to recover such amount in which such refund or any portion thereof is found to have been improperly withheld. If the seller's written notice of insufficiency is not given to the person making the tender at least ten days before the expiration of the time for cure, then regardless of whether the tender is accepted the time for cure shall be extended for ten days from the date the seller's written notice of insufficiency is given. The seller shall not be required to extend the time for cure

more than once even though more than one insufficient tender is made.

(4) Except as provided in this subsection, a timely tender of cure shall reinstate the contract. If a default that entitles the seller to forfeit the contract is not described in a notice of intent to forfeit previously given and the seller gives a notice of intent to forfeit concerning that default, timely cure of a default described in a previous notice of intent to forfeit shall not limit the effect of the subsequent notice.

(5) If the default is cured and a fulfillment deed is not given to the purchaser, the seller or the seller's agent or attorney shall sign, acknowledge, record, and deliver or mail to the purchaser and, if different, the person who made the tender a written statement that the contract is no longer subject to forfeiture under the notice of intent to forfeit previously given, referring to the notice of intent to forfeit by its recording number. A seller who fails within thirty days of written demand to give and record the statement required by this subsection, if such demand specifies the penalties in this subsection, is liable to the person who cured the default for the greater of five hundred dollars or actual damages, if any, and for reasonable attorneys' fees and other costs incurred in an action to recover such amount or damages.

(6) Any person curing or intending to cure any default shall have the right to request any court of competent jurisdiction to determine the reasonableness of any attorneys' fees which are included in the amount required to cure, and in making such determination the court may award the prevailing party its reasonable attorneys' fees and other costs incurred in the action. An action under this subsection shall not forestall any forfeiture or affect its validity. [1988 c 86 § 9; 1985 c 237 § 9.]

**61.30.100 Effect of forfeiture.** (1) The recorded and sworn declaration of forfeiture shall be prima facie evidence of the extent of the forfeiture and compliance with this chapter and, except as otherwise provided in RCW 61.30.040 (1) and (2), conclusive evidence thereof in favor of bona fide purchasers and encumbrancers for value.

(2) Except as otherwise provided in this chapter or the contract or other agreement with the seller, forfeiture of a contract under this chapter shall have the following effects:

(a) The purchaser, and all persons claiming through the purchaser or whose interests are otherwise subordinate to the seller's interest in the property who were given the required notices pursuant to this chapter, shall have no further rights in the contract or the property and no person shall have any right, by statute or otherwise, to redeem the property;

(b) All sums previously paid under the contract by or on behalf of the purchaser shall belong to and be retained by the seller or other person to whom paid; and

(c) All of the purchaser's rights in all improvements made to the property and in unharvested crops and timber thereon at the time the declaration of forfeiture is recorded shall be forfeited to the seller.

(3) The seller shall be entitled to possession of the property ten days after the declaration of forfeiture is recorded or any longer period provided in the contract or any other agreement with the seller. The seller may proceed under chapter 59.12 RCW to obtain such possession. Any person in possession who fails to surrender possession when required shall be

liable to the seller for actual damages caused by such failure and for reasonable attorneys' fees and costs of the action.

(4) After the declaration of forfeiture is recorded, the seller shall have no claim against and the purchaser shall not be liable to the seller for any portion of the purchase price unpaid or for any other breach of the purchaser's obligations under the contract, except for damages caused by waste to the property to the extent such waste results in the fair market value of the property on the date the declaration of forfeiture is recorded being less than the unpaid monetary obligations under the contract and all liens or contracts having priority over the seller's interest in the property. [1988 c 86 § 10; 1985 c 237 § 10.]

**61.30.110 Forfeiture may be restrained or enjoined.**

(1) The forfeiture may be restrained or enjoined or the time for cure may be extended by court order only as provided in this section. A certified copy of any restraining order or injunction may be recorded in each county in which any part of the property is located.

(2) Any person entitled to cure the default may bring or join in an action under this section. No other person may bring such an action without leave of court first given for good cause shown. Any such action shall be commenced by filing and serving the summons and complaint before the declaration of forfeiture is recorded. Service shall be made upon the seller or the seller's agent or attorney, if any, who gave the notice of intent to forfeit. Concurrently with commencement of the action, the person bringing the action shall record a lis pendens in each county in which any part of the property is located. A court may preliminarily enjoin the giving and recording of the declaration of forfeiture upon a prima facie showing of the grounds set forth in this section for a permanent injunction. If the court issues an order restraining or enjoining the forfeiture then until such order expires or is vacated or the court otherwise permits the seller to proceed with the forfeiture, the declaration of forfeiture shall not be given or recorded. However, the commencement of the action shall not of itself extend the time for cure.

(3) The forfeiture may be permanently enjoined only when the person bringing the action proves that there is no default as claimed in the notice of intent to forfeit or that the purchaser has a claim against the seller which releases, discharges, or excuses the default claimed in the notice of intent to forfeit, including by offset, or that there exists any material noncompliance with this chapter. The time for cure may be extended only when the default alleged is other than the failure to pay money, the nature of the default is such that it cannot practically be cured within the time stated in the notice of intent to forfeit, action has been taken and is diligently being pursued which would cure the default, and any person entitled to cure is ready, willing, and able to timely perform all of the purchaser's other contract obligations. [1988 c 86 § 11; 1985 c 237 § 11.]

**61.30.120 Sale of property in lieu of forfeiture.** (1)

Except for a sale ordered incident to foreclosure of the contract as a mortgage, a public sale of the property in lieu of the forfeiture may be ordered by the court only as provided in this section. Any person entitled to cure the default may bring

or join in an action seeking an order of public sale in lieu of forfeiture. No other person may bring such an action without leave of court first given for good cause shown.

(2) An action under this section shall be commenced by filing and serving the summons and complaint before the declaration of forfeiture is recorded. Service shall be made upon the seller or the seller's agent or attorney, if any, who gave the notice of intent to forfeit. Concurrently with commencement of the action, the person bringing the action shall record a lis pendens in each county in which any part of the property is located. After the commencement of an action under this section and before its dismissal, the denial of a request for a public sale, or the vacation or expiration of an order for a public sale, the declaration of forfeiture shall not be given or recorded. However, commencement of the action shall not of itself extend the time for cure.

(3) If the court finds the then fair market value of the property substantially exceeds the unpaid and unperformed obligations secured by the contract and any other liens having priority over the seller's interest in the property, the court may require the property to be sold after the expiration of the time for cure in whole or in parcels to pay the costs of the sale and satisfy the amount the seller is entitled to be paid from the sale proceeds. Such sale shall be for cash to the highest bidder at a public sale by the sheriff at a courthouse of the county in which the property or any contiguous or noncontiguous portion thereof is located. The order requiring a public sale of the property shall specify the amount which the seller is entitled to be paid from the sale proceeds, which shall include all sums unpaid under the contract, irrespective of the due dates thereof, and such other costs and expenses to which the seller is entitled as a result of the purchaser's default under the contract, subject to any offsets or damages to which the purchaser is entitled. The order shall require any person requesting the sale to deposit with the clerk of the court, or such other person as the court may direct, the amount the court finds will be necessary to pay all of the costs and expenses of advertising and conducting the sale, including the notices to be given under subsections (4) and (5) of this section. The court shall require such deposit to be made within seven days, and if not so made the court shall vacate its order of sale. Except as provided in subsections (6) and (8) of this section, the sale shall eliminate the interests of the persons given the notice of intent to forfeit to the same extent that such interests would have been eliminated had the seller's forfeiture been effected pursuant to such notice.

(4) The sheriff shall endorse upon the order the time and date when the sheriff receives it and shall forthwith post and publish the notice of sale specified in this subsection and sell the property, or so much thereof as may be necessary to discharge the amount the seller is entitled to be paid as specified in the court's order of sale. The notice of sale shall be printed or typed and contain the following information:

(a) A statement that the court has directed the sheriff to sell the property described in the notice of sale and the amount the seller is entitled to be paid from the sale proceeds as specified in the court's order;

(b) The caption, cause number, and court in which the order was entered;

(c) A legal description of the property to be sold, including the street address if any;

(d) The date and recording number of the contract;

(e) The scheduled date, time, and place of the sale;

(f) If the time for cure has not expired, the date it will expire and that the purchaser and other persons authorized to cure have the right to avoid the sale ordered by the court by curing the defaults specified in the notice of intent to forfeit before the time for cure expires;

(g) The right of the purchaser to avoid the sale ordered by the court by paying to the sheriff, at any time before the sale, in cash, the amount which the seller would be entitled to be paid from the proceeds of the sale, as specified in the court's order; and

(h) A statement that unless otherwise provided in the contract between seller and purchaser or other agreement with the seller, no person shall have any right to redeem the property sold at the sale.

The notice of sale shall be given by posting a copy thereof for a period of not less than four weeks prior to the date of sale in three public places in each county in which the property or any portion thereof is located, one of which shall be at the front door of the courthouse for the superior court of each such county, and one of which shall be placed in a conspicuous place on the property. Additionally, the notice of sale shall be published once a week for two consecutive weeks in the newspaper or newspapers prescribed for published notices in RCW 61.30.050(2)(b). The sale shall be scheduled to be held not more than seven days after the expiration of (i) the periods during which the notice of sale is required to be posted and published or (ii) the time for cure, whichever is later; however, the seller may, but shall not be required to, permit the sale to be scheduled for a later date. Upon the completion of the sale, the sheriff shall deliver a sheriff's deed to the property sold to the successful bidder.

(5) Within seven days following the date the notice of sale is posted on the property, the seller shall, by the means described in RCW 61.30.050(2), give a copy of the notice of sale to all persons who were given the notice of intent to forfeit, except the seller need not post or publish the notice of sale.

(6) Any person may bid at the sale. If the purchaser is the successful bidder, the sale shall not affect any interest in the property which is subordinate to the contract. If the seller is the successful bidder, the seller may offset against the price bid the amount the seller is entitled to be paid as specified in the court's order. Proceeds of such sale shall be first applied to any costs and expenses of sale incurred by the sheriff and the seller in excess of the deposit referred to in subsection (3) of this section, and next to the amount the seller is entitled to be paid as specified in the court's order. Any proceeds in excess of the amount necessary to pay such costs, expenses and amount, less the clerk's filing fee, shall be deposited with the clerk of the superior court of the county in which the sale took place, unless such surplus is less than the clerk's filing fee, in which event such excess shall be paid to the purchaser. The clerk shall index such funds under the name of the purchaser. Interests in or liens or claims of liens against the property eliminated by the sale shall attach to such surplus in the order of priority that they had attached to the property. The clerk shall not disburse the surplus except upon order of the superior court of such county, which order shall not be

entered less than ten days following the deposit of the funds with the clerk.

(7) In addition to the right to cure the default within the time for cure, the purchaser shall have the right to satisfy its obligations under the contract and avoid any public sale ordered by the court by paying to the sheriff, at any time before the sale, in cash, the amount which the seller would be entitled to be paid from the proceeds of the sale as specified in the court's order plus the amount of any costs and expenses of the sale incurred by the sheriff and the seller in excess of the deposit referred to in subsection (3) of this section. If the purchaser satisfies its obligations as provided in this subsection, the seller shall deliver its fulfillment deed to the purchaser.

(8) Unless otherwise provided in the contract or other agreement with the seller, after the public sale provided in this section no person shall have any right, by statute or otherwise, to redeem the property and, subject to the rights of persons unaffected by the sale, the purchaser at the public sale shall be entitled to possession of the property ten days after the date of the sale and may proceed under chapter 59.12 RCW to obtain such possession.

(9) A public sale effected under this section shall satisfy the obligations secured by the contract, regardless of the sale price or fair value, and no deficiency decree or other judgment may thereafter be obtained on such obligations. [1988 c 86 § 12; 1985 c 237 § 12.]

**61.30.130 Forfeiture may proceed upon expiration of judicial order—Court may award attorneys' fees or impose conditions—Venue.**

(1) If an order restraining or enjoining the forfeiture or an order of sale under RCW 61.30.120 expires or is dissolved or vacated at least ten days before expiration of the time for cure, the seller may proceed with the forfeiture under this chapter if the default is not cured at the end of the time for cure. If any such order expires or is dissolved or vacated or such other final disposition is made at any time later than stated in the first sentence of this subsection, the seller may proceed with the forfeiture under this chapter if the default is not cured, except the time for cure shall be extended for ten days after the final disposition or the expiration of, or entry of the order dissolving or vacating, the order.

(2) In actions under RCW 61.30.110 and 61.30.120, the court may award reasonable attorneys' fees and costs of the action to the prevailing party, except for such fees and costs incurred by a person requesting a public sale of the property.

(3) In actions under RCW 61.30.110 and 61.30.120, on the seller's motion the court may (a) require the person commencing the action to provide a bond or other security against all or a portion of the seller's damages and (b) impose other conditions, the failure of which may be cause for entry of an order dismissing the action and dissolving or vacating any restraining order, injunction, or other order previously entered.

(4) Actions under RCW 61.30.110, 61.30.120, or 61.30.140 shall be brought in the superior court of the county where the property is located or, if the property is located in more than one county, then in any of such counties, regardless of whether the property is contiguous or noncontiguous. [1988 c 86 § 13; 1985 c 237 § 13.]

**61.30.140 Action to set aside forfeiture.** (1) An action to set aside a forfeiture not otherwise void under RCW 61.30.040(1) may be commenced only after the declaration of forfeiture has been recorded and only as provided in this section, and regardless of whether an action was previously commenced under RCW 61.30.110.

(2) An action to set aside the forfeiture permitted by this section may be commenced only by a person entitled to be given the required notices under RCW 61.30.040 (1) and (2). For all persons given the required notices in accordance with this chapter, such an action shall be commenced by filing and serving the summons and complaint not later than sixty days after the declaration of forfeiture is recorded. Service shall be made upon the seller or the seller's attorney-in-fact, if any, who signed the declaration of forfeiture. Concurrently with commencement of the action, the person bringing the action shall record a lis pendens in each county in which any part of the property is located.

(3) The court may require that all payments specified in the notice of intent shall be paid to the clerk of the court as a condition to maintaining an action to set aside the forfeiture. All payments falling due during the pendency of the action shall be paid to the clerk of the court when due. These payments shall be calculated without regard to any acceleration provision in the contract (except an acceleration because of a transfer, encumbrance, or conveyance of the purchaser's interest in the property when otherwise enforceable) and without regard to the seller's contention the contract has been duly forfeited and shall not include the seller's costs and fees of the forfeiture. The court may make orders regarding the investment or disbursement of these funds and may authorize payments to third parties instead of the clerk of the court.

(4) The forfeiture shall not be set aside unless (a) the rights of bona fide purchasers for value and of bona fide encumbrancers for value of the property would not thereby be adversely affected and (b) the person bringing the action establishes that the seller was not entitled to forfeit the contract at the time the seller purported to do so or that the seller did not materially comply with the requirements of this chapter.

(5) If the purchaser or other person commencing the action establishes a right to set aside the forfeiture, the court shall award the purchaser or other person commencing the action actual damages, if any, and may award the purchaser or other person its reasonable attorneys' fees and costs of the action. If the court finds that the forfeiture was conducted in compliance with this chapter, the court shall award the seller actual damages, if any, and may award the seller its reasonable attorneys' fees and costs of the action.

(6) The seller is entitled to possession of the property and to the rents, issues, and profits thereof during the pendency of an action to set aside the forfeiture: PROVIDED, That the court may provide that possession of the property be delivered to or retained by the purchaser or some other person and may make other provisions for the rents, issues, and profits. [1988 c 86 § 14; 1985 c 237 § 14.]

**61.30.150 False swearing—Penalty—Failure to comply with chapter—Liability.** (1) Whoever knowingly swears falsely to any statement required by this chapter to be

sworn is guilty of perjury and shall be liable for the statutory penalties therefor.

(2) A seller who records a declaration of forfeiture with actual knowledge or reason to know of a material failure to comply with any requirement of this chapter is liable to any person whose interest in the property or the contract, or both, has been forfeited without material compliance with this chapter for actual damages and actual attorneys' fees and costs of the action and, in the court's discretion, exemplary damages. [1988 c 86 § 15; 1985 c 237 § 15.]

**61.30.160 Priority of actions under chapter.** An action brought under RCW 61.30.110, 61.30.120, or 61.30.140 shall take precedence over all other civil actions except those described in RCW 59.12.130. [1985 c 237 § 16.]

**61.30.900 Short title.** This chapter may be known and cited as the real estate contract forfeiture act. [1985 c 237 § 17.]

**61.30.905 Severability—1985 c 237.** If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1985 c 237 § 19.]

**61.30.910 Effective date—Application—1985 c 237.** This act shall take effect January 1, 1986, and shall apply to all real estate contract forfeitures initiated on or after that date, regardless of when the real estate contract was made. [1985 c 237 § 21.]

**61.30.911 Application—1988 c 86.** This act applies to all real estate contract forfeitures initiated on or after June 9, 1988, regardless of when the real estate contract was made. [1988 c 86 § 16.]

## Chapter 61.34 RCW

### DISTRESSED PROPERTY CONVEYANCES

(Formerly: Equity skimming)

#### Sections

61.34.010	Legislative findings.
61.34.020	Definitions.
61.34.030	Criminal penalty.
61.34.040	Application of consumer protection act—Remedies are cumulative.
61.34.045	Arbitration not required.
61.34.050	Distressed home consulting transaction—Requirements—Notice.
61.34.060	Distressed home consultant—Fiduciary duties.
61.34.070	Waiver of rights.
61.34.080	Distressed home reconveyance—Requirements.
61.34.090	Distressed home reconveyance—Entire agreement—Terms—Notice.
61.34.100	Distressed homeowner's right to cancel.
61.34.110	Notice of distressed homeowner's right to cancel.
61.34.120	Distressed home purchaser—Prohibited practices.
61.34.900	Severability—1988 c 33.

**61.34.010 Legislative findings.** The legislature finds that persons are engaging in patterns of conduct which defraud innocent homeowners of their equity interest or other

value in residential dwellings under the guise of a purchase of the owner's residence but which is in fact a device to convert the owner's equity interest or other value in the residence to an equity skimmer, who fails to make payments, diverts the equity or other value to the skimmer's benefit, and leaves the innocent homeowner with a resulting financial loss or debt.

The legislature further finds this activity of equity skimming to be contrary to the public policy of this state and therefore establishes the crime of equity skimming to address this form of real estate fraud and abuse. [1988 c 33 § 1.]

**61.34.020 Definitions.** Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) An "act of equity skimming" occurs when:

(a)(i) A person purchases a dwelling with the representation that the purchaser will pay for the dwelling by assuming the obligation to make payments on existing mortgages, deeds of trust, or real estate contracts secured by and pertaining to the dwelling, or by representing that such obligation will be assumed; and

(ii) The person fails to make payments on such mortgages, deeds of trust, or real estate contracts as the payments become due, within two years subsequent to the purchase; and

(iii) The person diverts value from the dwelling by either (A) applying or authorizing the application of rents from the dwelling for the person's own benefit or use, or (B) obtaining anything of value from the sale or lease with option to purchase of the dwelling for the person's own benefit or use, or (C) removing or obtaining appliances, fixtures, furnishings, or parts of such dwellings or appurtenances for the person's own benefit or use without replacing the removed items with items of equal or greater value; or

(b)(i) The person purchases a dwelling in a transaction in which all or part of the purchase price is financed by the seller and is (A) secured by a lien which is inferior in priority or subordinated to a lien placed on the dwelling by the purchaser, or (B) secured by a lien on other real or personal property, or (C) without any security; and

(ii) The person obtains a superior priority loan which either (A) is secured by a lien on the dwelling which is superior in priority to the lien of the seller, but not including a bona fide assumption by the purchaser of a loan existing prior to the time of purchase, or (B) creating any lien or encumbrance on the dwelling when the seller does not hold a lien on the dwelling; and

(iii) The person fails to make payments or defaults on the superior priority loan within two years subsequent to the purchase; and

(iv) The person diverts value from the dwelling by applying or authorizing any part of the proceeds from such superior priority loan for the person's own benefit or use.

(2) "Distressed home" means either:

(a) A dwelling that is in danger of foreclosure or at risk of loss due to nonpayment of taxes; or

(b) A dwelling that is in danger of foreclosure or that is in the process of being foreclosed due to a default under the terms of a mortgage.

(3) "Distressed home consultant" means a person who:

(a) Solicits or contacts a distressed homeowner in writing, in person, or through any electronic or telecommunications medium and makes a representation or offer to perform any service that the person represents will:

(i) Stop, enjoin, delay, void, set aside, annul, stay, or postpone a foreclosure sale;

(ii) Obtain forbearance from any servicer, beneficiary, or mortgagee;

(iii) Assist the distressed homeowner to exercise a right of reinstatement provided in the loan documents or to refinance a loan that is in foreclosure or is in danger of foreclosure;

(iv) Obtain an extension of the period within which the distressed homeowner may reinstate the distressed homeowner's obligation or extend the deadline to object to a ratification;

(v) Obtain a waiver of an acceleration clause contained in any promissory note or contract secured by a mortgage on a distressed home or contained in the mortgage;

(vi) Assist the distressed homeowner to obtain a loan or advance of funds;

(vii) Save the distressed homeowner's residence from foreclosure;

(viii) Avoid or ameliorate the impairment of the distressed homeowner's credit resulting from the recording of a notice of trustee sale, the filing of a petition to foreclose, or the conduct of a foreclosure sale;

(ix) Cause a contract to purchase an interest in the distressed home to be executed or closed within twenty days of an advertised or docketed foreclosure sale, unless the distressed homeowner is represented in the transaction by an attorney or a person licensed under chapter 18.85 RCW;

(x) Arrange for the distressed homeowner to become a lessee or tenant entitled to continue to reside in the distressed homeowner's residence, unless (A) the continued residence is for a period of no more than twenty days after closing, (B) the purpose of the continued residence is to arrange for and relocate to a new residence, and (C) the distressed homeowner is represented in the transaction by an attorney or a person licensed and subject to chapter 18.85 RCW;

(xi) Arrange for the distressed homeowner to have an option to repurchase the distressed homeowner's residence; or

(xii) Engage in any documentation, grant, conveyance, sale, lease, trust, or gift by which the distressed homeowner clogs the distressed homeowner's equity of redemption in the distressed homeowner's residence; or

(b) Systematically contacts owners of property that court records, newspaper advertisements, or any other source demonstrate are in foreclosure or are in danger of foreclosure.

"Distressed home consultant" does not include: A financial institution; a nonprofit credit counseling service; a licensed attorney, or a person subject to chapter 19.148 RCW; a licensed mortgage broker who, pursuant to lawful activities under chapter 19.146 RCW, procures a nonpurchase mortgage loan for the distressed homeowner from a financial institution; or a person licensed as a real estate broker or salesperson under chapter 18.85 RCW, when rendering real estate brokerage services under chapter 18.86 RCW, regardless of whether the person renders additional services that would otherwise constitute the services of a distressed

home consultant, and if the person is not engaged in activities designed to, or represented to, result in a distressed home conveyance.

(4) "Distressed home consulting transaction" means an agreement between a distressed homeowner and a distressed home consultant in which the distressed home consultant represents or offers to perform any of the services enumerated in subsection (3)(a) of this section.

(5) "Distressed home conveyance" means a transaction in which:

(a) A distressed homeowner transfers an interest in the distressed home to a distressed home purchaser;

(b) The distressed home purchaser allows the distressed homeowner to occupy the distressed home; and

(c) The distressed home purchaser or a person acting in participation with the distressed home purchaser conveys or promises to convey the distressed home to the distressed homeowner, provides the distressed homeowner with an option to purchase the distressed home at a later date, or promises the distressed homeowner an interest in, or portion of, the proceeds of any resale of the distressed home.

(6) "Distressed home purchaser" means any person who acquires an interest in a distressed home under a distressed home conveyance. "Distressed home purchaser" includes a person who acts in joint venture or joint enterprise with one or more distressed home purchasers in a distressed home conveyance. A financial institution is not a distressed home purchaser.

(7) "Distressed homeowner" means an owner of a distressed home.

(8) "Dwelling" means a one-to-four family residence, condominium unit, residential cooperative unit, residential unit in any other type of planned unit development, or manufactured home whether or not title has been eliminated pursuant to RCW 65.20.040.

(9) "Financial institution" means (a) any bank or trust company, mutual savings bank, savings and loan association, credit union, or a lender making federally related mortgage loans, (b) a holder in the business of acquiring federally related mortgage loans as defined in the real estate settlement procedures act (RESPA) (12 U.S.C. Sec. 2602), insurance company, insurance producer, title insurance company, escrow company, or lender subject to auditing by the federal national mortgage association or the federal home loan mortgage corporation, which is organized or doing business pursuant to the laws of any state, federal law, or the laws of a foreign country, if also authorized to conduct business in Washington state pursuant to the laws of this state or federal law, (c) any affiliate or subsidiary of any of the entities listed in (a) or (b) of this subsection, or (d) an employee or agent acting on behalf of any of the entities listed in (a) or (b) of this subsection. "Financial institution" also means a licensee under chapter 31.04 RCW, provided that the licensee does not include a licensed mortgage broker, unless the mortgage broker is engaged in lawful activities under chapter 19.146 RCW and procures a nonpurchase mortgage loan for the distressed homeowner from a financial institution.

(10) "Homeowner" means a person who owns and has occupied a dwelling as his or her primary residence within one hundred eighty days of the latter of conveyance or mutual acceptance of an agreement to convey an interest in the

dwelling, whether or not his or her ownership interest is encumbered by a mortgage, deed of trust, or other lien.

(11) "In danger of foreclosure" means any of the following:

(a) The homeowner has defaulted on the mortgage and, under the terms of the mortgage, the mortgagee has the right to accelerate full payment of the mortgage and repossess, sell, or cause to be sold, the property;

(b) The homeowner is at least thirty days delinquent on any loan that is secured by the property; or

(c) The homeowner has a good faith belief that he or she is likely to default on the mortgage within the upcoming four months due to a lack of funds, and the homeowner has reported this belief to:

(i) The mortgagee;

(ii) A person licensed or required to be licensed under chapter 19.134 RCW;

(iii) A person licensed or required to be licensed under chapter 19.146 RCW;

(iv) A person licensed or required to be licensed under chapter 18.85 RCW;

(v) An attorney-at-law;

(vi) A mortgage counselor or other credit counselor licensed or certified by any federal, state, or local agency; or

(vii) Any other party to a distressed home consulting transaction.

(12) "Mortgage" means a mortgage, mortgage deed, deed of trust, security agreement, or other instrument securing a mortgage loan and constituting a lien on or security interest in housing.

(13) "Nonprofit credit counseling service" means a nonprofit organization described under section 501(c)(3) of the internal revenue code, or similar successor provisions, that is licensed or certified by any federal, state, or local agency.

(14) "Pattern of equity skimming" means engaging in at least three acts of equity skimming within any three-year period, with at least one of the acts occurring after June 9, 1988.

(15) "Person" includes any natural person, corporation, joint stock association, or unincorporated association.

(16) "Resale" means a bona fide market sale of the distressed home subject to the distressed home conveyance by the distressed home purchaser to an unaffiliated third party.

(17) "Resale price" means the gross sale price of the distressed home on resale. [2009 c 15 § 1; 2008 c 278 § 1; 1988 c 33 § 4.]

**Effective date—2009 c 15:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [March 25, 2009]." [2009 c 15 § 2.]

**61.34.030 Criminal penalty.** Any person who wilfully engages in a pattern of equity skimming is guilty of a class B felony under RCW 9A.20.021. Equity skimming shall be classified as a level II offense under chapter 9.94A RCW, and each act of equity skimming found beyond a reasonable doubt or admitted by the defendant upon a plea of guilty to be included in the pattern of equity skimming, shall be a separate current offense for the purpose of determining the sentence range for each current offense pursuant to RCW 9.94A.589(1)(a). [1988 c 33 § 2.]

**61.34.040 Application of consumer protection act—Remedies are cumulative.** (1) In addition to the criminal penalties provided in RCW 61.34.030, the legislature finds that the practices covered by this chapter are matters vitally affecting the public interest for the purpose of applying chapter 19.86 RCW. A violation of this chapter is not reasonable in relation to the development and preservation of business and is an unfair method of competition for the purpose of applying chapter 19.86 RCW.

(2) In a private right of action under chapter 19.86 RCW for a violation of this chapter, the court may double or triple the award of damages pursuant to RCW 19.86.090, subject to the statutory limit. If, however, the court determines that the defendant acted in bad faith, the limit for doubling or tripling the award of damages may be increased, but shall not exceed one hundred thousand dollars. Any claim for damages brought under this chapter must be commenced within four years after the date of the alleged violation.

(3) The remedies provided in this chapter are cumulative and do not restrict any remedy that is otherwise available. The provisions of this chapter are not exclusive and are in addition to any other requirements, rights, remedies, and penalties provided by law. An action under this chapter shall not affect the rights in the distressed home held by a distressed home purchaser for value under this chapter or other applicable law. [2008 c 278 § 11; 1988 c 33 § 3.]

**61.34.045 Arbitration not required.** (1) Any provision in a contract that attempts or purports to require arbitration of any dispute arising under this chapter is void at the option of the distressed homeowner.

(2) This section applies to any contract entered into on or after June 12, 2008. [2008 c 278 § 9.]

**61.34.050 Distressed home consulting transaction—Requirements—Notice.** (1) A distressed home consulting transaction must:

(a) Be in writing in at least twelve-point font;

(b) Be in the same language as principally used by the distressed home consultant to describe his or her services to the distressed homeowner. If the agreement is written in a language other than English, the distressed home consultant shall cause the agreement to be translated into English and shall deliver copies of both the original and English language versions to the distressed homeowner at the time of execution and shall keep copies of both versions on file in accordance with subsection (2) of this section. Any ambiguities or inconsistencies between the English language and the original language versions of the written agreement must be strictly construed in favor of the distressed homeowner;

(c) Fully disclose the exact nature of the distressed home consulting services to be provided, including any distressed home conveyance that may be involved and the total amount and terms of any compensation to be received by the distressed home consultant or anyone working in association with the distressed home consultant;

(d) Be dated and signed by the distressed homeowner and the distressed home consultant;

(e) Contain the complete legal name, address, telephone number, fax number, e-mail address, and internet address if any, of the distressed home consultant, and if the distressed

home consultant is serving as an agent for any other person, the complete legal name, address, telephone number, fax number, e-mail address, and internet address if any, of the principal; and

(f) Contain the following notice, which must be initialed by the distressed homeowner, in bold face type and in at least fourteen-point font:

**"NOTICE REQUIRED BY WASHINGTON LAW**

**THIS IS AN IMPORTANT LEGAL CONTRACT AND  
COULD RESULT IN THE LOSS OF YOUR HOME.**

. . . Name of distressed home consultant . . . or anyone working for him or her CANNOT guarantee you that he or she will be able to refinance your home or arrange for you to keep your home. Continue making mortgage payments until refinancing, if applicable, is approved. You should consult with an attorney before signing this contract.

If you sign a promissory note, lien, mortgage, deed of trust, or deed, you could lose your home and be unable to get it back."

(2) At the time of execution, the distressed home consultant shall provide the distressed homeowner with a copy of the written agreement, and the distressed home consultant shall keep a separate copy of the written agreement on file for at least five years following the completion or other termination of the agreement.

(3) This section does not relieve any duty or obligation imposed upon a distressed home consultant by any other law including, but not limited to, the duties of a credit service organization under chapter 19.134 RCW or a person required to be licensed under chapter 19.146 RCW. [2008 c 278 § 2.]

**61.34.060 Distressed home consultant—Fiduciary duties.** A distressed home consultant has a fiduciary relationship with the distressed homeowner, and each distressed home consultant is subject to all requirements for fiduciaries otherwise applicable under state law. A distressed home consultant's fiduciary duties include, but are not limited to, the following:

(1) To act in the distressed homeowner's best interest and in utmost good faith toward the distressed homeowner, and not compromise a distressed homeowner's right or interest in favor of another's right or interest, including a right or interest of the distressed home consultant;

(2) To disclose to the distressed homeowner all material facts of which the distressed home consultant has knowledge that might reasonably affect the distressed homeowner's rights, interests, or ability to receive the distressed homeowner's intended benefit from the residential mortgage loan;

(3) To use reasonable care in performing his or her duties; and

(4) To provide an accounting to the distressed homeowner for all money and property received from the distressed homeowner. [2008 c 278 § 3.]

**61.34.070 Waiver of rights.** (1) A person may not induce or attempt to induce a distressed homeowner to waive his or her rights under this chapter.

(2) Any waiver by a homeowner of the provisions of this chapter is void and unenforceable as contrary to public policy. [2008 c 278 § 4.]

**61.34.080 Distressed home reconveyance—Requirements.** A distressed home purchaser shall enter into a distressed home reconveyance in the form of a written contract. The contract must be written in at least twelve-point boldface type in the same language principally used by the distressed home purchaser and distressed homeowner to negotiate the sale of the distressed home, and must be fully completed, signed, and dated by the distressed homeowner and distressed home purchaser before the execution of any instrument of conveyance of the distressed home. [2008 c 278 § 5.]

**61.34.090 Distressed home reconveyance—Entire agreement—Terms—Notice.** The contract required in RCW 61.34.080 must contain the entire agreement of the parties and must include the following:

- (1) The name, business address, and telephone number of the distressed home purchaser;
- (2) The address of the distressed home;
- (3) The total consideration to be provided by the distressed home purchaser in connection with or incident to the sale;
- (4) A complete description of the terms of payment or other consideration including, but not limited to, any services of any nature that the distressed home purchaser represents that he or she will perform for the distressed homeowner before or after the sale;
- (5) The time at which possession is to be transferred to the distressed home purchaser;
- (6) A complete description of the terms of any related agreement designed to allow the distressed homeowner to remain in the home, such as a rental agreement, repurchase agreement, or lease with option to buy;
- (7) A complete description of the interest, if any, the distressed homeowner maintains in the proceeds of, or consideration to be paid upon, the resale of the distressed home;
- (8) A notice of cancellation as provided in RCW 61.34.110; and
- (9) The following notice in at least fourteen-point boldface type if the contract is printed, or in capital letters if the contract is typed, and completed with the name of the distressed home purchaser, immediately above the statement required in RCW 61.34.110;

"NOTICE REQUIRED BY WASHINGTON LAW

Until your right to cancel this contract has ended, . . . . . (Name) or anyone working for . . . . . (Name) CANNOT ask you to sign or have you sign any deed or any other document."

The contract required by this section survives delivery of any instrument of conveyance of the distressed home and has no effect on persons other than the parties to the contract. [2008 c 278 § 6.]

**61.34.100 Distressed homeowner’s right to cancel.**

(1) In addition to any other right of rescission, a distressed homeowner has the right to cancel any contract with a distressed home purchaser until midnight of the fifth business day following the day on which the distressed homeowner signs a contract that complies with this chapter or until 8:00 a.m. on the last day of the period during which the distressed homeowner has a right of redemption, whichever occurs first.

(2) Cancellation occurs when the distressed homeowner delivers to the distressed home purchaser, by any means, a written notice of cancellation to the address specified in the contract.

(3) A notice of cancellation provided by the distressed homeowner is not required to take the particular form as provided with the contract.

(4) Within ten days following the receipt of a notice of cancellation under this section, the distressed home purchaser shall return without condition any original contract and any other documents signed by the distressed homeowner. [2008 c 278 § 7.]

**61.34.110 Notice of distressed homeowner’s right to cancel.**

(1) The contract required in RCW 61.34.080 must contain, in immediate proximity to the space reserved for the distressed homeowner’s signature, the following conspicuous statement in at least fourteen-point boldface type if the contract is printed, or in capital letters if the contract is typed:

"You may cancel this contract for the sale of your house without any penalty or obligation at any time before

.....  
(Date and time of day)

See the attached notice of cancellation form for an explanation of this right."

The distressed home purchaser shall accurately enter the date and time of day on which the cancellation right ends.

(2) The contract must be accompanied by a completed form in duplicate, captioned "NOTICE OF CANCELLATION" in twelve-point boldface type if the contract is printed, or in capital letters if the contract is typed, followed by a space in which the distressed home purchaser shall enter the date on which the distressed homeowner executes any contract. This form must be attached to the contract, must be easily detachable, and must contain in at least twelve-point type if the contract is printed, or in capital letters if the contract is typed, the following statement written in the same language as used in the contract:

"NOTICE OF CANCELLATION

.....  
(Enter date contract signed)

You may cancel this contract for the sale of your house, without any penalty or obligation, at any time before

.....  
(Enter date and time of day)

To cancel this transaction, personally deliver a signed and dated copy of this cancellation notice to

.....  
(Name of purchaser)

at

.....  
(Street address of purchaser's place of business)

NOT LATER THAN

.....  
(Enter date and time of day)

I hereby cancel this transaction.

.....  
(Date)

.....  
(Seller's signature)"

(3) The distressed home purchaser shall provide the distressed homeowner with a copy of the contract and the attached notice of cancellation at the time the contract is executed by all parties.

(4) The five-business-day period during which the distressed homeowner may cancel the contract must not begin to run until all parties to the contract have executed the contract and the distressed home purchaser has complied with this section. [2008 c 278 § 8.]

**61.34.120 Distressed home purchaser—Prohibited practices.** A distressed home purchaser shall not:

(1) Enter into, or attempt to enter into, a distressed home conveyance with a distressed homeowner unless the distressed home purchaser verifies and can demonstrate that the distressed homeowner has a reasonable ability to pay for the subsequent conveyance of an interest back to the distressed homeowner. In the case of a lease with an option to purchase, payment ability also includes the reasonable ability to make the lease payments and purchase the property within the term of the option to purchase. An evaluation of a distressed homeowner's reasonable ability to pay includes debt to income ratios, fair market value of the distressed home, and the distressed homeowner's payment and credit history. There is a rebuttable presumption that the distressed home purchaser has not verified a distressed homeowner's reasonable ability to pay if the distressed home purchaser has not obtained documentation of assets, liabilities, and income, other than an undocumented statement, of the distressed homeowner;

(2) Fail to either:

(a) Ensure that title to the distressed home has been reconveyed to the distressed homeowner; or

(b) Make payment to the distressed homeowner so that the distressed homeowner has received consideration in an amount of at least eighty-two percent of the fair market value of the property as of the date of the eviction or voluntary relinquishment of possession of the distressed home by the distressed homeowner. For the purposes of this subsection (2)(b), the following applies:

(i) There is a rebuttable presumption that an appraisal by a person licensed or certified by an agency of the federal government or this state to appraise real estate constitutes the fair market value of the distressed home;

(ii) "Consideration" means any payment or thing of value provided to the distressed homeowner, including unpaid rent owed by the distressed homeowner before the

date of eviction or voluntary relinquishment of the distressed home, reasonable costs paid to independent third parties necessary to complete the distressed home conveyance transaction, the payment of money to satisfy a debt or legal obligation of the distressed homeowner, or the reasonable cost of repairs for damage to the distressed home caused by the distressed homeowner. "Consideration" does not include amounts imputed as a down payment or fee to the distressed home purchaser or a person acting in participation with the distressed home purchaser;

(3) Enter into repurchase or lease terms as part of the distressed home conveyance that are unfair or commercially unreasonable, or engage in any other unfair or deceptive acts or practices;

(4) Represent, directly or indirectly, that (a) the distressed home purchaser is acting as an advisor or consultant, (b) the distressed home purchaser is acting on behalf of or in the interests of the distressed homeowner, or (c) the distressed home purchaser is assisting the distressed homeowner to save the distressed home, buy time, or use other substantially similar language;

(5) Misrepresent the distressed home purchaser's status as to licensure or certification;

(6) Perform any of the following until after the time during which the distressed homeowner may cancel the transaction has expired:

(a) Accept from any distressed homeowner an execution of, or induce any distressed homeowner to execute, any instrument of conveyance of any interest in the distressed home;

(b) Record with the county auditor any document, including any instrument of conveyance, signed by the distressed homeowner; or

(c) Transfer or encumber or purport to transfer or encumber any interest in the distressed home;

(7) Fail to reconvey title to the distressed home when the terms of the distressed home conveyance contract have been fulfilled;

(8) Enter into a distressed home conveyance where any party to the transaction is represented by a power of attorney;

(9) Fail to extinguish or assume all liens encumbering the distressed home immediately following the conveyance of the distressed home;

(10) Fail to close a distressed home conveyance in person before an independent third party who is authorized to conduct real estate closings within the state. [2008 c 278 § 10.]

**61.34.900 Severability—1988 c 33.** If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1988 c 33 § 6.]

# Title 62A

## UNIFORM COMMERCIAL CODE

### Articles

- 1**      **General provisions.**
- 2**      **Sales.**
- 2A**     **Leases.**
- 3**      **Negotiable instruments.**
- 4**      **Bank deposits and collections.**
- 4A**     **Funds transfers.**
- 5**      **Letters of credit.**
- 7**      **Warehouse receipts, bills of lading and other documents of title.**
- 8**      **Investment securities.**
- 9A**     **Secured transactions; sales of accounts, contract rights and chattel paper.**
- 10**     **Effective date and repealer.**
- 11**     **Effective date and transition provisions.**

**Reviser's note:** The Uniform Commercial Code was enacted by 1965 ex.s. c 157 and became effective at midnight on June 30, 1967. The 1972 amendments to the Uniform Commercial Code recommended by the National Conference of Commissioners on Uniform State Laws were enacted by 1981 c 41 and become effective at midnight on June 30, 1982.

The style of the numbers assigned in the Commercial Code differs from the standard RCW numbering system. The purpose of this variance is to enable ready comparison with the laws and annotations of other states which have adopted the Uniform Commercial Code and to conform to the recommendations of the National Conference of Commissioners on Uniform State Laws.

As enacted and amended by the Washington Legislature, the Uniform Commercial Code is divided into eleven Articles, which are subdivided into a number of Parts. The first section in Article 1, Part 1 of the Commercial Code is numbered 1-101, the second section in Article 1, Part 1 is numbered 1-102, the first section in Article 1, Part 2 is numbered 1-201, the first section in Article 2, Part 1 is numbered 2-101, etc.

We have assigned Title 62A RCW for the Uniform Commercial Code but have retained its uniform numbering; thus in this title, section 1-101 of the Commercial Code becomes RCW 62A.1-101; section 1-102 becomes RCW 62A.1-102; section 1-201 becomes RCW 62A.1-201; section 2-101 becomes RCW 62A.2-101, and so on.

*Cashing checks, drafts, and state warrants for state officers and employees—Discretionary—Conditions—Procedure upon dishonor: RCW 43.08.180.*

*Immunity from implied warranties and civil liability relating to blood, plasma, and blood derivative—Scope—Effective date: RCW 70.54.120.*

*Materials specifically authorized to be printed and distributed by secretary of state: RCW 43.07.140.*

*Motor vehicle certificate of ownership, transfer, perfection of security interest, etc.: Chapter 46.12 RCW.  
express warranties: Chapter 19.118 RCW.*

*Uniform law commission: Chapter 43.56 RCW.*

### Article 1 GENERAL PROVISIONS

#### Sections

#### PART 1 SHORT TITLE, CONSTRUCTION, APPLICATION AND SUBJECT MATTER OF THE TITLE

- 62A.1-101 Short title.
- 62A.1-102 Purposes; rules of construction; variation by agreement.

(2010 Ed.)

- 62A.1-103 Supplementary general principles of law applicable.
- 62A.1-104 Construction against implicit repeal.
- 62A.1-105 Territorial application of the title; parties' power to choose applicable law.
- 62A.1-106 Remedies to be liberally administered.
- 62A.1-107 Waiver or renunciation of claim or right after breach.
- 62A.1-108 Severability.
- 62A.1-109 Section captions.
- 62A.1-110 Art dealers and artists—Contracts—Duties, etc.
- 62A.1-190 Construction—Title applicable to state registered domestic partnerships—2009 c 521.

#### PART 2 GENERAL DEFINITIONS AND PRINCIPLES OF INTERPRETATION

- 62A.1-201 General definitions.
- 62A.1-202 Prima facie evidence by third party documents.
- 62A.1-203 Obligation of good faith.
- 62A.1-204 Time; reasonable time; "seasonably".
- 62A.1-205 Course of dealing and usage of trade.
- 62A.1-206 Statute of frauds for kinds of personal property not otherwise covered.
- 62A.1-207 Performance or acceptance under reservation of rights.
- 62A.1-208 Option to accelerate at will.

#### PART 1 SHORT TITLE, CONSTRUCTION, APPLICATION AND SUBJECT MATTER OF THE TITLE

**62A.1-101 Short title.** This Title shall be known and may be cited as Uniform Commercial Code. [1965 ex.s. c 157 § 1-101.]

**62A.1-102 Purposes; rules of construction; variation by agreement.** (1) This Title shall be liberally construed and applied to promote its underlying purposes and policies.

(2) Underlying purposes and policies of this Title are  
(a) to simplify, clarify and modernize the law governing commercial transactions;

(b) to permit the continued expansion of commercial practices through custom, usage and agreement of the parties;  
(c) to make uniform the law among the various jurisdictions.

(3) The effect of provisions of this Title may be varied by agreement, except as otherwise provided in this Title and except that the obligations of good faith, diligence, reasonableness and care prescribed by this Title may not be disclaimed by agreement but the parties may by agreement determine the standards by which the performance of such obligations is to be measured if such standards are not manifestly unreasonable.

(4) The presence in certain provisions of this Title of the words "unless otherwise agreed" or words of similar import does not imply that the effect of other provisions may not be varied by agreement under subsection (3).

(5) In this Title unless the context otherwise requires  
(a) words in the singular number include the plural, and in the plural include the singular;

(b) words of the masculine gender include the feminine and the neuter, and when the sense so indicates words of the neuter gender may refer to any gender. [1965 ex.s. c 157 § 1-102. Cf. former RCW sections: (i) RCW 22.04.580; 1913 c 99 § 57; RRS § 3643. (ii) RCW 23.80.190; 1939 c 100 § 19; RRS § 3803-119. (iii) RCW 63.04.745; 1925 ex.s. c 142 § 74; RRS § 5836-74; formerly RCW 63.04.770. (iv) RCW 81.32.521; 1961 c 14 § 81.32.521; prior: 1915 c 159 § 52; RRS § 3698; formerly RCW 81.32.610.]

*Code to be liberally construed: RCW 1.12.010.*

*Number and gender—Interpretation: RCW 1.12.050.*

**62A.1-103 Supplementary general principles of law applicable.** Unless displaced by the particular provisions of this Title, the principles of law and equity, including the law merchant and the law relative to capacity to contract, principal and agent, estoppel, fraud, misrepresentation, duress, coercion, mistake, bankruptcy, or other validating or invalidating cause shall supplement its provisions. [1965 ex.s. c 157 § 1-103. Cf. former RCW sections: (i) RCW 22.04.570; 1913 c 99 § 56; RRS § 3642. (ii) RCW 23.80.180; 1939 c 100 § 18; RRS § 3803-118; formerly RCW 23.20.190. (iii) RCW 62.01.196; 1955 c 35 § 196; RRS § 3586. (iv) RCW 63.04.030; 1925 ex.s. c 142 § 2; RRS § 5836-2. (v) RCW 81.32.511; 1961 c 14 § 81.32.511; prior: 1915 c 159 § 51; RRS § 3697; formerly RCW 81.32.600.]

*Application of common law: RCW 4.04.010.*

**62A.1-104 Construction against implicit repeal.** This Title being a general act intended as a unified coverage of its subject matter, no part of it shall be deemed to be impliedly repealed by subsequent legislation if such construction can reasonably be avoided. [1965 ex.s. c 157 § 1-104.]

**62A.1-105 Territorial application of the title; parties' power to choose applicable law.** (1) Except as provided hereafter in this section, when a transaction bears a reasonable relation to this state and also to another state or nation the parties may agree that the law either of this state or of such other state or nation shall govern their rights and duties. Failing such agreement this Title applies to transactions bearing an appropriate relation to this state.

(2) Where one of the following provisions of this Title specifies the applicable law, that provision governs and a contrary agreement is effective only to the extent permitted by the law (including the conflict of laws rules) so specified:

Rights of creditors against sold goods. RCW 62A.2-402.

Applicability of the Article on Leases. RCW 62A.2A-105 and 62A.2A-106.

Applicability of the Article on Bank Deposits and Collections. RCW 62A.4-102.

Governing law in the Article on Funds Transfers. RCW 62A.4A-507.

Letters of Credit. RCW 62A.5-116.

Applicability of the Article on Investment Securities. RCW 62A.8-110.

Law governing perfection, the effect of perfection or nonperfection, and the priority of security interests and agricultural liens. RCW 62A.9A-301 through 62A.9A-307. [2001 c 32 § 8; 2000 c 250 § 9A-801; 1997 c 56 § 19; 1995 c

48 § 54. Prior: 1993 c 395 § 6-102; 1993 c 230 § 2A-601; 1981 c 41 § 1; 1965 ex.s. c 157 § 1-105.]

**Effective date—2001 c 32:** See note following RCW 62A.9A-102.

**Effective date—2000 c 250:** See RCW 62A.9A-701.

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**62A.1-106 Remedies to be liberally administered.** (1) The remedies provided by this Title shall be liberally administered to the end that the aggrieved party may be put in as good a position as if the other party had fully performed but neither consequential or special nor penal damages may be had except as specifically provided in this Title or by other rule of law.

(2) Any right or obligation declared by this Title is enforceable by action unless the provision declaring it specifies a different and limited effect. [1965 ex.s. c 157 § 1-106. Cf. former: RCW 63.04.730; 1925 ex.s. c 142 § 72; RRS § 5836-72.]

**62A.1-107 Waiver or renunciation of claim or right after breach.** Any claim or right arising out of an alleged breach can be discharged in whole or in part without consideration by a written waiver or renunciation signed and delivered by the aggrieved party. [1965 ex.s. c 157 § 1-107. Cf. former RCW sections: (i) RCW 62.01.119(3); 1955 c 35 § 62.01.119; prior: 1899 c 149 § 119; RRS § 3509. (ii) RCW 62.01.120(2); 1955 c 35 § 62.01.120; prior: 1899 c 149 § 120; RRS § 3510. (iii) RCW 62.01.122; 1955 c 35 § 62.01.122; prior: 1899 c 149 § 122; RRS § 3512.]

**62A.1-108 Severability.** If any provision or clause of this Title or application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of the Title which can be given effect without the invalid provision or application, and to this end the provisions of this Title are declared to be severable. [1965 ex.s. c 157 § 1-108. Cf. former RCW 62.98.030; 1955 c 35 § 62.98.030.]

**62A.1-109 Section captions.** Section captions are parts of this Title. [1965 ex.s. c 157 § 1-109. Cf. former RCW 62.98.020; 1955 c 35 § 62.98.020.]

**Reviser's note:** Sections in this title that were amended or added after the original enactment of this title by chapter 157, Laws of 1965 ex. sess. may have section captions supplied by the code reviser as authorized under RCW 1.08.015(2)(l).

**62A.1-110 Art dealers and artists—Contracts—Duties, etc.** Chapter 18.110 RCW shall control over any conflicting provision of this title. [1981 c 33 § 7.]

**62A.1-190 Construction—Title applicable to state registered domestic partnerships—2009 c 521.** For the purposes of this title, the terms spouse, marriage, marital, husband, wife, widow, widower, next of kin, and family shall be interpreted as applying equally to state registered domestic partnerships or individuals in state registered domestic partnerships as well as to marital relationships and married persons, and references to dissolution of marriage shall apply equally to state registered domestic partnerships that have

been terminated, dissolved, or invalidated, to the extent that such interpretation does not conflict with federal law. Where necessary to implement chapter 521, Laws of 2009, gender-specific terms such as husband and wife used in any statute, rule, or other law shall be construed to be gender neutral, and applicable to individuals in state registered domestic partnerships. [2009 c 521 § 143.]

PART 2  
GENERAL DEFINITIONS AND PRINCIPLES  
OF INTERPRETATION

**62A.1-201 General definitions.** Subject to additional definitions contained in the subsequent Articles of this Title which are applicable to specific Articles or Parts thereof, and unless the context otherwise requires, in this Title:

(1) "Action" in the sense of a judicial proceeding includes recoupment, counterclaim, set-off, suit in equity and any other proceedings in which rights are determined.

(2) "Aggrieved party" means a party entitled to resort to a remedy.

(3) "Agreement" means the bargain of the parties in fact as found in their language or by implication from other circumstances including course of dealing or usage of trade or course of performance as provided in this Title (RCW 62A.1-205, RCW 62A.2-208, and RCW 62A.2A-207). Whether an agreement has legal consequences is determined by the provisions of this Title, if applicable; otherwise by the law of contracts (RCW 62A.1-103). (Compare "Contract".)

(4) "Bank" means any person engaged in the business of banking.

(5) "Bearer" means the person in possession of an instrument, document of title, or certificated security payable to bearer or indorsed in blank.

(6) "Bill of lading" means a document evidencing the receipt of goods for shipment issued by a person engaged in the business of transporting or forwarding goods, and includes an airbill. "Airbill" means a document serving for air transportation as a bill of lading does for marine or rail transportation, and includes an air consignment note or air waybill.

(7) "Branch" includes a separately incorporated foreign branch of a bank.

(8) "Burden of establishing" a fact means the burden of persuading the triers of fact that the existence of the fact is more probable than its non-existence.

(9) "Buyer in ordinary course of business" means a person that buys goods in good faith, without knowledge that the sale violates the rights of another person in the goods, and in the ordinary course from a person, other than a pawnbroker, in the business of selling goods of that kind. A person buys goods in the ordinary course if the sale to the person comports with the usual or customary practices in the kind of business in which the seller is engaged or with the seller's own usual or customary practices. A person that sells oil, gas, or other minerals at the wellhead or minehead is a person in the business of selling goods of that kind. A buyer in ordinary course of business may buy for cash, by exchange of other property, or on secured or unsecured credit, and may acquire goods or documents of title under a pre-existing contract for sale. Only a buyer that takes possession of the goods or has a

right to recover the goods from the seller under Article 62A.2 RCW may be a buyer in ordinary course of business. A person that acquires goods in a transfer in bulk or as security for or in total or partial satisfaction of a money debt is not a buyer in ordinary course of business.

(10) "Conspicuous": A term or clause is conspicuous when it is so written that a reasonable person against whom it is to operate ought to have noticed it. A printed heading in capitals (as: NON-NEGOTIABLE BILL OF LADING) is conspicuous. Language in the body of a form is "conspicuous" if it is in larger or other contrasting type or color. But in a telegram any stated term is "conspicuous". Whether a term or clause is "conspicuous" or not is for decision by the court.

(11) "Contract" means the total legal obligation which results from the parties' agreement as affected by this Title and any other applicable rules of law. (Compare "Agreement".)

(12) "Creditor" includes a general creditor, a secured creditor, a lien creditor and any representative of creditors, including an assignee for the benefit of creditors, a trustee in bankruptcy, a receiver in equity and an executor or administrator of an insolvent debtor's or assignor's estate.

(13) "Defendant" includes a person in the position of defendant in a cross-action or counterclaim.

(14) "Delivery" with respect to instruments, documents of title, chattel paper, or certificated securities means voluntary transfer of possession.

(15) "Document of title" includes bill of lading, dock warrant, dock receipt, warehouse receipt or order for the delivery of goods, and also any other document which in the regular course of business or financing is treated as adequately evidencing that the person in possession of it is entitled to receive, hold and dispose of the document and the goods it covers. To be a document of title a document must purport to be issued by or addressed to a bailee and purport to cover goods in the bailee's possession which are either identified or are fungible portions of an identified mass.

(16) "Fault" means wrongful act, omission or breach.

(17) "Fungible" with respect to goods or securities means goods or securities of which any unit is, by nature or usage of trade, the equivalent of any other like unit. Goods which are not fungible shall be deemed fungible for the purposes of this Title to the extent that under a particular agreement or document unlike units are treated as equivalents.

(18) "Genuine" means free of forgery or counterfeiting.

(19) "Good faith" means honesty in fact in the conduct or transaction concerned.

(20) "Holder" with respect to a negotiable instrument, means the person in possession if the instrument is payable to bearer or, in the case of an instrument payable to an identified person, if the identified person is in possession. "Holder" with respect to a document of title means the person in possession if the goods are deliverable to bearer or to the order of the person in possession.

(21) To "honor" is to pay or to accept and pay, or where a credit so engages to purchase or discount a draft complying with the terms of the credit.

(22) "Insolvency proceedings" includes any assignment for the benefit of creditors or other proceedings intended to liquidate or rehabilitate the estate of the person involved.

(23) A person is "insolvent" who either has ceased to pay his or her debts in the ordinary course of business or cannot pay his or her debts as they become due or is insolvent within the meaning of the federal bankruptcy law.

(24) "Money" means a medium of exchange authorized or adopted by a domestic or foreign government and includes a monetary unit of account established by an intergovernmental organization or by agreement between two or more nations.

(25) A person has "notice" of a fact when

- (a) he or she has actual knowledge of it; or
- (b) he or she has received a notice or notification of it; or
- (c) from all the facts and circumstances known to him or her at the time in question he or she has reason to know that it exists.

A person "knows" or has "knowledge" of a fact when he or she has actual knowledge of it. "Discover" or "learn" or a word or phrase of similar import refers to knowledge rather than to reason to know. The time and circumstances under which a notice or notification may cease to be effective are not determined by this Title.

(26) A person "notifies" or "gives" a notice or notification to another by taking such steps as may be reasonably required to inform the other in ordinary course whether or not such other actually comes to know of it. A person "receives" a notice or notification when

- (a) it comes to his or her attention; or
- (b) it is duly delivered at the place of business through which the contract was made or at any other place held out by him or her as the place for receipt of such communications.

(27) Notice, knowledge or a notice or notification received by an organization is effective for a particular transaction from the time when it is brought to the attention of the individual conducting that transaction, and in any event from the time when it would have been brought to his or her attention if the organization had exercised due diligence. An organization exercises due diligence if it maintains reasonable routines for communicating significant information to the person conducting the transaction and there is reasonable compliance with the routines. Due diligence does not require an individual acting for the organization to communicate information unless such communication is part of his or her regular duties or unless he or she has reason to know of the transaction and that the transaction would be materially affected by the information.

(28) "Organization" includes a corporation, government or governmental subdivision or agency, business trust, estate, trust, partnership or association, two or more persons having a joint or common interest, or any other legal or commercial entity.

(29) "Party", as distinct from "third party", means a person who has engaged in a transaction or made an agreement within this Title.

(30) "Person" includes an individual or an organization (See RCW 62A.1-102).

(31) "Presumption" or "presumed" means that the trier of fact must find the existence of the fact presumed unless and until evidence is introduced which would support a finding of its nonexistence.

(32) "Purchase" includes taking by sale, discount, negotiation, mortgage, pledge, lien, security interest, issue or re-

issue, gift or any other voluntary transaction creating an interest in property.

(33) "Purchaser" means a person who takes by purchase.

(34) "Remedy" means any remedial right to which an aggrieved party is entitled with or without resort to a tribunal.

(35) "Representative" includes an agent, an officer of a corporation or association, and a trustee, executor or administrator of an estate, or any other person empowered to act for another.

(36) "Rights" includes remedies.

(37) "Security interest" means an interest in personal property or fixtures which secures payment or performance of an obligation, except for lease-purchase agreements under chapter 63.19 RCW. The term also includes any interest of a consignor and a buyer of accounts, chattel paper, a payment intangible, or a promissory note in a transaction that is subject to Article 9A. The special property interest of a buyer of goods on identification of such goods to a contract for sale under RCW 62A.2-401 is not a "security interest", but a buyer may also acquire a "security interest" by complying with Article 9A. Except as otherwise provided in RCW 62A.2-505, the right of a seller or lessor of goods under Article 2 or 2A to retain or acquire possession of the goods is not a "security interest," but a seller or lessor may also acquire a "security interest" by complying with Article 9A. The retention or reservation of title by a seller of goods notwithstanding shipment or delivery to the buyer (RCW 62A.2-401) is limited in effect to a reservation of a "security interest."

Whether a transaction creates a lease or security interest is determined by the facts of each case. However, a transaction creates a security interest if the consideration the lessee is to pay the lessor for the right to possession and use of the goods is an obligation for the term of the lease not subject to termination by the lessee, and:

- (a) The original term of the lease is equal to or greater than the remaining economic life of the goods;
- (b) The lessee is bound to renew the lease for the remaining economic life of the goods or is bound to become the owner of the goods;
- (c) The lessee has an option to renew the lease for the remaining economic life of the goods for no additional consideration or nominal additional consideration upon compliance with the lease agreement; or

(d) The lessee has an option to become the owner of the goods for no additional consideration or nominal additional consideration upon compliance with the lease agreement.

A transaction does not create a security interest merely because it provides that:

(a) The present value of the consideration the lessee is obligated to pay the lessor for the right to possession and use of the goods is substantially equal to or is greater than the fair market value of the goods at the time the lease is entered into;

(b) The lessee assumes risk of loss of the goods, or agrees to pay taxes, insurance, filing, recording, or registration fees, or service or maintenance costs with respect to the goods;

(c) The lessee has an option to renew the lease or to become the owner of the goods;

(d) The lessee has an option to renew the lease for a fixed rent that is equal to or greater than the reasonably predictable

fair market rent for the use of the goods for the term of the renewal at the time the option is to be performed;

(e) The lessee has an option to become the owner of the goods for a fixed price that is equal to or greater than the reasonably predictable fair market value of the goods at the time the option is to be performed; or

(f) The amount of rental payments may or will be increased or decreased by reference to the amount realized by the lessor upon sale or disposition of the goods.

For purposes of this subsection (37):

(a) Additional consideration is not nominal if (i) when the option to renew the lease is granted to the lessee the rent is stated to be the fair market rent for the use of the goods for the term of the renewal determined at the time the option is to be performed, or (ii) when the option to become the owner of the goods is granted to the lessee the price is stated to be the fair market value of the goods determined at the time the option is to be performed. Additional consideration is nominal if it is less than the lessee's reasonably predictable cost of performing under the lease agreement if the option is not exercised;

(b) "Reasonably predictable" and "remaining economic life of the goods" are to be determined with reference to the facts and circumstances at the time the transaction is entered into; and

(c) "Present value" means the amount as of a date certain of one or more sums payable in the future, discounted to the date certain. The discount is determined by the interest rate specified by the parties if the rate is not manifestly unreasonable at the time the transaction is entered into; otherwise, the discount is determined by a commercially reasonable rate that takes into account the facts and circumstances of each case at the time the transaction was entered into.

(38) "Send" in connection with any writing or notice means to deposit in the mail or deliver for transmission by any other usual means of communication with postage or cost of transmission provided for and properly addressed and in the case of an instrument to an address specified thereon or otherwise agreed, or if there be none to any address reasonable under the circumstances. The receipt of any writing or notice within the time at which it would have arrived if properly sent has the effect of a proper sending.

(39) "Signed" includes any symbol executed or adopted by a party with present intention to authenticate a writing.

(40) "Surety" includes guarantor.

(41) "Telegram" includes a message transmitted by radio, teletype, cable, any mechanical method of transmission, or the like.

(42) "Term" means that portion of an agreement which relates to a particular matter.

(43) "Unauthorized" signature means one made without actual, implied or apparent authority and includes a forgery.

(44) "Value". Except as otherwise provided with respect to negotiable instruments and bank collections (RCW 62A.3-303, RCW 62A.4-210, and RCW 62A.4-211) a person gives "value" for rights if he or she acquires them

(a) in return for a binding commitment to extend credit or for the extension of immediately available credit whether or not drawn upon and whether or not a charge-back is provided for in the event of difficulties in collection; or

(b) as security for or in total or partial satisfaction of a preexisting claim; or

(c) by accepting delivery pursuant to a pre-existing contract for purchase; or

(d) generally, in return for any consideration sufficient to support a simple contract.

(45) "Warehouse receipt" means a receipt issued by a person engaged in the business of storing goods for hire.

(46) "Written" or "writing" includes printing, typewriting or any other intentional reduction to tangible form. [2001 c 32 § 9; 2000 c 250 § 9A-802; 1996 c 77 § 1. Prior: 1993 c 230 § 2A-602; 1993 c 229 § 1; 1992 c 134 § 14; 1990 c 228 § 1; 1986 c 35 § 53; 1981 c 41 § 2; 1965 ex.s. c 157 § 1-201.]

**Reviser's note:** This table indicates the latest comparable former Washington sources of the material contained in the various subsections of RCW 62A.1-201. Complete histories of the former sections are carried in the Revised Code of Washington Disposition Tables.

HEREIN SUBD.	COMPARE FORMER
(1)	RCW: (i) 22.04.585(1) (ii) 62.01.191 (iii) 63.04.755(1) (iv) 81.32.531(1)
(2)	None
(3)	None
(4)	RCW: (i) 30.52.010 (ii) 62.01.191
(5)	RCW 62.01.191
(6)	RCW 81.32.011 <sup>1</sup>
(7)	None
(8)	None
(9)	RCW 61.20.010
(10)	None
(11)	RCW: (i) 63.04.040 (ii) 63.04.720
(12)	None
(13)	RCW 63.04.755(1)
(14)	RCW: (i) 22.04.585(1) (ii) 62.01.191 (iii) 63.04.755(1) (iv) 81.32.531(1)
(15)	RCW 63.04.755(1)
(16)	RCW 63.04.755(1)
(17)	RCW: (i) 22.04.585(1) (ii) 63.04.060 (iii) 63.04.070 (iv) 63.04.755(1)
(18)	None
(19)	RCW: (i) 22.04.585(2) (ii) 23.80.220(2) (iii) 63.04.755(2) (iv) 81.32.531(2)
(20)	RCW: (i) 22.04.585(1) (ii) 62.01.191 (iii) 81.32.531(1)
(21)	None
(22)	None
(23)	RCW 63.04.755(3)
(24)	RCW 62.01.006(5)
(25)	RCW 62.01.056

(26)		None
(27)		None
(28)	RCW:	(i) 22.04.585(1) (ii) 23.80.220(1) (iii) 61.20.010 (iv) 62.01.191 (v) 63.04.755(1) (vi) 81.32.531(1)
(29)		None
(30)	RCW:	(i) 22.04.585(1) (ii) 23.80.220(1) (iii) 61.20.010 (iv) 62.01.191 (v) 63.04.755(1) (vi) 81.32.531(1)
(31)		None
(32)	RCW:	(i) 22.04.585(1) (ii) 23.80.220(1) (iii) 61.20.010 (iv) 63.04.755(1) (v) 81.32.531(1)
(33)	RCW:	(i) 22.04.585(1) (ii) 23.80.220(1) (iii) 61.20.010 (iv) 63.04.755(1) (v) 81.32.531(1)
(34)		None
(35)		None
(36)		None
(37)	RCW	61.20.010
(38)		None
(39)		None
(40)		None
(41)		None
(42)		None
(43)		None
(44)	RCW:	(i) 22.04.585(1) (ii) 23.80.220(1) (iii) 61.20.010 (iv) 62.01.025 (v) 62.01.026 (vi) 62.01.027 (vii) 62.01.191 (viii) 63.04.755(1) (ix) 81.32.531(1)
(45)	RCW:	(i) 22.04.020 (ii) 63.04.755(1)
(46)	RCW	62.01.191

<sup>1</sup>The repeal of RCW sections 81.32.010 through 81.32.561 ". . . shall not affect the validity of sections 81.29.010 through 81.29.050, chapter 14, Laws of 1961 (RCW 81.29.010 through 81.29.050)." Section 10-102(a)(xvii), chapter 157, Laws of 1965 ex. sess.

**Effective date—2001 c 32:** See note following RCW 62A.9A-102.

**Effective date—2000 c 250:** See RCW 62A.9A-701.

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**62A.1-202 Prima facie evidence by third party documents.** A document in due form purporting to be a bill of lading, policy or certificate of insurance, official weigher's or inspector's certificate, consular invoice, or any other docu-

ment authorized or required by the contract to be issued by a third party shall be prima facie evidence of its own authenticity and genuineness and of the facts stated in the document by the third party. [1965 ex.s. c 157 § 1-202.]

*Official documents as evidence:* RCW 5.40.020, 5.40.030, 5.40.040.

*Uniform Business Records as Evidence Act:* Chapter 5.45 RCW.

**62A.1-203 Obligation of good faith.** Every contract or duty within this Title imposes an obligation of good faith in its performance or enforcement. [1965 ex.s. c 157 § 1-203.]

**62A.1-204 Time; reasonable time; "seasonably".** (1) Whenever this Title requires any action to be taken within a reasonable time, any time which is not manifestly unreasonable may be fixed by agreement.

(2) What is a reasonable time for taking any action depends on the nature, purpose and circumstances of such action.

(3) An action is taken "seasonably" when it is taken at or within the time agreed or if no time is agreed at or within a reasonable time. [1965 ex.s. c 157 § 1-204.]

**62A.1-205 Course of dealing and usage of trade.** (1) A course of dealing is a sequence of previous conduct between the parties to a particular transaction which is fairly to be regarded as establishing a common basis of understanding for interpreting their expressions and other conduct.

(2) A usage of trade is any practice or method of dealing having such regularity of observance in a place, vocation or trade as to justify an expectation that it will be observed with respect to the transaction in question. The existence and scope of such a usage are to be proved as facts. If it is established that such a usage is embodied in a written trade code or similar writing the interpretation of the writing is for the court.

(3) A course of dealing between parties and any usage of trade in the vocation or trade in which they are engaged or of which they are or should be aware give particular meaning to and supplement or qualify terms of an agreement.

(4) The express terms of an agreement and an applicable course of dealing or usage of trade shall be construed wherever reasonable as consistent with each other; but when such construction is unreasonable express terms control both course of dealing and usage of trade and course of dealing controls usage of trade.

(5) An applicable usage of trade in the place where any part of performance is to occur shall be used in interpreting the agreement as to that part of the performance.

(6) Evidence of a relevant usage of trade offered by one party is not admissible unless and until he has given the other party such notice as the court finds sufficient to prevent unfair surprise to the latter. [1965 ex.s. c 157 § 1-205. Cf. former RCW sections: (i) RCW 63.04.100(1); 1925 ex.s. c 142 § 9; RRS § 5836-9. (ii) RCW 63.04.160(5); 1925 ex.s. c 142 § 15; RRS § 5836-15. (iii) RCW 63.04.190(2); 1925 ex.s. c 142 § 18; RRS § 5836-18. (iv) RCW 63.04.720; 1925 ex.s. c 142 § 71; RRS § 5836-71.]

**62A.1-206 Statute of frauds for kinds of personal property not otherwise covered.** (1) Except in the cases

described in subsection (2) of this section a contract for the sale of personal property is not enforceable by way of action or defense beyond five thousand dollars in amount or value of remedy unless there is some writing which indicates that a contract for sale has been made between the parties at a defined or stated price, reasonably identifies the subject matter, and is signed by the party against whom enforcement is sought or by his authorized agent.

(2) Subsection (1) of this section does not apply to contracts for the sale of goods (RCW 62A.2-201) nor of securities (RCW 62A.8-113) nor to security agreements (\*RCW 62A.9-203). [1995 c 48 § 55; 1965 ex.s. c 157 § 1-206. Cf. former RCW 63.04.050; 1925 ex.s. c 142 § 4; RRS § 5836-4; prior: Code 1881 § 2326.]

**\*Reviser's note:** Article 62A.9 RCW was repealed in its entirety by 2000 c 250 § 9A-901, effective July 1, 2001. For later enactment, see Article 62A.9A RCW.

*Statute of frauds: Chapter 19.36 RCW.*

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**62A.1-207 Performance or acceptance under reservation of rights.** (1) A party who, with explicit reservation of rights performs or promises performance or assents to performance in a manner demanded or offered by the other party does not thereby prejudice the rights reserved. Such words as "without prejudice", "under protest" or the like are sufficient.

(2) Subsection (1) of this section shall not apply to an accord and satisfaction. [1993 c 229 § 2; 1965 ex.s. c 157 § 1-207.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**62A.1-208 Option to accelerate at will.** A term providing that one party or his successor in interest may accelerate payment or performance or require collateral or additional collateral "at will" or "when he deems himself insecure" or in words of similar import shall be construed to mean that he shall have power to do so only if he in good faith believes that the prospect of payment or performance is impaired. [1965 ex.s. c 157 § 1-208. Cf. former RCW 61.08.080; Code 1881 § 1998; 1879 p 106 § 13; RRS § 1111.]

## Article 2

### SALES

#### Sections

#### PART 1

#### SHORT TITLE, GENERAL CONSTRUCTION AND SUBJECT MATTER

62A.2-101	Short title.
62A.2-102	Scope; certain security and other transactions excluded from this Article.
62A.2-103	Definitions and index of definitions.
62A.2-104	Definitions: "Merchant"; "between merchants"; "financing agency".
62A.2-105	Definitions: Transferability; "goods"; "future" goods; "lot"; "commercial unit".
62A.2-106	Definitions: "Contract"; "agreement"; "contract for sale"; "sale"; "present sale"; "conforming" to contract; "termination"; "cancellation".
62A.2-107	Goods to be severed from realty: Recording.

#### PART 2

#### FORM, FORMATION AND READJUSTMENT OF CONTRACT

62A.2-201	Formal requirements; statute of frauds.
-----------	---

62A.2-202	Final written expression: Parol or extrinsic evidence.
62A.2-203	Seals inoperative.
62A.2-204	Formation in general.
62A.2-205	Firm offers.
62A.2-206	Offer and acceptance in formation of contract.
62A.2-207	Additional terms in acceptance or confirmation.
62A.2-208	Course of performance or practical construction.
62A.2-209	Modification, rescission and waiver.
62A.2-210	Delegation of performance; assignment of rights.

#### PART 3

#### GENERAL OBLIGATION AND CONSTRUCTION OF CONTRACT

62A.2-301	General obligations of parties.
62A.2-302	Unconscionable contract or clause.
62A.2-303	Allocation or division of risks.
62A.2-304	Price payable in money, goods, realty, or otherwise.
62A.2-305	Open price term.
62A.2-306	Output, requirements and exclusive dealings.
62A.2-307	Delivery in single lot or several lots.
62A.2-308	Absence of specified place for delivery.
62A.2-309	Absence of specific time provisions; notice of termination.
62A.2-310	Open time for payment or running of credit; authority to ship under reservation.
62A.2-311	Options and cooperation respecting performance.
62A.2-312	Warranty of title and against infringement; buyer's obligation against infringement.
62A.2-313	Express warranties by affirmation, promise, description, sample.
62A.2-314	Implied warranty: Merchantability; usage of trade.
62A.2-315	Implied warranty: Fitness for particular purpose.
62A.2-316	Exclusion or modification of warranties.
62A.2-317	Cumulation and conflict of warranties express or implied.
62A.2-318	Third party beneficiaries of warranties express or implied.
62A.2-319	F.O.B. and F.A.S. terms.
62A.2-320	C.I.F. and C.&F. terms.
62A.2-321	C.I.F. or C.&F.: "Net landed weights"; "payment on arrival"; warranty of condition on arrival.
62A.2-322	Delivery "ex-ship".
62A.2-323	Form of bill of lading required in overseas shipment; "overseas".
62A.2-324	"No arrival, no sale" term.
62A.2-325	"Letter of credit" term; "confirmed credit".
62A.2-326	Sale on approval and sale or return; rights of creditors.
62A.2-327	Special incidents of sale on approval and sale or return.
62A.2-328	Sale by auction.

#### PART 4

#### TITLE, CREDITORS AND GOOD FAITH PURCHASERS

62A.2-401	Passing of title; reservation for security; limited application of this section.
62A.2-402	Rights of seller's creditors against sold goods.
62A.2-403	Power to transfer; good faith purchase of goods; "entrusting".

#### PART 5

#### PERFORMANCE

62A.2-501	Insurable interest in goods; manner of identification of goods.
62A.2-502	Buyer's right to goods on seller's insolvency.
62A.2-503	Manner of seller's tender of delivery.
62A.2-504	Shipment by seller.
62A.2-505	Seller's shipment under reservation.
62A.2-506	Rights of financing agency.
62A.2-507	Effect of seller's tender; delivery on condition.
62A.2-508	Cure by seller of improper tender or delivery; replacement.
62A.2-509	Risk of loss in the absence of breach.
62A.2-510	Effect of breach on risk of loss.
62A.2-511	Tender of payment by buyer; payment by check.
62A.2-512	Payment by buyer before inspection.
62A.2-513	Buyer's right to inspection of goods.
62A.2-514	When documents deliverable on acceptance; when on payment.
62A.2-515	Preserving evidence of goods in dispute.

#### PART 6

#### BREACH, REPUDIATION AND EXCUSE

62A.2-601	Buyer's rights on improper delivery.
62A.2-602	Manner and effect of rightful rejection.
62A.2-603	Merchant buyer's duties as to rightfully rejected goods.
62A.2-604	Buyer's options as to salvage of rightfully rejected goods.
62A.2-605	Waiver of buyer's objections by failure to particularize.
62A.2-606	What constitutes acceptance of goods.

62A.2-607	Effect of acceptance; notice of breach; burden of establishing breach after acceptance; notice of claim or litigation to person answerable over.
62A.2-608	Revocation of acceptance in whole or in part.
62A.2-609	Right to adequate assurance of performance.
62A.2-610	Anticipatory repudiation.
62A.2-611	Retraction of anticipatory repudiation.
62A.2-612	"Installment contract"; breach.
62A.2-613	Casualty to identified goods.
62A.2-614	Substituted performance.
62A.2-615	Excuse by failure of presupposed conditions.
62A.2-616	Procedure on notice claiming excuse.

PART 7  
REMEDIES

62A.2-701	Remedies for breach of collateral contracts not impaired.
62A.2-702	Seller's remedies on discovery of buyer's insolvency.
62A.2-703	Seller's remedies in general.
62A.2-704	Seller's right to identify goods to the contract notwithstanding breach or to salvage unfinished goods.
62A.2-705	Seller's stoppage of delivery in transit or otherwise.
62A.2-706	Seller's resale including contract for resale.
62A.2-707	"Person in the position of a seller".
62A.2-708	Seller's damages for non-acceptance or repudiation.
62A.2-709	Action for the price.
62A.2-710	Seller's incidental damages.
62A.2-711	Buyer's remedies in general; buyer's security interest in rejected goods.
62A.2-712	"Cover"; buyer's procurement of substitute goods.
62A.2-713	Buyer's damages for non-delivery or repudiation.
62A.2-714	Buyer's damages for breach in regard to accepted goods.
62A.2-715	Buyer's incidental and consequential damages.
62A.2-716	Buyer's right to specific performance or replevin.
62A.2-717	Deduction of damages from the price.
62A.2-718	Liquidation or limitation of damages; deposits.
62A.2-719	Contractual modification or limitation of remedy.
62A.2-720	Effect of "cancellation" or "rescission" on claims for antecedent breach.
62A.2-721	Remedies for fraud.
62A.2-722	Who can sue third parties for injury to goods.
62A.2-723	Proof of market price: Time and place.
62A.2-724	Admissibility of market quotations.
62A.2-725	Statute of limitations in contracts for sale.

PART 1  
SHORT TITLE, GENERAL CONSTRUCTION  
AND SUBJECT MATTER

**62A.2-101 Short title.** This Article shall be known and may be cited as Uniform Commercial Code—Sales. [1965 ex.s. c 157 § 2-101.]

**62A.2-102 Scope; certain security and other transactions excluded from this Article.** Unless the context otherwise requires, this Article applies to transactions in goods; it does not apply to any transaction which although in the form of an unconditional contract to sell or present sale is intended to operate only as a security transaction nor does this Article impair or repeal any statute regulating sales to consumers, farmers or other specified classes of buyers. [1965 ex.s. c 157 § 2-102. Cf. former RCW 63.04.750; 1925 ex.s. c 142 § 75; RRS § 5836-75.]

**62A.2-103 Definitions and index of definitions.** (1) In this Article unless the context otherwise requires

(a) "Buyer" means a person who buys or contracts to buy goods.

(b) "Good faith" in the case of a merchant means honesty in fact and the observance of reasonable commercial standards of fair dealing in the trade.

(c) "Receipt" of goods means taking physical possession of them.

(d) "Seller" means a person who sells or contracts to sell goods.

(2) Other definitions applying to this Article or to specified Parts thereof, and the sections in which they appear are:

"Acceptance."	RCW 62A.2-606.
"Banker's credit."	RCW 62A.2-325.
"Between merchants."	RCW 62A.2-104.
"Cancellation."	RCW 62A.2-106(4).
"Commercial unit."	RCW 62A.2-105.
"Confirmed credit."	RCW 62A.2-325.
"Conforming to contract."	RCW 62A.2-106.
"Contract for sale."	RCW 62A.2-106.
"Cover."	RCW 62A.2-712.
"Entrusting."	RCW 62A.2-403.
"Financing agency."	RCW 62A.2-104.
"Future goods."	RCW 62A.2-105.
"Goods."	RCW 62A.2-105.
"Identification."	RCW 62A.2-501.
"Installment contract."	RCW 62A.2-612.
"Letter of credit."	RCW 62A.2-325.
"Lot."	RCW 62A.2-105.
"Merchant."	RCW 62A.2-104.
"Overseas."	RCW 62A.2-323.
"Person in position of seller."	RCW 62A.2-707.
"Present sale."	RCW 62A.2-106.
"Sale."	RCW 62A.2-106.
"Sale on approval."	RCW 62A.2-326.
"Sale or return."	RCW 62A.2-326.
"Termination."	RCW 62A.2-106.

(3) The following definitions in other Articles apply to this Article:

"Check."	RCW 62A.3-104.
"Consignee."	RCW 62A.7-102.
"Consignor."	RCW 62A.7-102.
"Consumer goods."	RCW 62A.9A-102.
"Dishonor."	RCW 62A.3-502.
"Draft."	RCW 62A.3-104.

(4) In addition Article 1 contains general definitions and principles of construction and interpretation applicable throughout this Article. [2000 c 250 § 9A-803; 1965 ex.s. c 157 § 2-103. Cf. former RCW 63.04.755(1); 1925 ex.s. c 142 § 76; RRS § 5836-76; formerly RCW 63.04.010.]

**Effective date—2000 c 250:** See RCW 62A.9A-701.

**62A.2-104 Definitions: "Merchant"; "between merchants"; "financing agency".** (1) "Merchant" means a person who deals in goods of the kind or otherwise by his occupation holds himself out as having knowledge or skill peculiar to the practices or goods involved in the transaction or to whom such knowledge or skill may be attributed by his employment of an agent or broker or other intermediary who by his occupation holds himself out as having such knowledge or skill.

(2) "Financing agency" means a bank, finance company or other person who in the ordinary course of business makes advances against goods or documents of title or who by arrangement with either the seller or the buyer intervenes in ordinary course to make or collect payment due or claimed under the contract for sale, as by purchasing or paying the seller's draft or making advances against it or by merely tak-

ing it for collection whether or not documents of title accompany the draft. "Financing agency" includes also a bank or other person who similarly intervenes between persons who are in the position of seller and buyer in respect to the goods (RCW 62A.2-707).

(3) "Between merchants" means in any transaction with respect to which both parties are chargeable with the knowledge or skill of merchants. [1965 ex.s. c 157 § 2-104. Cf. former RCW sections: (i) RCW 63.04.160(2), (5); 1925 ex.s. c 142 § 15; RRS § 5836-15. (ii) RCW 63.04.170(c); 1925 ex.s. c 142 § 16; RRS § 5836-16. (iii) RCW 63.04.460(2); 1925 ex.s. c 142 § 45; RRS § 5836-45. (iv) RCW 63.04.720; 1925 ex.s. c 142 § 71; RRS § 5836-71. (v) RCW 81.32.351; 1961 c 14 § 81.32.351; prior: 1915 c 159 § 35; RRS § 3681; formerly RCW 81.32.440. (vi) RCW 81.32.371; 1961 c 14 § 81.32.371; prior: 1915 c 159 § 37; RRS § 3683; formerly RCW 81.32.460.]

**62A.2-105 Definitions: Transferability; "goods"; "future" goods; "lot"; "commercial unit".** (1) "Goods" means all things (including specially manufactured goods) which are movable at the time of identification to the contract for sale other than the money in which the price is to be paid, investment securities (Article 8) and things in action. "Goods" also includes the unborn young of animals and growing crops and other identified things attached to realty as described in the section on goods to be severed from realty (RCW 62A.2-107).

(2) Goods must be both existing and identified before any interest in them can pass. Goods which are not both existing and identified are "future" goods. A purported present sale of future goods or of any interest therein operates as a contract to sell.

(3) There may be a sale of a part interest in existing identified goods.

(4) An undivided share in an identified bulk of fungible goods is sufficiently identified to be sold although the quantity of the bulk is not determined. Any agreed proportion of such a bulk or any quantity thereof agreed upon by number, weight or other measure may to the extent of the seller's interest in the bulk be sold to the buyer who then becomes an owner in common.

(5) "Lot" means a parcel or a single article which is the subject matter of a separate sale or delivery, whether or not it is sufficient to perform the contract.

(6) "Commercial unit" means such a unit of goods as by commercial usage is a single whole for purposes of sale and division of which materially impairs its character or value on the market or in use. A commercial unit may be a single article (as a machine) or a set of articles (as a suite of furniture or an assortment of sizes) or a quantity (as a bale, gross, or carload) or any other unit treated in use or in the relevant market as a single whole. [1965 ex.s. c 157 § 2-105. Subds. (1), (2), (3), (4), cf. former RCW sections: (i) RCW 63.04.060; 1925 ex.s. c 142 § 5; RRS § 5836-5. (ii) RCW 63.04.070; 1925 ex.s. c 142 § 6; RRS § 5836-6. (iii) RCW 63.04.755; 1925 ex.s. c 142 § 76; RRS § 5836-76; formerly RCW 63.04.010.]

**62A.2-106 Definitions: "Contract"; "agreement"; "contract for sale"; "sale"; "present sale"; "conform-**

**ing" to contract; "termination"; "cancellation".** (1) In this Article unless the context otherwise requires "contract" and "agreement" are limited to those relating to the present or future sale of goods. "Contract for sale" includes both a present sale of goods and a contract to sell goods at a future time. A "sale" consists in the passing of title from the seller to the buyer for a price (RCW 62A.2-401). A "present sale" means a sale which is accomplished by the making of the contract.

(2) Goods or conduct including any part of a performance are "conforming" or conform to the contract when they are in accordance with the obligations under the contract.

(3) "Termination" occurs when either party pursuant to a power created by agreement or law puts an end to the contract otherwise than for its breach. On "termination" all obligations which are still executory on both sides are discharged but any right based on prior breach or performance survives.

(4) "Cancellation" occurs when either party puts an end to the contract for breach by the other and its effect is the same as that of "termination" except that the cancelling party also retains any remedy for breach of the whole contract or any unperformed balance. [1965 ex.s. c 157 § 2-106. Subd. (1) cf. former RCW 63.04.020; 1925 ex.s. c 142 § 1; RRS § 5836-1. Subd. (2) cf. former RCW sections: (i) RCW 63.04.120; 1925 ex.s. c 142 § 11; RRS § 5836-11. (ii) RCW 63.04.450; 1925 ex.s. c 142 § 44; RRS § 5836-44. (iii) RCW 63.04.700; 1925 ex.s. c 142 § 69; RRS § 5836-69.]

**62A.2-107 Goods to be severed from realty: Recording.** (1) A contract for the sale of minerals or the like including oil and gas or a structure or its materials to be removed from realty is a contract for the sale of goods within this Article if they are to be severed by the seller but until severance a purported present sale thereof which is not effective as a transfer of an interest in land is effective only as a contract to sell.

(2) A contract for the sale apart from the land of growing crops or other things attached to realty and capable of severance without material harm thereto but not described in subsection (1) or of timber to be cut is a contract for the sale of goods within this Article whether the subject matter is to be severed by the buyer or by the seller even though it forms part of the realty at the time of contracting, and the parties can by identification effect a present sale before severance.

(3) The provisions of this section are subject to any third party rights provided by the law relating to realty records, and the contract for sale may be executed and recorded as a document transferring an interest in land and shall then constitute notice to third parties of the buyer's rights under the contract for sale. [1981 c 41 § 3; 1965 ex.s. c 157 § 2-107. Cf. former RCW sections: (i) RCW 63.04.755(1); 1925 ex.s. c 142 § 76; RRS § 5836-76; formerly RCW 63.04.010. (ii) RCW 65.08.040; Code 1881 § 2327; 1863 p 413 § 4; 1854 p 404 § 4; RRS § 5827.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

PART 2  
FORM, FORMATION AND READJUSTMENT  
OF CONTRACT

**62A.2-201 Formal requirements; statute of frauds.**

(1) Except as otherwise provided in this section a contract for the sale of goods for the price of five hundred dollars or more is not enforceable by way of action or defense unless there is some writing sufficient to indicate that a contract for sale has been made between the parties and signed by the party against whom enforcement is sought or by his authorized agent or broker. A writing is not insufficient because it omits or incorrectly states a term agreed upon but the contract is not enforceable under this paragraph beyond the quantity of goods shown in such writing.

(2) Between merchants if within a reasonable time a writing in confirmation of the contract and sufficient against the sender is received and the party receiving it has reason to know its contents, it satisfies the requirements of subsection (1) against such party unless written notice of objection to its contents is given within ten days after it is received.

(3) A contract which does not satisfy the requirements of subsection (1) but which is valid in other respects is enforceable

(a) if the goods are to be specially manufactured for the buyer and are not suitable for sale to others in the ordinary course of the seller's business and the seller, before notice of repudiation is received and under circumstances which reasonably indicate that the goods are for the buyer, has made either a substantial beginning of their manufacture or commitments for their procurement; or

(b) if the party against whom enforcement is sought admits in his pleading, testimony or otherwise in court that a contract for sale was made, but the contract is not enforceable under this provision beyond the quantity of goods admitted; or

(c) with respect to goods for which payment has been made and accepted or which have been received and accepted (RCW 62A.2-606). [1965 ex.s c 157 § 2-201. Cf. former RCW 63.04.050; 1925 ex.s. c 142 § 4; RRS § 5836-4; prior: Code 1881 § 2326.]

*Statute of frauds: RCW 19.36.010.*

**62A.2-202 Final written expression: Parol or extrinsic evidence.** Terms with respect to which the confirmatory memoranda of the parties agree or which are otherwise set forth in a writing intended by the parties as a final expression of their agreement with respect to such terms as are included therein may not be contradicted by evidence of any prior agreement or of a contemporaneous oral agreement but may be explained or supplemented

(a) by course of dealing or usage of trade (RCW 62A.1-205) or by course of performance (RCW 62A.2-208); and

(b) by evidence of consistent additional terms unless the court finds the writing to have been intended also as a complete and exclusive statement of the terms of the agreement. [1965 ex.s. c 157 § 2-202.]

**62A.2-203 Seals inoperative.** The affixing of a seal to a writing evidencing a contract for sale or an offer to buy or

sell goods does not constitute the writing a sealed instrument and the law with respect to sealed instruments does not apply to such contract or offer. [1965 ex.s. c 157 § 2-203. Cf. former RCW 63.04.040; 1925 ex.s. c 142 § 3; RRS § 5836-3.]

*Corporate seals—Effect of absence from instrument: RCW 64.04.105.*

**62A.2-204 Formation in general.** (1) A contract for sale of goods may be made in any manner sufficient to show agreement, including conduct by both parties which recognizes the existence of such a contract.

(2) An agreement sufficient to constitute a contract for sale may be found even though the moment of its making is undetermined.

(3) Even though one or more terms are left open a contract for sale does not fail for indefiniteness if the parties have intended to make a contract and there is a reasonably certain basis for giving an appropriate remedy. [1965 ex.s. c 157 § 2-204. Cf. former RCW sections: (i) RCW 63.04.020; 1925 ex.s. c 142 § 1; RRS § 5836-1. (ii) RCW 63.04.040; 1925 ex.s. c 142 § 3; RRS § 5836-3.]

**62A.2-205 Firm offers.** An offer by a merchant to buy or sell goods in a signed writing which by its terms gives assurance that it will be held open is not revocable, for lack of consideration, during the time stated or if no time is stated for a reasonable time, but in no event may such period of irrevocability exceed three months; but any such term of assurance on a form supplied by the offeree must be separately signed by the offeror. [1965 ex.s. c 157 § 2-205. Cf. former RCW sections: (i) RCW 63.04.020; 1925 ex.s. c 142 § 1; RRS § 5836-1. (ii) RCW 63.04.040; 1925 ex.s. c 142 § 3; RRS § 5836-3.]

**62A.2-206 Offer and acceptance in formation of contract.** (1) Unless otherwise unambiguously indicated by the language or circumstances

(a) an offer to make a contract shall be construed as inviting acceptance in any manner and by any medium reasonable in the circumstances;

(b) an order or other offer to buy goods for prompt or current shipment shall be construed as inviting acceptance either by a prompt promise to ship or by the prompt or current shipment of conforming or non-conforming goods, but such a shipment of non-conforming goods does not constitute an acceptance if the seller seasonably notifies the buyer that the shipment is offered only as an accommodation to the buyer.

(2) Where the beginning of a requested performance is a reasonable mode of acceptance an offeror who is not notified of acceptance within a reasonable time may treat the offer as having lapsed before acceptance. [1965 ex.s. c 157 § 2-206. Cf. former RCW sections: (i) RCW 63.04.020; 1925 ex.s. c 142 § 1; RRS § 5836-1. (ii) RCW 63.04.040; 1925 ex.s. c 142 § 3; RRS § 5836-3.]

**62A.2-207 Additional terms in acceptance or confirmation.** (1) A definite and seasonable expression of acceptance or a written confirmation which is sent within a reasonable time operates as an acceptance even though it states terms additional to or different from those offered or agreed

upon, unless acceptance is expressly made conditional on assent to the additional or different terms.

(2) The additional terms are to be construed as proposals for addition to the contract. Between merchants such terms become part of the contract unless:

(a) the offer expressly limits acceptance to the terms of the offer;

(b) they materially alter it; or

(c) notification of objection to them has already been given or is given within a reasonable time after notice of them is received.

(3) Conduct by both parties which recognizes the existence of a contract is sufficient to establish a contract for sale although the writings of the parties do not otherwise establish a contract. In such case the terms of the particular contract consist of those terms on which the writings of the parties agree, together with any supplementary terms incorporated under any other provisions of this Title. [1965 ex.s. c 157 § 2-207. Cf. former RCW sections: (i) RCW 63.04.020; 1925 ex.s. c 142 § 1; RRS § 5836-1. (ii) RCW 63.04.040; 1925 ex.s. c 142 § 3; RRS § 5836-3.]

**62A.2-208 Course of performance or practical construction.** (1) Where the contract for sale involves repeated occasions for performance by either party with knowledge of the nature of the performance and opportunity for objection to it by the other, any course of performance accepted or acquiesced in without objection shall be relevant to determine the meaning of the agreement.

(2) The express terms of the agreement and any such course of performance, as well as any course of dealing and usage of trade, shall be construed whenever reasonable as consistent with each other; but when such construction is unreasonable, express terms shall control course of performance and course of performance shall control both course of dealing and usage of trade (RCW 62A.1-205).

(3) Subject to the provisions of the next section on modification and waiver, such course of performance shall be relevant to show a waiver or modification of any term inconsistent with such course of performance. [1965 ex.s. c 157 § 2-208.]

**62A.2-209 Modification, rescission and waiver.** (1) An agreement modifying a contract within this Article needs no consideration to be binding.

(2) A signed agreement which excludes modification or rescission except by a signed writing cannot be otherwise modified or rescinded, but except as between merchants such a requirement on a form supplied by the merchant must be separately signed by the other party.

(3) The requirements of the statute of frauds section of this Article (RCW 62A.2-201) must be satisfied if the contract as modified is within its provisions.

(4) Although an attempt at modification or rescission does not satisfy the requirements of subsection (2) or (3) it can operate as a waiver.

(5) A party who has made a waiver affecting an executory portion of the contract may retract the waiver by reasonable notification received by the other party that strict performance will be required of any term waived, unless the retrac-

tion would be unjust in view of a material change of position in reliance on the waiver. [1965 ex.s. c 157 § 2-209.]

**62A.2-210 Delegation of performance; assignment of rights.** (1) A party may perform his duty through a delegate unless otherwise agreed or unless the other party has a substantial interest in having his original promisor perform or control the acts required by the contract. No delegation of performance relieves the party delegating of any duty to perform or any liability for breach.

(2) Except as otherwise provided in RCW 62A.9A-406, unless otherwise agreed, all rights of either seller or buyer can be assigned except where the assignment would materially change the duty of the other party, or increase materially the burden or risk imposed on him by his contract, or impair materially his chance of obtaining return performance. A right to damages for breach of the whole contract or a right arising out of the assignor's due performance of his entire obligation can be assigned despite agreement otherwise.

(3) The creation, attachment, perfection, or enforcement of a security interest in the seller's interest under a contract is not a transfer that materially changes the duty of or increases materially the burden or risk imposed on the buyer or impairs materially the buyer's chance of obtaining return performance within the purview of subsection (2) of this section unless, and then only to the extent that, enforcement actually results in a delegation of material performance of the seller. Even in that event, the creation, attachment, perfection, and enforcement of the security interest remain effective, but (i) the seller is liable to the buyer for damages caused by the delegation to the extent that the damages could not reasonably be prevented by the buyer, and (ii) a court having jurisdiction may grant other appropriate relief, including cancellation of the contract for sale or an injunction against enforcement of the security interest or consummation of the enforcement.

(4) Unless the circumstances indicate the contrary a prohibition of assignment of "the contract" is to be construed as barring only the delegation to the assignee of the assignor's performance.

(5) An assignment of "the contract" or of "all my rights under the contract" or an assignment in similar general terms is an assignment of rights and unless the language or the circumstances (as in an assignment for security) indicate the contrary, it is a delegation of performance of the duties of the assignor and its acceptance by the assignee constitutes a promise by him to perform those duties. This promise is enforceable by either the assignor or the other party to the original contract.

(6) The other party may treat any assignment which delegates performance as creating reasonable grounds for insecurity and may without prejudice to his rights against the assignor demand assurances from the assignee (RCW 62A.2-609).

(7) Notwithstanding subsections (2) and (3) of this section, an assignment that would be a breach but for the provisions of RCW 62A.9A-406 may create reasonable grounds for insecurity with respect to the due performance of the assignor (RCW 62A.2-609). [2000 c 250 § 9A-804; 1965 ex.s. c 157 § 2-210.]

**Effective date—2000 c 250:** See RCW 62A.9A-701.

PART 3  
GENERAL OBLIGATION AND CONSTRUCTION  
OF CONTRACT

**62A.2-301 General obligations of parties.** The obligation of the seller is to transfer and deliver and that of the buyer is to accept and pay in accordance with the contract. [1965 ex.s. c 157 § 2-301. Cf. former RCW sections: (i) RCW 63.04.120; 1925 ex.s. c 142 § 11; RRS § 5836-11. (ii) RCW 63.04.420; 1925 ex.s. c 142 § 41; RRS § 5836-41.]

**62A.2-302 Unconscionable contract or clause.** (1) If the court as a matter of law finds the contract or any clause of the contract to have been unconscionable at the time it was made the court may refuse to enforce the contract, or it may enforce the remainder of the contract without the unconscionable clause, or it may so limit the application of any unconscionable clause as to avoid any unconscionable result.

(2) When it is claimed or appears to the court that the contract or any clause thereof may be unconscionable the parties shall be afforded a reasonable opportunity to present evidence as to its commercial setting, purpose and effect to aid the court in making the determination. [1965 ex.s. c 157 § 2-302.]

**62A.2-303 Allocation or division of risks.** Where this Article allocates a risk or a burden as between the parties "unless otherwise agreed", the agreement may not only shift the allocation but may also divide the risk or burden. [1965 ex.s. c 157 § 2-303.]

**62A.2-304 Price payable in money, goods, realty, or otherwise.** (1) The price can be made payable in money or otherwise. If it is payable in whole or in part in goods each party is a seller of the goods which he is to transfer.

(2) Even though all or part of the price is payable in an interest in realty the transfer of the goods and the seller's obligations with reference to them are subject to this Article, but not the transfer of the interest in realty or the transferor's obligations in connection therewith. [1965 ex.s. c 157 § 2-304. Cf. former RCW 63.04.100(2), (3); 1925 ex.s. c 142 § 9; RRS § 5836-9.]

**62A.2-305 Open price term.** (1) The parties if they so intend can conclude a contract for sale even though the price is not settled. In such a case the price is a reasonable price at the time for delivery if

- (a) nothing is said as to price; or
- (b) the price is left to be agreed by the parties and they fail to agree; or
- (c) the price is to be fixed in terms of some agreed market or other standard as set or recorded by a third person or agency and it is not so set or recorded.

(2) A price to be fixed by the seller or by the buyer means a price for him to fix in good faith.

(3) When a price left to be fixed otherwise than by agreement of the parties fails to be fixed through fault of one party the other may at his option treat the contract as cancelled or himself fix a reasonable price.

(4) Where, however, the parties intend not to be bound unless the price be fixed or agreed and it is not fixed or agreed there is no contract. In such a case the buyer must return any goods already received or if unable so to do must pay their reasonable value at the time of delivery and the seller must return any portion of the price paid on account. [1965 ex.s. c 157 § 2-305. Cf. former RCW sections: (i) RCW 63.04.100; 1925 ex.s. c 142 § 9; RRS § 5836-9. (ii) RCW 63.04.110; 1925 ex.s. c 142 § 10; RRS § 5836-10. Subd. (3) cf. former RCW 63.04.120(2); 1925 ex.s. c 142 § 11; RRS § 5836-11.]

**62A.2-306 Output, requirements and exclusive dealings.** (1) A term which measures the quantity by the output of the seller or the requirements of the buyer means such actual output or requirements as may occur in good faith, except that no quantity unreasonably disproportionate to any stated estimate or in the absence of a stated estimate to any normal or otherwise comparable prior output or requirements may be tendered or demanded.

(2) A lawful agreement by either the seller or the buyer for exclusive dealing in the kind of goods concerned imposes unless otherwise agreed an obligation by the seller to use best efforts to supply the goods and by the buyer to use best efforts to promote their sale. [1965 ex.s. c 157 § 2-306.]

**62A.2-307 Delivery in single lot or several lots.** Unless otherwise agreed all goods called for by a contract for sale must be tendered in a single delivery and payment is due only on such tender but where the circumstances give either party the right to make or demand delivery in lots the price if it can be apportioned may be demanded for each lot. [1965 ex.s. c 157 § 2-307. Cf. former RCW 63.04.460(1); 1925 ex.s. c 142 § 45; RRS § 5836-45.]

**62A.2-308 Absence of specified place for delivery.** Unless otherwise agreed

(a) the place for delivery of goods is the seller's place of business or if he has none his residence; but

(b) in a contract for sale of identified goods which to the knowledge of the parties at the time of contracting are in some other place, that place is the place for their delivery; and

(c) documents of title may be delivered through customary banking channels. [1965 ex.s. c 157 § 2-308. Subd. (a), (b) cf. former RCW 63.04.440(1); 1925 ex.s. c 142 § 43; RRS § 5836-43.]

**62A.2-309 Absence of specific time provisions; notice of termination.** (1) The time for shipment or delivery or any other action under a contract if not provided in this Article or agreed upon shall be a reasonable time.

(2) Where the contract provides for successive performances but is indefinite in duration it is valid for a reasonable time but unless otherwise agreed may be terminated at any time by either party.

(3) Termination of a contract by one party except on the happening of an agreed event requires that reasonable notification be received by the other party and an agreement dispensing with notification is invalid if its operation would be unconscionable. [1965 ex.s. c 157 § 2-309. Cf. former RCW sections: (i) RCW 63.04.440(2); 1925 ex.s. c 142 § 43; RRS

§ 5836-43. (ii) RCW 63.04.460(2); 1925 ex.s. c 142 § 45; RRS § 5836-45. (iii) RCW 63.04.480(1); 1925 ex.s. c 142 § 47; RRS § 5836-47. (iv) RCW 63.04.490; 1925 ex.s. c 142 § 48; RRS § 5836-48.]

**62A.2-310 Open time for payment or running of credit; authority to ship under reservation.** Unless otherwise agreed

(a) payment is due at the time and place at which the buyer is to receive the goods even though the place of shipment is the place of delivery; and

(b) if the seller is authorized to send the goods he may ship them under reservation, and may tender the documents of title, but the buyer may inspect the goods after their arrival before payment is due unless such inspection is inconsistent with the terms of the contract (RCW 62A.2-513); and

(c) if delivery is authorized and made by way of documents of title otherwise than by subsection (b) then payment is due at the time and place at which the buyer is to receive the documents regardless of where the goods are to be received; and

(d) where the seller is required or authorized to ship the goods on credit the credit period runs from the time of shipment but post-dating the invoice or delaying its dispatch will correspondingly delay the starting of the credit period. [1965 ex.s. c 157 § 2-310. Cf. former RCW sections: (i) RCW 63.04.430; 1925 ex.s. c 142 § 42; RRS § 5836-42. (ii) RCW 63.04.470(1); 1925 ex.s. c 142 § 46; RRS § 5836-46. (iii) RCW 63.04.480(2); 1925 ex.s. c 142 § 47; RRS § 5836-47.]

**62A.2-311 Options and cooperation respecting performance.** (1) An agreement for sale which is otherwise sufficiently definite (subsection (3) of RCW 62A.2-204) to be a contract is not made invalid by the fact that it leaves particulars of performance to be specified by one of the parties. Any such specification must be made in good faith and within limits set by commercial reasonableness.

(2) Unless otherwise agreed specifications relating to assortment of the goods are at the buyer's option and except as otherwise provided in subsections (1)(c) and (3) of RCW 62A.2-319 specifications or arrangements relating to shipment are at the seller's option.

(3) Where such specification would materially affect the other party's performance but is not seasonably made or where one party's cooperation is necessary to the agreed performance of the other but is not seasonably forthcoming, the other party in addition to all other remedies

(a) is excused for any resulting delay in his own performance; and

(b) may also either proceed to perform in any reasonable manner or after the time for a material part of his own performance treat the failure to specify or to cooperate as a breach by failure to deliver or accept the goods. [1965 ex.s. c 157 § 2-311.]

**62A.2-312 Warranty of title and against infringement; buyer's obligation against infringement.** (1) Subject to subsection (2) there is in a contract for sale a warranty by the seller that

(a) the title conveyed shall be good, and its transfer rightful; and

(b) the goods shall be delivered free from any security interest or other lien or encumbrance of which the buyer at the time of contracting has no knowledge.

(2) A warranty under subsection (1) will be excluded or modified only by specific language or by circumstances which give the buyer reason to know that the person selling does not claim title in himself or that he is purporting to sell only such right or title as he or a third person may have.

(3) Unless otherwise agreed a seller who is a merchant regularly dealing in goods of the kind warrants that the goods shall be delivered free of the rightful claim of any third person by way of infringement or the like but a buyer who furnishes specifications to the seller must hold the seller harmless against any such claim which arises out of compliance with the specifications. [1965 ex.s. c 157 § 2-312. Cf. former RCW 63.04.140; 1925 ex.s. c 142 § 13; RRS § 5836-13.]

**62A.2-313 Express warranties by affirmation, promise, description, sample.** (1) Express warranties by the seller are created as follows:

(a) Any affirmation of fact or promise made by the seller to the buyer which relates to the goods and becomes part of the basis of the bargain creates an express warranty that the goods shall conform to the affirmation or promise.

(b) Any description of the goods which is made part of the basis of the bargain creates an express warranty that the goods shall conform to the description.

(c) Any sample or model which is made part of the basis of the bargain creates an express warranty that the whole of the goods shall conform to the sample or model.

(2) It is not necessary to the creation of an express warranty that the seller use formal words such as "warranty" or "guarantee" or that he have a specific intention to make a warranty, but an affirmation merely of the value of the goods or a statement purporting to be merely the seller's opinion or commendation of the goods does not create a warranty. [1965 ex.s. c 157 § 2-313. Cf. former RCW sections: (i) RCW 63.04.130; 1925 ex.s. c 142 § 12; RRS § 5836-12. (ii) RCW 63.04.150; 1925 ex.s. c 142 § 14; RRS § 5836-14. (iii) RCW 63.04.170; 1925 ex.s. c 142 § 16; RRS § 5836-16.]

*Motor vehicle express warranties: Chapter 19.118 RCW.*

**62A.2-314 Implied warranty: Merchantability; usage of trade.** (1) Unless excluded or modified (RCW 62A.2-316), a warranty that the goods shall be merchantable is implied in a contract for their sale if the seller is a merchant with respect to goods of that kind. Under this section the serving for value of food or drink to be consumed either on the premises or elsewhere is a sale.

(2) Goods to be merchantable must be at least such as

(a) pass without objection in the trade under the contract description; and

(b) in the case of fungible goods, are of fair average quality within the description; and

(c) are fit for the ordinary purposes for which such goods are used; and

(d) run, within the variations permitted by the agreement, of even kind, quality and quantity within each unit and among all units involved; and

(e) are adequately contained, packaged, and labeled as the agreement may require; and

(f) conform to the promises or affirmations of fact made on the container or label if any.

(3) Unless excluded or modified (RCW 62A.2-316) other implied warranties may arise from course of dealing or usage of trade. [1965 ex.s. c 157 § 2-314. Cf. former RCW 63.04.160(2); 1925 ex.s. c 142 § 15; RRS § 5836-15.]

**62A.2-315 Implied warranty: Fitness for particular purpose.** Where the seller at the time of contracting has reason to know any particular purpose for which the goods are required and that the buyer is relying on the seller's skill or judgment to select or furnish suitable goods, there is unless excluded or modified under the next section an implied warranty that the goods shall be fit for such purpose. [1965 ex.s. c 157 § 2-315. Cf. former RCW 63.04.160(1), (4), (5); 1925 ex.s. c 142 § 15; RRS § 5836-15.]

**62A.2-316 Exclusion or modification of warranties.**

(1) Words or conduct relevant to the creation of an express warranty and words or conduct tending to negate or limit warranty shall be construed wherever reasonable as consistent with each other; but subject to the provisions of this Article on parol or extrinsic evidence (RCW 62A.2-202) negation or limitation is inoperative to the extent that such construction is unreasonable.

(2) Subject to subsection (3), to exclude or modify the implied warranty of merchantability or any part of it the language must mention merchantability and in case of a writing must be conspicuous, and to exclude or modify any implied warranty of fitness the exclusion must be by a writing and conspicuous. Language to exclude all implied warranties of fitness is sufficient if it states, for example, that "There are no warranties which extend beyond the description on the face hereof."

(3) Notwithstanding subsection (2)

(a) unless the circumstances indicate otherwise, all implied warranties are excluded by expressions like "as is", "with all faults" or other language which in common understanding calls the buyer's attention to the exclusion of warranties and makes plain that there is no implied warranty; and

(b) when the buyer before entering into the contract has examined the goods or the sample or model as fully as he desired or has refused to examine the goods there is no implied warranty with regard to defects which an examination ought in the circumstances to have revealed to him;

(c) an implied warranty can also be excluded or modified by course of dealing or course of performance or usage of trade; and

(d) in sales of livestock, including but not limited to, horses, mules, cattle, sheep, swine, goats, poultry, and rabbits, there are no implied warranties as defined in this article that the livestock are free from sickness or disease: PROVIDED, That the seller has complied with all state and federal laws and regulations that apply to animal health and dis-

ease, and the seller is not guilty of fraud, deceit or misrepresentation.

(4) Notwithstanding the provisions of subsections (2) and (3) of this section and the provisions of RCW 62A.2-719, as now or hereafter amended, in any case where goods are purchased primarily for personal, family or household use and not for commercial or business use, disclaimers of the warranty of merchantability or fitness for particular purpose shall not be effective to limit the liability of merchant sellers except insofar as the disclaimer sets forth with particularity the qualities and characteristics which are not being warranted. Remedies for breach of warranty can be limited in accordance with the provisions of this Article on liquidation or limitation of damages and on contractual modification of remedy (RCW 62A.2-718 and RCW 62A.2-719). [1982 c 199 § 1; 1974 ex.s. c 180 § 1; 1974 ex.s. c 78 § 1; 1965 ex.s. c 157 § 2-316. Subd. (3)(b) cf. former RCW 63.04.160(3); 1925 ex.s. c 142 § 15; RRS § 5836-15. Subd. (3)(c) cf. former RCW 63.04.720; 1925 ex.s. c 142 § 71; RRS § 5836-71.]

*Lease or rental of personal property—Disclaimer of warranty of merchantability or fitness: RCW 63.18.010.*

**62A.2-317 Cumulation and conflict of warranties express or implied.** Warranties whether express or implied shall be construed as consistent with each other and as cumulative, but if such construction is unreasonable the intention of the parties shall determine which warranty is dominant. In ascertaining that intention the following rules apply:

(a) Exact or technical specifications displace an inconsistent sample or model or general language of description.

(b) A sample from an existing bulk displaces inconsistent general language of description.

(c) Express warranties displace inconsistent implied warranties other than an implied warranty of fitness for a particular purpose. [1965 ex.s. c 157 § 2-317. Cf. former RCW sections: RCW 63.04.150 through 63.04.170; 1925 ex.s. c 142 §§ 14 through 16; RRS §§ 5836-14 through 5836-16.]

**62A.2-318 Third party beneficiaries of warranties express or implied.** A seller's warranty whether express or implied extends to any natural person who is in the family or household of his buyer or who is a guest in his home if it is reasonable to expect that such person may use, consume or be affected by the goods and who is injured in person by breach of the warranty. A seller may not exclude or limit the operation of this section. [1965 ex.s. c 157 § 2-318.]

**62A.2-319 F.O.B. and F.A.S. terms.** (1) Unless otherwise agreed the term F.O.B. (which means "free on board") at a named place, even though used only in connection with the stated price, is a delivery term under which

(a) when the term is F.O.B. the place of shipment, the seller must at that place ship the goods in the manner provided in this Article (RCW 62A.2-504) and bear the expense and risk of putting them into the possession of the carrier; or

(b) when the term is F.O.B. the place of destination, the seller must at his own expense and risk transport the goods to that place and there tender delivery of them in the manner provided in this Article (RCW 62A.2-503);

(c) when under either (a) or (b) the term is also F.O.B. vessel, car or other vehicle, the seller must in addition at his own expense and risk load the goods on board. If the term is F.O.B. vessel the buyer must name the vessel and in an appropriate case the seller must comply with the provisions of this Article on the form of bill of lading (RCW 62A.2-323).

(2) Unless otherwise agreed the term F.A.S. vessel (which means "free alongside") at a named port, even though used only in connection with the stated price, is a delivery term under which the seller must

(a) at his own expense and risk deliver the goods alongside the vessel in the manner usual in that port or on a dock designated and provided by the buyer; and

(b) obtain and tender a receipt for the goods in exchange for which the carrier is under a duty to issue a bill of lading.

(3) Unless otherwise agreed in any case falling within subsection (1)(a) or (c) or subsection (2) the buyer must seasonably give any needed instructions for making delivery, including when the term is F.A.S. or F.O.B. the loading berth of the vessel and in an appropriate case its name and sailing date. The seller may treat the failure of needed instructions as a failure of cooperation under this Article (RCW 62A.2-311). He may also at his option move the goods in any reasonable manner preparatory to delivery or shipment.

(4) Under the term F.O.B. vessel or F.A.S. unless otherwise agreed the buyer must make payment against tender of the required documents and the seller may not tender nor the buyer demand delivery of the goods in substitution for the documents. [1965 ex.s. c 157 § 2-319.]

**62A.2-320 C.I.F. and C.&F. terms.** (1) The term C.I.F. means that the price includes in a lump sum the cost of the goods and the insurance and freight to the named destination. The term C.&F. or C.F. means that the price so includes cost and freight to the named destination.

(2) Unless otherwise agreed and even though used only in connection with the stated price and destination, the term C.I.F. destination or its equivalent requires the seller at his own expense and risk to

(a) put the goods into the possession of a carrier at the port for shipment and obtain a negotiable bill or bills of lading covering the entire transportation to the named destination; and

(b) load the goods and obtain a receipt from the carrier (which may be contained in the bill of lading) showing that the freight has been paid or provided for; and

(c) obtain a policy or certificate of insurance, including any war risk insurance, of a kind and on terms then current at the port of shipment in the usual amount, in the currency of the contract, shown to cover the same goods covered by the bill of lading and providing for payment of loss to the order of the buyer or for the account of whom it may concern; but the seller may add to the price the amount of the premium for any such war risk insurance; and

(d) prepare an invoice of the goods and procure any other documents required to effect shipment or to comply with the contract; and

(e) forward and tender with commercial promptness all the documents in due form and with any indorsement necessary to perfect the buyer's rights.

(2010 Ed.)

(3) Unless otherwise agreed the term C.&F. or its equivalent has the same effect and imposes upon the seller the same obligations and risks as a C.I.F. term except the obligation as to insurance.

(4) Under the term C.I.F. or C.&F. unless otherwise agreed the buyer must make payment against tender of the required documents and the seller may not tender nor the buyer demand delivery of the goods in substitution for the documents. [1965 ex.s. c 157 § 2-320.]

**62A.2-321 C.I.F. or C.&F.: "Net landed weights"; "payment on arrival"; warranty of condition on arrival.** Under a contract containing a term C.I.F. or C.&F.

(1) Where the price is based on or is to be adjusted according to "net landed weights", "delivered weights", "out turn" quantity or quality or the like, unless otherwise agreed the seller must reasonably estimate the price. The payment due on tender of the documents called for by the contract is the amount so estimated, but after final adjustment of the price a settlement must be made with commercial promptness.

(2) An agreement described in subsection (1) or any warranty of quality or condition of the goods on arrival places upon the seller the risk of ordinary deterioration, shrinkage and the like in transportation but has no effect on the place or time of identification to the contract for sale or delivery or on the passing of the risk of loss.

(3) Unless otherwise agreed where the contract provides for payment on or after arrival of the goods the seller must before payment allow such preliminary inspection as is feasible; but if the goods are lost delivery of the documents and payment are due when the goods should have arrived. [1965 ex.s. c 157 § 2-321.]

**62A.2-322 Delivery "ex-ship".** (1) Unless otherwise agreed a term for delivery of goods "ex-ship" (which means from the carrying vessel) or in equivalent language is not restricted to a particular ship and requires delivery from a ship which has reached a place at the named port of destination where goods of the kind are usually discharged.

(2) Under such a term unless otherwise agreed

(a) the seller must discharge all liens arising out of the carriage and furnish the buyer with a direction which puts the carrier under a duty to deliver the goods; and

(b) the risk of loss does not pass to the buyer until the goods leave the ship's tackle or are otherwise properly unloaded. [1965 ex.s. c 157 § 2-322.]

**62A.2-323 Form of bill of lading required in overseas shipment; "overseas".** (1) Where the contract contemplates overseas shipment and contains a term C.I.F. or C.&F. or F.O.B. vessel, the seller unless otherwise agreed must obtain a negotiable bill of lading stating that the goods have been loaded on board or, in the case of a term C.I.F. or C.&F., received for shipment.

(2) Where in a case within subsection (1) a bill of lading has been issued in a set of parts, unless otherwise agreed if the documents are not to be sent from abroad the buyer may demand tender of the full set; otherwise only one part of the

bill of lading need be tendered. Even if the agreement expressly requires a full set

(a) due tender of a single part is acceptable within the provisions of this Article on cure of improper delivery (subsection (1) of RCW 62A.2-508); and

(b) even though the full set is demanded, if the documents are sent from abroad the person tendering an incomplete set may nevertheless require payment upon furnishing an indemnity which the buyer in good faith deems adequate.

(3) A shipment by water or by air or a contract contemplating such shipment is "overseas" insofar as by usage of trade or agreement it is subject to the commercial, financing or shipping practices characteristic of international deep water commerce. [1965 ex.s. c 157 § 2-323.]

**62A.2-324 "No arrival, no sale" term.** Under a term "no arrival, no sale" or terms of like meaning, unless otherwise agreed,

(a) the seller must properly ship conforming goods and if they arrive by any means he must tender them on arrival but he assumes no obligation that the goods will arrive unless he has caused the non-arrival; and

(b) where without fault of the seller the goods are in part lost or have so deteriorated as no longer to conform to the contract or arrive after the contract time, the buyer may proceed as if there had been casualty to identified goods (RCW 62A.2-613). [1965 ex.s. c 157 § 2-324.]

**62A.2-325 "Letter of credit" term; "confirmed credit".** (1) Failure of the buyer seasonably to furnish an agreed letter of credit is a breach of the contract for sale.

(2) The delivery to seller of a proper letter of credit suspends the buyer's obligation to pay. If the letter of credit is dishonored, the seller may on seasonable notification to the buyer require payment directly from him.

(3) Unless otherwise agreed the term "letter of credit" or "banker's credit" in a contract for sale means an irrevocable credit issued by a financing agency of good repute and, where the shipment is overseas, of good international repute. The term "confirmed credit" means that the credit must also carry the direct obligation of such an agency which does business in the seller's financial market. [1965 ex.s. c 157 § 2-325.]

**62A.2-326 Sale on approval and sale or return; rights of creditors.** (1) Unless otherwise agreed, if delivered goods may be returned by the buyer even though they conform to the contract, the transaction is

(a) a "sale on approval" if the goods are delivered primarily for use, and

(b) a "sale or return" if the goods are delivered primarily for resale.

(2) Goods held on approval are not subject to the claims of the buyer's creditors until acceptance; goods held on sale or return are subject to such claims while in the buyer's possession.

(3) Any "or return" term of a contract for sale is to be treated as a separate contract for sale within the statute of frauds section of this Article (RCW 62A.2-201) and as contradicting the sale aspect of the contract within the provisions of this Article on parol or extrinsic evidence (RCW 62A.2-

202). [2000 c 250 § 9A-805; 1965 ex.s. c 157 § 2-326. Cf. former RCW 63.04.200(3); 1925 ex.s. c 142 § 19; RRS § 5836-19.]

**Effective date—2000 c 250:** See RCW 62A.9A-701.

**62A.2-327 Special incidents of sale on approval and sale or return.** (1) Under a sale on approval unless otherwise agreed

(a) although the goods are identified to the contract the risk of loss and the title do not pass to the buyer until acceptance; and

(b) use of the goods consistent with the purpose of trial is not acceptance but failure seasonably to notify the seller of election to return the goods is acceptance, and if the goods conform to the contract acceptance of any part is acceptance of the whole; and

(c) after due notification of election to return, the return is at the seller's risk and expense but a merchant buyer must follow any reasonable instructions.

(2) Under a sale or return unless otherwise agreed

(a) the option to return extends to the whole or any commercial unit of the goods while in substantially their original condition, but must be exercised seasonably; and

(b) the return is at the buyer's risk and expense. [1965 ex.s. c 157 § 2-327. Cf. former RCW 63.04.200(3); 1925 ex.s. c 142 § 19; RRS § 5836-19.]

**62A.2-328 Sale by auction.** (1) In a sale by auction if goods are put up in lots each lot is the subject of a separate sale.

(2) A sale by auction is complete when the auctioneer so announces by the fall of the hammer or in other customary manner. Where a bid is made while the hammer is falling in acceptance of a prior bid the auctioneer may in his discretion reopen the bidding or declare the goods sold under the bid on which the hammer was falling.

(3) Such a sale is with reserve unless the goods are in explicit terms put up without reserve. In an auction with reserve the auctioneer may withdraw the goods at any time until he announces completion of the sale. In an auction without reserve, after the auctioneer calls for bids on an article or lot, that article or lot cannot be withdrawn unless no bid is made within a reasonable time. In either case a bidder may retract his bid until the auctioneer's announcement of completion of the sale, but a bidder's retraction does not revive any previous bid.

(4) If the auctioneer knowingly receives a bid on the seller's behalf or the seller makes or procures such a bid, and notice has not been given that liberty for such bidding is reserved, the buyer may at his option avoid the sale or take the goods at the price of the last good faith bid prior to the completion of the sale. This subsection shall not apply to any bid at a forced sale. [1965 ex.s. c 157 § 2-328. Cf. former RCW 63.04.220; 1925 ex.s. c 142 § 21; RRS § 5836-21.]

#### PART 4

#### TITLE, CREDITORS AND GOOD FAITH PURCHASERS

**62A.2-401 Passing of title; reservation for security; limited application of this section.** Each provision of this

Article with regard to the rights, obligations and remedies of the seller, the buyer, purchasers or other third parties applies irrespective of title to the goods except where the provision refers to such title. Insofar as situations are not covered by the other provisions of this Article and matters concerning title become material the following rules apply:

(1) Title to goods cannot pass under a contract for sale prior to their identification to the contract (RCW 62A.2-501), and unless otherwise explicitly agreed the buyer acquires by their identification a special property as limited by this Title. Any retention or reservation by the seller of the title (property) in goods shipped or delivered to the buyer is limited in effect to a reservation of a security interest. Subject to these provisions and to the provisions of the Article on Secured Transactions (\*Article 9), title to goods passes from the seller to the buyer in any manner and on any conditions explicitly agreed on by the parties.

(2) Unless otherwise explicitly agreed title passes to the buyer at the time and place at which the seller completes his performance with reference to the physical delivery of the goods, despite any reservation of a security interest and even though a document of title is to be delivered at a different time or place; and in particular and despite any reservation of a security interest by the bill of lading

(a) if the contract requires or authorizes the seller to send the goods to the buyer but does not require him to deliver them at destination, title passes to the buyer at the time and place of shipment; but

(b) if the contract requires delivery at destination, title passes on tender there.

(3) Unless otherwise explicitly agreed where delivery is to be made without moving the goods,

(a) if the seller is to deliver a document of title, title passes at the time when and the place where he delivers such documents; or

(b) if the goods are at the time of contracting already identified and no documents are to be delivered, title passes at the time and place of contracting.

(4) A rejection or other refusal by the buyer to receive or retain the goods, whether or not justified, or a justified revocation of acceptance revests title to the goods in the seller. Such revesting occurs by operation of law and is not a "sale". [1965 ex.s. c 157 § 2-401. Cf. former RCW sections: RCW 63.04.180 through 63.04.210; 1925 ex.s. c 142 §§ 17 through 20; RRS § 5836-17 through 5836-20.]

**\*Reviser's note:** Article 62A.9 RCW was repealed in its entirety by 2000 c 250 § 9A-901, effective July 1, 2001. For later enactment, see Article 62A.9A RCW.

**62A.2-402 Rights of seller's creditors against sold goods.** (1) Except as provided in subsections (2) and (3), rights of unsecured creditors of the seller with respect to goods which have been identified to a contract for sale are subject to the buyer's rights to recover the goods under this Article (RCW 62A.2-502 and RCW 62A.2-716).

(2) A creditor of the seller may treat a sale or an identification of goods to a contract for sale as void if as against him a retention of possession by the seller is fraudulent under any rule of law of the state where the goods are situated, except that retention of possession in good faith and current course

of trade by a merchant-seller for a commercially reasonable time after a sale or identification is not fraudulent.

(3) Nothing in this Article shall be deemed to impair the rights of creditors of the seller

(a) under the provisions of the Article on Secured Transactions (\*Article 9); or

(b) where identification to the contract or delivery is made not in current course of trade but in satisfaction of or as security for a pre-existing claim for money, security or the like and is made under circumstances which under any rule of law of the state where the goods are situated would apart from this Article constitute the transaction a fraudulent transfer or voidable preference. [1965 ex.s. c 157 § 2-402. Subd. (2) cf. former RCW sections: (i) RCW 63.04.270; 1925 ex.s. c 142 § 26; RRS § 5836-26. (ii) RCW 63.08.040; 1953 c 247 § 3; 1943 c 98 § 1, part; 1939 c 122 § 1, part; 1925 ex.s. c 135 § 2, part; Rem. Supp. 1943 § 5832, part; prior: 1901 c 109 § 1, part.]

**\*Reviser's note:** Article 62A.9 RCW was repealed in its entirety by 2000 c 250 § 9A-901, effective July 1, 2001. For later enactment, see Article 62A.9A RCW.

**62A.2-403 Power to transfer; good faith purchase of goods; "entrusting".** (1) A purchaser of goods acquires all title which his or her transferor had or had power to transfer except that a purchaser of a limited interest acquires rights only to the extent of the interest purchased. A person with voidable title has power to transfer a good title to a good faith purchaser for value. When goods have been delivered under a transaction of purchase the purchaser has such power even though

(a) the transferor was deceived as to the identity of the purchaser, or

(b) the delivery was in exchange for a check which is later dishonored, or

(c) it was agreed that the transaction was to be a "cash sale".

(2) Any entrusting of possession of goods to a merchant who deals in goods of that kind gives him or her power to transfer all rights of the entruster to a buyer in ordinary course of business.

(3) "Entrusting" includes any delivery and any acquiescence in retention of possession regardless of any condition expressed between the parties to the delivery or acquiescence and regardless of whether the procurement of the entrusting or the possessor's disposition of the goods have been such as to be larcenous under the criminal law.

(4) The rights of other purchasers of goods and of lien creditors are governed by the Articles on Secured Transactions (\*Article 9) and Documents of Title (Article 7). [1993 c 395 § 6-103; 1967 c 114 § 8; 1965 ex.s. c 157 § 2-403. Cf. former RCW sections: (i) RCW 61.20.090; 1943 c 71 § 9; Rem. Supp. 1943 § 11548-38. (ii) RCW 63.04.210(4); 1925 ex.s. c 142 § 20; RRS § 5836-20. (iii) RCW 63.04.240; 1925 ex.s. c 142 § 23; RRS § 5836-23. (iv) RCW 63.04.250; 1925 ex.s. c 142 § 24; RRS § 5836-24. (v) RCW 63.04.260; 1925 ex.s. c 142 § 25; RRS § 5836-25. (vi) RCW 65.08.040; Code 1881 § 2327; 1863 p 413 § 4; 1854 p 404 § 4; RRS § 5827.]

**\*Reviser's note:** Article 62A.9 RCW was repealed in its entirety by 2000 c 250 § 9A-901, effective July 1, 2001. For later enactment, see Article 62A.9A RCW.

*Restoration of stolen property: RCW 10.79.050.*

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

PART 5  
PERFORMANCE

**62A.2-501 Insurable interest in goods; manner of identification of goods.** (1) The buyer obtains a special property and an insurable interest in goods by identification of existing goods as goods to which the contract refers even though the goods so identified are non-conforming and he has an option to return or reject them. Such identification can be made at any time and in any manner explicitly agreed to by the parties. In the absence of explicit agreement identification occurs

(a) when the contract is made if it is for the sale of goods already existing and identified;

(b) if the contract is for the sale of future goods other than those described in paragraph (c), when goods are shipped, marked or otherwise designated by the seller as goods to which the contract refers;

(c) when the crops are planted or otherwise become growing crops or the young are conceived if the contract is for the sale of unborn young to be born within twelve months after contracting or for the sale of crops to be harvested within twelve months or the next normal harvest season after contracting whichever is longer.

(2) The seller retains an insurable interest in goods so long as title to or any security interest in the goods remains in him and where the identification is by the seller alone he may until default or insolvency or notification to the buyer that the identification is final substitute other goods for those identified.

(3) Nothing in this section impairs any insurable interest recognized under any other statute or rule of law. [1965 ex.s. c 157 § 2-501. Cf. former RCW sections: (i) RCW 63.04.180; 1925 ex.s. c 142 § 17; RRS § 5836-17. (ii) RCW 63.04.200; 1925 ex.s. c 142 § 19; RRS § 5836-19.]

**62A.2-502 Buyer's right to goods on seller's insolvency.** (1) Subject to subsections (2) and (3) of this section and even though the goods have not been shipped a buyer who has paid a part or all of the price of goods in which he has a special property under the provisions of the immediately preceding section may on making and keeping good a tender of any unpaid portion of their price recover them from the seller if:

(a) In the case of goods bought for personal, family, or household purposes, the seller repudiates or fails to deliver as required by the contract; or

(b) In all cases, the seller becomes insolvent within ten days after receipt of the first installment on their price.

(2) The buyer's right to recover the goods under subsection (1)(a) of this section vests upon acquisition of a special property, even if the seller had not then repudiated or failed to deliver.

(3) If the identification creating his special property has been made by the buyer he acquires the right to recover the goods only if they conform to the contract for sale. [2000 c 250 § 9A-806; 1965 ex.s. c 157 § 2-502. Cf. former RCW

sections: RCW 63.04.180 through 63.04.200; 1925 ex.s. c 142 §§ 17 through 19; RRS §§ 5836-17 through 5836-19.]

**Effective date—2000 c 250:** See RCW 62A.9A-701.

**62A.2-503 Manner of seller's tender of delivery.** (1) Tender of delivery requires that the seller put and hold conforming goods at the buyer's disposition and give the buyer any notification reasonably necessary to enable him to take delivery. The manner, time and place for tender are determined by the agreement and this Article, and in particular

(a) tender must be at a reasonable hour, and if it is of goods they must be kept available for the period reasonably necessary to enable the buyer to take possession; but

(b) unless otherwise agreed the buyer must furnish facilities reasonably suited to the receipt of the goods.

(2) Where the case is within the next section respecting shipment tender requires that the seller comply with its provisions.

(3) Where the seller is required to deliver at a particular destination tender requires that he comply with subsection (1) and also in any appropriate case tender documents as described in subsections (4) and (5) of this section.

(4) Where goods are in the possession of a bailee and are to be delivered without being moved

(a) tender requires that the seller either tender a negotiable document of title covering such goods or procure acknowledgment by the bailee of the buyer's right to possession of the goods; but

(b) tender to the buyer of a non-negotiable document of title or of a written direction to the bailee to deliver is sufficient tender unless the buyer seasonably objects, and receipt by the bailee of notification of the buyer's rights fixes those rights as against the bailee and all third persons; but risk of loss of the goods and of any failure by the bailee to honor the non-negotiable document of title or to obey the direction remains on the seller until the buyer has had a reasonable time to present the document or direction, and a refusal by the bailee to honor the document or to obey the direction defeats the tender.

(5) Where the contract requires the seller to deliver documents

(a) he must tender all such documents in correct form, except as provided in this Article with respect to bills of lading in a set (subsection (2) of RCW 62A.2-323); and

(b) tender through customary banking channels is sufficient and dishonor of a draft accompanying the documents constitutes non-acceptance or rejection. [1965 ex.s. c 157 § 2-503. Cf. former RCW sections: RCW 63.04.120, 63.04.200, 63.04.210, 63.04.440, 63.04.470, and 63.04.520; 1925 ex.s. c 142 §§ 11, 19, 20, 43, 46, and 51; RRS §§ 5836-11, 5836-19, 5836-20, 5836-43, 5836-46, and 5836-51.]

**62A.2-504 Shipment by seller.** Where the seller is required or authorized to send the goods to the buyer and the contract does not require him to deliver them at a particular destination, then unless otherwise agreed he must

(a) put the goods in the possession of such a carrier and make such a contract for their transportation as may be reasonable having regard to the nature of the goods and other circumstances of the case; and

(b) obtain and promptly deliver or tender in due form any document necessary to enable the buyer to obtain possession of the goods or otherwise required by the agreement or by usage of trade; and

(c) promptly notify the buyer of the shipment. Failure to notify the buyer under paragraph (c) or to make a proper contract under paragraph (a) is a ground for rejection only if material delay or loss ensues. [1965 ex.s. c 157 § 2-504. Cf. former RCW 63.04.470; 1925 ex.s. c 142 § 46; RRS § 5836-46.]

**62A.2-505 Seller's shipment under reservation.** (1) Where the seller has identified goods to the contract by or before shipment:

(a) his procurement of a negotiable bill of lading to his own order or otherwise reserves in him a security interest in the goods. His procurement of the bill to the order of a financing agency or of the buyer indicates in addition only the seller's expectation of transferring that interest to the person named.

(b) a non-negotiable bill of lading to himself or his nominee reserves possession of the goods as security but except in a case of conditional delivery (subsection (2) of RCW 62A.2-507) a non-negotiable bill of lading naming the buyer as consignee reserves no security interest even though the seller retains possession of the bill of lading.

(2) When shipment by the seller with reservation of a security interest is in violation of the contract for sale it constitutes an improper contract for transportation within the preceding section but impairs neither the rights given to the buyer by shipment and identification of the goods to the contract nor the seller's powers as a holder of a negotiable document. [1965 ex.s. c 157 § 2-505. Cf. former RCW 63.04.210 (2), (3), (4); 1925 ex.s. c 142 § 20; RRS § 5836-20.]

**62A.2-506 Rights of financing agency.** (1) A financing agency by paying or purchasing for value a draft which relates to a shipment of goods acquires to the extent of the payment or purchase and in addition to its own rights under the draft and any document of title securing it any rights of the shipper in the goods including the right to stop delivery and the shipper's right to have the draft honored by the buyer.

(2) The right to reimbursement of a financing agency which has in good faith honored or purchased the draft under commitment to or authority from the buyer is not impaired by subsequent discovery of defects with reference to any relevant document which was apparently regular on its face. [1965 ex.s. c 157 § 2-506.]

**62A.2-507 Effect of seller's tender; delivery on condition.** (1) Tender of delivery is a condition to the buyer's duty to accept the goods and, unless otherwise agreed, to his duty to pay for them. Tender entitles the seller to acceptance of the goods and to payment according to the contract.

(2) Where payment is due and demanded on the delivery to the buyer of goods or documents of title, his right as against the seller to retain or dispose of them is conditional upon his making the payment due. [1965 ex.s. c 157 § 2-507. Cf. former RCW sections: (i) RCW 63.04.120; 1925 ex.s. c 142 § 11; RRS § 5836-11. (ii) RCW 63.04.420; 1925 ex.s. c

(2010 Ed.)

142 § 41; RRS § 5836-41. (iii) RCW 63.04.430; 1925 ex.s. c 142 § 42; RRS § 5836-42. (iv) RCW 63.04.700; 1925 ex.s. c 142 § 69; RRS § 5836-69.]

**62A.2-508 Cure by seller of improper tender or delivery; replacement.** (1) Where any tender or delivery by the seller is rejected because non-conforming and the time for performance has not yet expired, the seller may seasonably notify the buyer of his intention to cure and may then within the contract time make a conforming delivery.

(2) Where the buyer rejects a non-conforming tender which the seller had reasonable grounds to believe would be acceptable with or without money allowance the seller may if he seasonably notifies the buyer have a further reasonable time to substitute a conforming tender. [1965 ex.s. c 157 § 2-508.]

**62A.2-509 Risk of loss in the absence of breach.** (1) Where the contract requires or authorizes the seller to ship the goods by carrier

(a) if it does not require him to deliver them at a particular destination, the risk of loss passes to the buyer when the goods are duly delivered to the carrier even though the shipment is under reservation (RCW 62A.2-505); but

(b) if it does require him to deliver them at a particular destination and the goods are there duly tendered while in the possession of the carrier, the risk of loss passes to the buyer when the goods are there duly so tendered as to enable the buyer to take delivery.

(2) Where the goods are held by a bailee to be delivered without being moved, the risk of loss passes to the buyer

(a) on his receipt of a negotiable document of title covering the goods; or

(b) on acknowledgment by the bailee of the buyer's right to possession of the goods; or

(c) after his receipt of a non-negotiable document of title or other written direction to deliver, as provided in subsection (4)(b) of RCW 62A.2-503.

(3) In any case not within subsection (1) or (2), the risk of loss passes to the buyer on his receipt of the goods if the seller is a merchant; otherwise the risk passes to the buyer on tender of delivery.

(4) The provisions of this section are subject to contrary agreement of the parties and to the provisions of this Article on sale on approval (RCW 62A.2-327) and on effect of breach on risk of loss (RCW 62A.2-510). [1965 ex.s. c 157 § 2-509. Cf. former RCW sections: (i) RCW 63.04.200; 1925 ex.s. c 142 § 19; RRS § 5836-19. (ii) RCW 63.04.230; 1925 ex.s. c 142 § 22; RRS § 5836-22.]

**62A.2-510 Effect of breach on risk of loss.** (1) Where a tender or delivery of goods so fails to conform to the contract as to give a right of rejection the risk of their loss remains on the seller until cure or acceptance.

(2) Where the buyer rightfully revokes acceptance he may to the extent of any deficiency in his effective insurance coverage treat the risk of loss as having rested on the seller from the beginning.

(3) Where the buyer as to conforming goods already identified to the contract for sale repudiates or is otherwise in

breach before risk of their loss has passed to him, the seller may to the extent of any deficiency in his effective insurance coverage treat the risk of loss as resting on the buyer for a commercially reasonable time. [1965 ex.s. c 157 § 2-510.]

**62A.2-511 Tender of payment by buyer; payment by check.** (1) Unless otherwise agreed tender of payment is a condition to the seller's duty to tender and complete any delivery.

(2) Tender of payment is sufficient when made by any means or in any manner current in the ordinary course of business unless the seller demands payment in legal tender and gives any extension of time reasonably necessary to procure it.

(3) Subject to the provisions of this Title on the effect of an instrument on an obligation (RCW 62A.3-310), payment by check is conditional and is defeated as between the parties by dishonor of the check on due presentment. [1996 c 77 § 2; 1965 ex.s. c 157 § 2-511. Cf. former RCW 63.04.430; 1925 ex.s. c 142 § 42; RRS § 5836-42.]

**62A.2-512 Payment by buyer before inspection.** (1) Where the contract requires payment before inspection non-conformity of the goods does not excuse the buyer from so making payment unless

(a) the non-conformity appears without inspection; or

(b) despite tender of the required documents the circumstances would justify injunction against honor under the provisions of this Title (RCW 62A.5-109(2)).

(2) Payment pursuant to subsection (1) does not constitute an acceptance of goods or impair the buyer's right to inspect or any of his or her remedies. [1997 c 56 § 20; 1965 ex.s. c 157 § 2-512. Cf. former RCW sections: (i) RCW 63.04.480; 1925 ex.s. c 142 § 47; RRS § 5836-47. (ii) RCW 63.04.500; 1925 ex.s. c 142 § 49; RRS § 5836-49.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**62A.2-513 Buyer's right to inspection of goods.** (1) Unless otherwise agreed and subject to subsection (3), where goods are tendered or delivered or identified to the contract for sale, the buyer has a right before payment or acceptance to inspect them at any reasonable place and time and in any reasonable manner. When the seller is required or authorized to send the goods to the buyer, the inspection may be after their arrival.

(2) Expenses of inspection must be borne by the buyer but may be recovered from the seller if the goods do not conform and are rejected.

(3) Unless otherwise agreed and subject to the provisions of this Article on C.I.F. contracts (subsection (3) of RCW 62A.2-321), the buyer is not entitled to inspect the goods before payment of the price when the contract provides

(a) for delivery "C.O.D." or on other like terms; or

(b) for payment against documents of title, except where such payment is due only after the goods are to become available for inspection.

(4) A place or method of inspection fixed by the parties is presumed to be exclusive but unless otherwise expressly agreed it does not postpone identification or shift the place for delivery or for passing the risk of loss. If compliance

becomes impossible, inspection shall be as provided in this section unless the place or method fixed was clearly intended as an indispensable condition failure of which avoids the contract. [1965 ex.s. c 157 § 2-513. Cf. former RCW 63.04.480 (2), (3); 1925 ex.s. c 142 § 47; RRS § 5836-47.]

**62A.2-514 When documents deliverable on acceptance; when on payment.** Unless otherwise agreed documents against which a draft is drawn are to be delivered to the drawee on acceptance of the draft if it is payable more than three days after presentment; otherwise, only on payment. [1965 ex.s. c 157 § 2-514. Cf. former RCW 81.32.411; 1961 c 14 § 81.32.411; prior: 1915 c 159 § 41; RRS § 3687; formerly RCW 81.32.500.]

**62A.2-515 Preserving evidence of goods in dispute.** In furtherance of the adjustment of any claim or dispute

(a) either party on reasonable notification to the other and for the purpose of ascertaining the facts and preserving evidence has the right to inspect, test and sample the goods including such of them as may be in the possession or control of the other; and

(b) the parties may agree to a third party inspection or survey to determine the conformity or condition of the goods and may agree that the findings shall be binding upon them in any subsequent litigation or adjustment. [1965 ex.s. c 157 § 2-515.]

## PART 6

### BREACH, REPUDIATION AND EXCUSE

**62A.2-601 Buyer's rights on improper delivery.** Subject to the provisions of this Article on breach in installment contracts (RCW 62A.2-612) and unless otherwise agreed under the sections on contractual limitations of remedy (RCW 62A.2-718 and RCW 62A.2-719), if the goods or the tender of delivery fail in any respect to conform to the contract, the buyer may

(a) reject the whole; or

(b) accept the whole; or

(c) accept any commercial unit or units and reject the rest. [1965 ex.s. c 157 § 2-601. Cf. former RCW sections: (i) RCW 63.04.120; 1925 ex.s. c 142 § 11; RRS § 5836-11. (ii) RCW 63.04.480; 1925 ex.s. c 142 § 47; RRS § 5836-47. (iii) RCW 63.04.700(1); 1925 ex.s. c 142 § 69; RRS § 5836-69.]

**62A.2-602 Manner and effect of rightful rejection.** (1) Rejection of goods must be within a reasonable time after their delivery or tender. It is ineffective unless the buyer seasonably notifies the seller.

(2) Subject to the provisions of the two following sections on rejected goods (RCW 62A.2-603 and RCW 62A.2-604),

(a) after rejection any exercise of ownership by the buyer with respect to any commercial unit is wrongful as against the seller; and

(b) if the buyer has before rejection taken physical possession of goods in which he does not have a security interest under the provisions of this Article (subsection (3) of RCW 62A.2-711), he is under a duty after rejection to hold them

with reasonable care at the seller's disposition for a time sufficient to permit the seller to remove them; but

(c) the buyer has no further obligations with regard to goods rightfully rejected.

(3) The seller's rights with respect to goods wrongfully rejected are governed by the provisions of this Article on seller's remedies in general (RCW 62A.2-703). [1965 ex.s. c 157 § 2-602. Cf. former RCW sections: (i) RCW 63.04.090; 1925 ex.s. c 142 § 8; RRS § 5836-8. (ii) RCW 63.04.510; 1925 ex.s. c 142 § 50; RRS § 5836-50.]

**62A.2-603 Merchant buyer's duties as to rightfully rejected goods.** (1) Subject to any security interest in the buyer (subsection (3) of RCW 62A.2-711), when the seller has no agent or place of business at the market of rejection a merchant buyer is under a duty after rejection of goods in his possession or control to follow any reasonable instructions received from the seller with respect to the goods and in the absence of such instructions to make reasonable efforts to sell them for the seller's account if they are perishable or threaten to decline in value speedily. Instructions are not reasonable if on demand indemnity for expenses is not forthcoming.

(2) When the buyer sells goods under subsection (1), he is entitled to reimbursement from the seller or out of the proceeds for reasonable expenses of caring for and selling them, and if the expenses include no selling commission then to such commission as is usual in the trade or if there is none to a reasonable sum not exceeding ten per cent on the gross proceeds.

(3) In complying with this section the buyer is held only to good faith and good faith conduct hereunder is neither acceptance nor conversion nor the basis of an action for damages. [1965 ex.s. c 157 § 2-603.]

**62A.2-604 Buyer's options as to salvage of rightfully rejected goods.** Subject to the provisions of the immediately preceding section on perishables if the seller gives no instructions within a reasonable time after notification of rejection the buyer may store the rejected goods for the seller's account or reship them to him or resell them for the seller's account with reimbursement as provided in the preceding section. Such action is not acceptance or conversion. [1965 ex.s. c 157 § 2-604.]

**62A.2-605 Waiver of buyer's objections by failure to particularize.** (1) The buyer's failure to state in connection with rejection a particular defect which is ascertainable by reasonable inspection precludes him from relying on the unstated defect to justify rejection or to establish breach

(a) where the seller could have cured it if stated seasonably; or

(b) between merchants when the seller has after rejection made a request in writing for a full and final written statement of all defects on which the buyer proposes to rely.

(2) Payment against documents made without reservation of rights precludes recovery of the payment for defects apparent on the face of the documents. [1965 ex.s. c 157 § 2-605.]

(2010 Ed.)

**62A.2-606 What constitutes acceptance of goods.** (1)

Acceptance of goods occurs when the buyer

(a) after a reasonable opportunity to inspect the goods signifies to the seller that the goods are conforming or that he will take or retain them in spite of their non-conformity; or

(b) fails to make an effective rejection (subsection (1) of RCW 62A.2-602), but such acceptance does not occur until the buyer has had a reasonable opportunity to inspect them; or

(c) does any act inconsistent with the seller's ownership; but if such act is wrongful as against the seller it is an acceptance only if ratified by him.

(2) Acceptance of a part of any commercial unit is acceptance of that entire unit. [1965 ex.s. c 157 § 2-606. Cf. former RCW sections: (i) RCW 63.04.480(1); 1925 ex.s. c 142 § 47; RRS § 5836-47. (ii) RCW 63.04.490; 1925 ex.s. c 142 § 48; RRS § 5836-48.]

**62A.2-607 Effect of acceptance; notice of breach; burden of establishing breach after acceptance; notice of claim or litigation to person answerable over.** (1) The buyer must pay at the contract rate for any goods accepted.

(2) Acceptance of goods by the buyer precludes rejection of the goods accepted and if made with knowledge of a non-conformity cannot be revoked because of it unless the acceptance was on the reasonable assumption that the non-conformity would be seasonably cured but acceptance does not of itself impair any other remedy provided by this Article for non-conformity.

(3) Where a tender has been accepted

(a) the buyer must within a reasonable time after he discovers or should have discovered any breach notify the seller of breach or be barred from any remedy; and

(b) if the claim is one for infringement or the like (subsection (3) of RCW 62A.2-312) and the buyer is sued as a result of such a breach he must so notify the seller within a reasonable time after he receives notice of the litigation or be barred from any remedy over for liability established by the litigation.

(4) The burden is on the buyer to establish any breach with respect to the goods accepted.

(5) Where the buyer is sued for breach of a warranty or other obligation for which his seller is answerable over

(a) he may give his seller written notice of the litigation. If the notice states that the seller may come in and defend and that if the seller does not do so he will be bound in any action against him by his buyer by any determination of fact common to the two litigations, then unless the seller after seasonable receipt of the notice does come in and defend he is so bound.

(b) if the claim is one for infringement or the like (subsection (3) of RCW 62A.2-312) the original seller may demand in writing that his buyer turn over to him control of the litigation including settlement or else be barred from any remedy over and if he also agrees to bear all expense and to satisfy any adverse judgment, then unless the buyer after seasonable receipt of the demand does turn over control the buyer is so barred.

(6) The provisions of subsections (3), (4) and (5) apply to any obligation of a buyer to hold the seller harmless against infringement or the like (subsection (3) of RCW 62A.2-312).

[1965 ex.s. c 157 § 2-607. Subd. (1) cf. former RCW 63.04.420; 1925 ex.s. c 142 § 41; RRS § 5836-41. Subd. (2), (3) cf. former RCW sections: (i) RCW 63.04.500; 1925 ex.s. c 142 § 49; RRS § 5836-49. (ii) RCW 63.04.700; 1925 ex.s. c 142 § 69; RRS § 5836-69.]

**62A.2-608 Revocation of acceptance in whole or in part.** (1) The buyer may revoke his acceptance of a lot or commercial unit whose non-conformity substantially impairs its value to him if he has accepted it

(a) on the reasonable assumption that its non-conformity would be cured and it has not been seasonably cured; or

(b) without discovery of such non-conformity if his acceptance was reasonably induced either by the difficulty of discovery before acceptance or by the seller's assurances.

(2) Revocation of acceptance must occur within a reasonable time after the buyer discovers or should have discovered the ground for it and before any substantial change in condition of the goods which is not caused by their own defects. It is not effective until the buyer notifies the seller of it.

(3) A buyer who so revokes has the same rights and duties with regard to the goods involved as if he had rejected them. [1965 ex.s. c 157 § 2-608. Cf. former RCW 63.04.700 (1)(d), (3), (4), (5); 1925 ex.s. c 142 § 69; RRS § 5836-69.]

**62A.2-609 Right to adequate assurance of performance.** (1) A contract for sale imposes an obligation on each party that the other's expectation of receiving due performance will not be impaired. When reasonable grounds for insecurity arise with respect to the performance of either party the other may in writing demand adequate assurance of due performance and until he receives such assurance may if commercially reasonable suspend any performance for which he has not already received the agreed return.

(2) Between merchants the reasonableness of grounds for insecurity and the adequacy of any assurance offered shall be determined according to commercial standards.

(3) Acceptance of any improper delivery or payment does not prejudice the aggrieved party's right to demand adequate assurance of future performance.

(4) After receipt of a justified demand failure to provide within a reasonable time not exceeding thirty days such assurance of due performance as is adequate under the circumstances of the particular case is a repudiation of the contract. [1965 ex.s. c 157 § 2-609. Cf. former RCW sections: (i) RCW 63.04.540; 1925 ex.s. c 142 § 53; RRS § 5836-53. (ii) RCW 63.04.550(1)(b); 1925 ex.s. c 142 § 54; RRS § 5836-54. (iii) RCW 63.04.560; 1925 ex.s. c 142 § 55; RRS § 5836-55. (iv) RCW 63.04.640(2); 1925 ex.s. c 142 § 63; RRS § 5836-63.]

**62A.2-610 Anticipatory repudiation.** When either party repudiates the contract with respect to a performance not yet due the loss of which will substantially impair the value of the contract to the other, the aggrieved party may

(a) for a commercially reasonable time await performance by the repudiating party; or

(b) resort to any remedy for breach (RCW 62A.2-703 or RCW 62A.2-711), even though he has notified the repudiating

party that he would await the latter's performance and has urged retraction; and

(c) in either case suspend his own performance or proceed in accordance with the provisions of this Article on the seller's right to identify goods to the contract notwithstanding breach or to salvage unfinished goods (RCW 62A.2-704). [1965 ex.s. c 157 § 2-610. Cf. former RCW section: (i) RCW 63.04.640(2); 1925 ex.s. c 142 § 63; RRS § 5836-63. (ii) RCW 63.04.660; 1925 ex.s. c 142 § 65; RRS § 5836-65.]

**62A.2-611 Retraction of anticipatory repudiation.** (1) Until the repudiating party's next performance is due he can retract his repudiation unless the aggrieved party has since the repudiation cancelled or materially changed his position or otherwise indicated that he considers the repudiation final.

(2) Retraction may be by any method which clearly indicates to the aggrieved party that the repudiating party intends to perform, but must include any assurance justifiably demanded under the provisions of this Article (RCW 62A.2-609).

(3) Retraction reinstates the repudiating party's rights under the contract with due excuse and allowance to the aggrieved party for any delay occasioned by the repudiation. [1965 ex.s. c 157 § 2-611.]

**62A.2-612 "Installment contract"; breach.** (1) An "installment contract" is one which requires or authorizes the delivery of goods in separate lots to be separately accepted, even though the contract contains a clause "each delivery is a separate contract" or its equivalent.

(2) The buyer may reject any installment which is non-conforming if the non-conformity substantially impairs the value of that installment and cannot be cured or if the non-conformity is a defect in the required documents; but if the non-conformity does not fall within subsection (3) and the seller gives adequate assurance of its cure the buyer must accept that installment.

(3) Whenever non-conformity or default with respect to one or more installments substantially impairs the value of the whole contract there is a breach of the whole. But the aggrieved party reinstates the contract if he accepts a non-conforming installment without seasonably notifying of cancellation or if he brings an action with respect only to past installments or demands performance as to future installments. [1965 ex.s. c 157 § 2-612. Cf. former RCW 63.04.460(2); 1925 ex.s. c 142 § 45; RRS § 5836-45.]

**62A.2-613 Casualty to identified goods.** Where the contract requires for its performance goods identified when the contract is made, and the goods suffer casualty without fault of either party before the risk of loss passes to the buyer, or in a proper case under a "no arrival, no sale" term (RCW 62A.2-324) then

(a) if the loss is total the contract is avoided; and

(b) if the loss is partial or the goods have so deteriorated as no longer to conform to the contract the buyer may nevertheless demand inspection and at his option either treat the contract as avoided or accept the goods with due allowance from the contract price for the deterioration or the deficiency

in quantity but without further right against the seller. [1965 ex.s. c 157 § 2-613. Cf. former RCW sections: (i) RCW 63.04.080; 1925 ex.s. c 142 § 7; RRS § 5836-7. (ii) RCW 63.04.090; 1925 ex.s. c 142 § 8; RRS § 5836-8.]

**62A.2-614 Substituted performance.** (1) Where without fault of either party the agreed berthing, loading, or unloading facilities fail or an agreed type of carrier becomes unavailable or the agreed manner of delivery otherwise becomes commercially impracticable but a commercially reasonable substitute is available, such substitute performance must be tendered and accepted.

(2) If the agreed means or manner of payment fails because of domestic or foreign governmental regulation, the seller may withhold or stop delivery unless the buyer provides a means or manner of payment which is commercially a substantial equivalent. If delivery has already been taken, payment by the means or in the manner provided by the regulation discharges the buyer's obligation unless the regulation is discriminatory, oppressive or predatory. [1965 ex.s. c 157 § 2-614.]

**62A.2-615 Excuse by failure of presupposed conditions.** Except so far as a seller may have assumed a greater obligation and subject to the preceding section on substituted performance:

(a) Delay in delivery or non-delivery in whole or in part by a seller who complies with paragraphs (b) and (c) is not a breach of his duty under a contract for sale if performance as agreed has been made impracticable by the occurrence of a contingency the non-occurrence of which was a basic assumption on which the contract was made or by compliance in good faith with any applicable foreign or domestic governmental regulation or order whether or not it later proves to be invalid.

(b) Where the causes mentioned in paragraph (a) affect only a part of the seller's capacity to perform, he must allocate production and deliveries among his customers but may at his option include regular customers not then under contract as well as his own requirements for further manufacture. He may so allocate in any manner which is fair and reasonable.

(c) The seller must notify the buyer seasonably that there will be delay or non-delivery and, when allocation is required under paragraph (b), of the estimated quota thus made available for the buyer. [1965 ex.s. c 157 § 2-615.]

**62A.2-616 Procedure on notice claiming excuse.** (1) Where the buyer receives notification of a material or indefinite delay or an allocation justified under the preceding section he may by written notification to the seller as to any delivery concerned, and where the prospective deficiency substantially impairs the value of the whole contract under the provisions of this Article relating to breach of installment contracts (RCW 62A.2-612), then also as to the whole,

(a) terminate and thereby discharge any unexecuted portion of the contract; or

(b) modify the contract by agreeing to take his available quota in substitution.

(2010 Ed.)

(2) If after receipt of such notification from the seller the buyer fails so to modify the contract within a reasonable time not exceeding thirty days the contract lapses with respect to any deliveries affected. [1965 ex.s. c 157 § 2-616.]

## PART 7 REMEDIES

**62A.2-701 Remedies for breach of collateral contracts not impaired.** Remedies for breach of any obligation or promise collateral or ancillary to a contract for sale are not impaired by the provisions of this Article. [1965 ex.s. c 157 § 2-701.]

**62A.2-702 Seller's remedies on discovery of buyer's insolvency.** (1) Where the seller discovers the buyer to be insolvent he may refuse delivery except for cash including payment for all goods theretofore delivered under the contract, and stop delivery under this Article (RCW 62A.2-705).

(2) Where the seller discovers that the buyer has received goods on credit while insolvent he may reclaim the goods upon demand made within ten days after the receipt, but if misrepresentation of solvency has been made to the particular seller in writing within three months before delivery the ten day limitation does not apply. Except as provided in this subsection the seller may not base a right to reclaim goods on the buyer's fraudulent or innocent misrepresentation of solvency or of intent to pay.

(3) The seller's right to reclaim under subsection (2) is subject to the rights of a buyer in ordinary course or other good faith purchaser under this Article (RCW 62A.2-403). Successful reclamation of goods excludes all other remedies with respect to them. [1981 c 41 § 4; 1965 ex.s. c 157 § 2-702. Subd. (1) cf. former RCW sections: (i) RCW 63.04.540(1)(b); 1925 ex.s. c 142 § 53; RRS § 5836-53. (ii) RCW 63.04.550(1)(c); 1925 ex.s. c 142 § 54; RRS § 5836-54. (iii) RCW 63.04.560; 1925 ex.s. c 142 § 55; RRS § 5836-55. (iv) RCW 63.04.580; 1925 ex.s. c 142 § 57; RRS § 5836-57. Subd. (3) cf. former RCW 63.04.755(3); 1925 ex.s. c 142 § 76; RRS § 5836-76; formerly RCW 63.04.010.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**62A.2-703 Seller's remedies in general.** Where the buyer wrongfully rejects or revokes acceptance of goods or fails to make a payment due on or before delivery or repudiates with respect to a part or the whole, then with respect to any goods directly affected and, if the breach is of the whole contract (RCW 62A.2-612), then also with respect to the whole undelivered balance, the aggrieved seller may

(a) withhold delivery of such goods;

(b) stop delivery by any bailee as hereafter provided (RCW 62A.2-705);

(c) proceed under the next section respecting goods still unidentified to the contract;

(d) resell and recover damages as hereafter provided (RCW 62A.2-706);

(e) recover damages for non-acceptance (RCW 62A.2-708) or in a proper case the price (RCW 62A.2-709);

(f) cancel. [1965 ex.s. c 157 § 2-703. Cf. former RCW sections: (i) RCW 63.04.540; 1925 ex.s. c 142 § 53; RRS §

5836-53. (ii) RCW 63.04.620(1); 1925 ex.s. c 142 § 61; RRS § 5836-61.]

**62A.2-704 Seller's right to identify goods to the contract notwithstanding breach or to salvage unfinished goods.** (1) An aggrieved seller under the preceding section may

(a) identify to the contract conforming goods not already identified if at the time he learned of the breach they are in his possession or control;

(b) treat as the subject of resale goods which have demonstrably been intended for the particular contract even though those goods are unfinished.

(2) Where the goods are unfinished an aggrieved seller may in the exercise of reasonable commercial judgment for the purposes of avoiding loss and of effective realization either complete the manufacture and wholly identify the goods to the contract or cease manufacture and resell for scrap or salvage value or proceed in any other reasonable manner. [1965 ex.s. c 157 § 2-704. Cf. former RCW sections: (i) RCW 63.04.640(3); 1925 ex.s. c 142 § 63; RRS § 5836-63. (ii) RCW 63.04.650(4); 1925 ex.s. c 142 § 64; RRS § 5836-64.]

**62A.2-705 Seller's stoppage of delivery in transit or otherwise.** (1) The seller may stop delivery of goods in the possession of a carrier or other bailee when he discovers the buyer to be insolvent (RCW 62A.2-702) and may stop delivery of carload, truckload, planeload or larger shipments of express or freight when the buyer repudiates or fails to make a payment due before delivery or if for any other reason the seller has a right to withhold or reclaim the goods.

(2) As against such buyer the seller may stop delivery until

(a) receipt of the goods by the buyer; or

(b) acknowledgment to the buyer by any bailee of the goods except a carrier that the bailee holds the goods for the buyer; or

(c) such acknowledgment to the buyer by a carrier by reshipment or as warehouseman; or

(d) negotiation to the buyer of any negotiable document of title covering the goods.

(3)(a) To stop delivery the seller must so notify as to enable the bailee by reasonable diligence to prevent delivery of the goods.

(b) After such notification the bailee must hold and deliver the goods according to the directions of the seller but the seller is liable to the bailee for any ensuing charges or damages.

(c) If a negotiable document of title has been issued for goods the bailee is not obliged to obey a notification to stop until surrender of the document.

(d) A carrier who has issued a non-negotiable bill of lading is not obliged to obey a notification to stop received from a person other than the consignor. [1965 ex.s. c 157 § 2-705. Cf. former RCW sections: (i) RCW 22.04.100; 1913 c 99 § 9; RRS § 3595; prior: 1891 c 134 § 7. (ii) RCW 22.04.120; 1913 c 99 § 11; RRS § 3597; prior: 1886 p 121 § 7. (iii) RCW 22.04.500; 1913 c 99 § 49; RRS § 3635. (iv) RCW 63.04.580 through 63.04.600; 1925 ex.s. c 142 §§ 57 through 59; RRS

§§ 5836-57 through 5836-59. (v) RCW 81.32.121, 81.32.141, and 81.32.421; 1961 c 14 §§ 81.32.121, 81.32.141, and 81.32.421; prior: 1915 c 159 §§ 12, 14, and 42; RRS §§ 3658, 3660, and 3688; formerly RCW 81.32.130, 81.32.160 and 81.32.510.]

**62A.2-706 Seller's resale including contract for resale.** (1) Under the conditions stated in RCW 62A.2-703 on seller's remedies, the seller may resell the goods concerned or the undelivered balance thereof. Where the resale is made in good faith and in a commercially reasonable manner the seller may recover the difference between the resale price and the contract price together with any incidental damages allowed under the provisions of this Article (RCW 62A.2-710), but less expenses saved in consequence of the buyer's breach.

(2) Except as otherwise provided in subsection (3) or unless otherwise agreed resale may be at public or private sale including sale by way of one or more contracts to sell or of identification to an existing contract of the seller. Sale may be as a unit or in parcels and at any time and place and on any terms but every aspect of the sale including the method, manner, time, place and terms must be commercially reasonable. The resale must be reasonably identified as referring to the broken contract, but it is not necessary that the goods be in existence or that any or all of them have been identified to the contract before the breach.

(3) Where the resale is at private sale the seller must give the buyer reasonable notification of his intention to resell.

(4) Where the resale is at public sale

(a) only identified goods can be sold except where there is a recognized market for a public sale of futures in goods of the kind; and

(b) it must be made at a usual place or market for public sale if one is reasonably available and except in the case of goods which are perishable or threaten to decline in value speedily the seller must give the buyer reasonable notice of the time and place of the resale; and

(c) if the goods are not to be within the view of those attending the sale the notification of sale must state the place where the goods are located and provide for their reasonable inspection by prospective bidders; and

(d) the seller may buy.

(5) A purchaser who buys in good faith at a resale takes the goods free of any rights of the original buyer even though the seller fails to comply with one or more of the requirements of this section.

(6) The seller is not accountable to the buyer for any profit made on any resale. A person in the position of a seller (RCW 62A.2-707) or a buyer who has rightfully rejected or justifiably revoked acceptance must account for any excess over the amount of his security interest, as hereinafter defined (subsection (3) of RCW 62A.2-711). [1967 c 114 § 13; 1965 ex.s. c 157 § 2-706. Cf. former RCW 63.04.610; 1925 ex.s. c 142 § 60; RRS § 5836-60.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**62A.2-707 "Person in the position of a seller".** (1) A "person in the position of a seller" includes as against a principal an agent who has paid or become responsible for the

price of goods on behalf of his principal or anyone who otherwise holds a security interest or other right in goods similar to that of a seller.

(2) A person in the position of a seller may as provided in this Article withhold or stop delivery (RCW 62A.2-705) and resell (RCW 62A.2-706) and recover incidental damages (RCW 62A.2-710). [1965 ex.s. c 157 § 2-707. Cf. former RCW 63.04.530(2); 1925 ex.s. c 142 § 52; RRS § 5836-52.]

**62A.2-708 Seller's damages for non-acceptance or repudiation.** (1) Subject to subsection (2) and to the provisions of this Article with respect to proof of market price (RCW 62A.2-723), the measure of damages for non-acceptance or repudiation by the buyer is the difference between the market price at the time and place for tender and the unpaid contract price together with any incidental damages provided in this Article (RCW 62A.2-710), but less expenses saved in consequence of the buyer's breach.

(2) If the measure of damages provided in subsection (1) is inadequate to put the seller in as good a position as performance would have done then the measure of damages is the profit (including reasonable overhead) which the seller would have made from full performance by the buyer, together with any incidental damages provided in this Article (RCW 62A.2-710), due allowance for costs reasonably incurred and due credit for payments or proceeds of resale. [1965 ex.s. c 157 § 2-708. Cf. former RCW 63.04.650; 1925 ex.s. c 142 § 64; RRS § 5836-64.]

**62A.2-709 Action for the price.** (1) When the buyer fails to pay the price as it becomes due the seller may recover, together with any incidental damages under the next section, the price

(a) of goods accepted or of conforming goods lost or damaged within a commercially reasonable time after risk of their loss has passed to the buyer; and

(b) of goods identified to the contract if the seller is unable after reasonable effort to resell them at a reasonable price or the circumstances reasonably indicate that such effort will be unavailing.

(2) Where the seller sues for the price he must hold for the buyer any goods which have been identified to the contract and are still in his control except that if resale becomes possible he may resell them at any time prior to the collection of the judgment. The net proceeds of any such resale must be credited to the buyer and payment of the judgment entitles him to any goods not resold.

(3) After the buyer has wrongfully rejected or revoked acceptance of the goods or has failed to make a payment due or has repudiated (RCW 62A.2-610), a seller who is held not entitled to the price under this section shall nevertheless be awarded damages for non-acceptance under the preceding section. [1965 ex.s. c 157 § 2-709. Cf. former RCW 63.04.640; 1925 ex.s. c 142 § 63; RRS § 5836-63.]

**62A.2-710 Seller's incidental damages.** Incidental damages to an aggrieved seller include any commercially reasonable charges, expenses or commissions incurred in stopping delivery, in the transportation, care and custody of goods after the buyer's breach, in connection with return or

resale of the goods or otherwise resulting from the breach. [1965 ex.s. c 157 § 2-710. Cf. former RCW sections: (i) RCW 63.04.650; 1925 ex.s. c 142 § 64; RRS § 5836-64. (ii) RCW 63.04.710; 1925 ex.s. c 142 § 70; RRS § 5836-70.]

**62A.2-711 Buyer's remedies in general; buyer's security interest in rejected goods.** (1) Where the seller fails to make delivery or repudiates or the buyer rightfully rejects or justifiably revokes acceptance then with respect to any goods involved, and with respect to the whole if the breach goes to the whole contract (RCW 62A.2-612), the buyer may cancel and whether or not he has done so may in addition to recovering so much of the price as has been paid

(a) "cover" and have damages under the next section as to all the goods affected whether or not they have been identified to the contract; or

(b) recover damages for non-delivery as provided in this Article (RCW 62A.2-713).

(2) Where the seller fails to deliver or repudiates the buyer may also

(a) if the goods have been identified recover them as provided in this Article (RCW 62A.2-502); or

(b) in a proper case obtain specific performance or replevy the goods as provided in this Article (RCW 62A.2-716).

(3) On rightful rejection or justifiable revocation of acceptance a buyer has a security interest in goods in his possession or control for any payments made on their price and any expenses reasonably incurred in their inspection, receipt, transportation, care and custody and may hold such goods and resell them in like manner as an aggrieved seller (RCW 62A.2-706). [1965 ex.s. c 157 § 2-711. Subd. (3) cf. former RCW 63.04.700(5); 1925 ex.s. c 142 § 69; RRS § 5836-69.]

**62A.2-712 "Cover"; buyer's procurement of substitute goods.** (1) After a breach within the preceding section the buyer may "cover" by making in good faith and without unreasonable delay any reasonable purchase of or contract to purchase goods in substitution for those due from the seller.

(2) The buyer may recover from the seller as damages the difference between the cost of cover and the contract price together with any incidental or consequential damages as hereinafter defined (RCW 62A.2-715), but less expenses saved in consequence of the seller's breach.

(3) Failure of the buyer to effect cover within this section does not bar him from any other remedy. [1965 ex.s. c 157 § 2-712.]

**62A.2-713 Buyer's damages for non-delivery or repudiation.** (1) Subject to the provisions of this Article with respect to proof of market price (RCW 62A.2-723), the measure of damages for nondelivery or repudiation by the seller is the difference between the market price at the time when the buyer learned of the breach and the contract price together with any incidental and consequential damages provided in this Article (RCW 62A.2-715), but less expenses saved in consequence of the seller's breach.

(2) Market price is to be determined as of the place for tender or, in cases of rejection after arrival or revocation of acceptance, as of the place of arrival. [1965 ex.s. c 157 § 2-

713. Cf. former RCW 63.04.680(3); 1925 ex.s. c 142 § 67; RRS § 5836-67.]

**62A.2-714 Buyer's damages for breach in regard to accepted goods.** (1) Where the buyer has accepted goods and given notification (subsection (3) of RCW 62A.2-607) he may recover as damages for any non-conformity of tender the loss resulting in the ordinary course of events from the seller's breach as determined in any manner which is reasonable.

(2) The measure of damages for breach of warranty is the difference at the time and place of acceptance between the value of the goods accepted and the value they would have had if they had been as warranted, unless special circumstances show proximate damages of a different amount.

(3) In a proper case any incidental and consequential damages under the next section may also be recovered. [1965 ex.s. c 157 § 2-714. Cf. former RCW 63.04.700 (6), (7); 1925 ex.s. c 142 § 69; RRS § 5836-69.]

**62A.2-715 Buyer's incidental and consequential damages.** (1) Incidental damages resulting from the seller's breach include expenses reasonably incurred in inspection, receipt, transportation and care and custody of goods rightfully rejected, any commercially reasonable charges, expenses or commissions in connection with effecting cover and any other reasonable expense incident to the delay or other breach.

(2) Consequential damages resulting from the seller's breach include

(a) any loss resulting from general or particular requirements and needs of which the seller at the time of contracting had reason to know and which could not reasonably be prevented by cover or otherwise; and

(b) injury to person or property proximately resulting from any breach of warranty. [1965 ex.s. c 157 § 2-715. Subd. (2) cf. former RCW sections: (i) RCW 63.04.700(7); 1925 ex.s. c 142 § 69; RRS § 5836-69. (ii) RCW 63.04.710; 1925 ex.s. c 142 § 70; RRS § 5836-70.]

**62A.2-716 Buyer's right to specific performance or replevin.** (1) Specific performance may be decreed where the goods are unique or in other proper circumstances.

(2) The decree for specific performance may include such terms and conditions as to payment of the price, damages, or other relief as the court may deem just.

(3) The buyer has a right of replevin for goods identified to the contract if after reasonable effort he is unable to effect cover for such goods or the circumstances reasonably indicate that such effort will be unavailing or if the goods have been shipped under reservation and satisfaction of the security interest in them has been made or tendered. In the case of goods bought for personal, family, or household purposes, the buyer's right of replevin vests upon acquisition of a special property, even if the seller had not then repudiated or failed to deliver. [2000 c 250 § 9A-807; 1965 ex.s. c 157 § 2-716. Cf. former RCW 63.04.690; 1925 ex.s. c 142 § 68; RRS § 5836-68.]

**Effective date—2000 c 250:** See RCW 62A.9A-701.

*Replevin:* Chapter 7.64 RCW.

**62A.2-717 Deduction of damages from the price.** The buyer on notifying the seller of his intention to do so may deduct all or any part of the damages resulting from any breach of the contract from any part of the price still due under the same contract. [1965 ex.s. c 157 § 2-717. Cf. former RCW 63.04.700(1)(a); 1925 ex.s. c 142 § 69; RRS § 5836-69.]

**62A.2-718 Liquidation or limitation of damages; deposits.** (1) Damages for breach by either party may be liquidated in the agreement but only at an amount which is reasonable in the light of the anticipated or actual harm caused by the breach, the difficulties of proof of loss, and the inconvenience or nonfeasibility of otherwise obtaining an adequate remedy. A term fixing unreasonably large liquidated damages is void as a penalty.

(2) Where the seller justifiably withholds delivery of goods because of the buyer's breach, the buyer is entitled to restitution of any amount by which the sum of his payments exceeds

(a) the amount to which the seller is entitled by virtue of terms liquidating the seller's damages in accordance with subsection (1), or

(b) in the absence of such terms, twenty per cent of the value of the total performance for which the buyer is obligated under the contract or five hundred dollars, whichever is smaller.

(3) The buyer's right to restitution under subsection (2) is subject to offset to the extent that the seller establishes

(a) a right to recover damages under the provisions of this Article other than subsection (1), and

(b) the amount or value of any benefits received by the buyer directly or indirectly by reason of the contract.

(4) Where a seller has received payment in goods their reasonable value or the proceeds of their resale shall be treated as payments for the purposes of subsection (2); but if the seller has notice of the buyer's breach before reselling goods received in part performance, his resale is subject to the conditions laid down in this Article on resale by an aggrieved seller (RCW 62A.2-706). [1965 ex.s. c 157 § 2-718.]

**62A.2-719 Contractual modification or limitation of remedy.** (1) Subject to the provisions of subsections (2) and (3) of this section and of the preceding section on liquidation and limitation of damages,

(a) the agreement may provide for remedies in addition to or in substitution for those provided in this Article and may limit or alter the measure of damages recoverable under this Article, as by limiting the buyer's remedies to return of the goods and repayment of the price or to repair and replacement of non-conforming goods or parts; and

(b) resort to a remedy as provided is optional unless the remedy is expressly agreed to be exclusive, in which case it is the sole remedy.

(2) Where circumstances cause an exclusive or limited remedy to fail of its essential purpose, remedy may be had as provided in this Title.

(3) Limitation of consequential damages for injury to the person in the case of goods purchased primarily for personal, family or household use or of any services related thereto is

invalid unless it is proved that the limitation is not unconscionable. Limitation of remedy to repair or replacement of defective parts or non-conforming goods is invalid in sales of goods primarily for personal, family or household use unless the manufacturer or seller maintains or provides within this state facilities adequate to provide reasonable and expeditious performance of repair or replacement obligations.

Limitation of other consequential damages is valid unless it is established that the limitation is unconscionable. [1974 ex.s. c 180 § 2; 1974 ex.s. c 78 § 2; 1965 ex.s. c 157 § 2-719. Subd. (1)(a) cf. former RCW 63.04.720; 1925 ex.s. c 142 § 71; RRS § 5836-71.]

*Lease or rental of personal property—Disclaimer of warranty of merchantability or fitness: RCW 63.18.010.*

**62A.2-720 Effect of "cancellation" or "rescission" on claims for antecedent breach.** Unless the contrary intention clearly appears, expressions of "cancellation" or "rescission" of the contract or the like shall not be construed as a renunciation or discharge of any claim in damages for an antecedent breach. [1965 ex.s. c 157 § 2-720.]

**62A.2-721 Remedies for fraud.** Remedies for material misrepresentation or fraud include all remedies available under this Article for non-fraudulent breach. Neither rescission or a claim for rescission of the contract for sale nor rejection or return of the goods shall bar or be deemed inconsistent with a claim for damages or other remedy. [1965 ex.s. c 157 § 2-721.]

**62A.2-722 Who can sue third parties for injury to goods.** Where a third party so deals with goods which have been identified to a contract for sale as to cause actionable injury to a party to that contract

(a) a right of action against the third party is in either party to the contract for sale who has title to or a security interest or a special property or an insurable interest in the goods; and if the goods have been destroyed or converted a right of action is also in the party who either bore the risk of loss under the contract for sale or has since the injury assumed that risk as against the other;

(b) if at the time of the injury the party plaintiff did not bear the risk of loss as against the other party to the contract for sale and there is no arrangement between them for disposition of the recovery, his suit or settlement is, subject to his own interest, as a fiduciary for the other party to the contract;

(c) either party may with the consent of the other sue for the benefit of whom it may concern. [1965 ex.s. c 157 § 2-722.]

**62A.2-723 Proof of market price: Time and place.**

(1) If an action based on anticipatory repudiation comes to trial before the time for performance with respect to some or all of the goods, any damages based on market price (RCW 62A.2-708 or RCW 62A.2-713) shall be determined according to the price of such goods prevailing at the time when the aggrieved party learned of the repudiation.

(2) If evidence of a price prevailing at the times or places described in this Article is not readily available the price prevailing within any reasonable time before or after the time

(2010 Ed.)

described or at any other place which in commercial judgment or under usage of trade would serve as a reasonable substitute for the one described may be used, making any proper allowance for the cost of transporting the goods to or from such other place.

(3) Evidence of a relevant price prevailing at a time or place other than the one described in this Article offered by one party is not admissible unless and until he has given the other party such notice as the court finds sufficient to prevent unfair surprise. [1965 ex.s. c 157 § 2-723.]

**62A.2-724 Admissibility of market quotations.**

Whenever the prevailing price or value of any goods regularly bought and sold in any established commodity market is in issue, reports in official publications or trade journals or in newspapers or periodicals of general circulation published as the reports of such market shall be admissible in evidence. The circumstances of the preparation of such a report may be shown to affect its weight but not its admissibility. [1965 ex.s. c 157 § 2-724.]

**62A.2-725 Statute of limitations in contracts for sale.**

(1) An action for breach of any contract for sale must be commenced within four years after the cause of action has accrued. By the original agreement the parties may reduce the period of limitation to not less than one year but may not extend it.

(2) A cause of action accrues when the breach occurs, regardless of the aggrieved party's lack of knowledge of the breach. A breach of warranty occurs when tender of delivery is made, except that where a warranty explicitly extends to future performance of the goods and discovery of the breach must await the time of such performance the cause of action accrues when the breach is or should have been discovered.

(3) Where an action commenced within the time limited by subsection (1) is so terminated as to leave available a remedy by another action for the same breach such other action may be commenced after the expiration of the time limited and within six months after the termination of the first action unless the termination resulted from voluntary discontinuance or from dismissal for failure or neglect to prosecute.

(4) This section does not alter the law on tolling of the statute of limitations nor does it apply to causes of action which have accrued before this Title becomes effective. [1965 ex.s. c 157 § 2-725.]

*Limitation of actions—Tolling of statute: RCW 4.16.170 through 4.16.240.*

**Article 2A**

**LEASES**

Sections

**PART 1  
GENERAL PROVISIONS**

- 62A.2A-101 Short title.
- 62A.2A-102 Scope.
- 62A.2A-103 Definitions and index of definitions.
- 62A.2A-104 Leases subject to other law.
- 62A.2A-105 Territorial application of article to goods covered by certificate of title.
- 62A.2A-106 Limitation on power of parties to consumer lease to choose applicable law and judicial forum.

62A.2A-107 Waiver or renunciation of claim or right after default.  
62A.2A-108 Unconscionability.

PART 2  
FORMATION AND CONSTRUCTION OF LEASE CONTRACT

62A.2A-201 Statute of frauds.  
62A.2A-202 Final written expression: Parol or extrinsic evidence.  
62A.2A-203 Seals inoperative.  
62A.2A-204 Formation in general.  
62A.2A-205 Firm offers.  
62A.2A-206 Offer and acceptance in formation of lease contract.  
62A.2A-207 Course of performance or practical construction.  
62A.2A-208 Modification, rescission, and waiver.  
62A.2A-209 Lessee under finance lease as beneficiary of supply contract.  
62A.2A-210 Express warranties.  
62A.2A-211 Warranties against interference and against infringement; lessee's obligation against infringement.  
62A.2A-212 Implied warranty of merchantability.  
62A.2A-213 Implied warranty of fitness for particular purpose.  
62A.2A-214 Exclusion or modification of warranties.  
62A.2A-215 Cumulation and conflict of warranties express or implied.  
62A.2A-216 Third party beneficiaries of express and implied warranties.  
62A.2A-217 Identification.  
62A.2A-218 Insurance and proceeds.  
62A.2A-219 Risk of loss.  
62A.2A-220 Effect of default on risk of loss.  
62A.2A-221 Casualty to identified goods.

PART 3  
EFFECT OF LEASE CONTRACT

62A.2A-301 Enforceability of lease contract.  
62A.2A-302 Title to and possession of goods.  
62A.2A-303 Alienability of party's interest under lease contract or of lessor's residual interest in goods; delegation of performance; transfer of rights.  
62A.2A-304 Subsequent lease of goods by lessor.  
62A.2A-305 Sale or sublease of goods by lessee.  
62A.2A-306 Priority of certain liens arising by operation of law.  
62A.2A-307 Priority of liens arising by attachment or levy on, security interests in, and other claims to goods.  
62A.2A-308 Special rights of creditors.  
62A.2A-309 Lessor's and lessee's rights when goods become fixtures.  
62A.2A-310 Lessor's and lessee's rights when goods become accessions.  
62A.2A-311 Priority subject to subordination.

PART 4  
PERFORMANCE OF LEASE CONTRACT:  
REPUDIATED, SUBSTITUTED, AND EXCUSED

62A.2A-401 Insecurity: Adequate assurance of performance.  
62A.2A-402 Anticipatory repudiation.  
62A.2A-403 Retraction of anticipatory repudiation.  
62A.2A-404 Substituted performance.  
62A.2A-405 Excused performance.  
62A.2A-406 Procedure on excused performance.  
62A.2A-407 Irrevocable promises: Finance leases.

PART 5  
A. DEFAULT IN GENERAL

62A.2A-501 Default: Procedure.  
62A.2A-502 Notice after default.  
62A.2A-503 Modification or impairment of rights and remedies.  
62A.2A-504 Liquidation of damages.  
62A.2A-505 Cancellation and termination and effect of cancellation, termination, rescission, or fraud on rights and remedies.  
62A.2A-506 Statute of limitations.  
62A.2A-507 Proof of market rent: Time and place.

B. DEFAULT BY LESSOR

62A.2A-508 Lessee's remedies.  
62A.2A-509 Lessee's rights on improper delivery; rightful rejection.  
62A.2A-510 Installment lease contracts: Rejection and default.  
62A.2A-511 Merchant lessee's duties as to rightfully rejected goods.  
62A.2A-512 Lessee's duties as to rightfully rejected goods.  
62A.2A-513 Cure by lessor of improper tender or delivery; replacement.  
62A.2A-514 Waiver of lessee's objections.  
62A.2A-515 Acceptance of goods.  
62A.2A-516 Effect of acceptance of goods; notice of default; burden of establishing default after acceptance; notice of claim or litigation to person answerable over.  
62A.2A-517 Revocation of acceptance of goods.  
62A.2A-518 Cover; substitute goods.

62A.2A-519 Lessee's damages for nondelivery, repudiation, default, and breach of warranty in regard to accepted goods.  
62A.2A-520 Lessee's incidental and consequential damages.  
62A.2A-521 Lessee's right to specific performance or replevin.  
62A.2A-522 Lessee's right to goods on lessor's insolvency.

C. DEFAULT BY LESSEE

62A.2A-523 Lessor's remedies.  
62A.2A-524 Lessor's right to identify goods to lease contract.  
62A.2A-525 Lessor's right to possession of goods.  
62A.2A-526 Lessor's stoppage of delivery in transit or otherwise.  
62A.2A-527 Lessor's rights to dispose of goods.  
62A.2A-528 Lessor's damages for nonacceptance, failure to pay, repudiation, or other default.  
62A.2A-529 Lessor's action for the rent.  
62A.2A-530 Lessor's incidental damages.  
62A.2A-531 Standing to sue third parties for injury to goods.  
62A.2A-532 Lessor's rights to residual interest.

PART 1  
GENERAL PROVISIONS

**62A.2A-101 Short title.** This Article shall be known and may be cited as the Uniform Commercial Code—Leases. [1993 c 230 § 2A-101.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**62A.2A-102 Scope.** This Article applies to any transaction, regardless of form, that creates a lease. [1993 c 230 § 2A-102.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**62A.2A-103 Definitions and index of definitions.** (1) In this Article unless the context otherwise requires:

(a) "Buyer in ordinary course of business" means a person who in good faith and without knowledge that the sale to him or her is in violation of the ownership rights or security interest or leasehold interest of a third party in the goods buys in ordinary course from a person in the business of selling goods of that kind but does not include a pawnbroker. "Buying" may be for cash, or by exchange of other property, or on secured or unsecured credit, and includes receiving goods or documents of title under a preexisting contract for sale but does not include a transfer in bulk or as security for or in total or partial satisfaction of a money debt.

(b) "Cancellation" occurs when either party puts an end to the lease contract for default by the other party.

(c) "Commercial unit" means such a unit of goods as by commercial usage is a single whole for purposes of lease and division of which materially impairs its character or value on the market or in use. A commercial unit may be a single article, as a machine, or a set of articles, as a suite of furniture or a line of machinery, or a quantity, as a gross or carload, or any other unit treated in use or in the relevant market as a single whole.

(d) "Conforming" goods or performance under a lease contract means goods or performance that are in accordance with the obligations under the lease contract.

(e) "Consumer lease" means a lease that a lessor regularly engaged in the business of leasing or selling makes to a lessee who is an individual who takes under the lease primarily for a personal, family, or household purpose, if the total payments to be made under the lease contract, excluding payments for options to renew or buy, do not exceed twenty-five thousand dollars.

(f) "Fault" means wrongful act, omission, breach, or default.

(g) "Finance lease" means a lease with respect to which:

(i) The lessor does not select, manufacture, or supply the goods;

(ii) The lessor acquires the goods or the right to possession and use of the goods in connection with the lease; and

(iii) Only in the case of a consumer lease, either:

(A) The lessee receives a copy of the contract by which the lessor acquired the goods or the right to possession and use of the goods before signing the lease contract;

(B) The lessee's approval of the contract by which the lessor acquired the goods or the right to possession and use of the goods is a condition to effectiveness of the lease contract; or

(C) The lessee, before signing the lease contract, receives an accurate and complete statement designating the promises and warranties, and any disclaimers of warranties, limitations or modifications of remedies, or liquidated damages, including those of a third party, such as the manufacturer of the goods, provided to the lessor by the person supplying the goods in connection with or as part of the contract by which the lessor acquired the goods or the right to possession and use of the goods.

(h) "Goods" means all things that are movable at the time of identification to the lease contract, or are fixtures (RCW 62A.2A-309), but the term does not include money, documents, instruments, accounts, chattel paper, general intangibles, or minerals or the like, including oil and gas, before extraction. The term also includes the unborn young of animals.

(i) "Installment lease contract" means a lease contract that authorizes or requires the delivery of goods in separate lots to be separately accepted, even though the lease contract contains a clause "each delivery is a separate lease" or its equivalent.

(j) "Lease" means a transfer of the right to possession and use of goods for a term in return for consideration, but a sale, including a sale on approval or a sale or return, or retention or creation of a security interest is not a lease. Unless the context clearly indicates otherwise, the term includes a sublease.

(k) "Lease agreement" means the bargain, with respect to the lease, of the lessor and the lessee in fact as found in their language or by implication from other circumstances including course of dealing or usage of trade or course of performance as provided in this Article. Unless the context clearly indicates otherwise, the term includes a sublease agreement.

(l) "Lease contract" means the total legal obligation that results from the lease agreement as affected by this Article and any other applicable rules of law. Unless the context clearly indicates otherwise, the term includes a sublease contract.

(m) "Leasehold interest" means the interest of the lessor or the lessee under a lease contract.

(n) "Lessee" means a person who acquires the right to possession and use of goods under a lease. Unless the context clearly indicates otherwise, the term includes a sublessee.

(o) "Lessee in ordinary course of business" means a person who in good faith and without knowledge that the lease to him or her is in violation of the ownership rights or security

interest or leasehold interest of a third party in the goods, leases in ordinary course from a person in the business of selling or leasing goods of that kind, but does not include a pawnbroker. "Leasing" may be for cash, or by exchange of other property, or on secured or unsecured credit and includes receiving goods or documents of title under a preexisting lease contract but does not include a transfer in bulk or as security for or in total or partial satisfaction of a money debt.

(p) "Lessor" means a person who transfers the right to possession and use of goods under a lease. Unless the context clearly indicates otherwise, the term includes a sublessor.

(q) "Lessor's residual interest" means the lessor's interest in the goods after expiration, termination, or cancellation of the lease contract.

(r) "Lien" means a charge against or interest in goods to secure payment of a debt or performance of an obligation, but the term does not include a security interest.

(s) "Lot" means a parcel or a single article that is the subject matter of a separate lease or delivery, whether or not it is sufficient to perform the lease contract.

(t) "Merchant lessee" means a lessee that is a merchant with respect to goods of the kind subject to the lease.

(u) "Present value" means the amount as of a date certain of one or more sums payable in the future, discounted to the date certain. The discount is determined by the interest rate specified by the parties if the rate was not manifestly unreasonable at the time the transaction was entered into; otherwise, the discount is determined by a commercially reasonable rate that takes into account the facts and circumstances of each case at the time the transaction was entered into.

(v) "Purchase" includes taking by sale, lease, mortgage, security interest, pledge, gift, or any other voluntary transaction creating an interest in goods.

(w) "Sublease" means a lease of goods the right to possession and use of which was acquired by the lessor as a lessee under an existing lease.

(x) "Supplier" means a person from whom a lessor buys or leases goods to be leased under a finance lease.

(y) "Supply contract" means a contract under which a lessor buys or leases goods to be leased.

(z) "Termination" occurs when either party pursuant to a power created by agreement or law puts an end to the lease contract otherwise than for default.

(2) Other definitions applying to this Article or to specified Parts thereof, and the sections in which they appear are:

"Accessions." RCW 62A.2A-310(1).

"Construction mortgage." RCW 62A.2A-309(1)(d).

"Encumbrance." RCW 62A.2A-309(1)(e).

"Fixtures." RCW 62A.2A-309(1)(a).

"Fixture filing." RCW 62A.2A-309(1)(b).

"Purchase money lease." RCW 62A.2A-309(1)(c).

(3) The following definitions in other Articles apply to this Article:

"Account." RCW 62A.9A-102(a)(2).

"Between merchants." RCW 62A.2-104(3).

"Buyer." RCW 62A.2-103(1)(a).

"Chattel paper." RCW 62A.9A-102(a)(11).

"Consumer goods." RCW 62A.9A-102(a)(23).

"Document." RCW 62A.9A-102(a)(30).

"Entrusting." RCW 62A.2-403(3).

"General intangible."	RCW 62A.9A-102(a)(42).
"Good faith."	RCW 62A.2-103(1)(b).
"Instrument."	RCW 62A.9A-102(a)(47).
"Merchant."	RCW 62A.2-104(1).
"Mortgage."	RCW 62A.9A-102(a)(55).
"Pursuant to commitment."	RCW 62A.9A-102(a)(68).
"Receipt."	RCW 62A.2-103(1)(c).
"Sale."	RCW 62A.2-106(1).
"Sale on approval."	RCW 62A.2-326.
"Sale or return."	RCW 62A.2-326.
"Seller."	RCW 62A.2-103(1)(d).

(4) In addition, Article 62A.1 RCW contains general definitions and principles of construction and interpretation applicable throughout this Article. [2000 c 250 § 9A-808; 1993 c 230 § 2A-103.]

**Effective date—2000 c 250:** See RCW 62A.9A-701.

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**62A.2A-104 Leases subject to other law.** (1) A lease, although subject to this Article, is also subject to any applicable:

(a) Certificate of title statute of this state (chapters 46.12 and 88.02 RCW);

(b) Certificate of title statute of another jurisdiction (RCW 62A.2A-105); or

(c) Consumer protection statute of this state.

(2) In case of conflict between this Article, other than RCW 62A.2A-105, 62A.2A-304(3), and 62A.2A-305(3), and a statute referred to in subsection (1) of this section, the statute or decision controls.

(3) Failure to comply with an applicable law has only the effect specified therein. [1993 c 230 § 2A-104.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**62A.2A-105 Territorial application of article to goods covered by certificate of title.** Subject to the provisions of RCW 62A.2A-304(3) and 62A.2A-305(3), with respect to goods covered by a certificate of title issued under a statute of this state or of another jurisdiction, compliance and the effect of compliance or noncompliance with a certificate of title statute are governed by the law (including the conflict of laws rules) of the jurisdiction issuing the certificate until the earlier of (a) surrender of the certificate, or (b) four months after the goods are removed from that jurisdiction and thereafter until a new certificate of title is issued by another jurisdiction. [1993 c 230 § 2A-105.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**62A.2A-106 Limitation on power of parties to consumer lease to choose applicable law and judicial forum.**

(1) If the law chosen by the parties to a consumer lease is that of a jurisdiction other than a jurisdiction (a) in which the lessee resides at the time the lease agreement becomes enforceable or within thirty days thereafter, (b) in which the goods are to be used, or (c) in which the lessee executes the lease, the choice is not enforceable.

(2) If the judicial forum or the forum for dispute resolution chosen by the parties to a consumer lease is a jurisdiction other than a jurisdiction (a) in which the lessee resides at the

time the lease agreement becomes enforceable or within thirty days thereafter, (b) in which the goods are to be used, or (c) in which the lease is executed by the lessee, the choice is not enforceable. [1993 c 230 § 2A-106.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**62A.2A-107 Waiver or renunciation of claim or right after default.** Any claim or right arising out of an alleged default or breach of warranty may be discharged in whole or in part without consideration by a written waiver or renunciation signed and delivered by the aggrieved party. [1993 c 230 § 2A-107.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**62A.2A-108 Unconscionability.** (1) If the court as a matter of law finds a lease contract or any clause of a lease contract to have been unconscionable at the time it was made the court may refuse to enforce the lease contract, or it may enforce the remainder of the lease contract without the unconscionable clause, or it may so limit the application of any unconscionable clause as to avoid any unconscionable result.

(2) If a party claims that, or it appears to the court that, the lease contract or a clause within the contract may be unconscionable, the court shall allow a reasonable opportunity to present evidence as to the lease or clause's commercial setting, purpose, and effect to aid the court in making the determination. [1993 c 230 § 2A-108.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

## PART 2 FORMATION AND CONSTRUCTION OF LEASE CONTRACT

**62A.2A-201 Statute of frauds.** (1) A lease contract is not enforceable by way of action or defense unless:

(a) The total payments to be made under the lease contract, excluding payments for options to renew or buy, are less than one thousand dollars; or

(b) There is a writing, signed by the party against whom enforcement is sought or by that party's authorized agent, sufficient to indicate that a lease contract has been made between the parties and to describe the goods leased and the lease term.

(2) Any description of leased goods or of the lease term is sufficient and satisfies subsection (1)(b) of this section, whether or not it is specific, if it reasonably identifies what is described.

(3) A writing is not insufficient because it omits or incorrectly states a term agreed upon, but the lease contract is not enforceable under subsection (1)(b) of this section beyond the lease term and the quantity of goods shown in the writing.

(4) A lease contract that does not satisfy the requirements of subsection (1) of this section, but which is valid in other respects, is enforceable:

(a) If the goods are to be specially manufactured or obtained for the lessee and are not suitable for lease or sale to others in the ordinary course of the lessor's business, and the lessor, before notice of repudiation is received and under circumstances that reasonably indicate that the goods are for the

lessee, has made either a substantial beginning of their manufacture or commitments for their procurement;

(b) If the party against whom enforcement is sought admits in that party's pleading, testimony, or otherwise in court that a lease contract was made, but the lease contract is not enforceable under this provision beyond the quantity of goods admitted; or

(c) With respect to goods that have been received and accepted by the lessee.

(5) The lease term under a lease contract referred to in subsection (4) of this section is:

(a) If there is a writing signed by the party against whom enforcement is sought or by that party's authorized agent specifying the lease term, the term so specified;

(b) If the party against whom enforcement is sought admits in that party's pleading, testimony, or otherwise in court a lease term, the term so admitted; or

(c) A reasonable lease term. [1993 c 230 § 2A-201.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**62A.2A-202 Final written expression: Parol or extrinsic evidence.** Terms with respect to which the confirmatory memoranda of the parties agree or which are otherwise set forth in a writing intended by the parties as a final expression of their agreement with respect to such terms as are included therein may not be contradicted by evidence of any prior agreement or of a contemporaneous oral agreement but may be explained or supplemented:

(1) By course of dealing or usage of trade or by course of performance; and

(2) By evidence of consistent additional terms unless the court finds the writing to have been intended also as a complete and exclusive statement of the terms of the agreement. [1993 c 230 § 2A-202.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**62A.2A-203 Seals inoperative.** The affixing of a seal to a writing evidencing a lease contract or an offer to enter into a lease contract does not render the writing a sealed instrument and the law with respect to sealed instruments does not apply to the lease contract or offer. [1993 c 230 § 2A-203.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**62A.2A-204 Formation in general.** (1) A lease contract may be made in any manner sufficient to show agreement, including conduct by both parties which recognizes the existence of a lease contract.

(2) An agreement sufficient to constitute a lease contract may be found although the moment of its making is undetermined.

(3) Although one or more terms are left open, a lease contract does not fail for indefiniteness if the parties have intended to make a lease contract and there is a reasonably certain basis for giving an appropriate remedy. [1993 c 230 § 2A-204.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**62A.2A-205 Firm offers.** An offer by a merchant to lease goods to or from another person in a signed writing that

(2010 Ed.)

by its terms gives assurance it will be held open is not revocable, for lack of consideration, during the time stated or, if no time is stated, for a reasonable time, but in no event may the period of irrevocability exceed three months. Any such term of assurance on a form supplied by the offeree must be separately signed by the offeror. [1993 c 230 § 2A-205.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**62A.2A-206 Offer and acceptance in formation of lease contract.** (1) Unless otherwise unambiguously indicated by the language or circumstances, an offer to make a lease contract must be construed as inviting acceptance in any manner and by any medium reasonable in the circumstances.

(2) If the beginning of a requested performance is a reasonable mode of acceptance, an offeror who is not notified of acceptance within a reasonable time may treat the offer as having lapsed before acceptance. [1993 c 230 § 2A-206.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**62A.2A-207 Course of performance or practical construction.** (1) If a lease contract involves repeated occasions for performance by either party with knowledge of the nature of the performance and opportunity for objection to it by the other, any course of performance accepted or acquiesced in without objection is relevant to determine the meaning of the lease agreement.

(2) The express terms of a lease agreement and any course of performance, as well as any course of dealing and usage of trade, must be construed whenever reasonable as consistent with each other; but if that construction is unreasonable, express terms control course of performance, course of performance controls both course of dealing and usage of trade, and course of dealing controls usage of trade.

(3) Subject to the provisions of RCW 62A.2A-208 on modification and waiver, course of performance is relevant to show a waiver or modification of any term inconsistent with the course of performance. [1993 c 230 § 2A-207.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**62A.2A-208 Modification, rescission, and waiver.** (1) An agreement modifying a lease contract needs no consideration to be binding.

(2) A signed lease agreement that excludes modification or rescission except by a signed writing may not be otherwise modified or rescinded, but, except as between merchants, such a requirement on a form supplied by a merchant must be separately signed by the other party.

(3) Although an attempt at modification or rescission does not satisfy the requirements of subsection (2) of this section, it may operate as a waiver.

(4) A party who has made a waiver affecting an executory portion of a lease contract may retract the waiver by reasonable notification received by the other party that strict performance will be required of any term waived, unless the retraction would be unjust in view of a material change of position in reliance on the waiver. [1993 c 230 § 2A-208.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**62A.2A-209 Lessee under finance lease as beneficiary of supply contract.** (1) The benefit of a supplier's promises to the lessor under the supply contract and of all warranties, whether express or implied, including those of any third party provided in connection with or as part of the supply contract, extends to the lessee to the extent of the lessee's leasehold interest under a finance lease related to the supply contract, but is subject to the terms of the warranty and of the supply contract and all defenses or claims arising therefrom.

(2) The extension of the benefit of a supplier's promises and of warranties to the lessee (RCW 62A.2A-209(1)) does not: (i) Modify the rights and obligations of the parties to the supply contract, whether arising therefrom or otherwise, or (ii) impose any duty or liability under the supply contract on the lessee.

(3) Any modification or rescission of the supply contract by the supplier and the lessor is effective between the supplier and the lessee unless, before the modification or rescission, the supplier has received notice that the lessee has entered into a finance lease related to the supply contract. If the modification or rescission is effective between the supplier and the lessee, the lessor is deemed to have assumed, in addition to the obligations of the lessor to the lessee under the lease contract, promises of the supplier to the lessor and warranties that were so modified or rescinded as they existed and were available to the lessee before modification or rescission.

(4) In addition to the extension of the benefit of the supplier's promises and of warranties to the lessee under subsection (1) of this section, the lessee retains all rights that the lessee may have against the supplier which arise from an agreement between the lessee and the supplier or under other law. [1993 c 230 § 2A-209.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**62A.2A-210 Express warranties.** (1) Express warranties by the lessor are created as follows:

(a) Any affirmation of fact or promise made by the lessor to the lessee which relates to the goods and becomes part of the basis of the bargain creates an express warranty that the goods will conform to the affirmation or promise.

(b) Any description of the goods which is made part of the basis of the bargain creates an express warranty that the goods will conform to the description.

(c) Any sample or model that is made part of the basis of the bargain creates an express warranty that the whole of the goods will conform to the sample or model.

(2) It is not necessary to the creation of an express warranty that the lessor use formal words, such as "warranty" or "guarantee," or that the lessor have a specific intention to make a warranty, but an affirmation merely of the value of the goods or a statement purporting to be merely the lessor's opinion or commendation of the goods does not create a warranty. [1993 c 230 § 2A-210.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**62A.2A-211 Warranties against interference and against infringement; lessee's obligation against infringement.** (1) There is in a lease contract a warranty that for the lease term no person holds a claim to or interest in the goods

that arose from an act or omission of the lessor, other than a claim by way of infringement or the like, which will interfere with the lessee's enjoyment of its leasehold interest.

(2) Except in a finance lease there is in a lease contract by a lessor who is a merchant regularly dealing in goods of the kind a warranty that the goods are delivered free of the rightful claim of any person by way of infringement or the like.

(3) A lessee who furnishes specifications to a lessor or a supplier shall hold the lessor and the supplier harmless against any claim by way of infringement or the like that arises out of compliance with the specifications. [1993 c 230 § 2A-211.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**62A.2A-212 Implied warranty of merchantability.**

(1) Except in a finance lease, a warranty that the goods will be merchantable is implied in a lease contract if the lessor is a merchant with respect to goods of that kind.

(2) Goods to be merchantable must be at least such as:

(a) Pass without objection in the trade under the description in the lease agreement;

(b) In the case of fungible goods, are of fair average quality within the description;

(c) Are fit for the ordinary purposes for which goods of that type are used;

(d) Run, within the variation permitted by the lease agreement, of even kind, quality, and quantity within each unit and among all units involved;

(e) Are adequately contained, packaged, and labeled as the lease agreement may require; and

(f) Conform to any promises or affirmations of fact made on the container or label.

(3) Other implied warranties may arise from course of dealing or usage of trade. [1993 c 230 § 2A-212.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**62A.2A-213 Implied warranty of fitness for particular purpose.**

Except in a finance lease, if the lessor at the time the lease contract is made has reason to know of any particular purpose for which the goods are required and that the lessee is relying on the lessor's skill or judgment to select or furnish suitable goods, there is in the lease contract an implied warranty that the goods will be fit for that purpose. [1993 c 230 § 2A-213.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**62A.2A-214 Exclusion or modification of warranties.**

(1) Words or conduct relevant to the creation of an express warranty and words or conduct tending to negate or limit a warranty must be construed wherever reasonable as consistent with each other; but, subject to the provisions of RCW 62A.2A-202 on parol or extrinsic evidence, negation or limitation is inoperative to the extent that the construction is unreasonable.

(2) Subject to subsection (3) of this section, to exclude or modify the implied warranty of merchantability or any part of it the language must mention "merchantability," be by a writing, and be conspicuous. Subject to subsection (3) of this section, to exclude or modify any implied warranty of fitness the

exclusion must be by a writing and be conspicuous. Language to exclude all implied warranties of fitness is sufficient if it is in writing, is conspicuous and states, for example, "There is no warranty that the goods will be fit for a particular purpose."

(3) Notwithstanding subsection (2) of this section, but subject to subsection (4) of this section:

(a) Unless the circumstances indicate otherwise, all implied warranties are excluded by expressions like "as is," or "with all faults," or by other language that in common understanding calls the lessee's attention to the exclusion of warranties and makes plain that there is no implied warranty, if in writing and conspicuous;

(b) If the lessee before entering into the lease contract has examined the goods or the sample or model as fully as desired or has refused to examine the goods, there is no implied warranty with regard to defects that an examination ought in the circumstances to have revealed; and

(c) An implied warranty may also be excluded or modified by course of dealing, course of performance, or usage of trade.

(4) To exclude or modify a warranty against interference or against infringement (RCW 62A.2A-211) or any part of it, the language must be specific, be by a writing, and be conspicuous, unless the circumstances, including course of performance, course of dealing, or usage of trade, give the lessee reason to know that the goods are being leased subject to a claim or interest of any person. [1993 c 230 § 2A-214.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**62A.2A-215 Cumulation and conflict of warranties express or implied.** Warranties, whether express or implied, must be construed as consistent with each other and as cumulative, but if that construction is unreasonable, the intention of the parties determines which warranty is dominant. In ascertaining that intention the following rules apply:

(a) Exact or technical specifications displace an inconsistent sample or model or general language of description.

(b) A sample from an existing bulk displaces inconsistent general language of description.

(c) Express warranties displace inconsistent implied warranties other than an implied warranty of fitness for a particular purpose. [1993 c 230 § 2A-215.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**62A.2A-216 Third party beneficiaries of express and implied warranties.** A warranty to or for the benefit of a lessee under this Article, whether express or implied, extends to any natural person who is in the family or household of the lessee or who is a guest in the lessee's home if it is reasonable to expect that such person may use, consume, or be affected by the goods and who is injured in person by breach of the warranty. This section does not displace principles of law and equity that extend a warranty to or for the benefit of a lessee to other persons. The operation of this section may not be excluded, modified, or limited, but an exclusion, modification, or limitation of the warranty, including any with respect to rights and remedies, effective against the lessee is also effective against any beneficiary designated under this section. [1993 c 230 § 2A-216.]

(2010 Ed.)

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**62A.2A-217 Identification.** Identification of goods as goods to which a lease contract refers may be made at any time and in any manner explicitly agreed to by the parties. In the absence of explicit agreement, identification occurs:

(a) When the lease contract is made if the lease contract is for a lease of goods that are existing and identified;

(b) When the goods are shipped, marked, or otherwise designated by the lessor as goods to which the lease contract refers, if the lease contract is for a lease of goods that are not existing and identified; or

(c) When the young are conceived, if the lease contract is for a lease of unborn young of animals. [1993 c 230 § 2A-217.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**62A.2A-218 Insurance and proceeds.** (1) A lessee obtains an insurable interest when existing goods are identified to the lease contract even though the goods identified are nonconforming and the lessee has an option to reject them.

(2) If a lessee has an insurable interest only by reason of the lessor's identification of the goods, the lessor, until default or insolvency or notification to the lessee that identification is final, may substitute other goods for those identified.

(3) Notwithstanding a lessee's insurable interest under subsections (1) and (2) of this section, the lessor retains an insurable interest until an option to buy has been exercised by the lessee and risk of loss has passed to the lessee.

(4) Nothing in this section impairs any insurable interest recognized under any other statute or rule of law.

(5) The parties by agreement may determine that one or more parties have an obligation to obtain and pay for insurance covering the goods and by agreement may determine the beneficiary of the proceeds of the insurance. [1993 c 230 § 2A-218.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**62A.2A-219 Risk of loss.** (1) Except in the case of a finance lease, risk of loss is retained by the lessor and does not pass to the lessee. In the case of a finance lease, risk of loss passes to the lessee.

(2) Subject to the provisions of this Article on the effect of default on risk of loss (RCW 62A.2A-220), if risk of loss is to pass to the lessee and the time of passage is not stated, the following rules apply:

(a) If the lease contract requires or authorizes the goods to be shipped by carrier:

(i) And it does not require delivery at a particular destination, the risk of loss passes to the lessee when the goods are duly delivered to the carrier; but

(ii) If it does require delivery at a particular destination and the goods are there duly tendered while in the possession of the carrier, the risk of loss passes to the lessee when the goods are there duly so tendered as to enable the lessee to take delivery.

(b) If the goods are held by a bailee to be delivered without being moved, the risk of loss passes to the lessee on

acknowledgment by the bailee of the lessee's right to possession of the goods.

(c) In any case not within subsection (2)(a) or (b) of this section, the risk of loss passes to the lessee on the lessee's receipt of the goods if the lessor, or, in the case of a finance lease, the supplier, is a merchant; otherwise the risk passes to the lessee on tender of delivery. [1993 c 230 § 2A-219.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**62A.2A-220 Effect of default on risk of loss.** (1) Where risk of loss is to pass to the lessee and the time of passage is not stated:

(a) If a tender or delivery of goods so fails to conform to the lease contract as to give a right of rejection, the risk of their loss remains with the lessor, or, in the case of a finance lease, the supplier, until cure or acceptance.

(b) If the lessee rightfully revokes acceptance, he or she, to the extent of any deficiency in his or her effective insurance coverage, may treat the risk of loss as having remained with the lessor from the beginning.

(2) Whether or not risk of loss is to pass to the lessee, if the lessee as to conforming goods already identified to a lease contract repudiates or is otherwise in default under the lease contract, the lessor, or, in the case of a finance lease, the supplier, to the extent of any deficiency in his or her effective insurance coverage may treat the risk of loss as resting on the lessee for a commercially reasonable time. [1993 c 230 § 2A-220.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**62A.2A-221 Casualty to identified goods.** If a lease contract requires goods identified when the lease contract is made, and the goods suffer casualty without fault of the lessee, the lessor or the supplier, before delivery, or the goods suffer casualty before risk of loss passes to the lessee pursuant to the lease agreement or RCW 62A.2A-219, then:

(a) If the loss is total, the lease contract is avoided; and

(b) If the loss is partial or the goods have so deteriorated as to no longer conform to the lease contract, the lessee may nevertheless demand inspection and at his or her option either treat the lease contract as avoided or, except in a finance lease, accept the goods with due allowance from the rent payable for the balance of the lease term for the deterioration or the deficiency in quantity but without further right against the lessor. [1993 c 230 § 2A-221.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

### PART 3 EFFECT OF LEASE CONTRACT

**62A.2A-301 Enforceability of lease contract.** Except as otherwise provided in this Article, a lease contract is effective and enforceable according to its terms between the parties, against purchasers of the goods and against creditors of the parties. [1993 c 230 § 2A-301.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**62A.2A-302 Title to and possession of goods.** Except as otherwise provided in this Article, each provision of this Article applies whether the lessor or a third party has title to

the goods, and whether the lessor, the lessee, or a third party has possession of the goods, notwithstanding any statute or rule of law that possession or the absence of possession is fraudulent. [1993 c 230 § 2A-302.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**62A.2A-303 Alienability of party's interest under lease contract or of lessor's residual interest in goods; delegation of performance; transfer of rights.** (1) As used in this section, "creation of a security interest" includes the sale of a lease contract that is subject to Article 9A, Secured Transactions, by reason of RCW 62A.9A-109(a)(3).

(2) Except as provided in subsection (3) of this section and RCW 62A.9A-407, a provision in a lease agreement which (a) prohibits the voluntary or involuntary transfer, including a transfer by sale, sublease, creation or enforcement of a security interest, or attachment, levy, or other judicial process, of an interest of a party under the lease contract or of the lessor's residual interest in the goods, or (b) makes such a transfer an event of default, gives rise to the rights and remedies provided in subsection (4) of this section, but a transfer that is prohibited or is an event of default under the lease agreement is otherwise effective.

(3) A provision in a lease agreement which (a) prohibits a transfer of a right to damages for default with respect to the whole lease contract or of a right to payment arising out of the transferor's due performance of the transferor's entire obligation, or (b) makes such a transfer an event of default, is not enforceable, and such a transfer is not a transfer that materially impairs the prospect of obtaining return performance by, materially changes the duty of, or materially increases the burden or risk imposed on, the other party to the lease contract within the purview of subsection (4) of this section.

(4) Subject to subsection (3) of this section and RCW 62A.9A-407:

(a) If a transfer is made which is made an event of default under a lease agreement, the party to the lease contract not making the transfer, unless that party waives the default or otherwise agrees, has the rights and remedies described in RCW 62A.2A-501(2);

(b) If subsection (4)(a) of this section is not applicable and if a transfer is made that (i) is prohibited under a lease agreement or (ii) materially impairs the prospect of obtaining return performance by, materially changes the duty of, or materially increases the burden or risk imposed on, the other party to the lease contract, unless the party not making the transfer agrees at any time to the transfer in the lease contract or otherwise, then, except as limited by contract, (A) the transferor is liable to the party not making the transfer for damages caused by the transfer to the extent that the damages could not reasonably be prevented by the party not making the transfer and (B) a court having jurisdiction may grant other appropriate relief, including cancellation of the lease contract or an injunction against the transfer.

(5) A transfer of "the lease" or of "all my rights under the lease," or a transfer in similar general terms, is a transfer of rights and, unless the language or the circumstances, as in a transfer for security, indicate the contrary, the transfer is a delegation of duties by the transferor to the transferee. Acceptance by the transferee constitutes a promise by the

transferee to perform those duties. The promise is enforceable by either the transferor or the other party to the lease contract.

(6) Unless otherwise agreed by the lessor and the lessee, a delegation of performance does not relieve the transferor as against the other party of any duty to perform or of any liability for default.

(7) In a consumer lease, to prohibit the transfer of an interest of a party under the lease contract or to make a transfer an event of default, the language must be specific, by a writing, and conspicuous. [2001 c 32 § 10; 2000 c 250 § 9A-809; 1993 c 230 § 2A-303.]

**Effective date—2001 c 32:** See note following RCW 62A.9A-102.

**Effective date—2000 c 250:** See RCW 62A.9A-701.

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**62A.2A-304 Subsequent lease of goods by lessor.** (1) Subject to RCW 62A.2A-303, a subsequent lessee from a lessor of goods under an existing lease contract obtains, to the extent of the leasehold interest transferred, the leasehold interest in the goods that the lessor had or had power to transfer, and except as provided in subsection (2) of this section and RCW 62A.2A-527(4), takes subject to the existing lease contract. A lessor with voidable title has power to transfer a good leasehold interest to a good faith subsequent lessee for value, but only to the extent set forth in the preceding sentence. If goods have been delivered under a transaction of purchase, the lessor has that power even though:

(a) The lessor's transferor was deceived as to the identity of the lessor;

(b) The delivery was in exchange for a check which is later dishonored;

(c) It was agreed that the transaction was to be a "cash sale"; or

(d) The delivery was procured through fraud punishable as larcenous under the criminal law.

(2) A subsequent lessee in the ordinary course of business from a lessor who is a merchant dealing in goods of that kind to whom the goods were entrusted by the existing lessee of that lessor before the interest of the subsequent lessee became enforceable against that lessor obtains, to the extent of the leasehold interest transferred, all of that lessor's and the existing lessee's rights to the goods, and takes free of the existing lease contract.

(3) A subsequent lessee from the lessor of goods that are subject to an existing lease contract and are covered by a certificate of title issued under a statute of this state or of another jurisdiction takes no greater rights than those provided both by this section and by the certificate of title statute. [1993 c 230 § 2A-304.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**62A.2A-305 Sale or sublease of goods by lessee.** (1) Subject to the provisions of RCW 62A.2A-303, a buyer or sublessee from the lessee of goods under an existing lease contract obtains, to the extent of the interest transferred, the leasehold interest in the goods that the lessee had or had power to transfer, and except as provided in subsection (2) of this section and RCW 62A.2A-511(4), takes subject to the existing lease contract. A lessee with a voidable leasehold

(2010 Ed.)

interest has power to transfer a good leasehold interest to a good faith buyer for value or a good faith sublessee for value, but only to the extent set forth in the preceding sentence. When goods have been delivered under a transaction of lease the lessee has that power even though:

(a) The lessor was deceived as to the identity of the lessee;

(b) The delivery was in exchange for a check which is later dishonored; or

(c) The delivery was procured through fraud punishable as larcenous under the criminal law.

(2) A buyer in the ordinary course of business or a sublessee in the ordinary course of business from a lessee who is a merchant dealing in goods of that kind to whom the goods were entrusted by the lessor obtains, to the extent of the interest transferred, all of the lessor's and lessee's rights to the goods, and takes free of the existing lease contract.

(3) A buyer or sublessee from the lessee of goods that are subject to an existing lease contract and are covered by a certificate of title issued under a statute of this state or of another jurisdiction takes no greater rights than those provided both by this section and by the certificate of title statute. [1993 c 230 § 2A-305.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**62A.2A-306 Priority of certain liens arising by operation of law.** (a) "**Possessory lien.**" In this section, "possessory lien" has the meaning defined in RCW 62A.9A-333.

(b) **Priority of possessory lien.** A possessory lien on goods subject to a lease contract has priority over any interest of the lessor or the lessee under the lease contract or this Article only if the lien is created by a statute that expressly so provides.

(c) A preparer lien or processor lien properly created pursuant to chapter 60.13 RCW or a depositor's lien created pursuant to chapter 22.09 RCW takes priority over any perfected or unperfected security interest. [2001 c 32 § 11; 1993 c 230 § 2A-306.]

**Effective date—2001 c 32:** See note following RCW 62A.9A-102.

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**62A.2A-307 Priority of liens arising by attachment or levy on, security interests in, and other claims to goods.**

(1) Except as otherwise provided in RCW 62A.2A-306, a creditor of a lessee takes subject to the lease contract.

(2) Except as otherwise provided in subsection (3) of this section and in RCW 62A.2A-306 and 62A.2A-308, a creditor of a lessor takes subject to the lease contract unless the creditor holds a lien that attached to the goods before the lease contract became enforceable.

(3) Except as otherwise provided in RCW 62A.9A-317, 62A.9A-321, and 62A.9A-323, a lessee takes a leasehold interest subject to a security interest held by a creditor of the lessor. [2000 c 250 § 9A-810; 1993 c 230 § 2A-307.]

**Effective date—2000 c 250:** See RCW 62A.9A-701.

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**62A.2A-308 Special rights of creditors.** (1) A creditor of a lessor in possession of goods subject to a lease contract may treat the lease contract as void if as against the creditor

retention of possession by the lessor is fraudulent under any statute or rule of law, but retention of possession in good faith and current course of trade by the lessor for a commercially reasonable time after the lease contract becomes enforceable is not fraudulent.

(2) Nothing in this Article impairs the rights of creditors of a lessor if the lease contract (a) becomes enforceable, not in current course of trade but in satisfaction of or as security for a preexisting claim for money, security, or the like, and (b) is made under circumstances which under any statute or rule of law apart from this Article would constitute the transaction a fraudulent transfer or voidable preference.

(3) A creditor of a seller may treat a sale or an identification of goods to a contract for sale as void if as against the creditor retention of possession by the seller is fraudulent under any statute or rule of law, but retention of possession of the goods pursuant to a lease contract entered into by the seller as lessee and the buyer as lessor in connection with the sale or identification of the goods is not fraudulent if the buyer bought for value and in good faith. [1993 c 230 § 2A-308.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**62A.2A-309 Lessor's and lessee's rights when goods become fixtures.** (1) In this section:

(a) Goods are "fixtures" when they become so related to particular real estate that an interest in them arises under real estate law;

(b) A "fixture filing" is the filing, in the office where a record of a mortgage on the real estate would be filed or recorded, of a financing statement covering goods that are or are to become fixtures and conforming to the requirements of RCW 62A.9A-502 (a) and (b);

(c) A lease is a "purchase money lease" unless the lessee has possession or use of the goods or the right to possession or use of the goods before the lease agreement is enforceable;

(d) A mortgage is a "construction mortgage" to the extent it secures an obligation incurred for the construction of an improvement on land including the acquisition cost of the land, if the recorded writing so indicates; and

(e) "Encumbrance" includes real estate mortgages and other liens on real estate and all other rights in real estate that are not ownership interests.

(2) Under this Article a lease may be of goods that are fixtures or may continue in goods that become fixtures, but no lease exists under this Article of ordinary building materials incorporated into an improvement on land.

(3) This Article does not prevent creation of a lease of fixtures pursuant to real estate law.

(4) The perfected interest of a lessor of fixtures has priority over a conflicting interest of an encumbrancer or owner of the real estate if:

(a) The lease is a purchase money lease, the conflicting interest of the encumbrancer or owner arises before the goods become fixtures, the interest of the lessor is perfected by a fixture filing before the goods become fixtures or within twenty days thereafter, and the lessee has an interest of record in the real estate or is in possession of the real estate; or

(b) The interest of the lessor is perfected by a fixture filing before the interest of the encumbrancer or owner is of

record, the lessor's interest has priority over any conflicting interest of a predecessor in title of the encumbrancer or owner, and the lessee has an interest of record in the real estate or is in possession of the real estate.

(5) The interest of a lessor of fixtures, whether or not perfected, has priority over the conflicting interest of an encumbrancer or owner of the real estate if:

(a) The fixtures are readily removable factory or office machines, readily removable equipment that is not primarily used or leased for use in the operation of the real estate, or readily removable replacements of domestic appliances that are goods subject to a consumer lease, and before the goods become fixtures the lease contract is enforceable; or

(b) The conflicting interest is a lien on the real estate obtained by legal or equitable proceedings after the lease contract is enforceable; or

(c) The encumbrancer or owner has consented in writing to the lease or has disclaimed an interest in the goods as fixtures; or

(d) The lessee has a right to remove the goods as against the encumbrancer or owner. If the lessee's right to remove terminates, the priority of the interest of the lessor continues for a reasonable time.

(6) Notwithstanding subsection (4)(a) of this section but otherwise subject to subsections (4) and (5) of this section, the interest of a lessor of fixtures, including the lessor's residual interest, is subordinate to the conflicting interest of an encumbrancer of the real estate under a construction mortgage recorded before the goods become fixtures if the goods become fixtures before the completion of the construction. To the extent given to refinance a construction mortgage, the conflicting interest of an encumbrancer of the real estate under a mortgage has this priority to the same extent as the encumbrancer of the real estate under the construction mortgage.

(7) In cases not within the preceding subsections, priority between the interest of a lessor of fixtures, including the lessor's residual interest, and the conflicting interest of an encumbrancer or owner of the real estate who is not the lessee is determined by the priority rules governing conflicting interests in real estate.

(8) If the interest of a lessor of fixtures, including the lessor's residual interest, has priority over all conflicting interests of all owners and encumbrancers of the real estate, the lessor or the lessee may (a) on default, expiration, termination, or cancellation of the lease agreement but subject to the lease agreement and this Article, or (b) if necessary to enforce other rights and remedies of the lessor or lessee under this Article, remove the goods from the real estate, free and clear of all conflicting interests of all owners and encumbrancers of the real estate, but the lessor or lessee must reimburse any encumbrancer or owner of the real estate who is not the lessee and who has not otherwise agreed for the cost of repair of any physical injury, but not for any diminution in value of the real estate caused by the absence of the goods removed or by any necessity of replacing them. A person entitled to reimbursement may refuse permission to remove until the party seeking removal gives adequate security for the performance of this obligation.

(9) Even though the lease agreement does not create a security interest, the interest of a lessor of fixtures, including

the lessor's residual interest, is perfected by filing a financing statement as a fixture filing for leased goods that are or are to become fixtures in accordance with the relevant provisions of the Article on Secured Transactions, Article 62A.9A RCW. [2000 c 250 § 9A-811; 1993 c 230 § 2A-309.]

**Effective date—2000 c 250:** See RCW 62A.9A-701.

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**62A.2A-310 Lessor's and lessee's rights when goods become accessions.** (1) Goods are "accessions" when they are installed in or affixed to other goods.

(2) The interest of a lessor or a lessee under a lease contract entered into before the goods became accessions is superior to all interests in the whole except as stated in subsection (4) of this section.

(3) The interest of a lessor or a lessee under a lease contract entered into at the time or after the goods became accessions is superior to all subsequently acquired interests in the whole except as stated in subsection (4) of this section but is subordinate to interests in the whole existing at the time the lease contract was made unless the holders of such interests in the whole have in writing consented to the lease, or disclaimed an interest in the goods as part of the whole, or the accession is leased under tariff No. 74 for residential conversion burners leased by a natural gas utility.

(4) Unless the accession is leased under tariff No. 74 for residential conversion burners leased by a natural gas utility, the interest of a lessor or a lessee under a lease contract described in subsection (2) or (3) of this section is subordinate to the interest of:

(a) A buyer in the ordinary course of business or a lessee in the ordinary course of business of any interest in the whole acquired after the goods became accessions;

(b) A creditor with a security interest in the whole perfected before the lease contract was made to the extent that the creditor makes subsequent advances without knowledge of the lease contract; or

(c) A creditor with a security interest in the whole which is perfected by compliance with the requirements of a certificate-of-title statute under RCW 62A.9A-311(b).

(5) When under subsections (2) or (3) and (4) of this section a lessor or a lessee of accessions holds an interest that is superior to all interests in the whole, the lessor or the lessee may (a) on default, expiration, termination, or cancellation of the lease contract by the other party but subject to the provisions of the lease contract and this Article, or (b) if necessary to enforce his or her other rights and remedies under this Article, remove the goods from the whole, free and clear of all interests in the whole, but he or she must reimburse any holder of an interest in the whole who is not the lessee and who has not otherwise agreed for the cost of repair of any physical injury but not for any diminution in value of the whole caused by the absence of the goods removed or by any necessity for replacing them. A person entitled to reimbursement may refuse permission to remove until the party seeking removal gives adequate security for the performance of this obligation. [2000 c 250 § 9A-812; 1993 c 230 § 2A-310.]

**Effective date—2000 c 250:** See RCW 62A.9A-701.

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

(2010 Ed.)

**62A.2A-311 Priority subject to subordination.** Nothing in this Article prevents subordination by agreement by any person entitled to priority. [1993 c 230 § 2A-311.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

#### PART 4

#### PERFORMANCE OF LEASE CONTRACT: REPUDIATED, SUBSTITUTED, AND EXCUSED

**62A.2A-401 Insecurity: Adequate assurance of performance.** (1) A lease contract imposes an obligation on each party that the other's expectation of receiving due performance will not be impaired.

(2) If reasonable grounds for insecurity arise with respect to the performance of either party, the insecure party may demand in writing adequate assurance of due performance. Until the insecure party receives that assurance, if commercially reasonable the insecure party may suspend any performance for which he or she has not already received the agreed return.

(3) A repudiation of the lease contract occurs if assurance of due performance adequate under the circumstances of the particular case is not provided to the insecure party within a reasonable time, not to exceed thirty days after receipt of a demand by the other party.

(4) Between merchants, the reasonableness of grounds for insecurity and the adequacy of any assurance offered must be determined according to commercial standards.

(5) Acceptance of any nonconforming delivery or payment does not prejudice the aggrieved party's right to demand adequate assurance of future performance. [1993 c 230 § 2A-401.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**62A.2A-402 Anticipatory repudiation.** If either party repudiates a lease contract with respect to a performance not yet due under the lease contract, the loss of which performance will substantially impair the value of the lease contract to the other, the aggrieved party may:

(a) For a commercially reasonable time, await retraction of repudiation and performance by the repudiating party;

(b) Make demand pursuant to RCW 62A.2A-401 and await assurance of future performance adequate under the circumstances of the particular case; or

(c) Resort to any right or remedy upon default under the lease contract or this Article, even though the aggrieved party has notified the repudiating party that the aggrieved party would await the repudiating party's performance and assurance and has urged retraction. In addition, whether or not the aggrieved party is pursuing one of the foregoing remedies, the aggrieved party may suspend performance or, if the aggrieved party is the lessor, proceed in accordance with the provisions of this Article on the lessor's right to identify goods to the lease contract notwithstanding default or to salvage unfinished goods (RCW 62A.2A-524). [1993 c 230 § 2A-402.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**62A.2A-403 Retraction of anticipatory repudiation.** (1) Until the repudiating party's next performance is due, the

repudiating party can retract the repudiation unless, since the repudiation, the aggrieved party has canceled the lease contract or materially changed the aggrieved party's position or otherwise indicated that the aggrieved party considers the repudiation final.

(2) Retraction may be by any method that clearly indicates to the aggrieved party that the repudiating party intends to perform under the lease contract and includes any assurance demanded under RCW 62A.2A-401.

(3) Retraction reinstates a repudiating party's rights under a lease contract with due excuse and allowance to the aggrieved party for any delay occasioned by the repudiation. [1993 c 230 § 2A-403.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**62A.2A-404 Substituted performance.** (1) If without fault of the lessee, the lessor and the supplier, the agreed berthing, loading, or unloading facilities fail or the agreed type of carrier becomes unavailable or the agreed manner of delivery otherwise becomes commercially impracticable, but a commercially reasonable substitute is available, the substituted performance must be tendered and accepted.

(2) If the agreed means or manner of payment fails because of domestic or foreign governmental regulation:

(a) The lessor may withhold or stop delivery or cause the supplier to withhold or stop delivery unless the lessee provides a means or manner of payment that is commercially a substantial equivalent; and

(b) If delivery has already been taken, payment by the means or in the manner provided by the regulation discharges the lessee's obligation unless the regulation is discriminatory, oppressive, or predatory. [1993 c 230 § 2A-404.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**62A.2A-405 Excused performance.** Subject to RCW 62A.2A-404 on substituted performance, the following rules apply:

(a) Delay in delivery or nondelivery in whole or in part by a lessor or a supplier who complies with subsections (b) and (c) of this section is not a default under the lease contract if performance as agreed has been made impracticable by the occurrence of a contingency the nonoccurrence of which was a basic assumption on which the lease contract was made or by compliance in good faith with any applicable foreign or domestic governmental regulation or order, whether or not the regulation or order later proves to be invalid.

(b) If the causes mentioned in subsection (a) of this section affect only part of the lessor's or the supplier's capacity to perform, he or she shall allocate production and deliveries among his or her customers but at his or her option may include regular customers not then under contract for sale or lease as well as his or her own requirements for further manufacture. He or she may so allocate in any manner that is fair and reasonable.

(c) The lessor seasonably shall notify the lessee and in the case of a finance lease the supplier seasonably shall notify the lessor and the lessee, if known, that there will be delay or nondelivery and, if allocation is required under subsection (b) of this section, of the estimated quota thus made available for the lessee. [1993 c 230 § 2A-405.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**62A.2A-406 Procedure on excused performance.** (1) If the lessee receives notification of a material or indefinite delay or an allocation justified under RCW 62A.2A-405, the lessee may by written notification to the lessor as to any goods involved, and with respect to all of the goods if under an installment lease contract the value of the whole lease contract is substantially impaired (RCW 62A.2A-510):

(a) Terminate the lease contract (RCW 62A.2A-505(2)); or

(b) Except in a finance lease, modify the lease contract by accepting the available quota in substitution, with due allowance from the rent payable for the balance of the lease term for the deficiency but without further right against the lessor.

(2) If, after receipt of a notification from the lessor under RCW 62A.2A-405, the lessee fails so to modify the lease agreement within a reasonable time not exceeding thirty days, the lease contract lapses with respect to any deliveries affected. [1993 c 230 § 2A-406.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**62A.2A-407 Irrevocable promises: Finance leases.** (1) In the case of a finance lease, the lessee's promises under the lease contract become irrevocable and independent upon the lessee's acceptance of the goods.

(2) A promise that has become irrevocable and independent under subsection (1) of this section:

(a) Is effective and enforceable between the parties, and by or against third parties including assignees of the parties; and

(b) Is not subject to cancellation, termination, modification, repudiation, excuse, or substitution without the consent of the party to whom the promise runs.

(3) This section does not affect the validity under any other law of a covenant in any lease contract making the lessee's promises irrevocable and independent upon the lessee's acceptance of the goods. [1993 c 230 § 2A-407.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

## PART 5

### A. DEFAULT IN GENERAL

**62A.2A-501 Default: Procedure.** (1) Whether the lessor or the lessee is in default under a lease contract is determined by the lease agreement and this Article.

(2) If the lessor or the lessee is in default under the lease contract, the party seeking enforcement has rights and remedies as provided in this Article and, except as limited by this Article, as provided in the lease agreement.

(3) If the lessor or the lessee is in default under the lease contract, the party seeking enforcement may reduce the party's claim to judgment, or otherwise enforce the lease contract by self help or any available judicial procedure or non-judicial procedure, including administrative proceeding, arbitration, or the like, in accordance with this Article.

(4) Except as otherwise provided in RCW 62A.1-106(1) or this Article or the lease agreement, the rights and remedies referred to in subsections (2) and (3) of this section are cumulative.

(5) If the lease agreement covers both real property and goods, the party seeking enforcement may proceed under this Part 5 as to the goods, or under other applicable law as to both the real property and the goods in accordance with that party's rights and remedies in respect of the real property, in which case this Part 5 does not apply. [1993 c 230 § 2A-501.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**62A.2A-502 Notice after default.** Except as otherwise provided in this Article or the lease agreement, the lessor or lessee in default under the lease contract is not entitled to notice of default or notice of enforcement from the other party to the lease agreement. [1993 c 230 § 2A-502.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**62A.2A-503 Modification or impairment of rights and remedies.** (1) Except as otherwise provided in this Article, the lease agreement may include rights and remedies for default in addition to or in substitution for those provided in this Article and may limit or alter the measure of damages recoverable under this Article.

(2) Resort to a remedy provided under this Article or in the lease agreement is optional unless the remedy is expressly agreed to be exclusive. If circumstances cause an exclusive or limited remedy to fail of its essential purpose, or provision for an exclusive remedy is unconscionable, remedy may be had as provided in this Article.

(3) Consequential damages may be liquidated under RCW 62A.2A-504, or may otherwise be limited, altered, or excluded unless the limitation, alteration, or exclusion is unconscionable. Limitation, alteration, or exclusion of consequential damages for injury to the person in the case of consumer goods is prima facie unconscionable but limitation, alteration, or exclusion of damages where the loss is commercial is not prima facie unconscionable.

(4) Rights and remedies on default by the lessor or the lessee with respect to any obligation or promise collateral or ancillary to the lease contract are not impaired by this Article. [1993 c 230 § 2A-503.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**62A.2A-504 Liquidation of damages.** (1) Damages payable by either party for default, or any other act or omission, including indemnity for loss or diminution of anticipated tax benefits or loss or damage to lessor's residual interest, may be liquidated in the lease agreement but only at an amount or by a formula that is reasonable in light of the then anticipated harm caused by the default or other act or omission.

(2) If the lease agreement provides for liquidation of damages, and such provision does not comply with subsection (1) of this section, or such provision is an exclusive or limited remedy that circumstances cause to fail of its essential purpose, remedy may be had as provided in this Article.

(3) If the lessor justifiably withholds or stops delivery of goods because of the lessee's default or insolvency (RCW 62A.2A-525 or 62A.2A-526), the lessee is entitled to restitution of any amount by which the sum of his or her payments exceeds:

(a) The amount to which the lessor is entitled by virtue of terms liquidating the lessor's damages in accordance with subsection (1) of this section; or

(b) In the absence of those terms, twenty percent of the then present value of the total rent the lessee was obligated to pay for the balance of the lease term, or, in the case of a consumer lease, the lesser of such amount or five hundred dollars.

(4) A lessee's right to restitution under subsection (3) of this section is subject to offset to the extent the lessor establishes:

(a) A right to recover damages under the provisions of this Article other than subsection (1) of this section; and

(b) The amount or value of any benefits received by the lessee directly or indirectly by reason of the lease contract. [1993 c 230 § 2A-504.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**62A.2A-505 Cancellation and termination and effect of cancellation, termination, rescission, or fraud on rights and remedies.** (1) On cancellation of the lease contract, all obligations that are still executory on both sides are discharged, but any right based on prior default or performance survives, and the cancelling party also retains any remedy for default of the whole lease contract or any unperformed balance.

(2) On termination of the lease contract, all obligations that are still executory on both sides are discharged but any right based on prior default or performance survives.

(3) Unless the contrary intention clearly appears, expressions of "cancellation," "rescission," or the like of the lease contract may not be construed as a renunciation or discharge of any claim in damages for an antecedent default.

(4) Rights and remedies for material misrepresentation or fraud include all rights and remedies available under this Article for default.

(5) Neither rescission nor a claim for rescission of the lease contract nor rejection or return of the goods may bar or be deemed inconsistent with a claim for damages or other right or remedy. [1993 c 230 § 2A-505.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**62A.2A-506 Statute of limitations.** (1) An action for default under a lease contract, including breach of warranty or indemnity, must be commenced within four years after the cause of action accrued. By the original lease contract the parties may reduce the period of limitation to not less than one year.

(2) A cause of action for default accrues when the act or omission on which the default or breach of warranty is based is or should have been discovered by the aggrieved party, or when the default occurs, whichever is later. A cause of action for indemnity accrues when the act or omission on which the claim for indemnity is based is or should have been discovered by the indemnified party, whichever is later.

(3) If an action commenced within the time limited by subsection (1) of this section is so terminated as to leave available a remedy by another action for the same default or breach of warranty or indemnity, the other action may be commenced after the expiration of the time limited and

within six months after the termination of the first action unless the termination resulted from voluntary discontinuance or from dismissal for failure or neglect to prosecute.

(4) This section does not alter the law on tolling of the statute of limitations nor does it apply to causes of action that have accrued before this Article becomes effective. [1993 c 230 § 2A-506.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**62A.2A-507 Proof of market rent: Time and place.**

(1) Damages based on market rent (RCW 62A.2A-519 or 62A.2A-528) are determined according to the rent for the use of the goods concerned for a lease term identical to the remaining lease term of the original lease agreement and prevailing at the times specified in RCW 62A.2A-519 and 62A.2A-528.

(2) If evidence of rent for the use of the goods concerned for a lease term identical to the remaining lease term of the original lease agreement and prevailing at the times or places described in this Article is not readily available, the rent prevailing within any reasonable time before or after the time described or at any other place or for a different lease term which in commercial judgment or under usage of trade would serve as a reasonable substitute for the one described may be used, making any proper allowance for the difference, including the cost of transporting the goods to or from the other place.

(3) Evidence of a relevant rent prevailing at a time or place or for a lease term other than the one described in this Article offered by one party is not admissible unless and until he or she has given the other party notice the court finds sufficient to prevent unfair surprise.

(4) If the prevailing rent or value of any goods regularly leased in any established market is in issue, reports in official publications or trade journals or in newspapers or periodicals of general circulation published as the reports of that market are admissible in evidence. The circumstances of the preparation of the report may be shown to affect its weight but not its admissibility. [1993 c 230 § 2A-507.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**B. DEFAULT BY LESSOR**

**62A.2A-508 Lessee's remedies.** (1) If a lessor fails to deliver the goods in conformity to the lease contract (RCW 62A.2A-509) or repudiates the lease contract (RCW 62A.2A-402), or a lessee rightfully rejects the goods (RCW 62A.2A-509) or justifiably revokes acceptance of the goods (RCW 62A.2A-517), then with respect to any goods involved, and with respect to all of the goods if under an installment lease contract the value of the whole lease contract is substantially impaired (RCW 62A.2A-510), the lessor is in default under the lease contract and the lessee may:

(a) Cancel the lease contract (RCW 62A.2A-505(1));

(b) Recover so much of the rent and security as has been paid and which is just under the circumstances;

(c) Cover and recover damages as to all goods affected whether or not they have been identified to the lease contract (RCW 62A.2A-518 and 62A.2A-520), or recover damages for nondelivery (RCW 62A.2A-519 and 62A.2A-520);

(d) Exercise any other rights or pursue any other remedies provided in the lease contract.

(2) If a lessor fails to deliver the goods in conformity to the lease contract or repudiates the lease contract, the lessee may also:

(a) If the goods have been identified, recover them (RCW 62A.2A-522); or

(b) In a proper case, obtain specific performance or replevy the goods (RCW 62A.2A-521).

(3) If a lessor is otherwise in default under a lease contract, the lessee may exercise the rights and pursue the remedies provided in the lease contract, which may include a right to cancel the lease, and in RCW 62A.2A-519(3).

(4) If a lessor has breached a warranty, whether express or implied, the lessee may recover damages (RCW 62A.2A-519(4)).

(5) On rightful rejection or justifiable revocation of acceptance, a lessee has a security interest in goods in the lessee's possession or control for any rent and security that has been paid and any expenses reasonably incurred in their inspection, receipt, transportation, and care and custody and may hold those goods and dispose of them in good faith and in a commercially reasonable manner, subject to RCW 62A.2A-527(5).

(6) Subject to the provisions of RCW 62A.2A-407, a lessee, on notifying the lessor of the lessee's intention to do so, may deduct all or any part of the damages resulting from any default under the lease contract from any part of the rent still due under the same lease contract. [1993 c 230 § 2A-508.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**62A.2A-509 Lessee's rights on improper delivery; rightful rejection.**

(1) Subject to the provisions of RCW 62A.2A-510 on default in installment lease contracts, if the goods or the tender or delivery fail in any respect to conform to the lease contract, the lessee may reject or accept the goods or accept any commercial unit or units and reject the rest of the goods.

(2) Rejection of goods is ineffective unless it is within a reasonable time after tender or delivery of the goods and the lessee seasonably notifies the lessor. [1993 c 230 § 2A-509.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**62A.2A-510 Installment lease contracts: Rejection and default.**

(1) Under an installment lease contract a lessee may reject any delivery that is nonconforming if the nonconformity substantially impairs the value of that delivery and cannot be cured or the nonconformity is a defect in the required documents; but if the nonconformity does not fall within subsection (2) of this section and the lessor or the supplier gives adequate assurance of its cure, the lessee must accept that delivery.

(2) Whenever nonconformity or default with respect to one or more deliveries substantially impairs the value of the installment lease contract as a whole there is a default with respect to the whole. But, the aggrieved party reinstates the installment lease contract as a whole if the aggrieved party accepts a nonconforming delivery without seasonably notifying of cancellation or brings an action with respect only to

past deliveries or demands performance as to future deliveries. [1993 c 230 § 2A-510.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**62A.2A-511 Merchant lessee's duties as to rightfully rejected goods.** (1) Subject to any security interest of a lessee (RCW 62A.2A-508(5)), if a lessor or a supplier has no agent or place of business at the market of rejection, a merchant lessee, after rejection of goods in his or her possession or control, shall follow any reasonable instructions received from the lessor or the supplier with respect to the goods. In the absence of those instructions, a merchant lessee shall make reasonable efforts to sell, lease, or otherwise dispose of the goods for the lessor's account if they threaten to decline in value speedily. Instructions are not reasonable if on demand indemnity for expenses is not forthcoming.

(2) If a merchant lessee, under subsection (1) of this section, or any other lessee (RCW 62A.2A-512) disposes of goods, he or she is entitled to reimbursement either from the lessor or the supplier or out of the proceeds for reasonable expenses of caring for and disposing of the goods and, if the expenses include no disposition commission, to such commission as is usual in the trade, or if there is none, to a reasonable sum not exceeding ten percent of the gross proceeds.

(3) In complying with this section or RCW 62A.2A-512, the lessee is held only to good faith. Good faith conduct hereunder is neither acceptance or conversion nor the basis of an action for damages.

(4) A purchaser who purchases in good faith from a lessee pursuant to this section or RCW 62A.2A-512 takes the goods free of any rights of the lessor and the supplier even though the lessee fails to comply with one or more of the requirements of this Article. [1993 c 230 § 2A-511.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**62A.2A-512 Lessee's duties as to rightfully rejected goods.** (1) Except as otherwise provided with respect to goods that threaten to decline in value speedily (RCW 62A.2A-511) and subject to any security interest of a lessee (RCW 62A.2A-508(5)):

(a) The lessee, after rejection of goods in the lessee's possession, shall hold them with reasonable care at the lessor's or the supplier's disposition for a reasonable time after the lessee's seasonable notification of rejection;

(b) If the lessor or the supplier gives no instructions within a reasonable time after notification of rejection, the lessee may store the rejected goods for the lessor's or the supplier's account or ship them to the lessor or the supplier or dispose of them for the lessor's or the supplier's account with reimbursement in the manner provided in RCW 62A.2A-511; but

(c) The lessee has no further obligations with regard to goods rightfully rejected.

(2) Action by the lessee pursuant to subsection (1) of this section is not acceptance or conversion. [1993 c 230 § 2A-512.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**62A.2A-513 Cure by lessor of improper tender or delivery; replacement.** (1) If any tender or delivery by the

(2010 Ed.)

lessor or the supplier is rejected because nonconforming and the time for performance has not yet expired, the lessor or the supplier may seasonably notify the lessee of the lessor's or the supplier's intention to cure and may then make a conforming delivery within the time provided in the lease contract.

(2) If the lessee rejects a nonconforming tender that the lessor or the supplier had reasonable grounds to believe would be acceptable with or without money allowance, the lessor or the supplier may have a further reasonable time to substitute a conforming tender if he or she seasonably notifies the lessee. [1993 c 230 § 2A-513.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**62A.2A-514 Waiver of lessee's objections.** (1) In rejecting goods, a lessee's failure to state a particular defect that is ascertainable by reasonable inspection precludes the lessee from relying on the defect to justify rejection or to establish default:

(a) If, stated seasonably, the lessor or the supplier could have cured it (RCW 62A.2A-513); or

(b) Between merchants if the lessor or the supplier after rejection has made a request in writing for a full and final written statement of all defects on which the lessee proposes to rely.

(2) A lessee's failure to reserve rights when paying rent or other consideration against documents precludes recovery of the payment for defects apparent on the face of the documents. [1993 c 230 § 2A-514.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**62A.2A-515 Acceptance of goods.** (1) Acceptance of goods occurs after the lessee has had a reasonable opportunity to inspect the goods and:

(a) The lessee signifies or acts with respect to the goods in a manner that signifies to the lessor or the supplier that the goods are conforming or that the lessee will take or retain them in spite of their nonconformity; or

(b) The lessee fails to make an effective rejection of the goods (RCW 62A.2A-509(2)).

(2) Acceptance of a part of any commercial unit is acceptance of that entire unit. [1993 c 230 § 2A-515.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**62A.2A-516 Effect of acceptance of goods; notice of default; burden of establishing default after acceptance; notice of claim or litigation to person answerable over.**

(1) A lessee must pay rent for any goods accepted in accordance with the lease contract, with due allowance for goods rightfully rejected or not delivered.

(2) A lessee's acceptance of goods precludes rejection of the goods accepted. In the case of a finance lease, if made with knowledge of a nonconformity, acceptance cannot be revoked because of it. In any other case, if made with knowledge of a nonconformity, acceptance cannot be revoked because of it unless the acceptance was on the reasonable assumption that the nonconformity would be seasonably cured. Acceptance does not of itself impair any other remedy provided by this Article or the lease agreement for nonconformity.

(3) If a tender has been accepted:

(a) Within a reasonable time after the lessee discovers or should have discovered any default, the lessee shall notify the lessor and the supplier, if any, or be barred from any remedy against the party not notified;

(b) Except in the case of a consumer lease, within a reasonable time after the lessee receives notice of litigation for infringement or the like (RCW 62A.2A-211) the lessee shall notify the lessor or be barred from any remedy over for liability established by the litigation; and

(c) The burden is on the lessee to establish any default.

(4) If a lessee is sued for breach of a warranty or other obligation for which a lessor or a supplier is answerable over the following apply:

(a) The lessee may give the lessor or the supplier, or both, written notice of the litigation. If the notice states that the person notified may come in and defend and that if the person notified does not do so that person will be bound in any action against that person by the lessee by any determination of fact common to the two litigations, then unless the person notified after seasonable receipt of the notice does come in and defend that person is so bound.

(b) The lessor or the supplier may demand in writing that the lessee turn over control of the litigation including settlement if the claim is one for infringement or the like (RCW 62A.2A-211) or else be barred from any remedy over. If the demand states that the lessor or the supplier agrees to bear all expense and to satisfy any adverse judgment, then unless the lessee after seasonable receipt of the demand does turn over control the lessee is so barred.

(5) Subsections (3) and (4) of this section apply to any obligation of a lessee to hold the lessor or the supplier harmless against infringement or the like (RCW 62A.2A-211). [1993 c 230 § 2A-516.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**62A.2A-517 Revocation of acceptance of goods.** (1) A lessee may revoke acceptance of a lot or commercial unit whose nonconformity substantially impairs its value to the lessee if the lessee has accepted it:

(a) Except in the case of a finance lease, on the reasonable assumption that its nonconformity would be cured and it has not been seasonably cured; or

(b) Without discovery of the nonconformity if the lessee's acceptance was reasonably induced either by the lessor's assurances or, except in the case of a finance lease, by the difficulty of discovery before acceptance.

(2) Except in the case of a finance lease, a lessee may revoke acceptance of a lot or commercial unit if the lessor defaults under the lease contract and the default substantially impairs the value of that lot or commercial unit to the lessee.

(3) If the lease agreement so provides, the lessee may revoke acceptance of a lot or commercial unit because of other defaults by the lessor.

(4) Revocation of acceptance must occur within a reasonable time after the lessee discovers or should have discovered the ground for it and before any substantial change in condition of the goods which is not caused by the nonconformity. Revocation is not effective until the lessee notifies the lessor.

(5) A lessee who so revokes has the same rights and duties with regard to the goods involved as if the lessee had rejected them. [1993 c 230 § 2A-517.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**62A.2A-518 Cover; substitute goods.** (1) After a default by a lessor under the lease contract of the type described in (RCW 62A.2A-508(1)), or, if agreed, after other default by the lessor, the lessee may cover by making any purchase or lease of or contract to purchase or lease goods in substitution for those due from the lessor.

(2) Except as otherwise provided with respect to damages liquidated in the lease agreement (RCW 62A.2A-504) or otherwise determined pursuant to agreement of the parties (RCW 62A.1-102(3) and 62A.2A-503), if a lessee's cover is by a lease agreement substantially similar to the original lease agreement and the new lease agreement is made in good faith and in a commercially reasonable manner, the lessee may recover from the lessor as damages (i) the present value, as of the date of the commencement of the term of the new lease agreement, of the rent under the new lease applicable to that period of the new lease term which is comparable to the then remaining term of the original lease agreement minus the present value as of the same date of the total rent for the then remaining lease term of the original lease agreement, and (ii) any incidental or consequential damages, less expenses saved in consequence of the lessor's default.

(3) If a lessee's cover is by lease agreement that for any reason does not qualify for treatment under subsection (2) of this section, or is by purchase or otherwise, the lessee may recover from the lessor as if the lessee had elected not to cover and RCW 62A.2A-519 governs. [1993 c 230 § 2A-518.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**62A.2A-519 Lessee's damages for nondelivery, repudiation, default, and breach of warranty in regard to accepted goods.** (1) Except as otherwise provided with respect to damages liquidated in the lease agreement (RCW 62A.2A-504) or otherwise determined pursuant to agreement of the parties (RCW 62A.1-102(3)), if a lessee elects not to cover or a lessee elects to cover and the cover is by lease agreement that for any reason does not qualify for treatment under RCW 62A.2A-518(2), or is by purchase or otherwise, the measure of damages for nondelivery or repudiation by the lessor or for rejection or revocation of acceptance by the lessee is the present value, as of the date of the default, of the then market rent minus the present value as of the same date of the original rent, computed for the remaining lease term of the original lease agreement, together with incidental and consequential damages, less expenses saved in consequence of the lessor's default.

(2) Market rent is to be determined as of the place for tender or, in cases of rejection after arrival or revocation of acceptance, as of the place of arrival.

(3) Except as otherwise agreed, if the lessee has accepted goods and given notification (RCW 62A.2A-516(3)), the measure of damages for nonconforming tender or delivery or other default by a lessor is the loss resulting in the ordinary course of events from the lessor's default as determined in

any manner that is reasonable together with incidental and consequential damages, less expenses saved in consequence of the lessor's default.

(4) Except as otherwise agreed, the measure of damages for breach of warranty is the present value at the time and place of acceptance of the difference between the value of the use of the goods accepted and the value if they had been as warranted for the lease term, unless special circumstances show proximate damages of a different amount, together with incidental and consequential damages, less expenses saved in consequence of the lessor's default or breach of warranty. [1993 c 230 § 2A-519.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**62A.2A-520 Lessee's incidental and consequential damages.** (1) Incidental damages resulting from a lessor's default include expenses reasonably incurred in inspection, receipt, transportation, and care and custody of goods rightfully rejected or goods the acceptance of which is justifiably revoked, any commercially reasonable charges, expenses or commissions in connection with effecting cover, and any other reasonable expense incident to the default.

(2) Consequential damages resulting from a lessor's default include:

(a) Any loss resulting from general or particular requirements and needs of which the lessor at the time of contracting had reason to know and which could not reasonably be prevented by cover or otherwise; and

(b) Injury to person or property proximately resulting from any breach of warranty. [1993 c 230 § 2A-520.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**62A.2A-521 Lessee's right to specific performance or replevin.** (1) Specific performance may be decreed if the goods are unique or in other proper circumstances.

(2) A decree for specific performance may include any terms and conditions as to payment of the rent, damages, or other relief that the court deems just.

(3) A lessee has a right of replevin, detinue, sequestration, claim and delivery, or the like for goods identified to the lease contract if after reasonable effort the lessee is unable to effect cover for those goods or the circumstances reasonably indicate that the effort will be unavailing. [1993 c 230 § 2A-521.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**62A.2A-522 Lessee's right to goods on lessor's insolvency.** (1) Subject to subsection (2) of this section and even though the goods have not been shipped, a lessee who has paid a part or all of the rent and security for goods identified to a lease contract (RCW 62A.2A-217) on making and keeping good a tender of any unpaid portion of the rent and security due under the lease contract may recover the goods identified from the lessor if the lessor becomes insolvent within ten days after receipt of the first installment of rent and security.

(2) A lessee acquires the right to recover goods identified to a lease contract only if they conform to the lease contract. [1993 c 230 § 2A-522.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

(2010 Ed.)

## C. DEFAULT BY LESSEE

**62A.2A-523 Lessor's remedies.** (1) If a lessee wrongfully rejects or revokes acceptance of goods or fails to make a payment when due or repudiates with respect to a part or the whole, then, with respect to any goods involved, and with respect to all of the goods if under an installment lease contract the value of the whole lease contract is substantially impaired (RCW 62A.2A-510), the lessee is in default under the lease contract and the lessor may:

(a) Cancel the lease contract (RCW 62A.2A-505(1));

(b) Proceed respecting goods not identified to the lease contract (RCW 62A.2A-524);

(c) Withhold delivery of the goods and take possession of goods previously delivered (RCW 62A.2A-525);

(d) Stop delivery of the goods by any bailee (RCW 62A.2A-526);

(e) Dispose of the goods and recover damages (RCW 62A.2A-527), or retain the goods and recover damages (RCW 62A.2A-528), or in a proper case recover rent (RCW 62A.2A-529);

(f) Exercise any other rights or pursue any other remedies provided in the lease contract.

(2) If a lessor does not fully exercise a right or obtain a remedy to which the lessor is entitled under subsection (1) of this section, the lessor may recover the loss resulting in the ordinary course of events from the lessee's default as determined in any reasonable manner, together with incidental damages, less expenses saved in consequence of the lessee's default.

(3) If a lessee is otherwise in default under a lease contract, the lessor may exercise the rights and pursue the remedies provided in the lease contract, which may include a right to cancel the lease. In addition, unless otherwise provided in the lease contract:

(a) If the default substantially impairs the value of the lease contract to the lessor, the lessor may exercise the rights and pursue the remedies provided in subsection (1) or (2) of this section; or

(b) If the default does not substantially impair the value of the lease contract to the lessor, the lessor may recover as provided in subsection (2) of this section. [1993 c 230 § 2A-523.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**62A.2A-524 Lessor's right to identify goods to lease contract.** (1) After default by the lessee under the lease contract of the type described in RCW 62A.2A-523 (1) or (3)(a) or, if agreed, after other default by the lessee, the lessor may:

(a) Identify to the lease contract conforming goods not already identified if at the time the lessor learned of the default they were in the lessor's or the supplier's possession or control; and

(b) Dispose of goods (RCW 62A.2A-527(1)) that demonstrably have been intended for the particular lease contract even though those goods are unfinished.

(2) If the goods are unfinished, in the exercise of reasonable commercial judgment for the purposes of avoiding loss and of effective realization, an aggrieved lessor or the supplier may either complete manufacture and wholly identify

the goods to the lease contract or cease manufacture and lease, sell, or otherwise dispose of the goods for scrap or salvage value or proceed in any other reasonable manner. [1993 c 230 § 2A-524.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**62A.2A-525 Lessor's right to possession of goods.** (1) If a lessor discovers the lessee to be insolvent, the lessor may refuse to deliver the goods.

(2) After a default by the lessee under the lease contract of the type described in RCW 62A.2A-523 (1) or (3)(a) or, if agreed, after other default by the lessee, the lessor has the right to take possession of the goods. If the lease contract so provides, the lessor may require the lessee to assemble the goods and make them available to the lessor at a place to be designated by the lessor which is reasonably convenient to both parties. Without removal, the lessor may render unusable any goods employed in trade or business, and may dispose of goods on the lessee's premises (RCW 62A.2A-527).

(3) The lessor may proceed under subsection (2) of this section without judicial process if it can be done without breach of the peace or the lessor may proceed by action. [1993 c 230 § 2A-525.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**62A.2A-526 Lessor's stoppage of delivery in transit or otherwise.** (1) A lessor may stop delivery of goods in the possession of a carrier or other bailee if the lessor discovers the lessee to be insolvent and may stop delivery of carload, truckload, planeload, or larger shipments of express or freight if the lessee repudiates or fails to make a payment due before delivery, whether for rent, security, or otherwise under the lease contract, or for any other reason the lessor has a right to withhold or take possession of the goods.

(2) In pursuing its remedies under subsection (1) of this section, the lessor may stop delivery until:

- (a) Receipt of the goods by the lessee;
- (b) Acknowledgment to the lessee by any bailee of the goods, except a carrier, that the bailee holds the goods for the lessee; or
- (c) Such an acknowledgment to the lessee by a carrier via reshipment or as warehouseman.

(3)(a) To stop delivery, a lessor shall so notify as to enable the bailee by reasonable diligence to prevent delivery of the goods.

(b) After notification, the bailee shall hold and deliver the goods according to the directions of the lessor, but the lessor is liable to the bailee for any ensuing charges or damages.

(c) A carrier who has issued a nonnegotiable bill of lading is not obliged to obey a notification to stop received from a person other than the consignor. [1993 c 230 § 2A-526.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**62A.2A-527 Lessor's rights to dispose of goods.** (1) After a default by a lessee under the lease contract of the type described in RCW 62A.2A-523 (1) or (3)(a) or after the lessor refuses to deliver or takes possession of goods (RCW 62A.2A-525 or 62A.2A-526), or, if agreed, after other default by a lessee, the lessor may dispose of the goods concerned or the undelivered balance thereof by lease, sale, or otherwise.

(2) Except as otherwise provided with respect to damages liquidated in the lease agreement (RCW 62A.2A-504) or otherwise determined pursuant to agreement of the parties (RCW 62A.1-102(3) and 62A.2A-503), if the disposition is by lease agreement substantially similar to the original lease agreement and the new lease agreement is made in good faith and in a commercially reasonable manner, the lessor may recover from the lessee as damages (i) accrued and unpaid rent as of the date of the commencement of the term of the new lease agreement, (ii) the present value, as of the same date, of the total rent for the then remaining lease term of the original lease agreement minus the present value, as of the same date, of the rent under the new lease agreement applicable to that period of the new lease term which is comparable to the then remaining term of the original lease agreement, and (iii) any incidental damages allowed under RCW 62A.2A-530, less expenses saved in consequence of the lessee's default.

(3) If the lessor's disposition is by lease agreement that for any reason does not qualify for treatment under subsection (2) of this section, or is by sale or otherwise, the lessor may recover from the lessee as if the lessor had elected not to dispose of the goods and RCW 62A.2A-528 governs.

(4) A subsequent buyer or lessee who buys or leases from the lessor in good faith for value as a result of a disposition under this section takes the goods free of the original lease contract and any rights of the original lessee even though the lessor fails to comply with one or more of the requirements of this Article.

(5) The lessor is not accountable to the lessee for any profit made on any disposition. A lessee who has rightfully rejected or justifiably revoked acceptance shall account to the lessor for any excess over the amount of the lessee's security interest (RCW 62A.2A-508(5)). [1993 c 230 § 2A-527.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**62A.2A-528 Lessor's damages for nonacceptance, failure to pay, repudiation, or other default.** (1) Except as otherwise provided with respect to damages liquidated in the lease agreement (RCW 62A.2A-504) or otherwise determined pursuant to agreement of the parties (RCW 62A.1-102(3) and 62A.2A-503), if a lessor elects to retain the goods or a lessor elects to dispose of the goods and the disposition is by lease agreement that for any reason does not qualify for treatment under RCW 62A.2A-527(2), or is by sale or otherwise, the lessor may recover from the lessee as damages for a default of the type described in RCW 62A.2A-523 (1) or (3)(a), or, if agreed, for other default of the lessee, (i) accrued and unpaid rent as of the date of default if the lessee has never taken possession of the goods, or, if the lessee has taken possession of the goods, as of the date the lessor repossesses the goods or an earlier date on which the lessee makes a tender of the goods to the lessor, (ii) the present value as of the date determined under subsection (1)(i) of this section of the total rent for the then remaining lease term of the original lease agreement minus the present value as of the same date of the market rent at the place where the goods are located computed for the same lease term, and (iii) any incidental damages allowed under RCW 62A.2A-530, less expenses saved in consequence of the lessee's default.

(2) If the measure of damages provided in subsection (1) of this section is inadequate to put a lessor in as good a position as performance would have, the measure of damages is the present value of the profit, including reasonable overhead, the lessor would have made from full performance by the lessee, together with any incidental damages allowed under RCW 62A.2A-530, due allowance for costs reasonably incurred and due credit for payments or proceeds of disposition. [1993 c 230 § 2A-528.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**62A.2A-529 Lessor's action for the rent.** (1) After default by the lessee under the lease contract of the type described in RCW 62A.2A-523 (1) or (3)(a) or, if agreed, after other default by the lessee, if the lessor complies with subsection (2) of this section, the lessor may recover from the lessee as damages:

(a) For goods accepted by the lessee and not repossessed by or tendered to the lessor, and for conforming goods lost or damaged within a commercially reasonable time after risk of loss passes to the lessee (RCW 62A.2A-219), (i) accrued and unpaid rent as of the date of entry of judgment in favor of the lessor, (ii) the present value as of the same date of the rent for the then remaining lease term of the lease agreement, and (iii) any incidental damages allowed under RCW 62A.2A-530, less expenses saved in consequence of the lessee's default; and

(b) For goods identified to the lease contract if the lessor is unable after reasonable effort to dispose of them at a reasonable price or the circumstances reasonably indicate that effort will be unavailing, (i) accrued and unpaid rent as of the date of entry of judgment in favor of the lessor, (ii) the present value as of the same date of the rent for the then remaining lease term of the lease agreement, and (iii) any incidental damages allowed under RCW 62A.2A-530, less expenses saved in consequence of the lessee's default.

(2) Except as provided in subsection (3) of this section, the lessor shall hold for the lessee for the remaining lease term of the lease agreement any goods that have been identified to the lease contract and are in the lessor's control.

(3) The lessor may dispose of the goods at any time before collection of the judgment for damages obtained pursuant to subsection (1) of this section. If the disposition is before the end of the remaining lease term of the lease agreement, the lessor's recovery against the lessee for damages is governed by RCW 62A.2A-527 or 62A.2A-528, and the lessor will cause an appropriate credit to be provided against a judgment for damages to the extent that the amount of the judgment exceeds the recovery available pursuant to RCW 62A.2A-527 or 62A.2A-528.

(4) Payment of the judgment for damages obtained pursuant to subsection (1) of this section entitles the lessee to the use and possession of the goods not then disposed of for the remaining lease term of and in accordance with the lease agreement.

(5) After default by the lessee under the lease contract of the type described in RCW 62A.2A-523 (1) or (3)(a) or, if agreed, after other default by the lessee, a lessor who is held not entitled to rent under this section must nevertheless be

(2010 Ed.)

awarded damages for nonacceptance under RCW 62A.2A-527 and 62A.2A-528. [1993 c 230 § 2A-529.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**62A.2A-530 Lessor's incidental damages.** Incidental damages to an aggrieved lessor include any commercially reasonable charges, expenses, or commissions incurred in stopping delivery, in the transportation, care and custody of goods after the lessee's default, in connection with return or disposition of the goods, or otherwise resulting from the default. [1993 c 230 § 2A-530.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**62A.2A-531 Standing to sue third parties for injury to goods.** (1) If a third party so deals with goods that have been identified to a lease contract as to cause actionable injury to a party to the lease contract (a) the lessor has a right of action against the third party, and (b) the lessee also has a right of action against the third party if the lessee:

(i) Has a security interest in the goods;  
(ii) Has an insurable interest in the goods; or  
(iii) Bears the risk of loss under the lease contract or has since the injury assumed that risk as against the lessor and the goods have been converted or destroyed.

(2) If at the time of the injury the party plaintiff did not bear the risk of loss as against the other party to the lease contract and there is no arrangement between them for disposition of the recovery, his or her suit or settlement, subject to his or her own interest, is as a fiduciary for the other party to the lease contract.

(3) Either party with the consent of the other may sue for the benefit of whom it may concern. [1993 c 230 § 2A-531.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**62A.2A-532 Lessor's rights to residual interest.** In addition to any other recovery permitted by this Article or other law, the lessor may recover from the lessee an amount that will fully compensate the lessor for any loss of or damage to the lessor's residual interest in the goods caused by the default of the lessee. [1993 c 230 § 2A-532.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

### Article 3

## NEGOTIABLE INSTRUMENTS

(Formerly: Commercial paper)

#### Sections

#### PART 1

#### GENERAL PROVISIONS AND DEFINITIONS

62A.3-101	Short title.
62A.3-102	Subject matter.
62A.3-103	Definitions.
62A.3-104	Negotiable instrument.
62A.3-105	Issue of instrument.
62A.3-106	Unconditional promise or order.
62A.3-107	Instrument payable in foreign money.
62A.3-108	Payable on demand or at definite time.
62A.3-109	Payable to bearer or to order.
62A.3-110	Identification of person to whom instrument is payable.
62A.3-111	Place of payment.
62A.3-112	Interest.
62A.3-113	Date of instrument.
62A.3-114	Contradictory terms of instrument.
62A.3-115	Incomplete instrument.

62A.3-116 Joint and several liability; contribution.  
 62A.3-117 Other agreements affecting instrument.  
 62A.3-118 Statute of limitations.  
 62A.3-119 Notice of right to defend action.

## PART 2

## NEGOTIATION, TRANSFER, AND INDORSEMENT

62A.3-201 Negotiation.  
 62A.3-202 Negotiation subject to rescission.  
 62A.3-203 Transfer of instrument; rights acquired by transfer.  
 62A.3-204 Indorsement.  
 62A.3-205 Special indorsement; blank indorsement; anomalous indorsement.  
 62A.3-206 Restrictive indorsement.  
 62A.3-207 Reacquisition.

## PART 3

## ENFORCEMENT OF INSTRUMENTS

62A.3-301 Person entitled to enforce instrument.  
 62A.3-302 Holder in due course.  
 62A.3-303 Value and consideration.  
 62A.3-304 Overdue instrument.  
 62A.3-305 Defenses and claims in recoupment.  
 62A.3-306 Claims to an instrument.  
 62A.3-307 Notice of breach of fiduciary duty.  
 62A.3-308 Proof of signatures and status as holder in due course.  
 62A.3-309 Enforcement of lost, destroyed, or stolen instrument.  
 62A.3-310 Effect of instrument on obligation for which taken.  
 62A.3-311 Accord and satisfaction by use of instrument.  
 62A.3-312 Lost, destroyed, or stolen cashier's check, teller's check, or certified check.

## PART 4

## LIABILITY OF PARTIES

62A.3-401 Signature.  
 62A.3-402 Signature by representative.  
 62A.3-403 Unauthorized signature.  
 62A.3-404 Impostors; fictitious payees.  
 62A.3-405 Employer's responsibility for fraudulent indorsement by employee.  
 62A.3-406 Negligence contributing to forged signature or alteration of instrument.  
 62A.3-407 Alteration.  
 62A.3-408 Drawee not liable on unaccepted draft.  
 62A.3-409 Acceptance of draft; certified check.  
 62A.3-410 Acceptance varying draft.  
 62A.3-411 Refusal to pay cashier's checks, teller's checks, and certified checks.  
 62A.3-412 Obligation of issuer of note or cashier's check.  
 62A.3-413 Obligation of acceptor.  
 62A.3-414 Obligation of drawer.  
 62A.3-415 Obligation of indorser.  
 62A.3-416 Transfer warranties.  
 62A.3-417 Presentment warranties.  
 62A.3-418 Payment or acceptance by mistake.  
 62A.3-419 Instruments signed for accommodation.  
 62A.3-420 Conversion of instrument.

## PART 5

## DISHONOR

62A.3-501 Presentment.  
 62A.3-502 Dishonor.  
 62A.3-503 Notice of dishonor.  
 62A.3-504 Excused presentment and notice of dishonor.  
 62A.3-505 Evidence of dishonor.  
 62A.3-512 Credit cards—As identification—In lieu of deposit.  
 62A.3-515 Checks dishonored by nonacceptance or nonpayment; liability for interest; rate; collection costs and attorneys' fees; satisfaction of claim.  
 62A.3-520 Statutory form for notice of dishonor.  
 62A.3-522 Notice of dishonor—Affidavit of service by mail.  
 62A.3-525 Consequences for failing to comply with requirements.  
 62A.3-530 Collection agencies—Checks dishonored by nonacceptance or nonpayment; liability for interest; rate; collection costs and attorneys' fees; satisfaction of claim.  
 62A.3-540 Collection agencies—Statutory form for notice of dishonor.  
 62A.3-550 Collection agencies—Consequences for failing to comply with requirements.

## PART 6

## DISCHARGE AND PAYMENT

62A.3-601 Discharge and effect of discharge.

62A.3-602 Payment.  
 62A.3-603 Tender of payment.  
 62A.3-604 Discharge by cancellation or renunciation.  
 62A.3-605 Discharge of indorsers and accommodation parties.

## PART 1

## GENERAL PROVISIONS AND DEFINITIONS

**62A.3-101 Short title.** This Article may be cited as Uniform Commercial Code—Negotiable Instruments. [1993 c 229 § 3; 1965 ex.s. c 157 § 3-101.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**62A.3-102 Subject matter.** (a) This Article applies to negotiable instruments. It does not apply to money, to payment orders governed by Article 4A, or to securities governed by Article 8.

(b) If there is conflict between this Article and Article 4 or 9A, Articles 4 and 9A govern.

(c) Regulations of the Board of Governors of the Federal Reserve System and operating circulars of the Federal Reserve Banks supersede any inconsistent provision of this Article to the extent of the inconsistency. [2001 c 32 § 12; 1993 c 229 § 4; 1965 ex.s. c 157 § 3-102. Cf. former RCW sections: (i) RCW 62.01.001(5); 1955 c 35 § 62.01.001; prior: 1899 c 149 § 1; RRS § 3392. (ii) RCW 62.01.128; 1955 c 35 § 62.01.128; prior: 1899 c 149 § 128; RRS § 3518. (iii) RCW 62.01.191; 1955 c 35 § 62.01.191; prior: 1899 c 149 § 191; RRS § 3581.]

**Effective date—2001 c 32:** See note following RCW 62A.9A-102.

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**62A.3-103 Definitions.** (a) In this Article:

(1) "Acceptor" means a drawee who has accepted a draft.  
 (2) "Drawee" means a person ordered in a draft to make payment.

(3) "Drawer" means a person who signs or is identified in a draft as a person ordering payment.

(4) "Good faith" means honesty in fact and the observance of reasonable commercial standards of fair dealing.

(5) "Maker" means a person who signs or is identified in a note as a person undertaking to pay.

(6) "Order" means a written instruction to pay money signed by the person giving the instruction. The instruction may be addressed to any person, including the person giving the instruction, or to one or more persons jointly or in the alternative but not in succession. An authorization to pay is not an order unless the person authorized to pay is also instructed to pay.

(7) "Ordinary care" in the case of a person engaged in business means observance of reasonable commercial standards, prevailing in the area in which the person is located, with respect to the business in which the person is engaged. In the case of a bank that takes an instrument for processing for collection or payment by automated means, reasonable commercial standards do not require the bank to examine the instrument if the failure to examine does not violate the bank's prescribed procedures and the bank's procedures do not vary unreasonably from general banking usage not disapproved by this Article or Article 4.

(8) "Party" means a party to an instrument.

(9) "Promise" means a written undertaking to pay money signed by the person undertaking to pay. An acknowledgment of an obligation by the obligor is not a promise unless the obligor also undertakes to pay the obligation.

(10) "Prove" with respect to a fact means to meet the burden of establishing the fact (RCW 62A.1-201(8)).

(11) "Remitter" means a person who purchases an instrument from its issuer if the instrument is payable to an identified person other than the purchaser.

(b) Other definitions applying to this Article and the sections in which they appear are:

"Acceptance"	RCW 62A.3-409
"Accommodated party"	RCW 62A.3-419
"Accommodation party"	RCW 62A.3-419
"Alteration"	RCW 62A.3-407
"Anomalous indorsement"	RCW 62A.3-205
"Blank indorsement"	RCW 62A.3-205
"Cashier's check"	RCW 62A.3-104
"Certificate of deposit"	RCW 62A.3-104
"Certified check"	RCW 62A.3-409
"Check"	RCW 62A.3-104
"Consideration"	RCW 62A.3-303
"Draft"	RCW 62A.3-104
"Holder in due course"	RCW 62A.3-302
"Incomplete instrument"	RCW 62A.3-115
"Indorsement"	RCW 62A.3-204
"Indorser"	RCW 62A.3-204
"Instrument"	RCW 62A.3-104
"Issue"	RCW 62A.3-105
"Issuer"	RCW 62A.3-105
"Negotiable instrument"	RCW 62A.3-104
"Negotiation"	RCW 62A.3-201
"Note"	RCW 62A.3-104
"Payable at a definite time"	RCW 62A.3-108
"Payable on demand"	RCW 62A.3-108
"Payable to bearer"	RCW 62A.3-109
"Payable to order"	RCW 62A.3-109
"Payment"	RCW 62A.3-602
"Person entitled to enforce"	RCW 62A.3-301
"Presentment"	RCW 62A.3-501
"Reacquisition"	RCW 62A.3-207
"Special indorsement"	RCW 62A.3-205
"Teller's check"	RCW 62A.3-104
"Transfer of instrument"	RCW 62A.3-203
"Traveler's check"	RCW 62A.3-104
"Value"	RCW 62A.3-303

(c) The following definitions in other Articles apply to this Article:

"Bank"	RCW 62A.4-105
"Banking day"	RCW 62A.4-104
"Clearing house"	RCW 62A.4-104
"Collecting bank"	RCW 62A.4-105
"Depositary bank"	RCW 62A.4-105
"Documentary draft"	RCW 62A.4-104
"Intermediary bank"	RCW 62A.4-105
"Item"	RCW 62A.4-104
"Payor bank"	RCW 62A.4-105
"Suspends payments"	RCW 62A.4-104

(d) In addition, Article 1 contains general definitions and principles of construction and interpretation applicable

throughout this Article. [1993 c 229 § 5; 1965 ex.s. c 157 § 3-103.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**62A.3-104 Negotiable instrument.** (a) Except as provided in subsections (c) and (d), "negotiable instrument" means an unconditional promise or order to pay a fixed amount of money, with or without interest or other charges described in the promise or order, if it:

(1) Is payable to bearer or to order at the time it is issued or first comes into possession of a holder;

(2) Is payable on demand or at a definite time; and

(3) Does not state any other undertaking or instruction by the person promising or ordering payment to do any act in addition to the payment of money, but the promise or order may contain (i) an undertaking or power to give, maintain, or protect collateral to secure payment, (ii) an authorization or power to the holder to confess judgment or realize on or dispose of collateral, or (iii) a waiver of the benefit of any law intended for the advantage or protection of an obligor.

(b) "Instrument" means a negotiable instrument.

(c) An order that meets all of the requirements of subsection (a), except subsection (a)(1), and otherwise falls within the definition of "check" in subsection (f) is a negotiable instrument and a check.

(d) A promise or order other than a check is not an instrument if, at the time it is issued or first comes into possession of a holder, it contains a conspicuous statement, however expressed, to the effect that the promise or order is not negotiable or is not an instrument governed by this Article.

(e) An instrument is a "note" if it is a promise and is a "draft" if it is an order. If an instrument falls within the definition of both "note" and "draft," a person entitled to enforce the instrument may treat it as either.

(f) "Check" means (i) a draft, other than a documentary draft, payable on demand and drawn on a bank, or (ii) a cashier's check or teller's check. An instrument may be a check even though it is described on its face by another term, such as "money order."

(g) "Cashier's check" means a draft with respect to which the drawer and drawee are the same bank or branches of the same bank.

(h) "Teller's check" means a draft drawn by a bank (i) on another bank, or (ii) payable at or through a bank.

(i) "Traveler's check" means an instrument that (i) is payable on demand, (ii) is drawn on or payable at or through a bank, (iii) is designated by the term "traveler's check" or by a substantially similar term, and (iv) requires, as a condition to payment, a countersignature by a person whose specimen signature appears on the instrument.

(j) "Certificate of deposit" means an instrument containing an acknowledgment by a bank that a sum of money has been received by the bank and a promise by the bank to repay the sum of money. A certificate of deposit is a note of the bank. [1993 c 229 § 6; 1965 ex.s. c 157 § 3-104. Cf. former RCW sections: RCW 62.01.001, 62.01.005, 62.01.010, 62.01.126, 62.01.184, and 62.01.185; 1955 c 35 §§ 62.01.001, 62.01.005, 62.01.010, 62.01.126, 62.01.184, and 62.01.185; prior: 1899 c 149 §§ 1, 5, 10, 126, 184, and 185; RRS §§ 3392, 3396, 3401, 3516, 3574, and 3575.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**62A.3-105 Issue of instrument.** (a) "Issue" means the first delivery of an instrument by the maker or drawer, whether to a holder or nonholder, for the purpose of giving rights on the instrument to any person.

(b) An unissued instrument, or an unissued incomplete instrument that is completed, is binding on the maker or drawer, but nonissuance is a defense. An instrument that is conditionally issued or is issued for a special purpose is binding on the maker or drawer, but failure of the condition or special purpose to be fulfilled is a defense.

(c) "Issuer" applies to issued and unissued instruments and means a maker or drawer of an instrument. [1993 c 229 § 7; 1965 ex.s. c 157 § 3-105. Cf. former RCW 62.01.003; 1955 c 35 § 62.01.003; prior: 1899 c 149 § 3; RRS § 3394.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**62A.3-106 Unconditional promise or order.** (a) Except as provided in this section, for the purposes of RCW 62A.3-104(a), a promise or order is unconditional unless it states (i) an express condition to payment, (ii) that the promise or order is subject to or governed by another writing, or (iii) that rights or obligations with respect to the promise or order are stated in another writing. A reference to another writing does not of itself make the promise or order conditional.

(b) A promise or order is not made conditional (i) by a reference to another writing for a statement of rights with respect to collateral, prepayment, or acceleration, or (ii) because payment is limited to resort to a particular fund or source.

(c) If a promise or order requires, as a condition to payment, a countersignature by a person whose specimen signature appears on the promise or order, the condition does not make the promise or order conditional for the purposes of RCW 62A.3-104(a). If the person whose specimen signature appears on an instrument fails to countersign the instrument, the failure to countersign is a defense to the obligation of the issuer, but the failure does not prevent a transferee of the instrument from becoming a holder of the instrument.

(d) If a promise or order at the time it is issued or first comes into possession of a holder contains a statement, required by applicable statutory or administrative law, to the effect that the rights of a holder or transferee are subject to claims or defenses that the issuer could assert against the original payee, the promise or order is not thereby made conditional for the purposes of RCW 62A.3-104(a); but if the promise or order is an instrument, there cannot be a holder in due course of the instrument. [1993 c 229 § 8; 1989 c 13 § 1; 1965 ex.s. c 157 § 3-106. Cf. former RCW sections: (i) RCW 62.01.002; 1955 c 35 § 62.01.002; prior: 1899 c 149 § 2; RRS § 3393. (ii) RCW 62.01.006(5); 1955 c 35 § 62.01.006; prior: 1899 c 149 § 6; RRS § 3397.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**62A.3-107 Instrument payable in foreign money.** Unless the instrument otherwise provides, an instrument that states the amount payable in foreign money may be paid in the foreign money or in an equivalent amount in dollars cal-

culated by using the current bank-offered spot rate at the place of payment for the purchase of dollars on the day on which the instrument is paid. [1993 c 229 § 9; 1965 ex.s. c 157 § 3-107. Cf. former RCW 62.01.006(5); 1955 c 35 § 62.01.006; prior: 1899 c 149 § 6; RRS § 3397.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**62A.3-108 Payable on demand or at definite time.** (a) A promise or order is "payable on demand" if it (i) states that it is payable on demand or at sight, or otherwise indicates that it is payable at the will of the holder, or (ii) does not state any time of payment.

(b) A promise or order is "payable at a definite time" if it is payable on elapse of a definite period of time after sight or acceptance or at a fixed date or dates or at a time or times readily ascertainable at the time the promise or order is issued, subject to rights of (i) prepayment, (ii) acceleration, (iii) extension at the option of the holder, or (iv) extension to a further definite time at the option of the maker or acceptor or automatically upon or after a specified act or event.

(c) If an instrument, payable at a fixed date, is also payable upon demand made before the fixed date, the instrument is payable on demand until the fixed date and, if demand for payment is not made before that date, becomes payable at a definite time on the fixed date. [1993 c 229 § 10; 1965 ex.s. c 157 § 3-108. Cf. former RCW 62.01.007; 1955 c 35 § 62.01.007; prior: 1899 c 149 § 7; RRS § 3398.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**62A.3-109 Payable to bearer or to order.** (a) A promise or order is payable to bearer if it:

(1) States that it is payable to bearer or to the order of bearer or otherwise indicates that the person in possession of the promise or order is entitled to payment;

(2) Does not state a payee; or

(3) States that it is payable to or to the order of cash or otherwise indicates that it is not payable to an identified person.

(b) A promise or order that is not payable to bearer is payable to order if it is payable (i) to the order of an identified person or (ii) to an identified person or order. A promise or order that is payable to order is payable to the identified person.

(c) An instrument payable to bearer may become payable to an identified person if it is specially indorsed pursuant to RCW 62A.3-205(a). An instrument payable to an identified person may become payable to bearer if it is indorsed in blank pursuant to RCW 62A.3-205(b). [1993 c 229 § 11; 1989 c 13 § 2; 1965 ex.s. c 157 § 3-109. Cf. former RCW sections: (i) RCW 62.01.002(3); 1955 c 35 § 62.01.002; prior: 1899 c 149 § 2; RRS § 3393. (ii) RCW 62.01.004; 1955 c 35 § 62.01.004; prior: 1899 c 149 § 4; RRS § 3395. (iii) RCW 62.01.017(3); 1955 c 35 § 62.01.017; prior: 1899 c 149 § 17; RRS § 3408.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**62A.3-110 Identification of person to whom instrument is payable.** (a) The person to whom an instrument is initially payable is determined by the intent of the person, whether or not authorized, signing as, or in the name or

behalf of, the issuer of the instrument. The instrument is payable to the person intended by the signer even if that person is identified in the instrument by a name or other identification that is not that of the intended person. If more than one person signs in the name or behalf of the issuer of an instrument and all the signers do not intend the same person as payee, the instrument is payable to any person intended by one or more of the signers.

(b) If the signature of the issuer of an instrument is made by automated means, such as a check-writing machine, the payee of the instrument is determined by the intent of the person who supplied the name or identification of the payee, whether or not authorized to do so.

(c) A person to whom an instrument is payable may be identified in any way, including by name, identifying number, office, or account number. For the purpose of determining the holder of an instrument, the following rules apply:

(1) If an instrument is payable to an account and the account is identified only by number, the instrument is payable to the person to whom the account is payable. If an instrument is payable to an account identified by number and by the name of a person, the instrument is payable to the named person, whether or not that person is the owner of the account identified by number.

(2) If an instrument is payable to:

(i) A trust, an estate, or a person described as trustee or representative of a trust or estate, the instrument is payable to the trustee, the representative, or a successor of either, whether or not the beneficiary or estate is also named;

(ii) A person described as agent or similar representative of a named or identified person, the instrument is payable to the represented person, the representative, or a successor of the representative;

(iii) A fund or organization that is not a legal entity, the instrument is payable to a representative of the members of the fund or organization; or

(iv) An office or to a person described as holding an office, the instrument is payable to the named person, the incumbent of the office, or a successor to the incumbent.

(d) If an instrument is payable to two or more persons alternatively, it is payable to any of them and may be negotiated, discharged, or enforced by any or all of them in possession of the instrument. If an instrument is payable to two or more persons not alternatively, it is payable to all of them and may be negotiated, discharged, or enforced only by all of them. If an instrument payable to two or more persons is ambiguous as to whether it is payable to the persons alternatively, the instrument is payable to the persons alternatively. [1993 c 229 § 12; 1965 ex.s. c 157 § 3-110. Cf. former RCW 62.01.008; 1955 c 35 § 62.01.008; prior: 1899 c 149 § 8; RRS § 3399.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**62A.3-111 Place of payment.** Except as otherwise provided for items in Article 4, an instrument is payable at the place of payment stated in the instrument. If no place of payment is stated, an instrument is payable at the address of the drawee or maker stated in the instrument. If no address is stated, the place of payment is the place of business of the drawee or maker. If a drawee or maker has more than one

(2010 Ed.)

place of business, the place of payment is any place of business of the drawee or maker chosen by the person entitled to enforce the instrument. If the drawee or maker has no place of business, the place of payment is the residence of the drawee or maker. [1993 c 229 § 13; 1965 ex.s. c 157 § 3-111. Cf. former RCW 62.01.009; 1955 c 35 § 62.01.009; prior: 1899 c 149 § 9; RRS § 3400.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**62A.3-112 Interest.** (a) Unless otherwise provided in the instrument or in RCW 19.52.010, (i) an instrument is not payable with interest, and (ii) interest on an interest-bearing instrument is payable from the date of the instrument.

(b) Interest may be stated in an instrument as a fixed or variable amount of money or it may be expressed as a fixed or variable rate or rates. The amount or rate of interest may be stated or described in the instrument in any manner and may require reference to information not contained in the instrument. If an instrument provides for interest, but the amount of interest payable cannot be ascertained from the description, then except as otherwise provided in RCW 19.52.010, interest is payable at the judgment rate in effect at the place of payment of the instrument and at the time interest first accrues. [1996 c 77 § 3; 1993 c 229 § 14; 1965 ex.s. c 157 § 3-112. Cf. former RCW sections: (i) 62.01.005; 1955 c 35 § 62.01.005; prior: 1899 c 149 § 5; RRS § 3396. (ii) RCW 62.01.006; 1955 c 35 § 62.01.006; prior: 1899 c 149 § 6; RRS § 3397.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**62A.3-113 Date of instrument.** (a) An instrument may be antedated or postdated. The date stated determines the time of payment if the instrument is payable at a fixed period after date. Except as provided in RCW 62A.4-401(c), an instrument payable on demand is not payable before the date of the instrument.

(b) If an instrument is undated, its date is the date of its issue or, in the case of an unissued instrument, the date it first comes into possession of a holder. [1993 c 229 § 15; 1965 ex.s. c 157 § 3-113. Cf. former RCW 62.01.006(4); 1955 c 35 § 62.01.006; prior: 1899 c 149 § 6; RRS § 3397.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**62A.3-114 Contradictory terms of instrument.** If an instrument contains contradictory terms, typewritten terms prevail over printed terms, handwritten terms prevail over both, and words prevail over numbers. [1993 c 229 § 16; 1965 ex.s. c 157 § 3-114. Cf. former RCW sections: (i) RCW 62.01.006(1); 1955 c 35 § 62.01.006; prior: 1899 c 149 § 6; RRS § 3397. (ii) RCW 62.01.011; 1955 c 35 § 62.01.011; prior: 1899 c 149 § 11; RRS § 3402. (iii) RCW 62.01.012; 1955 c 35 § 62.01.012; prior: 1899 c 149 § 12; RRS § 3403. (iv) RCW 62.01.017(3); 1955 c 35 § 62.01.017; prior: 1899 c 149 § 17; RRS § 3408.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**62A.3-115 Incomplete instrument.** (a) "Incomplete instrument" means a signed writing, whether or not issued by the signer, the contents of which show at the time of signing

that it is incomplete but that the signer intended it to be completed by the addition of words or numbers.

(b) Subject to subsection (c), if an incomplete instrument is an instrument under RCW 62A.3-104, it may be enforced according to its terms if it is not completed, or according to its terms as augmented by completion. If an incomplete instrument is not an instrument under RCW 62A.3-104, but, after completion, the requirements of RCW 62A.3-104 are met, the instrument may be enforced according to its terms as augmented by completion.

(c) If words or numbers are added to an incomplete instrument without authority of the signer, there is an alteration of the incomplete instrument under RCW 62A.3-407.

(d) The burden of establishing that words or numbers were added to an incomplete instrument without authority of the signer is on the person asserting the lack of authority. [1993 c 229 § 17; 1965 ex.s. c 157 § 3-115. Cf. former RCW sections: (i) RCW 62.01.013; 1955 c 35 § 62.01.013; prior: 1899 c 149 § 13; RRS § 3404. (ii) RCW 62.01.014; 1955 c 35 § 62.01.014; prior: 1899 c 149 § 14; RRS § 3405. (iii) RCW 62.01.015; 1955 c 35 § 62.01.015; prior: 1899 c 149 § 15; RRS § 3406.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

#### **62A.3-116 Joint and several liability; contribution.**

(a) Except as otherwise provided in the instrument, two or more persons who have the same liability on an instrument as makers, drawers, acceptors, indorsers who indorse as joint payees, or anomalous indorsers are jointly and severally liable in the capacity in which they sign.

(b) Except as provided in RCW 62A.3-419(e) or by agreement of the affected parties, a party having joint and several liability who pays the instrument is entitled to receive from any party having the same joint and several liability contribution in accordance with applicable law.

(c) Discharge of one party having joint and several liability by a person entitled to enforce the instrument does not affect the right under subsection (b) of a party having the same joint and several liability to receive contribution from the party discharged. [1993 c 229 § 18; 1965 ex.s. c 157 § 3-116. Cf. former RCW 62.01.041; 1955 c 35 § 62.01.041; prior: 1899 c 149 § 41; RRS § 3432.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

#### **62A.3-117 Other agreements affecting instrument.**

Subject to applicable law regarding exclusion of proof of contemporaneous or previous agreements, the obligation of a party to an instrument to pay the instrument may be modified, supplemented, or nullified by a separate agreement of the obligor and a person entitled to enforce the instrument, if the instrument is issued or the obligation is incurred in reliance on the agreement or as part of the same transaction giving rise to the agreement. To the extent an obligation is modified, supplemented, or nullified by an agreement under this section, the agreement is a defense to the obligation. [1993 c 229 § 19; 1965 ex.s. c 157 § 3-117. Cf. former RCW 62.01.042; 1955 c 35 § 62.01.042; prior: 1899 c 149 § 42; RRS § 3433.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**62A.3-118 Statute of limitations.** (a) Except as provided in subsection (e), an action to enforce the obligation of a party to pay a note payable at a definite time must be commenced within six years after the due date or dates stated in the note or, if a due date is accelerated, within six years after the accelerated due date.

(b) Except as provided in subsection (d) or (e), if demand for payment is made to the maker of a note payable on demand, an action to enforce the obligation of a party to pay the note must be commenced within six years after the demand. If no demand for payment is made to the maker, an action to enforce the note is barred if neither principal nor interest on the note has been paid for a continuous period of ten years.

(c) Except as provided in subsection (d), an action to enforce the obligation of a party to an unaccepted draft to pay the draft must be commenced within six years after dishonor of the draft or ten years after the date of the draft, whichever period expires first.

(d) An action to enforce the obligation of the acceptor of a certified check or the issuer of a teller's check, cashier's check, or traveler's check must be commenced within three years after demand for payment is made to the acceptor or issuer, as the case may be.

(e) An action to enforce the obligation of a party to a certificate of deposit to pay the instrument must be commenced within six years after demand for payment is made to the maker, but if the instrument states a due date and the maker is not required to pay before that date, the six-year period begins when a demand for payment is in effect and the due date has passed.

(f) An action to enforce the obligation of a party to pay an accepted draft, other than a certified check, must be commenced (i) within six years after the due date or dates stated in the draft or acceptance if the obligation of the acceptor is payable at a definite time, or (ii) within six years after the date of the acceptance if the obligation of the acceptor is payable on demand.

(g) Unless governed by other law regarding claims for indemnity or contribution, an action (i) for conversion of an instrument, for money had and received, or like action based on conversion, (ii) for breach of warranty, or (iii) to enforce an obligation, duty, or right arising under this Article and not governed by this section must be commenced within three years after the cause of action accrues. [1995 c 74 § 1; 1993 c 229 § 20; 1965 ex.s. c 157 § 3-118. Cf. former RCW sections: (i) RCW 62.01.017; 1955 c 35 § 62.01.017; prior: 1899 c 149 § 17; RRS § 3408. (ii) RCW 62.01.068; 1955 c 35 § 62.01.068; prior: 1899 c 149 § 68; RRS § 3459. (iii) RCW 62.01.130; 1955 c 35 § 62.01.130; prior: 1899 c 149 § 130; RRS § 3520.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**62A.3-119 Notice of right to defend action.** In an action for breach of an obligation for which a third person is answerable over pursuant to this Article or Article 4, the defendant may give the third person written notice of the litigation, and the person notified may then give similar notice to any other person who is answerable over. If the notice states (i) that the person notified may come in and defend and (ii) that failure to do so will bind the person notified in an

action later brought by the person giving the notice as to any determination of fact common to the two litigations, the person notified is so bound unless after reasonable receipt of the notice the person notified does come in and defend. [1993 c 229 § 21; 1965 ex.s. c 157 § 3-119.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

## PART 2 NEGOTIATION, TRANSFER, AND INDORSEMENT

**62A.3-201 Negotiation.** (a) "Negotiation" means a transfer of possession, whether voluntary or involuntary, of an instrument by a person other than the issuer to a person who thereby becomes its holder.

(b) Except for negotiation by a remitter, if an instrument is payable to an identified person, negotiation requires transfer of possession of the instrument and its indorsement by the holder. If an instrument is payable to bearer, it may be negotiated by transfer of possession alone. [1993 c 229 § 22; 1965 ex.s. c 157 § 3-201. Cf. former RCW sections: (i) RCW 62.01.027; 1955 c 35 § 62.01.027; prior: 1899 c 149 § 27; RRS § 3418. (ii) RCW 62.01.049; 1955 c 35 § 62.01.049; prior: 1899 c 149 § 49; RRS § 3440. (iii) RCW 62.01.058; 1955 c 35 § 62.01.058; prior: 1899 c 149 § 58; RRS § 3449.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**62A.3-202 Negotiation subject to rescission.** (a) Negotiation is effective even if obtained (i) from an infant, a corporation exceeding its powers, or a person without capacity, (ii) by fraud, duress, or mistake, or (iii) in breach of duty or as part of an illegal transaction.

(b) To the extent permitted by other law, negotiation may be rescinded or may be subject to other remedies, but those remedies may not be asserted against a subsequent holder in due course or a person paying the instrument in good faith and without knowledge of facts that are a basis for rescission or other remedy. [1993 c 229 § 23; 1965 ex.s. c 157 § 3-202. Cf. former RCW sections: (i) RCW 62.01.030; 1955 c 35 § 62.01.030; prior: 1899 c 149 § 30; RRS § 3421. (ii) RCW 62.01.031; 1955 c 35 § 62.01.031; prior: 1899 c 149 § 31; RRS § 3422. (iii) RCW 62.01.032; 1955 c 35 § 62.01.032; prior: 1899 c 149 § 32; RRS § 3423.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**62A.3-203 Transfer of instrument; rights acquired by transfer.** (a) An instrument is transferred when it is delivered by a person other than its issuer for the purpose of giving to the person receiving delivery the right to enforce the instrument.

(b) Transfer of an instrument, whether or not the transfer is a negotiation, vests in the transferee any right of the transferor to enforce the instrument, including any right as a holder in due course, but the transferee cannot acquire rights of a holder in due course by a transfer, directly or indirectly, from a holder in due course if the transferee engaged in fraud or illegality affecting the instrument.

(c) Unless otherwise agreed, if an instrument is transferred for value and the transferee does not become a holder because of lack of indorsement by the transferor, the transferee has a specifically enforceable right to the unqualified

(2010 Ed.)

indorsement of the transferor, but negotiation of the instrument does not occur until the indorsement is made.

(d) If a transferor purports to transfer less than the entire instrument, negotiation of the instrument does not occur. The transferee obtains no rights under this Article and has only the rights of a partial assignee. [1993 c 229 § 24; 1965 ex.s. c 157 § 3-203. Cf. former RCW 62.01.043; 1955 c 35 § 62.01.043; prior: 1899 c 149 § 43; RRS § 3434.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**62A.3-204 Indorsement.** (a) "Indorsement" means a signature, other than that of a signer as maker, drawer, or acceptor, that alone or accompanied by other words is made on an instrument for the purpose of (i) negotiating the instrument, (ii) restricting payment of the instrument, or (iii) incurring indorser's liability on the instrument, but regardless of the intent of the signer, a signature and its accompanying words is an indorsement unless the accompanying words, terms of the instrument, place of the signature, or other circumstances unambiguously indicate that the signature was made for a purpose other than indorsement. For the purpose of determining whether a signature is made on an instrument, a paper affixed to the instrument is a part of the instrument.

(b) "Indorser" means a person who makes an indorsement.

(c) For the purpose of determining whether the transferee of an instrument is a holder, an indorsement that transfers a security interest in the instrument is effective as an unqualified indorsement of the instrument.

(d) If an instrument is payable to a holder under a name that is not the name of the holder, indorsement may be made by the holder in the name stated in the instrument or in the holder's name or both, but signature in both names may be required by a person paying or taking the instrument for value or collection. [1993 c 229 § 25; 1965 ex.s. c 157 § 3-204. Cf. former RCW sections: (i) RCW 62.01.009(5); 1955 c 35 § 62.01.009; prior: 1899 c 149 § 9; RRS § 3400. (ii) RCW 62.01.033 through 62.01.036; 1955 c 35 §§ 62.01.033 through 62.01.036; prior: 1899 c 149 §§ 33 through 36; RRS §§ 3424 through 3427. (iii) RCW 62.01.040; 1955 c 35 § 62.01.040; prior: 1899 c 149 § 40; RRS § 3431.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**62A.3-205 Special indorsement; blank indorsement; anomalous indorsement.** (a) If an indorsement is made by the holder of an instrument, whether payable to an identified person or payable to bearer, and the indorsement identifies a person to whom it makes the instrument payable, it is a "special indorsement." When specially indorsed, an instrument becomes payable to the identified person and may be negotiated only by the indorsement of that person. The principles stated in RCW 62A.3-110 apply to special indorsements.

(b) If an indorsement is made by the holder of an instrument and it is not a special indorsement, it is a "blank indorsement." When indorsed in blank, an instrument becomes payable to bearer and may be negotiated by transfer of possession alone until specially indorsed.

(c) The holder may convert a blank indorsement that consists only of a signature into a special indorsement by

writing, above the signature of the indorser, words identifying the person to whom the instrument is made payable.

(d) "Anomalous indorsement" means an indorsement made by a person who is not the holder of the instrument. An anomalous indorsement does not affect the manner in which the instrument may be negotiated. [1993 c 229 § 26; 1965 ex.s. c 157 § 3-205. Cf. former RCW sections: (i) RCW 62.01.036; 1955 c 35 § 62.01.036; prior: 1899 c 149 § 36; RRS § 3427. (ii) RCW 62.01.039; 1955 c 35 § 62.01.039; prior: 1899 c 149 § 39; RRS § 3430.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**62A.3-206 Restrictive indorsement.** (a) An indorsement limiting payment to a particular person or otherwise prohibiting further transfer or negotiation of the instrument is not effective to prevent further transfer or negotiation of the instrument.

(b) An indorsement stating a condition to the right of the indorsee to receive payment does not affect the right of the indorsee to enforce the instrument. A person paying the instrument or taking it for value or collection may disregard the condition, and the rights and liabilities of that person are not affected by whether the condition has been fulfilled.

(c) If an instrument bears an indorsement (i) described in RCW 62A.4-201(b), or (ii) in blank or to a particular bank using the words "for deposit," "for collection," or other words indicating a purpose of having the instrument collected by a bank for the indorser or for a particular account, the following rules apply:

(1) A person, other than a bank, who purchases the instrument when so indorsed converts the instrument unless the amount paid for the instrument is received by the indorser or applied consistently with the indorsement.

(2) A depository bank that purchases the instrument or takes it for collection when so indorsed converts the instrument unless the amount paid by the bank with respect to the instrument is received by the indorser or applied consistently with the indorsement.

(3) A payor bank that is also the depository bank or that takes the instrument for immediate payment over the counter from a person other than a collecting bank converts the instrument unless the proceeds of the instrument are received by the indorser or applied consistently with the indorsement.

(4) Except as otherwise provided in subsection (c)(3), a payor bank or intermediary bank may disregard the indorsement and is not liable if the proceeds of the instrument are not received by the indorser or applied consistently with the indorsement.

(d) Except for an indorsement covered by subsection (c), if an instrument bears an indorsement using words to the effect that payment is to be made to the indorsee as agent, trustee, or other fiduciary for the benefit of the indorser or another person, the following rules apply:

(1) Unless there is notice of breach of fiduciary duty as provided in RCW 62A.3-307, a person who purchases the instrument from the indorsee or takes the instrument from the indorsee for collection or payment may pay the proceeds of payment or the value given for the instrument to the indorsee without regard to whether the indorsee violates a fiduciary duty to the indorser.

(2) A subsequent transferee of the instrument or person who pays the instrument is neither given notice nor otherwise affected by the restriction in the indorsement unless the transferee or payor knows that the fiduciary dealt with the instrument or its proceeds in breach of fiduciary duty.

(e) The presence on an instrument of an indorsement to which this section applies does not prevent a purchaser of the instrument from becoming a holder in due course of the instrument unless the purchaser is a converter under subsection (c) or has notice or knowledge of breach of fiduciary duty as stated in subsection (d).

(f) In an action to enforce the obligation of a party to pay the instrument, the obligor has a defense if payment would violate an indorsement to which this section applies and the payment is not permitted by this section. [1993 c 229 § 27; 1965 ex.s. c 157 § 3-206. Cf. former RCW sections: (i) RCW 62.01.036; 1955 c 35 § 62.01.036; prior: 1899 c 149 § 36; RRS § 3427. (ii) RCW 62.01.037; 1955 c 35 § 62.01.037; prior: 1899 c 149 § 37; RRS § 3428. (iii) RCW 62.01.039; 1955 c 35 § 62.01.039; prior: 1899 c 149 § 39; RRS § 3430. (iv) RCW 62.01.047; 1955 c 35 § 62.01.047; prior: 1899 c 149 § 47; RRS § 3438.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**62A.3-207 Reacquisition.** Reacquisition of an instrument occurs if it is transferred to a former holder, by negotiation or otherwise. A former holder who reacquires the instrument may cancel indorsements made after the reacquirer first became a holder of the instrument. If the cancellation causes the instrument to be payable to the reacquirer or to bearer, the reacquirer may negotiate the instrument. An indorser whose indorsement is canceled is discharged, and the discharge is effective against any subsequent holder. [1993 c 229 § 28; 1965 ex.s. c 157 § 3-207. Cf. former RCW sections: (i) RCW 62.01.022; 1955 c 35 § 62.01.022; prior: 1899 c 149 § 22; RRS § 3413. (ii) RCW 62.01.058; 1955 c 35 § 62.01.058; prior: 1899 c 149 § 58; RRS § 3449. (iii) RCW 62.01.059; 1955 c 35 § 62.01.059; prior: 1899 c 149 § 59; RRS § 3450.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

## PART 3 ENFORCEMENT OF INSTRUMENTS

**62A.3-301 Person entitled to enforce instrument.** "Person entitled to enforce" an instrument means (i) the holder of the instrument, (ii) a nonholder in possession of the instrument who has the rights of a holder, or (iii) a person not in possession of the instrument who is entitled to enforce the instrument pursuant to RCW 62A.3-309 or 62A.3-418(d). A person may be a person entitled to enforce the instrument even though the person is not the owner of the instrument or is in wrongful possession of the instrument. [1993 c 229 § 29; 1965 ex.s. c 157 § 3-301. Cf. former RCW 62.01.051; 1955 c 35 § 62.01.051; prior: 1899 c 149 § 51; RRS § 3442.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**62A.3-302 Holder in due course.** (a) Subject to subsection (c) and RCW 62A.3-106(d), "holder in due course" means the holder of an instrument if:

(1) The instrument when issued or negotiated to the holder does not bear such apparent evidence of forgery or alteration or is not otherwise so irregular or incomplete as to call into question its authenticity; and

(2) The holder took the instrument (i) for value, (ii) in good faith, (iii) without notice that the instrument is overdue or has been dishonored or that there is an uncured default with respect to payment of another instrument issued as part of the same series, (iv) without notice that the instrument contains an unauthorized signature or has been altered, (v) without notice of any claim to the instrument described in RCW 62A.3-306, and (vi) without notice that any party has a defense or claim in recoupment described in RCW 62A.3-305(a).

(b) Notice of discharge of a party, other than discharge in an insolvency proceeding, is not notice of a defense under subsection (a), but discharge is effective against a person who became a holder in due course with notice of the discharge. Public filing or recording of a document does not of itself constitute notice of a defense, claim in recoupment, or claim to the instrument.

(c) Except to the extent a transferor or predecessor in interest has rights as a holder in due course, a person does not acquire rights of a holder in due course of an instrument taken (i) by legal process or by purchase in an execution, bankruptcy, or creditor's sale or similar proceeding, (ii) by purchase as part of a bulk transaction not in ordinary course of business of the transferor, or (iii) as the successor in interest to an estate or other organization.

(d) If, under RCW 62A.3-303(a)(1), the promise of performance that is the consideration for an instrument has been partially performed, the holder may assert rights as a holder in due course of the instrument only to the fraction of the amount payable under the instrument equal to the value of the partial performance divided by the value of the promised performance.

(e) If (i) the person entitled to enforce an instrument has only a security interest in the instrument and (ii) the person obliged to pay the instrument has a defense, claim in recoupment, or claim to the instrument that may be asserted against the person who granted the security interest, the person entitled to enforce the instrument may assert rights as a holder in due course only to an amount payable under the instrument which, at the time of enforcement of the instrument, does not exceed the amount of the unpaid obligation secured.

(f) To be effective, notice must be received at a time and in a manner that gives a reasonable opportunity to act on it.

(g) This section is subject to any law limiting status as a holder in due course in particular classes of transactions. [1993 c 229 § 30; 1965 ex.s. c 157 § 3-302. Cf. former RCW sections: (i) RCW 62.01.027; 1955 c 35 § 62.01.027; prior: 1899 c 149 § 27; RRS § 3418. (ii) RCW 62.01.052; 1955 c 35 § 62.01.052; prior: 1899 c 149 § 52; RRS § 3443.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**62A.3-303 Value and consideration.** (a) An instrument is issued or transferred for value if:

(1) The instrument is issued or transferred for a promise of performance, to the extent the promise has been performed;

(2010 Ed.)

(2) The transferee acquires a security interest or other lien in the instrument other than a lien obtained by judicial proceeding;

(3) The instrument is issued or transferred as payment of, or as security for, an antecedent claim against any person, whether or not the claim is due;

(4) The instrument is issued or transferred in exchange for a negotiable instrument; or

(5) The instrument is issued or transferred in exchange for the incurring of an irrevocable obligation to a third party by the person taking the instrument.

(b) "Consideration" means any consideration sufficient to support a simple contract. The drawer or maker of an instrument has a defense if the instrument is issued without consideration. If an instrument is issued for a promise of performance, the issuer has a defense to the extent performance of the promise is due and the promise has not been performed. If an instrument is issued for value as stated in subsection (a), the instrument is also issued for consideration. [1993 c 229 § 31; 1965 ex.s. c 157 § 3-303. Cf. former RCW sections: (i) RCW 62.01.025 through 62.01.027; 1955 c 35 §§ 62.01.025 through 62.01.027; prior: 1899 c 149 §§ 25 through 27; RRS §§ 3416 through 3418. (ii) RCW 62.01.054; 1955 c 35 § 62.01.054; prior: 1899 c 149 § 54; RRS § 3445.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**62A.3-304 Overdue instrument.** (a) An instrument payable on demand becomes overdue at the earliest of the following times:

(1) On the day after the day demand for payment is duly made;

(2) If the instrument is a check, 90 days after its date; or

(3) If the instrument is not a check, when the instrument has been outstanding for a period of time after its date which is unreasonably long under the circumstances of the particular case in light of the nature of the instrument and usage of the trade.

(b) With respect to an instrument payable at a definite time the following rules apply:

(1) If the principal is payable in installments and a due date has not been accelerated, the instrument becomes overdue upon default under the instrument for nonpayment of an installment, and the instrument remains overdue until the default is cured.

(2) If the principal is not payable in installments and the due date has not been accelerated, the instrument becomes overdue on the day after the due date.

(3) If a due date with respect to principal has been accelerated, the instrument becomes overdue on the day after the accelerated due date.

(c) Unless the due date of principal has been accelerated, an instrument does not become overdue if there is default in payment of interest but no default in payment of principal. [1993 c 229 § 32; 1965 ex.s. c 157 § 3-304. Cf. former RCW sections: (i) RCW 62.01.045, 62.01.052, 62.01.053, 62.01.055, and 62.01.056; 1955 c 35 §§ 62.01.045, 62.01.052, 62.01.053, 62.01.055, and 62.01.056; prior: 1899 c 149 §§ 45, 52, 53, 55, and 56; RRS §§ 3436, 3443, 3444, 3446, and 3447. (ii) RCW 62.01.0195; 1955 c 35 §

62.01.0195; prior: 1927 c 296 § 1; 1925 ex.s. c 54 § 1; RRS § 3410-1.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**62A.3-305 Defenses and claims in recoupment.** (a) Except as stated in subsection (b), the right to enforce the obligation of a party to pay an instrument is subject to the following:

(1) A defense of the obligor based on (i) infancy of the obligor to the extent it is a defense to a simple contract, (ii) duress, lack of legal capacity, or illegality of the transaction which, under other law, nullifies the obligation of the obligor, (iii) fraud that induced the obligor to sign the instrument with neither knowledge nor reasonable opportunity to learn of its character or its essential terms, or (iv) discharge of the obligor in insolvency proceedings;

(2) A defense of the obligor stated in another section of this Article or a defense of the obligor that would be available if the person entitled to enforce the instrument were enforcing a right to payment under a simple contract; and

(3) A claim in recoupment of the obligor against the original payee of the instrument if the claim arose from the transaction that gave rise to the instrument; but the claim of the obligor may be asserted against a transferee of the instrument only to reduce the amount owing on the instrument at the time the action is brought.

(b) The right of a holder in due course to enforce the obligation of a party to pay the instrument is subject to defenses of the obligor stated in subsection (a)(1), but is not subject to defenses of the obligor stated in subsection (a)(2) or claims in recoupment stated in subsection (a)(3) against a person other than the holder.

(c) Except as stated in subsection (d), in an action to enforce the obligation of a party to pay the instrument, the obligor may not assert against the person entitled to enforce the instrument a defense, claim in recoupment, or claim to the instrument (RCW 62A.3-306) of another person, but the other person's claim to the instrument may be asserted by the obligor if the other person is joined in the action and personally asserts the claim against the person entitled to enforce the instrument. An obligor is not obliged to pay the instrument if the person seeking enforcement of the instrument does not have rights of a holder in due course and the obligor proves that the instrument is a lost or stolen instrument.

(d) In an action to enforce the obligation of an accommodation party to pay an instrument, the accommodation party may assert against the person entitled to enforce the instrument any defense or claim in recoupment under subsection (a) that the accommodated party could assert against the person entitled to enforce the instrument, except the defenses of discharge in insolvency proceedings, infancy, and lack of legal capacity. [1993 c 229 § 33; 1965 ex.s. c 157 § 3-305. Cf. former RCW sections: (i) RCW 62.01.015; 1955 c 35 § 62.01.015; prior: 1899 c 149 § 15; RRS § 3406. (ii) RCW 62.01.016; 1955 c 35 § 62.01.016; prior: 1899 c 149 § 16; RRS § 3407. (iii) RCW 62.01.057; 1955 c 35 § 62.01.057; prior: 1899 c 149 § 57; RRS § 3448.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**62A.3-306 Claims to an instrument.** A person taking an instrument, other than a person having rights of a holder in due course, is subject to a claim of a property or possessory right in the instrument or its proceeds, including a claim to rescind a negotiation and to recover the instrument or its proceeds. A person having rights of a holder in due course takes free of the claim to the instrument. [1993 c 229 § 34; 1965 ex.s. c 157 § 3-306. Cf. former RCW sections: (i) RCW 62.01.016; 1955 c 35 § 62.01.016; prior: 1899 c 149 § 16; RRS § 3407. (ii) RCW 62.01.028; 1955 c 35 § 62.01.028; prior: 1899 c 149 § 28; RRS § 3419. (iii) RCW 62.01.058; 1955 c 35 § 62.01.058; prior: 1899 c 149 § 58; RRS § 3449. (iv) RCW 62.01.059; 1955 c 35 § 62.01.059; prior: 1899 c 149 § 59; RRS § 3450.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**62A.3-307 Notice of breach of fiduciary duty.** (a) In this section:

(1) "Fiduciary" means an agent, trustee, partner, corporate officer or director, or other representative owing a fiduciary duty with respect to an instrument.

(2) "Represented person" means the principal, beneficiary, partnership, corporation, or other person to whom the duty stated in subsection (a)(1) is owed.

(b) If (i) an instrument is taken from a fiduciary for payment or collection or for value, (ii) the taker has knowledge of the fiduciary status of the fiduciary, and (iii) the represented person makes a claim to the instrument or its proceeds on the basis that the transaction of the fiduciary is a breach of fiduciary duty, the following rules apply:

(1) Notice of breach of fiduciary duty by the fiduciary is notice of the claim of the represented person.

(2) In the case of an instrument payable to the represented person or the fiduciary as such, the taker has notice of the breach of fiduciary duty if the instrument is (i) taken in payment of or as security for a debt known by the taker to be the personal debt of the fiduciary, (ii) taken in a transaction known by the taker to be for the personal benefit of the fiduciary, or (iii) deposited to an account other than an account of the fiduciary, as such, or an account of the represented person.

(3) If an instrument is issued by the represented person or the fiduciary as such, and made payable to the fiduciary personally, the taker does not have notice of the breach of fiduciary duty unless the taker knows of the breach of fiduciary duty.

(4) If an instrument is issued by the represented person or the fiduciary as such, to the taker as payee, the taker has notice of the breach of fiduciary duty if the instrument is (i) taken in payment of or as security for a debt known by the taker to be the personal debt of the fiduciary, (ii) taken in a transaction known by the taker to be for the personal benefit of the fiduciary, or (iii) deposited to an account other than an account of the fiduciary, as such, or an account of the represented person. [1993 c 229 § 35; 1965 ex.s. c 157 § 3-307. Cf. former RCW 62.01.059; 1955 c 35 § 62.01.059; prior: 1899 c 149 § 59; RRS § 3450.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**62A.3-308 Proof of signatures and status as holder in due course.** (a) In an action with respect to an instrument, the authenticity of, and authority to make, each signature on the instrument is admitted unless specifically denied in the pleadings. If the validity of a signature is denied in the pleadings, the burden of establishing validity is on the person claiming validity, but the signature is presumed to be authentic and authorized unless the action is to enforce the liability of the purported signer and the signer is dead or incompetent at the time of trial of the issue of validity of the signature. If an action to enforce the instrument is brought against a person as the undisclosed principal of a person who signed the instrument as a party to the instrument, the plaintiff has the burden of establishing that the defendant is liable on the instrument as a represented person under RCW 62A.3-402(a).

(b) If the validity of signatures is admitted or proved and there is compliance with subsection (a), a plaintiff producing the instrument is entitled to payment if the plaintiff proves entitlement to enforce the instrument under RCW 62A.3-301, unless the defendant proves a defense or claim in recoupment. If a defense or claim in recoupment is proved, the right to payment of the plaintiff is subject to the defense or claim, except to the extent the plaintiff proves that the plaintiff has rights of a holder in due course which are not subject to the defense or claim. [1993 c 229 § 36.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**62A.3-309 Enforcement of lost, destroyed, or stolen instrument.** (a) A person not in possession of an instrument is entitled to enforce the instrument if (i) the person was in possession of the instrument and entitled to enforce it when loss of possession occurred, (ii) the loss of possession was not the result of a transfer by the person or a lawful seizure, and (iii) the person cannot reasonably obtain possession of the instrument because the instrument was destroyed, its whereabouts cannot be determined, or it is in the wrongful possession of an unknown person or a person that cannot be found or is not amenable to service of process.

(b) A person seeking enforcement of an instrument under subsection (a) must prove the terms of the instrument and the person's right to enforce the instrument. If that proof is made, RCW 62A.3-308 applies to the case as if the person seeking enforcement had produced the instrument. The court may not enter judgment in favor of the person seeking enforcement unless it finds that the person required to pay the instrument is adequately protected against loss that might occur by reason of a claim by another person to enforce the instrument. Adequate protection may be provided by any reasonable means. [1993 c 229 § 37.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**62A.3-310 Effect of instrument on obligation for which taken.** (a) Unless otherwise agreed, if a certified check, cashier's check, or teller's check is taken for an obligation, the obligation is discharged to the same extent discharge would result if an amount of money equal to the amount of the instrument were taken in payment of the obligation. Discharge of the obligation does not affect any liability that the obligor may have as an indorser of the instrument.

(2010 Ed.)

(b) Unless otherwise agreed and except as provided in subsection (a), if a note or an uncertified check is taken for an obligation, the obligation is suspended to the same extent the obligation would be discharged if an amount of money equal to the amount of the instrument were taken, and the following rules apply:

(1) In the case of an uncertified check, suspension of the obligation continues until dishonor of the check or until it is paid or certified. Payment or certification of the check results in discharge of the obligation to the extent of the amount of the check.

(2) In the case of a note, suspension of the obligation continues until dishonor of the note or until it is paid. Payment of the note results in discharge of the obligation to the extent of the payment.

(3) Except as provided in subsection (b)(4), if the check or note is dishonored and the obligee of the obligation for which the instrument was taken is the person entitled to enforce the instrument, the obligee may enforce either the instrument or the obligation. In the case of an instrument of a third person which is negotiated to the obligee by the obligor, discharge of the obligor on the instrument also discharges the obligation.

(4) If the person entitled to enforce the instrument taken for an obligation is a person other than the obligee, the obligee may not enforce the obligation to the extent the obligation is suspended. If the obligee is the person entitled to enforce the instrument but no longer has possession of it because it was lost, stolen, or destroyed, the obligation may not be enforced to the extent of the amount payable on the instrument, and to that extent the obligee's rights against the obligor are limited to enforcement of the instrument.

(c) If an instrument other than one described in subsection (a) or (b) is taken for an obligation, the effect is (i) that stated in subsection (a) if the instrument is one on which a bank is liable as maker or acceptor, or (ii) that stated in subsection (b) in any other case. [1993 c 229 § 38.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**62A.3-311 Accord and satisfaction by use of instrument.** (a) If a person against whom a claim is asserted proves that (i) that person in good faith tendered an instrument to the claimant as full satisfaction of the claim, (ii) the amount of the claim was unliquidated or subject to a bona fide dispute, and (iii) the claimant obtained payment of the instrument, the following subsections apply.

(b) Unless subsection (c) applies, the claim is discharged if the person against whom the claim is asserted proves that the instrument or an accompanying written communication contained a conspicuous statement to the effect that the instrument was tendered as full satisfaction of the claim.

(c) Subject to subsection (d), a claim is not discharged under subsection (b) if either of the following applies:

(1) The claimant, if an organization, proves that (i) within a reasonable time before the tender, the claimant sent a conspicuous statement to the person against whom the claim is asserted that communications concerning disputed debts, including an instrument tendered as full satisfaction of a debt, are to be sent to a designated person, office, or place,

and (ii) the instrument or accompanying communication was not received by that designated person, office, or place.

(2) The claimant, whether or not an organization, proves that within 90 days after payment of the instrument, the claimant tendered repayment of the amount of the instrument to the person against whom the claim is asserted. This subsection (c)(2) does not apply if the claimant is an organization that sent a statement complying with subsection (c)(1)(i).

(d) A claim is discharged if the person against whom the claim is asserted proves that within a reasonable time before collection of the instrument was initiated, the claimant, or an agent of the claimant having direct responsibility with respect to the disputed obligation, knew that the instrument was tendered in full satisfaction of the claim. [1993 c 229 § 39.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**62A.3-312 Lost, destroyed, or stolen cashier's check, teller's check, or certified check.** (a) In this section:

(1) "Check" means a cashier's check, teller's check, or certified check.

(2) "Claimant" means a person who claims the right to receive the amount of a cashier's check, teller's check, or certified check that was lost, destroyed, or stolen.

(3) "Declaration of loss" means a written statement, made under penalty of perjury, to the effect that (i) the declarer lost possession of a check, (ii) the declarer is the drawer or payee of the check, in the case of a certified check, or the remitter or payee of the check, in the case of a cashier's check or teller's check, (iii) the loss of possession was not the result of a transfer by the declarer or a lawful seizure, and (iv) the declarer cannot reasonably obtain possession of the check because the check was destroyed, its whereabouts cannot be determined, or it is in the wrongful possession of an unknown person or a person that cannot be found or is not amendable [amenable] to service of process.

(4) "Obligated bank" means the insurer of a cashier's check or teller's check or the acceptor of a certified check.

(b) A claimant may assert a claim to the amount of a check by a communication to the obligated bank describing the check with reasonable certainty and requesting payment of the amount of the check, if (i) the claimant is the drawer or payee of a certified check or the remitter or payee of a cashier's check or teller's check, (ii) the communication contains or is accompanied by a declaration of loss of the claimant with respect to the check, (iii) the communication is received at a time and in a manner affording the bank a reasonable time to act on it before the check is paid, and (iv) the claimant provides reasonable identification if requested by the obligated bank. Delivery of a declaration of loss is a warranty of the truth of the statements made in the declaration. If a claim is asserted in compliance with this subsection, the following rules apply:

(1) The claim becomes enforceable at the later of (i) the time the claim is asserted, or (ii) the ninetieth day following the date of the check, in the case of a cashier's check or teller's check, or the ninetieth day following the date of the acceptance, in the case of a certified check.

(2) Until the claim becomes enforceable, it has no legal effect and the obligated bank may pay the check or, in the case of a teller's check, may permit the drawee to pay the

check. Payment to a person entitled to enforce the check discharges all liability of the obligated bank with respect to the check.

(3) If the claim becomes enforceable before the check is presented for payment, the obligated bank is not obliged to pay the check.

(4) When the claim becomes enforceable, the obligated bank becomes obliged to pay the amount of the check to the claimant if payment of the check has not been made to a person entitled to enforce the check. Subject to RCW 62A.4-302(a), payment to the claimant discharges all liability of the obligated bank with respect to the check.

(c) If the obligated bank pays the amount of a check to a claimant under subsection (b)(4) and the check is presented for payment by a person having rights of a holder in due course, the claimant is obliged to (i) refund the payment to the obligated bank if the check is paid, or (ii) pay the amount of the check to the person having rights of a holder in due course if the check is dishonored.

(d) If a claimant has the right to assert a claim under subsection (b) and is also a person entitled to enforce a cashier's check, teller's check, or certified check that is lost, destroyed, or stolen, the claimant may assert rights with respect to the check under this section. [1993 c 229 § 40.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

#### PART 4 LIABILITY OF PARTIES

**62A.3-401 Signature.** (a) A person is not liable on an instrument unless (i) the person signed the instrument, or (ii) the person is represented by an agent or representative who signed the instrument and the signature is binding on the represented person under RCW 62A.3-402.

(b) A signature may be made (i) manually or by means of a device or machine, and (ii) by the use of any name, including a trade or assumed name, or by a word, mark, or symbol executed or adopted by a person with present intention to authenticate a writing. [1993 c 229 § 41; 1965 ex.s. c 157 § 3-401. Cf. former RCW 62.01.018; 1955 c 35 § 62.01.018; prior: 1899 c 149 § 18; RRS § 3409.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**62A.3-402 Signature by representative.** (a) If a person acting, or purporting to act, as a representative signs an instrument by signing either the name of the represented person or the name of the signer, the represented person is bound by the signature to the same extent the represented person would be bound if the signature were on a simple contract. If the represented person is bound, the signature of the representative is the "authorized signature of the represented person" and the represented person is liable on the instrument, whether or not identified in the instrument.

(b) If a representative signs the name of the representative to an instrument and the signature is an authorized signature of the represented person, the following rules apply:

(1) If the form of the signature shows unambiguously that the signature is made on behalf of the represented person who is identified in the instrument, the representative is not liable on the instrument.

(2) Subject to subsection (c), if (i) the form of the signature does not show unambiguously that the signature is made in a representative capacity or (ii) the represented person is not identified in the instrument, the representative is liable on the instrument to a holder in due course that took the instrument without notice that the representative was not intended to be liable on the instrument. With respect to any other person, the representative is liable on the instrument unless the representative proves that the original parties did not intend the representative to be liable on the instrument.

(c) If a representative signs the name of the representative as drawer of a check without indication of the representative status and the check is payable from an account of the represented person who is identified on the check, the signer is not liable on the check if the signature is an authorized signature of the represented person. [1993 c 229 § 42; 1965 ex.s. c 157 § 3-402. Cf. former RCW sections: (i) RCW 62.01.017(6); 1955 c 149 § 62.01.017; prior: 1899 c 149 § 17; RRS § 3408. (ii) RCW 62.01.063; 1955 c 149 § 62.01.063; prior: 1899 c 149 § 63; RRS § 3454.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**62A.3-403 Unauthorized signature.** (a) Unless otherwise provided in this Article or Article 4, an unauthorized signature is ineffective except as the signature of the unauthorized signer in favor of a person who in good faith pays the instrument or takes it for value. An unauthorized signature may be ratified for all purposes of this Article.

(b) If the signature of more than one person is required to constitute the authorized signature of an organization, the signature of the organization is unauthorized if one of the required signatures is lacking.

(c) The civil or criminal liability of a person who makes an unauthorized signature is not affected by any provision of this Article which makes the unauthorized signature effective for the purposes of this Article. [1993 c 229 § 43; 1965 ex.s. c 157 § 3-403. Cf. former RCW sections: RCW 62.01.019 through 62.01.021; 1955 c 35 §§ 62.01.019 through 62.01.021; prior: 1899 c 149 §§ 19 through 21; RRS §§ 3410 through 3412.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**62A.3-404 Impostors; fictitious payees.** (a) If an impostor, by use of the mails or otherwise, induces the issuer of an instrument to issue the instrument to the impostor, or to a person acting in concert with the impostor, by impersonating the payee of the instrument or a person authorized to act for the payee, an indorsement of the instrument by any person in the name of the payee is effective as the indorsement of the payee in favor of a person who, in good faith, pays the instrument or takes it for value or for collection.

(b) If (i) a person whose intent determines to whom an instrument is payable (RCW 62A.3-110 (a) or (b)) does not intend the person identified as payee to have any interest in the instrument, or (ii) the person identified as payee of an instrument is a fictitious person, the following rules apply until the instrument is negotiated by special indorsement:

(1) Any person in possession of the instrument is its holder.

(2010 Ed.)

(2) An indorsement by any person in the name of the payee stated in the instrument is effective as the indorsement of the payee in favor of a person who, in good faith, pays the instrument or takes it for value or for collection.

(c) Under subsection (a) or (b), an indorsement is made in the name of a payee if (i) it is made in a name substantially similar to that of the payee or (ii) the instrument, whether or not indorsed, is deposited in a depository bank to an account in a name substantially similar to that of the payee.

(d) With respect to an instrument to which subsection (a) or (b) applies, if a person paying the instrument or taking it for value or for collection fails to exercise ordinary care in paying or taking the instrument and that failure contributes to loss resulting from payment of the instrument, the person bearing the loss may recover from the person failing to exercise ordinary care to the extent the failure to exercise ordinary care contributed to the loss. [1993 c 229 § 44; 1965 ex.s. c 157 § 3-404. Cf. former RCW 62.01.023; 1955 c 35 § 62.01.023; prior: 1899 c 149 § 23; RRS § 3414.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**62A.3-405 Employer's responsibility for fraudulent indorsement by employee.** (a) In this section:

(1) "Employee" includes an independent contractor and employee of an independent contractor retained by the employer.

(2) "Fraudulent indorsement" means (i) in the case of an instrument payable to the employer, a forged indorsement purporting to be that of the employer, or (ii) in the case of an instrument with respect to which the employer is the issuer, a forged indorsement purporting to be that of the person identified as payee.

(3) "Responsibility" with respect to instruments means authority (i) to sign or indorse instruments on behalf of the employer, (ii) to process instruments received by the employer for bookkeeping purposes, for deposit to an account, or for other disposition, (iii) to prepare or process instruments for issue in the name of the employer, (iv) to supply information determining the names or addresses of payees of instruments to be issued in the name of the employer, (v) to control the disposition of instruments to be issued in the name of the employer, or (vi) to act otherwise with respect to instruments in a responsible capacity. "Responsibility" does not include authority that merely allows an employee to have access to instruments or blank or incomplete instrument forms that are being stored or transported or are part of incoming or outgoing mail, or similar access.

(b) For the purpose of determining the rights and liabilities of a person who, in good faith, pays an instrument or takes it for value or for collection, if an employer entrusted an employee with responsibility with respect to the instrument and the employee or a person acting in concert with the employee makes a fraudulent indorsement of the instrument, the indorsement is effective as the indorsement of the person to whom the instrument is payable if it is made in the name of that person. If the person paying the instrument or taking it for value or for collection fails to exercise ordinary care in paying or taking the instrument and that failure contributes to loss resulting from the fraud, the person bearing the loss may recover from the person failing to exercise ordinary care to

the extent the failure to exercise ordinary care contributed to the loss.

(c) Under subsection (b), an indorsement is made in the name of the person to whom an instrument is payable if (i) it is made in a name substantially similar to the name of that person or (ii) the instrument, whether or not indorsed, is deposited in a depository bank to an account in a name substantially similar to the name of that person. [1993 c 229 § 45; 1965 ex.s. c 157 § 3-405. Cf. former RCW 62.01.009(3); 1955 c 35 § 62.01.009; prior: 1899 c 149 § 9; RRS § 3400.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**62A.3-406 Negligence contributing to forged signature or alteration of instrument.** (a) A person whose failure to exercise ordinary care contributes to an alteration of an instrument or to the making of a forged signature on an instrument is precluded from asserting the alteration or the forgery against a person who, in good faith, pays the instrument or takes it for value or for collection.

(b) Under subsection (a), if the person asserting the preclusion fails to exercise ordinary care in paying or taking the instrument and that failure contributes to loss, the loss is allocated between the person precluded and the person asserting the preclusion according to the extent to which the failure of each to exercise ordinary care contributed to the loss.

(c) Under subsection (a), the burden of proving failure to exercise ordinary care is on the person asserting the preclusion. Under subsection (b), the burden of proving failure to exercise ordinary care is on the person precluded. [1993 c 229 § 46; 1965 ex.s. c 157 § 3-406.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**62A.3-407 Alteration.** (a) "Alteration" means (i) an unauthorized change in an instrument that purports to modify in any respect the obligation of a party, or (ii) an unauthorized addition of words or numbers or other change to an incomplete instrument relating to the obligation of a party.

(b) Except as provided in subsection (c), an alteration fraudulently made discharges a party whose obligation is affected by the alteration unless that party assents or is precluded from asserting the alteration. No other alteration discharges a party, and the instrument may be enforced according to its original terms.

(c) A payor bank or drawee paying a fraudulently altered instrument or a person taking it for value, in good faith and without notice of the alteration, may enforce rights with respect to the instrument (i) according to its original terms, or (ii) in the case of an incomplete instrument altered by unauthorized completion, according to its terms as completed. [1993 c 229 § 47; 1965 ex.s. c 157 § 3-407. Cf. former RCW sections: (i) RCW 62.01.014; 1955 c 35 § 62.01.014; prior: 1899 c 149 § 14; RRS § 3405. (ii) RCW 62.01.015; 1955 c 35 § 62.01.015; prior: 1899 c 149 § 15; RRS § 3406. (iii) RCW 62.01.124; 1955 c 35 § 62.01.124; prior: 1899 c 149 § 124; RRS § 3514. (iv) RCW 62.01.125; 1955 c 35 § 62.01.125; prior: 1899 c 149 § 125; RRS § 3515.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**62A.3-408 Drawee not liable on unaccepted draft.** A check or other draft does not of itself operate as an assign-

ment of funds in the hands of the drawee available for its payment, and the drawee is not liable on the instrument until the drawee accepts it. [1993 c 229 § 48; 1965 ex.s. c 157 § 3-408. Cf. former RCW sections: (i) RCW 62.01.024; 1955 c 35 § 62.01.024; prior: 1899 c 149 § 24; RRS § 3415. (ii) RCW 62.01.025; 1955 c 35 § 62.01.025; prior: 1899 c 149 § 25; RRS § 3416. (iii) RCW 62.01.028; 1955 c 35 § 62.01.028; prior: 1899 c 149 § 28; RRS § 3419.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**62A.3-409 Acceptance of draft; certified check.** (a) "Acceptance" means the drawee's signed agreement to pay a draft as presented. It must be written on the draft and may consist of the drawee's signature alone. Acceptance may be made at any time and becomes effective when notification pursuant to instructions is given or the accepted draft is delivered for the purpose of giving rights on the acceptance to any person.

(b) A draft may be accepted although it has not been signed by the drawer, is otherwise incomplete, is overdue, or has been dishonored.

(c) If a draft is payable at a fixed period after sight and the acceptor fails to date the acceptance, the holder may complete the acceptance by supplying a date in good faith.

(d) "Certified check" means a check accepted by the bank on which it is drawn. Acceptance may be made as stated in subsection (a) or by a writing on the check which indicates that the check is certified. The drawee of a check has no obligation to certify the check, and refusal to certify is not dishonor of the check. [1993 c 229 § 49; 1965 ex.s. c 157 § 3-409. Cf. former RCW sections: (i) RCW 62.01.127; 1955 c 35 § 62.01.127; prior: 1899 c 149 § 127; RRS § 3517. (ii) RCW 62.01.189; 1955 c 35 § 62.01.189; prior: 1899 c 149 § 189; RRS § 3579.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**62A.3-410 Acceptance varying draft.** (a) If the terms of a drawee's acceptance vary from the terms of the draft as presented, the holder may refuse the acceptance and treat the draft as dishonored. In that case, the drawee may cancel the acceptance.

(b) The terms of a draft are not varied by an acceptance to pay at a particular bank or place in the United States, unless the acceptance states that the draft is to be paid only at that bank or place.

(c) If the holder assents to an acceptance varying the terms of a draft, the obligation of each drawer and indorser that does not expressly assent to the acceptance is discharged. [1993 c 229 § 50; 1965 ex.s. c 157 § 3-410. Cf. former RCW sections: (i) RCW 62.01.013; 1955 c 35 § 62.01.013; prior: 1899 c 149 § 13; RRS § 3404. (ii) RCW 62.01.132 through 62.01.138; 1955 c 35 §§ 62.01.132 through 62.01.138; prior: 1899 c 149 §§ 132 through 138; RRS §§ 3522 through 3528. (iii) RCW 62.01.161 through 62.01.170; 1955 c 35 §§ 62.01.161 through 62.01.170; prior: 1899 c 149 §§ 161 through 170; RRS §§ 3551 through 3560. (iv) RCW 62.01.191; 1955 c 35 § 62.01.191; prior: 1899 c 149 § 191; RRS § 3581.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**62A.3-411 Refusal to pay cashier's checks, teller's checks, and certified checks.** (a) In this section, "obligated bank" means the acceptor of a certified check or the issuer of a cashier's check or teller's check bought from the issuer.

(b) If the obligated bank wrongfully (i) refuses to pay a cashier's check or certified check, (ii) stops payment of a teller's check, or (iii) refuses to pay a dishonored teller's check, the person asserting the right to enforce the check is entitled to compensation for expenses and loss of interest resulting from the nonpayment and may recover consequential damages if the obligated bank refuses to pay after receiving notice of particular circumstances giving rise to the damages.

(c) Expenses or consequential damages under subsection (b) are not recoverable if the refusal of the obligated bank to pay occurs because (i) the bank suspends payments, (ii) the obligated bank asserts a claim or defense of the bank that it has reasonable grounds to believe is available against the person entitled to enforce the instrument, (iii) the obligated bank has a reasonable doubt whether the person demanding payment is the person entitled to enforce the instrument, or (iv) payment is prohibited by law. [1993 c 229 § 51; 1965 ex.s. c 157 § 3-411. Cf. former RCW sections: (i) RCW 62.01.187; 1955 c 35 § 62.01.187; prior: 1899 c 149 § 187; RRS § 3577. (ii) RCW 62.01.188; 1955 c 35 § 62.01.188; prior: 1899 c 149 § 188; RRS § 3578.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**62A.3-412 Obligation of issuer of note or cashier's check.** The issuer of a note or cashier's check or other draft drawn on the drawer is obliged to pay the instrument (i) according to its terms at the time it was issued or, if not issued, at the time it first came into possession of a holder, or (ii) if the issuer signed an incomplete instrument, according to its terms when completed, to the extent stated in RCW 62A.3-115 and 62A.3-407. The obligation is owed to a person entitled to enforce the instrument or to an indorser who paid the instrument under RCW 62A.3-415. [1993 c 229 § 52; 1965 ex.s. c 157 § 3-412. Cf. former RCW sections: RCW 62.01.139 through 62.01.142; 1955 c 35 §§ 62.01.139 through 62.01.142; prior: 1899 c 149 §§ 139 through 142; RRS §§ 3529 through 3532.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**62A.3-413 Obligation of acceptor.** (a) The acceptor of a draft is obliged to pay the draft (i) according to its terms at the time it was accepted, even though the acceptance states that the draft is payable "as originally drawn" or equivalent terms, (ii) if the acceptance varies the terms of the draft, according to the terms of the draft as varied, or (iii) if the acceptance is of a draft that is an incomplete instrument, according to its terms when completed, to the extent stated in RCW 62A.3-115 and 62A.3-407. The obligation is owed to a person entitled to enforce the draft or to the drawer or an indorser who paid the draft under RCW 62A.3-414 or 62A.3-415.

(b) If the certification of a check or other acceptance of a draft states the amount certified or accepted, the obligation of the acceptor is that amount. If (i) the certification or acceptance does not state an amount, (ii) the amount of the instru-

ment is subsequently raised, and (iii) the instrument is then negotiated to a holder in due course, the obligation of the acceptor is the amount of the instrument at the time it was taken by the holder in due course. [1993 c 229 § 53; 1965 ex.s. c 157 § 3-413. Cf. former RCW sections: RCW 62.01.060 through 62.01.062; 1955 c 35 §§ 62.01.060 through 62.01.062; prior: 1899 c 149 §§ 60 through 62; RRS §§ 3451 through 3453.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**62A.3-414 Obligation of drawer.** (a) This section does not apply to cashier's checks or other drafts drawn on the drawer.

(b) If an unaccepted draft is dishonored, the drawer is obliged to pay the draft (i) according to its terms at the time it was issued or, if not issued, at the time it first came into possession of a holder, or (ii) if the drawer signed an incomplete instrument, according to its terms when completed, to the extent stated in RCW 62A.3-115 and 62A.3-407. The obligation is owed to a person entitled to enforce the draft or to an indorser who paid the draft under RCW 62A.3-415.

(c) If a draft is accepted by a bank, the drawer is discharged, regardless of when or by whom acceptance was obtained.

(d) If a draft is accepted and the acceptor is not a bank, the obligation of the drawer to pay the draft if the draft is dishonored by the acceptor is the same as the obligation of an indorser under RCW 62A.3-415 (a) and (c).

(e) If a draft states that it is drawn "without recourse" or otherwise disclaims liability of the drawer to pay the draft, the drawer is not liable under subsection (b) to pay the draft if the draft is not a check. A disclaimer of the liability stated in subsection (b) is not effective if the draft is a check.

(f) If (i) a check is not presented for payment or given to a depository bank for collection within 30 days after its date, (ii) the drawee suspends payments after expiration of the 30-day period without paying the check, and (iii) because of the suspension of payments, the drawer is deprived of funds maintained with the drawee to cover payment of the check, the drawer to the extent deprived of funds may discharge its obligation to pay the check by assigning to the person entitled to enforce the check the rights of the drawer against the drawee with respect to the funds. [1993 c 229 § 54; 1965 ex.s. c 157 § 3-414. Cf. former RCW sections: (i) RCW 62.01.038; 1955 c 35 § 62.01.038; prior: 1899 c 149 § 38; RRS § 3429. (ii) RCW 62.01.044; 1955 c 35 § 62.01.044; prior: 1899 c 149 § 44; RRS § 3435. (iii) RCW 62.01.066 through 62.01.068; 1955 c 35 §§ 62.01.066 through 62.01.068; prior: 1899 c 149 §§ 66 through 68; RRS §§ 3457 through 3459.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**62A.3-415 Obligation of indorser.** (a) Subject to subsections (b), (c), (d), and (e) and to RCW 62A.3-419(d), if an instrument is dishonored, an indorser is obliged to pay the amount due on the instrument (i) according to the terms of the instrument at the time it was indorsed, or (ii) if the indorser indorsed an incomplete instrument, according to its terms when completed, to the extent stated in RCW 62A.3-115 and 62A.3-407. The obligation of the indorser is owed to a person

entitled to enforce the instrument or to a subsequent indorser who paid the instrument under this section.

(b) If an indorsement states that it is made "without recourse" or otherwise disclaims liability of the indorser, the indorser is not liable under subsection (a) to pay the instrument.

(c) If notice of dishonor of an instrument is required by RCW 62A.3-503 and notice of dishonor complying with that section is not given to an indorser, the liability of the indorser under subsection (a) is discharged.

(d) If a draft is accepted by a bank after an indorsement is made, the liability of the indorser under subsection (a) is discharged.

(e) If an indorser of a check is liable under subsection (a) and the check is not presented for payment, or given to a depository bank for collection, within 30 days after the day the indorsement was made, the liability of the indorser under subsection (a) is discharged. [1993 c 229 § 55; 1965 ex.s. c 157 § 3-415. Cf. former RCW sections: (i) RCW 62.01.028; 1955 c 35 § 62.01.028; prior: 1899 c 149 § 28; RRS § 3419. (ii) RCW 62.01.029; 1955 c 35 § 62.01.029; prior: 1899 c 149 § 29; RRS § 3420. (iii) RCW 62.01.064; 1955 c 35 § 62.01.064; prior: 1899 c 149 § 64; RRS § 3455.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**62A.3-416 Transfer warranties.** (a) A person who transfers an instrument for consideration warrants to the transferee and, if the transfer is by indorsement, to any subsequent transferee that:

(1) The warrantor is a person entitled to enforce the instrument;

(2) All signatures on the instrument are authentic and authorized;

(3) The instrument has not been altered;

(4) The instrument is not subject to a defense or claim in recoupment of any party which can be asserted against the warrantor; and

(5) The warrantor has no knowledge of any insolvency proceeding commenced with respect to the maker or acceptor or, in the case of an unaccepted draft, the drawer.

(b) A person to whom the warranties under subsection (a) are made and who took the instrument in good faith may recover from the warrantor as damages for breach of warranty an amount equal to the loss suffered as a result of the breach, but not more than the amount of the instrument plus expenses and loss of interest incurred as a result of the breach.

(c) The warranties stated in subsection (a) cannot be disclaimed with respect to checks. Unless notice of a claim for breach of warranty is given to the warrantor within 30 days after the claimant has reason to know of the breach and the identity of the warrantor, the liability of the warrantor under subsection (b) is discharged to the extent of any loss caused by the delay in giving notice of the claim.

(d) A cause of action for breach of warranty under this section accrues when the claimant has reason to know of the breach. [1993 c 229 § 56; 1965 ex.s. c 157 § 3-416.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**62A.3-417 Presentment warranties.** (a) If an unaccepted draft is presented to the drawee for payment or acceptance and the drawee pays or accepts the draft, (i) the person obtaining payment or acceptance, at the time of presentment, and (ii) a previous transferor of the draft, at the time of transfer, warrant to the drawee making payment or accepting the draft in good faith that:

(1) The warrantor is, or was, at the time the warrantor transferred the draft, a person entitled to enforce the draft or authorized to obtain payment or acceptance of the draft on behalf of a person entitled to enforce the draft;

(2) The draft has not been altered; and

(3) The warrantor has no knowledge that the signature of the drawer of the draft is unauthorized.

(b) A drawee making payment may recover from any warrantor damages for breach of warranty equal to the amount paid by the drawee less the amount the drawee received or is entitled to receive from the drawer because of the payment. In addition, the drawee is entitled to compensation for expenses and loss of interest resulting from the breach. The right of the drawee to recover damages under this subsection is not affected by any failure of the drawee to exercise ordinary care in making payment. If the drawee accepts the draft, breach of warranty is a defense to the obligation of the acceptor. If the acceptor makes payment with respect to the draft, the acceptor is entitled to recover from any warrantor for breach of warranty the amounts stated in this subsection.

(c) If a drawee asserts a claim for breach of warranty under subsection (a) based on an unauthorized indorsement of the draft or an alteration of the draft, the warrantor may defend by proving that the indorsement is effective under RCW 62A.3-404 or 62A.3-405 or the drawer is precluded under RCW 62A.3-406 or 62A.4-406 from asserting against the drawee the unauthorized indorsement or alteration.

(d) If (i) a dishonored draft is presented for payment to the drawer or an indorser or (ii) any other instrument is presented for payment to a party obliged to pay the instrument, and (iii) payment is received, the following rules apply:

(1) The person obtaining payment and a prior transferor of the instrument warrant to the person making payment in good faith that the warrantor is, or was, at the time the warrantor transferred the instrument, a person entitled to enforce the instrument or authorized to obtain payment on behalf of a person entitled to enforce the instrument.

(2) The person making payment may recover from any warrantor for breach of warranty an amount equal to the amount paid plus expenses and loss of interest resulting from the breach.

(e) The warranties stated in subsections (a) and (d) cannot be disclaimed with respect to checks. Unless notice of a claim for breach of warranty is given to the warrantor within 30 days after the claimant has reason to know of the breach and the identity of the warrantor, the liability of the warrantor under subsection (b) or (d) is discharged to the extent of any loss caused by the delay in giving notice of the claim.

(f) A cause of action for breach of warranty under this section accrues when the claimant has reason to know of the breach. [1993 c 229 § 57; 1965 ex.s. c 157 § 3-417. Cf. former RCW sections: (i) RCW 62.01.065; 1955 c 35 § 62.01.065; prior: 1899 c 149 § 65; RRS § 3456. (ii) RCW

62.01.066; 1955 c 35 § 62.01.066; prior: 1899 c 149 § 66; RRS § 3457. (iii) RCW 62.01.069; 1955 c 35 § 62.01.069; prior: 1899 c 149 § 69; RRS § 3460.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**62A.3-418 Payment or acceptance by mistake.** (a)

Except as provided in subsection (c), if the drawee of a draft pays or accepts the draft and the drawee acted on the mistaken belief that (i) payment of the draft had not been stopped pursuant to RCW 62A.4-403 or (ii) the signature of the drawer of the draft was authorized, the drawee may recover the amount of the draft from the person to whom or for whose benefit payment was made or, in the case of acceptance, may revoke the acceptance. Rights of the drawee under this subsection are not affected by failure of the drawee to exercise ordinary care in paying or accepting the draft.

(b) Except as provided in subsection (c), if an instrument has been paid or accepted by mistake and the case is not covered by subsection (a), the person paying or accepting may, to the extent permitted by the law governing mistake and restitution, (i) recover the payment from the person to whom or for whose benefit payment was made or (ii) in the case of acceptance, may revoke the acceptance.

(c) The remedies provided by subsection (a) or (b) may not be asserted against a person who took the instrument in good faith and for value or who in good faith changed position in reliance on the payment or acceptance. This subsection does not limit remedies provided by RCW 62A.3-417 or 62A.4-407.

(d) Notwithstanding RCW 62A.4-213, if an instrument is paid or accepted by mistake and the payor or acceptor recovers payment or revokes acceptance under subsection (a) or (b), the instrument is deemed not to have been paid or accepted and is treated as dishonored, and the person from whom payment is recovered has rights as a person entitled to enforce the dishonored instrument. [1993 c 229 § 58; 1965 ex.s. c 157 § 3-418. Cf. former RCW 62.01.062; 1955 c 35 § 62.01.062; prior: 1899 c 149 § 62; RRS § 3453.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**62A.3-419 Instruments signed for accommodation.**

(a) If an instrument is issued for value given for the benefit of a party to the instrument ("accommodated party") and another party to the instrument ("accommodation party") signs the instrument for the purpose of incurring liability on the instrument without being a direct beneficiary of the value given for the instrument, the instrument is signed by the accommodation party "for accommodation."

(b) An accommodation party may sign the instrument as maker, drawer, acceptor, or indorser and, subject to subsection (d), is obliged to pay the instrument in the capacity in which the accommodation party signs. The obligation of an accommodation party may be enforced notwithstanding any statute of frauds and whether or not the accommodation party receives consideration for the accommodation.

(c) A person signing an instrument is presumed to be an accommodation party and there is notice that the instrument is signed for accommodation if the signature is an anomalous indorsement or is accompanied by words indicating that the signer is acting as surety or guarantor with respect to the obli-

gation of another party to the instrument. Except as provided in RCW 62A.3-605, the obligation of an accommodation party to pay the instrument is not affected by the fact that the person enforcing the obligation had notice when the instrument was taken by that person that the accommodation party signed the instrument for accommodation.

(d) If the signature of a party to an instrument is accompanied by words indicating unambiguously that the party is guaranteeing collection rather than payment of the obligation of another party to the instrument, the signer is obliged to pay the amount due on the instrument to a person entitled to enforce the instrument only if (i) execution of judgment against the other party has been returned unsatisfied, (ii) the other party is insolvent or in an insolvency proceeding, (iii) the other party cannot be served with process, or (iv) it is otherwise apparent that payment cannot be obtained from the other party.

(e) An accommodation party who pays the instrument is entitled to reimbursement from the accommodated party and is entitled to enforce the instrument against the accommodated party. An accommodated party who pays the instrument has no right of recourse against, and is not entitled to contribution from, an accommodation party. [1993 c 229 § 59; 1965 ex.s. c 157 § 3-419. Cf. former RCW 62.01.137; 1955 c 35 § 62.01.137; prior: 1899 c 149 § 137; RRS § 3527.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**62A.3-420 Conversion of instrument.** (a) The law applicable to conversion of personal property applies to instruments. An instrument is also converted if it is taken by transfer, other than a negotiation, from a person not entitled to enforce the instrument or a bank makes or obtains payment with respect to the instrument for a person not entitled to enforce the instrument or receive payment. An action for conversion of an instrument may not be brought by (i) the issuer or acceptor of the instrument or (ii) a payee or indorsee who did not receive delivery of the instrument either directly or through delivery to an agent or a co-payee.

(b) In an action under subsection (a), the measure of liability is presumed to be the amount payable on the instrument, but recovery may not exceed the amount of the plaintiff's interest in the instrument.

(c) A representative, other than a depository bank, who has in good faith dealt with an instrument or its proceeds on behalf of one who was not the person entitled to enforce the instrument is not liable in conversion to that person beyond the amount of any proceeds that it has not paid out. [1993 c 229 § 60.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

PART 5  
DISHONOR

**62A.3-501 Presentment.** (a) "Presentment" means a demand made by or on behalf of a person entitled to enforce an instrument (i) to pay the instrument made to the drawee or a party obliged to pay the instrument or, in the case of a note or accepted draft payable at a bank, to the bank, or (ii) to accept a draft made to the drawee.

(b) The following rules are subject to Article 4, agreement of the parties, and clearinghouse rules and the like:

(1) Presentment may be made at the place of payment of the instrument and must be made at the place of payment if the instrument is payable at a bank in the United States; may be made by any commercially reasonable means, including an oral, written, or electronic communication; is effective when the demand for payment or acceptance is received by the person to whom presentment is made; and is effective if made to any one of two or more makers, acceptors, drawees, or other payors.

(2) Upon demand of the person to whom presentment is made, the person making presentment must (i) exhibit the instrument, (ii) give reasonable identification and, if presentment is made on behalf of another person, reasonable evidence of authority to do so, and (iii) sign a receipt on the instrument for any payment made or surrender the instrument if full payment is made.

(3) Without dishonoring the instrument, the party to whom presentment is made may (i) return the instrument for lack of a necessary indorsement, or (ii) refuse payment or acceptance for failure of the presentment to comply with the terms of the instrument, an agreement of the parties, or other applicable law or rule.

(4) The party to whom presentment is made may treat presentment as occurring on the next business day after the day of presentment if the party to whom presentment is made has established a cut-off hour not earlier than 2:00 p.m. for the receipt and processing of instruments presented for payment or acceptance and presentment is made after the cut-off hour. [1993 c 229 § 61; 1965 ex.s. c 157 § 3-501. Cf. former RCW sections: RCW 62.01.070, 62.01.089, 62.01.118, 62.01.129, 62.01.143, 62.01.144, 62.01.150, 62.01.151, 62.01.152, 62.01.157, 62.01.158, and 62.01.186; 1955 c 35 §§ 62.01.070, 62.01.089, 62.01.118, 62.01.129, 62.01.143, 62.01.144, 62.01.150, 62.01.151, 62.01.152, 62.01.157, 62.01.158, and 62.01.186; prior: 1899 c 149 §§ 70, 89, 118, 129, 143, 144, 150, 151, 152, 157, 158, and 186; RRS §§ 3461, 3479, 3508, 3519, 3533, 3534, 3540, 3541, 3542, 3547, 3548, and 3576.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**62A.3-502 Dishonor.** (a) Dishonor of a note is governed by the following rules:

(1) If the note is payable on demand, the note is dishonored if presentment is duly made to the maker and the note is not paid on the day of presentment.

(2) If the note is not payable on demand and is payable at or through a bank or the terms of the note require presentment, the note is dishonored if presentment is duly made and the note is not paid on the day it becomes payable or the day of presentment, whichever is later.

(3) If the note is not payable on demand and subsection (a)(2) does not apply, the note is dishonored if it is not paid on the day it becomes payable.

(b) Dishonor of an unaccepted draft other than a documentary draft is governed by the following rules:

(1) If a check is duly presented for payment to the payor bank otherwise than for immediate payment over the counter, the check is dishonored if the payor bank makes timely return

of the check or sends timely notice of dishonor or nonpayment under RCW 62A.4-301 or 62A.4-302, or becomes accountable for the amount of the check under RCW 62A.4-302.

(2) If a draft is payable on demand and subsection (b)(1) does not apply, the draft is dishonored if presentment for payment is duly made to the drawee and the draft is not paid on the day of presentment.

(3) If a draft is payable on a date stated in the draft, the draft is dishonored if (i) presentment for payment is duly made to the drawee and payment is not made on the day the draft becomes payable or the day of presentment, whichever is later, or (ii) presentment for acceptance is duly made before the day the draft becomes payable and the draft is not accepted on the day of presentment.

(4) If a draft is payable on elapse of a period of time after sight or acceptance, the draft is dishonored if presentment for acceptance is duly made and the draft is not accepted on the day of presentment.

(c) Dishonor of an unaccepted documentary draft occurs according to the rules stated in subsection (b) (2), (3), and (4), except that payment or acceptance may be delayed without dishonor until no later than the close of the third business day of the drawee following the day on which payment or acceptance is required by subsection (b) (2), (3), and (4).

(d) Dishonor of an accepted draft is governed by the following rules:

(1) If the draft is payable on demand, the draft is dishonored if presentment for payment is duly made to the acceptor and the draft is not paid on the day of presentment; or

(2) If the draft is not payable on demand, the draft is dishonored if presentment for payment is duly made to the acceptor and payment is not made on the day it becomes payable or the day of presentment, whichever is later.

(e) In any case in which presentment is otherwise required for dishonor under this section and presentment is excused under RCW 62A.3-504, dishonor occurs without presentment if the instrument is not duly accepted or paid.

(f) If a draft is dishonored because timely acceptance of the draft was not made and the person entitled to demand acceptance consents to a late acceptance, from the time of acceptance the draft is treated as never having been dishonored. [1993 c 229 § 62; 1965 ex.s. c 157 § 3-502. Cf. former RCW sections: RCW 62.01.007, 62.01.070, 62.01.089, 62.01.144, 62.01.150, 62.01.152, and 62.01.186; 1955 c 35 §§ 62.01.007, 62.01.070, 62.01.089, 62.01.144, 62.01.150, 62.01.152, and 62.01.186; prior: 1899 c 149 §§ 7, 70, 89, 144, 150, 152, and 186; RRS §§ 3398, 3461, 3479, 3534, 3540, 3542, and 3576.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**62A.3-503 Notice of dishonor.** (a) The obligation of an indorser stated in RCW 62A.3-415(a) and the obligation of a drawer stated in RCW 62A.3-414(d) may not be enforced unless (i) the indorser or drawer is given notice of dishonor of the instrument complying with this section or (ii) notice of dishonor is excused under RCW 62A.3-504(b).

(b) Notice of dishonor may be given by any person; may be given by any commercially reasonable means, including an oral, written, or electronic communication; and is suffi-

cient if it reasonably identifies the instrument and indicates that the instrument has been dishonored or has not been paid or accepted. Return of an instrument given to a bank for collection is sufficient notice of dishonor.

(c) Subject to RCW 62A.3-504(c), with respect to an instrument taken for collection by a collecting bank, notice of dishonor must be given (i) by the bank before midnight of the next banking day following the banking day on which the bank receives notice of dishonor of the instrument, or (ii) by any other person within 30 days following the day on which the person receives notice of dishonor. With respect to any other instrument, notice of dishonor must be given within 30 days following the day on which dishonor occurs. [1993 c 229 § 63; 1965 ex.s. c 157 § 3-503. Cf. former RCW sections: (i) RCW 62.01.071, 62.01.072, 62.01.075, 62.01.086, 62.01.144, 62.01.145, 62.01.146, 62.01.186, and 62.01.193; 1955 c 35 §§ 62.01.071, 62.01.072, 62.01.075, 62.01.086, 62.01.144, 62.01.145, 62.01.146, 62.01.186, and 62.01.193; prior: 1899 c 149 §§ 71, 72, 75, 86, 144, 145, 146, 186, and 193; RRS §§ 3462, 3463, 3466, 3476, 3534, 3535, 3536, 3576, and 3583. (ii) RCW 62.01.085; 1955 c 35 § 62.01.085; prior: 1915 c 173 § 1; 1899 c 149 § 85; RRS § 3475 1/2.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

#### **62A.3-504 Excused presentment and notice of dishonor.**

(a) Presentment for payment or acceptance of an instrument is excused if (i) the person entitled to present the instrument cannot with reasonable diligence make presentment, (ii) the maker or acceptor has repudiated an obligation to pay the instrument or is dead or in insolvency proceedings, (iii) by the terms of the instrument presentment is not necessary to enforce the obligation of indorsers or the drawer, (iv) the drawer or indorser whose obligation is being enforced has waived presentment or otherwise has no reason to expect or right to require that the instrument be paid or accepted, or (v) the drawer instructed the drawee not to pay or accept the draft or the drawee was not obligated to the drawer to pay the draft.

(b) Notice of dishonor is excused if (i) by the terms of the instrument notice of dishonor is not necessary to enforce the obligation of a party to pay the instrument, or (ii) the party whose obligation is being enforced waived notice of dishonor. A waiver of presentment is also a waiver of notice of dishonor.

(c) Delay in giving notice of dishonor is excused if the delay was caused by circumstances beyond the control of the person giving the notice and the person giving the notice exercised reasonable diligence after the cause of the delay ceased to operate. [1993 c 229 § 64; 1965 ex.s. c 157 § 3-504. Cf. former RCW sections: RCW 62.01.072, 62.01.073, 62.01.077, 62.01.078, and 62.01.145; 1955 c 35 §§ 62.01.072, 62.01.073, 62.01.077, 62.01.078, and 62.01.145; prior: 1899 c 149 §§ 72, 73, 77, 78, and 145; RRS §§ 3463, 3464, 3468, 3469, and 3535.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**62A.3-505 Evidence of dishonor.** (a) The following are admissible as evidence and create a presumption of dishonor and of any notice of dishonor stated:

(1) A document regular in form as provided in subsection (b) that purports to be a protest;

(2010 Ed.)

(2) A purported stamp or writing of the drawee, payor bank, or presenting bank on or accompanying the instrument stating that acceptance or payment has been refused unless reasons for the refusal are stated and the reasons are not consistent with dishonor;

(3) A book or record of the drawee, payor bank, or collecting bank, kept in the usual course of business which shows dishonor, even if there is no evidence of who made the entry.

(b) A protest is a certificate of dishonor made by a United States consul or vice-consul, or a notary public or other person authorized to administer oaths by the law of the place where dishonor occurs. It may be made upon information satisfactory to that person. The protest must identify the instrument and certify either that presentment has been made or, if not made, the reason why it was not made, and that the instrument has been dishonored by nonacceptance or nonpayment. The protest may also certify that notice of dishonor has been given to some or all parties. [1993 c 229 § 65; 1965 ex.s. c 157 § 3-505. Cf. former RCW sections: (i) RCW 62.01.072(3); 1955 c 35 § 62.01.072; prior: 1899 c 149 § 72; RRS § 3463. (ii) RCW 62.01.074; 1955 c 35 § 62.01.074; prior: 1899 c 149 § 74; RRS § 3465. (iii) RCW 62.01.133; 1955 c 35 § 62.01.133; prior: 1899 c 149 § 133; RRS § 3523.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

#### **62A.3-512 Credit cards—As identification—In lieu of deposit.**

A person may not record the number of a credit card given as identification under \*RCW 62A.3-501(a)(2) or given as proof of credit worthiness when payment for goods or services is made by check or draft. Nothing in this section prohibits the recording of the number of a credit card given in lieu of a deposit to secure payment in the event of a default, loss, damage, or other occurrence. [1993 c 229 § 66; 1990 c 203 § 2.]

**\*Reviser's note:** The reference to RCW 62A.3-501(a)(2) appears erroneous. Reference to RCW 62A.3-501(b)(2) was apparently intended.

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

#### **62A.3-515 Checks dishonored by nonacceptance or nonpayment; liability for interest; rate; collection costs and attorneys' fees; satisfaction of claim.**

(a) If a check as defined in RCW 62A.3-104 is dishonored by nonacceptance or nonpayment, the payee or person entitled to enforce the check under RCW 62A.3-301 may collect a reasonable handling fee for each instrument. If the check is not paid within fifteen days and after the person entitled to enforce the check or the person's agent sends a notice of dishonor as provided by RCW 62A.3-520 to the drawer at the drawer's last known address, and if the instrument does not provide for the payment of interest or collection costs and attorneys' fees, the drawer of the instrument is liable for payment of interest at the rate of twelve percent per annum from the date of dishonor, and cost of collection not to exceed forty dollars or the face amount of the check, whichever is less, payable to the person entitled to enforce the check. In addition, in the event of court action on the check, the court, after notice and the expiration of the fifteen days, shall award reasonable attorneys' fees, and three times the face amount of the check or

three hundred dollars, whichever is less, as part of the damages payable to the person enforcing the check. This section does not apply to an instrument that is dishonored by reason of a justifiable stop payment order.

(b)(1) Subsequent to the commencement of an action on the check (subsection (a)) but prior to the hearing, the defendant may tender to the plaintiff as satisfaction of the claim, an amount of money equal to the face amount of the check, a reasonable handling fee, accrued interest, collection costs equal to the face amount of the check not to exceed forty dollars, and the incurred court costs, service costs, and statutory attorneys' fees.

(2) Nothing in this section precludes the right to commence action in a court under chapter 12.40 RCW for small claims. [2000 c 215 § 1; 1995 c 187 § 1; 1993 c 229 § 67; 1991 c 168 § 1; 1986 c 128 § 1; 1981 c 254 § 1; 1969 c 62 § 1; 1967 ex.s. c 23 § 1.]

Additional notes found at www.leg.wa.gov

**62A.3-520 Statutory form for notice of dishonor.** The notice of dishonor shall be sent by mail to the drawer at the drawer's last known address, and the notice shall be substantially in the following form:

NOTICE OF DISHONOR OF CHECK

A check drawn by you and made payable by you to . . . . . in the amount of . . . . . has not been accepted for payment by . . . . ., which is the drawee bank designated on your check. This check is dated . . . . ., and it is numbered, No. . . . .

You are CAUTIONED that unless you pay the amount of this check within fifteen days after the date this letter is postmarked, you may very well have to pay the following additional amounts:

- (1) Costs of collecting the amount of the check, including an attorney's fee which will be set by the court;
- (2) Interest on the amount of the check which shall accrue at the rate of twelve percent per annum from the date of dishonor; and
- (3) Three hundred dollars or three times the face amount of the check, whichever is less, by award of the court.

You are also CAUTIONED that law enforcement agencies may be provided with a copy of this notice of dishonor and the check drawn by you for the possibility of proceeding with criminal charges if you do not pay the amount of this check within fifteen days after the date this letter is postmarked.

You are advised to make your payment to . . . . . at the following address: . . . . .

[1993 c 229 § 68; 1991 c 168 § 2; 1986 c 128 § 2; 1981 c 254 § 2; 1969 c 62 § 2.]

Additional notes found at www.leg.wa.gov

**62A.3-522 Notice of dishonor—Affidavit of service by mail.** In addition to sending a notice of dishonor to the drawer of the check under RCW 62A.3-520, the person sending notice shall execute an affidavit certifying service of the notice by mail. The affidavit of service by mail must be attached to a copy of the notice of dishonor and must be substantially in the following form:

AFFIDAVIT OF SERVICE BY MAIL

I, . . . . ., hereby certify that on the . . . . . day of . . . . ., 20 . . ., a copy of the foregoing Notice was served on . . . . . by mailing via the United States Postal Service, postage prepaid, at . . . . ., Washington.

Dated: . . . . .  
(Signature)

The person enforcing the check shall retain the affidavit with the check but shall file a copy of the affidavit with the clerk of the court in which an action on the check is commenced. [2000 c 215 § 2; 1993 c 229 § 69; 1981 c 254 § 3.]

Additional notes found at www.leg.wa.gov

**62A.3-525 Consequences for failing to comply with requirements.** No interest, collection costs, and attorneys' fees, except handling fees, are recoverable on any dishonored check under the provisions of RCW 62A.3-515 where a person entitled to such recovery or any agent, employee, or assign has demanded:

- (1) Interest or collection costs in excess of that provided by RCW 62A.3-515; or
- (2) Interest or collection costs prior to the expiration of fifteen days after the mailing of notice of dishonor, as provided by RCW 62A.3-515 and 62A.3-520; or
- (3) Attorneys' fees either without having the fees set by the court, or prior to the expiration of fifteen days after the mailing of notice of dishonor, as provided by RCW 62A.3-515 and 62A.3-520. [2000 c 215 § 3; 1993 c 229 § 70; 1981 c 254 § 4; 1969 c 62 § 3.]

Additional notes found at www.leg.wa.gov

**62A.3-530 Collection agencies—Checks dishonored by nonacceptance or nonpayment; liability for interest; rate; collection costs and attorneys' fees; satisfaction of claim.** (1) If a check as defined in RCW 62A.3-104 is dishonored by nonacceptance or nonpayment and the check is assigned or written to a collection agency as defined in RCW 19.16.100, the collection agency may collect a reasonable handling fee for each instrument. If the collection agency or its agent provides a notice of dishonor in the form provided in RCW 62A.3-540 to the drawer and the check amount plus the reasonable handling fee are not paid within thirty-three days after providing the notice of dishonor, then, unless the instrument otherwise provides, the drawer of the instrument is liable for payment of interest at the rate of twelve percent per annum from the date of dishonor, and a cost of collection of forty dollars or the face amount of the check, whichever is less, payable to the collection agency. In addition, in the event of court action on the check and after notice and the expiration of the thirty-three days, the court shall award reasonable attorneys' fees, and three times the face amount of the check or three hundred dollars, whichever is less, as part of the damages payable to the collection agency. This section does not apply to an instrument that is dishonored by reason of a justifiable stop payment order.

(2) Subsequent to the commencement of an action on the check under subsection (1) of this section but prior to the hearing, the defendant may tender to the plaintiff as satisfaction of the claim, an amount of money equal to the face

amount of the check, a reasonable handling fee, accrued interest, collection costs equal to the face amount of the check not to exceed forty dollars, and the incurred court costs, service costs, and statutory attorneys' fees.

(3) Nothing in this section precludes the right to commence action in a court under chapter 12.40 RCW for small claims. [2005 c 277 § 3.]

**Intent—2005 c 277:** "The legislature has directed the financial literacy public-private partnership to complete certain tasks to support efforts to increase the level of financial literacy in the common schools. In order to promote a greater understanding by students of the consequences of a dishonored check, the legislature intends to extend by one year the date by which the financial literacy public-private partnership must identify strategies to increase the financial literacy of public school students in Washington." [2005 c 277 § 1.]

**62A.3-540 Collection agencies—Statutory form for notice of dishonor.** (1) If a check is assigned or written to a collection agency as defined in RCW 19.16.100 and the collection agency or its agent provides a notice of dishonor, the notice of dishonor may be sent by mail to the drawer at the drawer's last known address. The drawer is presumed to have received the notice of dishonor three days from the date it is mailed. The collection agency may, as an alternative to providing a notice in the form described in RCW 62A.3-520, provide a notice in substantially the following form:

#### NOTICE OF DISHONOR OF CHECK

A check drawn by you and made payable by you to . . . . . in the amount of . . . . . has not been accepted for payment by . . . . ., which is the drawee bank designated on your check. This check is dated . . . . ., and it is numbered, No. . . . .

You are CAUTIONED that unless you pay the amount of this check and a handling fee of . . . . . within thirty-three days after the date this letter is postmarked or personally delivered, you may very well have to pay the following additional amounts:

(a) Costs of collecting the amount of the check in the lesser of the check amount or forty dollars;

(b) Interest on the amount of the check which shall accrue at the rate of twelve percent per annum from the date of dishonor; and

(c) Three hundred dollars or three times the face amount of the check, whichever is less, plus court costs and attorneys' fees, by award of the court in the event of legal action. Note that this caution regarding increased amounts in any possible legal action is advisory only and should not be construed as a representation or implication that legal action is contemplated or intended.

You are also CAUTIONED that law enforcement agencies may be provided with a copy of this notice of dishonor and the check drawn by you for the possibility of proceeding with criminal charges if you do not pay the amount of this check within thirty-three days after the date this letter is postmarked.

You are advised to make your payment of \$. . . . . to . . . . . at the following address: . . . . .

(2) The cautionary statement regarding law enforcement in subsection (1) of this section need not be included in a notice of dishonor sent by a collection agency. However, if included and whether or not the collection agency regularly

refers dishonored checks to law enforcement, the cautionary statement in subsection (1) of this section shall not be construed as a threat to take any action not intended to be taken or that cannot legally be taken; nor shall it be construed to be harassing, oppressive, or abusive conduct; nor shall it be construed to be a false, deceptive, or misleading representation; nor shall it be construed to be unfair or unconscionable; nor shall it otherwise be construed to violate any law.

(3) In addition to sending a notice of dishonor to the drawer of the check under this section, the person sending notice shall execute an affidavit certifying service of the notice by mail. The affidavit of service by mail must be substantially in the following form:

#### AFFIDAVIT OF SERVICE BY MAIL

I, . . . . ., hereby certify that on the . . . . . day of . . . . ., 20. . . . ., a copy of the foregoing Notice was served on . . . . . by mailing via the United States Postal Service, postage prepaid, at . . . . ., Washington.

Dated: . . . . .  
(Signature)

(4) The person enforcing a check under this section shall file the affidavit and check, or a true copy thereof, with the clerk of the court in which an action on the check is commenced as permitted by court rule or practice. [2009 c 185 § 1; 2005 c 277 § 4.]

**Intent—2005 c 277:** See note following RCW 62A.3-530.

**62A.3-550 Collection agencies—Consequences for failing to comply with requirements.** No interest, collection costs, and attorneys' fees, except handling fees, are recoverable on any dishonored check under the provisions of RCW 62A.3-530 where a collection agency or its agent, employee, or assign has demanded:

(1) Interest or collection costs in excess of that provided by RCW 62A.3-530; or

(2) Interest or collection costs prior to the expiration of thirty-three days after the serving or mailing of the notice of dishonor, as provided by RCW 62A.3-530 or 62A.3-540; or

(3) Attorneys' fees other than statutory attorneys' fees without having the fees set by the court, or any attorneys' fees prior to thirty-three days after the serving or mailing of the notice of dishonor, as provided by RCW 62A.3-530 or 62A.3-540. [2005 c 277 § 5.]

**Intent—2005 c 277:** See note following RCW 62A.3-530.

#### PART 6 DISCHARGE AND PAYMENT

**62A.3-601 Discharge and effect of discharge.** (a) The obligation of a party to pay the instrument is discharged as stated in this Article or by an act or agreement with the party which would discharge an obligation to pay money under a simple contract.

(b) Discharge of the obligation of a party is not effective against a person acquiring rights of a holder in due course of the instrument without notice of the discharge. [1993 c 229 § 71; 1965 ex.s. c 157 § 3-601. Cf. former RCW sections: RCW 62.01.119 through 62.01.121; 1955 c 35 §§ 62.01.119

through 62.01.121; prior: 1899 c 149 §§ 119 through 121; RRS §§ 3509 through 3511.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**62A.3-602 Payment.** (a) Subject to subsection (b), an instrument is paid to the extent payment is made (i) by or on behalf of a party obliged to pay the instrument, and (ii) to a person entitled to enforce the instrument. To the extent of the payment, the obligation of the party obliged to pay the instrument is discharged even though payment is made with knowledge of a claim to the instrument under RCW 62A.3-306 by another person.

(b) The obligation of a party to pay the instrument is not discharged under subsection (a) if:

(1) A claim to the instrument under RCW 62A.3-306 is enforceable against the party receiving payment and (i) payment is made with knowledge by the payor that payment is prohibited by injunction or similar process of a court of competent jurisdiction, or (ii) in the case of an instrument other than a cashier's check, teller's check, or certified check, the party making payment accepted, from the person having a claim to the instrument, indemnity against loss resulting from refusal to pay the person entitled to enforce the instrument; or

(2) The person making payment knows that the instrument is a stolen instrument and pays a person it knows is in wrongful possession of the instrument. [1993 c 229 § 72; 1965 ex.s. c 157 § 3-602. Cf. former RCW 62.01.122; 1955 c 35 § 62.01.122; prior: 1899 c 149 § 122; RRS § 3512.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**62A.3-603 Tender of payment.** (a) If tender of payment of an obligation to pay an instrument is made to a person entitled to enforce the instrument, the effect of tender is governed by principles of law applicable to tender of payment under a simple contract.

(b) If tender of payment of an obligation to pay an instrument is made to a person entitled to enforce the instrument and the tender is refused, there is discharge, to the extent of the amount of the tender, of the obligation of an indorser or accommodation party having a right of recourse with respect to the obligation to which the tender relates.

(c) If tender of payment of an amount due on an instrument is made to a person entitled to enforce the instrument, the obligation of the obligor to pay interest after the due date on the amount tendered is discharged. If presentment is required with respect to an instrument and the obligor is able and ready to pay on the due date at every place of payment stated in the instrument, the obligor is deemed to have made tender of payment on the due date to the person entitled to enforce the instrument. [1993 c 229 § 73; 1965 ex.s. c 157 § 3-603. Cf. former RCW sections: (i) RCW 62.01.051, 62.01.088, 62.01.119, and 62.01.121; 1955 c 35 §§ 62.01.051, 62.01.088, 62.01.119, and 62.01.121; prior: 1899 c 149 §§ 51, 88, 119, and 121; RRS §§ 3442, 3478, 3509, and 3511. (ii) RCW 62.01.171 through 62.01.177; 1955 c 35 §§ 62.01.171 through 62.01.177; prior: 1899 c 149 §§ 171 through 177; RRS §§ 3561 through 3567. (iii) Subd. (3) cf. former RCW 30.20.090; 1961 c 280 § 4.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**62A.3-604 Discharge by cancellation or renunciation.** (a) A person entitled to enforce an instrument, with or without consideration, may discharge the obligation of a party to pay the instrument (i) by an intentional voluntary act, such as surrender of the instrument to the party, destruction, mutilation, or cancellation of the instrument, cancellation or striking out of the party's signature, or the addition of words to the instrument indicating discharge, or (ii) by agreeing not to sue or otherwise renouncing rights against the party by a signed writing.

(b) Cancellation or striking out of an indorsement pursuant to subsection (a) does not affect the status and rights of a party derived from the indorsement. [1993 c 229 § 74; 1965 ex.s. c 157 § 3-604. Cf. former RCW sections: (i) RCW 62.01.070; 1955 c 35 § 62.01.070; prior: 1899 c 149 § 70; RRS § 3461. (ii) RCW 62.01.120; 1955 c 35 § 62.01.120; prior: 1899 c 149 § 120; RRS § 3510.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**62A.3-605 Discharge of indorsers and accommodation parties.** (a) In this section, the term "indorser" includes a drawer having the obligation described in RCW 62A.3-414(d).

(b) Discharge, under RCW 62A.3-604, of the obligation of a party to pay an instrument does not discharge the obligation of an indorser or accommodation party having a right of recourse against the discharged party.

(c) If a person entitled to enforce an instrument agrees, with or without consideration, to an extension of the due date of the obligation of a party to pay the instrument, the extension discharges an indorser or accommodation party having a right of recourse against the party whose obligation is extended to the extent the indorser or accommodation party proves that the extension caused loss to the indorser or accommodation party with respect to the right of recourse.

(d) If a person entitled to enforce an instrument agrees, with or without consideration, to a material modification of the obligation of a party other than an extension of the due date, the modification discharges the obligation of an indorser or accommodation party having a right of recourse against the person whose obligation is modified to the extent the modification causes loss to the indorser or accommodation party with respect to the right of recourse. The loss suffered by the indorser or accommodation party as a result of the modification is equal to the amount of the right of recourse unless the person enforcing the instrument proves that no loss was caused by the modification or that the loss caused by the modification was an amount less than the amount of the right of recourse.

(e) If the obligation of a party to pay an instrument is secured by an interest in collateral and a person entitled to enforce the instrument impairs the value of the interest in collateral, the obligation of an indorser or accommodation party having a right of recourse against the obligor is discharged to the extent of the impairment. The value of an interest in collateral is impaired to the extent (i) the value of the interest is reduced to an amount less than the amount of the right of recourse of the party asserting discharge, or (ii) the reduction in value of the interest causes an increase in the amount by which the amount of the right of recourse exceeds the value

of the interest. The burden of proving impairment is on the party asserting discharge.

(f) If the obligation of a party is secured by an interest in collateral not provided by an accommodation party and a person entitled to enforce the instrument impairs the value of the interest in collateral, the obligation of any party who is jointly and severally liable with respect to the secured obligation is discharged to the extent the impairment causes the party asserting discharge to pay more than that party would have been obliged to pay, taking into account rights of contribution, if impairment had not occurred. If the party asserting discharge is an accommodation party not entitled to discharge under subsection (e), the party is deemed to have a right to contribution based on joint and several liability rather than a right to reimbursement. The burden of proving impairment is on the party asserting discharge.

(g) Under subsection (e) or (f), impairing value of an interest in collateral includes (i) failure to obtain or maintain perfection or recordation of the interest in collateral, (ii) release of collateral without substitution of collateral of equal value, (iii) failure to perform a duty to preserve the value of collateral owed, under \*Article 9 or other law, to a debtor or surety or other person secondarily liable, or (iv) failure to comply with applicable law in disposing of collateral.

(h) An accommodation party is not discharged under subsection (c), (d), or (e) unless the person entitled to enforce the instrument knows of the accommodation or has notice under RCW 62A.3-419(c) that the instrument was signed for accommodation.

(i) A party is not discharged under this section if (i) the party asserting discharge consents to the event or conduct that is the basis of the discharge, or (ii) the instrument or a separate agreement of the party provides for waiver of discharge under this section either specifically or by general language indicating that parties waive defenses based on suretyship or impairment of collateral. [1993 c 229 § 75; 1965 ex.s. c 157 § 3-605. Cf. former RCW sections: RCW 62.01.048, 62.01.119(3), 62.01.120(2), 62.01.122, and 62.01.123; 1955 c 35 §§ 62.01.048, 62.01.119, 62.01.120, 62.01.122, and 62.01.123; prior: 1899 c 149 §§ 48, 119, 120, 122, and 123; RRS §§ 3439, 3509, 3510, 3512, and 3513.]

**\*Reviser's note:** Article 62A.9 RCW was repealed in its entirety by 2000 c 250 § 9A-901, effective July 1, 2001. For later enactment, see Article 62A.9A RCW.

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

## Article 4

### BANK DEPOSITS AND COLLECTIONS

#### Sections

#### PART 1 GENERAL PROVISIONS AND DEFINITIONS

62A.4-101	Short title.
62A.4-102	Applicability.
62A.4-103	Variation by agreement; measure of damages; action constituting ordinary care.
62A.4-104	Definitions and index of definitions.
62A.4-105	"Bank"; "depository bank"; "payor bank"; "intermediary bank"; "collecting bank"; "presenting bank".
62A.4-106	Payable through or payable at bank; collecting bank.
62A.4-107	Separate office of a bank.
62A.4-108	Time of receipt of items.
62A.4-109	Delays.

(2010 Ed.)

62A.4-110	Electronic presentment.
62A.4-111	Statute of limitations.

#### PART 2 COLLECTION OF ITEMS: DEPOSITORY AND COLLECTING BANKS

62A.4-201	Status of collecting bank as agent and provisional status of credits; applicability of article; item indorsed "pay any bank".
62A.4-202	Responsibility for collection or return; when action timely.
62A.4-203	Effect of instructions.
62A.4-204	Methods of sending and presenting; sending directly to payor bank.
62A.4-205	Depository bank holder of unindorsed item.
62A.4-206	Transfer between banks.
62A.4-207	Transfer warranties.
62A.4-208	Presentment warranties.
62A.4-209	Encoding and retention warranties.
62A.4-210	Security interest of collecting bank in items, accompanying documents and proceeds.
62A.4-211	When bank gives value for purposes of holder in due course.
62A.4-212	Presentment by notice of item not payable by, through, or at a bank; liability of drawer or indorser.
62A.4-213	Medium and time of settlement by bank.
62A.4-214	Right of charge-back or refund; liability of collecting bank; return of item.
62A.4-215	Final payment of item by payor bank; when provisional debits and credits become final; when certain credits become available for withdrawal.
62A.4-216	Insolvency and preference.

#### PART 3 COLLECTION OF ITEMS: PAYOR BANKS

62A.4-301	Deferred posting; recovery of payment by return of items; time of dishonor; return of items by payor bank.
62A.4-302	Payor bank's responsibility for late return of item.
62A.4-303	When items subject to notice, stop-payment order, legal process, or setoff; order in which items may be charged or certified.

#### PART 4 RELATIONSHIP BETWEEN PAYOR BANK AND ITS CUSTOMER

62A.4-401	When bank may charge customer's account.
62A.4-402	Bank's liability to customer for wrongful dishonor; time of determining insufficiency of account.
62A.4-403	Customer's right to stop payment; burden of proof of loss.
62A.4-404	Bank not obligated to pay check more than six months old.
62A.4-405	Death or incompetence of customer.
62A.4-406	Customer's duty to discover and report unauthorized signature or alteration.
62A.4-407	Payor bank's right to subrogation on improper payment.

#### PART 5 COLLECTION OF DOCUMENTARY DRAFTS

62A.4-501	Handling of documentary drafts; duty to send for presentment and to notify customer of dishonor.
62A.4-502	Presentment of "on arrival" drafts.
62A.4-503	Responsibility of presenting bank for documents and goods; report of reasons for dishonor; referee in case of need.
62A.4-504	Privilege of presenting bank to deal with goods; security interest for expenses.

**Reviser's note:** Powers, duties, and functions of the department of general administration relating to financial institutions were transferred to the department of financial institutions by 1993 c 472, effective October 1, 1993. See RCW 43.320.011.

#### PART 1 GENERAL PROVISIONS AND DEFINITIONS

**62A.4-101 Short title.** This Article may be cited as Uniform Commercial Code—Bank Deposits and Collections. [1993 c 229 § 77; 1965 ex.s. c 157 § 4-101.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**62A.4-102 Applicability.** (a) To the extent that items within this Article are also within Articles 3 and 8, they are

[Title 62A RCW—page 67]

subject to those Articles. If there is conflict, this Article governs Article 3, but Article 8 governs this Article.

(b) The liability of a bank for action or non-action with respect to an item handled by it for purposes of presentment, payment, or collection is governed by the law of the place where the bank is located. In the case of action or non-action by or at a branch or separate office of a bank, its liability is governed by the law of the place where the branch or separate office is located. [1993 c 229 § 78; 1965 ex.s. c 157 § 4-102.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**62A.4-103 Variation by agreement; measure of damages; action constituting ordinary care.** (a) The effect of the provisions of this Article may be varied by agreement, but the parties to the agreement cannot disclaim a bank's responsibility for its lack of good faith or failure to exercise ordinary care or limit the measure of damages for the lack or failure. However, the parties may determine by agreement the standards by which the bank's responsibility is to be measured if those standards are not manifestly unreasonable.

(b) Federal Reserve regulations and operating circulars, clearing-house rules, and the like have the effect of agreements under subsection (a), whether or not specifically assented to by all parties interested in items handled.

(c) Action or non-action approved by this Article or pursuant to Federal Reserve regulations or operating circulars is the exercise of ordinary care and, in the absence of special instructions, action or non-action consistent with clearing-house rules and the like or with a general banking usage not disapproved by this Article, is prima facie the exercise of ordinary care.

(d) The specification or approval of certain procedures by this Article is not disapproval of other procedures that may be reasonable under the circumstances.

(e) The measure of damages for failure to exercise ordinary care in handling an item is the amount of the item reduced by an amount that could not have been realized by the exercise of ordinary care. If there is also bad faith it includes any other damages the party suffered as a proximate consequence. [1993 c 229 § 79; 1965 ex.s. c 157 § 4-103. Cf. former RCW sections: (i) RCW 30.52.050; 1955 c 33 § 30.52.050; prior: 1931 c 10 § 1; 1929 c 203 § 5; RRS § 3292-5. (ii) RCW 30.52.060; 1955 c 33 § 30.52.060; prior: 1929 c 203 § 6; RRS § 3292-6.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**62A.4-104 Definitions and index of definitions.** (a) In this Article, unless the context otherwise requires:

(1) "Account" means any deposit or credit account with a bank, including a demand, time, savings, passbook, share draft, or like account, other than an account evidenced by a certificate of deposit;

(2) "Afternoon" means the period of a day between noon and midnight;

(3) "Banking day" means the part of a day on which a bank is open to the public for carrying on substantially all of its banking functions, except that it shall not include a Saturday, Sunday, or legal holiday;

(4) "Clearing house" means an association of banks or other payors regularly clearing items;

(5) "Customer" means a person having an account with a bank or for whom a bank has agreed to collect items, including a bank that maintains an account at another bank;

(6) "Documentary draft" means a draft to be presented for acceptance or payment if specified documents, certificated securities (RCW 62A.8-102) or instructions for uncertificated securities (RCW 62A.8-102), or other certificates, statements, or the like are to be received by the drawee or other payor before acceptance or payment of the draft;

(7) "Draft" means a draft as defined in RCW 62A.3-104 or an item, other than an instrument, that is an order;

(8) "Drawee" means a person ordered in a draft to make payment;

(9) "Item" means an instrument or a promise or order to pay money handled by a bank for collection or payment. The term does not include a payment order governed by Article 4A or a credit or debit card slip;

(10) "Midnight deadline" with respect to a bank is midnight on its next banking day following the banking day on which it receives the relevant item or notice or from which the time for taking action commences to run, whichever is later;

(11) "Settle" means to pay in cash, by clearing-house settlement, in a charge or credit or by remittance, or otherwise as agreed. A settlement may be either provisional or final;

(12) "Suspends payments" with respect to a bank means that it has been closed by order of the supervisory authorities, that a public officer has been appointed to take it over or that it ceases or refuses to make payments in the ordinary course of business.

(b) Other definitions applying to this Article and the sections in which they appear are:

"Agreement for electronic presentment"	RCW 62A.4-110.
"Bank"	RCW 62A.4-105.
"Collecting bank"	RCW 62A.4-105.
"Depository bank"	RCW 62A.4-105.
"Intermediary bank"	RCW 62A.4-105.
"Payor bank"	RCW 62A.4-105.
"Presenting bank"	RCW 62A.4-105.
"Presentment notice"	RCW 62A.4-110.

(c) The following definitions in other Articles apply to this Article:

"Acceptance"	RCW 62A.3-409.
"Alteration"	RCW 62A.3-407.
"Cashier's check"	RCW 62A.3-104.
"Certificate of deposit"	RCW 62A.3-104.
"Check"	RCW 62A.3-104.
"Draft"	RCW 62A.3-104.
"Good faith"	RCW 62A.3-103.
"Holder in due course"	RCW 62A.3-302.
"Instrument"	RCW 62A.3-104.
"Notice of dishonor"	RCW 62A.3-503.
"Order"	RCW 62A.3-103.
"Ordinary care"	RCW 62A.3-103.
"Person entitled to enforce"	RCW 62A.3-301.
"Presentment"	RCW 62A.3-501.
"Promise"	RCW 62A.3-103.
"Prove"	RCW 62A.3-103.
"Teller's check"	RCW 62A.3-104.

"Unauthorized signature" RCW 62A.3-403.

(d) In addition Article 1 contains general definitions and principles of construction and interpretation applicable throughout this Article. [1995 c 48 § 56; 1993 c 229 § 80; 1981 c 122 § 1; 1965 ex.s. c 157 § 4-104. Cf. former RCW 30.52.010; 1955 c 33 § 30.52.010; prior: 1929 c 203 § 1; RRS § 3292-1.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**62A.4-105 "Bank"; "depository bank"; "payor bank"; "intermediary bank"; "collecting bank"; "presenting bank".** In this Article:

(1) "Bank" means a person engaged in the business of banking, including a savings bank, savings and loan association, credit union, or trust company;

(2) "Depository bank" means the first bank to take an item even though it is also the payor bank, unless the item is presented for immediate payment over the counter;

(3) "Payor bank" means a bank that is the drawee of a draft;

(4) "Intermediary bank" means a bank to which an item is transferred in course of collection except the depository or payor bank;

(5) "Collecting bank" means a bank handling the item for collection except the payor bank;

(6) "Presenting bank" means a bank presenting an item except a payor bank. [1993 c 229 § 81; 1965 ex.s. c 157 § 4-105. Cf. former RCW 30.52.010; 1955 c 33 § 30.52.010; prior: 1929 c 203 § 1.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**62A.4-106 Payable through or payable at bank; collecting bank.** (a) If an item states that it is "payable through" a bank identified in the item, (i) the item designates the bank as a collecting bank and does not by itself authorize the bank to pay the item, and (ii) the item may be presented for payment only by or through the bank.

(b) If an item states that it is "payable at" a bank identified in the item, (i) the item designates the bank as a collecting bank and does not by itself authorize the bank to pay the item, and (ii) the item may be presented for payment only by or through the bank.

(c) If a draft names a nonbank drawee and it is unclear whether a bank named in the draft is a codrawee or a collecting bank, the bank is a collecting bank. [1993 c 229 § 82; 1965 ex.s. c 157 § 4-106. Cf. former RCW sections: (i) RCW 30.52.010; 1955 c 33 § 30.52.010; prior: 1929 c 203 § 1; RRS § 3292-1. (ii) RCW 30.40.030 through 30.40.050; 1955 c 33 §§ 30.40.030 through 30.40.050; prior: 1939 c 59 §§ 1 through 3; RRS §§ 3252-6 through 3252-8.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**62A.4-107 Separate office of a bank.** A branch or separate office of a bank is a separate bank for the purpose of computing the time within which and determining the place at or to which action may be taken or notices or orders must be given under this Article and under Article 3. [1993 c 229 § 83; 1965 ex.s. c 157 § 4-107.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

(2010 Ed.)

**62A.4-108 Time of receipt of items.** (a) For the purpose of allowing time to process items, prove balances, and make the necessary entries on its books to determine its position for the day, a bank may fix an afternoon hour of two P.M. or later as a cut-off hour for the handling of money and items and the making of entries on its books.

(b) An item or deposit of money received on any day after a cut-off hour so fixed or after the close of the banking day may be treated as being received at the opening of the next banking day. [1993 c 229 § 84; 1965 ex.s. c 157 § 4-108.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**62A.4-109 Delays.** (a) Unless otherwise instructed, a collecting bank in a good faith effort to secure payment of a specific item drawn on a payor other than a bank, and with or without the approval of any person involved, may waive, modify, or extend time limits imposed or permitted by this Title for a period not exceeding two additional banking days without discharge of drawers or indorsers or liability to its transferor or a prior party.

(b) Delay by a collecting bank or payor bank beyond time limits prescribed or permitted by this Title or by instructions is excused if (i) the delay is caused by interruption of communication or computer facilities, suspension of payments by another bank, war, emergency conditions, failure of equipment, or other circumstances beyond the control of the bank, and (ii) the bank exercises such diligence as the circumstances require. [1993 c 229 § 85; 1965 ex.s. c 157 § 4-109.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**62A.4-110 Electronic presentment.** (a) "Agreement for electronic presentment" means an agreement, clearing-house rule, or Federal Reserve regulation or operating circular, providing that presentment of an item may be made by transmission of an image of an item or information describing the item ("presentment notice") rather than delivery of the item itself. The agreement may provide for procedures governing retention, presentment, payment, dishonor, and other matters concerning items subject to the agreement.

(b) Presentment of an item pursuant to an agreement for presentment is made when the presentment notice is received.

(c) If presentment is made by presentment notice, a reference to "item" or "check" in this Article means the presentment notice unless the context otherwise indicates. [1993 c 229 § 86.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**62A.4-111 Statute of limitations.** An action to enforce an obligation, duty, or right arising under this Article must be commenced within three years after the cause of action accrues. [1993 c 229 § 87.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

PART 2  
COLLECTION OF ITEMS:  
DEPOSITORY AND COLLECTING BANKS

**62A.4-201 Status of collecting bank as agent and provisional status of credits; applicability of article; item indorsed "pay any bank".** (a) Unless a contrary intent clearly appears and before the time that a settlement given by a collecting bank for an item is or becomes final, the bank, with respect to the item, is an agent or sub-agent of the owner of the item and any settlement given for the item is provisional. This provision applies regardless of the form of indorsement or lack of indorsement and even though credit given for the item is subject to immediate withdrawal as of right or is in fact withdrawn; but the continuance of ownership of an item by its owner and any rights of the owner to proceeds of the item are subject to rights of a collecting bank such as those resulting from outstanding advances on the item and rights of recoupment or setoff. If an item is handled by banks for purposes of presentment, payment, collection, or return, the relevant provisions of this Article apply even though action of the parties clearly establishes that a particular bank has purchased the item and is the owner of it.

(b) After an item has been indorsed with the words "pay any bank" or the like, only a bank may acquire the rights of a holder until the item has been:

- (1) Returned to the customer initiating collection; or
- (2) Specially indorsed by a bank to a person who is not a bank. [1993 c 229 § 88; 1965 ex.s. c 157 § 4-201. Cf. former RCW sections: (i) RCW 30.52.020; 1955 c 33 § 30.52.020; prior: 1929 c 203 § 2; RRS § 3292-2. (ii) RCW 30.52.040; 1955 c 33 § 30.52.040; prior: 1931 c 10 § 1; 1929 c 203 § 4; RRS § 3292-4.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**62A.4-202 Responsibility for collection or return; when action timely.** (a) A collecting bank must exercise ordinary care in:

- (1) Presenting an item or sending it for presentment;
- (2) Sending notice of dishonor or non-payment or returning an item other than a documentary draft to the bank's transferor after learning that the item has not been paid or accepted, as the case may be;
- (3) Settling for an item when the bank receives final settlement; and
- (4) Notifying its transferor of any loss or delay in transit within a reasonable time after discovery thereof.

(b) A collecting bank exercises ordinary care under subsection (a) by taking proper action before its midnight deadline following receipt of an item, notice, or settlement. Taking proper action within a reasonably longer time may constitute the exercise of ordinary care, but the bank has the burden of establishing timeliness.

(c) Subject to subsection (a)(1), a bank is not liable for the insolvency, neglect, misconduct, mistake or default of another bank or person or for loss or destruction of an item in the possession of others or in transit. [1993 c 229 § 89; 1965 ex.s. c 157 § 4-202. Cf. former RCW sections: (i) RCW 30.52.050; 1955 c 33 § 30.52.050; prior: 1929 c 203 § 5;

RRS § 3292-5. (ii) RCW 30.52.060; 1955 c 33 § 30.52.060; prior: 1929 c 203 § 6; RRS § 3292-6.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**62A.4-203 Effect of instructions.** Subject to Article 3 concerning conversion of instruments (RCW 62A.3-420) and restrictive indorsements (RCW 62A.3-206), only a collecting bank's transferor can give instructions that affect the bank or constitute notice to it, and a collecting bank is not liable to prior parties for any action taken pursuant to the instructions or in accordance with any agreement with its transferor. [1993 c 229 § 90; 1965 ex.s. c 157 § 4-203. Cf. former RCW 30.52.020; 1955 c 33 § 30.52.020; prior: 1929 c 203 § 2; RRS § 3292-2.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**62A.4-204 Methods of sending and presenting; sending directly to payor bank.** (a) A collecting bank shall send items by a reasonably prompt method, taking into consideration relevant instructions, the nature of the item, the number of those items on hand, the cost of collection involved, and the method generally used by it or others to present those items.

- (b) A collecting bank may send:
- (1) An item directly to the payor bank;
  - (2) An item to a non-bank payor if authorized by its transferor; and
  - (3) An item other than documentary drafts to a non-bank payor, if authorized by Federal Reserve regulation or operating circular, clearing-house rule, or the like.

(c) Presentment may be made by a presenting bank at a place where the payor bank or other payor has requested that presentment be made. [1993 c 229 § 91; 1965 ex.s. c 157 § 4-204. Cf. former RCW 30.52.060; 1955 c 33 § 30.52.060; prior: 1929 c 203 § 6; RRS § 3292-6.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**62A.4-205 Depository bank holder of unindorsed item.** If a customer delivers an item to a depository bank for collection:

(a) The depository bank becomes a holder of the item at the time it receives the item for collection if the customer at the time of delivery was a holder of the item, whether or not the customer indorses the item, and, if the bank satisfies the other requirements of RCW 62A.3-302, it is a holder in due course; and

(b) The depository bank warrants to collecting banks, the payor bank or other payor, and the drawer that the amount of the item was paid to the customer or deposited to the customer's account. [1993 c 229 § 92; 1965 ex.s. c 157 § 4-205.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**62A.4-206 Transfer between banks.** Any agreed method that identifies the transferor bank is sufficient for the item's further transfer to another bank. [1993 c 229 § 93; 1965 ex.s. c 157 § 4-206.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**62A.4-207 Transfer warranties.** (a) A customer or collecting bank that transfers an item and receives a settle-

ment or other consideration warrants to the transferee and to any subsequent collecting bank that:

- (1) The warrantor is a person entitled to enforce the item;
- (2) All signatures on the item are authentic and authorized;
- (3) The item has not been altered;
- (4) The item is not subject to a defense or claim in recoupment (RCW 62A.3-305(a)) of any party that can be asserted against the warrantor; and
- (5) The warrantor has no knowledge of any insolvency proceeding commenced with respect to the maker or acceptor or, in the case of an unaccepted draft, the drawer.

(b) If an item is dishonored, a customer or collecting bank transferring the item and receiving settlement or other consideration is obliged to pay the amount due on the item (i) according to the terms of the item at the time it was transferred, or (ii) if the transfer was of an incomplete item, according to its terms when completed as stated in RCW 62A.3-115 and 62A.3-407. The obligation of a transferor is owed to the transferee and to any subsequent collecting bank that takes the item in good faith. A transferor cannot disclaim its obligation under this subsection by an indorsement stating that it is made "without recourse" or otherwise disclaiming liability.

(c) A person to whom the warranties under subsection (a) are made and who took the item in good faith may recover from the warrantor as damages for breach of warranty an amount equal to the loss suffered as a result of the breach, but not more than the amount of the item plus expenses and loss of interest incurred as a result of the breach.

(d) The warranties stated in subsection (a) cannot be disclaimed with respect to checks. Unless notice of a claim for breach of warranty is given to the warrantor within thirty days after the claimant has reason to know of the breach and the identity of the warrantor, the warrantor is discharged to the extent of any loss caused by the delay in giving notice of the claim.

(e) A cause of action for breach of warranty under this section accrues when the claimant has reason to know of the breach. [1993 c 229 § 94; 1965 ex.s. c 157 § 4-207. Cf. former RCW 30.52.040; 1955 c 33 § 30.52.040; prior: 1931 c 10 § 1; 1929 c 203 § 4; RRS § 3292-4.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**62A.4-208 Presentment warranties.** (a) If an unaccepted draft is presented to the drawee for payment or acceptance and the drawee pays or accepts the draft, (i) the person obtaining payment or acceptance, at the time of presentment, and (ii) a previous transferor of the draft, at the time of transfer, warrant to the drawee that pays or accepts the draft in good faith that:

- (1) The warrantor is, or was, at the time the warrantor transferred the draft, a person entitled to enforce the draft or authorized to obtain payment or acceptance of the draft on behalf of a person entitled to enforce the draft;
- (2) The draft has not been altered; and
- (3) The warrantor has no knowledge that the signature of the purported drawer of the draft is unauthorized.

(b) A drawee making payment may recover from a warrantor damages for breach of warranty equal to the amount

(2010 Ed.)

paid by the drawee less the amount the drawee received or is entitled to receive from the drawer because of the payment. In addition, the drawee is entitled to compensation for expenses and loss of interest resulting from the breach. The right of the drawee to recover damages under this subsection is not affected by any failure of the drawee to exercise ordinary care in making payment. If the drawee accepts the draft (i) breach of warranty is a defense to the obligation of the acceptor, and (ii) if the acceptor makes payment with respect to the draft, the acceptor is entitled to recover from a warrantor for breach of warranty the amounts stated in this subsection.

(c) If a drawee asserts a claim for breach of warranty under subsection (a) based on an unauthorized indorsement of the draft or an alteration of the draft, the warrantor may defend by proving that the indorsement is effective under RCW 62A.3-404 or 62A.3-405 or the drawer is precluded under RCW 62A.3-406 or 62A.4-406 from asserting against the drawee the unauthorized indorsement or alteration.

(d) If (i) a dishonored draft is presented for payment to the drawer or an indorser or (ii) any other item is presented for payment to a party obliged to pay the item, and the item is paid, the person obtaining payment and a prior transferor of the item warrant to the person making payment in good faith that the warrantor is, or was, at the time the warrantor transferred the item, a person entitled to enforce the item or authorized to obtain payment on behalf of a person entitled to enforce the item. The person making payment may recover from any warrantor for breach of warranty an amount equal to the amount paid plus expenses and loss of interest resulting from the breach.

(e) The warranties stated in subsections (a) and (d) cannot be disclaimed with respect to checks. Unless notice of a claim for breach of warranty is given to the warrantor within thirty days after the claimant has reason to know of the breach and the identity of the warrantor, the warrantor is discharged to the extent of any loss caused by the delay in giving notice of the claim.

(f) A cause of action for breach of warranty under this section accrues when the claimant has reason to know of the breach. [1993 c 229 § 95; 1965 ex.s. c 157 § 4-208. Cf. former RCW 30.52.020; 1955 c 33 § 30.52.020; prior: 1929 c 203 § 2; RRS § 3292-2.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**62A.4-209 Encoding and retention warranties.** (a) A person who encodes information on or with respect to an item after issue warrants to any subsequent collecting bank and to the payor bank or other payor that the information is correctly encoded. If the customer of a depository bank encodes, that bank also makes the warranty.

(b) A person who undertakes to retain an item pursuant to an agreement for electronic presentment warrants to any subsequent collecting bank and to the payor bank or other payor that retention and presentment of the item comply with the agreement. If a customer of a depository bank undertakes to retain an item, that bank also makes this warranty.

(c) A person to whom warranties are made under this section and who took the item in good faith may recover from the warrantor as damages for breach of warranty an amount

equal to the loss suffered as a result of the breach, plus expenses and loss of interest incurred as a result of the breach. [1993 c 229 § 96; 1965 ex.s. c 157 § 4-209. Cf. former RCW 62.01.027; 1955 c 35 § 62.01.027; prior: 1899 c 149 § 27; RRS § 3418.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**62A.4-210 Security interest of collecting bank in items, accompanying documents and proceeds.** (a) A collecting bank has a security interest in an item and any accompanying documents or the proceeds of either:

(1) In case of an item deposited in an account, to the extent to which credit given for the item has been withdrawn or applied;

(2) In case of an item for which it has given credit available for withdrawal as of right, to the extent of the credit given whether or not the credit is drawn upon or there is a right of charge-back; or

(3) If it makes an advance on or against the item.

(b) If credit given for several items received at one time or pursuant to a single agreement is withdrawn or applied in part, the security interest remains upon all the items, any accompanying documents or the proceeds of either. For the purpose of this section, credits first given are first withdrawn.

(c) Receipt by a collecting bank of a final settlement for an item is a realization on its security interest in the item, accompanying documents, and proceeds. So long as the bank does not receive final settlement for the item or give up possession of the item or accompanying documents for purposes other than collection, the security interest continues to that extent and is subject to Article 9A, but:

(1) No security agreement is necessary to make the security interest enforceable RCW 62A.9A-203(b)(3)(A);

(2) No filing is required to perfect the security interest; and

(3) The security interest has priority over conflicting perfected security interests in the item, accompanying documents, or proceeds. [2001 c 32 § 13; 2000 c 250 § 9A-813; 1993 c 229 § 97; 1965 ex.s. c 157 § 4-210.]

**Effective date—2001 c 32:** See note following RCW 62A.9A-102.

**Effective date—2000 c 250:** See RCW 62A.9A-701.

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**62A.4-211 When bank gives value for purposes of holder in due course.** For purposes of determining its status as a holder in due course, bank has given value to the extent it has a security interest in an item, if the bank otherwise complies with the requirements of RCW 62A.3-302 on what constitutes a holder in due course. [1993 c 229 § 98; 1965 ex.s. c 157 § 4-211. Cf. former RCW sections: (i) RCW 30.52.090; 1955 c 33 § 30.52.090; prior: 1929 c 203 § 9; RRS § 3292-9. (ii) RCW 30.52.100; 1955 c 33 § 30.52.100; prior: 1929 c 203 § 10; RRS § 3292-10.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**62A.4-212 Presentment by notice of item not payable by, through, or at a bank; liability of drawer or indorser.** (a) Unless otherwise instructed, a collecting bank may present an item not payable by, through or at a bank by sending to the party to accept or pay a written notice that the bank

holds the item for acceptance or payment. The notice must be sent in time to be received on or before the day when presentment is due and the bank must meet any requirement of the party to accept or pay under RCW 62A.3-501 by the close of the bank's next banking day after it knows of the requirement.

(b) If presentment is made by notice and payment, acceptance, or request for compliance with a requirement under RCW 62A.3-501 is not received by the close of business on the day after maturity or, in the case of demand items, by the close of business on the third banking day after notice was sent, the presenting bank may treat the item as dishonored and charge any drawer or indorser by sending it notice of the facts. [1993 c 229 § 99; 1965 ex.s. c 157 § 4-212. Cf. former RCW sections: (i) RCW 30.52.020; 1955 c 33 § 30.52.020; prior: 1929 c 203 § 2; RRS § 3292-2. (ii) RCW 30.52.110; 1955 c 33 § 30.52.110; prior: 1929 c 203 § 11; RRS § 3292-11.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**62A.4-213 Medium and time of settlement by bank.**

(a) With respect to settlement by a bank, the medium and time of settlement may be prescribed by Federal Reserve regulations or circulars, clearing-house rules, and the like, or agreement. In the absence of such prescription:

(1) The medium of settlement is cash or credit to an account in a Federal Reserve bank of or specified by the person to receive settlement; and

(2) The time of settlement, is:

(i) With respect to tender of settlement by cash, a cashier's check, or teller's check, when the cash or check is sent or delivered;

(ii) With respect to tender of settlement by credit in an account in a Federal Reserve bank, when the credit is made;

(iii) With respect to tender of settlement by a credit or debit to an account in a bank, when the credit or debit is made or, in the case of tender of settlement by authority to charge an account, when the authority is sent or delivered; or

(iv) With respect to tender of settlement by a funds transfer, when payment is made pursuant to RCW 62A.4A-406(1) to the person receiving settlement.

(b) If the tender of settlement is not by a medium authorized by subsection (a) or the time of settlement is not fixed by subsection (a), no settlement occurs until the tender of settlement is accepted by the person receiving settlement.

(c) If settlement for an item is made by cashier's check or teller's check and the person receiving settlement, before its midnight deadline:

(1) Presents or forwards the check for collection, settlement is final when the check is finally paid; or

(2) Fails to present or forward the check for collection, settlement is final at the midnight deadline of the person receiving settlement.

(d) If settlement for an item is made by giving authority to charge the account of the bank giving settlement in the bank receiving settlement, settlement is final when the charge is made by the bank receiving settlement if there are funds available in the account for the amount of the item. [1993 c 229 § 100; 1965 ex.s. c 157 § 4-213. Cf. former RCW

30.52.110; 1955 c 33 § 30.52.110; prior: 1929 c 203 § 11; RRS § 3292-11.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**62A.4-214 Right of charge-back or refund; liability of collecting bank; return of item.** (a) If a collecting bank has made provisional settlement with its customer for an item and fails by reason of dishonor, suspension of payments by a bank, or otherwise to receive a settlement for the item which is or becomes final, the bank may revoke the settlement given by it, charge back the amount of any credit given for the item to its customer's account, or obtain refund from its customer, whether or not it is able to return the items, if by its midnight deadline or within a longer reasonable time after it learns the facts it returns the item or sends notification of the facts. If the return or notice is delayed beyond the bank's midnight deadline or a longer reasonable time after it learns the facts, the bank may revoke the settlement, charge back the credit, or obtain refund from its customer, but it is liable for any loss resulting from the delay. These rights to revoke, charge-back, and obtain refund terminate if and when a settlement for the item received by the bank is or becomes final.

(b) A collecting bank returns an item when it is sent or delivered to the bank's customer or transferor or pursuant to its instructions.

(c) A depository bank that is also the payor may charge-back the amount of an item to its customer's account or obtain refund in accordance with the section governing return of an item received by a payor bank for credit on its books (RCW 62A.4-301).

(d) The right to charge-back is not affected by:

- (1) Previous use of a credit given for the item; or
- (2) Failure by any bank to exercise ordinary care with respect to the item, but a bank so failing remains liable.

(e) A failure to charge-back or claim refund does not affect other rights of the bank against the customer or any other party.

(f) If credit is given in dollars as the equivalent of the value of an item payable in a foreign money, the dollar amount of any charge-back or refund must be calculated on the basis of the bank-offered spot rate for the foreign money prevailing on the day when the person entitled to the charge-back or refund learns that it will not receive payment in ordinary course. [1993 c 229 § 101; 1965 ex.s. c 157 § 4-214. Cf. former RCW 30.52.130; 1955 c 33 § 30.52.130; prior: 1929 c 203 § 13; RRS § 3292-13.]

*Insolvency—Preferences prohibited: RCW 30.44.110.*

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**62A.4-215 Final payment of item by payor bank; when provisional debits and credits become final; when certain credits become available for withdrawal.** (a) An item is finally paid by a payor bank when the bank has first done any of the following:

- (1) Paid the item in cash;
- (2) Settled for the item without having a right to revoke the settlement under statute, clearing-house rule, or agreement; or

(2010 Ed.)

(3) Made a provisional settlement for the item and failed to revoke the settlement in the time and manner permitted by statute, clearing-house rule, or agreement.

(b) If provisional settlement for an item does not become final, the item is not finally paid.

(c) If provisional settlement for an item between the presenting and payor banks is made through a clearing house or by debits or credits in an account between them, then to the extent that provisional debits or credits for the item are entered in accounts between the presenting and payor banks or between the presenting and successive prior collecting banks seriatim, they become final upon final payment of the item by the payor bank.

(d) If a collecting bank receives a settlement for an item which is or becomes final, the bank is accountable to its customer for the amount of the item and any provisional credit given for the item in an account with its customer becomes final.

(e) Subject to (i) applicable law stating a time for availability of funds and (ii) any right of the bank to apply the credit to an obligation of the customer, credit given by a bank for an item in a customer's account becomes available for withdrawal as of right:

(1) If the bank has received a provisional settlement for the item, when the settlement becomes final and the bank has had a reasonable time to receive return of the item and the item has not been received within that time;

(2) If the bank is both the depository bank and the payor bank, and the item is finally paid, at the opening of the bank's second banking day following receipt of the item.

(f) Subject to applicable law stating a time for availability of funds and any right of a bank to apply a deposit to an obligation of the depositor, a deposit of money becomes available for withdrawal as of right at the opening of the bank's next banking day after receipt of the deposit. [1993 c 229 § 102.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**62A.4-216 Insolvency and preference.** (a) If an item is in or comes into the possession of a payor or collecting bank that suspends payment and the item has not been finally paid, the item must be returned by the receiver, trustee, or agent in charge of the closed bank to the presenting bank or the closed bank's customer.

(b) If a payor bank finally pays an item and suspends payments without making a settlement for the item with its customer or the presenting bank which settlement is or becomes final, the owner of the item has a preferred claim against the payor bank.

(c) If a payor bank gives or a collecting bank gives or receives a provisional settlement for an item and thereafter suspends payments, the suspension does not prevent or interfere with the settlement's becoming final if the finality occurs automatically upon the lapse of certain time or the happening of certain events.

(d) If a collecting bank receives from subsequent parties settlement for an item, which settlement is or becomes final and the bank suspends payments without making a settlement for the item with its customer which settlement is or becomes

final, the owner of the item has a preferred claim against the collecting bank. [1993 c 229 § 103.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

PART 3  
COLLECTION OF ITEMS: PAYOR BANKS

**62A.4-301 Deferred posting; recovery of payment by return of items; time of dishonor; return of items by payor bank.** (a) If a payor bank settles for a demand item (other than a documentary draft) presented otherwise than for immediate payment over the counter before midnight of the banking day of receipt, the payor bank may revoke the settlement and recover the settlement if, before it has made final payment and before its midnight deadline, it:

- (1) Returns the item; or
- (2) Sends written notice of dishonor or nonpayment if the item is unavailable for return.

(b) If a demand item is received by a payor bank for credit on its books, it may return the item or send notice of dishonor and may revoke any credit given or recover the amount thereof withdrawn by its customer, if it acts within the time limit and in the manner specified in subsection (a).

(c) Unless previous notice of dishonor has been sent, an item is dishonored at the time when for purposes of dishonor it is returned or notice sent in accordance with this section.

(d) An item is returned:

(1) As to an item presented through a clearing house, when it is delivered to the presenting or last collecting bank or to the clearing house or is sent or delivered in accordance with clearing-house rules; or

(2) In all other cases, when it is sent or delivered to the bank's customer or transferor or pursuant to instructions. [1993 c 229 § 104; 1965 ex.s. c 157 § 4-301. Cf. former RCW 30.52.030; 1955 c 33 § 30.52.030; prior: 1929 c 203 § 3; RRS § 3292-3.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**62A.4-302 Payor bank's responsibility for late return of item.** (a) If an item is presented to and received by a payor bank, the bank is accountable for the amount of:

(1) A demand item, other than a documentary draft, whether properly payable or not, if the bank, in any case in which it is not also the depository bank, retains the item beyond midnight of the banking day of receipt without settling for it or, whether or not it is also the depository bank, does not pay or return the item or send notice of dishonor until after its midnight deadline; or

(2) Any other properly payable item unless, within the time allowed for acceptance or payment of that item, the bank either accepts or pays the item or returns it and accompanying documents.

(b) The liability of a payor bank to pay an item pursuant to subsection (a) is subject to defenses based on breach of a presentment warranty (RCW 62A.4-208) or proof that the person seeking enforcement of the liability presented or transferred the item for the purpose of defrauding the payor bank. [1993 c 229 § 105; 1965 ex.s. c 157 § 4-302. Cf. former RCW 30.52.030; 1955 c 33 § 30.52.030; prior: 1929 c 203 § 3; RRS § 3292-3.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**62A.4-303 When items subject to notice, stop-payment order, legal process, or setoff; order in which items may be charged or certified.** (a) Any knowledge, notice, or stop-payment order received by, legal process served upon, or setoff exercised by a payor bank comes too late to terminate, suspend, or modify the bank's right or duty to pay an item or to charge its customer's account for the item if the knowledge, notice, stop-payment order, or legal process is received or served and a reasonable time for the bank to act thereon expires or the setoff is exercised after the earliest of the following:

- (1) The bank accepts or certifies the item;
- (2) The bank pays the item in cash;
- (3) The bank settles for the item without having a right to revoke the settlement under statute, clearing-house rule, or agreement;
- (4) The bank becomes accountable for the amount of the item under RCW 62A.4-302 dealing with the payor bank's responsibility for late return of items; or
- (5) With respect to checks, a cutoff hour no earlier than one hour after the opening of the next banking day after the banking day on which the bank received the check and no later than the close of that next banking day or, if no cutoff hour is fixed, the close of the next banking day after the banking day on which the bank received the check.

(b) Subject to subsection (a) items may be accepted, paid, certified, or charged to the indicated account of its customer in any order. [1993 c 229 § 106; 1965 ex.s. c 157 § 4-303.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

PART 4  
RELATIONSHIP BETWEEN PAYOR BANK  
AND ITS CUSTOMER

**62A.4-401 When bank may charge customer's account.** (a) A bank may charge against the account of a customer an item that is properly payable from that account even though the charge creates an overdraft. An item is properly payable if it is authorized by the customer and is in accordance with any agreement between the customer and bank.

(b) A customer is not liable for the amount of an overdraft if the customer neither signed the item nor benefited from the proceeds of the item.

(c) A bank may charge against the account of a customer a check that is otherwise properly payable from the account, even though payment was made before the date of the check, unless the customer has given notice to the bank of the postdating describing the check with reasonable certainty. The notice is effective for the period stated in RCW 62A.4-403(b) for stop-payment orders, and must be received at such time and in such manner as to afford the bank a reasonable opportunity to act on it before the bank takes any action with respect to the check described in RCW 62A.4-303. A bank may not collect a fee from a customer based on the customer's giving notice to the bank of a postdating. If a bank charges against the account of a customer a check before the date stated in the notice of postdating, the bank is liable for damages for the loss resulting from its act. The loss may

include damages for dishonor of subsequent items under RCW 62A.4-402.

(d) A bank that in good faith makes payment to a holder may charge the indicated account of its customer according to:

(1) The original terms of the altered item; or

(2) The terms of the completed item, even though the bank knows the item has been completed unless the bank has notice that the completion was improper. [1993 c 229 § 107; 1965 ex.s. c 157 § 4-401.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**62A.4-402 Bank's liability to customer for wrongful dishonor; time of determining insufficiency of account.**

(a) Except as otherwise provided in this Article, a payor bank wrongfully dishonors an item if it dishonors an item that is properly payable, but a bank may dishonor an item that would create an overdraft unless it has agreed to pay the overdraft.

(b) A payor bank is liable to its customer for damages proximately caused by the wrongful dishonor of an item. Liability is limited to actual damages proved and may include damages for an arrest or prosecution of the customer or other consequential damages. Whether any consequential damages are proximately caused by the wrongful dishonor is a question of fact to be determined in each case.

(c) A payor bank's determination of the customer's account balance on which a decision to dishonor for insufficiency of available funds is based may be made at any time between the time the item is received by the payor bank and the time that the payor bank returns the item or gives notice in lieu of return, and no more than one determination need be made. If, at the election of the payor bank, a subsequent balance determination is made for the purpose of reevaluating the bank's decision to dishonor the item, the account balance at that time is determinative of whether a dishonor for insufficiency of available funds is wrongful. [1993 c 229 § 108; 1965 ex.s. c 157 § 4-402.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**62A.4-403 Customer's right to stop payment; burden of proof of loss.** (a) A customer or any other person authorized to draw on the account if there is more than one person may stop payment of any item drawn on the customer's account or close the account by an order to the bank describing the item or account with reasonable certainty received at a time and in a manner that affords the bank a reasonable opportunity to act on it before any action by the bank with respect to the item described in RCW 62A.4-303. If the signature of more than one person is required to draw on an account, any of these persons may stop payment or close the account.

(b) A stop-payment order is effective for six months, but it lapses after fourteen calendar days if the original order was oral and was not confirmed in writing within that period. A stop-payment order may be renewed for additional six-month periods by a writing given to the bank within a period during which the stop-payment order is effective.

(c) The burden of establishing the fact and amount of loss resulting from the payment of an item contrary to a bind-

(2010 Ed.)

ing stop-payment order or order to close the account is on the customer. The loss from payment of an item contrary to a stop-payment order may include damages for dishonor of subsequent items under RCW 62A.4-402. [1993 c 229 § 109; 1965 ex.s. c 157 § 4-403. Cf. former RCW sections: (i) RCW 30.16.030; 1959 c 106 § 4; 1955 c 33 § 30.16.030; prior: 1923 c 114 §§ 1, part, and 2; RRS §§ 3252-1, part, and 3252-2. (ii) RCW 30.16.040; 1955 c 33 § 30.16.040; prior: 1923 c 114 §§ 1, part, and 3; RRS §§ 3252-1, part, and 3252-3.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**62A.4-404 Bank not obligated to pay check more than six months old.** A bank is under no obligation to a customer having a checking account to pay a check, other than a certified check, which is presented more than six months after its date, but it may charge its customer's account for a payment made thereafter in good faith. [1965 ex.s. c 157 § 4-404. Cf. former RCW 30.16.050; 1955 c 33 § 30.16.050; prior: 1923 c 114 §§ 1, part, and 5; RRS §§ 3252-1, part, and 3252-5.]

**62A.4-405 Death or incompetence of customer.** (a) A payor or collecting bank's authority to accept, pay, or collect an item or to account for proceeds of its collection, if otherwise effective, is not rendered ineffective by incompetence of a customer of either bank existing at the time the item is issued or its collection is undertaken if the bank does not know of an adjudication of incompetence. Neither death nor incompetence of a customer revokes the authority to accept, pay, collect, or account until the bank knows of the fact of death or of an adjudication of incompetence and has reasonable opportunity to act on it.

(b) Even with knowledge, a bank may for ten days after the date of death pay or certify checks drawn on or before that date unless ordered to stop payment by a person claiming an interest in the account. [1993 c 229 § 110; 1965 ex.s. c 157 § 4-405. Cf. former RCW 30.20.030; 1955 c 33 § 30.20.030; prior: 1917 c 80 § 43; RRS § 3250.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**62A.4-406 Customer's duty to discover and report unauthorized signature or alteration.** (a) A bank that sends or makes available to a customer a statement of account showing payment of items for the account shall either return or make available to the customer the items paid, copies of the items paid, or provide information in the statement of account sufficient to allow the customer reasonably to identify the items paid. The statement of account provides sufficient information if the item is described by item number, amount, and date of payment. If the bank does not return the items paid or copies of the items paid, it shall provide in the statement of account the telephone number that the customer may call to request an item or copy of an item pursuant to subsection (b) of this section.

(b) If the items are not returned to the customer, the person retaining the items shall either retain the items or, if the items are destroyed, maintain the capacity to furnish legible copies of the items until the expiration of seven years after receipt of the items. A customer may request an item from the bank that paid the item, and that bank must provide in a rea-

sonable time either the item or, if the item has been destroyed or is not otherwise obtainable, a legible copy of the item. A bank shall provide, upon request and without charge to the customer, at least two items or copies of items with respect to each statement of account sent to the customer. A bank may charge fees for additional items or copies of items in accordance with RCW 30.22.230. Requests for ten items or less shall be processed and completed within ten business days.

(c) If a bank sends or makes available a statement of account or items pursuant to subsection (a), the customer must exercise reasonable promptness in examining the statement or the items to determine whether any payment was not authorized because of an alteration of an item or because a purported signature by or on behalf of the customer was not authorized. If, based on the statement or items provided, the customer should reasonably have discovered the unauthorized payment, the customer must promptly notify the bank of the relevant facts.

(d) If the bank proves that the customer, failed with respect to an item, to comply with the duties imposed on the customer by subsection (c) the customer is precluded from asserting against the bank:

(1) The customer's unauthorized signature or any alteration on the item, if the bank also proves that it suffered a loss by reason of the failure; and

(2) The customer's unauthorized signature or alteration by the same wrong-doer on any other item paid in good faith by the bank if the payment was made before the bank received notice from the customer of the unauthorized signature or alteration and after the customer had been afforded a reasonable period of time, not exceeding thirty days, in which to examine the item or statement of account and notify the bank.

(e) If subsection (d) applies and the customer proves that the bank failed to exercise ordinary care in paying the item and that the failure substantially contributed to loss, the loss is allocated between the customer precluded and the bank asserting the preclusion according to the extent to which the failure of the customer to comply with subsection (c) and the failure of the bank to exercise ordinary care contributed to the loss. If the customer proves that the bank did not pay the item in good faith, the preclusion under subsection (d) does not apply.

(f) Without regard to care or lack of care of either the customer or the bank, a natural person whose account is primarily for personal, family, or household purposes who does not within one year, and any other customer who does not within sixty days, from the time the statement and items are made available to the customer (subsection (a)) discover and report the customer's unauthorized signature or any alteration on the face or back of the item or does not within one year from that time discover and report any unauthorized indorsement is precluded from asserting against the bank such unauthorized signature or indorsement or such alteration. If there is a preclusion under this subsection, the payor bank may not recover for breach of warranty under RCW 62A.4-208 with respect to the unauthorized signature or alteration to which the preclusion applies. [1997 c 53 § 1; 1995 c 107 § 1; 1993 c 229 § 111; 1991 sp.s. c 19 § 1; 1967 c 114 § 1; 1965 ex.s. c 157 § 4-406. Cf. former RCW 30.16.020; 1955 c 33 § 30.16.020; prior: 1917 c 80 § 45; RRS § 3252.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**62A.4-407 Payor bank's right to subrogation on improper payment.** If a payor bank has paid an item over the order of the drawer or maker to stop payment, or after an account has been closed, or otherwise under circumstances giving a basis for objection by the drawer or maker, to prevent unjust enrichment and only to the extent necessary to prevent loss to the bank by reason of its payment of the item, the payor bank is subrogated to the rights:

(1) Of any holder in due course on the item against the drawer or maker;

(2) Of the payee or any other holder of the item against the drawer or maker either on the item or under the transaction out of which the item arose; and

(3) Of the drawer or maker against the payee or any other holder of the item with respect to the transaction out of which the item arose. [1993 c 229 § 112; 1965 ex.s. c 157 § 4-407.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

## PART 5 COLLECTION OF DOCUMENTARY DRAFTS

**62A.4-501 Handling of documentary drafts; duty to send for presentment and to notify customer of dishonor.**

A bank that takes a documentary draft for collection shall present or send the draft and accompanying documents for presentment and, upon learning that the draft has not been paid or accepted in due course, shall seasonably notify its customer of the fact even though it may have discounted or bought the draft or extended credit available for withdrawal as of right. [1993 c 229 § 113; 1965 ex.s. c 157 § 4-501.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**62A.4-502 Presentment of "on arrival" drafts.** If a draft or the relevant instructions require presentment "on arrival", "when goods arrive" or the like, the collecting bank need not present until in its judgment a reasonable time for arrival of the goods has expired. Refusal to pay or accept because the goods have not arrived is not dishonor; the bank must notify its transferor of the refusal but need not present the draft again until it is instructed to do so or learns of the arrival of the goods. [1993 c 229 § 114; 1965 ex.s. c 157 § 4-502.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**62A.4-503 Responsibility of presenting bank for documents and goods; report of reasons for dishonor; referee in case of need.** Unless otherwise instructed and except as provided in Article 5, a bank presenting a documentary draft:

(1) Must deliver the documents to the drawee on acceptance of the draft if it is payable more than three days after presentment; otherwise, only on payment; and

(2) Upon dishonor, either in the case of presentment for acceptance or presentment for payment, may seek and follow instructions from any referee in case of need designated in the draft or, if the presenting bank does not choose to utilize the referee's services, it must use diligence and good faith to ascertain the reason for dishonor, must notify its transferor of the dishonor and of the results of its effort to ascertain the rea-

sons therefor, and must request instructions. However, the presenting bank is under no obligation with respect to goods represented by the documents except to follow any reasonable instructions seasonably received; it has a right to reimbursement for any expense incurred in following instructions and to prepayment of or indemnity for those expenses. [1993 c 229 § 115; 1965 ex.s. c 157 § 4-503. Cf. former RCW 62.01.131(3); 1955 c 35 § 62.01.131; prior: 1899 c 149 § 131; RRS § 3521.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**62A.4-504 Privilege of presenting bank to deal with goods; security interest for expenses.** (a) A presenting bank that, following the dishonor of a documentary draft, has seasonably requested instructions but does not receive them within a reasonable time may store, sell, or otherwise deal with the goods in any reasonable manner.

(b) For its reasonable expenses incurred by action under subsection (a) the presenting bank has a lien upon the goods or their proceeds, which may be foreclosed in the same manner as an unpaid seller's lien. [1993 c 229 § 116; 1965 ex.s. c 157 § 4-504.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**Article 4A  
FUNDS TRANSFERS**

Sections

**PART 1  
SUBJECT MATTER AND DEFINITIONS**

- 62A.4A-101 Short title.
- 62A.4A-102 Subject matter.
- 62A.4A-103 Payment order—Definitions.
- 62A.4A-104 Funds transfer—Definitions.
- 62A.4A-105 Other definitions.
- 62A.4A-106 Time payment order is received.
- 62A.4A-107 Federal reserve regulations and operating circulars.
- 62A.4A-108 Exclusion of consumer transactions governed by federal law.

**PART 2  
ISSUE AND ACCEPTANCE OF PAYMENT ORDER**

- 62A.4A-201 Security procedure.
- 62A.4A-202 Authorized and verified payment orders.
- 62A.4A-203 Unenforceability of certain verified payment orders.
- 62A.4A-204 Refund of payment and duty of customer to report with respect unauthorized payment order.
- 62A.4A-205 Erroneous payment orders.
- 62A.4A-206 Transmission of payment order through funds-transfer or other communication system.
- 62A.4A-207 Misdescription of beneficiary.
- 62A.4A-208 Misdescription of intermediary bank or beneficiary's bank.
- 62A.4A-209 Acceptance of payment order.
- 62A.4A-210 Rejection of payment order.
- 62A.4A-211 Cancellation and amendment of payment order.
- 62A.4A-212 Liability and duty of receiving bank regarding unaccepted payment order.

**PART 3  
EXECUTION OF SENDER'S PAYMENT ORDER  
BY RECEIVING BANK**

- 62A.4A-301 Execution and execution date.
- 62A.4A-302 Obligations of receiving bank in execution of payment order.
- 62A.4A-303 Erroneous execution of payment order.
- 62A.4A-304 Duty of sender to report erroneously executed payment order.
- 62A.4A-305 Liability for late or improper execution or failure to execute payment order.

**PART 4  
PAYMENT**

- 62A.4A-401 Payment date.

(2010 Ed.)

- 62A.4A-402 Obligation of sender to pay receiving bank.
- 62A.4A-403 Payment by sender to receiving bank.
- 62A.4A-404 Obligation of beneficiary's bank to pay and give notice to beneficiary.
- 62A.4A-405 Payment by beneficiary's bank to beneficiary.
- 62A.4A-406 Payment by originator to beneficiary; discharge of underlying obligation.

**PART 5  
MISCELLANEOUS PROVISIONS**

- 62A.4A-501 Variation by agreement and effect of funds-transfer system rule.
- 62A.4A-502 Creditor process served on receiving bank; setoff by beneficiary's bank.
- 62A.4A-503 Injunction or restraining order with respect to funds transfer.
- 62A.4A-504 Order in which items and payment orders may be charged to account; order of withdrawals from account.
- 62A.4A-505 Preclusion of objection to debit of customer's account.
- 62A.4A-506 Rate of interest.
- 62A.4A-507 Choice of law.

**Reviser's note:** Powers, duties, and functions of the department of general administration relating to financial institutions were transferred to the department of financial institutions by 1993 c 472, effective October 1, 1993. See RCW 43.320.011.

**PART 1  
SUBJECT MATTER AND DEFINITIONS**

**62A.4A-101 Short title.** This Article may be cited as the Uniform Commercial Code—Funds Transfers. [1991 sp.s. c 21 § 4A-101.]

**62A.4A-102 Subject matter.** Except as otherwise provided in RCW 62A.4A-108 this Article applies to funds transfers defined in RCW 62A.4A-104. [1991 sp.s. c 21 § 4A-102.]

**62A.4A-103 Payment order—Definitions.** (1) In this Article:

(a) "Payment order" means an instruction of a sender to a receiving bank, transmitted orally, electronically, or in writing, to pay, or to cause another bank to pay, a fixed or determinable amount of money to a beneficiary if:

(i) The instruction does not state a condition of payment to the beneficiary other than time of payment;

(ii) The receiving bank is to be reimbursed by debiting an account of, or otherwise receiving payment from, the sender; and

(iii) The instruction is transmitted by the sender directly to the receiving bank or to an agent, funds-transfer system, or communication system for transmittal to the receiving bank.

(b) "Beneficiary" means the person to be paid by the beneficiary's bank.

(c) "Beneficiary's bank" means the bank identified in a payment order in which an account of the beneficiary is to be credited pursuant to the order or which otherwise is to make payment to the beneficiary if the order does not provide for payment to an account.

(d) "Receiving bank" means the bank to which the sender's instruction is addressed.

(e) "Sender" means the person giving the instruction to the receiving bank.

(2) If an instruction complying with subsection (1)(a) of this section is to make more than one payment to a beneficiary, the instruction is a separate payment order with respect to each payment.

(3) A payment order is issued when it is sent to the receiving bank. [1991 sp.s. c 21 § 4A-103.]

**62A.4A-104 Funds transfer—Definitions.** In this Article:

(1) "Funds transfer" means the series of transactions, beginning with the originator's payment order, made for the purpose of making payment to the beneficiary of the order. The term includes any payment order issued by the originator's bank or an intermediary bank intended to carry out the originator's payment order. A funds transfer is completed by acceptance by the beneficiary's bank of a payment order for the benefit of the beneficiary of the originator's payment order.

(2) "Intermediary bank" means a receiving bank other than the originator's bank or the beneficiary's bank.

(3) "Originator" means the sender of the first payment order in a funds transfer.

(4) "Originator's bank" means (a) the receiving bank to which the payment order of the originator is issued if the originator is not a bank, or (b) the originator if the originator is a bank. [1991 sp.s. c 21 § 4A-104.]

**62A.4A-105 Other definitions.** (1) In this Article:

(a) "Authorized account" means a deposit account of a customer in a bank designated by the customer as a source of payment orders issued by the customer to the bank. If a customer does not so designate an account, any account of the customer is an authorized account if payment of a payment order from that account is not inconsistent with a restriction on the use of the account.

(b) "Bank" means a person engaged in the business of banking and includes a savings bank, savings and loan association, credit union, and trust company. A branch or separate office of a bank is a separate bank for purposes of this Article.

(c) "Customer" means a person, including a bank, having an account with a bank or from whom a bank has agreed to receive payment orders.

(d) "Funds-transfer business day" of a receiving bank means the part of a day during which the receiving bank is open for the receipt, processing, and transmittal of payment orders and cancellations and amendments of payment orders.

(e) "Funds-transfer system" means a wire transfer network, automated clearing house, or other communication system of a clearing house or other association of banks through which a payment order by a bank may be transmitted to the bank to which the order is addressed.

(f) "Good faith" means honesty in fact and the observance of reasonable commercial standards of fair dealing.

(g) "Prove" with respect to a fact means to meet the burden of establishing the fact (RCW 62A.1-201(8)).

(2) Other definitions applying to this Article and the sections in which they appear are:

"Acceptance"	RCW 62A.4A-209
"Beneficiary"	RCW 62A.4A-103
"Beneficiary's bank"	RCW 62A.4A-103
"Executed"	RCW 62A.4A-301
"Execution date"	RCW 62A.4A-301
"Funds transfer"	RCW 62A.4A-104
"Funds-transfer system rule"	RCW 62A.4A-501

"Intermediary bank"	RCW 62A.4A-104
"Originator"	RCW 62A.4A-104
"Originator's bank"	RCW 62A.4A-104
"Payment by beneficiary's bank to beneficiary"	RCW 62A.4A-405
"Payment by originator to beneficiary"	RCW 62A.4A-406
"Payment by sender to receiving bank"	RCW 62A.4A-403
"Payment date"	RCW 62A.4A-401
"Payment order"	RCW 62A.4A-103
"Receiving bank"	RCW 62A.4A-103
"Security procedure"	RCW 62A.4A-201
"Sender"	RCW 62A.4A-103

(3) The following definitions in Article 4 (RCW 62A.4-101 through 62A.4-504) apply to this Article:

"Clearing house"	*section 4-104 of this act
"Item"	*section 4-104 of this act
"Suspends payments"	*section 4-104 of this act

(4) In addition to Article 1 [In addition, Article 1] (RCW 62A.1-101 through 62A.1-208) contains general definitions and principles of construction and interpretation applicable throughout this Article. [1991 sp.s. c 21 § 4A-105.]

**\*Reviser's note:** The references to "section 4-104 of this act" are incorrect. RCW 62A.4-104 was apparently intended.

**62A.4A-106 Time payment order is received.** (1) The time of receipt of a payment order or communication canceling or amending a payment order is determined by the rules applicable to receipt of a notice stated in RCW 62A.1-201(27). A receiving bank may fix a cut-off time or times on a funds-transfer business day for the receipt and processing of payment orders and communications canceling or amending payment orders. Different cut-off times may apply to payment orders, cancellations, or amendments, or to different categories of payment orders, cancellations, or amendments. A cut-off time may apply to senders generally or different cut-off times may apply to different senders or categories of payment orders. If a payment order or communication canceling or amending a payment order is received after the close of a funds-transfer business day or after the appropriate cut-off time on a funds-transfer business day, the receiving bank may treat the payment order or communication as received at the opening of the next funds-transfer business day.

(2) If this Article refers to an execution date or payment date or states a day on which a receiving bank is required to take action, and the date or day does not fall on a funds-transfer business day, the next day that is a funds-transfer business day is treated as the date or day stated, unless the contrary is stated in this Article. [1991 sp.s. c 21 § 4A-106.]

**62A.4A-107 Federal reserve regulations and operating circulars.** Regulations of the board of governors of the federal reserve system and operating circulars of the federal reserve banks supersede any inconsistent provision of this Article to the extent of the inconsistency. [1991 sp.s. c 21 § 4A-107.]

**62A.4A-108 Exclusion of consumer transactions governed by federal law.** This Article does not apply to a funds transfer any part of which is governed by the Electronic Fund Transfer Act of 1978 (Title XX, P.L. 95-630, 92 Stat. 3728, 15 U.S.C. Sec. 1693 et seq.) as amended from time to time. [1991 sp.s. c 21 § 4A-108.]

## PART 2

### ISSUE AND ACCEPTANCE OF PAYMENT ORDER

**62A.4A-201 Security procedure.** "Security procedure" means a procedure established by agreement of a customer and a receiving bank for the purpose of (1) verifying that a payment order or communication amending or canceling a payment order is that of the customer, or (2) detecting error in the transmission or the content of the payment order or communication. A security procedure may require the use of algorithms or other codes, identifying words or numbers, encryption, callback procedures, or similar security devices. Comparison of a signature on a payment order or communication with an authorized specimen signature of the customer is not by itself a security procedure. [1991 sp.s. c 21 § 4A-201.]

**62A.4A-202 Authorized and verified payment orders.** (1) A payment order received by the receiving bank is the authorized order of the person identified as sender if that person authorized the order or is otherwise bound by it under the law of agency.

(2) If a bank and its customer have agreed that the authenticity of payment orders issued to the bank in the name of the customer as sender will be verified pursuant to a security procedure, a payment order received by the receiving bank is effective as the order of the customer, whether or not authorized, if (a) the security procedure is a commercially reasonable method of providing security against unauthorized payment orders, and (b) the bank proves that it accepted the payment order in good faith and in compliance with the security procedure and any written agreement or instruction of the customer restricting acceptance of payment orders issued in the name of the customer. The bank is not required to follow an instruction that violates a written agreement with the customer or notice of which is not received at a time and in a manner affording the bank a reasonable opportunity to act on it before the payment order is accepted.

(3) Commercial reasonableness of a security procedure is a question of law to be determined by considering the wishes of the customer expressed to the bank, the circumstances of the customer known to the bank, including the size, type, and frequency of payment orders normally issued by the customer to the bank, alternative security procedures offered to the customer, and security procedures in general use by customers and receiving banks similarly situated. A security procedure is deemed to be commercially reasonable if (a) the security procedure was chosen [by] the customer after the bank offered, and the customer refused, a security procedure that was commercially reasonable for that customer, and (b) the customer expressly agreed in writing to be bound by any payment order, whether or not authorized, issued in its name, and accepted by the bank in compliance with the security procedure chosen by the customer.

(4) The term "sender" in this Article includes the customer in whose name a payment order is issued if the order is the authorized order of the customer under subsection (1) of this section, or it is effective as the order of the customer under subsection (2) of this section.

(5) This section applies to amendments and cancellations of payment orders to the same extent it applies to payment orders.

(6) Except as provided in this section and RCW 62A.4A-203(1)(a), rights and obligations arising under this section or RCW 62A.4A-203 may not be varied by agreement. [1991 sp.s. c 21 § 4A-202.]

**62A.4A-203 Unenforceability of certain verified payment orders.** (1) If an accepted payment order is not, under RCW 62A.4A-201(1), an authorized order of a customer identified as sender, but is effective as an order of the customer pursuant to RCW 62A.4A-202(2), the following rules apply.

(a) By express written agreement, the receiving bank may limit the extent to which it is entitled to enforce or retain payment of the payment order.

(b) The receiving bank is not entitled to enforce or retain payment of the payment order if the customer proves that the order was not caused, directly or indirectly, by a person (i) entrusted at any time with duties to act for the customer with respect to payment orders or the security procedure, or (ii) who obtained access to transmitting facilities of the customer or who obtained, from a source controlled by the customer and without authority of the receiving bank, information facilitating breach of the security procedure, regardless of how the information was obtained or whether the customer was at fault. Information includes any access device, computer software, or the like.

(2) This section applies to amendments of payment orders to the same extent it applies to payment orders. [1991 sp.s. c 21 § 4A-203.]

**62A.4A-204 Refund of payment and duty of customer to report with respect unauthorized payment order.** (1) If a receiving bank accepts a payment order issued in the name of its customer as sender which is (a) not authorized and not effective as the order of the customer under RCW 62A.4A-202, or (b) not enforceable, in whole or in part, against the customer under RCW 62A.4A-203, the bank shall refund any payment of the payment order received from the customer to the extent the bank is not entitled to enforce payment and shall pay interest on the refundable amount calculated from the date the bank received payment to the date of the refund. However, the customer is not entitled to interest from the bank on the amount to be refunded if the customer fails to exercise ordinary care to determine that the order was not authorized by the customer and to notify the bank of the relevant facts within a reasonable time not exceeding ninety days after the date the customer received notification from the bank that the order was accepted or that the customer's account was debited with respect to the order. The bank is not entitled to any recovery from the customer on account of a failure by the customer to give notification as stated in this section.

(2) Reasonable time under subsection (1) of this section may be fixed by agreement as stated in RCW 62A.1-204(1), but the obligation of a receiving bank to refund payment as stated in subsection (1) may not otherwise be varied by agreement. [1991 sp.s. c 21 § 4A-204.]

**62A.4A-205 Erroneous payment orders.** (1) If an accepted payment order was transmitted pursuant to a security procedure for the detection of error and the payment order (a) erroneously instructed payment to a beneficiary not intended by the sender, (b) erroneously instructed payment in an amount greater than the amount intended by the sender, or (c) was an erroneously transmitted duplicate of a payment order previously sent by the sender, the following rules apply:

(i) If the sender proves that the sender or a person acting on behalf of the sender pursuant to RCW 62A.4A-206 complied with the security procedure and that the error would have been detected if the receiving bank had also complied, the sender is not obliged to pay the order to the extent stated in (ii) and (iii) of this subsection.

(ii) If the funds transfer is completed on the basis of an erroneous payment order described in (b) or (c) of this subsection, the sender is not obliged to pay the order and the receiving bank is entitled to recover from the beneficiary any amount paid to the beneficiary to the extent allowed by the law governing mistake and restitution.

(iii) If the funds transfer is completed on the basis of a payment order described in (b) of this subsection, the sender is not obliged to pay the order to the extent the amount received by the beneficiary is greater than the amount intended by the sender. In that case, the receiving bank is entitled to recover from the beneficiary the excess amount received to the extent allowed by the law governing mistake and restitution.

(2) If (a) the sender of an erroneous payment order described in subsection (1) of this section is not obliged to pay all or part of the order, and (b) the sender receives notification from the receiving bank that the order was accepted by the bank or that the sender's account was debited with respect to the order, the sender has a duty to exercise ordinary care, on the basis of information available to the sender, to discover the error with respect to the order and to advise the bank of the relevant facts within a reasonable time, not exceeding ninety days, after the bank's notification was received by the sender. If the bank proves that the sender failed to perform that duty, the sender is liable to the bank for the loss the bank proves it incurred as a result of the failure, but the liability of the sender may not exceed the amount of the sender's order.

(3) This section applies to amendments to payment orders to the same extent it applies to payment orders. [1991 sp.s. c 21 § 4A-205.]

**62A.4A-206 Transmission of payment order through funds-transfer or other communication system.** (1) If a payment order addressed to a receiving bank is transmitted to a funds-transfer system or other third-party communication system for transmittal to the bank, the system is deemed to be an agent of the sender for the purpose of transmitting the pay-

ment order to the bank. If there is a discrepancy between the terms of the payment order transmitted to the system and the terms of the payment order transmitted by the system to the bank, the terms of the payment order of the sender are those transmitted by the system. This section does not apply to a funds-transfer system of the federal reserve banks.

(2) This section applies to cancellations and amendments of payment orders to the same extent it applies to payment orders. [1991 sp.s. c 21 § 4A-206.]

**62A.4A-207 Misdescription of beneficiary.** (1) Subject to subsection (2) of this section, if, in a payment order received by the beneficiary's bank, the name, bank account number, or other identification of the beneficiary refers to a nonexistent or unidentifiable person or account, no person has rights as a beneficiary of the order and acceptance of the order cannot occur.

(2) If a payment order received by the beneficiary's bank identifies the beneficiary both by name and by an identifying or bank account number and the name and number identify different persons, the following rules apply:

(a) Except as otherwise provided in subsection (3) of this section, if the beneficiary's bank does not know that the name and number refer to different persons, it may rely on the number as the proper identification of the beneficiary of the order. The beneficiary's bank need not determine whether the name and number refer to the same person.

(b) If the beneficiary's bank pays the person identified by name or knows that the name and number identify different persons, no person has rights as beneficiary except the person paid by the beneficiary's bank if that person was entitled to receive payment from the originator of the funds transfer. If no person has rights as beneficiary, acceptance of the order cannot occur.

(3) If (a) a payment order described in subsection (2) of this section is accepted, (b) the originator's payment order described the beneficiary inconsistently by name and number, and (c) the beneficiary's bank pays the person identified by number as permitted by subsection (2)(a) of this section, the following rules apply:

(i) If the originator is a bank, the originator is obliged to pay its order.

(ii) If the originator is not a bank and proves that the person identified by number was not entitled to receive payment from the originator, the originator is not obliged to pay its order unless the originator's bank proves that the originator, before acceptance of the originator's order, had notice that payment of a payment order issued by the originator might be made by the beneficiary's bank on the basis of an identifying or bank account number even if it identifies a person different from the named beneficiary. Proof of notice may be made by any admissible evidence. The originator's bank satisfies the burden of proof if it proves that the originator, before the payment order was accepted, signed a writing stating the information to which the notice relates.

(4) In a case governed by subsection (2)(a) of this section, if the beneficiary's bank rightfully pays the person identified by number and that person was not entitled to receive payment from the originator, the amount paid may be recovered from that person to the extent allowed by the law governing mistake and restitution as follows:

(a) If the originator is obliged to pay its payment order as stated in subsection (3) of this section, the originator has the right to recover.

(b) If the originator is not a bank and is not obliged to pay its payment order, the originator's bank has the right to recover. [1991 sp.s. c 21 § 4A-207.]

**62A.4A-208 Misdescription of intermediary bank or beneficiary's bank.** (1) This subsection applies to a payment order identifying an intermediary bank or the beneficiary's bank only by an identifying number.

(a) The receiving bank may rely on the number as the proper identification of the intermediary or beneficiary's bank and need not determine whether the number identifies a bank.

(b) The sender is obliged to compensate the receiving bank for any loss and expenses incurred by the receiving bank as a result of its reliance on the number in executing or attempting to execute the order.

(2) This subsection applies to a payment order identifying an intermediary bank or the beneficiary's bank both by name and an identifying number if the name and number identify different persons.

(a) If the sender is a bank, the receiving bank may rely on the number as the proper identification of the intermediary or beneficiary's bank if the receiving bank, when it executes the sender's order, does not know that the name and number identify different persons. The receiving bank need not determine whether the name and number refer to the same person or whether the number refers to a bank. The sender is obliged to compensate the receiving bank for any loss and expenses incurred by the receiving bank as a result of its reliance on the number in executing or attempting to execute the order.

(b) If the sender is not a bank and the receiving bank proves that the sender, before the payment order was accepted, had notice that the receiving bank might rely on the number as the proper identification of the intermediary or beneficiary's bank even if it identifies a person different from the bank identified by name, the rights and obligations of the sender and the receiving bank are governed by subsection (2)(a) of this section, as though the sender were a bank. Proof of notice may be made by any admissible evidence. The receiving bank satisfies the burden of proof if it proves that the sender, before the payment order was accepted, signed a writing stating the information to which the notice relates.

(c) Regardless of whether the sender is a bank, the receiving bank may rely on the name as the proper identification of the intermediary or beneficiary's bank if the receiving bank, at the time it executes the sender's order, does not know that the name and number identify different persons. The receiving bank need not determine whether the name and number refer to the same person.

(d) If the receiving bank knows that the name and number identify different persons, reliance on either the name or the number in executing the sender's payment order is a breach of the obligation stated in RCW 62A.4A-302(1)(a). [1991 sp.s. c 21 § 4A-208.]

**62A.4A-209 Acceptance of payment order.** (1) Subject to subsection (4) of this section, a receiving bank other

than the beneficiary's bank accepts a payment order when it executes the order.

(2) Subject to subsections (3) and (4) of this section, a beneficiary's bank accepts a payment order at the earliest of the following times:

(a) When the bank (i) pays the beneficiary as stated in RCW 62A.4A-405 (1) or (2) or (ii) notifies the beneficiary of receipt of the order or that the account of the beneficiary has been credited with respect to the order unless the notice indicates that the bank is rejecting the order or that funds with respect to the order may not be withdrawn or used until receipt of payment from the sender of the order;

(b) When the bank receives payment of the entire amount of the sender's order pursuant to RCW 62A.4A-403(1) (a) or (b); or

(c) The opening of the next funds-transfer business day of the bank following the payment date of the order if, at that time, the amount of the sender's order is fully covered by a withdrawable credit balance in an authorized account of the sender or the bank has otherwise received full payment from the sender, unless the order was rejected before that time or is rejected within (i) one hour after that time, or (ii) one hour after the opening of the next business day of the sender following the payment date if that time is later. If notice of rejection is received by the sender after the payment date and the authorized account of the sender does not bear interest, the bank is obliged to pay interest to the sender on the amount of the order for the number of days elapsing after the payment date to the day the sender receives notice or learns that the order was not accepted, counting that day as an elapsed day. If the withdrawable credit balance during that period falls below the amount of the order, the amount of interest payable is reduced accordingly.

(3) Acceptance of a payment order cannot occur before the order is received by the receiving bank. Acceptance does not occur under subsection (2)(b) or (c) of this section if the beneficiary of the payment order does not have an account with the receiving bank, the account has been closed, or the receiving bank is not permitted by law to receive credits for the beneficiary's account.

(4) A payment order issued to the originator's bank cannot be accepted until the payment date if the bank is the beneficiary's bank, or the execution date if the bank is not the beneficiary's bank. If the originator's bank executes the originator's payment order before the execution date or pays the beneficiary of the originator's payment order before the payment date and the payment order is subsequently canceled pursuant to RCW 62A.4A-211(2), the bank may recover from the beneficiary any payment received to the extent allowed by the law governing mistake and restitution. [1991 sp.s. c 21 § 4A-209.]

**62A.4A-210 Rejection of payment order.** (1) A payment order is rejected by the receiving bank by a notice of rejection transmitted to the sender orally, electronically, or in writing. A notice of rejection need not use any particular words and is sufficient if it indicates that the receiving bank is rejecting the order or will not execute or pay the order. Rejection is effective when the notice is given if transmission is by a means that is reasonable in the circumstances. If notice of rejection is given by a means that is not reasonable, reject-

tion is effective when the notice is received. If an agreement of the sender and receiving bank establishes the means to be used to reject a payment order, (a) any means complying with the agreement is reasonable and (b) any means not complying is not reasonable unless no significant delay in receipt of the notice resulted from the use of the noncomplying means.

(2) This subsection applies if a receiving bank other than the beneficiary's bank fails to execute a payment order despite the existence on the execution date of a withdrawable credit balance in an authorized account of the sender sufficient to cover the order. If the sender does not receive notice of rejection of the order on the execution date and the authorized account of the sender does not bear interest, the bank is obliged to pay interest to the sender on the amount of the order for the number of days elapsing after the execution date to the earlier of the day the order is canceled pursuant to RCW 62A.4A-211(4) or the day the sender receives notice or learns that the order was not executed, counting the final day of the period as an elapsed day. If the withdrawable credit balance during that period falls below the amount of the order, the amount of interest is reduced accordingly.

(3) If a receiving bank suspends payments, all unaccepted payment orders issued to it are deemed rejected at the time the bank suspends payments.

(4) Acceptance of a payment order precludes a later rejection of the order. Rejection of a payment order precludes a later acceptance of the order. [1991 sp.s. c 21 § 4A-210.]

**62A.4A-211 Cancellation and amendment of payment order.** (1) A communication of the sender of a payment order canceling or amending the order may be transmitted to the receiving bank orally, electronically, or in writing. If a security procedure is in effect between the sender and the receiving bank, the communication is not effective to cancel or amend the order unless the communication is verified pursuant to the security procedure or the bank agrees to the cancellation or amendment.

(2) Subject to subsection (1) of this section, a communication by the sender canceling or amending a payment order is effective to cancel or amend the order if notice of the communication is received at a time and in a manner affording the receiving bank a reasonable opportunity to act on the communication before the bank accepts the payment order.

(3) After a payment order has been accepted, cancellation or amendment of the order is not effective unless the receiving bank agrees or a funds-transfer system rule allows cancellation or amendment without agreement of the bank.

(a) With respect to a payment order accepted by a receiving bank other than the beneficiary's bank, cancellation or amendment is not effective unless a conforming cancellation or amendment of the payment order issued by the receiving bank is also made.

(b) With respect to a payment order accepted by the beneficiary's bank, cancellation or amendment is not effective unless the order was issued in execution of an unauthorized payment order, or because of a mistake by a sender in the funds transfer which resulted in the issuance of a payment order (i) that is a duplicate of a payment order previously issued by the sender, (ii) that orders payment to a beneficiary not entitled to receive payment from the originator, or (iii) that orders payment in an amount greater than the amount the

beneficiary was entitled to receive from the originator. If the payment order is canceled or amended, the beneficiary's bank is entitled to recover from the beneficiary any amount paid to the beneficiary to the extent allowed by the law governing mistake and restitution.

(4) An unaccepted payment order is canceled by operation of law at the close of the fifth funds-transfer business day of the receiving bank after the execution date or payment date of the order.

(5) A canceled payment order cannot be accepted. If an accepted payment order is canceled, the acceptance is nullified and no person has any right or obligation based on the acceptance. Amendment of a payment order is deemed to be cancellation of the original order at the time of amendment and issue of a new payment order in the amended form at the same time.

(6) Unless otherwise provided in an agreement of the parties or in a funds-transfer system rule, if the receiving bank, after accepting a payment order, agrees to cancellation or amendment of the order by the sender or is bound by a funds-transfer system rule allowing cancellation or amendment without the bank's agreement, the sender, whether or not cancellation or amendment is effective, is liable to the bank for any loss and expenses, including reasonable attorneys' fees, incurred by the bank as a result of the cancellation or amendment or attempted cancellation or amendment.

(7) A payment order is not revoked by the death or legal incapacity of the sender unless the receiving bank knows of the death or of an adjudication of incapacity by a court of competent jurisdiction and has reasonable opportunity to act before acceptance of the order.

(8) A funds-transfer system rule is not effective to the extent it conflicts with subsection (3)(b) of this section. [1991 sp.s. c 21 § 4A-211.]

**62A.4A-212 Liability and duty of receiving bank regarding unaccepted payment order.** If a receiving bank fails to accept a payment order that [it] is obliged by express agreement to accept, the bank is liable for breach of the agreement to the extent provided in the agreement or in this Article, but does not otherwise have any duty to accept a payment order or, before acceptance, to take any action, or refrain from taking action, with respect to the order except as provided in this Article or by express agreement. Liability based on acceptance arises only when acceptance occurs as stated in RCW 62A.4A-209 and liability is limited to that provided in this Article. A receiving bank is not the agent of the sender or beneficiary of the payment order it accepts, or of any other party to the funds transfer, and the bank owes no duty to any party to the funds transfer except as provided in this Article or by express agreement. [1991 sp.s. c 21 § 4A-212.]

### PART 3 EXECUTION OF SENDER'S PAYMENT ORDER BY RECEIVING BANK

**62A.4A-301 Execution and execution date.** (1) A payment order is "executed" by the receiving bank when it issues a payment order intended to carry out the payment order

received by the bank. A payment order received by the beneficiary's bank can be accepted but cannot be executed.

(2) "Execution date" of a payment order means the day on which the receiving bank may properly issue a payment order in execution of the sender's order. The execution date may be determined by instruction of the sender but cannot be earlier than the day the order is received and, unless otherwise determined, is the day the order is received. If the sender's instruction states a payment date, the execution date is the payment date or an earlier date on which execution is reasonably necessary to allow payment to the beneficiary on the payment date. [1991 sp.s. c 21 § 4A-301.]

**62A.4A-302 Obligations of receiving bank in execution of payment order.** (1) Except as provided in subsections (2) through (4) of this section, if the receiving bank accepts a payment order pursuant to RCW 62A.4A-209(1), the bank has the following obligations in executing the order.

(a) The receiving bank is obliged to issue, on the execution date, a payment order complying with the sender's order and to follow the sender's instructions concerning (i) any intermediary bank or funds-transfer system to be used in carrying out the funds transfer, or (ii) the means by which payment orders are to be transmitted in the funds transfer. If the originator's bank issues a payment order to an intermediary bank, the originator's bank is obliged to instruct the intermediary bank according to the instruction of the originator. An intermediary bank in the funds transfer is similarly bound by an instruction given to it by the sender of the payment order it accepts.

(b) If the sender's instruction states that the funds transfer is to be carried out telephonically or by wire transfer or otherwise indicates that the funds transfer is to be carried out by the most expeditious means, the receiving bank is obliged to transmit its payment order by the most expeditious available means, and to instruct any intermediary bank accordingly. If a sender's instruction states a payment date, the receiving bank is obliged to transmit its payment order at a time and by means reasonably necessary to allow payment to the beneficiary on the payment date or as soon thereafter as is feasible.

(2) Unless otherwise instructed, a receiving bank executing a payment order may (a) use any funds-transfer system if use of that system is reasonable in the circumstances, and (b) issue a payment order to the beneficiary's bank or to an intermediary bank through which a payment order conforming to the sender's order can expeditiously be issued to the beneficiary's bank if the receiving bank exercises ordinary care in the selection of the intermediary bank. A receiving bank is not required to follow an instruction of the sender designating a funds-transfer system to be used in carrying out the funds transfer if the receiving bank, in good faith, determines that it is not feasible to follow the instruction or that following the instruction would unduly delay completion of the funds transfer.

(3) Unless subsection (1)(b) of this section applies or the receiving bank is otherwise instructed, the bank may execute a payment order by transmitting its payment order by first-class mail or by any means reasonable in the circumstances. If the receiving bank is instructed to execute the sender's order by transmitting its payment order by a particular means,

(2010 Ed.)

the receiving bank may issue its payment order by the means stated or by any means as expeditious as the means stated.

(4) Unless instructed by the sender, (a) the receiving bank may not obtain payment of its charges for services and expenses in connection with the execution of the sender's order by issuing a payment order in an amount equal to the amount of the sender's order less the amount of the charges, and (b) may not instruct a subsequent receiving bank to obtain payment of its charges in the same manner. [1991 sp.s. c 21 § 4A-302.]

**62A.4A-303 Erroneous execution of payment order.**

(1) A receiving bank that (a) executes the payment order of the sender by issuing a payment order in an amount greater than the amount of the sender's order, or (b) issues a payment order in execution of the sender's order and then issues a duplicate order, is entitled to payment of the amount of the sender's order under RCW 62A.4A-402(3) if that subsection is otherwise satisfied. The bank is entitled to recover from the beneficiary of the erroneous order the excess payment received to the extent allowed by the law governing mistake and restitution.

(2) A receiving bank that executes the payment order of the sender by issuing a payment order in an amount less than the amount of the sender's order is entitled to payment of the amount of the sender's order under RCW 62A.4A-402(3) if (a) that subsection is otherwise satisfied and (b) the bank corrects its mistake by issuing an additional payment order for the benefit of the beneficiary of the sender's order. If the error is not corrected, the issuer of the erroneous order is entitled to receive or retain payment from the sender of the order it accepted only to the extent of the amount of the erroneous order. This subsection does not apply if the receiving bank executes the sender's payment order by issuing a payment order in an amount less than the amount of the sender's order for the purpose of obtaining payment of its charges for services and expenses pursuant to instruction of the sender.

(3) If a receiving bank executes the payment order of the sender by issuing a payment order to a beneficiary different from the beneficiary of the sender's order and the funds transfer is completed on the basis of that error, the sender of the payment order that was erroneously executed and all previous senders in the funds transfer are not obliged to pay the payment orders they issued. The issuer of the erroneous order is entitled to recover from the beneficiary of the order the payment received to the extent allowed by the law governing mistake and restitution. [1991 sp.s. c 21 § 4A-303.]

**62A.4A-304 Duty of sender to report erroneously executed payment order.** If the sender of a payment order that is erroneously executed as stated in RCW 62A.4A-303 receives notification from the receiving bank that the order was executed or that the sender's account was debited with respect to the order, the sender has a duty to exercise ordinary care to determine, on the basis of information available to the sender, that the order was erroneously executed and to notify the bank of the relevant facts within a reasonable time not exceeding ninety days after the notification from the bank was received by the sender. If the sender fails to perform that duty, the bank is not obliged to pay interest on any amount

refundable to the sender under RCW 62A.4A-402(4) for the period before the bank learns of the execution error. The bank is not entitled to any recovery from the sender on account of a failure by the sender to perform the duty stated in this section. [1991 sp.s. c 21 § 4A-304.]

**62A.4A-305 Liability for late or improper execution or failure to execute payment order.** (1) If a funds transfer is completed but execution of a payment order by the receiving bank in breach of RCW 62A.4A-302 results in delay in payment to the beneficiary, the bank is obliged to pay interest to either the originator or the beneficiary of the funds transfer for the period of delay caused by the improper execution. Except as provided in subsection (3) of this section, additional damages are not recoverable.

(2) If execution of a payment order by a receiving bank in breach of RCW 62A.4A-302 results in (a) noncompletion of the funds transfer, (b) failure to use an intermediary bank designated by the originator, or (c) issuance of a payment order that does not comply with the terms of the payment order of the originator, the bank is liable to the originator for its expenses in the funds transfer and for incidental expenses and interest losses, to the extent not covered by subsection (1) of this section, resulting from the improper execution. Except as provided in subsection (3) of this section, additional damages are not recoverable.

(3) In addition to the amounts payable under subsections (1) and (2) of this section, damages, including consequential damages, are recoverable to the extent provided in an express written agreement of the receiving bank.

(4) If a receiving bank fails to execute a payment order it was obliged by express agreement to execute, the receiving bank is liable to the sender for its expenses in the transaction and for incidental expenses and interest losses resulting from the failure to execute. Additional damages, including consequential damages, are recoverable to the extent provided in an express written agreement of the receiving bank, but are not otherwise recoverable.

(5) Reasonable attorneys' fees are recoverable if demand for compensation under subsection (1) or (2) of this section is made and refused before an action is brought on the claim. If a claim is made for breach of an agreement under subsection (4) of this section and the agreement does not provide for damages, reasonable attorneys' fees are recoverable if demand for compensation under subsection (4) of this section is made and refused before an action is brought on the claim.

(6) Except as stated in this section, the liability of a receiving bank under subsections (1) and (2) of this section may not be varied by agreement. [1991 sp.s. c 21 § 4A-305.]

#### PART 4 PAYMENT

**62A.4A-401 Payment date.** "Payment date" of a payment order means the day on which the amount of the order is payable to the beneficiary by the beneficiary's bank. The payment date may be determined by instruction of the sender but cannot be earlier than the day the order is received by the beneficiary's bank and, unless otherwise determined, is the day the order is received by the beneficiary's bank. [1991 sp.s. c 21 § 4A-401.]

**62A.4A-402 Obligation of sender to pay receiving bank.** (1) This section is subject to RCW 62A.4A-205 and 62A.4A-207.

(2) With respect to a payment order issued to the beneficiary's bank, acceptance of the order by the bank obliges the sender to pay the bank the amount of the order, but payment is not due until the payment date of the order.

(3) This subsection is subject to subsection (5) of this section and to RCW 62A.4A-303. With respect to a payment order issued to a receiving bank other than the beneficiary's bank, acceptance of the order by the receiving bank obliges the sender to pay the bank the amount of the sender's order. Payment by the sender is not due until the execution date of the sender's order. The obligation of that sender to pay its payment order is excused if the funds transfer is not completed by acceptance by the beneficiary's bank of a payment order instructing payment to the beneficiary of that sender's payment order.

(4) If the sender of a payment order pays the order and was not obliged to pay all or part of the amount paid, the bank receiving payment is obliged to refund payment to the extent the sender was not obliged to pay. Except as provided in RCW 62A.4A-204 and 62A.4A-304, interest is payable on the refundable amount from the date of payment.

(5) If a funds transfer is not completed as stated in this subsection and an intermediary bank is obliged to refund payment as stated in subsection (4) of this section but is unable to do so because not permitted by applicable law or because the bank suspends payments, a sender in the funds transfer that executed a payment order in compliance with an instruction, as stated in RCW 62A.4A-302(1)(a), to route the funds transfer through that intermediary bank is entitled to receive or retain payment from the sender of the payment order that it accepted. The first sender in the funds transfer that issued an instruction requiring routing through that intermediary bank is subrogated to the right of the bank that paid the intermediary bank to refund as stated in subsection (4) of this section.

(6) The right of the sender of a payment order to be excused from the obligation to pay the order as stated in subsection (3) of this section or to receive refund under subsection (4) of this section may not be varied by agreement. [1991 sp.s. c 21 § 4A-402.]

**62A.4A-403 Payment by sender to receiving bank.** (1) Payment of the sender's obligation under RCW 62A.4A-402 to pay the receiving bank occurs as follows:

(a) If the sender is a bank, payment occurs when the receiving bank receives final settlement of the obligation through a federal reserve bank or through a funds-transfer system.

(b) If the sender is a bank and the sender (i) credited an account of the receiving bank with the sender, or (ii) caused an account of the receiving bank in another bank to be credited, payment occurs when the credit is withdrawn or, if not withdrawn, at midnight of the day on which the credit is withdrawable and the receiving bank learns of that fact.

(c) If the receiving bank debits an account of the sender with the receiving bank, payment occurs when the debit is made to the extent the debit is covered by a withdrawable credit balance in the account.

(2) If the sender and receiving bank are members of a funds-transfer system that nets obligations multilaterally among participants, the receiving bank receives final settlement when settlement is complete in accordance with the rules of the system. The obligation of the sender to pay the amount of a payment order transmitted through the funds-transfer system may be satisfied, to the extent permitted by the rules of the system, by setting off and applying against the sender's obligation the right of the sender to receive payment from the receiving bank of the amount of any other payment order transmitted to the sender by the receiving bank through the funds-transfer system. The aggregate balance of obligations owed by each sender to each receiving bank in the funds-transfer system may be satisfied, to the extent permitted by the rules of the system, by setting off and applying against that balance the aggregate balance of obligations owed to the sender by other members of the system. The aggregate balance is determined after the right of setoff stated in the second sentence of this subsection has been exercised.

(3) If two banks transmit payment orders to each other under an agreement that settlement of the obligations of each bank to the other under RCW 62A.4A-402 will be made at the end of the day or other period, the total amount owed with respect to all orders transmitted by one bank shall be set off against the total amount owed with respect to all orders transmitted by the other bank. To the extent of the setoff, each bank has made payment to the other.

(4) In a case not covered by subsection (1) of this section, the time when payment of the sender's obligation under RCW 62A.4A-402 (2) or (3) occurs is governed by applicable principles of law that determine when an obligation is satisfied. [1991 sp.s. c 21 § 4A-403.]

**62A.4A-404 Obligation of beneficiary's bank to pay and give notice to beneficiary.** (1) Subject to RCW 62A.4A-211(5), 62A.4A-405(4), and 62A.4A-405(5), if a beneficiary's bank accepts a payment order, the bank is obliged to pay the amount of the order to the beneficiary of the order. Payment is due on the payment date of the order, but if acceptance occurs on the payment date after the close of the funds-transfer business day of the bank, payment is due on the next funds-transfer business day. If the bank refuses to pay after demand by the beneficiary and receipt of notice of particular circumstances that will give rise to consequential damages as a result of nonpayment, the beneficiary may recover damages resulting from the refusal to pay to the extent the bank had notice of the damages, unless the bank proves that it did not pay because of a reasonable doubt concerning the right of the beneficiary to payment.

(2) If a payment order accepted by the beneficiary's bank instructs payment to an account of the beneficiary, the bank is obliged to notify the beneficiary of receipt of the order before midnight of the next funds-transfer business day following the payment date. If the payment order does not instruct payment to an account of the beneficiary, the bank is required to notify the beneficiary only if notice is required by the order. Notice may be given by first-class mail or any other means reasonable in the circumstances. If the bank fails to give the required notice, the bank is obliged to pay interest to the beneficiary on the amount of the payment order from the day notice should have been given until the day the beneficiary

learned of receipt of the payment order by the bank. No other damages are recoverable. Reasonable attorneys' fees are also recoverable if demand for interest is made and refused before an action is brought on the claim.

(3) The right of a beneficiary to receive payment and damages as stated in subsection (a) [subsection (1) of this section] may not be varied by agreement or a funds-transfer system rule. The right of a beneficiary to be notified as stated in subsection (2) of this section may be varied by agreement of the beneficiary or by a funds-transfer system rule if the beneficiary is notified of the rule before initiation of the funds transfer. [1991 sp.s. c 21 § 4A-404.]

**62A.4A-405 Payment by beneficiary's bank to beneficiary.** (1) If the beneficiary's bank credits an account of the beneficiary of a payment order payment of the bank's obligation under RCW 62A.4A-404(1) occurs when and to the extent (a) the beneficiary is notified of the right to withdraw the credit, (b) the bank lawfully applies the credit to a debt of the beneficiary, or (c) funds with respect to the order are otherwise made available to the beneficiary by the bank.

(2) If the beneficiary's bank does not credit an account of the beneficiary of a payment order, the time when payment of the bank's obligation under RCW 62A.4A-404(1) occurs is governed by principles of law that determine when an obligation is satisfied.

(3) Except as stated in subsections (4) and (5) of this act [section], if the beneficiary's bank pays the beneficiary of a payment order under a condition to payment or agreement of the beneficiary giving the bank the right to recover payment from the beneficiary if the bank does not receive payment of the order, the condition to payment or agreement is not enforceable.

(4) A funds-transfer system rule may provide that payments made to beneficiaries of funds transfers made through the system are provisional until receipt of payment by the beneficiary's bank of the payment order it accepted. A beneficiary's bank that makes a payment that is provisional under the rule is entitled to refund from the beneficiary if (a) the rule requires that both the beneficiary and the originator be given notice of the provisional nature of the payment before the funds transfer is initiated, (b) the beneficiary, the beneficiary's bank and the originator's bank agreed to be bound by the rule, and (c) the beneficiary's bank did not receive payment of the payment order that it accepted. If the beneficiary is obliged to refund payment to the beneficiary's bank, acceptance of the payment order by the beneficiary's bank is nullified and no payment by the originator of the funds transfer to the beneficiary occurs under RCW 62A.4A-406.

(5) This subsection applies to a funds transfer that includes a payment order transmitted over a funds-transfer system that (a) nets obligations multilaterally among participants, and (b) has in effect a loss-sharing agreement among participants for the purpose of providing funds necessary to complete settlement of the obligations of one or more participants that do not meet their settlement obligations. If the beneficiary's bank in the funds transfer accepts a payment order and the system fails to complete settlement pursuant to its rules with respect to any payment order in the funds transfer, (i) the acceptance by the beneficiary's bank is nullified and no person has any right or obligation based on the accep-

tance, (ii) the beneficiary's bank is entitled to recover payment from the beneficiary, (iii) no payment by the originator to the beneficiary occurs under RCW 62A.4A-406, and (iv) subject to RCW 62A.4A-402(5), each sender in the funds transfer is excused from its obligation to pay its payment order under RCW 62A.4A-402(5), each sender in the funds transfer is excused from its obligation to pay its payment order under RCW 62A.4A-402(3) because the funds transfer has not been completed. [1991 sp.s. c 21 § 4A-405.]

**62A.4A-406 Payment by originator to beneficiary; discharge of underlying obligation.** (1) Subject to RCW 62A.4A-211(5), 62A.4A-405(4), and 62A.4A-405(5), the originator of a funds transfer pays the beneficiary of the originator's payment order (a) at the time a payment order for the benefit of the beneficiary is accepted by the beneficiary's bank in the funds transfer and (b) in an amount equal to the amount of the order accepted by the beneficiary's bank, but not more than the amount of the originator's order.

(2) If payment under subsection (1) of this section is made to satisfy an obligation, the obligation is discharged to the same extent discharge would result from payment to the beneficiary of the same amount in money, unless (a) the payment under subsection (1) of this section was made by a means prohibited by the contract of the beneficiary with respect to the obligation, (b) the beneficiary, within a reasonable time after receiving notice of receipt of the order by the beneficiary's bank, notified the originator of the beneficiary's refusal of the payment, (c) funds with respect to the order were not withdrawn by the beneficiary or applied to a debt of the beneficiary, and (d) the beneficiary would suffer a loss that could reasonably have been avoided if payment had been made by a means complying with the contract. If payment by the originator does not result in discharge under this section, the originator is subrogated to the rights of the beneficiary to receive payment from the beneficiary's bank under RCW 62A.4A-404(1).

(3) For the purpose of determining whether discharge of an obligation occurs under subsection (2) of this section, if the beneficiary's bank accepts a payment order in an amount equal to the amount of the originator's payment order less charges of one or more receiving banks in the funds transfer, payment to the beneficiary is deemed to be in the amount of the originator's order unless upon demand by the beneficiary the originator does not pay the beneficiary the amount of the deducted charges.

(4) Rights of the originator or of the beneficiary of a funds transfer under this section may be varied only by agreement of the originator and the beneficiary. [1991 sp.s. c 21 § 4A-406.]

#### PART 5 MISCELLANEOUS PROVISIONS

**62A.4A-501 Variation by agreement and effect of funds-transfer system rule.** (1) Except as otherwise provided in this Article, the rights and obligations of a party to a funds transfer may be varied by agreement of the affected party.

(2) "Funds-transfer system rule" means a rule of an association of banks (a) governing transmission of payment

orders by means of a funds-transfer system of the association or rights and obligations with respect to those orders, or (b) to the extent the rule governs rights and obligations between banks that are parties to a funds transfer in which a federal reserve bank, acting as an intermediary bank, sends a payment order to the beneficiary's bank. Except as otherwise provided in this Article, a funds-transfer system rule governing rights and obligations between participating banks using the system may be effective even if the rule conflicts with the Article and indirectly affects another party to the funds transfer who does not consent to the rule. A funds-transfer system rule may also govern rights and obligations of parties other than participating banks using the system to the extent stated in RCW 62A.4A-404(3), 62A.4A-405(4), and 62A.4A-507(3). [1991 sp.s. c 21 § 4A-501.]

**62A.4A-502 Creditor process served on receiving bank; setoff by beneficiary's bank.** (1) As used in this section, "creditor process" means levy, attachment, garnishment, notice of lien, sequestration, or similar process issued by or on behalf of a creditor or other claimant with respect to an account.

(2) This subsection applies to creditor process with respect to an authorized account of the sender of a payment order if the creditor process is served on the receiving bank. For the purpose of determining rights with respect to the creditor process, if the receiving bank accepts the payment order the balance in the authorized account is deemed to be reduced by the amount of the payment order to the extent the bank did not otherwise receive payment of the order, unless the creditor process is served at the time and in a manner affording the bank a reasonable opportunity to act on it before the bank accepts the payment order.

(3) If a beneficiary's bank has received a payment order for payment to the beneficiary's account in the bank, the following rules apply:

(a) The bank may credit the beneficiary's account. The amount credited may be set off against an obligation owed by the beneficiary to the bank or may be applied to satisfy creditor process served on the bank with respect to the account.

(b) The bank may credit the beneficiary's account and allow withdrawal of the amount credited unless creditor process with respect to the account is served at the time and in a manner affording the bank a reasonable opportunity to act to prevent withdrawal.

(c) If creditor process with respect to the beneficiary's account has been served and the bank has had a reasonable opportunity to act on it, the bank may not reject the payment order except for a reason unrelated to the service of process.

(4) Creditor process with respect to a payment by the originator to the beneficiary pursuant to a funds transfer may be served only on the beneficiary's bank with respect to the debt owed by that bank to the beneficiary. Any other bank served with the creditor process is not obliged to act with respect to the process. [1991 sp.s. c 21 § 4A-502.]

**62A.4A-503 Injunction or restraining order with respect to funds transfer.** For proper cause and in compliance with applicable law, a court may restrain (1) a person from issuing a payment order to initiate a funds transfer, (2)

an originator's bank from executing the payment order of the originator, or (3) the beneficiary's bank from releasing funds to the beneficiary or the beneficiary from withdrawing the funds. A court may not otherwise restrain a person from issuing a payment order, paying or receiving payment of a payment order, or otherwise acting with respect to a funds transfer. [1991 sp.s. c 21 § 4A-503.]

**62A.4A-504 Order in which items and payment orders may be charged to account; order of withdrawals from account.** (1) If a receiving bank has received more than one payment order of the sender or one or more payment orders and other items that are payable from the sender's account, the bank may charge the sender's account with respect to the various orders and items in any sequence.

(2) In determining whether a credit to an account has been withdrawn by the holder of the account or applied to a debt of the holder of the account, credits first made to the account are first withdrawn or applied. [1991 sp.s. c 21 § 4A-504.]

**62A.4A-505 Preclusion of objection to debit of customer's account.** If a receiving bank has received payment from its customer with respect to a payment order issued in the name of the customer as sender and accepted by the bank, and the customer received notification reasonably identifying the order, the customer is precluded from asserting that the bank is not entitled to retain the payment unless the customer notifies the bank of the customer's objection to the payment within one year after the notification was received by the customer. [1991 sp.s. c 21 § 4A-505.]

**62A.4A-506 Rate of interest.** (1) If, under this Article, a receiving bank is obliged to pay interest with respect to a payment order issued to the bank, the amount payable may be determined (a) by agreement of the sender and receiving bank, or (b) by a funds-transfer system rule if the payment order is transmitted through a funds-transfer system.

(2) If the amount of interest is not determined by an agreement or rule as stated in subsection (1) of this section, the amount is calculated by multiplying the applicable federal funds rate by the amount on which interest is payable, and then multiplying the product by the number of days for which interest is payable. The applicable federal funds rate is the average of the federal funds rates published by the federal reserve bank of New York for each of the days for which interest is payable divided by three hundred sixty. The federal funds rate for any day on which a published rate is not available is the same as the published rate for the next preceding day for which there is a published rate. If a receiving bank that accepted a payment order is required to refund payment to the sender of the order because the funds transfer was not completed, but the failure to complete was not due to any fault by the bank, the interest payable is reduced by a percentage equal to the reserve requirement on deposits of the receiving bank. [1991 sp.s. c 21 § 4A-506.]

**62A.4A-507 Choice of law.** (1) The following rules apply unless the affected parties otherwise agree or subsection (3) of this section applies;

(a) The rights and obligations between the sender of a payment order and the receiving bank are governed by the law of the jurisdiction in which the receiving bank is located.

(b) The rights and obligations between the beneficiary's bank and the beneficiary are governed by the law of the jurisdiction in which the beneficiary's bank is located.

(c) The issue of when payment is made pursuant to a funds transfer by the originator to the beneficiary is governed by the law of the jurisdiction in which the beneficiary's bank is located.

(2) If the parties described in each paragraph of subsection (1) of this section have made an agreement selecting the law of a particular jurisdiction to govern rights and obligations between each other, the law of that jurisdiction governs those rights and obligations, whether or not the payment order or the funds transfer bears a reasonable relation to that jurisdiction.

(3) A funds-transfer system rule may select the law of a particular jurisdiction to govern (a) rights and obligations between participating banks with respect to payment orders transmitted or processed through the system, or (b) the rights and obligations of some or all parties to a funds transfer any part of which is carried out by means of the system. A choice of law made pursuant to (a) of this subsection is binding on participating banks. A choice of law made pursuant to (b) of this subsection is binding on the originator, other sender, or a receiving bank having notice that the funds-transfer system might be used in the funds transfer and of the choice of law by the system when the originator, other sender, or receiving bank issued or accepted a payment order. The beneficiary of a funds transfer is bound by the choice of law if, when the funds transfer is initiated, the beneficiary has notice that the funds-transfer system might be used in the funds transfer and of the choice of law by the system. The law of a jurisdiction selected pursuant to this subsection may govern, whether or not that law bears a reasonable relation to the matter in issue.

(4) In the event of inconsistency between an agreement under subsection (2) of this section and a choice-of-law rule under subsection (3) of this section, the agreement under subsection (2) of this section prevails.

(5) If a funds transfer is made by use of more than one funds-transfer system and there is inconsistency between choice-of-law rules of the systems, the matter in issue is governed by the law of the selected jurisdiction that has the most significant relationship to the matter in issue. [1991 sp.s. c 21 § 4A-507.]

## Article 5

### LETTERS OF CREDIT

#### Sections

62A.5-101	Short title.
62A.5-1013	Applicability—Transition provision.
62A.5-1015	Savings—Transition provision.
62A.5-102	Definitions.
62A.5-103	Scope.
62A.5-104	Formal requirements.
62A.5-105	Consideration.
62A.5-106	Issuance, amendment, cancellation, and duration.
62A.5-107	Confirmer, nominated person, and adviser.
62A.5-108	Issuer's rights and obligations.
62A.5-109	Fraud and forgery.
62A.5-110	Warranties.
62A.5-111	Remedies.

62A.5-112	Transfer of letter of credit.
62A.5-113	Transfer by operation of law.
62A.5-114	Assignment of proceeds.
62A.5-115	Statute of limitations.
62A.5-116	Choice of law and forum.
62A.5-117	Subrogation of issuer, applicant, and nominated person.
62A.5-118	Security interest of issuer or nominated person.

**62A.5-101 Short title.** This Article shall be known and may be cited as Uniform Commercial Code—Letters of Credit. [1965 ex.s. c 157 § 5-101.]

**62A.5-1013 Applicability—Transition provision.** Chapter 56, Laws of 1997 applies to a letter of credit that is issued on or after July 27, 1997. Chapter 56, Laws of 1997 does not apply to a transaction, event, obligation, or duty arising out of or associated with a letter of credit that was issued before July 27, 1997. [1997 c 56 § 1.]

**62A.5-1015 Savings—Transition provision.** A transaction arising out of or associated with a letter of credit that was issued before July 27, 1997, and the rights, obligations, and interests flowing from that transaction are governed by any statute or other law amended or repealed by chapter 56, Laws of 1997 as if repeal or amendment had not occurred and may be terminated, completed, consummated, or enforced under that statute or other law. [1997 c 56 § 2.]

**62A.5-102 Definitions.** (1) The definitions in this section apply throughout this Article unless the context clearly requires otherwise:

(a) "Adviser" means a person who, at the request of the issuer, a confirmer, or another adviser, notifies or requests another adviser to notify the beneficiary that a letter of credit has been issued, confirmed, or amended.

(b) "Applicant" means a person at whose request or for whose account a letter of credit is issued. The term includes a person who requests an issuer to issue a letter of credit on behalf of another if the person making the request undertakes an obligation to reimburse the issuer.

(c) "Beneficiary" means a person who under the terms of a letter of credit is entitled to have its complying presentation honored. The term includes a person to whom drawing rights have been transferred under a transferable letter of credit.

(d) "Confirmer" means a nominated person who undertakes, at the request or with the consent of the issuer, to honor a presentation under a letter of credit issued by another.

(e) "Dishonor" of a letter of credit means failure timely to honor or to take an interim action, such as acceptance of a draft, that may be required by the letter of credit.

(f) "Document" means a draft or other demand, document of title, investment security, certificate, invoice, or other record, statement, or representation of fact, law, right, or opinion (i) which is presented in a written or other medium permitted by the letter of credit or, unless prohibited by the letter of credit, by the standard practice referred to in RCW 62A.5-108(5) and (ii) which is capable of being examined for compliance with the terms and conditions of the letter of credit. A document may not be oral.

(g) "Good faith" means honesty in fact in the conduct or transaction concerned.

(h) "Honor" of a letter of credit means performance of the issuer's undertaking in the letter of credit to pay or deliver an item of value. Unless the letter of credit otherwise provides, "honor" occurs:

(i) Upon payment;

(ii) If the letter of credit provides for acceptance, upon acceptance of a draft and, at maturity, its payment; or

(iii) If the letter of credit provides for incurring a deferred obligation, upon incurring the obligation and, at maturity, its performance.

(i) "Issuer" means a bank or other person that issues a letter of credit, but does not include an individual who makes an engagement for personal, family, or household purposes.

(j) "Letter of credit" means a definite undertaking that satisfies the requirements of RCW 62A.5-104 by an issuer to a beneficiary at the request or for the account of an applicant or, in the case of a financial institution, to itself or for its own account, to honor a documentary presentation by payment or delivery of an item of value.

(k) "Nominated person" means a person whom the issuer (i) designates or authorizes to pay, accept, negotiate, or otherwise give value under a letter of credit and (ii) undertakes by agreement or custom and practice to reimburse.

(l) "Presentation" means delivery of a document to an issuer or nominated person for honor or giving of value under a letter of credit.

(m) "Presenter" means a person making a presentation as or on behalf of a beneficiary or nominated person.

(n) "Record" means information that is inscribed on a tangible medium, or that is stored in an electronic or other medium and is retrievable in perceivable form.

(o) "Successor of a beneficiary" means a person who succeeds to substantially all of the rights of a beneficiary by operation of law, including a corporation with or into which the beneficiary has been merged or consolidated, an administrator, executor, personal representative, trustee in bankruptcy, debtor in possession, liquidator, and receiver.

(2) Definitions in other Articles applying to this Article and the sections in which they appear are:

"Accept" or

"Acceptance" RCW 62A.3-409

"Value" RCW 62A.3-303, RCW 62A.4-211.

(3) Article 1 contains certain additional general definitions and principles of construction and interpretation applicable throughout this Article. [1997 c 56 § 3; 1965 ex.s. c 157 § 5-102.]

**62A.5-103 Scope.** (1) This Article applies to letters of credit and to certain rights and obligations arising out of transactions involving letters of credit.

(2) The statement of a rule in this Article does not by itself require, imply, or negate application of the same or a different rule to a situation not provided for, or to a person not specified, in this Article.

(3) With the exception of this subsection, subsections (1) and (4) of this section, RCW 62A.5-102(1) (i) and (j), 62A.5-106(4), and 62A.5-114(4), and except to the extent prohibited in RCW 62A.1-102(3) and 62A.5-117(4), the effect of this Article may be varied by agreement or by a provision stated or incorporated by reference in an undertaking. A term in an agreement or undertaking generally excusing liability or gen-

erally limiting remedies for failure to perform obligations is not sufficient to vary obligations prescribed by this Article.

(4) Rights and obligations of an issuer to a beneficiary or a nominated person under a letter of credit are independent of the existence, performance, or nonperformance of a contract or arrangement out of which the letter of credit arises or which underlies it, including contracts or arrangements between the issuer and the applicant and between the applicant and the beneficiary. [1997 c 56 § 4; 1965 ex.s. c 157 § 5-103.]

**62A.5-104 Formal requirements.** A letter of credit, confirmation, advice, transfer, amendment, or cancellation may be issued in any form that is a record and is authenticated (1) by a signature or (2) in accordance with the agreement of the parties or the standard practice referred to in RCW 62A.5-108(5). [1997 c 56 § 5; 1965 ex.s. c 157 § 5-104.]

**62A.5-105 Consideration.** Consideration is not required to issue, amend, transfer, or cancel a letter of credit, advice, or confirmation. [1997 c 56 § 6; 1965 ex.s. c 157 § 5-105.]

**62A.5-106 Issuance, amendment, cancellation, and duration.** (1) A letter of credit is issued and becomes enforceable according to its terms against the issuer when the issuer sends or otherwise transmits it to the person requested to advise or to the beneficiary. A letter of credit is revocable only if it so provides.

(2) After a letter of credit is issued, rights and obligations of a beneficiary, applicant, confirmer, and issuer are not affected by an amendment or cancellation to which that person has not consented except to the extent the letter of credit provides that it is revocable or that the issuer may amend or cancel the letter of credit without that consent.

(3) If there is no stated expiration date or other provision that determines its duration, a letter of credit expires one year after its stated date of issuance or, if none is stated, after the date on which it is issued.

(4) A letter of credit that states that it is perpetual expires five years after its stated date of issuance, or if none is stated, after the date on which it is issued. [1997 c 56 § 7; 1965 ex.s. c 157 § 5-106.]

**62A.5-107 Confirmer, nominated person, and adviser.** (1) A confirmer is directly obligated on a letter of credit and has the rights and obligations of an issuer to the extent of its confirmation. The confirmer also has rights against and obligations to the issuer as if the issuer were an applicant and the confirmer had issued the letter of credit at the request and for the account of the issuer.

(2) A nominated person who is not a confirmer is not obligated to honor or otherwise give value for a presentation.

(3) A person requested to advise may decline to act as an adviser. An adviser that is not a confirmer is not obligated to honor or give value for a presentation. An adviser undertakes to the issuer and to the beneficiary accurately to advise the terms of the letter of credit, confirmation, amendment, or advice received by that person and undertakes to the beneficiary to check the apparent authenticity of the request to

advise. Even if the advice is inaccurate, the letter of credit, confirmation, or amendment is enforceable as issued.

(4) A person who notifies a transferee beneficiary of the terms of a letter of credit, confirmation, amendment, or advice has the rights and obligations of an adviser under subsection (3) of this section. The terms in the notice to the transferee beneficiary may differ from the terms in any notice to the transferor beneficiary to the extent permitted by the letter of credit, confirmation, amendment, or advice received by the person who so notifies. [1997 c 56 § 8; 1965 ex.s. c 157 § 5-107.]

**62A.5-108 Issuer's rights and obligations.** (1) Except as otherwise provided in RCW 62A.5-109, an issuer shall honor a presentation that, as determined by the standard practice referred to in subsection (5) of this section, appears on its face strictly to comply with the terms and conditions of the letter of credit. Except as otherwise provided in RCW 62A.5-113 and unless otherwise agreed with the applicant, an issuer shall dishonor a presentation that does not appear so to comply.

(2) An issuer has a reasonable time after presentation, but not beyond the end of the seventh business day of the issuer after the day of its receipt of documents:

(a) To honor;

(b) If the letter of credit provides for honor to be completed more than seven business days after presentation, to accept a draft or incur a deferred obligation; or

(c) To give notice to the presenter of discrepancies in the presentation.

(3) Except as otherwise provided in subsection (4) of this section, an issuer is precluded from asserting as a basis for dishonor any discrepancy if timely notice is not given, or any discrepancy not stated in the notice if timely notice is given.

(4) Failure to give the notice specified in subsection (2) of this section or to mention fraud, forgery, or expiration in the notice does not preclude the issuer from asserting as a basis for dishonor fraud or forgery as described in RCW 62A.5-109(1) or expiration of the letter of credit before presentation.

(5) An issuer shall observe standard practice of financial institutions that regularly issue letters of credit. Determination of the issuer's observance of the standard practice is a matter of interpretation for the court. The court shall offer the parties a reasonable opportunity to present evidence of the standard practice.

(6) An issuer is not responsible for:

(a) The performance or nonperformance of the underlying contract, arrangement, or transaction;

(b) An act or omission of others; or

(c) Observance or knowledge of the usage of a particular trade other than the standard practice referred to in subsection (5) of this section.

(7) If an undertaking constituting a letter of credit under RCW 62A.5-102(1)(j) contains nondocumentary conditions, an issuer shall disregard the nondocumentary conditions and treat them as if they were not stated.

(8) An issuer that has dishonored a presentation shall return the documents or hold them at the disposal of, and send advice to that effect to, the presenter.

(9) An issuer that has honored a presentation as permitted or required by this Article:

(a) Is entitled to be reimbursed by the applicant in immediately available funds not later than the date of its payment of funds;

(b) Takes the documents free of claims of the beneficiary or presenter;

(c) Is precluded from asserting a right of recourse on a draft under RCW 62A.3-414 and 62A.3-415;

(d) Except as otherwise provided in RCW 62A.5-110 and 62A.5-117, is precluded from restitution of money paid or other value given by mistake to the extent the mistake concerns discrepancies in the documents or tender which are apparent on the face of the presentation; and

(e) Is discharged to the extent of its performance under the letter of credit unless the issuer honored a presentation in which a required signature of a beneficiary was forged. [1997 c 56 § 9; 1965 ex.s. c 157 § 5-108.]

**62A.5-109 Fraud and forgery.** (1) If a presentation is made that appears on its face strictly to comply with the terms and conditions of the letter of credit, but a required document is forged or materially fraudulent, or honor of the presentation would facilitate a material fraud by the beneficiary on the issuer or applicant:

(a) The issuer shall honor the presentation, if honor is demanded by (i) a nominated person who has given value in good faith and without notice of forgery or material fraud, (ii) a confirmer who has honored its confirmation in good faith, (iii) a holder in due course of a draft drawn under the letter of credit which was taken after acceptance by the issuer or nominated person, or (iv) an assignee of the issuer's or nominated person's deferred obligation that was taken for value and without notice of forgery or material fraud after the obligation was incurred by the issuer or nominated person; and

(b) The issuer, acting in good faith, may honor or dishonor the presentation in any other case.

(2) If an applicant claims that a required document is forged or materially fraudulent or that honor of the presentation would facilitate a material fraud by the beneficiary on the issuer or applicant, a court of competent jurisdiction may temporarily or permanently enjoin the issuer from honoring a presentation or grant similar relief against the issuer or other persons only if the court finds that:

(a) The relief is not prohibited under the law applicable to an accepted draft or deferred obligation incurred by the issuer;

(b) A beneficiary, issuer, or nominated person who may be adversely affected is adequately protected against loss that it may suffer because the relief is granted;

(c) All of the conditions to entitle a person to the relief under the law of this state have been met; and

(d) On the basis of the information submitted to the court, the applicant is more likely than not to succeed under its claim of forgery or material fraud and the person demanding honor does not qualify for protection under subsection (1)(a) of this section. [1997 c 56 § 10; 1965 ex.s. c 157 § 5-109.]

**62A.5-110 Warranties.** (1) If its presentation is honored, the beneficiary warrants:

(a) To the issuer, any other person to whom presentation is made, and the applicant that there is no fraud or forgery of the kind described in RCW 62A.5-109(1); and

(b) To the applicant that the drawing does not violate any agreement between the applicant and beneficiary or any other agreement intended by them to be augmented by the letter of credit.

(2) The warranties in subsection (1) of this section are in addition to warranties arising under Articles 3, 4, 7, and 8 because of the presentation or transfer of documents covered by any of those Articles. [1997 c 56 § 11; 1965 ex.s. c 157 § 5-110.]

**62A.5-111 Remedies.** (1) If an issuer wrongfully dishonors or repudiates its obligation to pay money under a letter of credit before presentation, the beneficiary, successor, or nominated person presenting on its own behalf may recover from the issuer the amount that is the subject of the dishonor or repudiation. If the issuer's obligation under the letter of credit is not for the payment of money, the claimant may obtain specific performance or, at the claimant's election, recover an amount equal to the value of performance from the issuer. In either case, the claimant may also recover incidental but not consequential damages. The claimant is not obligated to take action to avoid damages that might be due from the issuer under this subsection. If, although not obligated to do so, the claimant avoids damages, the claimant's recovery from the issuer must be reduced by the amount of damages avoided. The issuer has the burden of proving the amount of damages avoided. In the case of repudiation the claimant need not present any document.

(2) If an issuer wrongfully dishonors a draft or demand presented under a letter of credit or honors a draft or demand in breach of its obligation to the applicant, the applicant may recover damages resulting from the breach, including incidental but not consequential damages, less any amount saved as a result of the breach.

(3) If an adviser or nominated person other than a confirmer breaches an obligation under this Article or an issuer breaches an obligation not covered in subsection (1) or (2) of this section, a person to whom the obligation is owed may recover damages resulting from the breach, including incidental but not consequential damages, less any amount saved as a result of the breach. To the extent of the confirmation, a confirmer has the liability of an issuer specified in this subsection and subsections (1) and (2) of this section.

(4) An issuer, nominated person, or adviser who is found liable under subsection (1), (2), or (3) of this section shall pay interest on the amount owed thereunder from the date of wrongful dishonor or other appropriate date.

(5) Reasonable attorney's fees and other expenses of litigation must be awarded to the prevailing party in an action in which a remedy is sought under this Article.

(6) Damages that would otherwise be payable by a party for breach of an obligation under this Article may be liquidated by agreement or undertaking, but only in an amount or by a formula that is reasonable in light of the harm anticipated. [1997 c 56 § 12; 1965 ex.s. c 157 § 5-111.]

**62A.5-112 Transfer of letter of credit.** (1) Except as otherwise provided in RCW 62A.5-113, unless a letter of credit provides that it is transferable, the right of a beneficiary to draw or otherwise demand performance under a letter of credit may not be transferred.

(2) Even if a letter of credit provides that it is transferable, the issuer may refuse to recognize or carry out a transfer if:

(a) The transfer would violate applicable law; or

(b) The transferor or transferee has failed to comply with any requirement stated in the letter of credit or any other requirement relating to transfer imposed by the issuer which is within the standard practice referred to in RCW 62A.5-108(5) or is otherwise reasonable under the circumstances. [1997 c 56 § 13; 1965 ex.s. c 157 § 5-112. Cf. former RCW sections: (i) RCW 62.01.136; 1955 c 35 § 62.01.136; prior: 1899 c 149 § 136; RRS § 3526. (ii) RCW 62.01.137; 1955 c 35 § 62.01.137; prior: 1899 c 149 § 137; RRS § 3527. (iii) RCW 62.01.150; 1955 c 35 § 62.01.150; prior: 1899 c 149 § 150; RRS § 3540.]

**62A.5-113 Transfer by operation of law.** (1) A successor of a beneficiary may consent to amendments, sign and present documents, and receive payment or other items of value in the name of the beneficiary without disclosing its status as a successor.

(2) A successor of a beneficiary may consent to amendments, sign and present documents, and receive payment or other items of value in its own name as the disclosed successor of the beneficiary. Except as otherwise provided in subsection (5) of this section, an issuer shall recognize a disclosed successor of a beneficiary as beneficiary in full substitution for its predecessor upon compliance with the requirements for recognition by the issuer of a transfer of drawing rights by operation of law under the standard practice referred to in RCW 62A.5-108(5) or, in the absence of such a practice, compliance with other reasonable procedures sufficient to protect the issuer.

(3) An issuer is not obliged to determine whether a purported successor is a successor of a beneficiary or whether the signature of a purported successor is genuine or authorized.

(4) Honor of a purported successor's apparently complying presentation under subsection (1) or (2) of this section has the consequences specified in RCW 62A.5-108(9) even if the purported successor is not the successor of a beneficiary. Documents signed in the name of the beneficiary or of a disclosed successor by a person who is neither the beneficiary nor the successor of the beneficiary are forged documents for the purposes of RCW 62A.5-109.

(5) An issuer whose rights of reimbursement are not covered by subsection (4) of this section or substantially similar law and any confirmer or nominated person may decline to recognize a presentation under subsection (2) of this section.

(6) A beneficiary whose name is changed after the issuance of a letter of credit has the same rights and obligations as a successor of a beneficiary under this section. [1997 c 56 § 14; 1965 ex.s. c 157 § 5-113.]

**62A.5-114 Assignment of proceeds.** (1) In this section, "proceeds of a letter of credit" means the cash, check,

(2010 Ed.)

accepted draft, or other item of value paid or delivered upon honor or giving of value by the issuer or any nominated person under the letter of credit. The term does not include a beneficiary's drawing rights or documents presented by the beneficiary.

(2) A beneficiary may assign its right to part or all of the proceeds of a letter of credit. The beneficiary may do so before presentation as a present assignment of its right to receive proceeds contingent upon its compliance with the terms and conditions of the letter of credit.

(3) An issuer or nominated person need not recognize an assignment of proceeds of a letter of credit until it consents to the assignment.

(4) An issuer or nominated person has no obligation to give or withhold its consent to an assignment of proceeds of a letter of credit, but consent may not be unreasonably withheld if the assignee possesses and exhibits the letter of credit and presentation of the letter of credit is a condition to honor.

(5) Rights of a transferee beneficiary or nominated person are independent of the beneficiary's assignment of the proceeds of a letter of credit and are superior to the assignee's right to the proceeds.

(6) Neither the rights recognized by this section between an assignee and an issuer, transferee beneficiary, or nominated person nor the issuer's or nominated person's payment of proceeds to an assignee or a third person affect the rights between the assignee and any person other than the issuer, transferee beneficiary, or nominated person. The mode of creating and perfecting a security interest in or granting an assignment of a beneficiary's rights to proceeds is governed by \*Article 9 or other law. Against persons other than the issuer, transferee beneficiary, or nominated person, the rights and obligations arising upon the creation of a security interest or other assignment of a beneficiary's right to proceeds and its perfection are governed by \*Article 9 or other law. [1997 c 56 § 15; 1995 c 48 § 57; 1986 c 35 § 54; 1965 ex.s. c 157 § 5-114.]

**\*Reviser's note:** Article 62A.9 RCW was repealed in its entirety by 2000 c 250 § 9A-901, effective July 1, 2001. For later enactment, see Article 62A.9A RCW.

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**62A.5-115 Statute of limitations.** An action to enforce a right or obligation arising under this Article must be commenced within one year after the expiration date of the relevant letter of credit or one year after the cause of action accrues, whichever occurs later. A cause of action accrues when the breach occurs, regardless of the aggrieved party's lack of knowledge of the breach. [1997 c 56 § 16; 1965 ex.s. c 157 § 5-115.]

**62A.5-116 Choice of law and forum.** (1) The liability of an issuer, nominated person, or adviser for action or omission is governed by the law of the jurisdiction chosen by an agreement in the form of a record signed or otherwise authenticated by the affected parties in the manner provided in RCW 62A.5-104 or by a provision in the person's letter of credit, confirmation, or other undertaking. The jurisdiction whose law is chosen need not bear any relation to the transaction.

(2) Unless subsection (1) of this section applies, the liability of an issuer, nominated person, or adviser for action or omission is governed by the law of the jurisdiction in which the person is located. The person is considered to be located at the address indicated in the person's undertaking. If more than one address is indicated, the person is considered to be located at the address from which the person's undertaking was issued. For the purpose of jurisdiction, choice of law, and recognition of interbranch letters of credit, but not enforcement of a judgment, all branches of a bank are considered separate juridical entities and a bank is considered to be located at the place where its relevant branch is considered to be located under this subsection.

(3) Except as otherwise provided in this subsection, the liability of an issuer, nominated person, or adviser is governed by any rules of custom or practice, such as the Uniform Customs and Practice for Documentary Credits, to which the letter of credit, confirmation, or other undertaking is expressly made subject. If (a) this Article would govern the liability of an issuer, nominated person, or adviser under subsection (1) or (2) of this section, (b) the relevant undertaking incorporates rules of custom or practice, and (c) there is conflict between this Article and those rules as applied to that undertaking, those rules govern except to the extent of any conflict with the nonvariable provisions specified in RCW 62A.5-103(3).

(4) If there is conflict between this Article and Article 3, 4, 4A, or \*9, this Article governs.

(5) The forum for settling disputes arising out of an undertaking within this Article may be chosen in the manner and with the binding effect that governing law may be chosen in accordance with subsection (1) of this section. [1997 c 56 § 17; 1981 c 41 § 5; 1965 ex.s. c 157 § 5-116. Subd. (2)(b) cf. former RCW 63.16.020; 1947 c 8 § 2; Rem. Supp. 1947 § 2721-2.]

**\*Reviser's note:** Article 62A.9 RCW was repealed in its entirety by 2000 c 250 § 9A-901, effective July 1, 2001. For later enactment, see Article 62A.9A RCW.

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**62A.5-117 Subrogation of issuer, applicant, and nominated person.** (1) An issuer that honors a beneficiary's presentation is subrogated to the rights of the beneficiary to the same extent as if the issuer were a secondary obligor of the underlying obligation owed to the beneficiary and of the applicant to the same extent as if the issuer were the secondary obligor of the underlying obligation owed to the applicant.

(2) An applicant that reimburses an issuer is subrogated to the rights of the issuer against any beneficiary, presenter, or nominated person to the same extent as if the applicant were the secondary obligor of the obligations owed to the issuer and has the rights of subrogation of the issuer to the rights of the beneficiary stated in subsection (1) of this section.

(3) A nominated person who pays or gives value against a draft or demand presented under a letter of credit is subrogated to the rights of:

(a) The issuer against the applicant to the same extent as if the nominated person were a secondary obligor of the obligation owed to the issuer by the applicant;

(b) The beneficiary to the same extent as if the nominated person were a secondary obligor of the underlying obligation owed to the beneficiary; and

(c) The applicant to the same extent as if the nominated person were a secondary obligor of the underlying obligation owed to the applicant.

(4) Notwithstanding any agreement or term to the contrary, the rights of subrogation stated in subsections (1) and (2) of this section do not arise until the issuer honors the letter of credit or otherwise pays and the rights in subsection (3) of this section do not arise until the nominated person pays or otherwise gives value. Until then, the issuer, nominated person, and the applicant do not derive under this section present or prospective rights forming the basis of a claim, defense, or excuse. [1997 c 56 § 18; 1965 ex.s. c 157 § 5-117.]

**62A.5-118 Security interest of issuer or nominated person.** (a) An issuer or nominated person has a security interest in a document presented under a letter of credit to the extent that the issuer or nominated person honors or gives value for the presentation.

(b) So long as and to the extent that an issuer or nominated person has not been reimbursed or has not otherwise recovered the value given with respect to a security interest in a document under subsection (a) of this section, the security interest continues and is subject to Article 9, but:

(1) A security agreement is not necessary to make the security interest enforceable under RCW 62A.9A-203(b)(3);

(2) If the document is presented in a medium other than a written or other tangible medium, the security interest is perfected; and

(3) If the document is presented in a written or other tangible medium and is not a certificated security, chattel paper, a document of title, an instrument, or a letter of credit, the security interest is perfected and has priority over a conflicting security interest in the document so long as the debtor does not have possession of the document. [2000 c 250 § 2.]

**Effective date—2000 c 250:** See RCW 62A.9A-701.

## Article 7

### WAREHOUSE RECEIPTS, BILLS OF LADING AND OTHER DOCUMENTS OF TITLE

#### Sections

#### PART 1 GENERAL

- 62A.7-101 Short title.  
62A.7-102 Definitions and index of definitions.  
62A.7-103 Relation of Article to treaty, statute, tariff, classification or regulation.  
62A.7-104 Negotiable and non-negotiable warehouse receipt, bill of lading or other document of title.  
62A.7-105 Construction against negative implication.

#### PART 2

#### WAREHOUSE RECEIPTS: SPECIAL PROVISIONS

- 62A.7-201 Who may issue a warehouse receipt; storage under government bond.  
62A.7-202 Form of warehouse receipt; essential terms; optional terms.  
62A.7-203 Liability for non-receipt or misdescription.  
62A.7-204 Duty of care; contractual limitation of warehouse worker's liability.  
62A.7-205 Title under warehouse receipt defeated in certain cases.  
62A.7-206 Termination of storage at warehouseman's option.  
62A.7-207 Goods must be kept separate; fungible goods.

- 62A.7-208 Altered warehouse receipts.  
 62A.7-209 Lien of warehouseman.  
 62A.7-210 Enforcement of warehouseman's lien.

## PART 3

## BILLS OF LADING: SPECIAL PROVISIONS

- 62A.7-301 Liability for non-receipt or misdescription; "said to contain"; "shipper's load and count"; improper handling.  
 62A.7-302 Through bills of lading and similar documents.  
 62A.7-303 Diversion; reconsignment; change of instructions.  
 62A.7-304 Bills of lading in a set.  
 62A.7-305 Destination bills.  
 62A.7-306 Altered bills of lading.  
 62A.7-307 Lien of carrier.  
 62A.7-308 Enforcement of carrier's lien.  
 62A.7-309 Duty of care; contractual limitation of carrier's liability.

## PART 4

WAREHOUSE RECEIPTS AND BILLS OF LADING:  
GENERAL OBLIGATIONS

- 62A.7-401 Irregularities in issue of receipt or bill or conduct of issuer.  
 62A.7-402 Duplicate receipt or bill; overissue.  
 62A.7-403 Obligation of warehouseman or carrier to deliver; excuse.  
 62A.7-404 No liability for good faith delivery pursuant to receipt or bill.

## PART 5

WAREHOUSE RECEIPTS AND BILLS OF LADING:  
NEGOTIATION AND TRANSFER

- 62A.7-501 Form of negotiation and requirements of "due negotiation".  
 62A.7-502 Rights acquired by due negotiation.  
 62A.7-503 Document of title to goods defeated in certain cases.  
 62A.7-504 Rights acquired in the absence of due negotiation; effect of diversion; seller's stoppage of delivery.  
 62A.7-505 Indorser not a guarantor for other parties.  
 62A.7-506 Delivery without indorsement: Right to compel indorsement.  
 62A.7-507 Warranties on negotiation or transfer of receipt or bill.  
 62A.7-508 Warranties of collecting bank as to documents.  
 62A.7-509 Receipt or bill: When adequate compliance with commercial contract.

## PART 6

WAREHOUSE RECEIPTS AND BILLS OF LADING:  
MISCELLANEOUS PROVISIONS

- 62A.7-601 Lost and missing documents.  
 62A.7-602 Attachment of goods covered by a negotiable document.  
 62A.7-603 Conflicting claims; interpleader.

PART 1  
GENERAL

**62A.7-101 Short title.** This Article shall be known and may be cited as Uniform Commercial Code—Documents of Title. [1965 ex.s. c 157 § 7-101.]

**62A.7-102 Definitions and index of definitions.** (1) In this Article, unless the context otherwise requires:

(a) "Bailee" means the person who by a warehouse receipt, bill of lading or other document of title acknowledges possession of goods and contracts to deliver them.

(b) "Consignee" means the person named in a bill to whom or to whose order the bill promises delivery.

(c) "Consignor" means the person named in a bill as the person from whom the goods have been received for shipment.

(d) "Delivery order" means a written order to deliver goods directed to a warehouseman, carrier or other person who in the ordinary course of business issues warehouse receipts or bills of lading.

(e) "Document" means document of title as defined in the general definitions in Article 1 (RCW 62A.1-201).

(2010 Ed.)

(f) "Goods" means all things which are treated as movable for the purposes of a contract of storage or transportation.

(g) "Issuer" means a bailee who issues a document except that in relation to an unaccepted delivery order it means the person who orders the possessor of goods to deliver. Issuer includes any person for whom an agent or employee purports to act in issuing a document if the agent or employee has real or apparent authority to issue documents, notwithstanding that the issuer received no goods or that the goods were misdescribed or that in any other respect the agent or employee violated his instructions.

(h) "Warehouseman" is a person engaged in the business of storing goods for hire.

(2) Other definitions applying to this Article or to specified Parts thereof, and the sections in which they appear are: "Duly negotiate". RCW 62A.7-501.

"Person entitled under the document". RCW 62A.7-403(4).

(3) Definitions in other Articles applying to this Article and the sections in which they appear are:

"Contract for sale". RCW 62A.2-106.

"Overseas". RCW 62A.2-323.

"Receipt" of goods. RCW 62A.2-103.

(4) In addition Article 1 contains general definitions and principles of construction and interpretation applicable throughout this Article. [1965 ex.s. c 157 § 7-102. Cf. former RCW sections: (i) RCW 22.04.585(1); 1913 c 99 § 58; RRS § 3644; formerly RCW 22.04.010. (ii) RCW 63.04.755(1); 1925 ex.s. c 142 § 76; RRS § 5836-76; formerly RCW 63.04.010. (iii) RCW 81.32.011; 1961 c 14 § 81.32.011; prior: 1915 c 159 § 1; RRS § 3647; formerly RCW 81.32.020. (iv) RCW 81.32.531(1); 1961 c 14 § 81.32.531; prior: 1915 c 159 § 53; RRS § 3699; formerly RCW 81.32.010, part.]

**62A.7-103 Relation of Article to treaty, statute, tariff, classification or regulation.** To the extent that any treaty or statute of the United States, regulatory statute of this state or tariff, classification or regulation filed or issued pursuant thereto is applicable, the provisions of this Article are subject thereto. [1965 ex.s. c 157 § 7-103.]

**62A.7-104 Negotiable and non-negotiable warehouse receipt, bill of lading or other document of title.** (1) A warehouse receipt, bill of lading or other document of title is negotiable

(a) if by its terms the goods are to be delivered to bearer or to the order of a named person; or

(b) where recognized in overseas trade, if it runs to a named person or assigns.

(2) Any other document is non-negotiable. A bill of lading in which it is stated that the goods are consigned to a named person is not made negotiable by a provision that the goods are to be delivered only against a written order signed by the same or another named person. [1965 ex.s. c 157 § 7-104. Cf. former RCW sections: (i) RCW 22.04.030, 22.04.050, and 22.04.060; 1913 c 99 §§ 2, 4, and 5; RRS §§ 3588, 3590, and 3591; prior: 1891 c 134 §§ 5 and 8. (ii) RCW 22.04.040 and 22.04.080; 1913 c 99 §§ 3, 7; RRS §§

3589, 3593. (iii) RCW 63.04.280 and 63.04.310; 1925 ex.s. c 142 §§ 27 and 30; RRS §§ 5836-27 and 5836-30. (iv) RCW 63.04.755(1); 1925 ex.s. c 142 § 76; RRS § 5836-76; formerly RCW 63.04.010. (v) RCW 81.32.021 through 81.32.051, and 81.32.081; 1961 c 14 §§ 81.32.021 through 81.32.051, and 81.32.081; prior: 1915 c 159 §§ 2 through 5, and 8; RRS §§ 3648 through 3651, and 3654; formerly RCW 81.32.030 through 81.32.060, and 81.32.090. (vi) RCW 81.32.531; 1961 c 14 § 81.32.531; prior: 1915 c 159 § 53; RRS § 3699; formerly RCW 81.32.010, part.]

**62A.7-105 Construction against negative implication.** The omission from either Part 2 or Part 3 of this Article of a provision corresponding to a provision made in the other Part does not imply that a corresponding rule of law is not applicable. [1965 ex.s. c 157 § 7-105.]

## PART 2

### WAREHOUSE RECEIPTS: SPECIAL PROVISIONS

**62A.7-201 Who may issue a warehouse receipt; storage under government bond.** (1) A warehouse receipt may be issued by any warehouseman.

(2) Where goods including distilled spirits and agricultural commodities are stored under a statute requiring a bond against withdrawal or a license for the issuance of receipts in the nature of warehouse receipts, a receipt issued for the goods has like effect as a warehouse receipt even though issued by a person who is the owner of the goods and is not a warehouseman. [1965 ex.s. c 157 § 7-201. Cf. former RCW 22.04.020; 1913 c 99 § 1; RRS § 3587; prior: 1891 c 134 § 1.]

**62A.7-202 Form of warehouse receipt; essential terms; optional terms.** (1) A warehouse receipt need not be in any particular form.

(2) Unless a warehouse receipt embodies within its written, printed, or electronic terms each of the following, the warehouseman is liable for damages caused by the omission to a person injured thereby:

(a) the location of the warehouse where the goods are stored;

(b) the date of issue of the receipt;

(c) the consecutive number of the receipt;

(d) a statement whether the goods received will be delivered to the bearer, to a specified person, or to a specified person or his order;

(e) the rate of storage and handling charges, except that where goods are stored under a field warehousing arrangement a statement of that fact is sufficient on a non-negotiable receipt;

(f) a description of the goods or of the packages containing them;

(g) the signature of the warehouseman, which may be made by his authorized agent;

(h) if the receipt is issued for goods of which the warehouseman is owner, either solely or jointly or in common with others, the fact of such ownership; and

(i) a statement of the amount of advances made and of liabilities incurred for which the warehouseman claims a lien

or security interest (RCW 62A.7-209). If the precise amount of such advances made or of such liabilities incurred is, at the time of the issue of the receipt, unknown to the warehouseman or to his agent who issues it, a statement of the fact that advances have been made or liabilities incurred and the purpose thereof is sufficient.

(3) A warehouseman may insert in his receipt any other terms which are not contrary to the provisions of this Title and do not impair his obligation of delivery (RCW 62A.7-403) or his duty of care (RCW 62A.7-204). Any contrary provisions shall be ineffective. [2000 c 58 § 1; 1965 ex.s. c 157 § 7-202. Cf. former RCW sections: (i) RCW 22.04.030; 1913 c 99 § 2; RRS § 3588; prior: 1891 c 134 § 8. (ii) RCW 22.04.040; 1913 c 99 § 3; RRS § 3589.]

**62A.7-203 Liability for non-receipt or misdescription.**

A party to or purchaser for value in good faith of a document of title other than a bill of lading relying in either case upon the description therein of the goods may recover from the issuer damages caused by the non-receipt or misdescription of the goods, except to the extent that the document conspicuously indicates that the issuer does not know whether any part or all of the goods in fact were received or conform to the description, as where the description is in terms of marks or labels or kind, quantity or condition, or the receipt or description is qualified by "contents, condition and quality unknown", "said to contain" or the like, if such indication be true, or the party or purchaser otherwise has notice. [1965 ex.s. c 157 § 7-203. Cf. former RCW 22.04.210; 1913 c 99 § 20; RRS § 3606.]

**62A.7-204 Duty of care; contractual limitation of warehouse worker's liability.**

(1) A warehouse worker is liable for damages for loss of or injury to the goods caused by his or her failure to exercise such care in regard to them as a reasonably careful person would exercise under like circumstances but unless otherwise agreed he or she is not liable for damages which could not have been avoided by the exercise of such care.

(2) Damages may be limited by a term in the warehouse receipt or storage agreement limiting the amount of liability in case of loss or damage, and setting forth a specific liability per article or item, or value per unit of weight, beyond which the warehouse worker shall not be liable; provided, however, that such liability may on written request of the bailor at the time of signing such storage agreement or within a reasonable time after receipt of the warehouse receipt be increased on part or all of the goods thereunder, in which event increased rates may be charged based on such increased valuation, but that no such increase shall be permitted contrary to a lawful limitation of liability contained in the warehouse worker's tariff, if any. No such limitation is effective with respect to the warehouse worker's liability for conversion to his or her own use.

(3) Reasonable provisions as to the time and manner of presenting claims and instituting actions based on the bailment may be included in the warehouse receipt or tariff.

(4) This section does not impair or repeal the duties of care or liabilities or penalties for breach thereof as provided in chapters 22.09 and 22.32 RCW. [2009 c 549 § 1016; 1981

c 13 § 1; 1965 ex.s. c 157 § 7-204. Cf. former RCW sections: (i) RCW 22.04.040; 1913 c 99 § 3; RRS § 3589. (ii) RCW 22.04.220; 1913 c 99 § 21; RRS § 3607.]

**62A.7-205 Title under warehouse receipt defeated in certain cases.** A buyer in the ordinary course of business of fungible goods sold and delivered by a warehouseman who is also in the business of buying and selling such goods takes free of any claim under a warehouse receipt even though it has been duly negotiated. [1965 ex.s. c 157 § 7-205.]

**62A.7-206 Termination of storage at warehouseman's option.** (1) A warehouseman may on notifying the person on whose account the goods are held and any other person known to claim an interest in the goods require payment of any charges and removal of the goods from the warehouse at the termination of the period of storage fixed by the document, or, if no period is fixed, within a stated period not less than thirty days after the notification. If the goods are not removed before the date specified in the notification, the warehouseman may sell them in accordance with the provisions of the section on enforcement of a warehouseman's lien (RCW 62A.7-210).

(2) If a warehouseman in good faith believes that the goods are about to deteriorate or decline in value to less than the amount of his lien within the time prescribed in subsection (1) for notification, advertisement and sale, the warehouseman may specify in the notification any reasonable shorter time for removal of the goods and in case the goods are not removed, may sell them at public sale held not less than one week after a single advertisement or posting.

(3) If as a result of a quality or condition of the goods of which the warehouseman had no notice at the time of deposit the goods are a hazard to other property or to the warehouse or to persons, the warehouseman may sell the goods at public or private sale without advertisement on reasonable notification to all persons known to claim an interest in the goods. If the warehouseman after a reasonable effort is unable to sell the goods he may dispose of them in any lawful manner and shall incur no liability by reason of such disposition.

(4) The warehouseman must deliver the goods to any person entitled to them under this Article upon due demand made at any time prior to sale or other disposition under this section.

(5) The warehouseman may satisfy his lien from the proceeds of any sale or disposition under this section but must hold the balance for delivery on the demand of any person to whom he would have been bound to deliver the goods. [1965 ex.s. c 157 § 7-206. Cf. former RCW 22.04.350; 1913 c 99 § 34; RRS § 3620.]

**62A.7-207 Goods must be kept separate; fungible goods.** (1) Unless the warehouse receipt otherwise provides, a warehouseman must keep separate the goods covered by each receipt so as to permit at all times identification and delivery of those goods except that different lots of fungible goods may be commingled.

(2) Fungible goods so commingled are owned in common by the persons entitled thereto and the warehouseman is severally liable to each owner for that owner's share. Where

(2010 Ed.)

because of over-issue a mass of fungible goods is insufficient to meet all the receipts which the warehouseman has issued against it, the persons entitled include all holders to whom overissued receipts have been duly negotiated. [1965 ex.s. c 157 § 7-207. Cf. former RCW sections: (i) RCW 22.04.230; 1913 c 99 § 22; RRS § 3608; prior: 1891 c 134 § 3. (ii) RCW 22.04.240; 1913 c 99 § 23; RRS § 3609.]

**62A.7-208 Altered warehouse receipts.** Where a blank in a negotiable warehouse receipt has been filled in without authority, a purchaser for value and without notice of the want of authority may treat the insertion as authorized. Any other unauthorized alteration leaves any receipt enforceable against the issuer according to its original tenor. [1965 ex.s. c 157 § 7-208. Cf. former RCW 22.04.140; 1913 c 99 § 13; RRS § 3599.]

**62A.7-209 Lien of warehouseman.** (1) A warehouseman has a lien against the bailor on the goods covered by a warehouse receipt or on the proceeds thereof in his possession for charges for storage or transportation (including demurrage and terminal charges), insurance, labor, or charges present or future in relation to the goods, and for expenses necessary for preservation of the goods or reasonably incurred in their sale pursuant to law. If the person on whose account the goods are held is liable for like charges or expenses in relation to other goods whenever deposited and it is stated in the receipt that a lien is claimed for charges and expenses in relation to other goods, the warehouseman also has a lien against him for such charges and expenses whether or not the other goods have been delivered by the warehouseman. But against a person to whom a negotiable warehouse receipt is duly negotiated a warehouseman's lien is limited to charges in an amount or at a rate specified on the receipt or if no charges are so specified then to a reasonable charge for storage of the goods covered by the receipt subsequent to the date of the receipt. A warehouseman's lien as provided in this chapter takes priority over all other liens and perfected or unperfected security interests.

(2) The warehouseman may also reserve a security interest against the bailor for a maximum amount specified on the receipt for charges other than those specified in subsection (1), such as for money advanced and interest. Such a security interest is governed by the Article on Secured Transactions (\*Article 9).

(3) A warehouseman's lien for charges and expenses under subsection (1) or a security interest under subsection (2) is also effective against any person who so entrusted the bailor with possession of the goods that a pledge of them by him to a good faith purchaser for value would have been valid but is not effective against a person as to whom the document confers no right in the goods covered by it under RCW 62A.7-503.

(4) A warehouseman loses his lien on any goods which he voluntarily delivers or which he unjustifiably refuses to deliver. [1987 c 395 § 1; 1965 ex.s. c 157 § 7-209. Cf. former RCW sections: RCW 22.04.280 through 22.04.330; 1913 c 99 §§ 27 through 32; RRS §§ 3613 through 3618.]

**\*Reviser's note:** Article 62A.9 RCW was repealed in its entirety by 2000 c 250 § 9A-901, effective July 1, 2001. For later enactment, see Article 62A.9A RCW.

**62A.7-210 Enforcement of warehouseman's lien.** (1)

Except as provided in subsection (2), a warehouseman's lien may be enforced by public or private sale of the goods in bloc or in parcels, at any time or place and on any terms which are commercially reasonable, after notifying all persons known to claim an interest in the goods. Such notification must include a statement of the amount due, the nature of the proposed sale and the time and place of any public sale. The fact that a better price could have been obtained by a sale at a different time or in a different method from that selected by the warehouseman is not of itself sufficient to establish that the sale was not made in a commercially reasonable manner. If the warehouseman either sells the goods in the usual manner in any recognized market therefor, or if he sells at the price current in such market at the time of his sale, or if he has otherwise sold in conformity with commercially reasonable practices among dealers in the type of goods sold, he has sold in a commercially reasonable manner. A sale of more goods than apparently necessary to be offered to insure satisfaction of the obligation is not commercially reasonable except in cases covered by the preceding sentence.

(2) A warehouseman's lien on goods other than goods stored by a merchant in the course of his business may be enforced only as follows:

(a) All persons known to claim an interest in the goods must be notified.

(b) The notification must be delivered in person or sent by registered or certified letter to the last known address of any person to be notified.

(c) The notification must include an itemized statement of the claim, a description of the goods subject to the lien, a demand for payment within a specified time not less than ten days after receipt of the notification, and a conspicuous statement that unless the claim is paid within that time the goods will be advertised for sale and sold by auction at a specified time and place.

(d) The sale must conform to the terms of the notification.

(e) The sale must be held at the nearest suitable place to that where the goods are held or stored.

(f) After the expiration of the time given in the notification, an advertisement of the sale must be published once a week for two weeks consecutively in a newspaper of general circulation where the sale is to be held. The advertisement must include a description of the goods, the name of the person on whose account they are being held, and the time and place of the sale. The sale must take place at least fifteen days after the first publication. If there is no newspaper of general circulation where the sale is to be held, the advertisement must be posted at least ten days before the sale in not less than six conspicuous places in the neighborhood of the proposed sale.

(3) Before any sale pursuant to this section any person claiming a right in the goods may pay the amount necessary to satisfy the lien and the reasonable expenses incurred under this section. In that event the goods must not be sold, but must be retained by the warehouseman subject to the terms of the receipt and this Article.

(4) The warehouseman may buy at any public sale pursuant to this section.

(5) A purchaser in good faith of goods sold to enforce a warehouseman's lien takes the goods free of any rights of persons against whom the lien was valid, despite noncompliance by the warehouseman with the requirements of this section.

(6) The warehouseman may satisfy his lien from the proceeds of any sale pursuant to this section but must hold the balance, if any, for delivery on demand to any person to whom he would have been bound to deliver the goods.

(7) The rights provided by this section shall be in addition to all other rights allowed by law to a creditor against his debtor.

(8) Where a lien is on goods stored by a merchant in the course of his business the lien may be enforced in accordance with either subsection (1) or (2).

(9) The warehouseman is liable for damages caused by failure to comply with the requirements for sale under this section and in case of willful violation is liable for conversion. [1965 ex.s. c 157 § 7-210. Cf. former RCW sections: RCW 22.04.340, 22.04.360, and 22.04.370; 1913 c 99 §§ 33, 35, and 36; RRS §§ 3619, 3621, and 3622.]

## PART 3

## BILLS OF LADING: SPECIAL PROVISIONS

**62A.7-301 Liability for non-receipt or misdescription; "said to contain"; "shipper's load and count"; improper handling.** (1) A consignee of a non-negotiable bill who has given value in good faith or a holder to whom a negotiable bill has been duly negotiated relying in either case upon the description therein of the goods, or upon the date therein shown, may recover from the issuer damages caused by the misdating of the bill or the nonreceipt or misdescription of the goods, except to the extent that the document indicates that the issuer does not know whether any part or all of the goods in fact were received or conform to the description, as where the description is in terms of marks or labels or kind, quantity, or condition or the receipt or description is qualified by "contents or condition of contents of packages unknown", "said to contain", "shipper's weight, load and count" or the like, if such indication be true.

(2) When goods are loaded by an issuer who is a common carrier, the issuer must count the packages of goods if package freight and ascertain the kind and quantity if bulk freight. In such cases "shipper's weight, load and count" or other words indicating that the description was made by the shipper are ineffective except as to freight concealed by packages.

(3) When bulk freight is loaded by a shipper who makes available to the issuer adequate facilities for weighing such freight, an issuer who is a common carrier must ascertain the kind and quantity within a reasonable time after receiving the written request of the shipper to do so. In such cases "shipper's weight" or other words of like purport are ineffective.

(4) The issuer may by inserting in the bill the words "shipper's weight, load and count" or other words of like purport indicate that the goods were loaded by the shipper; and if such statement be true the issuer shall not be liable for damages caused by the improper loading. But their omission does not imply liability for such damages.

(5) The shipper shall be deemed to have guaranteed to the issuer the accuracy at the time of shipment of the description, marks, labels, number, kind, quantity, condition and weight, as furnished by him; and the shipper shall indemnify the issuer against damage caused by inaccuracies in such particulars. The right of the issuer to such indemnity shall in no way limit his responsibility and liability under the contract of carriage to any person other than the shipper. [1965 ex.s. c 157 § 7-301. Cf. former RCW 81.32.231; 1961 c 14 § 81.32.231; prior: 1915 c 159 § 23; RRS § 3669; formerly RCW 81.32.240.]

**62A.7-302 Through bills of lading and similar documents.** (1) The issuer of a through bill of lading or other document embodying an undertaking to be performed in part by persons acting as its agents or by connecting carriers is liable to anyone entitled to recover on the document for any breach by such other persons or by a connecting carrier of its obligation under the document but to the extent that the bill covers an undertaking to be performed overseas or in territory not contiguous to the continental United States or an undertaking including matters other than transportation this liability may be varied by agreement of the parties.

(2) Where goods covered by a through bill of lading or other document embodying an undertaking to be performed in part by persons other than the issuer are received by any such person, he is subject with respect to his own performance while the goods are in his possession to the obligation of the issuer. His obligation is discharged by delivery of the goods to another such person pursuant to the document, and does not include liability for breach by any other such persons or by the issuer.

(3) The issuer of such through bill of lading or other document shall be entitled to recover from the connecting carrier or such other person in possession of the goods when the breach of the obligation under the document occurred, the amount it may be required to pay to anyone entitled to recover on the document therefor, as may be evidenced by any receipt, judgment, or transcript thereof, and the amount of any expense reasonably incurred by it in defending any action brought by anyone entitled to recover on the document therefor. [1965 ex.s. c 157 § 7-302.]

**62A.7-303 Diversion; reconsignment; change of instructions.** (1) Unless the bill of lading otherwise provides, the carrier may deliver the goods to a person or destination other than that stated in the bill or may otherwise dispose of the goods on instructions from

(a) the holder of a negotiable bill; or

(b) the consignor on a non-negotiable bill notwithstanding contrary instructions from the consignee; or

(c) the consignee on a non-negotiable bill in the absence of contrary instructions from the consignor, if the goods have arrived at the billed destination or if the consignee is in possession of the bill; or

(d) the consignee on a non-negotiable bill if he is entitled as against the consignor to dispose of them.

(2) Unless such instructions are noted on a negotiable bill of lading, a person to whom the bill is duly negotiated can

hold the bailee according to the original terms. [1965 ex.s. c 157 § 7-303.]

**62A.7-304 Bills of lading in a set.** (1) Except where customary in overseas transportation, a bill of lading must not be issued in a set of parts. The issuer is liable for damages caused by violation of this subsection.

(2) Where a bill of lading is lawfully drawn in a set of parts, each of which is numbered and expressed to be valid only if the goods have not been delivered against any other part, the whole of the parts constitute one bill.

(3) Where a bill of lading is lawfully issued in a set of parts and different parts are negotiated to different persons, the title of the holder to whom the first due negotiation is made prevails as to both the document and the goods even though any later holder may have received the goods from the carrier in good faith and discharged the carrier's obligation by surrender of his part.

(4) Any person who negotiates or transfers a single part of a bill of lading drawn in a set is liable to holders of that part as if it were the whole set.

(5) The bailee is obliged to deliver in accordance with Part 4 of this Article against the first presented part of a bill of lading lawfully drawn in a set. Such delivery discharges the bailee's obligation on the whole bill. [1965 ex.s. c 157 § 7-304. Cf. former RCW 81.32.061; 1961 c 14 § 81.32.061; prior: 1915 c 159 § 6; RRS § 3652; formerly RCW 81.32.070.]

**62A.7-305 Destination bills.** (1) Instead of issuing a bill of lading to the consignor at the place of shipment a carrier may at the request of the consignor procure the bill to be issued at destination or at any other place designated in the request.

(2) Upon request of anyone entitled as against the carrier to control the goods while in transit and on surrender of any outstanding bill of lading or other receipt covering such goods, the issuer may procure a substitute bill to be issued at any place designated in the request. [1965 ex.s. c 157 § 7-305.]

**62A.7-306 Altered bills of lading.** An unauthorized alteration or filling in of a blank in a bill of lading leaves the bill enforceable according to its original tenor. [1965 ex.s. c 157 § 7-306. Cf. former RCW 81.32.161; 1961 c 14 § 81.32.161; prior: 1915 c 159 § 16; RRS § 3662; formerly RCW 81.32.170.]

**62A.7-307 Lien of carrier.** (1) A carrier has a lien on the goods covered by a bill of lading for charges subsequent to the date of its receipt of the goods for storage or transportation (including demurrage and terminal charges) and for expenses necessary for preservation of the goods incident to their transportation or reasonably incurred in their sale pursuant to law. But against a purchaser for value of a negotiable bill of lading a carrier's lien is limited to charges stated in the bill or the applicable tariffs, or if no charges are stated then to a reasonable charge.

(2) A lien for charges and expenses under subsection (1) on goods which the carrier was required by law to receive for

transportation is effective against the consignor or any person entitled to the goods unless the carrier had notice that the consignor lacked authority to subject the goods to such charges and expenses. Any other lien under subsection (1) is effective against the consignor and any person who permitted the bailor to have control or possession of the goods unless the carrier had notice that the bailor lacked such authority.

(3) A carrier loses his lien on any goods which he voluntarily delivers or which he unjustifiably refuses to deliver. [1965 ex.s. c 157 § 7-307. Cf. former RCW sections: RCW 22.04.280 through 22.04.330; 1913 c 99 §§ 27 through 32; RRS §§ 3613 through 3618.]

**62A.7-308 Enforcement of carrier's lien.** (1) A carrier's lien may be enforced by public or private sale of the goods, in bloc or in parcels, at any time or place and on any terms which are commercially reasonable, after notifying all persons known to claim an interest in the goods. Such notification must include a statement of the amount due, the nature of the proposed sale and the time and place of any public sale. The fact that a better price could have been obtained by a sale at a different time or in a different method from that selected by the carrier is not of itself sufficient to establish that the sale was not made in a commercially reasonable manner. If the carrier either sells the goods in the usual manner in any recognized market therefor or if he sells at the price current in such market at the time of his sale or if he has otherwise sold in conformity with commercially reasonable practices among dealers in the type of goods sold he has sold in a commercially reasonable manner. A sale of more goods than apparently necessary to be offered to ensure satisfaction of the obligation is not commercially reasonable except in cases covered by the preceding sentence.

(2) Before any sale pursuant to this section any person claiming a right in the goods may pay the amount necessary to satisfy the lien and the reasonable expenses incurred under this section. In that event the goods must not be sold, but must be retained by the carrier subject to the terms of the bill and this Article.

(3) The carrier may buy at any public sale pursuant to this section.

(4) A purchaser in good faith of goods sold to enforce a carrier's lien takes the goods free of any rights of persons against whom the lien was valid, despite noncompliance by the carrier with the requirements of this section.

(5) The carrier may satisfy his lien from the proceeds of any sale pursuant to this section but must hold the balance, if any, for delivery on demand to any person to whom he would have been bound to deliver the goods.

(6) The rights provided by this section shall be in addition to all other rights allowed by law to a creditor against his debtor.

(7) A carrier's lien may be enforced in accordance with either subsection (1) or the procedure set forth in subsection (2) of RCW 62A.7-210.

(8) The carrier is liable for damages caused by failure to comply with the requirements for sale under this section and in case of willful violation is liable for conversion. [1965 ex.s. c 157 § 7-308. Cf. former RCW 22.04.340; 1913 c 99 § 33; RRS § 3619.]

**62A.7-309 Duty of care; contractual limitation of carrier's liability.** Save as otherwise provided in RCW 81.29.010 and 81.29.020

(1) A carrier who issues a bill of lading whether negotiable or nonnegotiable must exercise the degree of care in relation to the goods which a reasonably careful person would exercise under like circumstances.

(2) Damages may be limited by a provision that the carrier's liability shall not exceed a value stated in the document if the carrier's rates are dependent upon value and the consignor by the carrier's tariff is afforded an opportunity to declare a higher value or a value as lawfully provided in the tariff, or where no tariff is filed he or she is otherwise advised of such opportunity; but no such limitation is effective with respect to the carrier's liability for conversion to its own use.

(3) Reasonable provisions as to the time and manner of presenting claims and instituting actions based on the shipment may be included in a bill of lading or tariff. [2009 c 549 § 1017; 1965 ex.s. c 157 § 7-309. Cf. former RCW 81.32.031; 1961 c 14 § 81.32.031; prior: 1915 c 159 § 3; RRS § 3649; formerly RCW 81.32.040.]

*Common carriers—Limitation on liability: Chapter 81.29 RCW.*

#### PART 4

#### WAREHOUSE RECEIPTS AND BILLS OF LADING: GENERAL OBLIGATIONS

**62A.7-401 Irregularities in issue of receipt or bill or conduct of issuer.** The obligations imposed by this Article on an issuer apply to a document of title regardless of the fact that

(a) the document may not comply with the requirements of this Article or of any other law or regulation regarding its issue, form or content; or

(b) the issuer may have violated laws regulating the conduct of his business; or

(c) the goods covered by the document were owned by the bailee at the time the document was issued; or

(d) the person issuing the document does not come within the definition of warehouseman if it purports to be a warehouse receipt. [1965 ex.s. c 157 § 7-401. Cf. former RCW sections: (i) RCW 22.04.210; 1913 c 99 § 20; RRS § 3606. (ii) RCW 81.32.231; 1961 c 14 § 81.32.231; prior: 1915 c 159 § 23; RRS § 3669; formerly RCW 81.32.240.]

**62A.7-402 Duplicate receipt or bill; overissue.** Neither a duplicate nor any other document of title purporting to cover goods already represented by an outstanding document of the same issuer confers any right in the goods, except as provided in the case of bills in a set, overissue of documents for fungible goods and substitutes for lost, stolen or destroyed documents. But the issuer is liable for damages caused by his overissue or failure to identify a duplicate document as such by conspicuous notation on its face. [1965 ex.s. c 157 § 7-402. Cf. former RCW sections: (i) RCW 22.04.070; 1913 c 99 § 6; RRS § 3592; prior: 1886 p 121 § 5. (ii) RCW 81.32.071; 1961 c 14 § 81.32.071; prior: 1915 c 159 § 7; RRS § 3653; formerly RCW 81.32.080.]

**62A.7-403 Obligation of warehouseman or carrier to deliver; excuse.** (1) The bailee must deliver the goods to a

person entitled under the document who complies with subsections (2) and (3), unless and to the extent that the bailee establishes any of the following:

(a) delivery of the goods to a person whose receipt was rightful as against the claimant;

(b) damage to or delay, loss or destruction of the goods for which the bailee is not liable;

(c) previous sale or other disposition of the goods in lawful enforcement of a lien or on warehouseman's lawful termination of storage;

(d) the exercise by a seller of his right to stop delivery pursuant to the provisions of the Article on Sales (RCW 62A.2-705);

(e) a diversion, reconsignment or other disposition pursuant to the provisions of this Article (RCW 62A.7-303) or tariff regulating such right;

(f) release, satisfaction or any other fact affording a personal defense against the claimant;

(g) any other lawful excuse.

(2) A person claiming goods covered by a document of title must satisfy the bailee's lien where the bailee so requests or where the bailee is prohibited by law from delivering the goods until the charges are paid.

(3) Unless the person claiming is one against whom the document confers no right under RCW 62A.7-503(1), he must surrender for cancellation or notation of partial deliveries any outstanding negotiable document covering the goods, and the bailee must cancel the document or conspicuously note the partial delivery thereon or be liable to any person to whom the document is duly negotiated.

(4) "Person entitled under the document" means holder in the case of a negotiable document, or the person to whom delivery is to be made by the terms of or pursuant to written instructions under a non-negotiable document. [1965 ex.s. c 157 § 7-403. Cf. former RCW sections: (i) RCW 22.04.090, and 22.04.100; 1913 c 99 §§ 8 and 9; RRS §§ 3594, and 3595; prior: 1891 c 134 §§ 6, and 7. (ii) RCW 22.04.110, 22.04.130, 22.04.170, and 22.04.200; 1913 c 99 §§ 10, 12, 16, and 19; RRS §§ 3596, 3598, 3602, and 3605. (iii) RCW 22.04.120; 1913 c 99 § 11; RRS § 3597; prior: 1886 p 121 § 7. (iv) RCW 81.32.111 through 81.32.151, 81.32.191, and 81.32.221; 1961 c 14 §§ 81.32.111 through 81.32.151, 81.32.191, and 81.32.221; 1915 c 159 §§ 11 through 15, 19, and 22; RRS §§ 3657 through 3661, 3665, and 3668; formerly RCW 81.32.120 through 81.32.160, 81.32.200, and 81.32.230.]

**62A.7-404 No liability for good faith delivery pursuant to receipt or bill.** A bailee who in good faith including observance of reasonable commercial standards has received goods and delivered or otherwise disposed of them according to the terms of the document of title or pursuant to this Article is not liable therefor. This rule applies even though the person from whom he received the goods had no authority to procure the document or to dispose of the goods and even though the person to whom he delivered the goods had no authority to receive them. [1965 ex.s. c 157 § 7-404. Cf. former RCW sections: (i) RCW 22.04.110; 1913 c 99 § 10; RRS § 3596. (ii) RCW 81.32.131; 1961 c 14 § 81.32.131; prior: 1915 c 159 § 13; RRS § 3659; formerly RCW 81.32.140.]

(2010 Ed.)

PART 5  
WAREHOUSE RECEIPTS AND BILLS OF LADING:  
NEGOTIATION AND TRANSFER

**62A.7-501 Form of negotiation and requirements of "due negotiation".** (1) A negotiable document of title running to the order of a named person is negotiated by his indorsement and delivery. After his indorsement in blank or to bearer any person can negotiate it by delivery alone.

(2) (a) A negotiable document of title is also negotiated by delivery alone when by its original terms it runs to bearer;

(b) when a document running to the order of a named person is delivered to him the effect is the same as if the document had been negotiated.

(3) Negotiation of a negotiable document of title after it has been indorsed to a specified person requires indorsement by the special indorsee as well as delivery.

(4) A negotiable document of title is "duly negotiated" when it is negotiated in the manner stated in this section to a holder who purchases it in good faith without notice of any defense against or claim to it on the part of any person and for value, unless it is established that the negotiation is not in the regular course of business or financing or involves receiving the document in settlement or payment of a money obligation.

(5) Indorsement of a non-negotiable document neither makes it negotiable nor adds to the transferee's rights.

(6) The naming in a negotiable bill of a person to be notified of the arrival of the goods does not limit the negotiability of the bill nor constitute notice to a purchaser thereof of any interest of such person in the goods. [1965 ex.s. c 157 § 7-501. Cf. former RCW sections: (i) RCW 22.04.380 through 22.04.410, and 22.04.480; 1913 c 99 §§ 37 through 40, and 47; RRS §§ 3623 through 3626, and 3633. (ii) RCW 63.04.290, 63.04.300, 63.04.320, 63.04.330, and 63.04.390; 1925 ex.s. c 142 §§ 28, 29, 31, 32, and 38; RRS §§ 5836-28, 5836-29, 5836-31, 5836-32 and 5836-38. (iii) RCW 81.32.281 through 81.32.311, and 81.32.381; 1961 c 14 §§ 81.32.281 through 81.32.311, and 81.32.381; prior: 1915 c 159 §§ 28 through 31, and 38; RRS §§ 3674 through 3677, and 3684; formerly RCW 81.32.370 through 81.32.400, and 81.32.470.]

**62A.7-502 Rights acquired by due negotiation.** (1) Subject to the following section and to the provisions of RCW 62A.7-205 on fungible goods, a holder to whom a negotiable document of title has been duly negotiated acquires thereby:

(a) title to the document;

(b) title to the goods;

(c) all rights accruing under the law of agency or estoppel, including rights to goods delivered to the bailee after the document was issued; and

(d) the direct obligation of the issuer to hold or deliver the goods according to the terms of the document free of any defense or claim by him except those arising under the terms of the document or under this Article. In the case of a delivery order the bailee's obligation accrues only upon acceptance and the obligation acquired by the holder is that the issuer and any indorser will procure the acceptance of the bailee.

[Title 62A RCW—page 99]

(2) Subject to the following section, title and rights so acquired are not defeated by any stoppage of the goods represented by the document or by surrender of such goods by the bailee, and are not impaired even though the negotiation or any prior negotiation constituted a breach of duty or even though any person has been deprived of possession of the document by misrepresentation, fraud, accident, mistake, duress, loss, theft or conversion, or even though a previous sale or other transfer of the goods or document has been made to a third person. [1965 ex.s. c 157 § 7-502. Cf. former RCW sections: (i) RCW 22.04.420, and 22.04.480 through 22.04.500; 1913 c 99 §§ 41, and 47 through 49; RRS §§ 3627, and 3633 through 3635. (ii) RCW 63.04.210(4), 63.04.260, 63.04.340, 63.04.390, and 63.04.630; 1925 ex.s. c 142 §§ 20, 25, 33, 38, and 62; RRS §§ 5836-20, 5836-25, 5836-33, 5836-38, and 5836-62. (iii) RCW 81.32.321, 81.32.381, 81.32.391, 81.32.401, and 81.32.421; 1961 c 14 §§ 81.32.321, 81.32.381, 81.32.391, 81.32.401, and 81.32.421; prior: 1915 c 159 §§ 32, 38, 39, 40, and 42; RRS §§ 3678, 3684, 3685, 3686, and 3688; formerly RCW 81.32.410, 81.32.470, 81.32.480, 81.32.490, and 81.32.510.]

**62A.7-503 Document of title to goods defeated in certain cases.** (1) A document of title confers no right in goods against a person who before issuance of the document had a legal interest or a perfected security interest in them and who neither

(a) delivered or entrusted them or any document of title covering them to the bailor or his nominee with actual or apparent authority to ship, store or sell or with power to obtain delivery under this Article (RCW 62A.7-403) or with power of disposition under this Title (RCW 62A.2-403 and 62A.9A-320) or other statute or rule of law; nor

(b) acquiesced in the procurement by the bailor or his nominee of any document of title.

(2) Title to goods based upon an unaccepted delivery order is subject to the rights of anyone to whom a negotiable warehouse receipt or bill of lading covering the goods has been duly negotiated. Such a title may be defeated under the next section to the same extent as the rights of the issuer or a transferee from the issuer.

(3) Title to goods based upon a bill of lading issued to a freight forwarder is subject to the rights of anyone to whom a bill issued by the freight forwarder is duly negotiated; but delivery by the carrier in accordance with Part 4 of this Article pursuant to its own bill of lading discharges the carrier's obligation to deliver. [2000 c 250 § 9A-814; 1965 ex.s. c 157 § 7-503. Cf. former RCW sections: (i) RCW 22.04.420; 1913 c 99 § 41; RRS § 3627. (ii) RCW 63.04.340; 1925 ex.s. c 142 § 33; RRS § 5836-33. (iii) RCW 81.32.321; 1961 c 14 § 81.32.321; prior: 1915 c 159 § 32; RRS § 3678; formerly RCW 81.32.410.]

**Effective date—2000 c 250:** See RCW 62A.9A-701.

**62A.7-504 Rights acquired in the absence of due negotiation; effect of diversion; seller's stoppage of delivery.** (1) A transferee of a document, whether negotiable or non-negotiable, to whom the document has been delivered but not duly negotiated, acquires the title and rights which his transferor had or had actual authority to convey.

(2) In the case of a non-negotiable document, until but not after the bailee receives notification of the transfer, the rights of the transferee may be defeated

(a) by those creditors of the transferor who could treat the sale as void under RCW 62A.7-402; or

(b) by a buyer from the transferor in ordinary course of business if the bailee has delivered the goods to the buyer or received notification of his rights; or

(c) as against the bailee by good faith dealings of the bailee with the transferor.

(3) A diversion or other change of shipping instructions by the consignor in a non-negotiable bill of lading which causes the bailee not to deliver to the consignee defeats the consignee's title to the goods if they have been delivered to a buyer in ordinary course of business and in any event defeats the consignee's rights against the bailee.

(4) Delivery pursuant to a non-negotiable document may be stopped by a seller under RCW 62A.2-705, and subject to the requirement of due notification there provided. A bailee honoring the seller's instructions is entitled to be indemnified by the seller against any resulting loss or expense. [1965 ex.s. c 157 § 7-504. Cf. former RCW sections: (i) RCW 22.04.420(2) and 22.04.430; 1913 c 99 §§ 41 and 42; RRS §§ 3627, and 3628. (ii) RCW 63.04.350; 1925 ex.s. c 142 § 34; RRS § 5834-34. (iii) RCW 81.32.321(2) and 81.32.331; 1961 c 14 §§ 81.32.321 and 81.32.331; prior: 1915 c 159 §§ 32 and 33; RRS §§ 3678 and 3679; formerly RCW 81.32.410 and 81.32.420.]

**62A.7-505 Indorser not a guarantor for other parties.** The indorsement of a document of title issued by a bailee does not make the indorser liable for any default by the bailee or by previous indorsers. [1965 ex.s. c 157 § 7-505. Cf. former RCW sections: (i) RCW 22.04.460; 1913 c 99 § 45; RRS § 3631. (ii) RCW 63.04.380; 1925 ex.s. c 142 § 37; RRS § 5836-37. (iii) RCW 81.32.361; 1961 c 14 § 81.32.361; prior: 1915 c 159 § 36; RRS § 3682; formerly RCW 81.32.450.]

**62A.7-506 Delivery without indorsement: Right to compel indorsement.** The transferee of a negotiable document of title has a specifically enforceable right to have his transferor supply any necessary indorsement but the transfer becomes a negotiation only as of the time the indorsement is supplied. [1965 ex.s. c 157 § 7-506. Cf. former RCW sections: (i) RCW 22.04.440; 1913 c 99 § 43; RRS § 3629. (ii) RCW 63.04.360; 1925 ex.s. c 142 § 35; RRS § 5836-35. (iii) RCW 81.32.341; 1961 c 14 § 81.32.341; prior: 1915 c 159 § 34; RRS § 3680; formerly RCW 81.32.430.]

**62A.7-507 Warranties on negotiation or transfer of receipt or bill.** Where a person negotiates or transfers a document of title for value otherwise than as a mere intermediary under the next following section, then unless otherwise agreed he warrants to his immediate purchaser only in addition to any warranty made in selling the goods

(a) that the document is genuine; and

(b) that he has no knowledge of any fact which would impair its validity or worth; and

(c) that his negotiation or transfer is rightful and fully effective with respect to the title to the document and the goods it represents. [1965 ex.s. c 157 § 7-507. Cf. former RCW sections: (i) RCW 22.04.450; 1913 c 99 § 44; RRS § 3630. (ii) RCW 63.04.370; 1925 ex.s. c 142 § 36; RRS § 5836-36. (iii) RCW 81.32.351; 1961 c 14 § 81.32.351; prior: 1915 c 159 § 35; RRS § 3681; formerly RCW 81.32.440.]

**62A.7-508 Warranties of collecting bank as to documents.** A collecting bank or other intermediary known to be entrusted with documents on behalf of another or with collection of a draft or other claim against delivery of documents warrants by such delivery of the documents only its own good faith and authority. This rule applies even though the intermediary has purchased or made advances against the claim or draft to be collected. [1965 ex.s. c 157 § 7-508. Cf. former RCW sections: (i) RCW 22.04.470; 1913 c 99 § 46; RRS § 3632. (ii) RCW 81.32.371; 1961 c 14 § 81.32.371; prior: 1915 c 159 § 37; RRS § 3683; formerly RCW 81.32.460.]

**62A.7-509 Receipt or bill: When adequate compliance with commercial contract.** The question whether a document is adequate to fulfill the obligations of a contract for sale or the conditions of a credit is governed by the Articles on Sales (Article 2) and on Letters of Credit (Article 5). [1965 ex.s. c 157 § 7-509.]

#### PART 6

#### WAREHOUSE RECEIPTS AND BILLS OF LADING: MISCELLANEOUS PROVISIONS

**62A.7-601 Lost and missing documents.** (1) If a document has been lost, stolen or destroyed, a court may order delivery of the goods or issuance of a substitute document and the bailee may without liability to any person comply with such order. If the document was negotiable the claimant must post security approved by the court to indemnify any person who may suffer loss as a result of non-surrender of the document. If the document was not negotiable, such security may be required at the discretion of the court. The court may also in its discretion order payment of the bailee's reasonable costs and counsel fees.

(2) A bailee who without court order delivers goods to a person claiming under a missing negotiable document is liable to any person injured thereby, and if the delivery is not in good faith becomes liable for conversion. Delivery in good faith is not conversion if made in accordance with a filed classification or tariff or, where no classification or tariff is filed, if the claimant posts security with the bailee in an amount at least double the value of the goods at the time of posting to indemnify any person injured by the delivery who files a notice of claim within one year after the delivery. [1965 ex.s. c 157 § 7-601. Cf. former RCW sections: (i) RCW 22.04.150; 1913 c 99 § 14; RRS § 3600. (ii) RCW 81.32.171; 1961 c 14 § 81.32.171; prior: 1915 c 159 § 17; RRS § 3663; formerly RCW 81.32.180.]

**62A.7-602 Attachment of goods covered by a negotiable document.** Except where the document was originally

issued upon delivery of the goods by a person who had no power to dispose of them, no lien attaches by virtue of any judicial process to goods in the possession of a bailee for which a negotiable document of title is outstanding unless the document be first surrendered to the bailee or its negotiation enjoined, and the bailee shall not be compelled to deliver the goods pursuant to process until the document is surrendered to him or impounded by the court. One who purchases the document for value without notice of the process or injunction takes free of the lien imposed by judicial process. [1965 ex.s. c 157 § 7-602. Cf. former RCW sections: (i) RCW 22.04.260; 1913 c 99 § 25; RRS § 3611. (ii) RCW 81.32.241; 1961 c 14 § 81.32.241; prior: 1915 c 159 § 24; RRS § 3670; formerly RCW 81.32.250.]

**62A.7-603 Conflicting claims; interpleader.** If more than one person claims title or possession of the goods, the bailee is excused from delivery until he has had a reasonable time to ascertain the validity of the adverse claims or to bring an action to compel all claimants to interplead and may compel such interpleader, either in defending an action for non-delivery of the goods, or by original action, whichever is appropriate. [1965 ex.s. c 157 § 7-603. Cf. former RCW sections: (i) RCW 22.04.170 and 22.04.180; 1913 c 99 §§ 16 and 17; RRS §§ 3602 and 3603. (ii) RCW 81.32.201 and 81.32.211; 1961 c 14 §§ 81.32.201 and 81.32.211; prior: 1915 c 159 §§ 20 and 21; RRS §§ 3666 and 3667; formerly RCW 81.32.210 and 81.32.220.]

#### Article 8

#### INVESTMENT SECURITIES

##### Sections

##### PART 1

##### SHORT TITLE AND GENERAL MATTERS

62A.8-101	Short title.
62A.8-102	Definitions.
62A.8-103	Rules for determining whether certain obligations and interests are securities or financial assets.
62A.8-104	Acquisition of security or financial asset or interest therein.
62A.8-105	Notice of adverse claim.
62A.8-106	Control.
62A.8-107	Whether indorsement, instruction, or entitlement is effective.
62A.8-108	Warranties in direct holding.
62A.8-109	Warranties in indirect holding.
62A.8-110	Applicability; choice of law.
62A.8-111	Clearing corporation rules.
62A.8-112	Creditor's legal process.
62A.8-113	Statute of frauds inapplicable.
62A.8-114	Evidentiary rules concerning certificated securities.
62A.8-115	Securities intermediary and others not liable to adverse claimant.
62A.8-116	Securities intermediary as purchaser for value.

##### PART 2

##### ISSUE AND ISSUER

62A.8-201	Issuer.
62A.8-202	Issuer's responsibility and defenses; notice of defect or defense.
62A.8-203	Staleness as notice of defect or defense.
62A.8-204	Effect of issuer's restrictions on transfer.
62A.8-205	Effect of unauthorized signature on security certificate.
62A.8-206	Completion or alteration of security certificate.
62A.8-207	Rights and duties of issuer with respect to registered owners.
62A.8-208	Effect of signature of authenticating trustee, registrar, or transfer agent.
62A.8-209	Issuer's lien.
62A.8-210	Overissue.

PART 3  
TRANSFER OF CERTIFICATED AND  
UNCERTIFICATED SECURITIES

62A.8-301	Delivery.
62A.8-302	Rights of purchaser.
62A.8-303	Protected purchaser.
62A.8-304	Indorsement.
62A.8-305	Instruction.
62A.8-306	Effect of guaranteeing signature, indorsement, or instruction.
62A.8-307	Purchaser's right to requisites for registration of transfer.

PART 4  
REGISTRATION

62A.8-401	Duty of issuer to register transfer.
62A.8-402	Assurance that indorsement or instruction is effective.
62A.8-403	Demand that issuer not register transfer.
62A.8-404	Wrongful registration.
62A.8-405	Replacement of lost, destroyed, or wrongfully taken security certificate.
62A.8-406	Obligation to notify issuer of lost, destroyed, or wrongfully taken security certificate.
62A.8-407	Authenticating trustee, transfer agent, and registrar.

PART 5  
SECURITY ENTITLEMENTS

62A.8-501	Securities account; acquisition of security entitlement from securities intermediary.
62A.8-502	Assertion of adverse claim against entitlement holder.
62A.8-503	Property interest of entitlement holder in financial asset held by securities intermediary.
62A.8-504	Duty of securities intermediary to maintain financial asset.
62A.8-505	Duty of securities intermediary with respect to payments and distributions.
62A.8-506	Duty of securities intermediary to exercise rights as directed by entitlement holder.
62A.8-507	Duty of securities intermediary to comply with entitlement order.
62A.8-508	Duty of securities intermediary to change entitlement holder's position to other form of security holding.
62A.8-509	Specification of duties of securities intermediary by other statute or regulation; manner of performance of duties of securities intermediary and exercise of rights of entitlement holder.
62A.8-510	Rights of purchaser of security entitlement from entitlement holder.
62A.8-511	Priority among security interests and entitlement holders.

PART 6  
TRANSITION PROVISIONS FOR REVISED ARTICLE 8 AND  
CONFORMING AMENDMENTS TO ARTICLES 1, 5, 9, AND 10

62A.8-601	Savings clause.
-----------	-----------------

PART 1  
SHORT TITLE AND GENERAL MATTERS

**62A.8-101 Short title.** This Article may be cited as Uniform Commercial Code—Investment Securities. [1995 c 48 § 1; 1965 ex.s. c 157 § 8-101.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**62A.8-102 Definitions.** (1) In this Article:

(a) "Adverse claim" means a claim that a claimant has a property interest in a financial asset and that it is a violation of the rights of the claimant for another person to hold, transfer, or deal with the financial asset.

(b) "Bearer form," as applied to a certificated security, means a form in which the security is payable to the bearer of the security certificate according to its terms but not by reason of an indorsement.

(c) "Broker" means a person defined as a broker or dealer under the federal securities laws, but without excluding a bank acting in that capacity.

(d) "Certificated security" means a security that is represented by a certificate.

(e) "Clearing corporation" means:

(i) A person that is registered as a "clearing agency" under the federal securities laws;

(ii) A federal reserve bank; or

(iii) Any other person that provides clearance or settlement services with respect to financial assets that would require it to register as a clearing agency under the federal securities laws but for an exclusion or exemption from the registration requirement, if its activities as a clearing corporation, including adoption of rules, are subject to regulation by a federal or state governmental authority.

(f) "Communicate" means to:

(i) Send a signed writing; or

(ii) Transmit information by any mechanism agreed upon by the persons transmitting and receiving the information.

(g) "Entitlement holder" means a person identified in the records of a securities intermediary as the person having a security entitlement against the securities intermediary. If a person acquires a security entitlement by virtue of RCW 62A.8-501(2) (b) or (c), that person is the entitlement holder.

(h) "Entitlement order" means a notification communicated to a securities intermediary directing transfer or redemption of a financial asset to which the entitlement holder has a security entitlement.

(i) "Financial asset," except as otherwise provided in RCW 62A.8-103, means:

(i) A security;

(ii) An obligation of a person or a share, participation, or other interest in a person or in property or an enterprise of a person, which is, or is of a type, dealt in or traded on financial markets, or which is recognized in any area in which it is issued or dealt in as a medium for investment; or

(iii) Any property that is held by a securities intermediary for another person in a securities account if the securities intermediary has expressly agreed with the other person that the property is to be treated as a financial asset under this Article.

As context requires, the term means either the interest itself or the means by which a person's claim to it is evidenced, including a certificated or uncertificated security, a security certificate, or a security entitlement.

(j) "Good faith," for purposes of the obligation of good faith in the performance or enforcement of contracts or duties within this Article, means honesty in fact and the observance of reasonable commercial standards of fair dealing.

(k) "Indorsement" means a signature that alone or accompanied by other words is made on a security certificate in registered form or on a separate document for the purpose of assigning, transferring, or redeeming the security or granting a power to assign, transfer, or redeem it.

(l) "Instruction" means a notification communicated to the issuer of an uncertificated security which directs that the transfer of the security be registered or that the security be redeemed.

(m) "Registered form," as applied to a certificated security, means a form in which:

(i) The security certificate specifies a person entitled to the security; and

(ii) A transfer of the security may be registered upon books maintained for that purpose by or on behalf of the issuer, or the security certificate so states.

(n) "Securities intermediary" means:

(i) A clearing corporation; or

(ii) A person, including a bank or broker, that in the ordinary course of its business maintains securities accounts for others and is acting in that capacity.

(o) "Security," except as otherwise provided in RCW 62A.8-103, means an obligation of an issuer or a share, participation, or other interest in an issuer or in property or an enterprise of an issuer:

(i) Which is represented by a security certificate in bearer or registered form, or the transfer of which may be registered upon books maintained for that purpose by or on behalf of the issuer;

(ii) Which is one of a class or series or by its terms is divisible into a class or series of shares, participations, interests, or obligations; and

(iii) Which:

(A) Is, or is of a type, dealt in or traded on securities exchanges or securities markets; or

(B) Is a medium for investment and by its terms expressly provides that it is a security governed by this Article.

(p) "Security certificate" means a certificate representing a security.

(q) "Security entitlement" means the rights and property interest of an entitlement holder with respect to a financial asset specified in Part 5 of this Article.

(r) "Uncertificated security" means a security that is not represented by a certificate.

(2) Other definitions applying to this Article and the sections in which they appear are:

Appropriate person	RCW 62A.8-107
Control	RCW 62A.8-106
Delivery	RCW 62A.8-301
Investment company security	RCW 62A.8-103
Issuer	RCW 62A.8-201
Overissue	RCW 62A.8-210
Protected purchaser	RCW 62A.8-303
Securities account	RCW 62A.8-501

(3) In addition Article 1 contains general definitions and principles of construction and interpretation applicable throughout this Article.

(4) The characterization of a person, business, or transaction for purposes of this Article does not determine the characterization of the person, business, or transaction for purposes of any other law, regulation, or rule. [1995 c 48 § 2; 1986 c 35 § 1; 1973 c 98 § 1; 1965 ex.s. c 157 § 8-102. Cf. former RCW 62.01.001; 1955 c 35 § 62.01.001; prior: 1899 c 149 § 1; RRS § 3392.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

### **62A.8-103 Rules for determining whether certain obligations and interests are securities or financial assets.**

(1) A share or similar equity interest issued by a corporation, business trust, joint stock company, or similar entity is a security.

(2010 Ed.)

(2) An "investment company security" is a security. "Investment company security" means a share or similar equity interest issued by an entity that is registered as an investment company under the federal investment company laws, an interest in a unit investment trust that is so registered, or a face-amount certificate issued by a face-amount certificate company that is so registered. Investment company security does not include an insurance policy or endowment policy or annuity contract issued by an insurance company.

(3) An interest in a partnership or limited liability company is not a security unless it is dealt in or traded on securities exchanges or in securities markets, its terms expressly provide that it is a security governed by this Article, or it is an investment company security. However, an interest in a partnership or limited liability company is a financial asset if it is held in a securities account.

(4) A writing that is a security certificate is governed by this Article and not by Article 3, even though it also meets the requirements of that Article. However, a negotiable instrument governed by Article 3 is a financial asset if it is held in a securities account.

(5) An option or similar obligation issued by a clearing corporation to its participants is not a security, but is a financial asset.

(6) A commodity contract, as defined in RCW 62A.9A-102(a)(15), is not a security or a financial asset. [2000 c 250 § 9A-815; 1995 c 48 § 3; 1986 c 35 § 2; 1965 ex.s. c 157 § 8-103. Cf. former RCW 23.80.150; 1939 c 100 § 15; RRS § 3803-115; formerly RCW 23.20.140.]

**Effective date—2000 c 250:** See RCW 62A.9A-701.

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

### **62A.8-104 Acquisition of security or financial asset or interest therein.** (1) A person acquires a security or an interest therein, under this Article, if:

(a) The person is a purchaser to whom a security is delivered pursuant to RCW 62A.8-301; or

(b) The person acquires a security entitlement to the security pursuant to RCW 62A.8-501.

(2) A person acquires a financial asset, other than a security, or an interest therein, under this Article, if the person acquires a security entitlement to the financial asset.

(3) A person who acquires a security entitlement to a security or other financial asset has the rights specified in Part 5 of this Article, but is a purchaser of any security, security entitlement, or other financial asset held by the securities intermediary only to the extent provided in RCW 62A.8-503.

(4) Unless the context shows that a different meaning is intended, a person who is required by other law, regulation, rule, or agreement to transfer, deliver, present, surrender, exchange, or otherwise put in the possession of another person a security or financial asset satisfies that requirement by causing the other person to acquire an interest in the security or financial asset pursuant to subsection (1) or (2) of this section. [1995 c 48 § 4; 1986 c 35 § 3; 1965 ex.s. c 157 § 8-104.]

*Corporations—Purchase of own shares:* RCW 23B.06.030 and 23B.06.310.

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**62A.8-105 Notice of adverse claim.** (1) A person has notice of an adverse claim if:

(a) The person knows of the adverse claim;  
 (b) The person is aware of facts sufficient to indicate that there is a significant probability that the adverse claim exists and deliberately avoids information that would establish the existence of the adverse claim; or

(c) The person has a duty, imposed by statute or regulation, to investigate whether an adverse claim exists, and the investigation so required would establish the existence of the adverse claim.

(2) Having knowledge that a financial asset or interest therein is or has been transferred by a representative imposes no duty of inquiry into the rightfulness of a transaction and is not notice of an adverse claim. However, a person who knows that a representative has transferred a financial asset or interest therein in a transaction that is, or whose proceeds are being used, for the individual benefit of the representative or otherwise in breach of duty has notice of an adverse claim.

(3) An act or event that creates a right to immediate performance of the principal obligation represented by a security certificate or sets a date on or after which the certificate is to be presented or surrendered for redemption or exchange does not itself constitute notice of an adverse claim except in the case of a transfer more than:

(a) One year after a date set for presentment or surrender for redemption or exchange; or

(b) Six months after a date set for payment of money against presentation or surrender of the certificate, if money was available for payment on that date.

(4) A purchaser of a certificated security has notice of an adverse claim if the security certificate:

(a) Whether in bearer or registered form, has been indorsed "for collection" or "for surrender" or for some other purpose not involving transfer; or

(b) Is in bearer form and has on it an unambiguous statement that it is the property of a person other than the transferor, but the mere writing of a name on the certificate is not such a statement.

(5) Filing of a financing statement under \*Article 9 is not notice of an adverse claim to a financial asset. [1995 c 48 § 5; 1986 c 35 § 4; 1965 ex.s. c 157 § 8-105. Cf. former RCW 62.01.001; 1955 c 35 § 62.01.001; prior: 1899 c 149 § 1; RRS § 3392.]

**\*Reviser's note:** Article 62A.9 RCW was repealed in its entirety by 2000 c 250 § 9A-901, effective July 1, 2001. For later enactment, see Article 62A.9A RCW.

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**62A.8-106 Control.** (1) A purchaser has "control" of a certificated security in bearer form if the certificated security is delivered to the purchaser.

(2) A purchaser has "control" of a certificated security in registered form if the certificated security is delivered to the purchaser, and:

(a) The certificate is indorsed to the purchaser or in blank by an effective indorsement; or

(b) The certificate is registered in the name of the purchaser, upon original issue or registration of transfer by the issuer.

(3) A purchaser has "control" of an uncertificated security if:

(a) The uncertificated security is delivered to the purchaser; or

(b) The issuer has agreed that it will comply with instructions originated by the purchaser without further consent by the registered owner.

(4) A purchaser has "control" of a security entitlement if:

(a) The purchaser becomes the entitlement holder;

(b) The securities intermediary has agreed that it will comply with entitlement orders originated by the purchaser without further consent by the entitlement holder; or

(c) Another person has control of the security entitlement on behalf of the purchaser or, having previously acquired control of the security entitlement, acknowledges that it has control on behalf of the purchaser.

(5) If an interest in a security entitlement is granted by the entitlement holder to the entitlement holder's own securities intermediary, the securities intermediary has control.

(6) A purchaser who has satisfied the requirements of subsection (3) or (4) of this section has control even if the registered owner in the case of subsection (3) of this section or the entitlement holder in the case of subsection (4) of this section retains the right to make substitutions for the uncertificated security or security entitlement, to originate instructions or entitlement orders to the issuer or securities intermediary, or otherwise to deal with the uncertificated security or security entitlement.

(7) An issuer or a securities intermediary may not enter into an agreement of the kind described in subsection (3)(b) or (4)(b) of this section without the consent of the registered owner or entitlement holder, but an issuer or a securities intermediary is not required to enter into such an agreement even though the registered owner or entitlement holder so directs. An issuer or securities intermediary that has entered into such an agreement is not required to confirm the existence of the agreement to another party unless requested to do so by the registered owner or entitlement holder. [2000 c 250 § 9A-816; 1995 c 48 § 6; 1986 c 35 § 5; 1965 ex.s. c 157 § 8-106.]

**Effective date—2000 c 250:** See RCW 62A.9A-701.

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**62A.8-107 Whether indorsement, instruction, or entitlement is effective.** (1) "Appropriate person" means:

(a) With respect to an indorsement, the person specified by a security certificate or by an effective special indorsement to be entitled to the security;

(b) With respect to an instruction, the registered owner of an uncertificated security;

(c) With respect to an entitlement order, the entitlement holder;

(d) If the person designated in (a), (b), or (c) of this subsection is deceased, the designated person's successor taking under other law or the designated person's personal representative acting for the estate of the decedent; or

(e) If the person designated in (a), (b), or (c) of this subsection lacks capacity, the designated person's guardian, conservator, or other similar representative who has power under other law to transfer the security or financial asset.

(2) An indorsement, instruction, or entitlement order is effective if:

(a) It is made by the appropriate person;

(b) It is made by a person who has power under the law of agency to transfer the security or financial asset on behalf of the appropriate person, including, in the case of an instruction or entitlement order, a person who has control under RCW 62A.8-106 (3)(b) or (4)(b); or

(c) The appropriate person has ratified it or is otherwise precluded from asserting its ineffectiveness.

(3) An indorsement, instruction, or entitlement order made by a representative is effective even if:

(a) The representative has failed to comply with a controlling instrument or with the law of the state having jurisdiction of the representative relationship, including any law requiring the representative to obtain court approval of the transaction; or

(b) The representative's action in making the indorsement, instruction, or entitlement order or using the proceeds of the transaction is otherwise a breach of duty.

(4) If a security is registered in the name of or specially indorsed to a person described as a representative, or if a securities account is maintained in the name of a person described as a representative, an indorsement, instruction, or entitlement order made by the person is effective even though the person is no longer serving in the described capacity.

(5) Effectiveness of an indorsement, instruction, or entitlement order is determined as of the date the indorsement, instruction, or entitlement order is made, and an indorsement, instruction, or entitlement order does not become ineffective by reason of any later change of circumstances. [1995 c 48 § 7; 1986 c 35 § 6; 1965 ex.s. c 157 § 8-107.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**62A.8-108 Warranties in direct holding.** (1) A person who transfers a certificated security to a purchaser for value warrants to the purchaser, and an indorser, if the transfer is by indorsement, warrants to any subsequent purchaser, that:

(a) The certificate is genuine and has not been materially altered;

(b) The transferor or indorser does not know of any fact that might impair the validity of the security;

(c) There is no adverse claim to the security;

(d) The transfer does not violate any restriction on transfer;

(e) If the transfer is by indorsement, the indorsement is made by an appropriate person, or if the indorsement is by an agent, the agent has actual authority to act on behalf of the appropriate person; and

(f) The transfer is otherwise effective and rightful.

(2) A person who originates an instruction for registration of transfer of an uncertificated security to a purchaser for value warrants to the purchaser that:

(a) The instruction is made by an appropriate person, or if the instruction is by an agent, the agent has actual authority to act on behalf of the appropriate person;

(b) The security is valid;

(c) There is no adverse claim to the security; and

(d) At the time the instruction is presented to the issuer:

(i) The purchaser will be entitled to the registration of transfer;

(ii) The transfer will be registered by the issuer free from all liens, security interests, restrictions, and claims other than those specified in the instruction;

(iii) The transfer will not violate any restriction on transfer; and

(iv) The requested transfer will otherwise be effective and rightful.

(3) A person who transfers an uncertificated security to a purchaser for value and does not originate an instruction in connection with the transfer warrants that:

(a) The uncertificated security is valid;

(b) There is no adverse claim to the security;

(c) The transfer does not violate any restriction on transfer; and

(d) The transfer is otherwise effective and rightful.

(4) A person who indorses a security certificate warrants to the issuer that:

(a) There is no adverse claim to the security; and

(b) The indorsement is effective.

(5) A person who originates an instruction for registration of transfer of an uncertificated security warrants to the issuer that:

(a) The instruction is effective; and

(b) At the time the instruction is presented to the issuer the purchaser will be entitled to the registration of transfer.

(6) A person who presents a certificated security for registration of transfer or for payment or exchange warrants to the issuer that the person is entitled to the registration, payment, or exchange, but a purchaser for value and without notice of adverse claims to whom transfer is registered warrants only that the person has no knowledge of any unauthorized signature in a necessary indorsement.

(7) If a person acts as agent of another in delivering a certificated security to a purchaser, the identity of the principal was known to the person to whom the certificate was delivered, and the certificate delivered by the agent was received by the agent from the principal or received by the agent from another person at the direction of the principal, the person delivering the security certificate warrants only that the delivering person has authority to act for the principal and does not know of any adverse claim to the certificated security.

(8) A secured party who redelivers a security certificate received, or after payment and on order of the debtor delivers the security certificate to another person, makes only the warranties of an agent under subsection (7) of this section.

(9) Except as otherwise provided in subsection (7) of this section, a broker acting for a customer makes to the issuer and a purchaser the warranties provided in subsections (1) through (6) of this section. A broker that delivers a security certificate to its customer, or causes its customer to be registered as the owner of an uncertificated security, makes to the customer the warranties provided in subsection (1) or (2) of this section, and has the rights and privileges of a purchaser under this section. The warranties of and in favor of the broker acting as an agent are in addition to applicable warranties given by and in favor of the customer. [1995 c 48 § 8; 1986 c 35 § 7.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**62A.8-109 Warranties in indirect holding.** (1) A person who originates an entitlement order to a securities intermediary warrants to the securities intermediary that:

(a) The entitlement order is made by an appropriate person, or if the entitlement order is by an agent, the agent has actual authority to act on behalf of the appropriate person; and

(b) There is no adverse claim to the security entitlement.

(2) A person who delivers a security certificate to a securities intermediary for credit to a securities account or originates an instruction with respect to an uncertificated security directing that the uncertificated security be credited to a securities account makes to the securities intermediary the warranties specified in RCW 62A.8-108 (1) or (2).

(3) If a securities intermediary delivers a security certificate to its entitlement holder or causes its entitlement holder to be registered as the owner of an uncertificated security, the securities intermediary makes to the entitlement holder the warranties specified in RCW 62A.8-108 (1) or (2). [1995 c 48 § 9.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**62A.8-110 Applicability; choice of law.** (1) The local law of the issuer's jurisdiction, as specified in subsection (4) of this section, governs:

(a) The validity of a security;

(b) The rights and duties of the issuer with respect to registration of transfer;

(c) The effectiveness of registration of transfer by the issuer;

(d) Whether the issuer owes any duties to an adverse claimant to a security; and

(e) Whether an adverse claim can be asserted against a person to whom transfer of a certificated or uncertificated security is registered or a person who obtains control of an uncertificated security.

(2) The local law of the securities intermediary's jurisdiction, as specified in subsection (5) of this section, governs:

(a) Acquisition of a security entitlement from the securities intermediary;

(b) The rights and duties of the securities intermediary and entitlement holder arising out of a security entitlement;

(c) Whether the securities intermediary owes any duties to an adverse claimant to a security entitlement; and

(d) Whether an adverse claim can be asserted against a person who acquires a security entitlement from the securities intermediary or a person who purchases a security entitlement or interest therein from an entitlement holder.

(3) The local law of the jurisdiction in which a security certificate is located at the time of delivery governs whether an adverse claim can be asserted against a person to whom the security certificate is delivered.

(4) "Issuer's jurisdiction" means the jurisdiction under which the issuer of the security is organized or, if permitted by the law of that jurisdiction, the law of another jurisdiction specified by the issuer. An issuer organized under the law of this state may specify the law of another jurisdiction as the law governing the matters specified in subsection (1)(b) through (e) of this section.

(5) The following rules determine a "securities intermediary's jurisdiction" for purposes of this section:

(a) If an agreement between the securities intermediary and its entitlement holder governing the securities account expressly provides that a particular jurisdiction is the securities intermediary's jurisdiction for purposes of this part, this Article, or Article 62A.9A RCW, that jurisdiction is the securities intermediary's jurisdiction.

(b) If (a) of this subsection does not apply and an agreement between the securities intermediary and its entitlement holder governing the securities account expressly provides that the agreement is governed by the law of a particular jurisdiction, that jurisdiction is the securities intermediary's jurisdiction.

(c) If neither (a) nor (b) of this subsection applies, and an agreement between the securities intermediary and its entitlement holder governing the securities account expressly provides that the securities account is maintained at an office in a particular jurisdiction, that jurisdiction is the securities intermediary's jurisdiction.

(d) If (a), (b), and (c) of this subsection do not apply, the securities intermediary's jurisdiction is the jurisdiction in which the office identified in an account statement as the office serving the entitlement holder's account is located.

(e) If (a), (b), (c), and (d) of this subsection do not apply, the securities intermediary's jurisdiction is the jurisdiction in which the chief executive office of the securities intermediary is located.

(6) A securities intermediary's jurisdiction is not determined by the physical location of certificates representing financial assets, or by the jurisdiction in which is organized the issuer of the financial asset with respect to which an entitlement holder has a security entitlement, or by the location of facilities for data processing or other recordkeeping concerning the account. [2001 c 32 § 14; 2000 c 250 § 9A-817; 1995 c 48 § 10.]

**Effective date—2001 c 32:** See note following RCW 62A.9A-102.

**Effective date—2000 c 250:** See RCW 62A.9A-701.

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**62A.8-111 Clearing corporation rules.** A rule adopted by a clearing corporation governing rights and obligations among the clearing corporation and its participants in the clearing corporation is effective even if the rule conflicts with this Title and affects another party who does not consent to the rule. [1995 c 48 § 11.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**62A.8-112 Creditor's legal process.** (1) The interest of a debtor in a certificated security may be reached by a creditor only by actual seizure of the security certificate by the officer making the attachment or levy, except as otherwise provided in subsection (4) of this section. However, a certificated security for which the certificate has been surrendered to the issuer may be reached by a creditor by legal process upon the issuer.

(2) The interest of a debtor in an uncertificated security may be reached by a creditor only by legal process upon the issuer at its chief executive office in the United States, except as otherwise provided in subsection (4) of this section.

(3) The interest of a debtor in a security entitlement may be reached by a creditor only by legal process upon the secu-

rities intermediary with whom the debtor's securities account is maintained, except as otherwise provided in subsection (4) of this section.

(4) The interest of a debtor in a certificated security for which the certificate is in the possession of a secured party, or in an uncertificated security registered in the name of a secured party, or a security entitlement maintained in the name of a secured party, may be reached by a creditor by legal process upon the secured party.

(5) A creditor whose debtor is the owner of a certificated security, uncertificated security, or security entitlement is entitled to aid from a court of competent jurisdiction, by injunction or otherwise, in reaching the certificated security, uncertificated security, or security entitlement or in satisfying the claim by means allowed at law or in equity in regard to property that cannot readily be reached by other legal process. [1995 c 48 § 12.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**62A.8-113 Statute of frauds inapplicable.** A contract or modification of a contract for the sale or purchase of a security is enforceable whether or not there is a writing signed or record authenticated by a party against whom enforcement is sought, even if the contract or modification is not capable of performance within one year of its making. [1995 c 48 § 13.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**62A.8-114 Evidentiary rules concerning certificated securities.** The following rules apply in an action on a certificated security against the issuer:

(1) Unless specifically denied in the pleadings, each signature on a security certificate or in a necessary indorsement is admitted.

(2) If the effectiveness of a signature is put in issue, the burden of establishing effectiveness is on the party claiming under the signature, but the signature is presumed to be genuine or authorized.

(3) If signatures on a security certificate are admitted or established, production of the certificate entitles a holder to recover on it unless the defendant establishes a defense or a defect going to the validity of the security.

(4) If it is shown that a defense or defect exists, the plaintiff has the burden of establishing that the plaintiff or some person under whom the plaintiff claims is a person against whom the defense or defect cannot be asserted. [1995 c 48 § 14.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**62A.8-115 Securities intermediary and others not liable to adverse claimant.** A securities intermediary that has transferred a financial asset pursuant to an effective entitlement order, or a broker or other agent or bailee that has dealt with a financial asset at the direction of its customer or principal, is not liable to a person having an adverse claim to the financial asset, unless the securities intermediary, or broker or other agent or bailee:

(1) Took the action after it had been served with an injunction, restraining order, or other legal process enjoining it from doing so, issued by a court of competent jurisdiction,

(2010 Ed.)

and had a reasonable opportunity to act on the injunction, restraining order, or other legal process; or

(2) Acted in collusion with the wrongdoer in violating the rights of the adverse claimant; or

(3) In the case of a security certificate that has been stolen, acted with notice of the adverse claim. [1995 c 48 § 15.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**62A.8-116 Securities intermediary as purchaser for value.** A securities intermediary that receives a financial asset and establishes a security entitlement to the financial asset in favor of an entitlement holder is a purchaser for value of the financial asset. A securities intermediary that acquires a security entitlement to a financial asset from another securities intermediary acquires the security entitlement for value if the securities intermediary acquiring the security entitlement establishes a security entitlement to the financial asset in favor of an entitlement holder. [1995 c 48 § 16.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

## PART 2 ISSUE AND ISSUER

**62A.8-201 Issuer.** (1) With respect to an obligation on or a defense to a security, an "issuer" includes a person that:

(a) Places or authorizes the placing of its name on a security certificate, other than as authenticating trustee, registrar, transfer agent, or the like, to evidence a share, participation, or other interest in its property or in an enterprise, or to evidence its duty to perform an obligation represented by the certificate;

(b) Creates a share, participation, or other interest in its property or in an enterprise, or undertakes an obligation, that is an uncertificated security;

(c) Directly or indirectly creates a fractional interest in its rights or property, if the fractional interest is represented by a security certificate; or

(d) Becomes responsible for, or in place of, another person described as an issuer in this section.

(2) With respect to an obligation on or defense to a security, a guarantor is an issuer to the extent of its guaranty, whether or not its obligation is noted on a security certificate.

(3) With respect to registration of a transfer, issuer means a person on whose behalf transfer books are maintained. [1995 c 48 § 17; 1986 c 35 § 8; 1965 ex.s. c 157 § 8-201. Cf. former RCW sections: RCW 62.01.029, and 62.01.060 through 62.01.062; 1955 c 35 §§ 62.01.029, and 62.01.060 through 62.01.062; prior: 1899 c 149 §§ 29, and 60 through 62; RRS §§ 3420, and 3451 through 3453.]

*Corporations, effect of merger or consolidation: RCW 23B.11.060.*

*Securities Act, issuer: RCW 21.20.005(7).*

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**62A.8-202 Issuer's responsibility and defenses; notice of defect or defense.** (1) Even against a purchaser for value and without notice, the terms of a certificated security include terms stated on the certificate and terms made part of the security by reference on the certificate to another instrument, indenture, or document or to a constitution, statute, ordinance, rule, regulation, order, or the like, to the extent the

terms referred to do not conflict with terms stated on the certificate. A reference under this subsection does not of itself charge a purchaser for value with notice of a defect going to the validity of the security, even if the certificate expressly states that a person accepting it admits notice. The terms of an uncertificated security include those stated in any instrument, indenture, or document or in a constitution, statute, ordinance, rule, regulation, order, or the like, pursuant to which the security is issued.

(2) The following rules apply if an issuer asserts that a security is not valid:

(a) A security other than one issued by a government or governmental subdivision, agency, or instrumentality, even though issued with a defect going to its validity, is valid in the hands of a purchaser for value and without notice of the particular defect unless the defect involves a violation of a constitutional provision. In that case, the security is valid in the hands of a purchaser for value and without notice of the defect, other than one who takes by original issue.

(b) Subsection (2)(a) of this section applies to an issuer that is a government or governmental subdivision, agency, or instrumentality only if there has been substantial compliance with the legal requirements governing the issue or the issuer has received a substantial consideration for the issue as a whole or for the particular security and a stated purpose of the issue is one for which the issuer has power to borrow money or issue the security.

(3) Except as otherwise provided in RCW 62A.8-205, lack of genuineness of a certificated security is a complete defense, even against a purchaser for value and without notice.

(4) All other defenses of the issuer of a security, including nondelivery and conditional delivery of a certificated security, are ineffective against a purchaser for value who has taken the certificated security without notice of the particular defense.

(5) This section does not affect the right of a party to cancel a contract for a security "when, as and if issued" or "when distributed" in the event of a material change in the character of the security that is the subject of the contract or in the plan or arrangement pursuant to which the security is to be issued or distributed.

(6) If a security is held by a securities intermediary against whom an entitlement holder has a security entitlement with respect to the security, the issuer may not assert any defense that the issuer could not assert if the entitlement holder held the security directly. [1995 c 48 § 18; 1986 c 35 § 9; 1965 ex.s. c 157 § 8-202. Cf. former RCW sections: RCW 62.01.016, 62.01.023, 62.01.028, 62.01.056, 62.01.057, and 62.01.060 through 62.01.062; 1955 c 35 §§ 62.01.016, 62.01.023, 62.01.028, 62.01.056, 62.01.057, and 62.01.060 through 62.01.062; prior: 1899 c 149 §§ 16, 23, 28, 56, 57, and 60 through 62; RRS §§ 3407, 3414, 3419, 3447, 3448, and 3451 through 3453.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

#### **62A.8-203 Staleness as notice of defect or defense.**

After an act or event, other than a call that has been revoked, creating a right to immediate performance of the principal obligation represented by a certificated security or setting a

date on or after which the security is to be presented or surrendered for redemption or exchange, a purchaser is charged with notice of any defect in its issue or defense of the issuer, if the act or event:

(1) Requires the payment of money, the delivery of a certificated security, the registration of transfer of an uncertificated security, or any of them on presentation or surrender of the security certificate, the money or security is available on the date set for payment or exchange, and the purchaser takes the security more than one year after that date; or

(2) Is not covered by subsection (1) of this section and the purchaser takes the security more than two years after the date set for surrender or presentation or the date on which performance became due. [1995 c 48 § 19; 1986 c 35 § 10; 1965 ex.s. c 157 § 8-203. Cf. former RCW sections: RCW 62.01.052(2) and 62.01.053; 1955 c 35 §§ 62.01.052 and 62.01.053; prior: 1899 c 149 §§ 52 and 53; RRS §§ 3443 and 3444.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

#### **62A.8-204 Effect of issuer's restrictions on transfer.**

A restriction on transfer of a security imposed by the issuer, even if otherwise lawful, is ineffective against a person without knowledge of the restriction unless:

(1) The security is certificated and the restriction is noted conspicuously on the security certificate; or

(2) The security is uncertificated and the registered owner has been notified by the restriction. [1995 c 48 § 20; 1986 c 35 § 11; 1965 ex.s. c 157 § 8-204. Cf. former RCW 23.80.150; 1939 c 100 § 15; RRS § 3803-115; formerly RCW 23.20.160.]

*Corporations—Stock certificates—Limitations: RCW 23B.06.250.*

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**62A.8-205 Effect of unauthorized signature on security certificate.** An unauthorized signature placed on a security certificate before or in the course of issue is ineffective, but the signature is effective in favor of a purchaser for value of the certificated security if the purchaser is without notice of the lack of authority and the signing has been done by:

(1) An authenticating trustee, registrar, transfer agent, or other person entrusted by the issuer with the signing of the security certificate or of similar certificates, or the immediate preparation for signing of any of them; or

(2) An employee of the issuer, or of any of the persons listed in subsection (1) of this section, entrusted with responsible handling of the security certificate. [1995 c 48 § 21; 1986 c 35 § 12; 1965 ex.s. c 157 § 8-205. Cf. former RCW 62.01.023; 1955 c 35 § 62.01.023; prior: 1899 c 149 § 23; RRS § 3414.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**62A.8-206 Completion or alteration of security certificate.** (1) If a security certificate contains the signatures necessary to its issue or transfer but is incomplete in any other respect:

(a) Any person may complete it by filling in the blanks as authorized; and

(b) Even though the blanks are incorrectly filled in, the security certificate as completed is enforceable by a pur-

chaser who took it for value and without notice of the incorrectness.

(2) A complete security certificate that has been improperly altered, even if fraudulently, remains enforceable, but only according to its original terms. [1995 c 48 § 22; 1986 c 35 § 13; 1965 ex.s. c 157 § 8-206. Cf. former RCW sections: (i) RCW 23.80.160; 1939 c 100 § 16; RRS § 3803-116; formerly RCW 23.20.170. (ii) RCW 62.01.014, 62.01.015, and 62.01.124; 1955 c 35 §§ 62.01.014, 62.01.015, and 62.01.124; prior: 1899 c 149 §§ 14, 15, and 124; RRS §§ 3405, 3406, and 3514.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**62A.8-207 Rights and duties of issuer with respect to registered owners.** (1) Before due presentment for registration of transfer of a certificated security in registered form or of an instruction requesting registration of transfer of an uncertificated security, the issuer or indenture trustee may treat the registered owner as the person exclusively entitled to vote, receive notifications, and otherwise exercise all the rights and powers of an owner.

(2) This Article does not affect the liability of the registered owner of a security for a call, assessment, or the like. [1995 c 48 § 23; 1986 c 35 § 14; 1965 ex.s. c 157 § 8-207. Cf. former RCW 23.80.020 and 23.80.030; 1939 c 100 §§ 2 and 3; RRS §§ 3803-102 and 3803-103; formerly RCW 23.20.030 and 23.20.040.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**62A.8-208 Effect of signature of authenticating trustee, registrar, or transfer agent.** (1) A person signing a security certificate as authenticating trustee, registrar, transfer agent, or the like, warrants to a purchaser for value of the certificated security, if the purchaser is without notice of a particular defect, that:

(a) The certificate is genuine;

(b) The person's own participation in the issue of the security is within the person's capacity and within the scope of the authority received by the person from the issuer; and

(c) The person has reasonable grounds to believe that the certificated security is in the form and within the amount the issuer is authorized to issue.

(2) Unless otherwise agreed, a person signing under subsection (1) of this section does not assume responsibility for the validity of the security in other respects. [1995 c 48 § 24; 1986 c 35 § 15; 1965 ex.s. c 157 § 8-208.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**62A.8-209 Issuer's lien.** A lien in favor of an issuer upon a certificated security is valid against a purchaser only if the right of the issuer to the lien is noted conspicuously on the security certificate. [1995 c 48 § 25.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**62A.8-210 Overissue.** (1) In this section, "overissue" means the issue of securities in excess of the amount the issuer has corporate power to issue, but an overissue does not occur if appropriate action has cured the overissue.

(2) Except as otherwise provided in subsections (3) and (4) of this section, the provisions of this Article which vali-

(2010 Ed.)

date a security or compel its issue or reissue do not apply to the extent that validation, issue, or reissue would result in overissue.

(3) If an identical security not constituting an overissue is reasonably available for purchase, a person entitled to issue or validation may compel the issuer to purchase the security and deliver it if certificated or register its transfer if uncertificated, against surrender of any security certificate the person holds.

(4) If a security is not reasonably available for purchase, a person entitled to issue or validation may recover from the issuer the price the person or the last purchaser for value paid for it with interest from the date of the person's demand. [1995 c 48 § 26.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

### PART 3 TRANSFER OF CERTIFICATED AND UNCERTIFICATED SECURITIES

**62A.8-301 Delivery.** (1) Delivery of a certificated security to a purchaser occurs when:

(a) The purchaser acquires possession of the security certificate;

(b) Another person, other than a securities intermediary, either acquires possession of the security certificate on behalf of the purchaser or, having previously acquired possession of the certificate, acknowledges that it holds for the purchaser; or

(c) A securities intermediary acting on behalf of the purchaser acquires possession of the security certificate, only if the certificate is in registered form and is (i) registered in the name of the purchaser, (ii) payable to the order of the purchaser, or (iii) specially indorsed to the purchaser by an effective indorsement and has not been indorsed to the securities intermediary or in blank.

(2) Delivery of an uncertificated security to a purchaser occurs when:

(a) The issuer registers the purchaser as the registered owner, upon original issue or registration of transfer; or

(b) Another person, other than a securities intermediary, either becomes the registered owner of the uncertificated security on behalf of the purchaser or, having previously become the registered owner, acknowledges that it holds for the purchaser. [2000 c 250 § 9A-818; 1995 c 48 § 27; 1986 c 35 § 16; 1965 ex.s. c 157 § 8-301. Cf. former RCW sections: (i) RCW 23.80.070; 1939 c 100 § 7; RRS § 3803-107; formerly RCW 23.20.080. (ii) RCW 62.01.052; 1955 c 35 § 62.01.052; prior: 1899 c 149 § 52; RRS § 3443. (iii) RCW 62.01.057 through 62.01.059; 1955 c 35 §§ 62.01.057 through 62.01.059; prior: 1899 c 149 §§ 57 through 59; RRS §§ 3448 through 3450.]

**Effective date—2000 c 250:** See RCW 62A.9A-701.

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**62A.8-302 Rights of purchaser.** (1) Except as otherwise provided in subsections (2) and (3) of this section, a purchaser of a certificated or uncertificated security acquires all rights in the security that the transferor had or had power to transfer.

(2) A purchaser of a limited interest acquires rights only to the extent of the interest purchased.

(3) A purchaser of a certificated security who as a previous holder had notice of an adverse claim does not improve its position by taking from a protected purchaser. [2000 c 250 § 9A-819; 1995 c 48 § 28; 1986 c 35 § 17; 1965 ex.s. c 157 § 8-302. Cf. former RCW sections: (i) RCW 23.80.230(2); 1939 c 100 § 23; RRS § 3803-123. (ii) RCW 62.01.052; 1955 c 35 § 62.01.052; prior: 1899 c 149 § 52; RRS § 3443.]

**Effective date—2000 c 250:** See RCW 62A.9A-701.

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**62A.8-303 Protected purchaser.** (1) "Protected purchaser" means a purchaser of a certificated or uncertificated security, or of an interest therein, who:

- (a) Gives value;
- (b) Does not have notice of any adverse claim to the security; and
- (c) Obtains control of the certificated or uncertificated security.

(2) In addition to acquiring the rights of a purchaser, a protected purchaser also acquires its interest in the security free of any adverse claim. [1995 c 48 § 29; 1986 c 35 § 18; 1965 ex.s. c 157 § 8-303.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**62A.8-304 Indorsement.** (1) An indorsement may be in blank or special. An indorsement in blank includes an indorsement to bearer. A special indorsement specifies to whom a security is to be transferred or who has power to transfer it. A holder may convert a blank indorsement to a special indorsement.

(2) An indorsement purporting to be only of part of a security certificate representing units intended by the issuer to be separately transferable is effective to the extent of the indorsement.

(3) An indorsement, whether special or in blank, does not constitute a transfer until delivery of the certificate on which it appears or, if the indorsement is on a separate document, until delivery of both the document and the certificate.

(4) If a security certificate in registered form has been delivered to a purchaser without a necessary indorsement, the purchaser may become a protected purchaser only when the indorsement is supplied. However, against a transferor, a transfer is complete upon delivery and the purchaser has a specifically enforceable right to have any necessary indorsement supplied.

(5) An indorsement of a security certificate in bearer form may give notice of an adverse claim to the certificate, but it does not otherwise affect a right to registration that the holder possesses.

(6) Unless otherwise agreed, a person making an indorsement assumes only the obligations provided in RCW 62A.8-108 and not an obligation that the security will be honored by the issuer. [1995 c 48 § 30; 1986 c 35 § 19; 1965 ex.s. c 157 § 8-304. Cf. former RCW sections: RCW 62.01.037 and 62.01.056; 1955 c 35 §§ 62.01.037 and 62.01.056; prior: 1899 c 149 §§ 37 and 56; RRS §§ 3428 and 3447.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**62A.8-305 Instruction.** (1) If an instruction has been originated by an appropriate person but is incomplete in any other respect, any person may complete it as authorized and the issuer may rely on it as completed, even though it has been completed incorrectly.

(2) Unless otherwise agreed, a person initiating an instruction assumes only the obligations imposed by RCW 62A.8-108 and not an obligation that the security will be honored by the issuer. [1995 c 48 § 31; 1986 c 35 § 20; 1965 ex.s. c 157 § 8-305. Cf. former RCW sections: RCW 62.01.052(2) and 62.01.053; 1955 c 35 §§ 62.01.052 and 62.01.053; prior: 1899 c 149 §§ 52 and 53; RRS §§ 3443 and 3444.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**62A.8-306 Effect of guaranteeing signature, indorsement, or instruction.** (1) A person who guarantees a signature of an indorser of a security certificate warrants that at the time of signing:

- (a) The signature was genuine;
  - (b) The signer was an appropriate person to indorse, or if the signature is by an agent, the agent had actual authority to act on behalf of the appropriate person; and
  - (c) The signer had legal capacity to sign.
- (2) A person who guarantees a signature of the originator of an instruction warrants that at the time of signing:

- (a) The signature was genuine;
- (b) The signer was an appropriate person to originate the instruction, or if the signature is by an agent, the agent had actual authority to act on behalf of the appropriate person, if the person specified in the instruction as the registered owner was, in fact, the registered owner, as to which fact the signature guarantor does not make a warranty; and
- (c) The signer had legal capacity to sign.

(3) A person who specially guarantees the signature of an originator of an instruction makes the warranties of a signature guarantor under subsection (2) of this section and also warrants that at the time the instruction is presented to the issuer:

- (a) The person specified in the instruction as the registered owner of the uncertificated security will be the registered owner; and
- (b) The transfer of the uncertificated security requested in the instruction will be registered by the issuer free from all liens, security interests, restrictions, and claims other than those specified in the instruction.

(4) A guarantor under subsections (1) and (2) of this section or a special guarantor under subsection (3) of this section does not otherwise warrant the rightfulness of the transfer.

(5) A person who guarantees an indorsement of a security certificate makes the warranties of a signature guarantor under subsection (1) of this section and also warrants the rightfulness of the transfer in all respects.

(6) A person who guarantees an instruction requesting the transfer of an uncertificated security makes the warranties of a special signature guarantor under subsection (3) of this section and also warrants the rightfulness of the transfer in all respects.

(7) An issuer may not require a special guaranty of signature, a guaranty of indorsement, or a guaranty of instruction as a condition to registration of transfer.

(8) The warranties under this section are made to a person taking or dealing with the security in reliance on the guaranty, and the guarantor is liable to the person for loss resulting from their breach. An indorser or originator of an instruction whose signature, indorsement, or instruction has been guaranteed is liable to a guarantor for any loss suffered by the guarantor as a result of breach of the warranties of the guarantor. [1995 c 48 § 32; 1986 c 35 § 21; 1965 ex.s. c 157 § 8-306. Cf. former RCW sections: (i) RCW 23.80.110 and 23.80.120; 1939 c 100 §§ 11 and 12; RRS §§ 3803-111 and 3803-112; formerly RCW 23.20.120 and 23.20.130. (ii) RCW 62.01.065 through 62.01.067, and 62.01.069; 1955 c 35 §§ 62.01.065 through 62.01.067, and 62.01.069; prior: 1899 c 149 §§ 65 through 67, and 69; RRS §§ 3456 through 3458, and 3460.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**62A.8-307 Purchaser's right to requisites for registration of transfer.** Unless otherwise agreed, the transferor of a security on due demand shall supply the purchaser with proof of authority to transfer or with any other requisite necessary to obtain registration of the transfer of the security, but if the transfer is not for value, a transferor need not comply unless the purchaser pays the necessary expenses. If the transferor fails within a reasonable time to comply with the demand, the purchaser may reject or rescind the transfer. [1995 c 48 § 33; 1986 c 35 § 22; 1965 ex.s. c 157 § 8-307. Cf. former RCW sections: (i) RCW 23.80.090; 1939 c 100 § 9; RRS § 3803-109; formerly RCW 23.20.100. (ii) RCW 62.01.049; 1955 c 35 § 62.01.049; prior: 1899 c 149 § 49; RRS § 3440.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

#### PART 4 REGISTRATION

**62A.8-401 Duty of issuer to register transfer.** (1) If a certificated security in registered form is presented to the issuer with a request to register transfer or an instruction is presented to the issuer with a request to register transfer of an uncertificated security, the issuer shall register the transfer as requested if:

(a) Under the terms of the security the person seeking registration of transfer is eligible to have the security registered in its name;

(b) The indorsement or instruction is made by the appropriate person or by an agent who has actual authority to act on behalf of the appropriate person;

(c) Reasonable assurance is given that the indorsement or instruction is genuine and authorized (RCW 62A.8-402);

(d) Any applicable law relating to the collection of taxes has been complied with;

(e) The transfer does not violate any restriction on transfer imposed by the issuer in accordance with RCW 62A.8-204;

(f) A demand that the issuer not register transfer has not become effective under RCW 62A.8-403, or the issuer has

(2010 Ed.)

complied with RCW 62A.8-403(2) but no legal process or indemnity bond is obtained as provided in RCW 62A.8-403(4); and

(g) The transfer is in fact rightful or is to a protected purchaser.

(2) If an issuer is under a duty to register a transfer of a security, the issuer is liable to a person presenting a certificated security or an instruction for registration or to the person's principal for loss resulting from unreasonable delay in registration or failure or refusal to register the transfer. [1995 c 48 § 34; 1986 c 35 § 37; 1965 ex.s. c 157 § 8-401.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**62A.8-402 Assurance that indorsement or instruction is effective.** (1) An issuer may require the following assurance that each necessary indorsement or each instruction is genuine and authorized:

(a) In all cases, a guaranty of the signature of the person making an indorsement or originating an instruction including, in the case of an instruction, reasonable assurance of identity;

(b) If the indorsement is made or the instruction is originated by an agent, appropriate assurance of actual authority to sign;

(c) If the indorsement is made or the instruction is originated by a fiduciary pursuant to RCW 62A.8-107(1) (d) or (e), appropriate evidence of appointment or incumbency;

(d) If there is more than one fiduciary, reasonable assurance that all who are required to sign have done so; and

(e) If the indorsement is made or the instruction is originated by a person not covered by another provision of this subsection, assurance appropriate to the case corresponding as nearly as may be to the provisions of this subsection.

(2) An issuer may elect to require reasonable assurance beyond that specified in this section.

(3) In this section:

(a) "Guaranty of the signature" means a guaranty signed by or on behalf of a person reasonably believed by the issuer to be responsible. An issuer may adopt standards with respect to responsibility if they are not manifestly unreasonable.

(b) "Appropriate evidence of appointment or incumbency" [means]:

(i) In the case of a fiduciary appointed or qualified by a court, a certificate issued by or under the direction or supervision of the court or an officer thereof and dated within sixty days before the date of presentation for transfer; or

(ii) In any other case, a copy of a document showing the appointment or a certificate issued by or on behalf of a person reasonably believed by an issuer to be responsible or, in the absence of that document or certificate, other evidence the issuer reasonably considered appropriate. [1995 c 48 § 35; 1986 c 35 § 38; 1965 ex.s. c 157 § 8-402.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**62A.8-403 Demand that issuer not register transfer.**

(1) A person who is an appropriate person to make an indorsement or originate an instruction may demand that the issuer not register transfer of a security by communicating to the issuer a notification that identifies the registered owner and the issue of which the security is a part and provides an

address for communications directed to the person making the demand. The demand is effective only if it is received by the issuer at a time and in a manner affording the issuer reasonable opportunity to act on it.

(2) If a certificated security in registered form is presented to an issuer with a request to register transfer or an instruction is presented to an issuer with a request to register transfer of an uncertificated security after a demand that the issuer not register transfer has become effective, the issuer shall promptly communicate to (a) the person who initiated the demand at the address provided in the demand and (b) the person who presented the security for registration of transfer or initiated the instruction requesting registration of transfer a notification stating that:

(i) The certificated security has been presented for registration of transfer or instruction for registration of transfer of uncertificated security has been received;

(ii) A demand that the issuer not register transfer had previously been received; and

(iii) The issuer will withhold registration of transfer for a period of time stated in the notification in order to provide the person who initiated the demand an opportunity to obtain legal process or an indemnity bond.

(3) The period described in subsection (2)(b)(iii) of this section may not exceed thirty days after the date of communication of the notification. A shorter period may be specified by the issuer if it is not manifestly unreasonable.

(4) An issuer is not liable to a person who initiated a demand that the issuer not register transfer for any loss the person suffers as a result of registration of a transfer pursuant to an effective indorsement or instruction if the person who initiated the demand does not, within the time stated in the issuer's communication, either:

(a) Obtain an appropriate restraining order, injunction, or other process from a court of competent jurisdiction enjoining the issuer from registering the transfer; or

(b) File with the issuer an indemnity bond, sufficient in the issuer's judgment to protect the issuer and any transfer agent, registrar, or other agent of the issuer involved from any loss it or they may suffer by refusing to register the transfer.

(5) This section does not relieve an issuer from liability for registering transfer pursuant to an indorsement or instruction that was not effective. [1995 c 48 § 36; 1986 c 35 § 39; 1965 ex.s. c 157 § 8-403.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**62A.8-404 Wrongful registration.** (1) Except as otherwise provided in RCW 62A.8-406, an issuer is liable for wrongful registration of transfer if the issuer has registered a transfer of a security to a person not entitled to it, and the transfer was registered:

(a) Pursuant to an ineffective indorsement or instruction;

(b) After a demand that the issuer not register transfer became effective under RCW 62A.8-403(1) and the issuer did not comply with RCW 62A.8-403(2);

(c) After the issuer had been served with an injunction, restraining order, or other legal process enjoining it from registering the transfer, issued by a court of competent jurisdiction, and the issuer had a reasonable opportunity to act on the injunction, restraining order, or other legal process; or

(d) By an issuer acting in collusion with the wrongdoer.

(2) An issuer that is liable for wrongful registration of transfer under subsection (1) of this section on demand shall provide the person entitled to the security with a like certificated or uncertificated security, and any payments or distributions that the person did not receive as a result of the wrongful registration. If an overissue would result, the issuer's liability to provide the person with a like security is governed by RCW 62A.8-210.

(3) Except as otherwise provided in subsection (1) of this section or in a law relating to the collection of taxes, an issuer is not liable to an owner or other person suffering loss as a result of the registration of a transfer of a security if registration was made pursuant to an effective indorsement or instruction. [1995 c 48 § 37; 1986 c 35 § 40; 1965 ex.s. c 157 § 8-404.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**62A.8-405 Replacement of lost, destroyed, or wrongfully taken security certificate.** (1) If an owner of a certificated security, whether in registered or bearer form, claims that the certificate has been lost, destroyed, or wrongfully taken, the issuer shall issue a new certificate if the owner:

(a) So requests before the issuer has notice that the certificate has been acquired by a protected purchaser;

(b) Files with the issuer a sufficient indemnity bond; and

(c) Satisfies any other reasonable requirements imposed by the issuer.

(2) If, after the issue of a new security certificate, a protected purchaser of the original certificate presents it for registration of transfer, the issuer shall register the transfer unless an overissue would result. In that case, the issuer's liability is governed by RCW 62A.8-209. In addition to any rights on the indemnity bond, an issuer may recover the new certificate from the person to whom it was issued or any person taking under that person, except a protected purchaser. [1995 c 48 § 38; 1986 c 35 § 41; 1965 ex.s. c 157 § 8-405. Cf. former RCW 23.80.170; 1939 c 100 § 17; RRS § 3803-117; formerly RCW 23.20.180.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**62A.8-406 Obligation to notify issuer of lost, destroyed, or wrongfully taken security certificate.** If a security certificate has been lost, apparently destroyed, or wrongfully taken, and the owner fails to notify the issuer of that fact within a reasonable time after the owner has notice of it and the issuer registers a transfer of the security before receiving notification, the owner may not assert against the issuer a claim for registering the transfer under RCW 62A.8-404 or a claim to a new security certificate under RCW 62A.8-405. [1995 c 48 § 39; 1986 c 35 § 42; 1965 ex.s. c 157 § 8-406.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**62A.8-407 Authenticating trustee, transfer agent, and registrar.** A person acting as authenticating trustee, transfer agent, registrar, or other agent for an issuer in the registration of a transfer of its securities, in the issue of new security certificates or uncertificated securities, or in the cancellation of surrendered security certificates has the same

obligation to the holder or owner of a certificated or uncertificated security with regard to the particular functions performed as the issuer has in regard to those functions. [1995 c 48 § 40; 1986 c 35 § 43.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

PART 5  
SECURITY ENTITLEMENTS

**62A.8-501 Securities account; acquisition of security entitlement from securities intermediary.** (1) "Securities account" means an account to which a financial asset is or may be credited in accordance with an agreement under which the person maintaining the account undertakes to treat the person for whom the account is maintained as entitled to exercise the rights that comprise the financial asset.

(2) Except as otherwise provided in subsections (4) and (5) of this section, a person acquires a security entitlement if a securities intermediary:

(a) Indicates by book entry that a financial asset has been credited to the person's securities account;

(b) Receives a financial asset from the person or acquires a financial asset for the person and, in either case, accepts it for credit to the person's securities account; or

(c) Becomes obligated under other law, regulation, or rule to credit a financial asset to the person's securities account.

(3) If a condition of subsection (2) of this section has been met, a person has a security entitlement even though the securities intermediary does not itself hold the financial asset.

(4) If a securities intermediary holds a financial asset for another person, and the financial asset is registered in the name of, payable to the order of, or specially indorsed to the other person, and has not been indorsed to the securities intermediary or in blank, the other person is treated as holding the financial asset directly rather than as having a security entitlement with respect to the financial asset.

(5) Issuance of a security is not establishment of a security entitlement. [1995 c 48 § 41.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**62A.8-502 Assertion of adverse claim against entitlement holder.** An action based on an adverse claim to a financial asset, whether framed in conversion, replevin, constructive trust, equitable lien, or other theory, may not be asserted against a person who acquires a security entitlement under RCW 62A.8-501 for value and without notice of the adverse claim. [1995 c 48 § 42.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**62A.8-503 Property interest of entitlement holder in financial asset held by securities intermediary.** (1) To the extent necessary for a securities intermediary to satisfy all security entitlements with respect to a particular financial asset, all interests in that financial asset held by the securities intermediary are held by the securities intermediary for the entitlement holders, are not property of the securities intermediary, and are not subject to claims of creditors of the securities intermediary, except as otherwise provided in RCW 62A.8-511.

(2010 Ed.)

(2) An entitlement holder's property interest with respect to a particular financial asset under subsection (1) of this section is a pro rata property interest in all interests in that financial asset held by the securities intermediary, without regard to the time the entitlement holder acquired the security entitlement or the time the securities intermediary acquired the interest in that financial asset.

(3) An entitlement holder's property interest with respect to a particular financial asset under subsection (1) of this section may be enforced against the securities intermediary only by exercise of the entitlement holder's rights under RCW 62A.8-505 through 62A.8-508.

(4) An entitlement holder's property interest with respect to a particular financial asset under subsection (1) of this section may be enforced against a purchaser of the financial asset or interest therein only if:

(a) Insolvency proceedings have been initiated by or against the securities intermediary;

(b) The securities intermediary does not have sufficient interests in the financial asset to satisfy the security entitlements of all of its entitlement holders to that financial asset;

(c) The securities intermediary violated its obligations under RCW 62A.8-504 by transferring the financial asset or interest therein to the purchaser; and

(d) The purchaser is not protected under subsection (5) of this section.

The trustee or other liquidator, acting on behalf of all entitlement holders having security entitlements with respect to a particular financial asset, may recover the financial asset, or interest therein, from the purchaser. If the trustee or other liquidator elects not to pursue that right, an entitlement holder whose security entitlement remains unsatisfied has the right to recover its interest in the financial asset from the purchaser.

(5) An action based on the entitlement holder's property interest with respect to a particular financial asset under subsection (1) of this section, whether framed in conversion, replevin, constructive trust, equitable lien, or other theory, may not be asserted against any purchaser of a financial asset or interest therein who gives value, obtains control, and does not act in collusion with the securities intermediary in violating the securities intermediary's obligations under RCW 62A.8-504. [1995 c 48 § 43.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**62A.8-504 Duty of securities intermediary to maintain financial asset.** (1) A securities intermediary shall promptly obtain and thereafter maintain a financial asset in a quantity corresponding to the aggregate of all security entitlements it has established in favor of its entitlement holders with respect to that financial asset. The securities intermediary may maintain those financial assets directly or through one or more other securities intermediaries.

(2) Except to the extent otherwise agreed by its entitlement holder, a securities intermediary may not grant any security interests in a financial asset it is obligated to maintain pursuant to subsection (1) of this section.

(3) A securities intermediary satisfies the duty in subsection (1) of this section if:

(a) The securities intermediary acts with respect to the duty as agreed upon by the entitlement holder and the securities intermediary; or

(b) In the absence of agreement, the securities intermediary exercises due care in accordance with reasonable commercial standards to obtain and maintain the financial asset.

(4) This section does not apply to a clearing corporation that is itself the obligor of an option or similar obligation to which its entitlement holders have security entitlements. [1995 c 48 § 44.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**62A.8-505 Duty of securities intermediary with respect to payments and distributions.** (1) A securities intermediary shall take action to obtain a payment or distribution made by the issuer of a financial asset. A securities intermediary satisfies the duty if:

(a) The securities intermediary acts with respect to the duty as agreed upon by the entitlement holder and the securities intermediary; or

(b) In the absence of agreement, the securities intermediary exercises due care in accordance with reasonable commercial standards to attempt to obtain the payment or distribution.

(2) A securities intermediary is obligated to its entitlement holder for a payment or distribution made by the issuer of a financial asset if the payment or distribution is received by the securities intermediary. [1995 c 48 § 45.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**62A.8-506 Duty of securities intermediary to exercise rights as directed by entitlement holder.** A securities intermediary shall exercise rights with respect to a financial asset if directed to do so by an entitlement holder. A securities intermediary satisfies the duty if:

(1) The securities intermediary acts with respect to the duty as agreed upon by the entitlement holder and the securities intermediary; or

(2) In the absence of agreement, the securities intermediary either places the entitlement holder in a position to exercise the rights directly or exercises due care in accordance with reasonable commercial standards to follow the direction of the entitlement holder. [1995 c 48 § 46.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**62A.8-507 Duty of securities intermediary to comply with entitlement order.** (1) A securities intermediary shall comply with an entitlement order if the entitlement order is originated by the appropriate person, the securities intermediary has had reasonable opportunity to assure itself that the entitlement order is genuine and authorized, and the securities intermediary has had reasonable opportunity to comply with the entitlement order. A securities intermediary satisfies the duty if:

(a) The securities intermediary acts with respect to the duty as agreed upon by the entitlement holder and the securities intermediary; or

(b) In the absence of agreement, the securities intermediary exercises due care in accordance with reasonable commercial standards to comply with the entitlement order.

(2) If a securities intermediary transfers a financial asset pursuant to an ineffective entitlement order, the securities intermediary shall reestablish a security entitlement in favor of the person entitled to it, and pay or credit any payments or distributions that the person did not receive as a result of the wrongful transfer. If the securities intermediary does not reestablish a security entitlement, the securities intermediary is liable to the entitlement holder for damages. [1995 c 48 § 47.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**62A.8-508 Duty of securities intermediary to change entitlement holder's position to other form of security holding.** A securities intermediary shall act at the direction of an entitlement holder to change a security entitlement into another available form of holding for which the entitlement holder is eligible, or to cause the financial asset to be transferred to a securities account of the entitlement holder with another securities intermediary. A securities intermediary satisfies the duty if:

(1) The securities intermediary acts as agreed upon by the entitlement holder and the securities intermediary; or

(2) In the absence of agreement, the securities intermediary exercises due care in accordance with reasonable commercial standards to follow the direction of the entitlement holder. [1995 c 48 § 48.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**62A.8-509 Specification of duties of securities intermediary by other statute or regulation; manner of performance of duties of securities intermediary and exercise of rights of entitlement holder.** (1) If the substance of a duty imposed upon a securities intermediary by RCW 62A.8-504 through 62A.8-508 is the subject of other statute, regulation, or rule, compliance with that statute, regulation, or rule satisfies the duty.

(2) To the extent that specific standards for the performance of the duties of a securities intermediary or the exercise of the rights of an entitlement holder are not specified by other statute, regulation, or rule or by agreement between the securities intermediary and entitlement holder, the securities intermediary shall perform its duties and the entitlement holder shall exercise its rights in a commercially reasonable manner.

(3) The obligation of a securities intermediary to perform the duties imposed by RCW 62A.8-504 through 62A.8-508 is subject to:

(a) Rights of the securities intermediary arising out of a security interest under a security agreement with the entitlement holder or otherwise; and

(b) Rights of the securities intermediary under other law, regulation, rule, or agreement to withhold performance of its duties as a result of unfulfilled obligations of the entitlement holder to the securities intermediary.

(4) RCW 62A.8-504 through 62A.8-508 do not require a securities intermediary to take any action that is prohibited by other statute, regulation, or rule. [1995 c 48 § 49.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**62A.8-510 Rights of purchaser of security entitlement from entitlement holder.** (1) In a case not covered by the priority rules in Article 9A or the rules stated in subsection (3) of this section, an action based on an adverse claim to a financial asset or security entitlement, whether framed in conversion, replevin, constructive trust, equitable lien, or other theory, may not be asserted against a person who purchases a security entitlement, or an interest therein, from an entitlement holder if the purchaser gives value, does not have notice of the adverse claim, and obtains control.

(2) If an adverse claim could not have been asserted against an entitlement holder under RCW 62A.8-502, the adverse claim cannot be asserted against a person who purchases a security entitlement, or an interest therein, from the entitlement holder.

(3) In a case not covered by the priority rules in Article 9A, a purchaser for value of a security entitlement, or an interest therein, who obtains control has priority over a purchaser of a security entitlement, or an interest therein, who does not obtain control. Except as otherwise provided in subsection (4) of this section, purchasers who have control rank according to priority in time of:

(a) The purchaser's becoming the person for whom the securities account, in which the security entitlement is carried, is maintained, if the purchaser obtained control under RCW 62A.8-106(4)(a);

(b) The securities intermediary's agreement to comply with the purchaser's entitlement orders with respect to security entitlements carried or to be carried in the securities account in which the security entitlement is carried, if the purchaser obtained control under RCW 62A.8-106(4)(b); or

(c) If the purchaser obtained control through another person under RCW 62A.8-106(4)(c), the time on which priority would be based under this subsection if the other person were the secured party.

(4) A securities intermediary as purchaser has priority over a conflicting purchaser who has control unless otherwise agreed by the securities intermediary. [2001 c 32 § 15; 2000 c 250 § 9A-820; 1995 c 48 § 50.]

**Effective date—2001 c 32:** See note following RCW 62A.9A-102.

**Effective date—2000 c 250:** See RCW 62A.9A-701.

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**62A.8-511 Priority among security interests and entitlement holders.** (1) Except as otherwise provided in subsections (2) and (3) of this section, if a securities intermediary does not have sufficient interests in a particular financial asset to satisfy both its obligations to entitlement holders who have security entitlements to that financial asset and its obligation to a creditor of the securities intermediary who has a security interest in that financial asset, the claims of entitlement holders, other than the creditor, have priority over the claim of the creditor.

(2) A claim of a creditor of a securities intermediary who has a security interest in a financial asset held by a securities intermediary has priority over claims of the securities intermediary's entitlement holders who have security entitlements with respect to that financial asset if the creditor has control over the financial asset.

(3) If a clearing corporation does not have sufficient financial assets to satisfy both its obligations to entitlement

(2010 Ed.)

holders who have security entitlements with respect to a financial asset and its obligation to a creditor of the clearing corporation who has a security interest in that financial asset, the claim of the creditor has priority over the claims of entitlement holders. [1995 c 48 § 51.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**PART 6**  
**TRANSITION PROVISIONS FOR REVISED ARTICLE 8**  
**AND CONFORMING AMENDMENTS TO**  
**\*ARTICLES 1, 5, 9, AND 10**

**\*Reviser's note:** (1) See 1995 c 48 §§ 54 through 71.

(2) Article 9 was repealed in its entirety by 2000 c 250 § 9A-901, effective July 1, 2001.

**62A.8-601 Savings clause.** (1) Chapter 48, Laws of 1995 does not affect an action or proceeding commenced before April 17, 1995.

(2) If a security interest in a security is perfected by April 17, 1995, and the action by which the security interest was perfected would suffice to perfect a security interest under chapter 48, Laws of 1995, no further action is required to continue perfection. If a security interest in a security is perfected by April 17, 1995, but the action by which the security interest was perfected would not suffice to perfect a security interest under chapter 48, Laws of 1995, the security interest remains perfected through December 31, 1995, and continues perfected thereafter if appropriate action to perfect under chapter 48, Laws of 1995 is taken by that date. If a security interest is perfected by April 17, 1995, and the security interest can be perfected by filing under chapter 48, Laws of 1995, a financing statement signed by the secured party instead of the debtor may be filed within that period to continue perfection or thereafter to perfect. [1995 c 48 § 53.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**Article 9A**

**SECURED TRANSACTIONS; SALES OF ACCOUNTS,**  
**CONTRACT RIGHTS AND CHATTEL PAPER**

Sections

**PART 1**  
**GENERAL PROVISIONS**

62A.9A-101	Short title.
62A.9A-102	Definitions and index of definitions.
62A.9A-103	Purchase-money security interest; application of payments; burden of establishing.
62A.9A-104	Control of deposit account.
62A.9A-105	Control of electronic chattel paper.
62A.9A-106	Control of investment property.
62A.9A-107	Control of letter-of-credit right.
62A.9A-108	Sufficiency of description in security agreement.
62A.9A-109	Scope.
62A.9A-110	Security interests arising under Article 2 or 2A.

**PART 2**  
**EFFECTIVENESS OF SECURITY AGREEMENT;**  
**ATTACHMENT OF SECURITY INTEREST;**  
**RIGHTS OF PARTIES TO SECURITY AGREEMENT**

62A.9A-201	General effectiveness of security agreement.
62A.9A-202	Title to collateral immaterial.
62A.9A-203	Attachment and enforceability of security interest; proceeds; supporting obligations; formal requisites.
62A.9A-204	After-acquired property; future advances.
62A.9A-205	Use or disposition of collateral permissible.

- 62A.9A-206 Security interest arising in purchase or delivery of financial asset.  
 62A.9A-207 Rights and duties of secured party having possession or control of collateral.  
 62A.9A-208 Additional duties of secured party having control of collateral.  
 62A.9A-209 Duties of secured party if account debtor has been notified of assignment.  
 62A.9A-210 Request for accounting; request regarding list of collateral or statement of account.

PART 3  
 PERFECTION AND PRIORITY

- 62A.9A-301 Law governing perfection and priority of security interests.  
 62A.9A-302 Law governing perfection and priority of agricultural liens.  
 62A.9A-303 Law governing perfection and priority of security interests in goods covered by a certificate of title.  
 62A.9A-304 Law governing perfection and priority of security interests in deposit accounts.  
 62A.9A-305 Law governing perfection and priority of security interests in investment property.  
 62A.9A-306 Law governing perfection and priority of security interests in letter-of-credit rights.  
 62A.9A-307 Location of debtor.  
 62A.9A-308 When security interest or agricultural lien is perfected; continuity of perfection.  
 62A.9A-309 Security interest perfected upon attachment.  
 62A.9A-310 When filing required to perfect security interest or agricultural lien; security interests and agricultural liens to which filing provisions do not apply.  
 62A.9A-311 Perfection of security interests in property subject to certain statutes, regulations, and treaties.  
 62A.9A-312 Perfection of security interests in chattel paper, deposit accounts, documents, goods covered by documents, instruments, investment property, letter-of-credit rights, and money; perfection by permissive filing; temporary perfection without filing or transfer of possession.  
 62A.9A-313 When possession by or delivery to secured party perfects security interest without filing.  
 62A.9A-314 Perfection by control.  
 62A.9A-315 Secured party's rights on disposition of collateral and in proceeds.  
 62A.9A-316 Continued perfection of security interest following change in governing law.  
 62A.9A-317 Interests that take priority over or take free of security interest or agricultural lien.  
 62A.9A-318 No interest retained in right to payment that is sold; rights and title of seller of account or chattel paper with respect to creditors and purchasers.  
 62A.9A-319 Rights and title of consignee with respect to creditors and purchasers.  
 62A.9A-320 Buyer of goods.  
 62A.9A-321 Licensee of general intangible and lessee of goods in ordinary course of business.  
 62A.9A-322 Priorities among conflicting security interests in and agricultural liens on same collateral.  
 62A.9A-323 Future advances.  
 62A.9A-324 Priority of purchase-money security interests.  
 62A.9A-325 Priority of security interests in transferred collateral.  
 62A.9A-326 Priority of security interests created by new debtor.  
 62A.9A-327 Priority of security interests in deposit account.  
 62A.9A-328 Priority of security interests in investment property.  
 62A.9A-329 Priority of security interests in letter-of-credit right.  
 62A.9A-330 Priority of purchaser of chattel paper or instrument.  
 62A.9A-331 Priority of rights of purchasers of instruments, documents, and securities under other articles; priority of interests in financial assets and security entitlements under Article 8.  
 62A.9A-332 Transfer of money; transfer of funds from deposit account.  
 62A.9A-333 Priority of certain liens arising by operation of law.  
 62A.9A-334 Priority of security interests in fixtures and crops.  
 62A.9A-335 Accessions.  
 62A.9A-336 Commingled goods.  
 62A.9A-337 Priority of security interests in goods covered by certificate of title.  
 62A.9A-338 Priority of security interest or agricultural lien perfected by filed financing statement providing certain incorrect information.  
 62A.9A-339 Priority subject to subordination.  
 62A.9A-340 Effectiveness of right of recoupment or set-off against deposit account.  
 62A.9A-341 Bank's rights and duties with respect to deposit account.  
 62A.9A-342 Bank's right to refuse to enter into or disclose existence of control agreement.

PART 4  
 RIGHTS OF THIRD PARTIES

- 62A.9A-401 Alienability of debtor's rights.  
 62A.9A-402 Secured party not obligated on contract of debtor or in tort.  
 62A.9A-403 Agreement not to assert defenses against assignee.  
 62A.9A-404 Rights acquired by assignee; claims and defenses against assignee.  
 62A.9A-405 Modification of assigned contract.  
 62A.9A-406 Discharge of account debtor; notification of assignment; identification and proof of assignment; restrictions on assignment of accounts, chattel paper, payment intangibles, and promissory notes ineffective.  
 62A.9A-407 Restrictions on creation or enforcement of security interest in leasehold interest or in lessor's residual interest.  
 62A.9A-408 Restrictions on assignment of promissory notes, health-care-insurance receivables, and certain general intangibles ineffective.  
 62A.9A-409 Restrictions on assignment of letter-of-credit rights ineffective.

PART 5  
 FILING

- 62A.9A-501 Filing office.  
 62A.9A-502 Contents of financing statement; record of mortgage as financing statement; time of filing financing statement.  
 62A.9A-503 Name of debtor and secured party.  
 62A.9A-504 Indication of collateral.  
 62A.9A-505 Filing and compliance with other statutes and treaties for consignments, leases, other bailments, and other transactions.  
 62A.9A-506 Effect of errors or omissions.  
 62A.9A-507 Effect of certain events on effectiveness of financing statement.  
 62A.9A-508 Effectiveness of financing statement if new debtor becomes bound by security agreement.  
 62A.9A-509 Persons entitled to file a record.  
 62A.9A-510 Effectiveness of filed record.  
 62A.9A-511 Secured party of record.  
 62A.9A-512 Amendment of financing statement.  
 62A.9A-513 Termination statement.  
 62A.9A-514 Assignment of powers of secured party of record.  
 62A.9A-515 Duration and effectiveness of financing statement; effect of lapsed financing statement.  
 62A.9A-516 What constitutes filing; effectiveness of filing.  
 62A.9A-517 Effect of indexing errors.  
 62A.9A-518 Claim concerning inaccurate or wrongfully filed record.  
 62A.9A-519 Numbering, maintaining, and indexing records; communicating information provided in records.  
 62A.9A-520 Acceptance and refusal to accept record.  
 62A.9A-521 Uniform form of written financing statement and amendment.  
 62A.9A-522 Maintenance and destruction of records.  
 62A.9A-523 Information from filing office; sale or license of records.  
 62A.9A-524 Delay by filing office.  
 62A.9A-525 Fees.  
 62A.9A-526 Filing-office rules.  
 62A.9A-527 Duty to report.

PART 6  
 DEFAULT

- 62A.9A-601 Rights after default; judicial enforcement; consignor or buyer of accounts, chattel paper, payment intangibles, or promissory notes.  
 62A.9A-602 Waiver and variance of rights and duties.  
 62A.9A-603 Agreement on standards concerning rights and duties.  
 62A.9A-604 Procedure if security agreement covers real property, fixtures, or manufactured home.  
 62A.9A-605 Unknown debtor or secondary obligor.  
 62A.9A-606 Time of default for agricultural lien.  
 62A.9A-607 Collection and enforcement by secured party.  
 62A.9A-608 Application of proceeds of collection or enforcement; liability for deficiency and right to surplus.  
 62A.9A-609 Secured party's right to take possession after default.  
 62A.9A-610 Disposition of collateral after default.  
 62A.9A-611 Notification before disposition of collateral.  
 62A.9A-612 Timeliness of notification before disposition of collateral.  
 62A.9A-613 Contents and form of notification before disposition of collateral: General.  
 62A.9A-614 Contents and form of notification before disposition of collateral: Consumer-goods transaction.  
 62A.9A-615 Application of proceeds of disposition; liability for deficiency and right to surplus.

62A.9A-616	Explanation of calculation of surplus or deficiency.
62A.9A-617	Rights of transferee of collateral.
62A.9A-618	Rights and duties of certain secondary obligors.
62A.9A-619	Transfer of record or legal title.
62A.9A-620	Acceptance of collateral in full or partial satisfaction of obligation; compulsory disposition of collateral.
62A.9A-621	Notification of proposal to accept collateral.
62A.9A-622	Effect of acceptance of collateral.
62A.9A-623	Right to redeem collateral.
62A.9A-624	Waiver.
62A.9A-625	Remedies for secured party's failure to comply with Article.
62A.9A-626	Action in which deficiency or surplus is in issue.
62A.9A-627	Determination of whether conduct was commercially reasonable.
62A.9A-628	Nonliability and limitation on liability of secured party; liability of secondary obligor.

PART 7  
TRANSITION

62A.9A-701	Effective date—2000 c 250.
62A.9A-702	Savings clause.
62A.9A-703	Security interest perfected before effective date.
62A.9A-704	Security interest unperfected before effective date.
62A.9A-705	Effectiveness of action taken before effective date.
62A.9A-706	When initial financing statement suffices to continue effectiveness of financing statement.
62A.9A-707	Amendment of preeffective-date financing statement.
62A.9A-708	Persons entitled to file initial financing statement or continuation statement.
62A.9A-709	Priority.

PART 1  
GENERAL PROVISIONS

**62A.9A-101 Short title.** This Article may be cited as the Uniform Commercial Code-Secured Transactions. [2000 c 250 § 9A-101.]

**62A.9A-102 Definitions and index of definitions.** (a) **Article 9A definitions.** In this Article:

(1) "Accession" means goods that are physically united with other goods in such a manner that the identity of the original goods is not lost.

(2)(A) "Account," except as used in "account for," means a right to payment of a monetary obligation, whether or not earned by performance, (i) for property that has been or is to be sold, leased, licensed, assigned, or otherwise disposed of, (ii) for services rendered or to be rendered, (iii) for a policy of insurance issued or to be issued, (iv) for a secondary obligation incurred or to be incurred, (v) for energy provided or to be provided, (vi) for the use or hire of a vessel under a charter or other contract, (vii) arising out of the use of a credit or charge card or information contained on or for use with the card, or (viii) as winnings in a lottery or other game of chance operated or sponsored by a state, governmental unit of a state, or person licensed or authorized to operate the game by a state or governmental unit of a state. The term includes health-care-insurance receivables.

(B) The term does not include (i) rights to payment evidenced by chattel paper or an instrument, (ii) commercial tort claims, (iii) deposit accounts, (iv) investment property, (v) letter-of-credit rights or letters of credit, or (vi) rights to payment for money or funds advanced or sold, other than rights arising out of the use of a credit or charge card or information contained on or for use with the card.

(3) "Account debtor" means a person obligated on an account, chattel paper, or general intangible. The term does not include persons obligated to pay a negotiable instrument, even if the instrument constitutes part of chattel paper.

(4) "Accounting," except as used in "accounting for," means a record:

(A) Authenticated by a secured party;

(B) Indicating the aggregate unpaid secured obligations as of a date not more than thirty-five days earlier or thirty-five days later than the date of the record; and

(C) Identifying the components of the obligations in reasonable detail.

(5) "Agricultural lien" means an interest, other than a security interest, in farm products:

(A) Which secures payment or performance of an obligation for:

(i) Goods or services furnished in connection with a debtor's farming operation; or

(ii) Rent on real property leased by a debtor in connection with its farming operation;

(B) Which is created by statute in favor of a person that:

(i) In the ordinary course of its business, furnished goods or services to a debtor in connection with a debtor's farming operation; or

(ii) Leased real property to a debtor in connection with the debtor's farming operation; and

(C) Whose effectiveness does not depend on the person's possession of the personal property.

(6) "As-extracted collateral" means:

(A) Oil, gas, or other minerals that are subject to a security interest that:

(i) Is created by a debtor having an interest in the minerals before extraction; and

(ii) Attaches to the minerals as extracted; or

(B) Accounts arising out of the sale at the wellhead or minehead of oil, gas, or other minerals in which the debtor had an interest before extraction.

(7) "Authenticate" means:

(A) To sign; or

(B) To execute or otherwise adopt a symbol, or encrypt or similarly process a record in whole or in part, with the present intent of the authenticating person to identify the person and adopt or accept a record.

(8) "Bank" means an organization that is engaged in the business of banking. The term includes savings banks, savings and loan associations, credit unions, and trust companies.

(9) "Cash proceeds" means proceeds that are money, checks, deposit accounts, or the like.

(10) "Certificate of title" means a certificate of title with respect to which a statute provides for the security interest in question to be indicated on the certificate as a condition or result of the security interest's obtaining priority over the rights of a lien creditor with respect to the collateral.

(11) "Chattel paper" means a record or records that evidence both a monetary obligation and a security interest in specific goods, a security interest in specific goods and software used in the goods, a security interest in specific goods and license of software used in the goods, a lease of specific goods, or a lease of specific goods and license of software used in the goods. In this subsection, "monetary obligation" means a monetary obligation secured by the goods or owed under a lease of the goods and includes a monetary obligation with respect to software used in the goods. The term "chattel paper" does not include (A) charters or other contracts

involving the use or hire of a vessel or (B) records that evidence a right to payment arising out of the use of a credit or charge card or information contained on or for use with the card. If a transaction is evidenced by records that include an instrument or series of instruments, the group of records taken together constitutes chattel paper.

(12) "Collateral" means the property subject to a security interest or agricultural lien. The term includes:

(A) Proceeds to which a security interest attaches;

(B) Accounts, chattel paper, payment intangibles, and promissory notes that have been sold; and

(C) Goods that are the subject of a consignment.

(13) "Commercial tort claim" means a claim arising in tort with respect to which:

(A) The claimant is an organization; or

(B) The claimant is an individual, and the claim:

(i) Arose in the course of the claimant's business or profession; and

(ii) Does not include damages arising out of personal injury to, or the death of, an individual.

(14) "Commodity account" means an account maintained by a commodity intermediary in which a commodity contract is carried for a commodity customer.

(15) "Commodity contract" means a commodity futures contract, an option on a commodity futures contract, a commodity option, or another contract if the contract or option is:

(A) Traded on or subject to the rules of a board of trade that has been designated as a contract market for such a contract pursuant to federal commodities laws; or

(B) Traded on a foreign commodity board of trade, exchange, or market, and is carried on the books of a commodity intermediary for a commodity customer.

(16) "Commodity customer" means a person for which a commodity intermediary carries a commodity contract on its books.

(17) "Commodity intermediary" means a person that:

(A) Is registered as a futures commission merchant under federal commodities law; or

(B) In the ordinary course of its business, provides clearance or settlement services for a board of trade that has been designated as a contract market pursuant to federal commodities law.

(18) "Communicate" means:

(A) To send a written or other tangible record;

(B) To transmit a record by any means agreed upon by the persons sending and receiving the record; or

(C) In the case of transmission of a record to or by a filing office, to transmit a record by any means prescribed by filing-office rule.

(19) "Consignee" means a merchant to which goods are delivered in a consignment.

(20) "Consignment" means a transaction, regardless of its form, in which a person delivers goods to a merchant for the purpose of sale and:

(A) The merchant:

(i) Deals in goods of that kind under a name other than the name of the person making delivery;

(ii) Is not an auctioneer; and

(iii) Is not generally known by its creditors to be substantially engaged in selling the goods of others;

(B) With respect to each delivery, the aggregate value of the goods is one thousand dollars or more at the time of delivery;

(C) The goods are not consumer goods immediately before delivery; and

(D) The transaction does not create a security interest that secures an obligation.

(21) "Consignor" means a person that delivers goods to a consignee in a consignment.

(22) "Consumer debtor" means a debtor in a consumer transaction.

(23) "Consumer goods" means goods that are used or bought for use primarily for personal, family, or household purposes.

(24) "Consumer-goods transaction" means a consumer transaction in which:

(A) An individual incurs a consumer obligation; and

(B) A security interest in consumer goods secures the obligation.

(25) "Consumer obligation" means an obligation which:

(A) Is incurred as part of a transaction entered into primarily for personal, family, or household purposes; and

(B) Arises from an extension of credit, or commitment to extend credit, in an aggregate amount not exceeding forty thousand dollars, or is secured by personal property used or expected to be used as a principal dwelling.

"Consumer obligor" means an obligor who is an individual and who incurred a consumer obligation.

(26) "Consumer transaction" means a transaction in which (A) an individual incurs a consumer obligation, (B) a security interest secures the obligation, and (C) the collateral is held or acquired primarily for personal, family, or household purposes. The term includes consumer-goods transactions.

(27) "Continuation statement" means an amendment of a financing statement which:

(A) Identifies, by its file number, the initial financing statement to which it relates; and

(B) Indicates that it is a continuation statement for, or that it is filed to continue the effectiveness of, the identified financing statement.

(28) "Debtor" means:

(A) A person having an interest, other than a security interest or other lien, in the collateral, whether or not the person is an obligor;

(B) A seller of accounts, chattel paper, payment intangibles, or promissory notes; or

(C) A consignee.

(29) "Deposit account" means a demand, time, savings, passbook, or similar account maintained with a bank. The term does not include investment property or accounts evidenced by an instrument.

(30) "Document" means a document of title or a receipt of the type described in RCW 62A.7-201(2).

(31) "Electronic chattel paper" means chattel paper evidenced by a record or records consisting of information stored in an electronic medium.

(32) "Encumbrance" means a right, other than an ownership interest, in real property. The term includes mortgages and other liens on real property.

(33) "Equipment" means goods other than inventory, farm products, or consumer goods.

(34) "Farm products" means goods, other than standing timber, with respect to which the debtor is engaged in a farming operation and which are:

(A) Crops grown, growing, or to be grown, including:

(i) Crops produced on trees, vines, and bushes; and

(ii) Aquatic goods produced in aquacultural operations;

(B) Livestock, born or unborn, including aquatic goods produced in aquacultural operations;

(C) Supplies used or produced in a farming operation; or

(D) Products of crops or livestock in their unmanufactured states.

(35) "Farming operation" means raising, cultivating, propagating, fattening, grazing, or any other farming, livestock, or aquacultural operation.

(36) "File number" means the number assigned to an initial financing statement pursuant to RCW 62A.9A-519(a).

(37) "Filing office" means an office designated in RCW 62A.9A-501 as the place to file a financing statement.

(38) "Filing-office rule" means a rule adopted pursuant to RCW 62A.9A-526.

(39) "Financing statement" means a record or records composed of an initial financing statement and any filed record relating to the initial financing statement.

(40) "Fixture filing" means the filing of a financing statement covering goods that are or are to become fixtures and satisfying RCW 62A.9A-502 (a) and (b). The term includes the filing of a financing statement covering goods of a transmitting utility which are or are to become fixtures.

(41) "Fixtures" means goods that have become so related to particular real property that an interest in them arises under real property law.

(42) "General intangible" means any personal property, including things in action, other than accounts, chattel paper, commercial tort claims, deposit accounts, documents, goods, instruments, investment property, letter-of-credit rights, letters of credit, money, and oil, gas, or other minerals before extraction. The term includes payment intangibles and software.

(43) "Good faith" means honesty in fact and the observance of reasonable commercial standards of fair dealing.

(44) "Goods" means all things that are movable when a security interest attaches. The term includes (A) fixtures, (B) standing timber that is to be cut and removed under a conveyance or contract for sale, (C) the unborn young of animals, (D) crops grown, growing, or to be grown, even if the crops are produced on trees, vines, or bushes, and (E) manufactured homes. The term also includes a computer program embedded in goods and any supporting information provided in connection with a transaction relating to the program if (i) the program is associated with the goods in such a manner that it customarily is considered part of the goods, or (ii) by becoming the owner of the goods, a person acquires a right to use the program in connection with the goods. The term does not include a computer program embedded in goods that consist solely of the medium in which the program is embedded. The term also does not include accounts, chattel paper, commercial tort claims, deposit accounts, documents, general intangibles, instruments, investment property, letter-of-credit rights, letters of credit, money, or oil, gas, or other minerals

(2010 Ed.)

before extraction or a manufactured home converted to real property under chapter 65.20 RCW.

(45) "Governmental unit" means a subdivision, agency, department, county, parish, municipality, or other unit of the government of the United States, a state, or a foreign country. The term includes an organization having a separate corporate existence if the organization is eligible to issue debt on which interest is exempt from income taxation under the laws of the United States.

(46) "Health-care-insurance receivable" means an interest in or claim under a policy of insurance which is a right to payment of a monetary obligation for health-care goods or services provided.

(47) "Instrument" means a negotiable instrument or any other writing that evidences a right to the payment of a monetary obligation, is not itself a security agreement or lease, and is of a type that in ordinary course of business is transferred by delivery with any necessary indorsement or assignment. The term does not include (A) investment property, (B) letters of credit, (C) writings that evidence a right to payment arising out of the use of a credit or charge card or information contained on or for use with the card, (D) writings that do not contain a promise or order to pay, or (E) writings that are expressly nontransferable or nonassignable.

(48) "Inventory" means goods, other than farm products, which:

(A) Are leased by a person as lessor;

(B) Are held by a person for sale or lease or to be furnished under a contract of service;

(C) Are furnished by a person under a contract of service; or

(D) Consist of raw materials, work in process, or materials used or consumed in a business.

(49) "Investment property" means a security, whether certificated or uncertificated, security entitlement, securities account, commodity contract, or commodity account.

(50) "Jurisdiction of organization," with respect to a registered organization, means the jurisdiction under whose law the organization is organized.

(51) "Letter-of-credit right" means a right to payment or performance under a letter of credit, whether or not the beneficiary has demanded or is at the time entitled to demand payment or performance. The term does not include the right of a beneficiary to demand payment or performance under a letter of credit.

(52) "Lien creditor" means:

(A) A creditor that has acquired a lien on the property involved by attachment, levy, or the like;

(B) An assignee for benefit of creditors from the time of assignment;

(C) A trustee in bankruptcy from the date of the filing of the petition; or

(D) A receiver in equity from the time of appointment.

(53) "Manufactured home" means a manufactured home or mobile home as defined in RCW 46.04.302.

(54) [Reserved]

(55) "Mortgage" means a consensual interest in real property, including fixtures, which secures payment or performance of an obligation.

(56) "New debtor" means a person that becomes bound as debtor under RCW 62A.9A-203(d) by a security agreement previously entered into by another person.

(57) "New value" means (A) money, (B) money's worth in property, services, or new credit, or (C) release by a transferee of an interest in property previously transferred to the transferee. The term does not include an obligation substituted for another obligation.

(58) "Noncash proceeds" means proceeds other than cash proceeds.

(59) "Obligor" means a person that, with respect to an obligation secured by a security interest in or an agricultural lien on the collateral, (A) owes payment or other performance of the obligation, (B) has provided property other than the collateral to secure payment or other performance of the obligation, or (C) is otherwise accountable in whole or in part for payment or other performance of the obligation. The term does not include issuers or nominated persons under a letter of credit.

(60) "Original debtor", except as used in RCW 62A.9A-310(c), means a person that, as debtor, entered into a security agreement to which a new debtor has become bound under RCW 62A.9A-203(d).

(61) "Payment intangible" means a general intangible under which the account debtor's principal obligation is a monetary obligation.

(62) "Person related to," with respect to an individual, means:

- (A) The spouse of the individual;
- (B) A brother, brother-in-law, sister, or sister-in-law of the individual;
- (C) An ancestor or lineal descendant of the individual or the individual's spouse; or
- (D) Any other relative, by blood or marriage, of the individual or the individual's spouse who shares the same home with the individual.

(63) "Person related to," with respect to an organization, means:

- (A) A person directly or indirectly controlling, controlled by, or under common control with the organization;
- (B) An officer or director of, or a person performing similar functions with respect to, the organization;
- (C) An officer or director of, or a person performing similar functions with respect to, a person described in (63)(A) of this subsection;
- (D) The spouse of an individual described in (63)(A), (B), or (C) of this subsection; or
- (E) An individual who is related by blood or marriage to an individual described in (63)(A), (B), (C), or (D) of this subsection and shares the same home with the individual.

(64) "Proceeds", except as used in RCW 62A.9A-609(b), means the following property:

- (A) Whatever is acquired upon the sale, lease, license, exchange, or other disposition of collateral;
- (B) Whatever is collected on, or distributed on account of, collateral;
- (C) Rights arising out of collateral;
- (D) To the extent of the value of collateral, claims arising out of the loss, nonconformity, or interference with the use of, defects or infringement of rights in, or damage to, the collateral; or

(E) To the extent of the value of collateral and to the extent payable to the debtor or the secured party, insurance payable by reason of the loss or nonconformity of, defects or infringement of rights in, or damage to, the collateral.

(65) "Promissory note" means an instrument that evidences a promise to pay a monetary obligation, does not evidence an order to pay, and does not contain an acknowledgment by a bank that the bank has received for deposit a sum of money or funds.

(66) "Proposal" means a record authenticated by a secured party, which includes the terms on which the secured party is willing to accept collateral in full or partial satisfaction of the obligation it secures pursuant to RCW 62A.9A-620, 62A.9A-621, and 62A.9A-622.

(67) "Public-finance transaction" means a secured transaction in connection with which:

- (A) Debt securities are issued;
- (B) All or a portion of the securities issued have an initial stated maturity of at least twenty years; and
- (C) The debtor, obligor, secured party, account debtor or other person obligated on collateral, assignor or assignee of a secured obligation, or assignor or assignee of a security interest is a state or a governmental unit of a state.

(68) "Pursuant to commitment," with respect to an advance made or other value given by a secured party, means pursuant to the secured party's obligation, whether or not a subsequent event of default or other event not within the secured party's control has relieved or may relieve the secured party from its obligation.

(69) "Record," except as used in "for record," "of record," "record or legal title," and "record owner," means information that is inscribed on a tangible medium or which is stored in an electronic or other medium and is retrievable in perceivable form.

(70) "Registered organization" means an organization organized solely under the law of a single state or the United States and as to which the state or the United States must maintain a public record showing the organization to have been organized.

(71) "Secondary obligor" means an obligor to the extent that:

- (A) The obligor's obligation is secondary; or
- (B) The obligor has a right of recourse with respect to an obligation secured by collateral against the debtor, another obligor, or property of either.

(72) "Secured party" means:

- (A) A person in whose favor a security interest is created or provided for under a security agreement, whether or not any obligation to be secured is outstanding;
- (B) A person that holds an agricultural lien;
- (C) A consignor;
- (D) A person to which accounts, chattel paper, payment intangibles, or promissory notes have been sold;
- (E) A trustee, indenture trustee, agent, collateral agent, or other representative in whose favor a security interest or agricultural lien is created or provided for; or

(F) A person that holds a security interest arising under RCW 62A.2-401, 62A.2-505, 62A.2-711(3), 62A.2A-508(5), 62A.4-210, or 62A.5-118.

(73) "Security agreement" means an agreement that creates or provides for a security interest.

(74) "Send," in connection with a record or notification, means:

(A) To deposit in the mail, deliver for transmission, or transmit by any other usual means of communication, with postage or cost of transmission provided for, addressed to any address reasonable under the circumstances; or

(B) To cause the record or notification to be received within the time that it would have been received if properly sent under (A) of this subsection.

(75) "Software" means a computer program and any supporting information provided in connection with a transaction relating to the program. The term does not include a computer program that is included in the definition of goods.

(76) "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

(77) "Supporting obligation" means a letter-of-credit right or secondary obligation that supports the payment or performance of an account, chattel paper, a document, a general intangible, an instrument, or investment property.

(78) "Tangible chattel paper" means chattel paper evidenced by a record or records consisting of information that is inscribed on a tangible medium.

(79) "Termination statement" means an amendment of a financing statement which:

(A) Identifies, by its file number, the initial financing statement to which it relates; and

(B) Indicates either that it is a termination statement or that the identified financing statement is no longer effective.

(80) "Transmitting utility" means a person primarily engaged in the business of:

(A) Operating a railroad, subway, street railway, or trolley bus;

(B) Transmitting communications electrically, electromagnetically, or by light;

(C) Transmitting goods by pipeline or sewer; or

(D) Transmitting or producing and transmitting electricity, steam, gas, or water.

(b) **Definitions in other Articles.** The following definitions in other Articles apply to this Article:

"Applicant."	RCW 62A.5-102.
"Beneficiary."	RCW 62A.5-102.
"Broker."	RCW 62A.8-102.
"Certificated security."	RCW 62A.8-102.
"Check."	RCW 62A.3-104.
"Clearing corporation."	RCW 62A.8-102.
"Contract for sale."	RCW 62A.2-106.
"Customer."	RCW 62A.4-104.
"Entitlement holder."	RCW 62A.8-102.
"Financial asset."	RCW 62A.8-102.
"Holder in due course."	RCW 62A.3-302.
"Issuer" with respect to a letter of credit or letter-of-credit right.	RCW 62A.5-102.
"Issuer" with respect to a security.	RCW 62A.8-201.
"Lease."	RCW 62A.2A-103.
"Lease agreement."	RCW 62A.2A-103.
"Lease contract."	RCW 62A.2A-103.
"Leasehold interest."	RCW 62A.2A-103.

"Lessee." RCW 62A.2A-103.

"Lessee in ordinary course of business." RCW 62A.2A-103.

"Lessor." RCW 62A.2A-103.

"Lessor's residual interest." RCW 62A.2A-103.

"Letter of credit." RCW 62A.5-102.

"Merchant." RCW 62A.2-104.

"Negotiable instrument." RCW 62A.3-104.

"Nominated person." RCW 62A.5-102.

"Note." RCW 62A.3-104.

"Proceeds of a letter of credit." RCW 62A.5-114.

"Prove." RCW 62A.3-103.

"Sale." RCW 62A.2-106.

"Securities account." RCW 62A.8-501.

"Securities intermediary." RCW 62A.8-102.

"Security." RCW 62A.8-102.

"Security certificate." RCW 62A.8-102.

"Security entitlement." RCW 62A.8-102.

"Uncertificated security." RCW 62A.8-102.

(c) **Article 1 definitions and principles.** Article 1 contains general definitions and principles of construction and interpretation applicable throughout this Article. [2001 c 32 § 16; 2000 c 250 § 9A-102.]

**Effective date—2001 c 32:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 2001." [2001 c 32 § 55.]

**62A.9A-103 Purchase-money security interest; application of payments; burden of establishing.** (a) **Definitions.** In this section:

(1) "Purchase-money collateral" means goods or software that secures a purchase-money obligation incurred with respect to that collateral; and

(2) "Purchase-money obligation" means an obligation of an obligor incurred as all or part of the price of the collateral or for value given to enable the debtor to acquire rights in, or the use of, the collateral, if the value is in fact so used.

(b) **Purchase-money security interest in goods.** A security interest in goods is a purchase-money security interest:

(1) To the extent that the goods are purchase-money collateral with respect to that security interest;

(2) If the security interest is in inventory that is or was purchase-money collateral, also to the extent that the security interest secures a purchase-money obligation incurred with respect to other inventory in which the secured party holds or held a purchase-money security interest; and

(3) Also to the extent that the security interest secures a purchase-money obligation incurred with respect to software in which the secured party holds or held a purchase-money security interest.

(c) **Purchase-money security interest in software.** A security interest in software is a purchase-money security interest to the extent that the security interest also secures a purchase-money obligation incurred with respect to goods in which the secured party holds or held a purchase-money security interest if:

(1) The debtor acquired its interest in the software in an integrated transaction in which it acquired an interest in the goods; and

(2) The debtor acquired its interest in the software for the principal purpose of using the software in the goods.

(d) **Consignor's inventory purchase-money security interest.** The security interest of a consignor in goods that are the subject of a consignment is a purchase-money security interest in inventory.

(e) **Application of payment in nonconsumer-goods transaction.** In a transaction other than a consumer-goods transaction, if the extent to which a security interest is a purchase-money security interest depends on the application of a payment to a particular obligation, the payment must be applied:

(1) In accordance with any reasonable method of application to which the parties agree;

(2) In the absence of the parties' agreement to a reasonable method, in accordance with any intention of the obligor manifested at or before the time of payment; or

(3) In the absence of an agreement to a reasonable method and a timely manifestation of the obligor's intention, in the following order:

(A) To obligations that are not secured; and

(B) If more than one obligation is secured, to obligations secured by purchase-money security interests in the order in which those obligations were incurred.

(f) **No loss of status of purchase-money security interest in nonconsumer-goods transaction.** In a transaction other than a consumer-goods transaction, a purchase-money security interest does not lose its status as such, even if:

(1) The purchase-money collateral also secures an obligation that is not a purchase-money obligation;

(2) Collateral that is not purchase-money collateral also secures the purchase-money obligation; or

(3) The purchase-money obligation has been renewed, refinanced, consolidated, or restructured.

(g) **Burden of proof in nonconsumer-goods transaction.** In a transaction other than a consumer-goods transaction, a secured party claiming a purchase-money security interest has the burden of establishing the extent to which the security interest is a purchase-money security interest.

(h) **Nonconsumer-goods transactions; no inference.** The limitation of the rules in subsections (e), (f), and (g) of this section to transactions other than consumer-goods transactions is intended to leave to the court the determination of the proper rules in consumer-goods transactions. The court may not infer from that limitation the nature of the proper rule in consumer-goods transactions and may continue to apply established approaches. [2000 c 250 § 9A-103.]

**62A.9A-104 Control of deposit account.** (a) **Requirements for control.** A secured party has control of a deposit account if:

(1) The secured party is the bank with which the deposit account is maintained;

(2) The debtor, secured party, and bank have agreed in an authenticated record that the bank will comply with instructions originated by the secured party directing disposition of the funds in the deposit account without further consent by the debtor; or

(3) The secured party becomes the bank's customer with respect to the deposit account.

(b) **Debtor's right to direct disposition.** A secured party that has satisfied subsection (a) of this section has control, even if the debtor retains the right to direct the disposition of funds from the deposit account. [2001 c 32 § 17; 2000 c 250 § 9A-104.]

**Effective date—2001 c 32:** See note following RCW 62A.9A-102.

**62A.9A-105 Control of electronic chattel paper.** A secured party has control of electronic chattel paper if the record or records comprising the chattel paper are created, stored, and assigned in such a manner that:

(1) A single authoritative copy of the record or records exists which is unique, identifiable and, except as otherwise provided in subsections (4), (5), and (6) of this section, unalterable;

(2) The authoritative copy identifies the secured party as the assignee of the record or records;

(3) The authoritative copy is communicated to and maintained by the secured party or its designated custodian;

(4) Copies or revisions that add or change an identified assignee of the authoritative copy can be made only with the participation of the secured party;

(5) Each copy of the authoritative copy and any copy of a copy is readily identifiable as a copy that is not the authoritative copy; and

(6) Any revision of the authoritative copy is readily identifiable as an authorized or unauthorized revision. [2001 c 32 § 18; 2000 c 250 § 9A-105.]

**Effective date—2001 c 32:** See note following RCW 62A.9A-102.

**62A.9A-106 Control of investment property.** (a) **Control under RCW 62A.8-106.** A person has control of a certificated security, uncertificated security, or security entitlement as provided in RCW 62A.8-106.

(b) **Control of commodity contract.** A secured party has control of a commodity contract if:

(1) The secured party is the commodity intermediary with which the commodity contract is carried; or

(2) The commodity customer, secured party, and commodity intermediary have agreed that the commodity intermediary will apply any value distributed on account of the commodity contract as directed by the secured party without further consent by the commodity customer.

(c) **Effect of control of securities account or commodity account.** A secured party having control of all security entitlements or commodity contracts carried in a securities account or commodity account has control over the securities account or commodity account. [2000 c 250 § 9A-106.]

**62A.9A-107 Control of letter-of-credit right.** A secured party has control of a letter-of-credit right to the extent of any right to payment or performance by the issuer or any nominated person if the issuer or nominated person has consented to an assignment of proceeds of the letter of credit under RCW 62A.5-114(3) or otherwise applicable law or practice. [2001 c 32 § 19; 2000 c 250 § 9A-107.]

**Effective date—2001 c 32:** See note following RCW 62A.9A-102.

**62A.9A-108 Sufficiency of description in security agreement.** (a) **Sufficiency of description.** Except as otherwise provided in subsections (c), (d), and (e) of this section, a description of personal or real property is sufficient, whether or not it is specific, if it reasonably identifies what is described.

(b) **Examples of reasonable identification.** Except as otherwise provided in subsection (d) of this section, a description of collateral reasonably identifies the collateral if it identifies the collateral by:

- (1) Specific listing;
  - (2) Category;
  - (3) Except as otherwise provided in subsection (e) of this section, a type of collateral defined in the Uniform Commercial Code;
  - (4) Quantity;
  - (5) Computational or allocational formula or procedure;
- or

(6) Except as otherwise provided in subsection (c) of this section, any other method, if the identity of the collateral is objectively determinable.

(c) **Supergeneric description not sufficient.** A description of collateral as "all the debtor's assets" or "all the debtor's personal property" or using words of similar import does not reasonably identify the collateral. However, as provided in RCW 62A.9A-504, such a description is sufficient in a financing statement.

(d) **Investment property.** Except as otherwise provided in subsection (e) of this section, a description of a security entitlement, securities account, or commodity account is sufficient if it describes:

- (1) The collateral by those terms or as investment property; or
- (2) The underlying financial asset or commodity contract.

(e) **When description by type insufficient.** A description only by type of collateral defined in the Uniform Commercial Code is an insufficient description of:

- (1) A commercial tort claim; or
- (2) In a consumer transaction, consumer goods, a security entitlement, a securities account, or a commodity account. [2000 c 250 § 9A-108.]

**62A.9A-109 Scope.** (a) **General scope of Article.** Except as otherwise provided in subsections (c) and (d) of this section, this Article applies to:

- (1) A transaction, regardless of its form, that creates a security interest in personal property or fixtures by contract;
- (2) An agricultural lien;
- (3) A sale of accounts, chattel paper, payment intangibles, or promissory notes;
- (4) A consignment;
- (5) A security interest arising under RCW 62A.2-401, 62A.2-505, 62A.2-711(3), or 62A.2A-508(5), as provided in RCW 62A.9A-110; and
- (6) A security interest arising under RCW 62A.4-210 or 62A.5-118.

(b) **Security interest in secured obligation.** The application of this Article to a security interest in a secured obligation is not affected by the fact that the obligation is itself

secured by a transaction or interest to which this Article does not apply.

(c) **Extent to which Article does not apply.** This Article does not apply to the extent that:

- (1) A statute, regulation, or treaty of the United States preempts this Article;
- (2) Another statute of this state expressly governs the creation, perfection, priority, or enforcement of a security interest created by this state or a governmental unit of this state;
- (3) A statute of another state, a foreign country, or a governmental unit of another state or a foreign country, other than a statute generally applicable to security interests, expressly governs creation, perfection, priority, or enforcement of a security interest created by the state, country, or governmental unit; or
- (4) The rights of a transferee beneficiary or nominated person under a letter of credit are independent and superior under RCW 62A.5-114.

(d) **Inapplicability of Article.** This Article does not apply to:

- (1) A landlord's lien, other than an agricultural lien;
- (2) A lien, other than an agricultural lien, given by statute or other rule of law for services or materials, but RCW 62A.9A-333 applies with respect to priority of the lien;
- (3) An assignment of a claim for wages, salary, or other compensation of an employee;
- (4) A sale of accounts, chattel paper, payment intangibles, or promissory notes as part of a sale of the business out of which they arose;
- (5) An assignment of accounts, chattel paper, payment intangibles, or promissory notes which is for the purpose of collection only;
- (6) An assignment of a right to payment under a contract to an assignee that is also obligated to perform under the contract;
- (7) An assignment of a single account, payment intangible, or promissory note to an assignee in full or partial satisfaction of a preexisting indebtedness;
- (8) A transfer of an interest in or an assignment of a claim under a policy of insurance, other than an assignment by or to a health-care provider of a health-care-insurance receivable and any subsequent assignment of the right to payment, but RCW 62A.9A-315 and 62A.9A-322 apply with respect to proceeds and priorities in proceeds;
- (9) An assignment of a right represented by a judgment, other than a judgment taken on a right to payment that was collateral;
- (10) A right of recoupment or set-off, but:
  - (A) RCW 62A.9A-340 applies with respect to the effectiveness of rights of recoupment or set-off against deposit accounts; and
  - (B) RCW 62A.9A-404 applies with respect to defenses or claims of an account debtor;
- (11) The creation or transfer of an interest in or lien on real property, including a lease or rents thereunder, except to the extent that provision is made for:
  - (A) Liens on real property in RCW 62A.9A-203 and 62A.9A-308;
  - (B) Fixtures in RCW 62A.9A-334;

(C) Fixture filings in RCW 62A.9A-501, 62A.9A-502, 62A.9A-512, 62A.9A-516, and 62A.9A-519; and

(D) Security agreements covering personal and real property in RCW 62A.9A-604;

(12) An assignment of a claim arising in tort, other than a commercial tort claim, but RCW 62A.9A-315 and 62A.9A-322 apply with respect to proceeds and priorities in proceeds;

(13) An assignment in a consumer transaction of a deposit account on which checks can be drawn, but RCW 62A.9A-315 and 62A.9A-322 apply with respect to proceeds and priorities in proceeds; or

(14) A transfer by this state or a governmental unit of this state. [2000 c 250 § 9A-109.]

**62A.9A-110 Security interests arising under Article 2 or 2A.** A security interest arising under RCW 62A.2-401, 62A.2-505, 62A.2-711(3), or 62A.2A-508(5) is subject to this Article. However, until the debtor obtains possession of the goods:

(1) The security interest is enforceable, even if RCW 62A.9A-203(b)(3) has not been satisfied;

(2) Filing is not required to perfect the security interest;

(3) The rights of the secured party after default by the debtor are governed by Article 2 or 2A; and

(4) The security interest has priority over a conflicting security interest created by the debtor. [2000 c 250 § 9A-110.]

## PART 2

### EFFECTIVENESS OF SECURITY AGREEMENT; ATTACHMENT OF SECURITY INTEREST; RIGHTS OF PARTIES TO SECURITY AGREEMENT

**62A.9A-201 General effectiveness of security agreement.** (a) **General effectiveness.** Except as otherwise provided in the Uniform Commercial Code, a security agreement is effective according to its terms between the parties, against purchasers of the collateral, and against creditors.

(b) **Applicable consumer laws and other law.** A transaction subject to this Article is subject to any applicable rule of law which establishes a different rule for consumers and (1) any other statute or regulation that regulates the rates, charges, agreements, and practices for loans, credit sales, or other extensions of credit and (2) any consumer-protection statute or regulation.

(c) **Other applicable law controls.** In case of conflict between this Article and a rule of law, statute, or regulation described in subsection (b) of this section, the rule of law, statute, or regulation controls. Failure to comply with a statute or regulation described in subsection (b) of this section has only the effect the statute or regulation specifies.

(d) **Further deference to other applicable law.** This Article does not:

(1) Validate any rate, charge, agreement, or practice that violates a rule of law, statute, or regulation described in subsection (b) of this section; or

(2) Extend the application of the rule of law, statute, or regulation to a transaction not otherwise subject to it. [2001 c 32 § 20; 2000 c 250 § 9A-201.]

**Effective date—2001 c 32:** See note following RCW 62A.9A-102.

**62A.9A-202 Title to collateral immaterial.** Except as otherwise provided with respect to consignments or sales of accounts, chattel paper, payment intangibles, or promissory notes, the provisions of this Article with regard to rights and obligations apply whether title to collateral is in the secured party or the debtor. [2000 c 250 § 9A-202.]

**62A.9A-203 Attachment and enforceability of security interest; proceeds; supporting obligations; formal requisites.** (a) **Attachment.** A security interest attaches to collateral when it becomes enforceable against the debtor with respect to the collateral, unless an agreement expressly postpones the time of attachment.

(b) **Enforceability.** Except as otherwise provided in subsections (c) through (i) of this section, a security interest is enforceable against the debtor and third parties with respect to the collateral only if:

(1) Value has been given;

(2) The debtor has rights in the collateral or the power to transfer rights in the collateral to a secured party; and

(3) One of the following conditions is met:

(A) The debtor has authenticated a security agreement that provides a description of the collateral and, if the security interest covers timber to be cut, a description of the land concerned;

(B) The collateral is not a certificated security and is in the possession of the secured party under RCW 62A.9A-313 pursuant to the debtor's security agreement;

(C) The collateral is a certificated security in registered form and the security certificate has been delivered to the secured party under RCW 62A.8-301 pursuant to the debtor's security agreement; or

(D) The collateral is deposit accounts, electronic chattel paper, investment property, or letter-of-credit rights, and the secured party has control under RCW 62A.9A-104, 62A.9A-105, 62A.9A-106, or 62A.9A-107 pursuant to the debtor's security agreement.

(c) **Other UCC provisions.** Subsection (b) of this section is subject to RCW 62A.4-210 on the security interest of a collecting bank, RCW 62A.5-118 on the security interest of a letter-of-credit issuer or nominated person, RCW 62A.9A-110 on a security interest arising under Article 2 or 2A, and RCW 62A.9A-206 on security interests in investment property.

(d) **When person becomes bound by another person's security agreement.** A person becomes bound as debtor by a security agreement entered into by another person if, by operation of law other than this Article or by contract:

(1) The security agreement becomes effective to create a security interest in the person's property; or

(2) The person becomes generally obligated for the obligations of the other person, including the obligation secured under the security agreement, and acquires or succeeds to all or substantially all of the assets of the other person.

(e) **Effect of new debtor becoming bound.** If a new debtor becomes bound as debtor by a security agreement entered into by another person:

(1) The agreement satisfies subsection (b)(3) of this section with respect to existing or after-acquired property of the

new debtor to the extent the property is described in the agreement; and

(2) Another agreement is not necessary to make a security interest in the property enforceable.

(f) **Proceeds and supporting obligations.** The attachment of a security interest in collateral gives the secured party the rights to proceeds provided by RCW 62A.9A-315 and is also attachment of a security interest in a supporting obligation for the collateral.

(g) **Lien securing right to payment.** The attachment of a security interest in a right to payment or performance secured by a security interest or other lien on personal or real property is also attachment of a security interest in the security interest, mortgage, or other lien.

(h) **Security entitlement carried in securities account.** The attachment of a security interest in a securities account is also attachment of a security interest in the security entitlements carried in the securities account.

(i) **Commodity contracts carried in commodity account.** The attachment of a security interest in a commodity account is also attachment of a security interest in the commodity contracts carried in the commodity account. [2000 c 250 § 9A-203.]

**62A.9A-204 After-acquired property; future advances.** (a) **After-acquired collateral.** Except as otherwise provided in subsection (b) of this section, a security agreement may create or provide for a security interest in after-acquired collateral.

(b) **When after-acquired property clause not effective.** A security interest does not attach, under a term constituting an after-acquired property clause, to:

(1) Consumer goods, other than an accession when given as additional security, unless the debtor acquires rights in them within ten days after the secured party gives value; or

(2) A commercial tort claim.

(c) **Future advances and other value.** A security agreement may provide that collateral secures, or that accounts, chattel paper, payment intangibles, or promissory notes are sold in connection with, future advances or other value, whether or not the advances or value are given pursuant to commitment. [2000 c 250 § 9A-204.]

**62A.9A-205 Use or disposition of collateral permissible.** (a) **When security interest not invalid or fraudulent.** A security interest is not invalid or fraudulent against creditors solely because:

(1) The debtor has the right or ability to:

(A) Use, commingle, or dispose of all or part of the collateral, including returned or repossessed goods;

(B) Collect, compromise, enforce, or otherwise deal with collateral;

(C) Accept the return of collateral or make repossessions; or

(D) Use, commingle, or dispose of proceeds; or

(2) The secured party fails to require the debtor to account for proceeds or replace collateral.

(b) **Requirements of possession not relaxed.** This section does not relax the requirements of possession if attachment, perfection, or enforcement of a security interest

(2010 Ed.)

depends upon possession of the collateral by the secured party. [2000 c 250 § 9A-205.]

**62A.9A-206 Security interest arising in purchase or delivery of financial asset.** (a) **Security interest when person buys through securities intermediary.** A security interest in favor of a securities intermediary attaches to a person's security entitlement if:

(1) The person buys a financial asset through the securities intermediary in a transaction in which the person is obligated to pay the purchase price to the securities intermediary at the time of the purchase; and

(2) The securities intermediary credits the financial asset to the buyer's securities account before the buyer pays the securities intermediary.

(b) **Security interest secures obligation to pay for financial asset.** The security interest described in subsection (a) of this section secures the person's obligation to pay for the financial asset.

(c) **Security interest in payment against delivery transaction.** A security interest in favor of a person that delivers a certificated security or other financial asset represented by a writing attaches to the security or other financial asset if:

(1) The security or other financial asset:

(A) In the ordinary course of business, is transferred by delivery with any necessary indorsement or assignment; and

(B) Is delivered under an agreement between persons in the business of dealing with such securities or financial assets; and

(2) The agreement calls for delivery against payment.

(d) **Security interest secures obligation to pay for delivery.** The security interest described in subsection (c) of this section secures the obligation to make payment for the delivery. [2000 c 250 § 9A-206.]

**62A.9A-207 Rights and duties of secured party having possession or control of collateral.** (a) **Duty of care when secured party in possession.** Except as otherwise provided in subsection (d) of this section, a secured party shall use reasonable care in the custody and preservation of collateral in the secured party's possession. In the case of chattel paper or an instrument, reasonable care includes taking necessary steps to preserve rights against prior parties unless otherwise agreed.

(b) **Expenses, risks, duties, and rights when secured party in possession.** Except as otherwise provided in subsection (d) of this section, if a secured party has possession of collateral:

(1) Reasonable expenses, including the cost of insurance and payment of taxes or other charges, incurred in the custody, preservation, use, or operation of the collateral are chargeable to the debtor and are secured by the collateral;

(2) The risk of accidental loss or damage is on the debtor to the extent of a deficiency in any effective insurance coverage;

(3) The secured party shall keep the collateral identifiable, but fungible collateral may be commingled; and

(4) The secured party may use or operate the collateral:

(A) For the purpose of preserving the collateral or its value;

(B) As permitted by an order of a court having competent jurisdiction; or

(C) Except in the case of consumer goods, in the manner and to the extent agreed by the debtor.

(c) **Duties and rights when secured party in possession or control.** Except as otherwise provided in subsection (d) of this section, a secured party having possession of collateral or control of collateral under RCW 62A.9A-104, 62A.9A-105, 62A.9A-106, or 62A.9A-107:

(1) May hold as additional security any proceeds, except money or funds, received from the collateral;

(2) Shall apply money or funds received from the collateral to reduce the secured obligation, unless remitted to the debtor; and

(3) May create a security interest in the collateral.

(d) **Buyer of certain rights to payment.** If the secured party is a buyer of accounts, chattel paper, payment intangibles, or promissory notes or a consignor:

(1) Subsection (a) of this section does not apply unless the secured party is entitled under an agreement:

(A) To charge back uncollected collateral; or

(B) Otherwise to full or limited recourse against the debtor or a secondary obligor based on the nonpayment or other default of an account debtor or other obligor on the collateral; and

(2) Subsections (b) and (c) of this section do not apply. [2000 c 250 § 9A-207.]

**62A.9A-208 Additional duties of secured party having control of collateral.** (a) **Applicability of section.** This section applies to cases in which there is no outstanding secured obligation and the secured party is not committed to make advances, incur obligations, or otherwise give value.

(b) **Duties of secured party after receiving demand from debtor.** Within ten days after receiving an authenticated demand by the debtor:

(1) A secured party having control of a deposit account under RCW 62A.9A-104(a)(2) shall send to the bank with which the deposit account is maintained an authenticated statement that releases the bank from any further obligation to comply with instructions originated by the secured party;

(2) A secured party having control of a deposit account under RCW 62A.9A-104(a)(3) shall:

(A) Pay the debtor the balance on deposit in the deposit account; or

(B) Transfer the balance on deposit into a deposit account in the debtor's name;

(3) A secured party, other than a buyer, having control of electronic chattel paper under RCW 62A.9A-105 shall:

(A) Communicate the authoritative copy of the electronic chattel paper to the debtor or its designated custodian;

(B) If the debtor designates a custodian that is the designated custodian with which the authoritative copy of the electronic chattel paper is maintained for the secured party, communicate to the custodian an authenticated record releasing the designated custodian from any further obligation to comply with instructions originated by the secured party and instructing the custodian to comply with instructions originated by the debtor; and

(C) Take appropriate action to enable the debtor or its designated custodian to make copies of or revisions to the authoritative copy which add or change an identified assignee of the authoritative copy without the consent of the secured party;

(4) A secured party having control of investment property under RCW 62A.8-106(4)(b) or 62A.9A-106(b) shall send to the securities intermediary or commodity intermediary with which the security entitlement or commodity contract is maintained an authenticated record that releases the securities intermediary or commodity intermediary from any further obligation to comply with entitlement orders or directions originated by the secured party; and

(5) A secured party having control of a letter-of-credit right under RCW 62A.9A-107 shall send to each person having an unfulfilled obligation to pay or deliver proceeds of the letter of credit to the secured party an authenticated release from any further obligation to pay or deliver proceeds of the letter of credit to the secured party. [2001 c 32 § 21; 2000 c 250 § 9A-208.]

**Effective date—2001 c 32:** See note following RCW 62A.9A-102.

**62A.9A-209 Duties of secured party if account debtor has been notified of assignment.** (a) **Applicability of section.** Except as otherwise provided in subsection (c) of this section, this section applies if:

(1) There is no outstanding secured obligation; and

(2) The secured party is not committed to make advances, incur obligations, or otherwise give value.

(b) **Duties of secured party after receiving demand from debtor.** Within ten days after receiving an authenticated demand by the debtor, a secured party shall send to an account debtor that has received notification of an assignment to the secured party as assignee under RCW 62A.9A-406(a) an authenticated record that releases the account debtor from any further obligation to the secured party.

(c) **Inapplicability to sales.** This section does not apply to an assignment constituting the sale of an account, chattel paper, or payment intangible. [2000 c 250 § 9A-209.]

**62A.9A-210 Request for accounting; request regarding list of collateral or statement of account.** (a) **Definitions.** In this section:

(1) "Request" means a record of a type described in (2), (3), or (4) of this subsection.

(2) "Request for an accounting" means a record authenticated by a debtor requesting that the recipient provide an accounting of the unpaid obligations secured by collateral and reasonably identifying the transaction or relationship that is the subject of the request.

(3) "Request regarding a list of collateral" means a record authenticated by a debtor requesting that the recipient approve or correct a list of what the debtor believes to be the collateral securing an obligation and reasonably identifying the transaction or relationship that is the subject of the request.

(4) "Request regarding a statement of account" means a record authenticated by a debtor requesting that the recipient approve or correct a statement indicating what the debtor

believes to be the aggregate amount of unpaid obligations secured by collateral as of a specified date and reasonably identifying the transaction or relationship that is the subject of the request.

(b) **Duty to respond to requests.** Subject to subsections (c), (d), (e), and (f) of this section, a secured party, other than a buyer of accounts, chattel paper, payment intangibles, or promissory notes or a consignor, shall comply with a request within fourteen days after receipt:

(1) In the case of a request for an accounting, by authenticating and sending to the debtor an accounting; and

(2) In the case of a request regarding a list of collateral or a request regarding a statement of account, by authenticating and sending to the debtor an approval or correction.

(c) **Request regarding list of collateral; statement concerning type of collateral.** A secured party that claims a security interest in all of a particular type of collateral owned by the debtor may comply with a request regarding a list of collateral by sending to the debtor an authenticated record including a statement to that effect within fourteen days after receipt.

(d) **Request regarding list of collateral; no interest claimed.** A person that receives a request regarding a list of collateral, claims no interest in the collateral when it receives the request, and claimed an interest in the collateral at an earlier time shall comply with the request within fourteen days after receipt by sending to the debtor an authenticated record:

(1) Disclaiming any interest in the collateral; and

(2) If known to the recipient, providing the name and mailing address of any assignee of, or successor to, the recipient's interest in the collateral.

(e) **Request for accounting or regarding statement of account; no interest in obligation claimed.** A person that receives a request for an accounting or a request regarding a statement of account, claims no interest in the obligations when it receives the request, and claimed an interest in the obligations at an earlier time shall comply with the request within fourteen days after receipt by sending to the debtor an authenticated record:

(1) Disclaiming any interest in the obligations; and

(2) If known to the recipient, providing the name and mailing address of any assignee of, or successor to, the recipient's interest in the obligations.

(f) **Charges for responses.** A debtor is entitled without charge to one response to a request under this section during any six-month period. The secured party may require payment of a charge not exceeding twenty-five dollars for each additional response. [2000 c 250 § 9A-210.]

### PART 3 PERFECTION AND PRIORITY

**62A.9A-301 Law governing perfection and priority of security interests.** Except as otherwise provided in RCW 62A.9A-303 through 62A.9A-306, the following rules determine the law governing perfection, the effect of perfection or nonperfection, and the priority of a security interest in collateral:

(1) Except as otherwise provided in this section, while a debtor is located in a jurisdiction, the local law of that juris-

isdiction governs perfection, the effect of perfection or nonperfection, and the priority of a security interest in collateral.

(2) While collateral is located in a jurisdiction, the local law of that jurisdiction governs perfection, the effect of perfection or nonperfection, and the priority of a possessory security interest in that collateral.

(3) Except as otherwise provided in subsection (4) of this section, while negotiable documents, goods, instruments, money, or tangible chattel paper is located in a jurisdiction, the local law of that jurisdiction governs:

(A) Perfection of a security interest in the goods by filing a fixture filing;

(B) Perfection of a security interest in timber to be cut; and

(C) The effect of perfection or nonperfection and the priority of a nonpossessory security interest in the collateral.

(4) The local law of the jurisdiction in which the well-head or minehead is located governs perfection, the effect of perfection or nonperfection, and the priority of a security interest in as-extracted collateral. [2001 c 32 § 22; 2000 c 250 § 9A-301.]

**Effective date—2001 c 32:** See note following RCW 62A.9A-102.

**62A.9A-302 Law governing perfection and priority of agricultural liens.** While farm products are located in a jurisdiction, the local law of that jurisdiction governs perfection, the effect of perfection or nonperfection, and the priority of an agricultural lien on the farm products. [2000 c 250 § 9A-302.]

**62A.9A-303 Law governing perfection and priority of security interests in goods covered by a certificate of title.** (a) **Applicability of section.** This section applies to goods covered by a certificate of title, even if there is no other relationship between the jurisdiction under whose certificate of title the goods are covered and the goods or the debtor.

(b) **When goods covered by certificate of title.** Goods become covered by a certificate of title when a valid application for the certificate of title and the applicable fee are delivered to the appropriate authority. Goods cease to be covered by a certificate of title at the earlier of the time the certificate of title ceases to be effective under the law of the issuing jurisdiction or the time the goods become covered subsequently by a certificate of title issued by another jurisdiction.

(c) **Applicable law.** The local law of the jurisdiction under whose certificate of title the goods are covered governs perfection, the effect of perfection or nonperfection, and the priority of a security interest in goods covered by a certificate of title from the time the goods become covered by the certificate of title until the goods cease to be covered by the certificate of title. [2000 c 250 § 9A-303.]

**62A.9A-304 Law governing perfection and priority of security interests in deposit accounts.** (a) **Law of bank's jurisdiction governs.** The local law of a bank's jurisdiction governs perfection, the effect of perfection or nonperfection, and the priority of a security interest in a deposit account maintained with that bank.

(b) **Bank's jurisdiction.** The following rules determine a bank's jurisdiction for purposes of this part:

(1) If an agreement between the bank and the debtor governing the deposit account expressly provides that a particular jurisdiction is the bank's jurisdiction for purposes of this part, this Article, or the Uniform Commercial Code, that jurisdiction is the bank's jurisdiction.

(2) If (1) of this subsection does not apply and an agreement between the bank and its customer governing the deposit account expressly provides that the agreement is governed by the law of a particular jurisdiction, that jurisdiction is the bank's jurisdiction.

(3) If neither (1) nor (2) of this subsection applies and an agreement between the bank and its customer governing the deposit account expressly provides that the deposit account is maintained at an office in a particular jurisdiction, that jurisdiction is the bank's jurisdiction.

(4) If (1) through (3) of this subsection do not apply, the bank's jurisdiction is the jurisdiction in which the office identified in an account statement as the office serving the customer's account is located.

(5) If (1) through (4) of this subsection do not apply, the bank's jurisdiction is the jurisdiction in which the chief executive office of the bank is located. [2000 c 250 § 9A-304.]

**62A.9A-305 Law governing perfection and priority of security interests in investment property.** (a) **Governing law: General rules.** Except as otherwise provided in subsection (c) of this section, the following rules apply:

(1) While a security certificate is located in a jurisdiction, the local law of that jurisdiction governs perfection, the effect of perfection or nonperfection, and the priority of a security interest in the certificated security represented thereby.

(2) The local law of the issuer's jurisdiction as specified in RCW 62A.8-110(4) governs perfection, the effect of perfection or nonperfection, and the priority of a security interest in an uncertificated security.

(3) The local law of the securities intermediary's jurisdiction as specified in RCW 62A.8-110(5) governs perfection, the effect of perfection or nonperfection, and the priority of a security interest in a security entitlement or securities account.

(4) The local law of the commodity intermediary's jurisdiction governs perfection, the effect of perfection or nonperfection, and the priority of a security interest in a commodity contract or commodity account.

(b) **Commodity intermediary's jurisdiction.** The following rules determine a commodity intermediary's jurisdiction for purposes of this part:

(1) If an agreement between the commodity intermediary and commodity customer governing the commodity account expressly provides that a particular jurisdiction is the commodity intermediary's jurisdiction for purposes of this part, this Article, or the Uniform Commercial Code, that jurisdiction is the commodity intermediary's jurisdiction.

(2) If (1) of this subsection does not apply and an agreement between the commodity intermediary and commodity customer governing the commodity account expressly provides that the agreement is governed by the law of a particular jurisdiction, that jurisdiction is the commodity intermediary's jurisdiction.

(3) If neither (1) nor (2) of this subsection applies and an agreement between the commodity intermediary and commodity customer governing the commodity account expressly provides that the commodity account is maintained at an office in a particular jurisdiction, that jurisdiction is the commodity intermediary's jurisdiction.

(4) If (1) through (3) of this subsection do not apply, the commodity intermediary's jurisdiction is the jurisdiction in which the office identified in an account statement as the office serving the commodity customer's account is located.

(5) If (1) through (4) of this subsection do not apply, the commodity intermediary's jurisdiction is the jurisdiction in which the chief executive office of the commodity intermediary is located.

(c) **When perfection governed by law of jurisdiction where debtor located.** The local law of the jurisdiction in which the debtor is located governs:

(1) Perfection of a security interest in investment property by filing;

(2) Automatic perfection of a security interest in investment property created by a broker or securities intermediary; and

(3) Automatic perfection of a security interest in a commodity contract or commodity account created by a commodity intermediary. [2001 c 32 § 23; 2000 c 250 § 9A-305.]

**Effective date—2001 c 32:** See note following RCW 62A.9A-102.

**62A.9A-306 Law governing perfection and priority of security interests in letter-of-credit rights.** (a) **Governing law: Issuer's or nominated person's jurisdiction.** Subject to subsection (c) of this section, the local law of the issuer's jurisdiction or a nominated person's jurisdiction governs perfection, the effect of perfection or nonperfection, and the priority of a security interest in a letter-of-credit right if the issuer's jurisdiction or nominated person's jurisdiction is a state.

(b) **Issuer's or nominated person's jurisdiction.** For purposes of this part, an issuer's jurisdiction or nominated person's jurisdiction is the jurisdiction whose law governs the liability of the issuer or nominated person with respect to the letter-of-credit right as provided in RCW 62A.5-116.

(c) **When section not applicable.** This section does not apply to a security interest that is perfected only under RCW 62A.9A-308(d). [2001 c 32 § 24; 2000 c 250 § 9A-306.]

**Effective date—2001 c 32:** See note following RCW 62A.9A-102.

**62A.9A-307 Location of debtor.** (a) **"Place of business."** In this section, "place of business" means a place where a debtor conducts its affairs.

(b) **Debtor's location: General rules.** Except as otherwise provided in this section, the following rules determine a debtor's location:

(1) A debtor who is an individual is located at the individual's principal residence.

(2) A debtor that is an organization and has only one place of business is located at its place of business.

(3) A debtor that is an organization and has more than one place of business is located at its chief executive office.

(c) **Limitation of applicability of subsection (b).** Subsection (b) of this section applies only if a debtor's residence,

place of business, or chief executive office, as applicable, is located in a jurisdiction whose law generally requires information concerning the existence of a nonpossessory security interest to be made generally available in a filing, recording, or registration system as a condition or result of the security interest's obtaining priority over the rights of a lien creditor with respect to the collateral. If subsection (b) of this section does not apply, the debtor is located in the District of Columbia.

(d) **Continuation of location: Cessation of existence, etc.** A person that ceases to exist, have a residence, or have a place of business continues to be located in the jurisdiction specified by subsections (b) and (c) of this section.

(e) **Location of registered organization organized under state law.** A registered organization that is organized under the law of a state is located in that state.

(f) **Location of registered organization organized under federal law; bank branches and agencies.** Except as otherwise provided in subsection (i) of this section, a registered organization that is organized under the law of the United States and a branch or agency of a bank that is not organized under the law of the United States or a state are located:

(1) In the state that the law of the United States designates, if the law designates a state of location;

(2) In the state that the registered organization, branch, or agency designates, if the law of the United States authorizes the registered organization, branch, or agency to designate its state of location; or

(3) In the District of Columbia, if neither (1) nor (2) of this subsection applies.

(g) **Continuation of location: Change in status of registered organization.** A registered organization continues to be located in the jurisdiction specified by subsection (e) or (f) of this section notwithstanding:

(1) The suspension, revocation, forfeiture, or lapse of the registered organization's status as such in its jurisdiction of organization; or

(2) The dissolution, winding up, or cancellation of the existence of the registered organization.

(h) **Location of United States.** The United States is located in the District of Columbia.

(i) **Location of foreign bank branch or agency if licensed in only one state.** A branch or agency of a bank that is not organized under the law of the United States or a state is located in the state in which the branch or agency is licensed, if all branches and agencies of the bank are licensed in only one state.

(j) **Location of foreign air carrier.** A foreign air carrier under the Federal Aviation Act of 1958, as amended, is located at the designated office of the agent upon which service of process may be made on behalf of the carrier.

(k) **Section applies only to this part.** This section applies only for purposes of this part. [2000 c 250 § 9A-307.]

**62A.9A-308 When security interest or agricultural lien is perfected; continuity of perfection.** (a) **Perfection of security interest.** Except as otherwise provided in this section and RCW 62A.9A-309, a security interest is perfected if it has attached and all of the applicable requirements for perfection in RCW 62A.9A-310 through 62A.9A-316

have been satisfied. A security interest is perfected when it attaches if the applicable requirements are satisfied before the security interest attaches.

(b) **Perfection of agricultural lien.** An agricultural lien is perfected if it has become effective and all of the applicable requirements for perfection in RCW 62A.9A-310 have been satisfied. An agricultural lien is perfected when it becomes effective if the applicable requirements are satisfied before the agricultural lien becomes effective.

(c) **Continuous perfection; perfection by different methods.** A security interest or agricultural lien is perfected continuously if it is originally perfected by one method under this Article and is later perfected by another method under this Article, without an intermediate period when it was unperfected.

(d) **Supporting obligation.** Perfection of a security interest in collateral also perfects a security interest in a supporting obligation for the collateral.

(e) **Lien securing right to payment.** Perfection of a security interest in a right to payment or performance also perfects a security interest in a security interest, mortgage, or other lien on personal or real property securing the right.

(f) **Security entitlement carried in securities account.** Perfection of a security interest in a securities account also perfects a security interest in the security entitlements carried in the securities account.

(g) **Commodity contract carried in commodity account.** Perfection of a security interest in a commodity account also perfects a security interest in the commodity contracts carried in the commodity account. [2000 c 250 § 9A-308.]

**62A.9A-309 Security interest perfected upon attachment.** The following security interests are perfected when they attach:

(1) A purchase-money security interest in consumer goods, except as otherwise provided in RCW 62A.9A-311(b) with respect to consumer goods that are subject to a statute or treaty described in RCW 62A.9A-311(a);

(2) An assignment of accounts or payment intangibles which does not by itself or in conjunction with other assignments to the same assignee transfer more than fifty thousand dollars, or ten percent of the total amount of the assignor's outstanding accounts and payment intangibles;

(3) A sale of a payment intangible;

(4) A sale of a promissory note;

(5) A security interest created by the assignment of a health-care-insurance receivable to the provider of the health-care goods or services;

(6) A security interest arising under RCW 62A.2-401, 62A.2-505, 62A.2-711(3), or 62A.2A-508(5), until the debtor obtains possession of the collateral;

(7) A security interest of a collecting bank arising under RCW 62A.4-210;

(8) A security interest of an issuer or nominated person arising under RCW 62A.5-118;

(9) A security interest arising in the delivery of a financial asset under RCW 62A.9A-206(c);

(10) A security interest in investment property created by a broker or securities intermediary;

(11) A security interest in a commodity contract or a commodity account created by a commodity intermediary;

(12) An assignment for the benefit of all creditors of the transferor and subsequent transfers by the assignee thereunder; and

(13) A security interest created by an assignment of a beneficial interest in a decedent's estate. [2000 c 250 § 9A-309.]

**62A.9A-310 When filing required to perfect security interest or agricultural lien; security interests and agricultural liens to which filing provisions do not apply.** (a) **General rule: Perfection by filing.** Except as otherwise provided in subsections (b) and (d) of this section and RCW 62A.9A-312(b), a financing statement must be filed to perfect all security interests and agricultural liens.

(b) **Exceptions: Filing not necessary.** The filing of a financing statement is not necessary to perfect a security interest:

(1) That is perfected under RCW 62A.9A-308 (d), (e), (f), or (g);

(2) That is perfected under RCW 62A.9A-309 when it attaches;

(3) In property subject to a statute, regulation, or treaty described in RCW 62A.9A-311(a);

(4) In goods in possession of a bailee which is perfected under RCW 62A.9A-312(d) (1) or (2);

(5) In certificated securities, documents, goods, or instruments which is perfected without filing or possession under RCW 62A.9A-312 (e), (f), or (g);

(6) In collateral in the secured party's possession under RCW 62A.9A-313;

(7) In a certificated security which is perfected by delivery of the security certificate to the secured party under RCW 62A.9A-313;

(8) In deposit accounts, electronic chattel paper, investment property, or letter-of-credit rights which is perfected by control under RCW 62A.9A-314;

(9) In proceeds which is perfected under RCW 62A.9A-315; or

(10) That is perfected under RCW 62A.9A-316.

(c) **Assignment of perfected security interest.** If a secured party assigns a perfected security interest or agricultural lien, a filing under this Article is not required to continue the perfected status of the security interest against creditors of and transferees from the original debtor.

(d) **Further exception: Filing not necessary for handler's lien.** The filing of a financing statement is not necessary to perfect the agricultural lien of a handler on orchard crops as provided in RCW 60.11.020(3). [2000 c 250 § 9A-310.]

**62A.9A-311 Perfection of security interests in property subject to certain statutes, regulations, and treaties. (Effective until July 1, 2011.)** (a) **Security interest subject to other law.** Except as otherwise provided in subsection (d) of this section, the filing of a financing statement is not necessary or effective to perfect a security interest in property subject to:

(1) A statute, regulation, or treaty of the United States whose requirements for a security interest's obtaining priority over the rights of a lien creditor with respect to the property preempt RCW 62A.9A-310(a);

(2) RCW 46.12.095 or 88.02.070, or chapter 65.12 RCW; or

(3) A certificate-of-title statute of another jurisdiction which provides for a security interest to be indicated on the certificate as a condition or result of the security interest's obtaining priority over the rights of a lien creditor with respect to the property.

(b) **Compliance with other law.** Compliance with the requirements of a statute, regulation, or treaty described in subsection (a) of this section for obtaining priority over the rights of a lien creditor is equivalent to the filing of a financing statement under this Article. Except as otherwise provided in subsection (d) of this section, RCW 62A.9A-313, and 62A.9A-316 (d) and (e) for goods covered by a certificate of title, a security interest in property subject to a statute, regulation, or treaty described in subsection (a) of this section may be perfected only by compliance with those requirements, and a security interest so perfected remains perfected notwithstanding a change in the use or transfer of possession of the collateral.

(c) **Duration and renewal of perfection.** Except as otherwise provided in subsection (d) of this section and RCW 62A.9A-316 (d) and (e), duration and renewal of perfection of a security interest perfected by compliance with the requirements prescribed by a statute, regulation, or treaty described in subsection (a) of this section are governed by the statute, regulation, or treaty. In other respects, the security interest is subject to this Article.

(d) **Inapplicability to certain inventory.** During any period in which collateral subject to RCW 46.12.095 or 88.02.070, or chapter 65.12 RCW is inventory held for sale or lease by a person or leased by that person as lessor and that person is in the business of selling goods of that kind, this section does not apply to a security interest in that collateral created by that person. [2001 c 32 § 25; 2000 c 250 § 9A-311.]

**Effective date—2001 c 32:** See note following RCW 62A.9A-102.

**62A.9A-311 Perfection of security interests in property subject to certain statutes, regulations, and treaties. (Effective July 1, 2011.)** (a) **Security interest subject to other law.** Except as otherwise provided in subsection (d) of this section, the filing of a financing statement is not necessary or effective to perfect a security interest in property subject to:

(1) A statute, regulation, or treaty of the United States whose requirements for a security interest's obtaining priority over the rights of a lien creditor with respect to the property preempt RCW 62A.9A-310(a);

(2) RCW 46.12.675 or 88.02.520, or chapter 65.12 RCW; or

(3) A certificate-of-title statute of another jurisdiction which provides for a security interest to be indicated on the certificate as a condition or result of the security interest's obtaining priority over the rights of a lien creditor with respect to the property.

(b) **Compliance with other law.** Compliance with the requirements of a statute, regulation, or treaty described in subsection (a) of this section for obtaining priority over the rights of a lien creditor is equivalent to the filing of a financing statement under this Article. Except as otherwise provided in subsection (d) of this section, RCW 62A.9A-313, and 62A.9A-316 (d) and (e) for goods covered by a certificate of title, a security interest in property subject to a statute, regulation, or treaty described in subsection (a) of this section may be perfected only by compliance with those requirements, and a security interest so perfected remains perfected notwithstanding a change in the use or transfer of possession of the collateral.

(c) **Duration and renewal of perfection.** Except as otherwise provided in subsection (d) of this section and RCW 62A.9A-316 (d) and (e), duration and renewal of perfection of a security interest perfected by compliance with the requirements prescribed by a statute, regulation, or treaty described in subsection (a) of this section are governed by the statute, regulation, or treaty. In other respects, the security interest is subject to this Article.

(d) **Inapplicability to certain inventory.** During any period in which collateral subject to RCW \*46.12.095 or 88.02.520, or chapter 65.12 RCW is inventory held for sale or lease by a person or leased by that person as lessor and that person is in the business of selling goods of that kind, this section does not apply to a security interest in that collateral created by that person. [2010 c 161 § 1151; 2001 c 32 § 25; 2000 c 250 § 9A-311.]

\*Reviser's note: RCW 46.12.095 was repealed by 2010 c 161 § 325, effective July 1, 2011. For later enactment, see RCW 46.12.675 (1) through (3).

Effective date—Intent—Legislation to reconcile chapter 161, Laws of 2010 and other amendments made during the 2010 legislative session—2010 c 161: See notes following RCW 46.04.013.

Effective date—2001 c 32: See note following RCW 62A.9A-102.

**62A.9A-312 Perfection of security interests in chattel paper, deposit accounts, documents, goods covered by documents, instruments, investment property, letter-of-credit rights, and money; perfection by permissive filing; temporary perfection without filing or transfer of possession.** (a) **Perfection by filing permitted.** A security interest in chattel paper, negotiable documents, instruments, or investment property may be perfected by filing.

(b) **Control or possession of certain collateral.** Except as otherwise provided in RCW 62A.9A-315 (c) and (d) for proceeds:

(1) A security interest in a deposit account may be perfected only by control under RCW 62A.9A-314;

(2) And except as otherwise provided in RCW 62A.9A-308(d), a security interest in a letter-of-credit right may be perfected only by control under RCW 62A.9A-314; and

(3) A security interest in money may be perfected only by the secured party's taking possession under RCW 62A.9A-313.

(c) **Goods covered by negotiable document.** While goods are in the possession of a bailee that has issued a negotiable document covering the goods:

(1) A security interest in the goods may be perfected by perfecting a security interest in the document; and

(2) A security interest perfected in the document has priority over any security interest that becomes perfected in the goods by another method during that time.

(d) **Goods covered by nonnegotiable document.** While goods are in the possession of a bailee that has issued a nonnegotiable document covering the goods, a security interest in the goods may be perfected by:

(1) Issuance of a document in the name of the secured party;

(2) The bailee's receipt of notification of the secured party's interest; or

(3) Filing as to the goods.

(e) **Temporary perfection: New value.** A security interest in certificated securities, negotiable documents, or instruments is perfected without filing or the taking of possession for a period of twenty days from the time it attaches to the extent that it arises for new value given under an authenticated security agreement.

(f) **Temporary perfection: Goods or documents made available to debtor.** A perfected security interest in a negotiable document or goods in possession of a bailee, other than one that has issued a negotiable document for the goods, remains perfected for twenty days without filing if the secured party makes available to the debtor the goods or documents representing the goods for the purpose of:

(1) Ultimate sale or exchange; or

(2) Loading, unloading, storing, shipping, transshipping, manufacturing, processing, or otherwise dealing with them in a manner preliminary to their sale or exchange.

(g) **Temporary perfection: Delivery of security certificate or instrument to debtor.** A perfected security interest in a certificated security or instrument remains perfected for twenty days without filing if the secured party delivers the security certificate or instrument to the debtor for the purpose of:

(1) Ultimate sale or exchange; or

(2) Presentation, collection, enforcement, renewal, or registration of transfer.

(h) **Expiration of temporary perfection.** After the twenty-day period specified in subsection (e), (f), or (g) of this section expires, perfection depends upon compliance with this Article. [2000 c 250 § 9A-312.]

**62A.9A-313 When possession by or delivery to secured party perfects security interest without filing.** (a) **Perfection by possession or delivery.** Except as otherwise provided in subsection (b) of this section, a secured party may perfect a security interest in negotiable documents, goods, instruments, money, or tangible chattel paper by taking possession of the collateral. A secured party may perfect a security interest in certificated securities by taking delivery of the certificated securities under RCW 62A.8-301.

(b) **Goods covered by certificate of title.** With respect to goods covered by a certificate of title issued by this state, a secured party may perfect a security interest in the goods by taking possession of the goods only in the circumstances described in RCW 62A.9A-316(d).

(c) **Collateral in possession of person other than debtor.** With respect to collateral other than certificated

securities and goods covered by a document, a secured party takes possession of collateral in the possession of a person other than the debtor, the secured party, or a lessee of the collateral from the debtor in the ordinary course of the debtor's business, when:

(1) The person in possession authenticates a record acknowledging that it holds possession of the collateral for the secured party's benefit; or

(2) The person takes possession of the collateral after having authenticated a record acknowledging that it will hold possession of collateral for the secured party's benefit.

**(d) Time of perfection by possession; continuation of perfection.** If perfection of a security interest depends upon possession of the collateral by a secured party, perfection occurs no earlier than the time the secured party takes possession and continues only while the secured party retains possession.

**(e) Time of perfection by delivery; continuation of perfection.** A security interest in a certificated security in registered form is perfected by delivery when delivery of the certificated security occurs under RCW 62A.8-301 and remains perfected by delivery until the debtor obtains possession of the security certificate.

**(f) Acknowledgment not required.** A person in possession of collateral is not required to acknowledge that it holds possession for a secured party's benefit.

**(g) Effectiveness of acknowledgment; no duties or confirmation.** If a person acknowledges that it holds possession for the secured party's benefit:

(1) The acknowledgment is effective under subsection (c) of this section or RCW 62A.8-301(1), even if the acknowledgment violates the rights of a debtor; and

(2) Unless the person otherwise agrees or law other than this Article otherwise provides, the person does not owe any duty to the secured party and is not required to confirm the acknowledgment to another person.

**(h) Secured party's delivery to person other than debtor.** A secured party having possession of collateral does not relinquish possession by delivering the collateral to a person other than the debtor or a lessee of the collateral from the debtor in the ordinary course of the debtor's business if the person was instructed before the delivery or is instructed contemporaneously with the delivery:

(1) To hold possession of the collateral for the secured party's benefit; or

(2) To redeliver the collateral to the secured party.

**(i) Effect of delivery under subsection (h); no duties or confirmation.** A secured party does not relinquish possession, even if a delivery under subsection (h) of this section violates the rights of a debtor. A person to which collateral is delivered under subsection (h) of this section does not owe any duty to the secured party and is not required to confirm the delivery to another person unless the person otherwise agrees or law other than this Article otherwise provides. [2001 c 32 § 26; 2000 c 250 § 9A-313.]

**Effective date—2001 c 32:** See note following RCW 62A.9A-102.

**62A.9A-314 Perfection by control.** (a) **Perfection by control.** A security interest in investment property, deposit accounts, letter-of-credit rights, or electronic chattel paper

may be perfected by control of the collateral under RCW 62A.9A-104, 62A.9A-105, 62A.9A-106, or 62A.9A-107.

**(b) Specified collateral: Time of perfection by control; continuation of perfection.** A security interest in deposit accounts, electronic chattel paper, or letter-of-credit rights is perfected by control under RCW 62A.9A-104, 62A.9A-105, or 62A.9A-107 when the secured party obtains control and remains perfected by control only while the secured party retains control.

**(c) Investment property: Time of perfection by control; continuation of perfection.** A security interest in investment property is perfected by control under RCW 62A.9A-106 from the time the secured party obtains control and remains perfected by control until:

(1) The secured party does not have control; and

(2) One of the following occurs:

(A) If the collateral is a certificated security, the debtor has or acquires possession of the security certificate;

(B) If the collateral is an uncertificated security, the issuer has registered or registers the debtor as the registered owner; or

(C) If the collateral is a security entitlement, the debtor is or becomes the entitlement holder. [2000 c 250 § 9A-314.]

**62A.9A-315 Secured party's rights on disposition of collateral and in proceeds.** (a) **Disposition of collateral: Continuation of security interest or agricultural lien; proceeds.** Except as otherwise provided in this Article and in RCW 62A.2-403(2):

(1) A security interest or agricultural lien continues in collateral notwithstanding sale, lease, license, exchange, or other disposition thereof unless the secured party authorized the disposition free of the security interest or agricultural lien; and

(2) A security interest attaches to any identifiable proceeds of collateral.

**(b) When commingled proceeds identifiable.** Proceeds that are commingled with other property are identifiable proceeds:

(1) If the proceeds are goods, to the extent provided by RCW 62A.9A-336; and

(2) If the proceeds are not goods, to the extent that the secured party identifies the proceeds by a method of tracing, including application of equitable principles, that is permitted under law other than this Article with respect to commingled property of the type involved.

**(c) Perfection of security interest in proceeds.** A security interest in proceeds is a perfected security interest if the security interest in the original collateral was perfected.

**(d) Continuation of perfection.** A perfected security interest in proceeds becomes unperfected on the twenty-first day after the security interest attaches to the proceeds unless:

(1) The following conditions are satisfied:

(A) A filed financing statement covers the original collateral;

(B) The proceeds are collateral in which a security interest may be perfected by filing in the office in which the financing statement has been filed; and

(C) The proceeds are not acquired with cash proceeds;

(2) The proceeds are identifiable cash proceeds; or

(3) The security interest in the proceeds is perfected other than under subsection (c) of this section when the security interest attaches to the proceeds or within twenty days thereafter.

(e) **When perfected security interest in proceeds becomes unperfected.** If a filed financing statement covers the original collateral, a security interest in proceeds which remains perfected under subsection (d)(1) of this section becomes unperfected at the later of:

(1) When the effectiveness of the filed financing statement lapses under RCW 62A.9A-515 or is terminated under RCW 62A.9A-513; or

(2) The twenty-first day after the security interest attaches to the proceeds. [2000 c 250 § 9A-315.]

**62A.9A-316 Continued perfection of security interest following change in governing law.** (a) **General rule: Effect on perfection of change in governing law.** A security interest perfected pursuant to the law of the jurisdiction designated in RCW 62A.9A-301(1) or 62A.9A-305(c) remains perfected until the earliest of:

(1) The time perfection would have ceased under the law of that jurisdiction;

(2) The expiration of four months after a change of the debtor's location to another jurisdiction; or

(3) The expiration of one year after a transfer of collateral to a person that thereby becomes a debtor and is located in another jurisdiction.

(b) **Security interest perfected or unperfected under law of new jurisdiction.** If a security interest described in subsection (a) of this section becomes perfected under the law of the other jurisdiction before the earliest time or event described in subsection (a) of this section, it remains perfected thereafter. If the security interest does not become perfected under the law of the other jurisdiction before the earliest time or event, it becomes unperfected and is deemed never to have been perfected as against a purchaser of the collateral for value.

(c) **Possessory security interest in collateral moved to new jurisdiction.** A possessory security interest in collateral, other than goods covered by a certificate of title and as-extracted collateral consisting of goods, remains continuously perfected if:

(1) The collateral is located in one jurisdiction and subject to a security interest perfected under the law of that jurisdiction;

(2) Thereafter the collateral is brought into another jurisdiction; and

(3) Upon entry into the other jurisdiction, the security interest is perfected under the law of the other jurisdiction.

(d) **Goods covered by certificate of title from this state.** Except as otherwise provided in subsection (e) of this section, a security interest in goods covered by a certificate of title which is perfected by any method under the law of another jurisdiction when the goods become covered by a certificate of title from this state remains perfected until the security interest would have become unperfected under the law of the other jurisdiction had the goods not become so covered.

(e) **When subsection (d) security interest becomes unperfected against purchasers.** A security interest

described in subsection (d) of this section becomes unperfected as against a purchaser of the goods for value and is deemed never to have been perfected as against a purchaser of the goods for value if the applicable requirements for perfection under RCW 62A.9A-311(b) or 62A.9A-313 are not satisfied before the earlier of:

(1) The time the security interest would have become unperfected under the law of the other jurisdiction had the goods not become covered by a certificate of title from this state; or

(2) The expiration of four months after the goods had become so covered.

(f) **Change in jurisdiction of bank, issuer, nominated person, securities intermediary, or commodity intermediary.** A security interest in deposit accounts, letter-of-credit rights, or investment property which is perfected under the law of the bank's jurisdiction, the issuer's jurisdiction, a nominated person's jurisdiction, the securities intermediary's jurisdiction, or the commodity intermediary's jurisdiction, as applicable, remains perfected until the earlier of:

(1) The time the security interest would have become unperfected under the law of that jurisdiction; or

(2) The expiration of four months after a change of the applicable jurisdiction to another jurisdiction.

(g) **Subsection (f) of this section security interest perfected or unperfected under law of new jurisdiction.** If a security interest described in subsection (f) of this section becomes perfected under the law of the other jurisdiction before the earlier of the time or the end of the period described in subsection (f) of this section, it remains perfected thereafter. If the security interest does not become perfected under the law of the other jurisdiction before the earlier of that time or the end of that period, it becomes unperfected and is deemed never to have been perfected as against a purchaser of the collateral for value. [2000 c 250 § 9A-316.]

**62A.9A-317 Interests that take priority over or take free of security interest or agricultural lien.** (a) **Conflicting security interests and rights of lien creditors.** A security interest or agricultural lien is subordinate to the rights of:

(1) A person entitled to priority under RCW 62A.9A-322; and

(2) Except as otherwise provided in subsection (e) of this section, a person that becomes a lien creditor before the earlier of the time:

(A) The security interest or agricultural lien is perfected; or

(B) One of the conditions specified in RCW 62A.9A-203(b)(3) is met and a financing statement covering the collateral is filed.

(b) **Buyers that receive delivery.** Except as otherwise provided in subsection (e) of this section, a buyer, other than a secured party, of tangible chattel paper, documents, goods, instruments, or a security certificate takes free of a security interest or agricultural lien if the buyer gives value and receives delivery of the collateral without knowledge of the security interest or agricultural lien and before it is perfected.

(c) **Lessees that receive delivery.** Except as otherwise provided in subsection (e) of this section, a lessee of goods takes free of a security interest or agricultural lien if the les-

see gives value and receives delivery of the collateral without knowledge of the security interest or agricultural lien and before it is perfected.

(d) **Licensees and buyers of certain collateral.** A licensee of a general intangible or a buyer, other than a secured party, of accounts, electronic chattel paper, general intangibles, or investment property other than a certificated security takes free of a security interest if the licensee or buyer gives value without knowledge of the security interest and before it is perfected.

(e) **Purchase-money security interest.** Except as otherwise provided in RCW 62A.9A-320 and 62A.9A-321, if a person files a financing statement with respect to a purchase-money security interest before or within twenty days after the debtor receives delivery of the collateral, the security interest takes priority over the rights of a buyer, lessee, or lien creditor which arise between the time the security interest attaches and the time of filing. [2001 c 32 § 27; 2000 c 250 § 9A-317.]

**Effective date—2001 c 32:** See note following RCW 62A.9A-102.

**62A.9A-318 No interest retained in right to payment that is sold; rights and title of seller of account or chattel paper with respect to creditors and purchasers.** (a) **Seller retains no interest.** A debtor that has sold an account, chattel paper, payment intangible, or promissory note does not retain a legal or equitable interest in the collateral sold.

(b) **Deemed rights of debtor if buyer's security interest unperfected.** For purposes of determining the rights of creditors of, and purchasers for value of an account or chattel paper from, a debtor that has sold an account or chattel paper, while the buyer's security interest is unperfected, the debtor is deemed to have rights and title to the account or chattel paper identical to those the debtor sold. [2000 c 250 § 9A-318.]

**62A.9A-319 Rights and title of consignee with respect to creditors and purchasers.** (a) **Consignee has consignor's rights.** Except as otherwise provided in subsection (b) of this section, for purposes of determining the rights of creditors of, and purchasers for value of goods from, a consignee, while the goods are in the possession of the consignee, the consignee is deemed to have rights and title to the goods identical to those the consignor had or had power to transfer.

(b) **Applicability of other law.** For purposes of determining the rights of a creditor of a consignee, law other than this Article determines the rights and title of a consignee while goods are in the consignee's possession if, under this part, a perfected security interest held by the consignor would have priority over the rights of the creditor. [2000 c 250 § 9A-319.]

**62A.9A-320 Buyer of goods.** (a) **Buyer in ordinary course of business.** Except as otherwise provided in subsection (e) of this section, a buyer in ordinary course of business, other than a person buying farm products from a person engaged in farming operations, takes free of a security interest created by the buyer's seller, even if the security interest is perfected and the buyer knows of its existence.

(b) **Buyer of consumer goods.** Except as otherwise provided in subsection (e) of this section, a buyer of goods from a person who used or bought the goods for use primarily for personal, family, or household purposes takes free of a security interest, even if perfected, if the buyer buys:

- (1) Without knowledge of the security interest;
- (2) For value;
- (3) Primarily for the buyer's personal, family, or household purposes; and
- (4) Before the filing of a financing statement covering the goods.

(c) **Effectiveness of filing for subsection (b) of this section.** To the extent that it affects the priority of a security interest over a buyer of goods under subsection (b) of this section, the period of effectiveness of a filing made in the jurisdiction in which the seller is located is governed by RCW 62A.9A-316 (a) and (b).

(d) **Buyer in ordinary course of business at wellhead or minehead.** A buyer in ordinary course of business buying oil, gas, or other minerals at the wellhead or minehead or after extraction takes free of an interest arising out of an encumbrance.

(e) **Possessory security interest not affected.** Subsections (a) and (b) of this section do not affect a security interest in goods in the possession of the secured party under RCW 62A.9A-313. [2000 c 250 § 9A-320.]

**62A.9A-321 Licensee of general intangible and lessee of goods in ordinary course of business.** (a) **"Licensee in ordinary course of business."** In this section, "licensee in ordinary course of business" means a person that becomes a licensee of a general intangible in good faith, without knowledge that the license violates the rights of another person in the general intangible, and in the ordinary course from a person in the business of licensing general intangibles of that kind. A person becomes a licensee in the ordinary course if the license to the person comports with the usual or customary practices in the kind of business in which the licensor is engaged or with the licensor's own usual or customary practices.

(b) **Rights of licensee in ordinary course of business.** A licensee in ordinary course of business takes its rights under a nonexclusive license free of a security interest in the general intangible created by the licensor, even if the security interest is perfected and the licensee knows of its existence.

(c) **Rights of lessee in ordinary course of business.** A lessee in ordinary course of business takes its leasehold interest free of a security interest in the goods created by the lessor, even if the security interest is perfected and the lessee knows of its existence. [2000 c 250 § 9A-321.]

**62A.9A-322 Priorities among conflicting security interests in and agricultural liens on same collateral.** (a) **General priority rules.** Except as otherwise provided in this section, priority among conflicting security interests and agricultural liens in the same collateral is determined according to the following rules:

- (1) Conflicting perfected security interests and agricultural liens rank according to priority in time of filing or perfection. Priority dates from the earlier of the time a filing cov-

ering the collateral is first made or the security interest or agricultural lien is first perfected, if there is no period thereafter when there is neither filing nor perfection.

(2) A perfected security interest or agricultural lien has priority over a conflicting unperfected security interest or agricultural lien.

(3) The first security interest or agricultural lien to attach or become effective has priority if conflicting security interests and agricultural liens are unperfected.

**(b) Time of perfection: Proceeds and supporting obligations.** For the purposes of subsection (a)(1) of this section:

(1) The time of filing or perfection as to a security interest in collateral is also the time of filing or perfection as to a security interest in proceeds; and

(2) The time of filing or perfection as to a security interest in collateral supported by a supporting obligation is also the time of filing or perfection as to a security interest in the supporting obligation.

**(c) Special priority rules: Proceeds and supporting obligations.** Except as otherwise provided in subsection (f) of this section, a security interest in collateral which qualifies for priority over a conflicting security interest under RCW 62A.9A-327, 62A.9A-328, 62A.9A-329, 62A.9A-330, or 62A.9A-331 also has priority over a conflicting security interest in:

(1) Any supporting obligation for the collateral; and

(2) Proceeds of the collateral if:

(A) The security interest in proceeds is perfected;

(B) The proceeds are cash proceeds or of the same type as the collateral; and

(C) In the case of proceeds that are proceeds of proceeds, all intervening proceeds are cash proceeds, proceeds of the same type as the collateral, or an account relating to the collateral.

**(d) First-to-file priority rule for certain collateral.** Subject to subsection (e) of this section and except as otherwise provided in subsection (f) of this section, if a security interest in chattel paper, deposit accounts, negotiable documents, instruments, investment property, or letter-of-credit rights is perfected by a method other than filing, conflicting perfected security interests in proceeds of the collateral rank according to priority in time of filing.

**(e) Applicability of subsection (d) of this section.** Subsection (d) of this section applies only if the proceeds of the collateral are not cash proceeds, chattel paper, negotiable documents, instruments, investment property, or letter-of-credit rights.

**(f) Limitations on subsections (a) through (e) of this section.** Subsections (a) through (e) of this section are subject to:

(1) Subsection (g) of this section and the other provisions of this part;

(2) RCW 62A.4-210 with respect to a security interest of a collecting bank;

(3) RCW 62A.5-118 with respect to a security interest of an issuer or nominated person; and

(4) RCW 62A.9A-110 with respect to a security interest arising under Article 2 or 2A.

**(g) Priority under agricultural lien statute.** A perfected agricultural lien on collateral has priority over a conflicting security interest in or agricultural lien on the same

(2010 Ed.)

collateral if the statute creating the agricultural lien so provides. Conflicts as to priority between and among security interests in crops and agricultural liens subject to chapter 60.11 RCW are governed by the provisions of that chapter. [2001 c 32 § 28; 2000 c 250 § 9A-322.]

**Effective date—2001 c 32:** See note following RCW 62A.9A-102.

**62A.9A-323 Future advances.** (a) **When priority based on time of advance.** Except as otherwise provided in subsection (c) of this section, for purposes of determining the priority of a perfected security interest under RCW 62A.9A-322(a)(1), perfection of the security interest dates from the time an advance is made to the extent that the security interest secures an advance that:

(1) Is made while the security interest is perfected only:

(A) Under RCW 62A.9A-309 when it attaches; or

(B) Temporarily under RCW 62A.9A-312 (e), (f), or (g); and

(2) Is not made pursuant to a commitment entered into before or while the security interest is perfected by a method other than under RCW 62A.9A-309 or 62A.9A-312 (e), (f), or (g).

**(b) Lien creditor.** Except as otherwise provided in subsection (c) of this section, a security interest is subordinate to the rights of a person that becomes a lien creditor to the extent that the security interest secures an advance made more than forty-five days after the person becomes a lien creditor unless the advance is made:

(1) Without knowledge of the lien; or

(2) Pursuant to a commitment entered into without knowledge of the lien.

**(c) Buyer of receivables.** Subsections (a) and (b) of this section do not apply to a security interest held by a secured party that is a buyer of accounts, chattel paper, payment intangibles, or promissory notes or a consignor.

**(d) Buyer of goods.** Except as otherwise provided in subsection (e) of this section, a buyer of goods other than a buyer in ordinary course of business takes free of a security interest to the extent that it secures advances made after the earlier of:

(1) The time the secured party acquires knowledge of the buyer's purchase; or

(2) Forty-five days after the purchase.

**(e) Advances made pursuant to commitment: Priority of buyer of goods.** Subsection (d) of this section does not apply if the advance is made pursuant to a commitment entered into without knowledge of the buyer's purchase and before the expiration of the forty-five day period.

**(f) Lessee of goods.** Except as otherwise provided in subsection (g) of this section, a lessee of goods, other than a lessee in ordinary course of business, takes the leasehold interest free of a security interest to the extent that it secures advances made after the earlier of:

(1) The time the secured party acquires knowledge of the lease; or

(2) Forty-five days after the lease contract becomes enforceable.

**(g) Advances made pursuant to commitment: Priority of lessee of goods.** Subsection (f) of this section does not apply if the advance is made pursuant to a commitment

entered into without knowledge of the lease and before the expiration of the forty-five day period. [2000 c 250 § 9A-323.]

**62A.9A-324 Priority of purchase-money security interests.** (a) **General rule: Purchase-money priority.** Except as otherwise provided in subsection (g) of this section, a perfected purchase-money security interest in goods other than inventory or livestock has priority over a conflicting security interest in the same goods, and, except as otherwise provided in RCW 62A.9A-327, a perfected security interest in its identifiable proceeds also has priority, if the purchase-money security interest is perfected when the debtor receives possession of the collateral or within twenty days thereafter.

(b) **Inventory purchase-money priority.** Subject to subsection (c) of this section and except as otherwise provided in subsection (g) of this section, a perfected purchase-money security interest in inventory has priority over a conflicting security interest in the same inventory, has priority over a conflicting security interest in chattel paper or an instrument constituting proceeds of the inventory and in proceeds of the chattel paper, if so provided in RCW 62A.9A-330, and, except as otherwise provided in RCW 62A.9A-327, also has priority in identifiable cash proceeds of the inventory to the extent the identifiable cash proceeds are received on or before the delivery of the inventory to a buyer, if:

(1) The purchase-money security interest is perfected when the debtor receives possession of the inventory;

(2) The purchase-money secured party sends an authenticated notification to the holder of the conflicting security interest;

(3) The holder of the conflicting security interest receives the notification within five years before the debtor receives possession of the inventory; and

(4) The notification states that the person sending the notification has or expects to acquire a purchase-money security interest in inventory of the debtor and describes the inventory.

(c) **Holders of conflicting inventory security interests to be notified.** Subsections (b)(2) through (4) of this section apply only if the holder of the conflicting security interest had filed a financing statement covering the same types of inventory:

(1) If the purchase-money security interest is perfected by filing, before the date of the filing; or

(2) If the purchase-money security interest is temporarily perfected without filing or possession under RCW 62A.9A-312(f), before the beginning of the twenty-day period thereunder.

(d) **Livestock purchase-money priority.** Subject to subsection (e) of this section and except as otherwise provided in subsection (g) of this section, a perfected purchase-money security interest in livestock that are farm products has priority over a conflicting security interest in the same livestock, and, except as otherwise provided in RCW 62A.9A-327, a perfected security interest in their identifiable proceeds and identifiable products in their unmanufactured states also has priority, if:

(1) The purchase-money security interest is perfected when the debtor receives possession of the livestock;

(2) The purchase-money secured party sends an authenticated notification to the holder of the conflicting security interest;

(3) The holder of the conflicting security interest receives the notification within six months before the debtor receives possession of the livestock; and

(4) The notification states that the person sending the notification has or expects to acquire a purchase-money security interest in livestock of the debtor and describes the livestock.

(e) **Holders of conflicting livestock security interests to be notified.** Subsections (d)(2) through (4) of this section apply only if the holder of the conflicting security interest had filed a financing statement covering the same types of livestock:

(1) If the purchase-money security interest is perfected by filing, before the date of the filing; or

(2) If the purchase-money security interest is temporarily perfected without filing or possession under RCW 62A.9A-312(f), before the beginning of the twenty-day period thereunder.

(f) **Software purchase-money priority.** Except as otherwise provided in subsection (g) of this section, a perfected purchase-money security interest in software has priority over a conflicting security interest in the same collateral, and, except as otherwise provided in RCW 62A.9A-327, a perfected security interest in its identifiable proceeds also has priority, to the extent that the purchase-money security interest in the goods in which the software was acquired for use has priority in the goods and proceeds of the goods under this section.

(g) **Conflicting purchase-money security interests.** If more than one security interest qualifies for priority in the same collateral under subsection (a), (b), (d), or (f) of this section:

(1) A security interest securing an obligation incurred as all or part of the price of the collateral has priority over a security interest securing an obligation incurred for value given to enable the debtor to acquire rights in or the use of collateral; and

(2) In all other cases, RCW 62A.9A-322(a) applies to the qualifying security interests. [2000 c 250 § 9A-324.]

**62A.9A-325 Priority of security interests in transferred collateral.** (a) **Subordination of security interest in transferred collateral.** Except as otherwise provided in subsection (b) of this section, a security interest created by a debtor is subordinate to a security interest in the same collateral created by another person if:

(1) The debtor acquired the collateral subject to the security interest created by the other person;

(2) The security interest created by the other person was perfected when the debtor acquired the collateral; and

(3) There is no period thereafter when the security interest is unperfected.

(b) **Limitation of subsection (a) of this section subordination.** Subsection (a) of this section subordinates a security interest only if the security interest:

(1) Otherwise would have priority solely under RCW 62A.9A-322(a) or 62A.9A-324; or

(2) Arose solely under RCW 62A.2-711(3) or 62A.2A-508(5). [2000 c 250 § 9A-325.]

**62A.9A-326 Priority of security interests created by new debtor.** (a) **Subordination of security interest created by new debtor.** Subject to subsection (b) of this section, a security interest created by a new debtor which is perfected by a filed financing statement that is effective solely under RCW 62A.9A-508 in collateral in which a new debtor has or acquires rights is subordinate to a security interest in the same collateral which is perfected other than by a filed financing statement that is effective solely under RCW 62A.9A-508.

(b) **Priority under other provisions; multiple original debtors.** The other provisions of this part determine the priority among conflicting security interests in the same collateral perfected by filed financing statements that are effective solely under RCW 62A.9A-508. However, if the security agreements to which a new debtor became bound as debtor were not entered into by the same original debtor, the conflicting security interests rank according to priority in time of the new debtor's having become bound. [2000 c 250 § 9A-326.]

**62A.9A-327 Priority of security interests in deposit account.** The following rules govern priority among conflicting security interests in the same deposit account:

(1) A security interest held by a secured party having control of the deposit account under RCW 62A.9A-104 has priority over a conflicting security interest held by a secured party that does not have control.

(2) Except as otherwise provided in [subsections] (3) and (4) of this section, security interests perfected by control under RCW 62A.9A-314 rank according to priority in time of obtaining control.

(3) Except as otherwise provided in [subsection] (4) of this section, a security interest held by the bank with which the deposit account is maintained has priority over a conflicting security interest held by another secured party.

(4) A security interest perfected by control under RCW 62A.9A-104(a)(3) has priority over a security interest held by the bank with which the deposit account is maintained. [2000 c 250 § 9A-327.]

**62A.9A-328 Priority of security interests in investment property.** The following rules govern priority among conflicting security interests in the same investment property:

(1) A security interest held by a secured party having control of investment property under RCW 62A.9A-106 has priority over a security interest held by a secured party that does not have control of the investment property.

(2) Except as otherwise provided in subsections (3) and (4) of this section, conflicting security interests held by secured parties each of which has control under RCW 62A.9A-106 rank according to priority in time of:

(a) If the collateral is a security, obtaining control;

(b) If the collateral is a security entitlement carried in a securities account and:

(i) If the secured party obtained control under RCW 62A.8-106(4)(a), the secured party's becoming the person for which the securities account is maintained;

(ii) If the secured party obtained control under RCW 62A.8-106(4)(b), the securities intermediary's agreement to comply with the secured party's entitlement orders with respect to security entitlements carried or to be carried in the securities account; or

(iii) If the secured party obtained control through another person under RCW 62A.8-106(4)(c), the time on which priority would be based under this paragraph if the other person were the secured party; or

(c) If the collateral is a commodity contract carried with a commodity intermediary, the satisfaction of the requirement for control specified in RCW 62A.9A-106(b)(2) with respect to commodity contracts carried or to be carried with the commodity intermediary.

(3) A security interest held by a securities intermediary in a security entitlement or a securities account maintained with the securities intermediary has priority over a conflicting security interest held by another secured party.

(4) A security interest held by a commodity intermediary in a commodity contract or a commodity account maintained with the commodity intermediary has priority over a conflicting security interest held by another secured party.

(5) A security interest in a certificated security in registered form which is perfected by taking delivery under RCW 62A.9A-313(a) and not by control under RCW 62A.9A-314 has priority over a conflicting security interest perfected by a method other than control.

(6) Conflicting security interests created by a broker, securities intermediary, or commodity intermediary which are perfected without control under RCW 62A.9A-106 rank equally.

(7) In all other cases, priority among conflicting security interests in investment property is governed by RCW 62A.9A-322 and 62A.9A-323. [2001 c 32 § 29; 2000 c 250 § 9A-328.]

**Effective date—2001 c 32:** See note following RCW 62A.9A-102.

**62A.9A-329 Priority of security interests in letter-of-credit right.** The following rules govern priority among conflicting security interests in the same letter-of-credit right:

(1) A security interest held by a secured party having control of the letter-of-credit right under RCW 62A.9A-107 has priority to the extent of its control over a conflicting security interest held by a secured party that does not have control.

(2) Security interests perfected by control under RCW 62A.9A-314 rank according to priority in time of obtaining control. [2000 c 250 § 9A-329.]

**62A.9A-330 Priority of purchaser of chattel paper or instrument.** (a) **Purchaser's priority: Security interest claimed merely as proceeds.** A purchaser of chattel paper has priority over a security interest in the chattel paper which is claimed merely as proceeds of inventory subject to a security interest if:

(1) In good faith and in the ordinary course of the purchaser's business, the purchaser gives new value and takes

possession of the chattel paper or obtains control of the chattel paper under RCW 62A.9A-105; and

(2) The chattel paper does not indicate that it has been assigned to an identified assignee other than the purchaser.

(b) **Purchaser's priority: Other security interests.** A purchaser of chattel paper has priority over a security interest in the chattel paper which is claimed other than merely as proceeds of inventory subject to a security interest if the purchaser gives new value and takes possession of the chattel paper or obtains control of the chattel paper under RCW 62A.9A-105 in good faith, in the ordinary course of the purchaser's business, and without knowledge that the purchase violates the rights of the secured party.

(c) **Chattel paper purchaser's priority in proceeds.** Except as otherwise provided in RCW 62A.9A-327, a purchaser having priority in chattel paper under subsection (a) or (b) of this section also has priority in proceeds of the chattel paper to the extent that:

(1) RCW 62A.9A-322 provides for priority in the proceeds; or

(2) The proceeds consist of the specific goods covered by the chattel paper or cash proceeds of the specific goods, even if the purchaser's security interest in the proceeds is unperfected.

(d) **Instrument purchaser's priority.** Except as otherwise provided in RCW 62A.9A-331(a), a purchaser of an instrument has priority over a security interest in the instrument perfected by a method other than possession if the purchaser gives value and takes possession of the instrument in good faith and without knowledge that the purchase violates the rights of the secured party.

(e) **Holder of purchase-money security interest gives new value.** For purposes of subsections (a) and (b) of this section, the holder of a purchase-money security interest in inventory gives new value for chattel paper constituting proceeds of the inventory.

(f) **Indication of assignment gives knowledge.** For purposes of subsections (b) and (d) of this section, if chattel paper or an instrument indicates that it has been assigned to an identified secured party other than the purchaser, a purchaser of the chattel paper or instrument has knowledge that the purchase violates the rights of the secured party. [2000 c 250 § 9A-330.]

**62A.9A-331 Priority of rights of purchasers of instruments, documents, and securities under other articles; priority of interests in financial assets and security entitlements under Article 8.** (a) **Rights under Articles 3, 7, and 8 not limited.** This Article does not limit the rights of a holder in due course of a negotiable instrument, a holder to which a negotiable document of title has been duly negotiated, or a protected purchaser of a security. These holders or purchasers take priority over an earlier security interest, even if perfected, to the extent provided in Articles 3, 7, and 8.

(b) **Protection under Article 8.** This Article does not limit the rights of or impose liability on a person to the extent that the person is protected against the assertion of a claim under Article 8.

(c) **Filing not notice.** Filing under this Article does not constitute notice of a claim or defense to the holders, or pur-

chasers, or persons described in subsections (a) and (b) of this section. [2001 c 32 § 30; 2000 c 250 § 9A-331.]

**Effective date—2001 c 32:** See note following RCW 62A.9A-102.

**62A.9A-332 Transfer of money; transfer of funds from deposit account.** (a) **Transferee of money.** A transferee of money takes the money free of a security interest unless the transferee acts in collusion with the debtor in violating the rights of the secured party.

(b) **Transferee of funds from deposit account.** A transferee of funds from a deposit account takes the funds free of a security interest in the deposit account unless the transferee acts in collusion with the debtor in violating the rights of the secured party. [2000 c 250 § 9A-332.]

**62A.9A-333 Priority of certain liens arising by operation of law.** (a) **"Possessory lien."** In this section, "possessory lien" means an interest, other than a security interest or an agricultural lien:

(1) Which secures payment or performance of an obligation for services or materials furnished with respect to goods by a person in the ordinary course of the person's business;

(2) Which is created by statute or rule of law in favor of the person; and

(3) Whose effectiveness depends on the person's possession of the goods.

(b) **Priority of possessory lien.** A possessory lien on goods has priority over a security interest in the goods only if the lien is created by a statute that expressly so provides.

(c) A preparer lien or processor lien properly created pursuant to chapter 60.13 RCW or a depositor's lien created pursuant to chapter 22.09 RCW takes priority over any perfected or unperfected security interest. [2001 c 32 § 31; 2000 c 250 § 9A-333.]

**Effective date—2001 c 32:** See note following RCW 62A.9A-102.

**62A.9A-334 Priority of security interests in fixtures and crops.** (a) **Security interest in fixtures under this Article.** A security interest under this Article may be created in goods that are fixtures or may continue in goods that become fixtures. A security interest does not exist under this Article in ordinary building materials incorporated into an improvement on land.

(b) **Security interest in fixtures under real-property law.** This Article does not prevent creation of an encumbrance upon fixtures under real property law.

(c) **General rule: Subordination of security interest in fixtures.** In cases not governed by subsections (d) through (h) of this section, a security interest in fixtures is subordinate to a conflicting interest of an encumbrancer or owner of the related real property other than the debtor.

(d) **Fixtures purchase-money priority.** Except as otherwise provided in subsection (h) of this section, a perfected security interest in fixtures has priority over a conflicting interest of an encumbrancer or owner of the real property if the debtor has an interest of record in, or is in possession of, the real property and:

(1) The security interest is a purchase-money security interest;

(2) The interest of the encumbrancer or owner arises before the goods become fixtures; and

(3) The security interest is perfected by a fixture filing before the goods become fixtures or within twenty days thereafter.

(e) **Priority of security interest in fixtures over interests in real property.** A perfected security interest in fixtures has priority over a conflicting interest of an encumbrancer or owner of the real property if:

(1) The debtor has an interest of record in the real property or is in possession of the real property and the security interest:

(A) Is perfected by a fixture filing before the interest of the encumbrancer or owner is of record; and

(B) Has priority over any conflicting interest of a predecessor in title of the encumbrancer or owner;

(2) Before the goods become fixtures, the security interest is perfected by any method permitted by this Article and the fixtures are readily removable:

(A) Factory or office machines;

(B) Equipment that is not primarily used or leased for use in the operation of the real property; or

(C) Replacements of domestic appliances that are consumer goods; or

(3) The conflicting interest is a lien on the real property obtained by legal or equitable proceedings after the security interest was perfected by any method permitted by this Article.

(f) **Priority based on consent, disclaimer, or right to remove.** A security interest in fixtures, whether or not perfected, has priority over a conflicting interest of an encumbrancer or owner of the real property if:

(1) The encumbrancer or owner has, in an authenticated record, consented to the security interest or disclaimed an interest in the goods as fixtures; or

(2) The debtor has a right to remove the goods as against the encumbrancer or owner.

(g) **Continuation of subsection (f)(2) priority.** The priority of the security interest under subsection (f)(2) of this section continues for a reasonable time if the debtor's right to remove the goods as against the encumbrancer or owner terminates.

(h) **Priority of construction mortgage.** A mortgage is a construction mortgage to the extent that it secures an obligation incurred for the construction of an improvement on land, including the acquisition cost of the land, if a recorded record of the mortgage so indicates. Except as otherwise provided in subsections (e) and (f) of this section, a security interest in fixtures is subordinate to a construction mortgage if a record of the mortgage is recorded before the goods become fixtures and the goods become fixtures before the completion of the construction. A mortgage has this priority to the same extent as a construction mortgage to the extent that it is given to refinance a construction mortgage.

(i) **Priority of security interest in crops.** A perfected security interest in crops growing on real property has priority over a conflicting interest of an encumbrancer or owner of the real property if the debtor has an interest of record in or is in possession of the real property.

(j) **Subsection (i) prevails.** Subsection (i) of this section prevails over inconsistent provisions of any other statute

(2010 Ed.)

except RCW 60.11.050. [2001 c 32 § 32; 2000 c 250 § 9A-334.]

**Effective date—2001 c 32:** See note following RCW 62A.9A-102.

**62A.9A-335 Accessions.** (a) **Creation of security interest in accession.** A security interest may be created in an accession and continues in collateral that becomes an accession.

(b) **Perfection of security interest.** If a security interest is perfected when the collateral becomes an accession, the security interest remains perfected in the collateral.

(c) **Priority of security interest.** Except as otherwise provided in subsection (d) of this section, the other provisions of this part determine the priority of a security interest in an accession.

(d) **Compliance with certificate-of-title statute.** A security interest in an accession is subordinate to a security interest in the whole which is perfected by compliance with the requirements of a certificate-of-title statute under RCW 62A.9A-311(b).

(e) **Removal of accession after default.** After default, subject to Part 6 of this Article, a secured party may remove an accession from other goods if the security interest in the accession has priority over the claims of every person having an interest in the whole.

(f) **Reimbursement following removal.** A secured party that removes an accession from other goods under subsection (e) of this section shall promptly reimburse any holder of a security interest or other lien on, or owner of, the whole or of the other goods, other than the debtor, for the cost of repair of any physical injury to the whole or the other goods. The secured party need not reimburse the holder or owner for any diminution in value of the whole or the other goods caused by the absence of the accession removed or by any necessity for replacing it. A person entitled to reimbursement may refuse permission to remove until the secured party gives adequate assurance for the performance of the obligation to reimburse. [2000 c 250 § 9A-335.]

**62A.9A-336 Commingled goods.** (a) **"Commingled goods."** In this section, "commingled goods" means goods that are physically united with other goods in such a manner that their identity is lost in a product or mass.

(b) **No security interest in commingled goods as such.** A security interest does not exist in commingled goods as such. However, a security interest may attach to a product or mass that results when goods become commingled goods.

(c) **Attachment of security interest to product or mass.** If collateral becomes commingled goods, a security interest attaches to the product or mass.

(d) **Perfection of security interest.** If a security interest in collateral is perfected before the collateral becomes commingled goods, the security interest that attaches to the product or mass under subsection (c) of this section is perfected.

(e) **Priority of security interest.** Except as otherwise provided in subsection (f) of this section, the other provisions of this part determine the priority of a security interest that attaches to the product or mass under subsection (c) of this section.

(f) **Conflicting security interests in product or mass.** If more than one security interest attaches to the product or mass under subsection (c) of this section, the following rules determine priority:

(1) A security interest that is perfected under subsection (d) of this section has priority over a security interest that is unperfected at the time the collateral becomes commingled goods.

(2) If more than one security interest is perfected under subsection (d) of this section, the security interests rank equally in proportion to the value of the collateral at the time it became commingled goods. [2001 c 32 § 33; 2000 c 250 § 9A-336.]

**Effective date—2001 c 32:** See note following RCW 62A.9A-102.

**62A.9A-337 Priority of security interests in goods covered by certificate of title.** If, while a security interest in goods is perfected by any method under the law of another jurisdiction, this state issues a certificate of title that does not show that the goods are subject to the security interest or contain a statement that they may be subject to security interests not shown on the certificate:

(1) A buyer of the goods, other than a person in the business of selling goods of that kind, takes free of the security interest if the buyer gives value and receives delivery of the goods after issuance of the certificate and without knowledge of the security interest; and

(2) The security interest is subordinate to a conflicting security interest in the goods that attaches, and is perfected under RCW 62A.9A-311(b), after issuance of the certificate and without the conflicting secured party's knowledge of the security interest. [2000 c 250 § 9A-337.]

**62A.9A-338 Priority of security interest or agricultural lien perfected by filed financing statement providing certain incorrect information.** If a security interest or agricultural lien is perfected by a filed financing statement providing information described in RCW 62A.9A-516(b)(5) which is incorrect at the time the financing statement is filed:

(1) The security interest or agricultural lien is subordinate to a conflicting perfected security interest in the collateral to the extent that the holder of the conflicting security interest gives value in reasonable reliance upon the incorrect information; and

(2) A purchaser, other than a secured party, of the collateral takes free of the security interest or agricultural lien to the extent that, in reasonable reliance upon the incorrect information, the purchaser gives value and, in the case of chattel paper, documents, goods, instruments, or a security certificate, receives delivery of the collateral. [2000 c 250 § 9A-338.]

**62A.9A-339 Priority subject to subordination.** This Article does not preclude subordination by agreement by a person entitled to priority. [2000 c 250 § 9A-339.]

**62A.9A-340 Effectiveness of right of recoupment or set-off against deposit account.** (a) **Exercise of recoupment or set-off.** Except as otherwise provided in subsection (c) of this section, a bank with which a deposit account is

maintained may exercise any right of recoupment or set-off against a secured party that holds a security interest in the deposit account.

(b) **Recoupment or set-off not affected by security interest.** Except as otherwise provided in subsection (c) of this section, the application of this Article to a security interest in a deposit account does not affect a right of recoupment or set-off of the secured party as to a deposit account maintained with the secured party.

(c) **When set-off ineffective.** The exercise by a bank of a set-off against a deposit account is ineffective against a secured party that holds a security interest in the deposit account which is perfected by control under RCW 62A.9A-104(a)(3), if the set-off is based on a claim against the debtor. [2000 c 250 § 9A-340.]

**62A.9A-341 Bank's rights and duties with respect to deposit account.** Except as otherwise provided in RCW 62A.9A-340(c), and unless the bank otherwise agrees in an authenticated record, a bank's rights and duties with respect to a deposit account maintained with the bank are not terminated, suspended, or modified by:

(1) The creation, attachment, or perfection of a security interest in the deposit account;

(2) The bank's knowledge of the security interest; or

(3) The bank's receipt of instructions from the secured party. [2000 c 250 § 9A-341.]

**62A.9A-342 Bank's right to refuse to enter into or disclose existence of control agreement.** This Article does not require a bank to enter into an agreement of the kind described in RCW 62A.9A-104(a)(2), even if its customer so requests or directs. A bank that has entered into such an agreement is not required to confirm the existence of the agreement to another person unless requested to do so by its customer. [2000 c 250 § 9A-342.]

#### PART 4 RIGHTS OF THIRD PARTIES

**62A.9A-401 Alienability of debtor's rights.** (a) **Other law governs alienability; exceptions.** Except as otherwise provided in subsection (b) of this section and RCW 62A.9A-406, 62A.9A-407, 62A.9A-408, and 62A.9A-409, whether a debtor's rights in collateral may be voluntarily or involuntarily transferred is governed by law other than this Article.

(b) **Agreement does not prevent transfer.** An agreement between the debtor and secured party which prohibits a transfer of the debtor's rights in collateral or makes the transfer a default does not prevent the transfer from taking effect. [2000 c 250 § 9A-401.]

**62A.9A-402 Secured party not obligated on contract of debtor or in tort.** The existence of a security interest, agricultural lien, or authority given to a debtor to dispose of or use collateral, without more, does not subject a secured party to liability in contract or tort for the debtor's acts or omissions. [2000 c 250 § 9A-402.]

**62A.9A-403 Agreement not to assert defenses against assignee.** (a) **"Value."** In this section, "value" has the meaning provided in RCW 62A.3-303(a).

(b) **Agreement not to assert claim or defense.** Except as otherwise provided in this section, an agreement between an account debtor and an assignor not to assert against an assignee any claim or defense that the account debtor may have against the assignor is enforceable by an assignee that takes an assignment:

- (1) For value;
- (2) In good faith;
- (3) Without notice of a claim of a property or possessory right to the property assigned; and
- (4) Without notice of a defense or claim in recoupment of the type that may be asserted against a person entitled to enforce a negotiable instrument under RCW 62A.3-305(a).

(c) **When subsection (b) of this section not applicable.** Subsection (b) of this section does not apply to defenses of a type that may be asserted against a holder in due course of a negotiable instrument under RCW 62A.3-305(b).

(d) **Omission of required statement in consumer transaction.** In a consumer transaction, if a record evidences the account debtor's obligation, law other than this Article requires that the record include a statement to the effect that the rights of an assignee are subject to claims or defenses that the account debtor could assert against the original obligee, and the record does not include such a statement:

- (1) The record has the same effect as if the record included such a statement; and
- (2) The account debtor may assert against an assignee those claims and defenses that would have been available if the record included such a statement.

(e) **Rule for individual under other law.** This section is subject to law other than this Article which establishes a different rule for an account debtor who is an individual and who incurred the obligation primarily for personal, family, or household purposes.

(f) **Other law not displaced.** Except as otherwise provided in subsection (d) of this section, this section does not displace law other than this Article which gives effect to an agreement by an account debtor not to assert a claim or defense against an assignee. [2000 c 250 § 9A-403.]

**62A.9A-404 Rights acquired by assignee; claims and defenses against assignee.** (a) **Assignee's rights subject to terms, claims, and defenses; exceptions.** Unless an account debtor has made an enforceable agreement not to assert defenses or claims, and subject to subsections (b) through (e) of this section, the rights of an assignee are subject to:

- (1) All terms of the agreement between the account debtor and assignor and any defense or claim in recoupment arising from the transaction that gave rise to the contract; and
- (2) Any other defense or claim of the account debtor against the assignor which accrues before the account debtor receives a notification of the assignment authenticated by the assignor or the assignee.

(b) **Account debtor's claim reduces amount owed to assignee.** Subject to subsection (c) of this section, and except as otherwise provided in subsection (d) of this section, the claim of an account debtor against an assignor may be

asserted against an assignee under subsection (a) of this section only to reduce the amount the account debtor owes.

(c) **Rule for individual under other law.** This section is subject to law other than this Article which establishes a different rule for an account debtor who is an individual and who incurred the obligation primarily for personal, family, or household purposes.

(d) **Omission of required statement in consumer transaction.** In a consumer transaction, if a record evidences the account debtor's obligation, law other than this Article requires that the record include a statement to the effect that the account debtor's recovery against an assignee with respect to claims and defenses against the assignor may not exceed amounts paid by the account debtor under the record, and the record does not include such a statement, the extent to which a claim of an account debtor against the assignor may be asserted against an assignee is determined as if the record included such a statement.

(e) **Inapplicability to health-care-insurance receivable.** This section does not apply to an assignment of a health-care-insurance receivable. [2000 c 250 § 9A-404.]

**62A.9A-405 Modification of assigned contract.** (a) **Effect of modification on assignee.** A modification of or substitution for an assigned contract is effective against an assignee if made in good faith. The assignee acquires corresponding rights under the modified or substituted contract. The assignment may provide that the modification or substitution is a breach of contract by the assignor. This subsection is subject to subsections (b) through (d) of this section.

(b) **Applicability of subsection (a) of this section.** Subsection (a) of this section applies to the extent that:

- (1) The right to payment or a part thereof under an assigned contract has not been fully earned by performance; or
- (2) The right to payment or a part thereof has been fully earned by performance and the account debtor has not received notification of the assignment under RCW 62A.9A-406(a).

(c) **Rule for individual under other law.** This section is subject to law other than this Article which establishes a different rule for an account debtor who is an individual and who incurred the obligation primarily for personal, family, or household purposes.

(d) **Inapplicability to health-care-insurance receivable.** This section does not apply to an assignment of a health-care-insurance receivable. [2000 c 250 § 9A-405.]

**62A.9A-406 Discharge of account debtor; notification of assignment; identification and proof of assignment; restrictions on assignment of accounts, chattel paper, payment intangibles, and promissory notes ineffective.** (a) **Discharge of account debtor; effect of notification.** Subject to subsections (b) through (j) of this section, an account debtor on an account, chattel paper, or a payment intangible may discharge its obligation by paying the assignor until, but not after, the account debtor receives a notification, authenticated by the assignor or the assignee, that the amount due or to become due has been assigned and that payment is to be made to the assignee. After receipt of

the notification, the account debtor may discharge its obligation by paying the assignee and may not discharge the obligation by paying the assignor.

(b) **When notification ineffective.** Subject to subsection (h) of this section, notification is ineffective under subsection (a) of this section:

(1) If it does not reasonably identify the rights assigned;

(2) To the extent that an agreement between an account debtor and a seller of a payment intangible limits the account debtor's duty to pay a person other than the seller and the limitation is effective under law other than this Article; or

(3) At the option of an account debtor, if the notification notifies the account debtor to make less than the full amount of any installment or other periodic payment to the assignee, even if:

(A) Only a portion of the account, chattel paper, or payment intangible has been assigned to that assignee;

(B) A portion has been assigned to another assignee; or

(C) The account debtor knows that the assignment to that assignee is limited.

(c) **Proof of assignment.** Subject to subsection (h) of this section, if requested by the account debtor, an assignee shall seasonably furnish reasonable proof that the assignment has been made. Unless the assignee complies, the account debtor may discharge its obligation by paying the assignor, even if the account debtor has received a notification under subsection (a) of this section.

(d) **Term restricting assignment generally ineffective.** Except as otherwise provided in subsection (e) of this section and RCW 62A.2A-303 and 62A.9A-407, and subject to subsections (h) and (j) of this section, a term in an agreement between an account debtor and an assignor or in a promissory note is ineffective to the extent that it:

(1) Prohibits, restricts, or requires the consent of the account debtor or person obligated on the promissory note to the assignment or transfer of, or the creation, attachment, perfection, or enforcement of a security interest in, the account, chattel paper, payment intangible, or promissory note; or

(2) Provides that the assignment or transfer or the creation, attachment, perfection, or enforcement of the security interest may give rise to a default, breach, right of recoupment, claim, defense, termination, right of termination, or remedy under the account, chattel paper, payment intangible, or promissory note.

(e) **Inapplicability of subsection (d) to certain sales.** Subsection (d) of this section does not apply to the sale of a payment intangible or promissory note.

(f) [Reserved]

(g) **Subsection (b)(3) not waivable.** Subject to subsection (h) of this section, an account debtor may not waive or vary its option under subsection (b)(3) of this section.

(h) **Rule for individual under other law.** This section is subject to law other than this Article which establishes a different rule for an account debtor who is an individual and who incurred the obligation primarily for personal, family, or household purposes.

(i) **Inapplicability to health-care-insurance receivable.** This section does not apply to an assignment of a health-care-insurance receivable.

(j)(1) **Inapplicability of subsection (d) of this section to certain transactions.** After July 1, 2003, subsection (d) of

this section does not apply to the assignment or transfer of or creation of a security interest in:

(A) A claim or right to receive compensation for injuries or sickness as described in 26 U.S.C. Sec. 104(a)(1) or (2); or

(B) A claim or right to receive benefits under a special needs trust as described in 42 U.S.C. Sec. 1396p(d)(4).

(2) This subsection will not affect a transfer of structured settlement payment rights under chapter 19.205 RCW. [2003 c 87 § 1; 2001 c 32 § 34; 2000 c 250 § 9A-406.]

**Effective date—2003 c 87:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 2003." [2003 c 87 § 3.]

**Effective date—2001 c 32:** See note following RCW 62A.9A-102.

**62A.9A-407 Restrictions on creation or enforcement of security interest in leasehold interest or in lessor's residual interest.** (a) **Term restricting assignment generally ineffective.** Except as otherwise provided in subsection (b) of this section, a term in a lease agreement is ineffective to the extent that it:

(1) Prohibits, restricts, or requires the consent of a party to the lease to the assignment or transfer of, or the creation, attachment, perfection, or enforcement of a security interest in, an interest of a party under the lease contract or in the lessor's residual interest in the goods; or

(2) Provides that the assignment or transfer or the creation, attachment, perfection, or enforcement of the security interest may give rise to a default, breach, right of recoupment, claim, defense, termination, right of termination, or remedy under the lease.

(b) **Effectiveness of certain terms.** Except as otherwise provided in RCW 62A.2A-303(7), a term described in subsection (a)(2) of this section is effective to the extent that there is:

(1) A transfer by the lessee of the lessee's right of possession or use of the goods in violation of the term; or

(2) A delegation of a material performance of either party to the lease contract in violation of the term.

(c) **Security interest not material impairment.** The creation, attachment, perfection, or enforcement of a security interest in the lessor's interest under the lease contract or the lessor's residual interest in the goods is not a transfer that materially impairs the lessee's prospect of obtaining return performance or materially changes the duty of or materially increases the burden or risk imposed on the lessee within the purview of RCW 62A.2A-303(4) unless, and then only to the extent that, enforcement actually results in a delegation of material performance of the lessor. [2001 c 32 § 35; 2000 c 250 § 9A-407.]

**Effective date—2001 c 32:** See note following RCW 62A.9A-102.

**62A.9A-408 Restrictions on assignment of promissory notes, health-care-insurance receivables, and certain general intangibles ineffective.** (a) **Term restricting assignment generally ineffective.** Except as otherwise provided in subsection (b) of this section, a term in a promissory note or in an agreement between an account debtor and a debtor which relates to a health-care-insurance receivable or a general intangible, including a contract, permit, license, or franchise, and which term prohibits, restricts, or requires the

consent of the person obligated on the promissory note or the account debtor to, the assignment or transfer of, or creation, attachment, or perfection of a security interest in, the promissory note, health-care-insurance receivable, or general intangible, is ineffective to the extent that the term:

(1) Would impair the creation, attachment, or perfection of a security interest; or

(2) Provides that the assignment or transfer or the creation, attachment, or perfection of the security interest may give rise to a default, breach, right of recoupment, claim, defense, termination, right of termination, or remedy under the promissory note, health-care-insurance receivable, or general intangible.

(b) **Applicability of subsection (a) of this section to sales of certain rights to payment.** Subsection (a) of this section applies to a security interest in a payment intangible or promissory note only if the security interest arises out of a sale of the payment intangible or promissory note.

(c) **Legal restrictions on assignment generally ineffective.** A rule of law, statute, or regulation that prohibits, restricts, or requires the consent of a government, governmental body or official, person obligated on a promissory note, or account debtor to the assignment or transfer of, or creation of a security interest in, a promissory note, health-care-insurance receivable, or general intangible, including a contract, permit, license, or franchise between an account debtor and a debtor, is ineffective to the extent that the rule of law, statute, or regulation:

(1) Would impair the creation, attachment, or perfection of a security interest; or

(2) Provides that the assignment or transfer or the creation, attachment, or perfection of the security interest may give rise to a default, breach, right of recoupment, claim, defense, termination, right of termination, or remedy under the promissory note, health-care-insurance receivable, or general intangible.

(d) **Limitation on ineffectiveness under subsections (a) and (c) of this section.** To the extent that a term in a promissory note or in an agreement between an account debtor and a debtor which relates to a health-care-insurance receivable or general intangible or a rule of law, statute, or regulation described in subsection (c) of this section would be effective under law other than this Article but is ineffective under subsection (a) or (c) of this section, the creation, attachment, or perfection of a security interest in the promissory note, health-care-insurance receivable, or general intangible:

(1) Is not enforceable against the person obligated on the promissory note or the account debtor;

(2) Does not impose a duty or obligation on the person obligated on the promissory note or the account debtor;

(3) Does not require the person obligated on the promissory note or the account debtor to recognize the security interest, pay or render performance to the secured party, or accept payment or performance from the secured party;

(4) Does not entitle the secured party to use or assign the debtor's rights under the promissory note, health-care-insurance receivable, or general intangible, including any related information or materials furnished to the debtor in the transaction giving rise to the promissory note, health-care-insurance receivable, or general intangible;

(5) Does not entitle the secured party to use, assign, possess, or have access to any trade secrets or confidential information of the person obligated on the promissory note or the account debtor; and

(6) Does not entitle the secured party to enforce the security interest in the promissory note, health-care-insurance receivable, or general intangible.

(e)(1) **Inapplicability of subsections (a) and (c) of this section to certain payment intangibles.** After July 1, 2003, subsections (a) and (c) of this section do not apply to the assignment or transfer of or creation of a security interest in:

(A) A claim or right to receive compensation for injuries or sickness as described in 26 U.S.C. Sec. 104(a)(1) or (2); or

(B) A claim or right to receive benefits under a special needs trust as described in 42 U.S.C. Sec. 1396p(d)(4).

(2) This subsection will not affect a transfer of structured settlement payment rights under chapter 19.205 RCW. [2003 c 87 § 2; 2000 c 250 § 9A-408.]

**Effective date—2003 c 87:** See note following RCW 62A.9A-406.

**62A.9A-409 Restrictions on assignment of letter-of-credit rights ineffective.** (a) **Term or law restricting assignment generally ineffective.** A term in a letter of credit or a rule of law, statute, regulation, custom, or practice applicable to the letter of credit which prohibits, restricts, or requires the consent of an applicant, issuer, or nominated person to a beneficiary's assignment of or creation of a security interest in a letter-of-credit right is ineffective to the extent that the term or rule of law, statute, regulation, custom, or practice:

(1) Would impair the creation, attachment, or perfection of a security interest in the letter-of-credit right; or

(2) Provides that the assignment or the creation, attachment, or perfection of the security interest may give rise to a default, breach, right of recoupment, claim, defense, termination, right of termination, or remedy under the letter-of-credit right.

(b) **Limitation on ineffectiveness under subsection (a) of this section.** To the extent that a term in a letter of credit is ineffective under subsection (a) of this section but would be effective under law other than this Article or a custom or practice applicable to the letter of credit, to the transfer of a right to draw or otherwise demand performance under the letter of credit, or to the assignment of a right to proceeds of the letter of credit, the creation, attachment, or perfection of a security interest in the letter-of-credit right:

(1) Is not enforceable against the applicant, issuer, nominated person, or transferee beneficiary;

(2) Imposes no duties or obligations on the applicant, issuer, nominated person, or transferee beneficiary; and

(3) Does not require the applicant, issuer, nominated person, or transferee beneficiary to recognize the security interest, pay or render performance to the secured party, or accept payment or other performance from the secured party. [2000 c 250 § 9A-409.]

PART 5  
FILING

**62A.9A-501 Filing office.** (a) **Filing offices.** Except as otherwise provided in subsection (b) of this section, if the local law of this state governs perfection of a security interest or agricultural lien, the office in which to file a financing statement to perfect the security interest or agricultural lien is:

(1) The office designated for the filing or recording of a record of a mortgage on the related real property, if:

(A) The collateral is as-extracted collateral or timber to be cut; or

(B) The financing statement is filed as a fixture filing and the collateral is goods that are or are to become fixtures; or

(2) The department of licensing, in all other cases, including a case in which the collateral is goods that are or are to become fixtures and the financing statement is not filed as a fixture filing.

(b) **Filing office for transmitting utilities.** The office in which to file a financing statement to perfect a security interest in collateral, including fixtures, of a transmitting utility is the department of licensing. The financing statement also constitutes a fixture filing as to the collateral indicated in the financing statement which is or is to become fixtures. [2000 c 250 § 9A-501.]

**62A.9A-502 Contents of financing statement; record of mortgage as financing statement; time of filing financing statement.** (a) **Sufficiency of financing statement.** Subject to subsection (b) of this section, a financing statement is sufficient only if it:

(1) Provides the name of the debtor;

(2) Provides the name of the secured party or a representative of the secured party; and

(3) Indicates the collateral covered by the financing statement.

(b) **Real-property-related financing statements.** Except as otherwise provided in RCW 62A.9A-501(b), to be sufficient, a financing statement that covers as-extracted collateral or timber to be cut, or which is filed as a fixture filing and covers goods that are or are to become fixtures, must satisfy subsection (a) of this section and also:

(1) Indicate that it covers this type of collateral;

(2) Indicate that it is to be filed for record in the real property records;

(3) Provide a description of the real property to which the collateral is related sufficient to give constructive notice of a mortgage under the law of this state if the description were contained in a record of the mortgage of the real property; and

(4) If the debtor does not have an interest of record in the real property, provide the name of a record owner.

(c) **Record of mortgage as financing statement.** A record of a mortgage is effective, from the date of recording, as a financing statement filed as a fixture filing or as a financing statement covering as-extracted collateral or timber to be cut only if:

(1) The record indicates the goods or accounts that it covers;

(2) The goods are or are to become fixtures related to the real property described in the record or the collateral is related to the real property described in the record and is as-extracted collateral or timber to be cut;

(3) The record satisfies the requirements for a financing statement in this section other than an indication that it is to be filed in the real property records; and

(4) The record is recorded.

(d) **Filing before security agreement or attachment.** A financing statement may be filed before a security agreement is made or a security interest otherwise attaches. [2000 c 250 § 9A-502.]

**62A.9A-503 Name of debtor and secured party.** (a) **Sufficiency of debtor's name.** A financing statement sufficiently provides the name of the debtor:

(1) If the debtor is a registered organization, only if the financing statement provides the name of the debtor indicated on the public record of the debtor's jurisdiction of organization which shows the debtor to have been organized;

(2) If the debtor is a decedent's estate, only if the financing statement provides the name of the decedent and indicates that the debtor is an estate;

(3) If the debtor is a trust or a trustee acting with respect to property held in trust, only if the financing statement:

(A) Provides the name specified for the trust in its organic documents or, if no name is specified, provides the name of the settlor and additional information sufficient to distinguish the debtor from other trusts having one or more of the same settlors; and

(B) Indicates, in the debtor's name or otherwise, that the debtor is a trust or is a trustee acting with respect to property held in trust; and

(4) In other cases:

(A) If the debtor has a name, only if it provides the individual or organizational name of the debtor; and

(B) If the debtor does not have a name, only if it provides the names of the partners, members, associates, or other persons comprising the debtor.

(b) **Additional debtor-related information.** A financing statement that provides the name of the debtor in accordance with subsection (a) of this section is not rendered ineffective by the absence of:

(1) A trade name or other name of the debtor; or

(2) Unless required under subsection (a)(4)(B) of this section, names of partners, members, associates, or other persons comprising the debtor.

(c) **Debtor's trade name insufficient.** A financing statement that provides only the debtor's trade name does not sufficiently provide the name of the debtor.

(d) **Representative capacity.** Failure to indicate the representative capacity of a secured party or representative of a secured party does not affect the sufficiency of a financing statement.

(e) **Multiple debtors and secured parties.** A financing statement may provide the name of more than one debtor and the name of more than one secured party. [2000 c 250 § 9A-503.]

**62A.9A-504 Indication of collateral.** A financing statement sufficiently indicates the collateral that it covers if the financing statement provides:

(1) A description of the collateral pursuant to RCW 62A.9A-108; or

(2) An indication that the financing statement covers all assets or all personal property. [2000 c 250 § 9A-504.]

**62A.9A-505 Filing and compliance with other statutes and treaties for consignments, leases, other bailments, and other transactions.** (a) **Use of terms other than "debtor" and "secured party."** A consignor, lessor, or other bailor of goods, a licensor, or a buyer of a payment intangible or promissory note may file a financing statement, or may comply with a statute or treaty described in RCW 62A.9A-311(a), using the terms "consignor," "consignee," "lessor," "lessee," "bailor," "bailee," "licensor," "licensee," "owner," "registered owner," "buyer," "seller," or words of similar import, instead of the terms "secured party" and "debtor."

(b) **Effect of financing statement under subsection (a) of this section.** This part applies to the filing of a financing statement under subsection (a) of this section and, as appropriate, to compliance that is equivalent to filing a financing statement under RCW 62A.9A-311(b), but the filing or compliance is not of itself a factor in determining whether the collateral secures an obligation. If it is determined for another reason that the collateral secures an obligation, a security interest held by the consignor, lessor, bailor, licensor, owner, or buyer which attaches to the collateral is perfected by the filing or compliance. [2000 c 250 § 9A-505.]

**62A.9A-506 Effect of errors or omissions.** (a) **Minor errors and omissions.** A financing statement substantially satisfying the requirements of this part is effective, even if it has minor errors or omissions, unless the errors or omissions make the financing statement seriously misleading.

(b) **Financing statement seriously misleading.** Except as otherwise provided in subsection (c) of this section, a financing statement that fails sufficiently to provide the name of the debtor in accordance with RCW 62A.9A-503(a) is seriously misleading.

(c) **Financing statement not seriously misleading.** If a search of the records of the filing office under the debtor's correct name, using the filing office's standard search logic, if any, would disclose a financing statement that fails sufficiently to provide the name of the debtor in accordance with RCW 62A.9A-503(a), the name provided does not make the financing statement seriously misleading.

(d) **"Debtor's correct name."** For purposes of RCW 62A.9A-508(b), the "debtor's correct name" in subsection (c) of this section means the correct name of the new debtor. [2000 c 250 § 9A-506.]

**62A.9A-507 Effect of certain events on effectiveness of financing statement.** (a) **Disposition.** A filed financing statement remains effective with respect to collateral that is sold, exchanged, leased, licensed, or otherwise disposed of and in which a security interest or agricultural lien continues, even if the secured party knows of or consents to the disposition.

(b) **Information becoming seriously misleading.** Except as otherwise provided in subsection (c) of this section and RCW 62A.9A-508, a financing statement is not rendered ineffective if, after the financing statement is filed, the information provided in the financing statement becomes seriously misleading under RCW 62A.9A-506.

(c) **Change in debtor's name.** If a debtor so changes its name that a filed financing statement becomes seriously misleading under RCW 62A.9A-506:

(1) The financing statement is effective to perfect a security interest in collateral acquired by the debtor before, or within four months after, the change; and

(2) The financing statement is not effective to perfect a security interest in collateral acquired by the debtor more than four months after the change, unless an amendment to the financing statement which renders the financing statement not seriously misleading is filed within four months after the change. [2000 c 250 § 9A-507.]

**62A.9A-508 Effectiveness of financing statement if new debtor becomes bound by security agreement.** (a) **Financing statement naming original debtor.** Except as otherwise provided in this section, a filed financing statement naming an original debtor is effective to perfect a security interest in collateral in which a new debtor has or acquires rights to the extent that the financing statement would have been effective had the original debtor acquired rights in the collateral.

(b) **Financing statement becoming seriously misleading.** If the difference between the name of the original debtor and that of the new debtor causes a filed financing statement that is effective under subsection (a) of this section to be seriously misleading under RCW 62A.9A-506:

(1) The financing statement is effective to perfect a security interest in collateral acquired by the new debtor before, and within four months after, the new debtor becomes bound under RCW 62A.9A-203(d); and

(2) The financing statement is not effective to perfect a security interest in collateral acquired by the new debtor more than four months after the new debtor becomes bound under RCW 62A.9A-203(d) unless an initial financing statement providing the name of the new debtor is filed before the expiration of that time.

(c) **When section not applicable.** This section does not apply to collateral as to which a filed financing statement remains effective against the new debtor under RCW 62A.9A-507(a). [2000 c 250 § 9A-508.]

**62A.9A-509 Persons entitled to file a record.** (a) **Person entitled to file record.** A person may file an initial financing statement, amendment that adds collateral covered by a financing statement, or amendment that adds a debtor to a financing statement only if:

(1) The debtor authorizes the filing in an authenticated record or pursuant to subsection (b) or (c) of this section; or

(2) The person holds an agricultural lien that has become effective at the time of filing and the financing statement covers only collateral in which the person holds an agricultural lien.

(b) **Security agreement as authorization.** By authenticating or becoming bound as debtor by a security agreement, a debtor or new debtor authorizes the filing of an initial financing statement, and an amendment, covering:

(1) The collateral described in the security agreement; and

(2) Property that becomes collateral under RCW 62A.9A-315(a)(2), whether or not the security agreement expressly covers proceeds.

(c) **Acquisition of collateral as authorization.** By acquiring collateral in which a security interest or agricultural lien continues under RCW 62A.9A-315(a)(1), a debtor authorizes the filing of an initial financing statement, and an amendment, covering the collateral and property that becomes collateral under RCW 62A.9A-315(a)(2).

(d) **Person entitled to file certain amendments.** A person may file an amendment other than an amendment that adds collateral covered by a financing statement or an amendment that adds a debtor to a financing statement only if:

(1) The secured party of record authorizes the filing; or

(2) The amendment is a termination statement for a financing statement as to which the secured party of record has failed to file or send a termination statement as required by RCW 62A.9A-513 (a) or (c), the debtor authorizes the filing, and the termination statement indicates that the debtor authorized it to be filed.

(e) **Multiple secured parties of record.** If there is more than one secured party of record for a financing statement, each secured party of record may authorize the filing of an amendment under subsection (d) of this section. [2001 c 32 § 36; 2000 c 250 § 9A-509.]

**Effective date—2001 c 32:** See note following RCW 62A.9A-102.

**62A.9A-510 Effectiveness of filed record.** (a) **Filed record effective if authorized.** A filed record is effective only to the extent that it was filed by a person that may file it under RCW 62A.9A-509.

(b) **Authorization by one secured party of record.** A record authorized by one secured party of record does not affect the financing statement with respect to another secured party of record.

(c) **Continuation statement not timely filed.** A continuation statement that is not filed within the six-month period prescribed by RCW 62A.9A-515(d) is ineffective. [2000 c 250 § 9A-510.]

**62A.9A-511 Secured party of record.** (a) **Secured party of record.** A secured party of record with respect to a financing statement is a person whose name is provided as the name of the secured party or a representative of the secured party in an initial financing statement that has been filed. If an initial financing statement is filed under RCW 62A.9A-514(a), the assignee named in the initial financing statement is the secured party of record with respect to the financing statement.

(b) **Amendment naming secured party of record.** If an amendment of a financing statement which provides the name of a person as a secured party or a representative of a secured party is filed, the person named in the amendment is a secured party of record. If an amendment is filed under

RCW 62A.9A-514(b), the assignee named in the amendment is a secured party of record.

(c) **Amendment deleting secured party of record.** A person remains a secured party of record until the filing of an amendment of the financing statement which deletes the person. [2000 c 250 § 9A-511.]

**62A.9A-512 Amendment of financing statement.** (a) **Amendment of information in financing statement.** Subject to RCW 62A.9A-509, a person may add or delete collateral covered by, continue or terminate the effectiveness of, or, subject to subsection (e) of this section, otherwise amend the information provided in, a financing statement by filing an amendment that:

(1) Identifies, by its file number, the initial financing statement to which the amendment relates; and

(2) If the amendment relates to an initial financing statement filed or recorded in a filing office described in RCW 62A.9A-501(a)(1), provides the information specified in RCW 62A.9A-502(b).

(b) **Period of effectiveness not affected.** Except as otherwise provided in RCW 62A.9A-515, the filing of an amendment does not extend the period of effectiveness of the financing statement.

(c) **Effectiveness of amendment adding collateral.** A financing statement that is amended by an amendment that adds collateral is effective as to the added collateral only from the date of the filing of the amendment.

(d) **Effectiveness of amendment adding debtor.** A financing statement that is amended by an amendment that adds a debtor is effective as to the added debtor only from the date of the filing of the amendment.

(e) **Certain amendments ineffective.** An amendment is ineffective to the extent it:

(1) Purports to delete all debtors and fails to provide the name of a debtor to be covered by the financing statement; or

(2) Purports to delete all secured parties of record and fails to provide the name of a new secured party of record. [2000 c 250 § 9A-512.]

**62A.9A-513 Termination statement.** (a) **Consumer goods.** A secured party shall cause the secured party of record for a financing statement to file a termination statement for the financing statement if the financing statement covers consumer goods and:

(1) There is no obligation secured by the collateral covered by the financing statement and no commitment to make an advance, incur an obligation, or otherwise give value; or

(2) The debtor did not authorize the filing of the initial financing statement.

(b) **Time for compliance with subsection (a) of this section.** To comply with subsection (a) of this section, a secured party shall cause the secured party of record to file the termination statement:

(1) Within one month after there is no obligation secured by the collateral covered by the financing statement and no commitment to make an advance, incur an obligation, or otherwise give value; or

(2) If earlier, within twenty days after the secured party receives an authenticated demand from a debtor.

(c) **Other collateral.** In cases not governed by subsection (a) of this section, within twenty days after a secured party receives an authenticated demand from a debtor, the secured party shall cause the secured party of record for a financing statement to send to the debtor a termination statement for the financing statement or file the termination statement in the filing office if:

(1) Except in the case of a financing statement covering accounts or chattel paper that has been sold or goods that are the subject of a consignment, there is no obligation secured by the collateral covered by the financing statement and no commitment to make an advance, incur an obligation, or otherwise give value;

(2) The financing statement covers accounts or chattel paper that has been sold but as to which the account debtor or other person obligated has discharged its obligation;

(3) The financing statement covers goods that were the subject of a consignment to the debtor but are not in the debtor's possession; or

(4) The debtor did not authorize the filing of the initial financing statement.

(d) **Effect of filing termination statement.** Except as otherwise provided in RCW 62A.9A-510, upon the filing of a termination statement with the filing office, the financing statement to which the termination statement relates ceases to be effective. Except as otherwise provided in RCW 62A.9A-510, for purposes of RCW 62A.9A-519(g), 62A.9A-522(a), and 62A.9A-523(c), the filing with the filing office of a termination statement relating to a financing statement that indicates that the debtor is a transmitting utility also causes the effectiveness of the financing statement to lapse. [2001 c 32 § 37; 2000 c 250 § 9A-513.]

**Effective date—2001 c 32:** See note following RCW 62A.9A-102.

**62A.9A-514 Assignment of powers of secured party of record.** (a) **Assignment reflected on initial financing statement.** Except as otherwise provided in subsection (c) of this section, an initial financing statement may reflect an assignment of all of the secured party's power to authorize an amendment to the financing statement by providing the name and mailing address of the assignee as the name and address of the secured party.

(b) **Assignment of filed financing statement.** Except as otherwise provided in subsection (c) of this section, a secured party of record may assign of record all or part of its power to authorize an amendment to a financing statement by filing in the filing office an amendment of the financing statement which:

(1) Identifies, by its file number, the initial financing statement to which it relates;

(2) Provides the name of the assignor; and

(3) Provides the name and mailing address of the assignee.

(c) **Assignment of record of mortgage.** An assignment of record of a security interest in a fixture covered by a record of a mortgage which is effective as a financing statement filed as a fixture filing under RCW 62A.9A-502(c) may be made only by an assignment of record of the mortgage in the manner provided by law of this state other than the Uniform Commercial Code. [2000 c 250 § 9A-514.]

(2010 Ed.)

**62A.9A-515 Duration and effectiveness of financing statement; effect of lapsed financing statement.** (a) **Five-year effectiveness.** Except as otherwise provided in subsections (b), (e), (f), and (g) of this section, a filed financing statement is effective for a period of five years after the date of filing.

(b) [Reserved]

(c) **Lapse and continuation of financing statement.** The effectiveness of a filed financing statement lapses on the expiration of the period of its effectiveness unless before the lapse a continuation statement is filed pursuant to subsection (d) of this section. Upon lapse, a financing statement ceases to be effective and any security interest or agricultural lien that was perfected by the financing statement becomes unperfected, unless the security interest is perfected otherwise. If the security interest or agricultural lien becomes unperfected upon lapse, it is deemed never to have been perfected as against a purchaser of the collateral for value.

(d) **When continuation statement may be filed.** A continuation statement may be filed only within six months before the expiration of the five-year period specified in subsection (a) of this section or the thirty-year period specified in subsection (b) of this section, whichever is applicable.

(e) **Effect of filing continuation statement.** Except as otherwise provided in RCW 62A.9A-510, upon timely filing of a continuation statement, the effectiveness of the initial financing statement continues for a period of five years commencing on the day on which the financing statement would have become ineffective in the absence of the filing. Upon the expiration of the five-year period, the financing statement lapses in the same manner as provided in subsection (c) of this section, unless, before the lapse, another continuation statement is filed pursuant to subsection (d) of this section. Succeeding continuation statements may be filed in the same manner to continue the effectiveness of the initial financing statement.

(f) **Transmitting utility financing statement.** If a debtor is a transmitting utility and a filed financing statement so indicates, the financing statement is effective until a termination statement is filed.

(g) **Record of mortgage as financing statement.** A record of a mortgage that is effective as a financing statement filed as a fixture filing under RCW 62A.9A-502(c) remains effective as a financing statement filed as a fixture filing until the mortgage is released or satisfied of record or its effectiveness otherwise terminates as to the real property. [2000 c 250 § 9A-515.]

**62A.9A-516 What constitutes filing; effectiveness of filing.** (a) **What constitutes filing.** Except as otherwise provided in subsection (b) of this section, communication of a record to a filing office and tender of the filing fee or acceptance of the record by the filing office constitutes filing.

(b) **Refusal to accept record; filing does not occur.** Filing does not occur with respect to a record that a filing office refuses to accept because:

(1) The record is not communicated by a method or medium of communication authorized by the filing office;

(2) An amount equal to or greater than the applicable filing fee is not tendered or, in the case of a filing office

described in RCW 62A.9A-501(a)(1), an amount equal to the applicable filing fee is not tendered;

(3) The filing office is unable to index the record because:

(A) In the case of an initial financing statement, the record does not provide a name for the debtor;

(B) In the case of an amendment or correction statement, the record:

(i) Does not identify the initial financing statement as required by RCW 62A.9A-512 or 62A.9A-518, as applicable; or

(ii) Identifies an initial financing statement whose effectiveness has lapsed under RCW 62A.9A-515;

(C) In the case of an initial financing statement that provides the name of a debtor identified as an individual or an amendment that provides a name of a debtor identified as an individual which was not previously provided in the financing statement to which the record relates, the record does not identify the debtor's last name; or

(D) In the case of a record filed or recorded in the filing office described in RCW 62A.9A-501(a)(1), the record does not provide a name for the debtor or a sufficient description of the real property to which the record relates;

(4) In the case of an initial financing statement or an amendment that adds a secured party of record, the record does not provide a name and mailing address for the secured party of record;

(5) In the case of an initial financing statement or an amendment that provides a name of a debtor which was not previously provided in the financing statement to which the amendment relates, the record does not:

(A) Provide a mailing address for the debtor;

(B) Indicate whether the debtor is an individual or an organization; or

(C) If the financing statement indicates that the debtor is an organization, provide:

(i) A type of organization for the debtor;

(ii) A jurisdiction of organization for the debtor; or

(iii) An organizational identification number for the debtor or indicate that the debtor has none;

(6) In the case of an assignment reflected in an initial financing statement under RCW 62A.9A-514(a) or an amendment filed under RCW 62A.9A-514(b), the record does not provide a name and mailing address for the assignee; or

(7) In the case of a continuation statement, the record is not filed within the six-month period prescribed by RCW 62A.9A-515(d).

**(c) Rules applicable to subsection (b) of this section.** For purposes of subsection (b) of this section:

(1) A record does not provide information if the filing office is unable to read or decipher the information; and

(2) A record that does not indicate that it is an amendment or identify an initial financing statement to which it relates, as required by RCW 62A.9A-512, 62A.9A-514, or 62A.9A-518, is an initial financing statement.

**(d) Refusal to accept record; record effective as filed record.** A record that is communicated to the filing office with tender of the filing fee, but which the filing office refuses to accept for a reason other than one set forth in subsection (b) of this section, is effective as a filed record except

as against a purchaser of the collateral which gives value in reasonable reliance upon the absence of the record from the files. [2001 c 32 § 38; 2000 c 250 § 9A-516.]

**Effective date—2001 c 32:** See note following RCW 62A.9A-102.

**62A.9A-517 Effect of indexing errors.** The failure of the filing office to index a record correctly does not affect the effectiveness of the filed record. [2000 c 250 § 9A-517.]

**62A.9A-518 Claim concerning inaccurate or wrongfully filed record.** (a) **Correction statement.** A person may file in the filing office a correction statement with respect to a record indexed there under the person's name if the person believes that the record is inaccurate or was wrongfully filed.

(b) **Sufficiency of correction statement.** A correction statement must:

(1) Identify the record to which it relates by the file number assigned to the initial financing statement to which the record relates;

(2) Indicate that it is a correction statement; and

(3) Provide the basis for the person's belief that the record is inaccurate and indicate the manner in which the person believes the record should be amended to cure any inaccuracy or provide the basis for the person's belief that the record was wrongfully filed.

(c) **Record not affected by correction statement.** The filing of a correction statement does not affect the effectiveness of an initial financing statement or other filed record. [2000 c 250 § 9A-518.]

**62A.9A-519 Numbering, maintaining, and indexing records; communicating information provided in records.** (a) **Filing office duties.** For each record filed in a filing office, the filing office shall:

(1) Assign a unique number to the filed record;

(2) Create a record that bears the number assigned to the filed record and the date and time of filing;

(3) Maintain the filed record for public inspection; and

(4) Index the filed record in accordance with subsections (c), (d), and (e) of this section.

(b) **File number.** A file number assigned after January 1, 2002, must include a digit that:

(1) Is mathematically derived from or related to the other digits of the file number; and

(2) Aids the filing office in determining whether a number communicated as the file number includes a single-digit or transpositional error.

(c) **Indexing: General.** Except as otherwise provided in subsections (d) and (e) of this section, the filing office shall:

(1) Index an initial financing statement according to the name of the debtor and index all filed records relating to the initial financing statement in a manner that associates with one another an initial financing statement and all filed records relating to the initial financing statement; and

(2) Index a record that provides a name of a debtor which was not previously provided in the financing statement to which the record relates also according to the name that was not previously provided.



1c. MAILING ADDRESS CITY STATE POSTAL CODE COUNTRY

1d. TAX ID #: ADD'L INFO RE 1e. TYPE OF 1f. JURISDICTION OF 1g. ORGANIZATIONAL  
 SSN OR EIN ORGANIZATION ORGANIZATION ORGANIZATION ID #, If any  NONE

2. ADDITIONAL DEBTOR'S EXACT FULL LEGAL NAME - insert only one debtor name (2a or 2b) - do not abbreviate or combine names

2a. ORGANIZATION'S NAME

OR

2b. INDIVIDUAL'S LAST NAME FIRST NAME MIDDLE NAME SUFFIX

2c. MAILING ADDRESS CITY STATE POSTAL CODE COUNTRY

2d. TAX ID #: ADD'L INFO RE 2e. TYPE OF 2f. JURISDICTION OF 2g. ORGANIZATIONAL  
 SSN OR EIN ORGANIZATION ORGANIZATION ORGANIZATION ID #, If any  NONE

3. SECURED PARTY'S NAME (or NAME of TOTAL ASSIGNEE of ASSIGNOR S/P) - insert only one secured party name (3a or 3b)

3a. ORGANIZATION'S NAME

OR

3b. INDIVIDUAL'S LAST NAME FIRST NAME MIDDLE NAME SUFFIX

3c. MAILING ADDRESS CITY STATE POSTAL CODE COUNTRY

4. This FINANCING STATEMENT covers the following collateral:

5. ALTERNATIVE DESIGNATION [if applicable]:  LESSEE/LESSOR  CONSIGNEE/CONSIGNOR  
 BAILEE/BAILOR  SELLER/BUYER  AG. LIEN  NON-UCC FILING

6.  This FINANCING STATEMENT is to be filed [for record] (or recorded) in the REAL ESTATE RECORDS. Attach Addendum [if applicable]

7. Check to REQUEST SEARCH REPORT(S) on Debtor(s)  All Debtors  Debtor 1  Debtor 2  
 [Additional Fee] [optional]

8. OPTIONAL FILER REFERENCE DATA

NATIONAL UCC FINANCING STATEMENT (FORM UCC1) (REV. 07/29/98)

UCC FINANCING STATEMENT ADDENDUM  
 FOLLOW INSTRUCTIONS (front and back) CAREFULLY

9. NAME OF FIRST DEBTOR (1a or 1b) ON RELATED FINANCING STATEMENT

9a. ORGANIZATION'S NAME

OR

9b. INDIVIDUAL'S LAST NAME FIRST NAME MIDDLE NAME SUFFIX

10. MISCELLANEOUS:

THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

11. ADDITIONAL DEBTOR'S EXACT FULL LEGAL NAME - insert only one name (11a or 11b) - do not abbreviate or combine names

11a. ORGANIZATION'S NAME

OR

11b. INDIVIDUAL'S LAST NAME FIRST NAME MIDDLE NAME SUFFIX

11c. MAILING ADDRESS CITY STATE POSTAL CODE COUNTRY

11d. TAX ID #: ADD'L INFO RE 11e. TYPE OF 11f. JURISDICTION OF 11g. ORGANIZATIONAL  
 SSN OR EIN ORGANIZATION ORGANIZATION ORGANIZATION ID #, If any  NONE

12.  ADDITIONAL SECURED PARTY'S or  ASSIGNOR S/P'S NAME - insert only one name (12a or 12b)

12a. ORGANIZATION'S NAME

OR

12b. INDIVIDUAL'S LAST NAME FIRST NAME MIDDLE NAME SUFFIX

12c. MAILING ADDRESS CITY STATE POSTAL CODE COUNTRY

13. This FINANCING STATEMENT covers  timber to be cut or  as-extracted collateral, or is filed as a  fixture filing. 16. Additional collateral description:

14. Description of real estate:

15. Name and address of a RECORD OWNER of above-described real estate  
(if Debtor does not have a record interest):

17. Check only if applicable and check only one box.  
Debtor is a  Trust or  Trustee acting with respect  
to property held in trust or  Decedent's Estate

18. Check only if applicable and check only one box.  
 Debtor is a TRANSMITTING UTILITY  
 Filed in connection with a Manufactured-Home  
Transaction - effective 30 years  
 Filed in connection with a Public-Finance  
Transaction - effective 30 years

NATIONAL UCC FINANCING STATEMENT ADDENDUM (FORM UCC1Ad) (REV. 07/29/98)

**(b) Amendment form.** A filing office that accepts written records may not refuse to accept a written record in the following form and format except for a reason set forth in RCW 62A.9A-516(b):

UCC FINANCING STATEMENT AMENDMENT  
FOLLOW INSTRUCTIONS (front and back) CAREFULLY

A. NAME & PHONE OF CONTACT AT FILER [optional]

B. SEND ACKNOWLEDGMENT TO: (Name and Address)

THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

1a. INITIAL FINANCING STATEMENT FILE #

1b. This FINANCING STATEMENT AMENDMENT is  
to be filed [for record] (or recorded) in the  
 REAL ESTATE RECORDS.

2.  TERMINATION: Effectiveness of the Financing Statement identified above is terminated with respect to security interest(s) of the Secured Party authorizing this Termination Statement.

3.  CONTINUATION: Effectiveness of the Financing Statement identified above with respect to security interest(s) of the Secured Party authorizing this Continuation Statement is continued for the additional period provided by applicable law.

4.  ASSIGNMENT (full or partial): Give name of assignee in item 7a or 7b and address of assignee in item 7c; and also give name of assignor in item 9.

5. AMENDMENT (PARTY INFORMATION): This Amendment affects  Debtor or  Secured Party of record. Check only one of these two boxes.

Also check one of the following three boxes and provide appropriate information in items 6 and/or 7.

CHANGE name and/or address: Give current record name in item 6a or 6b; also give new name (if name changed) in item 7a or 7b and/or new address (if address change) in item 7c.

DELETE name: Give record name to be deleted in item 6a or 6b.

ADD name: Complete item 7a or 7b, and also item 7c; also complete items 7d-7g (if applicable).

6. CURRENT RECORD INFORMATION:

6a. ORGANIZATION'S NAME

OR

6b. INDIVIDUAL'S LAST NAME FIRST NAME MIDDLE NAME SUFFIX

7. CHANGED (NEW) OR ADDED INFORMATION:

7a. ORGANIZATION'S NAME

OR

7b. INDIVIDUAL'S LAST NAME FIRST NAME MIDDLE NAME SUFFIX

7c. MAILING ADDRESS CITY STATE POSTAL CODE COUNTRY

7d. TAX ID #: SSN OR EIN

ADD'L INFO RE ORGANIZATION DEBTOR

7e. TYPE OF ORGANIZATION

7f. JURISDICTION OF ORGANIZATION

7g. ORGANIZATIONAL ID #, If any

NONE

8. AMENDMENT (COLLATERAL CHANGE): check only one box.

Describe collateral  deleted or  added, or give entire  restated collateral description, or describe collateral  assigned.

9. NAME OF SECURED PARTY OF RECORD AUTHORIZING THIS AMENDMENT (name of assignor, if this is an Assignment). If this is an Amendment authorized by a Debtor which adds collateral or adds the authorizing Debtor, or if this is a Termination authorized by a Debtor, check here  and enter name of DEBTOR authorizing this Amendment.

9a. ORGANIZATION'S NAME

OR

9b. INDIVIDUAL'S LAST NAME FIRST NAME MIDDLE NAME SUFFIX

## 10. OPTIONAL FILER REFERENCE DATA

NATIONAL UCC FINANCING STATEMENT AMENDMENT (FORM UCC3) (REV. 07/29/98)

UCC FINANCING STATEMENT AMENDMENT ADDENDUM

FOLLOW INSTRUCTIONS (front and back) CAREFULLY

11. INITIAL FINANCING STATEMENT FILE #  
(same as item 1a on Amendment form)12. NAME OF PARTY AUTHORIZING THIS AMENDMENT  
(same as item 9 on Amendment form)

12a. ORGANIZATION'S NAME

OR

12b. INDIVIDUAL'S LAST NAME FIRST NAME MIDDLE NAME SUFFIX

13. Use this space for additional information

THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

NATIONAL UCC FINANCING STATEMENT AMENDMENT ADDENDUM (FORM UCC3Ad) (REV. 07/29/98)

[2000 c 250 § 9A-521.]

**62A.9A-522 Maintenance and destruction of records.**

(a) **Post-lapse maintenance and retrieval of information.** The filing office shall maintain a record of the information provided in a filed financing statement for at least one year after the effectiveness of the financing statement has lapsed under RCW 62A.9A-515 with respect to all secured parties of record. The record must be retrievable by using the name of the debtor and by using the file number assigned to the initial financing statement to which the record relates.

(b) **Destruction of written records.** Except to the extent that a statute governing disposition of public records provides otherwise, the filing office immediately may destroy any written record evidencing a financing statement. However, if the filing office destroys a written record, it shall maintain another record of the financing statement which complies with subsection (a) of this section. [2000 c 250 § 9A-522.]

**62A.9A-523 Information from filing office; sale or license of records.** (a) **Acknowledgment of filing written record.** If a person that files a written record requests an acknowledgment of the filing, the filing office shall send to the person an image of the record showing the number assigned to the record pursuant to RCW 62A.9A-519(a)(1) and the date and time of the filing of the record. However, if the person furnishes a copy of the record to the filing office, the filing office may instead:

(1) Note upon the copy the number assigned to the record pursuant to RCW 62A.9A-519(a)(1) and the date and time of the filing of the record; and

(2) Send the copy to the person.

(b) **Acknowledgment of filing other record.** If a person files a record other than a written record, the filing office shall communicate to the person an acknowledgment that provides:

(1) The information in the record;

(2) The number assigned to the record pursuant to RCW 62A.9A-519(a)(1); and

(3) The date and time of the filing of the record.

(c) **Communication of requested information.** The filing office shall communicate or otherwise make available in

a record the following information to any person that requests it:

(1) Whether there is on file on a date and time specified by the filing office, but not a date earlier than three business days before the filing office receives the request, any financing statement that:

(A) Designates a particular debtor or, if the request so states, designates a particular debtor at the address specified in the request;

(B) Has not lapsed under RCW 62A.9A-515 with respect to all secured parties of record; and

(C) If the request so states, has lapsed under RCW 62A.9A-515 and a record of which is maintained by the filing office under RCW 62A.9A-522(a);

(2) The date and time of filing of each financing statement; and

(3) The information provided in each financing statement.

(d) **Medium for communicating information.** In complying with its duty under subsection (c) of this section, the filing office may communicate information in any medium. However, if requested, the filing office shall communicate information by issuing a record that can be admitted into evidence in the courts of this state without extrinsic evidence of its authenticity.

(e) **Timeliness of filing office performance.** The filing office described in RCW 62A.9A-501(a)(2) shall perform the acts required by subsections (a) through (d) of this section at the time and in the manner prescribed by filing-office rule, but not later than two business days after the filing office receives the request.

(f) **Public availability of records.** At least weekly, the filing office described in RCW 62A.9A-501(a)(2) shall offer to sell or license to the public on a nonexclusive basis, in bulk, copies of all records filed in it under this part, in every medium from time to time available to the filing office. If information provided pursuant to this section includes a list of individuals, disclosure of the list is specifically authorized. [2001 c 32 § 40; 2000 c 250 § 9A-523.]

**Effective date—2001 c 32:** See note following RCW 62A.9A-102.

**62A.9A-524 Delay by filing office.** Delay by the filing office beyond a time limit prescribed by this part is excused if:

(1) The delay is caused by interruption of communication or computer facilities, war, emergency conditions, failure of equipment, or other circumstances beyond control of the filing office; and

(2) The filing office exercises reasonable diligence under the circumstances. [2000 c 250 § 9A-524.]

**62A.9A-525 Fees. (Expires July 1, 2015.) (a) Filing with department of licensing.** Except as otherwise provided in subsection (b) or (e) of this section, the fee for filing and indexing a record under this part is the fee set by department of licensing rule pursuant to subsection (f) of this section. Without limitation, different fees may be charged for:

(1) A record that is communicated in writing and consists of one or two pages;

(2) A record that is communicated in writing and consists of more than two pages, which fee may be a multiple of the fee described in (1) of this subsection; and

(3) A record that is communicated by another medium authorized by department of licensing rule, which fee may be a fraction of the fee described in (1) of this subsection.

(b) **Filing with other filing offices.** Except as otherwise provided in subsection (e) of this section, the fee for filing and indexing a record under this part that is filed in a filing office described in RCW 62A.9A-501(a)(1) is the fee that would otherwise be applicable to the recording of a mortgage in that filing office, as set forth in RCW 36.18.010.

(c) **Number of names.** The number of names required to be indexed does not affect the amount of the fee in subsections (a) and (b) of this section.

(d) **Response to information request.** The fee for responding to a request for information from a filing office, including for issuing a certificate showing, or otherwise communicating, whether there is on file any financing statement naming a particular debtor, is the fee set by department of licensing rule pursuant to subsection (f) of this section; provided however, if the request is to a filing office described in RCW 62A.9A-501(a)(1) and that office charges a different fee, then that different fee shall apply instead. Without limitation, different fees may be charged:

(1) If the request is communicated in writing;

(2) If the request is communicated by another medium authorized by filing-office rule; and

(3) If the request is for expedited service.

(e) **Record of mortgage.** This section does not require a fee with respect to a record of a mortgage which is effective as a financing statement filed as a fixture filing or as a financing statement covering as-extracted collateral or timber to be cut under RCW 62A.9A-502(c). However, the recording and satisfaction fees that otherwise would be applicable to the record of the mortgage apply.

(f) **Filing office rules.** (1) The department of licensing shall by rule set the fees called for in this section for filing with, and obtaining information from, the department of licensing. The director shall set fees at a sufficient level to defray the costs of administering the program. All receipts from fees collected under this title, except fees for services covered under RCW 62A.9A-501(a)(1), shall be deposited to

the uniform commercial code fund in the state treasury. Moneys in the fund may be spent only after appropriation and may be used only to administer the uniform commercial code program.

(2) In addition to fees on filings authorized under this section, the department of licensing shall impose a surcharge of eight dollars per filing for paper filings and a surcharge of three dollars per filing for electronic filings. The department shall deposit the proceeds from these surcharges in the financial fraud and identity theft crimes investigation and prosecution account created in RCW 43.330.300.

(g) **Transition.** This section continues the fee-setting authority conferred on the department of licensing by former \*RCW 62A.9-409 and nothing herein shall invalidate fees set by the department of licensing under the authority of former \*RCW 62A.9-409. [2008 c 290 § 2; 2000 c 250 § 9A-525.]

\*Reviser's note: RCW 62A.9-409 was repealed by 2000 c 250 § 9A-901, effective July 1, 2001.

Expiration date—2008 c 290: See note following RCW 43.330.300.

**62A.9A-525 Fees. (Effective July 1, 2015.) (a) Filing with department of licensing.** Except as otherwise provided in subsection (b) or (e) of this section, the fee for filing and indexing a record under this part is the fee set by department of licensing rule pursuant to subsection (f) of this section. Without limitation, different fees may be charged for:

(1) A record that is communicated in writing and consists of one or two pages;

(2) A record that is communicated in writing and consists of more than two pages, which fee may be a multiple of the fee described in (1) of this subsection; and

(3) A record that is communicated by another medium authorized by department of licensing rule, which fee may be a fraction of the fee described in (1) of this subsection.

(b) **Filing with other filing offices.** Except as otherwise provided in subsection (e) of this section, the fee for filing and indexing a record under this part that is filed in a filing office described in RCW 62A.9A-501(a)(1) is the fee that would otherwise be applicable to the recording of a mortgage in that filing office, as set forth in RCW 36.18.010.

(c) **Number of names.** The number of names required to be indexed does not affect the amount of the fee in subsections (a) and (b) of this section.

(d) **Response to information request.** The fee for responding to a request for information from a filing office, including for issuing a certificate showing, or otherwise communicating, whether there is on file any financing statement naming a particular debtor, is the fee set by department of licensing rule pursuant to subsection (f) of this section; provided however, if the request is to a filing office described in RCW 62A.9A-501(a)(1) and that office charges a different fee, then that different fee shall apply instead. Without limitation, different fees may be charged:

(1) If the request is communicated in writing;

(2) If the request is communicated by another medium authorized by filing-office rule; and

(3) If the request is for expedited service.

(e) **Record of mortgage.** This section does not require a fee with respect to a record of a mortgage which is effective as a financing statement filed as a fixture filing or as a financing statement covering as-extracted collateral or timber to be

cut under RCW 62A.9A-502(c). However, the recording and satisfaction fees that otherwise would be applicable to the record of the mortgage apply.

(f) **Filing office rules.** The department of licensing shall by rule set the fees called for in this section for filing with, and obtaining information from, the department of licensing. The director shall set fees at a sufficient level to defray the costs of administering the program. All receipts from fees collected under this title, except fees for services covered under RCW 62A.9A-501(a)(1), shall be deposited to the uniform commercial code fund in the state treasury. Moneys in the fund may be spent only after appropriation and may be used only to administer the uniform commercial code program.

(g) **Transition.** This section continues the fee-setting authority conferred on the department of licensing by former \*RCW 62A.9-409 and nothing herein shall invalidate fees set by the department of licensing under the authority of former \*RCW 62A.9-409. [2000 c 250 § 9A-525.]

\*Reviser's note: RCW 62A.9-409 was repealed by 2000 c 250 § 9A-901, effective July 1, 2001.

**62A.9A-526 Filing-office rules.** (a) **Adoption of filing-office rules.** The department of licensing shall adopt and publish rules to implement this Article. The filing-office rules must be:

- (1) Consistent with this Article; and
- (2) Adopted and published in accordance with chapter 34.05 RCW.

(b) **Harmonization of rules.** To keep the filing-office rules and practices of the filing office in harmony with the rules and practices of filing offices in other jurisdictions that enact substantially this part, and to keep the technology used by the filing office compatible with the technology used by filing offices in other jurisdictions that enact substantially this part, the department of licensing, so far as is consistent with the purposes, policies, and provisions of this Article, in adopting, amending, and repealing filing-office rules, shall:

- (1) Consult with filing offices in other jurisdictions that enact substantially this part; and
- (2) Consult the most recent version of the Model Rules promulgated by the International Association of Corporate Administrators or any successor organization; and
- (3) Take into consideration the rules and practices of, and the technology used by, filing offices in other jurisdictions that enact substantially this part. [2000 c 250 § 9A-526.]

**62A.9A-527 Duty to report.** The department of licensing shall report annually on or before December 31st to the governor on the operation of the filing office. [2000 c 250 § 9A-527.]

## PART 6 DEFAULT

**62A.9A-601 Rights after default; judicial enforcement; consignor or buyer of accounts, chattel paper, payment intangibles, or promissory notes.** (a) **Rights of secured party after default.** After default, a secured party has the rights provided in this part and, except as otherwise

provided in RCW 62A.9A-602, those provided by agreement of the parties. A secured party:

(1) May reduce a claim to judgment, foreclose, or otherwise enforce the claim, security interest, or agricultural lien by any available judicial procedure; and

(2) If the collateral is documents, may proceed either as to the documents or as to the goods they cover.

(b) **Rights and duties of secured party in possession or control.** A secured party in possession of collateral or control of collateral under RCW 62A.9A-104, 62A.9A-105, 62A.9A-106, or 62A.9A-107 has the rights and duties provided in RCW 62A.9A-207.

(c) **Rights cumulative; simultaneous exercise.** The rights under subsections (a) and (b) of this section are cumulative and may be exercised simultaneously.

(d) **Rights of debtor and obligor.** Except as otherwise provided in subsection (g) of this section and RCW 62A.9A-605, after default, a debtor and an obligor have the rights provided in this part and by agreement of the parties.

(e) **Lien of levy after judgment.** If a secured party has reduced its claim to judgment, the lien of any levy that may be made upon the collateral by virtue of an execution based upon the judgment relates back to the earliest of:

- (1) The date of perfection of the security interest or agricultural lien in the collateral;
- (2) The date of filing a financing statement covering the collateral; or
- (3) Any date specified in a statute under which the agricultural lien was created.

(f) **Execution sale.** A sale pursuant to an execution is a foreclosure of the security interest or agricultural lien by judicial procedure within the meaning of this section. A secured party may purchase at the sale and thereafter hold the collateral free of any other requirements of this Article.

(g) **Consignor or buyer of certain rights to payment.** Except as otherwise provided in RCW 62A.9A-607(c), this part imposes no duties upon a secured party that is a consignor or is a buyer of accounts, chattel paper, payment intangibles, or promissory notes.

(h) **Enforcement restrictions.** All rights and remedies provided in this part with respect to promissory notes or an agreement between an account debtor and a debtor which relates to a health-care-insurance receivable or a general intangible, including a contract, permit, license, or franchise, are subject to RCW 62A.9A-408 to the extent applicable. [2000 c 250 § 9A-601.]

**62A.9A-602 Waiver and variance of rights and duties.** Except as otherwise provided in RCW 62A.9A-624, to the extent that they give rights to an obligor (other than a secondary obligor) or a debtor and impose duties on a secured party, the debtor or obligor may not waive or vary the rules stated in the following listed sections:

- (1) RCW 62A.9A-207(b)(4)(C), which deals with use and operation of the collateral by the secured party;
- (2) RCW 62A.9A-210, which deals with requests for an accounting and requests concerning a list of collateral and statement of account;
- (3) RCW 62A.9A-607(c), which deals with collection and enforcement of collateral;

(4) RCW 62A.9A-608(a) and 62A.9A-615(c) to the extent that they deal with application or payment of noncash proceeds of collection, enforcement, or disposition;

(5) RCW 62A.9A-608(a) and 62A.9A-615(d) to the extent that they require accounting for or payment of surplus proceeds of collateral;

(6) RCW 62A.9A-609 to the extent that it imposes upon a secured party that takes possession of collateral without judicial process the duty to do so without breach of the peace;

(7) RCW 62A.9A-610(b), 62A.9A-611, 62A.9A-613, and 62A.9A-614, which deal with disposition of collateral;

(8) [Reserved]

(9) RCW 62A.9A-616, which deals with explanation of the calculation of a surplus or deficiency;

(10) RCW 62A.9A-620, 62A.9A-621, and 62A.9A-622, which deal with acceptance of collateral in satisfaction of obligation;

(11) RCW 62A.9A-623, which deals with redemption of collateral;

(12) RCW 62A.9A-624, which deals with permissible waivers; and

(13) RCW 62A.9A-625 and 62A.9A-626, which deal with the secured party's liability for failure to comply with this Article. [2000 c 250 § 9A-602.]

**62A.9A-603 Agreement on standards concerning rights and duties.** (a) **Agreed standards.** The parties may determine by agreement the standards measuring the fulfillment of the rights of a debtor or obligor and the duties of a secured party under a rule stated in RCW 62A.9A-602 if the standards are not manifestly unreasonable.

(b) **Agreed standards inapplicable to breach of peace.** Subsection (a) of this section does not apply to the duty under RCW 62A.9A-609 to refrain from breaching the peace. [2000 c 250 § 9A-603.]

**62A.9A-604 Procedure if security agreement covers real property, fixtures, or manufactured home.** (a) **Enforcement: Personal and real property.** If a security agreement covers both personal and real property, a secured party may proceed:

(1) Under this part as to the personal property without prejudicing any rights with respect to the real property; or

(2) As to both the personal property and the real property in accordance with the rights with respect to the real property, in which case the other provisions of this part do not apply.

(b) **Enforcement: Fixtures.** Subject to subsection (c) of this section, if a security agreement covers goods that are or become fixtures, a secured party may proceed:

(1) Under this part; or

(2) In accordance with the rights with respect to real property, in which case the other provisions of this part do not apply.

(c) **Removal of fixtures or manufactured home.** Subject to the other provisions of this part, if a secured party holding a security interest in fixtures or a manufactured home has priority over all owners and encumbrancers of the real property, the secured party, after default, may remove the collateral from the real property.

(2010 Ed.)

(d) **Injury caused by removal.** A secured party that removes collateral consisting of fixtures or a manufactured home shall promptly reimburse any encumbrancer or owner of the real property, other than the debtor, for the cost of repair of any physical injury caused by the removal. The secured party need not reimburse the encumbrancer or owner for any diminution in value of the real property caused by the absence of the goods removed or by any necessity of replacing them. A person entitled to reimbursement may refuse permission to remove until the secured party gives adequate assurance for the performance of the obligation to reimburse. [2000 c 250 § 9A-604.]

**62A.9A-605 Unknown debtor or secondary obligor.**

A secured party does not owe a duty based on its status as secured party:

(1) To a person that is a debtor or obligor, unless the secured party knows:

(A) That the person is a debtor or obligor;

(B) The identity of the person; and

(C) How to communicate with the person; or

(2) To a secured party or lienholder that has filed a financing statement against a person, unless the secured party knows:

(A) That the person is a debtor; and

(B) The identity of the person. [2000 c 250 § 9A-605.]

**62A.9A-606 Time of default for agricultural lien.** For purposes of this part, a default occurs in connection with an agricultural lien at the time the secured party becomes entitled to enforce the lien in accordance with the statute under which it was created. [2000 c 250 § 9A-606.]

**62A.9A-607 Collection and enforcement by secured party.** (a) **Collection and enforcement generally.** If so agreed, and in any event after default, a secured party:

(1) May notify an account debtor or other person obligated on collateral to make payment or otherwise render performance to or for the benefit of the secured party;

(2) May take any proceeds to which the secured party is entitled under RCW 62A.9A-315;

(3) May enforce the obligations of an account debtor or other person obligated on collateral and exercise the rights of the debtor with respect to the obligation of the account debtor or other person obligated on collateral to make payment or otherwise render performance to the debtor, and with respect to any property that secures the obligations of the account debtor or other person obligated on the collateral;

(4) If it holds a security interest in a deposit account perfected by control under RCW 62A.9A-104(a)(1), may apply the balance of the deposit account to the obligation secured by the deposit account; and

(5) If it holds a security interest in a deposit account perfected by control under RCW 62A.9A-104(a)(2) or (3), may instruct the bank to pay the balance of the deposit account to or for the benefit of the secured party.

(b) **Nonjudicial enforcement of mortgage.** If necessary to enable a secured party to exercise, under subsection (a)(3) of this section, the right of a debtor to enforce a mortgage nonjudicially, the secured party may record in the office

in which a record of the mortgage is recorded the secured party's sworn affidavit stating that:

(1) Default has occurred under the security agreement that creates or provides for a security interest in the obligations secured by the mortgage;

(2) A copy of the security agreement is attached to the affidavit; and

(3) The secured party is entitled to enforce the mortgage nonjudicially.

If the secured party's affidavit and attached copy of the security agreement in the form prescribed by chapter 65.04 RCW are presented with the applicable fee to the office in which a record of the mortgage is recorded, the affidavit and attached copy of the security agreement shall be recorded pursuant to RCW 65.04.030(3).

(c) **Commercially reasonable collection and enforcement.** A secured party shall proceed in a commercially reasonable manner if the secured party:

(1) Undertakes to collect from or enforce an obligation of an account debtor or other person obligated on collateral; and

(2) Is entitled to charge back uncollected collateral or otherwise to full or limited recourse against the debtor or a secondary obligor.

(d) **Expenses of collection and enforcement.** A secured party may deduct from the collections made pursuant to subsection (c) of this section reasonable expenses of collection and enforcement, including reasonable attorneys' fees and legal expenses incurred by the secured party.

(e) **Duties to secured party not affected.** This section does not determine whether an account debtor, bank, or other person obligated on collateral owes a duty to a secured party. [2000 c 250 § 9A-607.]

**62A.9A-608 Application of proceeds of collection or enforcement; liability for deficiency and right to surplus.**

(a) **Application of proceeds, surplus, and deficiency if obligation secured.** If a security interest or agricultural lien secures payment or performance of an obligation, the following rules apply:

(1) A secured party shall apply or pay over for application the cash proceeds of collection or enforcement under RCW 62A.9A-607 in the following order to:

(A) The reasonable expenses of collection and enforcement and, to the extent provided for by agreement and not prohibited by law, reasonable attorneys' fees and legal expenses incurred by the secured party;

(B) The satisfaction of obligations secured by the security interest or agricultural lien under which the collection or enforcement is made; and

(C) The satisfaction of obligations secured by any subordinate security interest in or other lien on the collateral subject to the security interest or agricultural lien under which the collection or enforcement is made if the secured party receives an authenticated demand for proceeds before distribution of the proceeds is completed.

(2) If requested by a secured party, a holder of a subordinate security interest or other lien shall furnish reasonable proof of the interest or lien within a reasonable time. Unless the holder complies, the secured party need not comply with the holder's demand under (1)(C) of this subsection.

(3) A secured party need not apply or pay over for application noncash proceeds of collection and enforcement under RCW 62A.9A-607 unless the failure to do so would be commercially unreasonable. A secured party that applies or pays over for application noncash proceeds shall do so in a commercially reasonable manner.

(4) A secured party shall account to and pay a debtor for any surplus, and the obligor is liable for any deficiency.

(b) **No surplus or deficiency in sales of certain rights to payment.** If the underlying transaction is a sale of accounts, chattel paper, payment intangibles, or promissory notes, the debtor is not entitled to any surplus, and the obligor is not liable for any deficiency. [2001 c 32 § 41; 2000 c 250 § 9A-608.]

**Effective date—2001 c 32:** See note following RCW 62A.9A-102.

**62A.9A-609 Secured party's right to take possession after default.** (a) **Possession; rendering equipment unusable; disposition on debtor's premises.** After default, a secured party:

(1) May take possession of the collateral; and

(2) Without removal, may render equipment unusable and dispose of collateral on a debtor's premises under RCW 62A.9A-610.

(b) **Judicial and nonjudicial process.** A secured party may proceed under subsection (a) of this section:

(1) Pursuant to judicial process; or

(2) Without judicial process, if it proceeds without breach of the peace.

(c) **Assembly of collateral.** If so agreed, and in any event after default, a secured party may require the debtor to assemble the collateral and make it available to the secured party at a place to be designated by the secured party which is reasonably convenient to both parties. [2000 c 250 § 9A-609.]

**62A.9A-610 Disposition of collateral after default.**

(a) **Disposition after default.** After default, a secured party may sell, lease, license, or otherwise dispose of any or all of the collateral in its present condition or following any commercially reasonable preparation or processing.

(b) **Commercially reasonable disposition.** Every aspect of a disposition of collateral, including the method, manner, time, place, and other terms, must be commercially reasonable. If commercially reasonable, a secured party may dispose of collateral by public or private proceedings, by one or more contracts, as a unit or in parcels, and at any time and place and on any terms.

(c) **Purchase by secured party.** A secured party may purchase collateral:

(1) At a public disposition; or

(2) At a private disposition only if the collateral is of a kind that is customarily sold on a recognized market or the subject of widely distributed standard price quotations.

(d) **Warranties on disposition.** A contract for sale, lease, license, or other disposition includes the warranties relating to title, possession, quiet enjoyment, and the like which by operation of law accompany a voluntary disposition of property of the kind subject to the contract.

(e) **Disclaimer of warranties.** A secured party may disclaim or modify warranties under subsection (d) of this section:

(1) In a manner that would be effective to disclaim or modify the warranties in a voluntary disposition of property of the kind subject to the contract of disposition; or

(2) By communicating to the purchaser a record evidencing the contract for disposition and including an express disclaimer or modification of the warranties.

(f) **Record sufficient to disclaim warranties.** A record is sufficient to disclaim under subsection (e) of this section all warranties included under subsection (d) of this section if it indicates "There is no warranty relating to title, possession, quiet enjoyment, or the like in this disposition" or uses words of similar import. [2000 c 250 § 9A-610.]

**62A.9A-611 Notification before disposition of collateral.** (a) **"Notification date."** In this section, "notification date" means the earlier of the date on which:

(1) A secured party sends to the debtor and any secondary obligor an authenticated notification of disposition; or

(2) The debtor and any secondary obligor waive the right to notification.

(b) **Notification of disposition required.** Except as otherwise provided in subsection (d) of this section, a secured party that disposes of collateral under RCW 62A.9A-610 shall send to the persons specified in subsection (c) of this section a reasonable authenticated notification of disposition.

(c) **Persons to be notified.** To comply with subsection (b) of this section, the secured party shall send an authenticated notification of disposition to:

(1) The debtor;

(2) Any secondary obligor; and

(3) If the collateral is other than consumer goods:

(A) Any other secured party or lienholder that, ten days before the notification date, held a security interest in or other lien on the collateral perfected by the filing of a financing statement that:

(i) Identified the collateral;

(ii) Was indexed under the debtor's name as of that date; and

(iii) Was filed in the office in which to file a financing statement against the debtor covering the collateral as of that date; and

(B) Any other secured party that, ten days before the notification date, held a security interest in the collateral perfected by compliance with a statute, regulation, or treaty described in RCW 62A.9A-311(a).

(d) **Subsection (b) of this section inapplicable: Perishable collateral; recognized market.** Subsection (b) of this section does not apply if the collateral is perishable or threatens to decline speedily in value or is of a type customarily sold on a recognized market.

(e) **Compliance with subsection (c)(3)(A) of this section.** A secured party complies with the requirement for notification prescribed by subsection (c)(3)(A) of this section if:

(1) Not later than twenty days or earlier than thirty days before the notification date, the secured party requests, in a commercially reasonable manner, information concerning financing statements indexed under the debtor's name in the office indicated in subsection (c)(3)(A) of this section; and

(2) Before the notification date, the secured party:

(A) Did not receive a response to the request for information; or

(B) Received a response to the request for information and sent an authenticated notification of disposition to each secured party or other lienholder named in that response whose financing statement covered the collateral. [2000 c 250 § 9A-611.]

**62A.9A-612 Timeliness of notification before disposition of collateral.** (a) **Reasonable time is question of fact.** Except as otherwise provided in subsection (b) of this section, whether a notification is sent within a reasonable time is a question of fact.

(b) **Ten-day period sufficient in nonconsumer transaction.** In a transaction other than a consumer transaction, a notification of disposition sent after default and ten days or more before the earliest time of disposition set forth in the notification is sent within a reasonable time before the disposition. [2000 c 250 § 9A-612.]

**62A.9A-613 Contents and form of notification before disposition of collateral: General.** Except in a consumer-goods transaction, the following rules apply:

(1) The contents of a notification of disposition are sufficient if the notification:

(A) Describes the debtor and the secured party;

(B) Describes the collateral that is the subject of the intended disposition;

(C) States the method of intended disposition;

(D) States that the debtor is entitled to an accounting of the unpaid indebtedness and states the charge, if any, for an accounting; and

(E) States the time and place of a public disposition or the time after which any other disposition is to be made.

(2) Whether the contents of a notification that lacks any of the information specified in subsection (1) of this section are nevertheless sufficient is a question of fact.

(3) The contents of a notification providing substantially the information specified in subsection (1) of this section are sufficient, even if the notification includes:

(A) Information not specified by subsection (1) of this section; or

(B) Minor errors that are not seriously misleading.

(4) A particular phrasing of the notification is not required.

(5) The following form of notification and the form appearing in RCW 62A.9A-614(3), when completed, each provides sufficient information:

#### NOTIFICATION OF DISPOSITION OF COLLATERAL

To: [Name of debtor, obligor, or other person to which the notification is sent]

From: [Name, address, and telephone number of secured party]

Name of Debtor(s): [Include only if debtor(s) are not an addressee]

[For a public disposition:]

We will sell [or lease or license, *as applicable*] the [describe collateral] [to the highest qualified bidder] in public as follows:

Day and Date: \_\_\_\_\_

Time: \_\_\_\_\_

Place: \_\_\_\_\_

[For a private disposition:]

We will sell [or lease or license, *as applicable*] the [describe collateral] privately sometime after [day and date].

You are entitled to an accounting of the unpaid indebtedness secured by the property that we intend to sell [or lease or license, *as applicable*] [for a charge of \$\_\_\_\_\_]. You may request an accounting by calling us at [telephone number]. [2001 c 32 § 42; 2000 c 250 § 9A-613.]

Effective date—2001 c 32: See note following RCW 62A.9A-102.

**62A.9A-614 Contents and form of notification before disposition of collateral: Consumer-goods transaction.** In a consumer-goods transaction, the following rules apply:

(1) A notification of disposition must provide the following information:

(A) The information specified in RCW 62A.9A-613(1);

(B) A description of any liability for a deficiency of the person to which the notification is sent;

(C) A telephone number from which the amount that must be paid to the secured party to redeem the collateral under RCW 62A.9A-623 is available; and

(D) A telephone number or mailing address from which additional information concerning the disposition and the obligation secured is available.

(2) A particular phrasing of the notification is not required.

(3) The following form of notification, when completed, provides sufficient information:

[Name and address of secured party]

[Date]

**NOTICE OF OUR PLAN TO SELL PROPERTY**

[Name and address of any obligor who is also a debtor]

Subject: [Identification of Transaction]

We have your [describe collateral], because you broke promises in our agreement.

[For a public disposition:]

We will sell [describe collateral] at public sale. A sale could include a lease or license. The sale will be held as follows:

Date: \_\_\_\_\_

Time: \_\_\_\_\_

Place: \_\_\_\_\_

You may attend the sale and bring bidders if you want.

[For a private disposition:]

We will sell [describe collateral] at private sale sometime after [date]. A sale could include a lease or license.

The money that we get from the sale (after paying our costs) will reduce the amount you owe. If we get less money than you owe, you [will or will not, as applicable] still owe us the difference. If we get more money than you owe, you will get the extra money, unless we must pay it to someone else.

You can get the property back at any time before we sell it by paying us the full amount you owe (not just the past due payments), including our expenses. To learn the exact amount you must pay, call us at [telephone number].

If you want us to explain to you in writing how we have figured the amount that you owe us, you may call us at [telephone number] [or write us at [secured party's address]] and request a written explanation. [We will charge you \$ \_\_\_\_\_ for the explanation if we sent you another written explanation of the amount you owe us within the last six months.]

If you need more information about the sale call us at [telephone number] [or write us at [secured party's address]].

We are sending this notice to the following other people who have an interest in [describe collateral] or who owe money under your agreement:

[Names of all other debtors and obligors, if any]

(4) A notification in the form of [subsection] (3) of this section is sufficient, even if additional information appears at the end of the form.

(5) A notification in the form of [subsection] (3) of this section is sufficient, even if it includes errors in information not required by [subsection] (1) of this section, unless the error is misleading with respect to rights arising under this Article.

(6) If a notification under this section is not in the form of [subsection] (3) of this section, law other than this Article determines the effect of including information not required by [subsection] (1) of this section. [2000 c 250 § 9A-614.]

**62A.9A-615 Application of proceeds of disposition; liability for deficiency and right to surplus.** (a) **Application of proceeds.** A secured party shall apply or pay over for application the cash proceeds of disposition under RCW 62A.9A-610 in the following order to:

(1) The reasonable expenses of retaking, holding, preparing for disposition, processing, and disposing, and, to the extent provided for by agreement and not prohibited by law, reasonable attorneys' fees and legal expenses incurred by the secured party;

(2) The satisfaction of obligations secured by the security interest or agricultural lien under which the disposition is made;

(3) The satisfaction of obligations secured by any subordinate security interest in or other subordinate lien on the collateral if:

(A) The secured party receives from the holder of the subordinate security interest or other lien an authenticated demand for proceeds before distribution of the proceeds is completed; and

(B) In a case in which a consignor has an interest in the collateral, the subordinate security interest or other lien is senior to the interest of the consignor; and

(4) A secured party that is a consignor of the collateral if the secured party receives from the consignor an authenticated demand for proceeds before distribution of the proceeds is completed.

(b) **Proof of subordinate interest.** If requested by a secured party, a holder of a subordinate security interest or other lien shall furnish reasonable proof of the interest or lien within a reasonable time. Unless the holder does so, the secured party need not comply with the holder's demand under subsection (a)(3) of this section.

(c) **Application of noncash proceeds.** A secured party need not apply or pay over for application noncash proceeds of disposition under RCW 62A.9A-610 unless the failure to do so would be commercially unreasonable. A secured party that applies or pays over for application noncash proceeds shall do so in a commercially reasonable manner.

(d) **Surplus or deficiency if obligation secured.** If the security interest under which a disposition is made secures payment or performance of an obligation, after making the payments and applications required by subsection (a) of this section and permitted by subsection (c) of this section:

(1) Unless subsection (a)(4) of this section requires the secured party to apply or pay over cash proceeds to a consignor, the secured party shall account to and pay a debtor for any surplus; and

(2) The obligor is liable for any deficiency.

(e) **No surplus or deficiency in sales of certain rights to payment.** If the underlying transaction is a sale of accounts, chattel paper, payment intangibles, or promissory notes:

(1) The debtor is not entitled to any surplus; and

(2) The obligor is not liable for any deficiency.

(f) [Reserved]

(g) **Cash proceeds received by junior secured party.**

A secured party that receives cash proceeds of a disposition in good faith and without knowledge that the receipt violates the rights of the holder of a security interest or other lien that is not subordinate to the security interest or agricultural lien under which the disposition is made:

(1) Takes the cash proceeds free of the security interest or other lien;

(2) Is not obligated to apply the proceeds of the disposition to the satisfaction of obligations secured by the security interest or other lien; and

(3) Is not obligated to account to or pay the holder of the security interest or other lien for any surplus. [2001 c 32 § 43; 2000 c 250 § 9A-615.]

**Effective date—2001 c 32:** See note following RCW 62A.9A-102.

**62A.9A-616 Explanation of calculation of surplus or deficiency.** (a) **Definitions.** In this section:

(1) "Explanation" means a writing that:

(A) States the amount of the surplus or deficiency;

(B) Provides an explanation in accordance with subsection (c) of this section of how the secured party calculated the surplus or deficiency;

(C) States, if applicable, that future debits, credits, charges, including additional credit service charges or interest, rebates, and expenses may affect the amount of the surplus or deficiency; and

(D) Provides a telephone number or mailing address from which additional information concerning the transaction is available.

(2) "Request" means a record:

(A) Authenticated by a debtor or consumer obligor;

(B) Requesting that the recipient provide an explanation; and

(C) Sent after disposition of the collateral under RCW 62A.9A-610.

(b) **Explanation of calculation.** In a consumer-goods transaction in which the debtor is entitled to a surplus or a consumer obligor is liable for a deficiency under RCW 62A.9A-615, the secured party shall:

(1) Send an explanation to the debtor or consumer obligor, as applicable, after the disposition and:

(A) Before or when the secured party accounts to the debtor and pays any surplus or first makes written demand on the consumer obligor after the disposition for payment of the deficiency; and

(B) Within fourteen days after receipt of a request; or

(2) In the case of a consumer obligor who is liable for a deficiency, within fourteen days after receipt of a request, send to the consumer obligor a record waiving the secured party's right to a deficiency.

(c) **Required information.** To comply with subsection (a)(1)(B) of this section, a writing must provide the following information in the following order:

(1) The aggregate amount of obligations secured by the security interest under which the disposition was made, and, if the amount reflects a rebate of unearned interest or credit service charge, an indication of that fact, calculated as of a specified date:

(A) If the secured party takes or receives possession of the collateral after default, not more than thirty-five days before the secured party takes or receives possession; or

(B) If the secured party takes or receives possession of the collateral before default or does not take possession of the collateral, not more than thirty-five days before the disposition;

(2) The amount of proceeds of the disposition;

(3) The aggregate amount of the obligations after deducting the amount of proceeds;

(4) The amount, in the aggregate or by type, and types of expenses, including expenses of retaking, holding, preparing for disposition, processing, and disposing of the collateral, and attorneys' fees secured by the collateral which are known to the secured party and relate to the current disposition;

(5) The amount, in the aggregate or by type, and types of credits, including rebates of interest or credit service charges, to which the obligor is known to be entitled and which are not reflected in the amount in (1) of this subsection; and

(6) The amount of the surplus or deficiency.

(d) **Substantial compliance.** A particular phrasing of the explanation is not required. An explanation complying substantially with the requirements of subsection (a) of this section is sufficient, even if it includes minor errors that are not seriously misleading.

(e) **Charges for responses.** A debtor or consumer obligor is entitled without charge to one response to a request under this section during any six-month period in which the secured party did not send to the debtor or consumer obligor an explanation pursuant to subsection (b)(1) of this section. The secured party may require payment of a charge not exceeding twenty-five dollars for each additional response. [2000 c 250 § 9A-616.]

**62A.9A-617 Rights of transferee of collateral.** (a) **Effects of disposition.** A secured party's disposition of collateral after default:

(1) Transfers to a transferee for value all of the debtor's rights in the collateral;

(2) Discharges the security interest under which the disposition is made; and

(3) Discharges any subordinate security interest or other subordinate lien.

(b) **Rights of good-faith transferee.** A transferee that acts in good faith takes free of the rights and interests described in subsection (a) of this section, even if the secured party fails to comply with this Article or the requirements of any judicial proceeding.

(c) **Rights of other transferee.** If a transferee does not take free of the rights and interests described in subsection (a) of this section, the transferee takes the collateral subject to:

(1) The debtor's rights in the collateral;

(2) The security interest or agricultural lien under which the disposition is made; and

(3) Any other security interest or other lien. [2000 c 250 § 9A-617.]

**62A.9A-618 Rights and duties of certain secondary obligors.** (a) **Rights and duties of secondary obligor.** A secondary obligor acquires the rights and becomes obligated to perform the duties of the secured party after the secondary obligor:

(1) Receives an assignment of a secured obligation from the secured party;

(2) Receives a transfer of collateral from the secured party and agrees to accept the rights and assume the duties of the secured party; or

(3) Is subrogated to the rights of a secured party with respect to collateral.

(b) **Effect of assignment, transfer, or subrogation.** An assignment, transfer, or subrogation described in subsection (a) of this section:

(1) Is not a disposition of collateral under RCW 62A.9A-610; and

(2) Relieves the secured party of further duties under this Article. [2000 c 250 § 9A-618.]

**62A.9A-619 Transfer of record or legal title.** (a) **"Transfer statement."** In this section, "transfer statement" means a record authenticated by a secured party stating:

(1) That the debtor has defaulted in connection with an obligation secured by specified collateral;

(2) That the secured party has exercised its post-default remedies with respect to the collateral;

(3) That, by reason of the exercise, a transferee has acquired the rights of the debtor in the collateral; and

(4) The name and mailing address of the secured party, debtor, and transferee.

(b) **Effect of transfer statement.** A transfer statement entitles the transferee to the transfer of record of all rights of the debtor in the collateral specified in the statement in any official filing, recording, registration, or certificate-of-title system covering the collateral. If a transfer statement is presented with the applicable fee and request form to the official

or office responsible for maintaining the system, the official or office shall:

(1) Accept the transfer statement;

(2) Promptly amend its records to reflect the transfer; and

(3) If applicable, issue a new appropriate certificate of title in the name of the transferee.

(c) **Transfer not a disposition; no relief of secured party's duties.** A transfer of the record or legal title to collateral to a secured party under subsection (b) of this section or otherwise is not of itself a disposition of collateral under this Article and does not of itself relieve the secured party of its duties under this Article. [2000 c 250 § 9A-619.]

**62A.9A-620 Acceptance of collateral in full or partial satisfaction of obligation; compulsory disposition of collateral.** (a) **Conditions to acceptance in satisfaction.** A secured party may accept collateral in full or partial satisfaction of the obligation it secures only if:

(1) The debtor consents to the acceptance under subsection (c) of this section;

(2) The secured party does not receive, within the time set forth in subsection (d) of this section, a notification of objection to the proposal authenticated by:

(A) A person to which the secured party was required to send a proposal under RCW 62A.9A-621; or

(B) Any other person, other than the debtor, holding an interest in the collateral subordinate to the security interest that is the subject of the proposal; and

(3) Subsection (e) of this section does not require the secured party to dispose of the collateral or the debtor waives the requirement pursuant to RCW 62A.9A-624.

(b) **Purported acceptance ineffective.** A purported or apparent acceptance of collateral under this section is ineffective unless:

(1) The secured party consents to the acceptance in an authenticated record or sends a proposal to the debtor; and

(2) The conditions of subsection (a) of this section are met.

(c) **Debtor's consent.** For purposes of this section:

(1) A debtor consents to an acceptance of collateral in partial satisfaction of the obligation it secures only if the debtor agrees to the terms of the acceptance in a record authenticated after default; and

(2) A debtor consents to an acceptance of collateral in full satisfaction of the obligation it secures only if the debtor agrees to the terms of the acceptance in a record authenticated after default or the secured party:

(A) Sends to the debtor after default a proposal that is unconditional or subject only to a condition that collateral not in the possession of the secured party be preserved or maintained;

(B) In the proposal, proposes to accept collateral in full satisfaction of the obligation it secures; and

(C) Does not receive a notification of objection authenticated by the debtor within twenty days after the proposal is sent.

(d) **Effectiveness of notification.** To be effective under subsection (a)(2) of this section, a notification of objection must be received by the secured party:

(1) In the case of a person to which the proposal was sent pursuant to RCW 62A.9A-621, within twenty days after notification was sent to that person; and

(2) In other cases:

(A) Within twenty days after the last notification was sent pursuant to RCW 62A.9A-621; or

(B) If a notification was not sent, before the debtor consents to the acceptance under subsection (c) of this section.

(e) **Mandatory disposition of consumer goods.** A secured party that has taken possession of collateral shall dispose of the collateral pursuant to RCW 62A.9A-610 within the time specified in subsection (f) of this section if:

(1) Sixty percent of the cash price has been paid in the case of a purchase-money security interest in consumer goods; or

(2) Sixty percent of the principal amount of the obligation secured has been paid in the case of a nonpurchase-money security interest in consumer goods.

(f) **Compliance with mandatory disposition requirement.** To comply with subsection (e) of this section, the secured party shall dispose of the collateral:

(1) Within ninety days after taking possession; or

(2) Within any longer period to which the debtor and all secondary obligors have agreed in an agreement to that effect entered into and authenticated after default. [2000 c 250 § 9A-620.]

**62A.9A-621 Notification of proposal to accept collateral.** (a) **Persons to which proposal to be sent.** A secured party that desires to accept collateral in full or partial satisfaction of the obligation it secures shall send its proposal to:

(1) Any other secured party or lienholder that, ten days before the debtor consented to the acceptance, held a security interest in or other lien on the collateral perfected by the filing of a financing statement that:

(A) Identified the collateral;

(B) Was indexed under the debtor's name as of that date; and

(C) Was filed in the office or offices in which to file a financing statement against the debtor covering the collateral as of that date; and

(2) Any other secured party that, ten days before the debtor consented to the acceptance, held a security interest in the collateral perfected by compliance with a statute, regulation, or treaty described in RCW 62A.9A-311(a).

(b) **Proposal to be sent to secondary obligor in partial satisfaction.** A secured party that desires to accept collateral in partial satisfaction of the obligation it secures shall send its proposal to any secondary obligor in addition to the persons described in subsection (a) of this section. [2000 c 250 § 9A-621.]

**62A.9A-622 Effect of acceptance of collateral.** (a) **Effect of acceptance.** A secured party's acceptance of collateral in full or partial satisfaction of the obligation it secures:

(1) Discharges the obligation to the extent consented to by the debtor;

(2) Transfers to the secured party all of a debtor's rights in the collateral;

(2010 Ed.)

(3) Discharges the security interest or agricultural lien that is the subject of the debtor's consent and any subordinate security interest or other subordinate lien; and

(4) Terminates any other subordinate interest.

(b) **Discharge of subordinate interest notwithstanding noncompliance.** A subordinate interest is discharged or terminated under subsection (a) of this section, even if the secured party fails to comply with this Article. [2000 c 250 § 9A-622.]

**62A.9A-623 Right to redeem collateral.** (a) **Persons that may redeem.** A debtor, any secondary obligor, or any other secured party or lienholder may redeem collateral.

(b) **Requirements for redemption.** To redeem collateral, a person shall tender:

(1) Fulfillment of all obligations secured by the collateral; and

(2) The reasonable expenses and attorneys' fees described in RCW 62A.9A-615(a)(1).

(c) **When redemption may occur.** A redemption may occur at any time before a secured party:

(1) Has collected collateral under RCW 62A.9A-607;

(2) Has disposed of collateral or entered into a contract for its disposition under RCW 62A.9A-610; or

(3) Has accepted collateral in full or partial satisfaction of the obligation it secures under RCW 62A.9A-622. [2000 c 250 § 9A-623.]

**62A.9A-624 Waiver.** (a) **Waiver of disposition notification.** A debtor may waive the right to notification of disposition of collateral under RCW 62A.9A-611 only by an agreement to that effect entered into and authenticated after default.

(b) **Waiver of mandatory disposition.** A debtor may waive the right to require disposition of collateral under RCW 62A.9A-620(e) only by an agreement to that effect entered into and authenticated after default.

(c) **Waiver of redemption right.** Except in a consumer-goods transaction, a debtor or secondary obligor may waive the right to redeem collateral under RCW 62A.9A-623 only by an agreement to that effect entered into and authenticated after default. [2000 c 250 § 9A-624.]

**62A.9A-625 Remedies for secured party's failure to comply with Article.** (a) **Judicial orders concerning noncompliance.** If it is established that a secured party is not proceeding in accordance with this Article, a court may order or restrain collection, enforcement, or disposition of collateral on appropriate terms and conditions.

(b) **Damages for noncompliance.** Subject to subsections (c), (d), and (f) of this section, a person is liable for damages in the amount of any loss caused by a failure to comply with this Article or by filing a false statement under RCW 62A.9A-607(b) or 62A.9A-619. Loss caused by a failure to comply may include loss resulting from the debtor's inability to obtain, or increased costs of, alternative financing.

(c) **Persons entitled to recover damages; statutory damages in consumer-goods transaction.** Except as otherwise provided in RCW 62A.9A-628:

(1) A person that, at the time of the failure, was a debtor, was an obligor, or held a security interest in or other lien on the collateral may recover damages under subsection (b) of this section for its loss; and

(2) If the collateral is consumer goods, a person that was a debtor or a secondary obligor at the time a secured party failed to comply with this part may recover for that failure in any event an amount not less than the credit service charge plus ten percent of the principal amount of the obligation or the time-price differential plus ten percent of the cash price.

(d) **Recovery when deficiency eliminated or reduced.** A debtor whose deficiency is eliminated under RCW 62A.9A-626 may recover damages for the loss of any surplus. However, a debtor or secondary obligor may not recover under subsection (b) or (c)(2) of this section for non-compliance with the provisions of this part relating to collection, enforcement, disposition, or acceptance to the extent that its deficiency is eliminated or reduced under RCW 62A.9A-626.

(e) **Statutory damages: Noncompliance with specified provisions.** In addition to any damages recoverable under subsection (b) of this section, the debtor, consumer obligor, or person named as a debtor in a filed record, as applicable, may recover five hundred dollars in each case from a person that:

(1) Fails to comply with RCW 62A.9A-208;

(2) Fails to comply with RCW 62A.9A-209;

(3) Files a record that the person is not entitled to file under RCW 62A.9A-509(a);

(4) Fails to cause the secured party of record to file or send a termination statement as required by RCW 62A.9A-513 (a) or (c) within twenty days after the secured party receives an authenticated demand from a debtor;

(5) Fails to comply with RCW 62A.9A-616(b)(1) and whose failure is part of a pattern, or consistent with a practice, of noncompliance; or

(6) Fails to comply with RCW 62A.9A-616(b)(2).

(f) **Statutory damages: Noncompliance with RCW 62A.9A-210.** A debtor or consumer obligor may recover damages under subsection (b) of this section and, in addition, five hundred dollars in each case from a person that, without reasonable cause, fails to comply with a request under RCW 62A.9A-210. A recipient of a request under RCW 62A.9A-210 which never claimed an interest in the collateral or obligations that are the subject of a request under RCW 62A.9A-210 has a reasonable excuse for failure to comply with the request within the meaning of this subsection.

(g) **Limitation of security interest: Noncompliance with RCW 62A.9A-210.** If a secured party fails to comply with a request regarding a list of collateral or a statement of account under RCW 62A.9A-210, the secured party may claim a security interest only as shown in the list or statement included in the request as against a person that is reasonably misled by the failure. [2001 c 32 § 44; 2000 c 250 § 9A-625.]

Effective date—2001 c 32: See note following RCW 62A.9A-102.

**62A.9A-626 Action in which deficiency or surplus is in issue.** (a) **Applicable rules if amount of deficiency or surplus in issue.** In an action arising from a transaction in

which the amount of a deficiency or surplus is in issue, the following rules apply:

(1) A secured party need not prove compliance with the provisions of this part relating to collection, enforcement, disposition, or acceptance unless the debtor or a secondary obligor places the secured party's compliance in issue.

(2) If the secured party's compliance is placed in issue, the secured party has the burden of establishing that the collection, enforcement, disposition, or acceptance was conducted in accordance with this part.

(3) Except as otherwise provided in RCW 62A.9A-628, if a secured party fails to prove that the collection, enforcement, disposition, or acceptance was conducted in accordance with the provisions of this part relating to collection, enforcement, disposition, or acceptance, the liability of a debtor or a secondary obligor for a deficiency is limited to an amount by which the sum of the secured obligation, expenses, and attorneys' fees exceeds the greater of:

(A) The proceeds of the collection, enforcement, disposition, or acceptance; or

(B) The amount of proceeds that would have been realized had the noncomplying secured party proceeded in accordance with the provisions of this part relating to collection, enforcement, disposition, or acceptance.

(4) For purposes of (3)(B) of this subsection, the amount of proceeds that would have been realized is equal to the sum of the secured obligation, expenses, and attorneys' fees unless the secured party proves that the amount is less than that sum.

(b) [Reserved] [2000 c 250 § 9A-626.]

**62A.9A-627 Determination of whether conduct was commercially reasonable.** (a) **Greater amount obtainable under other circumstances; no preclusion of commercial reasonableness.** The fact that a greater amount could have been obtained by a collection, enforcement, disposition, or acceptance at a different time or in a different method from that selected by the secured party is not of itself sufficient to preclude the secured party from establishing that the collection, enforcement, disposition, or acceptance was made in a commercially reasonable manner.

(b) **Dispositions that are commercially reasonable.** A disposition of collateral is made in a commercially reasonable manner if the disposition is made:

(1) In the usual manner on any recognized market;

(2) At the price current in any recognized market at the time of the disposition; or

(3) Otherwise in conformity with reasonable commercial practices among dealers in the type of property that was the subject of the disposition.

(c) **Approval by court or on behalf of creditors.** A collection, enforcement, disposition, or acceptance is commercially reasonable if it has been approved:

(1) In a judicial proceeding;

(2) By a bona fide creditors' committee;

(3) By a representative of creditors; or

(4) By an assignee for the benefit of creditors.

(d) **Approval under subsection (c) of this section not necessary; absence of approval has no effect.** Approval under subsection (c) of this section need not be obtained, and lack of approval does not mean that the collection, enforce-

ment, disposition, or acceptance is not commercially reasonable. [2000 c 250 § 9A-627.]

**62A.9A-628 Nonliability and limitation on liability of secured party; liability of secondary obligor.** (a) **Limitation of liability of secured party for noncompliance with article.** Unless a secured party knows that a person is a debtor or obligor, knows the identity of the person, and knows how to communicate with the person:

(1) The secured party is not liable to the person, or to a secured party or lienholder that has filed a financing statement against the person, for failure to comply with this Article; and

(2) The secured party's failure to comply with this Article does not affect the liability of the person for a deficiency.

(b) **Limitation of liability based on status as secured party.** A secured party is not liable because of its status as secured party:

(1) To a person that is a debtor or obligor, unless the secured party knows:

- (A) That the person is a debtor or obligor;
- (B) The identity of the person; and
- (C) How to communicate with the person; or

(2) To a secured party or lienholder that has filed a financing statement against a person, unless the secured party knows:

- (A) That the person is a debtor; and
- (B) The identity of the person.

(c) **Limitation of liability if reasonable belief that transaction not a consumer-goods transaction or consumer transaction.** A secured party is not liable to any person, and a person's liability for a deficiency is not affected, because of any act or omission arising out of the secured party's reasonable belief that a transaction is not a consumer-goods transaction or a consumer transaction or that goods are not consumer goods, if the secured party's belief is based on its reasonable reliance on:

(1) A debtor's representation concerning the purpose for which collateral was to be used, acquired, or held; or

(2) An obligor's representation concerning the purpose for which a secured obligation was incurred.

(d) **Limitation of liability for statutory damages.** A secured party is not liable to any person under RCW 62A.9A-625(c)(2) for its failure to comply with RCW 62A.9A-616.

(e) **Limitation of multiple liability for statutory damages.** A secured party is not liable under RCW 62A.9A-625(c)(2) more than once with respect to any one secured obligation. [2001 c 32 § 45; 2000 c 250 § 9A-628.]

**Effective date—2001 c 32:** See note following RCW 62A.9A-102.

## PART 7 TRANSITION

**62A.9A-701 Effective date—2000 c 250.** This act takes effect July 1, 2001. [2000 c 250 § 9A-701.]

**62A.9A-702 Savings clause.** (a) **Preeffective-date transactions or liens.** Except as otherwise provided in this section, Article 62A.9A RCW applies to a transaction or lien

(2010 Ed.)

within its scope, even if the transaction or lien was entered into or created before July 1, 2001.

(b) **Continuing validity.** Except as otherwise provided in subsection (c) of this section and RCW 62A.9A-703 through 62A.9A-709:

(1) Transactions and liens that were not governed by \*Article 62A.9 RCW, were validly entered into or created before July 1, 2001, and would be subject to Article 62A.9A RCW if they had been entered into or created after July 1, 2001, and the rights, duties, and interests flowing from those transactions and liens remain valid after July 1, 2001; and

(2) The transactions and liens may be terminated, completed, consummated, and enforced as required or permitted by Article 62A.9A RCW or by the law that otherwise would apply if Article 62A.9A RCW had not taken effect.

(c) **Preeffective-date proceedings.** Article 62A.9A RCW does not affect an action, case, or proceeding commenced before July 1, 2001. [2001 c 32 § 46; 2000 c 250 § 9A-702.]

**\*Reviser's note:** Article 62A.9 RCW was repealed in its entirety by 2000 c 250 § 9A-901, effective July 1, 2001.

**Effective date—2001 c 32:** See note following RCW 62A.9A-102.

**62A.9A-703 Security interest perfected before effective date.** (a) **Continuing priority over lien creditor: Perfection requirements satisfied.** A security interest that is enforceable immediately before July 1, 2001, and would have priority over the rights of a person that becomes a lien creditor at that time is a perfected security interest under Article 62A.9A RCW if, on or before July 1, 2001, the applicable requirements for enforceability and perfection under Article 62A.9A RCW are satisfied without further action.

(b) **Continuing priority over lien creditor: Perfection requirements not satisfied.** Except as otherwise provided in RCW 62A.9A-705, if, immediately before July 1, 2001, a security interest is enforceable and would have priority over the rights of a person that becomes a lien creditor at that time, but the applicable requirements for enforceability or perfection under Article 62A.9A RCW are not satisfied on or before July 1, 2001, the security interest:

(1) Is a perfected security interest for one year after July 1, 2001;

(2) Remains enforceable thereafter only if the security interest becomes enforceable under RCW 62A.9A-203 before the year expires; and

(3) Remains perfected thereafter only if the applicable requirements for perfection under Article 62A.9A RCW are satisfied before the year expires. [2001 c 32 § 47; 2000 c 250 § 9A-703.]

**Effective date—2001 c 32:** See note following RCW 62A.9A-102.

**62A.9A-704 Security interest unperfected before effective date.** A security interest that is enforceable immediately before July 1, 2001, but which would be subordinate to the rights of a person that becomes a lien creditor at that time:

(1) Remains an enforceable security interest for one year after July 1, 2001;

(2) Remains enforceable thereafter if the security interest becomes enforceable under RCW 62A.9A-203 on or before July 1, 2001, or within one year thereafter; and

(3) Becomes perfected:

(A) Without further action, on July 1, 2001, if the applicable requirements for perfection under Article 62A.9A RCW are satisfied before or at that time; or

(B) When the applicable requirements for perfection are satisfied if the requirements are satisfied after that time. [2001 c 32 § 48; 2000 c 250 § 9A-704.]

**Effective date—2001 c 32:** See note following RCW 62A.9A-102.

**62A.9A-705 Effectiveness of action taken before effective date.** (a) **Preeffective-date action; one-year perfection period unless reperfected.** If action, other than the filing of a financing statement, is taken before July 1, 2001, and the action would have resulted in priority of a security interest over the rights of a person that becomes a lien creditor had the security interest become enforceable before July 1, 2001, the action is effective to perfect a security interest that attaches under Article 62A.9A RCW within one year after July 1, 2001. An attached security interest becomes unperfected one year after July 1, 2001, unless the security interest becomes a perfected security interest under Article 62A.9A RCW before the expiration of that period.

(b) **Preeffective-date filing.** The filing of a financing statement before July 1, 2001, is effective to perfect a security interest to the extent the filing would satisfy the applicable requirements for perfection under Article 62A.9A RCW.

(c) **Preeffective-date filing in jurisdiction formerly governing perfection.** Article 62A.9A RCW does not render ineffective an effective financing statement that, before July 1, 2001, is filed and satisfies the applicable requirements for perfection under the law of the jurisdiction governing perfection as provided in former \*RCW 62A.9-103. However, except as otherwise provided in subsections (d) and (e) of this section and RCW 62A.9A-706, the financing statement ceases to be effective at the earlier of:

(1) The time the financing statement would have ceased to be effective under the law of the jurisdiction in which it is filed; or

(2) June 30, 2006.

(d) **Continuation statement.** The filing of a continuation statement after July 1, 2001, does not continue the effectiveness of the financing statement filed before July 1, 2001. However, upon the timely filing of a continuation statement after July 1, 2001, and in accordance with the law of the jurisdiction governing perfection as provided in Part 3, the effectiveness of a financing statement filed in the same office in that jurisdiction before July 1, 2001, continues for the period provided by the law of that jurisdiction.

(e) **Application of subsection (c)(2) of this section to transmitting utility financing statement.** Subsection (c)(2) of this section applies to a financing statement that, before July 1, 2001, is filed against a transmitting utility and satisfies the applicable requirements for perfection under the law of the jurisdiction governing perfection as provided in former \*RCW 62A.9-103 only to the extent that Part 3 provides that the law of a jurisdiction other than the jurisdiction in which

the financing statement is filed governs perfection of a security interest in collateral covered by the financing statement.

(f) **Application of Part 5.** A financing statement that includes a financing statement filed before July 1, 2001, and a continuation statement filed after July 1, 2001, is effective only to the extent that it satisfies the requirements of Part 5 for an initial financing statement. [2001 c 32 § 49; 2000 c 250 § 9A-705.]

**\*Reviser's note:** RCW 62A.9-103 was repealed by 2000 c 250 § 9A-901, effective July 1, 2001.

**Effective date—2001 c 32:** See note following RCW 62A.9A-102.

**62A.9A-706 When initial financing statement suffices to continue effectiveness of financing statement.** (a) **Initial financing statement in lieu of continuation statement.** The filing of an initial financing statement in the office specified in RCW 62A.9A-501 continues the effectiveness of a financing statement filed before July 1, 2001, if:

(1) The filing of an initial financing statement in that office would be effective to perfect a security interest under Article 62A.9A RCW;

(2) The preeffective-date financing statement was filed in an office in another state or another office in this state; and

(3) The initial financing statement satisfies subsection (c) of this section.

(b) **Period of continued effectiveness.** The filing of an initial financing statement under subsection (a) of this section continues the effectiveness of the preeffective-date financing statement:

(1) If the initial financing statement is filed before July 1, 2001, for the period provided in \*RCW 62A.9-403 with respect to a financing statement; and

(2) If the initial financing statement is filed after July 1, 2001, for the period provided in RCW 62A.9A-515 with respect to an initial financing statement.

(c) **Requirements for initial financing statement under subsection (a) of this section.** To be effective for purposes of subsection (a) of this section, an initial financing statement must:

(1) Satisfy the requirements of Part 5 for an initial financing statement;

(2) Identify the preeffective-date financing statement by indicating the office in which the financing statement was filed and providing the dates of filing and file numbers, if any, of the financing statement and of the most recent continuation statement filed with respect to the financing statement; and

(3) Indicate that the preeffective-date financing statement remains effective. [2001 c 32 § 50; 2000 c 250 § 9A-706.]

**\*Reviser's note:** RCW 62A.9-403 was repealed by 2000 c 250 § 9A-901, effective July 1, 2001.

**Effective date—2001 c 32:** See note following RCW 62A.9A-102.

**62A.9A-707 Amendment of preeffective-date financing statement.** (a) **Preeffective-date financing statement.** In this section, "preeffective-date financing statement" means a financing statement filed before July 1, 2001.

(b) **Applicable law.** On or after July 1, 2001, a person may add or delete collateral covered by, continue or terminate the effectiveness of, or otherwise amend the information

provided in, a preeffective-date financing statement only in accordance with the law of the jurisdiction governing perfection as provided in Part 3. However, the effectiveness of a preeffective-date financing statement also may be terminated in accordance with the law of the jurisdiction in which the financing statement is filed.

(c) **Method of amending: General rule.** Except as otherwise provided in subsection (d) of this section, if the law of this state governs perfection of a security interest, the information in a preeffective-date financing statement may be amended on or after July 1, 2001, only if:

(1) The preeffective-date financing statement and an amendment are filed in the office specified in RCW 62A.9A-501;

(2) An amendment is filed in the office specified in RCW 62A.9A-501 concurrently with, or after the filing in that office of, an initial financing statement that satisfies RCW 62A.9A-706(c); or

(3) An initial financing statement that provides the information as amended and satisfies RCW 62A.9A-706(c) is filed in the office specified in RCW 62A.9A-501.

(d) **Method of amending: Continuation.** If the law of this state governs perfection of a security interest, the effectiveness of a preeffective-date financing statement may be continued only under RCW 62A.9A-705 (d) and (f) or 62A.9A-706.

(e) **Method of amending: Additional termination rule.** Whether or not the law of this state governs perfection of a security interest, the effectiveness of a preeffective-date financing statement filed in this state may be terminated on or after July 1, 2001, by filing a termination statement in the office in which the preeffective-date financing statement is filed, unless an initial financing statement that satisfies RCW 62A.9A-706(c) has been filed in the office specified by the law of the jurisdiction governing perfection as provided in Part 3 as the office in which to file a financing statement. [2001 c 32 § 51; 2000 c 250 § 9A-707.]

**Effective date—2001 c 32:** See note following RCW 62A.9A-102.

**62A.9A-708 Persons entitled to file initial financing statement or continuation statement.** A person may file an initial financing statement or a continuation statement under this part if:

(1) The secured party of record authorizes the filing; and

(2) The filing is necessary under this part:

(A) To continue the effectiveness of a financing statement filed before July 1, 2001; or

(B) To perfect or continue the perfection of a security interest. [2001 c 32 § 52; 2000 c 250 § 9A-708.]

**Effective date—2001 c 32:** See note following RCW 62A.9A-102.

**62A.9A-709 Priority.** (a) **Law governing priority.** Article 62A.9A RCW determines the priority of conflicting claims to collateral. However, if the relative priorities of the claims were established before July 1, 2001, \*Article 62A.9 RCW determines priority.

(b) **Priority if security interest becomes enforceable under RCW 62A.9A-203.** For purposes of RCW 62A.9A-322(a), the priority of a security interest that becomes enforceable under RCW 62A.9A-203 dates from

(2010 Ed.)

July 1, 2001, if the security interest is perfected under Article 62A.9A RCW by the filing of a financing statement before July 1, 2001, which would not have been effective to perfect the security interest under \*Article 62A.9 RCW. This subsection does not apply to conflicting security interests each of which is perfected by the filing of such a financing statement. [2001 c 32 § 53.]

**\*Reviser's note:** Article 62A.9 RCW was repealed in its entirety by 2000 c 250 § 9A-901, effective July 1, 2001.

**Effective date—2001 c 32:** See note following RCW 62A.9A-102.

## Article 10

### EFFECTIVE DATE AND REPEALER

#### Sections

62A.10-101	Effective date—1965 ex.s. c 157.
62A.10-102	Specific repealer; provision for transition.
62A.10-103	General repealer.
62A.10-104	Laws not repealed.

**62A.10-101 Effective date—1965 ex.s. c 157.** This Title shall become effective at midnight on June 30, 1967. It applies to transactions entered into and events occurring after that date. [1965 ex.s. c 157 § 10-101.]

**62A.10-102 Specific repealer; provision for transition.** (1) The following acts and all other acts and parts of acts inconsistent herewith are hereby repealed:

(a)(i) RCW 22.04.010 through 22.04.610;

(ii) RCW 23.80.010 through 23.80.250;

(iii) RCW 30.16.020, 30.16.030, 30.16.040 and 30.16.050;

(iv) RCW 30.40.030, 30.40.040 and 30.40.050;

(v) RCW 30.52.010 through 30.52.160;

(vi) RCW 61.04.010 through 61.04.090;

(vii) RCW 61.08.010 through 61.08.120;

(viii) RCW 61.12.160;

(ix) RCW 61.16.040, 61.16.050 and 61.16.070;

(x) RCW 61.20.010 through 61.20.190;

(xi) RCW 62.01.001 through 62.01.196 and 62.98.010 through 62.98.050;

(xii) RCW 63.04.010 through 63.04.780;

(xiii) RCW 63.08.010 through 63.08.060;

(xiv) RCW 63.12.010 through 63.12.030;

(xv) RCW 63.16.010 through 63.16.900;

(xvi) RCW 65.08.010, 65.08.020 and 65.08.040; and

(xvii) RCW 81.32.010 through 81.32.561: PROVIDED,

That such repeal shall not affect the validity of sections 81.29.010 through 81.29.050, chapter 14, Laws of 1961 (RCW 81.29.010 through 81.29.050).

(b)(i) Chapter 99, Laws of 1913;

(ii) Chapter 100, Laws of 1939;

(iii) Section 4, chapter 106, Laws of 1959 and sections 30.16.020, 30.16.030, 30.16.040 and 30.16.050, chapter 33, Laws of 1955;

(iv) Sections 30.40.030, 30.40.040 and 30.40.050, chapter 33, Laws of 1955;

(v) Section 3, chapter 194, Laws of 1963 and sections 30.52.010 through 30.52.160, chapter 33, Laws of 1955;

(vi) Section 11, chapter 263, Laws of 1959, section 3, chapter 214, Laws of 1953, sections 1, 2 and 3, chapter 284,

Laws of 1943, section 1, chapter 76, Laws of 1943, section 1, chapter 121, Laws of 1939, section 1, chapter 156, Laws of 1929, sections 1, 2, 3, 4, 5, 6 and 7, chapter 98, Laws of 1899, sections 1986, 1987 and 1988, Code of 1881, section 1, page 104, Laws of 1879, section 1, page 286, Laws of 1877 and section 1, page 43, Laws of 1875;

(vii) Sections 1989, 1990, 1991, 1992, 1993, 1994, 1995, 1996, 1997 and 1998, Code of 1881, sections 4, 5, 6, 7, 8, 9, 10, 11 and 12, pages 105 and 106, Laws of 1879 and sections 18, 19, 20, 22, 23, 24 and 28, page 47, Laws of 1875;

(viii) Sections 618 and 619, Code of 1881 and section 572, page 147, Laws of 1869;

(ix) Section 12, chapter 263, Laws of 1959, section 4, chapter 214, Laws of 1953, section 4, chapter 284, Laws of 1943, sections 1 and 2, chapter 133, Laws of 1937 and sections 8, 9 and 11, chapter 98, Laws of 1899;

(x) Sections 1 and 2, chapter 249, Laws of 1957 and chapter 71, Laws of 1943;

(xi) Sections 62.01.001 through 62.01.196 and 62.98.010 through 62.98.050, chapter 35, Laws of 1955;

(xii) Chapter 142, Laws of 1925 extraordinary session;

(xiii) Sections 1, 2, 3 and 4, chapter 247, Laws of 1953, section 1, chapter 98, Laws of 1943, sections 1, 2, 3 and 4, chapter 122, Laws of 1939 and sections 1, 2, 3 and 4, chapter 135, Laws of 1925 extraordinary session;

(xiv) Section 22, chapter 236, Laws of 1963, section 1, chapter 159, Laws of 1961, sections 1 and 2, chapter 196, Laws of 1937, sections 1 and 2, chapter 129, Laws of 1933, section 1, chapter 120, Laws of 1925 extraordinary session, section 1, chapter 95, Laws of 1915, sections 1 and 2, chapter 6, Laws of 1903 and sections 1 and 2, chapter 106, Laws of 1893;

(xv) Sections 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11 and 12, chapter 8, Laws of 1947;

(xvi) Sections 1 and 2, chapter 72, Laws of 1899, section 2327, Code of 1881, section 4, page 413, Laws of 1863 and section 4, page 404, Laws of 1854; and

(xvii) Chapter 159, Laws of 1915 and sections 81.32.011 through 81.32.561, chapter 14, Laws of 1961.

(2) Transactions validly entered into before the effective date specified in RCW 62A.10-101 and the rights, duties and interests flowing from them remain valid thereafter and may be terminated, completed, consummated or enforced as required or permitted by any statute or other law amended or repealed by this Title as though such repeal or amendment had not occurred. [1965 ex.s. c 157 § 10-102.]

**62A.10-103 General repealer.** Except as provided in the following section, all acts and parts of acts inconsistent with this Title are hereby repealed. [1965 ex.s. c 157 § 10-103.]

**62A.10-104 Laws not repealed.** The Article on Documents of Title (Article 7) does not repeal or modify any laws prescribing the form or contents of documents of title or the services or facilities to be afforded by bailees, or otherwise regulating bailees' businesses in respects not specifically dealt with herein; but the fact that such laws are violated does not affect the status of a document of title which otherwise

complies with the definition of a document of title (RCW 62A.1-201). [1995 c 48 § 71; 1965 ex.s. c 157 § 10-104.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

## Article 11

### EFFECTIVE DATE AND TRANSITION PROVISIONS

#### Sections

62A.11-101	Effective date—1981 c 41.
62A.11-102	Preservation of old transition provisions.
62A.11-103	Transition to the Uniform Commercial Code as amended by chapter 41, Laws of 1981; general rule.
62A.11-104	Transition provision on change of requirement of filing.
62A.11-105	Transition provision on change of place of filing.
62A.11-106	Required refilings.
62A.11-107	Transition provisions as to priorities.
62A.11-108	Presumption that rule of law continues unchanged.
62A.11-109	Effective financing statement; certificate by county auditor.
62A.11-110	Effective date—1993 c 230.
62A.11-111	Recovery of attorneys' fees.
62A.11-112	Effective date—1993 c 229.
62A.11-113	Effective date—1995 c 48.

**Reviser's note:** Throughout Article 11, "chapter 41, Laws of 1981" is a translation of the term "this act."

**62A.11-101 Effective date—1981 c 41.** This act shall take effect at midnight on June 30, 1982. [1981 c 41 § 47.]

**62A.11-102 Preservation of old transition provisions.** The provisions of Article 10 shall continue to apply to the Uniform Commercial Code as amended by chapter 41, Laws of 1981 and for this purpose the Uniform Commercial Code before midnight June 30, 1982 and the Uniform Commercial Code as amended by chapter 41, Laws of 1981 shall be considered one continuous statute. [1981 c 41 § 38.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**62A.11-103 Transition to the Uniform Commercial Code as amended by chapter 41, Laws of 1981; general rule.** Transactions validly entered into after June 30, 1967 and before midnight June 30, 1982, and which were subject to the provisions of the Uniform Commercial Code as it existed before midnight June 30, 1982 and which would be subject to the Uniform Commercial Code as amended if they had been entered into after midnight June 30, 1982 and the rights, duties and interests flowing from such transactions remain valid after midnight June 30, 1982 and may be terminated, completed, consummated or enforced as required or permitted by the Uniform Commercial Code as amended by chapter 41, Laws of 1981. Security interests arising out of such transactions which are perfected by midnight June 30, 1982 shall remain perfected until they lapse as provided in the Uniform Commercial Code as amended by chapter 41, Laws of 1981, and may be continued as permitted by the Uniform Commercial Code as amended by chapter 41, Laws of 1981, except as stated in RCW 62A.11-105. [1981 c 41 § 39.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**62A.11-104 Transition provision on change of requirement of filing.** A security interest for the perfection of which filing or the taking of possession was required under the Uniform Commercial Code as it existed before midnight

June 30, 1982 and which attached prior to midnight June 30, 1982 but was not perfected shall be deemed perfected on midnight June 30, 1982 if the Uniform Commercial Code as amended by chapter 41, Laws of 1981 permits perfection without filing or authorizes filing in the office or offices where a prior ineffective filing was made. [1981 c 41 § 40.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**62A.11-105 Transition provision on change of place of filing.** (1) A financing statement or continuation statement filed prior to midnight June 30, 1982 which shall not have lapsed prior to midnight June 30, 1982, shall remain effective for the period provided in the Uniform Commercial Code as it existed before midnight June 30, 1982, but not less than five years after the filing.

(2) With respect to any collateral acquired by the debtor subsequent to midnight June 30, 1982, any effective financing statement or continuation statement described in this section shall apply only if the filing or filings are in the office or offices that would be appropriate to perfect the security interests in the new collateral under chapter 41, Laws of 1981.

(3) The effectiveness of any financing statement or continuation statement filed prior to midnight June 30, 1982 may be continued by a continuation statement as permitted by the Uniform Commercial Code as amended by chapter 41, Laws of 1981, except that if the Uniform Commercial Code as amended by chapter 41, Laws of 1981 requires a filing in an office where there was no previous financing statement, a new financing statement conforming to RCW 62A.11-106 shall be filed in that office.

(4) If the record of a mortgage of real estate would have been effective as a fixture filing of goods described therein if the Uniform Commercial Code as amended by chapter 41, Laws of 1981 had been in effect on the date of recording the mortgage, the mortgage shall be deemed effective as a fixture filing as to such goods under subsection (6) of \*RCW 62A.9-402 as amended by chapter 41, Laws of 1981 on midnight June 30, 1982. [1981 c 41 § 41.]

**\*Reviser's note:** Article 62A.9 RCW was repealed in its entirety by 2000 c 250 § 9A-901, effective July 1, 2001. For later enactment, see Article 62A.9A RCW.

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**62A.11-106 Required refilings.** (1) If a security interest is perfected or has priority on midnight June 30, 1982, as to all persons or as to certain persons without any filing or recording, and if the filing of a financing statement would be required for the perfection or priority of the security interest against those persons under the Uniform Commercial Code as amended by chapter 41, Laws of 1981, the perfection and priority rights of the security interest continue until three years after midnight June 30, 1982. The perfection will then lapse unless a financing statement is filed as provided in subsection (4) or unless the security interest is perfected otherwise than by filing.

(2) If a security interest is perfected when the Uniform Commercial Code as amended by chapter 41, Laws of 1981 takes effect under a law other than the Uniform Commercial Code which requires no further filing, refiling or recording to continue its perfection, perfection continues until and will lapse three years after the Uniform Commercial Code as

(2010 Ed.)

amended by chapter 41, Laws of 1981 takes effect, unless a financing statement is filed as provided in subsection (4) or unless the security interest is perfected otherwise than by filing, or unless under subsection (3) of \*RCW 62A.9-302 the other law continues to govern filing.

(3) If a security interest is perfected by a filing, refiling or recording under a law repealed by chapter 41, Laws of 1981 which required further filing, refiling or recording to continue its perfection, perfection continues and will lapse on the date provided by the law so repealed for such further filing, refiling or recording unless a financing statement is filed as provided in subsection (4) or unless the security interest is perfected otherwise than by filing.

(4) A financing statement may be filed within six months before the perfection of a security interest would otherwise lapse. Any such financing statement may be signed by either the debtor or the secured party. It must identify the security agreement, statement or notice (however denominated in any statute or other law repealed or modified by chapter 41, Laws of 1981), state the office where and the date when the last filing, refiling or recording, if any, was made with respect thereto, and the filing number, if any, or book and page, if any, of recording and further state that the security agreement, statement or notice, however denominated, in another filing office under the Uniform Commercial Code or under any statute or other law repealed or modified by chapter 41, Laws of 1981 is still effective. \*RCW 62A.9-401 and 62A.9-103 determine the proper place to file such a financing statement. Except as specified in this subsection, the provisions of \*RCW 62A.9-403(3) for continuation statements apply to such a financing statement. [1981 c 41 § 42.]

**\*Reviser's note:** Article 62A.9 RCW was repealed in its entirety by 2000 c 250 § 9A-901, effective July 1, 2001. For later enactment, see Article 62A.9A RCW.

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**62A.11-107 Transition provisions as to priorities.** Except as otherwise provided in this article, the Uniform Commercial Code as it existed before midnight June 30, 1982 shall apply to any questions of priority if the positions of the parties were fixed prior to midnight June 30, 1982. In other cases questions of priority shall be determined by the Uniform Commercial Code as amended by chapter 41, Laws of 1981. [1981 c 41 § 43.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**62A.11-108 Presumption that rule of law continues unchanged.** Unless a change in law has clearly been made, the provisions of the Uniform Commercial Code as amended by chapter 41, Laws of 1981 shall be deemed declaratory of the meaning of the Uniform Commercial Code as it existed before midnight June 30, 1982. [1981 c 41 § 44.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**62A.11-109 Effective financing statement; certificate by county auditor.** From and after midnight June 30, 1982, upon request of any person, the county auditor shall issue his certificate showing whether there is on file with the county auditor's office on the date and hour stated therein, any presently effective financing statement filed with the county audi-

tor's office before midnight June 30, 1982, naming a particular debtor and any statement of assignment thereof and if there is, giving the date and hour of filing of each such statement and the names and addresses of each secured party therein. The uniform fee for such a certificate shall be four dollars. Upon request the county auditor shall issue his certificate and shall furnish a copy of any filed financing statements or statements of assignment for a uniform fee of ten dollars for each particular debtor's statements requested. [1981 c 41 § 45.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**62A.11-110 Effective date—1993 c 230.** This act shall take effect July 1, 1994. [1993 c 230 § 2A-605.]

**62A.11-111 Recovery of attorneys' fees.** No provision in this act changes or modifies existing common law or other law of Washington state concerning the recovery of attorneys' fees. [1993 c 229 § 119.]

**62A.11-112 Effective date—1993 c 229.** This act shall take effect July 1, 1994. [1993 c 229 § 120.]

**62A.11-113 Effective date—1995 c 48.** This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect July 1, 1995. [1995 c 48 § 72.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

# Title 63

## PERSONAL PROPERTY

### Chapters

- 63.10** Consumer leases.
- 63.14** Retail installment sales of goods and services.
- 63.18** Lease or rental of personal property—Disclaimer of warranty of merchantability or fitness.
- 63.19** Lease-purchase agreements.
- 63.21** Lost and found property.
- 63.24** Unclaimed property in hands of bailee.
- 63.26** Unclaimed property held by museum or historical society.
- 63.29** Uniform Unclaimed Property Act.
- 63.32** Unclaimed property in hands of city police.
- 63.35** Unclaimed property in hands of state patrol.
- 63.40** Unclaimed property in hands of sheriff.
- 63.42** Unclaimed inmate personal property.
- 63.44** Joint tenancies.
- 63.48** Escheat of postal savings system accounts.
- 63.52** Dies, molds, and forms.
- 63.60** Personality rights.

*Attachment: Chapter 6.25 RCW.*

*Chattel mortgages: Article 62A.9A RCW.*

*Community property: Chapter 26.16 RCW.*

*Corporate seals, effect of absence from instrument: RCW 64.04.105.*

*Corporate shares issued or transferred in joint tenancy form—Presumption—Transfer pursuant to direction of survivor: RCW 23B.07.240.*

*County property: Chapter 36.34 RCW.*

*Credit life insurance and credit accident and health insurance: Chapter 48.34 RCW.*

*Duration of trusts for employee benefits: Chapter 49.64 RCW.*

*Enforcement of judgments: Title 6 RCW.*

*Fox, mink, marten declared personalty: RCW 16.72.030.*

*Frauds and swindles—Encumbered, leased or rented personal property: RCW 9.45.060.*

*Intergovernmental disposition of personal property: Chapter 39.33 RCW.*

*Leases, satisfaction: Chapter 61.16 RCW.*

*Liens: Title 60 RCW.*

*Personal property sales, regulation of, generally: Titles 18 and 19 RCW.*

*Powers of appointment: Chapter 11.95 RCW.*

*Probate and trust law: Title 11 RCW.*

*Quieting title to personalty: RCW 7.28.310, 7.28.320.*

*Real property and conveyances: Title 64 RCW.*

*Replevin: Chapters 7.64, 12.28 RCW.*

*Safe deposit companies: Chapter 22.28 RCW.*

*Separate property: Chapter 26.16 RCW.*

*State institutions, property of inmates, residents: RCW 72.23.230 through 72.23.250.*

*Taxation*

*estate: Title 83 RCW.*

*excise: Title 82 RCW.*

*property: Title 84 RCW.*

*The Washington Principal and Income Act of 2002: Chapter 11.104A RCW.*

*Timeshare regulation: Chapter 64.36 RCW.*

*Transfers in trust: RCW 19.36.020.*

*Uniform transfers to minors act: Chapter 11.114 RCW.*

### Chapter 63.10 RCW CONSUMER LEASES

#### Sections

- 63.10.010 Legislative declaration.
- 63.10.020 Definitions.
- 63.10.030 Liability at expiration of lease—Residual value—Attorneys' fees—Lease terms.
- 63.10.040 Lease contracts—Disclosure requirements.
- 63.10.045 Unlawful acts or practices—Consumer lease of a motor vehicle.
- 63.10.050 Violations—Unfair acts under consumer protection act—Damages.
- 63.10.055 Remedies—Effect of chapter.
- 63.10.060 Defense or action of usury—Limitations.
- 63.10.900 Severability—1983 c 158.
- 63.10.901 Severability—1995 c 112.
- 63.10.902 Effective date—1995 c 112.

*Installment sales contracts: Chapter 63.14 RCW.*

**63.10.010 Legislative declaration.** The leasing of motor vehicles, furniture and fixtures, appliances, commercial equipment, and other personal property has become an important and widespread form of business transaction that is beneficial to the citizens and to the economy of the state. Users of personal property of all types and lessors throughout the state have relied upon the distinct nature of leasing as a modern means of transacting business that creates different relationships and legal consequences from those of lender and borrower in loan transactions and those of seller and buyer in installment sale transactions. The utility of lease transactions and the well-being of the state's economy and of the leasing industry require that leasing be a legally recognized and distinct form of transaction, creating legal relationships and having legal consequences different from loans or installment sales. [1983 c 158 § 1.]

**63.10.020 Definitions.** As used in this chapter, unless the context otherwise requires:

(1) The term "adjusted capitalized cost" means the agreed-upon amount that serves as the basis for determining the periodic lease payment, computed by subtracting from the gross capitalized cost any capitalized cost reduction.

(2) The term "gross capitalized cost" means the amount ascribed by the lessor to the vehicle including optional equipment, plus taxes, title, license fees, lease acquisition and administrative fees, insurance premiums, warranty charges, and any other product, service, or amount amortized in the lease. However, any definition of gross capitalized cost adopted by the federal reserve board to be used in the context of mandatory disclosure of the gross capitalized cost to lessees in consumer motor vehicle lease transactions supersedes the definition of gross capitalized cost in this subsection.

(3) The term "capitalized cost reduction" means any payment made by cash, check, or similar means, any manufacturer rebate, and net trade in allowance granted by the lessor at the inception of the lease for the purpose of reducing the gross capitalized cost but does not include any periodic lease payments due at the inception of the lease or all of the periodic lease payments if they are paid at the inception of the lease.

(4) The term "consumer lease" means a contract of lease or bailment for the use of personal property by a natural person for a period of time exceeding four months, and for a total contractual obligation not exceeding twenty-five thousand dollars, primarily for personal, family, or household purposes, whether or not the lessee has the option to purchase or otherwise become the owner of the property at the expiration of the lease, except that such term shall not include any lease which meets the definition of a retail installment contract under RCW 63.14.010 or the definition of a lease-purchase agreement under chapter 63.19 RCW. The twenty-five thousand dollar total contractual obligation in this subsection shall not apply to consumer leases of motor vehicles. The inclusion in a lease of a provision whereby the lessee's or lessor's liability, at the end of the lease period or upon an earlier termination, is based on the value of the leased property at that time, shall not be deemed to make the transaction other than a consumer lease. The term "consumer lease" does not include a lease for agricultural, business, or commercial purposes, or to a government or governmental agency or instrumentality, or to an organization.

(5) The term "lessee" means a natural person who leases or is offered a consumer lease.

(6) The term "lessor" means a person who is regularly engaged in leasing, offering to lease, or arranging to lease under a consumer lease. [1998 c 113 § 1; 1995 c 112 § 1; 1992 c 134 § 15; 1983 c 158 § 2.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**63.10.030 Liability at expiration of lease—Residual value—Attorneys' fees—Lease terms.** (1) Where the lessee's liability on expiration of a consumer lease is based on the estimated residual value of the property, such estimated residual value shall be a reasonable approximation of the anticipated actual fair market value of the property on lease expiration. There shall be a rebuttable presumption that the estimated residual value is unreasonable to the extent that the estimated residual value exceeds the actual residual value by more than three times the average payment allocable to a monthly period under the lease. In addition, where the lessee has such liability on expiration of a consumer lease there shall be a rebuttable presumption that the lessor's estimated residual value is not in good faith to the extent that the estimated residual value exceeds the actual residual value by more than three times the average payment allocable to a monthly period under the lease and such lessor shall not collect from the lessee the amount of such excess liability on expiration of a consumer lease unless the lessor brings a successful action with respect to such excess liability. In all actions, the lessor shall pay the lessee's reasonable attorneys' fees. The presumptions stated in this section shall not apply to the extent the excess of estimated over actual residual

value is due to physical damage to the property beyond reasonable wear and use, or to excessive use, and the lease may set standards for such wear and use if such standards are not unreasonable. Nothing in this subsection shall preclude the right of a willing lessee to make any mutually agreeable final adjustment with respect to such excess residual liability, provided such an agreement is reached after termination of the lease.

(2) Penalties or other charges for delinquency, default, or early termination may be specified in the lease but only at an amount which is reasonable in the light of the anticipated or actual harm caused by the delinquency, default, or early termination, the difficulties of proof of loss, and the inconvenience or nonfeasibility of otherwise obtaining an adequate remedy.

(3) If a lease has a residual value provision at the termination of the lease, the lessee may obtain, at his expense, a professional appraisal of the leased property by an independent third party agreed to be both parties. Such appraisal shall be final and binding on the parties. [1983 c 158 § 3.]

**63.10.040 Lease contracts—Disclosure requirements.** (1) In any lease contract subject to this chapter, the following items, as applicable, shall be disclosed:

(a) A brief description of the leased property, sufficient to identify the property to the lessee and lessor.

(b) The total amount of any payment, such as a refundable security deposit paid by cash, check, or similar means, advance payment, capitalized cost reduction, or any trade-in allowance, appropriately identified, to be paid by the lessee at consummation of the lease.

(c) The number, amount, and due dates or periods of payments scheduled under the lease and the total amount of the periodic payments.

(d) The total amount paid or payable by the lessee during the lease term for official fees, registration, certificate of title, license fees, or taxes.

(e) The total amount of all other charges, individually itemized, payable by the lessee to the lessor, which are not included in the periodic payments. This total includes the amount of any liabilities the lease imposes upon the lessee at the end of the term, but excludes the potential difference between the estimated and realized values required to be disclosed under (m) of this subsection.

(f) A brief identification of insurance in connection with the lease including (i) if provided or paid for by the lessor, the types and amounts of coverages and cost to the lessee, or (ii) if not provided or paid for by the lessor, the types and amounts of coverages required of the lessee.

(g) A statement identifying any express warranties or guarantees available to the lessee made by the lessor or manufacturer with respect to the leased property.

(h) An identification of the party responsible for maintaining or servicing the leased property together with a brief description of the responsibility, and a statement of reasonable standards for wear and use, if the lessor sets such standards.

(i) A description of any security interest, other than a security deposit disclosed under (b) of this subsection, held or to be retained by the lessor in connection with the lease and a

clear identification of the property to which the security interest relates.

(j) The amount or method of determining the amount of any penalty or other charge for delinquency, default, or late payments.

(k) A statement of whether or not the lessee has the option to purchase the leased property and, if at the end of the lease term, at what price, and, if prior to the end of the lease term, at what time, and the price or method of determining the price.

(l) A statement of the conditions under which the lessee or lessor may terminate the lease prior to the end of the lease term and the amount or method of determining the amount of any penalty or other charge for early termination.

(m) A statement that the lessee shall be liable for the difference between the estimated value of the property and its realized value at early termination or the end of the lease term, if such liability exists.

(n) Where the lessee's liability at early termination or at the end of the lease term is based on the estimated value of the leased property, a statement that the lessee may obtain at the end of the lease term or at early termination, at the lessee's expense, a professional appraisal of the value which could be realized at sale of the leased property by an independent third party agreed to by the lessee and the lessor, which appraisal shall be final and binding on the parties.

(o) Where the lessee's liability at the end of the lease term is based upon the estimated value of the leased property:

(i) The value of the property at consummation of the lease, the itemized total lease obligation at the end of the lease term, and the difference between them.

(ii) That there is a rebuttable presumption that the estimated value of the leased property at the end of the lease term is unreasonable and not in good faith to the extent that it exceeds the realized value by more than three times the average payment allocable to a monthly period, and that the lessor cannot collect the amount of such excess liability unless the lessor brings a successful action in court in which the lessor pays the lessee's attorney's fees, and that this provision regarding the presumption and attorney's fees does not apply to the extent the excess of estimated value over realized value is due to unreasonable wear or use, or excessive use.

(iii) A statement that the requirements of (o)(ii) of this subsection do not preclude the right of a willing lessee to make any mutually agreeable final adjustment regarding such excess liability.

(p) In consumer leases of motor vehicles:

(i) The gross capitalized cost stated as a total and the identity of the components listed in the definition of gross capitalized cost and the respective amount of each component;

(ii) Any capitalized cost reduction stated as a total;

(iii) A statement of adjusted capitalized cost;

(iv) If the lessee trades in a motor vehicle, the amount of any sales tax exemption for the agreed value of the traded vehicle and any reduction in the periodic payments resulting from the application of the sales tax exemption shall be disclosed in the lease contract; and

(v) A statement of the total amount to be paid prior to or at consummation or by delivery, if delivery occurs after consummation. The lessor shall itemize each component by type

and amount and shall itemize how the total amount will be paid, by type and amount.

(2) Where disclosures required under this chapter are the same as those required under Title I of the federal consumer protection act (90 Stat. 257, 15 U.S.C. Sec. 1667 et seq.), which is also known as the federal consumer leasing act, as of the date upon which the consumer lease is executed, disclosures complying with the federal consumer leasing act shall be deemed to comply with the disclosure requirements of this chapter. [1998 c 113 § 2; 1995 c 112 § 2; 1983 c 158 § 4.]

**63.10.045 Unlawful acts or practices—Consumer lease of a motor vehicle.** Each of the following acts or practices are unlawful in the context of offering a consumer lease of a motor vehicle:

(1) Advertising that is false, deceptive, misleading, or in violation of \*12 C.F.R. Sec. 213.5 (a) through (d) and 15 U.S.C. 1667, Regulation M;

(2) Misrepresenting any of the following:

(a) The material terms or conditions of a lease agreement;

(b) That the transaction is a purchase agreement as opposed to a lease agreement; or

(c) The amount of any equity or value the leased vehicle will have at the end of the lease; and

(3) Failure to comply with the disclosure requirements of Title I of the federal consumer protection act (90 Stat. 257, 15 U.S.C. Sec. 1667 et seq.), which is also known as the federal consumer leasing act, including, but not limited to, failure to disclose all fees that will be due when a consumer exercises the option to purchase. [1995 c 112 § 3.]

\*Reviser's note: 12 C.F.R. Sec. 213.5 (a) through (d) has been amended. See 12 C.F.R. Sec. 213.7 (a) through (f).

**63.10.050 Violations—Unfair acts under consumer protection act—Damages.** The legislature finds that the practices covered by this chapter are matters vitally affecting the public interest for the purpose of applying the consumer protection act, chapter 19.86 RCW. Violations of this chapter are not reasonable in relation to the development and preservation of business. A violation of this chapter is an unfair or deceptive act or practice in trade or commerce and an unfair method of competition for the purpose of applying the consumer protection act, chapter 19.86 RCW.

Regarding damages awarded under this section, the court may award damages allowed under chapter 19.86 RCW or 15 U.S.C. Sec. 1667d (a) and 15 U.S.C. Sec. 1640, but not both. [1995 c 112 § 4; 1983 c 158 § 5.]

**63.10.055 Remedies—Effect of chapter.** The provisions of this chapter shall be cumulative and nonexclusive and shall not affect any other remedy available at law or in equity. [1995 c 112 § 5.]

**63.10.060 Defense or action of usury—Limitations.** No person may plead the defense of usury or maintain any action thereon based upon a transaction heretofore entered into if such transaction:

(1) Constitutes a "consumer lease" as defined in RCW 63.10.020; or

(2) Would constitute such a consumer lease but for the fact that:

- (i) The lessee was not a natural person;
- (ii) The lease was not primarily for personal, family, or household purposes; or
- (iii) The total contractual obligation exceeded twenty-five thousand dollars. [1983 c 158 § 8.]

**63.10.900 Severability—1983 c 158.** If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1983 c 158 § 9.]

**63.10.901 Severability—1995 c 112.** If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1995 c 112 § 6.]

**63.10.902 Effective date—1995 c 112.** This act shall take effect January 1, 1996. [1995 c 112 § 7.]

### Chapter 63.14 RCW

## RETAIL INSTALLMENT SALES OF GOODS AND SERVICES

### Sections

- 63.14.010 Definitions.
- 63.14.020 Retail installment contracts—Number of documents—Promissory notes—Date—Signatures—Completion—Type size.
- 63.14.030 Retail installment contracts—Delivery to buyer of copy—Acknowledgment of delivery.
- 63.14.040 Retail installment contracts—Contents.
- 63.14.043 Retail installment contracts—Purchase of motor vehicle.
- 63.14.050 Retail installment contracts—Multiple documents permissible where original applies to purchases from time to time.
- 63.14.060 Retail installment contracts—Mail orders based on catalog or other printed solicitation.
- 63.14.070 Retail installment contracts—Seller not to obtain buyer's signature when essential blank spaces not filled—Exceptions.
- 63.14.080 Retail installment contracts—Prepayment in full of unpaid time balance—Refund of unearned service charge—"Rule of seventy-eighths".
- 63.14.090 Retail installment contracts, retail charge agreements, and lender credit card agreements—Delinquency or collection charges—Attorney's fees, court costs—Other provisions not inconsistent with chapter are permissible.
- 63.14.100 Receipt for cash payment—Retail installment contracts, statement of payment schedule and total amount unpaid.
- 63.14.110 Consolidation of subsequent purchases with previous contract.
- 63.14.120 Retail charge agreements and lender credit card agreements—Information to be furnished by seller.
- 63.14.123 Restrictions on electronically printed credit and debit card receipts.
- 63.14.125 Lender credit card agreements—Security interests prohibited.
- 63.14.130 Retail installment contracts, retail charge agreements, and lender credit card agreements—Service charge agreed to by contract—Other fees and charges prohibited.
- 63.14.136 Retail installment transaction—Unconscionable—Judicial action.
- 63.14.140 Retail installment contracts, retail charge agreements, and lender credit card agreements—Insurance.
- 63.14.145 Retail installment contracts and charge agreements—Sale, transfer, or assignment.
- 63.14.150 Retail installment contracts, retail charge agreements, and lender credit card agreements—Agreements by buyer not to assert claim or defense or to submit to suit in another county invalid.

- 63.14.151 Retail installment contracts, retail charge agreements, and lender credit card agreements—Compliance with disclosure requirements of federal consumer protection act deemed compliance with chapter 63.14 RCW.
- 63.14.152 Declaratory judgment action to establish if service charge is excessive.
- 63.14.154 Cancellation of transaction by buyer—Procedure.
- 63.14.156 Extension or deferment of payments—Agreement, charges.
- 63.14.158 Refinancing agreements—Costs—Contents.
- 63.14.159 New payment schedule—When authorized.
- 63.14.160 Conduct or agreement of buyer does not waive remedies.
- 63.14.165 Financial institution credit card agreement not subject to chapter 63.14 RCW, but subject to chapter 19.52 RCW.
- 63.14.167 Lender credit card agreements and financial institution credit card agreements—Credit to account for returned goods or forgiveness of a debit for services—Statement of credit to card issuer—Notice to cardholder.
- 63.14.170 Violations—Penalties.
- 63.14.175 Violations—Remedies.
- 63.14.180 Noncomplying person barred from recovery of service charge, etc.—Remedy of buyer—Extent of recovery.
- 63.14.190 Restraint of violations.
- 63.14.200 Assurance of discontinuance of unlawful practices.
- 63.14.210 Violation of order or injunction—Penalty.
- 63.14.900 Severability—1963 c 236.
- 63.14.901 Severability—1967 c 234.
- 63.14.902 Severability—1981 c 77.
- 63.14.903 Application, saving—1981 c 77.
- 63.14.904 Severability—1984 c 280.
- 63.14.910 Saving—1963 c 236.
- 63.14.920 Effective date—1963 c 236.
- 63.14.921 Effective date—Saving—1967 c 234.
- 63.14.922 Effective date—1993 sp.s. c 5.
- 63.14.923 Severability—1993 sp.s. c 5.
- 63.14.924 Application—1995 c 249.
- 63.14.925 Savings—1995 c 249.
- 63.14.926 Effective date—1995 c 249.

*Consumer leases: Chapter 63.10 RCW.*

*Interest—Usury: Chapter 19.52 RCW.*

### **63.14.010 Definitions. (Effective until July 1, 2011.)**

In this chapter, unless the context otherwise requires:

(1) "Financial institution" means any bank or trust company, mutual savings bank, credit union, or savings and loan association organized pursuant to the laws of any one of the United States of America or the United States of America, or the laws of a foreign country if also qualified to conduct business in any one of the United States of America or pursuant to the laws of the United States of America;

(2) "Goods" means all chattels personal when purchased primarily for personal, family, or household use and not for commercial or business use, but not including money or, except as provided in the next sentence, things in action. The term includes but is not limited to merchandise certificates or coupons, issued by a retail seller, to be used in their face amount in lieu of cash in exchange for goods or services sold by such a seller and goods which, at the time of sale or subsequently, are to be so affixed to real property as to become a part thereof, whether or not severable therefrom;

(3) "Lender credit card" means a card or device under a lender credit card agreement pursuant to which the issuer gives to a cardholder residing in this state the privilege of obtaining credit from the issuer or other persons in purchasing or leasing property or services, obtaining loans, or otherwise, and the issuer of which is not: (a) Principally engaged in the business of selling goods; or (b) a financial institution;

(4) "Lender credit card agreement" means an agreement entered into or performed in this state prescribing the terms of retail installment transactions pursuant to which the issuer may, with the buyer's consent, purchase or acquire one or more retail sellers' indebtedness of the buyer under a sales

slip or memorandum evidencing the purchase, lease, loan, or otherwise to be paid in accordance with the agreement. The issuer of a lender credit card agreement shall not be principally engaged in the business of selling goods or be a financial institution;

(5) "Official fees" means the amount of the fees prescribed by law and payable to the state, county, or other governmental agency for filing, recording, or otherwise perfecting, and releasing or satisfying, a retained title, lien, or other security interest created by a retail installment transaction;

(6) "Person" means an individual, partnership, joint venture, corporation, association, or any other group, however organized;

(7) "Principal balance" means the sale price of the goods or services which are the subject matter of a retail installment contract less the amount of the buyer's down payment in money or goods or both, plus the amounts, if any, included therein, if a separate identified charge is made therefor and stated in the contract, for insurance, any vehicle dealer administrative fee, any vehicle dealer documentary service fee, and official fees; and the amount actually paid or to be paid by the retail seller pursuant to an agreement with the buyer to discharge a security interest or lien on like-kind goods traded in or lease interest in the circumstance of a lease for like goods being terminated in conjunction with the sale pursuant to a retail installment contract;

(8) "Rate" means the percentage which, when multiplied times the outstanding balance for each month or other installment period, yields the amount of the service charge for such month or period;

(9) "Retail buyer" or "buyer" means a person who buys or agrees to buy goods or obtain services or agrees to have services rendered or furnished, from a retail seller;

(10) "Retail charge agreement," "revolving charge agreement," or "charge agreement" means an agreement between a retail buyer and a retail seller that is entered into or performed in this state and that prescribes the terms of retail installment transactions with one or more sellers which may be made thereunder from time to time and under the terms of which a service charge, as defined in this section, is to be computed in relation to the buyer's unpaid balance from time to time;

(11) "Retail installment contract" or "contract" means a contract, other than a retail charge agreement, a lender credit card agreement, or an instrument reflecting a sale made pursuant thereto, entered into or performed in this state for a retail installment transaction. The term "retail installment contract" may include a chattel mortgage, a conditional sale contract, and a contract in the form of a bailment or a lease if the bailee or lessee contracts to pay as compensation for their use a sum substantially equivalent to or in excess of the value of the goods sold and if it is agreed that the bailee or lessee is bound to become, or for no other or a merely nominal consideration, has the option of becoming the owner of the goods upon full compliance with the provisions of the bailment or lease. The term "retail installment contract" does not include: (a) A "consumer lease," heretofore or hereafter entered into, as defined in RCW 63.10.020; (b) a lease which would constitute such "consumer lease" but for the fact that: (i) It was entered into before April 29, 1983; (ii) the lessee was not a natural person; (iii) the lease was not primarily for personal,

(2010 Ed.)

family, or household purposes; or (iv) the total contractual obligations exceeded twenty-five thousand dollars; or (c) a lease-purchase agreement under chapter 63.19 RCW;

(12) "Retail installment transaction" means any transaction in which a retail buyer purchases goods or services from a retail seller pursuant to a retail installment contract, a retail charge agreement, or a lender credit card agreement, as defined in this section, which provides for a service charge, as defined in this section, and under which the buyer agrees to pay the unpaid principal balance in one or more installments or which provides for no service charge and under which the buyer agrees to pay the unpaid balance in more than four installments;

(13) "Retail seller" or "seller" means a person engaged in the business of selling goods or services to retail buyers;

(14) "Sale price" means the price for which the seller would have sold or furnished to the buyer, and the buyer would have bought or obtained from the seller, the goods or services which are the subject matter of a retail installment transaction. The sale price may include any taxes, registration and license fees, the cost of a guaranteed asset protection waiver, any vehicle dealer administrative fee, any vehicle dealer documentary service fee, and charges for transferring vehicle titles, delivery, installation, servicing, repairs, alterations, or improvements;

(15) "Service charge" however denominated or expressed, means the amount which is paid or payable for the privilege of purchasing goods or services to be paid for by the buyer in installments over a period of time. It does not include the amount, if any, charged for insurance premiums, delinquency charges, attorneys' fees, court costs, any vehicle dealer administrative fee under RCW 46.12.042, any vehicle dealer documentary service fee under RCW 46.70.180(2), or official fees;

(16) "Services" means work, labor, or services of any kind when purchased primarily for personal, family, or household use and not for commercial or business use whether or not furnished in connection with the delivery, installation, servicing, repair, or improvement of goods and includes repairs, alterations, or improvements upon or in connection with real property, but does not include services for which the price charged is required by law to be determined or approved by or to be filed, subject to approval or disapproval, with the United States or any state, or any department, division, agency, officer, or official of either as in the case of transportation services;

(17) "Time balance" means the principal balance plus the service charge. [2009 c 334 § 11; 2003 c 368 § 2; 1999 c 113 § 1; 1997 c 331 § 6; 1993 sp.s. c 5 § 1; 1992 c 134 § 16; 1984 c 280 § 1; 1983 c 158 § 7; 1981 c 77 § 1; 1972 ex.s. c 47 § 1; 1963 c 236 § 1.]

**Reviser's note:** The definitions in this section have been alphabetized pursuant to RCW 1.08.015(2)(k).

**Application—2009 c 334:** See RCW 48.160.900.

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**63.14.010 Definitions. (Effective July 1, 2011.)** In this chapter, unless the context otherwise requires:

(1) "Financial institution" means any bank or trust company, mutual savings bank, credit union, or savings and loan association organized pursuant to the laws of any one of the

United States of America or the United States of America, or the laws of a foreign country if also qualified to conduct business in any one of the United States of America or pursuant to the laws of the United States of America;

(2) "Goods" means all chattels personal when purchased primarily for personal, family, or household use and not for commercial or business use, but not including money or, except as provided in the next sentence, things in action. The term includes but is not limited to merchandise certificates or coupons, issued by a retail seller, to be used in their face amount in lieu of cash in exchange for goods or services sold by such a seller and goods which, at the time of sale or subsequently, are to be so affixed to real property as to become a part thereof, whether or not severable therefrom;

(3) "Lender credit card" means a card or device under a lender credit card agreement pursuant to which the issuer gives to a cardholder residing in this state the privilege of obtaining credit from the issuer or other persons in purchasing or leasing property or services, obtaining loans, or otherwise, and the issuer of which is not: (a) Principally engaged in the business of selling goods; or (b) a financial institution;

(4) "Lender credit card agreement" means an agreement entered into or performed in this state prescribing the terms of retail installment transactions pursuant to which the issuer may, with the buyer's consent, purchase or acquire one or more retail sellers' indebtedness of the buyer under a sales slip or memorandum evidencing the purchase, lease, loan, or otherwise to be paid in accordance with the agreement. The issuer of a lender credit card agreement shall not be principally engaged in the business of selling goods or be a financial institution;

(5) "Official fees" means the amount of the fees prescribed by law and payable to the state, county, or other governmental agency for filing, recording, or otherwise perfecting, and releasing or satisfying, a retained title, lien, or other security interest created by a retail installment transaction;

(6) "Person" means an individual, partnership, joint venture, corporation, association, or any other group, however organized;

(7) "Principal balance" means the sale price of the goods or services which are the subject matter of a retail installment contract less the amount of the buyer's down payment in money or goods or both, plus the amounts, if any, included therein, if a separate identified charge is made therefor and stated in the contract, for insurance, any vehicle dealer administrative fee, any vehicle dealer documentary service fee, and official fees; and the amount actually paid or to be paid by the retail seller pursuant to an agreement with the buyer to discharge a security interest or lien on like-kind goods traded in or lease interest in the circumstance of a lease for like goods being terminated in conjunction with the sale pursuant to a retail installment contract;

(8) "Rate" means the percentage which, when multiplied times the outstanding balance for each month or other installment period, yields the amount of the service charge for such month or period;

(9) "Retail buyer" or "buyer" means a person who buys or agrees to buy goods or obtain services or agrees to have services rendered or furnished, from a retail seller;

(10) "Retail charge agreement," "revolving charge agreement," or "charge agreement" means an agreement

between a retail buyer and a retail seller that is entered into or performed in this state and that prescribes the terms of retail installment transactions with one or more sellers which may be made thereunder from time to time and under the terms of which a service charge, as defined in this section, is to be computed in relation to the buyer's unpaid balance from time to time;

(11) "Retail installment contract" or "contract" means a contract, other than a retail charge agreement, a lender credit card agreement, or an instrument reflecting a sale made pursuant thereto, entered into or performed in this state for a retail installment transaction. The term "retail installment contract" may include a chattel mortgage, a conditional sale contract, and a contract in the form of a bailment or a lease if the bailee or lessee contracts to pay as compensation for their use a sum substantially equivalent to or in excess of the value of the goods sold and if it is agreed that the bailee or lessee is bound to become, or for no other or a merely nominal consideration, has the option of becoming the owner of the goods upon full compliance with the provisions of the bailment or lease. The term "retail installment contract" does not include: (a) A "consumer lease," heretofore or hereafter entered into, as defined in RCW 63.10.020; (b) a lease which would constitute such "consumer lease" but for the fact that: (i) It was entered into before April 29, 1983; (ii) the lessee was not a natural person; (iii) the lease was not primarily for personal, family, or household purposes; or (iv) the total contractual obligations exceeded twenty-five thousand dollars; or (c) a lease-purchase agreement under chapter 63.19 RCW;

(12) "Retail installment transaction" means any transaction in which a retail buyer purchases goods or services from a retail seller pursuant to a retail installment contract, a retail charge agreement, or a lender credit card agreement, as defined in this section, which provides for a service charge, as defined in this section, and under which the buyer agrees to pay the unpaid principal balance in one or more installments or which provides for no service charge and under which the buyer agrees to pay the unpaid balance in more than four installments;

(13) "Retail seller" or "seller" means a person engaged in the business of selling goods or services to retail buyers;

(14) "Sale price" means the price for which the seller would have sold or furnished to the buyer, and the buyer would have bought or obtained from the seller, the goods or services which are the subject matter of a retail installment transaction. The sale price may include any taxes, registration and vehicle license fees, the cost of a guaranteed asset protection waiver, any vehicle dealer administrative fee, any vehicle dealer documentary service fee, and charges for transferring vehicle titles, delivery, installation, servicing, repairs, alterations, or improvements;

(15) "Service charge" however denominated or expressed, means the amount which is paid or payable for the privilege of purchasing goods or services to be paid for by the buyer in installments over a period of time. It does not include the amount, if any, charged for insurance premiums, delinquency charges, attorneys' fees, court costs, any vehicle dealer administrative fee under RCW 46.68.440(1), any vehicle dealer documentary service fee under RCW 46.70.180(2), or official fees;

(16) "Services" means work, labor, or services of any kind when purchased primarily for personal, family, or household use and not for commercial or business use whether or not furnished in connection with the delivery, installation, servicing, repair, or improvement of goods and includes repairs, alterations, or improvements upon or in connection with real property, but does not include services for which the price charged is required by law to be determined or approved by or to be filed, subject to approval or disapproval, with the United States or any state, or any department, division, agency, officer, or official of either as in the case of transportation services;

(17) "Time balance" means the principal balance plus the service charge. [2010 c 161 § 1152. Prior: 2009 c 334 § 11; 2003 c 368 § 2; 1999 c 113 § 1; 1997 c 331 § 6; 1993 sp.s. c 5 § 1; 1992 c 134 § 16; 1984 c 280 § 1; 1983 c 158 § 7; 1981 c 77 § 1; 1972 ex.s. c 47 § 1; 1963 c 236 § 1.]

**Effective date—Intent—Legislation to reconcile chapter 161, Laws of 2010 and other amendments made during the 2010 legislative session—2010 c 161:** See notes following RCW 46.04.013.

**Application—2009 c 334:** See RCW 48.160.900.

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**63.14.020 Retail installment contracts—Number of documents—Promissory notes—Date—Signatures—Completion—Type size.** Every retail installment contract shall be contained in a single document which shall contain the entire agreement of the parties including any promissory notes or other evidences of indebtedness between the parties relating to the transaction, except as provided in RCW 63.14.050, 63.14.060 and 63.14.110: PROVIDED, That where the buyer's obligation to pay the time balance is represented by a promissory note secured by a chattel mortgage, the promissory note may be a separate instrument if the mortgage recites the amount and terms of payment of such note and the promissory note recites that it is secured by a mortgage: PROVIDED FURTHER, That any such promissory note or other evidence of indebtedness executed by the buyer shall not, when assigned or negotiated, cut off as to third parties any right of action or defense which the buyer may have against the seller, and each such promissory note or other evidence of indebtedness shall contain a statement to that effect: AND PROVIDED FURTHER, That in a transaction involving the repair, alteration or improvement upon or in connection with real property, the contract may be secured by a mortgage on the real property contained in a separate document. Home improvement retail sales transactions which are financed or insured by the Federal Housing Administration are not subject to this chapter.

The contract shall be dated, signed by the retail buyer and completed as to all essential provisions, except as otherwise provided in RCW 63.14.060 and 63.14.070. The printed or typed portion of the contract, other than instructions for completion, shall be in a size equal to at least eight point type. [1967 c 234 § 1; 1963 c 236 § 2.]

**63.14.030 Retail installment contracts—Delivery to buyer of copy—Acknowledgment of delivery.** The retail seller shall deliver to the retail buyer, at the time the buyer signs the contract a copy of the contract as signed by the buyer, unless the contract is completed by the buyer in situa-

tions covered by RCW 63.14.060, and if the contract is accepted at a later date by the seller the seller shall mail to the buyer at his address shown on the retail installment contract a copy of the contract as accepted by the seller or a copy of the memorandum as required in RCW 63.14.060. Until the seller does so, the buyer shall be obligated to pay only the sale price. Any acknowledgment by the buyer of delivery of a copy of the contract shall be in a size equal to at least ten point bold type and, if contained in the contract, shall appear directly above the buyer's signature. [1981 c 77 § 2; 1967 c 234 § 2; 1963 c 236 § 3.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**63.14.040 Retail installment contracts—Contents.**

(1) The retail installment contract shall contain the names of the seller and the buyer, the place of business of the seller, the residence or other address of the buyer as specified by the buyer and a description or identification of the goods sold or to be sold, or service furnished or rendered or to be furnished or rendered. The contract also shall contain the following items, which shall be set forth in the sequence appearing below:

- (a) The sale price of each item of goods or services;
- (b) The amount of the buyer's down payment, if any, identifying the amounts paid in money and allowed for goods traded in;
- (c) The difference between items (a) and (b);
- (d) The aggregate amount, if any, included for insurance, specifying the type or types of insurance and the terms of coverage;
- (e) The aggregate amount of official fees, if any;
- (f) The amount, if any, actually paid or to be paid by the retail seller pursuant to an agreement with the buyer to discharge a security interest or lien on like-kind goods traded in or lease interest in the circumstance of a lease for like goods being terminated in conjunction with the sale pursuant to a retail installment contract;
- (g) The principal balance, which is the sum of items (c), (d), (e), and (f);
- (h) The dollar amount or rate of the service charge;
- (i) The amount of the time balance owed by the buyer to the seller, which is the sum of items (g) and (h), if (h) is stated in a dollar amount; and
- (j) Except as otherwise provided in the next two sentences, the maximum number of installment payments required and the amount of each installment and the due date of each payment necessary to pay such balance. If installment payments other than the final payment are stated as a series of equal scheduled amounts and if the amount of the final installment payment does not substantially exceed the scheduled amount of each preceding installment payment, the maximum number of payments and the amount and due date of each payment need not be separately stated and the amount of the scheduled final installment payment may be stated as the remaining unpaid balance. The due date of the first installment payment may be fixed by a day or date or may be fixed by reference to the date of the contract or to the time of delivery or installation.

Additional items may be included to explain the calculations involved in determining the balance to be paid by the buyer.

(2) Every retail installment contract shall contain the following notice in ten point bold face type or larger directly above the space reserved in the contract for the signature of the buyer: "NOTICE TO BUYER:

(a) Do not sign this contract before you read it or if any spaces intended for the agreed terms, except as to unavailable information, are blank.

(b) You are entitled to a copy of this contract at the time you sign it.

(c) You may at any time pay off the full unpaid balance due under this contract, and in so doing you may receive a partial rebate of the service charge.

(d) The service charge does not exceed . . . % (must be filled in) per annum computed monthly.

(e) You may cancel this contract if it is solicited in person, and you sign it, at a place other than the seller's business address shown on the contract, by sending notice of such cancellation by certified mail return receipt requested to the seller at his address shown on the contract which notice shall be posted not later than midnight of the third day (excluding Sundays and holidays) following your signing this contract. If you choose to cancel this contract, you must return or make available to the seller at the place of delivery any merchandise, in its original condition, received by you under this contract."

Clause (2)(e) needs to be included in the notice only if the contract is solicited in person by the seller or his representative, and the buyer signs it, at a place other than the seller's business address shown on the contract. [1999 c 113 § 2; 1981 c 77 § 3; 1972 ex.s. c 47 § 2; 1969 c 2 § 1 (Initiative Measure No. 245, approved November 5, 1968); 1967 c 234 § 3; 1963 c 236 § 4.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**63.14.043 Retail installment contracts—Purchase of motor vehicle.** If a retail installment contract for the purchase of a motor vehicle meets the requirements of this chapter and meets the requirements of any federal law applicable to a retail installment contract for the purchase of a motor vehicle, the retail installment contract shall be accepted for consideration by any lender, except for lenders licensed and regulated under the provisions of chapter 31.04 RCW, to whom application for credit relating to the retail installment contract is made. [2006 c 288 § 1.]

**63.14.050 Retail installment contracts—Multiple documents permissible where original applies to purchases from time to time.** A retail installment contract may be contained in more than one document, provided that one such document shall be an original document signed by the retail buyer, stated to be applicable to purchases of goods or services to be made by the retail buyer from time to time. In such case such document, together with the sales slip, account book or other written statement relating to each purchase, shall set forth all of the information required by RCW 63.14.040 and shall constitute the retail installment contract for each purchase. On each succeeding purchase pursuant to

such original document, the sales slip, account book or other written statement may at the option of the seller constitute the memorandum required by RCW 63.14.110. [1963 c 236 § 5.]

**63.14.060 Retail installment contracts—Mail orders based on catalog or other printed solicitation.** Retail installment contracts negotiated and entered into by mail or telephone without solicitation in person by salesmen or other representatives of the seller and based upon a catalog of the seller, or other printed solicitation of business, if such catalog or other printed solicitation clearly sets forth the cash sale prices and other terms of sales to be made through such medium, may be made as provided in this section. The provisions of this chapter with respect to retail installment contracts shall be applicable to such sales, except that the retail installment contract, when completed by the buyer need not contain the items required by RCW 63.14.040.

When the contract is received from the retail buyer, the seller shall prepare a written memorandum containing all of the information required by RCW 63.14.040 to be included in a retail installment contract. In lieu of delivering a copy of the contract to the retail buyer as provided in RCW 63.14.030, the seller shall deliver to the buyer a copy of such memorandum prior to the due date of the first installment payable under the contract: PROVIDED, That if the catalog or other printed solicitation does not set forth all of the other terms of sales in addition to the cash sales prices, such memorandum shall be delivered to the buyer prior to or at the time of delivery of the goods or services. [1967 c 234 § 4; 1963 c 236 § 6.]

**63.14.070 Retail installment contracts—Seller not to obtain buyer's signature when essential blank spaces not filled—Exceptions.** The seller shall not obtain the signature of the buyer to any contract when it contains blank spaces of items which are essential provisions of the transaction except as provided in RCW 63.14.060: PROVIDED, HOWEVER, That if delivery of the goods is not made at the time of the execution of the contract, the identifying numbers or marks of the goods or similar information and the due date of the first installment may be inserted by the seller in the seller's counterpart of the contract after it has been signed by the buyer. [1963 c 236 § 7.]

**63.14.080 Retail installment contracts—Prepayment in full of unpaid time balance—Refund of unearned service charge—"Rule of seventy-eighths".** For the purpose of this section "periodic time balance" means the unpaid portion of the time balance as of the last day of each month, or other uniform time interval established by the regular consecutive payment period scheduled in a retail installment contract.

Notwithstanding the provisions of any retail installment contract to the contrary, and if the rights of the purchaser have not been terminated or forfeited under the terms of the contract, any buyer may prepay in full the unpaid portion of the time balance thereof at any time before its final due date and, if he does so, he shall receive a refund credit of the unearned portion of the service charge for such prepayment. The amount of such refund credit shall be computed according to the "rule of seventy-eighths", that is it shall represent at

least as great a portion of the original service charge, as the sum of the periodic time balances not yet due bears to the sum of all the periodic time balances under the schedule of payments in the contract: PROVIDED, That where the earned service charge (total service charge minus refund credit) thus computed is less than the following minimum service charge: fifteen dollars where the principal balance is not in excess of two hundred and fifty dollars, twenty-five dollars where the principal balance exceeds two hundred and fifty dollars but is not in excess of five hundred dollars, thirty-seven dollars and fifty cents where the principal balance exceeds five hundred dollars but is not in excess of one thousand dollars, and fifty dollars where the principal balance exceeds one thousand dollars; then such minimum service charge shall be deemed to be the earned service charge: AND PROVIDED FURTHER, That where the amount of such refund credit is less than one dollar, no refund credit need be made. [1967 c 234 § 5; 1963 c 236 § 8.]

**63.14.090 Retail installment contracts, retail charge agreements, and lender credit card agreements—Delinquency or collection charges—Attorney’s fees, court costs—Other provisions not inconsistent with chapter are permissible.** (1) The holder of any retail installment contract, retail charge agreement, or lender credit card agreement may not collect any delinquency or collection charges, including any attorney’s fee and court costs and disbursements, unless the contract, charge agreement, or lender credit card agreement so provides. In such cases, the charges shall be reasonable, and no attorney’s fee may be recovered unless the contract, charge agreement, or lender credit card agreement is referred for collection to an attorney not a salaried employee of the holder.

(2) The contract, charge agreement, or lender credit card agreement may contain other provisions not inconsistent with the purposes of this chapter, including but not limited to provisions relating to refinancing, transfer of the buyer’s equity, construction permits, and title reports.

(3) Notwithstanding subsection (1) of this section, where the minimum payment is received within the ten days following the payment due date, delinquency charges for the late payment of a retail charge agreement or lender credit card agreement may not be more than ten percent of the average balance of the delinquent account for the prior thirty-day period when the average balance of the account for the prior thirty-day period is less than one hundred dollars, except that a minimum charge of up to two dollars shall be allowed. This subsection (3) shall not apply in cases where the payment on the account is more than thirty days overdue. [1993 c 481 § 1; 1984 c 280 § 2; 1963 c 236 § 9.]

**63.14.100 Receipt for cash payment—Retail installment contracts, statement of payment schedule and total amount unpaid.** A buyer shall be given a written receipt for any payment when made in cash. Upon written request of the buyer, the holder of a retail installment contract shall give or forward to the buyer a written statement of the dates and amounts of payments and the total amount unpaid under the contract. Such a statement shall be given the buyer once without charge; if any additional statement is requested by the

buyer, it shall be supplied by the holder at a charge not in excess of one dollar for each additional statement so supplied. [1963 c 236 § 10.]

**63.14.110 Consolidation of subsequent purchases with previous contract.** (1) If, in a retail installment transaction, a retail buyer makes any subsequent purchases of goods or services from a retail seller from whom he has previously purchased goods or services under one or more retail installment contracts, and the amounts under such previous contract or contracts have not been fully paid, the subsequent purchases may, at the seller’s option, be included in and consolidated with one or more of the previous contracts. All the provisions of this chapter with respect to retail installment contracts shall be applicable to such subsequent purchases except as hereinafter stated in this subsection. In the event of such consolidation, in lieu of the buyer’s executing a retail installment contract respecting each subsequent purchase, as provided in this section, it shall be sufficient if the seller shall prepare a written memorandum of each such subsequent purchase, in which case the provisions of RCW 63.14.020, 63.14.030 and 63.14.040 shall not be applicable. Unless previously furnished in writing to the buyer by the seller, by sales slip, memoranda or otherwise, such memorandum shall set forth with respect to each subsequent purchase items (a) to (h) inclusive of RCW 63.14.040(1), and in addition, if the service charge is stated as a dollar amount, the amount of the time balance owed by the buyer to the seller for the subsequent purchase, the outstanding balance of the previous contract or contracts, the consolidated time balance, and the revised installments applicable to the consolidated time balance, if any, in accordance with RCW 63.14.040. If the service charge is not stated in a dollar amount, in addition to the items (a) to (h) inclusive of RCW 63.14.040(1), the memorandum shall set forth the outstanding balance of the previous contract or contracts, the consolidated outstanding balance and the revised installments applicable to the consolidated outstanding balance, in accordance with RCW 63.14.040.

The seller shall deliver to the buyer a copy of such memorandum prior to the due date of the first installment of such consolidated contract.

(2) When such subsequent purchases are made, if the seller has retained title or taken a lien or other security interest in any of the goods purchased under any one of the contracts included in the consolidation:

(a) The entire amount of all payments made prior to such subsequent purchases shall be deemed to have been applied on the previous purchases;

(b) The amount of any down payment on the subsequent purchase shall be allocated in its entirety to such subsequent purchase;

(c) Each payment received after the subsequent purchase shall be deemed to be allocated to all of the various time balances in the same proportion or ratio as the original cash sale prices of the various retail installment transactions bear to one another: PROVIDED, That the seller may elect, where the amount of each installment payment is increased in connection with the subsequent purchase, to allocate only the increased amount to the time balance of the subsequent retail installment transaction, and to allocate the amount of each

installment payment prior to the increase to the time balance(s) existing at the time of the subsequent purchase.

The provisions of this subsection shall not apply to cases where such previous and subsequent purchases involve equipment, parts, or other goods attached or affixed to goods previously purchased and not fully paid, or to services in connection therewith rendered by the seller at the buyer's request. [1999 c 113 § 3; 1967 c 234 § 6; 1963 c 236 § 11.]

**63.14.120 Retail charge agreements and lender credit card agreements—Information to be furnished by seller.**

(1) At or prior to the time a retail charge agreement or lender credit card agreement is made the seller shall advise the buyer in writing, on the application form or otherwise, or orally that a service charge will be computed on the outstanding balance for each month (which need not be a calendar month) or other regular period agreed upon, the schedule or rate by which the service charge will be computed, and that the buyer may at any time pay his or her total unpaid balance: PROVIDED, That if this information is given orally, the seller shall, upon approval of the buyer's credit, deliver to the buyer or mail to the buyer's address, a memorandum setting forth this information.

(2) The seller or holder of a retail charge agreement or lender credit card agreement shall promptly supply the buyer with a statement as of the end of each monthly period (which need not be a calendar month) or other regular period agreed upon, in which there is any unpaid balance thereunder, which statement shall set forth the following:

(a) The unpaid balance under the retail charge agreement or lender credit card agreement at the beginning and at the end of the period;

(b) Unless otherwise furnished by the seller to the buyer by sales slip, memorandum, or otherwise, a description or identification of the goods or services purchased during the period, the sale price, and the date of each purchase;

(c) The payments made by the buyer to the seller and any other credits to the buyer during the period;

(d) The amount, if any, of any service charge for such period; and

(e) A legend to the effect that the buyer may at any time pay his or her total unpaid balance.

(3) Every retail charge agreement shall contain the following notice in ten point bold face type or larger directly above the space reserved in the charge agreement for the signature of the buyer: NOTICE TO BUYER:

(a) Do not sign this retail charge agreement before you read it or if any spaces intended for the agreed terms are left blank.

(b) You are entitled to a copy of this charge agreement at the time you sign it.

(c) You may at any time pay off the full unpaid balance under this charge agreement.

(d) You may cancel any purchases made under this charge agreement if the seller or his representative solicited in person such purchase, and you sign an agreement for such purchase, at a place other than the seller's business address shown on the charge agreement, by sending notice of such cancellation by certified mail return receipt requested to the seller at his address shown on the charge agreement, which notice shall be posted not later than midnight of the third day

(excluding Sundays and holidays) following your signing of the purchase agreement. If you choose to cancel this purchase, you must return or make available to seller at the place of delivery any merchandise, in its original condition, received by you under this purchase agreement. [1984 c 280 § 3; 1981 c 77 § 4; 1972 ex.s. c 47 § 3; 1969 c 2 § 2 (Initiative Measure No. 245, approved November 5, 1968); 1967 c 234 § 7; 1963 c 236 § 12.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**63.14.123 Restrictions on electronically printed credit and debit card receipts.**

(1) A retailer shall not print more than the last five digits of the card account number or print the card expiration date on a credit or debit card receipt. This includes all receipts kept by the person or provided to the cardholder.

(2) This section shall apply only to receipts that are electronically printed and shall not apply to transactions in which the:

(a) Sole means of recording the card number is by handwriting or by an imprint or copy of the credit or debit card; or

(b) Retailer processes the transaction electronically but also takes additional manual measures for the purpose of ensuring that the card is not being used fraudulently, including measures the retailer is contractually obligated to take in connection with its acceptance of credit or debit cards.

(3) For the purposes of this section:

(a) "Credit card" means a card or device existing for the purpose of obtaining money, property, labor, or services on credit.

(b) "Debit card" means a card or device used to obtain money, property, labor, or services by a transaction that debits a cardholder's account, rather than extending credit. [2009 c 382 § 2; 2000 c 163 § 2.]

**Severability—Effective date—2000 c 163:** See RCW 19.200.900 and 19.200.901.

**63.14.125 Lender credit card agreements—Security interests prohibited.**

A lender credit card agreement may not contain any provision for a security interest in real or personal property or fixtures of the buyer to secure payment of performance of the buyer's obligation under the lender credit card agreement. [1984 c 280 § 4.]

**63.14.130 Retail installment contracts, retail charge agreements, and lender credit card agreements—Service charge agreed to by contract—Other fees and charges prohibited. (Effective until July 1, 2011.)**

The service charge shall be inclusive of all charges incident to investigating and making the retail installment contract or charge agreement and for the privilege of making the installment payments thereunder and no other fee, expense or charge whatsoever shall be taken, received, reserved or contracted therefor from the buyer, except for any vehicle dealer administrative fee under RCW 46.12.042 or for any vehicle dealer documentary service fee under RCW 46.70.180(2).

(1) The service charge, in a retail installment contract, shall not exceed the dollar amount or rate agreed to by contract and disclosed under RCW 63.14.040(1)(h).

(2) The service charge in a retail charge agreement, revolving charge agreement, lender credit card agreement, or charge agreement, shall not exceed the schedule or rate agreed to by contract and disclosed under RCW 63.14.120(1). If the service charge so computed is less than one dollar for any month, then one dollar may be charged. [2003 c 368 § 3; 1999 c 113 § 4; 1997 c 331 § 7; 1992 c 193 § 1. Prior: 1989 c 112 § 1; 1989 c 14 § 5; 1987 c 318 § 1; 1984 c 280 § 5; 1981 c 77 § 5; 1969 c 2 § 3 (Initiative Measure No. 245, approved November 5, 1968); 1967 c 234 § 8; 1963 c 236 § 13.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**63.14.130 Retail installment contracts, retail charge agreements, and lender credit card agreements—Service charge agreed to by contract—Other fees and charges prohibited. (Effective July 1, 2011.)** The service charge shall be inclusive of all charges incident to investigating and making the retail installment contract or charge agreement and for the privilege of making the installment payments thereunder and no other fee, expense or charge whatsoever shall be taken, received, reserved, or contracted therefor from the buyer, except for any vehicle dealer administrative fee under RCW 46.68.440(1) or for any vehicle dealer documentary service fee under RCW 46.70.180(2).

(1) The service charge, in a retail installment contract, shall not exceed the dollar amount or rate agreed to by contract and disclosed under RCW 63.14.040(1)(h).

(2) The service charge in a retail charge agreement, revolving charge agreement, lender credit card agreement, or charge agreement, shall not exceed the schedule or rate agreed to by contract and disclosed under RCW 63.14.120(1). If the service charge so computed is less than one dollar for any month, then one dollar may be charged. [2010 c 161 § 1153; 2003 c 368 § 3; 1999 c 113 § 4; 1997 c 331 § 7; 1992 c 193 § 1. Prior: 1989 c 112 § 1; 1989 c 14 § 5; 1987 c 318 § 1; 1984 c 280 § 5; 1981 c 77 § 5; 1969 c 2 § 3 (Initiative Measure No. 245, approved November 5, 1968); 1967 c 234 § 8; 1963 c 236 § 13.]

**Effective date—Intent—Legislation to reconcile chapter 161, Laws of 2010 and other amendments made during the 2010 legislative session—2010 c 161:** See notes following RCW 46.04.013.

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**63.14.136 Retail installment transaction—Unconscionable—Judicial action.** (1) With respect to a retail installment transaction, as defined in \*RCW 63.14.010(8), if the court as a matter of law finds the agreement or contract, or any clause in the agreement or contract, to have been unconscionable at the time it was made, the court may refuse to enforce the agreement or contract, may enforce the remainder of the agreement or contract, or may limit the application of any unconscionable clause to avoid an unconscionable result.

(2) If it is claimed or it appears to the court that the agreement or contract, or any clause in the agreement or contract, may be unconscionable, the parties shall be given a reasonable opportunity to present evidence as to its setting, purpose, and effect to assist the court in making a determination regarding unconscionability.

(2010 Ed.)

(3) For the purpose of this section, a charge or practice expressly permitted by this chapter is not in itself unconscionable. [1995 c 249 § 4.]

**\*Reviser's note:** RCW 63.14.010 was alphabetized pursuant to RCW 1.08.015(2)(k), changing subsection (8) to subsection (12).

**63.14.140 Retail installment contracts, retail charge agreements, and lender credit card agreements—Insurance.** If the cost of any insurance is included in the retail installment contract, retail charge agreement, or lender credit card agreement:

(1) The contract or agreement shall state the nature, purpose, term, and amount of such insurance, and in connection with the sale of a motor vehicle, the contract shall state that the insurance coverage ordered under the terms of this contract does not include "bodily injury liability," "public liability," and "property damage liability" coverage, where such coverage is in fact not included;

(2) The contract or agreement shall state whether the insurance is to be procured by the buyer or the seller;

(3) The amount, included for such insurance, shall not exceed the premiums chargeable in accordance with the rate fixed for such insurance by the insurer, except where the amount is less than one dollar;

(4) If the insurance is to be procured by the seller or holder, he shall, within forty-five days after delivery of the goods or furnishing of the services under the contract, deliver, mail or cause to be mailed to the buyer, at his or her address as specified in the contract, a notice thereof or a copy of the policy or policies of insurance or a certificate or certificates of the insurance so procured. [1984 c 280 § 6; 1963 c 236 § 14.]

**63.14.145 Retail installment contracts and charge agreements—Sale, transfer, or assignment.** (1) A retail seller may sell, transfer, or assign a retail installment contract or charge agreement. After such sale, transfer, or assignment, the retail installment contract or charge agreement remains a retail installment contract or charge agreement.

(2) Nothing contained in this chapter shall be deemed to limit any charge made by an assignee of a retail installment contract or charge agreement to the seller-assignor upon the sale, transfer, assignment, or discount of the contract or agreement, notwithstanding retention by the assignee of recourse rights against the seller-assignor and notwithstanding duties retained by the seller-assignor to service delinquencies, perform service or warranty agreements regarding the property which is the subject matter of the assigned or discounted contracts or charge agreements, or to do or perform any other duty with respect to the contract or agreement assigned or the subject matter of such contract or agreement. [1993 sp.s. c 5 § 2.]

**63.14.150 Retail installment contracts, retail charge agreements, and lender credit card agreements—Agreements by buyer not to assert claim or defense or to submit to suit in another county invalid.** No provision of a retail installment contract, retail charge agreement, or lender credit card agreement is valid by which the buyer agrees not to assert against the seller or against an assignee a claim or

defense arising out of the sale, or by which the buyer agrees to submit to suit in a county other than the county where the buyer signed the contract or where the buyer resides or has his principal place of business. [1984 c 280 § 7; 1967 c 234 § 9; 1963 c 236 § 15.]

**63.14.151 Retail installment contracts, retail charge agreements, and lender credit card agreements—Compliance with disclosure requirements of federal consumer protection act deemed compliance with chapter 63.14 RCW.** Any retail installment contract, retail charge agreement, or lender credit card agreement that complies with the disclosure requirements of Title I of the federal consumer protection act (82 Stat. 146, 15 U.S.C. 1601) which is also known as the truth in lending act, as of the date upon which said retail installment contract, revolving charge agreement, or lender credit card agreement is executed, shall be deemed to comply with the disclosure provisions of chapter 63.14 RCW. [1984 c 280 § 8; 1981 c 77 § 9.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**63.14.152 Declaratory judgment action to establish if service charge is excessive.** The seller, holder, or buyer may bring an action for declaratory judgment to establish whether service charges contracted for or received in connection with a retail installment transaction are in excess of those allowed by chapter 234, Laws of 1967. Such an action shall be brought against the current holder or against the buyer or his successor in interest or, if the entire principal balance has been fully paid, by the buyer or his successor in interest against the holder to whom the final payment was made. No such action shall be commenced after six months following the date the final payment becomes due, whether by acceleration or otherwise, nor after six months following the date the principal balance is fully paid, whichever first occurs. If the buyer commences such an action and fails to establish that the service charge is in excess of that allowed by RCW 63.14.130, and if the court finds the action was frivolously commenced, the defendant or defendants may, in the court's discretion, recover reasonable attorney's fees and costs from the buyer. [1967 c 234 § 11.]

**63.14.154 Cancellation of transaction by buyer—Procedure.** (1) In addition to any other rights he may have, the buyer shall have the right to cancel a retail installment transaction for other than the seller's breach by sending notice of such cancellation to the seller at his place of business as set forth in the contract or charge agreement by certified mail, return receipt requested, which shall be posted not later than midnight of the third day (excluding Sundays and holidays) following the date the buyer signs the contract or charge agreement:

(a) If the retail installment transaction was entered into by the buyer and solicited in person or by a commercial telephone solicitation as defined by chapter 20, Laws of 1989 by the seller or his representative at a place other than the seller's address, which may be his main or branch office, shown on the contract; and

(b) If the buyer returns goods received or makes them available to the seller as provided in clause (b) of subsection (2) of this section.

(2) In the event of cancellation pursuant to this section:

(a) The seller shall, without request, refund to the buyer within ten days after such cancellation all deposits, including any down payment, made under the contract or charge agreement and shall return all goods traded in to the seller on account or in contemplation of the contract less any reasonable costs actually incurred in making ready for sale the goods so traded in;

(b) The seller shall be entitled to reclaim and the buyer shall return or make available to the seller at the place of delivery in its original condition any goods received by the buyer under the contract or charge agreement;

(c) The buyer shall incur no additional liability for such cancellation. [1989 c 20 § 18; 1989 c 14 § 8; 1972 ex.s. c 47 § 4; 1967 c 234 § 12.]

**Reviser's note:** This section was amended by 1989 c 14 § 8 and by 1989 c 20 § 18, each without reference to the other. Both amendments are incorporated in the publication of this section pursuant to RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**63.14.156 Extension or deferment of payments—Agreement, charges.** The holder of a retail installment contract may, upon agreement with the buyer, extend the scheduled due date or defer a scheduled payment of all or of any part of any installment or installments payable thereunder. No charge shall be made for any such extension or deferment unless a written acknowledgment of such extension or deferment is sent or delivered to the buyer. The holder may charge and contract for the payment of an extension or deferral charge by the buyer and collect and receive the same, but such charge may not exceed those permitted by \*RCW 63.14.130 (a), (b), or (c) on the amount of the installment or installments, or part thereof, extended or deferred for the period of extension or deferral. Such period shall not exceed the period from the date when such extended or deferred installment or installments, or part thereof, would have been payable in the absence of such extension or deferral, to the date when such installment or installments, or part thereof, are made payable under the agreement of extension or deferral; except that a minimum charge of one dollar for the period of extension or deferral may be made in any case where the extension or deferral charge, when computed at such rate, amounts to less than one dollar. Such agreement may also provide for the payment by the buyer of the additional cost to the holder of the contract of premiums for continuing in force, until the end of such period of extension or deferral, any insurance coverages provided for in the contract, subject to the provisions of RCW 63.14.140. [1967 c 234 § 13.]

**\*Reviser's note:** The reference to RCW 63.14.130 (a), (b), or (c) is erroneous. RCW 63.14.130(1) (a) or (b) is apparently intended. Subsequently, RCW 63.14.130 was amended by 1992 c 193 § 2, changing the subsection numbering.

**63.14.158 Refinancing agreements—Costs—Contents.** The holder of a retail installment contract or contracts may, upon agreement in writing with the buyer, refinance the

payment of the unpaid time balance or balances of the contract or contracts by providing for a new schedule of installment payments.

The holder may charge and contract for the payment of a refinance charge by the buyer and collect and receive the same but such refinance charge (1) shall be based upon the amount refinanced, plus any additional cost of insurance and of official fees incident to such refinancing, after the deduction of a refund credit in an amount equal to that to which the buyer would have been entitled under RCW 63.14.080 if he had prepaid in full his obligations under the contract or contracts, but in computing such refund credit there shall not be allowed the minimum earned service charge as authorized by clause (d) of subsection (1) of such section, and (2) may not exceed the rate of service charge provided under RCW 63.14.130. Such agreement for refinancing may also provide for the payment by the buyer of the additional cost to the holder of the contract or contracts of premiums for continuing in force, until the maturity of the contract or contracts as refinanced, any insurance coverages provided for therein, subject to the provisions of RCW 63.14.140.

The refinancing agreement shall set forth the amount of the unpaid time balance or balances to be refinanced, the amount of any refund credit, the amount to be refinanced after the deduction of the refund credit, the amount or rate of the service charge under the refinancing agreement, any additional cost of insurance and of official fees to the buyer, the new unpaid time balance, if the service charge is stated as a dollar amount, and the new schedule of installment payments. Where there is a consolidation of two or more contracts then the provisions of RCW 63.14.110 shall apply. [1967 c 234 § 14.]

*Minimum earned service charges: RCW 63.14.080.*

**63.14.159 New payment schedule—When authorized.** In the event a contract provides for the payment of any installment which is more than double the amount of the average of the preceding installments the buyer upon default of this installment, shall be given an absolute right to obtain a new payment schedule. Unless agreed to by the buyer, the periodic payments under the new schedule shall not be substantially greater than the average of the preceding installments. This section shall not apply if the payment schedule is adjusted to the seasonal or irregular income of the buyer or to accommodate the nature of the buyer's employment. [1967 c 234 § 15.]

**63.14.160 Conduct or agreement of buyer does not waive remedies.** No act or agreement of the retail buyer before or at the time of the making of a retail installment contract, retail charge agreement, lender credit card agreement, or purchases thereunder shall constitute a valid waiver of any of the provisions of this chapter or of any remedies granted to the buyer by law. [1984 c 280 § 9; 1963 c 236 § 16.]

**63.14.165 Financial institution credit card agreement not subject to chapter 63.14 RCW, but subject to chapter 19.52 RCW.** A financial institution credit card is a card or device issued under an arrangement pursuant to which the issuing financial institution gives to a card holder residing in

(2010 Ed.)

this state the privilege of obtaining credit from the issuer or other persons in purchasing or leasing property or services, obtaining loans, or otherwise, and the issuer of which is not principally engaged in the business of selling goods.

Except as provided in RCW 63.14.167, a financial institution credit card agreement and credit extended pursuant to it is not subject to the provisions of this chapter but shall be subject to the provisions of chapter 19.52 RCW. [1984 c 280 § 10; 1981 c 77 § 10.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**63.14.167 Lender credit card agreements and financial institution credit card agreements—Credit to account for returned goods or forgiveness of a debit for services—Statement of credit to card issuer—Notice to cardholder.** (1) Pursuant to a lender credit card or financial institution credit card transaction in which a credit card has been used to obtain credit, the seller is a person other than the card issuer, and the seller accepts or allows a return of goods or forgiveness of a debit for services that were the subject of the sale, credit shall be applied to the obligor's account as provided by this section.

(2) Within seven working days after a transaction in which an obligor becomes entitled to credit, the seller shall transmit a statement to the card issuer through the normal channels established by the card issuer for the transmittal of such statements. The credit card issuer shall credit the obligor's account within three working days following receipt of a credit statement from the seller.

(3) The obligor is not responsible for payment of any service charges resulting from the seller's or card issuer's failure to comply with subsection (2) of this section.

(4) An issuer issuing a lender credit card or financial institution credit card shall mail or deliver a notice of the provisions of this section at least once per calendar year, at intervals of not less than six months nor more than eighteen months, either to all cardholders or to each cardholder entitled to receive a periodic statement for any one billing cycle. The notice shall state that the obligor is not responsible for payment of any service charges resulting from the seller's or card issuer's failure to comply with subsection (2) of this section. [1989 c 11 § 24; 1984 c 280 § 11.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**63.14.170 Violations—Penalties.** Any person who shall wilfully and intentionally violate any provision of this chapter shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not more than one thousand dollars or by imprisonment for not more than six months, or both. Violation of any order or injunction issued pursuant to this chapter shall constitute prima facie proof of a violation of this section. [1963 c 236 § 17.]

**63.14.175 Violations—Remedies.** No person may pursue any remedy alleging a violation of this chapter on the basis of any act or omission that does not constitute a violation of this chapter as amended by chapter 5, Laws of 1993 sp. sess. For purposes of this section, the phrase "pursue any remedy" includes pleading a defense, asserting a counterclaim or right of offset or recoupment, commencing, main-

taining, or continuing any legal action, or pursuing or defending any appeal. [1993 sp.s. c 5 § 3.]

**63.14.180 Noncomplying person barred from recovery of service charge, etc.—Remedy of buyer—Extent of recovery.** Any person who enters into a retail installment contract, charge agreement, or lender credit card agreement that does not comply with the provisions of this chapter or who violates any provision of this chapter except as a result of an accidental or bona fide error shall be barred from the recovery of any service charge, official fees, or any delinquency or collection charge under or in connection with the related retail installment contract or purchases under a retail charge agreement or lender credit card agreement; but such person may nevertheless recover from the buyer an amount equal to the cash price of the goods or services and the cost to such person of any insurance included in the transaction: PROVIDED, That if the service charge is in excess of that allowed by RCW 63.14.130, except as the result of an accidental or bona fide error, the buyer shall be entitled to an amount equal to the total of (1) twice the amount of the service charge paid, and (2) the amount of the service charge contracted for and not paid, plus (3) costs and reasonable attorneys' fees. The reduction in the cash price by the application of the above sentence shall be applied to diminish pro rata each future installment of principal amount payable under the terms of the contract or agreement. [1984 c 280 § 12; 1967 c 234 § 10; 1963 c 236 § 18.]

**63.14.190 Restraint of violations.** The attorney general or the prosecuting attorney may bring an action in the name of the state against any person to restrain and prevent any violation of this chapter. [1963 c 236 § 19.]

**63.14.200 Assurance of discontinuance of unlawful practices.** In the enforcement of this chapter, the attorney general may accept an assurance of discontinuance of any act or practice deemed in violation of this chapter, from any person engaging in, or who has engaged in, such act or practice. Any such assurance shall be in writing and be filed with and subject to the approval of the superior court of the county in which the alleged violator resides or has his principal place of business, or in Thurston county. Failure to perform the terms of any such assurance shall constitute prima facie proof of a violation of this chapter for the purpose of securing any injunction as provided in RCW 63.14.190 and for the purpose of RCW 63.14.180 hereof: PROVIDED, That after commencement of any action by a prosecuting attorney, as provided herein, the attorney general may not accept an assurance of discontinuance without the consent of the prosecuting attorney. [1963 c 236 § 20.]

**63.14.210 Violation of order or injunction—Penalty.** Any person who violates any order or injunction issued pursuant to this chapter shall forfeit and pay a civil penalty of not more than one thousand dollars. For the purpose of this section the superior court issuing any injunction shall retain jurisdiction, and the cause shall be continued, and in such cases the attorney general acting in the name of the state may petition for the recovery of civil penalties. [1963 c 236 § 21.]

**63.14.900 Severability—1963 c 236.** If any provision of this chapter is declared unconstitutional, or the applicability thereof to any person or circumstances is held invalid, the constitutionality of the remainder of the chapter and the applicability thereof to other persons and circumstances shall not be affected thereby. [1963 c 236 § 23.]

**63.14.901 Severability—1967 c 234.** If any provision of this chapter is declared unconstitutional, or the applicability thereof to any person or circumstances is held invalid, the constitutionality of the remainder of the act and the applicability thereof to other persons and circumstances shall not be affected thereby. [1967 c 234 § 16.]

**63.14.902 Severability—1981 c 77.** If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1981 c 77 § 12.]

**63.14.903 Application, saving—1981 c 77.** This act applies only to loans, forbearances, or transactions which are entered into after May 8, 1981, or to existing loans, forbearances, contracts, or agreements which were not primarily for personal, family, or household use in which there is an addition to the principal amount of the credit outstanding after May 8, 1981. [1981 c 77 § 13.]

**63.14.904 Severability—1984 c 280.** If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1984 c 280 § 13.]

**63.14.910 Saving—1963 c 236.** The provisions of this chapter shall not invalidate or make unlawful retail installment contracts or retail charge agreements executed prior to the effective date hereof. [1963 c 236 § 24.]

**63.14.920 Effective date—1963 c 236.** This chapter shall take effect October 1, 1963. [1963 c 236 § 25.]

**63.14.921 Effective date—Saving—1967 c 234.** This 1967 amendatory act shall take effect on January 1, 1968. Nothing in this 1967 amendatory act shall be construed to affect the validity of any agreement or contractual relationship entered into prior to such date, except that the rate of any service charge computed periodically on the outstanding balance in excess of that allowed by this 1967 amendatory act shall be reduced to a permissible rate on or before January 1, 1968. [1967 c 234 § 17.]

**63.14.922 Effective date—1993 sp.s. c 5.** This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately [May 28, 1993]. [1993 sp.s. c 5 § 4.]

**63.14.923 Severability—1993 sp.s. c 5.** If any provision of this act or its application to any person or circum-

stance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1993 sp.s. c 5 § 5.]

**63.14.924 Application—1995 c 249.** This act applies prospectively only and not retroactively. It applies only to retail installment transactions entered into on or after May 5, 1995. [1995 c 249 § 2.]

**63.14.925 Savings—1995 c 249.** The repeals in section 1, chapter 249, Laws of 1995 shall not be construed as affecting any existing right acquired or liability or obligation incurred under the statutes repealed or under any rule or order adopted pursuant to those statutes; nor as affecting any proceeding instituted under them. [1995 c 249 § 3.]

**63.14.926 Effective date—1995 c 249.** This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately [May 5, 1995]. [1995 c 249 § 5.]

**Chapter 63.18 RCW**

**LEASE OR RENTAL OF PERSONAL PROPERTY—  
DISCLAIMER OF WARRANTY OF  
MERCHANTABILITY OR FITNESS**

Sections

63.18.010 Lease or rental agreement for lease of personal property—Disclaimer of warranty of merchantability or fitness—Limitation—Exceptions.

**63.18.010 Lease or rental agreement for lease of personal property—Disclaimer of warranty of merchantability or fitness—Limitation—Exceptions.** In any lease or rental agreement for the lease of movable personal property for use primarily in this state (other than a lease under which the lessee is authorized to use such property at no charge), if the rental or other consideration paid or payable thereunder is at a rate which if computed on an annual basis would be six thousand dollars per year or less, no provision thereof purporting to disclaim any warranty of merchantability or fitness for particular purposes which may be implied by law shall be enforceable unless either (1) the disclaimer sets forth with particularity the qualities and characteristics which are not being warranted, or (2) the lessee is engaged in a public utility business or a public service business subject to regulation by the United States or this state. [1974 ex.s. c 180 § 3.]

*Exclusion or modification of warranties: RCW 62A.2-316.*

**Chapter 63.19 RCW**

**LEASE-PURCHASE AGREEMENTS**

Sections

63.19.010 Definitions.  
63.19.020 Chapter application.  
63.19.030 Disclosure by lessor—Requirement.  
63.19.040 Disclosure by lessor—Contents.  
63.19.050 Agreement—Restrictions.  
63.19.060 Consumer—Reinstatement of agreement—Terms.  
63.19.070 Written receipt—Lessor's duty.  
63.19.080 Renegotiation—Same lessor and consumer.

(2010 Ed.)

63.19.090 Advertising—Requirements—Liability.  
63.19.100 Upholstered furniture or bedding.  
63.19.110 Violation—Application of chapter 19.86 RCW.  
63.19.900 Short title—1992 c 134.  
63.19.901 Severability—1992 c 134.

**63.19.010 Definitions.** As used in this chapter, unless the context otherwise requires:

(1) "Advertisement" means a commercial message in any medium that aids, promotes, or assists, directly or indirectly, a lease-purchase agreement.

(2) "Cash price" means the price at which the lessor would have sold the property to the consumer for cash on the date of the lease-purchase agreement.

(3) "Consumer" means a natural person who rents personal property under a lease-purchase agreement to be used primarily for personal, family, or household purposes.

(4) "Consummation" means the time a consumer becomes contractually obligated on a lease-purchase agreement.

(5) "Lease-purchase agreement" means an agreement for the use of personal property by a natural person primarily for personal, family, or household purposes, for an initial period of four months or less that is automatically renewable with each payment after the initial period, but does not obligate or require the consumer to continue leasing or using the property beyond the initial period, and that permits the consumer to become the owner of the property.

(6) "Lessor" means a person who regularly provides the use of property through lease-purchase agreements and to whom lease payments are initially payable on the face of the lease-purchase agreement. [1992 c 134 § 2.]

**63.19.020 Chapter application.** (1) Lease-purchase agreements that comply with this chapter are not governed by the laws relating to:

- (a) A consumer lease as defined in chapter 63.10 RCW;
- (b) A retail installment sale of goods or services as regulated under chapter 63.14 RCW;
- (c) A security interest as defined in Title 62A RCW; or
- (d) Loans, forbearances of money, goods, or things in action as governed by chapter 19.52 RCW.

(2) This chapter does not apply to the following:

- (a) Lease-purchase agreements primarily for business, commercial, or agricultural purposes, or those made with governmental agencies or instrumentalities or with organizations;
- (b) A lease of a safe deposit box;
- (c) A lease or bailment of personal property that is incidental to the lease of real property, and that provides that the consumer has no option to purchase the leased property; or
- (d) A lease of an automobile. [1992 c 134 § 3.]

**63.19.030 Disclosure by lessor—Requirement.** (1) The lessor shall disclose to the consumer the information required under this chapter. In a transaction involving more than one lessor, only one lessor need make the disclosures, but all lessors shall be bound by such disclosures.

(2) The disclosure shall be made at or before consummation of the lease-purchase agreement.

(3) The disclosure shall be made clearly and conspicuously in writing and a copy of the lease-purchase agreement

provided to the consumer. The disclosures required under RCW 63.19.040(1) shall be made on the face of the contract above the line for the consumer's signature.

(4) If a disclosure becomes inaccurate as the result of any act, occurrence, or agreement by the consumer after delivery of the required disclosures, the resulting inaccuracy is not a violation of this chapter. [1992 c 134 § 4.]

**63.19.040 Disclosure by lessor—Contents.** (1) For each lease-purchase agreement, the lessor shall disclose in the agreement the following items, as applicable:

(a) The total number, total amount, and timing of all payments necessary to acquire ownership of the property;

(b) A statement that the consumer will not own the property until the consumer has made the total payment necessary to acquire ownership;

(c) A statement that the consumer is responsible for the fair market value of the property if, and as of the time, it is lost, stolen, damaged, or destroyed;

(d) A brief description of the leased property, sufficient to identify the property to the consumer and the lessor, including an identification number, if applicable, and a statement indicating whether the property is new or used, but a statement that indicates new property is used is not a violation of this chapter;

(e) A brief description of any damage to the leased property;

(f) A statement of the cash price of the property. Where the agreement involves a lease of five or more items as a set, in one agreement, a statement of the aggregate cash price of all items shall satisfy this requirement;

(g) The total of initial payments paid or required at or before consummation of the agreement or delivery of the property, whichever is later;

(h) A statement that the total of payments does not include other charges, such as late payment, default, pickup, and reinstatement fees, which fees shall be separately disclosed in the contract;

(i) A statement clearly summarizing the terms of the consumer's option to purchase, including a statement that the consumer has the right to exercise an early purchase option and the price, formula, or method for determining the price at which the property may be so purchased;

(j) A statement identifying the party responsible for maintaining or servicing the property while it is being leased, together with a description of that responsibility, and a statement that if any part of a manufacturer's express warranty covers the lease property at the time the consumer acquires ownership of the property, it shall be transferred to the consumer, if allowed by the terms of the warranty;

(k) The date of the transaction and the identities of the lessor and consumer;

(l) A statement that the consumer may terminate the agreement without penalty by voluntarily surrendering or returning the property in good repair upon expiration of any lease term along with any past due rental payments; and

(m) Notice of the right to reinstate an agreement as herein provided.

(2) With respect to matters specifically governed by the federal consumer credit protection act, compliance with the

act satisfies the requirements of this section. [1992 c 134 § 5.]

**63.19.050 Agreement—Restrictions.** A lease-purchase agreement may not contain:

(1) A confession of judgment;

(2) A negotiable instrument;

(3) A security interest or any other claim of a property interest in any goods except those goods delivered by the lessor pursuant to the lease-purchase agreement;

(4) A wage assignment;

(5) A waiver by the consumer of claims or defenses; or

(6) A provision authorizing the lessor or a person acting on the lessor's behalf to enter upon the consumer's premises or to commit any breach of the peace in the repossession of goods. [1992 c 134 § 6.]

**63.19.060 Consumer—Reinstatement of agreement—Terms.** (1) A consumer who fails to make a timely rental payment may reinstate the agreement, without losing any rights or options that exist under the agreement, by the payment of:

(a) All past due rental charges;

(b) If the property has been picked up, the reasonable costs of pickup and redelivery; and

(c) Any applicable late fee, within ten days of the renewal date if the consumer pays monthly, or within five days of the renewal date if the consumer pays more frequently than monthly.

(2) In the case of a consumer who has paid less than two-thirds of the total of payments necessary to acquire ownership and where the consumer has returned or voluntarily surrendered the property, other than through judicial process, during the applicable reinstatement period set forth in subsection (1) of this section, the consumer may reinstate the agreement during a period of not less than twenty-one days after the date of the return of the property.

(3) In the case of a consumer who has paid two-thirds or more of the total of payments necessary to acquire ownership, and where the consumer has returned or voluntarily surrendered the property, other than through judicial process, during the applicable period set forth in subsection (1) of this section, the consumer may reinstate the agreement during a period of not less than forty-five days after the date of the return of the property.

(4) Nothing in this section shall prevent a lessor from attempting to repossess property during the reinstatement period, but such a repossession shall not affect the consumer's right to reinstate. Upon reinstatement, the lessor shall provide the consumer with the same property or substitute property of comparable quality and condition. [1992 c 134 § 7.]

**63.19.070 Written receipt—Lessor's duty.** A lessor shall provide the consumer a written receipt for each payment made by cash or money order. [1992 c 134 § 8.]

**63.19.080 Renegotiation—Same lessor and consumer.** (1) A renegotiation shall occur when an existing lease-purchase agreement is satisfied and replaced by a new

agreement undertaken by the same lessor and consumer. A renegotiation shall be considered a new agreement requiring new disclosures. However, events such as the following shall not be treated as renegotiations:

(a) The addition or return of property in a multiple-item agreement or the substitution of the lease property, if in either case the average payment allocable to a payment period is not changed by more than twenty-five percent;

(b) A deferral or extension of one or more periodic payments, or portions of a periodic payment;

(c) A reduction in charges in the lease or agreement; and

(d) A lease or agreement involved in a court proceeding.

(2) No disclosures are required for any extension of a lease-purchase agreement. [1992 c 134 § 9.]

#### **63.19.090 Advertising—Requirements—Liability.**

(1) If an advertisement for a lease-purchase agreement refers to or states the dollar amount of any payment and the right to acquire ownership for any one specific item, the advertisement shall also clearly and conspicuously state the following items, as applicable:

(a) That the transaction advertised is a lease-purchase agreement;

(b) The total of payments necessary to acquire ownership; and

(c) That the consumer acquires no ownership rights if the total amount necessary to acquire ownership is not paid.

(2) Any owner or personnel of any medium in which an advertisement appears or through which it is disseminated shall not be liable under this section.

(3) The provisions of subsection (1) of this section shall not apply to an advertisement that does not refer to or state the amount of any payment, or which is published in the yellow pages of a telephone directory or in any similar directory of business. [1992 c 134 § 10.]

**63.19.100 Upholstered furniture or bedding.** Upon the return of leased upholstered furniture or bedding, the lessor shall sanitize the property. A lessor shall not lease used upholstered furniture or bedding that has not been sanitized. [1992 c 134 § 11.]

**63.19.110 Violation—Application of chapter 19.86 RCW.** The Washington lease-purchase agreement act is a matter affecting the public interest for the purpose of applying chapter 19.86 RCW. The violation of this chapter is not reasonable in relation to the development and preservation of business. A violation of this chapter constitutes an unfair or deceptive act or practice in trade or commerce for the purpose of applying chapter 19.86 RCW. [1992 c 134 § 12.]

**63.19.900 Short title—1992 c 134.** This act may be known and cited as the Washington lease-purchase agreement act. [1992 c 134 § 1.]

**63.19.901 Severability—1992 c 134.** If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1992 c 134 § 18.]

(2010 Ed.)

## **Chapter 63.21 RCW**

### **LOST AND FOUND PROPERTY**

#### Sections

63.21.010	Procedure where finder wishes to claim found property—Appraisal—Surrender of property—Notice of intent to claim—Publication.
63.21.020	Circumstances extinguishing finder's claim to property.
63.21.030	Release of property to finder—Limitations—Payment to governmental entity—Expiration of finder's claim.
63.21.040	Failure to comply with chapter—Forfeiture of right to property.
63.21.050	Duties of chief law enforcement officer receiving found property.
63.21.060	Duties of governmental entity acquiring lost property—Disposal of property.
63.21.070	Claim to found property by employee, officer, or agent of governmental entity—Limitation.
63.21.080	Chapter not applicable to certain unclaimed property.
63.21.900	Severability—1979 ex.s. c 85.

**63.21.010 Procedure where finder wishes to claim found property—Appraisal—Surrender of property—Notice of intent to claim—Publication.** (1) Any person who finds property that is not unlawful to possess, the owner of which is unknown, and who wishes to claim the found property, shall:

(a) Within seven days of the finding acquire a signed statement setting forth an appraisal of the current market value of the property prepared by a qualified person engaged in buying or selling like items or by a district court judge, unless the found property is cash; and

(b) Within seven days report the find of property and surrender, if requested, the property and a copy of the evidence of the value of the property to the chief law enforcement officer, or his or her designated representative, of the governmental entity where the property was found, and serve written notice upon the officer of the finder's intent to claim the property if the owner does not make out his or her right to it under this chapter.

(2) Within thirty days of the report the governmental entity shall cause notice of the finding to be published at least once a week for two successive weeks in a newspaper of general circulation in the county where the property was found, unless the appraised value of the property is less than the cost of publishing notice. If the value is less than the cost of publishing notice, the governmental entity may cause notice to be posted or published in other media or formats that do not incur expense to the governmental entity. [1997 c 237 § 1; 1979 ex.s. c 85 § 1.]

**63.21.020 Circumstances extinguishing finder's claim to property.** The finder's claim to the property shall be extinguished:

(1) If the owner satisfactorily establishes, within sixty days after the find was reported to the appropriate officer, the owner's right to possession of the property; or

(2) If the chief law enforcement officer determines and so informs the finder that the property is illegal for the finder to possess. [1979 ex.s. c 85 § 2.]

**63.21.030 Release of property to finder—Limitations—Payment to governmental entity—Expiration of finder's claim.** (1) The found property shall be released to the finder and become the property of the finder sixty days

after the find was reported to the appropriate officer if no owner has been found, or sixty days after the final disposition of any judicial or other official proceeding involving the property, whichever is later. The property shall be released only after the finder has presented evidence of payment to the treasurer of the governmental entity handling the found property, the amount of ten dollars plus the amount of the cost of publication of notice incurred by the government [governmental] entity pursuant to RCW 63.21.010, which amount shall be deposited in the general fund of the governmental entity. If the appraised value of the property is less than the cost of publication of notice of the finding, then the finder is not required to pay any fee.

(2) When ninety days have passed after the found property was reported to the appropriate officer, or ninety days after the final disposition of a judicial or other proceeding involving the found property, and the finder has not completed the requirements of this chapter, the finder's claim shall be deemed to have expired and the found property may be disposed of as unclaimed property under chapter 63.32 or 63.40 RCW. Such laws shall also apply whenever a finder states in writing that he or she has no intention of claiming the found property. [1997 c 237 § 2; 1979 ex.s. c 85 § 3.]

**63.21.040 Failure to comply with chapter—Forfeiture of right to property.** Any finder of property who fails to discharge the duties imposed by this chapter shall forfeit all right to the property and shall be liable for the full value of the property to its owner. [1979 ex.s. c 85 § 4.]

**63.21.050 Duties of chief law enforcement officer receiving found property.** The chief law enforcement officer or his or her designated representative to whom a finder surrenders property, shall:

(1) Advise the finder if the found property is illegal for him or her to possess;

(2) Advise the finder if the found property is to be held as evidence in judicial or other official proceedings;

(3) Advise the finder in writing of the procedures to be followed in claiming the found property;

(4) If the property is valued at twenty-five dollars or less, allow the finder to retain the property if it is determined there is no reason for the officer to retain the property;

(5) If the property exceeds twenty-five dollars in value and has been requested to be surrendered to the law enforcement agency, retain the property for sixty days before it can be claimed by the finder under this chapter, unless the owner shall have recovered the property;

(6) If the property is held as evidence in judicial or other official proceedings, retain the property for sixty days after the final disposition of the judicial or other official proceeding, before it can be claimed by the finder or owner under the provisions of this chapter;

(7) After the required number of days have passed, and if no owner has been found, surrender the property to the finder according to the requirements of this chapter; or

(8) If neither the finder nor the owner claim the property retained by the officer within thirty days of the time when the claim can be made, the property shall be disposed of as

unclaimed property under chapter 63.32 or 63.40 RCW. [1979 ex.s. c 85 § 5.]

**63.21.060 Duties of governmental entity acquiring lost property—Disposal of property.** Any governmental entity that acquires lost property shall attempt to notify the apparent owner of the property. If the property is not returned to a person validly establishing ownership or right to possession of the property, the governmental entity shall forward the lost property within thirty days but not less than ten days after the time the governmental entity acquires the lost property to the chief law enforcement officer, or his or her designated representative, of the county in which the property was found, except that if the property is found within the borders of a city or town the property shall be forwarded to the chief law enforcement officer of the city or town or his or her designated representative. A governmental entity may elect to retain property which it acquires and dispose of the property as provided by chapter 63.32 or 63.40 RCW. [1979 ex.s. c 85 § 6.]

**63.21.070 Claim to found property by employee, officer, or agent of governmental entity—Limitation.** An employee, officer, or agent of a governmental entity who finds or acquires any property covered by this chapter while acting within the course of his or her employment may not claim possession of the lost property as a finder under this chapter unless the governing body of the governmental entity has specifically provided, by ordinance, resolution, or rule for such a claim. [1979 ex.s. c 85 § 7.]

**63.21.080 Chapter not applicable to certain unclaimed property.** This chapter shall not apply to:

- (1) Motor vehicles under chapter 46.52 RCW;
- (2) Unclaimed property in the hands of a bailee under chapter 63.24 RCW;
- (3) Uniform disposition of unclaimed property under chapter 63.29 RCW;
- (4) Secured vessels under chapter 79A.65 RCW; and
- (5) Crab or other shellfish pots in coastal marine or Puget Sound waters under RCW 77.70.500. [2010 c 193 § 6; 2009 c 355 § 2; 1994 c 51 § 6; 1985 c 7 § 125; 1979 ex.s. c 85 § 8.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**63.21.900 Severability—1979 ex.s. c 85.** If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1979 ex.s. c 85 § 11.]

## Chapter 63.24 RCW

### UNCLAIMED PROPERTY IN HANDS OF BAILEE

#### Sections

- |           |  |
|-----------|--|
| 63.24.150 | Notice to owner.   |
| 63.24.160 | Disposition of unclaimed property—Donation to charitable organization or transmittal to police or sheriff. |
| 63.24.170 | Bailee not liable to owner—Reimbursed for reasonable costs.  |

*Abandoned inmate personal property: Chapter 63.42 RCW.*

*Unclaimed property in hands of state patrol: Chapter 63.35 RCW.*

**63.24.150 Notice to owner.** Unless otherwise provided between the parties, if personal property deposited with a bailee is unclaimed for a period of thirty days, the bailee shall notify the owner, if known, either personally or by mail that the property is subject to disposition under RCW 63.24.160. [1981 c 154 § 4.]

**63.24.160 Disposition of unclaimed property—Donation to charitable organization or transmittal to police or sheriff.** If property not covered by chapter 63.26 RCW remains unclaimed sixty days after notice is given, or, if the owner's identity or address is unknown, sixty days from when notice was attempted, the bailee shall:

(1) If the reasonable aggregate value of the unclaimed property is less than one hundred dollars, donate the property, or proceeds thereof, to a charitable organization exempt from federal income tax under the federal internal revenue code; or

(2) If the reasonable aggregate value of the unclaimed property is one hundred dollars or more, forward the property to the chief of police or sheriff for disposition as unclaimed property under chapter 63.32 or 63.40 RCW. [1988 c 226 § 1; 1981 c 154 § 5.]

**63.24.170 Bailee not liable to owner—Reimbursed for reasonable costs.** A bailee is not liable to the owner for unclaimed property disposed of in good faith in accordance with the requirements of this chapter. A bailee shall be reimbursed from the proceeds of sale of any unclaimed property disposed of under RCW 63.24.160 for the reasonable costs or charges for any goods or services provided by the bailee regarding the property, and for the costs to provide notice to the owner. [1990 c 41 § 1; 1981 c 154 § 6.]

### Chapter 63.26 RCW

#### UNCLAIMED PROPERTY HELD BY MUSEUM OR HISTORICAL SOCIETY

##### Sections

63.26.010	Definitions.
63.26.020	Abandoned property—Notice.
63.26.030	Loaned property deemed donated—Notice of owner's change of address—Notice of provisions of chapter.
63.26.040	Notice of abandonment of property.
63.26.050	Vesting of title in museum or historical society—Subsequent purchase from museum or historical society.

**63.26.010 Definitions.** Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Museum or historical society" means an institution operated by a nonprofit corporation, nonprofit association, or public agency, primarily educational, scientific, historic, or aesthetic in purpose, which owns, borrows, studies, or cares for tangible objects, including archives, and exhibits them as appropriate.

(2) "Property" includes all documents and tangible objects, animate and inanimate, under the care of a museum or historical society which have intrinsic scientific, historic, artistic, or cultural value. [1988 c 226 § 3.]

**63.26.020 Abandoned property—Notice.** Any property held by a museum or historical society within the state,

(2010 Ed.)

other than by terms of a loan agreement, that has been held for five years or more and has remained unclaimed shall be deemed to be abandoned. Such property shall become the property of the museum or historical society if the museum or society has given notice pursuant to RCW 63.26.040 and no assertion of title has been filed for the property within ninety days from the date of the second published notice. [1988 c 226 § 4.]

**63.26.030 Loaned property deemed donated—Notice of owner's change of address—Notice of provisions of chapter.** (1) Property subject to a loan agreement which is on loan to a museum or historical society shall be deemed to be donated to the museum or society if no claim is made or action filed to recover the property after termination or expiration of the loan and if the museum or society has given notice pursuant to RCW 63.26.040 and no assertion of title has been filed within ninety days from the date of the second published notice.

(2) A museum or society may terminate a loan of property if the property was loaned to the museum or society for an indefinite term and the property has been held by the museum or society for five years or more. Property on "permanent loan" shall be deemed to be loaned for an indefinite term.

(3) If property was loaned to the museum or society for a specified term, the museum or society may give notice of termination of the loan at any time after expiration of the specified term.

(4) It is the responsibility of the owner of property on loan to a museum or society to notify the museum or society promptly in writing of any change of address or change in ownership of the property.

(5) When a museum or society accepts a loan of property, the museum or society shall inform the owner in writing of the provisions of this chapter. [1988 c 226 § 5.]

**63.26.040 Notice of abandonment of property.** (1) When a museum or historical society is required to give notice of abandonment of property or of termination of a loan, the museum or historical society shall mail such notice by certified mail, return receipt requested, to the last known owner at the most recent address of such owner as shown on the museum's or society's records. If the museum or society has no address on record, or the museum or society does not receive written proof of receipt of the mailed notice within thirty days of the date the notice was mailed, the museum or society shall publish notice, at least once each week for two consecutive weeks, in a newspaper of general circulation in both the county in which the museum is located and the county in which the last known address, if available, of the owner is located.

(2) The published notice shall contain:

(a) A description of the unclaimed property;

(b) The name and last known address of the owner;

(c) A request that all persons who may have any knowledge of the whereabouts of the owner provide written notice to the museum or society; and

(d) A statement that if written assertion of title is not presented by the owner to the museum or society within ninety

days from the date of the second published notice, the property shall be deemed abandoned or donated and shall become the property of the museum or society.

(3) For purposes of this chapter, if the loan of property was made to a branch of a museum or society, the museum or society is deemed to be located in the county in which the branch is located. Otherwise the museum or society is located in the county in which it has its principal place of business. [1988 c 226 § 6.]

**63.26.050 Vesting of title in museum or historical society—Subsequent purchase from museum or historical society.** (1) If no written assertion of title has been presented by the owner to the museum or society within ninety days from the date of the second published notice, title to the property shall vest in the museum or historical society, free of all claims of the owner and of all persons claiming under the owner.

(2) One who purchases or otherwise acquires property from a museum or historical society acquires good title to the property if the museum or society has acquired title to the property under this chapter. [1988 c 226 § 7.]

### Chapter 63.29 RCW

#### UNIFORM UNCLAIMED PROPERTY ACT

##### Sections

63.29.010	Definitions and use of terms.
63.29.020	Property presumed abandoned—General rule—Exceptions.
63.29.030	General rules for taking custody of intangible unclaimed property.
63.29.040	Travelers checks and money orders.
63.29.050	Checks, drafts, and similar instruments issued or certified by banking and financial organizations.
63.29.060	Bank deposits and funds in financial organizations.
63.29.070	Funds owing under life insurance policies.
63.29.080	Deposits held by utilities.
63.29.090	Refunds held by business associations.
63.29.100	Stock and other intangible interests in business associations.
63.29.110	Property of business associations held in course of dissolution.
63.29.120	Property held by agents and fiduciaries.
63.29.130	Property held by courts and public agencies—When abandoned—Overpayments.
63.29.133	Property held by landlord.
63.29.135	Abandoned intangible property held by local government.
63.29.140	Gift certificates and credit memos.
63.29.150	Wages.
63.29.160	Contents of safe deposit box or other safekeeping repository.
63.29.165	Property in self-storage facility.
63.29.170	Report of abandoned property.
63.29.180	Notice and publication of information about unclaimed property.
63.29.190	Payment or delivery of abandoned property.
63.29.200	Custody by state—Holder relieved from liability—Reimbursement of holder paying claim—Reclaiming for owner—Defense of holder—Payment of safe deposit box or repository charges.
63.29.210	Crediting of dividends, interest, or increments to owner's account.
63.29.220	Public sale of abandoned property.
63.29.230	Deposit of funds.
63.29.240	Filing of claim with department.
63.29.250	Claim of another state to recover property—Procedure.
63.29.260	Action to establish claim.
63.29.270	Election to take payment or delivery.
63.29.280	Destruction or disposition of property having insubstantial commercial value—Immunity from liability.
63.29.290	Periods of limitation.
63.29.300	Requests for reports and examination of records.
63.29.310	Retention of records.
63.29.320	Enforcement.
63.29.330	Interstate agreements and cooperation—Joint and reciprocal actions with other states.

63.29.340	Interest and penalties.
63.29.350	Penalty for excessive fee for locating abandoned property—Consumer protection act application.
63.29.360	Foreign transactions.
63.29.370	Rules.
63.29.380	Information and records confidential.
63.29.900	Effect of new provisions—Clarification of application.
63.29.901	Captions not law—1983 c 179.
63.29.902	Uniformity of application and construction.
63.29.903	Short title.
63.29.904	Severability—1983 c 179.
63.29.905	Effective date—1983 c 179.
63.29.906	Effective date—1996 c 45.

*Abandoned inmate personal property: Chapter 63.42 RCW.*

*Unclaimed property in hands of state patrol: Chapter 63.35 RCW.*

**63.29.010 Definitions and use of terms.** As used in this chapter, unless the context otherwise requires:

(1) "Department" means the department of revenue established under RCW 82.01.050.

(2) "Apparent owner" means the person whose name appears on the records of the holder as the person entitled to property held, issued, or owing by the holder.

(3) "Attorney general" means the chief legal officer of this state referred to in chapter 43.10 RCW.

(4) "Banking organization" means a bank, trust company, savings bank, land bank, safe deposit company, private banker, or any organization defined by other law as a bank or banking organization.

(5) "Business association" means a nonpublic corporation, joint stock company, investment company, business trust, partnership, or association for business purposes of two or more individuals, whether or not for profit, including a banking organization, financial organization, insurance company, or utility.

(6) "Domicile" means the state of incorporation of a corporation and the state of the principal place of business of an unincorporated person.

(7) "Fare card" means any pass or instrument, and value contained therein, purchased to utilize public transportation facilities or services. "Fare card" does not include "gift card" or "gift certificate" as those terms are defined in RCW 19.240.010.

(8) "Financial organization" means a savings and loan association, cooperative bank, building and loan association, or credit union.

(9) "Gift certificate" has the same meaning as in RCW 19.240.010.

(10) "Holder" means a person, wherever organized or domiciled, who is:

- In possession of property belonging to another,
- A trustee, or
- Indebted to another on an obligation.

(11) "Insurance company" means an association, corporation, fraternal or mutual benefit organization, whether or not for profit, which is engaged in providing insurance coverage, including accident, burial, casualty, credit life, contract performance, dental, fidelity, fire, health, hospitalization, illness, life (including endowments and annuities), malpractice, marine, mortgage, surety, and wage protection insurance.

(12) "Intangible property" does not include contract claims which are unliquidated but does include:

- Moneys, checks, drafts, deposits, interest, dividends, and income;

(b) Credit balances, customer overpayments, gift certificates, security deposits, refunds, credit memos, unpaid wages, unused airline tickets, and unidentified remittances, but does not include discounts which represent credit balances for which no consideration was given;

(c) Stocks, and other intangible ownership interests in business associations;

(d) Moneys deposited to redeem stocks, bonds, coupons, and other securities, or to make distributions;

(e) Liquidated amounts due and payable under the terms of insurance policies; and

(f) Amounts distributable from a trust or custodial fund established under a plan to provide health, welfare, pension, vacation, severance, retirement, death, stock purchase, profit sharing, employee savings, supplemental unemployment insurance, or similar benefits.

(13) "Last known address" means a description of the location of the apparent owner sufficient for the purpose of the delivery of mail.

(14) "Owner" means a depositor in the case of a deposit, a beneficiary in case of a trust other than a deposit in trust, a creditor, claimant, or payee in the case of other intangible property, or a person having a legal or equitable interest in property subject to this chapter or his legal representative.

(15) "Person" means an individual, business association, state or other government, governmental subdivision or agency, public corporation, public authority, estate, trust, two or more persons having a joint or common interest, or any other legal or commercial entity.

(16) "State" means any state, district, commonwealth, territory, insular possession, or any other area subject to the legislative authority of the United States.

(17) "Third party bank check" means any instrument drawn against a customer's account with a banking organization or financial organization on which the banking organization or financial organization is only secondarily liable.

(18) "Utility" means a person who owns or operates for public use any plant, equipment, property, franchise, or license for the transmission of communications or the production, storage, transmission, sale, delivery, or furnishing of electricity, water, steam, or gas. [2005 c 285 § 1; 2004 c 168 § 13; 1983 c 179 § 1.]

**Effective date—2004 c 168 §§ 13 and 14:** "Sections 13 and 14 of this act take effect July 1, 2004." [2004 c 168 § 19.]

**63.29.020 Property presumed abandoned—General rule—Exceptions.** (1) Except as otherwise provided by this chapter, all intangible property, including any income or increment derived therefrom, less any lawful charges, that is held, issued, or owing in the ordinary course of the holder's business and has remained unclaimed by the owner for more than three years after it became payable or distributable is presumed abandoned.

(2) Property, with the exception of unredeemed Washington state lottery tickets and unrepresented winning parimutuel tickets, is payable and distributable for the purpose of this chapter notwithstanding the owner's failure to make demand or to present any instrument or document required to receive payment.

(3) This chapter does not apply to claims drafts issued by insurance companies representing offers to settle claims

(2010 Ed.)

unliquidated in amount or settled by subsequent drafts or other means.

(4) This chapter does not apply to property covered by chapter 63.26 RCW.

(5) This chapter does not apply to used clothing, umbrellas, bags, luggage, or other used personal effects if such property is disposed of by the holder as follows:

(a) In the case of personal effects of negligible value, the property is destroyed; or

(b) The property is donated to a bona fide charity.

(6) This chapter does not apply to a gift certificate subject to the prohibition against expiration dates under RCW 19.240.020 or to a gift certificate subject to RCW 19.240.030 through 19.240.060. However, this chapter applies to gift certificates presumed abandoned under RCW 63.29.110.

(7) Except as provided in RCW 63.29.350, this chapter does not apply to excess proceeds held by counties, cities, towns, and other municipal or quasi-municipal corporations from foreclosures for delinquent property taxes, assessments, or other liens. [2010 c 29 § 1. Prior: 2005 c 502 § 3; 2005 c 367 § 1; 2004 c 168 § 14; 2003 1st sp.s. c 13 § 1; 1992 c 122 § 1; 1988 c 226 § 2; 1983 c 179 § 2.]

**Effective date—2005 c 502:** See note following RCW 1.12.070.

**Effective date—2004 c 168 §§ 13 and 14:** See note following RCW 63.29.010.

**Effective dates—2003 1st sp.s. c 13:** "(1) Sections 8 through 10 of this act are necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and take effect August 1, 2003.

(2) Sections 11 through 16 of this act are necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and take effect July 1, 2003.

(3) Sections 1 through 7 of this act take effect January 1, 2004." [2003 1st sp.s. c 13 § 17.]

**63.29.030 General rules for taking custody of intangible unclaimed property.** Unless otherwise provided in this chapter or by other statute of this state, intangible property is subject to the custody of this state as unclaimed property if the conditions raising a presumption of abandonment under RCW 63.29.020 and 63.29.050 through 63.29.160 are satisfied and:

(1) The last known address, as shown on the records of the holder, of the apparent owner is in this state;

(2) The records of the holder do not reflect the identity of the person entitled to the property and it is established that the last known address of the person entitled to the property is in this state;

(3) The records of the holder do not reflect the last known address of the apparent owner, and it is established that:

(a) The last known address of the person entitled to the property is in this state, or

(b) The holder is a domiciliary or a government or governmental subdivision or agency of this state and has not previously paid or delivered the property to the state of the last known address of the apparent owner or other person entitled to the property;

(4) The last known address, as shown on the records of the holder, of the apparent owner is in a state that does not provide by law for the escheat or custodial taking of the property or its escheat or unclaimed property law is not applicable

to the property and the holder is a domiciliary or a government or governmental subdivision or agency of this state: PROVIDED, That a holder may rely, with acquittance, upon a list of such states which shall be provided by the department;

(5) The last known address, as shown on the records of the holder, of the apparent owner is in a foreign nation and the holder is a domiciliary or a government or governmental subdivision or agency of this state; or

(6) The transaction out of which the property arose occurred in this state; and

(a)(i) The last known address of the apparent owner or other person entitled to the property is unknown, or

(ii) The last known address of the apparent owner or other person entitled to the property is in a state that does not provide by law for the escheat or custodial taking of the property or its escheat or unclaimed property law is not applicable to the property: PROVIDED, That a holder may rely, with acquittance, upon a list of such states which shall be provided by the department, and

(b) The holder is a domiciliary of a state that does not provide by law for the escheat or custodial taking of the property or its escheat or unclaimed property law is not applicable to the property. [1983 c 179 § 3.]

**63.29.040 Travelers checks and money orders.** (1) Subject to subsection (4) of this section, any sum payable on a travelers check that has been outstanding for more than fifteen years after its issuance is presumed abandoned unless the owner, within fifteen years, has communicated in writing with the issuer concerning it or otherwise indicated an interest as evidenced by a memorandum or other record on file prepared by an employee of the issuer.

(2) Subject to subsection (4) of this section, any sum payable on a money order or similar written instrument, other than a third party bank check, that has been outstanding for more than five years after its issuance is presumed abandoned unless the owner, within five years, has communicated in writing with the issuer concerning it or otherwise indicated an interest as evidenced by a memorandum or other record on file prepared by an employee of the issuer.

(3) A holder may not deduct from the amount of a travelers check or money order any charge imposed by reason of the failure to present the instrument for payment unless there is a valid and enforceable written contract between the issuer and the owner of the instrument pursuant to which the issuer may impose a charge and the issuer regularly imposes such charges and does not regularly reverse or otherwise cancel them.

(4) No sum payable on a travelers check, money order, or similar written instrument, other than a third party bank check, described in subsections (1) and (2) of this section may be subjected to the custody of this state as unclaimed property unless:

(a) The records of the issuer show that the travelers check, money order, or similar written instrument was purchased in this state;

(b) The issuer has its principal place of business in this state and the records of the issuer do not show the state in which the travelers check, money order, or similar written instrument was purchased; or

(c) The issuer has its principal place of business in this state, the records of the issuer show the state in which the travelers check, money order, or similar written instrument was purchased and the laws of the state of purchase do not provide for the escheat or custodial taking of the property or its escheat or unclaimed property law is not applicable to the property. The department shall provide to the issuer a list of all such states and the issuer may rely with acquittance upon such list.

(5) Notwithstanding any other provision of this chapter, subsection (4) of this section applies to sums payable on travelers checks, money orders, and similar written instruments presumed abandoned on or after February 1, 1965, except to the extent that those sums have been paid over to a state. [1983 c 179 § 4.]

**63.29.050 Checks, drafts, and similar instruments issued or certified by banking and financial organizations.** (1) Any sum payable on a check, draft, or similar instrument, except those subject to RCW 63.29.040, on which a banking or financial organization is directly liable, including a cashier's check and a certified check, which has been outstanding for more than three years after it was payable or after its issuance if payable on demand, is presumed abandoned, unless the owner, within three years, has communicated in writing with the banking or financial organization concerning it or otherwise indicated an interest as evidenced by a memorandum or other record on file prepared by an employee thereof.

(2) A holder may not deduct from the amount of any instrument subject to this section any charge imposed by reason of the failure to present the instrument for payment unless there is a valid and enforceable written contract between the holder and the owner of the instrument pursuant to which the holder may impose a charge, and the holder regularly imposes such charges and does not regularly reverse or otherwise cancel them. [2003 1st sp.s. c 13 § 2; 1983 c 179 § 5.]

**Effective dates—2003 1st sp.s. c 13:** See note following RCW 63.29.020.

**63.29.060 Bank deposits and funds in financial organizations.** (1) Any demand, savings, or matured time deposit with a banking or financial organization, including a deposit that is automatically renewable, and any funds paid toward the purchase of a share, a mutual investment certificate, or any other interest in a banking or financial organization is presumed abandoned unless the owner, within three years, has:

(a) In the case of a deposit, increased or decreased its amount or presented the passbook or other similar evidence of the deposit for the crediting of interest;

(b) Communicated in writing with the banking or financial organization concerning the property;

(c) Otherwise indicated an interest in the property as evidenced by a memorandum or other record on file prepared by an employee of the banking or financial organization;

(d) Owned other property to which subsection (1)(a), (b), or (c) of this section applies and if the banking or financial organization communicates in writing with the owner with regard to the property that would otherwise be presumed abandoned under this subsection at the address to which com-

munications regarding the other property regularly are sent; or

(e) Had another relationship with the banking or financial organization concerning which the owner has:

(i) In the case of a deposit, increased or decreased the amount of the deposit or presented the passbook or other similar evidence of the deposit for the crediting of interest;

(ii) Communicated in writing with the banking or financial organization; or

(iii) Otherwise indicated an interest as evidenced by a memorandum or other record on file prepared by an employee of the banking or financial organization and if the banking or financial organization communicates in writing with the owner with regard to the property that would otherwise be abandoned under this subsection at the address to which communications regarding the other relationship regularly are sent.

(2) For purposes of subsection (1) of this section property includes interest and dividends.

(3) This chapter shall not apply to deposits made by a guardian or decedent's personal representative with a banking organization when the deposit is subject to withdrawal only upon the order of the court in the guardianship or estate proceeding.

(4) A holder may not impose with respect to property described in subsection (1) of this section any charge due to dormancy or inactivity or cease payment of interest unless:

(a) There is an enforceable written contract between the holder and the owner of the property pursuant to which the holder may impose a charge or cease payment of interest;

(b) For property in excess of ten dollars, the holder, no more than three months before the initial imposition of those charges or cessation of interest, has given written notice to the owner of the amount of those charges at the last known address of the owner stating that those charges will be imposed or that interest will cease, but the notice provided in this section need not be given with respect to charges imposed or interest ceased before June 30, 1983; and

(c) The holder regularly imposes such charges or ceases payment of interest and does not regularly reverse or otherwise cancel them or retroactively credit interest with respect to the property.

(5) Any property described in subsection (1) of this section that is automatically renewable is matured for purposes of subsection (1) of this section upon the expiration of its initial time period, or after one year if the initial period is less than one year, but in the case of any renewal to which the owner consents at or about the time of renewal by communicating in writing with the banking or financial organization or otherwise indicating consent as evidenced by a memorandum or other record on file prepared by an employee of the organization, the property is matured upon the expiration of the last time period for which consent was given. If, at the time provided for delivery in RCW 63.29.190, a penalty or forfeiture in the payment of interest would result from the delivery of the property, the time for delivery is extended until the time when no penalty or forfeiture would result. [2003 1st sp.s. c 13 § 3; 1983 c 179 § 6.]

**Effective dates—2003 1st sp.s. c 13:** See note following RCW 63.29.020.

(2010 Ed.)

### 63.29.070 Funds owing under life insurance policies.

(1) Funds held or owing under any life or endowment insurance policy or annuity contract that has matured or terminated are presumed abandoned if unclaimed for more than three years after the funds became due and payable as established from the records of the insurance company holding or owing the funds, but property described in subsection (3)(b) of this section is presumed abandoned if unclaimed for more than two years.

(2) If a person other than the insured or annuitant is entitled to the funds and an address of the person is not known to the company or it is not definite and certain from the records of the company who is entitled to the funds, it is presumed that the last known address of the person entitled to the funds is the same as the last known address of the insured or annuitant according to the records of the company.

(3) For purposes of this chapter, a life or endowment insurance policy or annuity contract not matured by actual proof of the death of the insured or annuitant according to the records of the company is matured and the proceeds due and payable if:

(a) The company knows that the insured or annuitant has died; or

(b)(i) The insured has attained, or would have attained if he were living, the limiting age under the mortality table on which the reserve is based;

(ii) The policy was in force at the time the insured attained, or would have attained, the limiting age specified in subparagraph (i) of this subsection; and

(iii) Neither the insured nor any other person appearing to have an interest in the policy within the preceding two years, according to the records of the company, has assigned, readjusted, or paid premiums on the policy, subjected the policy to a loan, corresponded in writing with the company concerning the policy, or otherwise indicated an interest as evidenced by a memorandum or other record on file prepared by an employee of the company.

(4) For purposes of this chapter, the application of an automatic premium loan provision or other nonforfeiture provision contained in an insurance policy does not prevent a policy from being matured or terminated under subsection (1) of this section if the insured has died or the insured or the beneficiaries of the policy otherwise have become entitled to the proceeds thereof before the depletion of the cash surrender value of a policy by the application of those provisions.

(5) If the laws of this state or the terms of the life insurance policy require the company to give notice to the insured or owner that an automatic premium loan provision or other nonforfeiture provision has been exercised and the notice, given to an insured or owner whose last known address according to the records of the company is in this state, is undeliverable, the company shall make a reasonable search to ascertain the policyholder's correct address to which the notice must be mailed.

(6) Notwithstanding any other provision of law, if the company learns of the death of the insured or annuitant and the beneficiary has not communicated with the insurer within four months after the death, the company shall take reasonable steps to pay the proceeds to the beneficiary.

(7) Commencing two years after June 30, 1983, every change of beneficiary form issued by an insurance company

under any life or endowment insurance policy or annuity contract to an insured or owner who is a resident of this state must request the following information:

(a) The name of each beneficiary, or if a class of beneficiaries is named, the name of each current beneficiary in the class;

(b) The address of each beneficiary; and

(c) The relationship of each beneficiary to the insured. [2003 1st sp.s. c 13 § 4; 1983 c 179 § 7.]

**Effective dates—2003 1st sp.s. c 13:** See note following RCW 63.29.020.

**63.29.080 Deposits held by utilities.** (1) A deposit, including any interest thereon, made by a subscriber with a utility to secure payment or any sum paid in advance for utility services to be furnished, less any lawful deductions, that remains unclaimed by the owner for more than one year after termination of the services for which the deposit or advance payment was made is presumed abandoned.

(2) Any sum which a utility has been ordered to refund and which was received for utility services rendered in this state, together with any interest thereon, less any lawful deductions, that has remained unclaimed by the person appearing on the records of the utility entitled thereto for more than one year after the date it became payable in accordance with the final determination or order providing for the refund is presumed abandoned. [1983 c 179 § 8.]

**63.29.090 Refunds held by business associations.**

Except to the extent otherwise ordered by the court or administrative agency, any sum that a business association has been ordered to refund by a court or administrative agency which has remained unclaimed by the owner for more than one year after it became payable in accordance with the final determination or order providing for the refund, whether or not the final determination or order requires any person entitled to a refund to make a claim for it, is presumed abandoned. [1983 c 179 § 9.]

**63.29.100 Stock and other intangible interests in business associations.**

(1) Except as provided in subsections (2) and (5) of this section, stock or other intangible ownership interest in a business association, the existence of which is evidenced by records available to the association, is presumed abandoned and, with respect to the interest, the association is the holder, if a dividend, distribution, or other sum payable as a result of the interest has remained unclaimed by the owner for three years and the owner within three years has not:

(a) Communicated in writing with the association regarding the interest or a dividend, distribution, or other sum payable as a result of the interest; or

(b) Otherwise communicated with the association regarding the interest or a dividend, distribution, or other sum payable as a result of the interest, as evidenced by a memorandum or other record on file with the association prepared by an employee of the association.

(2) At the expiration of a three-year period following the failure of the owner to claim a dividend, distribution, or other sum payable to the owner as a result of the interest, the inter-

est is not presumed abandoned unless there have been at least five dividends, distributions, or other sums paid during the period, none of which has been claimed by the owner. If five dividends, distributions, or other sums are paid during the three-year period, the period leading to a presumption of abandonment commences on the date payment of the first such unclaimed dividend, distribution, or other sum became due and payable. If five dividends, distributions, or other sums are not paid during the presumptive period, the period continues to run until there have been five dividends, distributions, or other sums that have not been claimed by the owner.

(3) The running of the three-year period of abandonment ceases immediately upon the occurrence of a communication referred to in subsection (1) of this section. If any future dividend, distribution, or other sum payable to the owner as a result of the interest is subsequently not claimed by the owner, a new period of abandonment commences and relates back to the time a subsequent dividend, distribution, or other sum became due and payable.

(4) At the time any interest is presumed abandoned under this section, any dividend, distribution, or other sum then held for or owing to the owner as a result of the interest, and not previously presumed abandoned, is presumed abandoned.

(5) This chapter shall not apply to any stock or other intangible ownership interest enrolled in a plan that provides for the automatic reinvestment of dividends, distributions, or other sums payable as a result of the interest unless:

(a) The records available to the administrator of the plan show, with respect to any intangible ownership interest not enrolled in the reinvestment plan, that the owner has not within three years communicated in any manner described in subsection (1) of this section; or

(b) Three years have elapsed since the location of the owner became unknown to the association, as evidenced by the return of official shareholder notifications or communications by the postal service as undeliverable, and the owner has not within those three years communicated in any manner described in subsection (1) of this section. The three-year period from the return of official shareholder notifications or communications shall commence from the earlier of the return of the second such mailing or the date the holder discontinues mailings to the shareholder. [2003 1st sp.s. c 13 § 5; 1996 c 45 § 1; 1983 c 179 § 10.]

**Effective dates—2003 1st sp.s. c 13:** See note following RCW 63.29.020.

**63.29.110 Property of business associations held in course of dissolution.**

Intangible property distributable in the course of a dissolution of a business association which remains unclaimed by the owner for more than one year after the date specified for final distribution is presumed abandoned. [1983 c 179 § 11.]

**63.29.120 Property held by agents and fiduciaries.**

(1) Intangible property and any income or increment derived therefrom held in a fiduciary capacity for the benefit of another person is presumed abandoned unless the owner, within three years after it has become payable or distributable, has increased or decreased the principal, accepted payment of principal or income, communicated concerning the

property, or otherwise indicated an interest as evidenced by a memorandum or other record on file prepared by the fiduciary.

(2) Funds in an individual retirement account or a retirement plan for self-employed individuals or similar account or plan established pursuant to the internal revenue laws of the United States are not payable or distributable within the meaning of subsection (1) of this section unless, under the terms of the account or plan, distribution of all or part of the funds would then be mandatory.

(3) For the purpose of this section, a person who holds property as an agent for a business association is deemed to hold the property in a fiduciary capacity for that business association alone, unless the agreement between him and the business association provides otherwise.

(4) For the purposes of this chapter, a person who is deemed to hold property in a fiduciary capacity for a business association alone is the holder of the property only insofar as the interest of the business association in the property is concerned, and the business association is the holder of the property insofar as the interest of any other person in the property is concerned. [2003 1st sp.s. c 13 § 6; 1983 c 179 § 12.]

**Effective dates—2003 1st sp.s. c 13:** See note following RCW 63.29.020.

**63.29.130 Property held by courts and public agencies—When abandoned—Overpayments.** Intangible property held for the owner by a court, state or other government, governmental subdivision or agency, public corporation, public authority, or the United States or any instrumentality of the United States that remains unclaimed by the owner for more than two years after becoming payable or distributable is presumed abandoned. However, courts may retain overpayments made in connection with any litigation, including traffic, criminal, and noncriminal matters, in an amount less than or equal to ten dollars. These overpayments shall be remitted by the clerk of the court to the local treasurer for deposit in the local current expense fund. [2007 c 183 § 1; 1993 c 498 § 2; 1983 c 179 § 13.]

**63.29.133 Property held by landlord.** Intangible property held by a landlord as a result of a sheriff's sale pursuant to RCW 59.18.312 that remains unclaimed for a period of one year from the date of the sale is presumed abandoned. [1992 c 38 § 9.]

**Intent—Effective date—1992 c 38:** See notes following RCW 59.18.352.

**63.29.135 Abandoned intangible property held by local government.** A local government holding abandoned intangible property that is not forwarded to the department of revenue, as authorized under RCW 63.29.190, shall not be required to maintain current records of this property for longer than five years after the property is presumed to be abandoned, and at that time may archive records of this intangible property and transfer the intangible property to its general fund. However, the local government shall remain liable to pay the intangible property to a person or entity subsequently establishing its ownership of this intangible property. [1990 2nd ex.s. c 1 § 301.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**63.29.140 Gift certificates and credit memos.** (1) A gift certificate or a credit memo issued in the ordinary course of an issuer's business which remains unclaimed by the owner for more than three years after becoming payable or distributable is presumed abandoned.

(2) In the case of a gift certificate, the amount presumed abandoned is the price paid by the purchaser for the gift certificate. In the case of a credit memo, the amount presumed abandoned is the amount credited to the recipient of the memo.

(3) A gift certificate that is presumed abandoned under this section may, but need not be, included in the report as provided under RCW 63.29.170(4). If a gift certificate that is presumed abandoned under this section is not timely reported as provided under RCW 63.29.170(4), RCW 19.240.005 through 19.240.110 apply to the gift certificate. [2004 c 168 § 15; 2003 1st sp.s. c 13 § 7; 1983 c 179 § 14.]

**Effective date—2004 c 168 §§ 15 and 16:** "Sections 15 and 16 of this act take effect January 1, 2005." [2004 c 168 § 20.]

**Effective dates—2003 1st sp.s. c 13:** See note following RCW 63.29.020.

**63.29.150 Wages.** Unpaid wages, including wages represented by un-presented payroll checks, owing in the ordinary course of the holder's business which remain unclaimed by the owner for more than one year after becoming payable are presumed abandoned. [1983 c 179 § 15.]

**63.29.160 Contents of safe deposit box or other safekeeping repository.** All tangible and intangible property held in a safe deposit box or any other safekeeping repository in this state in the ordinary course of the holder's business and proceeds resulting from the sale of the property permitted by other law, which remain unclaimed by the owner for more than five years after the lease or rental period on the box or other repository has expired, are presumed abandoned. [1983 c 179 § 16.]

**63.29.165 Property in self-storage facility.** The excess proceeds of a sale conducted pursuant to RCW 19.150.080 by an owner of a self-service storage facility to satisfy the lien and costs of storage which are not claimed by the occupant of the storage space or any other person which remains unclaimed for more than six months are presumed abandoned. [1993 c 498 § 4; 1988 c 240 § 21.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**63.29.170 Report of abandoned property.** (1) A person holding property presumed abandoned and subject to custody as unclaimed property under this chapter shall report to the department concerning the property as provided in this section.

(2) The report must be verified and must include:

(a) Except with respect to travelers checks and money orders, the name, if known, and last known address, if any, of each person appearing from the records of the holder to be the owner of property with a value of more than fifty dollars presumed abandoned under this chapter;

(b) In the case of unclaimed funds of more than fifty dollars held or owing under any life or endowment insurance policy or annuity contract, the full name and last known

address of the insured or annuitant and of the beneficiary according to the records of the insurance company holding or owing the funds;

(c) In the case of the contents of a safe deposit box or other safekeeping repository or in the case of other tangible property, a description of the property and the place where it is held and where it may be inspected by the department, and any amounts owing to the holder;

(d) The nature and identifying number, if any, or description of the property and the amount appearing from the records to be due, but items with a value of fifty dollars or less each may be reported in the aggregate;

(e) The date the property became payable, demandable, or returnable, and the date of the last transaction with the apparent owner with respect to the property; and

(f) Other information the department prescribes by rule as necessary for the administration of this chapter.

(3) If the person holding property presumed abandoned and subject to custody as unclaimed property is a successor to other persons who previously held the property for the apparent owner or the holder has changed his or her name while holding the property, the holder shall file with the report all known names and addresses of each previous holder of the property.

(4) The report must be filed before November 1st of each year and shall include, except as provided in RCW 63.29.140(3), all property presumed abandoned and subject to custody as unclaimed property under this chapter that is in the holder's possession as of the preceding June 30th. On written request by any person required to file a report, the department may postpone the reporting date.

(5) After May 1st, but before August 1st, of each year in which a report is required by this section, the holder in possession of property presumed abandoned and subject to custody as unclaimed property under this chapter shall send written notice to the apparent owner at the last known address informing him or her that the holder is in possession of property subject to this chapter if:

(a) The holder has in its records an address for the apparent owner which the holder's records do not disclose to be inaccurate;

(b) The claim of the apparent owner is not barred by the statute of limitations; and

(c) The property has a value of more than seventy-five dollars. [2004 c 168 § 16; 2003 c 237 § 1; 1996 c 45 § 2; 1993 c 498 § 7; 1983 c 179 § 17.]

**Effective date—2004 c 168 §§ 15 and 16:** See note following RCW 63.29.140.

**63.29.180 Notice and publication of information about unclaimed property.**

(1) The department shall cause a notice to be published not later than November 1st, immediately following the report required by RCW 63.29.170 in a newspaper of general circulation within this state, which the department determines is most likely to give notice to the apparent owner of the property.

(2) The published notice must be entitled "Notice to Owners of Unclaimed Property" and contain a summary explanation of how owners may obtain information about unclaimed property reported to the department.

(3) Not later than September 1st, immediately following the report required by RCW 63.29.170, the department shall mail a notice to each person whose last known address is listed in the report and who appears to be entitled to property with a value of more than seventy-five dollars presumed abandoned under this chapter and any beneficiary of a life or endowment insurance policy or annuity contract for whom the department has a last known address.

(4) The mailed notice must contain:

(a) A statement that, according to a report filed with the department, property is being held to which the addressee appears entitled; and

(b) The name of the person reporting the property and the type of property described in the report.

(5) This section is not applicable to sums payable on travelers checks, money orders, and other written instruments presumed abandoned under RCW 63.29.040. [2005 c 367 § 2; 2003 c 237 § 2; 1993 c 498 § 9; 1986 c 84 § 1; 1983 c 179 § 18.]

**63.29.190 Payment or delivery of abandoned property.** (1) Except as otherwise provided in subsections (2) and (3) of this section, a person who is required to file a report under RCW 63.29.170 shall pay or deliver to the department all abandoned property required to be reported at the time of filing the report.

(2)(a) Counties, cities, towns, and other municipal and quasi-municipal corporations that hold funds representing warrants canceled pursuant to RCW 36.22.100 and 39.56.040, uncashed checks, and property tax overpayments or refunds may retain the funds until the owner notifies them and establishes ownership as provided in RCW 63.29.135. Counties, cities, towns, or other municipal or quasi-municipal corporations shall provide to the department a report of property it is holding pursuant to this section. The report shall identify the property and owner in the manner provided in RCW 63.29.170 and the department shall publish the information as provided in RCW 63.29.180.

(b)(i) A public transportation authority that holds funds representing value on abandoned fare cards may retain the funds until the owner notifies the authority and establishes ownership as provided in RCW 63.29.135.

(ii) For the purposes of this subsection (2)(b), "public transportation authority" means a municipality, as defined in RCW 35.58.272, a regional transit authority authorized by chapter 81.112 RCW, a public mass transportation system authorized by chapter 47.60 RCW, or a city transportation authority authorized by chapter 35.95A RCW.

(3) The contents of a safe deposit box or other safekeeping repository presumed abandoned under RCW 63.29.160 and reported under RCW 63.29.170 shall be paid or delivered to the department within six months after the final date for filing the report required by RCW 63.29.170.

If the owner establishes the right to receive the abandoned property to the satisfaction of the holder before the property has been delivered or it appears that for some other reason the presumption of abandonment is erroneous, the holder need not pay or deliver the property to the department, and the property will no longer be presumed abandoned. In that case, the holder shall file with the department a verified

written explanation of the proof of claim or of the error in the presumption of abandonment.

(4) The holder of an interest under RCW 63.29.100 shall deliver a duplicate certificate or other evidence of ownership if the holder does not issue certificates of ownership to the department. Upon delivery of a duplicate certificate to the department, the holder and any transfer agent, registrar, or other person acting for or on behalf of a holder in executing or delivering the duplicate certificate is relieved of all liability of every kind in accordance with RCW 63.29.200 to every person, including any person acquiring the original certificate or the duplicate of the certificate issued to the department, for any losses or damages resulting to any person by the issuance and delivery to the department of the duplicate certificate. [2005 c 502 § 4; 2005 c 367 § 3; 2005 c 285 § 2; 1993 c 498 § 8; 1991 c 311 § 7; 1990 2nd ex.s. c 1 § 302; 1983 c 179 § 19.]

**Reviser's note:** This section was amended by 2005 c 285 § 2, 2005 c 367 § 3, and by 2005 c 502 § 4, each without reference to the other. All amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

**Effective date—2005 c 502:** See note following RCW 1.12.070.

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**63.29.200 Custody by state—Holder relieved from liability—Reimbursement of holder paying claim—Reclaiming for owner—Defense of holder—Payment of safe deposit box or repository charges.** (1) Upon the payment or delivery of property to the department, the state assumes custody and responsibility for the safekeeping of the property. A person who pays or delivers property to the department in good faith is relieved of all liability to the extent of the value of the property paid or delivered for any claim then existing or which thereafter may arise or be made in respect to the property.

(2) A holder who has paid money to the department pursuant to this chapter may make payment to any person appearing to the holder to be entitled to payment and, upon filing proof of payment and proof that the payee was entitled thereto, the department shall promptly reimburse the holder for the payment without imposing any fee or other charge. If reimbursement is sought for a payment made on an instrument, including a travelers check or money order, the holder must be reimbursed under this subsection upon filing proof that the instrument was duly presented and that payment was made to a person who appeared to the holder to be entitled to payment. The holder must be reimbursed for payment made under this subsection even if the payment was made to a person whose claim was barred under RCW 63.29.290(1).

(3) A holder who has delivered property (including a certificate of any interest in a business association) other than money to the department pursuant to this chapter may reclaim the property if still in the possession of the department, without paying any fee or other charge, upon filing proof that the owner has claimed the property from the holder.

(4) The department may accept the holder's affidavit as sufficient proof of the facts that entitle the holder to recover money and property under this section.

(5) If the holder pays or delivers property to the department in good faith and thereafter another person claims the

property from the holder or another state claims the money or property under its laws relating to escheat or abandoned or unclaimed property, the department, upon written notice of the claim, shall defend the holder against the claim and indemnify the holder against any liability on the claim.

(6) For the purposes of this section, "good faith" means that:

(a) Payment or delivery was made in a reasonable attempt to comply with this chapter;

(b) The person delivering the property was not a fiduciary then in breach of trust in respect to the property and had a reasonable basis for believing, based on the facts then known to him, that the property was abandoned for the purposes of this chapter; and

(c) There is no showing that the records pursuant to which the delivery was made did not meet reasonable commercial standards of practice in the industry.

(7) Property removed from a safe deposit box or other safekeeping repository is received by the department subject to the holder's right under this subsection to be reimbursed for the actual cost of the opening and to any valid lien or contract providing for the holder to be reimbursed for unpaid rent or storage charges. The department shall reimburse or pay the holder out of the proceeds remaining after deducting the department's selling cost. The liability of the department for this reimbursement to the holder shall be limited to the proceeds of the sale of the property remaining after the deduction of the department's costs. [1983 c 179 § 20.]

**63.29.210 Crediting of dividends, interest, or increments to owner's account.** Whenever property other than money is paid or delivered to the department under this chapter, the owner is entitled to receive from the department any dividends, interest, or other increments realized or accruing on the property at or before liquidation or conversion thereof into money. [1983 c 179 § 21.]

**63.29.220 Public sale of abandoned property.** (1) Except as provided in subsections (2) and (3) of this section the department, within five years after the receipt of abandoned property, shall sell it to the highest bidder at public sale in whatever city in the state affords in the judgment of the department the most favorable market for the property involved. The department may decline the highest bid and reoffer the property for sale if in the judgment of the department the bid is insufficient. If in the judgment of the department the probable cost of sale exceeds the value of the property, it need not be offered for sale. Any sale held under this section must be preceded by a single publication of notice, at least three weeks in advance of sale, in a newspaper of general circulation in the county in which the property is to be sold.

(2) Securities listed on an established stock exchange must be sold at prices prevailing at the time of sale on the exchange. Other securities may be sold over the counter at prices prevailing at the time of sale or by any other method the department considers advisable. All securities may be sold over the counter at prices prevailing at the time of the sale, or by any other method the department deems advisable.

(3) Unless the department considers it to be in the best interest of the state to do otherwise, all securities, other than those presumed abandoned under RCW 63.29.100, delivered to the department must be held for at least one year before being sold.

(4) Unless the department considers it to be in the best interest of the state to do otherwise, all securities presumed abandoned under RCW 63.29.100 and delivered to the department must be held for at least three years before being sold. If the department sells any securities delivered pursuant to RCW 63.29.100 before the expiration of the three-year period, any person making a claim pursuant to this chapter before the end of the three-year period is entitled to either the proceeds of the sale of the securities or the market value of the securities at the time the claim is made, whichever amount is greater, less any deduction for fees pursuant to RCW 63.29.230(2). A person making a claim under this chapter after the expiration of this period is entitled to receive either the securities delivered to the department by the holder, if they still remain in the hands of the department, or the proceeds received from sale, less any amounts deducted pursuant to RCW 63.29.230(2), but no person has any claim under this chapter against the state, the holder, any transfer agent, registrar, or other person acting for or on behalf of a holder for any appreciation in the value of the property occurring after delivery by the holder to the department.

(5) The purchaser of property at any sale conducted by the department pursuant to this chapter takes the property free of all claims of the owner or previous holder thereof and of all persons claiming through or under them. The department shall execute all documents necessary to complete the transfer of ownership. [2005 c 367 § 4; 1996 c 45 § 3; 1993 c 498 § 10; 1983 c 179 § 22.]

**63.29.230 Deposit of funds.** (1) Except as otherwise provided by this section, the department shall promptly deposit in the general fund of this state all funds received under this chapter, including the proceeds from the sale of abandoned property under RCW 63.29.220. The department shall retain in a separate trust fund an amount not less than two hundred fifty thousand dollars from which prompt payment of claims duly allowed must be made by the department. Before making the deposit, the department shall record the name and last known address of each person appearing from the holders' reports to be entitled to the property and the name and last known address of each insured person or annuitant and beneficiary and with respect to each policy or contract listed in the report of an insurance company its number, and the name of the company. The record must be available for public inspection at all reasonable business hours.

(2) The department of revenue may pay from the trust fund provided in subsection (1) of this section any costs of administering this chapter. [1983 c 179 § 23.]

**63.29.240 Filing of claim with department.** (1) A person, excluding another state, claiming an interest in any property paid or delivered to the department may file with it a claim on a form prescribed by it and verified by the claimant.

(2) The department shall consider each claim within ninety days after it is filed and give written notice to the

claimant if the claim is denied in whole or in part. The notice may be given by mailing it to the last address, if any, stated in the claim as the address to which notices are to be sent. If no address for notices is stated in the claim, the notice may be mailed to the last address, if any, of the claimant as stated in the claim. No notice of denial need be given if the claim fails to state either the last address to which notices are to be sent or the address of the claimant.

(3) If a claim is allowed, the department shall pay over or deliver to the claimant the property or the amount the department actually received or the net proceeds if it has been sold by the department, together with any additional amount required by RCW 63.29.210. If the claim is for property presumed abandoned under RCW 63.29.100 which was sold by the department within three years after the date of delivery, the amount payable for that claim is the value of the property at the time the claim was made or the net proceeds of sale, whichever is greater. If the property claimed was interest-bearing to the owner on the date of surrender by the holder, the department also shall pay interest at the legal rate or any lesser rate the property earned while in the possession of the holder. Interest begins to accrue when the property is delivered to the department and ceases on the earlier of the expiration of ten years after delivery or the date on which payment is made to the owner. No interest on interest-bearing property is payable for any period before June 30, 1983.

(4) Any holder who pays the owner for property that has been delivered to the state and which, if claimed from the department, would be subject to subsection (3) of this section shall add interest as provided in subsection (3) of this section. The added interest must be repaid to the holder by the department in the same manner as the principal. [1983 c 179 § 24.]

**63.29.250 Claim of another state to recover property—Procedure.** (1) At any time after property has been paid or delivered to the department under this chapter another state may recover the property if:

(a) The property was subjected to custody by this state because the records of the holder did not reflect the last known address of the apparent owner when the property was presumed abandoned under this chapter, and the other state establishes that the last known address of the apparent owner or other person entitled to the property was in that state and under the laws of that state the property escheated to or was subject to a claim of abandonment by that state;

(b) The last known address of the apparent owner or other person entitled to the property, as reflected by the records of the holder, is in the other state and under the laws of that state the property has escheated to or become subject to a claim of abandonment by that state;

(c) The records of the holder were erroneous in that they did not accurately reflect the actual owner of the property and the last known address of the actual owner is in the other state and under the laws of that state the property escheated to or was subject to a claim of abandonment by that state;

(d) The property was subjected to custody by this state under RCW 63.29.030(6) and under the laws of the state of domicile of the holder the property has escheated to or become subject to a claim of abandonment by that state; or

(e) The property is the sum payable on a travelers check, money order, or other similar instrument that was subjected

to custody by this state under RCW 63.29.040, and the instrument was purchased in the other state, and under the laws of that state the property escheated to or became subject to a claim of abandonment by that state.

(2) The claim of another state to recover escheated or abandoned property must be presented in a form prescribed by the department, who shall decide the claim within ninety days after it is presented. The department shall allow the claim if it determines that the other state is entitled to the abandoned property under subsection (1) of this section.

(3) The department shall require a state, before recovering property under this section, to agree to indemnify this state and its officers and employees against any liability on a claim for the property. [1983 c 179 § 25.]

**63.29.260 Action to establish claim.** A person aggrieved by a decision of the department or whose claim has not been acted upon within ninety days after its filing may bring an action to establish the claim in the superior court of Thurston county naming the department as a defendant. The action must be brought within ninety days after the decision of the department or within one hundred eighty days after the filing of the claim if the department has failed to act on it. [1983 c 179 § 26.]

**63.29.270 Election to take payment or delivery.** (1) The department may decline to receive any property reported under this chapter which it considers to have a value less than the expense of giving notice and of sale. If the department elects not to receive custody of the property, the holder shall be notified within one hundred twenty days after filing the report required under RCW 63.29.170. The holder then may dispose of the property in such manner as it sees fit. No action or proceeding may be maintained against the holder for or on account of any action taken by the holder pursuant to this subsection with respect to the property.

(2) A holder, with the written consent of the department and upon conditions and terms prescribed by it, may report and deliver property before the property is presumed abandoned. Property delivered under this subsection must be held by the department and is not presumed abandoned until such time as it otherwise would be presumed abandoned under this chapter. [1983 c 179 § 27.]

**63.29.280 Destruction or disposition of property having insubstantial commercial value—Immunity from liability.** If the department determines after investigation that any property delivered under this chapter has insubstantial commercial value, the department may destroy or otherwise dispose of the property at any time. No action or proceeding may be maintained against the state or any officer or against the holder for or on account of any action taken by the department pursuant to this section. Original documents which the department has identified to be destroyed and which have legal significance or historical interest may be surrendered to the state historical museum or to the state library. [2005 c 367 § 5; 1983 c 179 § 28.]

**63.29.290 Periods of limitation.** (1) The expiration, after September 1, 1979, of any period of time specified by

(2010 Ed.)

contract, statute, or court order, during which a claim for money or property can be made or during which an action or proceeding may be commenced or enforced to obtain payment of a claim for money or to recover property, does not prevent the money or property from being presumed abandoned or affect any duty to file a report or to pay or deliver abandoned property to the department as required by this chapter.

(2) No action or proceeding may be commenced by the department with respect to any duty of a holder under this chapter more than six years after the duty arose. [1983 c 179 § 29.]

**63.29.300 Requests for reports and examination of records.** (1) The department may require any person who has not filed a report to file a verified report stating whether or not the person is holding any unclaimed property reportable or deliverable under this chapter. Nothing in this chapter requires reporting of property which is not subject to payment or delivery.

(2) The department, at reasonable times and upon reasonable notice, may examine the records of any person to determine whether the person has complied with the provisions of this chapter. The department may conduct the examination even if the person believes it is not in possession of any property reportable or deliverable under this chapter.

(3) If a person is treated under RCW 63.29.120 as the holder of the property only insofar as the interest of the business association in the property is concerned, the department, pursuant to subsection (2) of this section, may examine the records of the person if the department has given the notice required by subsection (2) of this section to both the person and the business association at least ninety days before the examination.

(4) If an examination of the records of a person results in the disclosure of property reportable and deliverable under this chapter, the department may assess the cost of the examination against the holder at the rate of one hundred forty dollars a day for each examiner, but in no case may the charges exceed the lesser of three thousand dollars or the value of the property found to be reportable and deliverable. No assessment shall be imposed where the person proves that failure to report and deliver property was inadvertent. The cost of examination made pursuant to subsection (3) of this section may be imposed only against the business association.

(5) If a holder fails after June 30, 1983, to maintain the records required by RCW 63.29.310 and the records of the holder available for the periods subject to this chapter are insufficient to permit the preparation of a report, the department may require the holder to report and pay such amounts as may reasonably be estimated from any available records. [1983 c 179 § 30.]

**63.29.310 Retention of records.** (1) Every holder required to file a report under RCW 63.29.170, as to any property for which it has obtained the last known address of the owner, shall maintain a record of the name and last known address of the owner for six years after the property becomes reportable, except to the extent that a shorter time is provided in subsection (2) of this section or by rule of the department.

(2) Any business association that sells in this state its travelers checks, money orders, or other similar written instruments, other than third-party bank checks on which the business association is directly liable, or that provides such instruments to others for sale in this state, shall maintain a record of those instruments while they remain outstanding, indicating the state and date of issue for three years after the date the property is reportable. [1983 c 179 § 31.]

**63.29.320 Enforcement.** The department may bring an action in a court of competent jurisdiction to enforce this chapter. [1983 c 179 § 32.]

**63.29.330 Interstate agreements and cooperation—Joint and reciprocal actions with other states.** (1) The department may enter into agreements with other states to exchange information needed to enable this or another state to audit or otherwise determine unclaimed property that it or another state may be entitled to subject to a claim of custody. The department by rule may require the reporting of information needed to enable compliance with agreements made pursuant to this section and prescribe the form.

(2) To avoid conflicts between the department's procedures and the procedures of administrators in other jurisdictions that enact the Uniform Unclaimed Property Act, the department, so far as is consistent with the purposes, policies, and provisions of this chapter, before adopting, amending or repealing rules, shall advise and consult with administrators in other jurisdictions that enact substantially the Uniform Unclaimed Property Act and take into consideration the rules of administrators in other jurisdictions that enact the Uniform Unclaimed Property Act.

(3) The department may join with other states to seek enforcement of this chapter against any person who is or may be holding property reportable under this chapter.

(4) At the request of another state, the attorney general of this state may bring an action in the name of the administrator of the other state in any court of competent jurisdiction to enforce the unclaimed property laws of the other state against a holder in this state of property subject to escheat or a claim of abandonment by the other state, if the other state has agreed to pay expenses incurred by the attorney general in bringing the action.

(5) The department may request that the attorney general of another state or any other person bring an action in the name of the department in the other state. This state shall pay all expenses including attorney's fees in any action under this subsection. The department may agree to pay the person bringing the action attorney's fees based in whole or in part on a percentage of the value of any property recovered in the action. Any expenses paid pursuant to this subsection may not be deducted from the amount that is subject to the claim by the owner under this chapter. [1983 c 179 § 33.]

**63.29.340 Interest and penalties.** (1) A person who fails to pay or deliver property within the time prescribed by this chapter shall be required to pay to the department interest at the rate as computed under RCW 82.32.050(2) from the date the property should have been paid or delivered until the property is paid or delivered, unless the department finds that

the failure to pay or deliver the property within the time prescribed by this chapter was the result of circumstances beyond the person's control sufficient for waiver or cancellation of interest under RCW 82.32.105.

(2) A person who willfully fails to render any report, to pay or deliver property, or to perform other duties required under this chapter shall pay a civil penalty of one hundred dollars for each day the report is withheld or the duty is not performed, but not more than five thousand dollars, plus one hundred percent of the value of the property which should have been reported, paid or delivered.

(3) A person who willfully refuses after written demand by the department to pay or deliver property to the department as required under this chapter or who enters into a contract to avoid the duties of this chapter is guilty of a gross misdemeanor and upon conviction may be punished by a fine of not more than one thousand dollars or imprisonment for not more than one year, or both. [1996 c 149 § 11; 1996 c 45 § 4; 1983 c 179 § 34.]

**Reviser's note:** This section was amended by 1996 c 45 § 4 and by 1996 c 149 § 11, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

**Findings—Intent—Effective date—1996 c 149:** See notes following RCW 82.32.050.

**63.29.350 Penalty for excessive fee for locating abandoned property—Consumer protection act application.**

(1) It is unlawful for any person to seek or receive from any person or contract with any person for any fee or compensation for locating or purporting to locate any property which he knows has been reported or paid or delivered to the department of revenue pursuant to this chapter, or funds held by a county that are proceeds from a foreclosure for delinquent property taxes, assessments, or other liens, or, funds that are otherwise held by a county because of a person's failure to claim funds held as reimbursement for unowed taxes, fees, or other government charges, in excess of five percent of the value thereof returned to such owner. Any person violating this section is guilty of a misdemeanor and shall be fined not less than the amount of the fee or charge he has sought or received or contracted for, and not more than ten times such amount, or imprisoned for not more than thirty days, or both.

(2) The legislature finds that the practices covered by this section are matters vitally affecting the public interest for the purpose of applying the consumer protection act, chapter 19.86 RCW. Any violation of this section is not reasonable in relation to the development and preservation of business. It is an unfair or deceptive act in trade or commerce and an unfair method of competition for the purpose of applying the consumer protection act, chapter 19.86 RCW. Remedies provided by chapter 19.86 RCW are cumulative and not exclusive. [2010 c 29 § 2; 1983 c 179 § 35.]

**63.29.360 Foreign transactions.** This chapter does not apply to any property held, due, and owing in a foreign country and arising out of a foreign transaction. [1983 c 179 § 36.]

**63.29.370 Rules.** The department may adopt necessary rules in accordance with chapter 34.05 RCW to carry out the provisions of this chapter. [1983 c 179 § 38.]

**63.29.380 Information and records confidential.** Any information or records required to be furnished to the department of revenue as provided in this chapter shall be confidential and shall not be disclosed to any person except the person who furnished the same to the department of revenue, and except as provided in RCW 63.29.180 and 63.29.230, or as may be necessary in the proper administration of this chapter. [1983 c 179 § 39.]

**63.29.900 Effect of new provisions—Clarification of application.** (1) This chapter does not relieve a holder of a duty that arose before June 30, 1983, to report, pay, or deliver property. A holder who did not comply with the law in effect before June 30, 1983, is subject to the applicable enforcement and penalty provisions that then existed and they are continued in effect for the purpose of this subsection, subject to RCW 63.29.290(2).

(2) The initial report to be filed under this chapter shall include all property which is presumed abandoned under this chapter. The report shall include property that was not required to be reported before June 30, 1983, but which would have been presumed abandoned on or after September 1, 1979 under the terms of chapter 63.29 RCW.

(3) It shall be a defense to any action by the department that facts cannot be established because a holder, prior to January 1, 1983, destroyed or lost records or did not then keep records, if the destruction, loss, or failure to keep records did not violate laws existing at the time of the destruction, loss or failure. [1983 c 179 § 37.]

**63.29.901 Captions not law—1983 c 179.** Captions as used in sections of this act shall not constitute any part of the law. [1983 c 179 § 40.]

**63.29.902 Uniformity of application and construction.** This chapter shall be applied and construed as to effectuate its general purpose to make uniform the law with respect to the subject of this chapter among states enacting it. [1983 c 179 § 41.]

**63.29.903 Short title.** This chapter may be cited as the Uniform Unclaimed Property Act of 1983. [1983 c 179 § 42.]

**63.29.904 Severability—1983 c 179.** If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1983 c 179 § 43.]

**63.29.905 Effective date—1983 c 179.** This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect June 30, 1983. [1983 c 179 § 47.]

**63.29.906 Effective date—1996 c 45.** This act shall take effect July 1, 1996. [1996 c 45 § 5.]

(2010 Ed.)

**Chapter 63.32 RCW**  
**UNCLAIMED PROPERTY IN HANDS**  
**OF CITY POLICE**

Sections

63.32.010	Methods of disposition—Notice—Sale, retention, destruction, or trade.
63.32.020	Notice of sale.
63.32.030	Disposition of proceeds.
63.32.040	Reimbursement to owner.
63.32.050	Donation of unclaimed personal property to nonprofit charitable organizations.

**63.32.010 Methods of disposition—Notice—Sale, retention, destruction, or trade.** Whenever any personal property shall come into the possession of the police authorities of any city in connection with the official performance of their duties and said personal property shall remain unclaimed or not taken away for a period of sixty days from date of written notice to the owner thereof, if known, which notice shall inform the owner of the disposition which may be made of the property under this section and the time that the owner has to claim the property and in all other cases for a period of sixty days from the time said property came into the possession of the police department, unless said property has been held as evidence in any court, then, in that event, after sixty days from date when said case has been finally disposed of and said property released as evidence by order of the court, said city may:

(1) At any time thereafter sell said personal property at public auction to the highest and best bidder for cash in the manner hereinafter provided;

(2) Retain the property for the use of the police department subject to giving notice in the manner prescribed in RCW 63.32.020 and the right of the owner, or the owner's legal representative, to reclaim the property within one year after receipt of notice, without compensation for ordinary wear and tear if, in the opinion of the chief of police, the property consists of firearms or other items specifically usable in law enforcement work: PROVIDED, That at the end of each calendar year during which there has been such a retention, the police department shall provide the city's mayor or council and retain for public inspection a list of such retained items and an estimation of each item's replacement value. At the end of the one-year period any unclaimed firearm shall be disposed of pursuant to RCW 9.41.098(2);

(3) Destroy an item of personal property at the discretion of the chief of police if the chief of police determines that the following circumstances have occurred:

(a) The property has no substantial commercial value, or the probable cost of sale exceeds the value of the property;

(b) The item has been unclaimed by any person after notice procedures have been met, as prescribed in this section; and

(c) The chief of police has determined that the item is unsafe and unable to be made safe for use by any member of the general public;

(4) If the item is not unsafe or illegal to possess or sell, such item, after satisfying the notice requirements as prescribed in RCW 63.32.020, may be offered by the chief of police to bona fide dealers, in trade for law enforcement equipment, which equipment shall be treated as retained

property for purpose of annual listing requirements of subsection (2) of this section; or

(5) If the item is not unsafe or illegal to possess or sell, but has been, or may be used, in the judgment of the chief of police, in a manner that is illegal, such item may be destroyed. [1988 c 223 § 3; 1988 c 132 § 1; 1981 c 154 § 2; 1973 1st ex.s. c 44 § 1; 1939 c 148 § 1; 1925 ex.s. c 100 § 1; RRS § 8999-1.]

**Reviser's note:** This section was amended by 1988 c 132 § 1 and by 1988 c 223 § 3, each without reference to the other. Both amendments are incorporated in the publication of this section pursuant to RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

**63.32.020 Notice of sale.** Before said personal property shall be sold, a notice of such sale fixing the time and place thereof which shall be at a suitable place, which will be noted in the advertisement for sale, and containing a description of the property to be sold shall be published at least once in the official newspaper of said city at least ten days prior to the date fixed for said sale. The notice shall be signed by the chief or other head of the police department of such city. If the owner fails to reclaim said property prior to the time fixed for the sale in such notice, the chief or other head of the police department shall conduct said sale and sell the property described in the notice at public auction to the highest and best bidder for cash, and upon payment of the amount of such bid shall deliver the said property to such bidder. [1988 c 132 § 2; 1925 ex.s. c 100 § 2; RRS § 8999-2.]

**63.32.030 Disposition of proceeds.** The moneys arising from sales under the provisions of this chapter shall be first applied to the payment of the costs and expenses of the sale and then to the payment of lawful charges and expenses for the keep of said personal property and the balance, if any, shall be paid into the police pension fund of said city if such fund exists; otherwise into the city current expense fund. [1939 c 148 § 2; 1925 ex.s. c 100 § 3; RRS § 8999-3.]

**63.32.040 Reimbursement to owner.** If the owner of said personal property so sold, or his legal representative, shall, at any time within three years after such money shall have been deposited in said police pension fund or the city current expense fund, furnish satisfactory evidence to the police pension fund board or the city treasurer of said city of the ownership of said personal property he or they shall be entitled to receive from said police pension fund or city current expense fund the amount so deposited therein with interest. [1939 c 148 § 3; 1925 ex.s. c 100 § 4; RRS § 899-4.]

**63.32.050 Donation of unclaimed personal property to nonprofit charitable organizations.** In addition to any other method of disposition of unclaimed property provided under this chapter, the police authorities of a city or town may donate unclaimed personal property to nonprofit charitable organizations. A nonprofit charitable organization receiving personal property donated under this section must use the property, or its proceeds, to benefit needy persons. Such organization must qualify for tax-exempt status under 26 U.S.C. Sec. 501(c)(3) of the federal internal revenue code. [2007 c 219 § 1; 1987 c 182 § 1.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

## Chapter 63.35 RCW UNCLAIMED PROPERTY IN HANDS OF STATE PATROL

### Sections

63.35.010	Definitions.
63.35.020	Methods of disposition—Sale, retention, destruction, or trade.
63.35.030	Notice of sale.
63.35.040	Disposition of proceeds.
63.35.050	Reimbursement to owner.
63.35.060	Applicability of other statutes.
63.35.065	Donation of unclaimed personal property to nonprofit charitable organizations.
63.35.900	Severability—1989 c 222.

**63.35.010 Definitions.** Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

- (1) "Agency" means the Washington state patrol.
- (2) "Chief" means the chief of the Washington state patrol or designee.
- (3) "Personal property" or "property" includes both corporeal and incorporeal personal property and includes, among other property, contraband and money.
- (4) "Contraband" means any property which is unlawful to produce or possess.
- (5) "Money" means all currency, script, personal checks, money orders, or other negotiable instruments.
- (6) "Owner" means the person in whom is vested the ownership, dominion, or title of the property.
- (7) "Unclaimed" means that no owner of the property has been identified or has requested, in writing, the release of the property to themselves nor has the owner of the property designated an individual to receive the property or paid the required postage to effect delivery of the property.
- (8) "Illegal items" means those items unlawful to be possessed. [1989 c 222 § 1.]

**63.35.020 Methods of disposition—Sale, retention, destruction, or trade.** Whenever any personal property shall come into the possession of the officers of the state patrol in connection with the official performance of their duties and said personal property shall remain unclaimed or not taken away for a period of sixty days from the date of written notice to the owner thereof, if known, which notice shall inform the owner of the disposition which may be made of the property under this section and the time that the owner has to claim the property and in all other cases for a period of sixty days from the time said property came into the possession of the state agency, unless said property has been held as evidence in any court, then, in that event, after sixty days from date when said case has been finally disposed of and said property released as evidence by order of the court, said agency may:

- (1) At any time thereafter sell said personal property at public auction to the highest and best bidder for cash in the manner hereinafter provided;
- (2) Retain the property for the use of the state patrol subject to giving notice in the manner prescribed in RCW 63.35.030 and the right of the owner, or the owner's legal representative, to reclaim the property within one year after receipt of notice, without compensation for ordinary wear and tear if, in the opinion of the chief, the property consists of

firearms or other items specifically usable in law enforcement work: PROVIDED, That at the end of each calendar year during which there has been such a retention, the state patrol shall provide the office of financial management and retain for public inspection a list of such retained items and an estimation of each item's replacement value;

(3) Destroy an item of personal property at the discretion of the chief if the chief determines that the following circumstances have occurred:

(a) The property has no substantial commercial value, or the probable cost of sale exceeds the value of the property;

(b) The item has been unclaimed by any person after notice procedures have been met, as prescribed in this section; and

(c) The chief has determined that the item is illegal to possess or sell or unsafe and unable to be made safe for use by any member of the general public;

(4) If the item is not unsafe or illegal to possess or sell, such item, after satisfying the notice requirements as prescribed in this section may be offered by the chief to bona fide dealers, in trade for law enforcement equipment, which equipment shall be treated as retained property for purpose of annual listing requirements of subsection (2) of this section; or

(5) At the end of one year, any unclaimed firearm shall be disposed of pursuant to RCW 9.41.098(2). Any other item which is not unsafe or illegal to possess or sell, but has been, or may be used, in the judgment of the chief, in a manner that is illegal, may be destroyed. [1989 c 222 § 2.]

**63.35.030 Notice of sale.** Before said personal property shall be sold, a notice of such sale fixing the time and place thereof which shall be at a suitable place, which will be noted in the advertisement for sale, and containing a description of the property to be sold shall be published at least once in a newspaper of general circulation in the county in which the property is to be sold at least ten days prior to the date fixed for the auction. The notice shall be signed by the chief. If the owner fails to reclaim said property prior to the time fixed for the sale in such notice, the chief shall conduct said sale and sell the property described in the notice at public auction to the highest and best bidder for cash, and upon payment of the amount of such bid shall deliver the said property to such bidder. [1989 c 222 § 3.]

**63.35.040 Disposition of proceeds.** The moneys arising from sales under the provisions of this chapter shall be first applied to the payment of the costs and expenses of the sale and then to the payment of lawful charges and expenses for the keep of said personal property and the balance, if any, shall be forwarded to the state treasurer to be deposited into the state patrol highway account. [1989 c 222 § 4.]

**63.35.050 Reimbursement to owner.** If the owner of said personal property so sold, or the owner's legal representative, shall, at any time within three years after such money shall have been deposited in the state patrol highway account, furnish satisfactory evidence to the state treasurer of the ownership of said personal property, the owner or the owner's legal representative shall be entitled to receive from said state

patrol highway account the amount so deposited therein with interest. [1989 c 222 § 5.]

**63.35.060 Applicability of other statutes.** (1) Chapter 63.24 RCW, unclaimed property in hands of bailee, does not apply to personal property in the possession of the state patrol.

(2) The uniform unclaimed property act, chapter 63.29 RCW, does not apply to personal property in the possession of the state patrol. [1989 c 222 § 6.]

**63.35.065 Donation of unclaimed personal property to nonprofit charitable organizations.** In addition to any other method of disposition of unclaimed property provided under this chapter, the state patrol may donate unclaimed personal property to nonprofit charitable organizations. A nonprofit charitable organization receiving personal property donated under this section must use the property, or its proceeds, to benefit needy persons. Such organization must qualify for tax-exempt status under 26 U.S.C. Sec. 501(c)(3) of the federal internal revenue code. [2007 c 219 § 2.]

**63.35.900 Severability—1989 c 222.** If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1989 c 222 § 9.]

**Chapter 63.40 RCW**

**UNCLAIMED PROPERTY IN HANDS OF SHERIFF**

Sections

63.40.010	Methods of disposition—Notice—Sale, retention, destruction, or trade.
63.40.020	Notice of sale, form, contents—Conduct of sale.
63.40.030	Disposition of proceeds.
63.40.040	Reimbursement to owner.
63.40.050	Uniform unclaimed property act not applicable.
63.40.060	Donation of unclaimed personal property to nonprofit charitable organizations.

**63.40.010 Methods of disposition—Notice—Sale, retention, destruction, or trade.** Whenever any personal property, other than vehicles governed by chapter 46.52 RCW, shall come into the possession of the sheriff of any county in connection with the official performance of his duties and said personal property shall remain unclaimed or not taken away for a period of sixty days from date of written notice to the owner thereof, if known, which notice shall inform the owner of the disposition which may be made of the property under this section and the time that the owner has to claim the property and in all other cases for a period of sixty days from the time said property came into the possession of the sheriff's office, unless said property has been held as evidence in any court, then, in that event, after sixty days from date when said case has been finally disposed of and said property released as evidence by order of the court, said county sheriff may:

(1) At any time thereafter sell said personal property at public auction to the highest and best bidder for cash in the manner hereinafter provided;

(2) Retain the property for the use of the sheriff's office subject to giving notice in the manner prescribed in RCW 63.40.020 and the right of the owner, or his or her legal representative, to reclaim the property within one year after the receipt of notice, without compensation for ordinary wear and tear if, in the opinion of the county sheriff, the property consists of firearms or other items specifically usable in law enforcement work: PROVIDED, That at the end of each calendar year during which there has been such a retention, the sheriff shall provide the county's executive or legislative authority and retain for public inspection a list of such retained items and an estimation of each item's replacement value. At the end of the one-year period any unclaimed firearm shall be disposed of pursuant to RCW 9.41.098(2);

(3) Destroy an item of personal property at the discretion of the county sheriff if the county sheriff determines that the following circumstances have occurred:

(a) The property has no substantial commercial value, or the probable cost of sale exceeds the value of the property;

(b) The item has been unclaimed by any person after notice procedures have been met, as prescribed in this section; and

(c) The county sheriff has determined that the item is unsafe and unable to be made safe for use by any member of the general public;

(4) If the item is not unsafe or illegal to possess or sell, such item, after satisfying the notice requirements as prescribed in RCW 63.40.020, may be offered by the county sheriff to bona fide dealers, in trade for law enforcement equipment, which equipment shall be treated as retained property for purpose of annual listing requirements of subsection (2) of this section; or

(5) If the item is not unsafe or illegal to possess or sell, but has been, or may be used, in the discretion of the county sheriff, in a manner that is illegal, such item may be destroyed. [1988 c 223 § 4; 1988 c 132 § 3; 1981 c 154 § 3; 1973 1st ex.s. c 44 § 4; 1961 c 104 § 1.]

**Reviser's note:** This section was amended by 1988 c 132 § 3 and by 1988 c 223 § 4, each without reference to the other. Both amendments are incorporated in the publication of this section pursuant to RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

**63.40.020 Notice of sale, form, contents—Conduct of sale.** Before said personal property shall be sold, a notice of such sale fixing the time and place thereof which shall be at a suitable place, which will be noted in the advertisement for sale, and containing a description of the property to be sold shall be published at least once in an official newspaper in said county at least ten days prior to the date fixed for said sale. The notice shall be signed by the sheriff or his deputy. If the owner fails to reclaim said property prior to the time fixed for the sale in such notice, the sheriff or his deputy shall conduct said sale and sell the property described in the notice at public auction to the highest and best bidder for cash, and upon payment of the amount of such bid shall deliver the said property to such bidder. [1988 c 132 § 4; 1961 c 104 § 2.]

**63.40.030 Disposition of proceeds.** The moneys arising from sales under the provisions of this chapter shall be first applied to the payment of the costs and expenses of the sale and then to the payment of lawful charges and expenses

for the keeping of said personal property and the balance, if any, shall be paid into the county current expense fund. [1961 c 104 § 3.]

**63.40.040 Reimbursement to owner.** If the owner of said personal property so sold, or his legal representative, shall, at any time within three years after such money shall have been deposited in the county current expense fund, furnish satisfactory evidence to the county treasurer of said county of the ownership of said personal property he or they shall be entitled to receive from said county current expense fund the amount so deposited therein. [1961 c 104 § 4.]

**63.40.050 Uniform unclaimed property act not applicable.** The provisions of chapter 63.29 RCW shall not apply to personal property in the possession of the office of county sheriff. [1985 c 7 § 126; 1961 c 104 § 5.]

**63.40.060 Donation of unclaimed personal property to nonprofit charitable organizations.** In addition to any other method of disposition of unclaimed property provided under this chapter, the county sheriff may donate unclaimed personal property to nonprofit charitable organizations. A nonprofit charitable organization receiving personal property donated under this section must use the property, or its proceeds, to benefit needy persons. Such organization must qualify for tax-exempt status under 26 U.S.C. Sec. 501(c)(3) of the federal internal revenue code. [2007 c 219 § 3; 1987 c 182 § 2.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

## Chapter 63.42 RCW

### UNCLAIMED INMATE PERSONAL PROPERTY

#### Sections

63.42.010	Legislative intent.
63.42.020	Definitions.
63.42.030	Personal property presumed abandoned—Illegal items retained as evidence or destroyed.
63.42.040	Disposition of property presumed abandoned—Inventory—Notice.
63.42.050	Chapter not applicable if prior written agreement.
63.42.060	Application of chapters 63.24 and 63.29 RCW.
63.42.900	Severability—1983 1st ex.s. c 52.

**63.42.010 Legislative intent.** It is the intent of the legislature to relieve the department of corrections from unacceptable burdens of cost related to storage space and manpower in the preservation of inmate personal property if the property has been abandoned by the inmate and to enhance the security and safety of the institutions. [1983 1st ex.s. c 52 § 1.]

**63.42.020 Definitions.** Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Secretary" means the secretary of the department of corrections or the secretary's designees.

(2) "Personal property" or "property" includes both corporeal and incorporeal personal property and includes among others contraband and money.

(3) "Contraband" means all personal property including, but not limited to, alcoholic beverages and other items which a resident of a correctional institution may not have in the resident's possession, as defined in rules adopted by the secretary.

(4) "Money" means all currency, script, personal checks, money orders, or other negotiable instruments.

(5) "Owner" means the inmate, the inmate's legal representative, or any person claiming through or under the inmate entitled to title and possession of the property.

(6) "Unclaimed" means that no owner of the property has been identified or has requested, in writing, the release of the property to themselves nor has the owner of the property designated an individual to receive the property or paid the required postage to effect delivery of the property.

(7) "Inmate" means a person committed to the custody of the department of corrections or transferred from other states or the federal government.

(8) "Institutions" means those facilities set forth in RCW 72.01.050(2) and all community residential programs under the department's jurisdiction operated pursuant to chapter 72.65 RCW.

(9) "Department" means the department of corrections.

(10) "Illegal items" means those items unlawful to be possessed.

(11) "Nonprofit" has the meaning prescribed by state or federal law or rules. [1983 1st ex.s. c 52 § 2.]

**63.42.030 Personal property presumed abandoned—Illegal items retained as evidence or destroyed.** (1) All personal property, and any income or increment which has accrued thereon, held for the owner by an institution that has remained unclaimed for more than six months from the date the owner terminated without authorization from work training release, transferred to a different institution, or when the owner is unknown or deceased, from the date the property was placed in the custody of the institution, is presumed abandoned: PROVIDED, That the provisions of this section shall be extended for up to six months for any inmate, transferred to another institution, who has no recorded next of kin, or person to whom the unclaimed property can be sent.

(2) All personal property, and any income or increment which has accrued thereon, the inmate owner of which has been placed on escape status is presumed abandoned and shall be held for three months by the institution from which the inmate escaped. If the inmate owner remains on escape status for three months or if no other person claims ownership within three months, the property shall be disposed of as set forth in this chapter.

(3) All illegal items owned by and in the possession of an inmate shall be confiscated and held by the institution to which the inmate is assigned. Such items shall be held as required for evidence for law enforcement authorities. Illegal items not retained for evidence shall be destroyed. [1983 1st ex.s. c 52 § 3.]

*Property of deceased inmates: RCW 11.08.101, 11.08.111, and 11.08.120.*

**63.42.040 Disposition of property presumed abandoned—Inventory—Notice.** (1) All personal property, other than money, presumed abandoned shall be destroyed

(2010 Ed.)

unless, in the opinion of the secretary, the property may be used or has value to a charitable or nonprofit organization, in which case the property may be donated to the organization. A charitable or nonprofit organization does not have a claim nor shall the department or any employee thereof be held liable to any charitable or nonprofit organization for property which is destroyed rather than donated or for the donation of property to another charitable or nonprofit organization.

(2) Money presumed abandoned under this chapter shall be paid into the revolving fund set up in accordance with RCW 9.95.360.

(3) The department shall inventory all personal property prior to its destruction or donation.

(4) Before personal property is donated or destroyed, if the name and address of the owner thereof is known or if deceased, the address of the heirs as known, at least thirty days' notice of the donation or destruction of the personal property shall be given to the owner at the owner's residence or place of business or to some person of suitable age and discretion residing or employed therein. If the name or residence of the owner or the owner's heirs is not known, a notice of the action fixing the time and place thereof shall be published at least once in an official newspaper in the county at least thirty days prior to the date fixed for the action. The notice shall be signed by the secretary. The notice need not contain a description of property, but shall contain a general statement that the property is unclaimed personal property of inmates, specifying the institution at which the property is held. If the owner fails to reclaim the property prior to the time fixed in the notice, the property shall be donated or destroyed. [1983 1st ex.s. c 52 § 4.]

*Property of deceased inmates: RCW 11.08.101, 11.08.111, and 11.08.120.*

**63.42.050 Chapter not applicable if prior written agreement.** This chapter does not apply if the inmate and the department have reached an agreement in writing regarding the disposition of the personal property. [1983 1st ex.s. c 52 § 5.]

**63.42.060 Application of chapters 63.24 and 63.29 RCW.** (1) The uniform unclaimed property act, chapter 63.29 RCW, does not apply to personal property in the possession of the department of corrections.

(2) Chapter 63.24 RCW, unclaimed property in hands of bailee, does not apply to personal property in the possession of the department of corrections. [1985 c 7 § 127; 1983 1st ex.s. c 52 § 6.]

**63.42.900 Severability—1983 1st ex.s. c 52.** If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1983 1st ex.s. c 52 § 9.]

## Chapter 63.44 RCW JOINT TENANCIES

### Sections

63.44.010 Joint tenancies in property.

**63.44.010 Joint tenancies in property.** See chapter 64.28 RCW.

### Chapter 63.48 RCW

#### ESCHEAT OF POSTAL SAVINGS SYSTEM ACCOUNTS

##### Sections

63.48.010	Accounts presumed abandoned and to escheat to state.
63.48.020	Director to request federal records.
63.48.030	Escheat proceedings brought in Thurston county.
63.48.040	Notice to depositors whose accounts are to be escheated.
63.48.050	Copy of judgment presented for payment—Disposition of proceeds.
63.48.060	Indemnification for losses as result of escheat proceedings—Source.

**63.48.010 Accounts presumed abandoned and to escheat to state.** All postal savings system accounts created by the deposits of persons whose last known addresses are in the state which have not been claimed by the persons entitled thereto before May 1, 1971, are presumed to have been abandoned by their owners and are declared to escheat and become the property of this state. [1971 ex.s. c 68 § 1.]

**63.48.020 Director to request federal records.** The director of revenue shall request from the bureau of accounts of the United States treasury department records providing the following information: The names of depositors at the post offices of this state whose accounts are unclaimed, their last addresses as shown by the records of the post office department, and the balance in each account. He shall agree to return to the bureau of accounts promptly all account cards showing last addresses in another state. [1971 ex.s. c 68 § 2.]

**63.48.030 Escheat proceedings brought in Thurston county.** The director of revenue may bring proceedings in the superior court for Thurston county to escheat unclaimed postal savings system accounts held by the United States treasury. A single proceeding may be used to escheat as many accounts as may be available for escheat at one time. [1971 ex.s. c 68 § 3.]

**63.48.040 Notice to depositors whose accounts are to be escheated.** The director of revenue shall notify depositors whose accounts are to be escheated as follows:

(1) A letter advising that a postal savings system account in the name of the addressee is about to be escheated and setting forth the procedure by which a deposit may be claimed shall be mailed by first-class mail to the named depositor at the last address shown on the account records for each account to be escheated having an unpaid principal balance of more than twenty-five dollars.

(2) A general notice of intention to escheat postal savings system accounts shall be published once in each of three successive weeks in one or more newspapers which combine to provide general circulation throughout this state.

(3) A special notice of intention to escheat the unclaimed postal savings system accounts originally deposited in each post office must be published once in each of three successive weeks in a newspaper published in the county in which the post office is located or, if there is none, in a newspaper hav-

ing general circulation in the county. This notice must list the names of the owners of each unclaimed account to be escheated having a principal balance of three dollars or more. [1971 ex.s. c 68 § 4.]

**63.48.050 Copy of judgment presented for payment—Disposition of proceeds.** The director of revenue shall present a copy of each final judgment of escheat to the United States treasury department for payment of the principal due and the interest computed under regulations of the United States treasury department. The payment received shall be deposited in the general fund in the state treasury. [1971 ex.s. c 68 § 5.]

**63.48.060 Indemnification for losses as result of escheat proceedings—Source.** This state shall indemnify the United States for any losses suffered as a result of the escheat of unclaimed postal savings system accounts. The burden of the indemnification falls upon the fund into which the proceeds of the escheated accounts have been paid. [1971 ex.s. c 68 § 6.]

### Chapter 63.52 RCW

#### DIES, MOLDS, AND FORMS

##### Sections

63.52.005	Definitions.
63.52.010	Customer has title and all rights—Written exception—Failure to claim within three years after the last use—Notice to customer—Title and all rights may transfer to the molder.

**63.52.005 Definitions.** Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Customer" means an individual or entity that causes or did cause a molder to fabricate, cast, or otherwise make a die, mold, or form.

(2) "Molder" means an individual or entity, including but not limited to a tool or die maker, that fabricates, casts, or otherwise makes a die, mold, or form.

(3) "Within three years after the last use" means the three-year period after the last use of a die, mold, or form, regardless of whether or not any portion of that period pre-dates June 6, 1996. [1996 c 235 § 1.]

**63.52.010 Customer has title and all rights—Written exception—Failure to claim within three years after the last use—Notice to customer—Title and all rights may transfer to the molder.** (1) In the absence of a written agreement otherwise, the customer has title and all rights to a die, mold, or form in the molder's possession.

(2) If a customer does not claim possession from a molder of a die, mold, or form within three years after the last use of the die, mold, or form, title and all rights to the die, mold, or form may be transferred to the molder for the purpose of destroying or otherwise disposing of the die, mold, or form.

(3) At least one hundred twenty days before seeking title and rights to a die, mold, or form in its possession, a molder shall send notice, via registered or certified mail, to the chief executive officer of the customer or, if the customer is not a

business entity, to the customer's last known address. The notice must state that the molder intends to seek title and rights to the die, mold, or form. The notice must also include the name, address, and phone number of the molder.

(4) If a customer does not respond in person or by mail within one hundred twenty days after the date the notice was sent, or does not make other contractual arrangements with the molder for storage of the die, mold, or form, title and all rights of the customer transfer by operation of law to the molder. Thereafter, the molder may destroy or otherwise dispose of the die, mold, or form without any risk of liability to the customer. [1996 c 235 § 2.]

**Chapter 63.60 RCW  
PERSONALITY RIGHTS**

Sections

63.60.010	Property right—Use of name, voice, signature, photograph, or likeness.
63.60.020	Definitions.
63.60.030	Transfer, assignment, and license.
63.60.040	Right is exclusive for individuals and personalities.
63.60.050	Infringement of right—Use without consent—Profit or not for profit.
63.60.060	Infringement of right—Superior courts—Injunctions—Liability for damages and profits—Impoundment—Destruction—Attorneys' fees.
63.60.070	Exemptions from use restrictions—When chapter does not apply.
63.60.080	Community property rights.

**63.60.010 Property right—Use of name, voice, signature, photograph, or likeness.** Every individual or personality has a property right in the use of his or her name, voice, signature, photograph, or likeness. Such right exists in the name, voice, signature, photograph, or likeness of individuals or personalities deceased before, on, or after June 11, 1998. This right shall be freely transferable, assignable, and licensable, in whole or in part, by any otherwise permissible form of inter vivos or testamentary transfer, including without limitation a will or other testamentary instrument, trust, contract, community property agreement, or cotenancy with survivorship provisions or payable-on-death provisions, whether the will or other testamentary instrument, trust, contract, community property agreement, or cotenancy document is entered into or executed before, on, or after June 11, 1998, by the deceased individual or personality or by any subsequent owner of the deceased individual's or personality's rights as recognized by this chapter; or, if none is applicable, then the owner of the rights shall be determined under the laws of intestate succession applicable to interests in intangible personal property. The property right does not expire upon the death of the individual or personality, regardless of whether the law of the domicile, residence, or citizenship of the individual or personality at the time of death or otherwise recognizes a similar or identical property right. The right exists whether or not it was commercially exploited by the individual or the personality during the individual's or the personality's lifetime. The rights recognized under this chapter shall be deemed to have existed before June 11, 1998, and at the time of death of any deceased individual or personality or subsequent successor of their rights for the purpose of determining the person or persons entitled to these property rights as provided in RCW 63.60.030. This chapter is intended to

apply to all individuals and personalities, living and deceased, regardless of place of domicile or place of domicile at time of death. [2008 c 62 § 1; 1998 c 274 § 1.]

**Application—2008 c 62:** "This act applies to all causes of action commenced on or after June 11, 1998, regardless of when the cause of action arose. To this extent, this act applies retroactively, but in all other respects it applies prospectively." [2008 c 62 § 4.]

**63.60.020 Definitions.** Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Deceased individual" means any individual, regardless of the individual's place of domicile, residence, or citizenship at the time of death or otherwise, who has died within ten years before January 1, 1998, or thereafter.

(2) "Deceased personality" means any individual, regardless of the personality's place of domicile, residence, or citizenship at the time of death or otherwise, whose name, voice, signature, photograph, or likeness had commercial value at the time of his or her death, whether or not during the lifetime of that individual he or she used his or her name, voice, signature, photograph, or likeness on or in products, merchandise or goods, or for purposes of advertising or selling, or soliciting the purchase or sale of, products, merchandise, goods, or services. A "deceased personality" includes, without limitation, any such individual who has died within fifty years before January 1, 1998, or thereafter.

(3) "Fund-raising" means an organized activity to solicit donations of money or other goods or services from persons or entities by an organization, company, or public entity. A fund-raising activity does not include a live, public performance by an individual or group of individuals for which money is received in solicited or unsolicited gratuities.

(4) "Individual" means a natural person, living or dead.

(5) "Likeness" means an image, painting, sketching, model, diagram, or other clear representation, other than a photograph, of an individual's face, body, or parts thereof, or the distinctive appearance, gestures, or mannerisms of an individual.

(6) "Name" means the actual or assumed name, or nickname, of a living or deceased individual that is intended to identify that individual.

(7) "Person" means any natural person, firm, association, partnership, corporation, joint stock company, syndicate, receiver, common law trust, conservator, statutory trust, or any other concern by whatever name known or however organized, formed, or created, and includes not-for-profit corporations, associations, educational and religious institutions, political parties, and community, civic, or other organizations.

(8) "Personality" means any individual whose name, voice, signature, photograph, or likeness has commercial value, whether or not that individual uses his or her name, voice, signature, photograph, or likeness on or in products, merchandise, or goods, or for purposes of advertising or selling, or solicitation of purchase of, products, merchandise, goods, or services.

(9) "Photograph" means any photograph or photographic reproduction, still or moving, or any videotape, online or live television transmission, of any individual, so that the individual is readily identifiable.

(10) "Signature" means the one handwritten or otherwise legally binding form of an individual's name, written or authorized by that individual, that distinguishes the individual from all others. [2008 c 62 § 2; 2004 c 71 § 1; 1998 c 274 § 2.]

**Application—2008 c 62:** See note following RCW 63.60.010.

**63.60.030 Transfer, assignment, and license.** (1) Every individual or personality has a property right in the use of his or her name, voice, signature, photograph, or likeness. Such right shall be freely transferable, assignable, and licensable, in whole or in part, by contract or inter vivos transfer. This right shall not expire upon the death of the individual or personality, but shall be owned and enforceable by the following successors, heirs, or other transferees of living or deceased individuals or personalities:

(a) Except where such rights were transferred or assigned before such deceased personality's death by means of any contract or trust instrument, the right shall be owned by the person entitled to such rights under the deceased individual's or personality's last will and testament or, if none, then by the beneficiaries or heirs under the laws of intestate succession applicable to interests in intangible personal property generally of the individual's or personality's domicile, regardless of whether the law of the domicile of the deceased individual or personality, at the time of death, or thereafter, recognizes a similar or identical property right; or

(b) If the deceased individual or personality transferred or assigned any interest in the personality rights during his or her life by means of any contract or trust instrument, then the transferred or assigned interest shall be held as follows:

(i) If the transferred or assigned interest was held in trust, in accordance with the terms of the trust;

(ii) If the interest is subject to a cotenancy with any survivorship provisions or payable-on-death provisions, in accordance with those provisions;

(iii) If the interest is subject to any contract, including without limitation an exclusive license, assignment, or a community property agreement, in accordance with the terms of the applicable contract or contracts;

(iv) If the interest has been transferred or assigned to a third person in a form that is not addressed in this section, by the individual or personality, or the successor, heir, or other transferee of the living or deceased individual or personality, then the interest may be transferred, assigned, or licensed by such third person, in whole or in part, by any otherwise permissible form of inter vivos or testamentary transfer or, if none is applicable, under the laws of intestate succession applicable to interests in intangible personal property of the third person's domicile, regardless of whether the law of the domicile of the deceased third party, at the time of death, or thereafter, recognizes a similar or identical property right.

(2) A property right exists whether or not such rights were commercially exploited by or under the authority of the individual or the personality or the individual's or personality's successors or transferees during the individual's or the personality's lifetime.

(3) The rights recognized under this chapter shall be deemed to have existed before June 11, 1998, and at the time of death of any deceased individual or personality or subse-

quent successor of their rights for the purpose of determining the person or persons entitled to these property rights as provided in this section. [2008 c 62 § 3; 1998 c 274 § 3.]

**Application—2008 c 62:** See note following RCW 63.60.010.

**63.60.040 Right is exclusive for individuals and personalities.** (1) For individuals, except to the extent that the individual may have assigned or licensed such rights, the rights protected in this chapter are exclusive to the individual, subject to the assignment or licensing of such rights, during such individual's lifetime and are exclusive to the persons entitled to such rights under RCW 63.60.030 for a period of ten years after the death of the individual except to the extent that the persons entitled to such rights under RCW 63.60.030 may have assigned or licensed such rights to others.

(2) For personalities, except to the extent that the personality may have assigned or licensed such rights, the rights protected in this chapter are exclusive to the personality, subject to the assignment or licensing of such rights, during such personality's lifetime and to the persons entitled to such rights under RCW 63.60.030 for a period of seventy-five years after the death of the personality except to the extent that the persons entitled to such rights under RCW 63.60.030 may have assigned or licensed such rights to others.

(3) The rights granted in this chapter may be exercised by a personal representative, attorney-in-fact, parent of a minor child, or guardian, or as authorized by a court of competent jurisdiction. The terms "personal representative," "attorney-in-fact," and "guardian" shall have the same meanings in this chapter as they have in Title 11 RCW. [2004 c 71 § 2; 1998 c 274 § 4.]

**63.60.050 Infringement of right—Use without consent—Profit or not for profit.** Any person who uses or authorizes the use of a living or deceased individual's or personality's name, voice, signature, photograph, or likeness, on or in goods, merchandise, or products entered into commerce in this state, or for purposes of advertising products, merchandise, goods, or services, or for purposes of fund-raising or solicitation of donations, or if any person disseminates or publishes such advertisements in this state, without written or oral, express or implied consent of the owner of the right, has infringed such right. An infringement may occur under this section without regard to whether the use or activity is for profit or not for profit. [1998 c 274 § 5.]

**63.60.060 Infringement of right—Superior courts—Injunctions—Liability for damages and profits—Impoundment—Destruction—Attorneys' fees.** (1) The superior courts of this state may grant injunctions on reasonable terms to prevent or restrain the unauthorized use of the rights in a living or deceased individual's or personality's name, voice, signature, photograph, or likeness.

(2) Any person who infringes the rights under this chapter shall be liable for the greater of one thousand five hundred dollars or the actual damages sustained as a result of the infringement, and any profits that are attributable to the infringement and not taken into account when calculating actual damages. To prove profits under this section, the injured party or parties must submit proof of gross revenues

attributable to the infringement, and the infringing party is required to prove his or her deductible expenses. For the purposes of computing statutory damages, use of a name, voice, signature, photograph, and/or likeness in or related to one work constitutes a single act of infringement regardless of the number of copies made or the number of times the name, voice, signature, photograph, or likeness is displayed.

(3) At any time while an action under this chapter is pending, the court may order the impounding, on reasonable terms, of all materials or any part thereof claimed to have been made or used in violation of the injured party's rights, and the court may enjoin the use of all plates, molds, matrices, masters, tapes, film negatives, or other articles by means of which such materials may be reproduced.

(4) As part of a final judgment or decree, the court may order the destruction or other reasonable disposition of all materials found to have been made or used in violation of the injured party's rights, and of all plates, molds, matrices, masters, tapes, film negatives, or other articles by means of which such materials may be reproduced.

(5) The prevailing party may recover reasonable attorneys' fees, expenses, and court costs incurred in recovering any remedy or defending any claim brought under this section.

(6) The remedies provided for in this section are cumulative and are in addition to any others provided for by law. [1998 c 274 § 6.]

**63.60.070 Exemptions from use restrictions—When chapter does not apply.** (1) For purposes of RCW 63.60.050, the use of a name, voice, signature, photograph, or likeness in connection with matters of cultural, historical, political, religious, educational, newsworthy, or public interest, including, without limitation, comment, criticism, satire, and parody relating thereto, shall not constitute a use for which consent is required under this chapter. A matter exempt from consent under this subsection does not lose such exempt status because it appears in the form of a paid advertisement if it is clear that the principal purpose of the advertisement is to comment on such matter.

(2) This chapter does not apply to the use or authorization of use of an individual's or personality's name, voice, signature, photograph, or likeness, in any of the following:

(a) Single and original works of fine art, including but not limited to photographic, graphic, and sculptural works of art that are not published in more than five copies;

(b) A literary work, theatrical work, musical composition, film, radio, online or television program, magazine article, news story, public affairs report, or sports broadcast or account, or with any political campaign when the use does not inaccurately claim or state an endorsement by the individual or personality;

(c) An advertisement or commercial announcement for a use permitted by subsections (1) and (7) of this section and (a) or (b) of this subsection;

(d) An advertisement, commercial announcement, or packaging for the authorized sale, distribution, performance, broadcast, or display of a literary, musical, cinematographic, or other artistic work using the name, voice, signature, photograph, or likeness of the writer, author, composer, director, actor, or artist who created the work, where such individual

or personality consented to the use of his or her name, voice, signature, photograph, or likeness on or in connection with the initial sale, distribution, performance, or display thereof; and

(e) The advertisement or sale of a rare or fine product, including but not limited to books, which incorporates the signature of the author.

(3) It is no defense to an infringement action under this chapter that the use of an individual's or personality's name, voice, signature, photograph, or likeness includes more than one individual or personality so identifiable. However, the individuals or personalities complaining of the use shall not bring their cause of action as a class action.

(4) RCW 63.60.050 does not apply to the owners or employees of any medium used for advertising, including but not limited to, newspapers, magazines, radio and television stations, online service providers, billboards, and transit ads, who have published or disseminated any advertisement or solicitation in violation of this chapter, unless the advertisement or solicitation was intended to promote the medium itself.

(5) This chapter does not apply to a use or authorization of use of an individual's or personality's name that is merely descriptive and used fairly and in good faith only to identify or describe something other than the individual or personality, such as, without limitation, to describe or identify a place, a legacy, a style, a theory, an ownership interest, or a party to a transaction or to accurately describe the goods or services of a party.

(6) This chapter does not apply to the use of an individual's or personality's name, voice, signature, photograph, or likeness when the use of the individual's or personality's name, voice, signature, photograph, or likeness is an insignificant, de minimis, or incidental use.

(7) This chapter does not apply to the distribution, promotion, transfer, or license of a photograph or other material containing an individual's or personality's name, voice, signature, photograph, or likeness to a third party for use in a manner which is lawful under this chapter, or to a third party for further distribution, promotion, transfer, or license for use in a manner which is lawful under this chapter. [2004 c 71 § 3; 1998 c 274 § 7.]

**63.60.080 Community property rights.** Nothing contained in this chapter is intended to invalidate any community property rights. [1998 c 274 § 8.]



# Title 64

## REAL PROPERTY AND CONVEYANCES

### Chapters

- 64.04** Conveyances.
- 64.06** Real property transfers—Sellers’ disclosures.
- 64.08** Acknowledgments.
- 64.12** Waste and trespass.
- 64.16** Alien land law.
- 64.20** Alienation of land by Indians.
- 64.28** Joint tenancies.
- 64.32** Horizontal property regimes act (Condominiums).
- 64.34** Condominium act.
- 64.35** Condominiums—Qualified warranties.
- 64.36** Timeshare regulation.
- 64.38** Homeowners’ associations.
- 64.40** Property rights—Damages from governmental actions.
- 64.44** Contaminated properties.
- 64.50** Construction defect claims.
- 64.55** Construction defect disputes—Multiunit residential buildings.
- 64.70** Uniform environmental covenants act.

*Actions, where commenced:* RCW 4.12.010.

*Actions or claims arising from construction, alteration, repair, design, planning, etc., of improvements upon real property:* RCW 4.16.300 through 4.16.320.

*Adverse possession:* Chapter 7.28 RCW.

*Alien property custodian:* RCW 4.28.330.

*Attachment:* Chapter 6.25 RCW.

*Boundaries and plats:* Title 58 RCW.

*Cemetery plats, title and right to:* Chapter 68.32 RCW.

*Cemetery property:* Chapter 68.28 RCW.

*Commissioners to convey real estate:* Chapter 6.28 RCW.

*Community property:* Chapter 26.16 RCW.

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

*Co-owners, simultaneous death:* RCW 11.05A.040.

*Default in rent:* Chapter 59.08 RCW.

*Discrimination—Human rights commission:* Chapter 49.60 RCW.

*District courts, proceedings where land title involved:* RCW 12.20.070.

*Donation law, conflicting claims:* RCW 7.28.280.

*Ejectment:* Chapter 7.28 RCW.

*Eminent domain:* Title 8 RCW; State Constitution Art. 1 § 16 (Amendment 9).

*Estates of absentees:* Chapter 11.80 RCW.

*Excise tax, real estate sales:* Chapter 82.45 RCW.

*Execution and redemptions, sales under:* Chapter 6.21 RCW.

*Executions:* Chapter 6.17 RCW.

*Federal areas*

*acquisition of land by United States:* RCW 37.04.010.

*jurisdiction in special cases:* Chapter 37.08 RCW.

*Federal property, purchase of:* Chapter 39.32 RCW.

*Federally assisted housing:* Chapter 59.28 RCW.

*Fences:* Chapter 16.60 RCW.

*Forcible entry:* Chapter 59.12 RCW.

*Foreign corporations:* Chapters 23B.01 and 23B.15 RCW.

*Forests and forest products:* Title 76 RCW.

*Geological survey, entry on lands:* RCW 43.92.080.

*Homesteads:* Chapter 6.13 RCW.

*Housing authorities law:* Chapter 35.82 RCW.

*Housing cooperation law:* Chapter 35.83 RCW.

*Indians and Indian lands:* Chapter 37.12 RCW.

*Intergovernmental disposition of property:* Chapter 39.33 RCW.

*Landlord and tenant:* Title 59 RCW.

*Legal publications:* Chapter 65.16 RCW.

*Legislative, special legislation prohibited:* State Constitution Art. 2 § 28.

*Liens*

*landlord’s:* Chapter 60.72 RCW.

*mechanics’ and materialmen’s:* Chapter 60.04 RCW.

*orchard lands:* Chapter 60.16 RCW.

*timber and lumber:* Chapter 60.24 RCW.

*Limitation of actions:* Chapter 4.16 RCW.

*Limitation on liability of landowners for injuries to recreation users:* RCW 4.24.210.

*Lis pendens:* RCW 4.28.160, 4.28.320.

*Mortgages and trust receipts:* Title 61 RCW.

*Nuisances:* Chapters 7.48, 9.66 RCW.

*Partition:* Chapter 7.52 RCW.

*Personal exemptions:* Chapter 6.15 RCW.

*Power of attorney, recording of revocation:* RCW 65.08.130.

*Probate and trust law:* Title 11 RCW.

*Property taxes:* Title 84 RCW.

*Public lands:* Title 79 RCW.

*Public lands, trespass:* Chapter 79.02 RCW.

*Quieting title:* Chapter 7.28 RCW.

*Real estate brokers and salespersons:* Chapter 18.85 RCW.

*Real property, false representation concerning title:* RCW 9.38.020.

*Recording:* Chapters 65.04, 65.08 RCW.

*Registration of land titles (Torrens Act):* Chapter 65.12 RCW.

*Rents and profits constitute real property for purposes of mortgages, trust deeds or assignments:* RCW 7.28.230.

*Residential Landlord-Tenant Act:* Chapter 59.18 RCW.

*Retail installment sales of goods and services:* Chapter 63.14 RCW.

*Separate property:* Chapter 26.16 RCW.

*Tenancies:* Chapter 59.04 RCW.

*The Washington Principal and Income Act of 2002:* Chapter 11.104A RCW.

*Unlawful entry and detainer:* Chapter 59.16 RCW.

*Validity of agreement to indemnify against liability for negligence relative to construction or improvement of real property:* RCW 4.24.115.

*Water rights:* Title 90 RCW.

### Chapter 64.04 RCW CONVEYANCES

#### Sections

- 64.04.005 Liquidated damages—Earnest money deposit—Exclusive remedy—Definition.
- 64.04.010 Conveyances and encumbrances to be by deed.
- 64.04.020 Requisites of a deed.

- 64.04.030 Warranty deed—Form and effect.
- 64.04.040 Bargain and sale deed—Form and effect.
- 64.04.050 Quitclaim deed—Form and effect.
- 64.04.055 Deeds for conveyance of apartments under horizontal property regimes act.
- 64.04.060 Word "heirs" unnecessary.
- 64.04.070 After acquired title follows deed.
- 64.04.080 Purchaser of community real property protected by record title.
- 64.04.090 Private seals abolished.
- 64.04.100 Private seals abolished—Validation.
- 64.04.105 Corporate seals—Effect of absence from instrument.
- 64.04.120 Registration of land titles.
- 64.04.130 Interests in land for purposes of conservation, protection, preservation, etc.—Ownership by certain entities—Conveyances.
- 64.04.135 Criteria for monitoring historical conformance not to exceed those in original donation agreement—Exception.
- 64.04.140 Legislative declaration—Solar energy systems—Solar easements authorized.
- 64.04.150 Solar easements—Definitions.
- 64.04.160 Solar easements—Creation.
- 64.04.170 Interference with solar easement—Remedies.
- 64.04.175 Easements established by dedication—Extinguishing or altering.
- 64.04.180 Railroad properties as public utility and transportation corridors—Declaration of availability for public use—Acquisition of reversionary interest.
- 64.04.190 Public utility and transportation corridors—Defined.
- 64.04.200 Existing rate or charge for energy conservation—Seller's duty to disclose.
- 64.04.210 Requests for notice of transfer or encumbrance—Disclosure—Notice to department of social and health services.

**Reviser's note:** The two sections below were repealed by 1929 c 33 § 15 but are retained for their historical value.

**Validating—Code 1881:** "All deeds, mortgages, or other instruments in writing, which, prior to the passage of this chapter may have been acknowledged before either of the foregoing named officers, or deputies, or before the clerk of any court, or his deputies, heretofore established by the laws of this territory, are hereby declared legal and valid, in so far as such acknowledgment is concerned." [Code 1881 § 2318; RRS § 10562.]

**Validating—Code 1881:** "That all deeds, mortgages, and other instruments at any time heretofore acknowledged according to the provisions of this chapter are hereby declared legal and valid." [Code 1881 § 2322; RRS § 10568.]

*Recording of deeds and conveyances: Title 65 RCW.*

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**64.04.005 Liquidated damages—Earnest money deposit—Exclusive remedy—Definition.** (1) A provision in a written agreement for the purchase and sale of real estate which provides for liquidated damages or the forfeiture of an earnest money deposit to the seller as the seller's sole and exclusive remedy if a party fails, without legal excuse, to complete the purchase, is valid and enforceable, regardless of whether the other party incurs any actual damages. However, the amount of liquidated damages or amount of earnest money to be forfeited under this subsection may not exceed five percent of the purchase price.

(2) For purposes of this section:

(a) "Earnest money deposit" means any deposit, deposits, payment, or payments of a part of the purchase price for the property, made in the form of cash, check, promissory note, or other things of value for the purpose of binding the purchaser to the agreement and identified in the agreement as an earnest money deposit, and does not include other deposits or payments made by the purchaser; and

(b) "Liquidated damages" means an amount agreed by the parties as the amount of damages to be recovered for a breach of the agreement by the other and identified in the

agreement as liquidated damages, and does not include other deposits or payments made by the purchaser.

(3) This section does not prohibit, or supersede the common law with respect to, liquidated damages or earnest money forfeiture provisions in excess of five percent of the purchase price. A liquidated damages or earnest money forfeiture provision not meeting the requirements of subsection (1) of this section shall be interpreted and enforced without regard to this statute. [2005 c 186 § 1; 1991 c 210 § 1.]

**Application—2005 c 186:** "This act applies to all contracts executed after April 26, 2005." [2005 c 186 § 2.]

**Effective date—2005 c 186:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [April 26, 2005]." [2005 c 186 § 3.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**64.04.010 Conveyances and encumbrances to be by deed.** Every conveyance of real estate, or any interest therein, and every contract creating or evidencing any encumbrance upon real estate, shall be by deed: PROVIDED, That when real estate, or any interest therein, is held in trust, the terms and conditions of which trust are of record, and the instrument creating such trust authorizes the issuance of certificates or written evidence of any interest in said real estate under said trust, and authorizes the transfer of such certificates or evidence of interest by assignment by the holder thereof by a simple writing or by endorsement on the back of such certificate or evidence of interest or delivery thereof to the vendee, such transfer shall be valid, and all such assignments or transfers hereby authorized and heretofore made in accordance with the provisions of this section are hereby declared to be legal and valid. [1929 c 33 § 1; RRS § 10550. Prior: 1888 p 50 § 1; 1886 p 177 § 1; Code 1881 § 2311; 1877 p 312 § 1; 1873 p 465 § 1; 1863 p 430 § 1; 1860 p 299 § 1; 1854 p 402 § 1.]

**64.04.020 Requisites of a deed.** Every deed shall be in writing, signed by the party bound thereby, and acknowledged by the party before some person authorized by \*this act to take acknowledgments of deeds. [1929 c 33 § 2; RRS § 10551. Prior: 1915 c 172 § 1; 1888 p 50 § 2; 1886 p 177 § 2; Code 1881 § 2312; 1854 p 402 § 2.]

\***Reviser's note:** The language "this act" appears in 1929 c 33, which is codified in RCW 64.04.010-64.04.050, 64.08.010-64.08.070, 64.12.020, and 65.08.030.

**64.04.030 Warranty deed—Form and effect.** Warranty deeds for the conveyance of land may be substantially in the following form, without express covenants:

The grantor (here insert the name or names and place or residence) for and in consideration of (here insert consideration) in hand paid, conveys and warrants to (here insert the grantee's name or names) the following described real estate (here insert description), situated in the county of . . . . ., state of Washington. Dated this . . . . day of . . . . ., 19. . . .

Every deed in substance in the above form, when otherwise duly executed, shall be deemed and held a conveyance in fee simple to the grantee, his heirs and assigns, with covenants on the part of the grantor: (1) That at the time of the making and

delivery of such deed he was lawfully seized of an indefeasible estate in fee simple, in and to the premises therein described, and had good right and full power to convey the same; (2) that the same were then free from all encumbrances; and (3) that he warrants to the grantee, his heirs and assigns, the quiet and peaceable possession of such premises, and will defend the title thereto against all persons who may lawfully claim the same, and such covenants shall be obligatory upon any grantor, his heirs and personal representatives, as fully and with like effect as if written at full length in such deed. [1929 c 33 § 9; RRS § 10552. Prior: 1886 p 177 § 3.]

**64.04.040 Bargain and sale deed—Form and effect.**

Bargain and sale deeds for the conveyance of land may be substantially in the following form, without express covenants:

The grantor (here insert name or names and place of residence), for and in consideration of (here insert consideration) in hand paid, bargains, sells and conveys to (here insert the grantee's name or names) the following described real estate (here insert description) situated in the county of . . . . ., state of Washington. Dated this . . . . day of . . . . ., 19. . .

Every deed in substance in the above form when otherwise duly executed, shall convey to the grantee, his heirs or assigns an estate of inheritance in fee simple, and shall be adjudged an express covenant to the grantee, his heirs or assigns, to wit: That the grantor was seized of an indefeasible estate in fee simple, free from encumbrances, done or suffered from the grantor, except the rents and services that may be reserved, and also for quiet enjoyment against the grantor, his heirs and assigns, unless limited by express words contained in such deed; and the grantee, his heirs, executors, administrators and assigns may recover in any action for breaches as if such covenants were expressly inserted. [1929 c 33 § 10; RRS § 10553. Prior: 1886 p 178 § 4.]

**64.04.050 Quitclaim deed—Form and effect.** Quitclaim deeds may be in substance in the following form:

The grantor (here insert the name or names and place of residence), for and in consideration of (here insert consideration) conveys and quitclaims to (here insert grantee's name or names) all interest in the following described real estate (here insert description), situated in the county of . . . . ., state of Washington. Dated this . . . . day of . . . . ., 19. . .

Every deed in substance in the above form, when otherwise duly executed, shall be deemed and held a good and sufficient conveyance, release and quitclaim to the grantee, his heirs and assigns in fee of all the then existing legal and equitable rights of the grantor in the premises therein described, but shall not extend to the after acquired title unless words are added expressing such intention. [1929 c 33 § 11; RRS § 10554. Prior: 1886 p 178 § 5.]

**64.04.055 Deeds for conveyance of apartments under horizontal property regimes act.** All deeds for the conveyance of apartments as provided for in chapter 64.32 RCW shall be substantially in the form required by law for the con-

veyance of any other land or real property and shall in addition thereto contain the contents described in RCW 64.32.120. [1963 c 156 § 29.]

**64.04.060 Word "heirs" unnecessary.** The term "heirs", or other technical words of inheritance, shall not be necessary to create and convey an estate in fee simple. All conveyances heretofore made omitting the word "heirs", or other technical words of inheritance, but not limiting the estate conveyed, are hereby validated as and are declared to be conveyances of an estate in fee simple. [1931 c 20 § 1; RRS § 10558. Prior: 1888 p 51 § 4.]

**64.04.070 After acquired title follows deed.** Whenever any person or persons having sold and conveyed by deed any lands in this state, and who, at the time of such conveyance, had no title to such land, and any person or persons who may hereafter sell and convey by deed any lands in this state, and who shall not at the time of such sale and conveyance have the title to such land, shall acquire a title to such lands so sold and conveyed, such title shall inure to the benefit of the purchasers or conveyee or conveyees of such lands to whom such deed was executed and delivered, and to his and their heirs and assigns forever. And the title to such land so sold and conveyed shall pass to and vest in the conveyee or conveyees of such lands and to his or their heirs and assigns, and shall thereafter run with such land. [1871 p 195 § 1; RRS § 10571. Cf. Code 1881 (Supp.) p 25 § 1.]

**64.04.080 Purchaser of community real property protected by record title.** See RCW 26.16.095.

**64.04.090 Private seals abolished.** The use of private seals upon all deeds, mortgages, leases, bonds, and other instruments, and contracts in writing, including deeds from a husband to his wife and from a wife to her husband for their respective community right, title, interest or estate in all or any portion of their community real property, is hereby abolished, and the addition of a private seal to any such instrument or contract in writing hereafter made, shall not affect its validity or legality in any respect. [1923 c 23 § 1; RRS § 10556. Prior: 1888 p 184 § 1; 1888 p 50 § 3; 1886 p 165 § 1; 1871 p 83 §§ 1, 2.]

**64.04.100 Private seals abolished—Validation.** All deeds, mortgages, leases, bonds and other instruments and contracts in writing, including deeds from a husband to his wife and from a wife to her husband for their respective community right, title, interest or estate in all or any portion of their community real property, which have heretofore been executed without the use of a private seal, are, notwithstanding, hereby declared to be legal and valid. [1923 c 23 § 2; RRS § 10557. Prior: 1888 p 184 § 2.]

**64.04.105 Corporate seals—Effect of absence from instrument.** The absence of a corporate seal on any deed, mortgage, lease, bond or other instrument or contract in writing shall not affect its validity, legality or character in any respect. [1957 c 200 § 1.]

**64.04.120 Registration of land titles.** See chapter 65.12 RCW.

**64.04.130 Interests in land for purposes of conservation, protection, preservation, etc.—Ownership by certain entities—Conveyances.** A development right, easement, covenant, restriction, or other right, or any interest less than the fee simple, to protect, preserve, maintain, improve, restore, limit the future use of, or conserve for open space purposes, any land or improvement on the land, whether the right or interest be appurtenant or in gross, may be held or acquired by any state agency, federal agency, county, city, town, or metropolitan municipal corporation, nonprofit historic preservation corporation, or nonprofit nature conservancy corporation. Any such right or interest shall constitute and be classified as real property. All instruments for the conveyance thereof shall be substantially in the form required by law for the conveyance of any land or other real property.

As used in this section, "nonprofit nature conservancy corporation" means an organization which qualifies as being tax exempt under 26 U.S.C. section 501(c)(3) (of the United States Internal Revenue Code of 1954, as amended) as it existed on June 25, 1976, and which has as one of its principal purposes the conducting or facilitating of scientific research; the conserving of natural resources, including but not limited to biological resources, for the general public; or the conserving of natural areas including but not limited to wildlife or plant habitat.

As used in this section, "nonprofit historic preservation corporation" means an organization which qualifies as being tax exempt under 26 U.S.C. section 501(c)(3) of the United States Internal Revenue Code of 1954, as amended, and which has as one of its principal purposes the conducting or facilitating of historic preservation activities within the state, including conservation or preservation of historic sites, districts, buildings, and artifacts. [1987 c 341 § 1; 1979 ex.s. c 21 § 1.]

*Acquisition of open space, land, or rights to future development by certain entities: RCW 84.34.200 through 84.34.250.*

*Property tax exemption for conservation futures on agricultural land: RCW 84.36.500.*

**64.04.135 Criteria for monitoring historical conformance not to exceed those in original donation agreement—Exception.** The criteria for monitoring historical conformance shall not exceed those included in the original donation agreement, unless agreed to in writing between grantor and grantee. [1987 c 341 § 4.]

**64.04.140 Legislative declaration—Solar energy systems—Solar easements authorized.** The legislature declares that the potential economic and environmental benefits of solar energy use are considered to be in the public interest; therefore, local governments are authorized to encourage and protect access to direct sunlight for solar energy systems. The legislature further declares that solar easements appropriate to assuring continued access to direct sunlight for solar energy systems may be created and may be privately negotiated. [1979 ex.s. c 170 § 1.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**64.04.150 Solar easements—Definitions.** (1) As used in this chapter:

(a) "Solar energy system" means any device or combination of devices or elements which rely upon direct sunlight as an energy source, including but not limited to any substance or device which collects sunlight for use in:

- (i) The heating or cooling of a structure or building;
- (ii) The heating or pumping of water;
- (iii) Industrial, commercial, or agricultural processes; or
- (iv) The generation of electricity.

A solar energy system may be used for purposes in addition to the collection of solar energy. These uses include, but are not limited to, serving as a structural member or part of a roof of a building or structure and serving as a window or wall; and

(b) "Solar easement" means a right, expressed as an easement, restriction, covenant, or condition contained in any deed, contract, or other written instrument executed by or on behalf of any landowner for the purpose of assuring adequate access to direct sunlight for solar energy systems.

(2) A solar easement is an interest in real property, and shall be created in writing and shall be subject to the same conveyancing and instrument recording requirements as other easements.

(3) A solar easement shall be appurtenant and run with the land or lands benefited and burdened, unless otherwise provided in the easement.

(4) Any instrument creating a solar easement shall include but not be limited to:

(a) A description of the real property subject to the solar easement and a description of the real property benefiting from the solar easement; and

(b) A description of the extent of the solar easement which is sufficiently certain to allow the owner of the real property subject to the easement to ascertain the extent of the easement. Such description may be made by describing the vertical and horizontal angles, expressed in degrees, at which the solar easement extends over the real property subject to the easement and the points from which those angles are to be measured, or the height over the property above which the solar easement extends, or a prohibited shadow pattern, or any other reasonably certain description.

(5) Any instrument creating a solar easement may include:

(a) The terms or conditions or both under which the solar easement is granted or will be terminated; and

(b) Any provisions for compensation to the owner of property benefiting from the solar easement in the event of interference with the enjoyment of the solar easement, or compensation to the owner of the property subject to the solar easement for maintaining the solar easement. [1979 ex.s. c 170 § 12.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**64.04.160 Solar easements—Creation.** A solar easement created under this chapter may only be created by written agreement. Nothing in this chapter shall be deemed to create or authorize the creation of an implied easement or a prescriptive easement. [1979 ex.s. c 170 § 14.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**64.04.170 Interference with solar easement—Remedies.** In any action for interference with a solar easement, if the instrument creating the easement does not specify any appropriate and applicable remedies, the court may choose one or more remedies including but not limited to the following:

(1) Actual damages as measured by increased charges for supplemental energy, the capital cost of the solar energy system, and/or the cost of additional equipment necessary to supply sufficient energy:

(a) From the time the interference began until the actual or expected cessation of the interference; or

(b) If the interference is not expected to cease, in a lump sum which represents the present value of the damages from the time the interference began until the normally expected end of the useful life of the equipment which was interfered with;

(2) Reasonable and necessary attorney's fees as fixed by the court; and

(3) An injunction against the interference. [1979 ex.s. c 170 § 13.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**64.04.175 Easements established by dedication—Extinguishing or altering.** Easements established by a dedication are property rights that cannot be extinguished or altered without the approval of the easement owner or owners, unless the plat or other document creating the dedicated easement provides for an alternative method or methods to extinguish or alter the easement. [1991 c 132 § 1.]

**64.04.180 Railroad properties as public utility and transportation corridors—Declaration of availability for public use—Acquisition of reversionary interest.** Railroad properties, including but not limited to rights-of-way, land held in fee and used for railroad operations, bridges, tunnels, and other facilities, are declared to be suitable for public use upon cessation of railroad operations on the properties. It is in the public interest of the state of Washington that such properties retain their character as public utility and transportation corridors, and that they may be made available for public uses including highways, other forms of mass transportation, conservation, energy production or transmission, or recreation. Nothing in this section or in RCW 64.04.190 authorizes a public agency or utility to acquire reversionary interests in public utility and transportation corridors without payment of just compensation. [1988 c 16 § 1; 1984 c 143 § 22.]

**64.04.190 Public utility and transportation corridors—Defined.** Public utility and transportation corridors are railroad properties (1) on which railroad operations have ceased; (2) that have been found suitable for public use by an order of the Interstate Commerce Commission of the United States; and (3) that have been acquired by purchase, lease, donation, exchange, or other agreement by the state, one of its political subdivisions, or a public utility. [1988 c 16 § 2; 1984 c 143 § 23.]

**64.04.200 Existing rate or charge for energy conservation—Seller's duty to disclose.** Prior to closing, the seller

(2010 Ed.)

of real property subject to a rate or charge for energy conservation measures, services, or payments provided under a tariff approved by the utilities and transportation commission pursuant to RCW 80.28.065 shall disclose to the purchaser of the real property the existence of the obligation and the possibility that the purchaser may be responsible for the payment obligation. [1993 c 245 § 3.]

**Findings—Intent—1993 c 245:** See note following RCW 80.28.065.

**64.04.210 Requests for notice of transfer or encumbrance—Disclosure—Notice to department of social and health services.** (1) If the department of social and health services has filed a request for notice of transfer or encumbrance under RCW 43.20B.750:

(a) A title insurance company or agent that discovers the presence of a request for notice of transfer or encumbrance when performing a title search on real property shall disclose the presence of the request for notice of transfer or encumbrance in any report preliminary to, or any commitment to offer, a certificate of title insurance for the real property; and

(b) Any individual who transfers or encumbers real property shall provide the department of social and health services with a notice of transfer or encumbrance. The department of social and health services shall adopt by rule a model form for notice of transfer or encumbrance to be used by a purchaser or lender when notifying the department.

(2) If the department of social and health services has caused to be recorded a termination of request for notice of transfer or encumbrance in the deed and mortgage records under RCW 43.20B.750, an individual transferring or encumbering the real property is not required to provide the notice of transfer or encumbrance required by subsection (1)(b) of this section. [2005 c 292 § 2.]

## Chapter 64.06 RCW

### REAL PROPERTY TRANSFERS— SELLERS' DISCLOSURES

#### Sections

64.06.005	Definitions.
64.06.010	Application—Exceptions for certain transfers of real property.
64.06.013	Commercial real estate—Seller's duty—Format of disclosure statement—Minimum information.
64.06.015	Unimproved residential real property—Seller's duty—Format of disclosure statement—Minimum information.
64.06.020	Improved residential real property—Seller's duty—Format of disclosure statement—Minimum information.
64.06.021	Notice regarding sex offenders.
64.06.022	Disclosure of possible proximity to farm.
64.06.030	Delivery of disclosure statement—Buyer's options—Time frame.
64.06.040	After delivery of disclosure statement—Additional information—Seller's duty—Buyer's options—Closing the transaction.
64.06.050	Error, inaccuracy, or omission in disclosure statement—Actual knowledge—Liability.
64.06.060	Consumer protection act does not apply.
64.06.070	Buyer's rights or remedies.
64.06.900	Effective date—1994 c 200.

**64.06.005 Definitions.** The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Commercial real estate" has the same meaning as in RCW 60.42.005.

(2) "Improved residential real property" means:

(a) Real property consisting of, or improved by, one to four residential dwelling units;

(b) A residential condominium as defined in RCW 64.34.020(9), unless the sale is subject to the public offering statement requirement in the Washington condominium act, chapter 64.34 RCW;

(c) A residential timeshare, as defined in RCW 64.36.010(11), unless subject to written disclosure under the Washington timeshare act, chapter 64.36 RCW; or

(d) A mobile or manufactured home, as defined in RCW 43.22.335 or 46.04.302, that is personal property.

(3) "Residential real property" means both improved and unimproved residential real property.

(4) "Seller disclosure statement" means the form to be completed by the seller of residential real property as prescribed by this chapter.

(5) "Unimproved residential real property" means property zoned for residential use that is not improved by one or more residential dwelling units, a residential condominium, a residential timeshare, or a mobile or manufactured home. It does not include commercial real estate or property defined as "timber land" under RCW 84.34.020. [2010 c 64 § 1; 2009 c 505 § 1; 2007 c 107 § 2; 2002 c 268 § 8; 1994 c 200 § 1.]

**Application—2009 c 505:** "This act applies prospectively and not retroactively. It applies only to sales of property that arise on or after July 26, 2009." [2009 c 505 § 5.]

**Findings—Intent—2007 c 107:** See note following RCW 64.06.015.

**Purpose—Finding—Effective dates—2002 c 268:** See notes following RCW 43.22.434.

**64.06.010 Application—Exceptions for certain transfers of real property.** This chapter does not apply to the following transfers of real property:

(1) A foreclosure or deed-in-lieu of foreclosure;

(2) A gift or other transfer to a parent, spouse, domestic partner, or child of a transferor or child of any parent, spouse, or domestic partner of a transferor;

(3) A transfer between spouses or between domestic partners in connection with a marital dissolution or dissolution of a state registered domestic partnership;

(4) A transfer where a buyer had an ownership interest in the property within two years of the date of the transfer including, but not limited to, an ownership interest as a partner in a partnership, a limited partner in a limited partnership, a shareholder in a corporation, a leasehold interest, or transfers to and from a facilitator pursuant to a tax deferred exchange;

(5) A transfer of an interest that is less than fee simple, except that the transfer of a vendee's interest under a real estate contract is subject to the requirements of this chapter;

(6) A transfer made by the personal representative of the estate of the decedent or by a trustee in bankruptcy; and

(7) A transfer in which the buyer has expressly waived the receipt of the seller disclosure statement. However, if the answer to any of the questions in the section entitled "Environmental" would be "yes," the buyer may not waive the receipt of the "Environmental" section of the seller disclosure statement. [2010 c 64 § 2; 2008 c 6 § 632; 2007 c 107 § 3; 1994 c 200 § 2.]

**Part headings not law—Severability—2008 c 6:** See RCW 26.60.900 and 26.60.901.

**Findings—Intent—2007 c 107:** See note following RCW 64.06.015.

**64.06.013 Commercial real estate—Seller's duty—Format of disclosure statement—Minimum information.**

(1) In a transaction for the sale of commercial real estate, the seller shall, unless the buyer has expressly waived the right to receive the disclosure statement under RCW 64.06.010, or unless the transfer is otherwise exempt under RCW 64.06.010, deliver to the buyer a completed seller disclosure statement in the following format and that contains, at a minimum, the following information:

**INSTRUCTIONS TO THE SELLER**

Please complete the following form. Do not leave any spaces blank. If the question clearly does not apply to the property write "NA." If the answer is "yes" to any \* items, please explain on attached sheets. Please refer to the line number(s) of the question(s) when you provide your explanation(s). For your protection you must date and sign each page of this disclosure statement and each attachment. Delivery of the disclosure statement must occur not later than five business days, unless otherwise agreed, after mutual acceptance of a written contract to purchase between a buyer and a seller.

**NOTICE TO THE BUYER**

THE FOLLOWING DISCLOSURES ARE MADE BY SELLER ABOUT THE CONDITION OF THE PROPERTY LOCATED AT..... ("THE PROPERTY"), OR AS LEGALLY DESCRIBED ON ATTACHED EXHIBIT A.

SELLER MAKES THE FOLLOWING DISCLOSURES OF EXISTING MATERIAL FACTS OR MATERIAL DEFECTS TO BUYER BASED ON SELLER'S ACTUAL KNOWLEDGE OF THE PROPERTY AT THE TIME SELLER COMPLETES THIS DISCLOSURE STATEMENT. UNLESS YOU AND SELLER OTHERWISE AGREE IN WRITING, YOU HAVE THREE BUSINESS DAYS FROM THE DAY SELLER OR SELLER'S AGENT DELIVERS THIS DISCLOSURE STATEMENT TO YOU TO RESCIND THE AGREEMENT BY DELIVERING A SEPARATELY SIGNED WRITTEN STATEMENT OF RESCISSION TO SELLER OR SELLER'S AGENT. IF THE SELLER DOES NOT GIVE YOU A COMPLETED DISCLOSURE STATEMENT, THEN YOU MAY WAIVE THE RIGHT TO RESCIND PRIOR TO OR AFTER THE TIME YOU ENTER INTO A SALE AGREEMENT.

THE FOLLOWING ARE DISCLOSURES MADE BY SELLER AND ARE NOT THE REPRESENTATIONS OF ANY REAL ESTATE LICENSEE OR OTHER PARTY. THIS INFORMATION IS FOR DISCLOSURE ONLY AND IS NOT INTENDED TO BE A PART OF ANY WRITTEN AGREEMENT BETWEEN BUYER AND SELLER.

FOR A MORE COMPREHENSIVE EXAMINATION OF THE SPECIFIC CONDITION OF THIS PROPERTY YOU ARE ADVISED TO OBTAIN AND PAY FOR THE SERVICES OF QUALIFIED EXPERTS TO INSPECT THE PROPERTY, WHICH MAY INCLUDE, WITHOUT LIMITATION,

TATION, ARCHITECTS, ENGINEERS, LAND SURVEYORS, PLUMBERS, ELECTRICIANS, ROOFERS, BUILDING INSPECTORS, ON-SITE WASTEWATER TREATMENT INSPECTORS, OR STRUCTURAL PEST INSPECTORS. THE PROSPECTIVE BUYER AND SELLER MAY WISH TO OBTAIN PROFESSIONAL ADVICE OR INSPECTIONS OF THE PROPERTY OR TO PROVIDE APPROPRIATE PROVISIONS IN A CONTRACT BETWEEN THEM WITH RESPECT TO ANY ADVICE, INSPECTION, DEFECTS, OR WARRANTIES.

Seller . . . . is/ . . . . is not occupying the property.

**I. SELLER'S DISCLOSURES:**

\*If you answer "Yes" to a question with an asterisk (\*), please explain your answer and attach documents, if available and not otherwise publicly recorded. If necessary, use an attached sheet.

Yes  No  Don't know

**1. TITLE AND LEGAL**

A. Do you have legal authority to sell the property? If no, please explain.

Yes  No  Don't know

\*B. Is title to the property subject to any of the following?

- (1) First right of refusal
- (2) Option
- (3) Lease or rental agreement
- (4) Life estate?

Yes  No  Don't know

\*C. Are there any encroachments, boundary agreements, or boundary disputes?

Yes  No  Don't know

\*D. Is there any leased parking?

Yes  No  Don't know

\*E. Is there a private road or easement agreement for access to the property?

Yes  No  Don't know

\*F. Are there any rights-of-way, easements, shared use agreements, or access limitations?

Yes  No  Don't know

\*G. Are there any written agreements for joint maintenance of an easement or right-of-way?

Yes  No  Don't know

\*H. Are there any zoning violations or nonconforming uses?

Yes  No  Don't know

\*I. Is there a survey for the property?

Yes  No  Don't know

\*J. Are there any legal actions pending or threatened that affect the property?

Yes  No  Don't know

\*K. Is the property in compliance with the Americans with Disabilities Act?

Yes  No  Don't know

**2. WATER**

\*Are there any water rights for the property, such as a water right permit, certificate, or claim?

Yes  No  Don't know

**3. SEWER/ON-SITE SEWAGE SYSTEM**

\*Is the property subject to any sewage system fees or charges in addition to those covered in your regularly billed sewer or on-site sewage system maintenance service?

Yes  No  Don't know

**4. STRUCTURAL**

\*A. Has the roof leaked within the last five years?

Yes  No  Don't know

\*B. Has any occupied subsurface flooded or leaked within the last five years?

Yes  No  Don't know

\*C. Have there been any conversions, additions, or remodeling?

Yes  No  Don't know

\*(1) If yes, were all building permits obtained?

Yes  No  Don't know

\*(2) If yes, were all final inspections obtained?

Yes  No  Don't know

\*D. Has there been any settling, slippage, or sliding of the property or its improvements?

Yes  No  Don't know

\*E. Are there any defects with the following: (If yes, please check applicable items and explain.)

Yes  No  Don't know

- Foundations
- Doors
- Ceilings
- Sidewalks
- Other
- Interior Walls

- Windows
- Slab Floors
- Outbuildings
- Exterior Walls
- Siding

Yes  No  Don't know

**5. SYSTEMS AND FIXTURES**

\* Are there any defects in the following systems? If yes, please explain.

- (1) Electrical system
- (2) Plumbing system
- (3) Heating and cooling systems
- (4) Fire and security system

**6. ENVIRONMENTAL**

\*A. Have there been any flooding, standing water, or drainage problems on the property that affect the property or access to the property?

\*B. Is there any material damage to the property from fire, wind, floods, beach movements, earthquake, expansive soils, or landslides?

\*C. Are there any shorelines, wetlands, floodplains, or critical areas on the property?

\*D. Are there any substances, materials, or products in or on the property that may be environmental concerns, such as asbestos, formaldehyde, radon gas, lead-based paint, fuel or chemical storage tanks, or contaminated soil or water?

\*E. Is there any soil or groundwater contamination?

\*F. Has the property been used as a legal or illegal dumping site?

\*G. Has the property been used as an illegal drug manufacturing site?

**7. FULL DISCLOSURE BY SELLERS**

A. Other conditions or defects:

\*Are there any other existing material defects affecting the property that a prospective buyer should know about?

B. Verification:

The foregoing answers and attached explanations (if any) are complete and correct to the best of my/our knowledge and I/we have received a copy hereof. I/we authorize all of my/our real estate licensees, if any, to deliver a copy of this disclosure statement to other real estate licensees and all prospective buyers of the property.

DATE . . . . . SELLER . . . . . SELLER . . . . .  
NOTICE TO BUYER

INFORMATION REGARDING REGISTERED SEX OFFENDERS MAY BE OBTAINED FROM LOCAL LAW ENFORCEMENT AGENCIES. THIS NOTICE IS INTENDED ONLY TO INFORM YOU OF WHERE TO OBTAIN THIS INFORMATION AND IS NOT AN INDICATION OF THE PRESENCE OF REGISTERED SEX OFFENDERS.

**II. BUYER'S ACKNOWLEDGMENT**

- A. Buyer hereby acknowledges that: Buyer has a duty to pay diligent attention to any material defects that are known to Buyer or can be known to Buyer by utilizing diligent attention and observation.
- B. The disclosures set forth in this statement and in any amendments to this statement are made only by the Seller and not by any real estate licensee or other party.
- C. Buyer acknowledges that, pursuant to RCW 64.06.050(2), real estate licensees are not liable for inaccurate information provided by Seller, except to the extent that real estate licensees know of such inaccurate information.
- D. This information is for disclosure only and is not intended to be a part of the written agreement between the Buyer and Seller.
- E. Buyer (which term includes all persons signing the "Buyer's acceptance" portion of this disclosure statement below) has received a copy of this Disclosure Statement (including attachments, if any) bearing Seller's signature.

DISCLOSURES CONTAINED IN THIS DISCLOSURE STATEMENT ARE PROVIDED BY SELLER BASED ON SELLER'S ACTUAL KNOWLEDGE OF THE PROPERTY AT THE TIME SELLER COMPLETES THIS DISCLOSURE STATEMENT. UNLESS BUYER AND SELLER OTHERWISE AGREE IN WRITING, BUYER SHALL HAVE THREE BUSINESS DAYS FROM THE DAY

SELLER OR SELLER’S AGENT DELIVERS THIS DISCLOSURE STATEMENT TO RESCIND THE AGREEMENT BY DELIVERING A SEPARATELY SIGNED WRITTEN STATEMENT OF RESCISSION TO SELLER OR SELLER’S AGENT. YOU MAY WAIVE THE RIGHT TO RESCIND PRIOR TO OR AFTER THE TIME YOU ENTER INTO A SALE AGREEMENT.

BUYER HEREBY ACKNOWLEDGES RECEIPT OF A COPY OF THIS DISCLOSURE STATEMENT AND ACKNOWLEDGES THAT THE DISCLOSURES MADE HEREIN ARE THOSE OF THE SELLER ONLY, AND NOT OF ANY REAL ESTATE LICENSEE OR OTHER PARTY.

DATE . . . . . BUYER . . . . . BUYER . . . . .

(2) The seller disclosure statement shall be for disclosure only, and shall not be considered part of any written agreement between the buyer and seller of residential property. The seller disclosure statement shall be only a disclosure made by the seller, and not any real estate licensee involved in the transaction, and shall not be construed as a warranty of any kind by the seller or any real estate licensee involved in the transaction. [2010 c 64 § 3.]

**64.06.015 Unimproved residential real property—Seller’s duty—Format of disclosure statement—Minimum information.** (1) In a transaction for the sale of unimproved residential real property, the seller shall, unless the buyer has expressly waived the right to receive the disclosure statement under RCW 64.06.010, or unless the transfer is otherwise exempt under RCW 64.06.010, deliver to the buyer a completed seller disclosure statement in the following format and that contains, at a minimum, the following information:

**INSTRUCTIONS TO THE SELLER**

Please complete the following form. Do not leave any spaces blank. If the question clearly does not apply to the property write "NA." If the answer is "yes" to any \* items, please explain on attached sheets. Please refer to the line number(s) of the question(s) when you provide your explanation(s). For your protection you must date and sign each page of this disclosure statement and each attachment. Delivery of the disclosure statement must occur not later than five business days, unless otherwise agreed, after mutual acceptance of a written contract to purchase between a buyer and a seller.

**NOTICE TO THE BUYER**

THE FOLLOWING DISCLOSURES ARE MADE BY SELLER ABOUT THE CONDITION OF THE PROPERTY LOCATED AT . . . . . ("THE PROPERTY"), OR AS LEGALLY DESCRIBED ON ATTACHED EXHIBIT A.

SELLER MAKES THE FOLLOWING DISCLOSURES OF EXISTING MATERIAL FACTS OR MATERIAL DEFECTS TO BUYER BASED ON SELLER’S ACTUAL KNOWLEDGE OF THE PROPERTY AT THE TIME SELLER COMPLETES THIS DISCLOSURE STATEMENT. UNLESS YOU AND SELLER OTHERWISE AGREE IN WRITING, YOU HAVE THREE BUSINESS DAYS FROM THE DAY SELLER OR SELLER’S AGENT DELIVERS THIS DISCLOSURE STATEMENT TO YOU

TO RESCIND THE AGREEMENT BY DELIVERING A SEPARATELY SIGNED WRITTEN STATEMENT OF RESCISSION TO SELLER OR SELLER’S AGENT. IF THE SELLER DOES NOT GIVE YOU A COMPLETED DISCLOSURE STATEMENT, THEN YOU MAY WAIVE THE RIGHT TO RESCIND PRIOR TO OR AFTER THE TIME YOU ENTER INTO A SALE AGREEMENT.

THE FOLLOWING ARE DISCLOSURES MADE BY SELLER AND ARE NOT THE REPRESENTATIONS OF ANY REAL ESTATE LICENSEE OR OTHER PARTY. THIS INFORMATION IS FOR DISCLOSURE ONLY AND IS NOT INTENDED TO BE A PART OF ANY WRITTEN AGREEMENT BETWEEN BUYER AND SELLER.

FOR A MORE COMPREHENSIVE EXAMINATION OF THE SPECIFIC CONDITION OF THIS PROPERTY YOU ARE ADVISED TO OBTAIN AND PAY FOR THE SERVICES OF QUALIFIED EXPERTS TO INSPECT THE PROPERTY, WHICH MAY INCLUDE, WITHOUT LIMITATION, ARCHITECTS, ENGINEERS, LAND SURVEYORS, PLUMBERS, ELECTRICIANS, ROOFERS, BUILDING INSPECTORS, ON-SITE WASTEWATER TREATMENT INSPECTORS, OR STRUCTURAL PEST INSPECTORS. THE PROSPECTIVE BUYER AND SELLER MAY WISH TO OBTAIN PROFESSIONAL ADVICE OR INSPECTIONS OF THE PROPERTY OR TO PROVIDE APPROPRIATE PROVISIONS IN A CONTRACT BETWEEN THEM WITH RESPECT TO ANY ADVICE, INSPECTION, DEFECTS, OR WARRANTIES.

Seller . . . . is/ . . . . is not occupying the property.

**I. SELLER’S DISCLOSURES:**

\*If you answer "Yes" to a question with an asterisk (\*), please explain your answer and attach documents, if available and not otherwise publicly recorded. If necessary, use an attached sheet.

- 1. TITLE**
- A. Do you have legal authority to sell the property? If no, please explain.  Yes  No  Don't know
- \*B. Is title to the property subject to any of the following?  Yes  No  Don't know
  - (1) First right of refusal
  - (2) Option
  - (3) Lease or rental agreement
  - (4) Life estate?
- \*C. Are there any encroachments, boundary agreements, or boundary disputes?  Yes  No  Don't know
- \*D. Is there a private road or easement agreement for access to the property?  Yes  No  Don't know
- \*E. Are there any rights-of-way, easements, or access limitations that affect the Buyer’s use of the property?  Yes  No  Don't know
- \*F. Are there any written agreements for joint maintenance of an easement or right-of-way?  Yes  No  Don't know
- \*G. Is there any study, survey project, or notice that would adversely affect the property?  Yes  No  Don't know
- \*H. Are there any pending or existing assessments against the property?  Yes  No  Don't know
- \*I. Are there any zoning violations, non-conforming uses, or any unusual restrictions on the property that affect future construction or remodeling?  Yes  No  Don't know
- \*J. Is there a boundary survey for the property?  Yes  No  Don't know
- \*K. Are there any covenants, conditions, or restrictions recorded against title to the property?  Yes  No  Don't know
- 2. WATER**
- A. Household Water

<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Don't know	(1) Does the property have potable water supply?	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Don't know	(3) Is the septic system a pressurized system?
			(2) If yes, the source of water for the property is:	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Don't know	(4) Is the septic system a gravity system?
			<input type="checkbox"/> Private or publicly owned water system	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Don't know	* (5) Have there been any changes or repairs to the on-site sewage system?
			<input type="checkbox"/> Private well serving only the property	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Don't know	(6) Is the on-site sewage system, including the drainfield, located entirely within the boundaries of the property? If no, please explain:
			* <input type="checkbox"/> Other water system				.....
<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Don't know	* If shared, are there any written agreements?	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Don't know	* (7) Does the on-site sewage system require monitoring and maintenance services more frequently than once a year?
<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Don't know	* (3) Is there an easement (recorded or unrecorded) for access to and/or maintenance of the water source?	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Don't know	.....
<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Don't know	* (4) Are there any problems or repairs needed?				<b>4. ELECTRICAL/GAS</b>
<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Don't know	(5) Is there a connection or hook-up charge payable before the property can be connected to the water main?	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Don't know	A. Is the property served by natural gas?
<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Don't know	(6) Have you obtained a certificate of water availability from the water purveyor serving the property? (If yes, please attach a copy.)	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Don't know	B. Is there a connection charge for gas?
<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Don't know	(7) Is there a water right permit, certificate, or claim associated with household water supply for the property? (If yes, please attach a copy.)	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Don't know	C. Is the property served by electricity?
<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Don't know	(a) If yes, has the water right permit, certificate, or claim been assigned, transferred, or changed?	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Don't know	D. Is there a connection charge for electricity?
<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Don't know	* (b) If yes, has all or any portion of the water right not been used for five or more successive years?	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Don't know	* E. Are there any electrical problems on the property?
<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Don't know	(c) If no or don't know, is the water withdrawn from the water source less than 5,000 gallons a day?	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Don't know	.....
<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Don't know	* (8) Are there any defects in the operation of the water system (e.g., pipes, tank, pump, etc.)?				<b>5. FLOODING</b>
<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Don't know	B. Irrigation Water	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Don't know	A. Is the property located in a government designated flood zone or floodplain?
<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Don't know	(1) Are there any irrigation water rights for the property, such as a water right permit, certificate, or claim? (If yes, please attach a copy.)	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Don't know	<b>6. SOIL STABILITY</b>
<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Don't know	(a) If yes, has all or any portion of the water right not been used for five or more successive years?	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Don't know	* A. Are there any settlement, earth movement, slides, or similar soil problems on the property?
<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Don't know	(b) If yes, has the water right permit, certificate, or claim been assigned, transferred, or changed?	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Don't know	.....
<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Don't know	* (2) Does the property receive irrigation water from a ditch company, irrigation district, or other entity? If so, please identify the entity that supplies irrigation water to the property:	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Don't know	<b>7. ENVIRONMENTAL</b>
<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Don't know	.....	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Don't know	* A. Have there been any flooding, standing water, or drainage problems on the property that affect the property or access to the property?
<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Don't know	C. Outdoor Sprinkler System	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Don't know	* B. Does any part of the property contain fill dirt, waste, or other fill material?
<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Don't know	(1) Is there an outdoor sprinkler system for the property?	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Don't know	* C. Is there any material damage to the property from fire, wind, floods, beach movements, earthquake, expansive soils, or landslides?
<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Don't know	* (2) If yes, are there any defects in the system?	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Don't know	D. Are there any shorelines, wetlands, floodplains, or critical areas on the property?
<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Don't know	* (3) If yes, is the sprinkler system connected to irrigation water?	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Don't know	* E. Are there any substances, materials, or products in or on the property that may be environmental concerns, such as asbestos, formaldehyde, radon gas, lead-based paint, fuel or chemical storage tanks, or contaminated soil or water?
			<b>3. SEWER/SEPTIC SYSTEM</b>	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Don't know	* F. Has the property been used for commercial or industrial purposes?
			A. The property is served by:	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Don't know	* G. Is there any soil or groundwater contamination?
			<input type="checkbox"/> Public sewer system	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Don't know	* H. Are there transmission poles or other electrical utility equipment installed, maintained, or buried on the property that do not provide utility service to the structures on the property?
			<input type="checkbox"/> On-site sewage system (including pipes, tanks, drainfields, and all other component parts)	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Don't know	* I. Has the property been used as a legal or illegal dumping site?
			<input type="checkbox"/> Other disposal system, please describe:	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Don't know	* J. Has the property been used as an illegal drug manufacturing site?
			.....	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Don't know	* K. Are there any radio towers that cause interference with cellular telephone reception?
<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Don't know	B. Is the property subject to any sewage system fees or charges in addition to those covered in your regularly billed sewer or on-site sewage system maintenance service?	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Don't know	<b>8. HOMEOWNERS' ASSOCIATION/COMMON INTERESTS</b>
<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Don't know	C. If the property is connected to an on-site sewage system:				A. Is there a homeowners' association? Name of association and contact information for an officer, director, employee, or other authorized agent, if any, who may provide the association's financial statements, minutes, bylaws, fining policy, and other information that is not publicly available:
<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Don't know	* (1) Was a permit issued for its construction?	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Don't know	.....
<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Don't know	* (2) Was it approved by the local health department or district following its construction?	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Don't know	B. Are there regular periodic assessments: \$ . . . per <input type="checkbox"/> Month <input type="checkbox"/> Year <input type="checkbox"/> Other .....

- Yes  No  Don't know \*C. Are there any pending special assessments?
- Yes  No  Don't know \*D. Are there any shared "common areas" or any joint maintenance agreements (facilities such as walls, fences, landscaping, pools, tennis courts, walkways, or other areas co-owned in undivided interest with others)?
- Yes  No  Don't know **9. OTHER FACTS**  
\*A. Are there any disagreements, disputes, encroachments, or legal actions concerning the property?
- Yes  No  Don't know \*B. Does the property have any plants or wildlife that are designated as species of concern, or listed as threatened or endangered by the government?
- Yes  No  Don't know \*C. Is the property classified or designated as forest land or open space?
- Yes  No  Don't know D. Do you have a forest management plan? If yes, attach.
- Yes  No  Don't know \*E. Have any development-related permit applications been submitted to any government agencies?

If the answer to E is "yes," what is the status or outcome of those applications?

**10. FULL DISCLOSURE BY SELLERS**

- A. Other conditions or defects:  
\*Are there any other existing material defects affecting the property that a prospective buyer should know about?
- B. Verification:  
The foregoing answers and attached explanations (if any) are complete and correct to the best of my/our knowledge and I/we have received a copy hereof. I/we authorize all of my/our real estate licensees, if any, to deliver a copy of this disclosure statement to other real estate licensees and all prospective buyers of the property.

DATE ..... SELLER ..... SELLER .....  
NOTICE TO BUYER

INFORMATION REGARDING REGISTERED SEX OFFENDERS MAY BE OBTAINED FROM LOCAL LAW ENFORCEMENT AGENCIES. THIS NOTICE IS INTENDED ONLY TO INFORM YOU OF WHERE TO OBTAIN THIS INFORMATION AND IS NOT AN INDICATION OF THE PRESENCE OF REGISTERED SEX OFFENDERS.

**II. BUYER'S ACKNOWLEDGMENT**

- A. Buyer hereby acknowledges that: Buyer has a duty to pay diligent attention to any material defects that are known to Buyer or can be known to Buyer by utilizing diligent attention and observation.
- B. The disclosures set forth in this statement and in any amendments to this statement are made only by the Seller and not by any real estate licensee or other party.
- C. Buyer acknowledges that, pursuant to RCW 64.06.050(2), real estate licensees are not liable for inaccurate information provided by Seller, except to the extent that real estate licensees know of such inaccurate information.
- D. This information is for disclosure only and is not intended to be a part of the written agreement between the Buyer and Seller.
- E. Buyer (which term includes all persons signing the "Buyer's acceptance" portion of this disclosure statement below) has received a copy of this Disclosure Statement (including attachments, if any) bearing Seller's signature.

DISCLOSURES CONTAINED IN THIS DISCLOSURE STATEMENT ARE PROVIDED BY SELLER BASED ON SELLER'S ACTUAL KNOWLEDGE OF THE PROPERTY AT THE TIME SELLER COMPLETES THIS DISCLOSURE STATEMENT. UNLESS BUYER AND SELLER OTHERWISE AGREE IN WRITING, BUYER SHALL HAVE THREE BUSINESS DAYS FROM THE DAY SELLER OR SELLER'S AGENT DELIVERS THIS DISCLOSURE STATEMENT TO RESCIND THE AGREE-

MENT BY DELIVERING A SEPARATELY SIGNED WRITTEN STATEMENT OF RESCISSION TO SELLER OR SELLER'S AGENT. YOU MAY WAIVE THE RIGHT TO RESCIND PRIOR TO OR AFTER THE TIME YOU ENTER INTO A SALE AGREEMENT.

BUYER HEREBY ACKNOWLEDGES RECEIPT OF A COPY OF THIS DISCLOSURE STATEMENT AND ACKNOWLEDGES THAT THE DISCLOSURES MADE HEREIN ARE THOSE OF THE SELLER ONLY, AND NOT OF ANY REAL ESTATE LICENSEE OR OTHER PARTY.

DATE ..... BUYER ..... BUYER .....

(2) The seller disclosure statement shall be for disclosure only, and shall not be considered part of any written agreement between the buyer and seller of residential property. The seller disclosure statement shall be only a disclosure made by the seller, and not any real estate licensee involved in the transaction, and shall not be construed as a warranty of any kind by the seller or any real estate licensee involved in the transaction. [2009 c 505 § 2; 2009 c 130 § 1; 2007 c 107 § 5.]

**Reviser's note:** This section was amended by 2009 c 130 § 1 and by 2009 c 505 § 2, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

**Application—2009 c 505:** See note following RCW 64.06.005.

**Findings—Intent—2007 c 107:** "(1) The legislature finds that:

(a) Some purchasers of residential property have been financially ruined, and their health threatened, by the discovery of toxic materials buried or otherwise hidden on the property, that was not disclosed by the seller who had actual knowledge of the presence of such materials before the sale;

(b) Current law exempts some sellers from legal responsibility to disclose what they know about the presence of toxic materials on unimproved property they are selling for residential purposes; and

(c) Seller disclosure statements provide information of fundamental importance to a buyer to help the buyer determine whether the property has health and safety characteristics suitable for residential use and whether the buyer can financially afford the clean-up costs and related legal costs.

(2) The legislature intends that:

(a) Purchasers of unimproved property intended to be used for residential purposes be entitled to receive from the seller information known by the seller about toxic materials on or buried in the property;

(b) There be no legal exemptions from such disclosure in the interests of fairness and transparency in residential property sales transactions; and

(c) Separate residential property sales disclosure forms be used for improved and unimproved property, to assist with transparency in property transactions." [2007 c 107 § 1.]

**64.06.020 Improved residential real property—Seller's duty—Format of disclosure statement—Minimum information.** (1) In a transaction for the sale of improved residential real property, the seller shall, unless the buyer has expressly waived the right to receive the disclosure statement under RCW 64.06.010, or unless the transfer is otherwise exempt under RCW 64.06.010, deliver to the buyer a completed seller disclosure statement in the following format and that contains, at a minimum, the following information:

**INSTRUCTIONS TO THE SELLER**

Please complete the following form. Do not leave any spaces blank. If the question clearly does not apply to the property write "NA." If the answer is "yes" to any \* items, please explain on attached sheets. Please refer to the line number(s) of the question(s) when you provide your explanation(s). For your protection you must date and sign each page



- Yes  No  Don't know
- Yes  No  Don't know
- Yes  No  Don't know

C. Outdoor Sprinkler System  
 (1) Is there an outdoor sprinkler system for the property?  
 \*(2) If yes, are there any defects in the system?  
 \*(3) If yes, is the sprinkler system connected to irrigation water?

- Foundations
- Chimneys
- Doors
- Ceilings
- Pools
- Sidewalks
- Garage Floors
- Other
- Decks
- Interior Walls
- Windows
- Slab Floors
- Hot Tub
- Outbuildings
- Walkways
- Wood Stoves
- Exterior Walls
- Fire Alarm
- Patio
- Driveways
- Sauna
- Fireplaces
- Siding

**3. SEWER/ON-SITE SEWAGE SYSTEM**

A. The property is served by:  
 Public sewer system,  
 On-site sewage system (including pipes, tanks, drainfields, and all other component parts)  
 Other disposal system, please describe:

- Yes  No  Don't know
- Yes  No  Don't know

B. If public sewer system service is available to the property, is the house connected to the sewer main? If no, please explain.

\*C. Is the property subject to any sewage system fees or charges in addition to those covered in your regularly billed sewer or on-site sewage system maintenance service?

- Yes  No  Don't know

D. If the property is connected to an on-site sewage system:

(1) Was a permit issued for its construction, and was it approved by the local health department or district following its construction?  
 (2) When was it last pumped ?

- Yes  No  Don't know
- Don't know

(3) Are there any defects in the operation of the on-site sewage system?  
 (4) When was it last inspected?

By whom: .....  
 (5) For how many bedrooms was the on-site sewage system approved?

- Yes  No  Don't know

E. Are all plumbing fixtures, including laundry drain, connected to the sewer/on-site sewage system? If no, please explain:

- Yes  No  Don't know

\*F. Have there been any changes or repairs to the on-site sewage system?

- Yes  No  Don't know

G. Is the on-site sewage system, including the drainfield, located entirely within the boundaries of the property? If no, please explain.

- Yes  No  Don't know

\*H. Does the on-site sewage system require monitoring and maintenance services more frequently than once a year?

NOTICE: IF THIS RESIDENTIAL REAL PROPERTY DISCLOSURE STATEMENT IS BEING COMPLETED FOR NEW CONSTRUCTION WHICH HAS NEVER BEEN OCCUPIED, THE SELLER IS NOT REQUIRED TO COMPLETE THE QUESTIONS LISTED IN ITEM 4. STRUCTURAL OR ITEM 5. SYSTEMS AND FIXTURES

**4. STRUCTURAL**

\*A. Has the roof leaked within the last five years?

- Yes  No  Don't know

\*B. Has the basement flooded or leaked?

- Yes  No  Don't know

\*C. Have there been any conversions, additions, or remodeling?

- Yes  No  Don't know

(1) If yes, were all building permits obtained?

- Yes  No  Don't know

(2) If yes, were all final inspections obtained?

- Yes  No  Don't know

D. Do you know the age of the house? If yes, year of original construction:

- Yes  No  Don't know

\*E. Has there been any settling, slippage, or sliding of the property or its improvements?

- Yes  No  Don't know

\*F. Are there any defects with the following: (If yes, please check applicable items and explain.)

- Yes  No  Don't know

\*G. Was a structural pest or "whole house" inspection done? If yes, when and by whom was the inspection completed? .....

H. During your ownership, has the property had any wood destroying organism or pest infestation?

I. Is the attic insulated?

J. Is the basement insulated?

**5. SYSTEMS AND FIXTURES**

\*A. If any of the following systems or fixtures are included with the transfer, are there any defects? If yes, please explain.

- Electrical system, including wiring, switches, outlets, and service
- Plumbing system, including pipes, faucets, fixtures, and toilets
- Hot water tank
- Garbage disposal
- Appliances
- Sump pump
- Heating and cooling systems
- Security system
- Owned  Leased
- Other .....

\*B. If any of the following fixtures or property is included with the transfer, are they leased? (If yes, please attach copy of lease.)

- Security system .....
- Tanks (type): .....
- Satellite dish .....
- Other: .....

\*C. Are any of the following kinds of wood burning appliances present at the property?

- (1) Woodstove?
- (2) Fireplace insert?
- (3) Pellet stove?
- (4) Fireplace?

If yes, are all of the (1) woodstoves or (2) fireplace inserts certified by the U.S. Environmental Protection Agency as clean burning appliances to improve air quality and public health?

**6. HOMEOWNERS' ASSOCIATION/COMMON INTERESTS**

A. Is there a Homeowners' Association? Name of Association and contact information for an officer, director, employee, or other authorized agent, if any, who may provide the association's financial statements, minutes, bylaws, fining policy, and other information that is not publicly available: .....

B. Are there regular periodic assessments:

\$ . . . per  Month  Year

Other .....

\*C. Are there any pending special assessments?

\*D. Are there any shared "common areas" or any joint maintenance agreements (facilities such as walls, fences, landscaping, pools, tennis courts, walkways, or other areas co-owned in undivided interest with others)?

**7. ENVIRONMENTAL**

\*A. Have there been any flooding, standing water, or drainage problems on the property that affect the property or access to the property?

- Yes  No  Don't know \*B. Does any part of the property contain fill dirt, waste, or other fill material?
- Yes  No  Don't know \*C. Is there any material damage to the property from fire, wind, floods, beach movements, earthquake, expansive soils, or landslides?
- Yes  No  Don't know D. Are there any shorelines, wetlands, floodplains, or critical areas on the property?
- Yes  No  Don't know \*E. Are there any substances, materials, or products in or on the property that may be environmental concerns, such as asbestos, formaldehyde, radon gas, lead-based paint, fuel or chemical storage tanks, or contaminated soil or water?
- Yes  No  Don't know \*F. Has the property been used for commercial or industrial purposes?
- Yes  No  Don't know \*G. Is there any soil or groundwater contamination?
- Yes  No  Don't know \*H. Are there transmission poles or other electrical utility equipment installed, maintained, or buried on the property that do not provide utility service to the structures on the property?
- Yes  No  Don't know \*I. Has the property been used as a legal or illegal dumping site?
- Yes  No  Don't know \*J. Has the property been used as an illegal drug manufacturing site?
- Yes  No  Don't know \*K. Are there any radio towers in the area that cause interference with cellular telephone reception?

**8. MANUFACTURED AND MOBILE HOMES**

If the property includes a manufactured or mobile home,

- Yes  No  Don't know \*A. Did you make any alterations to the home? If yes, please describe the alterations: . . . . .
- Yes  No  Don't know \*B. Did any previous owner make any alterations to the home?
- Yes  No  Don't know \*C. If alterations were made, were permits or variances for these alterations obtained?

**9. FULL DISCLOSURE BY SELLERS**

A. Other conditions or defects:  
 \*Are there any other existing material defects affecting the property that a prospective buyer should know about?

B. Verification:  
 The foregoing answers and attached explanations (if any) are complete and correct to the best of my/our knowledge and I/we have received a copy hereof. I/we authorize all of my/our real estate licensees, if any, to deliver a copy of this disclosure statement to other real estate licensees and all prospective buyers of the property.

DATE . . . . . SELLER . . . . . SELLER . . . . .  
NOTICE TO THE BUYER

INFORMATION REGARDING REGISTERED SEX OFFENDERS MAY BE OBTAINED FROM LOCAL LAW ENFORCEMENT AGENCIES. THIS NOTICE IS INTENDED ONLY TO INFORM YOU OF WHERE TO OBTAIN THIS INFORMATION AND IS NOT AN INDICATION OF THE PRESENCE OF REGISTERED SEX OFFENDERS.

**II. BUYER'S ACKNOWLEDGMENT**

- A. Buyer hereby acknowledges that: Buyer has a duty to pay diligent attention to any material defects that are known to Buyer or can be known to Buyer by utilizing diligent attention and observation.
- B. The disclosures set forth in this statement and in any amendments to this statement are made only by the Seller and not by any real estate licensee or other party.
- C. Buyer acknowledges that, pursuant to RCW 64.06.050(2), real estate licensees are not liable for inaccurate information provided by Seller, except to the extent that real estate licensees know of such inaccurate information.
- D. This information is for disclosure only and is not intended to be a part of the written agreement between the Buyer and Seller.
- E. Buyer (which term includes all persons signing the "Buyer's acceptance" portion of this disclosure statement below) has received a copy of this Disclosure Statement (including attachments, if any) bearing Seller's signature.

DISCLOSURES CONTAINED IN THIS DISCLOSURE STATEMENT ARE PROVIDED BY SELLER BASED ON SELLER'S ACTUAL KNOWLEDGE OF THE PROPERTY AT THE TIME SELLER COMPLETES THIS DISCLOSURE STATEMENT. UNLESS BUYER AND SELLER OTHERWISE AGREE IN WRITING, BUYER SHALL HAVE THREE BUSINESS DAYS FROM THE DAY SELLER OR SELLER'S AGENT DELIVERS THIS DISCLOSURE STATEMENT TO RESCIND THE AGREEMENT BY DELIVERING A SEPARATELY SIGNED WRITTEN STATEMENT OF RESCISSION TO SELLER OR SELLER'S AGENT. YOU MAY WAIVE THE RIGHT TO RESCIND PRIOR TO OR AFTER THE TIME YOU ENTER INTO A SALE AGREEMENT.

BUYER HEREBY ACKNOWLEDGES RECEIPT OF A COPY OF THIS DISCLOSURE STATEMENT AND ACKNOWLEDGES THAT THE DISCLOSURES MADE HEREIN ARE THOSE OF THE SELLER ONLY, AND NOT OF ANY REAL ESTATE LICENSEE OR OTHER PARTY.

DATE . . . . . BUYER . . . . . BUYER . . . . .

(2) If the disclosure statement is being completed for new construction which has never been occupied, the disclosure statement is not required to contain and the seller is not required to complete the questions listed in item 4. Structural or item 5. Systems and Fixtures.

(3) The seller disclosure statement shall be for disclosure only, and shall not be considered part of any written agreement between the buyer and seller of residential property. The seller disclosure statement shall be only a disclosure made by the seller, and not any real estate licensee involved in the transaction, and shall not be construed as a warranty of any kind by the seller or any real estate licensee involved in the transaction. [2009 c 505 § 3; 2009 c 130 § 2; 2007 c 107 § 4; 2004 c 114 § 1; 2003 c 200 § 1; 1996 c 301 § 2; 1994 c 200 § 3.]

**Reviser's note:** This section was amended by 2009 c 130 § 2 and by 2009 c 505 § 3, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

**Application—2009 c 505:** See note following RCW 64.06.005.

**Findings—Intent—2007 c 107:** See note following RCW 64.06.015.

**Application—Effective date—2004 c 114:** See notes following RCW 64.06.021.

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**64.06.021 Notice regarding sex offenders.** The notice regarding sex offenders under RCW 64.06.020 does not create any legal duty on the part of the seller, or on the part of any real estate licensee, to investigate or to provide the buyer with information regarding the actual presence, or lack thereof, of registered sex offenders in the area of any property, including but not limited to any property that is the subject of a disclosure or waiver of disclosure under this chapter, or that is exempt from disclosure under RCW 64.06.010. [2004 c 114 § 2.]

**Application—2004 c 114:** "This act applies prospectively only and not retroactively. It applies only to residential real property purchase and sale agreements entered into on or after January 1, 2005, without regard to when the agreements are closed or finalized." [2004 c 114 § 3.]

**Effective date—2004 c 114:** "This act takes effect January 1, 2005." [2004 c 114 § 4.]

**64.06.022 Disclosure of possible proximity to farm.**

A seller of residential real property shall make available to the buyer the following statement: "This notice is to inform you that the real property you are considering for purchase may lie in close proximity to a farm. The operation of a farm involves usual and customary agricultural practices, which are protected under RCW 7.48.305, the Washington right to farm act." [2010 c 64 § 4; 2006 c 77 § 1; 2005 c 511 § 3.]

**64.06.030 Delivery of disclosure statement—Buyer's options—Time frame.** Unless the buyer has expressly waived the right to receive the disclosure statement, not later than five business days or as otherwise agreed to, after mutual acceptance of a written agreement between a buyer and a seller for the purchase and sale of residential real property, the seller shall deliver to the buyer a completed, signed, and dated real property transfer disclosure statement. Within three business days, or as otherwise agreed to, of receipt of the real property transfer disclosure statement, the buyer shall have the right to exercise one of the following two options: (1) Approving and accepting the real property transfer disclosure statement; or (2) rescinding the agreement for the purchase and sale of the property, which decision may be made by the buyer in the buyer's sole discretion. If the buyer elects to rescind the agreement, the buyer must deliver written notice of rescission to the seller within the three-business-day period, or as otherwise agreed to, and upon delivery of the written rescission notice the buyer shall be entitled to immediate return of all deposits and other considerations less any agreed disbursements paid to the seller, or to the seller's agent or an escrow agent for the seller's account, and the agreement for purchase and sale shall be void. If the buyer does not deliver a written rescission notice to [the] seller within the three-business-day period, or as otherwise agreed to, the real property transfer disclosure statement will be deemed approved and accepted by the buyer. [1996 c 301 § 3; 1994 c 200 § 4.]

**64.06.040 After delivery of disclosure statement—Additional information—Seller's duty—Buyer's options—Closing the transaction.** (1) If, after the date that a seller of real property completes a real property transfer disclosure statement, the seller learns from a source other than the buyer or others acting on the buyer's behalf such as an inspector of additional information or an adverse change which makes any of the disclosures made inaccurate, the seller shall amend the real property transfer disclosure statement, and deliver the amendment to the buyer. No amendment shall be required, however, if the seller takes whatever corrective action is necessary so that the accuracy of the disclosure is restored, or the adverse change is corrected, at least three business days prior to the closing date. Unless the corrective action is completed by the seller prior to the closing date, the buyer shall have the right to exercise one of the following two options: (a) Approving and accepting the amendment, or (b) rescinding the agreement of purchase and sale of the property within three business days after receiving the amended real property transfer disclosure statement. Accept-

ance or rescission shall be subject to the same procedures described in RCW 64.06.030. If the closing date provided in the purchase and sale agreement is scheduled to occur within the three-business-day rescission period provided for in this section, the closing date shall be extended until the expiration of the three-business-day rescission period. The buyer shall have no right of rescission if the seller takes whatever action is necessary so that the accuracy of the disclosure is restored at least three business days prior to the closing date.

(2) In the event any act, occurrence, or agreement arising or becoming known after the closing of a real property transfer causes a real property transfer disclosure statement to be inaccurate in any way, the seller of such property shall have no obligation to amend the disclosure statement, and the buyer shall not have the right to rescind the transaction under this chapter.

(3) If the seller in a real property transfer fails or refuses to provide to the prospective buyer a real property transfer disclosure statement as required under this chapter, the prospective buyer's right of rescission under this section shall apply until the earlier of three business days after receipt of the real property transfer disclosure statement or the date the transfer has closed, unless the buyer has otherwise waived the right of rescission in writing. Closing is deemed to occur when the buyer has paid the purchase price, or down payment, and the conveyance document, including a deed or real estate contract, from the seller has been delivered and recorded. After closing, the seller's obligation to deliver the real property transfer disclosure statement and the buyer's rights and remedies under this chapter shall terminate.

(4) Failure of a homeowners' association or its officers, directors, employees, or authorized agents to provide requested information in part 8 of the disclosure statement form in RCW 64.06.015 or part 6 of the disclosure statement form in RCW 64.06.020 does not constitute a seller's failure or refusal to provide a real property transfer disclosure statement under subsection (3) of this section. [2010 c 64 § 5. Prior: 2009 c 505 § 4; 2009 c 130 § 3; 1996 c 301 § 4; 1994 c 200 § 5.]

**Application—2009 c 505:** See note following RCW 64.06.005.

**64.06.050 Error, inaccuracy, or omission in disclosure statement—Actual knowledge—Liability.** (1) The seller shall not be liable for any error, inaccuracy, or omission in the real property transfer disclosure statement if the seller had no actual knowledge of the error, inaccuracy, or omission. Unless the seller has actual knowledge of an error, inaccuracy, or omission in a real property transfer disclosure statement, the seller shall not be liable for such error, inaccuracy, or omission if the disclosure was based on information provided by public agencies, or by other persons providing information within the scope of their professional license or expertise, including, but not limited to, a report or opinion delivered by a land surveyor, title company, title insurance company, structural inspector, pest inspector, licensed engineer, or contractor.

(2) Any real estate licensee involved in a real property transaction is not liable for any error, inaccuracy, or omission in the real property transfer disclosure statement if the licensee had no actual knowledge of the error, inaccuracy, or

omission. Unless the licensee has actual knowledge of an error, inaccuracy, or omission in a real property transfer disclosure statement, the licensee shall not be liable for such error, inaccuracy, or omission if the disclosure was based on information provided by public agencies, or by other persons providing information within the scope of their professional license or expertise, including, but not limited to, a report or opinion delivered by a land surveyor, title company, title insurance company, structural inspector, pest inspector, licensed engineer, or contractor. [2010 c 64 § 6; 1996 c 301 § 5; 1994 c 200 § 6.]

#### **64.06.060 Consumer protection act does not apply.**

The legislature finds that the practices covered by this chapter are not matters vitally affecting the public interest for the purpose of applying the consumer protection act, chapter 19.86 RCW. [1994 c 200 § 7.]

**64.06.070 Buyer's rights or remedies.** Except as provided in RCW 64.06.050, nothing in this chapter shall extinguish or impair any rights or remedies of a buyer of real estate against the seller or against any agent acting for the seller otherwise existing pursuant to common law, statute, or contract; nor shall anything in this chapter create any new right or remedy for a buyer of real property other than the right of rescission exercised on the basis and within the time limits provided in this chapter. [2010 c 64 § 7; 1996 c 301 § 6; 1994 c 200 § 8.]

**64.06.900 Effective date—1994 c 200.** This act shall take effect on January 1, 1995. [1994 c 200 § 10.]

### **Chapter 64.08 RCW ACKNOWLEDGMENTS**

#### Sections

64.08.010	Who may take acknowledgments.
64.08.020	Acknowledgments out of state—Certificate.
64.08.040	Foreign acknowledgments, who may take.
64.08.050	Certificate of acknowledgment—Evidence.
64.08.060	Form of certificate for individual.
64.08.070	Form of certificate for corporation.
64.08.090	Authority of superintendents, business managers and officers of correctional institutions to take acknowledgments and administer oaths—Procedure.
64.08.100	Acknowledgments by persons unable to sign name.

**Validating:** See notes following chapter 64.04 RCW digest.

#### *Acknowledgments*

*merchant seamen:* RCW 73.20.010.

*persons in the armed services:* RCW 73.20.010.

*persons outside United States in connection with war:* RCW 73.20.010.

#### **64.08.010 Who may take acknowledgments.**

Acknowledgments of deeds, mortgages and other instruments in writing, required to be acknowledged may be taken in this state before a justice of the supreme court, or the clerk thereof, or the deputy of such clerk, before a judge of the court of appeals, or the clerk thereof, before a judge of the superior court, or qualified court commissioner thereof, or the clerk thereof, or the deputy of such clerk, or a county auditor, or the deputy of such auditor, or a qualified notary public, or a qualified United States commissioner appointed by any district court of the United States for this state, and all said instruments heretofore executed and acknowledged

(2010 Ed.)

according to the provisions of this section are hereby declared legal and valid. [1971 c 81 § 131; 1931 c 13 § 1; 1929 c 33 § 3; RRS § 10559. Prior: 1913 c 14 § 1; Code 1881 § 2315; 1879 p 110 § 1; 1877 p 317 § 5; 1875 p 107 § 1; 1873 p 466 § 5.]

**64.08.020 Acknowledgments out of state—Certificate.** Acknowledgments of deeds conveying or encumbering real estate situated in this state, or any interest therein, and other instruments in writing, required to be acknowledged, may be taken in any other state or territory of the United States, the District of Columbia, or in any possession of the United States, before any person authorized to take the acknowledgments of deeds by the laws of the state, territory, district or possession wherein the acknowledgment is taken, or before any commissioner appointed by the governor of this state, for that purpose, but unless such acknowledgment is taken before a commissioner so appointed by the governor, or before the clerk of a court of record of such state, territory, district or possession, or before a notary public or other officer having a seal of office, the instrument shall have attached thereto a certificate of the clerk of a court of record of the county, parish, or other political subdivision of such state, territory, district or possession wherein the acknowledgment was taken, under the seal of said court, certifying that the person who took the acknowledgment, and whose name is subscribed to the certificate thereof, was at the date thereof such officer as he represented himself to be, authorized by law to take acknowledgments of deeds, and that the clerk verily believes the signature of the person subscribed to the certificate of acknowledgment to be genuine. [1929 c 33 § 4; RRS §§ 10560, 10561. Prior: Code 1881 §§ 2316, 2317; 1877 p 313 §§ 6, 7; 1873 p 466 §§ 6, 7; 1867 pp 93, 94 §§ 1, 2; 1866 p 89 § 1; 1865 p 25 § 1. Formerly RCW 64.08.020 and 64.08.030.]

#### **64.08.040 Foreign acknowledgments, who may take.**

Acknowledgments of deeds conveying or encumbering real estate situated in this state, or any interest therein and other instruments in writing, required to be acknowledged, may be taken in any foreign country before any minister, plenipotentiary, secretary of legation, charge d'affaires, consul general, consul, vice consul, consular agent, or commercial agent appointed by the United States government, or before any notary public, or before the judge, clerk, or other proper officer of any court of said country, or before the mayor or other chief magistrate of any city, town or other municipal corporation therein. [1929 c 33 § 5; RRS § 10563, part. Prior: 1901 c 53 § 1; 1888 p 1 § 1; Code 1881 § 2319; 1875 p 108 § 2.]

#### **64.08.050 Certificate of acknowledgment—Evidence.**

The officer, or person, taking an acknowledgment as in this chapter provided, shall certify the same by a certificate written upon or annexed to the instrument acknowledged and signed by him or her and sealed with his or her official seal, if any, and reciting in substance that the person, or persons, known to him or her as, or determined by satisfactory evidence to be, the person, or persons, whose name, or names, are signed to the instrument as executing the same, acknowl-

edged before him or her on the date stated in the certificate that he, she, or they, executed the same freely and voluntarily. Such certificate shall be prima facie evidence of the facts therein recited. The officer or person taking the acknowledgment has satisfactory evidence that a person is the person whose name is signed on the instrument if that person: (1) Is personally known to the officer or person taking the acknowledgment; (2) is identified upon the oath or affirmation of a credible witness personally known to the officer or person taking the acknowledgment; or (3) is identified on the basis of identification documents. [1988 c 69 § 1; 1929 c 33 § 6; RRS §§ 10564, 10565. Prior: Code 1881 §§ 2320, 2321; 1879 p 158 §§ 2, 3.]

**64.08.060 Form of certificate for individual.** A certificate of acknowledgment for an individual, substantially in the following form or, after December 31, 1985, substantially in the form set forth in RCW 42.44.100(1), shall be sufficient for the purposes of this chapter and for any acknowledgment required to be taken in accordance with this chapter:

State of ..... }  
County of ..... } ss.

On this day personally appeared before me (here insert the name of grantor or grantors) to me known to be the individual, or individuals described in and who executed the within and foregoing instrument, and acknowledged that he (she or they) signed the same as his (her or their) free and voluntary act and deed, for the uses and purposes therein mentioned. Given under my hand and official seal this . . . . day of . . . . ., 19. . . (Signature of officer and official seal)

If acknowledgment is taken before a notary public of this state the signature shall be followed by substantially the following: Notary Public in and for the state of Washington, residing at . . . . ., (giving place of residence). [1988 c 69 § 2; 1929 c 33 § 13; RRS § 10566. Prior: 1888 p 51 § 2; 1886 p 179 § 7.]

**64.08.070 Form of certificate for corporation.** A certificate of acknowledgment for a corporation, substantially in the following form or, after December 31, 1985, substantially in the form set forth in RCW 42.44.100(2), shall be sufficient for the purposes of this chapter and for any acknowledgment required to be taken in accordance with this chapter:

State of ..... }  
County of ..... } ss.

On this . . . . day of . . . . ., 19. . . , before me personally appeared . . . . ., to me known to be the (president, vice president, secretary, treasurer, or other authorized officer or agent, as the case may be) of the corporation that executed the within and foregoing instrument, and acknowledged said instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated that he was authorized to execute said instrument and that the seal affixed is the corporate seal of said corporation.

In Witness Whereof I have hereunto set my hand and affixed my official seal the day and year first above written. (Signature and title of officer with place of residence of notary public.) [1988 c 69 § 3; 1929 c 33 § 14; RRS § 10567. Prior: 1903 c 132 § 1.]

**64.08.090 Authority of superintendents, business managers and officers of correctional institutions to take acknowledgments and administer oaths—Procedure.** The superintendents, associate and assistant superintendents, business managers, records officers and camp superintendents of any correctional institution or facility operated by the state of Washington are hereby authorized and empowered to take acknowledgments on any instruments of writing, and certify the same in the manner required by law, and to administer all oaths required by law to be administered, all of the foregoing acts to have the same effect as if performed by a notary public: PROVIDED, That such authority shall only extend to taking acknowledgments for and administering oaths to officers, employees and residents of such institutions and facilities. None of the individuals herein empowered to take acknowledgments and administer oaths shall demand or accept any fee or compensation whatsoever for administering or taking any oath, affirmation, or acknowledgment under the authority conferred by this section.

In certifying any oath or in signing any instrument officially, an individual empowered to do so under this section shall, in addition to his name, state in writing his place of residence, the date of his action, and affix the seal of the institution where he is employed: PROVIDED, That in certifying any oath to be used in any of the courts of this state, it shall not be necessary to append an impression of the official seal of the institution. [1972 ex.s. c 58 § 1.]

**64.08.100 Acknowledgments by persons unable to sign name.** Any person who is otherwise competent but is physically unable to sign his or her name or make a mark may make an acknowledgment authorized under this chapter by orally directing the notary public or other authorized officer taking the acknowledgment to sign the person’s name on his or her behalf. In taking an acknowledgment under this section, the notary public or other authorized officer shall, in addition to stating his or her name and place of residence, state that the signature in the acknowledgment was obtained under the authority of this section. [1987 c 76 § 2.]

**Chapter 64.12 RCW  
WASTE AND TRESPASS**

Sections

- 64.12.010 Waste actionable.
- 64.12.020 Waste by guardian or tenant, action for.
- 64.12.030 Injury to or removing trees, etc.—Damages.
- 64.12.035 Cutting or removing vegetation—Electric utility—Liability—Definitions.
- 64.12.040 Mitigating circumstances—Damages.
- 64.12.050 Injunction to prevent waste on public land.
- 64.12.060 Action by occupant of unsurveyed land.

*Actions to be commenced where subject is situated: RCW 4.12.010.*

*Damages for waste after injunction issued: RCW 7.40.200.*

*Injunctions, generally: Chapter 7.40 RCW.*

*Trespass*

animals: Title 16 RCW.  
 criminal: Chapter 9A.52 RCW.  
 public lands: Chapter 79.02 RCW.  
 theft: Chapter 9A.56 RCW.  
 waste, executor or administrator may sue: RCW 11.48.010.

#### Waste

option contracts and coal leases on state lands: RCW 79.14.580.  
 restraining during redemption period: RCW 6.23.100.  
 trespass on state lands: Chapter 79.02 RCW.

**64.12.010 Waste actionable.** Wrongs heretofore remediable by action of waste shall be subjects of actions as other wrongs. [Code 1881 § 600; 1877 p 125 § 605; 1869 p 143 § 554; 1854 p 206 § 403; RRS § 937.]

**64.12.020 Waste by guardian or tenant, action for.** If a guardian, tenant in severalty or in common, for life or for years, or by sufferance, or at will, or a subtenant, of real property commit waste thereon, any person injured thereby may maintain an action at law for damages therefor against such guardian or tenant or subtenant; in which action, if the plaintiff prevails, there shall be judgment for treble damages, or for fifty dollars, whichever is greater, and the court, in addition may decree forfeiture of the estate of the party committing or permitting the waste, and of eviction from the property. The judgment, in any event, shall include as part of the costs of the prevailing party, a reasonable attorney's fee to be fixed by the court. But judgment of forfeiture and eviction shall only be given in favor of the person entitled to the reversion against the tenant in possession, when the injury to the estate in reversion is determined in the action to be equal to the value of the tenant's estate or unexpired term, or to have been done or suffered in malice. [1943 c 22 § 1; Code 1881 § 601; 1877 p 125 § 606; 1869 p 143 § 555; 1854 p 206 § 403; Rem. Supp. 1943 § 938.]

**64.12.030 Injury to or removing trees, etc.—Damages.** Whenever any person shall cut down, girdle, or otherwise injure, or carry off any tree, including a Christmas tree as defined in \*RCW 76.48.020, timber, or shrub on the land of another person, or on the street or highway in front of any person's house, city or town lot, or cultivated grounds, or on the commons or public grounds of any city or town, or on the street or highway in front thereof, without lawful authority, in an action by the person, city, or town against the person committing the trespasses or any of them, any judgment for the plaintiff shall be for treble the amount of damages claimed or assessed. [2009 c 349 § 4; Code 1881 § 602; 1877 p 125 § 607; 1869 p 143 § 556; RRS § 939.]

\*Reviser's note: RCW 76.48.020 was recodified as RCW 76.48.021 pursuant to 2009 c 245 § 29.

Trespass, public lands: Chapter 79.02 RCW.

**64.12.035 Cutting or removing vegetation—Electric utility—Liability—Definitions.** (1) An electric utility is immune from liability under RCW 64.12.030, 64.12.040, and 4.24.630 and any claims for general or special damages, including claims of emotional distress, for cutting or removing vegetation located on or originating from land or property adjacent to electric facilities that:

(a) Has come in contact with or caused damage to electric facilities;

(b) Poses an imminent hazard to the general public health, safety, or welfare and the electric utility provides notice and makes a reasonable effort to obtain an agreement from the resident or property owner present on the property to trim or remove such hazard. For purposes of this subsection (1)(b), notice may be provided by posting a notice or flier in a conspicuous location on the affected property that gives a good faith estimate of the time frame in which the electric utility's trimming or removal work must occur, specifies how the electric utility may be contacted, and explains the responsibility of the resident or property owner to respond pursuant to the requirements of the notice. An electric utility may act without agreement if the resident or property owner fails to respond pursuant to the requirements of the notice. No notice or agreement is necessary if the electric utility's action is necessary to protect life, property, or restore electric service; or

(c) Poses a potential threat to damage electric facilities and the electric utility attempts written notice by mail to the last known address of record indicating the intent to act or remove vegetation and secures agreement from the affected property owner of record for the cutting, removing, and disposition of the vegetation. Such notice shall include a brief statement of the need and nature of the work intended that will impact the owner's property or vegetation, a good faith estimate of the time frame in which such work will occur, and how the utility can be contacted regarding the cutting or removal of vegetation. If the affected property owner fails to respond to a notice from the electric utility within two weeks of the date the electric utility provided notice, the electric utility may secure agreement from a resident of the affected property for the cutting, removing, and disposition of vegetation.

(2)(a) A hazard to the general public health, safety, or welfare is deemed to exist when:

(i) Vegetation has encroached upon electric facilities by overhanging or growing in such close proximity to overhead electric facilities that it constitutes an electrical hazard under applicable electrical construction codes or state and federal health and safety regulations governing persons who are employed or retained by, or on behalf of, an electric utility to construct, maintain, inspect, and repair electric facilities or to trim or remove vegetation; or

(ii) Vegetation is visibly diseased, dead, or dying and has been determined by a qualified forester or certified arborist employed or retained by, or on behalf of, an electric utility to be of such proximity to electric facilities that trimming or removal of the vegetation is necessary to avoid contact between the vegetation and electric facilities.

(b) The factors to be considered in determining the extent of trimming required to remove a hazard to the general public health, safety, or welfare may include normal tree growth, the combined movement of trees and conductors under adverse weather conditions, voltage, and sagging of conductors at elevated temperatures.

(3) A potential threat to damage electric facilities exists when vegetation is of such size, condition, and proximity to electric facilities that it can be reasonably expected to cause damage to electric facilities and, based upon this standard, the vegetation has been determined to pose a potential threat by a qualified forester or certified arborist employed or retained by or on behalf of an electric utility.

(4) For the purposes of this section:

(a) "Electric facilities" means lines, conduits, ducts, poles, wires, pipes, conductors, cables, cross-arms, receivers, transmitters, transformers, instruments, machines, appliances, instrumentalities, and all devices and apparatus used, operated, owned, or controlled by an electric utility, for the purposes of manufacturing, transforming, transmitting, distributing, selling, or furnishing electricity.

(b) "Electric utility" means an electrical company, as defined under RCW 80.04.010, a municipal electric utility formed under Title 35 RCW, a public utility district formed under Title 54 RCW, an irrigation district formed under chapter 87.03 RCW, a cooperative formed under chapter 23.86 RCW, and a mutual corporation or association formed under chapter 24.06 RCW, that is engaged in the business of distributing electricity in the state.

(c) "Vegetation" means trees, timber, or shrubs. [1999 c 248 § 1.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**64.12.040 Mitigating circumstances—Damages.** If upon trial of such action it shall appear that the trespass was casual or involuntary, or that the defendant had probable cause to believe that the land on which such trespass was committed was his own, or that of the person in whose service or by whose direction the act was done, or that such tree or timber was taken from uninclosed woodlands, for the purpose of repairing any public highway or bridge upon the land or adjoining it, judgment shall only be given for single damages. [Code 1881 § 603; 1877 p 125 § 608; 1869 p 143 § 557; RRS § 940.]

**64.12.050 Injunction to prevent waste on public land.** When any two or more persons are opposing claimants under the laws of the United States to any land in this state, and one is threatening to commit upon such land waste which tends materially to lessen the value of the inheritance and which cannot be compensated by damages and there is imminent danger that unless restrained such waste will be committed, the party, on filing his complaint and satisfying the court or judge of the existence of the facts, may have an injunction to restrain the adverse party. In all cases he shall give notice and bond as is provided in other cases where injunction is granted, and the injunction when granted shall be set aside or modified as is provided generally for injunction and restraining orders. [Code 1881 § 604; 1877 p 125 § 609; 1869 p 144 § 558; 1854 p 206 § 404; RRS § 941.]

*Injunction, generally: Chapter 7.40 RCW.*

**64.12.060 Action by occupant of unsurveyed land.** Any person now occupying and settled upon, or who may hereafter occupy or settle upon any of the unsurveyed public lands not to exceed one hundred sixty acres in this territory, for the purpose of holding and cultivating the same, may commence and maintain any action, in any court of competent jurisdiction, for interference with or injuries done to his or her possessions of said lands, against any person or persons so interfering with or injuring such lands or possessions: PROVIDED, ALWAYS, That if any of the aforesaid class of settlers are absent from their claims continuously, for a

period of six months in any one year, the said person or persons shall be deemed to have forfeited all rights under this act. [1883 p 70 § 1; RRS § 942.]

**Reviser's note:** The preamble and sections 2 and 3 of the 1883 act, section 1 of which is codified above as RCW 64.12.060, read as follows:

**Preamble:** "WHEREAS, A great many citizens of the United States are now settling upon and cultivating the unsurveyed government lands in this territory; and, as many years may elapse before the government surveys will be extended over the said lands, so that the settlers upon the same, can take them under the laws of the United States, and defend them against the trespass of others, therefore:"

**"Sec. 2.** Any person or persons, who shall wilfully and maliciously disturb, or in any wise injure, or destroy the dwelling house or other building, or any fence inclosing, or being on the claim of any of the aforesaid class of settlers, shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be fined not less than fifty nor more than one hundred (\$100) dollars, for each and every offense, to which may be added imprisonment in the county jail, not exceeding ninety (90) days." [1883 p 71 § 2.]

**"Sec. 3.** Any person or persons, who shall wilfully or maliciously set fire to any dwelling, or other building, of any of the aforesaid class of settlers, shall be deemed guilty of arson, and subject to the penalties of the law in such cases, made and provided." [1883 p 71 § 3.]

## Chapter 64.16 RCW ALIEN LAND LAW

### Sections

64.16.005 Aliens' rights and interests in lands same as native citizens'.  
64.16.140 Certain titles confirmed.

**64.16.005 Aliens' rights and interests in lands same as native citizens'.** Any alien may acquire and hold lands, or any right thereto, or interest therein, by purchase, devise or descent; and he may convey, mortgage and devise the same, and if he shall die intestate, the same shall descend to his heirs, and in all cases such lands shall be held, conveyed, mortgaged or devised, or shall descend in like manner and with like effect as if such alien were a native citizen of this state or of the United States. [1967 c 163 § 2.]

**1967 c 163 adopted to implement Amendment 42:** "This act is adopted by the legislature to implement amendment 42 to the state Constitution approved by the voters of the state on November 8, 1966. Amendment 42 removed constitutional restrictions against alien ownership of land by repealing Article II, section 33 of the state Constitution, as amended and Amendments 24 and 29." [1967 c 163 § 1.]

The above two annotations apply to 1967 c 163. For codification of that act, see Codification Tables, Volume 0.

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**64.16.140 Certain titles confirmed.** All lands and all estates or interests in lands, within the state of Washington, which were conveyed or attempted to be conveyed to, or acquired or attempted to be acquired by, any alien or aliens, prior to the date of the adoption of this act, are hereby confirmed to the respective persons at present owning or claiming to own the title thereto derived by, through or under any such alien ownership or attempted ownership, to the extent that title was vested in or conveyed by said alien or aliens: PROVIDED, That nothing in this section shall be construed to affect, adversely or otherwise, any title to any such lands, or to any interest or estate therein, held or claimed by any private person or corporation adversely to the title hereby confirmed. [1967 c 163 § 3; 1895 c 111 § 1; RRS § 10589.]

**Reviser's note:** 1967 c 163 carried an emergency clause and was approved by the governor on March 21, 1967.

## Chapter 64.20 RCW

## ALIENATION OF LAND BY INDIANS

## Sections

- 64.20.010 Puyallup Indians—Right of alienation.  
 64.20.025 Puyallup Indians—Right of alienation—When effective.  
 64.20.030 Sale of land or materials authorized.

*Indian graves and records: Chapter 27.44 RCW.*

*Indians and Indian lands, jurisdiction: Chapter 37.12 RCW.*

**64.20.010 Puyallup Indians—Right of alienation.**

The said Indians who now hold, or who may hereafter hold, any of the lands of any reservation, in severalty, located in this state by virtue of treaties made between them and the United States, shall have power to lease, incumber, grant and alien the same in like manner and with like effect as any other person may do under the laws of the United States and of this state, and all restrictions in reference thereto are hereby removed. [1890 p 500 § 1; RRS § 10593.]

**Preamble:** "WHEREAS, It was and is provided by and in the treaty made with and between the chiefs, head men and delegates of the Indian tribes (including the Puyallup tribe) and the United States of America, which treaty is dated on the 26th day of December, 1854, among other things as follows: "That the president, at his discretion, should cause the whole or any portion of the lands thereby reserved, or such land as might be selected in lieu thereof, to be surveyed into lots and assign the same to such individuals or families as are willing to avail themselves of the privilege and will locate on the same as a permanent home, on the same terms, and subject to the same regulations as are provided in the sixth article of the treaty with the Omahas, so far as the same may be applicable; and

"WHEREAS, It was and is provided by and in the sixth article of the treaty with the Omahas aforesaid, among other things, that said tracts of land shall not be aliened or leased for a longer term than two years, and shall be exempt from levy, sale or forfeiture, which conditions shall continue in force until a state constitution embracing such lands within its boundaries shall have been formed, and the legislature of the state shall remove the restrictions, but providing that no state legislature shall remove the restrictions\* \* \* without the consent of the Congress;" and

"WHEREAS, The President of the United States, on the 30th day of January, 1866, made and issued patents to the Puyallup Indians, in severalty, for the lands of said reservation, which are now of record in the proper office in Pierce county, in the State of Washington; and

"WHEREAS, All the conditions now exist which said treaties contain, and which make it desirable and proper to remove the restrictions in respect to the alienation and disposition of said lands by the Indians, who now hold them in severalty: now, therefore,"

**64.20.025 Puyallup Indians—Right of alienation—**

**When effective.** \*This act shall take effect and be in force from and after the consent to such removal of the restrictions shall have been given by the congress of the United States. [1890 p 501 § 3; no RRS.]

**Reviser's note:** \*(1) The language "this act" appears in 1890 p 501 § 3, which act is codified herein as RCW 64.20.010 through 64.20.025.

(2) An act of congress of March 3, 1893, removed the restriction on transfer (Wilson Act, 27 Stat. p 633) but postponed the right to transfer for ten years, that is, until March 3, 1903.

**64.20.030 Sale of land or materials authorized.**

Any Indian who owns within this state any land or real estate allotted to him by the government of the United States may with the consent of congress, either special or general, sell and convey by deed made, executed and acknowledged before any officer authorized to take acknowledgments to deeds within this state, any stone, mineral, petroleum or timber contained on said land or the fee thereof and such conveyance shall have the same effect as a deed of any other person or

(2010 Ed.)

persons within this state; it being the intention of this section to remove from Indians residing in this state all existing disabilities relating to alienation of their real estate. [1899 c 96 § 1; RRS § 10595.]

## Chapter 64.28 RCW

## JOINT TENANCIES

## Sections

- 64.28.010 Joint tenancies with right of survivorship authorized—Methods of creation—Creditors' rights saved.  
 64.28.020 Interest in favor of two or more is interest in common—Exceptions for joint tenancies, partnerships, trustees, etc.—Presumption of community property.  
 64.28.030 Bank deposits, choses in action, community property agreements not affected.  
 64.28.040 Character of joint tenancy interests held by both spouses or both domestic partners.

**64.28.010 Joint tenancies with right of survivorship authorized—Methods of creation—Creditors' rights saved.**

Whereas joint tenancy with right of survivorship permits property to pass to the survivor without the cost or delay of probate proceedings, there shall be a form of co-ownership of property, real and personal, known as joint tenancy. A joint tenancy shall have the incidents of survivorship and severability as at common law, including the unilateral right of each tenant to sever the joint tenancy. Joint tenancy shall be created only by written instrument, which instrument shall expressly declare the interest created to be a joint tenancy. It may be created by a single agreement, transfer, deed, will, or other instrument of conveyance, or by agreement, transfer, deed or other instrument from a sole owner to himself or herself and others, or from tenants in common or joint tenants to themselves or some of them, or to themselves or any of them and others, or from both spouses or both domestic partners, when holding title as community property, or otherwise, to themselves or to themselves and others, or to one of them and to another or others, or when granted or devised to executors or trustees as joint tenants: PROVIDED, That such transfer shall not derogate from the rights of creditors. [2008 c 6 § 625; 1993 c 19 § 1; 1963 ex.s. c 16 § 1; 1961 c 2 § 1 (Initiative Measure No. 208, approved November 8, 1960).]

**Part headings not law—Severability—2008 c 6:** See RCW 26.60.900 and 26.60.901.

**64.28.020 Interest in favor of two or more is interest in common—Exceptions for joint tenancies, partnerships, trustees, etc.—Presumption of community property.** (1)

Every interest created in favor of two or more persons in their own right is an interest in common, unless acquired by them in partnership, for partnership purposes, or unless declared in its creation to be a joint tenancy, as provided in RCW 64.28.010, or unless acquired by executors or trustees.

(2) Interests in common held in the names of both spouses or both domestic partners, whether or not in conjunction with others, are presumed to be their community property.

(3) Subsection (2) of this section applies as of June 9, 1988, to all existing or subsequently created interests in common. [2008 c 6 § 626; 1988 c 29 § 10; 1961 c 2 § 2 (Initiative Measure No. 208, approved November 8, 1960).]

**Part headings not law—Severability—2008 c 6:** See RCW 26.60.900 and 26.60.901.

**64.28.030 Bank deposits, choses in action, community property agreements not affected.** The provisions of this chapter shall not restrict the creation of a joint tenancy in a bank deposit or in other choses in action as heretofore or hereafter provided by law, nor restrict the power of both spouses or both domestic partners to make agreements as provided in RCW 26.16.120. [2008 c 6 § 627; 1961 c 2 § 3 (Initiative Measure No. 208, approved November 8, 1960).]

**Part headings not law—Severability—2008 c 6:** See RCW 26.60.900 and 26.60.901.

**64.28.040 Character of joint tenancy interests held by both spouses or both domestic partners.** (1) Joint tenancy interests held in the names of both spouses or both domestic partners, whether or not in conjunction with others, are presumed to be their community property, the same as other property held in the name of both spouses or both domestic partners. Any such interest passes to the survivor of the spouse or survivor of the domestic partner as provided for property held in joint tenancy, but in all other respects the interest is treated as community property.

(2) Either person in a marriage or either person in a state registered domestic partnership, or both, may sever a joint tenancy. When a joint tenancy is severed, the property, or proceeds of the property, shall be presumed to be their community property, whether it is held in the name of either spouse, or both, or in the name of either domestic partner, or both.

(3) This section applies as of January 1, 1985, to all existing or subsequently created joint tenancies. [2008 c 6 § 628; 1993 c 19 § 2; 1985 c 10 § 2. Prior: 1984 c 149 § 174.]

**Part headings not law—Severability—2008 c 6:** See RCW 26.60.900 and 26.60.901.

**Purpose—1985 c 10:** "The purpose of this act is to make technical corrections to chapter 149, Laws of 1984, and to ensure that the changes made in that chapter meet the constitutional requirements of Article II, section 19 of the state Constitution." [1985 c 10 § 1.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

## Chapter 64.32 RCW

### HORIZONTAL PROPERTY REGIMES ACT (CONDOMINIUMS)

#### Sections

64.32.010	Definitions.
64.32.020	Application of chapter.
64.32.030	Apartments and common areas declared real property.
64.32.040	Ownership and possession of apartments and common areas.
64.32.050	Common areas and facilities.
64.32.060	Compliance with covenants, bylaws and administrative rules and regulations.
64.32.070	Liens or encumbrances—Enforcement—Satisfaction.
64.32.080	Common profits and expenses.
64.32.090	Contents of declaration.
64.32.100	Copy of survey map, building plans to be filed—Contents of plans.
64.32.110	Ordinances, resolutions, or zoning laws—Construction.
64.32.120	Contents of deeds or other conveyances of apartments.
64.32.130	Mortgages, liens or encumbrances affecting an apartment at time of first conveyance.
64.32.140	Recording.
64.32.150	Removal of property from provisions of chapter.
64.32.160	Removal of property from provisions of chapter—No bar to subsequent resubmission.

64.32.170	Records and books—Availability for examination—Audits.
64.32.180	Exemption from liability for contribution for common expenses prohibited.
64.32.190	Separate assessments and taxation.
64.32.200	Assessments for common expenses—Enforcement of collection—Liens and foreclosures—Liability of mortgagee or purchaser.
64.32.210	Conveyance—Liability of grantor and grantee for unpaid common expenses.
64.32.220	Insurance.
64.32.230	Destruction or damage to all or part of property—Disposition.
64.32.240	Actions.
64.32.250	Application of chapter, declaration and bylaws.
64.32.900	Short title.
64.32.910	Construction of term "this chapter."
64.32.920	Severability—1963 c 156.

*Condominiums created after July 1, 1990: Chapter 64.34 RCW.*

*Conversion of apartments into condominiums, notice required: RCW 59.18.200.*

*Mutual savings banks, powers as to condominiums: RCW 32.04.025.*

*RCW 64.34.380 through 64.34.390 concerning reserve accounts and reserve studies applicable to residential condominiums governed by chapter 64.32 RCW: RCW 64.34.380(4).*

**64.32.010 Definitions.** As used in this chapter unless the context otherwise requires:

(1) "Apartment" means a part of the property intended for any type of independent use, including one or more rooms or spaces located on one or more floors (or part or parts thereof) in a building, or if not in a building, a separately delineated place of storage or moorage of a boat, plane, or motor vehicle, regardless of whether it is destined for a residence, an office, storage or moorage of a boat, plane, or motor vehicle, the operation of any industry or business, or for any other use not prohibited by law, and which has a direct exit to a public street or highway, or to a common area leading to such street or highway. The boundaries of an apartment located in a building are the interior surfaces of the perimeter walls, floors, ceilings, windows and doors thereof, and the apartment includes both the portions of the building so described and the air space so encompassed. If the apartment is a separately delineated place of storage or moorage of a boat, plane, or motor vehicle the boundaries are those specified in the declaration. In interpreting declarations, deeds, and plans, the existing physical boundaries of the apartment as originally constructed or as reconstructed in substantial accordance with the original plans thereof shall be conclusively presumed to be its boundaries rather than the metes and bounds expressed or depicted in the declaration, deed or plan, regardless of settling or lateral movement of the building and regardless of minor variance between boundaries shown in the declaration, deed, or plan and those of apartments in the building.

(2) "Apartment owner" means the person or persons owning an apartment, as herein defined, in fee simple absolute or qualified, by way of leasehold or by way of a periodic estate, or in any other manner in which real property may be owned, leased or possessed in this state, together with an undivided interest in a like estate of the common areas and facilities in the percentage specified and established in the declaration as duly recorded or as it may be lawfully amended.

(3) "Apartment number" means the number, letter, or combination thereof, designating the apartment in the declaration as duly recorded or as it may be lawfully amended.

(4) "Association of apartment owners" means all of the apartment owners acting as a group in accordance with the bylaws and with the declaration as it is duly recorded or as they may be lawfully amended.

(5) "Building" means a building, containing two or more apartments, or two or more buildings each containing one or more apartments, and comprising a part of the property.

(6) "Common areas and facilities", unless otherwise provided in the declaration as duly recorded or as it may be lawfully amended, includes:

(a) The land on which the building is located;

(b) The foundations, columns, girders, beams, supports, main walls, roofs, halls, corridors, lobbys, stairs, stairways, fire escapes, and entrances and exits of the building;

(c) The basements, yards, gardens, parking areas and storage spaces;

(d) The premises for the lodging of janitors or persons in charge of the property;

(e) The installations of central services such as power, light, gas, hot and cold water, heating, refrigeration, air conditioning and incinerating;

(f) The elevators, tanks, pumps, motors, fans, compressors, ducts and in general all apparatus and installations existing for common use;

(g) Such community and commercial facilities as may be provided for in the declaration as duly recorded or as it may be lawfully amended;

(h) All other parts of the property necessary or convenient to its existence, maintenance and safety, or normally in common use.

(7) "Common expenses" include:

(a) All sums lawfully assessed against the apartment owners by the association of apartment owners;

(b) Expenses of administration, maintenance, repair, or replacement of the common areas and facilities;

(c) Expenses agreed upon as common expenses by the association of apartment owners;

(d) Expenses declared common expenses by the provisions of this chapter, or by the declaration as it is duly recorded, or by the bylaws, or as they may be lawfully amended.

(8) "Common profits" means the balance of all income, rents, profits and revenues from the common areas and facilities remaining after the deduction of the common expenses.

(9) "Declaration" means the instrument by which the property is submitted to provisions of this chapter, as hereinafter provided, and as it may be, from time to time, lawfully amended.

(10) "Land" means the material of the earth, whatever may be the ingredients of which it is composed, whether soil, rock, or other substance, whether or not submerged, and includes free or occupied space for an indefinite distance upwards as well as downwards, subject to limitations upon the use of airspace imposed, and rights in the use of the airspace granted, by the laws of this state or of the United States.

(11) "Limited common areas and facilities" includes those common areas and facilities designated in the declaration, as it is duly recorded or as it may be lawfully amended, as reserved for use of certain apartment or apartments to the exclusion of the other apartments.

(12) "Majority" or "majority of apartment owners" means the apartment owners with fifty-one percent or more of the votes in accordance with the percentages assigned in the declaration, as duly recorded or as it may be lawfully amended, to the apartments for voting purposes.

(13) "Person" includes any individual, corporation, partnership, association, trustee, or other legal entity.

(14) "Property" means the land, the building, all improvements and structures thereon, all owned in fee simple absolute or qualified, by way of leasehold or by way of a periodic estate, or in any other manner in which real property may be owned, leased or possessed in this state, and all easements, rights and appurtenances belonging thereto, none of which shall be considered as a security or security interest, and all articles of personalty intended for use in connection therewith, which have been or are intended to be submitted to the provisions of this chapter.

(15) "Percent of the apartment owners" means the apartment owners with the stated percent or more of the votes in accordance with the percentages assigned in the declaration, as duly recorded or as it may be lawfully amended, to the apartments for voting purposes. [2008 c 114 § 3; 1987 c 383 § 1; 1981 c 304 § 34; 1965 ex.s. c 11 § 1; 1963 c 156 § 1.]

**Applicability of RCW 64.32.010(1) to houseboat moorages:** "The provisions of section 34 (1) shall not apply to moorages for houseboats without the approval of the local municipality." [1981 c 304 § 35.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**64.32.020 Application of chapter.** This chapter shall be applicable only to property, the sole owner or all of the owners, lessees or possessors of which submit the same to the provisions hereof by duly executing and recording a declaration as hereinafter provided. [1963 c 156 § 2.]

**64.32.030 Apartments and common areas declared real property.** Each apartment, together with its undivided interest in the common areas and facilities shall not be considered as an intangible or a security or any interest therein but shall for all purposes constitute and be classified as real property. [1963 c 156 § 3.]

**64.32.040 Ownership and possession of apartments and common areas.** Each apartment owner shall be entitled to the exclusive ownership and possession of his apartment but any apartment may be jointly or commonly owned by more than one person. Each apartment owner shall have the common right to a share, with other apartment owners, in the common areas and facilities. [1963 c 156 § 4.]

**64.32.050 Common areas and facilities.** (1) Each apartment owner shall be entitled to an undivided interest in the common areas and facilities in the percentage expressed in the declaration. Such percentage shall be computed by taking as a basis the value of the apartment in relation to the value of the property.

(2) The percentage of the undivided interest of each apartment owner in the common areas and facilities as expressed in the declaration shall not be altered except in accordance with procedures set forth in the bylaws and by amending the declaration. The percentage of the undivided interest in the common areas and facilities shall not be sepa-

rated from the apartment to which it appertains even though such interest is not expressly mentioned or described in the conveyance or other instrument. Nothing in this section or this chapter shall be construed to detract from or limit the powers and duties of any assessing or taxing unit or official which is otherwise granted or imposed by law, rule, or regulation.

(3) The common areas and facilities shall remain undivided and no apartment owner or any other person shall bring any action for partition or division of any part thereof, unless the property has been removed from the provisions of this chapter as provided in RCW 64.32.150 and 64.32.230. Any covenant to the contrary shall be void. Nothing in this chapter shall be construed as a limitation on the right of partition by joint owners or owners in common of one or more apartments as to the ownership of such apartment or apartments.

(4) Each apartment owner shall have a nonexclusive easement for, and may use the common areas and facilities in accordance with the purpose for which they were intended without hindering or encroaching upon the lawful right of the other apartment owners.

(5) The necessary work of maintenance, repair and replacement of the common areas and facilities and the making of any addition or improvement thereto shall be carried out only as provided in this chapter and in the bylaws.

(6) The association of apartment owners shall have the irrevocable right, to be exercised by the manager or board of directors, to have access to each apartment from time to time during reasonable hours as may be necessary for the maintenance, repair, or replacement of any of the common areas and facilities therein or accessible therefrom, or for making emergency repairs therein necessary to prevent damage to the common areas and facilities or to another apartment or apartments. [1965 ex.s. c 11 § 2; 1963 c 156 § 5.]

**64.32.060 Compliance with covenants, bylaws and administrative rules and regulations.** Each apartment owner shall comply strictly with the bylaws and with the administrative rules and regulations adopted pursuant thereto, as either may be lawfully amended from time to time, and with the covenants, conditions and restrictions set forth in the declaration or in the deed to his apartment. Failure to comply with any of the foregoing shall be ground for an action to recover sums due, for damages or injunctive relief, or both, maintainable by the manager or board of directors on behalf of the association of apartment owners or by a particularly aggrieved apartment owner. [1963 c 156 § 6.]

**64.32.070 Liens or encumbrances—Enforcement—Satisfaction.** (1) Subsequent to recording the declaration as provided in this chapter, and while the property remains subject to this chapter, no lien shall thereafter arise or be effective against the property. During such period, liens or encumbrances shall arise or be created only against each apartment and the percentage of undivided interest in the common areas and facilities and appurtenant to such apartment in the same manner and under the same conditions in every respect as liens or encumbrances may arise or be created upon or against any other separate parcel of real property subject to individual ownership: PROVIDED, That no labor performed

or materials furnished with the consent of or at the request of the owner of any apartment, or such owner's agent, contractor, or subcontractor, shall be the basis for the filing of a lien against any other apartment or any other property of any other apartment owner not expressly consenting to or requesting the same, except that such express consent shall be deemed to be given by any apartment owner in the case of emergency repairs. Labor performed or materials furnished for the common areas and facilities, if authorized by the association of apartment owners, the manager or board of directors shall be deemed to be performed or furnished with the express consent of each apartment owner and shall be the basis for the filing of a lien against each of the apartments and shall be subject to the provisions of subsection (2) of this section.

(2) In the event a lien against two or more apartments becomes effective, the apartment owners of the separate apartments may remove their apartment and the percentage of undivided interest in the common areas and facilities appurtenant to such apartment from the lien by payment of the fractional or proportional amounts attributable to each of the apartments affected. Such individual payments shall be computed by reference to the percentages appearing on the declaration. Subsequent to any such payment, discharge, or satisfaction, the apartment and the percentage of undivided interest in the common areas and facilities appurtenant thereto shall thereafter be free and clear of the liens so paid, satisfied, or discharged. Such partial payment, satisfaction, or discharge shall not prevent the lienor from proceeding to enforce his rights against any apartment and the percentage of undivided interest in the common areas and facilities appurtenant thereto not so paid, satisfied, or discharged. [1963 c 156 § 7.]

**64.32.080 Common profits and expenses.** The common profits of the property shall be distributed among, and the common expenses shall be charged to, the apartment owners according to the percentage of the undivided interest in the common areas and facilities. [1963 c 156 § 8.]

**64.32.090 Contents of declaration.** The declaration shall contain the following:

- (1) A description of the land on which the building and improvement are or are to be located;
- (2) A description of the building, stating the number of stories and basements, the number of apartments and the principal materials of which it is or is to be constructed;
- (3) The apartment number of each apartment, and a statement of its location, approximate area, number of rooms, and immediate common area to which it has access, and any other data necessary for its proper identification;
- (4) A description of the common areas and facilities;
- (5) A description of the limited common areas and facilities, if any, stating to which apartments their use is reserved;
- (6) The value of the property and of each apartment, and the percentage of undivided interest in the common areas and facilities appertaining to each apartment and its owner for all purposes, including voting;

(7) A statement of the purposes for which the building and each of the apartments are intended and restricted as to use;

(8) The name of a person to receive service of process in the cases provided for in this chapter, together with a residence or place of business of such person which shall be within the county in which the building is located;

(9) A provision as to the percentage of votes by the apartment owners which shall be determinative of whether to rebuild, repair, restore, or sell the property in event of damage or destruction of all or part of the property;

(10) A provision authorizing and establishing procedures for the subdividing and/or combining of any apartment or apartments, common areas and facilities or limited common areas and facilities, which procedures may provide for the accomplishment thereof through means of a metes and bounds description;

(11) A provision requiring the adoption of bylaws for the administration of the property or for other purposes not inconsistent with this chapter, which may include whether administration of the property shall be by a board of directors elected from among the apartment owners, by a manager, or managing agent, or otherwise, and the procedures for the adoption thereof and amendments thereto;

(12) Any further details in connection with the property which the person executing the declaration may deem desirable to set forth consistent with this chapter; and

(13) The method by which the declaration may be amended, consistent with this chapter: PROVIDED, That not less than sixty percent of the apartment owners shall consent to any amendment except that any amendment altering the value of the property and of each apartment and the percentage of undivided interest in the common areas and facilities shall require the unanimous consent of the apartment owners. [1963 c 156 § 9.]

**64.32.100 Copy of survey map, building plans to be filed—Contents of plans.** Simultaneously with the recording of the declaration there shall be filed in the office of the county auditor of the county in which the property is located a survey map of the surface of the land submitted to the provisions of this chapter showing the location or proposed location of the building or buildings thereon.

There also shall be filed simultaneously, a set of plans of the building or buildings showing as to each apartment:

(1) The vertical and horizontal boundaries, as defined in RCW 64.32.010(1), in sufficient detail to identify and locate such boundaries relative to the survey map of the surface of the land by the use of standard survey methods;

(2) The number of the apartment and its dimensions;

(3) The approximate square footage of each unit;

(4) The number of bathrooms, whole or partial;

(5) The number of rooms to be used primarily as bedrooms;

(6) The number of built-in fireplaces;

(7) A statement of any scenic view which might affect the value of the apartment; and

(8) The initial value of the apartment relative to the other apartments in the building.

The set of plans shall bear the verified statement of a registered architect, registered professional engineer, or regis-

(2010 Ed.)

tered land surveyor certifying that the plans accurately depict the location and dimensions of the apartments as built.

If such plans do not include such verified statement there shall be recorded prior to the first conveyance of any apartment an amendment to the declaration to which shall be attached a verified statement of a registered architect, registered professional engineer, or registered land surveyor, certifying that the plans theretofore filed or being filed simultaneously with such amendment, fully and accurately depict the apartment numbers, dimensions, and locations of the apartments as built.

Such plans shall each contain a reference to the date of recording of the declaration and the volume, page and county auditor's receiving number of the recorded declaration. Correspondingly, the record of the declaration or amendment thereof shall contain a reference to the file number of the plans of the building affected thereby.

All plans filed shall be in such style, size, form and quality as shall be prescribed by the county auditor of the county where filed, and a copy shall be delivered to the county assessor. [1987 c 383 § 2; 1965 ex.s. c 11 § 3; 1963 c 156 § 10.]

*Fees for filing condominium surveys, maps, or plats: RCW 58.24.070.*

**64.32.110 Ordinances, resolutions, or zoning laws—Construction.** Local ordinances, resolutions, or laws relating to zoning shall be construed to treat like structures, lots, or parcels in like manner regardless of whether the ownership thereof is divided by sale of apartments under this chapter rather than by lease of apartments. [1963 c 156 § 11.]

**64.32.120 Contents of deeds or other conveyances of apartments.** Deeds or other conveyances of apartments shall include the following:

(1) A description of the land as provided in RCW 64.32.090, or the post office address of the property, including in either case the date of recording of the declaration and the volume and page or county auditor's recording number of the recorded declaration;

(2) The apartment number of the apartment in the declaration and any other data necessary for its proper identification;

(3) A statement of the use for which the apartment is intended;

(4) The percentage of undivided interest appertaining to the apartment, the common areas and facilities and limited common areas and facilities appertaining thereto, if any;

(5) Any further details which the grantor and grantee may deem desirable to set forth consistent with the declaration and with this chapter. [1999 c 233 § 9; 1965 ex.s. c 11 § 4; 1963 c 156 § 12.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**64.32.130 Mortgages, liens or encumbrances affecting an apartment at time of first conveyance.** At the time of the first conveyance of each apartment, every mortgage, lien, or other encumbrance affecting such apartment, including the percentage of undivided interest of the apartment in the common areas and facilities, shall be paid and satisfied of record, or the apartment being conveyed and its percentage of undivided interest in the common areas and facilities shall be

released therefrom by partial release duly recorded. [1963 c 156 § 13.]

**64.32.140 Recording.** The declaration, any amendment thereto, any instrument by which the property may be removed from this chapter and every instrument affecting the property or any apartment shall be entitled to be recorded in the office of the auditor of the county in which the property is located. Neither the declaration nor any amendment thereof shall be valid unless duly recorded. [1963 c 156 § 14.]

**64.32.150 Removal of property from provisions of chapter.** (1) All of the apartment owners may remove a property from the provisions of this chapter by an instrument to that effect duly recorded: PROVIDED, That the mortgagees and holders of all liens affecting any of the apartments consent thereto or agree, in either case by instrument duly recorded, that their mortgages and liens be transferred to the percentage of the undivided interest of the apartment owner in the property as hereinafter provided;

(2) Upon removal of the property from the provisions of this chapter, the property shall be deemed to be owned in common by the apartment owners. The undivided interest in the property owned in common which shall appertain to each apartment owner shall be the percentage of the undivided interest previously owned by such owners in the common areas and facilities.

(3) Subject to RCW 64.34.010 (1) and (2) and the rights of mortgagees and the holders of all liens affecting any of the apartments, the apartment owners may remove a property from the provisions of this chapter and terminate the condominium in the manner set forth in RCW 64.34.268 (1) through (7) and (10), in which event all of the provisions of RCW 64.34.268 (1) through (7) and (10) shall apply to such removal in lieu of subsections (1) and (2) of this section. [2008 c 114 § 2; 1963 c 156 § 15.]

**64.32.160 Removal of property from provisions of chapter—No bar to subsequent resubmission.** The removal provided for in RCW 64.32.150 shall in no way bar the subsequent resubmission of the property to the provisions of this chapter. [1963 c 156 § 16.]

**64.32.170 Records and books—Availability for examination—Audits.** The manager or board of directors, as the case may be, shall keep complete and accurate books and records of the receipts and expenditures affecting the common areas and facilities, specifying and itemizing the maintenance and repair expenses of the common areas and facilities and any other expenses incurred. Such books and records and the vouchers authorizing payments shall be available for examination by the apartment owners, their agents or attorneys, at any reasonable time or times. All books and records shall be kept in accordance with good accounting procedures and be audited at least once a year by an auditor outside of the organization. [1965 ex.s. c 11 § 5; 1963 c 156 § 17.]

**64.32.180 Exemption from liability for contribution for common expenses prohibited.** No apartment owner

may exempt himself from liability for his contribution towards the common expenses by waiver of the use or enjoyment of any of the common areas and facilities or by abandonment of his apartment. [1963 c 156 § 18.]

**64.32.190 Separate assessments and taxation.** Each apartment and its undivided interest in the common areas and facilities shall be deemed to be a parcel and shall be subject to separate assessments and taxation by each assessing unit for all types of taxes authorized by law including but not limited to special ad valorem levies and special assessments. Neither the building, nor the property, nor any of the common areas and facilities shall be deemed to be a security or a parcel for any purpose. [1963 c 156 § 19.]

**64.32.200 Assessments for common expenses—Enforcement of collection—Liens and foreclosures—Liability of mortgagee or purchaser.** (1) The declaration may provide for the collection of all sums assessed by the association of apartment owners for the share of the common expenses chargeable to any apartment and the collection may be enforced in any manner provided in the declaration including but not limited to (a) ten days notice shall be given the delinquent apartment owner to the effect that unless such assessment is paid within ten days any or all utility services will be forthwith severed and shall remain severed until such assessment is paid, or (b) collection of such assessment may be made by such lawful method of enforcement, judicial or extra-judicial, as may be provided in the declaration and/or bylaws.

(2) All sums assessed by the association of apartment owners but unpaid for the share of the common expenses chargeable to any apartment shall constitute a lien on such apartment prior to all other liens except only (a) tax liens on the apartment in favor of any assessing unit and/or special district, and (b) all sums unpaid on all mortgages of record. Such lien is not subject to the ban against execution or forced sales of homesteads under RCW 6.13.080 and may be foreclosed by suit by the manager or board of directors, acting on behalf of the apartment owners, in like manner as a mortgage of real property. In any such foreclosure the apartment owner shall be required to pay a reasonable rental for the apartment, if so provided in the bylaws, and the plaintiff in such foreclosures shall be entitled to the appointment of a receiver to collect the same. The manager or board of directors, acting on behalf of the apartment owners, shall have power, unless prohibited by the declaration, to bid on the apartment at foreclosure sale, and to acquire and hold, lease, mortgage and convey the same. Upon an express waiver in the complaint of any right to a deficiency judgment, the period of redemption shall be eight months after the sale. Suit to recover any judgment for any unpaid common expenses shall be maintainable without foreclosing or waiving the liens securing the same.

(3) Where the mortgagee of a mortgage of record or other purchaser of an apartment obtains possession of the apartment as a result of foreclosure of the mortgage, such possessor, his successors and assigns shall not be liable for the share of the common expenses or assessments by the association of apartment owners chargeable to such apartment which became due prior to such possession. Such

unpaid share of common expenses of assessments shall be deemed to be common expenses collectible from all of the apartment owners including such possessor, his successors and assigns. [1988 c 192 § 2; 1965 ex.s. c 11 § 6; 1963 c 156 § 20.]

**64.32.210 Conveyance—Liability of grantor and grantee for unpaid common expenses.** In a voluntary conveyance the grantee of an apartment shall be jointly and severally liable with the grantor for all unpaid assessments against the latter for his share of the common expenses up to the time of the grantor's conveyance, without prejudice to the grantee's right to recover from the grantor the amounts paid by the grantee therefor. Any such grantee shall be entitled to a statement from the manager or board of directors, as the case may be, setting forth the amount of the unpaid assessments against the grantor and such grantee shall not be liable for, nor shall the apartment conveyed be subject to a lien for, any unpaid assessments against the grantor in excess of the amount therein set forth. [1963 c 156 § 21.]

**64.32.220 Insurance.** The manager or board of directors, if required by the declaration, bylaws, or by a majority of the apartment owners, or at the request of a mortgagee having a mortgage of record covering an apartment, shall obtain insurance for the property against loss or damage by fire and such other hazards under such terms and for such amounts as shall be required or requested. Such insurance coverage shall be written on the property in the name of the manager or of the board of directors of the association of apartment owners, as trustee for each of the apartment owners in the percentages established in the declaration. Premiums shall be common expenses. Provision for such insurance shall be without prejudice to the right of each apartment owner to insure his own apartment and/or the personal contents thereof for his benefit. [1963 c 156 § 22.]

**64.32.230 Destruction or damage to all or part of property—Disposition.** If, within ninety days of the date of damage or destruction to all or part of the property it is not determined by the apartment owners to repair, reconstruct, or rebuild in accordance with the original plan, or by a unanimous vote of all apartment owners to do otherwise, then and in that event:

(1) The property shall be owned in common by the apartment owners;

(2) The undivided interest in the property owned in common which appertains to each apartment owner shall be the percentage of undivided interest previously owned by such owner in the common areas and facilities;

(3) Any mortgages or liens affecting any of the apartments shall be deemed transferred in accordance with the existing priorities to the percentage of the undivided interest of the apartment owner in the property as provided herein; and

(4) The property shall be subject to an action for partition at the suit of any apartment owner, in which event the net proceeds of sale, together with the net proceeds of the insurance of the property, if any, shall be considered as one fund; such fund shall be divided into separate shares one for each apart-

ment owner in a percentage equal to the percentage of undivided interest owned by each such owner in the property; then, after first paying out of the respective share of each apartment owner, to the extent sufficient for the purpose, all mortgages and liens on the undivided interest in the property owned by such apartment owner, the balance remaining in each share shall then be distributed to each apartment owner respectively. [1965 ex.s. c 11 § 7; 1963 c 156 § 23.]

**64.32.240 Actions.** Without limiting the rights of any apartment owner, actions may be brought as provided by law and by the rules of court by the manager or board of directors, in either case in the discretion of the board of directors, on behalf of two or more of the apartment owners, as their respective interests may appear, with respect to any cause of action relating to the common areas and facilities or more than one apartment. Service of process on two or more apartment owners in any action relating to the common areas and facilities or more than one apartment may be made on the person designated in the declaration to receive service of process. Actions relating to the common areas and facilities for damages arising out of tortious conduct shall be maintained only against the association of apartment owners and any judgment lien or other charge resulting therefrom shall be deemed a common expense, which judgment lien or other charge shall be removed from any apartment and its percentage of undivided interest in the common areas and facilities upon payment by the respective owner of his proportionate share thereof based on the percentage of undivided interest owned by such apartment owner. [1963 c 156 § 24.]

**64.32.250 Application of chapter, declaration and bylaws.** (1) All apartment owners, tenants of such owners, employees of such owners and tenants, and any other person that may in any manner use the property or any part thereof submitted to the provisions of this chapter, shall be subject to this chapter and to the declaration and bylaws of the association of apartment owners adopted pursuant to the provisions of this chapter.

(2) All agreements, decisions and determinations made by the association of apartment owners under the provisions of this chapter, the declaration, or the bylaws and in accordance with the voting percentages established in this chapter, the declaration, or the bylaws, shall be deemed to be binding on all apartment owners. [1963 c 156 § 25.]

**64.32.900 Short title.** This chapter shall be known as the horizontal property regimes act. [1963 c 156 § 26.]

**64.32.910 Construction of term "this chapter."** The term "this chapter" means RCW 64.32.010 through 64.32.250 and 64.32.900 through 64.32.920, and as they may hereafter be amended or supplemented by subsequent legislation. [1963 c 156 § 27.]

**64.32.920 Severability—1963 c 156.** If any provision of this chapter, or its application to any person or circumstance is held invalid, the remainder of the chapter, or the application of the provisions to other persons or circumstances is not affected. [1963 c 156 § 28.]

**Chapter 64.34 RCW**  
**CONDOMINIUM ACT**

## Sections

ARTICLE 1  
GENERAL PROVISIONS

64.34.005	Findings—Intent—2004 c 201.
64.34.010	Applicability.
64.34.020	Definitions.
64.34.030	Variation by agreement.
64.34.040	Separate interests—Taxation.
64.34.050	Local ordinances, regulations, and building codes—Applicability.
64.34.060	Condemnation.
64.34.070	Law applicable—General principles.
64.34.073	Application of chapter 64.55 RCW.
64.34.080	Contracts—Unconscionability.
64.34.090	Obligation of good faith.
64.34.100	Remedies liberally administered.

ARTICLE 2  
CREATION, ALTERATION, AND TERMINATION  
OF CONDOMINIUMS

64.34.200	Creation of condominium.
64.34.202	Reservation of condominium name.
64.34.204	Unit boundaries.
64.34.208	Declaration and bylaws—Construction and validity.
64.34.212	Description of units.
64.34.216	Contents of declaration.
64.34.220	Leasehold condominiums.
64.34.224	Common element interests, votes, and expenses—Allocation.
64.34.228	Limited common elements.
64.34.232	Survey maps and plans.
64.34.236	Development rights.
64.34.240	Alterations of units.
64.34.244	Relocation of boundaries—Adjoining units.
64.34.248	Subdivision of units.
64.34.252	Monuments as boundaries.
64.34.256	Use by declarant.
64.34.260	Easement rights—Common elements.
64.34.264	Amendment of declaration.
64.34.268	Termination of condominium.
64.34.272	Rights of secured lenders.
64.34.276	Master associations.
64.34.278	Delegation of power to subassociations.
64.34.280	Merger or consolidation.

ARTICLE 3  
MANAGEMENT OF CONDOMINIUM

64.34.300	Unit owners' association—Organization.
64.34.304	Unit owners' association—Powers.
64.34.308	Board of directors and officers.
64.34.312	Control of association—Transfer.
64.34.316	Special declarant rights—Transfer.
64.34.320	Contracts and leases—Declarant—Termination.
64.34.324	Bylaws.
64.34.328	Upkeep of condominium.
64.34.332	Meetings.
64.34.336	Quorums.
64.34.340	Voting—Proxies.
64.34.344	Tort and contract liability.
64.34.348	Common elements—Conveyance—Encumbrance.
64.34.352	Insurance.
64.34.354	Insurance—Conveyance.
64.34.356	Surplus funds.
64.34.360	Common expenses—Assessments.
64.34.364	Lien for assessments.
64.34.368	Liens—General provisions.
64.34.372	Association records—Funds.
64.34.376	Association as trustee.
64.34.380	Reserve account—Reserve study—Annual update.
64.34.382	Reserve study—Contents.
64.34.384	Reserve account—Withdrawals.
64.34.386	Reserve study—Demand by owners—Study not timely prepared.
64.34.388	Reserve study—Decision making.
64.34.390	Reserve study—Reserve account—Immunity from liability.
64.34.392	Reserve account and study—Exemption—Disclosure.

ARTICLE 4  
PROTECTION OF CONDOMINIUM PURCHASERS

64.34.400	Applicability—Waiver.
64.34.405	Public offering statement—Requirements—Liability.
64.34.410	Public offering statement—General provisions.
64.34.415	Public offering statement—Conversion condominiums.
64.34.417	Public offering statement—Use of single disclosure document.
64.34.418	Public offering statement—Contract of sale—Restriction on interest conveyed.
64.34.420	Purchaser's right to cancel.
64.34.425	Resale of unit.
64.34.430	Escrow of deposits.
64.34.435	Release of liens—Conveyance.
64.34.440	Conversion condominiums—Notice—Tenants—Relocation assistance.
64.34.442	Conversion condominium projects—Report.
64.34.443	Express warranties of quality.
64.34.445	Implied warranties of quality—Breach.
64.34.450	Implied warranties of quality—Exclusion—Modification—Disclaimer—Express written warranty.
64.34.452	Warranties of quality—Breach—Actions for construction defect claims.
64.34.455	Effect of violations on rights of action—Attorney's fees.
64.34.460	Labeling of promotional material.
64.34.465	Improvements—Declarant's duties.

ARTICLE 5  
MISCELLANEOUS

64.34.900	Short title.
64.34.910	Section captions.
64.34.920	Severability—1989 c 43.
64.34.921	Severability—2004 c 201.
64.34.930	Effective date—1989 c 43.
64.34.931	Effective date—2004 c 201 §§ 1-13.
64.34.940	Construction against implicit repeal.
64.34.950	Uniformity of application and construction.

*Condominiums created prior to July 1, 1990: Chapter 64.32 RCW.*

ARTICLE 1  
GENERAL PROVISIONS

**64.34.005 Findings—Intent—2004 c 201.** (1) The legislature finds, declares, and determines that:

(a) Washington's cities and counties under the growth management act are required to encourage urban growth in urban growth areas at densities that accommodate twenty-year growth projections;

(b) The growth management act's planning goals include encouraging the availability of affordable housing for all residents of the state and promoting a variety of housing types;

(c) Quality condominium construction needs to be encouraged to achieve growth management act mandated urban densities and to ensure that residents of the state, particularly in urban growth areas, have a broad range of ownership choices.

(2) It is the intent of the legislature that limited changes be made to the condominium act to ensure that a broad range of affordable homeownership opportunities continue to be available to the residents of the state, and to assist cities' and counties' efforts to achieve the density mandates of the growth management act. [2004 c 201 § 1.]

**64.34.010 Applicability.** (1) This chapter applies to all condominiums created within this state after July 1, 1990. RCW 64.34.040 (separate titles and taxation), RCW 64.34.050 (applicability of local ordinances, regulations, and building codes), RCW 64.34.060 (condemnation), RCW 64.34.208 (construction and validity of declaration and bylaws), RCW 64.34.268 (1) through (7) and (10) (termina-

tion of condominium), RCW 64.34.212 (description of units), \*RCW 64.34.304(1)(a) through (f) and (k) through (r) (powers of unit owners' association), RCW 64.34.308(1) (board of directors and officers), RCW 64.34.340 (voting—proxies), RCW 64.34.344 (tort and contract liability), RCW 64.34.354 (notification on sale of unit), RCW 64.34.360(3) (common expenses—assessments), RCW 64.34.364 (lien for assessments), RCW 64.34.372 (association records), RCW 64.34.425 (resales of units), RCW 64.34.455 (effect of violation on rights of action; attorney's fees), RCW 64.34.380 through 34.34.390 (reserve studies and accounts), and RCW 64.34.020 (definitions) to the extent necessary in construing any of those sections, apply to all condominiums created in this state before July 1, 1990; but those sections apply only with respect to events and circumstances occurring after July 1, 1990, and do not invalidate or supersede existing, inconsistent provisions of the declaration, bylaws, or survey maps or plans of those condominiums.

(2) The provisions of chapter 64.32 RCW do not apply to condominiums created after July 1, 1990, and do not invalidate any amendment to the declaration, bylaws, and survey maps and plans of any condominium created before July 1, 1990, if the amendment would be permitted by this chapter. The amendment must be adopted in conformity with the procedures and requirements specified by those instruments and by chapter 64.32 RCW. If the amendment grants to any person any rights, powers, or privileges permitted by this chapter which are not otherwise provided for in the declaration or chapter 64.32 RCW, all correlative obligations, liabilities, and restrictions in this chapter also apply to that person.

(3) This chapter does not apply to condominiums or units located outside this state.

(4) RCW 64.34.400 (applicability—waiver), RCW 64.34.405 (liability for public offering statement requirements), RCW 64.34.410 (public offering statement—general provisions), RCW 64.34.415 (public offering statement—conversion condominiums), RCW 64.34.420 (purchaser's right to cancel), RCW 64.34.430 (escrow of deposits), RCW 64.34.440 (conversion condominiums—notice—tenants[-relocation assistance]), and RCW 64.34.455 (effect of violations on rights of action—attorney's fees) apply with respect to all sales of units pursuant to purchase agreements entered into after July 1, 1990, in condominiums created before July 1, 1990, in which as of July 1, 1990, the declarant or an affiliate of the declarant owns or had the right to create at least ten units constituting at least twenty percent of the units in the condominium. [2008 c 115 § 7; 2008 c 114 § 1; 1993 c 429 § 12; 1992 c 220 § 1; 1989 c 43 § 1-102.]

**Reviser's note:** \*(1) RCW 64.34.304 was amended by 2008 c 115 § 9, changing subsection (1)(q) and (r) to subsection (1)(s) and (t).

(2) This section was amended by 2008 c 114 § 1 and by 2008 c 115 § 7, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

**64.34.020 Definitions.** In the declaration and bylaws, unless specifically provided otherwise or the context requires otherwise, and in this chapter:

(1) "Affiliate" means any person who controls, is controlled by, or is under common control with the referenced person. A person "controls" another person if the person: (a)

Is a general partner, officer, director, or employer of the referenced person; (b) directly or indirectly or acting in concert with one or more other persons, or through one or more subsidiaries, owns, controls, holds with power to vote, or holds proxies representing, more than twenty percent of the voting interest in the referenced person; (c) controls in any manner the election of a majority of the directors of the referenced person; or (d) has contributed more than twenty percent of the capital of the referenced person. A person "is controlled by" another person if the other person: (i) Is a general partner, officer, director, or employer of the person; (ii) directly or indirectly or acting in concert with one or more other persons, or through one or more subsidiaries, owns, controls, holds with power to vote, or holds proxies representing, more than twenty percent of the voting interest in the person; (iii) controls in any manner the election of a majority of the directors of the person; or (iv) has contributed more than twenty percent of the capital of the person. Control does not exist if the powers described in this subsection are held solely as security for an obligation and are not exercised.

(2) "Allocated interests" means the undivided interest in the common elements, the common expense liability, and votes in the association allocated to each unit.

(3) "Assessment" means all sums chargeable by the association against a unit including, without limitation: (a) Regular and special assessments for common expenses, charges, and fines imposed by the association; (b) interest and late charges on any delinquent account; and (c) costs of collection, including reasonable attorneys' fees, incurred by the association in connection with the collection of a delinquent owner's account.

(4) "Association" or "unit owners' association" means the unit owners' association organized under RCW 64.34.300.

(5) "Board of directors" means the body, regardless of name, with primary authority to manage the affairs of the association.

(6) "Common elements" means all portions of a condominium other than the units.

(7) "Common expenses" means expenditures made by or financial liabilities of the association, together with any allocations to reserves.

(8) "Common expense liability" means the liability for common expenses allocated to each unit pursuant to RCW 64.34.224.

(9) "Condominium" means real property, portions of which are designated for separate ownership and the remainder of which is designated for common ownership solely by the owners of those portions. Real property is not a condominium unless the undivided interests in the common elements are vested in the unit owners, and unless a declaration and a survey map and plans have been recorded pursuant to this chapter.

(10) "Contribution rate" means, in a reserve study as described in RCW 64.34.380, the amount contributed to the reserve account so that the association will have cash reserves to pay major maintenance, repair, or replacement costs without the need of a special assessment.

(11) "Conversion condominium" means a condominium (a) that at any time before creation of the condominium was lawfully occupied wholly or partially by a tenant or subtenant

for residential purposes pursuant to a rental agreement, oral or written, express or implied, for which the tenant or subtenant had not received the notice described in (b) of this subsection; or (b) that, at any time within twelve months before the conveyance of, or acceptance of an agreement to convey, any unit therein other than to a declarant or any affiliate of a declarant, was lawfully occupied wholly or partially by a residential tenant of a declarant or an affiliate of a declarant and such tenant was not notified in writing, prior to lawfully occupying a unit or executing a rental agreement, whichever event first occurs, that the unit was part of a condominium and subject to sale. "Conversion condominium" shall not include a condominium in which, before July 1, 1990, any unit therein had been conveyed or been made subject to an agreement to convey to any transferee other than a declarant or an affiliate of a declarant.

(12) "Conveyance" means any transfer of the ownership of a unit, including a transfer by deed or by real estate contract and, with respect to a unit in a leasehold condominium, a transfer by lease or assignment thereof, but shall not include a transfer solely for security.

(13) "Dealer" means a person who, together with such person's affiliates, owns or has a right to acquire either six or more units in a condominium or fifty percent or more of the units in a condominium containing more than two units.

(14) "Declarant" means:

(a) Any person who executes as declarant a declaration as defined in subsection (16) of this section; or

(b) Any person who reserves any special declarant right in the declaration; or

(c) Any person who exercises special declarant rights or to whom special declarant rights are transferred; or

(d) Any person who is the owner of a fee interest in the real property which is subjected to the declaration at the time of the recording of an instrument pursuant to RCW 64.34.316 and who directly or through one or more affiliates is materially involved in the construction, marketing, or sale of units in the condominium created by the recording of the instrument.

(15) "Declarant control" means the right of the declarant or persons designated by the declarant to appoint and remove officers and members of the board of directors, or to veto or approve a proposed action of the board or association, pursuant to RCW 64.34.308 (4) or (5).

(16) "Declaration" means the document, however denominated, that creates a condominium by setting forth the information required by RCW 64.34.216 and any amendments to that document.

(17) "Development rights" means any right or combination of rights reserved by a declarant in the declaration to: (a) Add real property or improvements to a condominium; (b) create units, common elements, or limited common elements within real property included or added to a condominium; (c) subdivide units or convert units into common elements; (d) withdraw real property from a condominium; or (e) reallocate limited common elements with respect to units that have not been conveyed by the declarant.

(18) "Dispose" or "disposition" means a voluntary transfer or conveyance to a purchaser or lessee of any legal or equitable interest in a unit, but does not include the transfer or release of a security interest.

(19) "Effective age" means the difference between useful life and remaining useful life.

(20) "Eligible mortgagee" means the holder of a mortgage on a unit that has filed with the secretary of the association a written request that it be given copies of notices of any action by the association that requires the consent of mortgagees.

(21) "Foreclosure" means a forfeiture or judicial or non-judicial foreclosure of a mortgage or a deed in lieu thereof.

(22) "Fully funded balance" means the value of the deteriorated portion of all the reserve components. The fully funded balance for each reserve component is calculated by multiplying the current replacement cost of that reserve component by its effective age, then dividing the result by that reserve component's useful life. The sum total of all reserve components' fully funded balances is the association's fully funded balance.

(23) "Identifying number" means the designation of each unit in a condominium.

(24) "Leasehold condominium" means a condominium in which all or a portion of the real property is subject to a lease, the expiration or termination of which will terminate the condominium or reduce its size.

(25) "Limited common element" means a portion of the common elements allocated by the declaration or by operation of RCW 64.34.204 (2) or (4) for the exclusive use of one or more but fewer than all of the units.

(26) "Master association" means an organization described in RCW 64.34.276, whether or not it is also an association described in RCW 64.34.300.

(27) "Mortgage" means a mortgage, deed of trust or real estate contract.

(28) "Person" means a natural person, corporation, partnership, limited partnership, trust, governmental subdivision or agency, or other legal entity.

(29) "Purchaser" means any person, other than a declarant or a dealer, who by means of a disposition acquires a legal or equitable interest in a unit other than (a) a leasehold interest, including renewal options, of less than twenty years at the time of creation of the unit, or (b) as security for an obligation.

(30) "Real property" means any fee, leasehold or other estate or interest in, over, or under land, including structures, fixtures, and other improvements thereon and easements, rights and interests appurtenant thereto which by custom, usage, or law pass with a conveyance of land although not described in the contract of sale or instrument of conveyance. "Real property" includes parcels, with or without upper or lower boundaries, and spaces that may be filled with air or water.

(31) "Remaining useful life" means the estimated time, in years, that a reserve component can be expected to continue to serve its intended function.

(32) "Replacement cost" means the current cost of replacing, repairing, or restoring a reserve component to its original functional condition.

(33) "Residential purposes" means use for dwelling or recreational purposes, or both.

(34) "Reserve components" means common elements whose cost of maintenance, repair, or replacement is infre-

quent, significant, and impractical to include in an annual budget.

(35) "Reserve study professional" means an independent person suitably qualified by knowledge, skill, experience, training, or education to prepare a reserve study in accordance with RCW 64.34.380 and 64.34.382.

(36) "Special declarant rights" means rights reserved for the benefit of a declarant to: (a) Complete improvements indicated on survey maps and plans filed with the declaration under RCW 64.34.232; (b) exercise any development right under RCW 64.34.236; (c) maintain sales offices, management offices, signs advertising the condominium, and models under RCW 64.34.256; (d) use easements through the common elements for the purpose of making improvements within the condominium or within real property which may be added to the condominium under RCW 64.34.260; (e) make the condominium part of a larger condominium or a development under RCW 64.34.280; (f) make the condominium subject to a master association under RCW 64.34.276; or (g) appoint or remove any officer of the association or any master association or any member of the board of directors, or to veto or approve a proposed action of the board or association, during any period of declarant control under RCW 64.34.308(4).

(37) "Timeshare" shall have the meaning specified in the timeshare act, RCW 64.36.010(11).

(38) "Unit" means a physical portion of the condominium designated for separate ownership, the boundaries of which are described pursuant to RCW 64.34.216(1)(d). "Separate ownership" includes leasing a unit in a leasehold condominium under a lease that expires contemporaneously with any lease, the expiration or termination of which will remove the unit from the condominium.

(39) "Unit owner" means a declarant or other person who owns a unit or leases a unit in a leasehold condominium under a lease that expires simultaneously with any lease, the expiration or termination of which will remove the unit from the condominium, but does not include a person who has an interest in a unit solely as security for an obligation. "Unit owner" means the vendee, not the vendor, of a unit under a real estate contract.

(40) "Useful life" means the estimated time, in years, that a reserve component can be expected to serve its intended function. [2008 c 115 § 8; 2004 c 201 § 9; 1992 c 220 § 2; 1990 c 166 § 1; 1989 c 43 § 1-103.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**64.34.030 Variation by agreement.** Except as expressly provided in this chapter, provisions of this chapter may not be varied by agreement, and rights conferred by this chapter may not be waived. A declarant may not act under a power of attorney or use any other device to evade the limitations or prohibitions of this chapter or the declaration. [1989 c 43 § 1-104.]

**64.34.040 Separate interests—Taxation.** (1) If there is any unit owner other than a declarant, each unit that has been created, together with its interest in the common elements, constitutes for all purposes a separate parcel of real property.

(2) If there is any unit owner other than a declarant, each unit together with its interest in the common elements must be separately taxed and assessed.

(3) If a development right has an ascertainable market value, the development right shall constitute a separate parcel of real property for property tax purposes and must be separately taxed and assessed to the declarant.

(4) If there is no unit owner other than a declarant, the real property comprising the condominium may be taxed and assessed in any manner provided by law. [1992 c 220 § 3; 1989 c 43 § 1-105.]

**64.34.050 Local ordinances, regulations, and building codes—Applicability.** (1) A zoning, subdivision, building code, or other real property law, ordinance, or regulation may not prohibit the condominium form of ownership or impose any requirement upon a condominium which it would not impose upon a physically identical development under a different form of ownership. Otherwise, no provision of this chapter invalidates or modifies any provision of any zoning, subdivision, building code, or other real property use law, ordinance, or regulation.

(2) This section shall not prohibit a county legislative authority from requiring the review and approval of declarations and amendments thereto and termination agreements executed pursuant to RCW 64.34.268(2) by the county assessor solely for the purpose of allocating the assessed value and property taxes. The review by the assessor shall be done in a reasonable and timely manner. [1989 c 43 § 1-106.]

**64.34.060 Condemnation.** (1) If a unit is acquired by condemnation, or if part of a unit is acquired by condemnation leaving the unit owner with a remnant of a unit which may not practically or lawfully be used for any purpose permitted by the declaration, the award must compensate the unit owner for the owner's unit and its appurtenant interest in the common elements, whether or not any common elements are acquired. Upon acquisition, unless the decree otherwise provides, that unit's allocated interests are automatically reallocated to the remaining units in proportion to the respective allocated interests of those units before the taking, and the association shall promptly prepare, execute, and record an amendment to the declaration reflecting the reallocations. Any remnant of a unit remaining after part of a unit is taken under this subsection is thereafter a common element.

(2) Except as provided in subsection (1) of this section, if part of a unit is acquired by condemnation, the award must compensate the unit owner for the reduction in value of the unit and its appurtenant interest in the common elements, whether or not any common elements are acquired. Upon acquisition, unless the decree otherwise provides: (a) That unit's allocated interests are reduced in proportion to the reduction in the size of the unit, or on any other basis specified in the declaration; and (b) the portion of the allocated interests divested from the partially acquired unit are automatically reallocated to that unit and the remaining units in proportion to the respective allocated interests of those units before the taking, with the partially acquired unit participating in the reallocation on the basis of its reduced allocated interests.

(3) If part of the common elements is acquired by condemnation the portion of the award attributable to the common elements taken shall be paid to the owners based on their respective interests in the common elements unless the declaration provides otherwise. Unless the declaration provides otherwise, any portion of the award attributable to the acquisition of a limited common element must be equally divided among the owners of the units to which that limited common element was allocated at the time of acquisition.

(4) The court judgment shall be recorded in every county in which any portion of the condominium is located.

(5) Should the association not act, based on a right reserved to the association in the declaration, on the owners' behalf in a condemnation process, the affected owners may individually or jointly act on their own behalf. [1989 c 43 § 1-107.]

**64.34.070 Law applicable—General principles.** The principles of law and equity, including the law of corporations and unincorporated associations, the law of real property, and the law relative to capacity to contract, principal and agent, condemnation, estoppel, fraud, misrepresentation, duress, coercion, mistake, receivership, substantial performance, or other validating or invalidating cause supplement the provisions of this chapter, except to the extent inconsistent with this chapter. [1989 c 43 § 1-108.]

**64.34.073 Application of chapter 64.55 RCW.** Chapter 64.55 RCW includes requirements for: The inspection of the building enclosures of multiunit residential buildings, as defined in RCW 64.55.010, which includes condominiums and conversion condominiums; for provision of inspection and repair reports; and for the resolution of implied or express warranty disputes under chapter 64.34 RCW. [2005 c 456 § 21.]

**Captions not law—Effective date—2005 c 456:** See RCW 64.55.900 and 64.55.901.

**64.34.080 Contracts—Unconscionability.** (1) The court, upon finding as a matter of law that a contract or contract clause was unconscionable at the time the contract was made, may refuse to enforce the contract, enforce the remainder of the contract without the unconscionable clause, or limit the application of any unconscionable clause in order to avoid an unconscionable result.

(2) Whenever it is claimed, or appears to the court, that a contract or any contract clause is or may be unconscionable, the parties, in order to aid the court in making the determination, shall be afforded a reasonable opportunity to present evidence as to:

(a) The commercial setting of the negotiations;

(b) Whether a party has knowingly taken advantage of the inability of the other party reasonably to protect his or her interests by reason of physical or mental infirmity, illiteracy, or inability to understand the language of the agreement or similar factors;

(c) The effect and purpose of the contract or clause; and

(d) If a sale, any gross disparity at the time of contracting between the amount charged for the real property and the value of the real property measured by the price at which sim-

ilar real property was readily obtainable in similar transactions, but a disparity between the contract price and the value of the real property measured by the price at which similar real property was readily obtainable in similar transactions does not, of itself, render the contract unconscionable. [1989 c 43 § 1-111.]

**64.34.090 Obligation of good faith.** Every contract or duty governed by this chapter imposes an obligation of good faith in its performance or enforcement. [1989 c 43 § 1-112.]

**64.34.100 Remedies liberally administered.** (1) The remedies provided by this chapter shall be liberally administered to the end that the aggrieved party is put in as good a position as if the other party had fully performed. However, consequential, special, or punitive damages may not be awarded except as specifically provided in this chapter or by other rule of law.

(2) Except as otherwise provided in RCW 64.55.100 through 64.55.160 or chapter 64.35 RCW, any right or obligation declared by this chapter is enforceable by judicial proceeding. The arbitration proceedings provided for in RCW 64.55.100 through 64.55.160 shall be considered judicial proceedings for the purposes of this chapter. [2005 c 456 § 20; 2004 c 201 § 2; 1989 c 43 § 1-113.]

**Captions not law—Effective date—2005 c 456:** See RCW 64.55.900 and 64.55.901.

## ARTICLE 2 CREATION, ALTERATION, AND TERMINATION OF CONDOMINIUMS

**64.34.200 Creation of condominium.** (1) A condominium may be created pursuant to this chapter only by recording a declaration executed by the owner of the interest subject to this chapter in the same manner as a deed and by simultaneously recording a survey map and plans pursuant to RCW 64.34.232. The declaration and survey map and plans must be recorded in every county in which any portion of the condominium is located, and the condominium shall not have the same name as any other existing condominium, whether created under this chapter or under chapter 64.32 RCW, in any county in which the condominium is located.

(2) A declaration or an amendment to a declaration adding units to a condominium may not be recorded unless (a) all structural components and mechanical systems of all buildings containing or comprising any units thereby created are substantially completed as evidenced by a recorded certificate of completion executed by the declarant which certificate may be included in the declaration or the amendment, the survey map and plans to be recorded pursuant to RCW 64.34.232, or a separately recorded written instrument, and (b) all horizontal and vertical boundaries of such units are substantially completed in accordance with the plans required to be recorded by RCW 64.34.232, as evidenced by a recorded certificate of completion executed by a licensed surveyor. [1992 c 220 § 4; 1990 c 166 § 2; 1989 c 43 § 2-101.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**64.34.202 Reservation of condominium name.** Upon the filing of a written request with the county office in which the declaration is to be recorded, using such form of written request as may be required by the county office and paying such fee as the county office may establish not in excess of fifty dollars, a person may reserve the exclusive right to use a particular name for a condominium to be created in that county. The name being reserved shall not be identical to any other condominium or subdivision plat located in that county, and such name reservation shall automatically lapse unless within three hundred sixty-five days from the date on which the name reservation is filed the person reserving that name either records a declaration using the reserved name or files a new name reservation request. [1992 c 220 § 5.]

**64.34.204 Unit boundaries.** Except as provided by the declaration:

(1) The walls, floors, or ceilings are the boundaries of a unit, and all lath, furring, wallboard, plasterboard, plaster, paneling, tiles, wallpaper, paint, finished flooring, and any other materials constituting any part of the finished surfaces thereof are a part of the unit, and all other portions of the walls, floors, or ceilings are a part of the common elements.

(2) If any chute, flue, duct, wire, conduit, bearing wall, bearing column, or any other fixture lies partially within and partially outside the designated boundaries of a unit, any portion thereof serving only that unit is a limited common element allocated solely to that unit, and any portion thereof serving more than one unit or any portion of the common elements is a part of the common elements.

(3) Subject to the provisions of subsection (2) of this section, all spaces, interior partitions, and other fixtures and improvements within the boundaries of a unit are a part of the unit.

(4) Any shutters, awnings, window boxes, doorsteps, stoops, porches, balconies, patios, and all exterior doors and windows or other fixtures designed to serve a single unit, but which are located outside the unit's boundaries, are limited common elements allocated exclusively to that unit. [1992 c 220 § 6; 1989 c 43 § 2-102.]

**64.34.208 Declaration and bylaws—Construction and validity.** (1) All provisions of the declaration and bylaws are severable.

(2) The rule against perpetuities may not be applied to defeat any provision of the declaration, bylaws, rules, or regulations adopted pursuant to RCW 64.34.304(1)(a).

(3) In the event of a conflict between the provisions of the declaration and the bylaws, the declaration prevails except to the extent the declaration is inconsistent with this chapter.

(4) The creation of a condominium shall not be impaired and title to a unit and common elements shall not be rendered unmarketable or otherwise affected by reason of an insignificant failure of the declaration or survey map and plans or any amendment thereto to comply with this chapter. Whether a significant failure impairs marketability shall not be determined by this chapter. [1989 c 43 § 2-103.]

**64.34.212 Description of units.** A description of a unit which sets forth the name of the condominium, the recording

number for the declaration, the county in which the condominium is located, and the identifying number of the unit is a sufficient legal description of that unit and all rights, obligations, and interests appurtenant to that unit which were created by the declaration or bylaws. [1989 c 43 § 2-104.]

**64.34.216 Contents of declaration.** (1) The declaration for a condominium must contain:

(a) The name of the condominium, which must include the word "condominium" or be followed by the words "a condominium," and the name of the association;

(b) A legal description of the real property included in the condominium;

(c) A statement of the number of units which the declarant has created and, if the declarant has reserved the right to create additional units, the number of such additional units;

(d) The identifying number of each unit created by the declaration and a description of the boundaries of each unit if and to the extent they are different from the boundaries stated in RCW 64.34.204(1);

(e) With respect to each existing unit:

(i) The approximate square footage;

(ii) The number of bathrooms, whole or partial;

(iii) The number of rooms designated primarily as bedrooms;

(iv) The number of built-in fireplaces; and

(v) The level or levels on which each unit is located.

The data described in (ii), (iii), and (iv) of this subsection (1)(e) may be omitted with respect to units restricted to non-residential use;

(f) The number of parking spaces and whether covered, uncovered, or enclosed;

(g) The number of moorage slips, if any;

(h) A description of any limited common elements, other than those specified in RCW 64.34.204 (2) and (4), as provided in RCW 64.34.232(2)(j);

(i) A description of any real property which may be allocated subsequently by the declarant as limited common elements, other than limited common elements specified in RCW 64.34.204 (2) and (4), together with a statement that they may be so allocated;

(j) A description of any development rights and other special declarant rights under \*RCW 64.34.020(29) reserved by the declarant, together with a description of the real property to which the development rights apply, and a time limit within which each of those rights must be exercised;

(k) If any development right may be exercised with respect to different parcels of real property at different times, a statement to that effect together with: (i) Either a statement fixing the boundaries of those portions and regulating the order in which those portions may be subjected to the exercise of each development right, or a statement that no assurances are made in those regards; and (ii) a statement as to whether, if any development right is exercised in any portion of the real property subject to that development right, that development right must be exercised in all or in any other portion of the remainder of that real property;

(l) Any other conditions or limitations under which the rights described in (j) of this subsection may be exercised or will lapse;

(m) An allocation to each unit of the allocated interests in the manner described in RCW 64.34.224;

(n) Any restrictions in the declaration on use, occupancy, or alienation of the units;

(o) A cross-reference by recording number to the survey map and plans for the units created by the declaration; and

(p) All matters required or permitted by RCW 64.34.220 through 64.34.232, 64.34.256, 64.34.260, 64.34.276, and 64.34.308(4).

(2) All amendments to the declaration shall contain a cross-reference by recording number to the declaration and to any prior amendments thereto. All amendments to the declaration adding units shall contain a cross-reference by recording number to the survey map and plans relating to the added units and set forth all information required by RCW 64.34.216(1) with respect to the added units.

(3) The declaration may contain any other matters the declarant deems appropriate. [1992 c 220 § 7; 1989 c 43 § 2-105.]

**\*Reviser's note:** RCW 64.34.020 was amended by 2008 c 115 § 8, changing subsection (29) to subsection (36).

**64.34.220 Leasehold condominiums.** (1) Any lease, the expiration or termination of which may terminate the condominium or reduce its size, or a memorandum thereof, shall be recorded. Every lessor of those leases must sign the declaration, and the declaration shall state:

(a) The recording number of the lease or a statement of where the complete lease may be inspected;

(b) The date on which the lease is scheduled to expire;

(c) A legal description of the real property subject to the lease;

(d) Any right of the unit owners to redeem the reversion and the manner whereby those rights may be exercised, or a statement that they do not have those rights;

(e) Any right of the unit owners to remove any improvements within a reasonable time after the expiration or termination of the lease, or a statement that they do not have those rights; and

(f) Any rights of the unit owners to renew the lease and the conditions of any renewal, or a statement that they do not have those rights.

(2) The declaration may provide for the collection by the association of the proportionate rents paid on the lease by the unit owners and may designate the association as the representative of the unit owners on all matters relating to the lease.

(3) If the declaration does not provide for the collection of rents by the association, the lessor may not terminate the interest of a unit owner who makes timely payment of the owner's share of the rent and otherwise complies with all covenants other than the payment of rent which, if violated, would entitle the lessor to terminate the lease.

(4) Acquisition of the leasehold interest of any unit owner by the owner of the reversion or remainder does not merge the leasehold and fee simple interests unless the leasehold interests of all unit owners subject to that reversion or remainder are acquired and the owner thereof records a document confirming the merger.

(5) If the expiration or termination of a lease decreases the number of units in a condominium, the allocated interests

shall be reallocated in accordance with RCW 64.34.060(1) as though those units had been taken by condemnation. Reallocations shall be confirmed by an amendment to the declaration and survey map and plans prepared, executed, and recorded by the association. [1989 c 43 § 2-106.]

**64.34.224 Common element interests, votes, and expenses—Allocation.** (1) The declaration shall allocate a fraction or percentage of undivided interests in the common elements and in the common expenses of the association, and a portion of the votes in the association, to each unit and state the formulas or methods used to establish those allocations. Those allocations may not discriminate in favor of units owned by the declarant or an affiliate of the declarant.

(2) If units may be added to or withdrawn from the condominium, the declaration shall state the formulas or methods to be used to reallocate the allocated interests among all units included in the condominium after the addition or withdrawal.

(3) The declaration may provide: (a) For cumulative voting only for the purpose of electing members of the board of directors; and (b) for class voting on specified issues affecting the class if necessary to protect valid interests of the class. A declarant may not utilize cumulative or class voting for the purpose of evading any limitation imposed on declarants by this chapter, nor may units constitute a class because they are owned by a declarant.

(4) Except for minor variations due to rounding, the sum of the undivided interests in the common elements and common expense liabilities allocated at any time to all the units must each equal one if stated as fractions or one hundred percent if stated as percentages. In the event of discrepancy between an allocated interest and the result derived from application of the pertinent formula, the allocated interest prevails.

(5) Except where permitted by other sections of this chapter, the common elements are not subject to partition, and any purported conveyance, encumbrance, judicial sale, or other voluntary or involuntary transfer of an undivided interest in the common elements made without the unit to which that interest is allocated is void. [1992 c 220 § 8; 1989 c 43 § 2-107.]

**64.34.228 Limited common elements.** (1) Except for the limited common elements described in RCW 64.34.204 (2) and (4), the declaration shall specify to which unit or units each limited common element is allocated.

(2) Except in the case of a reallocation being made by a declarant pursuant to a development right reserved in the declaration, a limited common element may only be reallocated between units with the approval of the board of directors and by an amendment to the declaration executed by the owners of the units to which the limited common element was and will be allocated. The board of directors shall approve the request of the owner or owners under this subsection within thirty days, or within such other period provided by the declaration, unless the proposed reallocation does not comply with this chapter or the declaration. The failure of the board of directors to act upon a request within such period shall be

deemed approval thereof. The amendment shall be recorded in the names of the parties and of the condominium.

(3) Unless otherwise provided in the declaration, the owners of units to which at least sixty-seven percent of the votes are allocated, including the owner of the unit to which the limited common element will be assigned or incorporated, must agree to reallocate a common element as a limited common element or to incorporate a common element or a limited common element into an existing unit. Such reallocation or incorporation shall be reflected in an amendment to the declaration, survey map, or plans. [1992 c 220 § 9; 1989 c 43 § 2-108.]

**64.34.232 Survey maps and plans.** (1) A survey map and plans executed by the declarant shall be recorded simultaneously with, and contain cross-references by recording number to, the declaration and any amendments. The survey map and plans must be clear and legible and contain a certification by the person making the survey or the plans that all information required by this section is supplied. All plans filed shall be in such style, size, form and quality as shall be prescribed by the recording authority of the county where filed, and a copy shall be delivered to the county assessor.

(2) Each survey map shall show or state:

(a) The name of the condominium and a legal description and a survey of the land in the condominium and of any land that may be added to the condominium;

(b) The boundaries of all land not subject to development rights, or subject only to the development right to withdraw, and the location and dimensions of all existing buildings containing units on that land;

(c) The boundaries of any land subject to development rights, labeled "SUBJECT TO DEVELOPMENT RIGHTS SET FORTH IN THE DECLARATION"; any land that may be added to the condominium shall also be labeled "MAY BE ADDED TO THE CONDOMINIUM"; any land that may be withdrawn from the condominium shall also be labeled "MAY BE WITHDRAWN FROM THE CONDOMINIUM";

(d) The extent of any encroachments by or upon any portion of the condominium;

(e) To the extent feasible, the location and dimensions of all recorded easements serving or burdening any portion of the condominium and any unrecorded easements of which a surveyor knows or reasonably should have known, based on standard industry practices, while conducting the survey;

(f) Subject to the provisions of subsection (8) of this section, the location and dimensions of any vertical unit boundaries not shown or projected on plans recorded under subsection (4) of this section and that unit's identifying number;

(g) The location with reference to an established datum of any horizontal unit boundaries not shown or projected on plans recorded under subsection (4) of this section and that unit's identifying number;

(h) The location and dimensions of any real property in which the unit owners will own only an estate for years, labeled as "leasehold real property";

(i) The distance between any noncontiguous parcels of real property comprising the condominium;

(j) The general location of any existing principal common amenities listed in a public offering statement under RCW 64.34.410(1)(j) and any limited common elements,

including limited common element porches, balconies, patios, parking spaces, and storage facilities, but not including the other limited common elements described in RCW 64.34.204 (2) and (4);

(k) In the case of real property not subject to development rights, all other matters customarily shown on land surveys.

(3) A survey map may also show the intended location and dimensions of any contemplated improvement to be constructed anywhere within the condominium. Any contemplated improvement shown must be labeled either "MUST BE BUILT" or "NEED NOT BE BUILT."

(4) To the extent not shown or projected on the survey map, plans of the existing units must show or project:

(a) Subject to the provisions of subsection (8) of this section, the location and dimensions of the vertical boundaries of each unit, and that unit's identifying number;

(b) Any horizontal unit boundaries, with reference to an established datum, and that unit's identifying number; and

(c) Any units in which the declarant has reserved the right to create additional units or common elements under RCW 64.34.236(3), identified appropriately.

(5) Unless the declaration provides otherwise, the horizontal boundaries of part of a unit located outside of a building have the same elevation as the horizontal boundaries of the inside part and in such case need not be depicted on the survey map and plans.

(6) Upon exercising any development right, the declarant shall record either a new survey map and plans necessary to conform to the requirements of subsections (1), (2), and (3) of this section or new certifications of a survey map and plans previously recorded if the documents otherwise conform to the requirements of those subsections.

(7) Any survey map, plan, or certification required by this section shall be made by a licensed surveyor.

(8) In showing or projecting the location and dimensions of the vertical boundaries of a unit under subsections (2)(f) and (4)(a) of this section, it is not necessary to show the thickness of the walls constituting the vertical boundaries or otherwise show the distance of those vertical boundaries either from the exterior surface of the building containing that unit or from adjacent vertical boundaries of other units if: (a) The walls are designated to be the vertical boundaries of that unit; (b) the unit is located within a building, the location and dimensions of the building having been shown on the survey map under subsection (2)(b) of this section; and (c) the graphic general location of the vertical boundaries are shown in relation to the exterior surfaces of that building and to the vertical boundaries of other units within that building. [1997 c 400 § 2; 1992 c 220 § 10; 1989 c 43 § 2-109.]

**64.34.236 Development rights.** (1) To exercise any development right reserved under RCW 64.34.216(1)(j), the declarant shall prepare, execute, and record an amendment to the declaration under RCW 64.34.264, and comply with RCW 64.34.232. The declarant is the unit owner of any units thereby created. The amendment to the declaration shall assign an identifying number to each new unit created, and, except in the case of subdivision or conversion of units described in subsection (2) of this section, reallocate the allocated interests among all units. The amendment must

describe any common elements and any limited common elements thereby created and, in the case of limited common elements, designate the unit to which each is allocated to the extent required by RCW 64.34.228.

(2) Development rights may be reserved within any real property added to the condominium if the amendment adding that real property includes all matters required by RCW 64.34.216 or 64.34.220, as the case may be, and the survey map and plans include all matters required by RCW 64.34.232. This provision does not extend the time limit on the exercise of development rights imposed by the declaration pursuant to RCW 64.34.216(1)(j).

(3) Whenever a declarant exercises a development right to subdivide or convert a unit previously created into additional units, common elements, or both:

(a) If the declarant converts the unit entirely to common elements, the amendment to the declaration must reallocate all the allocated interests of that unit among the other units as if that unit had been taken by condemnation under RCW 64.34.060.

(b) If the declarant subdivides the unit into two or more units, whether or not any part of the unit is converted into common elements, the amendment to the declaration must reallocate all the allocated interests of the unit among the units created by the subdivision in any reasonable and equitable manner prescribed by the declarant.

(4) If the declaration provides, pursuant to RCW 64.34.216(1)(j), that all or a portion of the real property is subject to the development right of withdrawal:

(a) If all the real property is subject to withdrawal, and the declaration or survey map or amendment thereto does not describe separate portions of real property subject to that right, none of the real property may be withdrawn if a unit in that portion of the real property is owned by a person other than the declarant; and

(b) If a portion or portions are subject to withdrawal as described in the declaration or in the survey map or in any amendment thereto, no portion may be withdrawn if a unit in that portion of the real property is owned by a person other than the declarant. [1989 c 43 § 2-110.]

**64.34.240 Alterations of units.** Subject to the provisions of the declaration and other provisions of law, a unit owner:

(1) May make any improvements or alterations to the owner's unit that do not affect the structural integrity or mechanical or electrical systems or lessen the support of any portion of the condominium;

(2) May not change the appearance of the common elements or the exterior appearance of a unit without permission of the association;

(3) After acquiring an adjoining unit or an adjoining part of an adjoining unit may, with approval of the board of directors, remove or alter any intervening partition or create apertures therein, even if the partition in whole or in part is a common element, if those acts do not adversely affect the structural integrity or mechanical or electrical systems or lessen the support of any portion of the condominium. Removal of partitions or creation of apertures under this subsection is not a relocation of boundaries. The board of directors shall approve a unit owner's request, which request shall include

the plans and specifications for the proposed removal or alteration, under this subsection within thirty days, or within such other period provided by the declaration, unless the proposed alteration does not comply with this chapter or the declaration or impairs the structural integrity or mechanical or electrical systems in the condominium. The failure of the board of directors to act upon a request within such period shall be deemed approval thereof. [1989 c 43 § 2-111.]

**64.34.244 Relocation of boundaries—Adjoining units.** (1) Subject to the provisions of the declaration and other provisions of law, the boundaries between adjoining units may only be relocated by an amendment to the declaration upon application to the association by the owners of those units. If the owners of the adjoining units have specified a reallocation between their units of their allocated interests, the application must state the proposed reallocations. Unless the board of directors determines within thirty days, or such other period provided in the declaration, that the reallocations are unreasonable, the association shall prepare an amendment that identifies the units involved, states the reallocations, is executed by those unit owners, contains words of conveyance between them, and is recorded in the name of the grantor and the grantee.

(2) The association shall obtain and record survey maps or plans complying with the requirements of RCW 64.34.232(4) necessary to show the altered boundaries between adjoining units and their dimensions and identifying numbers. [1989 c 43 § 2-112.]

**64.34.248 Subdivision of units.** (1) If the declaration permits, a unit may be subdivided into two or more units. Subject to the provisions of the declaration and other provisions of law, upon application of a unit owner to subdivide a unit, the association shall prepare, execute, and record an amendment to the declaration, including survey maps and plans, subdividing that unit.

(2) The amendment to the declaration must be executed by the owner of the unit to be subdivided, assign an identifying number to each unit created, and reallocate the allocated interests formerly allocated to the subdivided unit to the new units in any reasonable and equitable manner prescribed by the owner of the subdivided unit. [1989 c 43 § 2-113.]

**64.34.252 Monuments as boundaries.** The physical boundaries of a unit constructed in substantial accordance with the original survey map and set of plans thereof become its boundaries rather than the metes and bounds expressed in the survey map or plans, regardless of settling or lateral movement of the building or minor variance between boundaries shown on the survey map or plans and those of the building. This section does not relieve a declarant or any other person of liability for failure to adhere to the survey map and plans. [1989 c 43 § 2-114.]

**64.34.256 Use by declarant.** A declarant may maintain sales offices, management offices, and models in units or on common elements in the condominium only if the declaration so provides and specifies the rights of a declarant with regard to the number, location, and relocation thereof. Any sales

office, management office, or model not designated a unit by the declaration is a common element and, if a declarant ceases to be a unit owner, the declarant ceases to have any rights with regard thereto unless it is removed promptly from the condominium in accordance with a right to remove reserved in the declaration. Subject to any limitations in the declaration, a declarant may maintain signs on the common elements advertising the condominium. The provisions of this section are subject to the provisions of other state law and to local ordinances. [1992 c 220 § 11; 1989 c 43 § 2-115.]

**64.34.260 Easement rights—Common elements.**

Subject to the provisions of the declaration, a declarant has an easement through the common elements as may be reasonably necessary for the purpose of discharging a declarant's obligations or exercising special declarant rights, whether arising under this chapter or reserved in the declaration. [1989 c 43 § 2-116.]

**64.34.264 Amendment of declaration.** (1) Except in cases of amendments that may be executed by a declarant under RCW 64.34.232(6) or 64.34.236; the association under RCW 64.34.060, 64.34.220(5), 64.34.228(3), 64.34.244(1), 64.34.248, or 64.34.268(8); or certain unit owners under RCW 64.34.228(2), 64.34.244(1), 64.34.248(2), or 64.34.268(2), and except as limited by subsection (4) of this section, the declaration, including the survey maps and plans, may be amended only by vote or agreement of unit owners of units to which at least sixty-seven percent of the votes in the association are allocated, or any larger percentage the declaration specifies: PROVIDED, That the declaration may specify a smaller percentage only if all of the units are restricted exclusively to nonresidential use.

(2) No action to challenge the validity of an amendment adopted by the association pursuant to this section may be brought more than one year after the amendment is recorded.

(3) Every amendment to the declaration must be recorded in every county in which any portion of the condominium is located, and is effective only upon recording. An amendment shall be indexed in the name of the condominium and shall contain a cross-reference by recording number to the declaration and each previously recorded amendment thereto.

(4) Except to the extent expressly permitted or required by other provisions of this chapter, no amendment may create or increase special declarant rights, increase the number of units, change the boundaries of any unit, the allocated interests of a unit, or the uses to which any unit is restricted, in the absence of the vote or agreement of the owner of each unit particularly affected and the owners of units to which at least ninety percent of the votes in the association are allocated other than the declarant or such larger percentage as the declaration provides.

(5) Amendments to the declaration required by this chapter to be recorded by the association shall be prepared, executed, recorded, and certified on behalf of the association by any officer of the association designated for that purpose or, in the absence of designation, by the president of the association.

(6) No amendment may restrict, eliminate, or otherwise modify any special declarant right provided in the declaration without the consent of the declarant and any mortgagee of record with a security interest in the special declarant right or in any real property subject thereto, excluding mortgagees of units owned by persons other than the declarant. [1989 c 43 § 2-117.]

**64.34.268 Termination of condominium.** (1) Except in the case of a taking of all the units by condemnation under RCW 64.34.060, a condominium may be terminated only by agreement of unit owners of units to which at least eighty percent of the votes in the association are allocated, or any larger percentage the declaration specifies: PROVIDED, That the declaration may specify a smaller percentage only if all of the units in the condominium are restricted exclusively to non-residential uses.

(2) An agreement to terminate must be evidenced by the execution of a termination agreement or ratifications thereof, in the same manner as a deed, by the requisite number of unit owners. The termination agreement must specify a date after which the agreement will be void unless it is recorded before that date and shall contain a description of the manner in which the creditors of the association will be paid or provided for. A termination agreement and all ratifications thereof must be recorded in every county in which a portion of the condominium is situated and is effective only upon recording. A termination agreement may be amended by complying with all of the requirements of this section.

(3) A termination agreement may provide that all the common elements and units of the condominium shall be sold following termination. If, pursuant to the agreement, any real property in the condominium is to be sold following termination, the termination agreement must set forth the minimum terms of the sale.

(4) The association, on behalf of the unit owners, may contract for the sale of real property in the condominium, but the contract is not binding on the unit owners until approved pursuant to subsections (1) and (2) of this section. If any real property in the condominium is to be sold following termination, title to that real property, upon termination, vests in the association as trustee for the holders of all interests in the units. Thereafter, the association has all powers necessary and appropriate to effect the sale. Until the sale has been concluded and the proceeds thereof distributed, the association continues in existence with all powers it had before termination. Proceeds of the sale must be distributed to unit owners and lien holders as their interests may appear, in proportion to the respective interests of unit owners as provided in subsection (7) of this section. Unless otherwise specified in the termination agreement, as long as the association holds title to the real property, each unit owner and the owner's successors in interest have an exclusive right to occupancy of the portion of the real property that formerly constituted the owner's unit. During the period of that occupancy, each unit owner and the owner's successors in interest remain liable for all assessments and other obligations imposed on unit owners by this chapter or the declaration.

(5) If the real property constituting the condominium is not to be sold following termination, title to all the real property in the condominium vests in the unit owners upon termi-

nation as tenants in common in proportion to their respective interests as provided in subsection (7) of this section, and liens on the units shift accordingly. While the tenancy in common exists, each unit owner and the owner's successors in interest have an exclusive right to occupancy of the portion of the real property that formerly constituted the owner's unit.

(6) Following termination of the condominium, the proceeds of any sale of real property, together with the assets of the association, are held by the association as trustee for unit owners and holders of liens on the units and creditors of the association as their interests may appear. No such proceeds or assets may be disbursed to the owners until all of the creditors of the association have been paid or provided for. Following termination, creditors of the association holding liens on the units, which were recorded or perfected under RCW 4.64.020 before termination, may enforce those liens in the same manner as any lien holder.

(7) The respective interests of unit owners referred to in subsections (4), (5), and (6) of this section are as follows:

(a) Except as provided in (b) of this subsection, the respective interests of unit owners are the fair market values of their units, limited common elements, and common element interests immediately before the termination, as determined by one or more independent appraisers selected by the association. The decision of the independent appraisers shall be distributed to the unit owners and becomes final unless disapproved, within thirty days after distribution, by unit owners of units to which twenty-five percent of the votes in the association are allocated. The proportion of any unit owner's interest to that of all unit owners is determined by dividing the fair market value of that unit owner's unit and common element interest by the total fair market values of all the units and common elements.

(b) If any unit or any limited common element is destroyed to the extent that an appraisal of the fair market value thereof before destruction cannot be made, the interests of all unit owners are their respective common element interests immediately before the termination.

(8) Except as provided in subsection (9) of this section, foreclosure or enforcement of a lien or encumbrance against the entire condominium does not of itself terminate the condominium, and foreclosure or enforcement of a lien or encumbrance against a portion of the condominium, other than withdrawable real property, does not withdraw that portion from the condominium. Foreclosure or enforcement of a lien or encumbrance against withdrawable real property does not of itself withdraw that real property from the condominium, but the person taking title thereto has the right to require from the association, upon request, an amendment excluding the real property from the condominium.

(9) If a lien or encumbrance against a portion of the real property that is withdrawable from the condominium has priority over the declaration, and the lien or encumbrance has not been partially released as to a unit, the purchaser at the foreclosure or such purchaser's successors may, upon foreclosure, record an instrument exercising the right to withdraw the real property subject to that lien or encumbrance from the condominium. The board of directors shall reallocate interests as if the foreclosed portion were condemned.

(10) The right of partition under chapter 7.52 RCW shall be suspended if an agreement to sell the property is provided for in the termination agreement pursuant to subsection (3) of this section. The suspension of the right to partition shall continue unless and until no binding obligation to sell exists three months after the recording of the termination agreement, the binding sale agreement is terminated, or one year after the termination agreement is recorded, whichever first occurs. [1992 c 220 § 12; 1989 c 43 § 2-118.]

**64.34.272 Rights of secured lenders.** The declaration may require that all or a specified number or percentage of the holders of mortgages encumbering the units approve specified actions of the unit owners or the association as a condition to the effectiveness of those actions, but no requirement for approval may operate to (1) deny or delegate control over the general administrative affairs of the association by the unit owners or the board of directors, or (2) prevent the association or the board of directors from commencing, intervening in, or settling any litigation or proceeding, or receiving and distributing any insurance proceeds except pursuant to RCW 64.34.352. With respect to any action requiring the consent of a specified number or percentage of mortgagees, the consent of only eligible mortgagees holding a first lien mortgage need be obtained and the percentage shall be based upon the votes attributable to units with respect to which eligible mortgagees have an interest. [1989 c 43 § 2-119.]

**64.34.276 Master associations.** (1) If the declaration provides that any of the powers described in RCW 64.34.304 are to be exercised by or may be delegated to a profit or non-profit corporation which exercises those or other powers on behalf of a development consisting of one or more condominiums or for the benefit of the unit owners of one or more condominiums, all provisions of this chapter applicable to unit owners' associations apply to any such corporation, except as modified by this section.

(2) Unless a master association is acting in the capacity of an association described in RCW 64.34.300, it may exercise the powers set forth in RCW 64.34.304(1)(b) only to the extent expressly permitted in the declarations of condominiums which are part of the master association or expressly described in the delegations of power from those condominiums to the master association.

(3) If the declaration of any condominium provides that the board of directors may delegate certain powers to a master association, the members of the board of directors have no liability for the acts or omissions of the master association with respect to those powers following delegation.

(4) The rights and responsibilities of unit owners with respect to the unit owners' association set forth in RCW 64.34.308, 64.34.332, 64.34.336, 64.34.340, and 64.34.348 apply in the conduct of the affairs of a master association only to those persons who elect the board of a master association, whether or not those persons are otherwise unit owners within the meaning of this chapter.

(5) Notwithstanding the provisions of RCW 64.34.308(6) with respect to the election of the board of directors of an association by all unit owners after the period of declarant control ends and even if a master association is

also an association described in RCW 64.34.300, the certificate of incorporation or other instrument creating the master association and the declaration of each condominium, the powers of which are assigned by the declaration or delegated to the master association, must provide that the board of directors of the master association shall be elected after the period of declarant control in any of the following ways:

(a) All unit owners of all condominiums subject to the master association may elect all members of that board of directors.

(b) All members of the boards of directors of all condominiums subject to the master association may elect all members of that board of directors.

(c) All unit owners of each condominium subject to the master association may elect specified members of that board of directors.

(d) All members of the board of directors of each condominium subject to the master association may elect specified members of that board of directors. [1989 c 43 § 2-120.]

**64.34.278 Delegation of power to subassociations.** (1) If the declaration provides that any of the powers described in RCW 64.34.304 are to be exercised by or may be delegated to a profit or nonprofit corporation that exercises those or other powers on behalf of unit owners owning less than all of the units in a condominium, and where those unit owners share the exclusive use of one or more limited common elements within the condominium or share some property or other interest in the condominium in common that is not shared by the remainder of the unit owners in the condominium, all provisions of this chapter applicable to unit owners' associations apply to any such corporation, except as modified by this section. The delegation of powers to a subassociation shall not be used to discriminate in favor of units owned by the declarant or an affiliate of the declarant.

(2) A subassociation may exercise the powers set forth in RCW 64.34.304(1) only to the extent expressly permitted by the declaration of the condominium of which the units in the subassociation are a part of or expressly described in the delegations of power from that condominium to the subassociation.

(3) If the declaration of any condominium contains a delegation of certain powers to a subassociation, or provides that the board of directors of the condominium may make such a delegation, the members of the board of directors have no liability for the acts or omissions of the subassociation with respect to those powers so exercised by the subassociation following delegation.

(4) The rights and responsibilities of unit owners with respect to the unit owners' association set forth in RCW 64.34.300 through 64.34.376 apply to the conduct of the affairs of a subassociation.

(5) Notwithstanding the provisions of RCW 64.34.308(6) with respect to the election of the board of directors of an association by all unit owners after the period of declarant control ends, the board of directors of the subassociation shall be elected after the period of declarant control by the unit owners of all of the units in the condominium subject to the subassociation.

(6) The declaration of the condominium creating the subassociation may provide that the authority of the board of

directors of the subassociation is exclusive with regard to the powers and responsibilities delegated to it. In the alternative, the declaration may provide as to some or all such powers that the authority of the board of directors of a subassociation is concurrent with and subject to the authority of the board of directors of the unit owners' association, in which case the declaration shall also contain standards and procedures for the review of the decisions of the board of directors of the subassociation and procedures for resolving any dispute between the board of the unit owners' association and the board of the subassociation. [1992 c 220 § 13.]

**64.34.280 Merger or consolidation.** (1) Any two or more condominiums, by agreement of the unit owners as provided in subsection (2) of this section, may be merged or consolidated into a single condominium. In the event of a merger or consolidation, unless the agreement otherwise provides, the resultant condominium is, for all purposes, the legal successor of all of the preexisting condominiums and the operations and activities of all associations of the preexisting condominiums shall be merged or consolidated into a single association which shall hold all powers, rights, obligations, assets, and liabilities of all preexisting associations.

(2) An agreement of two or more condominiums to merge or consolidate pursuant to subsection (1) of this section must be evidenced by an agreement prepared, executed, recorded, and certified by the president of the association of each of the preexisting condominiums following approval by owners of units to which are allocated the percentage of votes in each condominium required to terminate that condominium. Any such agreement must be recorded in every county in which a portion of the condominium is located and is not effective until recorded.

(3) Every merger or consolidation agreement must provide for the reallocation of the allocated interests in the new association among the units of the resultant condominium either (a) by stating the reallocations or the formulas upon which they are based or (b) by stating the portion of overall allocated interests of the new condominium which are allocated to all of the units comprising each of the preexisting condominiums, and providing that the percentages allocated to each unit formerly comprising a part of the preexisting condominium in such portion must be equal to the percentages of allocated interests allocated to that unit by the declaration of the preexisting condominium.

(4) All merged or consolidated condominiums under this section shall comply with this chapter. [1989 c 43 § 2-121.]

### ARTICLE 3

#### MANAGEMENT OF CONDOMINIUM

##### **64.34.300 Unit owners' association—Organization.**

A unit owners' association shall be organized no later than the date the first unit in the condominium is conveyed. The membership of the association at all times shall consist exclusively of all the unit owners. Following termination of the condominium, the membership of the association shall consist of all of the unit owners at the time of termination entitled to distributions of proceeds under RCW 64.34.268 or their heirs, successors, or assigns. The association shall be organized as a profit or nonprofit corporation. In case of any con-

flict between Title 23B RCW, the business corporation act, chapter 24.03 RCW, the nonprofit corporation act, or chapter 24.06 RCW, the nonprofit miscellaneous and mutual corporations act, and this chapter, this chapter shall control. [1992 c 220 § 14; 1989 c 43 § 3-101.]

**64.34.304 Unit owners' association—Powers.** (1) Except as provided in subsection (2) of this section, and subject to the provisions of the declaration, the association may:

- (a) Adopt and amend bylaws, rules, and regulations;
- (b) Adopt and amend budgets for revenues, expenditures, and reserves, and impose and collect assessments for common expenses from unit owners;
- (c) Hire and discharge or contract with managing agents and other employees, agents, and independent contractors;
- (d) Institute, defend, or intervene in litigation or administrative proceedings in its own name on behalf of itself or two or more unit owners on matters affecting the condominium;
- (e) Make contracts and incur liabilities;
- (f) Regulate the use, maintenance, repair, replacement, and modification of common elements;
- (g) Cause additional improvements to be made as a part of the common elements;
- (h) Acquire, hold, encumber, and convey in its own name any right, title, or interest to real or personal property, but common elements may be conveyed or subjected to a security interest only pursuant to RCW 64.34.348;
- (i) Grant easements, leases, licenses, and concessions through or over the common elements and petition for or consent to the vacation of streets and alleys;
- (j) Impose and collect any payments, fees, or charges for the use, rental, or operation of the common elements, other than limited common elements described in RCW 64.34.204 (2) and (4), and for services provided to unit owners;
- (k) Impose and collect charges for late payment of assessments pursuant to RCW 64.34.364(13) and, after notice and an opportunity to be heard by the board of directors or by such representative designated by the board of directors and in accordance with such procedures as provided in the declaration or bylaws or rules and regulations adopted by the board of directors, levy reasonable fines in accordance with a previously established schedule thereof adopted by the board of directors and furnished to the owners for violations of the declaration, bylaws, and rules and regulations of the association;
- (l) Impose and collect reasonable charges for the preparation and recording of amendments to the declaration, resale certificates required by RCW 64.34.425, and statements of unpaid assessments;
- (m) Provide for the indemnification of its officers and board of directors and maintain directors' and officers' liability insurance;
- (n) Assign its right to future income, including the right to receive common expense assessments, but only to the extent the declaration provides;
- (o) Join in a petition for the establishment of a parking and business improvement area, participate in the rate payers' board or other advisory body set up by the legislative authority for operation of a parking and business improvement area, and pay special assessments levied by the legislative author-

ity on a parking and business improvement area encompassing the condominium property for activities and projects which benefit the condominium directly or indirectly;

(p) Establish and administer a reserve account as described in RCW 64.34.380;

(q) Prepare a reserve study as described in RCW 64.34.380;

(r) Exercise any other powers conferred by the declaration or bylaws;

(s) Exercise all other powers that may be exercised in this state by the same type of corporation as the association; and

(t) Exercise any other powers necessary and proper for the governance and operation of the association.

(2) The declaration may not impose limitations on the power of the association to deal with the declarant which are more restrictive than the limitations imposed on the power of the association to deal with other persons. [2008 c 115 § 9; 1993 c 429 § 11; 1990 c 166 § 3; 1989 c 43 § 3-102.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**64.34.308 Board of directors and officers.** (1) Except as provided in the declaration, the bylaws, subsection (2) of this section, or other provisions of this chapter, the board of directors shall act in all instances on behalf of the association. In the performance of their duties, the officers and members of the board of directors are required to exercise: (a) If appointed by the declarant, the care required of fiduciaries of the unit owners; or (b) if elected by the unit owners, ordinary and reasonable care.

(2) The board of directors shall not act on behalf of the association to amend the declaration in any manner that requires the vote or approval of the unit owners pursuant to RCW 64.34.264, to terminate the condominium pursuant to RCW 64.34.268, or to elect members of the board of directors or determine the qualifications, powers, and duties, or terms of office of members of the board of directors pursuant to subsection (6) of this section; but the board of directors may fill vacancies in its membership for the unexpired portion of any term.

(3) Within thirty days after adoption of any proposed budget for the condominium, the board of directors shall provide a summary of the budget to all the unit owners and shall set a date for a meeting of the unit owners to consider ratification of the budget not less than fourteen nor more than sixty days after mailing of the summary. Unless at that meeting the owners of units to which a majority of the votes in the association are allocated or any larger percentage specified in the declaration reject the budget, the budget is ratified, whether or not a quorum is present. In the event the proposed budget is rejected or the required notice is not given, the periodic budget last ratified by the unit owners shall be continued until such time as the unit owners ratify a subsequent budget proposed by the board of directors.

(4)(a) Subject to subsection (5) of this section, the declaration may provide for a period of declarant control of the association, during which period a declarant, or persons designated by the declarant, may: (i) Appoint and remove the officers and members of the board of directors; or (ii) veto or approve a proposed action of the board or association. A

declarant's failure to veto or approve such proposed action in writing within thirty days after receipt of written notice of the proposed action shall be deemed approval by the declarant.

(b) Regardless of the period provided in the declaration, a period of declarant control terminates no later than the earlier of: (i) Sixty days after conveyance of seventy-five percent of the units which may be created to unit owners other than a declarant; (ii) two years after the last conveyance or transfer of record of a unit except as security for a debt; (iii) two years after any development right to add new units was last exercised; or (iv) the date on which the declarant records an amendment to the declaration pursuant to which the declarant voluntarily surrenders the right to further appoint and remove officers and members of the board of directors. A declarant may voluntarily surrender the right to appoint and remove officers and members of the board of directors before termination of that period pursuant to (i), (ii), and (iii) of this subsection (4)(b), but in that event the declarant may require, for the duration of the period of declarant control, that specified actions of the association or board of directors, as described in a recorded instrument executed by the declarant, be approved by the declarant before they become effective.

(5) Not later than sixty days after conveyance of twenty-five percent of the units which may be created to unit owners other than a declarant, at least one member and not less than twenty-five percent of the members of the board of directors must be elected by unit owners other than the declarant. Not later than sixty days after conveyance of fifty percent of the units which may be created to unit owners other than a declarant, not less than thirty-three and one-third percent of the members of the board of directors must be elected by unit owners other than the declarant.

(6) Within thirty days after the termination of any period of declarant control, the unit owners shall elect a board of directors of at least three members, at least a majority of whom must be unit owners. The number of directors need not exceed the number of units then in the condominium. The board of directors shall elect the officers. Such members of the board of directors and officers shall take office upon election.

(7) Notwithstanding any provision of the declaration or bylaws to the contrary, the unit owners, by a two-thirds vote of the voting power in the association present and entitled to vote at any meeting of the unit owners at which a quorum is present, may remove any member of the board of directors with or without cause, other than a member appointed by the declarant. The declarant may not remove any member of the board of directors elected by the unit owners. Prior to the termination of the period of declarant control, the unit owners, other than the declarant, may remove by a two-thirds vote, any director elected by the unit owners. [1992 c 220 § 15; 1989 c 43 § 3-103.]

**64.34.312 Control of association—Transfer.** (1) Within sixty days after the termination of the period of declarant control provided in RCW 64.34.308(4) or, in the absence of such period, within sixty days after the first conveyance of a unit in the condominium, the declarant shall deliver to the association all property of the unit owners and of the association held or controlled by the declarant including, but not limited to:

(a) The original or a photocopy of the recorded declaration and each amendment to the declaration;

(b) The certificate of incorporation and a copy or duplicate original of the articles of incorporation of the association as filed with the secretary of state;

(c) The bylaws of the association;

(d) The minute books, including all minutes, and other books and records of the association;

(e) Any rules and regulations that have been adopted;

(f) Resignations of officers and members of the board who are required to resign because the declarant is required to relinquish control of the association;

(g) The financial records, including canceled checks, bank statements, and financial statements of the association, and source documents from the time of incorporation of the association through the date of transfer of control to the unit owners;

(h) Association funds or the control of the funds of the association;

(i) All tangible personal property of the association, represented by the declarant to be the property of the association or ostensibly the property of the association, and an inventory of the property;

(j) Except for alterations to a unit done by a unit owner other than the declarant, a copy of the declarant's plans and specifications utilized in the construction or remodeling of the condominium, with a certificate of the declarant or a licensed architect or engineer that the plans and specifications represent, to the best of their knowledge and belief, the actual plans and specifications utilized by the declarant in the construction or remodeling of the condominium;

(k) Insurance policies or copies thereof for the condominium and association;

(l) Copies of any certificates of occupancy that may have been issued for the condominium;

(m) Any other permits issued by governmental bodies applicable to the condominium in force or issued within one year before the date of transfer of control to the unit owners;

(n) All written warranties that are still in effect for the common elements, or any other areas or facilities which the association has the responsibility to maintain and repair, from the contractor, subcontractors, suppliers, and manufacturers and all owners' manuals or instructions furnished to the declarant with respect to installed equipment or building systems;

(o) A roster of unit owners and eligible mortgagees and their addresses and telephone numbers, if known, as shown on the declarant's records and the date of closing of the first sale of each unit sold by the declarant;

(p) Any leases of the common elements or areas and other leases to which the association is a party;

(q) Any employment contracts or service contracts in which the association is one of the contracting parties or service contracts in which the association or the unit owners have an obligation or a responsibility, directly or indirectly, to pay some or all of the fee or charge of the person performing the service;

(r) A copy of any qualified warranty issued to the association as provided for in RCW 64.35.505; and

(s) All other contracts to which the association is a party.

(2) Upon the transfer of control to the unit owners, the records of the association shall be audited as of the date of transfer by an independent certified public accountant in accordance with generally accepted auditing standards unless the unit owners, other than the declarant, by two-thirds vote elect to waive the audit. The cost of the audit shall be a common expense unless otherwise provided in the declaration. The accountant performing the audit shall examine supporting documents and records, including the cash disbursements and related paid invoices, to determine if expenditures were for association purposes and the billings, cash receipts, and related records to determine if the declarant was charged for and paid the proper amount of assessments. [2004 c 201 § 10; 1989 c 43 § 3-104.]

**64.34.316 Special declarant rights—Transfer.** (1) No special declarant right, as described in \*RCW 64.34.020(29), created or reserved under this chapter may be transferred except by an instrument evidencing the transfer executed by the declarant or the declarant's successor and the transferee is recorded in every county in which any portion of the condominium is located. Each unit owner shall receive a copy of the recorded instrument, but the failure to furnish the copy shall not invalidate the transfer.

(2) Upon transfer of any special declarant right, the liability of a transferor declarant is as follows:

(a) A transferor is not relieved of any obligation or liability arising before the transfer and remains liable for warranty obligations imposed upon the transferor by this chapter. Lack of privity does not deprive any unit owner of standing to maintain an action to enforce any obligation of the transferor.

(b) If a successor to any special declarant right is an affiliate of a declarant as described in RCW 64.34.020(1), the transferor is jointly and severally liable with the successor for any obligations or liabilities of the successor relating to the condominium.

(c) If a transferor retains any special declarant right, but transfers other special declarant rights to a successor who is not an affiliate of the declarant, the transferor is liable for any obligations or liabilities imposed on a declarant by this chapter or by the declaration relating to the retained special declarant rights arising after the transfer.

(d) A transferor has no liability for any act or omission or any breach of a contractual or warranty obligation arising from the exercise of a special declarant right by a successor declarant who is not an affiliate of the transferor.

(3) In case of foreclosure of a mortgage, tax sale, judicial sale, or sale under bankruptcy code or receivership proceedings of any unit owned by a declarant or real property in a condominium subject to development rights, a person acquiring title to all the real property being foreclosed or sold succeeds to all special declarant rights related to that real property held by that declarant and to any rights reserved in the declaration pursuant to RCW 64.34.256 and held by that declarant to maintain models, sales offices, and signs, unless such person requests that all or any of such rights not be transferred. The instrument conveying title shall describe any special declarant rights not being transferred.

(4) Upon foreclosure of a mortgage, tax sale, judicial sale, or sale under bankruptcy code or receivership proceed-

ings of all units and other real property in a condominium owned by a declarant:

(a) The declarant ceases to have any special declarant rights; and

(b) The period of declarant control as described in RCW 64.34.308(4) terminates unless the judgment or instrument conveying title provides for transfer of all special declarant rights held by that declarant to a successor declarant.

(5) The liabilities and obligations of a person who succeeds to special declarant rights are as follows:

(a) A successor to any special declarant right who is an affiliate of a declarant is subject to all obligations and liabilities imposed on the transferor by this chapter or by the declaration;

(b) A successor to any special declarant right, other than a successor described in (c) or (d) of this subsection, who is not an affiliate of a declarant is subject to all obligations and liabilities imposed by this chapter or the declaration:

(i) On a declarant which relate to such successor's exercise or nonexercise of special declarant rights; or

(ii) On the declarant's transferor, other than:

(A) Misrepresentations by any previous declarant;

(B) Warranty obligations on improvements made by any previous declarant or made before the condominium was created;

(C) Breach of any fiduciary obligation by any previous declarant or the declarant's appointees to the board of directors; or

(D) Any liability or obligation imposed on the transferor as a result of the transferor's acts or omissions after the transfer;

(c) A successor to only a right reserved in the declaration to maintain models, sales offices, and signs as described in RCW 64.34.256, if the successor is not an affiliate of a declarant, may not exercise any other special declarant right and is not subject to any liability or obligation as a declarant, except the obligation to provide a public offering statement and any liability arising as a result thereof;

(d) A successor to all special declarant rights held by the successor's transferor who is not an affiliate of that declarant and who succeeded to those rights pursuant to a foreclosure, a deed in lieu of foreclosure, or a judgment or instrument conveying title to units under subsection (3) of this section may declare his or her intention in a recorded instrument to hold those rights solely for transfer to another person. Thereafter, until transferring all special declarant rights to any person acquiring title to any unit owned by the successor or until recording an instrument permitting exercise of all those rights, that successor may not exercise any of those rights other than any right held by the successor's transferor to control the board of directors in accordance with the provisions of RCW 64.34.308(4) for the duration of any period of declarant control, and any attempted exercise of those rights is void. So long as a successor declarant may not exercise special declarant rights under this subsection, the successor is not subject to any liability or obligation as a declarant other than liability for the successor's acts and omissions under RCW 64.34.308(4);

(e) Nothing in this section subjects any successor to a special declarant right to any claims against or other obligations of a transferor declarant, other than claims and obliga-

tions arising under this chapter or the declaration. [1989 c 43 § 3-105.]

**\*Reviser's note:** RCW 64.34.020 was amended by 2008 c 115 § 8, changing subsection (29) to subsection (36).

**64.34.320 Contracts and leases—Declarant—Termination.** If entered into before the board of directors elected by the unit owners pursuant to RCW 64.34.308(6) takes office, (1) any management contract, employment contract, or lease of recreational or parking areas or facilities, (2) any other contract or lease between the association and a declarant or an affiliate of a declarant, or (3) any contract or lease that is not bona fide or was unconscionable to the unit owners at the time entered into under the circumstances then prevailing may be terminated without penalty by the association at any time after the board of directors elected by the unit owners pursuant to RCW 64.34.308(6) takes office upon not less than ninety days' notice to the other party or within such lesser notice period provided for without penalty in the contract or lease. This section does not apply to any lease, the termination of which would terminate the condominium or reduce its size, unless the real property subject to that lease was included in the condominium for the purpose of avoiding the right of the association to terminate a lease under this section. [1989 c 43 § 3-106.]

**64.34.324 Bylaws.** (1) Unless provided for in the declaration, the bylaws of the association shall provide for:

(a) The number, qualifications, powers and duties, terms of office, and manner of electing and removing the board of directors and officers and filling vacancies;

(b) Election by the board of directors of such officers of the association as the bylaws specify;

(c) Which, if any, of its powers the board of directors or officers may delegate to other persons or to a managing agent;

(d) Which of its officers may prepare, execute, certify, and record amendments to the declaration on behalf of the association;

(e) The method of amending the bylaws; and

(f) A statement of the standard of care for officers and members of the board of directors imposed by RCW 64.34.308(1).

(2) Subject to the provisions of the declaration, the bylaws may provide for any other matters the association deems necessary and appropriate.

(3) In determining the qualifications of any officer or director of the association, notwithstanding the provision of \*RCW 64.34.020(32) the term "unit owner" in such context shall, unless the declaration or bylaws otherwise provide, be deemed to include any director, officer, partner in, or trustee of any person, who is, either alone or in conjunction with another person or persons, a unit owner. Any officer or director of the association who would not be eligible to serve as such if he or she were not a director, officer, partner in, or trustee of such a person shall be disqualified from continuing in office if he or she ceases to have any such affiliation with that person, or if that person would have been disqualified from continuing in such office as a natural person. [2004 c 201 § 3; 1992 c 220 § 16; 1989 c 43 § 3-107.]

(2010 Ed.)

**\*Reviser's note:** RCW 64.34.020 was amended by 2008 c 115 § 8, changing subsection (32) to subsection (39).

**64.34.328 Upkeep of condominium.** (1) Except to the extent provided by the declaration, subsection (2) of this section, or RCW 64.34.352(7), the association is responsible for maintenance, repair, and replacement of the common elements, including the limited common elements, and each unit owner is responsible for maintenance, repair, and replacement of the owner's unit. Each unit owner shall afford to the association and the other unit owners, and to their agents or employees, access through the owner's unit and limited common elements reasonably necessary for those purposes. If damage is inflicted on the common elements, or on any unit through which access is taken, the unit owner responsible for the damage, or the association if it is responsible, shall be liable for the repair thereof.

(2) In addition to the liability that a declarant as a unit owner has under this chapter, the declarant alone is liable for all expenses in connection with real property subject to development rights except that the declaration may provide that the expenses associated with the operation, maintenance, repair, and replacement of a common element that the owners have a right to use shall be paid by the association as a common expense. No other unit owner and no other portion of the condominium is subject to a claim for payment of those expenses. Unless the declaration provides otherwise, any income or proceeds from real property subject to development rights inures to the declarant. [1989 c 43 § 3-108.]

**64.34.332 Meetings.** A meeting of the association must be held at least once each year. Special meetings of the association may be called by the president, a majority of the board of directors, or by unit owners having twenty percent or any lower percentage specified in the declaration or bylaws of the votes in the association. Not less than ten nor more than sixty days in advance of any meeting, the secretary or other officer specified in the bylaws shall cause notice to be hand-delivered or sent prepaid by first-class United States mail to the mailing address of each unit or to any other mailing address designated in writing by the unit owner. The notice of any meeting shall state the time and place of the meeting and the items on the agenda to be voted on by the members, including the general nature of any proposed amendment to the declaration or bylaws, changes in the previously approved budget that result in a change in assessment obligations, and any proposal to remove a director or officer. [1989 c 43 § 3-109.]

**64.34.336 Quorums.** (1) Unless the bylaws specify a larger percentage, a quorum is present throughout any meeting of the association if the owners of units to which twenty-five percent of the votes of the association are allocated are present in person or by proxy at the beginning of the meeting.

(2) Unless the bylaws specify a larger percentage, a quorum is deemed present throughout any meeting of the board of directors if persons entitled to cast fifty percent of the votes on the board of directors are present at the beginning of the meeting. [1989 c 43 § 3-110.]

**64.34.340 Voting—Proxies.** (1) If only one of the multiple owners of a unit is present at a meeting of the association

or has delivered a written ballot or proxy to the association secretary, the owner is entitled to cast all the votes allocated to that unit. If more than one of the multiple owners are present or has delivered a written ballot or proxy to the association secretary, the votes allocated to that unit may be cast only in accordance with the agreement of a majority in interest of the multiple owners, unless the declaration expressly provides otherwise. There is majority agreement if any one of the multiple owners casts the votes allocated to that unit without protest being made promptly to the person presiding over the meeting by any of the other owners of the unit.

(2) Votes allocated to a unit may be cast pursuant to a proxy duly executed by a unit owner. If a unit is owned by more than one person, each owner of the unit may vote or register protest to the casting of votes by the other owners of the unit through a duly executed proxy. A unit owner may not revoke a proxy given pursuant to this section except by actual notice of revocation to the person presiding over a meeting of the association. A proxy is void if it is not dated or purports to be revocable without notice. Unless stated otherwise in the proxy, a proxy terminates eleven months after its date of issuance.

(3) If the declaration requires that votes on specified matters affecting the condominium be cast by lessees rather than unit owners of leased units: (a) The provisions of subsections (1) and (2) of this section apply to lessees as if they were unit owners; (b) unit owners who have leased their units to other persons may not cast votes on those specified matters; and (c) lessees are entitled to notice of meetings, access to records, and other rights respecting those matters as if they were unit owners. Unit owners must also be given notice, in the manner provided in RCW 64.34.332, of all meetings at which lessees may be entitled to vote.

(4) No votes allocated to a unit owned by the association may be cast, and in determining the percentage of votes required to act on any matter, the votes allocated to units owned by the association shall be disregarded. [1992 c 220 § 17; 1989 c 43 § 3-111.]

**64.34.344 Tort and contract liability.** Neither the association nor any unit owner except the declarant is liable for that declarant's torts in connection with any part of the condominium which that declarant has the responsibility to maintain. Otherwise, an action alleging a wrong done by the association must be brought against the association and not against any unit owner or any officer or director of the association. Unless the wrong was done by a unit owner other than the declarant, if the wrong by the association occurred during any period of declarant control and the association gives the declarant reasonable notice of and an opportunity to defend against the action, the declarant who then controlled the association is liable to the association or to any unit owner: (1) For all tort losses not covered by insurance suffered by the association or that unit owner; and (2) for all costs which the association would not have incurred but for a breach of contract or other wrongful act or omission by the association. If the declarant does not defend the action and is determined to be liable to the association under this section, the declarant is also liable for all litigation expenses, including reasonable attorneys' fees, incurred by the association in such defense. Any statute of limitations affecting the associ-

ation's right of action under this section is tolled until the period of declarant control terminates. A unit owner is not precluded from bringing an action contemplated by this section because he or she is a unit owner or a member or officer of the association. Liens resulting from judgments against the association are governed by RCW 64.34.368. [1989 c 43 § 3-112.]

**64.34.348 Common elements—Conveyance—Encumbrance.** (1) Portions of the common elements which are not necessary for the habitability of a unit may be conveyed or subjected to a security interest by the association if the owners of units to which at least eighty percent of the votes in the association are allocated, including eighty percent of the votes allocated to units not owned by a declarant or an affiliate of a declarant, or any larger percentage the declaration specifies, agree to that action; but all the owners of units to which any limited common element is allocated must agree in order to convey that limited common element or subject it to a security interest. The declaration may specify a smaller percentage, but not less than sixty-seven percent of the votes not held by a declarant or an affiliate of a declarant, only if all of the units are restricted exclusively to nonresidential uses. Proceeds of the sale or financing are an asset of the association. The declaration may provide for a special allocation or distribution of the proceeds of the sale or refinancing of a limited common element.

(2) An agreement to convey common elements or subject them to a security interest must be evidenced by the execution of an agreement, or ratifications thereof, in the same manner as a deed, by the requisite number of unit owners. The agreement must specify a date after which the agreement will be void unless recorded before that date. The agreement and all ratifications thereof must be recorded in every county in which a portion of the condominium is situated and is effective only upon recording.

(3) The association, on behalf of the unit owners, may contract to convey common elements or subject them to a security interest, but the contract is not enforceable against the association until approved pursuant to subsections (1) and (2) of this section. Thereafter, the association has all powers necessary and appropriate to effect the conveyance or encumbrance, including the power to execute deeds or other instruments.

(4) Any purported conveyance, encumbrance, or other voluntary transfer of common elements, unless made pursuant to this section, is void.

(5) A conveyance or encumbrance of common elements pursuant to this section shall not deprive any unit of its rights of access and support.

(6) A conveyance or encumbrance of common elements pursuant to this section shall not affect the priority or validity of preexisting encumbrances. [1989 c 43 § 3-113.]

**64.34.352 Insurance.** (1) Commencing not later than the time of the first conveyance of a unit to a person other than a declarant, the association shall maintain, to the extent reasonably available:

(a) Property insurance on the condominium, which may, but need not, include equipment, improvements, and better-

ments in a unit installed by the declarant or the unit owners, insuring against all risks of direct physical loss commonly insured against. The total amount of insurance after application of any deductibles shall be not less than eighty percent, or such greater amount specified in the declaration, of the actual cash value of the insured property at the time the insurance is purchased and at each renewal date, exclusive of land, excavations, foundations, and other items normally excluded from property policies; and

(b) Liability insurance, including medical payments insurance, in an amount determined by the board of directors but not less than the amount specified in the declaration, covering all occurrences commonly insured against for death, bodily injury, and property damage arising out of or in connection with the use, ownership, or maintenance of the common elements.

(2) If the insurance described in subsection (1) of this section is not reasonably available, or is modified, canceled, or not renewed, the association promptly shall cause notice of that fact to be hand-delivered or sent prepaid by first-class United States mail to all unit owners, to each eligible mortgagee, and to each mortgagee to whom a certificate or memorandum of insurance has been issued at their respective last known addresses. The declaration may require the association to carry any other insurance, and the association in any event may carry any other insurance it deems appropriate to protect the association or the unit owners.

(3) Insurance policies carried pursuant to subsection (1) of this section shall provide that:

(a) Each unit owner is an insured person under the policy with respect to liability arising out of the owner's interest in the common elements or membership in the association;

(b) The insurer waives its right to subrogation under the policy against any unit owner, member of the owner's household, and lessee of the owner;

(c) No act or omission by any unit owner, unless acting within the scope of the owner's authority on behalf of the association, will void the policy or be a condition to recovery under the policy; and

(d) If, at the time of a loss under the policy, there is other insurance in the name of a unit owner covering the same risk covered by the policy, the association's policy provides primary insurance.

(4) Any loss covered by the property insurance under subsection (1)(a) of this section must be adjusted with the association, but the insurance proceeds for that loss are payable to any insurance trustee designated for that purpose, or otherwise to the association, and not to any holder of a mortgage. The insurance trustee or the association shall hold any insurance proceeds in trust for unit owners and lienholders as their interests may appear. Subject to the provisions of subsection (7) of this section, the proceeds must be disbursed first for the repair or restoration of the damaged property, and unit owners and lienholders are not entitled to receive payment of any portion of the proceeds unless there is a surplus of proceeds after the property has been completely repaired or restored or the condominium is terminated.

(5) An insurance policy issued to the association does not prevent a unit owner from obtaining insurance for the owner's own benefit.

(6) An insurer that has issued an insurance policy under this section shall issue certificates or memoranda of insurance to the association and, upon written request, to any unit owner or holder of a mortgage. The insurer issuing the policy may not modify the amount or the extent of the coverage of the policy or cancel or refuse to renew the policy unless the insurer has complied with all applicable provisions of chapter 48.18 RCW pertaining to the cancellation or nonrenewal of contracts of insurance. The insurer shall not modify the amount or the extent of the coverage of the policy, or cancel or refuse to renew the policy without complying with this section.

(7) Any portion of the condominium for which insurance is required under this section which is damaged or destroyed shall be repaired or replaced promptly by the association unless: (a) The condominium is terminated; (b) repair or replacement would be illegal under any state or local health or safety statute or ordinance; or (c) eighty percent of the unit owners, including every owner of a unit or assigned limited common element which will not be rebuilt, vote not to rebuild. The cost of repair or replacement in excess of insurance proceeds and reserves is a common expense. If all of the damaged or destroyed portions of the condominium are not repaired or replaced: (i) The insurance proceeds attributable to the damaged common elements shall be used to restore the damaged area to a condition compatible with the remainder of the condominium; (ii) the insurance proceeds attributable to units and limited common elements which are not rebuilt shall be distributed to the owners of those units and the owners of the units to which those limited common elements were allocated, or to lienholders, as their interests may appear; and (iii) the remainder of the proceeds shall be distributed to all the unit owners or lienholders, as their interests may appear, in proportion to the common element interests of all the units. If the unit owners vote not to rebuild any unit, that unit's allocated interests are automatically reallocated upon the vote as if the unit had been condemned under RCW 64.34.060(1), and the association promptly shall prepare, execute, and record an amendment to the declaration reflecting the reallocations. Notwithstanding the provisions of this subsection, RCW 64.34.268 governs the distribution of insurance proceeds if the condominium is terminated.

(8) The provisions of this section may be varied or waived as provided in the declaration if all units of a condominium are restricted to nonresidential use. [1992 c 220 § 18; 1990 c 166 § 4; 1989 c 43 § 3-114.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**64.34.354 Insurance—Conveyance.** Promptly upon the conveyance of a unit, the new unit owner shall notify the association of the date of the conveyance and the unit owner's name and address. The association shall notify each insurance company that has issued an insurance policy to the association for the benefit of the owners under RCW 64.34.352 of the name and address of the new owner and request that the new owner be made a named insured under such policy. [1990 c 166 § 8.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**64.34.356 Surplus funds.** Unless otherwise provided in the declaration, any surplus funds of the association remaining after payment of or provision for common expenses and any prepayment of reserves shall, in the discretion of the board of directors, either be paid to the unit owners in proportion to their common expense liabilities or credited to them to reduce their future common expense assessments. [1989 c 43 § 3-115.]

**64.34.360 Common expenses—Assessments.** (1) Until the association makes a common expense assessment, the declarant shall pay all common expenses. After any assessment has been made by the association, assessments must be made against all units, based on a budget adopted by the association.

(2) Except for assessments under subsections (3), (4), and (5) of this section, all common expenses must be assessed against all the units in accordance with the allocations set forth in the declaration pursuant to RCW 64.34.224(1). Any past due common expense assessment or installment thereof bears interest at the rate established by the association pursuant to RCW 64.34.364.

(3) To the extent required by the declaration:

(a) Any common expense associated with the operation, maintenance, repair, or replacement of a limited common element shall be paid by the owner of or assessed against the units to which that limited common element is assigned, equally, or in any other proportion that the declaration provides;

(b) Any common expense or portion thereof benefiting fewer than all of the units must be assessed exclusively against the units benefited;

(c) The costs of insurance must be assessed in proportion to risk; and

(d) The costs of utilities must be assessed in proportion to usage.

(4) Assessments to pay a judgment against the association pursuant to RCW 64.34.368(1) may be made only against the units in the condominium at the time the judgment was entered in proportion to their allocated common expense liabilities at the time the judgment was entered.

(5) To the extent that any common expense is caused by the misconduct of any unit owner, the association may assess that expense against the owner's unit.

(6) If common expense liabilities are reallocated, common expense assessments and any installment thereof not yet due shall be recalculated in accordance with the reallocated common expense liabilities. [1990 c 166 § 5; 1989 c 43 § 3-116.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**64.34.364 Lien for assessments.** (1) The association has a lien on a unit for any unpaid assessments levied against a unit from the time the assessment is due.

(2) A lien under this section shall be prior to all other liens and encumbrances on a unit except: (a) Liens and encumbrances recorded before the recording of the declaration; (b) a mortgage on the unit recorded before the date on which the assessment sought to be enforced became delinquent; and (c) liens for real property taxes and other governmental assessments or charges against the unit. A lien under

this section is not subject to the provisions of chapter 6.13 RCW.

(3) Except as provided in subsections (4) and (5) of this section, the lien shall also be prior to the mortgages described in subsection (2)(b) of this section to the extent of assessments for common expenses, excluding any amounts for capital improvements, based on the periodic budget adopted by the association pursuant to RCW 64.34.360(1) which would have become due during the six months immediately preceding the date of a sheriff's sale in an action for judicial foreclosure by either the association or a mortgagee, the date of a trustee's sale in a nonjudicial foreclosure by a mortgagee, or the date of recording of the declaration of forfeiture in a proceeding by the vendor under a real estate contract.

(4) The priority of the association's lien against units encumbered by a mortgage held by an eligible mortgagee or by a mortgagee which has given the association a written request for a notice of delinquent assessments shall be reduced by up to three months if and to the extent that the lien priority under subsection (3) of this section includes delinquencies which relate to a period after such holder becomes an eligible mortgagee or has given such notice and before the association gives the holder a written notice of the delinquency. This subsection does not affect the priority of mechanics' or materialmen's liens, or the priority of liens for other assessments made by the association.

(5) If the association forecloses its lien under this section nonjudicially pursuant to chapter 61.24 RCW, as provided by subsection (9) of this section, the association shall not be entitled to the lien priority provided for under subsection (3) of this section.

(6) Unless the declaration otherwise provides, if two or more associations have liens for assessments created at any time on the same real estate, those liens have equal priority.

(7) Recording of the declaration constitutes record notice and perfection of the lien for assessments. While no further recording of any claim of lien for assessment under this section shall be required to perfect the association's lien, the association may record a notice of claim of lien for assessments under this section in the real property records of any county in which the condominium is located. Such recording shall not constitute the written notice of delinquency to a mortgagee referred to in subsection (2) of this section.

(8) A lien for unpaid assessments and the personal liability for payment of assessments is extinguished unless proceedings to enforce the lien or collect the debt are instituted within three years after the amount of the assessments sought to be recovered becomes due.

(9) The lien arising under this section may be enforced judicially by the association or its authorized representative in the manner set forth in chapter 61.12 RCW. The lien arising under this section may be enforced nonjudicially in the manner set forth in chapter 61.24 RCW for nonjudicial foreclosure of deeds of trust if the declaration (a) contains a grant of the condominium in trust to a trustee qualified under RCW 61.24.010 to secure the obligations of the unit owners to the association for the payment of assessments, (b) contains a power of sale, (c) provides in its terms that the units are not used principally for agricultural or farming purposes, and (d) provides that the power of sale is operative in the case of a default in the obligation to pay assessments. The association

or its authorized representative shall have the power, unless prohibited by the declaration, to purchase the unit at the foreclosure sale and to acquire, hold, lease, mortgage, or convey the same. Upon an express waiver in the complaint of any right to a deficiency judgment in a judicial foreclosure action, the period of redemption shall be eight months. Nothing in this section shall prohibit an association from taking a deed in lieu of foreclosure.

(10) From the time of commencement of an action by the association to foreclose a lien for nonpayment of delinquent assessments against a unit that is not occupied by the owner thereof, the association shall be entitled to the appointment of a receiver to collect from the lessee thereof the rent for the unit as and when due. If the rental is not paid, the receiver may obtain possession of the unit, refurbish it for rental up to a reasonable standard for rental units in this type of condominium, rent the unit or permit its rental to others, and apply the rents first to the cost of the receivership and attorneys' fees thereof, then to the cost of refurbishing the unit, then to applicable charges, then to costs, fees, and charges of the foreclosure action, and then to the payment of the delinquent assessments. Only a receiver may take possession and collect rents under this subsection, and a receiver shall not be appointed less than ninety days after the delinquency. The exercise by the association of the foregoing rights shall not affect the priority of preexisting liens on the unit.

(11) Except as provided in subsection (3) of this section, the holder of a mortgage or other purchaser of a unit who obtains the right of possession of the unit through foreclosure shall not be liable for assessments or installments thereof that became due prior to such right of possession. Such unpaid assessments shall be deemed to be common expenses collectible from all the unit owners, including such mortgagee or other purchaser of the unit. Foreclosure of a mortgage does not relieve the prior owner of personal liability for assessments accruing against the unit prior to the date of such sale as provided in this subsection.

(12) In addition to constituting a lien on the unit, each assessment shall be the joint and several obligation of the owner or owners of the unit to which the same are assessed as of the time the assessment is due. In a voluntary conveyance, the grantee of a unit shall be jointly and severally liable with the grantor for all unpaid assessments against the grantor up to the time of the grantor's conveyance, without prejudice to the grantee's right to recover from the grantor the amounts paid by the grantee therefor. Suit to recover a personal judgment for any delinquent assessment shall be maintainable in any court of competent jurisdiction without foreclosing or waiving the lien securing such sums.

(13) The association may from time to time establish reasonable late charges and a rate of interest to be charged on all subsequent delinquent assessments or installments thereof. In the absence of another established nonusurious rate, delinquent assessments shall bear interest from the date of delinquency at the maximum rate permitted under RCW 19.52.020 on the date on which the assessments became delinquent.

(14) The association shall be entitled to recover any costs and reasonable attorneys' fees incurred in connection with the collection of delinquent assessments, whether or not such collection activities result in suit being commenced or prose-

cuted to judgment. In addition, the association shall be entitled to recover costs and reasonable attorneys' fees if it prevails on appeal and in the enforcement of a judgment.

(15) The association upon written request shall furnish to a unit owner or a mortgagee a statement signed by an officer or authorized agent of the association setting forth the amount of unpaid assessments against that unit. The statement shall be furnished within fifteen days after receipt of the request and is binding on the association, the board of directors, and every unit owner, unless and to the extent known by the recipient to be false.

(16) To the extent not inconsistent with this section, the declaration may provide for such additional remedies for collection of assessments as may be permitted by law. [1990 c 166 § 6; 1989 c 43 § 3-117.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**64.34.368 Liens—General provisions.** (1) Except as provided in subsection (2) of this section, a judgment for money against the association perfected under RCW 4.64.020 is a lien in favor of the judgment lienholder against all of the units in the condominium and their interest in the common elements at the time the judgment was entered. No other property of a unit owner is subject to the claims of creditors of the association.

(2) If the association has granted a security interest in the common elements to a creditor of the association pursuant to RCW 64.34.348, the holder of that security interest shall exercise its right first against such common elements before its judgment lien on any unit may be enforced.

(3) Whether perfected before or after the creation of the condominium, if a lien other than a mortgage, including a judgment lien or lien attributable to work performed or materials supplied before creation of the condominium, becomes effective against two or more units, the unit owner of an affected unit may pay to the lienholder the amount of the lien attributable to the owner's unit, and the lienholder, upon receipt of payment, promptly shall deliver a release of the lien covering that unit. The amount of the payment must be proportionate to the ratio which that unit owner's allocated common expense liability bears to the allocated common expense liabilities of all unit owners whose units are subject to the lien. After payment, the association may not assess or have a lien against that unit owner's unit for any portion of the common expenses incurred in connection with that lien.

(4) A judgment against the association shall be filed in the name of the condominium and the association and, when so filed, is notice of the lien against the units. [1989 c 43 § 3-118.]

**64.34.372 Association records—Funds.** (1) The association shall keep financial records sufficiently detailed to enable the association to comply with RCW 64.34.425. All financial and other records of the association, including but not limited to checks, bank records, and invoices, are the property of the association, but shall be made reasonably available for examination and copying by the manager of the association, any unit owner, or the owner's authorized agents. At least annually, the association shall prepare, or cause to be prepared, a financial statement of the association in accor-

dance with generally accepted accounting principles. The financial statements of condominiums consisting of fifty or more units shall be audited at least annually by a certified public accountant. In the case of a condominium consisting of fewer than fifty units, an annual audit is also required but may be waived annually by unit owners other than the declarant of units to which sixty percent of the votes are allocated, excluding the votes allocated to units owned by the declarant.

(2) The funds of an association shall be kept in accounts in the name of the association and shall not be commingled with the funds of any other association, nor with the funds of any manager of the association or any other person responsible for the custody of such funds. Any reserve funds of an association shall be kept in a segregated account and any transaction affecting such funds, including the issuance of checks, shall require the signature of at least two persons who are officers or directors of the association. [1992 c 220 § 19; 1990 c 166 § 7; 1989 c 43 § 3-119.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**64.34.376 Association as trustee.** With respect to a third person dealing with the association in the association's capacity as a trustee, the existence of trust powers and their proper exercise by the association may be assumed without inquiry. A third person is not bound to inquire whether the association has power to act as trustee or is properly exercising trust powers. A third person, without actual knowledge that the association is exceeding or improperly exercising its powers, is fully protected in dealing with the association as if it possessed and properly exercised the powers it purports to exercise. A third person is not bound to assure the proper application of trust assets paid or delivered to the association in its capacity as trustee. [1989 c 43 § 3-120.]

**64.34.380 Reserve account—Reserve study—Annual update.** (1) An association is encouraged to establish a reserve account to fund major maintenance, repair, and replacement of common elements, including limited common elements that will require major maintenance, repair, or replacement within thirty years. A reserve account shall be established in the name of the association. The board of directors is responsible for administering the reserve account.

(2) Unless doing so would impose an unreasonable hardship, an association shall prepare and update a reserve study, in accordance with the association's governing documents and RCW 64.34.224(1). The initial reserve study must be based upon a visual site inspection conducted by a reserve study professional.

(3) Unless doing so would impose an unreasonable hardship, the association shall update the reserve study annually. At least every three years, an updated reserve study must be prepared and based upon a visual site inspection conducted by a reserve study professional.

(4) This section and RCW 64.34.382 through 64.34.390 apply to condominiums governed by chapter 64.32 RCW or this chapter and intended in whole or in part for residential purposes. These sections do not apply to condominiums consisting solely of units that are restricted in the declaration to

nonresidential use. An association's governing documents may contain stricter requirements. [2008 c 115 § 1.]

**64.34.382 Reserve study—Contents.** (1) A reserve study as described in RCW 64.34.380 is supplemental to the association's operating and maintenance budget. In preparing a reserve study, the association shall estimate the anticipated major maintenance, repair, and replacement costs, whose infrequent and significant nature make them impractical to be included in an annual budget.

(2) A reserve study shall include:

(a) A reserve component list, including quantities and estimates for useful life of each reserve component, remaining useful life of each reserve component, and current repair and replacement cost for each component;

(b) The date of the study and a statement that the study meets the requirements of this section;

(c) The level of reserve study performed:

(i) Level I: Full reserve study funding analysis and plan;

(ii) Level II: Update with visual site inspection;

(iii) Level III: Update with no visual site inspection;

(d) The association's reserve account balance;

(e) The percentage of the fully funded balance that the reserve account is funded;

(f) Special assessments already implemented or planned;

(g) Interest and inflation assumptions;

(h) Current reserve account contribution rate;

(i) Recommended reserve account contribution rate;

(j) Projected reserve account balance for thirty years and a funding plan to pay for projected costs from those reserves without reliance on future unplanned special assessments; and

(k) Whether the reserve study was prepared with the assistance of a reserve study professional.

(3) A reserve study shall include the following disclosure:

"This reserve study should be reviewed carefully. It may not include all common and limited common element components that will require major maintenance, repair, or replacement in future years, and may not include regular contributions to a reserve account for the cost of such maintenance, repair, or replacement. The failure to include a component in a reserve study, or to provide contributions to a reserve account for a component, may, under some circumstances, require you to pay on demand as a special assessment your share of common expenses for the cost of major maintenance, repair, or replacement of a reserve component."

[2008 c 115 § 2.]

**64.34.384 Reserve account—Withdrawals.** An association may withdraw funds from its reserve account to pay for unforeseen or unbudgeted costs. The board of directors shall record any such withdrawal in the minute books of the association, cause notice of any such withdrawal to be hand delivered or sent prepaid by first-class United States mail to the mailing address of each unit or to any other mailing address designated in writing by the unit owner, and adopt a

repayment schedule not to exceed twenty-four months unless it determines that repayment within twenty-four months would impose an unreasonable burden on the unit owners. [2008 c 115 § 3.]

**64.34.386 Reserve study—Demand by owners—Study not timely prepared.** (1) Where more than three years have passed since the date of the last reserve study prepared by a reserve study professional, the owners of the units to which at least twenty percent of the votes are allocated may demand, in writing, to the association that the cost of a reserve study be included in the next budget and that the study be obtained by the end of that budget year. The written demand must refer to this section. The board of directors shall, upon receipt of the written demand, provide unit owners making the demand reasonable assurance that the board of directors will include a reserve study in the next budget and, if the budget is not rejected by the owners, will arrange for the completion of a reserve study.

(2) In the event a written demand is made and a reserve study is not timely prepared, a court may order specific performance and award reasonable attorneys' fees to the prevailing party in any legal action brought to enforce this section. An association may assert unreasonable hardship as an affirmative defense in any action brought against it under this section. Without limiting this affirmative defense, an unreasonable hardship exists where the cost of preparing a reserve study would exceed ten percent of the association's annual budget.

(3) A unit owner's duty to pay for common expenses shall not be excused because of the association's failure to comply with this section or RCW 64.34.382 through 64.34.390. A budget ratified by the unit owners under RCW 64.34.308(3) may not be invalidated because of the association's failure to comply with this section or RCW 64.34.382 through 64.34.390. [2008 c 115 § 4.]

**64.34.388 Reserve study—Decision making.** Subject to RCW 64.34.386, the decisions relating to the preparation and updating of a reserve study must be made by the board of directors of the association in the exercise of the reasonable discretion of the board. Such decisions must include whether a reserve study will be prepared or updated, and whether the assistance of a reserve study professional will be utilized. [2008 c 115 § 5.]

**64.34.390 Reserve study—Reserve account—Immunity from liability.** Monetary damages or any other liability may not be awarded against or imposed upon the association, the officers or board of directors of the association, or those persons who may have provided advice or assistance to the association or its officers or directors, for failure to: Establish a reserve account; have a current reserve study prepared or updated in accordance with RCW 64.34.380 through 64.34.388; or make the reserve disclosures in accordance with RCW 64.34.382 and 64.34.410(1)(oo) and 64.34.425(1)(s). [2008 c 115 § 6.]

**64.34.392 Reserve account and study—Exemption—Disclosure.** (1) A condominium association with ten or (2010 Ed.)

fewer unit owners is not required to follow the requirements under RCW 64.34.380 through 64.34.390 if two-thirds of the owners agree to exempt the association from the requirements.

(2) The unit owners must agree to maintain an exemption under subsection (1) of this section by a two-thirds vote every three years.

(3) Notwithstanding subsections (1) and (2) of this section, a disclosure that the condominium association does not have a reserve study must be included in a unit's public offering statement as required under RCW 64.34.410 or resale certificate as required under RCW 64.34.425. [2009 c 307 § 1.]

#### ARTICLE 4

#### PROTECTION OF CONDOMINIUM PURCHASERS

**64.34.400 Applicability—Waiver.** (1) This article applies to all units subject to this chapter, except as provided in subsection (2) of this section and unless and to the extent otherwise agreed to in writing by the seller and purchasers of those units that are restricted to nonresidential use in the declaration.

(2) This article shall not apply in the case of:

(a) A conveyance by gift, devise, or descent;

(b) A conveyance pursuant to court order;

(c) A disposition by a government or governmental agency;

(d) A conveyance by foreclosure;

(e) A disposition of all of the units in a condominium in a single transaction;

(f) A disposition to other than a purchaser as defined in \*RCW 64.34.020(26); or

(g) A disposition that may be canceled at any time and for any reason by the purchaser without penalty. [1992 c 220 § 20; 1990 c 166 § 9; 1989 c 43 § 4-101.]

\*Reviser's note: RCW 64.34.020 was amended by 2008 c 115 § 8, changing subsection (26) to subsection (29).

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**64.34.405 Public offering statement—Requirements—Liability.** (1) Except as provided in subsection (2) of this section or when no public offering statement is required, a declarant shall prepare a public offering statement conforming to the requirements of RCW 64.34.410 and 64.34.415.

(2) A declarant may transfer responsibility for preparation of all or a part of the public offering statement to a successor declarant pursuant to RCW 64.34.316 or to a dealer who intends to offer units in the condominium for the person's own account.

(3) Any declarant or dealer who offers a unit for the person's own account to a purchaser shall deliver a public offering statement in the manner prescribed in RCW 64.34.420(1). Any agent, attorney, or other person assisting the declarant or dealer in preparing the public offering statement may rely upon information provided by the declarant or dealer without independent investigation. The agent, attorney, or other person shall not be liable for any material misrepresentation in or omissions of material facts from the public offering statement unless the person had actual knowledge of the misrepresenta-

tion or omission at the time the public offering statement was prepared. The declarant or dealer shall be liable for any misrepresentation contained in the public offering statement or for any omission of material fact therefrom if the declarant or dealer had actual knowledge of the misrepresentation or omission or, in the exercise of reasonable care, should have known of the misrepresentation or omission.

(4) If a unit is part of a condominium and is part of another real property regime in connection with the sale of which the delivery of a public offering statement is required under the laws of this state, a single public offering statement, conforming to the requirements of RCW 64.34.410 and 64.34.415 as those requirements relate to all real property regimes in which the unit is located and conforming to any other requirements imposed under the laws of this state, may be prepared and delivered in lieu of providing two or more public offering statements. [1989 c 43 § 4-102.]

**64.34.410 Public offering statement—General provisions.** (1) A public offering statement shall contain the following information:

- (a) The name and address of the condominium;
- (b) The name and address of the declarant;
- (c) The name and address of the management company, if any;
- (d) The relationship of the management company to the declarant, if any;
- (e) A list of up to the five most recent condominium projects completed by the declarant or an affiliate of the declarant within the past five years, including the names of the condominiums, their addresses, and the number of existing units in each. For the purpose of this section, a condominium is "completed" when any one unit therein has been rented or sold;
- (f) The nature of the interest being offered for sale;
- (g) A brief description of the permitted uses and use restrictions pertaining to the units and the common elements;
- (h) A brief description of the restrictions, if any, on the renting or leasing of units by the declarant or other unit owners, together with the rights, if any, of the declarant to rent or lease at least a majority of units;
- (i) The number of existing units in the condominium and the maximum number of units that may be added to the condominium;
- (j) A list of the principal common amenities in the condominium which materially affect the value of the condominium and those that will or may be added to the condominium;
- (k) A list of the limited common elements assigned to the units being offered for sale;
- (l) The identification of any real property not in the condominium, the owner of which has access to any of the common elements, and a description of the terms of such access;
- (m) The identification of any real property not in the condominium to which unit owners have access and a description of the terms of such access;
- (n) The status of construction of the units and common elements, including estimated dates of completion if not completed;
- (o) The estimated current common expense liability for the units being offered;

(p) An estimate of any payment with respect to the common expense liability for the units being offered which will be due at closing;

(q) The estimated current amount and purpose of any fees not included in the common expenses and charged by the declarant or the association for the use of any of the common elements;

(r) Any assessments which have been agreed to or are known to the declarant and which, if not paid, may constitute a lien against any units or common elements in favor of any governmental agency;

(s) The identification of any parts of the condominium, other than the units, which any individual owner will have the responsibility for maintaining;

(t) If the condominium involves a conversion condominium, the information required by RCW 64.34.415;

(u) Whether timesharing is restricted or prohibited, and if restricted, a general description of such restrictions;

(v) A list of all development rights reserved to the declarant and all special declarant rights reserved to the declarant, together with the dates such rights must terminate, and a copy of or reference by recording number to any recorded transfer of a special declarant right;

(w) A description of any material differences in terms of furnishings, fixtures, finishes, and equipment between any model unit available to the purchaser at the time the agreement for sale is executed and the unit being offered;

(x) Any liens on real property to be conveyed to the association required to be disclosed pursuant to RCW 64.34.435(2)(b);

(y) A list of any physical hazards known to the declarant which particularly affect the condominium or the immediate vicinity in which the condominium is located and which are not readily ascertainable by the purchaser;

(z) A brief description of any construction warranties to be provided to the purchaser;

(aa) Any building code violation citations received by the declarant in connection with the condominium which have not been corrected;

(bb) A statement of any unsatisfied judgments or pending suits against the association, a statement of the status of any pending suits material to the condominium of which the declarant has actual knowledge, and a statement of any litigation brought by an owners' association, unit owner, or governmental entity in which the declarant or any affiliate of the declarant has been a defendant, arising out of the construction, sale, or administration of any condominium within the previous five years, together with the results thereof, if known;

(cc) Any rights of first refusal to lease or purchase any unit or any of the common elements;

(dd) The extent to which the insurance provided by the association covers furnishings, fixtures, and equipment located in the unit;

(ee) A notice which describes a purchaser's right to cancel the purchase agreement or extend the closing under RCW 64.34.420, including applicable time frames and procedures;

(ff) Any reports or statements required by RCW 64.34.415 or 64.34.440(6)(a). RCW 64.34.415 shall apply to the public offering statement of a condominium in connection with which a final certificate of occupancy was issued

more than sixty calendar months prior to the preparation of the public offering statement whether or not the condominium is a conversion condominium as defined in RCW 64.34.020(11);

(gg) A list of the documents which the prospective purchaser is entitled to receive from the declarant before the rescission period commences;

(hh) A notice which states: A purchaser may not rely on any representation or express warranty unless it is contained in the public offering statement or made in writing signed by the declarant or by any person identified in the public offering statement as the declarant's agent;

(ii) A notice which states: This public offering statement is only a summary of some of the significant aspects of purchasing a unit in this condominium and the condominium documents are complex, contain other important information, and create binding legal obligations. You should consider seeking the assistance of legal counsel;

(jj) Any other information and cross-references which the declarant believes will be helpful in describing the condominium to the recipients of the public offering statement, all of which may be included or not included at the option of the declarant;

(kk) A notice that addresses compliance or noncompliance with the housing for older persons act of 1995, P.L. 104-76, as enacted on December 28, 1995;

(ll) A notice that is substantially in the form required by RCW 64.50.050;

(mm) A statement, as required by RCW 64.35.210, as to whether the units or common elements of the condominium are covered by a qualified warranty, and a history of claims under any such warranty;

(nn) A statement that the building enclosure has been designed and inspected as required by RCW 64.55.010 through 64.55.090, and, if required, repaired in accordance with the requirements of RCW 64.55.090; and

(oo) If the association does not have a reserve study that has been prepared in accordance with RCW 64.34.380 and 64.34.382 or its governing documents, the following disclosure:

"This association does not have a current reserve study. The lack of a current reserve study poses certain risks to you, the purchaser. Insufficient reserves may, under some circumstances, require you to pay on demand as a special assessment your share of common expenses for the cost of major maintenance, repair, or replacement of a common element."

(2) The public offering statement shall include copies of each of the following documents: The declaration, the survey map and plans, the articles of incorporation of the association, bylaws of the association, rules and regulations, if any, current or proposed budget for the association, the balance sheet of the association current within ninety days if assessments have been collected for ninety days or more, the association's current reserve study, if any, and the inspection and repair report or reports prepared in accordance with the requirements of RCW 64.55.090.

If any of the foregoing documents listed in this subsection are not available because they have not been executed,

(2010 Ed.)

adopted, or recorded, drafts of such documents shall be provided with the public offering statement, and, before closing the sale of a unit, the purchaser shall be given copies of any material changes between the draft of the proposed documents and the final documents.

(3) The disclosures required by subsection (1)(g), (k), (s), (u), (v), and (cc) of this section shall also contain a reference to specific sections in the condominium documents which further explain the information disclosed.

(4) The disclosures required by subsection (1)(ee), (hh), (ii), and (ll) of this section shall be located at the top of the first page of the public offering statement and be typed or printed in ten-point bold face type size.

(5) A declarant shall promptly amend the public offering statement to reflect any material change in the information required by this section. [2008 c 115 § 10; 2005 c 456 § 19; 2004 c 201 § 11; 2002 c 323 § 10; 1997 c 400 § 1; 1992 c 220 § 21; 1989 c 43 § 4-103.]

**Captions not law—Effective date—2005 c 456:** See RCW 64.55.900 and 64.55.901.

**64.34.415 Public offering statement—Conversion condominiums.** (1) The public offering statement of a conversion condominium shall contain, in addition to the information required by RCW 64.34.410:

(a) Either a copy of a report prepared by an independent, licensed architect or engineer, or a statement by the declarant based on such report, which report or statement describes, to the extent reasonably ascertainable, the present condition of all structural components and mechanical and electrical installations material to the use and enjoyment of the condominium;

(b) A copy of the inspection and repair report prepared by an independent, licensed architect, engineer, or qualified building inspector in accordance with the requirements of RCW 64.55.090;

(c) A statement by the declarant of the expected useful life of each item reported on in (a) of this subsection or a statement that no representations are made in that regard; and

(d) A list of any outstanding notices of uncured violations of building code or other municipal regulations, together with the estimated cost of curing those violations. Unless the purchaser waives in writing the curing of specific violations, the extent to which the declarant will cure such violations prior to the closing of the sale of a unit in the condominium shall be included.

(2) This section applies only to condominiums containing units that may be occupied for residential use. [2005 c 456 § 18; 1992 c 220 § 22; 1990 c 166 § 10; 1989 c 43 § 4-104.]

**Captions not law—Effective date—2005 c 456:** See RCW 64.55.900 and 64.55.901.

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**64.34.417 Public offering statement—Use of single disclosure document.** If a unit is offered for sale for which the delivery of a public offering statement or other disclosure document is required under the laws of any state or the United States, a single disclosure document conforming to the requirements of RCW 64.34.410 and 64.34.415 and conforming to any other requirement imposed under such laws,

may be prepared and delivered in lieu of providing two or more disclosure documents. [1990 c 166 § 11.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**64.34.418 Public offering statement—Contract of sale—Restriction on interest conveyed.** In the case of a sale of a unit where delivery of a public offering statement is required, a contract of sale may be executed, but no interest in that unit may be conveyed until (1) the declaration and survey map and plans which create the condominium in which that unit is located are recorded pursuant to RCW 64.34.200 and 64.34.232 and (2) the unit is substantially completed and available for occupancy, unless the declarant and purchaser have otherwise specifically agreed in writing as to the extent to which the unit will not be substantially completed and available for occupancy at the time of conveyance. [1990 c 166 § 15.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**64.34.420 Purchaser's right to cancel.** (1) A person required to deliver a public offering statement pursuant to RCW 64.34.405(3) shall provide a purchaser of a unit with a copy of the public offering statement and all material amendments thereto before conveyance of that unit. Unless a purchaser is given the public offering statement more than seven days before execution of a contract for the purchase of a unit, the purchaser, before conveyance, shall have the right to cancel the contract within seven days after first receiving the public offering statement and, if necessary to have seven days to review the public offering statement and cancel the contract, to extend the closing date for conveyance to a date not more than seven days after first receiving the public offering statement. The purchaser shall have no right to cancel the contract upon receipt of an amendment unless the purchaser would have that right under generally applicable legal principles.

(2) If a purchaser elects to cancel a contract pursuant to subsection (1) of this section, the purchaser may do so by hand-delivering notice thereof to the offeror or by mailing notice thereof by prepaid United States mail to the offeror or to his or her agent for service of process. Cancellation is without penalty, and all payments made by the purchaser before cancellation shall be refunded promptly.

(3) If a person required to deliver a public offering statement pursuant to RCW 64.34.405(3) fails to provide a purchaser to whom a unit is conveyed with that public offering statement and all material amendments thereto as required by subsection (1) of this section, the purchaser is entitled to receive from that person an amount equal to the greater of (a) actual damages, or (b) ten percent of the sales price of the unit for a willful failure by the declarant or three percent of the sales price of the unit for any other failure. There shall be no liability for failure to deliver any amendment unless such failure would have entitled the purchaser under generally applicable legal principles to cancel the contract for the purchase of the unit had the undisclosed information been evident to the purchaser before the closing of the purchase. [1989 c 43 § 4-106.]

**64.34.425 Resale of unit.** (1) Except in the case of a sale where delivery of a public offering statement is required, or unless exempt under RCW 64.34.400(2), a unit owner shall furnish to a purchaser before execution of any contract for sale of a unit, or otherwise before conveyance, a resale certificate, signed by an officer or authorized agent of the association and based on the books and records of the association and the actual knowledge of the person signing the certificate, containing:

(a) A statement disclosing any right of first refusal or other restraint on the free alienability of the unit contained in the declaration;

(b) A statement setting forth the amount of the monthly common expense assessment and any unpaid common expense or special assessment currently due and payable from the selling unit owner and a statement of any special assessments that have been levied against the unit which have not been paid even though not yet due;

(c) A statement, which shall be current to within forty-five days, of any common expenses or special assessments against any unit in the condominium that are past due over thirty days;

(d) A statement, which shall be current to within forty-five days, of any obligation of the association which is past due over thirty days;

(e) A statement of any other fees payable by unit owners;

(f) A statement of any anticipated repair or replacement cost in excess of five percent of the annual budget of the association that has been approved by the board of directors;

(g) A statement of the amount of any reserves for repair or replacement and of any portions of those reserves currently designated by the association for any specified projects;

(h) The annual financial statement of the association, including the audit report if it has been prepared, for the year immediately preceding the current year;

(i) A balance sheet and a revenue and expense statement of the association prepared on an accrual basis, which shall be current to within one hundred twenty days;

(j) The current operating budget of the association;

(k) A statement of any unsatisfied judgments against the association and the status of any pending suits or legal proceedings in which the association is a plaintiff or defendant;

(l) A statement describing any insurance coverage provided for the benefit of unit owners;

(m) A statement as to whether there are any alterations or improvements to the unit or to the limited common elements assigned thereto that violate any provision of the declaration;

(n) A statement of the number of units, if any, still owned by the declarant, whether the declarant has transferred control of the association to the unit owners, and the date of such transfer;

(o) A statement as to whether there are any violations of the health or building codes with respect to the unit, the limited common elements assigned thereto, or any other portion of the condominium;

(p) A statement of the remaining term of any leasehold estate affecting the condominium and the provisions governing any extension or renewal thereof;

(q) A copy of the declaration, the bylaws, the rules or regulations of the association, the association's current reserve study, if any, and any other information reasonably

requested by mortgagees of prospective purchasers of units. Information requested generally by the federal national mortgage association, the federal home loan bank board, the government national mortgage association, the veterans administration and the department of housing and urban development shall be deemed reasonable, provided such information is reasonably available to the association;

(r) A statement, as required by RCW 64.35.210, as to whether the units or common elements of the condominium are covered by a qualified warranty, and a history of claims under any such warranty; and

(s) If the association does not have a reserve study that has been prepared in accordance with RCW 64.34.380 and 64.34.382 or its governing documents, the following disclosure:

"This association does not have a current reserve study. The lack of a current reserve study poses certain risks to you, the purchaser. Insufficient reserves may, under some circumstances, require you to pay on demand as a special assessment your share of common expenses for the cost of major maintenance, repair, or replacement of a common element."

(2) The association, within ten days after a request by a unit owner, and subject to payment of any fee imposed pursuant to RCW 64.34.304(1)(l), shall furnish a resale certificate signed by an officer or authorized agent of the association and containing the information necessary to enable the unit owner to comply with this section. For the purposes of this chapter, a reasonable charge for the preparation of a resale certificate may not exceed one hundred fifty dollars. The association may charge a unit owner a nominal fee for updating a resale certificate within six months of the unit owner's request. The unit owner shall also sign the certificate but the unit owner is not liable to the purchaser for any erroneous information provided by the association and included in the certificate unless and to the extent the unit owner had actual knowledge thereof.

(3) A purchaser is not liable for any unpaid assessment or fee against the unit as of the date of the certificate greater than the amount set forth in the certificate prepared by the association unless and to the extent such purchaser had actual knowledge thereof. A unit owner is not liable to a purchaser for the failure or delay of the association to provide the certificate in a timely manner, but the purchaser's contract is voidable by the purchaser until the certificate has been provided and for five days thereafter or until conveyance, whichever occurs first. [2008 c 115 § 11; 2004 c 201 § 4; 1992 c 220 § 23; 1990 c 166 § 12; 1989 c 43 § 4-107.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**64.34.430 Escrow of deposits.** Any deposit made in connection with the purchase or reservation of a unit from a person required to deliver a public offering statement pursuant to RCW 64.34.405(3) shall be placed in escrow and held in this state in an escrow or trust account designated solely for that purpose by a licensed title insurance company, an attorney, a real estate broker, an independent bonded escrow company, or an institution whose accounts are insured by a

(2010 Ed.)

governmental agency or instrumentality until: (1) Delivered to the declarant at closing; (2) delivered to the declarant because of purchaser's default under a contract to purchase the unit; (3) refunded to the purchaser; or (4) delivered to a court in connection with the filing of an interpleader action. [1992 c 220 § 24; 1989 c 43 § 4-108.]

**64.34.435 Release of liens—Conveyance.** (1) At the time of the first conveyance of each unit, every mortgage, lien, or other encumbrance affecting that unit and any other unit or units or real property, other than the percentage of undivided interest of that unit in the common elements, shall be paid and satisfied of record, or the unit being conveyed and its undivided interest in the common elements shall be released therefrom by partial release duly recorded or the purchaser of that unit shall receive title insurance from a licensed title insurance company against such mortgage, lien or other encumbrance. This subsection does not apply to any real property which a declarant has the right to withdraw.

(2) Before conveying real property to the association the declarant shall have that real property released from: (a) All liens the foreclosure of which would deprive unit owners of any right of access to or easement of support of their units; and (b) all other liens on that real property unless the public offering statement describes certain real property which may be conveyed subject to liens in specified amounts. [1989 c 43 § 4-109.]

**64.34.440 Conversion condominiums—Notice—Tenants—Relocation assistance.** (1)(a) A declarant of a conversion condominium, and any dealer who intends to offer units in such a condominium, shall give each of the residential tenants and any residential subtenant in possession of a portion of a conversion condominium notice of the conversion and provide those persons with the public offering statement no later than one hundred twenty days before the tenants and any subtenant in possession are required to vacate. The notice must:

(i) Set forth generally the rights of tenants and subtenants under this section;

(ii) Be delivered pursuant to notice requirements set forth in RCW 59.12.040; and

(iii) Expressly state whether there is a county or city relocation assistance program for tenants or subtenants of conversion condominiums in the jurisdiction in which the property is located. If the county or city does have a relocation assistance program, the following must also be included in the notice:

(A) A summary of the terms and conditions under which relocation assistance is paid; and

(B) Contact information for the city or county relocation assistance program, which must include, at a minimum, a telephone number of the city or county department that administers the relocation assistance program for conversion condominiums.

(b) No tenant or subtenant may be required to vacate upon less than one hundred twenty days' notice, except by reason of nonpayment of rent, waste, conduct that disturbs other tenants' peaceful enjoyment of the premises, or act of unlawful detainer as defined in RCW 59.12.030, and the

terms of the tenancy may not be altered during that period except as provided in (c) of this subsection.

(c) At the declarant's option, the declarant may provide all tenants in a single building with an option to terminate their lease or rental agreements without cause or consequence after providing the declarant with thirty days' notice. In such case, tenants continue to have access to relocation assistance under subsection (6)(e) of this section.

(d) Nothing in this subsection shall be deemed to waive or repeal RCW 59.18.200(2). Failure to give notice as required by this section is a defense to an action for possession.

(e) The city or county in which the property is located may require the declarant to forward a copy of the conversion notice required in (a) of this subsection to the appropriately designated department or agency in the city or county for the purpose of maintaining a list of conversion condominium projects proposed in the jurisdiction.

(2) For sixty days after delivery or mailing of the notice described in subsection (1) of this section, the person required to give the notice shall offer to convey each unit or proposed unit occupied for residential use to the tenant who leases that unit. If a tenant fails to purchase the unit during that sixty-day period, the offeror may offer to dispose of an interest in that unit during the following one hundred eighty days at a price or on terms more favorable to the offeree than the price or terms offered to the tenant only if: (a) Such offeror, by written notice mailed to the tenant's last known address, offers to sell an interest in that unit at the more favorable price and terms, and (b) such tenant fails to accept such offer in writing within ten days following the mailing of the offer to the tenant. This subsection does not apply to any unit in a conversion condominium if that unit will be restricted exclusively to nonresidential use or the boundaries of the converted unit do not substantially conform to the dimensions of the residential unit before conversion.

(3) If a seller, in violation of subsection (2) of this section, conveys a unit to a purchaser for value who has no knowledge of the violation, recording of the deed conveying the unit extinguishes any right a tenant may have to purchase that unit but does not affect the right of a tenant to recover damages from the seller for a violation of subsection (2) of this section.

(4) If a notice of conversion specifies a date by which a unit or proposed unit must be vacated and otherwise complies with the provisions of this chapter and chapter 59.18 RCW, the notice also constitutes a notice to vacate specified by that statute.

(5) Nothing in this section permits termination of a lease by a declarant in violation of its terms.

(6) Notwithstanding RCW 64.34.050(1), a city or county may by appropriate ordinance require with respect to any conversion condominium within the jurisdiction of such city or county that:

(a) In addition to the statement required by RCW 64.34.415(1)(a), the public offering statement shall contain a copy of the written inspection report prepared by the appropriate department of such city or county, which report shall list any violations of the housing code or other governmental regulation, which code or regulation is applicable regardless of whether the real property is owned as a condominium or in

some other form of ownership; said inspection shall be made within forty-five days of the declarant's written request therefor and said report shall be issued within fourteen days of said inspection being made. Such inspection may not be required with respect to any building for which a final certificate of occupancy has been issued by the city or county within the preceding twenty-four months; and any fee imposed for the making of such inspection may not exceed the fee that would be imposed for the making of such an inspection for a purpose other than complying with this subsection (6)(a);

(b) Prior to the conveyance of any residential unit within a conversion condominium, other than a conveyance to a declarant or affiliate of a declarant: (i) All violations disclosed in the inspection report provided for in (a) of this subsection, and not otherwise waived by such city or county, shall be repaired, and (ii) a certification shall be obtained from such city or county that such repairs have been made, which certification shall be based on a reinspection to be made within seven days of the declarant's written request therefor and which certification shall be issued within seven days of said reinspection being made;

(c) The repairs required to be made under (b) of this subsection shall be warranted by the declarant against defects due to workmanship or materials for a period of one year following the completion of such repairs;

(d) Prior to the conveyance of any residential unit within a conversion condominium, other than a conveyance to a declarant or affiliate of a declarant: (i) The declarant shall establish and maintain, during the one-year warranty period provided under (c) of this subsection, an account containing a sum equal to ten percent of the actual cost of making the repairs required under (b) of this subsection; (ii) during the one-year warranty period, the funds in such account shall be used exclusively for paying the actual cost of making repairs required, or for otherwise satisfying claims made, under such warranty; (iii) following the expiration of the one-year warranty period, any funds remaining in such account shall be immediately disbursed to the declarant; and (iv) the declarant shall notify in writing the association and such city or county as to the location of such account and any disbursements therefrom;

(e)(i) A declarant shall pay relocation assistance, in an amount to be determined by the city or county, which may not exceed a sum equal to three months of the tenant's or subtenant's rent at the time the conversion notice required under subsection (1) of this section is received, to tenants and subtenants:

(A) Who do not elect to purchase a unit;

(B) Who are in lawful occupancy for residential purposes of a unit; and

(C) Whose annual household income from all sources, on the date of the notice described in subsection (1) of this section, was less than an amount equal to eighty percent of:

(I) The annual median income for comparably sized households in the standard metropolitan statistical area, as defined and established by the United States department of housing and urban development, in which the condominium is located; or

(II) If the condominium is not within a standard metropolitan statistical area, the annual median income for compa-

rably sized households in the state of Washington, as defined and determined by said department.

The household size of a unit shall be based on the number of persons actually in lawful occupancy of the unit. The tenant or subtenant actually in lawful occupancy of the unit shall be entitled to the relocation assistance. Relocation assistance shall be paid on or before the date the tenant or subtenant vacates and shall be in addition to any damage deposit or other compensation or refund to which the tenant is otherwise entitled. Unpaid rent or other amounts owed by the tenant or subtenant to the landlord may be offset against the relocation assistance;

(ii) Elderly or special needs tenants who otherwise meet the requirements of (e)(i)(A) of this subsection shall receive relocation assistance, the greater of:

(A) The sum described in (e)(i) of this subsection; or

(B) The sum of actual relocation expenses of the tenant, up to a maximum of one thousand five hundred dollars in excess of the sum described in (e)(i) of this subsection, which may include costs associated with the physical move, first month's rent, and the security deposit for the dwelling unit to which the tenant is relocating, rent differentials for up to a six-month period, and any other reasonable costs or fees associated with the relocation. Receipts for relocation expenses must be provided to the declarant by eligible tenants, and declarants shall provide the relocation assistance to tenants in a timely manner. The city or county may provide additional guidelines for the relocation assistance;

(iii) For the purposes of this subsection (6)(e):

(A) "Special needs" means, but is not limited to, a chronic mental illness or physical disability, a developmental disability, or other condition affecting cognition, disease, chemical dependency, or a medical condition that is permanent, not reversible or curable, or is long lasting, and severely limits a person's mental or physical capacity for self-care; and

(B) "Elderly" means a person who is at least sixty-five years of age;

(f) Except as authorized under (g) of this subsection, a declarant and any dealer shall not begin any construction, remodeling, or repairs to any interior portion of an occupied building that is to be converted to a condominium during the one hundred twenty-day notice period provided for in subsection (1) of this section unless all residential tenants and residential subtenants who have elected not to purchase a unit and who are in lawful occupancy in the building have vacated the premises. For the purposes of this subsection:

(i) "Construction, remodeling, or repairs" means the work that is done for the purpose of converting the condominium, not work that is done to maintain the building or lot for the residential use of the existing tenants or subtenants;

(ii) "Occupied building" means a stand-alone structure occupied by tenants and does not include other stand-alone buildings located on the property or detached common area facilities; and

(g)(i) If a declarant or dealer has offered existing tenants an option to terminate an existing lease or rental agreement without cause or consequence as authorized under subsection (1)(c) of this section, a declarant and any dealer may begin construction, remodeling, or repairs to interior portions of an occupied building (A) to repair or remodel vacant units to be

used as model units, if the repair or remodel is limited to one model for each unit type in the building, (B) to repair or remodel a vacant unit or common area for use as a sales office, or (C) to do both.

(ii) The work performed under this subsection (6)(g) must not violate the tenant's or subtenant's rights of quiet enjoyment during the one hundred twenty-day notice period.

(7) Violations of any city or county ordinance adopted as authorized by subsection (6) of this section shall give rise to such remedies, penalties, and causes of action which may be lawfully imposed by such city or county. Such violations shall not invalidate the creation of the condominium or the conveyance of any interest therein. [2008 c 113 § 1; 1992 c 220 § 25; 1990 c 166 § 13; 1989 c 43 § 4-110.]

**Application—2008 c 113:** "This act does not apply to any conversion condominiums for which a notice required under RCW 64.34.440(1) has been delivered before August 1, 2008." [2008 c 113 § 5.]

**Effective date—2008 c 113:** "This act takes effect August 1, 2008." [2008 c 113 § 6.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**64.34.442 Conversion condominium projects—Report.** (1) All cities and counties planning under RCW 36.70A.040, which have allowed any conversion condominiums within the jurisdiction within the previous twelve-month period, must report annually to the \*department of community, trade, and economic development the following information:

(a) The total number of apartment units converted into condominiums;

(b) The total number of conversion condominium projects; and

(c) The total number of apartment tenants who receive relocation assistance.

(2) Upon completion of a conversion condominium project, a city or county may require the declarant to provide the information described in subsection (1) of this section to the appropriately designated department or agency in the city or county for the purpose of complying with subsection (1) of this section. [2008 c 113 § 3.]

**\*Reviser's note:** The "department of community, trade, and economic development" was renamed the "department of commerce" by 2009 c 565.

**Application—Effective date—2008 c 113:** See notes following RCW 64.34.440.

**64.34.443 Express warranties of quality.** (1) Express warranties made by any seller to a purchaser of a unit, if relied upon by the purchaser, are created as follows:

(a) Any written affirmation of fact or promise which relates to the unit, its use, or rights appurtenant thereto, area improvements to the condominium that would directly benefit the unit, or the right to use or have the benefit of facilities not located in the condominium creates an express warranty that the unit and related rights and uses will conform to the affirmation or promise;

(b) Any model or written description of the physical characteristics of the condominium at the time the purchase agreement is executed, including plans and specifications of or for improvements, creates an express warranty that the condominium will conform to the model or description except pursuant to \*RCW 64.34.410(1)(v);

(c) Any written description of the quantity or extent of the real property comprising the condominium, including plats or surveys, creates an express warranty that the condominium will conform to the description, subject to customary tolerances; and

(d) A written provision that a buyer may put a unit only to a specified use is an express warranty that the specified use is lawful.

(2) Neither formal words, such as "warranty" or "guarantee," nor a specific intention to make a warranty are necessary to create an express warranty of quality, but a statement purporting to be merely an opinion or commendation of the real estate or its value does not create a warranty. A purchaser may not rely on any representation or express warranty unless it is contained in the public offering statement or made in writing signed by the declarant or declarant's agent identified in the public offering statement.

(3) Any conveyance of a unit transfers to the purchaser all express warranties of quality made by previous sellers. [1989 c 428 § 2.]

**\*Reviser's note:** RCW 64.34.410 was amended by 1997 c 400 § 1, changing subsection (1)(v) to subsection (1)(w).

**\*Reviser's note:** Sections 1, 3, and 4 of this act were vetoed by the governor.

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

#### **64.34.445 Implied warranties of quality—Breach.**

(1) A declarant and any dealer warrants that a unit will be in at least as good condition at the earlier of the time of the conveyance or delivery of possession as it was at the time of contracting, reasonable wear and tear and damage by casualty or condemnation excepted.

(2) A declarant and any dealer impliedly warrants that a unit and the common elements in the condominium are suitable for the ordinary uses of real estate of its type and that any improvements made or contracted for by such declarant or dealer will be:

- (a) Free from defective materials;
- (b) Constructed in accordance with sound engineering and construction standards;
- (c) Constructed in a workmanlike manner; and
- (d) Constructed in compliance with all laws then applicable to such improvements.

(3) A declarant and any dealer warrants to a purchaser of a unit that may be used for residential use that an existing use, continuation of which is contemplated by the parties, does not violate applicable law at the earlier of the time of conveyance or delivery of possession.

(4) Warranties imposed by this section may be excluded or modified as specified in RCW 64.34.450.

(5) For purposes of this section, improvements made or contracted for by an affiliate of a declarant, as defined in RCW 64.34.020(1), are made or contracted for by the declarant.

(6) Any conveyance of a unit transfers to the purchaser all of the declarant's implied warranties of quality.

(7) In a judicial proceeding for breach of any of the obligations arising under this section, the plaintiff must show that the alleged breach has adversely affected or will adversely affect the performance of that portion of the unit or common elements alleged to be in breach. As used in this subsection,

an "adverse effect" must be more than technical and must be significant to a reasonable person. To establish an adverse effect, the person alleging the breach is not required to prove that the breach renders the unit or common element uninhabitable or unfit for its intended purpose.

(8) Proof of breach of any obligation arising under this section is not proof of damages. Damages awarded for a breach of an obligation arising under this section are the cost of repairs. However, if it is established that the cost of such repairs is clearly disproportionate to the loss in market value caused by the breach, then damages shall be limited to the loss in market value. [2004 c 201 § 5; 1992 c 220 § 26; 1989 c 43 § 4-112.]

**Application—2004 c 201 §§ 5 and 6:** "Sections 5 and 6 of this act apply only to condominiums created by declarations recorded on or after July 1, 2004." [2004 c 201 § 12.]

**64.34.450 Implied warranties of quality—Exclusion—Modification—Disclaimer—Express written warranty.** (1) For units intended for nonresidential use, implied warranties of quality:

(a) May be excluded or modified by written agreement of the parties; and

(b) Are excluded by written expression of disclaimer, such as "as is," "with all faults," or other language which in common understanding calls the buyer's attention to the exclusion of warranties.

(2) For units intended for residential use, no disclaimer of implied warranties of quality is effective, except that a declarant or dealer may disclaim liability in writing, in type that is bold faced, capitalized, underlined, or otherwise set out from surrounding material so as to be conspicuous, and separately signed by the purchaser, for a specified defect or specified failure to comply with applicable law, if: (a) The declarant or dealer knows or has reason to know that the specific defect or failure exists at the time of disclosure; (b) the disclaimer specifically describes the defect or failure; and (c) the disclaimer includes a statement as to the effect of the defect or failure.

(3) A declarant or dealer may offer an express written warranty of quality only if the express written warranty does not reduce protections provided to the purchaser by the implied warranty set forth in RCW 64.34.445. [2004 c 201 § 6; 1989 c 43 § 4-113.]

**Application—2004 c 201 §§ 5 and 6:** See note following RCW 64.34.445.

**64.34.452 Warranties of quality—Breach—Actions for construction defect claims.** (1) A judicial proceeding for breach of any obligations arising under RCW 64.34.443, 64.34.445, and 64.34.450 must be commenced within four years after the cause of action accrues: PROVIDED, That the period for commencing an action for a breach accruing pursuant to subsection (2)(b) of this section shall not expire prior to one year after termination of the period of declarant control, if any, under RCW 64.34.308(4). Such periods may not be reduced by either oral or written agreement, or through the use of contractual claims or notice procedures that require the filing or service of any claim or notice prior to the expiration of the period specified in this section.

(2) Subject to subsection (3) of this section, a cause of action or [for] breach of warranty of quality, regardless of the purchaser's lack of knowledge of the breach, accrues:

(a) As to a unit, the date the purchaser to whom the warranty is first made enters into possession if a possessory interest was conveyed or the date of acceptance of the instrument of conveyance if a nonpossessory interest was conveyed; and

(b) As to each common element, at the latest of (i) the date the first unit in the condominium was conveyed to a bona fide purchaser, (ii) the date the common element was completed, or (iii) the date the common element was added to the condominium.

(3) If a warranty of quality explicitly extends to future performance or duration of any improvement or component of the condominium, the cause of action accrues at the time the breach is discovered or at the end of the period for which the warranty explicitly extends, whichever is earlier.

(4) If a written notice of claim is served under RCW 64.50.020 within the time prescribed for the filing of an action under this chapter, the statutes of limitation in this chapter and any applicable statutes of repose for construction-related claims are tolled until sixty days after the period of time during which the filing of an action is barred under RCW 64.50.020.

(5) Nothing in this section affects the time for filing a claim under chapter 64.35 RCW. [2004 c 201 § 7; 2002 c 323 § 11; 1990 c 166 § 14.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**64.34.455 Effect of violations on rights of action—Attorney's fees.** If a declarant or any other person subject to this chapter fails to comply with any provision hereof or any provision of the declaration or bylaws, any person or class of persons adversely affected by the failure to comply has a claim for appropriate relief. The court, in an appropriate case, may award reasonable attorney's fees to the prevailing party. [1989 c 43 § 4-115.]

**64.34.460 Labeling of promotional material.** If any improvement contemplated in a condominium is labeled "NEED NOT BE BUILT" on a survey map or plan, or is to be located within a portion of the condominium with respect to which the declarant has reserved a development right, no promotional material may be displayed or delivered to prospective purchasers which describes or portrays that improvement unless the description or portrayal of the improvement in the promotional material is conspicuously labeled or identified as "NEED NOT BE BUILT." [1989 c 43 § 4-116.]

**64.34.465 Improvements—Declarant's duties.** (1) The declarant shall complete all improvements labeled "MUST BE BUILT" on survey maps or plans prepared pursuant to RCW 64.34.232.

(2) The declarant is subject to liability for the prompt repair and restoration, to a condition compatible with the remainder of the condominium, of any portion of the condominium damaged by the exercise of rights reserved pursuant to or created by RCW 64.34.236, 64.34.240, 64.34.244, 64.34.248, 64.34.256, and 64.34.260. [1989 c 43 § 4-117.]

(2010 Ed.)

ARTICLE 5  
MISCELLANEOUS

**64.34.900 Short title.** This chapter shall be known and may be cited as the Washington condominium act or the condominium act. [1989 c 43 § 1-101.]

**64.34.910 Section captions.** Section captions as used in this chapter do not constitute any part of the law. [1989 c 43 § 4-119.]

**64.34.920 Severability—1989 c 43.** If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1989 c 43 § 4-120.]

**64.34.921 Severability—2004 c 201.** If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [2004 c 201 § 13.]

**64.34.930 Effective date—1989 c 43.** This act shall take effect July 1, 1990. [1989 c 43 § 4-124.]

**64.34.931 Effective date—2004 c 201 §§ 1-13.** Sections 1 through 13 of this act take effect July 1, 2004. [2004 c 201 § 14.]

**64.34.940 Construction against implicit repeal.** This chapter being a general act intended as a unified coverage of its subject matter, no part of it shall be construed to be impliedly repealed by subsequent legislation if that construction can reasonably be avoided. [1989 c 43 § 1-109.]

**64.34.950 Uniformity of application and construction.** This chapter shall be applied and construed so as to effectuate its general purpose to make uniform the law with respect to the subject of this chapter among states enacting it. [1989 c 43 § 1-110.]

Chapter 64.35 RCW

CONDOMINIUMS—QUALIFIED WARRANTIES

Sections

ARTICLE 1  
GENERAL PROVISIONS

- 64.35.105 Definitions.
- 64.35.106 Qualified warrantees—Application of RCW 48.01.040.
- 64.35.110 No duty to offer a qualified warranty—Insurer sets terms—Scope of inquiry—Conditions.
- 64.35.115 Attorneys' fees.
- 64.35.120 Change of ownership—Coverage transfers.

ARTICLE 2  
REMEDY, PROCEDURE, AND DISCLOSURE  
UNDER A QUALIFIED WARRANTY

- 64.35.205 Qualified warranty—Remedy and procedure—Application of chapter 64.50 RCW.
- 64.35.210 Notice of qualified warranty—History of claims.

ARTICLE 3  
MINIMUM COVERAGE STANDARDS  
FOR QUALIFIED WARRANTIES

- 64.35.305 Two-year materials and labor warranty—Noncompliance with building code.  
64.35.310 Five-year building envelope warranty.  
64.35.315 Ten-year structural defects warranty.  
64.35.320 Beginning dates for warranty coverage.  
64.35.325 Beginning dates for warranty coverage—Special cases—Declarant control.  
64.35.330 Living expense allowance.  
64.35.335 Warranty on repairs and replacements.

ARTICLE 4  
QUALIFIED WARRANTY TERMS

- 64.35.405 Provisions a qualified insurer may include.  
64.35.410 Authorized exclusions—General.  
64.35.415 Authorized exclusions—Defects.  
64.35.420 Limits on amounts—Calculation of costs—Adjustments.  
64.35.425 Prohibited policy provisions—Exclusions.

ARTICLE 5  
DUTIES OF PARTIES REGARDING COVERAGE AND CLAIMS

- 64.35.505 Failure to provide information—Conditions or exclusions may not apply.  
64.35.510 Schedule of expiration dates must be provided.  
64.35.515 Duty to mitigate may be required.  
64.35.520 Notice of claim—Reasonable timeliness and detail—Contents.  
64.35.525 Handling of claim—Prompt response—Procedures.

ARTICLE 6  
MEDIATION OR ARBITRATION OF DISPUTES

- 64.35.605 Disputed claim—Notice—Mediation procedures—Duties of parties.  
64.35.610 Disputed claim—Notice—Arbitration procedures—Duties of parties.

ARTICLE 9  
MISCELLANEOUS

- 64.35.900 Captions not law—2004 c 201.  
64.35.901 Severability—2004 c 201.

ARTICLE 1  
GENERAL PROVISIONS

**64.35.105 Definitions.** The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

- (1) "Affiliate" has the meaning in RCW 64.34.020.
- (2) "Association" has the meaning in RCW 64.34.020.
- (3) "Building envelope" means the assemblies, components, and materials of a building that are intended to separate and protect the interior space of the building from the adverse effects of exterior climatic conditions.
- (4) "Common element" has the meaning in RCW 64.34.020.
- (5) "Condominium" has the meaning in RCW 64.34.020.
- (6) "Construction professional" has the meaning in RCW 64.50.010.
- (7) "Conversion condominium" has the meaning in RCW 64.34.020.
- (8) "Declarant" has the meaning in RCW 64.34.020.
- (9) "Declarant control" has the meaning in RCW 64.34.020.
- (10) "Defect" means any aspect of a condominium unit or common element which constitutes a breach of the implied warranties set forth in RCW 64.34.445.
- (11) "Limited common element" has the meaning in RCW 64.34.020.

(12) "Material" means substantive, not simply formal; significant to a reasonable person; not trivial or insignificant. When used with respect to a particular construction defect, "material" does not require that the construction defect render the unit or common element unfit for its intended purpose or uninhabitable.

(13) "Mediation" means a collaborative process in which two or more parties meet and attempt, with the assistance of a mediator, to resolve issues in dispute between them.

(14) "Mediation session" means a meeting between two or more parties to a dispute during which they are engaged in mediation.

(15) "Mediator" means a neutral and impartial facilitator with no decision-making power who assists parties in negotiating a mutually acceptable settlement of issues in dispute between them.

(16) "Person" has the meaning in RCW 64.34.020.

(17) "Public offering statement" has the meaning in RCW 64.34.410.

(18) "Qualified insurer" means an entity that holds a certificate of authority under RCW 48.05.030, or an eligible insurer under chapter 48.15 RCW.

(19) "Qualified warranty" means an insurance policy issued by a qualified insurer that complies with the requirements of this chapter. A qualified warranty includes coverage for repair of physical damage caused by the defects covered by the qualified warranty, except to the extent of any exclusions and limitations under this chapter.

(20) "Resale certificate" means the statement to be delivered by the association under RCW 64.34.425.

(21) "Transition date" means the date on which the declarant is required to deliver to the association the property of the association under RCW 64.34.312.

(22) "Unit" has the meaning in RCW 64.34.020.

(23) "Unit owner" has the meaning in RCW 64.34.020. [2004 c 201 § 101.]

**64.35.106 Qualified warrantees—Application of RCW 48.01.040.** All qualified warrantees shall be deemed to be "insurance" for purposes of RCW 48.01.040, and shall be regulated as such. [2004 c 201 § 2001.]

**64.35.110 No duty to offer a qualified warranty—Insurer sets terms—Scope of inquiry—Conditions.** (1) No insurer is bound to offer a qualified warranty to any person. Except as specifically set forth in this section, the terms of any qualified warranty are set in the sole discretion of the qualified insurer. Without limiting the generality of this subsection, a qualified insurer may make inquiries about the applicant as follows:

(a) Does the applicant have the financial resources to undertake the construction of the number of units being proposed by the applicant's business plan for the following twelve months;

(b) Does the applicant and its directors, officers, employees, and consultants possess the necessary technical expertise to adequately perform their individual functions with respect to their proposed role in the construction and sale of units;

(c) Does the applicant and its directors and officers have sufficient experience in business management to properly manage the unit construction process;

(d) Does the applicant and its directors, officers, and employees have sufficient practical experience to undertake the proposed unit construction;

(e) Does the past conduct of the applicant and its directors, officers, employees, and consultants provide a reasonable indication of good business practices, and reasonable grounds for belief that its undertakings will be carried on in accordance with all legal requirements; and

(f) Is the applicant reasonably able to provide, or to cause to be provided, after-sale customer service for the units to be constructed.

(2) A qualified insurer may charge a fee to make the inquiries permitted by subsection (1) of this section.

(3) Before approving a qualified warranty for a condominium, a qualified insurer may make such inquiries and impose such conditions as it deems appropriate in its sole discretion, including without limitation the following:

(a) To determine if the applicant has the necessary capitalization or financing in place, including any reasonable contingency reserves, to undertake construction of the proposed unit;

(b) To determine if the applicant or, in the case of a corporation, its directors, officers, employees, and consultants possess reasonable technical expertise to construct the proposed unit, including specific technical knowledge or expertise in any building systems, construction methods, products, treatments, technologies, and testing and inspection methods proposed to be employed;

(c) To determine if the applicant or, in the case of a corporation, its directors, officers, employees, and consultants have sufficient practical experience in the specific types of construction to undertake construction of the proposed unit;

(d) To determine if the applicant has sufficient personnel and other resources to adequately undertake the construction of the proposed unit in addition to other units which the applicant may have under construction or is currently marketing;

(e) To determine if:

(i) The applicant is proposing to engage a general contractor to undertake all or a significant portion of the construction of the proposed unit; and

(ii) The general contractor meets the criteria set out in this section;

(f) Requiring that a declarant provide security in a form suitable to the qualified insurer;

(g) Establishing or requiring compliance with specific construction standards for the unit;

(h) Restricting the applicant from constructing some types of units or using some types of construction or systems;

(i) Requiring the use of specific types of systems, consultants, or personnel for the construction;

(j) Requiring an independent review of the unit building plans or consultants' reports or any part thereof;

(k) Requiring third-party verification or certification of the construction of the unit or any part thereof;

(l) Providing for inspection of the unit or any part thereof during construction;

(m) Requiring ongoing monitoring of the unit, or one or more of its components, following completion of construction;

(n) Requiring that the declarant or any of the design professionals, engineering professionals, consultants, general contractors, or subcontractors maintain minimum levels of insurance, bonding, or other security naming the potential owners and qualified insurer as loss payees or beneficiaries of the insurance, bonding, or security to the extent possible;

(o) Requiring that the declarant provide a list of all design professionals and other consultants who are involved in the design or construction inspection, or both, of the unit;

(p) Requiring that the declarant provide a list of trades employed in the construction of the unit, and requiring evidence of their current trade's certification, if applicable. [2004 c 201 § 1901.]

**64.35.115 Attorneys' fees.** In any judicial proceeding or arbitration brought to enforce the terms of a qualified warranty, the court or arbitrator may award reasonable attorneys' fees to the substantially prevailing party. In no event may such fees exceed the reasonable hourly value of the attorney's work. [2004 c 201 § 1701.]

**64.35.120 Change of ownership—Coverage transfers.** (1) A qualified warranty pertains solely to the unit and common elements for which it provides coverage and no notice to the qualified insurer is required on a change of ownership.

(2) All of the applicable unused benefits under a qualified warranty with respect to a unit are automatically transferred to any subsequent owner on a change of ownership. [2004 c 201 § 1801.]

## ARTICLE 2

### REMEDY, PROCEDURE, AND DISCLOSURE UNDER A QUALIFIED WARRANTY

**64.35.205 Qualified warranty—Remedy and procedure—Application of chapter 64.50 RCW.** No declarant, affiliate of a declarant, or construction professional is liable to a unit owner or an association for damages awarded for repair of construction defects and resulting physical damage, and chapter 64.50 RCW shall not apply if: (1) Every unit is the subject of a qualified warranty; and (2) the association has been issued a qualified warranty with respect to the common elements. If a construction professional agrees on terms satisfactory to the qualified insurer to partially or fully indemnify the qualified insurer with respect to a defect caused by the construction professional, the liability of the construction professional for the defect and resulting physical damage caused by him or her shall not exceed damages recoverable under the terms of the qualified warranty for the defect. Any indemnity claim by the qualified insurer shall be by separate action or arbitration, and no unit owner or association shall be joined therein. A qualified warranty may also be provided in the case of improvements made or contracted for by a declarant as part of a conversion condominium, and in such case, declarant's liability with respect to such improvements

shall be limited as set forth in this section. [2004 c 201 § 201.]

**64.35.210 Notice of qualified warranty—History of claims.** (1) Every public offering statement and resale certificate shall affirmatively state whether or not the unit and/or the common elements are covered by a qualified warranty, and shall provide to the best knowledge of the person preparing the public offering statement or resale certificate a history of claims under the warranty.

(2) The history of claims must include, for each claim, not less than the following information for the unit and/or the common elements, as applicable, to the best knowledge of the person providing the information:

- (a) The type of claim that was made;
- (b) The resolution of the claim;
- (c) The type of repair performed;
- (d) The date of the repair;
- (e) The cost of the repair; and
- (f) The name of the person or entity who performed the repair. [2004 c 201 § 301.]

ARTICLE 3  
MINIMUM COVERAGE STANDARDS  
FOR QUALIFIED WARRANTIES

**64.35.305 Two-year materials and labor warranty—Noncompliance with building code.** (1) The minimum coverage for the two-year materials and labor warranty is:

(a) In the first twelve months, for other than the common elements, (i) coverage for any defect in materials and labor; and (ii) subject to subsection (2) of this section, coverage for a violation of the building code;

(b) In the first fifteen months, for the common elements, (i) coverage for any defect in materials and labor; and (ii) subject to subsection (2) of this section, coverage for a violation of the building code;

(c) In the first twenty-four months, (i) coverage for any defect in materials and labor supplied for the electrical, plumbing, heating, ventilation, and air conditioning delivery and distribution systems; (ii) coverage for any defect in materials and labor supplied for the exterior cladding, caulking, windows, and doors that may lead to detachment or material damage to the unit or common elements; (iii) coverage for any defect in materials and labor which renders the unit unfit to live in; and (iv) subject to subsection (2) of this section, coverage for a violation of the building code.

(2) Noncompliance with the building code is considered a defect covered by a qualified warranty if the noncompliance:

- (a) Constitutes an unreasonable health or safety risk; or
- (b) Has resulted in, or is likely to result in, material damage to the unit or common elements. [2004 c 201 § 401.]

**64.35.310 Five-year building envelope warranty.** The minimum coverage for the building envelope warranty is five years for defects in the building envelope of a condominium, including a defect which permits unintended water penetration so that it causes, or is likely to cause, material damage to the unit or common elements. [2004 c 201 § 402.]

**64.35.315 Ten-year structural defects warranty.** The minimum coverage for the structural defects warranty is ten years for:

(1) Any defect in materials and labor that results in the failure of a load-bearing part of the condominium; and

(2) Any defect which causes structural damage that materially and adversely affects the use of the condominium for residential occupancy. [2004 c 201 § 403.]

**64.35.320 Beginning dates for warranty coverage.**

(1) For the unit, the beginning date of the qualified warranty coverage is the earlier of:

- (a) Actual occupancy of the unit; or
- (b) Transfer of legal title to the unit.

(2) For the common elements, the beginning date of a qualified warranty is the date a temporary or final certificate of occupancy is issued for the common elements in each separate multiunit building, comprised by the condominium. [2004 c 201 § 404.]

**64.35.325 Beginning dates for warranty coverage—Special cases—Declarant control.** (1) If an unsold unit is occupied as a rental unit, the qualified warranty beginning date for such unit is the date the unit is first occupied.

(2) If the declarant subsequently offers to sell a unit which is rented, the declarant must disclose, in writing, to each prospective purchaser, the date on which the qualified warranty expires.

(3) If the declarant retains any declarant control over the association on the date that is fourteen full calendar months following the month in which the beginning date for common element warranty coverage commences, the declarant shall within thirty days thereafter cause an election to be held in which the declarant may not vote, for the purpose of electing one or more board members who are empowered to make warranty claims. If at such time, one or more independent board members hold office, no additional election need be held, and such independent board members are empowered to make warranty claims. The declarant shall inform all independent board members of their right to make warranty claims at no later than sixteen full calendar months following the beginning date of the common element warranty. [2004 c 201 § 405.]

**64.35.330 Living expense allowance.** (1) If repairs are required under the qualified warranty and damage to the unit, or the extent of the repairs renders the unit uninhabitable, the qualified warranty must cover reasonable living expenses incurred by the owner to live elsewhere in an amount commensurate with the nature of the unit.

(2) If a qualified insurer establishes a maximum amount per day for claims for living expenses, the limit must be the greater of one hundred dollars per day or a reasonable amount commensurate with the nature of the unit for the complete reimbursement of the actual accommodation expenses incurred by the owner at a hotel, motel, or other rental accommodation up to the day the unit is ready for occupancy, subject to the owner receiving twenty-four hours' advance notice. [2004 c 201 § 406.]

**64.35.335 Warranty on repairs and replacements.**

(1) All repairs and replacements made under a qualified warranty must be warranted by the qualified warranty against defects in materials and labor until the later of:

(a) The first anniversary of the date of completion of the repair or replacement; or

(b) The expiration of the applicable qualified warranty coverage.

(2) All repairs and replacements made under a qualified warranty must be completed in a reasonable manner using materials and labor conforming to the building code and industry standards. [2004 c 201 § 407.]

ARTICLE 4  
QUALIFIED WARRANTY TERMS

**64.35.405 Provisions a qualified insurer may include.**

A qualified insurer may include any of the following provisions in a qualified warranty:

(1) If the qualified insurer makes a payment or assumes liability for any payment or repair under a qualified warranty, the owner and association must fully support and assist the qualified insurer in pursuing any rights that the qualified insurer may have against the declarant, and any construction professional that has contractual or common law obligations to the declarant, whether such rights arose by contract, subrogation, or otherwise.

(2) Warranties or representations made by a declarant which are in addition to the warranties set forth in this chapter are not binding on the qualified insurer unless and to the extent specifically provided in the text of the warranty; and disclaimers of specific defects made by agreement between the declarant and the unit purchaser under RCW 64.34.450 act as an exclusion of the specified defect from the warranty coverage.

(3) An owner and the association must permit the qualified insurer or declarant, or both, to enter the unit at reasonable times, after reasonable notice to the owner and the association:

- (a) To monitor the unit or its components;
- (b) To inspect for required maintenance;
- (c) To investigate complaints or claims; or
- (d) To undertake repairs under the qualified warranty.

If any reports are produced as a result of any of the activities referred to in (a) through (d) of this subsection, the reports must be provided to the owner and the association.

(4) An owner and the association must provide to the qualified insurer all information and documentation that the owner and the association have available, as reasonably required by the qualified insurer to investigate a claim or maintenance requirement, or to undertake repairs under the qualified warranty.

(5) To the extent any damage to a unit is caused or made worse by the unreasonable refusal of the association, or an owner or occupant to permit the qualified insurer or declarant access to the unit for the reasons in subsection (3) of this section, or to provide the information required by subsection (4) of this section, that damage is excluded from the qualified warranty.

(6) In any claim under a qualified warranty issued to the association, the association shall have the sole right to prose-

(2010 Ed.)

cute and settle any claim with respect to the common elements. [2004 c 201 § 501.]

**64.35.410 Authorized exclusions—General.** (1) A qualified insurer may exclude from a qualified warranty:

(a) Landscaping, both hard and soft, including plants, fencing, detached patios, planters not forming a part of the building envelope, gazebos, and similar structures;

(b) Any commercial use area and any construction associated with a commercial use area;

(c) Roads, curbs, and lanes;

(d) Subject to subsection (2) of this section, site grading and surface drainage except as required by the building code;

(e) Municipal services operation, including sanitary and storm sewer;

(f) Septic tanks or septic fields;

(g) The quality or quantity of water, from either a piped municipal water supply or a well;

(h) A water well, but excluding equipment installed for the operation of a water well used exclusively for a unit, which equipment is part of the plumbing system for that unit for the purposes of the qualified warranty.

(2) The exclusions permitted by subsection (1) of this section do not include any of the following:

(a) A driveway or walkway;

(b) Recreational and amenity facilities situated in, or included as the common property of, a unit;

(c) A parking structure in a multiunit building;

(d) A retaining wall that:

(i) An authority with jurisdiction requires to be designed by a professional engineer; or

(ii) Is reasonably required for the direct support of, or retaining soil away from, a unit, driveway, or walkway. [2004 c 201 § 601.]

**64.35.415 Authorized exclusions—Defects.** A qualified insurer may exclude any or all of the following items from a qualified warranty:

(1) Weathering, normal wear and tear, deterioration, or deflection consistent with normal industry standards;

(2) Normal shrinkage of materials caused by drying after construction;

(3) Any loss or damage which arises while a unit is being used primarily or substantially for nonresidential purposes;

(4) Materials, labor, or design supplied by an owner;

(5) Any damage to the extent caused or made worse by an owner or third party, including:

(a) Negligent or improper maintenance or improper operation by anyone other than the declarant or its employees, agents, or subcontractors;

(b) Failure of anyone, other than the declarant or its employees, agents, or subcontractors, to comply with the warranty requirements of the manufacturers of appliances, equipment, or fixtures;

(c) Alterations to the unit, including converting nonliving space into living space or converting a unit into two or more units, by anyone other than the declarant or its employees, agents, or subcontractors while undertaking their obligations under the sales contract; and

(d) Changes to the grading of the ground by anyone other than the declarant or its employees, agents, or subcontractors;

(6) An owner failing to take timely action to prevent or minimize loss or damage, including failing to give prompt notice to the qualified insurer of a defect or discovered loss, or a potential defect or loss;

(7) Any damage caused by insects, rodents, or other animals, unless the damage results from noncompliance with the building code by the declarant or its employees, agents, or subcontractors;

(8) Accidental loss or damage from acts of nature including, but not limited to, fire, explosion, smoke, water escape, glass breakage, windstorm, hail, lightning, falling trees, aircraft, vehicles, flood, earthquake, avalanche, landslide, and changes in the level of the underground water table which are not reasonably foreseeable by the declarant;

(9) Bodily injury or damage to personal property or real property which is not part of a unit;

(10) Any defect in, or caused by, materials or work supplied by anyone other than the declarant, an affiliate of a declarant, or their respective contractors, employees, agents, or subcontractors;

(11) Changes, alterations, or additions made to a unit by anyone after initial occupancy, except those performed by the declarant or its employees, agents, or subcontractors as required by the qualified warranty or under the construction contract or sales agreement;

(12) Contaminated soil;

(13) Subsidence of the land around a unit or along utility lines, other than subsidence beneath footings of a unit or under driveways or walkways;

(14) Diminution in the value of the unit. [2004 c 201 § 701.]

**64.35.420 Limits on amounts—Calculation of costs—Adjustments.** (1) A qualified insurer may establish a monetary limit on the amount of the warranty. Any limit must not be less than:

(a) For a unit, the lesser of (i) the original purchase price paid by the owner, or (ii) one hundred thousand dollars;

(b) For common elements, the lesser of (i) the total original purchase price for all components of the multiunit building, or (ii) one hundred fifty thousand dollars times the number of units of the condominium.

(2) When calculating the cost of warranty claims under the standard limits under a qualified warranty, a qualified insurer may include:

(a) The cost of repairs;

(b) The cost of any investigation, engineering, and design required for the repairs; and

(c) The cost of supervision of repairs, including professional review, but excluding legal costs.

(3) The minimum amounts in subsections (1) and (2) of this section shall be adjusted at the end of each calendar year after the effective date by an amount equal to the percentage change in the consumer price index for all urban consumers, all items, as published from time to time by the United States department of labor. The adjustment does not affect any qualified warranty issued before the adjustment date. [2004 c 201 § 801.]

**64.35.425 Prohibited policy provisions—Exclusions.**

(1) A qualified insurer must not include in a qualified warranty any provision that requires an owner or the association:

(a) To sign a release before repairs are performed under the qualified warranty; or

(b) To pay a deductible in excess of five hundred dollars for the repair of any defect in a unit covered by the qualified warranty, or in excess of the lesser of five hundred dollars per unit or ten thousand dollars in the aggregate for any defect in the common elements.

(2) All exclusions must be permitted by this chapter and stated in the qualified warranty. [2004 c 201 § 901.]

ARTICLE 5

DUTIES OF PARTIES REGARDING  
COVERAGE AND CLAIMS

**64.35.505 Failure to provide information—Conditions or exclusions may not apply.**

(1) If coverage under a qualified warranty is conditional on an owner undertaking proper maintenance, or if coverage is excluded for damage caused by negligence by the owner or association with respect to maintenance or repair by the owner or association, the conditions or exclusions apply only to maintenance requirements or procedures: (a) Provided to the original owner in the case of the unit warranty, and to the association for the common element warranty with an estimation of the required cost thereof for the common element warranty provided in the budget prepared by the declarant; or (b) that would be obvious to a reasonable and prudent layperson. Recommended maintenance requirements and procedures are sufficient for purposes of this subsection if consistent with knowledge generally available in the construction industry at the time the qualified warranty is issued.

(2) If an original owner or the association has not been provided with the manufacturer's documentation or warranty information, or both, or with recommended maintenance and repair procedures for any component of a unit, the relevant exclusion does not apply. The common element warranty is included in the written warranty to be provided to the association under RCW 64.34.312. [2004 c 201 § 1001.]

**64.35.510 Schedule of expiration dates must be provided.**

(1) A qualified insurer must, as soon as reasonably possible after the beginning date for the qualified warranty, provide an owner and association with a schedule of the expiration dates for coverages under the qualified warranty as applicable to the unit and the common elements, respectively.

(2) The expiration date schedule for a unit must set out all the required dates on an adhesive label that is a minimum size of four inches by four inches and is suitable for affixing by the owner in a conspicuous location in the unit. [2004 c 201 § 1101.]

**64.35.515 Duty to mitigate may be required.** (1) The qualified insurer may require an owner or association to mitigate any damage to a unit or the common elements, including damage caused by defects or water penetration, as set out in the qualified warranty.

(2) Subject to subsection (3) of this section, for defects covered by the qualified warranty, the duty to mitigate is met through timely notice in writing to the qualified insurer.

(3) The owner must take all reasonable steps to restrict damage to the unit if the defect requires immediate attention.

(4) The owner's duty to mitigate survives even if:

(a) The unit is unoccupied;

(b) The unit is occupied by someone other than the owner;

(c) Water penetration does not appear to be causing damage; or

(d) The owner advises the homeowners' association corporation about the defect.

(5) If damage to a unit is caused or made worse by the failure of an owner to take reasonable steps to mitigate as set out in this section, the damage may, at the option of the qualified insurer, be excluded from qualified warranty coverage. [2004 c 201 § 1201.]

**64.35.520 Notice of claim—Reasonable timeliness and detail—Contents.** (1) Within a reasonable time after the discovery of a defect and before the expiration of the applicable qualified warranty coverage, a claimant must give to the qualified insurer and the declarant written notice in reasonable detail that provides particulars of any specific defects covered by the qualified warranty.

(2) The qualified insurer may require the notice under subsection (1) of this section to include:

(a) The qualified warranty number; and

(b) Copies of any relevant documentation and correspondence between the claimant and the declarant, to the extent any such documentation and correspondence is in the control or possession of the claimant. [2004 c 201 § 1301.]

**64.35.525 Handling of claim—Prompt response—Procedures.** A qualified insurer must, on receipt of a notice of a claim under a qualified warranty, promptly make reasonable attempts to contact the claimant to arrange an evaluation of the claim. Claims shall be handled in accordance with the claims procedures set forth in rules by the insurance commissioner, and as follows:

(1) The qualified insurer must make all reasonable efforts to avoid delays in responding to a claim under a qualified warranty, evaluating the claim, and scheduling any required repairs.

(2) If, after evaluating a claim under a qualified warranty, the qualified insurer determines that the claim is not valid, or not covered under the qualified warranty, the qualified insurer must: (a) Notify the claimant of the decision in writing; (b) set out the reasons for the decision; and (c) set out the rights of the parties under the third-party dispute resolution process for the warranty.

(3) Repairs must be undertaken in a timely manner, with reasonable consideration given to weather conditions and the availability of materials and labor.

(4) On completing any repairs, the qualified insurer must deliver a copy of the repair specifications to the claimant along with a letter confirming the date the repairs were completed and referencing the repair warranty provided for in RCW 64.35.335. [2004 c 201 § 1401.]

(2010 Ed.)

ARTICLE 6

MEDIATION OR ARBITRATION OF DISPUTES

**64.35.605 Disputed claim—Notice—Mediation procedures—Duties of parties.** (1) If a dispute between a qualified insurer and a claimant arising under a qualified warranty cannot be resolved by informal negotiation within a reasonable time, the claimant or qualified insurer may require that the dispute be referred to mediation by delivering written notice to the other to mediate.

(2) If a party delivers a request to mediate under subsection (1) of this section, the qualified insurer and the party must attend a mediation session in relation to the dispute and may invite to participate in the mediation any other party to the dispute who may be liable.

(3) Within twenty-one days after the party has delivered a request to mediate under subsection (1) of this section, the parties must, directly or with the assistance of an independent, neutral person or organization, jointly appoint a mutually acceptable mediator.

(4) If the parties do not jointly appoint a mutually acceptable mediator within the time required by subsection (3) of this section, the party may apply to the superior court of the county where the project is located, which must appoint a mediator taking into account:

(a) The need for the mediator to be neutral and independent;

(b) The qualifications of the mediator;

(c) The mediator's fees;

(d) The mediator's availability; and

(e) Any other consideration likely to result in the selection of an impartial, competent, and effective mediator.

(5) After selecting the mediator under subsection (4) of this section, the superior court must promptly notify the parties in writing of that selection.

(6) The mediator selected by the superior court is deemed to be appointed by the parties effective the date of the notice sent under subsection (5) of this section.

(7) The first mediation session must occur within twenty-one days of the appointment of the mediator at the date, time, and place selected by the mediator.

(8) A party may attend a mediation session by representative if:

(a) The party is under a legal disability and the representative is that party's guardian ad litem;

(b) The party is not an individual; or

(c) The party is a resident of a jurisdiction other than Washington and will not be in Washington at the time of the mediation session.

(9) A representative who attends a mediation session in the place of a party as permitted by subsection (8) of this section:

(a) Must be familiar with all relevant facts on which the party, on whose behalf the representative attends, intends to rely; and

(b) Must have full authority to settle, or have immediate access to a person who has full authority to settle, on behalf of the party on whose behalf the representative attends.

(10) A party or a representative who attends the mediation session may be accompanied by counsel.

(11) Any other person may attend a mediation session on consent of all parties or their representatives.

(12) At least seven days before the first mediation session is to be held, each party must deliver to the mediator a statement briefly setting out:

- (a) The facts on which the party intends to rely; and
- (b) The matters in dispute.

(13) The mediator must promptly send each party's statement to each of the other parties.

(14) Before the first mediation session, the parties must enter into a retainer agreement with the mediator which must:

- (a) Disclose the cost of the mediation services; and
- (b) Provide that the cost of the mediation will be paid:
  - (i) Equally by the parties; or
  - (ii) On any other specified basis agreed by the parties.

(15) The mediator may conduct the mediation in any manner he or she considers appropriate to assist the parties to reach a resolution that is timely, fair, and cost-effective.

(16) A person may not disclose, or be compelled to disclose, in any proceeding, oral or written information acquired or an opinion formed, including, without limitation, any offer or admission made in anticipation of or during a mediation session.

(17) Nothing in subsection (16) of this section precludes a party from introducing into evidence in a proceeding any information or records produced in the course of the mediation that are otherwise producible or compellable in those proceedings.

(18) A mediation session is concluded when:

- (a) All issues are resolved;
- (b) The mediator determines that the process will not be productive and so advises the parties or their representatives; or
- (c) The mediation session is completed and there is no agreement to continue.

(19) If the mediation resolves some but not all issues, the mediator may, at the request of all parties, complete a report setting out any agreements made as a result of the mediation, including, without limitation, any agreements made by the parties on any of the following:

- (a) Facts;
- (b) Issues; and
- (c) Future procedural steps. [2004 c 201 § 1501.]

**64.35.610 Disputed claim—Notice—Arbitration procedures—Duties of parties.** A qualified warranty may include mandatory binding arbitration of all disputes arising out of or in connection with a qualified warranty. The provision may provide that all claims for a single condominium be heard by the same arbitrator, but shall not permit the joinder or consolidation of any other person or entity. The arbitration shall comply with the following minimum procedural standards:

(1) Any demand for arbitration shall be delivered by certified mail return receipt requested, and by ordinary first-class mail. The party initiating the arbitration shall address the notice to the address last known to the initiating party in the exercise of reasonable diligence, and also, for any entity which is required to have a registered agent in the state of Washington, to the address of the registered agent. Demand

for arbitration is deemed effective three days after the date deposited in the mail;

(2) All disputes shall be heard by one qualified arbitrator, unless the parties agree to use three arbitrators. If three arbitrators are used, one shall be appointed by each of the disputing parties and the first two arbitrators shall appoint the third, who will chair the panel. The parties shall select the identity and number of the arbitrator or arbitrators after the demand for arbitration is made. If, within thirty days after the effective date of the demand for arbitration, the parties fail to agree on an arbitrator or the agreed number of arbitrators fail to be appointed, then an arbitrator or arbitrators shall be appointed under \*RCW 7.04.050 by the presiding judge of the superior court of the county in which the condominium is located;

(3) In any arbitration, at least one arbitrator must be a lawyer or retired judge. Any additional arbitrator must be either a lawyer or retired judge or a person who has experience with construction and engineering standards and practices, written construction warranties, or construction dispute resolution. No person may serve as an arbitrator in any arbitration in which that person has any past or present financial or personal interest;

(4) The arbitration hearing must be conducted in a manner that permits full, fair, and expeditious presentation of the case by both parties. The arbitrator is bound by the law of Washington state. Parties may be, but are not required to be, represented by attorneys. The arbitrator may permit discovery to ensure a fair hearing, but may limit the scope or manner of discovery for good cause to avoid excessive delay and costs to the parties. The parties and the arbitrator shall use all reasonable efforts to complete the arbitration within six months of the effective date of the demand for arbitration or, when applicable, the service of the list of defects in accordance with RCW 64.50.030;

(5) Except as otherwise set forth in this section, arbitration shall be conducted under \*chapter 7.04 RCW, unless the parties elect to use the construction industry arbitration rules of the American arbitration association, which are permitted to the extent not inconsistent with this section. The expenses of witnesses including expert witnesses shall be paid by the party producing the witnesses. All other expenses of arbitration shall be borne equally by the parties, unless all parties agree otherwise or unless the arbitrator awards expenses or any part thereof to any specified party or parties. The parties shall pay the fees of the arbitrator as and when specified by the arbitrator;

(6) Demand for arbitration given pursuant to subsection (1) of this section commences a judicial proceeding for purposes of RCW 64.34.452;

(7) The arbitration decision shall be in writing and must set forth findings of fact and conclusions of law that support the decision. [2004 c 201 § 1601.]

**\*Reviser's note:** Chapter 7.04 RCW was repealed in its entirety by 2005 c 433 § 50, effective January 1, 2006.

## ARTICLE 9 MISCELLANEOUS

**64.35.900 Captions not law—2004 c 201.** Captions and part headings used in this act are not any part of the law. [2004 c 201 § 2002.]

**64.35.901 Severability—2004 c 201.** See RCW 64.34.921.

**Chapter 64.36 RCW  
TIMESHARE REGULATION**

Sections

64.36.010 Definitions.  
64.36.020 Registration required before advertisement, solicitation, or offer—Requirements for registration—Exemption authorized—Penalties.  
64.36.025 Timeshare interest reservation—Definition—Registration required—Promoter’s obligations—Deposits—Escrow—Purchaser cancellation rights—Insolvency prior to completion.  
64.36.028 Timeshare interest—Incomplete projects or facilities—Promoter’s obligations—Funds—Purchaser’s rights.  
64.36.030 Application for registration—Contents.  
64.36.035 Applications for registration, consents to service, affidavits, and permits to market—Authorized signatures required—Corporate shield disclaimer prohibited.  
64.36.040 Application for registration—When effective.  
64.36.050 Timeshare offering—Duration of registration—Renewal—Amendment—Penalties.  
64.36.060 Application for registration—Acceptance of disclosure documents—Waiver of information—Additional information.  
64.36.070 Registration as timeshare salesperson required—Exemption.  
64.36.081 Fees.  
64.36.085 Inspections of projects—Identification of inspectors.  
64.36.090 Disciplinary action against a timeshare salesperson’s application, registration, or license—Unprofessional conduct.  
64.36.100 Disciplinary action—Unprofessional conduct—Other conduct, acts, or conditions.  
64.36.110 Requirements of transfer of promoter’s interest—Notice to purchaser.  
64.36.120 Good faith required—Provision relieving person from duty prohibited—Out-of-state jurisdiction or venue designation void.  
64.36.130 Impoundment of proceeds from sales authorized—Establishment of trusts, escrows, etc.  
64.36.140 Disclosure document—Contents.  
64.36.150 Disclosure document to prospective purchasers—Cancellation and refund—Voidable agreement.  
64.36.160 Application of liability provisions.  
64.36.170 Noncompliance—Unfair practice under chapter 19.86 RCW.  
64.36.185 Director’s powers—Employment of outside persons for advice on project operating budget—Reimbursement by promoter—Notice and hearing.  
64.36.195 Assurances of discontinuance—Violation of assurance constitutes unprofessional conduct.  
64.36.200 Cease and desist order—Notification—Hearing.  
64.36.210 Unlawful acts—Penalties.  
64.36.220 Injunction, restraining order, writ of mandamus—Costs and attorney’s fees—Penalties—Appointment of receiver or conservator.  
64.36.225 Liability of registrant or applicant for costs of proceedings.  
64.36.240 Liability for violation of chapter.  
64.36.250 Appointment of director to receive service—Requirements for effective service.  
64.36.260 Certain acts not constituting findings or approval by the director—Certain representations unlawful.  
64.36.270 Rules, forms, and orders—Interpretive opinions.  
64.36.290 Application of chapters 21.20, 58.19, and 19.105 RCW—Exemption of certain camping and outdoor recreation enterprises.  
64.36.310 Copy of advertisement to be filed with director before publication—Application of chapter limited.  
64.36.320 Free gifts, awards, and prizes—Security arrangement required of promisor—Other requirements—Private causes of action.  
64.36.330 Membership lists available for members and owners—Conditions—Exclusion of members’ names from list—Commercial use of list.  
64.36.340 Uniform regulation of business and professions act.  
64.36.900 Short title.  
64.36.901 Severability—1983 1st ex.s. c 22.

**64.36.010 Definitions.** As used in this chapter, the following terms have the meanings indicated unless the context clearly requires otherwise.

(1) "Advertisement" means any written, printed, audio, or visual communication which is published in whole or part to sell, offer to sell, or solicit an offer for a timeshare.

(2) "Affiliate of a promoter" means any person who controls, is controlled by, or is under the control of a promoter.

(3) "Commercial promotional programs" mean packaging or putting together advertising or promotional materials involving promises of gifts, prizes, awards, or other items of value to solicit prospective purchasers to purchase a product or commodity.

(4) "Director" means the director of licensing.

(5) "Interval" means that period of time when a timeshare owner is entitled to the possession and use of the timeshare unit.

(6) "Offer" means any inducement, solicitation, or attempt to encourage any person to acquire a timeshare.

(7) "Person" means a natural person, corporation, business trust, estate, trust, partnership, association, joint venture, or other legal or commercial entity.

(8) "Promoter" means any person directly or indirectly instrumental in organizing, wholly or in part, a timeshare offering.

(9) "Purchaser" means any person, other than a promoter, who by means of a voluntary transfer acquires a legal or equitable interest in a timeshare, other than as security for an obligation.

(10) "Sale" or "sell" includes every contract of sale of, contract to sell, or disposition of, a timeshare for value.

(11) "Timeshare" means a right to occupy a unit or any of several units during three or more separate time periods over a period of at least three years, including renewal options, whether or not coupled with an estate in land.

(12) "Timeshare expenses" means expenditures, fees, charges, or liabilities: (a) Incurred with respect to the timeshares by or on behalf of all timeshare owners in one timeshare property; and (b) imposed on the timeshare units by the entity governing a project of which the timeshare property is a part, together with any allocations to reserves but excluding purchase money payable for timeshares.

(13) "Timeshare instrument" means one or more documents, by whatever name denominated, creating or regulating timeshares.

(14) "Timeshare owner" means a person who is an owner or co-owner of a timeshare. If title to a timeshare is held in trust, "timeshare owner" means the beneficiary of the trust.

(15) "Timeshare salesperson" means any natural person who offers a timeshare unit for sale.

(16) "Unit" means the real or personal property, or portion thereof, in which the timeshare exists and which is designated for separate use. [1987 c 370 § 1; 1985 c 358 § 1; 1983 1st ex.s. c 22 § 1.]

**64.36.020 Registration required before advertisement, solicitation, or offer—Requirements for registration—Exemption authorized—Penalties.** (1) A timeshare offering registration must be effective before any advertisement, solicitation of an offer, or any offer or sale of a timeshare may be made in this state.

(2) An applicant shall apply for registration by filing with the director:

(a) A copy of the disclosure document prepared in accordance with RCW 64.36.140 and signed by the applicant;

(b) An application for registration prepared in accordance with RCW 64.36.030;

(c) An irrevocable consent to service of process signed by the applicant;

(d) The prescribed registration fee; and

(e) Any other information the director may by rule require in the protection of the public interest.

(3) The registration requirements do not apply to:

(a) An offer, sale, or transfer of not more than one timeshare in any twelve-month period;

(b) A gratuitous transfer of a timeshare;

(c) A sale under court order;

(d) A sale by a government or governmental agency;

(e) A sale by forfeiture, foreclosure, or deed in lieu of foreclosure; or

(f) A sale of a timeshare property or all timeshare units therein to any one purchaser.

(4) The director may by rule or order exempt any potential registrant from the requirements of this chapter if the director finds registration is unnecessary for the protection of the public interest.

(5)(a) Except as provided in (b) of this subsection, any person who violates this section is guilty of a gross misdemeanor.

(b) Any person who knowingly violates this section is guilty of a class C felony punishable according to chapter 9A.20 RCW.

(c) No indictment or information for a felony may be returned under this chapter more than five years after the alleged violation. [2003 c 53 § 289; 1983 1st ex.s. c 22 § 2.]

**Intent—Effective date—2003 c 53:** See notes following RCW 2.48.180.

**64.36.025 Timeshare interest reservation—Definition—Registration required—Promoter's obligations—Deposits—Escrow—Purchaser cancellation rights—Insolvency prior to completion.** (1) For the purpose of this section, "timeshare interest reservation" means a revocable right to purchase an interest in a timeshare project for which construction has not yet been completed and an effective registration has been obtained under this chapter.

(2) An effective registration pursuant to this chapter is required for any party to offer to sell a timeshare interest reservation. Promoters offering a timeshare interest reservation under this section must provide the registered disclosure document required by RCW 64.36.140 to each prospective purchaser before he or she enters into a timeshare interest reservation. Prior to the signing of a purchase agreement, the subject property or properties must be completed, the timeshare offering registration required by RCW 64.36.020 must be amended to reflect any changes to the property and must be reapproved by the department, the disclosure document required by RCW 64.36.140 must be revised, and the new version of the disclosure document must be provided to the prospective purchaser.

(3) Deposits accepted by promoters on a timeshare interest reservation may be no more than twenty percent of the total purchase price of the timeshare interest that is being purchased. Within one business day after being accepted by the

promoter, any deposit on a timeshare interest reservation shall be deposited in an account in a federally insured depository located in the state of Washington. This account must be an escrow account wherein the deposited funds are held for the benefit of the purchaser. The department may request that deposits be placed in impoundment under RCW 64.36.130.

(4) In addition to the cancellation rights provided in RCW 64.36.150, the purchaser has the right to cancel the purchase at any time before the signing of a purchase agreement. If the purchaser notifies the promoter that he or she wishes to cancel the timeshare interest reservation, the promoter must refund the full amount of the deposit minus any account fees within ten days of the notice.

(5) If prior to signing a purchase agreement the purchaser learns that the promoter proposes to raise the purchase price above the price agreed to in the written reservation agreement for the timeshare interest reservation, the written reservation agreement is void and all deposit moneys including account fees shall be returned to the purchaser within ten days after the purchaser learns of the proposed price increase.

(6) If the promoter charges account fees to pay for administrative costs of holding the purchaser's funds in escrow, these fees may be no more than one percent of the total deposit paid towards the timeshare interest reservation by the purchaser.

(7) The promoter shall provide instructions to the escrow company for release of the funds to be held in escrow in compliance with this section and rules of the department.

(8) The purchaser's right to cancel and the amount of the deposit proposed to be retained for account fees in the event of cancellation must be included in the contract for the sale of a timeshare interest reservation and the contract must state:

#### PURCHASER CANCELLATION RIGHTS

As a purchaser of a timeshare interest reservation, you have the right to cancel this timeshare interest reservation and receive a refund of all consideration paid (less only those account fee deductions which were fully disclosed at the time of the agreement) by providing written notice of the cancellation to the promoter or the promoter's agent at any time prior to signing a purchase agreement. You also have a right to cancel your purchase within seven days of signing a purchase agreement.

(9) If it appears that the timeshare project will become or does become insolvent prior to completion, the promoter shall instruct the escrow company to immediately return all deposits to purchasers of timeshare interest reservations. If funds are returned under this subsection, the promoter may not retain any portion of the deposits for account fees. [2002 c 226 § 2.]

**64.36.028 Timeshare interest—Incomplete projects or facilities—Promoter's obligations—Funds—Purchaser's rights.** (1) An effective registration pursuant to this chapter is required for any party to offer to sell a timeshare interest. A promoter who offers to sell or sells revocable timeshare interests in incomplete projects or facilities is limited by and must comply with all of the requirements of RCW 64.36.025. If a promoter seeks to enter into irrevocable purchase agreements with purchasers for timeshare interests in

incomplete projects or facilities, the promoter must meet the requirements in this section in addition to RCW 64.36.020 and the following limitations and conditions apply:

(a) The promoter is limited to offering or selling only fee simple deeded timeshare interests;

(b) Construction on the project must have begun by the time the irrevocable purchase agreement is signed and the purchaser must have the right to occupy the unit and use all contracted for amenities no later than within two years of the date that the irrevocable purchase agreement is signed;

(c) The promoter must establish an independent third-party escrow account for the purpose of protecting the funds or other property paid, pledged, or deposited by purchasers;

(d) The promoter's solicitations, advertisements, and promotional materials must clearly and conspicuously disclose that "THE PROJECT IS NOT YET COMPLETED; IT IS STILL UNDER CONSTRUCTION"; and

(e) The promoter's solicitations, advertisements, and promotional materials and the timeshare interest purchase agreement must clearly and conspicuously provide for and disclose the last possible estimated date for completion of construction of any building the promoter is contractually obligated to the purchaser to complete.

(2) The timeshare interest purchase agreement must contain the following language in fourteen-point bold face type: "If the building in which the timeshare interest is located and all contracted for amenities are not completed by [estimated date of completion], the purchaser has the right to void the purchase agreement and is entitled to a full, unqualified refund of all moneys paid."

(3) One hundred percent of all funds or other property that is received from or on behalf of purchasers of timeshare interests prior to the occurrence of events required in this section must be deposited pursuant to a third-party escrow agreement approved by the director. For purposes of this section, "purchasers" includes all persons solicited, offered, or who purchased a timeshare interest by a promoter within the state of Washington. An escrow agent shall maintain the account only in such a manner as to be under the direct supervision and control of the escrow agent. The escrow agent has a fiduciary duty to each purchaser to maintain the escrow accounts in accordance with good accounting practices and to release the purchaser's funds or other property from escrow only in accordance with this chapter. If the escrow agent receives conflicting demands for funds or property held in escrow, the escrow agent shall immediately notify the department of licensing of the dispute and the department shall determine if and how the funds should be distributed. If the purchaser, promoter, or escrow agent disagrees with the department's determination, the parties have the right to request an administrative hearing under chapter 34.05 RCW. Funds may be released from the escrow account to the purchaser if the purchaser cancels within the cancellation period, or to the promoter only when all three of the following conditions occur:

(a) The purchaser's cancellation period has expired;

(b) Closing has occurred; and

(c) Construction is complete and the building is ready to occupy.

(4) In lieu of depositing purchaser funds into an escrow account, the promoter may post with the department a bond

in an amount equal to or greater than the amount that would otherwise be required to be placed into the escrow account.

(5) Any purchaser has the right to void the timeshare purchase agreement and request a full, unqualified refund if construction of the building in which the timeshare interest is located or all contracted for amenities are not completed within two years from the date that the irrevocable purchase agreement is signed or by the last estimated date of construction contained in the irrevocable purchase agreement, whichever is earlier.

(6) If the completed timeshare building or contracted for amenities are materially and adversely different from the building or amenities that were promised to purchasers at the time that the purchase agreements were signed, the director may declare any or all of the purchaser contracts void. Before declaring the contracts void, the director shall give the promoter the opportunity for a hearing in accordance with chapters 34.05 and 18.235 RCW.

(7) If the promoter intends to or does pledge or borrow against funds or properties, that are held in escrow or protected by a bond, to help finance in whole or in part the construction of the timeshare project or to help pay for operating costs, this must be fully, plainly, and conspicuously disclosed in all written advertising, in all written solicitations for the sale of the timeshare interests, in the registration with the director, and in the purchase agreement or contract.

(8) A promoter who obtains an effective registration for a revocable timeshare interest reservation must meet the requirements of this section in order to complete an irrevocable purchase agreement. [2003 c 348 § 1.]

#### **64.36.030 Application for registration—Contents.**

The application for registration signed by the promoter shall contain the following information on a form prescribed by the director:

(1) The following financial statements showing the financial condition of the promoter and any affiliate:

(a) A balance sheet as of a date within four months before the filing of the application for registration; and

(b) Statements of income, shareholders' equity, and material changes in financial position as of the end of the last fiscal year and for any period between the end of the last fiscal year and the date of the last balance sheet;

(2) A projected budget for the timeshare project for two years after the offering being made, including but not limited to source of revenues and expenses of construction, development, management, maintenance, advertisement, operating reserves, interest, and any other necessary reserves;

(3) A statement of the selling costs per unit and total sales costs for the project, including sales commissions, advertisement fees, and fees for promotional literature;

(4) A description of the background of the promoters for the previous ten years, including information about the business experience of the promoter and any relevant criminal convictions, civil law suits, or administrative actions related to such promotion during that period;

(5) A statement disclosing any fees in excess of the stated price per unit to be charged to the purchasers, a description of their purpose, and the method of calculation;

(6) A statement disclosing when and where the promoter or an affiliate has previously sold timeshares;

(7) A statement of any liens, defects, or encumbrances on or affecting the title to the timeshare units;

(8) Copies of all timeshare instruments; and

(9) Any additional information to describe the risks which the director considers appropriate. [1983 1st ex.s. c 22 § 4.]

**64.36.035 Applications for registration, consents to service, affidavits, and permits to market—Authorized signatures required—Corporate shield disclaimer prohibited.** (1) Applications, consents to service of process, affidavits, and permits to market shall be signed by the promoter, unless a trustee or person with power of attorney is specifically authorized to make such signatures. If the signature of a person with a power of attorney or trustee is used, the filing of the signature shall include a copy of the authorizations for the signature. No promoter or other person responsible under this chapter shall disclaim responsibility because the signature of a trustee or attorney-in-fact, or other substitute was used.

(2) If the promoter is a corporation or a general partnership, each natural person therein, with a ten percent or greater interest or share in the promoter, shall, in addition to the promoter, be required to sign as required in this section, but may authorize a trustee or a person with power of attorney to make the signatures.

(3) All persons required to use or authorizing the use of their signatures in this section, individually or otherwise, shall be responsible for affidavits, applications, and permits signed, and for compliance with the provisions of this chapter. Individuals whose signatures are required under this section shall not disclaim their responsibilities because of any corporate shield. [1987 c 370 § 2.]

**64.36.040 Application for registration—When effective.** If no stop order is in effect and no proceeding is pending under RCW 64.36.100, a complete registration application becomes effective at 3:00 p.m. Pacific Standard Time on the afternoon of the thirtieth calendar day after the filing of the application or the last amendment or at such earlier time as the director determines. [2002 c 86 § 297; 1983 1st ex.s. c 22 § 5.]

**Effective dates—2002 c 86:** See note following RCW 18.08.340.

**Part headings not law—Severability—2002 c 86:** See RCW 18.235.902 and 18.235.903.

**64.36.050 Timeshare offering—Duration of registration—Renewal—Amendment—Penalties.** (1) A timeshare offering is registered for a period of one year from the effective date of registration unless the director specifies a different period.

(2) Registration of a timeshare offering may be renewed for additional periods of one year each, unless the director by rule specifies a different period, by filing a renewal application with the director no later than thirty days before the expiration of the period in subsection (1) of this section and paying the prescribed fees. A renewal application shall contain any information the director requires to indicate any material changes in the information contained in the original application.

(3) If a material change in the condition of the promoter, the promoter's affiliates, the timeshare project, or the operation or management of the timeshare project occurs during any year, an amendment to the documents filed under RCW 64.36.030 shall be filed, along with the prescribed fees, as soon as reasonably possible and before any further sales occur.

(4) The promoter shall keep the information in the written disclosures reasonably current at all times by amending the registration. If the promoter fails to amend and keep current the written disclosures or the registrations in instances of material change, the director may require compliance under RCW 64.36.100 and assess penalties. [1987 c 370 § 3; 1983 1st ex.s. c 22 § 6.]

**64.36.060 Application for registration—Acceptance of disclosure documents—Waiver of information—Additional information.** (1) In lieu of the documents required to be filed under RCW 64.36.030, the director may by rule accept:

(a) Any disclosure document filed with agencies of the United States or any other state;

(b) Any disclosure document compiled in accordance with any rule of any agency of the United States or any other state; or

(c) Any documents submitted pursuant to registration of a timeshare offering under chapter 58.19 RCW before August 1, 1983.

(2) The director may by rule waive disclosure of information which the director considers unnecessary for the protection of timeshare purchasers.

(3) The director may by rule require the provision of any other information the director considers necessary to protect timeshare purchasers. [1983 1st ex.s. c 22 § 7.]

**64.36.070 Registration as timeshare salesperson required—Exemption.** Any individual offering timeshare units or timeshare interest reservations for the individual's own account or for the account of others shall be registered as a timeshare salesperson unless the timeshare offering is exempt from registration under RCW 64.36.020. Registration may be obtained by filing an application with the department of licensing on a form prescribed by the director. The director may require that the applicant demonstrate sufficient knowledge of the timeshare industry and this chapter. A timeshare salesperson who is licensed as a real estate broker or salesperson under chapter 18.85 RCW is exempt from the registration requirement of this section. [2002 c 226 § 1; 1983 1st ex.s. c 22 § 8.]

**64.36.081 Fees.** (1) Applicants or registrants under this chapter shall pay fees determined by the director as provided in RCW 43.24.086. These fees shall be prepaid and the director may establish fees for the following:

(a) Processing an original application for registration of a timeshare offering, along with an additional fee for each interval registered or in the timeshare program;

(b) Processing consolidations or adding additional inventory into the program;

(c) Reviewing and granting exemptions;

- (d) Processing annual or periodic renewals;
- (e) Initially and annually processing and administering any required impound, trust, or escrow arrangement;
- (f) The review of advertising or promotional materials;
- (g) Registering persons in the business of selling promotional programs for use in timeshare offerings or sales presentations;
- (h) Registrations and renewal of registrations of salespersons;
- (i) The transfer of salespersons' permits to other promoters;
- (j) Administering and processing examinations for salespersons;
- (k) Conducting site inspections of registered projects and projects for which registration is pending.

(2) The director may establish penalties for registrants in any situation where a registrant has failed to file an amendment to the registration or the disclosure document in a timely manner for material changes, as required in this chapter and rules adopted under this chapter. [1987 c 370 § 4.]

**64.36.085 Inspections of projects—Identification of inspectors.** (1) The director may require inspections of projects registered under this chapter and promoters and their agents shall cooperate by permitting staff of the department to conduct the inspections.

(2) The director may perform "spot checks" or inspections of sales offices, during tours or sales presentations or normal business hours, for purposes of enforcing this chapter and determining compliance by the operator and salespersons in the sales, advertising, and promotional activities regulated under this chapter. These inspections or spot checks may be conducted during or at the time of sales presentations or during the hours during which sales are ordinarily scheduled.

(3) The department employee making the inspections shall show identification upon request. It is a violation of this chapter for the operator or its sales representatives to refuse an inspection or refuse to cooperate with employees of the department conducting the inspection. [1987 c 370 § 5.]

**64.36.090 Disciplinary action against a timeshare salesperson's application, registration, or license—Unprofessional conduct.** The director may take disciplinary action against a timeshare salesperson's registration or application for registration or a salesperson's license under chapter 18.85 RCW who is selling under this chapter, if the director finds that the applicant or registrant has committed unprofessional conduct as described in RCW 18.235.130. In addition, the director may take disciplinary action if the applicant or registrant:

- (1) Has filed an application for registration as a timeshare salesperson or as a licensee under chapter 18.85 RCW which, as of its effective date, is incomplete in any material respect;
- (2) Has violated or failed to comply with any provision of this chapter or a predecessor act or any rule or order issued under this chapter or a predecessor act;
- (3) Is permanently or temporarily enjoined by any court or administrative order from engaging in or continuing any

(2010 Ed.)

conduct or practice involving any aspect of the timeshare business;

(4) Has engaged in dishonest or unethical practices in the timeshare, real estate, or camp resort business;

(5) Is insolvent either in the sense that the individual's liabilities exceed his or her assets or in the sense that the individual cannot meet his or her obligations as they mature; or

(6) Has not complied with any condition imposed by the director or is not qualified on the basis of such factors as training, experience, or knowledge of the timeshare business or this chapter. [2002 c 86 § 298; 1987 c 370 § 9; 1983 1st ex.s. c 22 § 9.]

**Effective dates—2002 c 86:** See note following RCW 18.08.340.

**Part headings not law—Severability—2002 c 86:** See RCW 18.235.902 and 18.235.903.

**64.36.100 Disciplinary action—Unprofessional conduct—Other conduct, acts, or conditions.** The director may deny or take disciplinary action against any timeshare application or registration if the director finds that the applicant or registrant has engaged in unprofessional conduct as described in RCW 18.235.130. In addition, the director may deny or take disciplinary action based on the following conduct, acts, or conditions:

(1) The application, written disclosure, or registration is incomplete;

(2) The activities of the promoter include, or would include, activities which are unlawful or in violation of a law, rule, or ordinance in this state or another jurisdiction;

(3) The timeshare offering has worked or tended to work a fraud on purchasers, or would likely be adverse to the interests or the economic or physical welfare of purchasers;

(4) The protections and security arrangements to ensure future quiet enjoyment required under RCW 64.36.130 have not been provided as required by the director for the protection of purchasers; or

(5) The operating budget proposed by the promoter or promoter-controlled association appears inadequate to meet operating costs or funding of reserve accounts or fees for a consultant to determine adequacy have not been paid by the promoter. [2002 c 86 § 299; 1987 c 370 § 10; 1983 1st ex.s. c 22 § 10.]

**Effective dates—2002 c 86:** See note following RCW 18.08.340.

**Part headings not law—Severability—2002 c 86:** See RCW 18.235.902 and 18.235.903.

**64.36.110 Requirements of transfer of promoter's interest—Notice to purchaser.** A promoter shall not sell, lease, assign, or otherwise transfer the promoter's interest in the timeshare program unless the transferee agrees in writing to honor the timeshare purchaser's right to use and occupy the timeshare unit, honor the purchaser's right to cancel, and comply with this chapter. In the event of a transfer, each timeshare purchaser whose contract may be affected shall be given written notice of the transfer when the transfer is made. [1983 1st ex.s. c 22 § 11.]

**64.36.120 Good faith required—Provision relieving person from duty prohibited—Out-of-state jurisdiction**

**or venue designation void.** (1) The parties to a timeshare agreement shall deal with each other in good faith.

(2) A timeshare promoter shall not require any timeshare purchaser to agree to a release, assignment, novation, waiver, or any other provision which relieves any person from a duty imposed by this chapter.

(3) Any provision in a timeshare contract or agreement which designates jurisdiction or venue in a forum outside this state is void with respect to any cause of action which is enforceable in this state. [1983 1st ex.s. c 22 § 12.]

**64.36.130 Impoundment of proceeds from sales authorized—Establishment of trusts, escrows, etc.** (1) The director may by rule require as a condition of registration under this chapter that the proceeds from the sale of the timeshares be impounded until the promoter receives an amount established by the director. The director may by rule determine the conditions of any impoundment required under this section, including the release of moneys for promotional purposes.

(2) The director, in lieu of or in addition to requiring impoundment under subsection (1) of this section, may require that the registrant establish trusts, escrows, or any other similar arrangement that assures the timeshare purchaser quiet enjoyment of the timeshare unit.

(3) Impounding will not be required for those timeshare offerors who are able to convey fee simple title, along with title insurance: PROVIDED, That no other facilities are promised in the offering. [1983 1st ex.s. c 22 § 13.]

**64.36.140 Disclosure document—Contents.** Any person who offers or sells a timeshare shall provide the prospective purchaser a written disclosure document before the prospective purchaser signs an agreement for the purchase of a timeshare. The timeshare salesperson shall date and sign the disclosure document. The disclosure document shall include:

(1) The official name and address of the promoter, its parent or affiliates, and the names and addresses of the director and officers of each;

(2) The location of the timeshare property;

(3) A general description of the timeshare property and the timeshare units;

(4) A list of all units offered by the promoter in the same project including:

(a) The types, prices, and number of units;

(b) Identification and location of units;

(c) The types and durations of the timeshares;

(d) The maximum number of units that may become part of the timeshare property; and

(e) A statement of the maximum number of timeshares that may be created or a statement that there is no maximum.

(5) A description of any financing offered by the promoter;

(6) A statement of ownership of all properties included in the timeshare offering including any liens or encumbrances affecting the property;

(7) Copies of any agreements or leases to be signed by timeshare purchasers at closing and a copy of the timeshare instrument;

(8) The identity of the managing entity and the manner, if any, whereby the promoter may change the managing entity;

(9) A description of the selling costs both per unit and for the total project at the time the sale is made;

(10) A statement disclosing when and where the promoter or its affiliate has previously sold timeshares;

(11) A description of the nature and purpose of all charges, dues, maintenance fees, and other expenses that may be assessed, including:

(a) The current amounts assessed;

(b) The method and formula for charges; and

(c) The formula for payment of charges if all timeshares are not sold and a statement of who pays additional costs;

(12) Any services which the promoter provides or expenses the promoter pays which the promoter expects may become a timeshare expense at any subsequent time;

(13) A statement in bold face type on the cover page of the disclosure document and the cover page of the timeshare purchase agreement that within seven days after receipt of a disclosure document or the signing of the timeshare purchase agreement, whichever is later, a purchaser may cancel any agreement for the purchase of a timeshare from a promoter or a timeshare salesperson and that the cancellation must be in writing and be either hand delivered or mailed to the promoter or the promoter's agent;

(14) Any restraints on transfer of a timeshare or portion thereof;

(15) A description of the insurance coverage provided for the benefit of timeshare owners;

(16) A full and accurate disclosure of whether the timeshare owners are to be permitted or required to become members of or participate in any program for the exchange of property rights among themselves or with the timeshare owners of other timeshare units, or both, and a complete description of the program; and

(17) Any additional information the director finds necessary to fully inform prospective timeshare purchasers, including but not limited to information required by RCW 64.36.030. [1983 1st ex.s. c 22 § 3.]

**64.36.150 Disclosure document to prospective purchasers—Cancellation and refund—Voidable agreement.** The promoter or any person offering timeshare interest shall provide a prospective purchaser with a copy of the disclosure document described in RCW 64.36.140 before the execution of any agreement for the purchase of a timeshare. A purchaser may, for seven days following execution of an agreement to purchase a timeshare, cancel the agreement and receive a refund of any consideration paid by providing written notice of the cancellation to the promoter or the promoter's agent either by mail or hand delivery. If the purchaser does not receive the disclosure document, the agreement is voidable by the purchaser until the purchaser receives the document and for seven days thereafter. [1983 1st ex.s. c 22 § 14.]

**64.36.160 Application of liability provisions.** No provision of this chapter imposing any liability applies to any act or omission in good faith in conformity with any rule, form,

or order of the director, notwithstanding that the rule, form, or order may later be amended or rescinded or determined by judicial or other authority to be invalid for any reason. [1983 1st ex.s. c 22 § 15.]

**64.36.170 Noncompliance—Unfair practice under chapter 19.86 RCW.** Any failure to comply with this chapter constitutes an unfair and deceptive trade practice under chapter 19.86 RCW. [1983 1st ex.s. c 22 § 16.]

**64.36.185 Director's powers—Employment of outside persons for advice on project operating budget—Reimbursement by promoter—Notice and hearing.** (1) If it appears that the operating budget of a project fails to adequately provide for funding of reserve accounts, the director may employ outside professionals or consultants to provide advice or to develop an alternative budget. The promoter shall pay or reimburse the department for the costs incurred for such professional opinions.

(2) Before employing consultants under this section, the director shall provide the applicant with written notice and an opportunity for a hearing under chapter 34.05 RCW. [1987 c 370 § 6.]

**64.36.195 Assurances of discontinuance—Violation of assurance constitutes unprofessional conduct.** The director or persons to whom the director delegates such powers may enter into assurances of discontinuance in lieu of issuing a statement of charges or a cease and desist order or conducting a hearing under this chapter. The assurances shall consist of a statement of the law in question and an agreement to not violate the stated provision. The applicant or registrant shall not be required to admit to any violation of the law, nor shall the assurance be construed as such an admission. Violation or breaching of an assurance under this section shall constitute unprofessional conduct for which disciplinary action may be taken under RCW 18.235.110 and 18.235.130. [2002 c 86 § 300; 1987 c 370 § 7.]

**Effective dates—2002 c 86:** See note following RCW 18.08.340.

**Part headings not law—Severability—2002 c 86:** See RCW 18.235.902 and 18.235.903.

**64.36.200 Cease and desist order—Notification—Hearing.** (1) The director may order any person to cease and desist from an act or practice if it appears that the person is violating or is about to violate any provision of this chapter or any rule or order issued under this chapter.

(2) Upon the entry of the temporary order to cease and desist, the director shall promptly notify the recipient of the order that it has been entered and the reasons therefor and that if requested in writing by such person within fifteen days after service of the director's notification, the matter will be scheduled for hearing which shall be held within a reasonable time and in accordance with chapter 34.05 RCW. The temporary order shall remain in effect until ten days after the hearing is held.

(3) If a person does not request a hearing, the order shall become final.

(4) Unlicensed timeshare activity is subject to RCW 18.235.150. [2002 c 86 § 301; 1983 1st ex.s. c 22 § 19.]

(2010 Ed.)

**Effective dates—2002 c 86:** See note following RCW 18.08.340.

**Part headings not law—Severability—2002 c 86:** See RCW 18.235.902 and 18.235.903.

**64.36.210 Unlawful acts—Penalties.** (1) It is unlawful for any person in connection with the offer, sale, or lease of any timeshare in the state:

(a) To make any untrue or misleading statement of a material fact, or to omit a material fact;

(b) To employ any device, scheme, or artifice to defraud;

(c) To engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person;

(d) To file, or cause to be filed, with the director any document which contains any untrue or misleading information; or

(e) To violate any rule or order of the director.

(2)(a) Any person who knowingly violates this section is guilty of a class C felony punishable according to chapter 9A.20 RCW.

(b) No indictment or information for a felony may be returned under this chapter more than five years after the alleged violation. [2003 c 53 § 290; 1983 1st ex.s. c 22 § 20.]

**Intent—Effective date—2003 c 53:** See notes following RCW 2.48.180.

**64.36.220 Injunction, restraining order, writ of mandamus—Costs and attorney's fees—Penalties—Appointment of receiver or conservator.** (1) The attorney general, in the name of the state or the director, may bring an action to enjoin any person from violating any provision of this chapter. Upon a proper showing, the superior court shall grant a permanent or temporary injunction, restraining order, or writ of mandamus. The court may make any additional orders or judgments which may be necessary to restore to any person any interest in any money or property, real or personal, which may have been acquired by means of any act prohibited or declared to be unlawful under this chapter. The prevailing party may recover costs of the action, including a reasonable attorney's fee.

(2) The superior court issuing an injunction shall retain jurisdiction. Any person who violates the terms of an injunction shall pay a civil penalty of not more than twenty-five thousand dollars.

(3) The attorney general, in the name of the state or the director, may apply to the superior court to appoint a receiver or conservator for any person, or the assets of any person, who is subject to a cease and desist order, permanent or temporary injunction, restraining order, or writ of mandamus.

(4) Proceedings for injunctions for unlicensed timeshare activity must be conducted under the provisions of RCW 18.235.150. [2002 c 86 § 302; 1983 1st ex.s. c 22 § 21.]

**Effective dates—2002 c 86:** See note following RCW 18.08.340.

**Part headings not law—Severability—2002 c 86:** See RCW 18.235.902 and 18.235.903.

**64.36.225 Liability of registrant or applicant for costs of proceedings.** A registrant or applicant against whom an administrative or legal proceeding authorized under this chapter has been filed, shall be liable for and reimburse to the state of Washington by payment into the business and

professions account created in RCW 43.24.150, all administrative and legal costs, including attorneys' fees, incurred by the department in issuing and conducting administrative or legal proceedings that result in a final legal or administrative determination of any type or degree, in favor of the department or the state of Washington. [2005 c 25 § 4; 1987 c 370 § 8.]

**Effective date—2005 c 25:** See note following RCW 43.24.150.

**64.36.240 Liability for violation of chapter.** Any person who offers, sells, or materially aids in such offer or sale of a timeshare in violation of this chapter is liable to the person buying the timeshare who may sue either at law or in equity to recover the consideration paid for the timeshare, together with interest at ten percent per annum from date of payment and costs upon the tender of the timeshare, or for damages if the person no longer owns the timeshare. [1983 1st ex.s. c 22 § 23.]

**64.36.250 Appointment of director to receive service—Requirements for effective service.** Every applicant for registration under this chapter shall file with the director, in a form the director prescribes by rule, an irrevocable consent appointing the director to be the attorney of the applicant to receive service of any lawful process in any civil suit, action, or proceeding against the applicant or the applicant's successor, executor, or administrator which arises under this chapter or any rule or order issued under this chapter after the consent has been filed, with the same force and validity as if served personally on the person filing the consent. Service may be made by leaving a copy of the process in the office of the director, but it is not effective unless: (1) The plaintiff, who may be the director in a suit, action, or proceeding instituted by the director, forthwith sends notice of the service and a copy of the process by certified mail to the defendant or respondent at the last address of the respondent or defendant on file with the director; and (2) the plaintiff's affidavit of compliance with this section is filed in the case on or before the return day of the process, if any, or within such further time as the court allows. [1983 1st ex.s. c 22 § 24.]

**64.36.260 Certain acts not constituting findings or approval by the director—Certain representations unlawful.** Neither the fact that an application for registration nor a disclosure document under RCW 64.36.140 has been filed, nor the fact that a timeshare offering is effectively registered, constitutes a finding by the director that any document filed under this chapter is true, complete, and not misleading, nor does either fact mean that the director has determined in any way the merits of, qualifications of, or recommended or given approval to any person, timeshare, or transaction. It is unlawful to make, or cause to be made, to any prospective purchaser any representation inconsistent with this section. [1983 1st ex.s. c 22 § 25.]

**64.36.270 Rules, forms, and orders—Interpretive opinions.** The director may make, amend, and repeal rules, forms, and orders when necessary to carry out this chapter. The director may honor requests for interpretive opinions. [1983 1st ex.s. c 22 § 26.]

**64.36.290 Application of chapters 21.20, 58.19, and 19.105 RCW—Exemption of certain camping and outdoor recreation enterprises.** (1) All timeshares registered under this chapter are exempt from chapters 21.20, 58.19, and 19.105 RCW.

(2) This chapter shall not apply to any enterprise that has as its primary purpose camping and outdoor recreation and camping sites designed and promoted for the purpose of purchasers locating a trailer, tent, tent trailer, pick-up camper, or other similar device used for land-based portable housing. [1987 c 370 § 11; 1983 1st ex.s. c 22 § 28.]

**64.36.310 Copy of advertisement to be filed with director before publication—Application of chapter limited.** (1) No person may publish any advertisement in this state offering a timeshare which is subject to the registration requirements of RCW 64.36.020 unless a true copy of the advertisement has been filed in the office of the director at least seven days before publication or a shorter period which the director by rule may establish. The right to subsequently publish the advertisement is subject to the approval of the director within that seven day period.

(2) Nothing in this chapter applies to any radio or television station or any publisher, printer, or distributor of any newspaper, magazine, billboard, or other advertising medium which accepts advertising in good faith without knowledge of its violation of any provision of this chapter. This subsection does not apply, however, to any publication devoted primarily to the soliciting of resale timeshare offerings and where the publisher or owner of the publication collects advance fees for the purpose of locating or finding potential resale buyers or sellers. [1987 c 370 § 12; 1983 1st ex.s. c 22 § 31.]

**64.36.320 Free gifts, awards, and prizes—Security arrangement required of promisor—Other requirements—Private causes of action.** (1) No person, including a promoter, may advertise, sell, contract for, solicit, arrange, or promise a free gift, an award, a prize, or other item of value in this state as a condition for attending a sales presentation, touring a facility, or performing other activities in connection with the offer or sale of a timeshare under this chapter, without first providing the director with a bond, letter of credit, cash depository, or other security arrangement that will assure performance by the promisor and delivery of the promised gift, award, sweepstakes, prize, or other item of value.

(2) Promoters under this chapter shall be strictly liable for delivering promised gifts, prizes, awards, or other items of value offered or advertised in connection with the marketing of timeshares.

(3) Persons promised but not receiving gifts, prizes, awards, or other items of consideration covered under this section, shall be entitled in any cause of action in the courts of this state in which their causes prevail, to be awarded treble the stated value of the gifts, prizes, or awards, court costs, and reasonable attorney fees.

(4) The director may require that any fees or funds of any description collected from persons in advance, in connection with delivery by the promisor of gifts, prizes, awards, or other items of value covered under this section, be placed in

a depository in this state, where they shall remain until performance by the promisor.

(5) The director may require commercial promotional programs to be registered and require the provision of whatever information, including financial information, the department deems necessary for protection of purchasers.

(6) Persons offering commercial promotional programs shall sign and present to the department a consent to service of process, in the manner required of promoters in this chapter.

(7) Registrants or their agents or other persons shall not take possession of promotional materials covered under this section and RCW 64.36.310, from recipients who have received the materials for attending a sales presentation or touring a project, unless the permission of the recipient is received and the recipient is provided with an accurate signed copy describing such promotional materials. The department shall adopt rules enforcing this subsection.

(8) Chapter 19.170 RCW applies to free gifts, awards, prizes, or other items of value regulated under this chapter. [1991 c 227 § 10; 1987 c 370 § 13.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**64.36.330 Membership lists available for members and owners—Conditions—Exclusion of members' names from list—Commercial use of list.** (1) Concerning any timeshare offered or sited in this state, it is unlawful and a violation of this chapter and chapter 19.86 RCW for any person, developer, promoter, operator, or other person in control of timeshares or the board of directors or appropriate officer of timeshares with such responsibilities, to fail to provide a member/owner of a timeshare with a membership list, including names, addresses, and lot, unit, or interval owned, under the following circumstances:

(a) Upon demand or by rule or order of the director of the department, for whatever purpose deemed necessary to administer this chapter;

(b) Upon written request sent by certified mail being made by a member of the timeshare, to a declarant, promoter, or other person who has established and is yet in control of the timeshare;

(c) Upon written request sent by certified mail of a member of a timeshare to the board of directors or appropriate officer of the timeshare or an affiliated timeshare.

(2) The board of directors of the timeshare may require that any applicant for a membership list, other than the department, pay reasonable costs for providing the list and an affidavit that the applicant will not use and will be responsible for any use of the list for commercial purposes.

(3) Upon request, a member's name shall be excluded from a membership list available to any person other than the director of licensing for purposes of administering statutes that are its responsibility. Such persons shall make their request for exclusion in writing by certified mail to the board of directors or the appropriate officer or director of the timeshare.

(4) It is unlawful for any person to use a membership list obtained under this section or otherwise, for commercial purposes, unless written permission to do so has been received from the board of directors or appropriate officer of the time-

share. Wilful use of a membership list for commercial purposes without such permission shall subject the violator to damages, costs, and reasonable attorneys' fees in any legal proceedings instituted by a member in which the member prevails alleging violation of this section. Members may petition the courts of this state for orders restraining such commercial use. [1987 c 370 § 14.]

**64.36.340 Uniform regulation of business and professions act.** The uniform regulation of business and professions act, chapter 18.235 RCW, governs unlicensed practice, the issuance and denial of licenses, and the discipline of licensees under this chapter. [2002 c 86 § 304.]

**Effective dates—2002 c 86:** See note following RCW 18.08.340.

**Part headings not law—Severability—2002 c 86:** See RCW 18.235.902 and 18.235.903.

**64.36.900 Short title.** This chapter may be known and cited as "The Timeshare Act." [1983 1st ex.s. c 22 § 32.]

**64.36.901 Severability—1983 1st ex.s. c 22.** If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1983 1st ex.s. c 22 § 35.]

## Chapter 64.38 RCW

### HOMEOWNERS' ASSOCIATIONS

#### Sections

64.38.005	Intent.
64.38.010	Definitions.
64.38.015	Association membership.
64.38.020	Association powers.
64.38.025	Board of directors—Standard of care—Restrictions—Budget—Removal from board.
64.38.028	Removal of discriminatory provisions in governing documents—Procedure.
64.38.030	Association bylaws.
64.38.033	Flag of the United States—Outdoor display—Governing documents.
64.38.034	Political yard signs—Governing documents.
64.38.035	Association meetings—Notice—Board of directors.
64.38.040	Quorum for meeting.
64.38.045	Financial and other records—Property of association—Copies—Examination—Annual financial statement—Accounts.
64.38.050	Violation—Remedy—Attorneys' fees.
64.38.055	Governing documents—Solar panels.
64.38.060	Adult family homes.

*Speed enforcement: RCW 46.61.419.*

**64.38.005 Intent.** The intent of this chapter is to provide consistent laws regarding the formation and legal administration of homeowners' associations. [1995 c 283 § 1.]

**64.38.010 Definitions.** For purposes of this chapter:

(1) "Homeowners' association" or "association" means a corporation, unincorporated association, or other legal entity, each member of which is an owner of residential real property located within the association's jurisdiction, as described in the governing documents, and by virtue of membership or ownership of property is obligated to pay real property taxes, insurance premiums, maintenance costs, or for improvement of real property other than that which is owned by the mem-

ber. "Homeowners' association" does not mean an association created under chapter 64.32 or 64.34 RCW.

(2) "Governing documents" means the articles of incorporation, bylaws, plat, declaration of covenants, conditions, and restrictions, rules and regulations of the association, or other written instrument by which the association has the authority to exercise any of the powers provided for in this chapter or to manage, maintain, or otherwise affect the property under its jurisdiction.

(3) "Board of directors" or "board" means the body, regardless of name, with primary authority to manage the affairs of the association.

(4) "Common areas" means property owned, or otherwise maintained, repaired or administered by the association.

(5) "Common expense" means the costs incurred by the association to exercise any of the powers provided for in this chapter.

(6) "Residential real property" means any real property, the use of which is limited by law, covenant or otherwise for primarily residential or recreational purposes. [1995 c 283 § 2.]

**64.38.015 Association membership.** The membership of an association at all times shall consist exclusively of the owners of all real property over which the association has jurisdiction, both developed and undeveloped. [1995 c 283 § 3.]

**64.38.020 Association powers.** Unless otherwise provided in the governing documents, an association may:

- (1) Adopt and amend bylaws, rules, and regulations;
- (2) Adopt and amend budgets for revenues, expenditures, and reserves, and impose and collect assessments for common expenses from owners;
- (3) Hire and discharge or contract with managing agents and other employees, agents, and independent contractors;
- (4) Institute, defend, or intervene in litigation or administrative proceedings in its own name on behalf of itself or two or more owners on matters affecting the homeowners' association, but not on behalf of owners involved in disputes that are not the responsibility of the association;
- (5) Make contracts and incur liabilities;
- (6) Regulate the use, maintenance, repair, replacement, and modification of common areas;
- (7) Cause additional improvements to be made as a part of the common areas;
- (8) Acquire, hold, encumber, and convey in its own name any right, title, or interest to real or personal property;
- (9) Grant easements, leases, licenses, and concessions through or over the common areas and petition for or consent to the vacation of streets and alleys;
- (10) Impose and collect any payments, fees, or charges for the use, rental, or operation of the common areas;
- (11) Impose and collect charges for late payments of assessments and, after notice and an opportunity to be heard by the board of directors or by the representative designated by the board of directors and in accordance with the procedures as provided in the bylaws or rules and regulations adopted by the board of directors, levy reasonable fines in accordance with a previously established schedule adopted

by the board of directors and furnished to the owners for violation of the bylaws, rules, and regulations of the association;

(12) Exercise any other powers conferred by the bylaws;

(13) Exercise all other powers that may be exercised in this state by the same type of corporation as the association; and

(14) Exercise any other powers necessary and proper for the governance and operation of the association. [1995 c 283 § 4.]

*Speed enforcement: RCW 46.61.419.*

**64.38.025 Board of directors—Standard of care—Restrictions—Budget—Removal from board.** (1) Except as provided in the association's governing documents or this chapter, the board of directors shall act in all instances on behalf of the association. In the performance of their duties, the officers and members of the board of directors shall exercise the degree of care and loyalty required of an officer or director of a corporation organized under chapter 24.03 RCW.

(2) The board of directors shall not act on behalf of the association to amend the articles of incorporation, to take any action that requires the vote or approval of the owners, to terminate the association, to elect members of the board of directors, or to determine the qualifications, powers, and duties, or terms of office of members of the board of directors; but the board of directors may fill vacancies in its membership of the unexpired portion of any term.

(3) Within thirty days after adoption by the board of directors of any proposed regular or special budget of the association, the board shall set a date for a meeting of the owners to consider ratification of the budget not less than fourteen nor more than sixty days after mailing of the summary. Unless at that meeting the owners of a majority of the votes in the association are allocated or any larger percentage specified in the governing documents reject the budget, in person or by proxy, the budget is ratified, whether or not a quorum is present. In the event the proposed budget is rejected or the required notice is not given, the periodic budget last ratified by the owners shall be continued until such time as the owners ratify a subsequent budget proposed by the board of directors.

(4) The owners by a majority vote of the voting power in the association present, in person or by proxy, and entitled to vote at any meeting of the owners at which a quorum is present, may remove any member of the board of directors with or without cause. [1995 c 283 § 5.]

**64.38.028 Removal of discriminatory provisions in governing documents—Procedure.** (1) The association, acting through a simple majority vote of its board, may amend the association's governing documents for the purpose of removing:

(a) Every covenant, condition, or restriction that purports to forbid or restrict the conveyance, encumbrance, occupancy, or lease thereof to individuals of a specified race, creed, color, sex, or national origin; families with children status; individuals with any sensory, mental, or physical disability; or individuals who use a trained dog guide or service

animal because they are blind or deaf or have a physical disability; and

(b) Every covenant, condition, restriction, or prohibition, including a right of entry or possibility of reverter, that directly or indirectly limits the use or occupancy of real property on the basis of race, creed, color, sex, national origin; families with children status; the presence of any sensory, mental, or physical disability; or the use of a trained dog guide or service animal by a person with a physical disability or who is blind or deaf.

(2) Upon the board's receipt of a written request by a member of the association that the board exercise its amending authority granted under subsection (1) of this section, the board must, within a reasonable time, amend the governing documents, as provided under this section.

(3) Amendments under subsection (1) of this section may be executed by any board officer.

(4) Amendments made under subsection (1) of this section must be recorded in the public records and state the following:

"This amendment strikes from these covenants, conditions, and restrictions those provisions that are void under RCW 49.60.224. Specifically, this amendment strikes:

(a) Those provisions that forbid or restrict use, occupancy, conveyance, encumbrance, or lease of real property to individuals of a specified race, creed, color, sex, or national origin; families with children status; individuals with any sensory, mental, or physical disability; or individuals who use a trained dog guide or service animal because they are blind or deaf or have a physical disability; and

(b) Every covenant, condition, restriction, or prohibition, including a right of entry or possibility of reverter, that directly or indirectly limits the use or occupancy of real property on the basis of race, creed, color, sex, national origin; families with children status; the presence of any sensory, mental, or physical disability; or the use of a trained dog guide or service animal by a person with a physical disability or who is blind or deaf."

(5) Board action under this section does not require the vote or approval of the owners.

(6) As provided in RCW 49.60.227, any owner, occupant, or tenant in the association or board may bring an action in superior court to have any provision of a written instrument that is void pursuant to RCW 49.60.224 stricken from the public records.

(7) Nothing in this section prohibiting discrimination based on families with children status applies to housing for older persons as defined by the federal fair housing amendments act of 1988, 42 U.S.C. Sec. 3607(b)(1) through (3), as amended by the housing for older persons act of 1995, P.L. 104-76, as enacted on December 28, 1995. Nothing in this section authorizes requirements for housing for older persons different than the requirements in the federal fair housing amendments act of 1988, 42 U.S.C. Sec. 3607(b)(1) through (3), as amended by the housing for older persons act of 1995, P.L. 104-76, as enacted on December 28, 1995.

(2010 Ed.)

(8) Except as otherwise provided in subsection (2) of this section, (a) nothing in this section creates a duty on the part of owners, occupants, tenants, associations, or boards to amend the governing documents as provided in this section, or to bring an action as authorized under this section and RCW 49.60.227; and (b) an owner, occupant, tenant, association, or board is not liable for failing to amend the governing documents or to pursue an action in court as authorized under this section and RCW 49.60.227. [2006 c 58 § 2.]

**Finding—Intent—2006 c 58:** "The legislature finds that some homeowners' associations have governing documents that contain discriminatory covenants, conditions, or restrictions that are void and unenforceable under both the federal fair housing amendments act of 1988 and RCW 49.60.224. The continued existence of these discriminatory covenants, conditions, or restrictions is contrary to public policy and repugnant to many property owners. It is the intent of chapter 58, Laws of 2006 to allow homeowners' associations to remove all remnants of discrimination from their governing documents." [2006 c 58 § 1.]

**64.38.030 Association bylaws.** Unless provided for in the governing documents, the bylaws of the association shall provide for:

(1) The number, qualifications, powers and duties, terms of office, and manner of electing and removing the board of directors and officers and filling vacancies;

(2) Election by the board of directors of the officers of the association as the bylaws specify;

(3) Which, if any, of its powers the board of directors or officers may delegate to other persons or to a managing agent;

(4) Which of its officers may prepare, execute, certify, and record amendments to the governing documents on behalf of the association;

(5) The method of amending the bylaws; and

(6) Subject to the provisions of the governing documents, any other matters the association deems necessary and appropriate. [1995 c 283 § 6.]

**64.38.033 Flag of the United States—Outdoor display—Governing documents.** (1) The governing documents may not prohibit the outdoor display of the flag of the United States by an owner or resident on the owner's or resident's property if the flag is displayed in a manner consistent with federal flag display law, 4 U.S.C. Sec. 1 et seq. The governing documents may include reasonable rules and regulations, consistent with 4 U.S.C. Sec. 1 et seq., regarding the placement and manner of display of the flag of the United States.

(2) The governing documents may not prohibit the installation of a flagpole for the display of the flag of the United States. The governing documents may include reasonable rules and regulations regarding the location and the size of the flagpole.

(3) For purposes of this section, "flag of the United States" means the flag of the United States as defined in federal flag display law, 4 U.S.C. Sec. 1 et seq., that is made of fabric, cloth, or paper and that is displayed from a staff or flagpole or in a window. For purposes of this section, "flag of the United States" does not mean a flag depiction or emblem made of lights, paint, roofing, siding, paving materials, flora, or balloons, or of any similar building, landscaping, or decorative component.

(4) The provisions of this section shall be construed to apply retroactively to any governing documents in effect on June 10, 2004. Any provision in a governing document in effect on June 10, 2004, that is inconsistent with this section shall be void and unenforceable. [2004 c 169 § 1.]

**64.38.034 Political yard signs—Governing documents.** (1) The governing documents may not prohibit the outdoor display of political yard signs by an owner or resident on the owner's or resident's property before any primary or general election. The governing documents may include reasonable rules and regulations regarding the placement and manner of display of political yard signs.

(2) This section applies retroactively to any governing documents in effect on July 24, 2005. Any provision in a governing document in effect on July 24, 2005, that is inconsistent with this section is void and unenforceable. [2005 c 179 § 1.]

**64.38.035 Association meetings—Notice—Board of directors.** (1) A meeting of the association must be held at least once each year. Special meetings of the association may be called by the president, a majority of the board of directors, or by owners having ten percent of the votes in the association. Not less than fourteen nor more than sixty days in advance of any meeting, the secretary or other officers specified in the bylaws shall cause notice to be hand-delivered or sent prepaid by first-class United States mail to the mailing address of each owner or to any other mailing address designated in writing by the owner. The notice of any meeting shall state the time and place of the meeting and the business to be placed on the agenda by the board of directors for a vote by the owners, including the general nature of any proposed amendment to the articles of incorporation, bylaws, any budget or changes in the previously approved budget that result in a change in assessment obligation, and any proposal to remove a director.

(2) Except as provided in this subsection, all meetings of the board of directors shall be open for observation by all owners of record and their authorized agents. The board of directors shall keep minutes of all actions taken by the board, which shall be available to all owners. Upon the affirmative vote in open meeting to assemble in closed session, the board of directors may convene in closed executive session to consider personnel matters; consult with legal counsel or consider communications with legal counsel; and discuss likely or pending litigation, matters involving possible violations of the governing documents of the association, and matters involving the possible liability of an owner to the association. The motion shall state specifically the purpose for the closed session. Reference to the motion and the stated purpose for the closed session shall be included in the minutes. The board of directors shall restrict the consideration of matters during the closed portions of meetings only to those purposes specifically exempted and stated in the motion. No motion, or other action adopted, passed, or agreed to in closed session may become effective unless the board of directors, following the closed session, reconvenes in open meeting and votes in the open meeting on such motion, or other action which is reasonably identified. The requirements of this subsection shall

not require the disclosure of information in violation of law or which is otherwise exempt from disclosure. [1995 c 283 § 7.]

**64.38.040 Quorum for meeting.** Unless the governing documents specify a different percentage, a quorum is present throughout any meeting of the association if the owners to which thirty-four percent of the votes of the association are allocated are present in person or by proxy at the beginning of the meeting. [1995 c 283 § 8.]

**64.38.045 Financial and other records—Property of association—Copies—Examination—Annual financial statement—Accounts.** (1) The association or its managing agent shall keep financial and other records sufficiently detailed to enable the association to fully declare to each owner the true statement of its financial status. All financial and other records of the association, including but not limited to checks, bank records, and invoices, in whatever form they are kept, are the property of the association. Each association managing agent shall turn over all original books and records to the association immediately upon termination of the management relationship with the association, or upon such other demand as is made by the board of directors. An association managing agent is entitled to keep copies of association records. All records which the managing agent has turned over to the association shall be made reasonably available for the examination and copying by the managing agent.

(2) All records of the association, including the names and addresses of owners and other occupants of the lots, shall be available for examination by all owners, holders of mortgages on the lots, and their respective authorized agents on reasonable advance notice during normal working hours at the offices of the association or its managing agent. The association shall not release the unlisted telephone number of any owner. The association may impose and collect a reasonable charge for copies and any reasonable costs incurred by the association in providing access to records.

(3) At least annually, the association shall prepare, or cause to be prepared, a financial statement of the association. The financial statements of associations with annual assessments of fifty thousand dollars or more shall be audited at least annually by an independent certified public accountant, but the audit may be waived if sixty-seven percent of the votes cast by owners, in person or by proxy, at a meeting of the association at which a quorum is present, vote each year to waive the audit.

(4) The funds of the association shall be kept in accounts in the name of the association and shall not be commingled with the funds of any other association, nor with the funds of any manager of the association or any other person responsible for the custody of such funds. [1995 c 283 § 9.]

**64.38.050 Violation—Remedy—Attorneys' fees.** Any violation of the provisions of this chapter entitles an aggrieved party to any remedy provided by law or in equity. The court, in an appropriate case, may award reasonable attorneys' fees to the prevailing party. [1995 c 283 § 10.]

**64.38.055 Governing documents—Solar panels.** (1)

The governing documents may not prohibit the installation of a solar energy panel by an owner or resident on the owner's or resident's property as long as the solar energy panel:

(a) Meets applicable health and safety standards and requirements imposed by state and local permitting authorities;

(b) If used to heat water, is certified by the solar rating certification corporation or another nationally recognized certification agency. Certification must be for the solar energy panel and for installation; and

(c) If used to produce electricity, meets all applicable safety and performance standards established by the national electric code, the institute of electrical and electronics engineers, accredited testing laboratories, such as underwriters laboratories, and, where applicable, rules of the utilities and transportation commission regarding safety and reliability.

(2) The governing documents may:

(a) Prohibit the visibility of any part of a roof-mounted solar energy panel above the roof line;

(b) Permit the attachment of a solar energy panel to the slope of a roof facing a street only if:

(i) The solar energy panel conforms to the slope of the roof; and

(ii) The top edge of the solar energy panel is parallel to the roof ridge; or

(c) Require:

(i) A solar energy panel frame, a support bracket, or any visible piping or wiring to be painted to coordinate with the roofing material;

(ii) An owner or resident to shield a ground-mounted solar energy panel if shielding the panel does not prohibit economic installation of the solar energy panel or degrade the operational performance quality of the solar energy panel by more than ten percent; or

(iii) Owners or residents who install solar energy panels to indemnify or reimburse the association or its members for loss or damage caused by the installation, maintenance, or use of a solar energy panel.

(3) The governing documents may include other reasonable rules regarding the placement and manner of a solar energy panel.

(4) For purposes of this section, "solar energy panel" means a panel device or system or combination of panel devices or systems that relies on direct sunlight as an energy source, including a panel device or system or combination of panel devices or systems that collects sunlight for use in:

(a) The heating or cooling of a structure or building;

(b) The heating or pumping of water;

(c) Industrial, commercial, or agricultural processes; or

(d) The generation of electricity.

(5) This section does not apply to common areas as defined in RCW 64.38.010.

(6) This section applies retroactively to a governing document in effect on July 26, 2009. A provision in a governing document in effect on July 26, 2009, that is inconsistent with this section is void and unenforceable. [2009 c 51 § 1.]

**64.38.060 Adult family homes.** (1) To effectuate the public policy of chapter 70.128 RCW, the governing documents may not limit, directly or indirectly:

(a) Persons with disabilities from living in an adult family home licensed under chapter 70.128 RCW; or

(b) Persons and legal entities from operating adult family homes licensed under chapter 70.128 RCW, whether for-profit or nonprofit, to provide services covered under chapter 70.128 RCW. However, this subsection does not prohibit application of reasonable nondiscriminatory regulation, including but not limited to landscaping standards or regulation of sign location or size, that applies to all residential property subject to the governing documents.

(2) This section applies retroactively to any governing documents in effect on July 26, 2009. Any provision in a governing document in effect on or after July 26, 2009, that is inconsistent with subsection (1) of this section is unenforceable to the extent of the conflict. [2009 c 530 § 4.]

**Chapter 64.40 RCW****PROPERTY RIGHTS—  
DAMAGES FROM GOVERNMENTAL ACTIONS**

## Sections

64.40.010	Definitions—Defense in action for damages.
64.40.020	Applicant for permit—Actions for damages from governmental actions.
64.40.030	Commencement of action—Time limitation.
64.40.040	Remedies cumulative.
64.40.900	Severability—1982 c 232.

**64.40.010 Definitions—Defense in action for damages.** As used in this chapter, the terms in this section shall have the meanings indicated unless the context clearly requires otherwise.

(1) "Agency" means the state of Washington, any of its political subdivisions, including any city, town, or county, and any other public body exercising regulatory authority or control over the use of real property in the state.

(2) "Permit" means any governmental approval required by law before an owner of a property interest may improve, sell, transfer, or otherwise put real property to use.

(3) "Property interest" means any interest or right in real property in the state.

(4) "Damages" means reasonable expenses and losses, other than speculative losses or profits, incurred between the time a cause of action arises and the time a holder of an interest in real property is granted relief as provided in RCW 64.40.020. Damages must be caused by an act, necessarily incurred, and actually suffered, realized, or expended, but are not based upon diminution in value of or damage to real property, or litigation expenses.

(5) "Regulation" means any ordinance, resolution, or other rule or regulation adopted pursuant to the authority provided by state law, which imposes or alters restrictions, limitations, or conditions on the use of real property.

(6) "Act" means a final decision by an agency which places requirements, limitations, or conditions upon the use of real property in excess of those allowed by applicable regulations in effect on the date an application for a permit is filed. "Act" also means the failure of an agency to act within time limits established by law in response to a property owner's application for a permit: PROVIDED, That there is no "act" within the meaning of this section when the owner of a property interest agrees in writing to extensions of time, or

to the conditions or limitations imposed upon an application for a permit. "Act" shall not include lawful decisions of an agency which are designed to prevent a condition which would constitute a threat to the health, safety, welfare, or morals of residents in the area.

In any action brought pursuant to this chapter, a defense is available to a political subdivision of this state that its act was mandated by a change in statute or state rule or regulation and that such a change became effective subsequent to the filing of an application for a permit. [1982 c 232 § 1.]

**64.40.020 Applicant for permit—Actions for damages from governmental actions.** (1) Owners of a property interest who have filed an application for a permit have an action for damages to obtain relief from acts of an agency which are arbitrary, capricious, unlawful, or exceed lawful authority, or relief from a failure to act within time limits established by law: PROVIDED, That the action is unlawful or in excess of lawful authority only if the final decision of the agency was made with knowledge of its unlawfulness or that it was in excess of lawful authority, or it should reasonably have been known to have been unlawful or in excess of lawful authority.

(2) The prevailing party in an action brought pursuant to this chapter may be entitled to reasonable costs and attorney's fees.

(3) No cause of action is created for relief from unintentional procedural or ministerial errors of an agency.

(4) Invalidation of any regulation in effect prior to the date an application for a permit is filed with the agency shall not constitute a cause of action under this chapter. [1982 c 232 § 2.]

**Findings—Recommendations—Reports encouraged—2007 c 231:** See note following RCW 43.155.070.

**64.40.030 Commencement of action—Time limitation.** Any action to assert claims under the provisions of this chapter shall be commenced only within thirty days after all administrative remedies have been exhausted. [1982 c 232 § 3.]

**64.40.040 Remedies cumulative.** The remedies provided by this chapter are in addition to any other remedies provided by law. [1982 c 232 § 4.]

**64.40.900 Severability—1982 c 232.** If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1982 c 232 § 5.]

## Chapter 64.44 RCW

### CONTAMINATED PROPERTIES

#### Sections

64.44.005	Legislative finding.
64.44.010	Definitions.
64.44.020	Reporting—Warning—Notice—Duties of local health officer.
64.44.030	Order declaring property unfit and prohibiting use—Notice—Hearing—Emergency order.
64.44.040	Orders declaring property unfit and prohibiting use—City, county action—Entrance upon property prohibited.

64.44.045	Vehicle and vessel titles—Notice of contamination or decontamination—Penalty.
64.44.050	Decontamination, demolition, or disposal by owner—Requirements and procedure—Costs—Decontamination timeline.
64.44.060	Certification of contractors, supervisors, or workers—Denial, suspension, revocation, or restrictions on certificate—Penalties—Fees—Decontamination account.
64.44.070	Rules and standards—Chapter administration, property decontamination.
64.44.075	Annual evaluation and inspection of decontamination projects.
64.44.080	Civil liability—Immunity.
64.44.900	Application—Other remedies.
64.44.901	Severability—1990 c 213.

**64.44.005 Legislative finding.** The legislature finds that some properties are being contaminated by hazardous chemicals used in unsafe or illegal ways in the manufacture of illegal drugs. Innocent members of the public may be harmed by the residue left by these chemicals when the properties are subsequently rented or sold without having been decontaminated. [1990 c 213 § 1.]

**64.44.010 Definitions.** The words and phrases defined in this section shall have the following meanings when used in this chapter unless the context clearly indicates otherwise.

(1) "Authorized contractor" means a person who decontaminates, demolishes, or disposes of contaminated property as required by this chapter who is certified by the department as provided for in RCW 64.44.060.

(2) "Contaminated" or "contamination" means polluted by hazardous chemicals so that the property is unfit for human habitation or use due to immediate or long-term hazards. Property that at one time was contaminated but has been satisfactorily decontaminated according to procedures established by the state board of health is not "contaminated."

(3) "Department" means the department of health.

(4) "Hazardous chemicals" means the following substances associated with the illegal manufacture of controlled substances: (a) Hazardous substances as defined in RCW 70.105D.020; (b) precursor substances as defined in RCW 69.43.010 which the state board of health, in consultation with the state board of pharmacy, has determined present an immediate or long-term health hazard to humans; and (c) the controlled substance or substances being manufactured, as defined in RCW 69.50.101.

(5) "Officer" means a local health officer authorized under chapters 70.05, 70.08, and 70.46 RCW.

(6) "Property" means any real or personal property, or segregable part thereof, that is involved in or affected by the unauthorized manufacture, distribution, or storage of hazardous chemicals. This includes but is not limited to single-family residences, units of multiplexes, condominiums, apartment buildings, boats, motor vehicles, trailers, manufactured housing, any shop, booth, garden, or storage shed, and all contents of the items referenced in this subsection. [2006 c 339 § 201; 1999 c 292 § 2; 1990 c 213 § 2.]

**Intent—Part headings not law—2006 c 339:** See notes following RCW 70.96A.325.

**Finding—Intent—1999 c 292:** "The legislature finds that the contamination of properties used for illegal drug manufacturing poses a threat to public health. The toxic chemicals left behind by the illegal drug manufacturing must be cleaned up to prevent harm to subsequent occupants of the properties. It is the intent of the legislature that properties are decontaminated in a manner that is efficient, prompt, and that makes them safe to reoccupy." [1999 c 292 § 1.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**64.44.020 Reporting—Warning—Notice—Duties of local health officer.** Whenever a law enforcement agency becomes aware that property has been contaminated by hazardous chemicals, that agency shall report the contamination to the local health officer. The local health officer shall cause a posting of a written warning on the premises within one working day of notification of the contamination and shall inspect the property within fourteen days after receiving the notice of contamination. The warning posting for any property that includes a hotel or motel holding a current license under RCW 70.62.220, shall be limited to inside the room or on the door of the contaminated room and no written warning posting shall be posted in the lobby of the facility. The warning shall inform the potential occupants that hazardous chemicals may exist on, or have been removed from, the premises and that entry is unsafe. If a property owner believes that a tenant has contaminated property that was being leased or rented, and the property is vacated or abandoned, then the property owner shall contact the local health officer about the possible contamination. Local health officers or boards may charge property owners reasonable fees for inspections of suspected contaminated property requested by property owners.

A local health officer may enter, inspect, and survey at reasonable times any properties for which there are reasonable grounds to believe that the property has become contaminated. If the property is contaminated, the local health officer shall post a written notice declaring that the officer intends to issue an order prohibiting use of the property as long as the property is contaminated.

If access to the property is denied, a local health officer in consultation with law enforcement may seek a warrant for the purpose of conducting administrative inspections. A superior, district, or municipal court within the jurisdiction of the property may, based upon probable cause that the property is contaminated, issue warrants for the purpose of conducting administrative inspections.

Local health officers must report all cases of contaminated property to the state department of health. The department may make the list of contaminated properties available to health associations, landlord and realtor organizations, prosecutors, and other interested groups. The department shall promptly update the list of contaminated properties to remove those which have been decontaminated according to provisions of this chapter.

The local health officer may determine when the services of an authorized contractor are necessary. [2006 c 339 § 202; 1999 c 292 § 3; 1990 c 213 § 3.]

**Intent—Part headings not law—2006 c 339:** See notes following RCW 70.96A.325.

**Finding—Intent—1999 c 292:** See note following RCW 64.44.010.

**64.44.030 Order declaring property unfit and prohibiting use—Notice—Hearing—Emergency order.** (1) If after the inspection of the property, the local health officer finds that it is contaminated, then the local health officer shall issue an order declaring the property unfit and prohibiting its use. The local health officer shall cause the order to be served either personally or by certified mail, with return

receipt requested, upon all occupants and persons having any interest therein as shown upon the records of the auditor's office of the county in which such property is located. The local health officer shall also cause the order to be posted in a conspicuous place on the property. If the whereabouts of such persons is unknown and the same cannot be ascertained by the local health officer in the exercise of reasonable diligence, and the health officer makes an affidavit to that effect, then the serving of the order upon such persons may be made either by personal service or by mailing a copy of the order by certified mail, postage prepaid, return receipt requested, to each person at the address appearing on the last equalized tax assessment roll of the county where the property is located or at the address known to the county assessor, and the order shall be posted conspicuously at the residence. A copy of the order shall also be mailed, addressed to each person or party having a recorded right, title, estate, lien, or interest in the property. The order shall contain a notice that a hearing before the local health board or officer shall be held upon the request of a person required to be notified of the order under this section. The request for a hearing must be made within ten days of serving the order. The hearing shall then be held within not less than twenty days nor more than thirty days after the serving of the order. The officer shall prohibit use as long as the property is found to be contaminated. A copy of the order shall also be filed with the auditor of the county in which the property is located, where the order pertains to real property, and such filing of the complaint or order shall have the same force and effect as other lis pendens notices provided by law. In any hearing concerning whether property is fit for use, the property owner has the burden of showing that the property is decontaminated or fit for use. The owner or any person having an interest in the property may file an appeal on any order issued by the local health board or officer within thirty days from the date of service of the order with the appeals commission established pursuant to RCW 35.80.030. All proceedings before the appeals commission, including any subsequent appeals to superior court, shall be governed by the procedures established in chapter 35.80 RCW.

(2) If the local health officer determines immediate action is necessary to protect public health, safety, or the environment, the officer may issue or cause to be issued an emergency order, and any person to whom such an order is directed shall comply immediately. Emergency orders issued pursuant to this section shall expire no later than seventy-two hours after issuance and shall not impair the health officer from seeking an order under subsection (1) of this section. [2006 c 339 § 203; 1999 c 292 § 4; 1990 c 213 § 4.]

**Intent—Part headings not law—2006 c 339:** See notes following RCW 70.96A.325.

**Finding—Intent—1999 c 292:** See note following RCW 64.44.010.

**64.44.040 Orders declaring property unfit and prohibiting use—City, county action—Entrance upon property prohibited.** (1) Upon issuance of an order declaring property unfit and prohibiting its use, the city or county in which the contaminated property is located may take action to prohibit use, occupancy, or removal of such property; condemn, decontaminate, or demolish the property; or require that the property be vacated or the contents removed from the

property. The city or county may use an authorized contractor if property is demolished, decontaminated, or removed under this section. The city, county, or contractor shall comply with all orders of the health officer during these processes. No city or county may condemn, decontaminate, or demolish property pursuant to this section until all procedures granting the right of notice and the opportunity to appeal in RCW 64.44.030 have been exhausted, but may prohibit use, occupancy, or removal of contaminated property pending appeal of the order.

(2)(a) It is unlawful for any person to enter upon any property, or to remove any property, that has been found unfit for use by a local health officer pursuant to RCW 64.44.030.

(b) This subsection does not apply to: (i) Health officials, law enforcement officials, or other government agents performing their official duties; (ii) authorized contractors or owners performing decontamination pursuant to authorization by the local health officer; and (iii) any person acting with permission of a local health officer, or of a superior court or hearing examiner following an appeal of a decision of the local health officer.

(c) Any person who violates this subsection is guilty of a misdemeanor.

(3) No provision of this section may be construed to limit the ability of the local health officer to permit occupants or owners of the property at issue to remove uncontaminated personal property from the premises. [2006 c 339 § 204; 1999 c 292 § 5; 1990 c 213 § 5.]

**Intent—Part headings not law—2006 c 339:** See notes following RCW 70.96A.325.

**Finding—Intent—1999 c 292:** See note following RCW 64.44.010.

**64.44.045 Vehicle and vessel titles—Notice of contamination or decontamination—Penalty. (Effective until July 1, 2011.)** (1) The Washington state department of licensing shall take action to place notification on the title of any motor vehicle as defined in RCW 46.04.320, a vehicle as defined in RCW 46.04.670, or a vessel as defined in RCW 88.02.010, that the vehicle or vessel has been declared unfit and prohibited from use by order of the local health officer under this chapter. When satisfactory decontamination has been completed and the contaminated property has been retested according to the written work plan approved by the local health officer, a release for reuse document shall be issued by the local health officer, and the department of licensing shall place notification on the title of that vehicle or vessel as having been decontaminated and released for reuse.

(2)(a) A person is guilty of a gross misdemeanor if he or she advertises for sale or sells a motor vehicle as defined in RCW 46.04.320, a vehicle as defined in RCW 46.04.670, or a vessel as defined in RCW 88.02.010, that has been declared unfit and prohibited from use by the local health officer under this chapter when:

(i) The person has knowledge that the local health officer has issued an order declaring the vehicle or vessel unfit and prohibiting its use; or

(ii) A notification has been placed on the title under subsection (1) of this section that the vehicle or vessel has been declared unfit and prohibited from use.

(b) A person may advertise or sell a vehicle or vessel when a release for reuse document has been issued by the

local health officer under this chapter or a notification has been placed on the title under subsection (1) of this section that the vehicle or vessel has been decontaminated and released for reuse. [2008 c 201 § 2.]

**64.44.050 Decontamination, demolition, or disposal by owner—Requirements and procedure—Costs—Decontamination timeline.**

(1) An owner of contaminated property who desires to have the property decontaminated, demolished, or disposed of shall use the services of an authorized contractor unless otherwise authorized by the local health officer. The contractor and property owner shall prepare and submit a written work plan for decontamination, demolition, or disposal to the local health officer. The local health officer may charge a reasonable fee for review of the work plan. If the work plan is approved and the decontamination, demolition, or disposal is completed and the property is retested according to the plan and properly documented, then the health officer shall allow reuse of the property. A release for reuse document shall be recorded in the real property records indicating the property has been decontaminated, demolished, or disposed of in accordance with rules of the state department of health. The property owner is responsible for: (a) The costs of any property testing which may be required to demonstrate the presence or absence of hazardous chemicals; and (b) the costs of the property's decontamination, demolition, and disposal expenses, as well as costs incurred by the local health officer resulting from the enforcement of this chapter.

(2)(a) In a case where the contaminated property is a motor vehicle as defined in RCW 46.04.320, a vehicle as defined in RCW 46.04.670, or a vessel as defined in \*RCW 88.02.010, and the local health officer has issued an order declaring the property unfit and prohibiting its use, the city or county in which the property is located shall take action to prohibit use, occupancy, or removal, and shall require demolition, disposal, or decontamination of the property. The city, county, or local law enforcement agency may impound the vehicle or vessel to enforce this chapter.

(b) The property owner shall have the property demolished, disposed of, or decontaminated by an authorized contractor, or under a written work plan approved by the local health officer, within thirty days of receiving the order declaring the property unfit and prohibited from use. After all procedures granting the right of notice and the opportunity to appeal in RCW 64.44.030 have been exhausted, if the property owner has not demolished, disposed of, or decontaminated the property using an authorized contractor, or under a written work plan approved by the local health officer within thirty days, then the local health officer or the local law enforcement agency may demolish, dispose of, or decontaminate the property. The property owner is responsible for the costs of the property's demolition, disposal, or decontamination, as well as all costs incurred by the local health officer or the local law enforcement agency resulting from the enforcement of this chapter, except as otherwise provided under this subsection.

(c) The legal owner of a motor vehicle as defined in RCW 46.04.320, a vehicle as defined in RCW 46.04.670, or a vessel as defined in \*RCW 88.02.010 whose sole basis of ownership is a bona fide security interest is responsible for

costs under this subsection if the legal owner had knowledge of or consented to any act or omission that caused contamination of the vehicle or vessel.

(d) If the vehicle or vessel has been stolen and the property owner neither had knowledge of nor consented to any act or omission that contributed to the theft and subsequent contamination of the vehicle or vessel, the owner is not responsible for costs under this subsection. However, if the registered owner is insured, the registered owner shall, within fifteen calendar days of receiving an order declaring the property unfit and prohibiting its use, submit a claim to his or her insurer for reimbursement of costs of the property's demolition, disposal, or decontamination, as well as all costs incurred by the local health officer or the local law enforcement agency resulting from the enforcement of this chapter, and shall provide proof of claim to the local health officer or the local law enforcement agency.

(e) If the property owner has not acted to demolish, dispose of, or decontaminate as set forth in this subsection regardless of responsibility for costs, and the local health officer or local law enforcement agency has taken responsibility for demolition, disposal, or decontamination, including all associated costs, then all rights, title, and interest in the property shall be deemed forfeited to the local health jurisdiction or the local law enforcement agency.

(f) This subsection may not be construed to limit the authority of a city, county, local law enforcement agency, or local health officer to take action under this chapter to require the owner of the real property upon which the contaminated vehicle or vessel is located to comply with the requirements of this chapter, including provisions for the right of notice and opportunity to appeal as provided in RCW 64.44.030.

(3) Except as provided in subsection (2) of this section, the local health officer has thirty days from the issuance of an order declaring a property unfit and prohibiting its use to establish a reasonable timeline for decontamination. The department of health shall establish the factors to be considered by the local health officer in establishing the appropriate amount of time.

The local health officer shall notify the property owner of the proposed time frame by United States mail to the last known address. Notice shall be postmarked no later than the thirtieth day from the issuance of the order. The property owner may request a modification of the time frame by submitting a letter identifying the circumstances which justify such an extension to the local health officer within thirty-five days of the date of the postmark on the notification regardless of when received. [2008 c 201 § 1; 2006 c 339 § 205; 1999 c 292 § 6; 1990 c 213 § 6.]

**\*Reviser's note:** RCW 88.02.010 was recodified as RCW 88.02.310 pursuant to 2010 c 161 § 1231, effective July 1, 2011.

**Intent—Part headings not law—2006 c 339:** See notes following RCW 70.96A.325.

**Finding—Intent—1999 c 292:** See note following RCW 64.44.010.

**64.44.060 Certification of contractors, supervisors, or workers—Denial, suspension, revocation, or restrictions on certificate—Penalties—Fees—Decontamination account.** (1) A contractor, supervisor, or worker may not perform decontamination, demolition, or disposal work unless issued a certificate by the state department of health.

The department shall establish performance standards for contractors, supervisors, and workers by rule in accordance with chapter 34.05 RCW, the administrative procedure act. The department shall train and test, or may approve courses to train and test, contractors, supervisors, and workers on the essential elements in assessing property used as an illegal controlled substances manufacturing or storage site to determine hazard reduction measures needed, techniques for adequately reducing contaminants, use of personal protective equipment, methods for proper decontamination, demolition, removal, and disposal of contaminated property, and relevant federal and state regulations. Upon successful completion of the training, and after a background check, the contractor, supervisor, or worker shall be certified.

(2) The department may require the successful completion of annual refresher courses provided or approved by the department for the continued certification of the contractor or employee.

(3) The department shall provide for reciprocal certification of any individual trained to engage in decontamination, demolition, or disposal work in another state when the prior training is shown to be substantially similar to the training required by the department. The department may require such individuals to take an examination or refresher course before certification.

(4) The department may deny, suspend, revoke, or place restrictions on a certificate for failure to comply with the requirements of this chapter or any rule adopted pursuant to this chapter. A certificate may be denied, suspended, revoked, or have restrictions placed on it on any of the following grounds:

(a) Failing to perform decontamination, demolition, or disposal work under the supervision of trained personnel;

(b) Failing to perform decontamination, demolition, or disposal work using department of health certified decontamination personnel;

(c) Failing to file a work plan;

(d) Failing to perform work pursuant to the work plan;

(e) Failing to perform work that meets the requirements of the department and the requirements of the local health officers;

(f) Failing to properly dispose of contaminated property;

(g) Committing fraud or misrepresentation in: (i) Applying for or obtaining a certification, recertification, or reinstatement; (ii) seeking approval of a work plan; and (iii) documenting completion of work to the department or local health officer;

(h) Failing the evaluation and inspection of decontamination projects pursuant to RCW 64.44.075; or

(i) If the person has been certified pursuant to RCW 74.20A.320 by the department of social and health services as a person who is not in compliance with a support order or a \*residential or visitation order. If the person has continued to meet all other requirements for reinstatement during the suspension, reissuance of the license or certificate shall be automatic upon the department's receipt of a release issued by the department of social and health services stating that the person is in compliance with the order.

(5) A contractor, supervisor, or worker who violates any provision of this chapter may be assessed a fine not to exceed five hundred dollars for each violation.

(6) The department of health shall prescribe fees as provided for in RCW 43.70.250 for: The issuance and renewal of certificates, conducting background checks of applicants, the administration of examinations, and the review of training courses.

(7) The decontamination account is hereby established in the state treasury. All fees collected under this chapter shall be deposited in this account. Moneys in the account may only be spent after appropriation for costs incurred by the department in the administration and enforcement of this chapter. [2006 c 339 § 206; 1999 c 292 § 7; 1997 c 58 § 878; 1990 c 213 § 7.]

**\*Reviser's note:** 1997 c 58 § 886 requiring a court to order certification of noncompliance with residential provisions of a court-ordered parenting plan was vetoed. Provisions ordering the department of social and health services to certify a responsible parent based on a court order to certify for noncompliance with residential provisions of a parenting plan were vetoed. See RCW 74.20A.320.

**Intent—Part headings not law—2006 c 339:** See notes following RCW 70.96A.325.

**Finding—Intent—1999 c 292:** See note following RCW 64.44.010.

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

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**64.44.070 Rules and standards—Chapter administration, property decontamination.** (1) The state board of health shall promulgate rules and standards for carrying out the provisions in this chapter in accordance with chapter 34.05 RCW, the administrative procedure act. The local board of health and the local health officer are authorized to exercise such powers as may be necessary to carry out this chapter. The department may provide technical assistance to local health boards and health officers to carry out their duties under this chapter.

(2) The department shall adopt rules for decontamination of a property used as a laboratory for the production of controlled substances and methods for the testing of porous and nonporous surfaces, groundwater, surface water, soil, and septic tanks for contamination. The rules shall establish decontamination standards for hazardous chemicals, including but not limited to methamphetamine, lead, mercury, and total volatile organic compounds. [2009 c 495 § 7; 2006 c 339 § 207; 1999 c 292 § 8; 1990 c 213 § 9.]

**Effective date—2009 c 495:** See note following RCW 43.20.050.

**Intent—Part headings not law—2006 c 339:** See notes following RCW 70.96A.325.

**Finding—Intent—1999 c 292:** See note following RCW 64.44.010.

**64.44.075 Annual evaluation and inspection of decontamination projects.** The department may evaluate annually a number of the property decontamination projects performed by licensed contractors to determine the adequacy of the decontamination work, using the services of an independent environmental contractor or state or local agency. If a project fails the evaluation and inspection, the contractor is subject to a civil penalty and license suspension, pursuant to RCW 64.44.060 (4) and (5); and the contractor is prohibited from performing additional work until deficiencies have been corrected. [2006 c 339 § 208.]

**Intent—Part headings not law—2006 c 339:** See notes following RCW 70.96A.325.

**64.44.080 Civil liability—Immunity.** Members of the state board of health and local boards of health, local health officers, and employees of the department of health and local health departments are immune from civil liability arising out of the performance of their duties under this chapter, unless such performance constitutes gross negligence or intentional misconduct. [1990 c 213 § 10.]

**64.44.900 Application—Other remedies.** This chapter shall not limit state or local government authority to act under any other statute, including chapter 35.80 or 7.48 RCW. [1990 c 213 § 11.]

**64.44.901 Severability—1990 c 213.** If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1990 c 213 § 14.]

## Chapter 64.50 RCW

### CONSTRUCTION DEFECT CLAIMS

#### Sections

64.50.005	Finding—Intent.
64.50.010	Definitions.
64.50.020	Construction defect action—Notice of claim—Response—Procedure for negotiations—Commencing an action.
64.50.030	List of known construction defects—Requirements—Time limits.
64.50.040	Construction defect action brought by a board of directors—Notice.
64.50.050	Construction professional right to offer to cure defects—Notice to homeowner.
64.50.060	Interpretation of chapter regarding certain relationships and rights.

**64.50.005 Finding—Intent.** The legislature finds, declares, and determines that limited changes in the law are necessary and appropriate concerning actions claiming damages, indemnity, or contribution in connection with alleged construction defects. It is the intent of the legislature that this chapter apply to these types of civil actions while preserving adequate rights and remedies for property owners who bring and maintain such actions. [2002 c 323 § 1.]

**64.50.010 Definitions.** Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Action" means any civil lawsuit or action in contract or tort for damages or indemnity brought against a construction professional to assert a claim, whether by complaint, counterclaim, or cross-claim, for damage or the loss of use of real or personal property caused by a defect in the construction of a residence or in the substantial remodel of a residence. "Action" does not include any civil action in tort alleging personal injury or wrongful death to a person or persons resulting from a construction defect.

(2) "Association" means an association, master association, or subassociation as defined and provided for in RCW 64.34.020(4), 64.34.276, 64.34.278, and 64.38.010(1).

(3) "Claimant" means a homeowner or association who asserts a claim against a construction professional concerning

a defect in the construction of a residence or in the substantial remodel of a residence.

(4) "Construction professional" means an architect, builder, builder vendor, contractor, subcontractor, engineer, or inspector, including, but not limited to, a dealer as defined in \*RCW 64.34.020(12) and a declarant as defined in \*RCW 64.34.020(13), performing or furnishing the design, supervision, inspection, construction, or observation of the construction of any improvement to real property, whether operating as a sole proprietor, partnership, corporation, or other business entity.

(5) "Homeowner" means: (a) Any person, company, firm, partnership, corporation, or association who contracts with a construction professional for the construction, sale, or construction and sale of a residence; and (b) an "association" as defined in this section. "Homeowner" includes, but is not limited to, a subsequent purchaser of a residence from any homeowner.

(6) "Residence" means a single-family house, duplex, triplex, quadraplex, or a unit in a multiunit residential structure in which title to each individual unit is transferred to the owner under a condominium or cooperative system, and shall include common elements as defined in RCW 64.34.020(6) and common areas as defined in RCW 64.38.010(4).

(7) "Serve" or "service" means personal service or delivery by certified mail to the last known address of the addressee.

(8) "Substantial remodel" means a remodel of a residence, for which the total cost exceeds one-half of the assessed value of the residence for property tax purposes at the time the contract for the remodel work was made. [2002 c 323 § 2.]

\*Reviser's note: RCW 64.34.020 was amended by 2008 c 115 § 8, changing subsections (12) and (13) to subsections (13) and (14), respectively.

**64.50.020 Construction defect action—Notice of claim—Response—Procedure for negotiations—Commencing an action.** (1) In every construction defect action brought against a construction professional, the claimant shall, no later than forty-five days before filing an action, serve written notice of claim on the construction professional. The notice of claim shall state that the claimant asserts a construction defect claim against the construction professional and shall describe the claim in reasonable detail sufficient to determine the general nature of the defect.

(2) Within twenty-one days after service of the notice of claim, the construction professional shall serve a written response on the claimant by registered mail or personal service. The written response shall:

(a) Propose to inspect the residence that is the subject of the claim and to complete the inspection within a specified time frame. The proposal shall include the statement that the construction professional shall, based on the inspection, offer to remedy the defect, compromise by payment, or dispute the claim;

(b) Offer to compromise and settle the claim by monetary payment without inspection. A construction professional's offer under this subsection (2)(b) to compromise and settle a homeowner's claim may include, but is not limited to, an express offer to purchase the claimant's residence that is

the subject of the claim, and to pay the claimant's reasonable relocation costs; or

(c) State that the construction professional disputes the claim and will neither remedy the construction defect nor compromise and settle the claim.

(3)(a) If the construction professional disputes the claim or does not respond to the claimant's notice of claim within the time stated in subsection (2) of this section, the claimant may bring an action against the construction professional for the claim described in the notice of claim without further notice.

(b) If the claimant rejects the inspection proposal or the settlement offer made by the construction professional pursuant to subsection (2) of this section, the claimant shall serve written notice of the claimant's rejection on the construction professional. After service of the rejection, the claimant may bring an action against the construction professional for the construction defect claim described in the notice of claim. If the construction professional has not received from the claimant, within thirty days after the claimant's receipt of the construction professional's response, either an acceptance or rejection of the inspection proposal or settlement offer, then at anytime thereafter the construction professional may terminate the proposal or offer by serving written notice to the claimant, and the claimant may thereafter bring an action against the construction professional for the construction defect claim described in the notice of claim.

(4)(a) If the claimant elects to allow the construction professional to inspect in accordance with the construction professional's proposal pursuant to subsection (2)(a) of this section, the claimant shall provide the construction professional and its contractors or other agents reasonable access to the claimant's residence during normal working hours to inspect the premises and the claimed defect.

(b) Within fourteen days following completion of the inspection, the construction professional shall serve on the claimant:

(i) A written offer to remedy the construction defect at no cost to the claimant, including a report of the scope of the inspection, the findings and results of the inspection, a description of the additional construction necessary to remedy the defect described in the claim, and a timetable for the completion of such construction;

(ii) A written offer to compromise and settle the claim by monetary payment pursuant to subsection (2)(b) of this section; or

(iii) A written statement that the construction professional will not proceed further to remedy the defect.

(c) If the construction professional does not proceed further to remedy the construction defect within the agreed timetable, or if the construction professional fails to comply with the provisions of (b) of this subsection, the claimant may bring an action against the construction professional for the claim described in the notice of claim without further notice.

(d) If the claimant rejects the offer made by the construction professional pursuant to (b)(i) or (ii) of this subsection to either remedy the construction defect or to compromise and settle the claim by monetary payment, the claimant shall serve written notice of the claimant's rejection on the construction professional. After service of the rejection notice, the claimant may bring an action against the construction

professional for the construction defect claim described in the notice of claim. If the construction professional has not received from the claimant, within thirty days after the claimant's receipt of the construction professional's response, either an acceptance or rejection of the offer made pursuant to (b)(i) or (ii) of this subsection, then at anytime thereafter the construction professional may terminate the offer by serving written notice to the claimant.

(5)(a) Any claimant accepting the offer of a construction professional to remedy the construction defect pursuant to subsection (4)(b)(i) of this section shall do so by serving the construction professional with a written notice of acceptance within a reasonable time period after receipt of the offer, and no later than thirty days after receipt of the offer. The claimant shall provide the construction professional and its contractors or other agents reasonable access to the claimant's residence during normal working hours to perform and complete the construction by the timetable stated in the offer.

(b) The claimant and construction professional may, by written mutual agreement, alter the extent of construction or the timetable for completion of construction stated in the offer, including, but not limited to, repair of additional defects.

(6) Any action commenced by a claimant prior to compliance with the requirements of this section shall be subject to dismissal without prejudice, and may not be recommenced until the claimant has complied with the requirements of this section.

(7) Nothing in this section may be construed to prevent a claimant from commencing an action on the construction defect claim described in the notice of claim if the construction professional fails to perform the construction agreed upon, fails to remedy the defect, or fails to perform by the timetable agreed upon pursuant to subsection (2)(a) or (5) of this section.

(8) Prior to commencing any action alleging a construction defect, or after the dismissal of any action without prejudice pursuant to subsection (6) of this section, the claimant may amend the notice of claim to include construction defects discovered after the service of the original notice of claim, and must otherwise comply with the requirements of this section for the additional claims. The service of an amended notice of claim shall relate back to the original notice of claim for purposes of tolling statutes of limitations and repose. Claims for defects discovered after the commencement or recommencement of an action may be added to such action only after providing notice to the construction professional of the defect and allowing for response under subsection (2) of this section. [2002 c 323 § 3.]

**64.50.030 List of known construction defects—Requirements—Time limits.** (1) In every action brought against a construction professional, the claimant, including a construction professional asserting a claim against another construction professional, shall file with the court and serve on the defendant a list of known construction defects in accordance with this section.

(2) The list of known construction defects shall contain a description of the construction that the claimant alleges to be defective. The list of known construction defects shall be filed with the court and served on the defendant within thirty

days after the commencement of the action or within such longer period as the court in its discretion may allow.

(3) The list of known construction defects may be amended by the claimant to identify additional construction defects as they become known to the claimant.

(4) The list of known construction defects must specify, to the extent known to the claimant, the construction professional responsible for each alleged defect identified by the claimant.

(5) If a subcontractor or supplier is added as a party to an action under this section, the party making the claim against such subcontractor or supplier shall serve on the subcontractor or supplier the list of construction defects in accordance with this section within thirty days after service of the complaint against the subcontractor or supplier or within such period as the court in its discretion may allow. [2002 c 323 § 4.]

**64.50.040 Construction defect action brought by a board of directors—Notice.** (1)(a) In the event the board of directors, pursuant to RCW 64.34.304(1)(d) or 64.38.020(4), institutes an action asserting defects in the construction of two or more residences, common elements, or common areas, this section shall apply. For purposes of this section, "action" has the same meaning as set forth in RCW 64.50.010.

(b) The board of directors shall substantially comply with the provisions of this section.

(2)(a) Prior to the service of the summons and complaint on any defendant with respect to an action governed by this section, the board of directors shall mail or deliver written notice of the commencement or anticipated commencement of such action to each homeowner at the last known address described in the association's records.

(b) The notice required by (a) of this subsection shall state a general description of the following:

- (i) The nature of the action and the relief sought; and
- (ii) The expenses and fees that the board of directors anticipates will be incurred in prosecuting the action.

(3) Nothing in this section may be construed to:

(a) Require the disclosure in the notice or the disclosure to a unit owner of attorney-client communications or other privileged communications;

(b) Permit the notice to serve as a basis for any person to assert the waiver of any applicable privilege or right of confidentiality resulting from, or to claim immunity in connection with, the disclosure of information in the notice; or

(c) Limit or impair the authority of the board of directors to contract for legal services, or limit or impair the ability to enforce such a contract for legal services. [2002 c 323 § 5.]

**64.50.050 Construction professional right to offer to cure defects—Notice to homeowner.** (1) The construction professional shall provide notice to each homeowner upon entering into a contract for sale, construction, or substantial remodel of a residence, of the construction professional's right to offer to cure construction defects before a homeowner may commence litigation against the construction professional. Such notice shall be conspicuous and may be included as part of the underlying contract signed by the homeowner. In the sale of a condominium unit, the require-

ment for delivery of such notice shall be deemed satisfied if contained in a public offering statement delivered in accordance with chapter 64.34 RCW.

(2) The notice required by this subsection shall be in substantially the following form:

CHAPTER 64.50 RCW CONTAINS IMPORTANT REQUIREMENTS YOU MUST FOLLOW BEFORE YOU MAY FILE A LAWSUIT FOR DEFECTIVE CONSTRUCTION AGAINST THE SELLER OR BUILDER OF YOUR HOME. FORTY-FIVE DAYS BEFORE YOU FILE YOUR LAWSUIT, YOU MUST DELIVER TO THE SELLER OR BUILDER A WRITTEN NOTICE OF ANY CONSTRUCTION CONDITIONS YOU ALLEGE ARE DEFECTIVE AND PROVIDE YOUR SELLER OR BUILDER THE OPPORTUNITY TO MAKE AN OFFER TO REPAIR OR PAY FOR THE DEFECTS. YOU ARE NOT OBLIGATED TO ACCEPT ANY OFFER MADE BY THE BUILDER OR SELLER. THERE ARE STRICT DEADLINES AND PROCEDURES UNDER STATE LAW, AND FAILURE TO FOLLOW THEM MAY AFFECT YOUR ABILITY TO FILE A LAWSUIT.

(3) This chapter shall not preclude or bar any action if notice is not given to the homeowner as required by this section. [2002 c 323 § 6.]

**64.50.060 Interpretation of chapter regarding certain relationships and rights.** Nothing in this chapter shall be construed to hinder or otherwise affect the employment, agency, or contractual relationship between and among homeowners and construction professionals during the process of construction or remodeling and does not preclude the termination of those relationships as allowed under current law. Nothing in this chapter shall negate or otherwise restrict a construction professional's right to access or inspection provided by law, covenant, easement, or contract. [2002 c 323 § 7.]

### Chapter 64.55 RCW

#### CONSTRUCTION DEFECT DISPUTES— MULTIUNIT RESIDENTIAL BUILDINGS

##### Sections

64.55.005	Application.
64.55.010	Definitions.
64.55.020	Building permit application—Submission of design documents.
64.55.030	Inspection required.
64.55.040	Inspectors—Qualifications.
64.55.050	Scope of inspection—Definition.
64.55.060	Certification—Certificate of occupancy.
64.55.070	Inspector, architect, and engineer—No private right of action or basis for liability against.
64.55.080	Inspector's report or testimony—No evidentiary presumption—Admissibility.
64.55.090	Sale of condominium unit subject to compliance—Inspection alternative.
64.55.100	Arbitration—Election—Number of arbitrators—Qualifications—Trial de novo.
64.55.110	Case schedule plan—Deadlines.
64.55.120	Mandatory mediation.

(2010 Ed.)

64.55.130	Appointment of neutral expert—Qualifications—Duties—Admissibility of report or testimony.
64.55.140	Payment of arbitrators, mediators, and neutral experts.
64.55.150	Subcontractors and suppliers—When party to arbitration.
64.55.160	Offers of judgment—Costs and fees.
64.55.900	Captions not law—2005 c 456.
64.55.901	Effective date—2005 c 456.

**64.55.005 Application.** (1)(a) RCW 64.55.010 through 64.55.090 apply to any multiunit residential building for which the permit for construction or rehabilitative construction of such building was issued on or after August 1, 2005.

(b) RCW 64.55.010 and 64.55.090 apply to conversion condominiums as defined in RCW 64.34.020, provided that RCW 64.55.090 shall not apply to a condominium conversion for which a public offering statement had been delivered pursuant to chapter 64.34 RCW prior to August 1, 2005.

(2) RCW 64.55.010 and 64.55.100 through 64.55.160 and 64.34.415 apply to any action that alleges breach of an implied or express warranty under chapter 64.34 RCW or that seeks relief that could be awarded for such breach, regardless of the legal theory pled, except that RCW 64.55.100 through 64.55.160 and 64.34.415 shall not apply to:

(a) Actions filed or served prior to August 1, 2005;

(b) Actions for which a notice of claim was served pursuant to chapter 64.50 RCW prior to August 1, 2005;

(c) Actions asserting any claim regarding a building that is not a multiunit residential building;

(d) Actions asserting any claim regarding a multiunit residential building that was permitted on or after August 1, 2005, unless the letter required by RCW 64.55.060 has been submitted to the appropriate building department or the requirements of RCW 64.55.090 have been satisfied.

(3) Other than the requirements imposed by RCW 64.55.010 through 64.55.090, nothing in this chapter amends or modifies the provisions of RCW 64.34.050. [2005 c 456 § 1.]

**64.55.010 Definitions.** Unless the context clearly requires otherwise, the definitions in RCW 64.34.020 and in this section apply throughout this chapter.

(1) "Attached dwelling unit" means any dwelling unit that is attached to another dwelling unit by a wall, floor, or ceiling that separates heated living spaces. A garage is not a heated living space.

(2) "Building enclosure" means that part of any building, above or below grade, that physically separates the outside or exterior environment from interior environments and which weatherproofs, waterproofs, or otherwise protects the building or its components from water or moisture intrusion. Interior environments consist of both heated and unheated enclosed spaces. The building enclosure includes, but is not limited to, that portion of roofs, walls, balcony support columns, decks, windows, doors, vents, and other penetrations through exterior walls, which waterproof, weatherproof, or otherwise protect the building or its components from water or moisture intrusion.

(3) "Building enclosure design documents" means plans, details, and specifications for the building enclosure that have been stamped by a licensed engineer or architect. The building enclosure design documents shall include details and specifications that are appropriate for the building in the pro-

fessional judgment of the architect or engineer which prepared the same to waterproof, weatherproof, and otherwise protect the building or its components from water or moisture intrusion, including details of flashing, intersections at roof, eaves or parapets, means of drainage, water-resistive membrane, and details around openings.

(4) "Developer" means:

(a) With respect to a condominium or a conversion condominium, the declarant; and

(b) With respect to all other buildings, an individual, group of individuals, partnership, corporation, association, municipal corporation, state agency, or other entity or person that obtains a building permit for the construction or rehabilitative reconstruction of a multiunit residential building. If a permit is obtained by service providers such as architects, contractors, and consultants who obtain permits for others as part of services rendered for a fee, the person for whom the permit is obtained shall be the developer, not the service provider.

(5) "Dwelling unit" has the meaning given to that phrase or similar phrases in the ordinances of the jurisdiction issuing the permit for construction of the building enclosure but if such ordinances do not provide a definition, then "dwelling unit" means a residence containing living, cooking, sleeping, and sanitary facilities.

(6) "Multiunit residential building" means:

(a) A building containing more than two attached dwelling units, including a building containing nonresidential units if the building also contains more than two attached dwelling units, but excluding the following classes of buildings:

(i) Hotels and motels;

(ii) Dormitories;

(iii) Care facilities;

(iv) Floating homes;

(v) A building that contains attached dwelling units that are each located on a single platted lot, except as provided in (b) of this subsection;

(vi) A building in which all of the dwelling units are held under one ownership and is subject to a recorded irrevocable sale prohibition covenant.

(b) If the developer submits to the appropriate building department when applying for the building permit described in RCW 64.55.020 a statement that the developer elects to treat the improvement for which a permit is sought as a multiunit residential building for all purposes under this chapter, then "multiunit residential building" also means the following buildings for which such election has been made:

(i) A building containing only two attached dwelling units;

(ii) A building that does not contain attached dwelling units; and

(iii) Any building that contains attached dwelling units each of which is located on a single platted lot.

(7) "Party unit owner" means a unit owner who is a named party to an action subject to this chapter and does not include any unit owners whose involvement with the action stems solely from their membership in the association.

(8) "Qualified building inspector" means a person satisfying the requirements of RCW 64.55.040.

(9) "Rehabilitative construction" means construction work on the building enclosure of a multiunit residential

building if the cost of such construction work is more than five percent of the assessed value of the building.

(10) "Sale prohibition covenant" means a recorded covenant that prohibits the sale or other disposition of individual dwelling units as or as part of a condominium for five years or more from the date of first occupancy except as otherwise provided in RCW 64.55.090, a certified copy of which the developer shall submit to the appropriate building department; provided such covenant shall not apply to sales or dispositions listed in RCW 64.34.400(2). The covenant must be recorded in the county in which the building is located and must be in substantially the following form:

This covenant has been recorded in the real property records of . . . . . County, Washington, in satisfaction of the requirements of RCW 64.55.010 through 64.55.090. The undersigned is the owner of the property described on Exhibit A (the "Property"). Until termination of this covenant, no dwelling unit in or on the Property may be sold as a condominium unit except for sales listed in RCW 64.34.400(2).

This covenant terminates on the earlier of either: (a) Compliance with the requirements of RCW 64.55.090, as certified by the owner of the Property in a recorded supplement hereto; or (b) the fifth anniversary of the date of first occupancy of a dwelling unit as certified by the Owner in a recorded supplement hereto.

All title insurance companies and persons acquiring an interest in the Property may rely on the forgoing certifications without further inquiry in issuing any policy of title insurance or in acquiring an interest in the Property.

(11) "Stamped" means bearing the stamp and signature of the responsible licensed architect or engineer on the title page, and on every sheet of the documents, drawings, or specifications, including modifications to the documents, drawings, and specifications that become part of change orders or addenda to alter those documents, drawings, or specifications. [2005 c 456 § 2.]

**64.55.020 Building permit application—Submission of design documents.** (1) Any person applying for a building permit for construction of a multiunit residential building or rehabilitative construction shall submit building enclosure design documents to the appropriate building department prior to the start of construction or rehabilitative construction of the building enclosure. If construction work on a building enclosure is not rehabilitative construction because the cost thereof is not more than five percent of the assessed value of the building, then the person applying for a building permit shall submit to the building department a letter so certifying. Any changes to the building enclosure design documents that alter the manner in which the building or its components is waterproofed, weatherproofed, and otherwise protected from water or moisture intrusion shall be stamped by the architect or engineer and shall be provided to the building department and to the person conducting the course of construction inspection in a timely manner to permit such person to inspect for compliance therewith, and may be provided

through individual updates, cumulative updates, or as-built updates.

(2) The building department shall not issue a building permit for construction of the building enclosure of a multiunit residential building or for rehabilitative construction unless the building enclosure design documents contain a stamped statement by the person stamping the building enclosure design documents in substantially the following form: "The undersigned has provided building enclosure documents that in my professional judgment are appropriate to satisfy the requirements of RCW 64.55.005 through 64.55.090."

(3) The building department is not charged with determining whether the building enclosure design documents are adequate or appropriate to satisfy the requirements of RCW 64.55.005 through 64.55.090. Nothing in RCW 64.55.005 through 64.55.090 requires a building department to review, approve, or disapprove enclosure design documents. [2005 c 456 § 3.]

**64.55.030 Inspection required.** All multiunit residential buildings shall have the building enclosure inspected by a qualified inspector during the course of initial construction and during rehabilitative construction. [2005 c 456 § 4.]

**64.55.040 Inspectors—Qualifications.** (1) A qualified building enclosure inspector:

(a) Must be a person with substantial and verifiable training and experience in building enclosure design and construction;

(b) Shall be free from improper interference or influence relating to the inspections; and

(c) May not be an employee, officer, or director of, nor have any pecuniary interest in, the declarant, developer, association, or any party providing services or materials for the project, or any of their respective affiliates, except that the qualified inspector may be the architect or engineer who approved the building enclosure design documents or the architect or engineer of record. The qualified inspector may, but is not required to, assist with the preparation of such design documents.

(2) Nothing in this section alters requirements for licensure of any architect, engineer, or other professional, or alters the jurisdiction, authority, or scope of practice of architects, engineers, other professionals, or general contractors. [2005 c 456 § 5.]

**64.55.050 Scope of inspection—Definition.** (1) Any inspection required by this chapter shall include, at a minimum, the following:

(a) Water penetration resistance testing of a representative sample of windows and window installations. Such tests shall be conducted according to industry standards. Where appropriate, tests shall be conducted with an induced air pressure difference across the window and window installation. Additional testing is not required if the same assembly has previously been tested in situ within the previous two years in the project under construction by the builder, by another member of the construction team such as an architect or engineer, or by an independent testing laboratory; and

(b) An independent periodic review of the building enclosure during the course of construction or rehabilitative construction to ascertain whether the multiunit residential building has been constructed, or the rehabilitative construction has been performed, in substantial compliance with the building enclosure design documents.

(2) Subsection (1)(a) of this section shall not apply to rehabilitative construction if the windows and adjacent cladding are not altered in the rehabilitative construction.

(3) "Project" means one or more parcels of land in a single ownership, which are under development pursuant to a single land use approval or building permit, where window installation is performed by the owner with its own forces, or by the same general contractor, or, if the owner is contracting directly with trade contractors, is performed by the same trade contractor. [2005 c 456 § 6.]

**64.55.060 Certification—Certificate of occupancy.** Upon completion of an inspection required by this chapter, the qualified inspector shall prepare and submit to the appropriate building department a signed letter certifying that the building enclosure has been inspected during the course of construction or rehabilitative construction and that it has been constructed or reconstructed in substantial compliance with the building enclosure design documents, as updated pursuant to RCW 64.55.020. The building department shall not issue a final certificate of occupancy or other equivalent final acceptance until the letter required by this section has been submitted. The building department is not charged with and has no responsibility for determining whether the building enclosure inspection is adequate or appropriate to satisfy the requirements of this chapter. [2005 c 456 § 7.]

**64.55.070 Inspector, architect, and engineer—No private right of action or basis for liability against.** (1) Nothing in this chapter and RCW 64.34.073, 64.34.100(2), 64.34.410 (1)(nn) and (2), and 64.34.415(1)(b) is intended to, or does:

(a) Create a private right of action against any inspector, architect, or engineer based upon compliance or noncompliance with its provisions; or

(b) Create any independent basis for liability against an inspector, architect, or engineer.

(2) The qualified inspector, architect, or engineer and the developer that retained the inspector, architect, or engineer may contractually agree to the amount of their liability to the developer. [2005 c 456 § 8.]

**64.55.080 Inspector's report or testimony—No evidentiary presumption—Admissibility.** A qualified inspector's report or testimony regarding an inspection conducted pursuant to this chapter is not entitled to any evidentiary presumption in any arbitration or court proceeding. Nothing in this chapter restricts the admissibility of such a report or testimony, and questions of the admissibility of such a report or testimony shall be determined under the rules of evidence. [2005 c 456 § 9.]

**64.55.090 Sale of condominium unit subject to compliance—Inspection alternative.** (1) Except for sales or

other dispositions listed in RCW 64.34.400(2), no declarant may convey a condominium unit that may be occupied for residential use in a multiunit residential building without first complying with the requirements of RCW 64.55.005 through 64.55.080 unless the building enclosure of the building in which such unit is included is inspected by a qualified building enclosure inspector, and:

(a) The inspection includes such intrusive or other testing, such as the removal of siding or other building enclosure materials, that the inspector believes, in his or her professional judgment, is necessary to ascertain the manner in which the building enclosure was constructed;

(b) The inspection evaluates, to the extent reasonably ascertainable and in the professional judgment of the inspector, the present condition of the building enclosure including whether such condition has adversely affected or will adversely affect the performance of the building enclosure to waterproof, weatherproof, or otherwise protect the building or its components from water or moisture intrusion. "Adversely affect" has the same meaning as provided in RCW 64.34.445(7);

(c) The inspection report includes recommendations for repairs to the building enclosure that, in the professional judgment of the qualified building inspector, are necessary to: (i) Repair a design or construction defect in the building enclosure that results in the failure of the building enclosure to perform its intended function and allows unintended water penetration not caused by flooding; and (ii) repair damage caused by such a defect that has an adverse effect as provided in RCW 64.34.445(7);

(d) With respect to a building that would be a multiunit residential building but for the recording of a sale prohibition covenant and unless more than five years have elapsed since the date such covenant was recorded, all repairs to the building enclosure recommended pursuant to (c) of this subsection have been made; and

(e) The declarant provides as part of the public offering statement, consistent with RCW 64.34.410 (1)(nn) and (2) and 64.34.415(1)(b), an inspection and repair report signed by the qualified building enclosure inspector that identifies:

(i) The extent of the inspection performed pursuant to this section;

(ii) The information obtained as a result of that inspection; and

(iii) The manner in which any repairs required by this section were performed, the scope of those repairs, and the names of the persons performing those repairs.

(2) Failure to deliver the inspection and repair report in violation of this section constitutes a failure to deliver a public offering statement for purposes of chapter 64.34 RCW. [2005 c 456 § 10.]

**64.55.100 Arbitration—Election—Number of arbitrators—Qualifications—Trial de novo.** (1) If the declarant, an association, or a party unit owner demands an arbitration by filing such demand with the court not less than thirty and not more than ninety days after filing or service of the complaint, whichever is later, the parties shall participate in a private arbitration hearing. The declarant, the association, and the party unit owner do not have the right to compel arbitration without giving timely notice in compliance with

this subsection. Unless otherwise agreed by the parties, the arbitration hearing shall commence no more than fourteen months from the later of the filing or service of the complaint.

(2) Unless otherwise agreed by the parties, claims that in aggregate are for less than one million dollars shall be heard by a single arbitrator and all other claims shall be heard by three arbitrators. As used in this chapter, arbitrator also means arbitrators where applicable.

(3) Unless otherwise agreed by the parties, the court shall appoint the arbitrator, who shall be a current or former attorney with experience as an attorney, judge, arbitrator, or mediator in construction defect disputes involving the application of Washington law.

(4) Upon conclusion of the arbitration hearing, the arbitrator shall file the decision and award with the clerk of the superior court, together with proof of service thereof on the parties. Within twenty days after the filing of the decision and award, any aggrieved party may file with the clerk a written notice of appeal and demand for a trial de novo in the superior court on all claims between the appealing party and an adverse party. As used in this section, "adverse party" means the party who either directly asserted or defended claims against the appealing party. The demand shall identify the adverse party or parties and all claims between those parties shall be included in the trial de novo. The right to a trial de novo includes the right to a jury, if demanded. The court shall give priority to the trial date for the trial de novo.

(5) If the judgment for damages, not including awards of fees and costs, in the trial de novo is not more favorable to the appealing party than the damages awarded by the arbitrator, not including awards of fees and costs, the appealing party shall pay the nonappealing adverse party's costs and fees incurred after the filing of the appeal, including reasonable attorneys' fees so incurred.

(6) If the judgment for damages, not including awards of fees and costs, in the trial de novo is more favorable to the appealing party than the damages awarded by the arbitrator, not including awards of fees and costs, then the court may award costs and fees, including reasonable attorneys' fees, incurred after the filing of the request for trial de novo in accordance with applicable law; provided if such a judgment is not more favorable to the appealing party than the most recent offer of judgment, if any, made pursuant to RCW 64.55.160, the court shall not make an award of fees and costs to the appealing party.

(7) If a party is entitled to an award with respect to the same fees and costs pursuant to this section and RCW 64.55.160, then the party shall only receive an award of fees and costs as provided in and limited by RCW 64.55.160. Any award of fees and costs pursuant to subsections (5) or (6) of this section is subject to review in the event of any appeal thereof otherwise permitted by applicable law or court rule. [2005 c 456 § 11.]

**64.55.110 Case schedule plan—Deadlines.** (1) Not less than sixty days after the later of filing or service of the complaint, the parties shall confer to create a proposed case schedule plan for submission to the court that includes the following deadlines:

(a) Selection of a mediator;

- (b) Commencement of the mandatory mediation and submission of mediation materials required by this chapter;
- (c) Selection of the arbitrator by the parties, where applicable;
- (d) Joinder of additional parties in the action;
- (e) Completion of each party's investigation;
- (f) Disclosure of each party's proposed repair plan;
- (g) Disclosure of each party's estimated costs of repair;
- (h) Meeting of parties and experts to confer in accordance with RCW 64.55.120; and
- (i) Disclosure of each party's settlement demand or response.

(2) If the parties agree upon a proposed case schedule plan, they shall move the court for the entry of the proposed case schedule plan. If the parties cannot agree, either party may move the court for entry of a case schedule plan that includes the above deadlines. [2005 c 456 § 12.]

**64.55.120 Mandatory mediation.** (1) The parties to an action subject to this chapter and RCW 64.34.073, 64.34.100(2), 64.34.410 (1)(nn) and (2), and 64.34.415(1)(b) shall engage in mediation. Unless the parties agree otherwise, the mediation required by this section shall commence within seven months of the later of the filing or service of the complaint. If the parties cannot agree upon a mediator, the court shall appoint a mediator.

(2) Prior to the mediation required by this section, the parties and their experts shall meet and confer in good faith to attempt to resolve or narrow the scope of the disputed issues, including issues related to the parties' repair plans.

(3) Prior to the mandatory mediation, the parties or their attorneys shall file and serve a declaration that:

- (a) A decision maker with authority to settle will be available for the duration of the mandatory mediation; and
- (b) The decision maker has been provided with and has reviewed the mediation materials provided by the party to which the decision maker is affiliated as well as the materials submitted by the opposing parties.

(4) Completion of the mediation required by this section occurs upon written notice of termination by any party. The provisions of RCW 64.55.160 shall not apply to any later mediation conducted following such notice. [2005 c 456 § 13.]

**64.55.130 Appointment of neutral expert—Qualifications—Duties—Admissibility of report or testimony.**

(1) If, after meeting and conferring as required by RCW 64.55.120(2), disputed issues remain, a party may file a motion with the court, or arbitrator if an arbitrator has been appointed, requesting the appointment of a neutral expert to address any or all of the disputed issues. Unless otherwise agreed to by the parties or upon a showing of exceptional circumstances, including a material adverse change in a party's litigation risks due to a change in allegations, claims, or defenses by an adverse party following the appointment of the neutral expert, any such motion shall be filed no later than sixty days after the first day of the meeting required by RCW 64.55.120(2). Upon such a request, the court or arbitrator shall decide whether or not to appoint a neutral expert or experts. A party may only request more than one neutral

expert if the particular expertise of the additional neutral expert or experts is necessary to address disputed issues.

(2) The neutral expert shall be a licensed architect or engineer, or any other person, with substantial experience relevant to the issue or issues in dispute. The neutral expert shall not have been employed as an expert by a party to the present action within three years before the commencement of the present action, unless the parties agree otherwise.

(3) All parties shall be given an opportunity to recommend neutral experts to the court or arbitrator and shall have input regarding the appointment of a neutral expert.

(4) Unless the parties agree otherwise on the following matters, the court, or arbitrator if then appointed, shall determine:

- (a) Who shall serve as the neutral expert;
- (b) Subject to the requirements of this section, the scope of the neutral expert's duties;
- (c) The number and timing of inspections of the property;
- (d) Coordination of inspection activities with the parties' experts;
- (e) The neutral expert's access to the work product of the parties' experts;
- (f) The product to be prepared by the neutral expert;
- (g) Whether the neutral expert may participate personally in the mediation required by RCW 64.55.120; and
- (h) Other matters relevant to the neutral expert's assignment.

(5) Unless the parties agree otherwise, the neutral expert shall not make findings or render opinions regarding the amount of damages to be awarded, or the cost of repairs, or absent exceptional circumstances any matters that are not in dispute as determined in the meeting described in RCW 64.55.120(2) or otherwise.

(6) A party may, by motion to the court, or to the arbitrator if then appointed, object to the individual appointed to serve as the neutral expert and to determinations regarding the neutral expert's assignment.

(7) The neutral expert shall have no liability to the parties for the performance of his or her duties as the neutral expert.

(8) Except as otherwise agreed by the parties, the parties have a right to review and comment on the neutral expert's report before it is made final.

(9) A neutral expert's report or testimony is not entitled to any evidentiary presumption in any arbitration or court proceeding. Nothing in this chapter and RCW 64.34.073, 64.34.100(2), 64.34.410 (1)(nn) and (2), and 64.34.415(1)(b) restricts the admissibility of such a report or testimony, provided it is within the scope of the neutral expert's assigned duties, and questions of the admissibility of such a report or testimony shall be determined under the rules of evidence.

(10) The court, or arbitrator if then appointed, shall determine the significance of the neutral expert's report and testimony with respect to parties joined after the neutral expert's appointment and shall determine whether additional neutral experts should be appointed or other measures should be taken to protect such joined parties from undue prejudice. [2005 c 456 § 14.]

**64.55.140 Payment of arbitrators, mediators, and neutral experts.** (1) Where the building permit that authorized commencement of construction of a building was issued on or after August 1, 2005:

(a)(i) If the action is referred to arbitration under RCW 64.55.100, the party who demands arbitration shall advance the fees of any arbitrator and any mediator appointed under RCW 64.55.120; and

(ii) A party who requests the appointment of a neutral expert pursuant to RCW 64.55.130 shall advance any appointed neutral expert's fees incurred up to the issuance of a final report.

(b) If the action has not been referred to arbitration, the court shall determine liability for the fees of any mediator appointed under RCW 64.55.120, unless the parties agree otherwise.

(c) Ultimate liability for any fees or costs advanced pursuant to this subsection (1) is subject to the fee- and cost-shifting provisions of RCW 64.55.160.

(2) Where the building permit that authorized commencement of construction of a building was issued before August 1, 2005:

(a)(i) If the action is referred to arbitration under RCW 64.55.100, the party who demands arbitration is liable for and shall pay the fees of any appointed arbitrator and any mediator appointed under RCW 64.55.120; and

(ii) A party who requests the appointment of a neutral expert pursuant to RCW 64.55.130 is liable for and shall pay any appointed neutral expert's fees incurred up to the issuance of a final report.

(b) If the action has not been referred to arbitration, the court shall determine liability for the fees of any mediator appointed under RCW 64.55.120, unless the parties agree otherwise.

(c) Fees and costs paid under this subsection (2) are not subject to the fee- and cost-shifting provisions of RCW 64.55.160. [2005 c 456 § 15.]

**64.55.150 Subcontractors and suppliers—When party to arbitration.** Upon the demand of a party to an arbitration demanded under RCW 64.55.100, any subcontractor or supplier against whom such party has a legal claim and whose work or performance on the building in question becomes an issue in the arbitration may be joined in and become a party to the arbitration. However, joinder of such parties shall not be allowed if such joinder would require the arbitration hearing date to be continued beyond the date established pursuant to RCW 64.55.100, unless the existing parties to the arbitration agree otherwise. Nothing in RCW 64.55.010 through 64.55.090 shall be construed to release, modify, or otherwise alleviate the liabilities or responsibilities that any party may have towards any other party, contractor, or subcontractor. [2005 c 456 § 16.]

**64.55.160 Offers of judgment—Costs and fees.** (1) On or before the sixtieth day following completion of the mediation pursuant to RCW 64.55.120(4), the declarant, association, or party unit owner may serve on an adverse party an offer to allow judgment to be entered. The offer of judgment shall specify the amount of damages, not including costs or fees, that the declarant, association, or party unit

owner is offering to pay or receive. A declarant's offer shall also include its commitment to pay costs and fees that may be awarded as provided in this section. The declarant, association, or party unit owner may make more than one offer of judgment so long as each offer is timely made. Each subsequent offer supersedes and replaces the previous offer. Any offer not accepted within twenty-one days of the service of that offer is deemed rejected and withdrawn and evidence thereof is not admissible and may not be provided to the court or arbitrator except in a proceeding to determine costs and fees or as part of the motion identified in subsection (2) of this section.

(2) A declarant's offer must include a demonstration of ability to pay damages, costs, and fees, including reasonable attorneys' fees, within thirty days of acceptance of the offer of judgment. The demonstration of ability to pay shall include a sworn statement signed by the declarant, the attorney representing the declarant, and, if any insurance proceeds will be used to fund any portion of the offer, an authorized representative of the insurance company. If the association or party unit owner disputes the adequacy of the declarant's demonstration of ability to pay, the association or party unit owner may file a motion with the court requesting a ruling on the adequacy of the declarant's demonstration of ability to pay. Upon filing of such motion, the deadline for a response to the offer shall be tolled from the date the motion is filed until the court has ruled.

(3) An association or party unit owner that accepts the declarant's offer of judgment shall be deemed the prevailing party and, in addition to recovery of the amount of the offer, shall be entitled to a costs and fees award, including reasonable attorneys' fees, in an amount to be determined by the court in accordance with applicable law.

(4) If the amount of the final nonappealable or nonappealed judgment, exclusive of costs or fees, is not more favorable to the offeree than the offer of judgment, then the offeror is deemed the prevailing party for purposes of this section only and is entitled to an award of costs and fees, including reasonable attorneys' fees, incurred after the date the last offer of judgment was rejected and through the date of entry of a final nonappealable or nonappealed judgment, in an amount to be determined by the court in accordance with applicable law. The nonprevailing party shall not be entitled to receive any award of costs and fees.

(5) If the final nonappealable or nonappealed judgment on damages, not including costs or fees, is more favorable to the offeree than the last offer of judgment, then the court shall determine which party is the prevailing party and shall determine the amount of the costs and fees award, including reasonable attorneys' fees, in accordance with applicable law.

(6) Notwithstanding any other provision in this section, with respect to claims brought by an association or unit owner, the liability for declarant's costs and fees, including reasonable attorneys' fees, shall:

(a) With respect to claims brought by an association, not exceed five percent of the assessed value of the condominium as a whole, which is determined by the aggregate tax-assessed value of all units at the time of the award; and

(b) With respect to claims brought by a party unit owner, not exceed five percent of the assessed value of the unit at the time of the award. [2005 c 456 § 17.]

**64.55.900 Captions not law—2005 c 456.** Captions used in this act are not any part of the law. [2005 c 456 § 22.]

**64.55.901 Effective date—2005 c 456.** This act takes effect August 1, 2005. [2005 c 456 § 24.]

### Chapter 64.70 RCW

#### UNIFORM ENVIRONMENTAL COVENANTS ACT

##### Sections

64.70.005	Findings—National uniform legislation.
64.70.010	Short title.
64.70.015	Application—Construction—2007 c 104.
64.70.020	Definitions.
64.70.030	Interests in real property—Subordination.
64.70.040	Covenants—Contents—Agency discretion—Local land use consideration.
64.70.050	Covenants—Enforceability.
64.70.060	Use of real property—Chapter application.
64.70.070	Covenants—Providing copies.
64.70.080	Covenants—Recording and priority of interests.
64.70.090	Covenant—Duration—Court action.
64.70.100	Covenant—Amendment or termination by consent.
64.70.110	Violations—Civil actions—Regulatory authority under chapter—Liability.
64.70.120	Covenants—Registry—Information contained.
64.70.130	Electronic signatures in global and national commerce act.
64.70.900	Severability—2007 c 104.

**64.70.005 Findings—National uniform legislation.** The legislature finds that the national conference of commissioners on uniform state laws has developed uniform legislation called the uniform environmental covenants act. The act ensures that environmental covenants, recorded use restrictions negotiated in connection with hazardous waste site cleanups, and other environmental response projects are legally valid and enforceable. The uniform environmental covenants act achieves this objective by providing clear statutory standards that override court-made doctrines that do not fit such cleanup and reuse contexts. The legislature further finds that nothing in this chapter will amend or modify any local or state laws that determine when environmental covenants are required, when a particular contaminated site must be cleaned up, or the standards for a cleanup.

Adoption of the uniform environmental covenants act in Washington will provide all participants in a cleanup with greater confidence that environmental covenants and other institutional controls will be effective over the life of the cleanup. This will facilitate cleanups of many sites and assist in the recycling of urban brownfield properties into new economic uses for the benefit of the citizens of Washington.

This chapter adopts most provisions of the uniform legislation while making modifications to integrate the uniform environmental covenants act with Washington's environmental cleanup programs. [2007 c 104 § 1.]

**64.70.010 Short title.** This chapter may be cited as the uniform environmental covenants act. [2007 c 104 § 2.]

**64.70.015 Application—Construction—2007 c 104.** In applying and construing this uniform act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it. [2007 c 104 § 14.]

(2010 Ed.)

**64.70.020 Definitions.** The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Activity or use limitations" means restrictions or obligations created under this chapter with respect to real property.

(2) "Agency" means either the department of ecology or the United States environmental protection agency, whichever determines or approves the environmental response project pursuant to which the environmental covenant is created.

(3)(a) "Common interest community" means a condominium, cooperative, or other real property with respect to which a person, by virtue of the person's ownership of a parcel of real property, is obligated to pay property taxes or insurance premiums, or for maintenance, or improvement of other real property described in a recorded covenant that creates the common interest community.

(b) "Common interest community" includes but is not limited to:

(i) An association of apartment owners as defined in RCW 64.32.010;

(ii) A unit owners' association as defined in RCW 64.34.020 and organized under RCW 64.34.300;

(iii) A master association as provided in RCW 64.34.276;

(iv) A subassociation as provided in RCW 64.34.278; and

(v) A homeowners' association as defined in RCW 64.38.010.

(4) "Environmental covenant" means a servitude arising under an environmental response project that imposes activity or use limitations.

(5) "Environmental response project" means a plan or work performed for environmental remediation of real property and conducted:

(a) Under a federal or state program governing environmental remediation of real property, including chapters 43.21C, 64.44, 70.95, 70.98, 70.105, 70.105D, 90.48, and 90.52 RCW;

(b) Incident to closure of a solid or hazardous waste management unit, if the closure is conducted with approval of an agency; or

(c) Under the state voluntary clean-up program authorized under chapter 70.105D RCW.

(6) "Holder" means the grantee of an environmental covenant as specified in RCW 64.70.030(1).

(7) "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, public corporation, government, governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.

(8) "Record," used as a noun, means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(9) "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States. [2007 c 104 § 3.]

**64.70.030 Interests in real property—Subordination.**

(1) Any person, including a person that owns an interest in the real property, the agency, or a municipality or other unit of local government, may be a holder. An environmental covenant may identify more than one holder. The interest of a holder is an interest in real property.

(2) A right of an agency under this chapter or under an environmental covenant, other than a right as a holder, is not an interest in real property.

(3) An agency is bound by any obligation it assumes in an environmental covenant, but an agency does not assume obligations merely by signing an environmental covenant. Any other person that signs an environmental covenant is bound by the obligations the person assumes in the covenant, but signing the covenant does not change obligations, rights, or protections granted or imposed under law other than this chapter except as provided in the covenant.

(4) The following rules apply to interests in real property in existence at the time an environmental covenant is created or amended:

(a) An interest that has priority under other law is not affected by an environmental covenant unless the person that owns the interest subordinates that interest to the covenant.

(b) This chapter does not require a person that owns a prior interest to subordinate that interest to an environmental covenant or to agree to be bound by the covenant.

(c) A subordination agreement may be contained in an environmental covenant covering real property or in a separate record. If the environmental covenant covers commonly owned property in a common interest community, the record may be signed by any person authorized by the governing board of the owners' association.

(d) An agreement by a person to subordinate a prior interest to an environmental covenant affects the priority of that person's interest but does not by itself impose any affirmative obligation on the person with respect to the environmental covenant. [2007 c 104 § 4.]

**64.70.040 Covenants—Contents—Agency discretion—Local land use consideration.** (1) An environmental covenant must:

(a) State that the instrument is an environmental covenant executed pursuant to this chapter;

(b) Contain a legally sufficient description of the real property subject to the covenant;

(c) Describe with specificity the activity or use limitations on the real property;

(d) Identify every holder;

(e) Be signed by the agency, every holder, and unless waived by the agency every owner of the fee simple of the real property subject to the covenant; and

(f) Identify the name and location of any administrative record for the environmental response project reflected in the environmental covenant.

(2) In addition to the information required by subsection (1) of this section, an environmental covenant may contain other information, restrictions, and requirements agreed to by the persons who signed it, including any:

(a) Requirements for notice following transfer of a specified interest in, or concerning proposed changes in use of, applications for building permits for, or proposals for any site

work affecting the contamination on, the property subject to the covenant;

(b) Requirements for periodic reporting describing compliance with the covenant;

(c) Rights of access to the property granted in connection with implementation or enforcement of the covenant;

(d) Narrative descriptions of the contamination and remedy, including the contaminants of concern, the pathways of exposure, limits on exposure, and the location and extent of the contamination;

(e) Limitations on amendment or termination of the covenant in addition to those contained in RCW 64.70.090 and 64.70.100;

(f) Rights of the holder in addition to its right to enforce the covenant pursuant to RCW 64.70.110;

(g) Other information, restrictions, or requirements required by the agency, including the department of ecology under the authority of chapter 70.105D RCW.

(3) In addition to other conditions for its approval of an environmental covenant, the agency may require those persons specified by the agency who have interests in the real property to sign the covenant.

(4) The agency may also require notice and opportunity to comment upon an environmental covenant as part of public participation efforts related to the environmental response project.

(5) The agency shall consult with local land use planning authorities in the development of the land use or activity restrictions in the environmental covenant. The agency shall consider potential redevelopment and revitalization opportunities and obtain information regarding present and proposed land and resource uses, and consider comprehensive land use plan and zoning provisions applicable to the real property to be subject to the environmental covenant. [2007 c 104 § 5.]

**64.70.050 Covenants—Enforceability.** (1) An environmental covenant that complies with this chapter runs with the land.

(2) An environmental covenant that is otherwise effective is valid and enforceable even if:

(a) It is not appurtenant to an interest in real property;

(b) It can be or has been assigned to a person other than the original holder;

(c) It is not of a character that has been recognized traditionally at common law;

(d) It imposes a negative burden;

(e) It imposes an affirmative obligation on a person having an interest in the real property or on the holder;

(f) The benefit or burden does not touch or concern real property;

(g) There is no privity of estate or contract;

(h) The holder dies, ceases to exist, resigns, or is replaced; or

(i) The owner of an interest subject to the environmental covenant and the holder are the same person.

(3) An instrument that creates restrictions or obligations with respect to real property that would qualify as activity or use limitations except for the fact that the instrument was recorded before July 22, 2007, is not invalid or unenforceable because of any of the limitations on enforcement of interests described in subsection (2) of this section or because it was

identified as an easement, servitude, deed restriction, or other interest. This chapter does not apply in any other respect to such an instrument.

(4) This chapter does not invalidate or render unenforceable any interest, whether designated as an environmental covenant or other interest, that is otherwise enforceable under the law of this state. [2007 c 104 § 6.]

**64.70.060 Use of real property—Chapter application.** This chapter does not authorize a use of real property that is otherwise prohibited by zoning, by law other than this chapter regulating use of real property, or by a recorded instrument that has priority over the environmental covenant. An environmental covenant may prohibit or restrict uses of real property that are authorized by zoning or by law other than this chapter. [2007 c 104 § 7.]

**64.70.070 Covenants—Providing copies.** (1) A copy of an environmental covenant shall be provided by the persons and in the manner required by the agency to:

- (a) Each person that signed the covenant;
- (b) Each person holding a recorded interest in the real property subject to the covenant;
- (c) Each person in possession of the real property subject to the covenant at the time the covenant is executed;
- (d) Each municipality or other unit of local government in which real property subject to the covenant is located;
- (e) The department of ecology; and
- (f) Any other person the agency requires.

(2) The validity of an environmental covenant is not affected by failure to provide a copy of the covenant as required under this section.

(3) If the agency has not designated the persons to provide a copy of an environmental covenant, the grantor shall be responsible for providing a copy of an environmental covenant as required under subsection (1) of this section. [2007 c 104 § 8.]

**64.70.080 Covenants—Recording and priority of interests.** (1) An environmental covenant and any amendment or termination of the covenant must be recorded in every county in which any portion of the real property subject to the covenant is located. For purposes of indexing, a holder shall be treated as a grantee.

(2) Except as otherwise provided in RCW 64.70.090(3), an environmental covenant is subject to the laws of this state governing recording and priority of interests in real property. [2007 c 104 § 9.]

**64.70.090 Covenant—Duration—Court action.** (1) An environmental covenant is perpetual unless it is:

- (a) By its terms limited to a specific duration or terminated by the occurrence of a specific event;
- (b) Terminated by consent pursuant to RCW 64.70.100;
- (c) Terminated pursuant to subsection (2) of this section;
- (d) Terminated by foreclosure of an interest that has priority over the environmental covenant; or
- (e) Terminated or modified in an eminent domain proceeding, but only if:

(i) The agency that signed the covenant is a party to the proceeding;

(ii) All persons identified in RCW 64.70.100 (1) and (2) are given notice of the pendency of the proceeding; and

(iii) The court determines, after hearing, that the termination or modification will not adversely affect human health or the environment.

(2) If the agency that signed an environmental covenant has determined that the intended benefits of the covenant can no longer be realized, a court, under the doctrine of changed circumstances, in an action in which all persons identified in RCW 64.70.100 (1) and (2) have been given notice, may terminate the covenant or reduce its burden on the real property subject to the covenant.

(3) Except as otherwise provided in subsections (1) and (2) of this section, an environmental covenant may not be extinguished, limited, or impaired through issuance of a tax deed, foreclosure of a tax lien, or application of the doctrine of adverse possession, prescription, abandonment, waiver, lack of enforcement, or acquiescence, or a similar doctrine.

(4) An environmental covenant may not be extinguished, limited, or impaired by the extinguishment of a mineral interest under chapter 78.22 RCW. [2007 c 104 § 10.]

**64.70.100 Covenant—Amendment or termination by consent.** (1) An environmental covenant may be amended or terminated by consent only if the amendment or termination is signed by:

- (a) The agency;
- (b) Unless waived by the agency, the current owner of the fee simple of the real property subject to the covenant;
- (c) Each person that originally signed the covenant, unless the person waived in a signed record the right to consent or a court finds that the person no longer exists or cannot be located or identified with the exercise of reasonable diligence; and

(d) Except as otherwise provided in subsection (4)(b) of this section, the holder.

(2) If an interest in real property is subject to an environmental covenant, the interest is not affected by an amendment of the covenant unless the current owner of the interest consents to the amendment or has waived in a signed record the right to consent to amendments.

(3) Except for an assignment undertaken pursuant to a governmental reorganization, assignment of an environmental covenant to a new holder is an amendment.

(4) Except as otherwise provided in an environmental covenant:

- (a) A holder may not assign its interest without consent of the other parties;
- (b) A holder may be removed and replaced by agreement of the other parties specified in subsection (1) of this section; and
- (c) A court of competent jurisdiction may fill a vacancy in the position of holder. [2007 c 104 § 11.]

**64.70.110 Violations—Civil actions—Regulatory authority under chapter—Liability.** (1) A civil action for injunctive or other equitable relief for violation of an environmental covenant may be maintained by:

- (a) A party to the covenant;
- (b) The agency or, if it is not the agency, the department of ecology;
- (c) Any person to whom the covenant expressly grants power to enforce;
- (d) A person whose interest in the real property or whose collateral or liability may be affected by the alleged violation of the covenant; and
- (e) A municipality or other unit of local government in which the real property subject to the covenant is located.

(2) This chapter does not limit the regulatory authority of the agency or the department of ecology under law other than this chapter with respect to an environmental response project.

(3) A person is not responsible for or subject to liability for environmental remediation solely because it has the right to enforce an environmental covenant. [2007 c 104 § 12.]

**64.70.120 Covenants—Registry—Information contained.** (1) The department of ecology shall establish and maintain a registry that contains information identifying all environmental covenants established under this chapter and any amendment or termination of those covenants, including the county where the covenant is recorded and the recording number. The registry may also contain any other information concerning environmental covenants and the real property subject to them that the department of ecology considers appropriate. The registry is a public record for purposes of chapter 42.56 RCW, but the department shall maintain electronic access to the registry without requiring a public records request for any information included in the registry.

(2) Failure to include information or inclusion of inaccurate information concerning an environmental covenant in the registry does not invalidate or limit the application or enforceability of the covenant. [2007 c 104 § 13.]

**64.70.130 Electronic signatures in global and national commerce act.** This chapter modifies, limits, or supersedes the federal electronic signatures in global and national commerce act (15 U.S.C. Sec. 7001 et seq.) but does not modify, limit, or supersede section 101 of that act (15 U.S.C. Sec. 7001(a)) or authorize electronic delivery of any of the notices described in section 103 of that act (15 U.S.C. Sec. 7003(b)). [2007 c 104 § 15.]

**64.70.900 Severability—2007 c 104.** If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [2007 c 104 § 21.]

# Title 65

## RECORDING, REGISTRATION, AND LEGAL PUBLICATION

### Chapters

- 65.04 Duties of county auditor.**
- 65.08 Recording.**
- 65.12 Registration of land titles (Torrens Act).**
- 65.16 Legal publications.**
- 65.20 Classification of manufactured homes.**
- 65.24 Uniform real property electronic recording act.**

*Assessor's plats:* Chapter 58.18 RCW.

*Assignment, satisfaction of mortgages:* Chapter 61.16 RCW.

*Civil procedure, legal publication generally:* Chapter 4.28 RCW.

*Community property*

*claim of spouse or domestic partner to be filed:* RCW 26.16.100.  
*purchaser protected by record title:* RCW 26.16.095.

*Copies of recorded instruments as evidence:* Chapter 5.44 RCW.

*Corporate seals, effect of absence from instrument:* RCW 64.04.105.

*County auditor:* Chapter 36.22 RCW.

*Crop liens:* Chapter 60.11 RCW.

*Eminent domain by*

*corporations, judgment or decree:* RCW 8.20.090.  
*county, decree:* RCW 8.08.060.  
*school districts, decree:* RCW 8.16.110.  
*state, judgment or decree:* RCW 8.04.120.

*Eminent domain, state lands, decree:* RCW 8.28.010.

*Fees of county officers:* Chapter 36.18 RCW.

*Field notes of irregular subdivided tracts:* RCW 84.40.170.

*Filing reports, claims, tax returns, etc.:* RCW 1.12.070.

*Lis pendens, effect of filing:* RCW 4.28.320.

*Notice of proposed constitutional amendments, publication of:* RCW 29A.52.330, 29A.52.340.

*Plats:* Chapter 58.08 RCW, RCW 84.40.170.

*Powers of appointment:* Chapter 11.95 RCW.

*RCW 65.08.070 applicable to rents and profits of real property:* RCW 7.28.230.

*Retail installment sales of goods and services:* Chapter 63.14 RCW.

*Secretary of state, duties:* RCW 43.07.030.

65.04.110 Liability of auditor for damages.

65.04.115 Names on documents, etc., to be printed or typewritten—Indexing.

65.04.130 Fees to be paid or tendered.

65.04.140 Auditor as custodian of records.

*Corporate seals, effect of absence from instrument:* RCW 64.04.105.

*County auditor:* Chapter 36.22 RCW.

*Fees of county officers, generally:* Chapter 36.18 RCW.

*Powers of appointment:* Chapter 11.95 RCW.

**65.04.015 Definitions.** The definitions set forth in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Recording officer" means the county auditor, or in charter counties the county official charged with the responsibility for recording instruments in the county records.

(2) "File," "filed," or "filing" means the act of delivering or transmitting electronically an instrument to the auditor or recording officer for recording into the official public records.

(3) "Record," "recorded," or "recording" means the process, such as electronic, mechanical, optical, magnetic, or microfilm storage used by the auditor or recording officer after filing to incorporate the instrument into the public records.

(4) "Recording number" means a unique number that identifies the storage location (book or volume and page, reel and frame, instrument number, auditor or recording officer file number, receiving number, electronic retrieval code, or other specific place) of each instrument in the public records accessible in the same recording office where the instrument containing the reference to the location is found.

(5) "Grantor/grantee" for recording purposes means the names of the parties involved in the transaction used to create the recording index. There will always be at least one grantor and one grantee for any document. In some cases, the grantor and the grantee will be the same individual(s), or one of the parties may be the public.

(6) "Legible and capable of being imaged" means all text, seals, drawings, signatures, or other content within the document must be legible and capable of producing a readable image, regardless of what process is used for recording. [1999 c 233 § 10; 1998 c 27 § 3; 1996 c 229 § 1; 1991 c 26 § 3.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**65.04.020 Duty to provide records.** For the purpose of recording deeds and other instruments of writing, required or permitted by law to be recorded, the county auditor shall procure such media for records as the business of the office requires. [1999 c 233 § 11; 1985 c 44 § 14; 1893 c 119 § 10; Code 1881 § 2726; RRS § 10600.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

### Chapter 65.04 RCW DUTIES OF COUNTY AUDITOR

#### Sections

- 65.04.015 Definitions.
- 65.04.020 Duty to provide records.
- 65.04.030 Instruments to be recorded or filed.
- 65.04.033 Notice of abandoned cemetery document—Recording requirements.
- 65.04.040 Method for recording instruments—Marginal notations—Arrangement of records.
- 65.04.045 Recorded instruments—Requirements—Content restrictions—Form.
- 65.04.047 Recorded instruments—Cover sheet—When required—Form.
- 65.04.048 Additional fee for certain documents not meeting requirements—Signed statement.
- 65.04.050 Index of instruments, how made and kept—Recording of plat names.
- 65.04.060 Record when lien is discharged.
- 65.04.070 Recording judgments affecting real property.
- 65.04.080 Entries when instruments offered for record—Content restrictions.
- 65.04.090 Further endorsements—Delivery.

**65.04.030 Instruments to be recorded or filed.** The auditor or recording officer must, upon the payment of the fees as required in RCW 36.18.010 for the same, acknowledge receipt therefor in writing or printed form and record in large and well bound books, or by photographic, photomechanical, electronic format, or other approved process, the following:

(1) Deeds, grants and transfers of real property, mortgages and releases of mortgages of real estate, instruments or agreements relating to community or separate property, powers of attorney to convey real estate, and leases which have been acknowledged or proved: PROVIDED, That deeds, contracts and mortgages of real estate described by lot and block and addition or plat, shall not be filed or recorded until the plat of such addition has been filed and made a matter of record;

(2) Patents to lands and receivers' receipts, whether for mineral, timber, homestead or preemption claims or cash entries;

(3) All such other papers or writing as are required by law to be recorded and such as are required by law to be filed. [1996 c 229 § 2; 1991 c 26 § 4; 1985 c 44 § 15; 1967 c 98 § 1; 1919 c 182 § 1; 1893 c 119 § 11; Code 1881 § 2727; 1865 p 26 § 1; RRS § 10601.]

*Claim of spouse or domestic partner in community realty to be filed:* RCW 26.16.100.

*Marriage certificate to county auditor, filing and recording, etc.:* RCW 26.04.090, 26.04.100.

*Purchaser of community realty protected by record title:* RCW 26.16.095.

**65.04.033 Notice of abandoned cemetery document—Recording requirements.** Any person who has knowledge of the existence of any cemetery, abandoned cemetery, historical cemetery, or historic grave that has not been dedicated pursuant to RCW 68.24.010 through 68.24.040 may file for recording, in the county in which the cemetery or grave is located, a notice of abandoned cemetery document providing notice of the existence of the cemetery or grave. Such document shall contain the legal description of the property, the approximate location of the cemetery or grave within the property, the name of the owner or reputed owner of the property, and the assessor's tax parcel or account number. The auditor or recording officer shall index the document to the names of the property owner and the person executing the document. [1999 c 367 § 1.]

**65.04.040 Method for recording instruments—Marginal notations—Arrangement of records.** Any state, county, or municipal officer charged with the duty of recording instruments in public records shall record them by \*record location number in the order filed, irrespective of the type of instrument, using a process that has been tested and approved for the intended purpose by the state archivist.

In addition, the county auditor or recording officer, in the exercise of the duty of recording instruments in public records, may, in lieu of transcription, record all instruments, that he or she is charged by law to record, by any electronic data transfer, photographic, photostatic, microfilm, microcard, miniature photographic or other process that actually reproduces or forms a durable medium for so reproducing the original, and which has been tested and approved for the

intended purpose by the state archivist. If the county auditor or recording officer records any instrument by a process approved by the state archivist it shall not be necessary thereafter to make any notations or marginal notes, which are otherwise required by law, thereon if, in lieu of making said notations thereon, the auditor or recording officer immediately makes a note of such in the general index in the column headed "remarks," listing the record number location of the instrument to which the current entry relates back.

Previously recorded or filed instruments may be processed and preserved by any means authorized under this section for the original recording of instruments. The county auditor or recording officer may provide for the use of the public, media containing reproductions of instruments and other materials that have been recorded pursuant to the provisions of this section. The contents of the media may be arranged according to date of filing, irrespective of type of instrument, or in such other manner as the county auditor or recording officer deems proper. [1996 c 229 § 3; 1991 c 26 § 5; 1985 c 44 § 16; 1967 c 98 § 2; 1959 c 254 § 1; 1919 c 125 § 1; RRS § 10602.]

\*Reviser's note: The definition "record location number" was changed to "recording number" by 1999 c 233 § 10.

*Fees for recording instruments:* RCW 36.18.010.

*State archivist:* RCW 40.14.020.

**65.04.045 Recorded instruments—Requirements—Content restrictions—Form.** (1) When any instrument is presented to a county auditor or recording officer for recording, the first page of the instrument shall contain:

(a) A top margin of at least three inches and a one-inch margin on the bottom and sides, except that an instrument may be recorded if a minor portion of a notary seal, incidental writing, or minor portion of a signature extends beyond the margins;

(b) The top left-hand side of the page shall contain the name and address to whom the instrument will be returned;

(c) The title or titles, or type or types, of the instrument to be recorded indicating the kind or kinds of documents or transactions contained therein immediately below the three-inch margin at the top of the page. The auditor or recording officer shall be required to index only the title or titles captioned on the document;

(d) Reference numbers of documents assigned or released with reference to the document page number where additional references can be found, if applicable;

(e) The names of the grantor(s) and grantee(s), as defined under RCW 65.04.015, with reference to the document page number where additional names are located, if applicable;

(f) An abbreviated legal description of the property, and for purposes of this subsection, "abbreviated legal description of the property" means lot, block, plat, or section, township, range, and quarter/quarter section, and reference to the document page number where the full legal description is included, if applicable;

(g) The assessor's property tax parcel or account number set forth separately from the legal description or other text.

(2) All pages of the document shall be on sheets of paper of a weight and color capable of producing a legible image that are not larger than fourteen inches long and eight and one-half inches wide with text printed or written in eight

point type or larger. All text within the document must be of sufficient color and clarity to ensure that when the text is imaged all text is readable. Further, all pages presented for recording must have at minimum a one-inch margin on the top, bottom, and sides for all pages except page one, except that an instrument may be recorded if a minor portion of a notary seal, incidental writing, or minor portion of a signature extends beyond the margins, be prepared in ink color capable of being imaged, and have all seals legible and capable of being imaged. No attachments, except firmly attached bar code or address labels, may be affixed to the pages.

(3) When any instrument, except those generated by governmental agencies, is presented to a county auditor or recording officer for recording, the document may not contain the following information: (a) A social security number; (b) a date of birth identified with a particular person; or (c) the maiden name of a person's parent so as to be identified with a particular person.

The information provided on the instrument must be in substantially the following form:

This Space Provided for Recorder's Use

When Recorded Return to:

.....

Document Title(s)

Grantor(s)

Grantee(s)

Legal Description

Assessor's Property Tax Parcel or Account Number

Reference Numbers of Documents Assigned or Released

[2005 c 134 § 1; 1999 c 233 § 12; 1998 c 27 § 1; 1996 c 143 § 2.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**65.04.047 Recorded instruments—Cover sheet—When required—Form.** (1) If the first page of an instrument presented for recording does not contain the information required by RCW 65.04.045(1), the person preparing the instrument for recording shall prepare a cover sheet that contains the required information. The cover sheet shall be attached to the instrument and shall be recorded as a part of the instrument. An additional page fee as determined under RCW 36.18.010 shall be collected for recording of the cover sheet. Any errors in the cover sheet shall not affect the transactions contained in the instrument itself. The cover sheet need not be separately signed or acknowledged. The cover sheet information shall be used to generate the auditor's grantor/grantee index, however, the names and legal description in the instrument itself will determine the legal chain of title. The cover sheet shall be substantially the following form:

Return Address

Please print or type information

**Document Title(s)** (or transactions contained therein):

- 1.
- 2.
- 3.
- 4.

**Grantor(s)** (Last name first, then first name and initials)

- 1.
- 2.
- 3.
- 4.

5.  Additional names on page \_\_ of document.

**Grantee(s)** (Last name first, then first name and initials)

- 1.
- 2.
- 3.
- 4.

5.  Additional names on page \_\_ of document.

**Legal Description** (abbreviated: i.e., lot, block, plat or section, township, range)

Additional legal description is on page \_\_ of document.

**Assessor's Property Tax Parcel or Account Number at the time of recording:**

**Reference Number(s) of Documents assigned or released:**

Additional references on page \_\_ of document.

The Auditor or Recording Officer will rely on the information provided on this form. The staff will not read the document to verify the accuracy of or the completeness of the indexing information provided herein.

(2) Documents which are exempt from format requirements and which may be recorded with a properly completed cover sheet include: Documents which were signed prior to January 1, 1997; military separation documents; documents executed outside of the United States; certified copies of documents; any birth or death certificate; marriage certificates from outside the state of Washington; any document, one of whose original signer is deceased or otherwise incapacitated; and judgments or other documents formatted to meet court requirements. [1999 c 233 § 13; 1998 c 27 § 2; 1996 c 143 § 3.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**65.04.048 Additional fee for certain documents not meeting requirements—Signed statement.** (1) Documents which must be recorded immediately and which do not meet margin and font size requirements may be recorded for an additional fee of fifty dollars. Documents which do not meet legibility requirements must not be recorded as a nonstandard recording.

(2) In addition to preparing a properly completed cover sheet as described in RCW 65.04.047, the person preparing the document for recording must sign a statement which must be attached to the document and which must read substantially as follows: "I am requesting an emergency nonstandard

recording for an additional fee as provided in RCW 36.18.010. I understand that the recording processing requirements may cover up or otherwise obscure some part of the text of the original document." [1999 c 233 § 14.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**65.04.050 Index of instruments, how made and kept—Recording of plat names.** Every auditor or recording officer must keep a general index, direct and inverted. The index may be either printed on paper or produced on microfilm or microfiche, or it can be created from a computerized database and displayed on a video display terminal. Any reference to a prior \*record location number may be entered in the remarks column. Any property legal description contained in the instrument must be entered in the description of property column of the general index. The direct index shall be divided into eight columns, and with heads to the respective columns, as follows: Date of reception, grantor, grantee, nature of instrument, volume and page where recorded and/or the auditor's file number, remarks, description of property, assessor's property tax parcel or account number. The auditor or recording officer shall correctly enter in such index every instrument concerning or affecting real estate which by law is required to be recorded, the names of grantors being in alphabetical order. The inverted index shall also be divided into eight columns, precisely similar, except that "grantee" shall occupy the second column and "grantor" the third, the names of grantees being in alphabetical order. The auditor or recording officer may combine the direct and indirect indexes into a single index if it contains all the information required to be contained in the separate direct and indirect indexes and the names of all grantors and grantees can be found by a person searching the combined index. For the purposes of this chapter, the term "grantor" means any person conveying or encumbering the title to any property, or any person against whom any lis pendens, judgment, notice of lien, order of sale, execution, writ of attachment, claims of separate or community property, or notice for request of transfer or encumbrance under RCW 43.20B.750 shall be placed on record. The auditor or recording officer shall also enter in the general index, the name of the party or parties platting a town, village, or addition in the column prescribed for "grantors," describing the grantee in such case as "the public." However, the auditor or recording officer shall not receive or record any such plat or map until it has been approved by the mayor and common council of the municipality in which the property so platted is situated, or if the property be not situated within any municipal corporation, then the plat must be first approved by the county legislative authority. The auditor or recording officer shall not receive for record any plat, map, or subdivision of land bearing a name the same or similar to the name of any map or plat already on record in the office. The auditor or recording officer may establish a name reservation system to preclude the possibility of duplication of names. [2005 c 292 § 3; 1996 c 143 § 4; 1991 c 26 § 6; 1893 c 119 § 12; Code 1881 § 2728; 1869 p 314 § 24; RRS § 10603.]

\*Reviser's note: The definition "record location number" was changed to "recording number" by 1999 c 233 § 10.

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**65.04.060 Record when lien is discharged.** Whenever any mortgage, bond, lien, or instrument encumbering real estate, has been satisfied, released or discharged, by the recording of an instrument of release, or acknowledgment of satisfaction, the auditor shall immediately note, in the comment section of the index, the recording number of the original mortgage, bond, lien, or instrument. [1999 c 233 § 15; 1985 c 44 § 17; Code 1881 § 2729; 1869 p 315 § 25; RRS § 10604.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**65.04.070 Recording judgments affecting real property.** The auditor must file and record with the record of deeds, grants and transfers certified copies of final judgments or decrees partitioning or affecting the title or possession of real property, any part of which is situated in the county of which he is recorder. Every such certified copy or partition, from the time of filing the same with the auditor for record, imparts notice to all persons of the contents thereof, and subsequent purchasers, mortgagees and lien holders purchase and take with like notice and effect as if such copy or decree was a duly recorded deed, grant or transfer. [Code 1881 § 2730; RRS § 10605.]

**65.04.080 Entries when instruments offered for record—Content restrictions.** (1) When any instrument, paper, or notice, authorized or required by law to be filed or recorded, is deposited in or electronically transmitted to the county auditor's office for filing or record, that officer must endorse upon the same the time when it was received, noting the year, month, day, hour and minute of its reception, and note that the document was received by electronic transmission, and must file, or file and record the same without delay, together with the acknowledgments, proofs, and certificates written or printed upon or annexed to the same, with the plats, surveys, schedules and other papers thereto annexed, in the order and as of the time when the same was received for filing or record, and must note on the instrument filed, or at the foot of the record the exact time of its reception, and the name of the person at whose request it was filed or filed and recorded. However, the county auditor shall not be required to accept for filing, or filing and recording, any instrument unless there appear upon the face thereof, the name and nature of the instrument offered for filing, or filing and recording, as the case may be.

(2) When any instrument, except those generated by governmental agencies, is presented to a county auditor or recording officer for recording, the document may not contain the following information: (a) A social security number; (b) a date of birth identified with a particular person; or (c) the maiden name of a person's parent so as to be identified with a particular person. [2005 c 134 § 2; 1996 c 229 § 4; 1985 c 44 § 18; 1927 c 187 § 1; Code 1881 § 2731; 1869 p 313 § 19; RRS § 10606.]

**65.04.090 Further endorsements—Delivery.** The recording officer must also endorse upon such an instrument, paper, or notice, the time when and the book and page in which it is recorded, and must thereafter either electronically transmit or deliver it to the party leaving the same for record

or to the address on the face of the document. [2003 c 239 § 1; 1996 c 229 § 5; Code 1881 § 2732; RRS § 10607.]

**65.04.110 Liability of auditor for damages.** If any county auditor to whom an instrument, proved or acknowledged according to law, or any paper or notice which may by law be recorded is delivered or electronically transmitted for record: (1) Neglects or refuses to record such instrument, paper or notice, within a reasonable time after receiving the same; or (2) records any instruments, papers or notices untruly, or in any other manner than as directed in this chapter; or, (3) neglects or refuses to keep in his or her office such indexes as are required by \*this act, or to make the proper entries therein; or, (4) neglects or refuses to make the searches and to give the certificate required by \*this act; or if such searches or certificate are incomplete and defective in any important particular affecting the property in respect to which the search is requested; or, (5) alters, changes, or obliterates any records deposited in his or her office, or inserts any new matter therein; he or she is liable to the party aggrieved for the amount of damage which may be occasioned thereby. However, if the name or names and address hand printed, printed, or typewritten on any instrument, proved or acknowledged according to law, or on any paper or notice which may by law be filed or recorded, is or are incorrect, or misspelled or not the true name or names of the party or parties appearing thereon, the county auditor shall not, by reason of such fact, be liable for any loss or damage resulting therefrom. [1996 c 229 § 6; 1965 c 134 § 1; Code 1881 § 2734; RRS § 10609.]

**\*Reviser's note:** The language "this act" appears in Code 1881 c 211, codified herein as RCW 5.44.070, 36.16.030 through 36.16.050, 36.16.070, 36.16.080, 36.22.110 through 36.22.130, 36.22.150, 65.04.020, 65.04.030, 65.04.050 through 65.04.110, 65.04.130, and 65.04.140.

**65.04.115 Names on documents, etc., to be printed or typewritten—Indexing.** The name or names appearing on all documents or instruments, proved or acknowledged according to law, or on any paper which may by law be filed or recorded shall be hand printed, printed or typewritten so as to be legible and the county auditor shall index said documents and instruments in accordance with the hand printed, printed or typewritten name or names appearing thereon. [1965 c 134 § 2.]

**65.04.130 Fees to be paid or tendered.** Said county auditor is not bound to record any instrument, or file any paper or notice, or furnish any copies, or to render any service connected with his office, until his fees for the same, as prescribed by law, are if demanded paid or tendered. [Code 1881 § 2735; RRS § 10610.]

**65.04.140 Auditor as custodian of records.** The county auditor in his capacity of recorder of deeds is sole custodian of all books in which are recorded deeds, mortgages, judgments, liens, incumbrances and other instruments of writing, indexes thereto, maps, charts, town plats, survey and other books and papers constituting the records and files in said office of recorder of deeds, and all such records and files are, and shall be, matters of public information, free of charge to any and all persons demanding to inspect or to examine the

(2010 Ed.)

same, or to search the same for titles of property. It is said recorder's duty to arrange in suitable places the indexes of said books of record, and when practicable, the record books themselves, to the end that the same may be accessible to the public and convenient for said public inspection, examination and search, and not interfere with the said auditor's personal control and responsibility for the same, or prevent him from promptly furnishing the said records and files of his said office to persons demanding any information from the same. The said auditor or recorder must and shall, upon demand, and without charge, freely permit any and all persons, during reasonable office hours, to inspect, examine and search any or all of the records and files of his said office, and to gather any information therefrom, and to make any desired notes or memoranda about or concerning the same, and to prepare an abstract or abstracts of title to any and all property therein contained. [1886 p 163 § 1; 1883 p 34 § 1; Code 1881 § 2736; RRS § 10611.]

## Chapter 65.08 RCW RECORDING

### Sections

65.08.030	Recorded irregular instrument imparts notice.
65.08.050	Recording land office receipts.
65.08.060	Terms defined.
65.08.070	Real property conveyances to be recorded.
65.08.090	Letters patent.
65.08.095	Conveyances of fee title by public bodies.
65.08.100	Certified copies.
65.08.110	Certified copies—Effect.
65.08.120	Assignment of mortgage—Notice.
65.08.130	Revocation of power of attorney.
65.08.140	No liability for error in recording when properly indexed.
65.08.150	Duty to record.
65.08.160	Recording master form instruments and mortgages or deeds of trust incorporating master form provisions.
65.08.170	Notice of additional water or sewer facility tap or connection charges—Required—Contents.
65.08.180	Notice of additional water or sewer facility tap or connection charges—Duration—Certificate of payment and release.

*Corporate seals, effect of absence from instrument: RCW 64.04.105.*

*Powers of appointment: Chapter 11.95 RCW.*

**65.08.030 Recorded irregular instrument imparts notice.** An instrument in writing purporting to convey or encumber real estate or any interest therein, which has been recorded in the auditor's office of the county in which the real estate is situated, although the instrument may not have been executed and acknowledged in accordance with the law in force at the time of its execution, shall impart the same notice to third persons, from the date of recording, as if the instrument had been executed, acknowledged, and recorded, in accordance with the laws regulating the execution, acknowledgment, and recording of the instrument then in force. [1953 c 115 § 1. Prior: 1929 c 33 § 8; RRS § 10599.]

**65.08.050 Recording land office receipts.** Every cash or final receipt from any receiver, and every cash or final certificate from any register of the United States land office, evidencing that final payment has been made to the United States as required by law, or that the person named in such certificate is entitled, on presentation thereof, to a patent from the United States for land within the state of Washington, shall be recorded by the county auditor of the county wherein

such land lies, on request of any party presenting the same, and any record heretofore made of any such cash or final receipt or certificate shall, from the date when this section becomes a law, and every record hereafter made of any such receipt or certificate shall, from the date of recording, impart to third persons and all the world, full notice of all the rights and equities of the person named in said cash or final receipt or certificate in the land described in such receipt or certificate. [1890 p 92 § 1; RRS § 10613.]

**65.08.060 Terms defined.** (1) The term "real property" as used in RCW 65.08.060 through 65.08.150 includes lands, tenements and hereditaments and chattels real and mortgage liens thereon except a leasehold for a term not exceeding two years.

(2) The term "purchaser" includes every person to whom any estate or interest in real property is conveyed for a valuable consideration and every assignee of a mortgage, lease or other conditional estate.

(3) The term "conveyance" includes every written instrument by which any estate or interest in real property is created, transferred, mortgaged or assigned or by which the title to any real property may be affected, including an instrument in execution of a power, although the power be one of revocation only, and an instrument releasing in whole or in part, postponing or subordinating a mortgage or other lien; except a will, a lease for a term of not exceeding two years, and an instrument granting a power to convey real property as the agent or attorney for the owner of the property. "To convey" is to execute a "conveyance" as defined in this subdivision.

(4) The term "recording officer" means the county auditor or, in charter counties, the county official charged with the responsibility for recording instruments in the county records. [1999 c 233 § 16; 1984 c 73 § 1; 1927 c 278 § 1; RRS § 10596-1.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**65.08.070 Real property conveyances to be recorded.** A conveyance of real property, when acknowledged by the person executing the same (the acknowledgment being certified as required by law), may be recorded in the office of the recording officer of the county where the property is situated. Every such conveyance not so recorded is void as against any subsequent purchaser or mortgagee in good faith and for a valuable consideration from the same vendor, his heirs or devisees, of the same real property or any portion thereof whose conveyance is first duly recorded. An instrument is deemed recorded the minute it is filed for record. [1927 c 278 § 2; RRS § 10596-2. Prior: 1897 c 5 § 1; Code 1881 § 2314; 1877 p 312 § 4; 1873 p 465 § 4; 1863 p 430 § 4; 1860 p 299 § 4; 1858 p 28 § 1; 1854 p 403 § 4.]

*RCW 65.08.070 applicable to rents and profits of real property: RCW 7.28.230.*

**65.08.090 Letters patent.** Letters patent from the United States or the state of Washington granting real property may be recorded in the office of the recording officer of the county where such property is situated in the same manner and with like effect as a conveyance that is entitled to be recorded. [1927 c 278 § 4; RRS § 10596-4.]

**65.08.095 Conveyances of fee title by public bodies.**

Every conveyance of fee title to real property hereafter executed by the state or by any political subdivision or municipal corporation thereof shall be recorded by the grantor, after having been reviewed as to form by the grantee, at the expense of the grantee at the time of delivery to the grantee, and shall constitute legal delivery at the time of filing for record. [1963 c 49 § 1.]

**65.08.100 Certified copies.** A copy of a conveyance of or other instrument affecting real property recorded or filed in the office of the secretary of state or the commissioner of public lands, or of the record thereof, when certified in the manner required to entitle the same to be read in evidence, may be recorded with the certificate in the office of any recording officer of the state. [1927 c 278 § 5; RRS § 10596-5.]

**65.08.110 Certified copies—Effect.** A copy of a record, when certified or authenticated to entitle it to be read in evidence, may be recorded in any office where the original instrument would be entitled to be recorded. Such record has the same effect as if the original were so recorded. A copy of the record of a conveyance of or other instrument affecting separate parcels of real property situated in more than one county, when certified or authenticated to entitle it to be read in evidence may be recorded in the office of the recording officer of any county in which any such parcel is situated with the same effect as though the original instrument were so recorded. [1927 c 278 § 6; RRS § 10596-6.]

**65.08.120 Assignment of mortgage—Notice.** The recording of an assignment of a mortgage is not in itself notice to the mortgagor, his heirs, assigns or personal representatives, to invalidate a payment made by any of them to a prior holder of the mortgage. [1927 c 278 § 7; RRS § 10596-7.]

**65.08.130 Revocation of power of attorney.** A power of attorney or other instrument recorded pursuant to RCW 65.08.060 through 65.08.150 is not deemed revoked by any act of the party by whom it was executed unless the instrument of revocation is also recorded in the same office in which the instrument granting the power was recorded. [1927 c 278 § 8; RRS § 10596-8.]

**65.08.140 No liability for error in recording when properly indexed.** A recording officer is not liable for recording an instrument in a wrong book, volume or set of records if the instrument is properly indexed with a reference to the volume and page or recording number where the instrument is actually of record. [1999 c 233 § 17; 1927 c 278 § 9; RRS § 10596-9. Formerly RCW 65.04.120.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**65.08.150 Duty to record.** A recording officer, upon payment or tender to him of the lawful fees therefor, shall record in his office any instrument authorized or permitted to be so recorded by the laws of this state or by the laws of the

United States. [1943 c 23 § 1; 1927 c 278 § 10; RRS § 10596-10. Formerly RCW 65.04.010.]

**65.08.160 Recording master form instruments and mortgages or deeds of trust incorporating master form provisions.** A mortgage or deed of trust of real estate may be recorded and constructive notice of the same and the contents thereof given in the following manner:

(1) An instrument containing a form or forms of covenants, conditions, obligations, powers, and other clauses of a mortgage or deed of trust may be recorded in the office of the county auditor of any county and the auditor of such county, upon the request of any person, on tender of the lawful fees therefor, shall record the same. Every such instrument shall be entitled on the face thereof as a "Master form recorded by . . . (name of person causing the instrument to be recorded)." Such instrument need not be acknowledged to be entitled to record.

(2) When any such instrument is recorded, the county auditor shall index such instrument under the name of the person causing it to be recorded in the manner provided for miscellaneous instruments relating to real estate.

(3) Thereafter any of the provisions of such master form instrument may be incorporated by reference in any mortgage or deed of trust of real estate situated within this state, if such reference in the mortgage or deed of trust states that the master form instrument was recorded in the county in which the mortgage or deed of trust is offered for record, the date when and the book and page or pages or recording number where such master form instrument was recorded, and that a copy of such master form instrument was furnished to the person executing the mortgage or deed of trust. The recording of any mortgage or deed of trust which has so incorporated by reference therein any of the provisions of a master form instrument recorded as provided in this section shall have like effect as if such provisions of the master form so incorporated by reference had been set forth fully in the mortgage or deed of trust.

(4) Whenever a mortgage or deed of trust is presented for recording on which is set forth matter purporting to be a copy or reproduction of such master form instrument or of part thereof, identified by its title as provided in subsection (1) of this section and stating the date when it was recorded and the book and page where it was recorded, preceded by the words "do not record" or "not to be recorded," and plainly separated from the matter to be recorded as a part of the mortgage or deed of trust in such manner that it will not appear upon a photographic reproduction of any page containing any part of the mortgage or deed of trust, such matter shall not be recorded by the county auditor to whom the instrument is presented for recording; in such case the county auditor shall record only the mortgage or deed of trust apart from such matter and shall not be liable for so doing, any other provisions of law to the contrary notwithstanding. [1999 c 233 § 18; 1967 c 148 § 1.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**65.08.170 Notice of additional water or sewer facility tap or connection charges—Required—Contents.** When any municipality as defined in RCW 35.91.020 or any county

(2010 Ed.)

has levied or intends to levy a charge on property pertaining to:

(1) The amount required by the provisions of a contract pursuant to RCW 35.91.020 under which the water or sewer facilities so tapped into or used were constructed; or

(2) Any connection charges which are in fact reimbursement for the cost of facilities constructed by the sale of revenue bonds; or

(3) The additional connection charge authorized in RCW 35.92.025;

such municipality or county shall record in the office in which deeds are recorded of the county or counties in which such facility is located a notice of additional tap or connection charges. Such notice shall contain either the legal description of the land affected by such additional tap or connection charges or a map making appropriate references to the United States government survey showing in outline the land affected or to be affected by such additional tap or connection charges. [1977 c 72 § 1.]

**65.08.180 Notice of additional water or sewer facility tap or connection charges—Duration—Certificate of payment and release.** The notice required by RCW 65.08.170, when duly recorded, shall be effective until there is recorded in the same office in which the notice was recorded a certificate of payment and release executed by the municipality or county. Such certificate shall contain a legal description of the particular parcel of land so released and shall be recorded within thirty days of the date of payment thereof. [1977 c 72 § 2.]

**Chapter 65.12 RCW**

**REGISTRATION OF LAND TITLES (TORRENS ACT)**

Sections

65.12.005	Registration authorized—Who may apply.
65.12.010	Land subject to a lesser estate.
65.12.015	Tax title land—Conditions to registration.
65.12.020	Application.
65.12.025	Various lands in one application.
65.12.030	Amendment of application.
65.12.035	Form of application.
65.12.040	Venue—Power of the court.
65.12.050	Registrars of titles.
65.12.055	Bond of registrar.
65.12.060	Deputy registrar—Duties—Vacancy.
65.12.065	Registrar not to practice law—Liability for deputy.
65.12.070	Nonresident to appoint agent.
65.12.080	Filing application—Docket and record entries.
65.12.085	Filing abstract of title.
65.12.090	Examiner of titles—Appointment—Oath—Bond.
65.12.100	Copy of application as <i>lis pendens</i> .
65.12.110	Examination of title.
65.12.120	Summons to issue.
65.12.125	Summons—Form.
65.12.130	Parties to action.
65.12.135	Service of summons.
65.12.140	Copy mailed to nonresidents—Proof—Expense.
65.12.145	Guardians <i>ad litem</i> .
65.12.150	Who may appear—Answer.
65.12.155	Judgment by default—Proof.
65.12.160	Cause set for trial—Default—Referral.
65.12.165	Court may require further proof.
65.12.170	Application dismissed or withdrawn.
65.12.175	Decree of registration—Effect—Appellate review.
65.12.180	Rights of persons not served.
65.12.190	Limitation of actions.
65.12.195	Title free from incumbrances—Exceptions.

65.12.200	Decree—Contents—Filing.
65.12.210	Interest acquired after filing application.
65.12.220	Registration—Effect.
65.12.225	Withdrawal authorized—Effect.
65.12.230	Application to withdraw.
65.12.235	Certificate of withdrawal.
65.12.240	Effect of recording.
65.12.245	Title prior to withdrawal unaffected.
65.12.250	Entry of registration—Records.
65.12.255	Certificate of title.
65.12.260	Owner's certificate—Receipt.
65.12.265	Tenants in common.
65.12.270	Subsequent certificates.
65.12.275	Exchange of certificates—Platting land.
65.12.280	Effective date of certificate.
65.12.290	Certificate of title as evidence.
65.12.300	Indexes and files—Forms.
65.12.310	Tract and alphabetical indexes.
65.12.320	Dealings with registered land.
65.12.330	Registration has effect of recording.
65.12.340	Filing—Numbering—Indexing—Public records.
65.12.350	Duplicate of instruments certified—Fees.
65.12.360	New certificate—Register of less than fee—When form of memorial in doubt.
65.12.370	Owner's certificate to be produced when new certificate issued.
65.12.375	Owner's duplicate certificate.
65.12.380	Conveyance of registered land.
65.12.390	Certificate of tax payment.
65.12.400	Registered land charged as other land.
65.12.410	Conveyances by attorney-in-fact.
65.12.420	Encumbrances by owner.
65.12.430	Registration of mortgages.
65.12.435	Dealings with mortgages.
65.12.440	Foreclosures on registered land.
65.12.445	Registration of final decree—New certificate.
65.12.450	Title on foreclosure—Registration.
65.12.460	Petition for new certificate.
65.12.470	Registration of leases.
65.12.480	Instruments with conditions.
65.12.490	Transfers between trustees.
65.12.500	Trustee may register land.
65.12.510	Creation of lien on registered land.
65.12.520	Registration of liens.
65.12.530	Entry as to plaintiff's attorney.
65.12.540	Decree.
65.12.550	Title acquired on execution.
65.12.560	Termination of proceedings.
65.12.570	Land registered only after redemption period.
65.12.580	Registration on inheritance.
65.12.590	Probate court may direct sale of registered land.
65.12.600	Trustees and receivers.
65.12.610	Eminent domain—Reversion.
65.12.620	Registration when owner's certificate withheld.
65.12.630	Reference to examiner of title.
65.12.635	Examiner of titles.
65.12.640	Registered instruments to contain names and addresses—Service of notices.
65.12.650	Adverse claims—Procedure.
65.12.660	Assurance fund.
65.12.670	Investment of fund.
65.12.680	Recoveries from fund.
65.12.690	Parties defendant—Judgment—Payment—Duties of county attorney.
65.12.700	When fund not liable—Maximum liability.
65.12.710	Limitation of actions.
65.12.720	Proceeding to change records.
65.12.730	Certificate subject of theft—Penalty.
65.12.740	Perjury.
65.12.750	Fraud—False entries—Penalty.
65.12.760	Forgery—Penalty.
65.12.770	Civil actions unaffected.
65.12.780	Fees of clerk.
65.12.790	Fees of registrar.
65.12.800	Disposition of fees.
65.12.900	Construction—Chapter applicable to state registered domestic partnerships—2009 c 521.

### 65.12.005 Registration authorized—Who may apply.

The owner of any estate or interest in land, whether legal or equitable, except unpatented land, may apply as hereinafter provided to have the title of said land registered. The applica-

tion may be made by the applicant personally, or by an agent thereunto lawfully authorized in writing, which authority shall be executed and acknowledged in the same manner and form as is now required as to a deed, and shall be recorded in the office of the county auditor in the county in which the land, or the major portion thereof, is situated before the making of the application by such agent. A corporation may apply by its authorized agent, and an infant or any other person under disability by his legal guardian. Joint tenants and tenants in common shall join in the application. The person in whose behalf the application is made shall be named as applicant. [1907 c 250 § 1; RRS § 10622.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**65.12.010 Land subject to a lesser estate.** It shall not be an objection to bringing land under this chapter, that the estate or interest of the applicant is subject to any outstanding lesser estate, mortgage, lien or charge; but no mortgage, lien, charge or lesser estate than a fee simple shall be registered unless the estate in fee simple to the same land is registered; and every such lesser estate, mortgage, lien or charge shall be noted upon the certificate of title and the duplicate thereof, and the title or interest certified shall be subject only to such estates, mortgages, liens and charges as are so noted, except as herein provided. [1907 c 250 § 2; RRS § 10623.]

### 65.12.015 Tax title land—Conditions to registration.

No title derived through sale for any tax or assessment, or special assessment, shall be entitled to be registered, unless it shall be made to appear that the title of the applicant, or those through whom he claims title has been adjudicated by a court of competent jurisdiction, and a decree of such court duly made and recorded, decreeing the title of the applicant, or that the applicant or those through whom he claims title have been in the actual and undisputed possession of the land under such title at least seven years, immediately prior to the application, and shall have paid all taxes and assessments legally levied thereon during said times; unless the same is vacant and unoccupied lands or lots, in which case, where title is derived through sale for any tax or assessment or special assessment for any such vacant and unoccupied lands or lots, and the applicant, or those through whom he claims title, shall have paid all taxes and assessments legally levied thereon for eight successive years immediately prior to the application, in which case such lands and lots shall be entitled to be registered as other lands provided for by this section. [1907 c 250 § 3; RRS § 10624.]

**65.12.020 Application.** The application shall be in writing and shall be signed and verified by the oath of the applicant, or the person acting in his behalf. It shall set forth substantially:

(1) The name and place of residence of the applicant, and if the application is by one acting in behalf of another, the name and place of residence and capacity of the person so acting.

(2) Whether the applicant (except in the case of a corporation) is married or not, and, if married, the name and residence of the husband or wife, and the age of the applicant.

(3) The description of the land and the assessed value thereof, exclusive of improvements, according to the last official assessment, the same to be taken as a basis for the payments required under RCW 65.12.670 and 65.12.790(1).

(4) The applicant’s estate or interest in the same, and whether the same is subject to homestead exemption.

(5) The names of all persons or parties who appear of record to have any title, claim, estate, lien or interest in the lands described in the application for registration.

(6) Whether the land is occupied or unoccupied, and if occupied by any other person than the applicant, the name and post office address of each occupant, and what estate he has or claims in the land.

(7) Whether the land is subject to any lien or incumbrance, and if any, give the nature and amount of the same, and if recorded, the book and page of record; also give the name and post office address of each holder thereof.

(8) Whether any other person has any estate or claims any interest in the land, in law or equity, in possession, remainder, reversion or expectancy, and if any, set forth the name and post office address of every such person and the nature of his estate or claim.

(9) In case it is desired to settle or establish boundary lines, the names and post office addresses of all the owners of the adjoining lands that may be affected thereby, as far as he is able, upon diligent inquiry, to ascertain the same.

(10) If the application is on behalf of a minor, the age of such minor shall be stated.

(11) When the place of residence of any person whose residence is required to be given is unknown, it may be so stated if the applicant will also state that upon diligent inquiry he had been unable to ascertain the same. [1907 c 250 § 4; RRS § 10625.]

**65.12.025 Various lands in one application.** Any number of contiguous pieces of land in the same county, and owned by the same person, and in the same right, or any number of pieces of property in the same county having the same chain of title and belonging to the same person, may be included in one application. [1907 c 250 § 5; RRS § 10626.]

**65.12.030 Amendment of application.** The application may be amended only by supplemental statement in writing, signed and sworn to as in the case of the original application. [1907 c 250 § 6; RRS § 10627.]

**65.12.035 Form of application.** The form of application may, with appropriate changes, be substantially as follows:

FORM OF APPLICATION FOR INITIAL REGISTRATION OF TITLE TO LAND

State of Washington }  
County of ..... } ss.

In the superior court of the state of Washington in and for ..... county.

In the matter of the application of. .... to register the title to the land hereinafter described } PETITION

To the Honorable ....., judge of said court: I hereby make application to have registered the title to the land hereinafter described, and do solemnly swear that the answers to the questions herewith, and the statements herein contained, are true to the best of my knowledge, information and belief.

First. Name of applicant, ....., age, .... years. Residence, ..... (number and street, if any). Married to or in a state registered domestic partnership with ..... (name of husband, wife, or state registered domestic partner).

Second. Applications made by ....., acting as ..... (owner, agent or attorney). Residence, ..... (number, street).

Third. Description of real estate is as follows: ..... estate or interest therein is ..... and ..... subject to homestead.

Fourth. The land is ..... occupied by ..... (names of occupants), whose address is ..... (number street and town or city). The estate, interest or claim of occupant is .....

Fifth. Liens and incumbrances on the land ..... Name of holder or owner thereof is ..... Whose post office address is ..... Amount of claim, \$. ... Recorded, Book ....., page ....., of the records of said county.

Sixth. Other persons, firm or corporation having or claiming any estate, interest or claim in law or equity, in possession, remainder, reversion or expectancy in said land are ..... whose addresses are ..... respectively. Character of estate, interest or claim is .....

Seventh. Other facts connected with said land and appropriate to be considered in this registration proceeding are .....

Eighth. Therefore, the applicant prays this honorable court to find or declare the title or interest of the applicant in said land and decree the same, and order the registrar of titles to register the same and to grant such other and further relief as may be proper in the premises.

..... (Applicant’s signature) By ....., agent, attorney, administrator or guardian. Subscribed and sworn to before me this .... day of ....., A.D. 19...

..... Notary Public in and for the state of Washington, residing at .....

[2009 c 521 § 145; 1907 c 250 § 7; RRS § 10628.]

**65.12.040 Venue—Power of the court.** The application for registration shall be made to the superior court of the state of Washington in and for the county wherein the land is situated. Said court shall have power to inquire into the condition of the title to and any interest in the land and any lien or encumbrance thereon, and to make all orders, judgments and decrees as may be necessary to determine, establish and declare the title or interest, legal or equitable, as against all persons, known, or unknown, and all liens and incumbrances existing thereon, whether by law, contract, judgment, mortgage, trust deed or otherwise, and to declare the order, priority and preference as between the same, and to remove all clouds from the title. [1907 c 250 § 8; RRS § 10629.]

**65.12.050 Registrars of titles.** The county auditors of the several counties of this state shall be registrars of titles in their respective counties; and their deputies shall be deputy registrars. All acts performed by registrars and deputy registrars under this law shall be performed under rules and instructions established and given by the superior court having jurisdiction of the county in which they act. [1907 c 250 § 9; RRS § 10630.]

**65.12.055 Bond of registrar.** Every county auditor shall, before entering upon his duties as registrar of titles, give a bond with sufficient sureties, to be approved by a judge of the superior court of the state of Washington in and for his county, payable to the state of Washington, in such sum as shall be fixed by the said judge of the superior court, conditioned for the faithful discharge of his duties, and to deliver up all papers, books, records and other property belonging to the county or appertaining to his office as registrar of titles, whole, safe and undamaged, when lawfully required so to do; said bond shall be filed in the office of the secretary of state, and a copy thereof shall be filed and entered upon the records of the superior court in the county wherein the county auditor shall hold office. [1907 c 250 § 10; RRS § 10631.]

**65.12.060 Deputy registrar—Duties—Vacancy.** Deputy registrars shall perform any and all duties of the registrar in the name of the registrar, and the acts of such deputies shall be held to be the acts of the registrar, and in the case of the death of the registrar or his removal from office, the vacancy shall be filled in the same manner as is provided by law for filling such vacancy in the office of the county auditor. The person so appointed to fill such vacancy shall file a bond and be vested with the same powers as the registrar whose office he is appointed to fill. [1907 c 250 § 11; RRS § 10632.]

**65.12.065 Registrar not to practice law—Liability for deputy.** No registrar or deputy registrar shall practice as an attorney or counselor at law, nor prepare any papers in any proceeding herein provided for, nor while in the office be in partnership with any attorney or counselor at law so practicing. The registrar shall be liable for any neglect or omission of the duties of his office when occasioned by a deputy registrar, in the same manner as for his own personal neglect or omission. [1907 c 250 § 12; RRS § 10633.]

**65.12.070 Nonresident to appoint agent.** If the applicant is not a resident of the state of Washington, he shall file with his application a paper, duly acknowledged, appointing an agent residing in this state, giving his name in full and post office address, and shall therein agree that the service of any legal process in proceedings under or growing out of the application shall be of the same legal effect when made on said agent as if made on the applicant within this state. If the agent so appointed dies or removes from the state, the applicant shall at once make another appointment in like manner, and if he fails so to do, the court may dismiss the application. [1907 c 250 § 14; RRS § 10635.]

**65.12.080 Filing application—Docket and record entries.** The application shall be filed in the office of the clerk of the court to which the application is made and in case of personal service a true copy thereof shall be served with the summons, and the clerk shall docket the case in a book to be kept for that purpose, which shall be known as the "land registration docket". The record entry of the application shall be entitled (name of applicant), plaintiff, against (here insert the names of all persons named in the application as being in possession of the premises, or as having any lien, incumbrance, right, title or interest in the land, and the names of all persons who shall be found by the report of the examiner hereinafter provided for to be in possession or to have any lien, incumbrance, right, title or interest in the land), also all other persons or parties unknown, claiming any right, title, estate, lien or interest in the real estate described in the application herein, defendants.

All orders, judgments and decrees of the court in the case shall be appropriately entered in such docket. All final orders or decrees shall be recorded, and proper reference made thereto in such docket. [1907 c 250 § 15; RRS § 10636.]

**65.12.085 Filing abstract of title.** The applicant shall also file with the said clerk, at the time the application is made, an abstract of title such as is now commonly used, prepared and certified to by the county auditor of the county, or a person, firm or corporation regularly engaged in the abstract business, and having satisfied the said superior court that they have a complete set of abstract books and are in existence and doing business at the time of the filing of the application under this chapter. [1907 c 250 § 15a; RRS § 10637.]

**65.12.090 Examiner of titles—Appointment—Oath—Bond.** The judges of the superior court in and for the state of Washington for the counties for which they were elected or appointed shall appoint a competent attorney in each county to be examiner of titles and legal adviser of the registrar. The examiner of titles in each county shall be paid in each case by the applicant such compensation as the judge of the superior court of the state of Washington in and for that county shall determine. Every examiner of titles shall, before entering upon the duties of his office, take and subscribe an oath of office to faithfully and impartially perform the duties of his office, and shall also give a bond in such amount and with such sureties as shall be approved by the judge of the said superior court, payable in like manner and with like conditions as required of the registrar. A copy of the bond shall

be entered upon the records of said court and the original shall be filed with the registrar. [1907 c 250 § 13; RRS § 10634.]

**65.12.100 Copy of application as lis pendens.** At the time of the filing of the application in the office of the clerk of the court, a copy thereof, certified by the clerk, shall be filed (but need not be recorded) in the office of the county auditor, and shall have the force and effect of a lis pendens. [1907 c 250 § 16; RRS § 10638.]

**65.12.110 Examination of title.** Immediately after the filing of the abstract of title, the court shall enter an order referring the application to an examiner of titles, who shall proceed to examine into the title and into the truth of the matters set forth in the application, and particularly whether the land is occupied, the nature of the occupation, if occupied, and by what right, and, also as to all judgments against the applicant or those through whom he claims title, which may be a lien upon the lands described in the application; he shall search the records and investigate all the facts brought to his notice, and file in the case a report thereon, including a certificate of his opinion upon the title. The clerk of the court shall thereupon give notice to the applicant of the filing of such report. If the opinion of the examiner is adverse to the applicant, he shall be allowed by the court a reasonable time in which to elect to proceed further, or to withdraw his application. The election shall be made in writing, and filed with the clerk of the court. [1907 c 250 § 17; RRS § 10639.]

**65.12.120 Summons to issue.** If, in the opinion of the examiner, the applicant has a title, as alleged, and proper for registration, or if the applicant, after an adverse opinion of the examiner, elects to proceed further, the clerk of the court shall, immediately upon the filing of the examiner's opinion or the applicant's election, as the case may be, issue a summons substantially in the form hereinafter provided. The summons shall be issued by the order of the court and attested by the clerk of the court. [1907 c 250 § 18; RRS § 10640.]

**65.12.125 Summons—Form.** The summons provided for in RCW 65.12.135 shall be in substance in the form following, to wit:

SUMMONS ON APPLICATION FOR  
REGISTRATION OF LAND

State of Washington, }  
County of . . . . . , } ss.

In the superior court of the state of Washington in and for the county of . . . . . (name of applicant), plaintiff, . . . . ., versus . . . . . (names of all defendants), and all other persons or parties unknown, claiming any right, title, estate, lien or interest in the real estate, described in the application herein . . . . . defendants.

The state of Washington to the above-named defendants, greeting:

You are hereby summoned and required to answer the application of the applicant plaintiff in the above entitled application for registration of the following land situate in . . . . . county, Washington, to wit: (description of land), and to file your answer to the said application in the office of the clerk of said court, in said county, within twenty days after the service of this summons upon you, exclusive of the day of such service; and if you fail to answer the said application within the time aforesaid, the applicant plaintiff in this action will apply to the court for the relief demanded in the application herein.

Witness, . . . . ., clerk of said court and the seal thereof, at . . . . ., in said county and state, this . . . . day of . . . . ., A.D. 19. . .

(Seal.) . . . . . Clerk.

[1907 c 250 § 206; RRS § 10644.]

**65.12.130 Parties to action.** The applicant shall be known in the summons as the plaintiff. All persons named in the application or found by the report of the examiner as being in possession of the premises or as having of record any lien, incumbrance, right, title, or interest in the land, and all other persons who shall be designated as follows, viz: "All other persons or parties unknown claiming any right, title, estate, lien or interest in, to, or upon the real estate described in the application herein," shall be and shall be known as defendants. [1907 c 250 § 19; RRS § 10641.]

**65.12.135 Service of summons.** The summons shall be directed to the defendants and require them to appear and answer the application within twenty days after the service of the summons, exclusive of the day of service; and the summons shall be served as is now provided for the service of summons in civil actions in the superior court in this state, except as herein otherwise provided. The summons shall be served upon nonresident defendants and upon "all such unknown persons or parties," defendant, by publishing the summons in a newspaper of general circulation in the county where the application is filed, once in each week for three consecutive weeks, and the service by publication shall be deemed complete at the end of the twenty-first day from and including the first publication, provided that if any named defendant assents in writing to the registration as prayed for, which assent shall be endorsed upon the application or filed therewith and be duly witnessed and acknowledged, then in all such cases no service of summons upon the defendant shall be necessary. [1985 c 469 § 60; 1907 c 250 § 20; RRS § 10642.]

**65.12.140 Copy mailed to nonresidents—Proof—Expense.** The clerk of the court shall also, on or before twenty days after the first publication, send a copy thereof by mail to such defendants who are not residents of the state whose place of address is known or stated in the application, and whose appearance is not entered and who are not in person served with the summons. The certificate of the clerk that he has sent such notice, in pursuance of this section, shall be conclusive evidence thereof. Other or further notice of the application for registration may be given in such manner and to such persons as the court or any judge thereof may direct.

The summons shall be served at the expense of the applicant, and proof of the service thereof shall be made as proof of service is now made in other civil actions. [1907 c 250 § 20a; RRS § 10643.]

**65.12.145 Guardians ad litem.** The court shall appoint a disinterested person to act as guardian ad litem for minors and other persons under disability, and for all other persons not in being who may appear to have an interest in the land. The compensation of the said guardian shall be determined by the court, and paid as a part of the expense of the proceeding. [1907 c 250 § 21; RRS § 10645.]

**65.12.150 Who may appear—Answer.** Any person claiming an interest, whether named in the summons or not, may appear and file an answer within the time named in the summons, or within such further time as may be allowed by the court. The answer shall state all objections to the application, and shall set forth the interests claimed by the party filing the same, and shall be signed and sworn to by him or by some person in his behalf. [1907 c 250 § 22; RRS § 10646.]

**65.12.155 Judgment by default—Proof.** If no person appears and answers within the time named in the summons, or allowed by the court, the court may at once, upon the motion of the applicant, no reason to the contrary appearing, upon satisfactory proof of the applicant's right thereto, make its order and decree confirming the title of the applicant and ordering registration of the same. By the description in the summons, "all other persons unknown, claiming any right, title, lien, or interest in, to, or upon the real estate described in the application herein", all the world are made parties defendant, and shall be concluded by the default, order and decree. The court shall not be bound by the report of the examiners of title, but may require other or further proof. [1907 c 250 § 23; RRS § 10647.]

**65.12.160 Cause set for trial—Default—Referral.** If, in any case an appearance is entered and answer filed, the cause shall be set down for hearing on motion of either party, but a default and order shall first be entered against all persons who do not appear and answer in the manner provided in RCW 65.12.155. The court may refer the cause or any part thereof to one of the examiners of title, as referee, to hear the parties and their evidence, and make report thereon to the court. His report shall have the same force and effect as that of a referee appointed by the said superior court under the laws of this state now in force, and relating to the appointment, duties and powers of referees. [1907 c 250 § 24; RRS § 10648.]

**65.12.165 Court may require further proof.** The court may order such other or further hearing of the cause before the court or before the examiner of titles after the filing of the report of the examiner, referred to in RCW 65.12.160, and require such other and further proof by either of the parties to the cause as to the court shall seem meet and proper. [1907 c 250 § 25; RRS § 10649.]

**65.12.170 Application dismissed or withdrawn.** If, in any case, after hearing, the court finds that the applicant has not title proper for registration, a decree shall be entered dismissing the application, and such decree may be ordered to be without prejudice. The applicant may dismiss his application at any time, before the final decree, upon such terms as may be fixed by the court, and upon motion to dismiss duly made by the court. [1907 c 250 § 26; RRS § 10650.]

**65.12.175 Decree of registration—Effect—Appellate review.** If the court, after hearing, finds that the applicant has title, whether as stated in his application or otherwise, proper for registration, a decree of confirmation of title and registration shall be entered. Every decree of registration shall bind the land, and quiet the title thereto, except as herein otherwise provided, and shall be forever binding and conclusive upon all persons, whether mentioned by name in the application, or included in "all other persons or parties unknown claiming any right, title, estate, lien or interest in, to, or upon the real estate described in the application herein", and such decree shall not be opened by reason of the absence, infancy or other disability of any person affected thereby, nor by any proceeding at law, or in equity, for reversing judgments or decrees, except as herein especially provided. Appellate review of the court's decision may be sought as in other civil actions. [1988 c 202 § 56; 1971 c 81 § 132; 1907 c 250 § 27; RRS § 10651.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**65.12.180 Rights of persons not served.** Any person having an interest in or lien upon the land who has not been actually served with process or notified of the filing of the application or the pendency thereof, may at any time within ninety days after the entry of such decree, and not afterwards, appear and file his sworn answer to such application in like manner as hereinbefore prescribed for making answer: PROVIDED, HOWEVER, That such person had no actual notice or information of the filing of such application or the pendency of the proceedings during the pendency thereof, or until within three months of the time of the filing of such answer, which facts shall be made to appear before answering by the affidavit of the person answering or the affidavit of some one in his behalf having knowledge of the facts, and PROVIDED, ALSO, that no innocent purchaser for value has acquired an interest. If there is any such purchaser, the decree of registration shall not be opened, but shall remain in full force and effect forever, subject only to the right of appeal hereinbefore provided; but any person aggrieved by such decree in any case may pursue his remedy by suit in the nature of an action of tort against the applicant or any other person for fraud in procuring the decree; and may also bring his action for indemnity as hereinafter provided. Upon the filing of such answer, and not less than ten days' notice having been given to the applicant, and to such other interested parties as the court may order in such manner as shall be directed by the court, the court shall proceed to review the case, and if the court is satisfied that the order or decree ought to be opened, an order shall be entered to that effect, and the court shall proceed to review the proceedings, and shall make such order in the case as shall be equitable in the premises. An appeal may be allowed in this case, as well as from all other

decrees affecting any registered title within a like time, and in a like manner, as in the case of an original decree under this chapter, and not otherwise. [1907 c 250 § 28; RRS § 10652.]

**65.12.190 Limitation of actions.** No person shall commence any proceeding for the recovery of lands or any interest, right, lien or demand therein or upon the same adverse to the title or interest as found, or decreed in the decree of registration, unless within ninety days after the entry of the order or decree; and this section shall be construed as giving such right of action to such person only as shall not, because of some irregularity, insufficiency, or for some other cause, be bound and concluded by such order or decree. [1907 c 250 § 29; RRS § 10653.]

**65.12.195 Title free from incumbrances—Exceptions.** Every person receiving a certificate of title in pursuance of a decree of registration, and every subsequent purchaser of registered land who takes a certificate of title for value and in good faith, shall hold the same free from all incumbrances except only such estates, mortgages, liens, charges and interests as may be noted in the last certificate of title in the registrar’s office, and except any of the following rights or incumbrances subsisting, namely:

- (1) Any existing lease for a period not exceeding three years, when there is actual occupation of the premises under the lease.
- (2) All public highways embraced in the description of the land included in the certificates shall be deemed to be excluded from the certificate. And any subsisting right-of-way or other easement, for ditches or water rights, upon, over or in respect to the land.
- (3) Any tax or special assessment for which a sale of the land has not been had at the date of the certificate of title.
- (4) Such right of appeal, or right to appear and contest the application, as is allowed by this chapter. And,
- (5) Liens, claims or rights, if any, arising or existing under the constitution or laws of the United States, and which the statutes of this state cannot or do not require to appear of record in the office of the county clerk and county auditor. [1907 c 250 § 30; RRS § 10654.]

**65.12.200 Decree—Contents—Filing.** Every decree of registration shall bear the date of the year, day, hour and minute of its entry, and shall be signed by the judge of the superior court of the state of Washington in and for the county in which the land is situated; it shall state whether the owner is married or unmarried, and if married, the name of the husband or wife; if the owner is under disability it shall state the nature of the disability, and if a minor, shall state his age. It shall contain a description of the land as finally determined by the court, and shall set forth the estate of the owner, and also in such manner as to show their relative priority, all particular estates, mortgages, easements, liens, attachments, homesteads and other incumbrances, including rights of husband and wife, if any, to which the land or the owner’s estate is subject, and shall contain any other matter or information properly to be determined by the court in pursuance of this chapter. The decree shall be stated in a convenient form for transcription upon the certificate of title, to be made as here-

inafter provided by the registrar of titles. Immediately upon the filing of the decree of registration, the clerk shall file a certified copy thereof in the office of the registrar of titles. [1907 c 250 § 31; RRS § 10655.]

**65.12.210 Interest acquired after filing application.** Any person who shall take by conveyance, attachment, judgment, lien or otherwise any right, title or interest in the land, subsequent to the filing of a copy of the application for registration in the office of the county auditor, shall at once appear and answer as a party defendant in the proceeding for registration, and the right, title or interest of such person shall be subject to the order or decree of the court. [1907 c 250 § 32; RRS § 10656.]

**65.12.220 Registration—Effect.** The obtaining of a decree of registration and receiving of a certificate of title shall be deemed an agreement running with the land and binding upon the applicant and the successors in title, that the land shall be and forever remain registered land, subject to the provisions of this chapter and of all acts amendatory thereof, unless the same shall be withdrawn from registration in the manner hereinafter provided. All dealings with the land or any estate or interest therein after the same has been brought under this chapter, and all liens, encumbrances, and charges upon the same shall be made only subject to the terms of this chapter, so long as said land shall remain registered land and until the same shall be withdrawn from registration in the manner hereinafter provided. [1917 c 62 § 1; 1907 c 250 § 33; RRS § 10657.]

**65.12.225 Withdrawal authorized—Effect.** The owner or owners of any lands, the title to which has been or shall hereafter be registered in the manner provided by law, shall have the right to withdraw said lands from registration in the manner hereinafter provided, and after the same have been so withdrawn from registration, shall have the right to contract concerning, convey, encumber or otherwise deal with the title to said lands as freely and to the same extent and in the same manner as though the title had not been registered. [1917 c 62 § 2; RRS § 10658.]

**65.12.230 Application to withdraw.** The owner or owners of registered lands, desiring to withdraw the same from registration, shall make and file with the registrar of titles in the county in which said lands are situated, an application in substantially the following form:

To the registrar of titles in the county of . . . . ., state of Washington:

I, (or we), . . . . ., the undersigned registered owner . . . in fee simple of the following described real property situated in the county of . . . . ., state of Washington, to wit: (here insert the description of the property), hereby make application to have the title to said real property withdrawn from registration.

Witness my (or our) hand . . . and seal . . . this . . . day of . . . . ., 19 . . .

. . . . .  
Applicant’s signature.

Said application shall be acknowledged in the same manner as is required for the acknowledgment of deeds. [1917 c 62 § 3; RRS § 10659.]

**65.12.235 Certificate of withdrawal.** Upon the filing of such application and the payment of a fee of five dollars, the registrar of titles, if it shall appear that the application is signed and acknowledged by all the registered owners of said land, shall issue to the [applicant] a certificate in substantially the following form:

This is to certify, That . . . . . the owner (or owners) in fee simple of the following described lands situated in the county of . . . . ., state of Washington, the title to which has been heretofore registered under the laws of the state of Washington, to wit: (here insert description of the property), having heretofore filed his (or their) application for the withdrawal of the title to said lands from the registry system; NOW, THEREFORE, The title to said above described lands has been withdrawn from the effect and operation of the title registry system of the state of Washington and the owner (or owners) of said lands is (or are) by law authorized to contract concerning, convey, encumber or otherwise deal with the title to said lands in the same manner and to the same extent as though said title had never been registered.

Witness my hand and seal this . . . . day of . . . . ., 19. . .

.....  
Registrar of Titles for  
..... county.

[1973 c 121 § 1; 1917 c 62 § 4; RRS § 10660.]

**65.12.240 Effect of recording.** The person receiving such certificate of withdrawal shall record the same in the record of deeds in the office of the county auditor of the county in which the lands are situated and thereafter the title to said lands shall be conveyed or encumbered in the same manner as the title to lands that have not been registered. [1917 c 62 § 5; RRS § 10661.]

**65.12.245 Title prior to withdrawal unaffected.** \*This act shall not be construed to disturb the effect of any proceedings under said registry system, wherein the question of title to said real property has been determined, but all proceedings had in connection with the registering of said title, relating to the settlement or determination of said title, prior to such withdrawal, shall have the same force and effect as if said title still remained under said registry system. [1917 c 62 § 6; RRS § 10662.]

\*Reviser's note: The language "This act" appears in 1917 c 62 codified herein as RCW 65.12.220 through 65.12.245.

**65.12.250 Entry of registration—Records.** Immediately upon the filing of the decree of registration in the office of the registrar of titles, the registrar shall proceed to register the title or interest pursuant to the terms of the decree in the manner herein provided. The registrar shall keep a book known as the "Register of Titles", wherein he shall enter all first and subsequent original certificates of title by binding or

recording them therein in the order of their numbers, consecutively, beginning with number one, with appropriate blanks for entry of memorials and notations allowed by this chapter. Each certificate, with such blanks, shall constitute a separate page of such book. All memorials and notations that may be entered upon the register shall be entered upon the page whereon the last certificate of title of the land to which they relate is entered. The term certificate of title used in this chapter shall be deemed to include all memorials and notations thereon. [1907 c 250 § 34; RRS § 10663.]

**65.12.255 Certificate of title.** The certificate of registration shall contain the name of the owner, a description of the land and of the estate of the owner, and shall by memorial or notation contain a description of all incumbrances, liens and interests to which the estate of the owner is subject; it shall state the residence of the owner and, if a minor, give his age; if under disability, it shall state the nature of the disability; it shall state whether married or not, and, if married, the name of the husband or wife; in case of a trust, condition or limitation, it shall state the trust, condition or limitation, as the case may be; and shall contain and conform in respect to all statements to the certified copy of the decree of registration filed with the registrar of titles as hereinbefore provided; and shall be in form substantially as follows:

FIRST CERTIFICATE OF TITLE

Pursuant to order of the superior court of the state of Washington, in and for . . . . . county.  
State of Washington, }  
County of . . . . ., } ss.

This is to certify that A. . . . . B. . . . . of . . . . ., county of . . . . ., state of . . . . ., is now the owner of an estate (describe the estate) of, and in (describe the land), subject to the incumbrances, liens and interests noted by the memorial underwritten or indorsed thereon, subject to the exceptions and qualifications mentioned in the thirtieth section of "An Act relating to the registration and confirmation of titles to land," in the session laws of Washington for the year 1907 [RCW 65.12.195]. (Here note all statements provided herein to appear upon the certificate.)

In witness whereof, I have hereunto set my hand and affixed the official seal of my office this . . . . day of . . . . ., A.D. 19. . .  
(Seal)

.....  
Registrar of Titles.

[1907 c 250 § 35; RRS § 10664.]

**65.12.260 Owner's certificate—Receipt.** The registrar shall, at the time that he enters his original certificate of title, make an exact duplicate thereof, but putting on it the words "Owner's duplicate certificate of ownership", and deliver the same to the owner or to his attorney duly authorized. For the purpose of preserving evidence of the signature and handwriting of the owner in his office, it shall be the duty of the registrar to take from the owner, in every case where it is

practicable so to do, his receipt for the certificate of title which shall be signed by the owner in person. Such receipt, when signed and delivered in the registrar's office, shall be witnessed by the registrar or deputy registrar. If such receipt is signed elsewhere, it shall be witnessed and acknowledged in the same manner as is now provided for the acknowledgment of deeds. When so signed, such receipt shall be prima facie evidence of the genuineness of such signature. [1907 c 250 § 36; RRS § 10665.]

**65.12.265 Tenants in common.** Where two or more persons are registered owners as tenants in common or otherwise, one owner's duplicate certificate can be issued for the entirety, or a separate duplicate owner's certificate may be issued to each owner for his undivided share. [1907 c 250 § 37; RRS § 10666.]

**65.12.270 Subsequent certificates.** All certificates subsequent to the first shall be in like form, except that they shall be entitled: "Transfer from No. . . .", (the number of the next previous certificate relating to the same land), and shall also contain the words "Originally registered on the . . . day of . . . , 19. . . , and entered in the book . . . at page . . . of register." [1907 c 250 § 38; RRS § 10667.]

**65.12.275 Exchange of certificates—Platting land.** A registered owner holding one duplicate certificate for several distinct parcels of land may surrender it and take out several certificates for portions thereof. A registered owner holding several duplicate certificates for several distinct parcels of land may surrender them and take out a single duplicate certificate for all of said parcels, or several certificates for different portions thereof. Such exchange of certificates, however, shall only be made by the order of the court upon petition therefor duly made by the owner. An owner of registered land who shall subdivide such land into lots, blocks or acre tracts shall file with the registrar of titles a plat of said land so subdivided, in the same manner and subject to the same rules of law and restrictions as is provided for platting land that is not registered. [1907 c 250 § 39; RRS § 10668.]

**65.12.280 Effective date of certificate.** The certificate of title shall relate back to and take effect as of the date of the decree of registration. [1907 c 250 § 40; RRS § 10669.]

**65.12.290 Certificate of title as evidence.** The original certificate in the registration book, any copy thereof duly certified under the signature of the registrar of titles or his deputy, and authenticated by his seal and also the owner's duplicate certificate shall be received as evidence in all the courts of this state, and shall be conclusive as to all matters contained therein, except so far as is otherwise provided in this chapter. In case of a variance between the owner's duplicate certificate and the original certificate, the original shall prevail. [1907 c 250 § 41; RRS § 10670.]

**65.12.300 Indexes and files—Forms.** The registrar of titles, under the direction of the court, shall make and keep indexes of all duplication and of all certified copies and decrees of registration and certificates of titles, and shall also

index and file in classified order all papers and instruments filed in his office relating to applications and to registered titles. The registrar shall also, under the direction of the court, prepare and keep forms of indexes and entry books. The court shall prepare and adopt convenient forms of certificates of titles, and also general forms of memorials or notations to be used by the registrars of titles in registering the common forms of conveyance and other instruments to express briefly their effect. [1907 c 250 § 42; RRS § 10671.]

**65.12.310 Tract and alphabetical indexes.** The registrar of titles shall keep tract indexes, in which shall be entered the lands registered in the numerical order of the townships, ranges, sections, and in cases of subdivisions, the blocks and lots therein, and the names of the owners, with a reference to the volume and page of the register of titles in which the lands are registered. He shall also keep alphabetical indexes, in which shall be entered, in alphabetical order, the names of all registered owners, and all other persons interested in, or holding charges upon, or any interest in, the registered land, with a reference to the volume and page of the register of titles in which the land is registered. [1907 c 250 § 43; RRS § 10672.]

**65.12.320 Dealings with registered land.** The owner of registered land may convey, mortgage, lease, charge or otherwise incur, dispose of or deal with the same as fully as if it had not been registered. He may use forms of deeds, trust deeds, mortgages and leases or voluntary instruments, like those now in use, and sufficient in law for the purpose intended. But no voluntary instrument of conveyance, except a will and a lease, for a term not exceeding three years, purporting to convey or affect registered land, shall take effect as a conveyance, or bind the land; but shall operate only as a contract between the parties, and as evidence of the authority to the registrar of titles to make registration. The act of registration shall be the operative act to convey or affect the land. [1907 c 250 § 44; RRS § 10673.]

**65.12.330 Registration has effect of recording.** Every conveyance, lien, attachment, order, decree, judgment of a court of record, or instrument or entry which would, under existing law, if recorded, filed or entered in the office of the county clerk, and county auditor, of the county in which the real estate is situate, affect the said real estate to which it relates, if the title thereto were not registered, shall, if recorded, filed or entered in the office of the registrar of titles in the county where the real estate to which such instrument relates is situate, affect in like manner the title thereto if registered, and shall be notice to all persons from the time of such recording, filing or entering. [1907 c 250 § 45; RRS § 10674.]

**65.12.340 Filing—Numbering—Indexing—Public records.** The registrar of titles shall number and note in a proper book to be kept for that purpose, the year, month, day, hour and minute of reception and number of all conveyances, orders or decrees, writs or other process, judgments, liens, or all other instruments, or papers or orders affecting the title of land, the title to which is registered. Every instrument so filed

shall be retained in the office of the registrar of titles, and shall be regarded as registered from the time so noted, and the memorial of each instrument, when made on the certificate of title to which it refers, shall bear the same date. Every instrument so filed, whether voluntary or involuntary, shall be numbered and indexed, and indorsed with a reference to the proper certificate of title. All records and papers, relating to registered land, in the office of the registrar of titles shall be open to public inspection, in the same manner as are now the papers and records in the office of the county clerk and county auditor. [1907 c 250 § 46; RRS § 10675.]

**65.12.350 Duplicate of instruments certified—Fees.**

Duplicates of all instruments, voluntary or involuntary, filed and registered in the office of the registrar of titles, may be presented with the originals, and shall be attested and sealed by the registrar of titles, and indorsed with the file number and other memoranda on the originals, and may be taken away by the person presenting the same. Certified copies of all instruments filed and registered may be obtained from the registrar of titles, on the payment of a fee of the same amount as is now allowed the county clerk and county auditor, for a like certified copy. [1907 c 250 § 47; RRS § 10676.]

**65.12.360 New certificate—Register of less than fee—When form of memorial in doubt.** No new certificate shall be entered or issued upon any transfer of registered land, which does not divest the title in fee simple of said land or some part thereof, from the owner or some one of the registered owners. All interest in the registered land, less than a freehold estate, shall be registered by filing with the registrar of titles, the instruments creating, transferring or claiming such interest, and by a brief memorandum or memorial thereof, made by a registrar of titles upon the certificate of title, and signed by him. A similar memorandum, or memorial, shall also be made on the owner's duplicate.

The cancellation or extinguishment of such interests shall be registered in the same manner. When any party in interest does not agree as to the proper memorial to be made upon the filing of any instrument, (voluntary or involuntary), presented for registration, or where the registrar of titles is in doubt as to the form of such memorial, the question shall be referred to the court for decision, either on the certificate of the registrar of titles, or upon the demand in writing of any party in interest.

The registrar of titles shall bring before the court all the papers and evidence which may be necessary for the determination of the question by the court. The court, after notice to all parties in interest and a hearing, shall enter an order prescribing the form of the memorial, and the registrar of titles shall make registration in accordance therewith. [1907 c 250 § 48; RRS § 10677.]

**65.12.370 Owner's certificate to be produced when new certificate issued.** No new certificates of titles shall be entered, and no memorial shall be made upon any certificate of title, in pursuance of any deed, or other voluntary instrument, unless the owner's duplicate certificate is presented with such instrument, except in cases provided for in this chapter, or upon the order of the court for cause shown; and

whenever such order is made a memorial therefor shall be entered, or a new certificate issued, as directed by said order. The production of the owner's duplicate certificate, whenever any voluntary instrument is presented for registration, shall be conclusive authority from the registered owner to the registrar of titles, to enter a new certificate, or to make a memorial of registration in accordance with such instrument; and a new certificate or memorial shall be binding upon the registered owner and upon all persons claiming under him in favor of every purchaser for value and in good faith. [1907 c 250 § 49; RRS § 10678.]

**65.12.375 Owner's duplicate certificate.** In the event that an owner's duplicate certificate of title shall be lost, mislaid or destroyed, the owner may make affidavit of the fact before any officer authorized to administer oaths, stating, with particularity, the facts relating to such loss, mislaying or destruction, and shall file the same in the office of the registrar of titles.

Any party in interest may thereupon apply to the court, and the court shall, upon proofs of the facts set forth in the affidavits, enter an order directing the registrar of titles to make and issue a new owner's duplicate certificate, such new owner's duplicate certificate shall be printed or marked, "Certified copy of owner's duplicate certificate", and such certified copy shall stand in the place of and have like effect as the owner's duplicate certificate. [1907 c 250 § 50; RRS § 10679.]

**65.12.380 Conveyance of registered land.** An owner of registered land, conveying the same, or any portion thereof, in fee, shall execute a deed of conveyance, which the grantor shall file with the registrar of titles in the county where the land lies. The owner's duplicate certificate shall be surrendered at the same time and shall be by the registrar marked "Canceled". The original certificate of title shall also be marked "Canceled". The registrar of titles shall thereupon entered in the register of titles, a new certificate of title to the grantee, and shall prepare and deliver to such grantee an owner's duplicate certificate. All incumbrances, claims or interests adverse to the title of the registered owner shall be stated upon the new certificate or certificates, except insofar as they may be simultaneously released or discharged.

When only a part of the land described in a certificate is transferred, or some estate or interest in the land is to remain in the transferor, a new certificate shall be issued to him, for the part, estate or interest remaining in him. [1907 c 250 § 51; RRS § 10680.]

**65.12.390 Certificate of tax payment.** Before any deed, plat or other instrument affecting registered land shall be filed or registered in the office of the registrar of titles, the owner shall present a certificate from the county treasurer showing that all taxes then due thereon have been paid. [1907 c 250 § 52; RRS § 10681.]

**65.12.400 Registered land charged as other land.** Registered land and ownership therein shall in all respects be subject to the same burdens and incidents which attach by law to unregistered land. Nothing contained in this chapter

shall in any way be construed to relieve registered land, or the owners thereof, from any rights incident to the relation of husband and wife, or from liability to attachment of mesne process, or levy on execution, or from liability from any lien of any description established by law on land or the improvements thereon, or the interest of the owner in such land or improvements, or to change the laws of descent, or the rights of partition between cotenants, or the right to take the same by eminent domain, or to relieve such land from liability to be recovered by an assignee in insolvency or trustee in bankruptcy, under the provisions of law relating thereto; or to change or affect in any way, any other rights or liabilities, created by law, applicable to unregistered land, except as otherwise expressly provided in this chapter, or any amendments hereof. [1907 c 250 § 53; RRS § 10682.]

**65.12.410 Conveyances by attorney-in-fact.** Any person may by attorney convey or otherwise deal with registered land, but the letters or power of attorney shall be acknowledged and filed with the registrar of titles, and registered. Any instrument revoking such letters, or power of attorney, shall be acknowledged in like manner. [1907 c 250 § 54; RRS § 10683.]

**65.12.420 Encumbrances by owner.** The owner of registered land may mortgage or encumber the same, by executing a trust deed or other instrument, sufficient in law for that purpose, and such instrument may be assigned, extended, discharged, released, in whole or in part, or otherwise dealt with by the mortgagee, by any form of instrument sufficient in law for the purpose; but such trust deed or other instrument, and all instruments assigning, extending, discharging, releasing or otherwise dealing with the encumbrance, shall be registered, and shall take effect upon the title only from the time of registration. [1907 c 250 § 55; RRS § 10684.]

**65.12.430 Registration of mortgages.** A trust deed shall be deemed to be a mortgage, and be subject to the same rules as a mortgage, excepting as to the manner of the foreclosure thereof. The registration of a mortgage shall be made in the following manner, to wit: The owner's duplicate certificate shall be presented to the registrar of titles with the mortgage deed or instrument to be registered, and the registrar shall enter upon the original certificate of title and also upon the owner's duplicate certificate, a memorial of the purport of the instrument registered, the time of filing, and the file number of the registered instrument. He shall also note upon the instrument registered, the time of filing, and a reference to the volume and page of the register of titles, wherein the same is registered. The registrar of titles shall also, at the request of the mortgagee, make out and deliver to him a duplicate certificate of title, like the owner's duplicate, except that the words, "Mortgagee's duplicate", shall be written or printed upon such certificate in large letters, diagonally across the face. A memorandum of the issuance of the mortgagee's duplicate shall be made upon the certificate of title. [1907 c 250 § 56; RRS § 10685.]

**65.12.435 Dealings with mortgages.** Whenever a mortgage upon which a mortgagee's duplicate has been

issued is assigned, extended or otherwise dealt with, the mortgagee's duplicate shall be presented with the instrument assigning, extending, or otherwise dealing with the mortgage, and a memorial of the instrument shall be made upon the mortgagee's duplicate, and upon the original certificate of title. When the mortgage is discharged, or otherwise extinguished, the mortgagee's duplicate shall be surrendered and stamped, "Canceled". In case only a part of the charge or of the land is intended to be released, discharged, or surrendered, the entry shall be made by a memorial according in like manner as before provided for a release or discharge.

The production of the mortgagee's duplicate certificate shall be conclusive authority to register the instrument therewith presented. A mortgage on registered land may be discharged in whole or in part by the mortgagee in person on the register of titles in the same manner as a mortgage on unregistered land may be discharged by an entry on the margin of the record thereof, in the auditor's office, and such discharge shall be attested by the registrar of titles. [1907 c 250 § 57; RRS § 10686.]

**65.12.440 Foreclosures on registered land.** All charges upon registered land, or any estate or interest in the same, and any right thereunder, may be enforced as is now allowed by law, and all laws relating to the foreclosure of mortgages shall apply to mortgages upon registered land, or any estate or interest therein, except as herein otherwise provided, and except that a notice of the pendency of any suit or of any proceeding to enforce or foreclose the mortgage, or any charge, shall be filed in the office of the registrar of titles, and a memorial thereof entered on the register, at the time of, or prior to, the commencement of such suit, or the beginning of any such proceeding. A notice so filed and registered shall be notice to the registrar of titles and all persons dealing with the land or any part thereof. When a mortgagee's duplicate has been issued, such duplicate shall, at the time of the registering of the notice, be presented, and a memorial of such notice shall be entered upon the mortgagee's duplicate. [1907 c 250 § 58; RRS § 10687.]

**65.12.445 Registration of final decree—New certificate.** In any action affecting registered land a judgment or final decree shall be entitled to registration on the presentation of a certified copy of the entry thereof from the clerk of the court where the action is pending to the registrar of titles. The registrar of titles shall enter a memorial thereof upon the original certificates of title, and upon the owner's duplicate, and also upon the mortgagee's and lessee's duplicate, if any there be outstanding. When the registered owner of such land is, by such judgment or decree, divested of his estate in fee to the land or any part thereof, the plaintiff or defendant shall be entitled to a new certificate of title for the land, or that part thereof, designated in the judgment or decree, and the registrar of titles shall enter such new certificate of title, and issue a new owner's duplicate, in such manner as is provided in the case of voluntary conveyance: PROVIDED, HOWEVER, That no such new certificate of title shall be entered, except upon the order of the superior court of the county in which the land is situated, and upon the filing in the office of the regis-

trar of titles, an order of the court directing the entry of such new certificate. [1907 c 250 § 59; RRS § 10688.]

**65.12.450 Title on foreclosure—Registration.** Any person who has, by any action or proceeding to enforce or foreclose any mortgage, lien or charge upon registered land, become the owner in fee of the land, or any part thereof, shall be entitled to have his title registered, and the registrar of titles shall, upon application therefor, enter a new certificate of title for the land, or that part thereof, of which the applicant is the owner, and issue an owner's duplicate, in such manner as in the case of a voluntary conveyance of registered land: PROVIDED, HOWEVER, No such new certificate of title shall be entered, except after the time to redeem from such foreclosure has expired, and upon the filing in the office of the registrar of titles, an order of the superior court of the county directing the entry of such new certificates. [1907 c 250 § 60; RRS § 10689.]

**65.12.460 Petition for new certificate.** In all cases wherein, by this chapter, it is provided that a new certificate of title to registered land shall be entered by order of the court a person applying for such new certificate shall apply to the court by petition, setting forth the facts; and the court shall, after notice given to all parties in interest, as the court may direct, and upon hearing, make an order or decree for the entry of a new certificate to such person as shall appear to be entitled thereto. [1907 c 250 § 61; RRS § 10690.]

**65.12.470 Registration of leases.** Leases for registered land, for a term of three years or more, shall be registered in like manner as a mortgage, and the provisions herein relating to the registration of mortgages, shall also apply to the registration of leases. The registrar shall, at the request of the lessee, make out and deliver to him a duplicate of the certificate of title like the owner's duplicate, except the words, "Lessee's duplicate", shall be written or printed upon it in large letters diagonally across its face. [1907 c 250 § 62; RRS § 10691.]

**65.12.480 Instruments with conditions.** Whenever a deed, or other instrument, is filed in the office of the registrar of titles, for the purpose of effecting a transfer of or charge upon the registered land, or any estate or interest in the same, and it shall appear that the transfer or charge is to be in trust or upon condition or limitation expressed in such deed or instrument, such deed or instrument shall be registered in the usual manner, except that the particulars of the trust, condition, limitation or other equitable interest shall not be entered upon the certificate of title by memorial, but a memorandum or memorial shall be entered by the words, "in trust", or "upon condition", or other apt words, and by reference by number to the instrument authorizing or creating the same. A similar memorial shall be made upon the owner's duplicate certificate.

No transfer of, or charge upon, or dealing with, the land, estate or interest therein, shall thereafter be registered, except upon an order of the court first filed in the office of the registrar of titles, directing such transfer, charge, or dealing, in accordance with the true intent and meaning of the trust, con-

dition or limitation. Such registration shall be conclusive evidence in favor of the person taking such transfer, charge, or right; and those claiming under him, in good faith, and for a valuable consideration, that such transfer, charge or other dealing is in accordance with the true intent and meaning of the trust, condition, or limitation. [1907 c 250 § 63; RRS § 10692.]

**65.12.490 Transfers between trustees.** When the title to registered land passes from a trustee to a new trustee, a new certificate shall be entered to him, and shall be registered in like manner as upon an original conveyance in trust. [1907 c 250 § 64; RRS § 10693.]

**65.12.500 Trustee may register land.** Any trustee shall have authority to file an application for the registration of any land held in trust by him, unless expressly prohibited by the instrument creating the trust. [1907 c 250 § 65; RRS § 10694.]

**65.12.510 Creation of lien on registered land.** In every case where writing of any description, or copy of any writ, order or decree is required by law to be filed or recorded in order to create or preserve any lien, right, or attachment upon unregistered land, such writing or copy, when intended to affect registered land, in lieu of recording, shall be filed and registered in the office of the registrar of titles, in the county in which the land lies, and, in addition to any particulars required in such papers, for the filing or recording, shall also contain a reference to the number of the certificate of title of the land to be affected, and also, if the attachment, right or lien is not claimed on all the land in any certificate of title, a description sufficiently accurate for the identification of the land intended to be affected. [1907 c 250 § 66; RRS § 10695.]

**65.12.520 Registration of liens.** All attachments, liens and rights, of every description, shall be enforced, continued, reduced, discharged and dissolved, by any proceeding or method, sufficient and proper in law to enforce, continue, reduce, discharge or dissolve, like liens or unregistered land. All certificates, writing or other instruments, permitted or required by law, to be filed or recorded, to give effect to the enforcement, continuance, reduction, discharge or dissolution of attachments, liens or other rights upon registered land, or to give notice of such enforcement, continuance, reduction, discharge or dissolution, shall in the case of like attachments, liens or other rights upon registered land, be filed with the registrar of titles, and registered in the register of titles, in lieu of filing or recording. [1907 c 250 § 67; RRS § 10696.]

**65.12.530 Entry as to plaintiff's attorney.** The name and address of the attorney for the plaintiff in every action affecting the title to registered land, shall, in all cases, be endorsed upon the writ or other writing filed in the office of the registrar of titles, and he shall be deemed the attorney of the plaintiff until written notice that he has ceased to be such plaintiff's attorney shall be filed for registration by the plaintiff. [1907 c 250 § 68; RRS § 10697.]

**65.12.540 Decree.** A judgment, decree, or order of any court shall be a lien upon, or affect registered land, or any estate or interest therein, only when a certificate under the hand and official seal of the clerk of the court in which the same is of record, stating the date and purport of the judgment, decree, or order, or a certified copy of such judgment, decree, or order, or transcript of the judgment docket, is filed in the office of the registrar, and a memorial of the same is entered upon the register of the last certificate of the title to be affected. [1907 c 250 § 69; RRS § 10698.]

**65.12.550 Title acquired on execution.** Any person who has acquired any right, interest or estate in registered land by virtue of any execution, judgment, order or decree of the court, shall register his title so acquired, by filing in the office of the registrar of titles all writings or instruments permitted or required to be recorded in the case of unregistered land. If the interest or estate so acquired is the fee in the registered land, or any part thereof, the person acquiring such interest shall be entitled to have a new certificate of title, registered in him, in the same manner as is provided in the case of persons acquiring title by an action or proceeding in foreclosure of mortgages. [1907 c 250 § 70; RRS § 10699.]

**65.12.560 Termination of proceedings.** The certificate of the clerk of the court in which any action or proceeding shall be pending, or any judgment or decree is of record, that such action or proceeding has been dismissed or otherwise disposed of, or that the judgment, decree, or order has been satisfied, released, reversed or overruled, or of any sheriff or any other officer that the levy of any execution, attachment, or other process, certified by him, has been released, discharged, or otherwise disposed of, being filed in the office of the registrar of titles and noted upon the register, shall be sufficient to authorize the registrar to cancel or otherwise treat the memorial of such action, proceeding, judgment, decree, order, or levy, according to the purport of such certificate. [1907 c 250 § 71; RRS § 10700.]

**65.12.570 Land registered only after redemption period.** Whenever registered land is sold, and the same is by law subject to redemption by the owner or any other person, the purchaser shall not be entitled to have a new certificate of title entered, until the time within which the land may be redeemed has expired. At any time after the time to redeem shall have expired, the purchaser may petition the court for an order directing the entry of a new certificate of title to him, and the court shall, after such notice as it may order, and hearing, grant and make an order directing the entry of such new certificate of title. [1907 c 250 § 72; RRS § 10701.]

**65.12.580 Registration on inheritance.** The heirs at law and devisees, upon the death of an owner of lands, and any estate or interest therein, registered pursuant to this chapter, on the expiration of thirty days after the entry of the decree of the superior court granting letters testamentary or of administration, or, in case of an appeal from such decree, at any time after the entry of a final decree, may file a certified copy of the final decree, of the superior court having jurisdiction, and of the will, if any, with the clerk of the superior

court, in the county in which the land lies, and make application to the court for an order for the entry of a new certificate of title. The court shall issue notice to the executor or administrator and all other persons in interest, and may also give notice by publication in such newspaper or newspapers as it may deem proper, to all whom it may concern; and after hearing, may direct the entry of a new certificate or certificates to the person or persons who appear to be entitled thereto as heirs or devisees. Any new certificate so entered before the final settlement of the estate of the deceased owner, in the superior courts, shall state expressly that it is entered by transfer from the last certificate by descent or devise, and that the estate is in process of settlement. After the final settlement of the estate in the superior court, or after the expiration of the time allowed by law for bringing an action against an executor or administrator by creditors of the deceased, the heirs at law or devisees may petition the court for an order to cancel the memorial upon their certificates, stating that the estate is in the course of settlement, and the court, after such notice as it may order, and a hearing, may grant the petition: PROVIDED, HOWEVER, That the liability of registered land to be sold for claims against the estate of the deceased, shall not in any way be diminished or changed. [1907 c 250 § 73; RRS § 10702.]

**65.12.590 Probate court may direct sale of registered land.** Nothing contained in this chapter shall include, affect or impair the jurisdiction of the superior court to order an executor, administrator or guardian to sell or mortgage registered land for any purpose for which such order may be granted in the case of unregistered land. The purchaser or mortgagee, taking a deed or mortgage executed in pursuance of such order of the superior court, shall be entitled to register his title, and to the entry of a new certificate of title or memorial of registration, upon application to the superior court, and upon filing in the office of the registrar of titles, an order of said court, directing the entry of such certificates. [1907 c 250 § 74; RRS § 10703.]

**65.12.600 Trustees and receivers.** An assignee for the benefit of creditors, receiver, trustee in bankruptcy, master in chancery, special commissioner, or other person appointed by the court, shall file in the office of the registrar of titles, the instrument or instruments by which he is vested with title, estate, or interest in any registered land, or a certified copy of an order of the court showing that such assignee, receiver, trustee in bankruptcy, master in chancery, special commissioner, or other person, is authorized to deal with such land, estate or interest, and, if it is in the power of such person, he shall, at the same time, present to the registrar of titles, the owner's duplicate certificate of title; thereupon the registrar shall enter upon the register of titles, and the duplicate certificate, if presented, a memorial thereof, with a reference to such order or deed by its file number. Such memorial having been entered, the assignee, receiver, trustee in bankruptcy, master in chancery, special commissioner or other person may, subject to the direction of the court, deal with or transfer such land as if he were a registered owner. [1907 c 250 § 75; RRS § 10704.]

**65.12.610 Eminent domain—Reversion.** Whenever registered land, or any right or interest therein, is taken by eminent domain, the state or body politic, or corporate or other authority exercising such right shall pay all fees on account of any memorial or registration or entry of new certificates, or duplicate thereof, and fees for the filing of instruments required by this chapter to be filed. When, for any reason, by operation of law, land which has been taken for public use reverts to the owner from whom it was taken, or his heirs or assigns, the court, upon petition of the person entitled to the benefit of the reversion, after such notice as it may order, and hearing, may order the entry of a new certificate of title to him. [1907 c 250 § 76; RRS § 10705.]

**65.12.620 Registration when owner's certificate withheld.** In every case where the registrar of titles enters a memorial upon a certificate of title, or enters a new certificate of title, in pursuance of any instrument executed by the registered owner, or by reason of any instrument or proceeding which affects or devises the title of the registered owner against his consent, if the outstanding owner's duplicate certificate is not presented, the registrar of titles shall not enter a new certificate or make a memorial, but the person claiming to be entitled thereto may apply by petition to the court. The court may order the registered owner, or any person withholding the duplicate certificate, to present or surrender the same, and direct the entry of a memorial or new certificate upon such presentation or surrender. If, in any case, the person withholding the duplicate certificate is not amenable to the process of the court, or cannot be found, or if, for any reason, the outstanding owner's duplicate certificate cannot be presented or surrendered without delay, the court may, by decree, annul the same, and order a new certificate of title to be entered. Such new certificate, and all duplicates thereof, shall contain a memorial of the annulment of the outstanding duplicate. If in any case of an outstanding mortgagee's or lessee's duplicate certificate shall be withheld or otherwise dealt with, like proceedings may be had to obtain registration as in case of the owner's withholding or refusing to deliver the duplicate receipt. [1907 c 250 § 77; RRS § 10706.]

**65.12.630 Reference to examiner of title.** In all cases where, under the provisions of this chapter, application is made to the court for an order or decree, the court may refer the matter to one of the examiners of title for hearing and report, in like manner, as is herein provided for the reference of the application for registration. [1907 c 250 § 78; RRS § 10707.]

**65.12.635 Examiner of titles.** Examiners of titles shall, upon the request of the registrar of titles, advise him upon any act or duty pertaining to the conduct of his office, and shall, upon request, prepare the form of any memorial to be made or entered by the registrar of titles. The examiner of titles shall have full power to administer oaths and examine witnesses involved in his investigation of titles. [1907 c 250 § 79; RRS § 10708.]

**65.12.640 Registered instruments to contain names and addresses—Service of notices.** Every writing and

instrument required or permitted by this chapter to be filed for registration, shall contain or have endorsed upon it, the full name, place of residence and post office address of the grantee or other person requiring or claiming any right, title or interest under such instrument. Any change in residence or post office address of such person shall be endorsed by the registrar of titles in the original instrument, on receiving a sworn statement of such change. All names and addresses shall also be entered on all certificates. All notices required by, or given in pursuance of the provisions of this chapter by the registrar of titles or by the court, after original registration, shall be served upon the person to be notified; if a resident of the state of Washington, as summons in civil actions are served; and proof of such service shall be made as on the return of a summons. All such notices shall be sent by mail, to the person to be notified, if not a resident of the state of Washington, and his residence and post office address, as stated in the certificate of title, or in any registered instrument under which he claims an interest. The certificate of the registrar of titles, or clerk of court, that any notice has been served, by mailing the same, as aforesaid, shall be conclusive proof of such notice: PROVIDED, HOWEVER, That the court may, in any case, order different or further service by publication or otherwise. [1907 c 250 § 80; RRS § 10709.]

**65.12.650 Adverse claims—Procedure.** Any person claiming any right or interest in registered land, adverse to the registered owner, arising subsequent to the date of the original registration, may, if no other provision is made in this chapter for registering the same, make a statement in writing, setting forth fully his alleged right or interest and how or under whom acquired, and a reference to the volume and page of the certificate of title of the registered owner, and a description of the land to which the right or interest is claimed. The statement shall be signed and sworn to, and shall state the adverse claimant's residence, and designate a place at which all notices may be served upon him. This statement shall be entitled to registration, as an adverse claim; and the court, upon the petition of any party in interest, shall grant a speedy hearing upon the question of the validity of such adverse claim, and shall enter such decree thereon as equity and justice may require.

If the claim is adjudged to be invalid, its registration shall be canceled. The court may, in any case, award such costs and damages, including reasonable attorneys' fees, as it may deem just in the premises. [1907 c 250 § 81; RRS § 10710.]

**65.12.660 Assurance fund.** Upon the original registration of land under this chapter, and also upon the entry of the certificate showing title as registered owners in heirs or devisees, there shall be paid to the registrar of titles, one-fortieth of one percent of the assessed value of the real estate on the basis of the last assessment for general taxation, as an assurance fund. [1973 1st ex.s. c 195 § 75; 1907 c 250 § 82; RRS § 10711.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**65.12.670 Investment of fund.** All sums of money received by the registrar as provided for in RCW 65.12.660,

shall be forthwith paid by the registrar to the county treasurer of the county in which the land lies, for the purpose of an assurance fund, under the terms of this chapter; it shall be the duty of the county treasurer, whenever the amount on hand in said assurance fund is sufficient, to invest the same, principal and income, and report annually to the superior court of the same county the condition and income thereof; and no investment of the funds, or any part thereof, shall be made without the approval of said court, by order entered of record. Said fund shall be invested only in bonds or securities of the United States, or of one of the states of the United States, or of the counties or other municipalities of this state. [1907 c 250 § 83; RRS § 10712.]

**65.12.680 Recoveries from fund.** Any person sustaining loss or damage, through any omission, mistake, or misfeasance of the registrar of titles, or of any examiner of titles, or of any deputy, or by the mistake or misfeasance of the clerk of the court, or any deputy, in the performance of their respective duties, under the provisions of this chapter, and any person wrongfully deprived of any land or any interest therein, through the bringing of the same, under the provisions of this chapter, or by the registration of any other person as the owner of such land, or by any mistake, omission, or misdescription in any certificate or entry, or memorial, in the register of titles, or by any cancellation, and who, by the provisions of this chapter, is barred or precluded from bringing any action for the recovery of such land, or interest therein, or claim thereon, may bring an action against the treasurer of the county in which such land is situated, for the recovery of damages to be paid out of the assurance fund. [1907 c 250 § 84; RRS § 10713.]

**65.12.690 Parties defendant—Judgment—Payment—Duties of county attorney.** If such action be for recovery for loss or damage arising only through any omission, mistake or misfeasance of the registrar of titles or his deputies, or of any examiner of titles, or any clerk of court or his deputy, in the performance of their respective duties, under the provisions of this chapter, then the county treasurer shall be the sole defendant to such action; but if such action be brought for loss or damage arising only through the fraud or wrongful act of some person or persons other than the registrar or his deputies, the examiners of title, the clerk of the court or his deputies, or arising jointly through the fraud or wrongful act of such other person or persons, and the omission, mistakes or misfeasance of the registrar of titles or his deputies, the examiners of titles, the clerk of the court or his deputies, then such action shall be brought against both the county treasurer and such persons or persons aforesaid. In all such actions, where there are defendants other than the county treasurer, and damages shall have been recovered, no final judgment shall be entered against the county treasurer, until execution against the other defendants shall be returned unsatisfied in whole or in part, and the officer returning the execution shall certify that the amount still due upon the execution cannot be collected except by application to the indemnity [assurance] fund. Thereupon the court, being satisfied as to the truth of such return, shall order final judgment against the treasurer, for the amount of the execution and

costs, or so much thereof as remains unpaid. The county treasurer shall, upon such order of the court and final judgment, pay the amount of such judgment out of the assurance fund. It shall be the duty of the county attorney to appear and defend all such actions. If the funds in the assurance funds at any time are insufficient to pay any judgment in full, the balance unpaid shall draw interest at the legal rate of interest, and be paid with such interest out of the first funds coming into said fund. [1907 c 250 § 85; RRS § 10714.]

**65.12.700 When fund not liable—Maximum liability.** The assurance fund shall not be liable in any action to pay for any loss, damage or deprivation occasioned by a breach of trust, whether expressed, implied, or constructive, by any registered owner who is a trustee, or by the improper exercise of any power of sale, in a mortgage or a trust deed. Final judgment shall not be entered against the county treasurer in any action against this chapter to recover from the assurance fund for more than a fair market value of the real estate at the time of the last payment to the assurance fund, on account of the same real estate. [1907 c 250 § 86; RRS § 10715.]

**65.12.710 Limitation of actions.** No action or proceeding for compensation for or by reason of any deprivation, loss or damage occasioned or sustained as provided in this chapter, shall be made, brought or taken, except within the period of six years from the time when right to bring or take such action or proceeding first accrued; except that if, at any time, when such right of action first accrues, the person entitled to bring such action, or take such proceeding, is under the age of eighteen years, or insane, imprisoned, or absent from the United States in the service of the United States, or of this state, then such person, or anyone claiming from, by, or under him, may bring the action, or take the proceeding, at any time within two years after such disability is removed, notwithstanding the time before limited in that behalf has expired. [1971 ex.s. c 292 § 49; 1907 c 250 § 87; RRS § 10716.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**65.12.720 Proceeding to change records.** No erasure, alteration or amendment shall be made upon the register of titles after the entry of the certificate of title, or a memorial thereon, and the attestation of the same by the registrar of titles, except by order of the court. Any registered owner, or other person in interest, may at any time apply by petition to the court, on the ground that registered interests of any description, whether vested, contingent, expectant, or inchoate, have determined and ceased; or that new interests have arisen or been created, which do not appear upon the certificate; or that an error, omission or mistake was made in entering the certificate; or any memorial thereon, or any duplicate certificate; or that the name of any person on the certificate has been changed; or that the registered owner has been married, or if registered, has married, that the marriage has been terminated, or that a corporation which owned registered land has been dissolved, and has not conveyed the same within three years after its dissolution; or upon any other reasonable ground; and the court shall have jurisdiction to hear and determine the petition after such notice as it may order, to all parties in interest, and may order the entry of a new certifi-

cate, the entry or cancellation of a memorial upon a certificate, or grant any other relief upon such terms and conditions, requiring security if necessary, as it may deem proper: PROVIDED, HOWEVER, That this section shall not be construed to give the court authority to open the original decree of registration, and that nothing shall be done or ordered by the court which shall impair the title or other interest of the purchaser, holding a certificate for value and in good faith, or his heirs or assigns, without his or their written consent. [1907 c 250 § 88; RRS § 10717.]

**65.12.730 Certificate subject of theft—Penalty.** Certificates of title or duplicate certificates entered under this chapter, shall be subjects of theft, and anyone unlawfully stealing or carrying away any such certificate, shall, upon conviction thereof, be deemed guilty of theft under chapter 9A.56 RCW. [2003 c 53 § 291; 1907 c 250 § 89; RRS § 10718.]

**Intent—Effective date—2003 c 53:** See notes following RCW 2.48.180.

**65.12.740 Perjury.** Whoever knowingly swears falsely to any statement required by this chapter to be made under oath is guilty of perjury under chapter 9A.72 RCW. [2003 c 53 § 292; 1907 c 250 § 90; RRS § 10719.]

**Intent—Effective date—2003 c 53:** See notes following RCW 2.48.180.

**65.12.750 Fraud—False entries—Penalty.** Whoever fraudulently procures, or assists fraudulently procuring, or is privy to the fraudulent procurement of any certificate of title, or other instrument, or of any entry in the register of titles, or other book kept in the registrar's office, or of any erasure or alteration in any entry in any such book, or in any instrument authorized by this chapter, or knowingly defrauds or is privy to defrauding any person by means of a false or fraudulent instrument, certificate, statement, or affidavit affecting registered land, shall be guilty of a class C felony, and upon conviction, shall be fined in any sum not exceeding five thousand dollars, or imprisoned in a state correctional facility for not more than five years, or both such fine and imprisonment, in the discretion of the court. [2003 c 53 § 293; 1907 c 250 § 91; RRS § 10720.]

**Intent—Effective date—2003 c 53:** See notes following RCW 2.48.180.

**65.12.760 Forgery—Penalty.** Whoever forges or procures to be forged, or assists in forging, the seal of the registrar, or the name, signature, or handwriting of any officer of the registry office, in case where such officer is expressly or impliedly authorized to affix his or her signature; or forges or procures to be forged, or assists in forging, the name, signature, or handwriting of any person whomsoever, to any instrument which is expressly or impliedly authorized to be signed by such person; or uses any document upon which any impression or part of the impression of any seal of the registrar has been forged, knowing the same to have been forged, or any document, the signature to which has been forged, shall be guilty of a class B felony, and upon conviction shall be imprisoned in a state correctional facility for not more than ten years, or fined not more than one thousand dollars, or

both fined and imprisoned, in the discretion of the court. [2003 c 53 § 294; 1907 c 250 § 92; RRS § 10721.]

**Intent—Effective date—2003 c 53:** See notes following RCW 2.48.180.

**65.12.770 Civil actions unaffected.** No proceeding or conviction for any act hereby declared to be a felony, shall affect any remedy which any person aggrieved or injured by such act may be entitled to at law, or in equity, against the person who has committed such act, or against his estate. [1907 c 250 § 93; RRS § 10722.]

**65.12.780 Fees of clerk.** On the filing of any application for registration, the applicant shall pay to the clerk of the court filing fees as set in RCW 36.18.016. When any number of defendants enter their appearance at the same time, before default, but one fee shall be paid. Every publication in a newspaper required by this chapter shall be paid for by the party on whose application the order of publication is made, in addition to the fees above prescribed. The party at whose request any notice is issued, shall pay for the service of the same, except when sent by mail by the clerk of court, or the registrar of titles. [1995 c 292 § 19; 1907 c 250 § 94; RRS § 10723.]

**65.12.790 Fees of registrar.** The fees to be paid to the registrar of titles shall be as follows:

(1) At or before the time of filing of the certified copy of the application with the registrar, the applicant shall pay, to the registrar, on all land having an assessed value, exclusive of improvements, of one thousand dollars or less, thirty-one and one-quarter cents on each one thousand dollars, or major fraction thereof, of the assessed value of said land, additional.

(2) For granting certificates of title, upon each applicant, and registering the same, two dollars.

(3) For registering each transfer, including the filing of all instruments connected therewith, and the issuance and registration of the instruments connected therewith, and the issuance and registration of the new certificate of title, ten dollars.

(4) When the land transferred is held upon any trust, condition, or limitation, an additional fee of three dollars.

(5) For entry of each memorial on the register, including the filing of all instruments and papers connected therewith, and endorsements upon duplicate certificates, three dollars.

(6) For issuing each additional owner's duplicate certificate, mortgagee's duplicate certificate, or lessee's duplicate certificate, three dollars.

(7) For filing copy of will, with letters testamentary, or filing copy of letters of administration, and entering memorial thereof, two dollars and fifty cents.

(8) For the cancellation of each memorial, or charge, one dollar.

(9) For each certificate showing the condition of the register, one dollar.

(10) For any certified copy of any instrument or writing on file in his office, the same fees now allowed by law to county clerks and county auditors for like service.

(11) For any other service required, or necessary to carry out this chapter, and not hereinbefore itemized, such fee or fees as the court shall determine and establish.

(12) For registration of each mortgage and issuance of duplicate of title a fee of five dollars; for each deed of trust and issuance of duplicate of title a fee of eight dollars. [1973 1st ex.s. c 195 § 76; 1973 c 121 § 2; 1907 c 250 § 95; RRS § 10724.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**65.12.800 Disposition of fees.** One-half of all fees provided for in RCW 65.12.790(1), shall be collected by the registrar, and paid to the county treasurer of the county in which the fees are paid, to be used for the current expenses of the county; and all the remaining fees provided for in said section, and all the subdivisions thereof, shall be collected by the registrar, and applied the same as the other fees of his office; but his salary as county clerk or county auditor, as now provided by law, shall not be increased on account of the additional duties, or by reason of the allowance of additional fees provided for herein; and the said registrar, as such, shall receive no salary. [1907 c 250 § 96; RRS § 10725.]

**65.12.900 Construction—Chapter applicable to state registered domestic partnerships—2009 c 521.** For the purposes of this chapter, the terms spouse, marriage, marital, husband, wife, widow, widower, next of kin, and family shall be interpreted as applying equally to state registered domestic partnerships or individuals in state registered domestic partnerships as well as to marital relationships and married persons, and references to dissolution of marriage shall apply equally to state registered domestic partnerships that have been terminated, dissolved, or invalidated, to the extent that such interpretation does not conflict with federal law. Where necessary to implement chapter 521, Laws of 2009, gender-specific terms such as husband and wife used in any statute, rule, or other law shall be construed to be gender neutral, and applicable to individuals in state registered domestic partnerships. [2009 c 521 § 144.]

**Chapter 65.16 RCW  
LEGAL PUBLICATIONS**

Sections

- 65.16.010 Weekly publication—How made.
- 65.16.020 Qualifications of legal newspaper.
- 65.16.030 Affidavit of publication—Presumption.
- 65.16.040 Legal publications to be approved—Order of approval.
- 65.16.050 Revocation of approval—Notice.
- 65.16.060 Choice of newspapers.
- 65.16.070 List posted in clerk’s office.
- 65.16.080 Scope of provisions.
- 65.16.091 Rates for legal notices.
- 65.16.095 Rates for political candidates.
- 65.16.100 Omissions for Sundays and holidays.
- 65.16.110 Affidavit to cover payment of fees.
- 65.16.120 Payment of fees in advance, on demand.
- 65.16.130 Publication of official notices by radio or television—Restrictions.
- 65.16.150 Proof of publication by radio or television.
- 65.16.160 Publication of ordinances.

*Civil procedure, legal publication generally: Chapter 4.28 RCW.*  
*Corporate seals, effect of absence from instrument: RCW 64.04.105.*  
*Powers of appointment: Chapter 11.95 RCW.*

(2010 Ed.)

**65.16.010 Weekly publication—How made.** The publication of legal notices required by law, or by an order of a judge or court, to be published in a newspaper once in each week for a specified number of weeks, shall be made on the day of each week in which such newspaper is published. [1893 c 127 § 27; RRS § 253.]

**65.16.020 Qualifications of legal newspaper.** The qualifications of a legal newspaper are that such newspaper shall have been published regularly, at least once a week, in the English language, as a newspaper of general circulation, in the city or town where the same is published at the time of application for approval, for at least six months prior to the date of such application; shall be compiled either in whole or in part in an office maintained at the place of publication; shall contain news of general interest as contrasted with news of interest primarily to an organization, group or class; shall have a policy to print all statutorily required legal notices; and shall hold a periodical class mailing permit: PROVIDED, That in case of the consolidation of two or more newspapers, such consolidated newspaper shall be considered as qualified if either or any of the papers so consolidated would be a qualified newspaper at the date of such legal publication, had not such consolidation taken place: PROVIDED, That this section shall not disqualify as a legal newspaper any publication which, prior to June 8, 1961, was adjudged a legal newspaper, so long as it continues to meet the requirements under which it qualified. [2001 c 283 § 1; 1961 c 279 § 1; 1941 c 213 § 3; 1921 c 99 § 1; Rem. Supp. 1941 § 253-1. Prior: 1917 c 61 § 1.]

**65.16.030 Affidavit of publication—Presumption.** All legal and other official notices shall be published in a legal newspaper as herein defined, and the affidavit of publication shall state that the newspaper has been approved as a legal newspaper by order of the superior court of the county in which it is published, and shall be prima facie evidence of that fact. Wherever a legal notice, publication, advertisement or other official notice is required to be published by any statute or law of the state of Washington, the proof of such publication shall be the affidavit of the printer, publisher, foreman, principal clerk or business manager of the newspaper which published said notice. [1953 c 233 § 1; 1941 c 213 § 4; 1921 c 99 § 2; Rem. Supp. 1941 § 253-2.]

**65.16.040 Legal publications to be approved—Order of approval.** Sixty days from and after the date \*this act becomes effective, a legal newspaper for the publication of any advertisement, notice, summons, report, proceeding, or other official document now or hereafter required by law to be published, shall be a newspaper which has been approved as a legal newspaper by order of the superior court of the county in which such newspaper is published. Such order may be entered without notice upon presentation of a petition by or on behalf of the publisher, setting forth the qualifications of the newspaper as required by \*this act, and upon evidence satisfactory to the court that such newspaper is so qualified. [1941 c 213 § 1; Rem. Supp. 1941 § 253a.]

\*Reviser’s note: (1) The language "this act" appears in 1941 c 213 codified as RCW 65.16.020 through 65.16.080.

(2) The effective date of this act is midnight June 11, 1941; see preface 1941 session laws.

**65.16.050 Revocation of approval—Notice.** An order of approval of a newspaper shall remain effective from the time of the entry thereof until the approval be terminated by a subsequent order of the court, which may be done whenever it shall be brought to the attention of the court that the newspaper is no longer qualified as a legal newspaper, and after notice of hearing issued by the clerk and served upon the publisher, at least ten days prior to the date of hearing, by delivering a copy of such notice to the person in charge of the business office of the publisher, or if the publisher has no business office at the time of service, by mailing a copy of such notice addressed to the publisher at the place of publication alleged in the petition for approval. [1941 c 213 § 2; Rem. Supp. 1941 § 253b.]

**65.16.060 Choice of newspapers.** Any summons, citation, notice of sheriff's sale, or legal advertisement of any description, the publication of which is now or may be hereafter required by law, may be published in any daily or weekly legal newspaper published in the county where the action, suit or other proceeding is pending, or is to be commenced or had, or in which such notice, summons, citation, or other legal advertisement is required to be given: PROVIDED, HOWEVER, That if there be more than one legal newspaper in which any such legal notice, summons, citation or legal advertisement might lawfully be published, then the plaintiff or moving party in the action, suit or proceeding shall have the exclusive right to designate in which of such qualified newspapers such legal notice, summons, citation, notice of sheriff's sale or other legal advertisement shall be published. [1941 c 213 § 6; 1921 c 99 § 5; Rem. Supp. 1941 § 253-5.]

**65.16.070 List posted in clerk's office.** Publications commenced in a legal newspaper, \*when this act takes effect, may be completed in that newspaper notwithstanding any failure to obtain an order of approval under \*this act, and notwithstanding an order of termination of approval prior to completion of publication. The clerk of the superior court of each county shall post and keep posted in a prominent place in his office a list of the newspapers published in that county which are approved as legal newspapers. [1941 c 213 § 7; RRS § 253-5a.]

\*Reviser's note: "this act," "when this act takes effect," see note following RCW 65.16.040.

**65.16.080 Scope of provisions.** The provisions of \*this act shall not apply in counties where no newspaper has been published for a period of one year prior to the publication of such legal or other official notices. [1941 c 213 § 5; 1921 c 99 § 3; Rem. Supp. 1941 § 253-3.]

\*Reviser's note: "this act," see note following RCW 65.16.040.

**65.16.091 Rates for legal notices.** The rate charged by a newspaper for legal notices shall not exceed the national advertising rate extended by the newspaper to all general advertisers and advertising agencies in its published rate card. [1977 c 34 § 3.]

**65.16.095 Rates for political candidates.** The rate charged by a newspaper for advertising in relation to candidates for political office shall not exceed the national advertising rate extended to all general advertisers and advertising agencies in its published rate card. [1955 c 186 § 2.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**65.16.100 Omissions for Sundays and holidays.** Where any law or ordinance of any incorporated city or town in this state provides for the publication of any form of notice or advertisement for consecutive days in a daily newspaper, the publication of such notice on legal holidays and Sundays may be omitted without in any manner affecting the legality of such notice or advertisement: PROVIDED, That the publication of the required number of notices is complied with. [1921 c 99 § 6; RRS § 253-6.]

**65.16.110 Affidavit to cover payment of fees.** The affidavit of publication of all notices required by law to be published shall state the full amount of the fee charged for such publication and that the fee has been paid in full. [1921 c 99 § 7; RRS § 253-7.]

**65.16.120 Payment of fees in advance, on demand.** When, by law, any publication is required to be made by an officer of any suit, process, notice, order or other papers, the costs of such publication shall, if demanded, be tendered by the party procuring such publication before such officer shall be compelled to make publication thereof. [Code 1881 § 2092; 1869 p 373 § 14; RRS § 504.]

**65.16.130 Publication of official notices by radio or television—Restrictions.** Any official of the state or any of its political subdivisions who is required by law to publish any notice required by law may supplement publication thereof by radio or television broadcast or both when, in his or her judgment, the public interest will be served thereby: PROVIDED, That the time, place, and nature of such notice only be read or shown with no reference to any person by name then a candidate for political office, and that notices by political subdivisions may be made only by stations whose signal is received within the county of origin of the legal notice. [2007 c 103 § 1; 1961 c 85 § 1; 1951 c 119 § 1.]

**65.16.150 Proof of publication by radio or television.** Written documentation of proof of publication of legal notice or notice of event must be provided by the radio or television station broadcasting the notice. [2007 c 103 § 2; 1961 c 85 § 3; 1951 c 119 § 3.]

**65.16.160 Publication of ordinances.** (1) Whenever any county is required by law to publish legal notices containing the full text of any proposed or adopted ordinance in a newspaper, the county may publish a summary of the ordinance which summary shall be approved by the governing body and which shall include:

- (a) The name of the county;
- (b) The formal identification or citation number of the ordinance;
- (c) A descriptive title;

- (d) A section-by-section summary;
- (e) Any other information which the county finds is necessary to provide a complete summary; and
- (f) A statement that the full text will be mailed upon request.

Publication of the title of an ordinance by a county authorizing the issuance of bonds, notes, or other evidences of indebtedness shall constitute publication of a complete summary of that ordinance, and a section-by-section summary shall not be required.

(2) Subsection (1) of this section notwithstanding, whenever any publication is made under this section and the proposed or adopted ordinance contains provisions regarding taxation or penalties or contains legal descriptions of real property, then the sections containing this matter shall be published in full and shall not be summarized. When a legal description of real property is involved, the notice shall also include the street address or addresses of the property described, if any. In the case of descriptions covering more than one street address, the street addresses of the four corners of the area described shall meet this requirement.

(3) The full text of any ordinance which is summarized by publication under this section shall be mailed without charge to any person who requests the text from the adopting county. [1995 c 157 § 1; 1994 c 273 § 19; 1977 c 34 § 4.]

**Chapter 65.20 RCW**

**CLASSIFICATION OF MANUFACTURED HOMES**

Sections

65.20.010	Purpose.
65.20.020	Definitions.
65.20.030	Clarification of type of property and perfection of security interests.
65.20.040	Elimination of title—Application.
65.20.050	Elimination of title—Approval.
65.20.060	Eliminating title—Lenders and conveyances.
65.20.070	Eliminating title—Removing manufactured home when title has been eliminated.
65.20.080	Eliminating title—Uniform forms.
65.20.090	Eliminating title—Fees.
65.20.100	Eliminating title—General supervision.
65.20.110	Eliminating title—Rules.
65.20.120	Eliminating title—Notice.
65.20.130	General penalties.
65.20.900	Prospective effect.
65.20.910	Effect on taxation.
65.20.920	Captions not law.
65.20.930	Short title.
65.20.940	Severability—1989 c 343.
65.20.950	Effective date—1989 c 343.

*Certificates of ownership and registration: Chapter 46.12 RCW.*

**65.20.010 Purpose.** The legislature recognizes that confusion exists regarding the classification of manufactured homes as personal or real property. This confusion is increased because manufactured homes are treated as vehicles in some parts of state statutes, however these homes are often used as residences to house persons residing in the state of Washington. This results in a variety of problems, including: (1) Creating confusion as to the creation, perfection, and priority of security interests in manufactured homes; (2) making it more difficult and expensive to obtain financing and title insurance; (3) making it more difficult to utilize manufactured homes as an affordable housing option; and (4) increasing the risk of problems for and losses to the con-

sumer. Therefore the purpose of this chapter is to clarify the type of property manufactured homes are, particularly relating to security interests, and to provide a statutory process to make the manufactured home real property by eliminating the title to a manufactured home when the home is affixed to land owned by the homeowner. [1989 c 343 § 1.]

**65.20.020 Definitions. (Effective until July 1, 2011.)**

Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Affixed" means that the manufactured home is installed in accordance with the installation standards in state law.

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

(3) "Eliminating the title" means to cancel an existing title issued by this state or a foreign jurisdiction or to waive the certificate of ownership required by chapter 46.12 RCW and recording the appropriate documents in the county real property records pursuant to this chapter.

(4) "Homeowner" means the owner of a manufactured home.

(5) "Land" means real property excluding the manufactured home.

(6) "Manufactured home" or "mobile home" means a structure, designed and constructed to be transportable in one or more sections and is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities that include plumbing, heating, and electrical systems contained therein. The structure must comply with the national mobile home construction and safety standards act of 1974 as adopted by chapter 43.22 RCW if applicable. "Manufactured home" does not include a modular home. A structure which met the definition of a "manufactured home" at the time of manufacture is still considered to meet this definition notwithstanding that it is no longer transportable.

(7) "Owner" means, when referring to a manufactured home that is titled, the person who is the registered owner. When referring to a mobile home that is untitled pursuant to this chapter, the owner is the person who owns the land. When referring to land, the person may have fee simple title, have a leasehold estate of thirty-five years or more, or be purchasing the property on a real estate contract. Owners include joint tenants, tenants in common, holders of legal life estates, and holders of remainder interests.

(8) "Person" means any individual, trustee, partnership, corporation, or other legal entity. "Person" may refer to more than one individual or entity.

(9) "Secured party" means the legal owner when referring to a titled mobile home, or the lender securing a loan through a mortgage, deed of trust, or real estate contract when referring to land or land containing an untitled manufactured home pursuant to this chapter.

(10) "Security interest" means an interest in property to secure payment of a loan made by a secured party to a borrower.

(11) "Title" or "titled" means a certificate of ownership issued pursuant to chapter 46.12 RCW. [1989 c 343 § 2.]

**65.20.020 Definitions.** (*Effective July 1, 2011.*) Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Affixed" means that the manufactured home is installed in accordance with the installation standards in state law.

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

(3) "Eliminating the title" means to cancel an existing certificate of title issued by this state or a foreign jurisdiction or to waive the certificate of title required in chapter 46.12 RCW and recording the appropriate documents in the county real property records pursuant to this chapter.

(4) "Homeowner" means the owner of a manufactured home.

(5) "Land" means real property excluding the manufactured home.

(6) "Manufactured home" or "mobile home" means a structure, designed and constructed to be transportable in one or more sections and is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities that include plumbing, heating, and electrical systems contained therein. The structure must comply with the national mobile home construction and safety standards act of 1974 as adopted by chapter 43.22 RCW if applicable. "Manufactured home" does not include a modular home. A structure which met the definition of a "manufactured home" at the time of manufacture is still considered to meet this definition notwithstanding that it is no longer transportable.

(7) "Owner" means, when referring to a manufactured home that is titled, the person who is the registered owner. When referring to a mobile home that is untitled pursuant to this chapter, the owner is the person who owns the land. When referring to land, the person may have fee simple title, have a leasehold estate of thirty-five years or more, or be purchasing the property on a real estate contract. Owners include joint tenants, tenants in common, holders of legal life estates, and holders of remainder interests.

(8) "Person" means any individual, trustee, partnership, corporation, or other legal entity. "Person" may refer to more than one individual or entity.

(9) "Secured party" means the legal owner when referring to a titled mobile home, or the lender securing a loan through a mortgage, deed of trust, or real estate contract when referring to land or land containing an untitled manufactured home pursuant to this chapter.

(10) "Security interest" means an interest in property to secure payment of a loan made by a secured party to a borrower.

(11) "Title" or "titled" means a certificate of title issued pursuant to chapter 46.12 RCW. [2010 c 161 § 1154; 1989 c 343 § 2.]

**Effective date—Intent—Legislation to reconcile chapter 161, Laws of 2010 and other amendments made during the 2010 legislative session—2010 c 161:** See notes following RCW 46.04.013.

**65.20.030 Clarification of type of property and perfection of security interests.** When a manufactured home is sold or transferred on or after March 1, 1990, and when all ownership in the manufactured home is transferred through the sale or other transfer of the manufactured home to new

owners, the manufactured home shall be real property when the new owners eliminate the title pursuant to this chapter. The manufactured home shall not be real property in any form, including fixture law, unless the title is eliminated under this chapter. Where any person who owned a used manufactured home on March 1, 1990, continues to own the manufactured home on or after March 1, 1990, the interests and rights of owners, secured parties, lienholders, and others in the manufactured home shall be based on the law prior to March 1, 1990, except where the owner voluntarily eliminates the title to the manufactured home by complying with this chapter. If the title to the manufactured home is eliminated under this chapter, the manufactured home shall be treated the same as a site-built structure and ownership shall be based on ownership of the real property through real property law. If the title to the manufactured home has not been eliminated under this chapter, ownership shall be based on chapter 46.12 RCW.

For purposes of perfecting and realizing upon security interests, manufactured homes shall always be treated as follows: (1) If the title has not been eliminated under this chapter, security interests in the manufactured home shall be perfected only under chapter 62A.9A RCW in the case of a manufactured home held as inventory by a manufacturer or dealer or chapter 46.12 RCW in all other cases, and the lien shall be treated as securing personal property for purposes of realizing upon the security interest; or (2) if the title has been eliminated under this chapter, a separate security interest in the manufactured home shall not exist, and the manufactured home shall only be secured as part of the real property through a mortgage, deed of trust, or real estate contract. [2000 c 250 § 9A-836; 1989 c 343 § 3.]

**Effective date—2000 c 250:** See RCW 62A.9A-701.

**65.20.040 Elimination of title—Application.** (*Effective until July 1, 2011.*) If a manufactured home is affixed to land that is owned by the homeowner, the homeowner may apply to the department to have the title to the manufactured home eliminated. The application package shall consist of the following:

(1) An affidavit, in the form prescribed by the department, signed by all the owners of the manufactured home and containing:

(a) The date;

(b) The names of all of the owners of record of the manufactured home;

(c) The legal description of the real property;

(d) A description of the manufactured home including model year, make, width, length, and vehicle identification number;

(e) The names of all secured parties in the manufactured home; and

(f) A statement that the owner of the manufactured home owns the real property to which it is affixed;

(2) Certificate of ownership for the manufactured home, or the manufacturer's statement of origin in the case of a new manufactured home. Where title is held by the secured party as legal owner, the consent of the secured party must be indicated by the legal owner releasing his or her security interest;

(3) A certification by the local government indicating that the manufactured home is affixed to the land;

(4) Payment of all licensing fees, excise tax, use tax, real estate tax, recording fees, and proof of payment of all property taxes then due; and

(5) Any other information the department may require. [1989 c 343 § 4.]

**65.20.040 Elimination of title—Application.** (*Effective July 1, 2011.*) If a manufactured home is affixed to land that is owned by the homeowner, the homeowner may apply to the department to have the title to the manufactured home eliminated. The application package shall consist of the following:

(1) An affidavit, in the form prescribed by the department, signed by all the owners of the manufactured home and containing:

(a) The date;

(b) The names of all of the owners of record of the manufactured home;

(c) The legal description of the real property;

(d) A description of the manufactured home including model year, make, width, length, and vehicle identification number;

(e) The names of all secured parties in the manufactured home; and

(f) A statement that the owner of the manufactured home owns the real property to which it is affixed;

(2) Certificate of title for the manufactured home, or the manufacturer's statement of origin in the case of a new manufactured home. Where title is held by the secured party as legal owner, the consent of the secured party must be indicated by the legal owner releasing his or her security interest;

(3) A certification by the local government indicating that the manufactured home is affixed to the land;

(4) Payment of all vehicle license fees, excise tax, use tax, real estate tax, recording fees, and proof of payment of all property taxes then due; and

(5) Any other information the department may require. [2010 c 161 § 1155; 1989 c 343 § 4.]

**Effective date—Intent—Legislation to reconcile chapter 161, Laws of 2010 and other amendments made during the 2010 legislative session—2010 c 161:** See notes following RCW 46.04.013.

**65.20.050 Elimination of title—Approval.** The department shall approve the application for elimination of the title when all requirements listed in RCW 65.20.040 have been satisfied and the registered and legal owners of the manufactured home have consented to the elimination of the title. After approval, the department shall have the approved application recorded in the county or counties in which the land is located and on which the manufactured home is affixed.

The county auditor shall record the approved application, and any other form prescribed by the department, in the county real property records. The manufactured home shall then be treated as real property as if it were a site-built structure. Removal of the manufactured home from the land is prohibited unless the procedures set forth in RCW 65.20.070 are complied with.

The department shall cancel the title after verification that the county auditor has recorded the appropriate docu-

ments, and the department shall maintain a record of each manufactured home title eliminated under this chapter by vehicle identification number. The title is deemed eliminated on the date the appropriate documents are recorded by the county auditor. [1989 c 343 § 5.]

**65.20.060 Eliminating title—Lenders and conveyances.** It is the responsibility of the owner, secured parties, and others to take action as necessary to protect their respective interests in conjunction with the elimination of the title or reissuance of a previously eliminated title.

A manufactured home whose title has been eliminated shall be conveyed by deed or real estate contract and shall only be transferred together with the property to which it is affixed, unless procedures described in RCW 65.20.070 are completed.

Nothing in this chapter shall be construed to require a lender to consent to the elimination of the title of a manufactured home, or to retitling a manufactured home under RCW 65.20.070. The obligation of the lender to consent is governed solely by the agreement between the lender and the owner of the manufactured home. Absent any express written contractual obligation, a lender may withhold consent in the lender's sole discretion. In addition, the homeowner shall comply with all reasonable requirements imposed by a lender for obtaining consent, and a lender may charge a reasonable fee for processing a request for consent. [1989 c 343 § 6.]

**65.20.070 Eliminating title—Removing manufactured home when title has been eliminated.** Before physical removal of an untitled manufactured home from the land the home is affixed to, the owner shall follow one of these two procedures:

(1) Where a title is to be issued or the home has been destroyed:

(i) The owner shall apply to the department for a title pursuant to chapter 46.12 RCW. In addition the owner shall provide:

(i) An affidavit in the form prescribed by the department, signed by the owners of the land and all secured parties and other lienholders in the land consenting to the removal of the home;

(ii) Payment of recording fees;

(iii) A certification from a title insurance company listing the owners and lienholders in the land and dated within ten days of the date of application for a new title under this subsection; and

(iv) Any other information the department may require;

(b) The owner shall apply for and obtain permits necessary to move a manufactured home including but not limited to the permit required by RCW 46.44.170, and comply with other regulations regarding moving a manufactured home; and

(c) The department shall approve the application for title when the requirements of chapter 46.12 RCW and this subsection have been satisfied. Upon approval the department shall have the approved application and the affidavit recorded in the county or counties in which the land from which the home is being removed is located and the department shall

issue a title. The title is deemed effective on the date the appropriate documents are recorded with the county auditor.

(2) Where the manufactured home is to be moved to a new location but again will be affixed to land owned by the homeowner a new title need not be issued, but the following procedures must be complied with:

(a) The owner shall apply to the department for a transfer in location of the manufactured home and if a new owner, a transfer in ownership by filing an application pursuant to RCW 65.20.040. In addition the owner shall include:

(i) An affidavit in the form prescribed by the department signed by all of the owners of the real property from which the manufactured home is being moved indicating their consent. The affidavit shall include the consent of all secured parties and other lienholders in the land from which the manufactured home is being moved;

(ii) A legal description and property tax parcel number of the real property from which the home is being removed and a legal description and property tax parcel number of the land on which the home is being moved to; and

(iii) A certification from a title insurance company listing the owners and lienholders in the land and dated within ten days of the application for transfer in location under this subsection;

(b) The owner shall apply for and obtain permits necessary to move a manufactured home including but not limited to RCW 46.44.170, and comply with other regulations regarding moving a manufactured home; and

(c) After approval, including verification that the owners, secured parties, and other lienholders have consented to the move, the department shall have the approved application recorded in the county or counties in which the land from which the home is being removed and the land to which the home is being moved is located. [1989 c 343 § 7.]

**65.20.080 Eliminating title—Uniform forms.** The department may prepare standard affidavits, lienholder's consents, and other forms to be used pursuant to this chapter. [1989 c 343 § 8.]

**65.20.090 Eliminating title—Fees.** The director may, in addition to the title fees and other fees and taxes required under chapter 46.12 RCW establish by rule a reasonable fee to cover the cost of processing documents and performing services by the department required under this chapter.

Fees collected by the department for services provided by the department under this chapter shall be forwarded to the state treasurer. The state treasurer shall credit such moneys to the motor vehicle fund and all department expenses incurred in carrying out the provisions of this chapter shall be paid from such fund as authorized by legislative appropriation. [1989 c 343 § 9.]

**65.20.100 Eliminating title—General supervision.** The department shall have the general supervision and control of the elimination of titles and shall have full power to do all things necessary and proper to carry out the provisions of this chapter. The director shall have the power to appoint the county auditors as the agents of the department. [1989 c 343 § 11.]

**65.20.110 Eliminating title—Rules.** The department may make any reasonable rules relating to the enforcement and proper operation of this chapter. [1989 c 343 § 12.]

**65.20.120 Eliminating title—Notice.** County auditors shall notify county assessors regarding elimination of titles to manufactured homes, the retitling of manufactured homes, and the movement of manufactured homes under RCW 65.20.070. [1989 c 343 § 13.]

**65.20.130 General penalties.** Every person who falsifies or intentionally omits material information required in an affidavit, or otherwise intentionally violates a material provision of this chapter, is guilty of a gross misdemeanor punishable in accordance with RCW 9A.20.021. [1989 c 343 § 10.]

**65.20.900 Prospective effect.** This chapter applies prospectively only. RCW 65.20.030 applies to all security interests perfected on or after March 1, 1990. This chapter applies to the sale or transfer of manufactured homes on or after March 1, 1990, where all of the existing ownership rights and interests in the manufactured home are terminated in favor of new and different owners, or where persons who own a manufactured home on or after March 1, 1990, voluntarily elect to eliminate the title to the manufactured home under this chapter. [1989 c 343 § 14.]

**65.20.910 Effect on taxation.** Nothing in this chapter shall be construed to affect the taxation of manufactured homes. [1989 c 343 § 15.]

**65.20.920 Captions not law.** Section headings as used in this chapter do not constitute any part of the law. [1989 c 343 § 16.]

**65.20.930 Short title.** This chapter may be known and cited as the manufactured home real property act. [1989 c 343 § 17.]

**65.20.940 Severability—1989 c 343.** If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1989 c 343 § 26.]

**65.20.950 Effective date—1989 c 343.** This act shall take effect on March 1, 1990. [1989 c 343 § 27.]

## Chapter 65.24 RCW UNIFORM REAL PROPERTY ELECTRONIC RECORDING ACT

### Sections

65.24.010	Definitions.
65.24.020	Electronic authentication.
65.24.030	Recording officer—Powers and duties.
65.24.040	E-recording standards commission.
65.24.050	Electronic signatures in global and national commerce act.
65.24.900	Short title.
65.24.901	Application—construction.

**65.24.010 Definitions.** The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Document" means information that is:

(a) Inscribed on a tangible medium or that is stored in an electronic or other medium, and is retrievable in perceivable form; and

(b) Eligible to be recorded in the land records maintained by the recording officer.

(2) "Electronic" means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.

(3) "Electronic document" means a document that is received by the recording officer in an electronic form.

(4) "Electronic signature" means an electronic sound, symbol, or process attached to or logically associated with a document and executed or adopted by a person with the intent to sign the document.

(5) "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, public corporation, government, or governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.

(6) "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

(7) "E-recording standards commission" means the body of stakeholders appointed by the secretary of state to review electronic recording standards and make recommendations to the secretary under RCW 65.24.040. [2008 c 57 § 2.]

**65.24.020 Electronic authentication.** (1) If a law requires, as a condition for recording, that a document be an original, be on paper or another tangible medium, or be in writing, the requirement is satisfied by an electronic document satisfying this chapter.

(2) If a law requires, as a condition for recording, that a document be signed, the requirement is satisfied by an electronic signature.

(3) A requirement that a document or a signature associated with a document be notarized, acknowledged, verified, witnessed, or made under oath is satisfied if the electronic signature of the person authorized to perform that act, and all other information required to be included, is attached to or logically associated with the document or signature. A physical or electronic image of a stamp, impression, or seal need not accompany an electronic signature. [2008 c 57 § 3.]

**65.24.030 Recording officer—Powers and duties.** (1) In this section, "paper document" means a document that is received by the recording officer in a form that is not electronic.

(2) A recording officer:

(a) Who performs any of the functions listed in this section shall do so in compliance with the rules adopted by the secretary of state for the electronic recording of documents;

(b) May receive, index, store, archive, and transmit electronic documents;

(c) May provide for access to, and for search and retrieval of, documents and information by electronic means;

(2010 Ed.)

(d) Who accepts electronic documents for recording shall continue to accept paper documents as authorized by state law and shall place entries for both types of documents in the same index;

(e) May convert paper documents accepted for recording into electronic form;

(f) May convert information previously recorded into electronic form;

(g) May, after receiving approval pursuant to RCW 36.29.190, accept electronically any fee or tax that the recording officer is authorized to collect;

(h) May agree with other officials of a state, or a political subdivision thereof, or of the United States, on procedures or processes to facilitate the electronic satisfaction of prior approvals and conditions precedent to recording and the electronic payment of fees or taxes. [2008 c 57 § 4.]

**65.24.040 E-recording standards commission.** The office of the secretary of state shall create and appoint an e-recording standards commission. The e-recording standards commission shall review electronic recording standards and make recommendations to the secretary of state for rules necessary to implement this chapter. A majority of the commission must be county recorders or auditors. The commission may include assessors, treasurers, land title company representatives, escrow agents, and mortgage brokers, the state archivist, and any other party the secretary of state deems appropriate. The term of the commissioners will be set by the secretary of state.

To keep the standards and practices of recording officers in this state in harmony with the standards and practices of recording offices in other jurisdictions that enact this chapter and to keep the technology used by recording officers in this state compatible with technology used by recording offices in other jurisdictions that enact this chapter, the office of the secretary of state, so far as is consistent with the purposes, policies, and provisions of this chapter, in adopting, amending, and repealing standards shall consider:

(1) The standards and practices of other jurisdictions;

(2) The most recent standards adopted by national standard-setting bodies, such as the property records industry association;

(3) The views of interested persons and governmental officials and entities;

(4) The needs of counties of varying size, population, and resources; and

(5) Standards requiring adequate information security protection to ensure that electronic documents are accurate, authentic, adequately preserved, and resistant to tampering. [2008 c 57 § 5.]

**65.24.050 Electronic signatures in global and national commerce act.** This chapter modifies, limits, and supersedes the federal electronic signatures in global and national commerce act (15 U.S.C. Sec. 7001, et seq.) but does not modify, limit, or supersede section 101(c) of that act or authorize electronic delivery of any of the notices described in section 103(b) of that act. [2008 c 57 § 7.]

**65.24.900 Short title.** This chapter may be known and cited as the uniform real property electronic recording act. [2008 c 57 § 1.]

**65.24.901 Application—construction.** In applying and construing this chapter, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact a uniform real property electronic recording act. [2008 c 57 § 6.]

# Title 66

## ALCOHOLIC BEVERAGE CONTROL

### Chapters

- 66.04** Definitions.
- 66.08** Liquor control board—General provisions.
- 66.12** Exemptions.
- 66.16** State liquor stores.
- 66.20** Liquor permits.
- 66.24** Licenses—Stamp taxes.
- 66.28** Miscellaneous regulatory provisions.
- 66.32** Search and seizure.
- 66.36** Abatement proceedings.
- 66.40** Local option.
- 66.44** Enforcement—Penalties.
- 66.98** Construction.

*Alcoholism, intoxication, and drug addiction private establishments: Chapter 71.12 RCW. treatment: Chapter 70.96A RCW.*

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

*Minors, access to tobacco, role of liquor control board: Chapter 70.155 RCW.*

*Wine grape industry, instruction relating to—Purpose—Administration: RCW 28B.30.067 and 28B.30.068.*

### Chapter 66.04 RCW

#### DEFINITIONS

#### Sections

- 66.04.010 Definitions.
- 66.04.011 "Public place" not to include certain parks and picnic areas.

**66.04.010 Definitions.** In this title, unless the context otherwise requires:

(1) "Alcohol" is that substance known as ethyl alcohol, hydrated oxide of ethyl, or spirit of wine, which is commonly produced by the fermentation or distillation of grain, starch, molasses, or sugar, or other substances including all dilutions and mixtures of this substance. The term "alcohol" does not include alcohol in the possession of a manufacturer or distiller of alcohol fuel, as described in RCW 66.12.130, which is intended to be denatured and used as a fuel for use in motor vehicles, farm implements, and machines or implements of husbandry.

(2) "Authorized representative" means a person who:

(a) Is required to have a federal basic permit issued pursuant to the federal alcohol administration act, 27 U.S.C. Sec. 204;

(b) Has its business located in the United States outside of the state of Washington;

(c) Acquires ownership of beer or wine for transportation into and resale in the state of Washington; and which beer or wine is produced by a brewery or winery in the United States outside of the state of Washington; and

(d) Is appointed by the brewery or winery referenced in (c) of this subsection as its authorized representative for mar-

keting and selling its products within the United States in accordance with a written agreement between the authorized representative and such brewery or winery pursuant to this title.

(3) "Beer" means any malt beverage, flavored malt beverage, or malt liquor as these terms are defined in this chapter.

(4) "Beer distributor" means a person who buys beer from a domestic brewery, microbrewery, beer certificate of approval holder, or beer importers, or who acquires foreign produced beer from a source outside of the United States, for the purpose of selling the same pursuant to this title, or who represents such brewer or brewery as agent.

(5) "Beer importer" means a person or business within Washington who purchases beer from a beer certificate of approval holder or who acquires foreign produced beer from a source outside of the United States for the purpose of selling the same pursuant to this title.

(6) "Board" means the liquor control board, constituted under this title.

(7) "Brewer" or "brewery" means any person engaged in the business of manufacturing beer and malt liquor. Brewer includes a brand owner of malt beverages who holds a brewer's notice with the federal bureau of alcohol, tobacco, and firearms at a location outside the state and whose malt beverage is contract-produced by a licensed in-state brewery, and who may exercise within the state, under a domestic brewery license, only the privileges of storing, selling to licensed beer distributors, and exporting beer from the state.

(8) "Club" means an organization of persons, incorporated or unincorporated, operated solely for fraternal, benevolent, educational, athletic or social purposes, and not for pecuniary gain.

(9) "Confection" means a preparation of sugar, honey, or other natural or artificial sweeteners in combination with chocolate, fruits, nuts, dairy products, or flavorings, in the form of bars, drops, or pieces.

(10) "Consume" includes the putting of liquor to any use, whether by drinking or otherwise.

(11) "Contract liquor store" means a business that sells liquor on behalf of the board through a contract with a contract liquor store manager.

(12) "Craft distillery" means a distillery that pays the reduced licensing fee under RCW 66.24.140.

(13) "Dentist" means a practitioner of dentistry duly and regularly licensed and engaged in the practice of his profession within the state pursuant to chapter 18.32 RCW.

(14) "Distiller" means a person engaged in the business of distilling spirits.

(15) "Domestic brewery" means a place where beer and malt liquor are manufactured or produced by a brewer within the state.

(16) "Domestic winery" means a place where wines are manufactured or produced within the state of Washington.

(17) "Drug store" means a place whose principal business is, the sale of drugs, medicines and pharmaceutical preparations and maintains a regular prescription department and employs a registered pharmacist during all hours the drug store is open.

(18) "Druggist" means any person who holds a valid certificate and is a registered pharmacist and is duly and regularly engaged in carrying on the business of pharmaceutical chemistry pursuant to chapter 18.64 RCW.

(19) "Employee" means any person employed by the board.

(20) "Flavored malt beverage" means:

(a) A malt beverage containing six percent or less alcohol by volume to which flavoring or other added nonbeverage ingredients are added that contain distilled spirits of not more than forty-nine percent of the beverage's overall alcohol content; or

(b) A malt beverage containing more than six percent alcohol by volume to which flavoring or other added nonbeverage ingredients are added that contain distilled spirits of not more than one and one-half percent of the beverage's overall alcohol content.

(21) "Fund" means 'liquor revolving fund.'

(22) "Hotel" means buildings, structures, and grounds, having facilities for preparing, cooking, and serving food, that are kept, used, maintained, advertised, or held out to the public to be a place where food is served and sleeping accommodations are offered for pay to transient guests, in which twenty or more rooms are used for the sleeping accommodation of such transient guests. The buildings, structures, and grounds must be located on adjacent property either owned or leased by the same person or persons.

(23) "Importer" means a person who buys distilled spirits from a distillery outside the state of Washington and imports such spirituous liquor into the state for sale to the board or for export.

(24) "Imprisonment" means confinement in the county jail.

(25) "Liquor" includes the four varieties of liquor herein defined (alcohol, spirits, wine and beer), and all fermented, spirituous, vinous, or malt liquor, or combinations thereof, and mixed liquor, a part of which is fermented, spirituous, vinous or malt liquor, or otherwise intoxicating; and every liquid or solid or semisolid or other substance, patented or not, containing alcohol, spirits, wine or beer, and all drinks or drinkable liquids and all preparations or mixtures capable of human consumption, and any liquid, semisolid, solid, or other substance, which contains more than one percent of alcohol by weight shall be conclusively deemed to be intoxicating. Liquor does not include confections or food products that contain one percent or less of alcohol by weight.

(26) "Malt beverage" or "malt liquor" means any beverage such as beer, ale, lager beer, stout, and porter obtained by the alcoholic fermentation of an infusion or decoction of pure hops, or pure extract of hops and pure barley malt or other wholesome grain or cereal in pure water containing not more than eight percent of alcohol by weight, and not less than one-half of one percent of alcohol by volume. For the purposes of

this title, any such beverage containing more than eight percent of alcohol by weight shall be referred to as "strong beer."

(27) "Manufacturer" means a person engaged in the preparation of liquor for sale, in any form whatsoever.

(28) "Nightclub" means an establishment that provides entertainment and has as its primary source of revenue (a) the sale of alcohol for consumption on the premises, (b) cover charges, or (c) both, and has an occupancy load of one hundred or more.

(29) "Package" means any container or receptacle used for holding liquor.

(30) "Passenger vessel" means any boat, ship, vessel, barge, or other floating craft of any kind carrying passengers for compensation.

(31) "Permit" means a permit for the purchase of liquor under this title.

(32) "Person" means an individual, copartnership, association, or corporation.

(33) "Physician" means a medical practitioner duly and regularly licensed and engaged in the practice of his profession within the state pursuant to chapter 18.71 RCW.

(34) "Prescription" means a memorandum signed by a physician and given by him to a patient for the obtaining of liquor pursuant to this title for medicinal purposes.

(35) "Public place" includes streets and alleys of incorporated cities and towns; state or county or township highways or roads; buildings and grounds used for school purposes; public dance halls and grounds adjacent thereto; those parts of establishments where beer may be sold under this title, soft drink establishments, public buildings, public meeting halls, lobbies, halls and dining rooms of hotels, restaurants, theatres, stores, garages and filling stations which are open to and are generally used by the public and to which the public is permitted to have unrestricted access; railroad trains, stages, and other public conveyances of all kinds and character, and the depots and waiting rooms used in conjunction therewith which are open to unrestricted use and access by the public; publicly owned bathing beaches, parks, and/or playgrounds; and all other places of like or similar nature to which the general public has unrestricted right of access, and which are generally used by the public.

(36) "Regulations" means regulations made by the board under the powers conferred by this title.

(37) "Restaurant" means any establishment provided with special space and accommodations where, in consideration of payment, food, without lodgings, is habitually furnished to the public, not including drug stores and soda fountains.

(38) "Sale" and "sell" include exchange, barter, and traffic; and also include the selling or supplying or distributing, by any means whatsoever, of liquor, or of any liquid known or described as beer or by any name whatever commonly used to describe malt or brewed liquor or of wine, by any person to any person; and also include a sale or selling within the state to a foreign consignee or his agent in the state. "Sale" and "sell" shall not include the giving, at no charge, of a reasonable amount of liquor by a person not licensed by the board to a person not licensed by the board, for personal use only. "Sale" and "sell" also does not include a raffle authorized under RCW 9.46.0315: PROVIDED, That the non-

profit organization conducting the raffle has obtained the appropriate permit from the board.

(39) "Soda fountain" means a place especially equipped with apparatus for the purpose of dispensing soft drinks, whether mixed or otherwise.

(40) "Spirits" means any beverage which contains alcohol obtained by distillation, except flavored malt beverages, but including wines exceeding twenty-four percent of alcohol by volume.

(41) "Store" means a state liquor store established under this title.

(42) "Tavern" means any establishment with special space and accommodation for sale by the glass and for consumption on the premises, of beer, as herein defined.

(43)(a) "Wine" means any alcoholic beverage obtained by fermentation of fruits (grapes, berries, apples, et cetera) or other agricultural product containing sugar, to which any saccharine substances may have been added before, during or after fermentation, and containing not more than twenty-four percent of alcohol by volume, including sweet wines fortified with wine spirits, such as port, sherry, muscatel and angelica, not exceeding twenty-four percent of alcohol by volume and not less than one-half of one percent of alcohol by volume. For purposes of this title, any beverage containing no more than fourteen percent of alcohol by volume when bottled or packaged by the manufacturer shall be referred to as "table wine," and any beverage containing alcohol in an amount more than fourteen percent by volume when bottled or packaged by the manufacturer shall be referred to as "fortified wine." However, "fortified wine" shall not include: (i) Wines that are both sealed or capped by cork closure and aged two years or more; and (ii) wines that contain more than fourteen percent alcohol by volume solely as a result of the natural fermentation process and that have not been produced with the addition of wine spirits, brandy, or alcohol.

(b) This subsection shall not be interpreted to require that any wine be labeled with the designation "table wine" or "fortified wine."

(44) "Wine distributor" means a person who buys wine from a domestic winery, wine certificate of approval holder, or wine importer, or who acquires foreign produced wine from a source outside of the United States, for the purpose of selling the same not in violation of this title, or who represents such vintner or winery as agent.

(45) "Wine importer" means a person or business within Washington who purchases wine from a wine certificate of approval holder or who acquires foreign produced wine from a source outside of the United States for the purpose of selling the same pursuant to this title.

(46) "Winery" means a business conducted by any person for the manufacture of wine for sale, other than a domestic winery. [2009 c 373 § 1; 2009 c 271 § 2; 2008 c 94 § 4; (2008 c 94 § 3 expired July 1, 2008). Prior: 2007 c 370 § 10; 2007 c 226 § 1; prior: 2006 c 225 § 1; 2006 c 101 § 1; 2005 c 151 § 1; 2004 c 160 § 1; 2000 c 142 § 1; 1997 c 321 § 37; 1991 c 192 § 1; 1987 c 386 § 3; 1984 c 78 § 5; 1982 c 39 § 1; 1981 1st ex.s. c 5 § 1; 1980 c 140 § 3; 1969 ex.s. c 21 § 13; 1935 c 158 § 1; 1933 ex.s. c 62 § 3; RRS § 7306-3. Formerly RCW 66.04.010 through 66.04.380.]

**Reviser's note:** (1) The definitions in this section have been alphabetized pursuant to RCW 1.08.015(2)(k).

(2010 Ed.)

(2) This section was amended by 2009 c 271 § 2 and by 2009 c 373 § 1, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

**Effective date—2008 c 94 §§ 4 and 11:** "Sections 4 and 11 of this act take effect July 1, 2008." [2008 c 94 § 13.]

**Expiration date—2008 c 94 § 3:** "Section 3 of this act expires July 1, 2008." [2008 c 94 § 12.]

**Effective date—2007 c 370 §§ 10-20:** "Sections 10 through 20 of this act take effect July 1, 2008." [2007 c 370 § 23.]

**Effective date—2004 c 160:** "This act takes effect January 1, 2005." [2004 c 160 § 20.]

**Finding and declaration—Severability—1984 c 78:** See notes following RCW 66.12.160.

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**66.04.011 "Public place" not to include certain parks and picnic areas.** "Public place" as defined in this title shall not include (a) any of those parks under the control of the state parks and recreation commission, nor, (b) parks and picnic areas adjacent to and held by the same ownership as licensed brewers and domestic wineries for the consumption of beer and wine produced by the respective brewery or winery, as prescribed by regulation adopted by the board pursuant to chapter 34.05 RCW. [1977 ex.s. c 219 § 1; 1971 ex.s. c 208 § 3.]

## Chapter 66.08 RCW

### LIQUOR CONTROL BOARD— GENERAL PROVISIONS

#### Sections

66.08.010	Title liberally construed.
66.08.012	Creation of board—Chairman—Quorum—Salary.
66.08.014	Terms of members—Vacancies—Principal office— Removal—Devotion of time to duties—Bond—Oath.
66.08.016	Employees of the board.
66.08.020	Liquor control board to administer.
66.08.022	Attorney general is general counsel of board—Duties— Assistants.
66.08.024	Annual audit—State auditor's duties—Additional audits— Public records.
66.08.026	Appropriation and payment of administrative expenses from liquor revolving fund—"Administrative expenses" defined.
66.08.030	Regulations—Scope.
66.08.050	Powers of board in general.
66.08.0501	Adoption of rules.
66.08.055	Oaths may be administered and affidavits, declarations received.
66.08.060	Board cannot advertise liquor, exception—Advertising regu- lations.
66.08.070	Purchase of liquor by board—Consignment not prohibited— Warranty or affirmation not required for wine or malt pur- chases.
66.08.075	Officer, employee not to represent manufacturer, wholesaler in sale to board.
66.08.080	Interest in manufacture or sale of liquor prohibited.
66.08.090	Sale of liquor by employees of board.
66.08.095	Liquor for training or investigation purposes.
66.08.100	Jurisdiction of action against board—Immunity from per- sonal liability of members.
66.08.120	Preemption of field by state—Exception.
66.08.130	Inspection of books and records—Goods possessed or shipped—Refusal as violation.
66.08.140	Inspection of books and records—Financial dealings—Pen- alty for refusal.
66.08.145	Subpoena issuing authority.
66.08.150	Board's action as to permits and licenses—Administrative procedure act, applicability—Adjudicative proceeding— Opportunity for hearing—Summary suspension.
66.08.160	Acquisition of warehouse authorized.
66.08.165	Strategies to improve operational efficiency and revenue.

- 66.08.166 Sunday sales authorized—Store selection and other requirements.
- 66.08.167 Sunday sales—Store selection.
- 66.08.170 Liquor revolving fund—Creation—Composition—State treasurer as custodian—Daily deposits, exceptions—Budget and accounting act applicable.
- 66.08.180 Liquor revolving fund—Distribution—Reserve for administration—Disbursement to universities and state agencies.
- 66.08.190 Liquor revolving fund—Disbursement of excess funds to state, counties, and cities—Withholding of funds for non-compliance.
- 66.08.195 Liquor revolving fund—Definition of terms relating to border areas.
- 66.08.196 Liquor revolving fund—Distribution of funds to border areas.
- 66.08.198 Liquor revolving fund—Distribution of funds to border areas—Guidelines adoption.
- 66.08.200 Liquor revolving fund—Computation for distribution to counties—"Unincorporated area" defined.
- 66.08.210 Liquor revolving fund—Computation for distribution to cities.
- 66.08.220 Liquor revolving fund—Separate account—Distribution.
- 66.08.225 Liquor revolving fund—License fee deposits—Fund uses.
- 66.08.230 Initial disbursement to wine commission—Repayment.
- 66.08.235 Liquor control board construction and maintenance account.
- 66.08.240 Transfer of funds pursuant to government service agreement.

*Minors, access to tobacco, role of liquor control board: Chapter 70.155 RCW.*

*Public bodies may retain collection agencies to collect public debts—Fees: RCW 19.16.500.*

**66.08.010 Title liberally construed.** This entire title shall be deemed an exercise of the police power of the state, for the protection of the welfare, health, peace, morals, and safety of the people of the state, and all its provisions shall be liberally construed for the accomplishment of that purpose. [1933 ex.s. c 62 § 2; RRS § 7306-2.]

**66.08.012 Creation of board—Chairman—Quorum—Salary.** There shall be a board, known as the "Washington state liquor control board," consisting of three members, to be appointed by the governor, with the consent of the senate, who shall each be paid an annual salary to be fixed by the governor in accordance with the provisions of RCW 43.03.040. The governor may, in his discretion, appoint one of the members as chairman of the board, and a majority of the members shall constitute a quorum of the board. [1961 c 307 § 7; 1949 c 5 § 8; 1945 c 208 § 1; 1937 c 225 § 1; 1933 ex.s. c 62 § 63; Rem. Supp. 1949 § 7306-63. Formerly RCW 43.66.010.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**66.08.014 Terms of members—Vacancies—Principal office—Removal—Devotion of time to duties—Bond—Oath.** (1) The members of the board to be appointed after December 2, 1948 shall be appointed for terms beginning January 15, 1949, and expiring as follows: One member of the board for a term of three years from January 15, 1949; one member of the board for a term of six years from January 15, 1949; and one member of the board for a term of nine years from January 15, 1949. Each of the members of the board appointed hereunder shall hold office until his successor is appointed and qualified. After June 11, 1986, the term that began on January 15, 1985, will end on January 15, 1989, the term beginning on January 15, 1988, will end on January 15, 1993, and the term beginning on January 15, 1991, will end on January 15, 1997. Thereafter, upon the expiration of the term of any member appointed after June 11, 1986, each

succeeding member of the board shall be appointed and hold office for the term of six years. In case of a vacancy, it shall be filled by appointment by the governor for the unexpired portion of the term in which said vacancy occurs. No vacancy in the membership of the board shall impair the right of the remaining member or members to act, except as herein otherwise provided.

(2) The principal office of the board shall be at the state capitol, and it may establish such other offices as it may deem necessary.

(3) Any member of the board may be removed for inefficiency, malfeasance or misfeasance in office, upon specific written charges filed by the governor, who shall transmit such written charges to the member accused and to the chief justice of the supreme court. The chief justice shall thereupon designate a tribunal composed of three judges of the superior court to hear and adjudicate the charges. Such tribunal shall fix the time of the hearing, which shall be public, and the procedure for the hearing, and the decision of such tribunal shall be final and not subject to review by the supreme court. Removal of any member of the board by the tribunal shall disqualify such member for reappointment.

(4) Each member of the board shall devote his entire time to the duties of his office and no member of the board shall hold any other public office. Before entering upon the duties of his office, each of said members of the board shall enter into a surety bond executed by a surety company authorized to do business in this state, payable to the state of Washington, to be approved by the governor in the penal sum of fifty thousand dollars conditioned upon the faithful performance of his duties, and shall take and subscribe to the oath of office prescribed for elective state officers, which oath and bond shall be filed with the secretary of state. The premium for said bond shall be paid by the board. [1986 c 105 § 1; 1949 c 5 § 9; 1947 c 113 § 1; 1945 c 208 § 2; 1933 ex.s. c 62 § 64; Rem. Supp. 1949 § 7306-64. Formerly RCW 43.66.020.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**66.08.016 Employees of the board.** The board may employ such number of employees as in its judgment are required from time to time. [1961 c 1 § 30 (Initiative Measure No. 207, approved November 8, 1960); 1947 c 113 § 2; 1933 ex.s. c 62 § 65; Rem. Supp. 1947 § 7306-65. Formerly RCW 43.66.030.]

**66.08.020 Liquor control board to administer.** The administration of this title, including the general control, management and supervision of all liquor stores, shall be vested in the liquor control board, constituted under this title. [1933 ex.s. c 62 § 5; RRS § 7306-5.]

*Prosecuting attorney to make annual report of liquor law prosecutions: RCW 36.27.020.*

**66.08.022 Attorney general is general counsel of board—Duties—Assistants.** The attorney general shall be the general counsel of the liquor control board and he shall institute and prosecute all actions and proceedings which may be necessary in the enforcement and carrying out of the provisions of this chapter and Title 66 RCW.

He shall assign such assistants as may be necessary to the exclusive duty of assisting the liquor control board in the enforcement of Title 66 RCW. [1961 ex.s. c 6 § 2; 1933 ex.s. c 62 § 66; RRS § 7306-66. Formerly RCW 43.66.140.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**66.08.024 Annual audit—State auditor's duties—Additional audits—Public records.** The state auditor shall audit the books, records, and affairs of the board annually. The board may provide for additional audits by certified public accountants. All such audits shall be public records of the state. The payment of the audits provided for in this section shall be paid as provided in RCW 66.08.026 for other administrative expenses. [1987 c 74 § 1; 1981 1st ex.s. c 5 § 2; 1961 ex.s. c 6 § 3; 1937 c 138 § 1; 1935 c 174 § 12; 1933 ex.s. c 62 § 71; RRS § 7306-71. Formerly RCW 43.66.150.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**66.08.026 Appropriation and payment of administrative expenses from liquor revolving fund—"Administrative expenses" defined.** Administrative expenses of the board shall be appropriated and paid from the liquor revolving fund. These administrative expenses shall include, but not be limited to: The salaries and expenses of the board and its employees, the cost of opening additional state liquor stores and warehouses, legal services, pilot projects, annual or other audits, and other general costs of conducting the business of the board. The administrative expenses shall not include costs of liquor and lottery tickets purchased, the cost of transportation and delivery to the point of distribution, the cost of operating, maintaining, relocating, and leasing state liquor stores and warehouses, other costs pertaining to the acquisition and receipt of liquor and lottery tickets, agency commissions for contract liquor stores, transaction fees associated with credit or debit card purchases for liquor in state liquor stores and in contract liquor stores pursuant to RCW 66.16.040 and 66.16.041, sales tax, and those amounts distributed pursuant to RCW 66.08.180, 66.08.190, 66.08.200, 66.08.210 and 66.08.220. Agency commissions for contract liquor stores shall be established by the liquor control board after consultation with and approval by the director of the office of financial management. All expenditures and payment of obligations authorized by this section are subject to the allotment requirements of chapter 43.88 RCW. [2008 c 67 § 1; 2005 c 151 § 2; 2004 c 63 § 1; 2001 c 313 § 1; 1998 c 265 § 2; 1997 c 148 § 1; 1996 c 291 § 3; 1983 c 160 § 2; 1963 c 239 § 1; 1961 ex.s. c 6 § 4. Formerly RCW 43.66.161.]

**Effective date—2008 c 67:** "This act takes effect July 1, 2009." [2008 c 67 § 2.]

**Intent—1998 c 265:** See note following RCW 66.16.041.

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**66.08.030 Regulations—Scope.** (1) For the purpose of carrying into effect the provisions of this title according to their true intent or of supplying any deficiency therein, the board may make such regulations not inconsistent with the spirit of this title as are deemed necessary or advisable. All regulations so made shall be a public record and shall be filed in the office of the code reviser, and thereupon shall have the same force and effect as if incorporated in this title. Such reg-

(2010 Ed.)

ulations, together with a copy of this title, shall be published in pamphlets and shall be distributed as directed by the board.

(2) Without thereby limiting the generality of the provisions contained in subsection (1), it is declared that the power of the board to make regulations in the manner set out in that subsection shall extend to

(a) regulating the equipment and management of stores and warehouses in which state liquor is sold or kept, and prescribing the books and records to be kept therein and the reports to be made thereon to the board;

(b) prescribing the duties of the employees of the board, and regulating their conduct in the discharge of their duties;

(c) governing the purchase of liquor by the state and the furnishing of liquor to stores established under this title;

(d) determining the classes, varieties, and brands of liquor to be kept for sale at any store;

(e) prescribing, subject to \*RCW 66.16.080, the hours during which the state liquor stores shall be kept open for the sale of liquor;

(f) providing for the issuing and distributing of price lists showing the price to be paid by purchasers for each variety of liquor kept for sale under this title;

(g) prescribing an official seal and official labels and stamps and determining the manner in which they shall be attached to every package of liquor sold or sealed under this title, including the prescribing of different official seals or different official labels for different classes of liquor;

(h) providing for the payment by the board in whole or in part of the carrying charges on liquor shipped by freight or express;

(i) prescribing forms to be used for purposes of this title or the regulations, and the terms and conditions to be contained in permits and licenses issued under this title, and the qualifications for receiving a permit or license issued under this title, including a criminal history record information check. The board may submit the criminal history record information check to the Washington state patrol and to the identification division of the federal bureau of investigation in order that these agencies may search their records for prior arrests and convictions of the individual or individuals who filled out the forms. The board shall require fingerprinting of any applicant whose criminal history record information check is submitted to the federal bureau of investigation;

(j) prescribing the fees payable in respect of permits and licenses issued under this title for which no fees are prescribed in this title, and prescribing the fees for anything done or permitted to be done under the regulations;

(k) prescribing the kinds and quantities of liquor which may be kept on hand by the holder of a special permit for the purposes named in the permit, regulating the manner in which the same shall be kept and disposed of, and providing for the inspection of the same at any time at the instance of the board;

(l) regulating the sale of liquor kept by the holders of licenses which entitle the holder to purchase and keep liquor for sale;

(m) prescribing the records of purchases or sales of liquor kept by the holders of licenses, and the reports to be made thereon to the board, and providing for inspection of the records so kept;

(n) prescribing the kinds and quantities of liquor for which a prescription may be given, and the number of prescriptions which may be given to the same patient within a stated period;

(o) prescribing the manner of giving and serving notices required by this title or the regulations, where not otherwise provided for in this title;

(p) regulating premises in which liquor is kept for export from the state, or from which liquor is exported, prescribing the books and records to be kept therein and the reports to be made thereon to the board, and providing for the inspection of the premises and the books, records and the liquor so kept;

(q) prescribing the conditions and qualifications requisite for the obtaining of club licenses and the books and records to be kept and the returns to be made by clubs, prescribing the manner of licensing clubs in any municipality or other locality, and providing for the inspection of clubs;

(r) prescribing the conditions, accommodations and qualifications requisite for the obtaining of licenses to sell beer and wines, and regulating the sale of beer and wines thereunder;

(s) specifying and regulating the time and periods when, and the manner, methods and means by which manufacturers shall deliver liquor within the state; and the time and periods when, and the manner, methods and means by which liquor may lawfully be conveyed or carried within the state;

(t) providing for the making of returns by brewers of their sales of beer shipped within the state, or from the state, showing the gross amount of such sales and providing for the inspection of brewers' books and records, and for the checking of the accuracy of any such returns;

(u) providing for the making of returns by the wholesalers of beer whose breweries are located beyond the boundaries of the state;

(v) providing for the making of returns by any other liquor manufacturers, showing the gross amount of liquor produced or purchased, the amount sold within and exported from the state, and to whom so sold or exported, and providing for the inspection of the premises of any such liquor manufacturers, their books and records, and for the checking of any such return;

(w) providing for the giving of fidelity bonds by any or all of the employees of the board: PROVIDED, That the premiums therefor shall be paid by the board;

(x) providing for the shipment by mail or common carrier of liquor to any person holding a permit and residing in any unit which has, by election pursuant to this title, prohibited the sale of liquor therein;

(y) prescribing methods of manufacture, conditions of sanitation, standards of ingredients, quality and identity of alcoholic beverages manufactured, sold, bottled, or handled by licensees and the board; and conducting from time to time, in the interest of the public health and general welfare, scientific studies and research relating to alcoholic beverages and the use and effect thereof;

(z) seizing, confiscating and destroying all alcoholic beverages manufactured, sold or offered for sale within this state which do not conform in all respects to the standards prescribed by this title or the regulations of the board: PROVIDED, Nothing herein contained shall be construed as authorizing the liquor board to prescribe, alter, limit or in any

way change the present law as to the quantity or percentage of alcohol used in the manufacturing of wine or other alcoholic beverages. [2002 c 119 § 2; 1977 ex.s. c 115 § 1; 1971 c 62 § 1; 1943 c 102 § 1; 1933 ex.s. c 62 § 79; RRS § 7306-79. Formerly RCW 66.08.030 and 66.08.040.]

\*Reviser's note: RCW 66.16.080 was repealed by 2005 c 231 § 6.

**66.08.050 Powers of board in general.** The board, subject to the provisions of this title and the rules, shall:

(1) Determine the localities within which state liquor stores shall be established throughout the state, and the number and situation of the stores within each locality;

(2) Appoint in cities and towns and other communities, in which no state liquor store is located, contract liquor stores. In addition, the board may appoint, in its discretion, a manufacturer that also manufactures liquor products other than wine under a license under this title, as a contract liquor store for the purpose of sale of liquor products of its own manufacture on the licensed premises only. Such contract liquor stores shall be authorized to sell liquor under the guidelines provided by law, rule, or contract, and such contract liquor stores shall be subject to such additional rules and regulations consistent with this title as the board may require;

(3) Establish all necessary warehouses for the storing and bottling, diluting and rectifying of stocks of liquors for the purposes of this title;

(4) Provide for the leasing for periods not to exceed ten years of all premises required for the conduct of the business; and for remodeling the same, and the procuring of their furnishings, fixtures, and supplies; and for obtaining options of renewal of such leases by the lessee. The terms of such leases in all other respects shall be subject to the direction of the board;

(5) Determine the nature, form and capacity of all packages to be used for containing liquor kept for sale under this title;

(6) Execute or cause to be executed, all contracts, papers, and documents in the name of the board, under such regulations as the board may fix;

(7) Pay all customs, duties, excises, charges and obligations whatsoever relating to the business of the board;

(8) Require bonds from all employees in the discretion of the board, and to determine the amount of fidelity bond of each such employee;

(9) Perform services for the state lottery commission to such extent, and for such compensation, as may be mutually agreed upon between the board and the commission;

(10) Accept and deposit into the general fund-local account and disburse, subject to appropriation, federal grants or other funds or donations from any source for the purpose of improving public awareness of the health risks associated with alcohol consumption by youth and the abuse of alcohol by adults in Washington state. The board's alcohol awareness program shall cooperate with federal and state agencies, interested organizations, and individuals to effect an active public beverage alcohol awareness program;

(11) Perform all other matters and things, whether similar to the foregoing or not, to carry out the provisions of this title, and shall have full power to do each and every act necessary to the conduct of its business, including all buying,

selling, preparation and approval of forms, and every other function of the business whatsoever, subject only to audit by the state auditor: PROVIDED, That the board shall have no authority to regulate the content of spoken language on licensed premises where wine and other liquors are served and where there is not a clear and present danger of disorderly conduct being provoked by such language. [2005 c 151 § 3; 1997 c 228 § 1; 1993 c 25 § 1; 1986 c 214 § 2; 1983 c 160 § 1; 1975 1st ex.s. c 173 § 1; 1969 ex.s. c 178 § 1; 1963 c 239 § 3; 1935 c 174 § 10; 1933 ex.s. c 62 § 69; RRS § 7306-69.]

*Minors, access to tobacco, role of liquor control board: Chapter 70.155 RCW.*

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**66.08.0501 Adoption of rules.** The liquor control board may adopt appropriate rules pursuant to chapter 34.05 RCW for the purpose of carrying out the provisions of chapter 321, Laws of 1997. [1997 c 321 § 56.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**66.08.055 Oaths may be administered and affidavits, declarations received.** Every member of the board, and every employee authorized by the board to issue permits under this title may administer any oath and take and receive any affidavit or declaration required under this title or the regulations. [1933 ex.s. c 62 § 80; RRS § 7306-80. Formerly RCW 43.66.050.]

**66.08.060 Board cannot advertise liquor, exception—Advertising regulations.** (1) The board shall not advertise liquor in any form or through any medium whatsoever.

(2) In-store liquor merchandising is not advertising for the purposes of this section.

(3) The board shall have power to adopt any and all reasonable rules as to the kind, character, and location of advertising of liquor. [2005 c 231 § 3; 1933 ex.s. c 62 § 43; RRS § 7306-43.]

**Severability—2005 c 231:** See note following RCW 66.08.165.

**66.08.070 Purchase of liquor by board—Consignment not prohibited—Warranty or affirmation not required for wine or malt purchases.** (1) Every order for the purchase of liquor shall be authorized by the board, and no order for liquor shall be valid or binding unless it is so authorized and signed by the board or its authorized designee.

(2) A duplicate of every such order shall be kept on file in the office of the board.

(3) All cancellations of such orders made by the board shall be signed in the same manner and duplicates thereof kept on file in the office of the board. Nothing in this title shall be construed as preventing the board from accepting liquor on consignment.

(4) In the purchase of wine or malt beverages the board shall not require, as a term or condition of purchase, any warranty or affirmation with respect to the relationship of the price charged the board to any price charged any other buyer. [1985 c 226 § 2; 1973 1st ex.s. c 209 § 1; 1933 ex.s. c 62 § 67; RRS § 7306-67.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

(2010 Ed.)

**66.08.075 Officer, employee not to represent manufacturer, wholesaler in sale to board.** No official or employee of the liquor control board of the state of Washington shall, during his term of office or employment, or for a period of two years immediately following the termination thereof, represent directly or indirectly any manufacturer or wholesaler of liquor in the sale of liquor to the board. [1937 c 217 § 5 (adding new section 42-A to 1933 ex.s. c 62); RRS § 7306-42A. Formerly RCW 43.66.040.]

**66.08.080 Interest in manufacture or sale of liquor prohibited.** Except as provided by chapter 42.52 RCW, no member of the board and no employee of the board shall have any interest, directly or indirectly, in the manufacture of liquor or in any liquor sold under this title, or derive any profit or remuneration from the sale of liquor, other than the salary or wages payable to him in respect of his office or position, and shall receive no gratuity from any person in connection with such business. [1994 c 154 § 313; 1981 1st ex.s. c 5 § 3; 1933 ex.s. c 62 § 68; RRS § 7306-68.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**66.08.090 Sale of liquor by employees of board.** No employee shall sell liquor in any other place, nor at any other time, nor otherwise than as authorized by the board under this title and the regulations. [1933 ex.s. c 62 § 31; RRS § 7306-31.]

**66.08.095 Liquor for training or investigation purposes.** The liquor control board may provide liquor at no charge, including liquor forfeited under chapter 66.32 RCW, to recognized law enforcement agencies within the state when the law enforcement agency will be using the liquor for bona fide law enforcement training or investigation purposes. [1993 c 26 § 3.]

**66.08.100 Jurisdiction of action against board—Immunity from personal liability of members.** No court of the state of Washington other than the superior court of Thurston county shall have jurisdiction over any action or proceeding against the board or any member thereof for anything done or omitted to be done in or arising out of the performance of his or their duties under this title. Neither the board nor any member or members thereof shall be personally liable in any action at law for damages sustained by any person because of any acts performed or done or omitted to be done by the board or any employee of the board in the performance of his duties and in the administration of this title. [1935 c 174 § 9 (adding new section 62-A to 1933 ex.s. c 62); RRS § 7306-62A. Formerly RCW 66.08.100 and 66.08.110.]

**66.08.120 Preemption of field by state—Exception.** No municipality or county shall have power to license the sale of, or impose an excise tax upon, liquor as defined in this title, or to license the sale or distribution thereof in any manner; and any power now conferred by law on any municipality or county to license premises which may be licensed under this section, or to impose an excise tax upon liquor, or to license the sale and distribution thereof, as defined in this title, shall be suspended and shall be of no further effect:

PROVIDED, That municipalities and counties shall have power to adopt police ordinances and regulations not in conflict with this title or with the regulations made by the board. [1933 ex.s. c 62 § 29; RRS § 7306-29.]

**66.08.130 Inspection of books and records—Goods possessed or shipped—Refusal as violation.** For the purpose of obtaining information concerning any matter relating to the administration or enforcement of this title, the board, or any person appointed by it in writing for the purpose, may inspect the books and records of

- (1) any manufacturer;
- (2) any license holder;
- (3) any drug store holding a permit to sell on prescriptions;
- (4) the freight and express books and records and all waybills, bills of lading, receipts and documents in the possession of any common carrier doing business within the state, containing any information or record relating to any goods shipped or carried, or consigned or received for shipment or carriage within the state. Every manufacturer, license holder, drug store holding a permit to sell on prescriptions, and common carrier, and every owner or officer or employee of the foregoing, who neglects or refuses to produce and submit for inspection any book, record or document referred to in this section when requested to do so by the board or by a person so appointed by it shall be guilty of a violation of this title. [1981 1st ex.s. c 5 § 4; 1933 ex.s. c 62 § 56; RRS § 7306-56.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**66.08.140 Inspection of books and records—Financial dealings—Penalty for refusal.** For the purpose of obtaining information concerning any matter relating to the administration or enforcement of this title, the board, or any person appointed by it in writing for the purpose, may inspect the books, documents and records of any person lending money to or in any manner financing any license, holder or applicant for license insofar as such books, documents and/or records pertain to the financial transaction involved. Every person who neglects or refuses to produce and submit for inspection any book, record or document as required by this section when requested to do so by the board or by a person duly appointed by it shall be guilty of a violation of this title. [1945 c 48 § 1 (adding new section 56-A to 1933 ex.s. c 62); RRS § 7306-56A.]

**66.08.145 Subpoena issuing authority.** (1) The liquor control board may issue subpoenas in connection with any investigation, hearing, or proceeding for the production of books, records, and documents held under this chapter or chapters 70.155, 70.158, 82.24, and 82.26 RCW, and books and records of common carriers as defined in RCW 81.80.010, or vehicle rental agencies relating to the transportation or possession of cigarettes or other tobacco products.

(2) The liquor control board may designate individuals authorized to sign subpoenas.

(3) If any person is served a subpoena from the board for the production of records, documents, and books, and fails or refuses to obey the subpoena for the production of records,

documents, and books when required to do so, the person is subject to proceedings for contempt, and the board may institute contempt of court proceedings in the superior court of Thurston county or in the county in which the person resides. [2007 c 221 § 1.]

**66.08.150 Board's action as to permits and licenses—Administrative procedure act, applicability—Adjudicative proceeding—Opportunity for hearing—Summary suspension.** The action, order, or decision of the board as to any denial of an application for the reissuance of a permit or license or as to any revocation, suspension, or modification of any permit or license shall be an adjudicative proceeding and subject to the applicable provisions of chapter 34.05 RCW.

(1) An opportunity for a hearing may be provided an applicant for the reissuance of a permit or license prior to the disposition of the application, and if no such opportunity for a prior hearing is provided then an opportunity for a hearing to reconsider the application must be provided the applicant.

(2) An opportunity for a hearing must be provided a permittee or licensee prior to a revocation or modification of any permit or license and, except as provided in subsection (4) of this section, prior to the suspension of any permit or license.

(3) No hearing shall be required until demanded by the applicant, permittee, or licensee.

(4) The board may summarily suspend a license or permit for a period of up to one hundred eighty days without a prior hearing if it finds that public health, safety, or welfare imperatively require emergency action, and it incorporates a finding to that effect in its order. Proceedings for revocation or other action must be promptly instituted and determined. An administrative law judge may extend the summary suspension period for up to one calendar year in the event the proceedings for revocation or other action cannot be completed during the initial one hundred eighty day period due to actions by the licensee or permittee. The board's enforcement division shall complete a preliminary staff investigation of the violation before requesting an emergency suspension by the board. [2007 c 370 § 3; 2003 c 320 § 1; 1989 c 175 § 122; 1967 c 237 § 23; 1933 ex.s. c 62 § 62; RRS § 7306-62.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**66.08.160 Acquisition of warehouse authorized.** The Washington state liquor board and the state finance committee are hereby authorized to lease or purchase or acquire a site and erect a warehouse building in the city of Seattle, and for that purpose may borrow money and may issue bonds in an amount not to exceed one million five hundred thousand dollars to be amortized from liquor revenues over a period of not to exceed ten years. [1947 c 134 § 1; No RRS.]

**66.08.165 Strategies to improve operational efficiency and revenue.** The board shall, consistent with, and in addition to, the existing retail business plan, implement strategies to improve the efficiency of retail sales operations and maximize revenue-generating opportunities. Strategies to be implemented shall include, but are not limited to:

(1) Expanding store operations to include Sunday sales in selected liquor stores. Sunday sales are optional for liquor vendors operating agency stores;

(2) Implementing a plan of in-store liquor merchandising, including point-of-sale advertising, and product specific point-of-sale promotional displays and carousels, including displays designed and provided by vendors; and

(3) Implementing a plan for in-store liquor merchandising of brands. The plan may not include provisions for selling liquor-related items other than those items previously authorized. [2005 c 231 § 1.]

**Severability—2005 c 231:** "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [2005 c 231 § 7.]

**66.08.166 Sunday sales authorized—Store selection and other requirements.** By September 1, 2005, the board shall expand operations in at least twenty state-operated retail stores to include Sundays. The board shall select the stores that are expected to gross the most revenues on Sunday by considering factors including, but not limited to, population density, proximity to shopping centers, and proximity to other businesses that are open on Sunday. The selected stores shall be open for retail business a minimum of five hours on Sunday. In implementing this program, if the board determines it would be beneficial to retain a consultant to assist the board in determining appropriate stores for the program and monitoring the results of the program, the agency is authorized to do so. The board shall track gross sales and expenses of the selected stores and compare them to previous years' sales and projected sales and expenses before opening on Sunday. The board shall also examine the sales of state and contract liquor stores in proximity to those stores opened on Sundays to determine whether Sunday openings has [have] reduced the sales of other state and contract liquor stores that are not open on Sundays. The board shall present this information to the appropriate policy and fiscal committees of the legislature by January 31, 2007. [2005 c 231 § 2.]

**Severability—2005 c 231:** See note following RCW 66.08.165.

**66.08.167 Sunday sales—Store selection.** (1) Before the board determines which state liquor stores will be open on Sundays, it shall give: (a) Due consideration to the location of the liquor store with respect to the proximity of places of worship, schools, and public institutions; (b) due consideration to motor vehicle accident data in the proximity of the liquor store; and (c) written notice by certified mail of the proposed Sunday opening, including proposed Sunday opening hours, to places of worship, schools, and public institutions within five hundred feet of the liquor store proposed to be open on Sunday.

(2) Before permitting an agency vendor liquor store to open for business on Sunday, the board must meet the due consideration and written notice requirements established in subsection (1) of this section.

(3) For the purpose of this section, "place of worship" means a building erected for and used exclusively for religious worship and schooling or other related religious activity. [2005 c 231 § 4.]

**Severability—2005 c 231:** See note following RCW 66.08.165.

**66.08.170 Liquor revolving fund—Creation—Composition—State treasurer as custodian—Daily deposits, exceptions—Budget and accounting act applicable.** There shall be a fund, known as the "liquor revolving fund", which shall consist of all license fees, permit fees, penalties, forfeitures, and all other moneys, income, or revenue received by the board. The state treasurer shall be custodian of the fund. All moneys received by the board or any employee thereof, except for change funds and an amount of petty cash as fixed by the board within the authority of law shall be deposited each day in a depository approved by the state treasurer and transferred to the state treasurer to be credited to the liquor revolving fund. During the 2009-2011 fiscal biennium, the legislature may transfer funds from the liquor revolving account [fund] to the state general fund and may direct an additional amount of liquor profits to be distributed to local governments. Neither the transfer of funds nor the additional distribution of liquor profits to local governments during the 2009-2011 fiscal biennium may reduce the excess fund distributions that otherwise would occur under RCW 66.08.190. Disbursements from the revolving fund shall be on authorization of the board or a duly authorized representative thereof. In order to maintain an effective expenditure and revenue control the liquor revolving fund shall be subject in all respects to chapter 43.88 RCW but no appropriation shall be required to permit expenditures and payment of obligations from such fund. [2009 c 564 § 947; 2002 c 371 § 917; 1961 ex.s. c 6 § 1; 1933 ex.s. c 62 § 73; RRS § 7306-73. Formerly RCW 43.66.060.]

**Effective date—2009 c 564:** See note following RCW 2.68.020.

**Severability—Effective date—2002 c 371:** See notes following RCW 9.46.100.

**Transfer of liquor revolving fund to state treasurer—Outstanding obligations:** "On June 30, 1961, the Washington state liquor control board shall deliver and transfer to the state treasurer, as custodian, all moneys and accounts which comprise the liquor revolving fund, except change funds and petty cash, and the state treasurer shall assume custody thereof. All obligations outstanding as of June 30, 1961 shall be paid out of the liquor revolving fund." [1961 ex.s. c 6 § 5.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**66.08.180 Liquor revolving fund—Distribution—Reserve for administration—Disbursement to universities and state agencies.** Except as provided in RCW 66.24.290(1), moneys in the liquor revolving fund shall be distributed by the board at least once every three months in accordance with RCW 66.08.190, 66.08.200 and 66.08.210: PROVIDED, That the board shall reserve from distribution such amount not exceeding five hundred thousand dollars as may be necessary for the proper administration of this title.

(1) All license fees, penalties, and forfeitures derived under chapter 13, Laws of 1935 from spirits, beer, and wine restaurant; spirits, beer, and wine private club; hotel; spirits, beer, and wine nightclub; and sports entertainment facility licenses shall every three months be disbursed by the board as follows:

(a) Three hundred thousand dollars per biennium, to the death investigations account for the state toxicology program pursuant to RCW 68.50.107; and

(b) Of the remaining funds:

(i) 6.06 percent to the University of Washington and 4.04 percent to Washington State University for alcoholism and

drug abuse research and for the dissemination of such research; and

(ii) 89.9 percent to the general fund to be used by the department of social and health services solely to carry out the purposes of RCW 70.96A.050;

(2) The first fifty-five dollars per license fee provided in RCW 66.24.320 and 66.24.330 up to a maximum of one hundred fifty thousand dollars annually shall be disbursed every three months by the board to the general fund to be used for juvenile alcohol and drug prevention programs for kindergarten through third grade to be administered by the superintendent of public instruction;

(3) Twenty percent of the remaining total amount derived from license fees pursuant to RCW 66.24.320, 66.24.330, 66.24.350, and 66.24.360, shall be transferred to the general fund to be used by the department of social and health services solely to carry out the purposes of RCW 70.96A.050; and

(4) One-fourth cent per liter of the tax imposed by RCW 66.24.210 shall every three months be disbursed by the board to Washington State University solely for wine and wine grape research, extension programs related to wine and wine grape research, and resident instruction in both wine grape production and the processing aspects of the wine industry in accordance with RCW 28B.30.068. The director of financial management shall prescribe suitable accounting procedures to ensure that the funds transferred to the general fund to be used by the department of social and health services and appropriated are separately accounted for. [2009 c 271 § 3; 2007 c 370 § 14; 2000 c 192 § 1. Prior: 1999 c 281 § 1; 1999 c 40 § 7; prior: 1997 c 451 § 3; 1997 c 321 § 57; 1995 c 398 § 16; 1987 c 458 § 10; 1986 c 87 § 1; 1981 1st ex.s. c 5 § 6; 1979 c 151 § 166; 1967 ex.s. c 75 § 1; 1965 ex.s. c 143 § 2; 1949 c 5 § 10; 1935 c 13 § 2; 1933 ex.s. c 62 § 77; Rem. Supp. 1949 § 7306-77. Formerly RCW 43.66.080.]

**Effective date—2007 c 370 §§ 10-20:** See note following RCW 66.04.010.

*Distribution for state toxicological lab:* RCW 68.50.107.

*Wine grape industry, instruction relating to—Purpose—Administration:* RCW 28B.30.067 and 28B.30.068.

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**66.08.190 Liquor revolving fund—Disbursement of excess funds to state, counties, and cities—Withholding of funds for noncompliance.** (1) Except for revenues generated by the 2003 surcharge of \$0.42/liter on retail sales of spirits that shall be distributed to the state general fund during the 2003-2005 biennium, when excess funds are distributed, all moneys subject to distribution shall be disbursed as follows:

(a) Three-tenths of one percent to border areas under RCW 66.08.195; and

(b) From the amount remaining after distribution under (a) of this subsection, (i) fifty percent to the general fund of the state, (ii) ten percent to the counties of the state, and (iii) forty percent to the incorporated cities and towns of the state.

(2) During the months of June, September, December, and March of each year, prior to disbursing the distribution to incorporated cities and towns under subsection (1)(b) of this section, the treasurer shall deduct from that distribution an amount that will fund that quarter's allotments under RCW

43.88.110 from any legislative appropriation from the city and town research services account. The treasurer shall deposit the amount deducted into the city and town research services account.

(3) The governor may notify and direct the state treasurer to withhold the revenues to which the counties and cities are entitled under this section if the counties or cities are found to be in noncompliance pursuant to RCW 36.70A.340. [2003 1st sp.s. c 25 § 927; 2002 c 38 § 2; 2000 c 227 § 2; 1995 c 159 § 1; 1991 sp.s. c 32 § 34; 1988 c 229 § 4; 1957 c 175 § 6. Prior: 1955 c 109 § 2; 1949 c 187 § 1, part; 1939 c 173 § 1, part; 1937 c 62 § 2, part; 1935 c 80 § 1, part; 1933 ex.s. c 62 § 78, part; Rem. Supp. 1949 § 7306-78, part. Formerly RCW 43.66.090.]

**Severability—Effective date—2003 1st sp.s. c 25:** See notes following RCW 19.28.351.

**Effective date—2000 c 227:** See note following RCW 43.110.060.

**Finding—1988 c 229:** "The legislature finds and declares that certain counties and municipalities near international borders are subjected to a constant volume and flow of travelers and visitors for whom local government services must be provided. The legislature further finds that it is in the public interest and for the protection of the health, property, and welfare of the residents and visitors to provide supplemental resources to augment and maintain existing levels of police protection in such areas and to alleviate the impact of such added burdens." [1988 c 229 § 2.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**66.08.195 Liquor revolving fund—Definition of terms relating to border areas.** For the purposes of this chapter:

(1) "Border area" means any incorporated city or town, or unincorporated area, located within seven miles of the Washington-Canadian border or any unincorporated area that is a point of land surrounded on three sides by saltwater and adjacent to the Canadian border.

(2) "Border area per-capita law-enforcement spending" equals total per capita expenditures in a border area on: Law enforcement operating costs, court costs, law enforcement-related insurance, and detention expenses, minus funds allocated to a border area under RCW 66.08.190 and 66.08.196.

(3) "Border-crossing traffic total" means the number of vehicles, vessels, and aircraft crossing into the United States through a United States customs service border crossing that enter into the border area during a federal fiscal year, using border crossing statistics and criteria included in guidelines adopted by the \*department of community, trade, and economic development.

(4) "Border-related crime statistic" means the sum of infractions and citations issued, and arrests of persons permanently residing outside Washington state in a border area during a calendar year. [2001 c 8 § 1; 1995 c 159 § 2; 1988 c 229 § 3.]

**\*Reviser's note:** The "department of community, trade, and economic development" was renamed the "department of commerce" by 2009 c 565.

**Finding—Effective date—1988 c 229:** See notes following RCW 66.08.190.

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**66.08.196 Liquor revolving fund—Distribution of funds to border areas.** Distribution of funds to border areas under RCW 66.08.190 and \*66.24.290 (1)(a) and (4) shall be as follows:

(1) Sixty-five percent of the funds shall be distributed to border areas ratably based on border area traffic totals;

(2) Twenty-five percent of the funds shall be distributed to border areas ratably based on border-related crime statistics; and

(3) Ten percent of the funds shall be distributed to border areas ratably based upon border area per capita law enforcement spending.

Distributions to an unincorporated area shall be made to the county in which such an area is located and may only be spent on services provided to that area. [2001 c 8 § 2; 1997 c 451 § 4; 1995 c 159 § 3.]

**\*Reviser's note:** RCW 66.24.290 was amended by 2006 c 302 § 7, changing subsection (1)(a) to subsection (1)(c)(i), expiring June 30, 2008.

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**66.08.198 Liquor revolving fund—Distribution of funds to border areas—Guidelines adoption.** The \*department of community, trade, and economic development shall develop guidelines to determine the figures used under the three distribution factors defined in RCW 66.08.195. At the request of any border community, the department may review these guidelines once every three years. [1995 c 159 § 4.]

**\*Reviser's note:** The "department of community, trade, and economic development" was renamed the "department of commerce" by 2009 c 565.

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**66.08.200 Liquor revolving fund—Computation for distribution to counties—"Unincorporated area" defined.** With respect to the ten percent share coming to the counties, the computations for distribution shall be made by the state agency responsible for collecting the same as follows:

The share coming to each eligible county shall be determined by a division among the eligible counties according to the relation which the population of the unincorporated area of such eligible county, as last determined by the office of financial management, bears to the population of the total combined unincorporated areas of all eligible counties, as determined by the office of financial management: PROVIDED, That no county in which the sale of liquor is forbidden in the unincorporated area thereof as the result of an election shall be entitled to share in such distribution. "Unincorporated area" means all that portion of any county not included within the limits of incorporated cities and towns.

When a special county census has been conducted for the purpose of determining the population base of a county's unincorporated area for use in the distribution of liquor funds, the census figure shall become effective for the purpose of distributing funds as of the official census date once the census results have been certified by the office of financial management and officially submitted to the office of the secretary of state. [1979 c 151 § 167; 1977 ex.s. c 110 § 2; 1957 c 175 § 7. Prior: 1955 c 109 § 3; 1949 c 187 § 1, part; 1939 c 173 § 1, part; 1937 c 62 § 2, part; 1935 c 80 § 1, part; 1933 ex.s. c 62 § 78, part; Rem. Supp. 1949 § 7306-78, part. Formerly RCW 43.66.100.]

*Population determinations, office of financial management: Chapter 43.62 RCW.*

(2010 Ed.)

**66.08.210 Liquor revolving fund—Computation for distribution to cities.** With respect to the forty percent share coming to the incorporated cities and towns, the computations for distribution shall be made by the state agency responsible for collecting the same as follows:

The share coming to each eligible city or town shall be determined by a division among the eligible cities and towns within the state ratably on the basis of population as last determined by the office of financial management: AND PROVIDED, That no city or town in which the sale of liquor is forbidden as the result of an election shall be entitled to any share in such distribution. [1979 c 151 § 168; 1977 ex.s. c 110 § 3; 1957 c 175 § 8. Prior: 1949 c 187 § 1, part; 1939 c 173 § 1, part; 1937 c 62 § 2, part; 1935 c 80 § 1, part; 1933 ex.s. c 62 § 78, part; Rem. Supp. 1949 § 7306-78, part. Formerly RCW 43.66.110.]

*Allocation of state funds on population basis: RCW 43.62.020, 43.62.030.*

*Determining population of territory annexed to city: RCW 35.13.260.*

**66.08.220 Liquor revolving fund—Separate account—Distribution.** The board shall set aside in a separate account in the liquor revolving fund an amount equal to ten percent of its gross sales of liquor to spirits, beer, and wine restaurant; spirits, beer, and wine private club; spirits, beer, and wine nightclub; hotel; and sports entertainment facility licensees collected from these licensees pursuant to the provisions of RCW 82.08.150, less the fifteen percent discount provided for in RCW 66.24.440; and the moneys in said separate account shall be distributed in accordance with the provisions of RCW 66.08.190, 66.08.200 and 66.08.210. No election unit in which the sale of liquor under spirits, beer, and wine restaurant; spirits, beer, and wine private club; spirits, beer, and wine nightclub; and sports entertainment facility licensees is unlawful shall be entitled to share in the distribution of moneys from such separate account. [2009 c 271 § 4; 2007 c 370 § 15; 1999 c 281 § 2; 1949 c 5 § 11 (adding new section 78-A to 1933 ex.s. c 62); Rem. Supp. 1949 § 7306-78A. Formerly RCW 43.66.130.]

**Effective date—2007 c 370 §§ 10-20:** See note following RCW 66.04.010.

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**66.08.225 Liquor revolving fund—License fee deposits—Fund uses. (Expires July 1, 2011.)** Ten and a [one-] half percent of total license fee revenues collected for the following licenses established in chapter 66.24 RCW: Beer and/or wine restaurants; taverns; snack bars; combined beer and wine retailers; grocery stores; beer and/or wine specialty shops; passenger trains, vessels, and airplanes; spirits, beer, and wine restaurants; spirits, beer, and wine private clubs; beer and wine private clubs; and public houses, shall be deposited in the liquor revolving fund, is not subject to the distribution specified in RCW 66.08.180, and may be expended only for purposes of the administration and enforcement of these licenses. [2009 c 507 § 14.]

**Expiration date—2009 c 507:** "This act expires July 1, 2011." [2009 c 507 § 15.]

**66.08.230 Initial disbursement to wine commission—Repayment.** To provide for the operation of the wine commission prior to its first quarterly disbursement, the liquor

[Title 66 RCW—page 11]

control board shall, on July 1, 1987, disburse one hundred ten thousand dollars to the wine commission. However, such disbursement shall be repaid to the liquor control board by a reduction from the quarterly disbursements to the wine commission under RCW 66.24.210 of twenty-seven thousand five hundred dollars each quarter until such amount is repaid. These funds shall be used to establish the Washington wine commission and the other purposes delineated in chapter 15.88 RCW. [1987 c 452 § 12.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**66.08.235 Liquor control board construction and maintenance account.** The liquor control board construction and maintenance account is created within the state treasury. The liquor control board shall deposit into this account a portion of the board's markup, as authorized by chapter 66.16 RCW, placed upon liquor as determined by the board. Moneys in the account may be spent only after appropriation. The liquor control board shall use deposits to this account to fund construction and maintenance of a centralized distribution center for liquor products intended for sale through the board's liquor store and contract liquor store system. During the 2001-2003 fiscal biennium, the legislature may transfer from the liquor control board construction and maintenance account to the state general fund such amounts as reflect the appropriations reductions made by the 2002 supplemental appropriations act for administrative efficiencies and savings. [2005 c 151 § 4; 2002 c 371 § 918; 1997 c 75 § 1.]

**Severability—Effective date—2002 c 371:** See notes following RCW 9.46.100.

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**66.08.240 Transfer of funds pursuant to government service agreement.** Funds that are distributed to counties, cities, or towns pursuant to this chapter may be transferred by the recipient county, city, or town to another unit of government pursuant to a government service agreement as provided in RCW 36.115.040 and 36.115.050. [1994 c 266 § 10.]

## Chapter 66.12 RCW EXEMPTIONS

### Sections

66.12.010	Wine or beer manufactured for home use.
66.12.020	Sales of liquor to board.
66.12.030	Licensed manufacturers not prevented from storing liquor— Transshipment in interstate, foreign commerce—Interstate, foreign transactions protected.
66.12.060	Pharmaceutical preparations, patent medicines, denatured alcohol.
66.12.070	Medicinal, culinary, and toilet preparations not usable as bev- erages—Sample and analysis—Clearly labeled.
66.12.110	Duty-free alcoholic beverages for personal use.
66.12.120	Bringing alcoholic beverages into state from another state— Payment of markup and tax.
66.12.125	Alcohol for use as fuel—Legislative finding and declaration.
66.12.130	Alcohol for use as fuel in motor vehicles, farm implements, machines, etc., or in combination with other petroleum prod- ucts for use as fuel.
66.12.140	Use of alcoholic beverages in culinary, restaurant, or food fer- mentation courses.
66.12.145	Persons engaged in medical or dental pursuits—Persons engaged in mechanical, manufacturing, or scientific pursuits.
66.12.150	Beer or wine offered by hospital or nursing home for con- sumption on the premises.

66.12.160	Manufacture or sale of confections or food containing liquor.
66.12.170	Obtaining liquor for manufacturing confections or food prod- ucts.
66.12.180	Wine commission—Wine donations—Promotional activities.
66.12.185	Beer commission—Beer or malt donations—Promotional activities.
66.12.195	Legislative gift center—Selling wine for off-premises con- sumption.
66.12.230	Washington grain commission.
66.12.240	Wedding boutiques and art galleries.

**66.12.010 Wine or beer manufactured for home use.** Nothing in this title, other than RCW 66.28.140, applies to wine or beer manufactured in any home for private consumption, and not for sale. [2009 c 360 § 1; 1981 c 255 § 1; 1955 c 39 § 1; 1933 ex.s. c 62 § 32; RRS § 7306-32.]

**66.12.020 Sales of liquor to board.** Nothing in this title shall apply to or prevent the sale of liquor by any person to the board. [1933 ex.s. c 62 § 48; RRS § 7306-48.]

**66.12.030 Licensed manufacturers not prevented from storing liquor—Transshipment in interstate, foreign commerce—Interstate, foreign transactions protected.** (1) Nothing in this title shall prevent any person licensed to manufacture liquor from keeping liquor in his warehouse or place of business.

(2) Nothing in this title shall prevent the transshipment of liquor in interstate and foreign commerce; but no person shall import liquor into the state from any other state or country, except, as herein otherwise provided, for use or sale in the state, except the board.

(3) Every provision of this title which may affect transactions in liquor between a person in this state and a person in another state or in a foreign country shall be construed to affect such transactions so far only as the legislature has power to make laws in relation thereto. [1933 ex.s. c 62 § 49; RRS § 7306-49. Formerly RCW 66.12.030, 66.12.040, and 66.12.050.]

**66.12.060 Pharmaceutical preparations, patent medicines, denatured alcohol.** Nothing in this title shall apply to or prevent the sale, purchase or consumption

(1) of any pharmaceutical preparation containing liquor which is prepared by a druggist according to a formula of the pharmacopoeia of the United States, or the dispensatory of the United States; or

(2) of any proprietary or patent medicine; or

(3) of wood alcohol or denatured alcohol, except in the case of the sale, purchase, or consumption of wood alcohol or denatured alcohol for beverage purposes, either alone or combined with any other liquid or substance. [1933 ex.s. c 62 § 50; RRS § 7306-50.]

**66.12.070 Medicinal, culinary, and toilet preparations not usable as beverages—Sample and analysis—Clearly labeled.** (1) Where a medicinal preparation contains liquor as one of the necessary ingredients thereof, and also contains sufficient medication to prevent its use as an alcoholic beverage, nothing in this title shall apply to or prevent its composition or sale by a druggist when compounded from liquor purchased by the druggist under a special permit held by him, nor apply to or prevent the purchase or consumption

of the preparation by any person for strictly medicinal purposes.

(2) Where a toilet or culinary preparation, that is to say, any perfume, lotion, or flavoring extract or essence, or dietary supplement as defined by the federal food and drug administration, contains liquor and also contains sufficient ingredient or medication to prevent its use as a beverage, nothing in this title shall apply to or prevent the sale or purchase of that preparation by any druggist or other person who manufactures or deals in the preparation, nor apply to or prevent the purchase or consumption of the preparation by any person who purchases or consumes it for any toilet or culinary purpose.

(3) In order to determine whether any particular medicinal, toilet, dietary supplement, or culinary preparation referred to in this section contains sufficient ingredient or medication to prevent its use as an alcoholic beverage, the board may cause a sample of the preparation, purchased or obtained from any person whomsoever, to be analyzed by an analyst appointed or designated by the board; and if it appears from a certificate signed by the analyst that he finds the sample so analyzed by him did not contain sufficient ingredient or medication to prevent its use as an alcoholic beverage, the certificate shall be conclusive evidence that the preparation, the sample of which was so analyzed, is not a preparation the sale or purchase of which is permitted by this section.

(4) Dietary supplements that contain more than one-half of one percent alcohol which are prepared and sold under this section shall be clearly labeled and the ingredients listed on the label in accordance with the provisions of the federal food, drug, and cosmetics act (21 U.S.C. Sec. 321) as now or hereafter amended. [1999 c 88 § 1; 1933 ex.s. c 62 § 51; RRS § 7306-51. Formerly RCW 66.12.070, 66.12.080, and 66.12.090.]

**66.12.110 Duty-free alcoholic beverages for personal use.** A person twenty-one years of age or over may bring into the state from without the United States, free of tax and markup, for his personal or household use such alcoholic beverages as have been declared and permitted to enter the United States duty free under federal law.

Such entry of alcoholic beverages in excess of that herein provided may be authorized by the board upon payment of an equivalent markup and tax as would be applicable to the purchase of the same or similar liquor at retail from a Washington state liquor store. The board shall adopt appropriate regulations pursuant to chapter 34.05 RCW for the purpose of carrying out the provisions of this section. The board may issue a spirits, beer, and wine private club license to a charitable or nonprofit corporation of the state of Washington, the majority of the officers and directors of which are United States citizens and the minority of the officers and directors of which are citizens of the Dominion of Canada, and where the location of the premises for such spirits, beer, and wine private club license is not more than ten miles south of the border between the United States and the province of British Columbia. [1999 c 281 § 3; 1975-'76 2nd ex.s. c 20 § 1. Prior: 1975 1st ex.s. c 256 § 1; 1975 1st ex.s. c 173 § 2; 1967 c 38 § 1.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

(2010 Ed.)

**66.12.120 Bringing alcoholic beverages into state from another state—Payment of markup and tax.** Notwithstanding any other provision of Title 66 RCW, a person twenty-one years of age or over may, free of tax and markup, for personal or household use, bring into the state of Washington from another state no more than once per calendar month up to two liters of spirits or wine or two hundred eighty-eight ounces of beer. Additionally, such person may be authorized by the board to bring into the state of Washington from another state a reasonable amount of alcoholic beverages in excess of that provided in this section for personal or household use only upon payment of an equivalent markup and tax as would be applicable to the purchase of the same or similar liquor at retail from a state liquor store. The board shall adopt appropriate regulations pursuant to chapter 34.05 RCW for the purpose of carrying into effect the provisions of this section. [1995 c 100 § 1; 1975 1st ex.s. c 173 § 3.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**66.12.125 Alcohol for use as fuel—Legislative finding and declaration.** The legislature finds that the production of alcohol for use as a fuel or fuel supplement is of great importance to the state. Alcohol, when used as a fuel source, is less polluting to the atmosphere than conventional fuels and its use reduces the state's dependence on limited oil resources. Production of alcohol for use as a fuel provides a new use and market for Washington agricultural products and aids Washington farmers in producing food and fiber for the citizens of the state, nation, and world. Therefore, the legislature declares public policy to be one of encouragement toward the production and use of alcohol as a fuel or fuel supplement. [1980 c 140 § 1.]

**66.12.130 Alcohol for use as fuel in motor vehicles, farm implements, machines, etc., or in combination with other petroleum products for use as fuel.** Nothing in this title shall apply to or prevent the sale, importation, purchase, production, or blending of alcohol used solely for fuel to be used in motor vehicles, farm implements, and machines or implements of husbandry or in combination with gasoline or other petroleum products for use as such fuel. Manufacturers and distillers of such alcohol fuel are not required to obtain a license under this title. Alcohol which is produced for use as fuel shall be denatured in accordance with a formula approved by the federal bureau of alcohol, tobacco and firearms prior to the removal of the alcohol from the premises as described in the approved federal permit application: PROVIDED, That alcohol which is being transferred between plants involved in the distillation or manufacture of alcohol fuel need not be denatured if it is transferred in accordance with federal bureau of alcohol, tobacco and firearms regulation 27 C.F.R. 19.996 as existing on July 26, 1981. The exemptions from the state liquor control laws provided by this section only apply to distillers and manufacturers of alcohol to be used solely for fuel as long as the manufacturers and distillers are the holders of an appropriate permit issued under federal law. [1981 c 179 § 1; 1980 c 140 § 2.]

**66.12.140 Use of alcoholic beverages in culinary, restaurant, or food fermentation courses.** (1) Nothing in this

[Title 66 RCW—page 13]

title shall prevent the use of beer, wine, and/or spirituous liquor, for cooking purposes only, in conjunction with a culinary or restaurant course offered by a college, university, community college, area vocational technical institute, or private vocational school. Further, nothing in this title shall prohibit the making of beer or wine in food fermentation courses offered by a college, university, community college, area vocational technical institute, or private vocational school.

(2) "Culinary or restaurant course" as used in this section means a course of instruction which includes practical experience in food preparation under the supervision of an instructor who is twenty-one years of age or older.

(3) Persons under twenty-one years of age participating in culinary or restaurant courses may handle beer, wine, or spirituous liquor for purposes of participating in the courses, but nothing in this section shall be construed to authorize consumption of liquor by persons under twenty-one years of age or to authorize possession of liquor by persons under twenty-one years of age at any time or place other than while preparing food under the supervision of the course instructor.

(4) Beer, wine, and/or spirituous liquor to be used in culinary or restaurant courses shall be purchased at retail from the board or a retailer licensed under this title. All such liquor shall be securely stored in the food preparation area and shall not be displayed in an area open to the general public.

(5) Colleges, universities, community colleges, area vocational technical institutes, and private vocational schools shall obtain the prior written approval of the board for use of beer, wine, and/or spirituous liquor for cooking purposes in their culinary or restaurant courses. [1982 c 85 § 8.]

**66.12.145 Persons engaged in medical or dental pursuits—Persons engaged in mechanical, manufacturing, or scientific pursuits.** (1) Any person engaged in medical or dental pursuits, any person in charge of an institution regularly conducted as a hospital or sanitarium for the care of persons in ill health, or a home devoted exclusively to the care of aged persons, may obtain alcohol in a nonbeverage form directly from a supplier under a permit issued under RCW 66.20.010(1).

(2) Any person engaged in the mechanical or manufacturing business or in scientific pursuits requiring the use of alcohol may obtain alcohol in a nonbeverage form directly from a supplier under a permit issued under RCW 66.20.010(2). [2008 c 64 § 1.]

**66.12.150 Beer or wine offered by hospital or nursing home for consumption on the premises.** Nothing in this title shall apply to or prevent a hospital, as defined in \*RCW 70.39.020, or a nursing home as defined in RCW 18.51.010, from offering or supplying without charge beer or wine by the individual glass to any patient, member of a patient's family, or patient visitor, for consumption on the premises: PROVIDED, That such patient, family member, or visitor shall be at least twenty-one years of age, and that the beer or wine shall be purchased under this title. [1982 c 85 § 9.]

\*Reviser's note: RCW 70.39.020 was repealed by 1982 c 223 § 10, effective June 30, 1990.

**66.12.160 Manufacture or sale of confections or food containing liquor.** Nothing in this title shall apply to or prevent the manufacture or sale of confections or food products containing alcohol or liquor if: (1) The confection or food product does not contain more than one percent of alcohol by weight; and (2) the confection or food product has a label stating: "This product contains liquor and the alcohol content is one percent or less of the weight of the product." Manufacturers of confections or food products are not required to obtain a license under this title. [1984 c 78 § 3.]

**Finding and declaration—1984 c 78:** "The legislature finds that confectioners operating in the state are at an economic disadvantage due to a continued prohibition on the use of natural alcohol flavor in candies and that other related business entities, such as bakeries and delicatessens, may use natural alcohol flavors in the preparation of food for retail sale. Therefore, the legislature declares that the use of natural alcohol flavorings in an amount not to exceed the limit established in RCW 69.04.240 presents no threat to the public health and safety." [1984 c 78 § 1.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**66.12.170 Obtaining liquor for manufacturing confections or food products.** Nothing in this title shall be construed as limiting the right of any manufacturer of confections or food products from obtaining liquor from any source whatsoever if: (1) It is acquired pursuant to a permit issued under RCW 66.20.010(5); and (2) the applicable taxes imposed by this title are paid. [1984 c 78 § 4.]

**Finding and declaration—Severability—1984 c 78:** See notes following RCW 66.12.160.

**66.12.180 Wine commission—Wine donations—Promotional activities.** The Washington wine commission created under RCW 15.88.030 may purchase or receive donations of wine from wineries and may use such wine for promotional purposes. Wine furnished to the commission under this section which is used within the state is subject to the taxes imposed under RCW 66.24.210. No license, permit, or bond is required of the Washington wine commission under this title for promotional activities conducted under chapter 15.88 RCW. [1993 c 160 § 1; 1987 c 452 § 14.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**66.12.185 Beer commission—Beer or malt donations—Promotional activities.** The Washington beer commission created under RCW 15.89.030 may purchase or receive donations of beer or malt beverages from any brewery, in any state, or in any country and may use such beer or malt beverages for any promotional purposes as outlined in RCW 15.89.070. Beer and malt beverages that are furnished to the commission under this section that are used within the state are subject to the taxes imposed under RCW 66.24.290. No license, permit, or bond is required of the Washington beer commission under this title for promotional activities conducted under chapter 15.89 RCW. [2006 c 330 § 23.]

**Construction—Severability—2006 c 330:** See RCW 15.89.900 and 15.89.901.

**66.12.195 Legislative gift center—Selling wine for off-premises consumption.** Nothing in this title shall apply to or prevent the legislative gift center created in chapter 44.73 RCW from selling at retail for off-premises consumption

tion wine produced in Washington by a licensed domestic winery. [2009 c 228 § 2.]

**Findings—Intent—2009 c 228:** "The legislature finds that the production of wine grapes in the state is an important segment of Washington agriculture as evidenced by the continued investments made by the state in developing the wine industry, including the creation of viticulture and enology programs at Washington State University and wine technology programs at community and technical colleges. The legislature further finds that the promotion and sale of Washington wine at the legislative gift center is harmonious with the purpose of the gift center, which is to promote the state and the goods produced around the state. Therefore, the legislature intends to allow the legislative gift center to sell wine produced in Washington to visitors of legal drinking age." [2009 c 228 § 1.]

**66.12.230 Washington grain commission.** The Washington grain commission created under RCW 15.115.040 may purchase or receive donations of liquor produced from wheat or barley grown in Washington and may use the liquor for the promotional purposes specified in RCW 15.115.170(2). Liquor furnished to the commission under this section which is used within the state is subject to the taxes imposed under RCW 66.24.210. A license, permit, or bond is not required of the Washington grain commission under this title for the promotional purposes specified in RCW 15.115.170(2). [2009 c 33 § 18.]

**66.12.240 Wedding boutiques and art galleries.** (1) Nothing in this title applies to or prevents a wedding boutique or art gallery from offering or supplying without charge wine or beer by the individual glass to a customer for consumption on the premises. However, the customer must be at least twenty-one years of age and may only be offered one glass of wine or beer, and wine or beer served or consumed shall be purchased from a Washington state licensed retailer or a Washington state liquor store or agency at full retail price. A wedding boutique or art gallery offering wine or beer without charge may not advertise the service of complimentary wine or beer and may not sell wine or beer in any manner. Any employee involved in the service of wine or beer must complete a board-approved limited alcohol server training program.

(2) For the purposes of this section:

(a) "Art gallery" means a room or building devoted to the exhibition and/or sale of the works of art.

(b) "Wedding boutique" means a business primarily engaged in the sale of wedding merchandise. [2009 c 361 § 1.]

- 66.16.110 Birth defects from alcohol—Warning required.
- 66.16.120 Employees working on Sabbath.

**66.16.010 Board may establish—Price standards—Prices in special instances.** (1) There shall be established at such places throughout the state as the liquor control board, constituted under this title, shall deem advisable, stores to be known as "state liquor stores," for the sale of liquor in accordance with the provisions of this title and the regulations: PROVIDED, That the prices of all liquor shall be fixed by the board from time to time so that the net annual revenue received by the board therefrom shall not exceed thirty-five percent. Effective no later than July 1, 2005, the liquor control board shall add an equivalent surcharge of \$0.42 per liter on all retail sales of spirits, excluding licensee, military, and tribal sales. The intent of this surcharge is to raise revenue for the general fund-state for the 2003-2005 and 2005-2007 bienniums. The board shall remove the surcharge June 30, 2007.

(2) The liquor control board may, from time to time, fix the special price at which pure ethyl alcohol may be sold to physicians and dentists and institutions regularly conducted as hospitals, for use or consumption only in such hospitals; and may also fix the special price at which pure ethyl alcohol may be sold to schools, colleges and universities within the state for use for scientific purposes. Regularly conducted hospitals may have right to purchase pure ethyl alcohol on a federal permit.

(3) The liquor control board may also fix the special price at which pure ethyl alcohol may be sold to any department, branch or institution of the state of Washington, federal government, or to any person engaged in a manufacturing or industrial business or in scientific pursuits requiring alcohol for use therein.

(4) The liquor control board may also fix a special price at which pure ethyl alcohol may be sold to any private individual, and shall make regulations governing such sale of alcohol to private individuals as shall promote, as nearly as may be, the minimum purchase of such alcohol by such persons. [2005 c 518 § 935; 2003 1st sp.s. c 25 § 928; 1939 c 172 § 10; 1937 c 62 § 1; 1933 ex.s. c 62 § 4; RRS § 7306-4. Formerly RCW 66.16.010 and 66.16.020.]

**Severability—Effective date—2005 c 518:** See notes following RCW 28A.500.030.

**Severability—Effective date—2003 1st sp.s. c 25:** See notes following RCW 19.28.351.

**66.16.040 Sales of liquor by employees—Identification cards—Permit holders—Sales for cash—Exception.** Except as otherwise provided by law, an employee in a state liquor store or contract liquor store may sell liquor to any person of legal age to purchase alcoholic beverages and may also sell to holders of permits such liquor as may be purchased under such permits.

Where there may be a question of a person's right to purchase liquor by reason of age, such person shall be required to present any one of the following officially issued cards of identification which shows his/her correct age and bears his/her signature and photograph:

(1) Driver's license, instruction permit or identification card of any state or province of Canada, or "identocard"

**Chapter 66.16 RCW  
STATE LIQUOR STORES**

Sections

- 66.16.010 Board may establish—Price standards—Prices in special instances.
- 66.16.040 Sales of liquor by employees—Identification cards—Permit holders—Sales for cash—Exception.
- 66.16.041 Credit and debit card purchases—Rules—Provision, installation, maintenance of equipment by board—Consideration of offsetting liquor revolving fund balance reduction.
- 66.16.050 Sale of beer and wine to person licensed to sell.
- 66.16.060 Sealed packages may be required, exception.
- 66.16.070 Liquor cannot be opened or consumed on store premises.
- 66.16.090 Record of individual purchases confidential—Penalty for disclosure.
- 66.16.100 Fortified wine sales.

issued by the Washington state department of licensing pursuant to RCW 46.20.117.

(2) United States armed forces identification card issued to active duty, reserve, and retired personnel and the personnel's dependents, which may include an imbedded, digital signature in lieu of a visible signature.

(3) Passport.

(4) Merchant Marine identification card issued by the United States Coast Guard.

(5) Enrollment card issued by the governing authority of a federally recognized Indian tribe located in Washington, if the enrollment card incorporates security features comparable to those implemented by the department of licensing for Washington drivers' licenses. At least ninety days prior to implementation of an enrollment card under this subsection, the appropriate tribal authority shall give notice to the board. The board shall publish and communicate to licensees regarding the implementation of each new enrollment card.

The board may adopt such regulations as it deems proper covering the cards of identification listed in this section.

No liquor sold under this section shall be delivered until the purchaser has paid for the liquor in cash, except as allowed under RCW 66.16.041. The use of a personal credit card does not rely upon the credit of the state as prohibited by Article VIII, section 5 of the state Constitution. [2005 c 206 § 1; 2005 c 151 § 5; 2005 c 102 § 1; 2004 c 61 § 1; 1996 c 291 § 1; 1995 c 16 § 1; 1981 1st ex.s. c 5 § 8; 1979 c 158 § 217; 1973 1st ex.s. c 209 § 3; 1971 ex.s. c 15 § 1; 1959 c 111 § 1; 1933 ex.s. c 62 § 7; RRS § 7306-7.]

**Reviser's note:** This section was amended by 2005 c 102 § 1, 2005 c 151 § 5, and by 2005 c 206 § 1, each without reference to the other. All amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

*Renewal driver's license accepted as proper identification: RCW 46.20.185.*

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**66.16.041 Credit and debit card purchases—Rules—Provision, installation, maintenance of equipment by board—Consideration of offsetting liquor revolving fund balance reduction.** (1) The state liquor control board shall accept bank credit card and debit cards for purchases in state liquor stores, under such rules as the board may adopt. The board shall authorize contract liquor stores appointed under RCW 66.08.050 to accept bank credit cards and debit cards for liquor purchases under this title, under such rules as the board may adopt.

(2) If a contract liquor store chooses to use credit or debit cards for liquor purchases, the board shall provide equipment and installation and maintenance of the equipment necessary to implement the use of credit and debit cards. Any equipment provided by the board to a contract liquor store for this purpose may be used only for the purchase of liquor. [2005 c 151 § 6; 2004 c 63 § 2; 1998 c 265 § 3; 1997 c 148 § 2; 1996 c 291 § 2.]

**Intent—1998 c 265:** "It is the intent of the legislature that expenditures associated with the implementation of using credit and debit cards in state liquor stores and agency liquor vendor stores not have a negative impact to the liquor revolving fund balance and that transfers to the state general fund, the cities, and the counties not be reduced because of these costs." [1998 c 265 § 1.]

**66.16.050 Sale of beer and wine to person licensed to sell.** An employee may sell beer and wines to any licensee holding a license to sell under this title in accordance with the terms of said license. [1933 ex.s. c 62 § 8; RRS § 7306-8.]

**66.16.060 Sealed packages may be required, exception.** The board may in its discretion by regulation prescribe that any or all liquors other than malt liquor shall be delivered to any purchaser at a state liquor store only in a package sealed with the official seal. [1943 c 216 § 1; 1933 ex.s. c 62 § 9; RRS § 7306-9.]

**66.16.070 Liquor cannot be opened or consumed on store premises.** No employee in a state liquor store shall open or consume, or allow to be opened or consumed any liquor on the store premises. [1933 ex.s. c 62 § 10; RRS § 7306-10.]

**66.16.090 Record of individual purchases confidential—Penalty for disclosure.** All records whatsoever of the board showing purchases by any individual of liquor shall be deemed confidential, and, except subject to audit by the state auditor, shall not be permitted to be inspected by any person whatsoever, except by employees of the board to the extent permitted by the regulations; and no member of the board and no employee whatsoever shall give out any information concerning such records and neither such records nor any information relative thereto which shall make known the name of any individual purchaser shall be competent to be admitted as evidence in any court or courts except in prosecutions for illegal possession of and/or sale of liquor. Any person violating the provisions of this section shall be guilty of a misdemeanor. [1933 ex.s. c 62 § 89; RRS § 7306-89.]

**66.16.100 Fortified wine sales.** No state liquor store in a county with a population over three hundred thousand may sell fortified wine if the board finds that the sale would be against the public interest based on the factors in RCW 66.24.360. The burden of establishing that the sale would be against the public interest is on those persons objecting. [1997 c 321 § 42; 1987 c 386 § 5.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**66.16.110 Birth defects from alcohol—Warning required.** The board shall cause to be posted in conspicuous places, in a number determined by the board, within each state liquor store, notices in print not less than one inch high warning persons that consumption of alcohol shortly before conception or during pregnancy may cause birth defects, including fetal alcohol syndrome and fetal alcohol effects. [1993 c 422 § 2.]

**Reviser's note:** 1993 c 422 directed that this section be added to chapter 66.08 RCW. This section has been codified in chapter 66.16 RCW, which relates more directly to liquor stores.

**Finding—1993 c 422:** "The United States surgeon general warns that women should not drink alcoholic beverages during pregnancy because of the risk of birth defects. The legislature finds that these defects include fetal alcohol syndrome, a birth defect that causes permanent antisocial behavior in the sufferer, disrupts the functions of his or her family, and, at an alarmingly increasing rate, extracts a safety and fiscal toll on society." [1993 c 422 § 1.]

**Intent—1993 c 422:** See RCW 70.83C.005.

**66.16.120 Employees working on Sabbath.** Employees in state liquor stores, including agency vendor liquor stores, may not be required to work on their Sabbath for the purpose of selling liquor if doing so would violate their religious beliefs. [2005 c 231 § 5.]

**Severability—2005 c 231:** See note following RCW 66.08.165.

## Chapter 66.20 RCW LIQUOR PERMITS

### Sections

66.20.010	Permits classified—Issuance—Fees—Waiver of provisions during state of emergency.
66.20.020	Permits not transferable—False name or address prohibited—Sacramental liquor, wine.
66.20.040	Applicant must sign permit.
66.20.060	Duration.
66.20.070	Suspension or cancellation.
66.20.080	Surrender of suspended or canceled permit—New permit, when.
66.20.085	License suspension—Noncompliance with support order—Reissuance.
66.20.090	Retaining permits wrongfully presented.
66.20.100	Physician may prescribe or administer liquor—Penalty.
66.20.110	Dentist may administer liquor—Penalty.
66.20.120	Hospital, etc., may administer liquor—Penalty.
66.20.140	Limitation on application after cancellation or suspension.
66.20.150	Purchases prohibited under canceled, suspended permit or under another's permit.
66.20.160	"Card of identification," "licensee," "store employee" defined for certain purposes.
66.20.170	Card of identification may be accepted as identification card and evidence of legal age.
66.20.180	Card of identification to be presented on request of licensee.
66.20.190	Identification card holder may be required to sign certification card—Contents—Procedure—Statement.
66.20.200	Unlawful acts relating to identification or certification card—Penalties.
66.20.210	Licensee's immunity to prosecution or suit—Certification card as evidence of good faith.
66.20.300	Alcohol servers—Definitions.
66.20.310	Alcohol servers—Permits—Requirements—Suspension, revocation—Violations—Exemptions.
66.20.320	Alcohol servers—Education program—Fees—Issuance of permits.
66.20.330	Alcohol servers—Rules.
66.20.340	Alcohol servers—Violation of rules—Penalties.
66.20.350	Alcohol servers—Deposit of fees.
66.20.360	Direct sale of wine to consumer—Holder of license to manufacture wine.
66.20.365	Direct sale of wine to consumer—Requirements for wineries.
66.20.370	Direct sale of wine to consumer—Wine shipper's permit—Requirements.
66.20.375	Direct sale of wine to consumer—Labeling and private carrier requirements.
66.20.380	Direct sale of wine to consumer—Monthly reporting—Display of permit or license number.
66.20.385	Direct sale of wine to consumer—Fee for wine shipper's permit.
66.20.390	Direct sale of wine to consumer—Consent to jurisdiction—Revocation or suspension of permit.

**66.20.010 Permits classified—Issuance—Fees—Waiver of provisions during state of emergency.** Upon application in the prescribed form being made to any employee authorized by the board to issue permits, accompanied by payment of the prescribed fee, and upon the employee being satisfied that the applicant should be granted a permit under this title, the employee shall issue to the applicant under such regulations and at such fee as may be prescribed by the board a permit of the class applied for, as follows:

(1) Where the application is for a special permit by a physician or dentist, or by any person in charge of an institu-

tion regularly conducted as a hospital or sanitorium for the care of persons in ill health, or as a home devoted exclusively to the care of aged people, a special liquor purchase permit, except that the governor may waive the requirement for a special liquor purchase permit under this subsection pursuant to an order issued under RCW 43.06.220(2);

(2) Where the application is for a special permit by a person engaged within the state in mechanical or manufacturing business or in scientific pursuits requiring alcohol for use therein, or by any private individual, a special permit to purchase alcohol for the purpose named in the permit, except that the governor may waive the requirement for a special liquor purchase permit under this subsection pursuant to an order issued under RCW 43.06.220(2);

(3) Where the application is for a special permit to consume liquor at a banquet, at a specified date and place, a special permit to purchase liquor for consumption at such banquet, to such applicants as may be fixed by the board;

(4) Where the application is for a special permit to consume liquor on the premises of a business not licensed under this title, a special permit to purchase liquor for consumption thereon for such periods of time and to such applicants as may be fixed by the board;

(5) Where the application is for a special permit by a manufacturer to import or purchase within the state alcohol, malt, and other materials containing alcohol to be used in the manufacture of liquor, or other products, a special permit;

(6) Where the application is for a special permit by a person operating a drug store to purchase liquor at retail prices only, to be thereafter sold by such person on the prescription of a physician, a special liquor purchase permit, except that the governor may waive the requirement for a special liquor purchase permit under this subsection pursuant to an order issued under RCW 43.06.220(2);

(7) Where the application is for a special permit by an authorized representative of a military installation operated by or for any of the armed forces within the geographical boundaries of the state of Washington, a special permit to purchase liquor for use on such military installation at prices to be fixed by the board;

(8) Where the application is for a special permit by a manufacturer, importer, or distributor, or representative thereof, to serve liquor without charge to delegates and guests at a convention of a trade association composed of licensees of the board, when the said liquor is served in a hospitality room or from a booth in a board-approved suppliers' display room at the convention, and when the liquor so served is for consumption in the said hospitality room or display room during the convention, anything in Title 66 RCW to the contrary notwithstanding. Any such spirituous liquor shall be purchased from the board or a spirits, beer, and wine restaurant licensee and any such beer and wine shall be subject to the taxes imposed by RCW 66.24.290 and 66.24.210;

(9) Where the application is for a special permit by a manufacturer, importer, or distributor, or representative thereof, to donate liquor for a reception, breakfast, luncheon, or dinner for delegates and guests at a convention of a trade association composed of licensees of the board, when the liquor so donated is for consumption at the said reception, breakfast, luncheon, or dinner during the convention, anything in Title 66 RCW to the contrary notwithstanding. Any

such spirituous liquor shall be purchased from the board or a spirits, beer, and wine restaurant licensee and any such beer and wine shall be subject to the taxes imposed by RCW 66.24.290 and 66.24.210;

(10) Where the application is for a special permit by a manufacturer, importer, or distributor, or representative thereof, to donate and/or serve liquor without charge to delegates and guests at an international trade fair, show, or exposition held under the auspices of a federal, state, or local governmental entity or organized and promoted by a nonprofit organization, anything in Title 66 RCW to the contrary notwithstanding. Any such spirituous liquor shall be purchased from the board and any such beer or wine shall be subject to the taxes imposed by RCW 66.24.290 and 66.24.210;

(11) Where the application is for an annual special permit by a person operating a bed and breakfast lodging facility to donate or serve wine or beer without charge to overnight guests of the facility if the wine or beer is for consumption on the premises of the facility. "Bed and breakfast lodging facility," as used in this subsection, means a facility offering from one to eight lodging units and breakfast to travelers and guests. [2008 c 181 § 602; (2008 c 181 § 601 expired July 1, 2008); 2007 c 370 § 16; 1998 c 126 § 1; 1997 c 321 § 43; 1984 c 78 § 6; 1984 c 45 § 1; 1983 c 13 § 1; 1982 c 85 § 1; 1975-76 2nd ex.s. c 62 § 2; 1959 c 111 § 2; 1951 2nd ex.s. c 13 § 1; 1933 ex.s. c 62 § 12; RRS § 7306-12.]

**Effective date—2008 c 181 § 602:** "Section 602 of this act takes effect July 1, 2008." [2008 c 181 § 604.]

**Expiration date—2008 c 181 § 601:** "Section 601 of this act expires July 1, 2008." [2008 c 181 § 603.]

**Part headings not law—2008 c 181:** See note following RCW 43.06.220.

**Effective date—2007 c 370 §§ 10-20:** See note following RCW 66.04.010.

**Finding and declaration—Severability—1984 c 78:** See notes following RCW 66.12.160.

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**66.20.020 Permits not transferable—False name or address prohibited—Sacramental liquor, wine.** (1) Every permit shall be issued in the name of the applicant therefor, and no permit shall be transferable, nor shall the holder of any permit allow any other person to use the permit.

(2) No person shall apply in any false or fictitious name for the issuance to him of a permit, and no person shall furnish a false or fictitious address in his application for a permit.

(3) Nothing in this title shall be construed as limiting the right of any minister, priest or rabbi, or religious organization from obtaining wine for sacramental purposes directly from any source whatsoever, whether from within the limits of the state of Washington or from outside the state; nor shall any fee be charged, directly or indirectly, for the exercise of this right. The board shall have the power and authority to make reasonable rules and regulations concerning the importing of any such liquor or wine, for the purpose of preventing any unlawful use of such right. [1933 ex.s. c 62 § 13; RRS § 7306-13. Formerly RCW 66.12.100, 66.20.020, and 66.20.030.]

**66.20.040 Applicant must sign permit.** No permit shall be valid or be accepted or used for the purchase of liquor until the applicant for the permit has written his signature thereon in the prescribed manner, for the purposes of identification as the holder thereof, in the presence of the employee to whom the application is made. [1933 ex.s. c 62 § 14; RRS § 7306-14.]

**66.20.060 Duration.** Every permit issued for use after October 1, 1955, shall expire at midnight on the thirtieth day of June of the fiscal year for which the permit was issued, except special permits for banquets and special permits to physicians, dentists, or persons in charge of an institution regularly conducted as a hospital or sanatorium for the care of persons in ill health, or as a home devoted exclusively to the care of aged people. [1955 c 180 § 1; 1935 c 174 § 1; 1933 ex.s. c 62 § 16; RRS § 7306-16.]

**66.20.070 Suspension or cancellation.** Where the holder of any permit issued under this title violates any provision of this title or of the regulations, or is an interdicted person, or is otherwise disqualified from holding a permit, the board, upon proof to its satisfaction of the fact or existence of such violation, interdiction, or disqualification, and in its discretion, may with or without any hearing, suspend the permit and all rights of the holder thereunder for such period as the board sees fit, or may cancel the permit. [1933 ex.s. c 62 § 17; RRS § 7306-17.]

**66.20.080 Surrender of suspended or canceled permit—New permit, when.** Upon receipt of notice of the suspension or cancellation of his permit, the holder of the permit shall forthwith deliver up the permit to the board. Where the permit has been suspended only, the board shall return the permit to the holder at the expiration or termination of the period of suspension. Where the permit has been suspended or canceled, no employee shall knowingly issue to the person whose permit is suspended or canceled a permit under this title until the end of the period of suspension or within the period of one year from the date of cancellation. [1933 ex.s. c 62 § 18; RRS § 7306-18.]

**66.20.085 License suspension—Noncompliance with support order—Reissuance.** The board shall immediately suspend the license of a person who has been certified pursuant to RCW 74.20A.320 by the department of social and health services as a person who is not in compliance with a support order or a \*residential or visitation order. If the person has continued to meet all other requirements for reinstatement during the suspension, reissuance of the license shall be automatic upon the board's receipt of a release issued by the department of social and health services stating that the licensee is in compliance with the order. [1997 c 58 § 861.]

**\*Reviser's note:** 1997 c 58 § 886 requiring a court to order certification of noncompliance with residential provisions of a court-ordered parenting plan was vetoed. Provisions ordering the department of social and health services to certify a responsible parent based on a court order to certify for non-compliance with residential provisions of a parenting plan were vetoed. See RCW 74.20A.320.

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

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**66.20.090 Retaining permits wrongfully presented.**

Where any permit is presented to an employee by a person who is not the holder of the permit, or where any permit which is suspended or canceled is presented to an employee, the employee shall retain the permit in his custody and shall forthwith notify the board of the fact of its retention. [1933 ex.s. c 62 § 19; RRS § 7306-19.]

**66.20.100 Physician may prescribe or administer liquor—Penalty.** Any physician who deems liquor necessary for the health of a patient, whether an interdicted person or not, whom he has seen or visited professionally may give to the patient a prescription therefor, signed by the physician, or the physician may administer the liquor to the patient, for which purpose the physician may administer the liquor purchased by him under special permit and may charge for the liquor so administered; but no prescription shall be given or liquor be administered by a physician except to bona fide patients in cases of actual need, and when in the judgment of the physician the use of liquor as medicine in the quantity prescribed or administered is necessary; and any physician who administers liquor in evasion or violation of this title shall be guilty of a violation of this title. [1933 ex.s. c 62 § 20; RRS § 7306-20.]

**66.20.110 Dentist may administer liquor—Penalty.** Any dentist who deems it necessary that any patient then under treatment by him should be supplied with liquor as a stimulant or restorative may administer to the patient the liquor so needed, and for that purpose the dentist shall administer liquor obtained by him under special permit pursuant to this title, and may charge for the liquor so administered; but no liquor shall be administered by a dentist except to bona fide patients in cases of actual need; and every dentist who administers liquor in evasion or violation of this title shall be guilty of a violation of this title. [1933 ex.s. c 62 § 21; RRS § 7306-21.]

**66.20.120 Hospital, etc., may administer liquor—Penalty.** Any person in charge of an institution regularly conducted as a hospital or sanatorium for the care of persons in ill health, or as a home devoted exclusively to the care of aged people, may, if he holds a special permit under this title for that purpose, administer liquor purchased by him under his special permit to any patient or inmate of the institution who is in need of the same, either by way of external application or otherwise for medicinal purposes, and may charge for the liquor so administered; but no liquor shall be administered by any person under this section except to bona fide patients or inmates of the institution of which he is in charge and in cases of actual need and every person in charge of an institution who administers liquor in evasion or violation of this title shall be guilty of a violation of this title. [1933 ex.s. c 62 § 22; RRS § 7306-22.]

(2010 Ed.)

**66.20.140 Limitation on application after cancellation or suspension.** No person whose permit has been canceled within the period of twelve months next preceding, or is suspended, shall make application to any employee under this title for another permit. [1933 ex.s. c 62 § 40; RRS § 7306-40.]

**66.20.150 Purchases prohibited under canceled, suspended permit or under another's permit.** No person shall purchase or attempt to purchase liquor under a permit which is suspended, or which has been canceled, or of which he is not the holder. [1933 ex.s. c 62 § 41; RRS § 7306-41.]

**66.20.160 "Card of identification," "licensee," "store employee" defined for certain purposes.** Words and phrases as used in RCW 66.20.160 to 66.20.210, inclusive, shall have the following meaning:

"Card of identification" means any one of those cards described in RCW 66.16.040.

"Licensee" means the holder of a retail liquor license issued by the board, and includes any employee or agent of the licensee.

"Store employee" means a person employed in a state liquor store to sell liquor. [2005 c 151 § 8; 1973 1st ex.s. c 209 § 4; 1971 ex.s. c 15 § 2; 1959 c 111 § 4; 1949 c 67 § 1; Rem. Supp. 1949 § 7306-19A.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**66.20.170 Card of identification may be accepted as identification card and evidence of legal age.** A card of identification may for the purpose of this title and for the purpose of procuring liquor, be accepted as an identification card by any licensee or store employee and as evidence of legal age of the person presenting such card, provided the licensee or store employee complies with the conditions and procedures prescribed herein and such regulations as may be made by the board. [1973 1st ex.s. c 209 § 5; 1971 ex.s. c 15 § 3; 1959 c 111 § 5; 1949 c 67 § 2; Rem. Supp. 1949 § 7306-19B.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**66.20.180 Card of identification to be presented on request of licensee.** A card of identification shall be presented by the holder thereof upon request of any licensee, store employee, contract liquor store manager, contract liquor store employee, peace officer, or enforcement officer of the board for the purpose of aiding the licensee, store employee, contract liquor store manager, contract liquor store employee, peace officer, or enforcement officer of the board to determine whether or not such person is of legal age to purchase liquor when such person desires to procure liquor from a licensed establishment or state liquor store or contract liquor store. [2005 c 151 § 9; 1973 1st ex.s. c 209 § 6; 1971 ex.s. c 15 § 4; 1959 c 111 § 6; 1949 c 67 § 3; Rem. Supp. 1949 § 7306-19C.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**66.20.190 Identification card holder may be required to sign certification card—Contents—Procedure—Statement.** In addition to the presentation by the holder and verification by the licensee or store employee of such card of

identification, the licensee or store employee who is still in doubt about the true age of the holder shall require the person whose age may be in question to sign a certification card and record an accurate description and serial number of his card of identification thereon. Such statement shall be upon a five-inch by eight-inch file card, which card shall be filed alphabetically by the licensee or store employee at or before the close of business on the day on which the statement is executed, in the file box containing a suitable alphabetical index and the card shall be subject to examination by any peace officer or agent or employee of the board at all times. The certification card shall also contain in bold-face type a statement stating that the signer understands that conviction for unlawful purchase of alcoholic beverages or misuse of the certification card may result in criminal penalties including imprisonment or fine or both. [1981 1st ex.s. c 5 § 9; 1975 1st ex.s. c 173 § 4; 1973 1st ex.s. c 209 § 7; 1971 ex.s. c 15 § 5; 1959 c 111 § 7; 1949 c 67 § 4; Rem. Supp. 1949 § 7306-19D.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**66.20.200 Unlawful acts relating to identification or certification card—Penalties.** (1) It shall be unlawful for the owner of a card of identification to transfer the card to any other person for the purpose of aiding such person to procure alcoholic beverages from any licensee or store employee. Any person who shall permit his or her card of identification to be used by another or transfer such card to another for the purpose of aiding such transferee to obtain alcoholic beverages from a licensee or store employee or gain admission to a premises or portion of a premises classified by the board as off-limits to persons under twenty-one years of age, shall be guilty of a misdemeanor punishable as provided by RCW 9A.20.021, except that a minimum fine of two hundred fifty dollars shall be imposed and any sentence requiring community restitution shall require not fewer than twenty-five hours of community restitution.

(2) Any person not entitled thereto who unlawfully procures or has issued or transferred to him or her a card of identification and any person who possesses a card of identification not issued to him or her, and any person who makes any false statement on any certification card required by RCW 66.20.190, to be signed by him or her, shall be guilty of a misdemeanor punishable as provided by RCW 9A.20.021, except that a minimum fine of two hundred fifty dollars shall be imposed and any sentence requiring community restitution shall require not fewer than twenty-five hours of community restitution. [2003 c 53 § 295; 2002 c 175 § 41; 1994 c 201 § 1; 1987 c 101 § 4; 1973 1st ex.s. c 209 § 8; 1971 ex.s. c 15 § 6; 1969 ex.s. c 178 § 2; 1959 c 111 § 8; 1949 c 67 § 5; Rem. Supp. 1949 § 7306-19E.]

**Intent—Effective date—2003 c 53:** See notes following RCW 2.48.180.

**Effective date—2002 c 175:** See note following RCW 7.80.130.

*Unlawful transfer to minor of age identification: RCW 66.44.325.*

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**66.20.210 Licensee's immunity to prosecution or suit—Certification card as evidence of good faith.** No licensee or the agent or employee of the licensee, or store employee, shall be prosecuted criminally or be sued in any

civil action for serving liquor to a person under legal age to purchase liquor if such person has presented a card of identification in accordance with RCW 66.20.180, and has signed a certification card as provided in RCW 66.20.190.

Such card in the possession of a licensee may be offered as a defense in any hearing held by the board for serving liquor to the person who signed the card and may be considered by the board as evidence that the licensee acted in good faith. [1973 1st ex.s. c 209 § 9; 1971 ex.s. c 15 § 7; 1959 c 111 § 9; 1949 c 67 § 6; Rem. Supp. 1949 § 7306-19F.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**66.20.300 Alcohol servers—Definitions.** Unless the context clearly requires otherwise, the definitions in this section apply throughout RCW 66.20.310 through 66.20.350.

(1) "Alcohol" has the same meaning as "liquor" in RCW 66.04.010.

(2) "Alcohol server" means any person who as part of his or her employment participates in the sale or service of alcoholic beverages for on-premise consumption at a retail licensed premise as a regular requirement of his or her employment, and includes those persons eighteen years of age or older permitted by the liquor laws of this state to serve alcoholic beverages with meals.

(3) "Board" means the Washington state liquor control board.

(4) "Training entity" means any liquor licensee associations, independent contractors, private persons, and private or public schools, that have been certified by the board.

(5) "Retail licensed premises" means any:

(a) Premises licensed to sell alcohol by the glass or by the drink, or in original containers primarily for consumption on the premises as authorized by RCW 66.24.320, 66.24.330, 66.24.350, 66.24.400, 66.24.425, 66.24.450, and 66.24.570;

(b) Distillery licensed pursuant to RCW 66.24.140 that is authorized to serve samples of its own production;

(c) Facility established by a domestic winery for serving and selling wine pursuant to RCW 66.24.170(4); and

(d) Grocery store licensed under RCW 66.24.360, but only with respect to employees whose duties include serving during tasting activities under RCW 66.24.363. [2010 c 141 § 3. Prior: 2008 c 94 § 10; 2008 c 41 § 1; 1997 c 321 § 44; 1996 c 218 § 2; 1995 c 51 § 2.]

**Findings—1995 c 51:** "The legislature finds that education of alcohol servers on issues such as the physiological effects of alcohol on consumers, liability and legal implications of serving alcohol, driving while intoxicated, and methods of intervention with the problem customer are important in protecting the health and safety of the public. The legislature further finds that it is in the best interest of the citizens of the state of Washington to have an alcohol server education program." [1995 c 51 § 1.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**66.20.310 Alcohol servers—Permits—Requirements—Suspension, revocation—Violations—Exemptions.** (1)(a) There shall be an alcohol server permit, known as a class 12 permit, for a manager or bartender selling or mixing alcohol, spirits, wines, or beer for consumption at an on-premises licensed facility.

(b) There shall be an alcohol server permit, known as a class 13 permit, for a person who only serves alcohol, spirits,

wines, or beer for consumption at an on-premises licensed facility.

(c) As provided by rule by the board, a class 13 permit holder may be allowed to act as a bartender without holding a class 12 permit.

(2)(a) Effective January 1, 1997, except as provided in (d) of this subsection, every alcohol server employed, under contract or otherwise, at a retail licensed premise shall be issued a class 12 or class 13 permit.

(b) Every class 12 and class 13 permit issued shall be issued in the name of the applicant and no other person may use the permit of another permit holder. The holder shall present the permit upon request to inspection by a representative of the board or a peace officer. The class 12 or class 13 permit shall be valid for employment at any retail licensed premises described in (a) of this subsection.

(c) Except as provided in (d) of this subsection, no licensee holding a license as authorized by RCW 66.24.320, 66.24.330, 66.24.350, 66.24.400, 66.24.425, 66.24.450, 66.24.570, and 66.24.600 may employ or accept the services of any person without the person first having a valid class 12 or class 13 permit.

(d) Within sixty days of initial employment, every person whose duties include the compounding, sale, service, or handling of liquor shall have a class 12 or class 13 permit.

(e) No person may perform duties that include the sale or service of alcoholic beverages on a retail licensed premises without possessing a valid alcohol server permit.

(3) A permit issued by a training entity under this section is valid for employment at any retail licensed premises described in subsection (2)(a) of this section for a period of five years unless suspended by the board.

(4) The board may suspend or revoke an existing permit if any of the following occur:

(a) The applicant or permittee has been convicted of violating any of the state or local intoxicating liquor laws of this state or has been convicted at any time of a felony; or

(b) The permittee has performed or permitted any act that constitutes a violation of this title or of any rule of the board.

(5) The suspension or revocation of a permit under this section does not relieve a licensee from responsibility for any act of the employee or agent while employed upon the retail licensed premises. The board may, as appropriate, revoke or suspend either the permit of the employee who committed the violation or the license of the licensee upon whose premises the violation occurred, or both the permit and the license.

(6)(a) After January 1, 1997, it is a violation of this title for any retail licensee or agent of a retail licensee as described in subsection (2)(a) of this section to employ in the sale or service of alcoholic beverages, any person who does not have a valid alcohol server permit or whose permit has been revoked, suspended, or denied.

(b) It is a violation of this title for a person whose alcohol server permit has been denied, suspended, or revoked to accept employment in the sale or service of alcoholic beverages.

(7) Grocery stores licensed under RCW 66.24.360, the primary commercial activity of which is the sale of grocery products and for which the sale and service of beer and wine for on-premises consumption with food is incidental to the

primary business, and employees of such establishments, are exempt from RCW 66.20.300 through 66.20.350, except for employees whose duties include serving during tasting activities under RCW 66.24.363. [2010 c 141 § 2. Prior: 2009 c 271 § 5; 2009 c 187 § 4; prior: 2008 c 94 § 11; 2008 c 41 § 3; (2008 c 41 § 2 expired July 1, 2008); 2007 c 370 § 17; 1997 c 321 § 45; prior: 1996 c 311 § 1; 1996 c 218 § 3; 1995 c 51 § 3.]

**Effective date—2008 c 94 §§ 4 and 11:** See note following RCW 66.04.010.

**Effective date—2008 c 41 §§ 3, 10, and 11:** "Sections 3, 10, and 11 of this act take effect July 1, 2008." [2008 c 41 § 16.]

**Expiration date—2008 c 41 § 2:** "Section 2 of this act expires July 1, 2008." [2008 c 41 § 13.]

**Effective date—2007 c 370 §§ 10-20:** See note following RCW 66.04.010.

**Findings—1995 c 51:** See note following RCW 66.20.300.

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**66.20.320 Alcohol servers—Education program—Fees—Issuance of permits.** (1) The board shall regulate a required alcohol server education program that includes:

(a) Development of the curriculum and materials for the education program;

(b) Examination and examination procedures;

(c) Certification procedures, enforcement policies, and penalties for education program instructors and providers;

(d) The curriculum for an approved class 12 alcohol permit training program that includes but is not limited to the following subjects:

(i) The physiological effects of alcohol including the effects of alcohol in combination with drugs;

(ii) Liability and legal information;

(iii) Driving while intoxicated;

(iv) Intervention with the problem customer, including ways to stop service, ways to deal with the belligerent customer, and alternative means of transportation to get the customer safely home;

(v) Methods for checking proper identification of customers;

(vi) Nationally recognized programs, such as TAM (Techniques in Alcohol Management) and TIPS (Training for Intervention Programs) modified to include Washington laws and regulations.

(2) The board shall provide the program through liquor licensee associations, independent contractors, private persons, private or public schools certified by the board, or any combination of such providers.

(3) Each training entity shall provide a class 12 permit to the manager or bartender who has successfully completed a course the board has certified. A list of the individuals receiving the class 12 permit shall be forwarded to the board on the completion of each course given by the training entity.

(4) After January 1, 1997, the board shall require all alcohol servers applying for a class 13 alcohol server permit to view a video training session. Retail liquor licensees shall fully compensate employees for the time spent participating in this training session.

(5) When requested by a retail liquor licensee, the board shall provide copies of videotaped training programs that have been produced by private vendors and make them avail-

able for a nominal fee to cover the cost of purchasing and shipment, with the fees being deposited in the liquor revolving fund for distribution to the board as needed.

(6) Each training entity may provide the board with a video program of not less than one hour that covers the subjects in subsection (1)(d)(i) through (v) of this section that will be made available to a licensee for the training of a class 13 alcohol server.

(7) Applicants shall be given a class 13 permit upon the successful completion of the program.

(8) A list of the individuals receiving the class 13 permit shall be forwarded to the board on the completion of each video training program.

(9) The board shall develop a model permit for the class 12 and 13 permits. The board may provide such permits to training entities or licensees for a nominal cost to cover production.

(10)(a) Persons who have completed a nationally recognized alcohol management or intervention program since July 1, 1993, may be issued a class 12 or 13 permit upon providing proof of completion of such training to the board.

(b) Persons who completed the board's alcohol server training program after July 1, 1993, but before July 1, 1995, may be issued a class 13 permit upon providing proof of completion of such training to the board. [1996 c 311 § 2; 1995 c 51 § 4.]

**Findings—1995 c 51:** See note following RCW 66.20.300.

**66.20.330 Alcohol servers—Rules.** The board shall adopt rules to implement RCW 66.20.300 through 66.20.350 including, but not limited to, procedures and grounds for denying, suspending, or revoking permits. [1995 c 51 § 5.]

**Findings—1995 c 51:** See note following RCW 66.20.300.

**66.20.340 Alcohol servers—Violation of rules—Penalties.** A violation of any of the rules of the board adopted to implement RCW 66.20.300 through 66.20.350 is a misdemeanor, punishable by a fine of not more than two hundred fifty dollars for a first offense. A subsequent offense is punishable by a fine of not more than five hundred dollars, or imprisonment for not more than ninety days, or both the fine and imprisonment. [1995 c 51 § 6.]

**Findings—1995 c 51:** See note following RCW 66.20.300.

**66.20.350 Alcohol servers—Deposit of fees.** Fees collected by the board under RCW 66.20.300 through 66.20.350 shall be deposited in the liquor revolving fund in accordance with RCW 66.08.170. [1995 c 51 § 7.]

**Findings—1995 c 51:** See note following RCW 66.20.300.

**66.20.360 Direct sale of wine to consumer—Holder of license to manufacture wine.** The holder of a license to manufacture wine issued by this state or another state may ship its wine to a person who is a resident of Washington and is twenty-one years of age or older for that person's personal use and not for resale. [2006 c 49 § 1.]

**66.20.365 Direct sale of wine to consumer—Requirements for wineries.** Before wine may be shipped by a

domestic winery or an out-of-state winery to a person who is a resident of Washington, the winery must:

(1) Obtain a wine shipper's permit under procedures prescribed by the board by rule and pay a fee established by the board, if the winery is located outside the state; or

(2) Be licensed as a domestic winery by the board and have paid the annual license fee. [2006 c 49 § 2.]

**66.20.370 Direct sale of wine to consumer—Wine shipper's permit—Requirements.** (1) An applicant for a wine shipper's permit under RCW 66.20.365 must:

(a) Operate a winery located in the United States;

(b) Provide the board a copy of its valid license to manufacture wine issued by another state;

(c) Certify that it holds all state and federal licenses and permits necessary to operate a winery; and

(d) Register with the department of revenue under RCW 82.32.030.

(2) Holders of a winery certificate of approval under RCW 66.24.206(1)(a) are deemed to hold a wine shipper's permit without further application or fee, if the holder meets all requirements for a wine shipper's permit. A winery certificate of approval holder who wants to ship wine under its wine shipper's permit privilege must notify the liquor control board in a manner determined by the board before shipping any wine to a Washington consumer.

(3) Holders of a wine shipper's permit must:

(a) Pay the tax under RCW 66.24.210 for sales of wine to Washington state residents; and

(b) Collect and remit to the department of revenue all applicable state and local sales and use taxes imposed by or under the authority of chapters 82.08, 82.12, and 82.14 RCW on all sales of wine delivered to buyers in this state, regardless of whether the permit holder has a physical presence in this state. [2006 c 49 § 3.]

**66.20.375 Direct sale of wine to consumer—Labeling and private carrier requirements.** (1) A domestic winery or a wine shipper's permit holder must clearly label all wine cases or outside shipping packages of wine sent into or out of this state under chapter 49, Laws of 2006 to indicate that the package cannot be delivered to a person under twenty-one years of age or to an intoxicated person.

(2) A domestic winery or a wine shipper's permit holder must ensure that the private carrier used to deliver wine (a) obtains the signature of the person who receives the wine upon delivery, (b) verifies the age of the recipient, and (c) verifies that the recipient does not appear intoxicated at the time of delivery. [2006 c 49 § 4.]

**66.20.380 Direct sale of wine to consumer—Monthly reporting—Display of permit or license number.** (1) A wine shipper's permit holder and a domestic winery must report to the board, on or before the twentieth day of each month, all shipments of wine made during the preceding calendar month directly to Washington consumers under a wine shipper's permit or a domestic winery license in effect for all or any portion of the preceding year. All reports will be on forms prescribed by the board.

(2) A wine shipper's permit holder, a winery certificate of approval holder, or domestic winery who advertises or offers wine for direct shipment to customers within this state must clearly and conspicuously display the permit or license number in its advertising. [2006 c 49 § 5.]

**66.20.385 Direct sale of wine to consumer—Fee for wine shipper's permit.** A fee for a wine shipper's permit may be established by the board. [2006 c 49 § 6.]

**66.20.390 Direct sale of wine to consumer—Consent to jurisdiction—Revocation or suspension of permit.** (1) Holders of a wine shipper's permit are deemed to have consented to the jurisdiction of Washington concerning enforcement of chapter 49, Laws of 2006 and all laws, rules, and regulations related to the shipment of wine from wine manufacturers directly to consumers.

(2)(a) A permit issued under chapter 49, Laws of 2006 to a wine manufacturer located outside this state who fails to comply with the provisions of chapter 49, Laws of 2006 shall be suspended or revoked.

(b) The privilege to ship wine directly to Washington consumers under a domestic winery license shall be suspended or revoked if the domestic winery fails to comply with the provisions of chapter 49, Laws of 2006. [2006 c 49 § 7.]

### Chapter 66.24 RCW

#### LICENSES—STAMP TAXES

##### Sections

66.24.010	Licensure—Issuance—Conditions and restrictions—Limitations—Temporary licenses.
66.24.012	License suspension—Noncompliance with support order—Reissuance.
66.24.015	Nonrefundable application fee for retail license.
66.24.025	Transfer of license—Fee—Exception—Corporate changes, approval—Fee.
66.24.120	Vacation of suspension on payment of penalty.
66.24.140	Distiller's license—Fee.
66.24.145	Craft distillery—Sales and samples of spirits.
66.24.150	Manufacturer's license—Scope—Fee.
66.24.160	Liquor importer's license—Fee.
66.24.170	Domestic winery license—Winery as distributor and/or retailer of own wine—Off-premise samples—Domestic wine made into sparkling wine—Sales at qualifying farmers markets.
66.24.185	Bonded wine warehouse storage license—Qualifications and requirements—Fee.
66.24.191	Wine transfers.
66.24.200	Wine distributor's license—Fee.
66.24.203	Wine importer's license—Principal office—Report—Labels—Fee.
66.24.206	Out-of-state winery—Certificate of approval—Fee.
66.24.210	Imposition of taxes on sales of wine and cider—Additional taxes—Distributions.
66.24.215	Levy of assessment on wine producers and growers to fund wine commission—Assessment rate changes—Procedures—Disbursement—Continuation.
66.24.230	Monthly reports of domestic winery, wine certificate of approval holder, wine importer, and wine distributor—Prohibited, authorized sales.
66.24.240	Domestic brewery's license—Fee.
66.24.244	Microbrewery's license—Fee.
66.24.250	Beer distributor's license—Fee.
66.24.261	Beer importer's license—Principal office—Report—Labels—Fee.
66.24.270	Manufacturer's monthly report of malt liquor or strong beer sales—Certificate of approval—Report for out-of-state or imported beer—Fee.

66.24.290	Authorized, prohibited sales—Monthly reports—Added tax—Distribution—Late payment penalty—Additional taxes, purposes.
66.24.305	Refunds of taxes on unsalable wine and beer.
66.24.310	Representative's license—Qualifications—Conditions and restrictions—Fee.
66.24.320	Beer and/or wine restaurant license—Containers—Fee—Caterer's endorsement.
66.24.330	Tavern license—Fees.
66.24.350	Snack bar license—Fee.
66.24.354	Combined license—Sale of beer and wine for consumption on and off premises—Conditions—Fee.
66.24.360	Grocery store license—Fees—Restricted license—Determination of public interest—Inventory—Endorsements.
66.24.363	Grocery store—Beer and wine tasting endorsement.
66.24.371	Beer and/or wine specialty shop license—Fee—Samples—Restricted license—Determination of public interest—Inventory.
66.24.375	"Society or organization" defined for certain purposes.
66.24.380	Special occasion license—Fee—Penalty.
66.24.395	Interstate common carrier's licenses—Class CCI—Fees—Scope.
66.24.400	Liquor by the drink, spirits, beer, and wine restaurant license—Liquor by the bottle for hotel or club guests—Removing unconsumed liquor, when.
66.24.410	Liquor by the drink, spirits, beer, and wine restaurant license—Terms defined.
66.24.420	Liquor by the drink, spirits, beer, and wine restaurant license—Schedule of fees—Location—Number of licenses—Caterer's endorsement.
66.24.425	Liquor by the drink, spirits, beer, and wine restaurant license—Restaurants not serving the general public.
66.24.440	Liquor by the drink, spirits, beer, and wine restaurant, spirits, beer, and wine private club, hotel, spirits, beer, and wine nightclub, and sports entertainment facility license—Purchase of liquor by licensees—Discount.
66.24.450	Liquor by the drink, spirits, beer, and wine private club license—Qualifications—Fee.
66.24.452	Private club beer and wine license—Fee.
66.24.455	Bowling establishments—Extension of premises to concourse and lane areas—Beer and/or wine restaurant, tavern, snack bar, spirits, beer, and wine restaurant, spirits, beer, and wine private club, or beer and wine private club licensees.
66.24.480	Bottle clubs—License required.
66.24.481	Public place or club—License or permit required—Penalty.
66.24.495	Nonprofit arts organization license—Fee.
66.24.520	Grower's license—Fee.
66.24.530	Duty free exporter's license—Class S—Fee.
66.24.540	Motel license—Fee.
66.24.550	Beer and wine gift delivery license—Fee—Limitations.
66.24.570	Sports entertainment facility license—Fee—Caterer's endorsement—Financial arrangements—Reporting.
66.24.580	Public house license—Fees—Limitations.
66.24.590	Hotel license—Fee—Limitations.
66.24.600	Nightclub license.
66.24.900	Construction—Chapter applicable to state registered domestic partnerships—2009 c 521.

*Minors, access to tobacco, role of liquor control board: Chapter 70.155 RCW.*

**66.24.010 Licensure—Issuance—Conditions and restrictions—Limitations—Temporary licenses.** (1) Every license shall be issued in the name of the applicant, and the holder thereof shall not allow any other person to use the license.

(2) For the purpose of considering any application for a license, or the renewal of a license, the board may cause an inspection of the premises to be made, and may inquire into all matters in connection with the construction and operation of the premises. For the purpose of reviewing any application for a license and for considering the denial, suspension, revocation, or renewal or denial thereof, of any license, the liquor control board may consider any prior criminal conduct of the applicant including an administrative violation history record with the board and a criminal history record information check. The board may submit the criminal history record

information check to the Washington state patrol and to the identification division of the federal bureau of investigation in order that these agencies may search their records for prior arrests and convictions of the individual or individuals who filled out the forms. The board shall require fingerprinting of any applicant whose criminal history record information check is submitted to the federal bureau of investigation. The provisions of RCW 9.95.240 and of chapter 9.96A RCW shall not apply to such cases. Subject to the provisions of this section, the board may, in its discretion, grant or deny the renewal or license applied for. Denial may be based on, without limitation, the existence of chronic illegal activity documented in objections submitted pursuant to subsections (8)(d) and (12) of this section. Authority to approve an uncontested or unopposed license may be granted by the board to any staff member the board designates in writing. Conditions for granting such authority shall be adopted by rule. No retail license of any kind may be issued to:

(a) A person doing business as a sole proprietor who has not resided in the state for at least one month prior to receiving a license, except in cases of licenses issued to dining places on railroads, boats, or aircraft;

(b) A copartnership, unless all of the members thereof are qualified to obtain a license, as provided in this section;

(c) A person whose place of business is conducted by a manager or agent, unless such manager or agent possesses the same qualifications required of the licensee;

(d) A corporation or a limited liability company, unless it was created under the laws of the state of Washington or holds a certificate of authority to transact business in the state of Washington.

(3)(a) The board may, in its discretion, subject to the provisions of RCW 66.08.150, suspend or cancel any license; and all rights of the licensee to keep or sell liquor thereunder shall be suspended or terminated, as the case may be.

(b) The board shall immediately suspend the license or certificate of a person who has been certified pursuant to RCW 74.20A.320 by the department of social and health services as a person who is not in compliance with a support order. If the person has continued to meet all other requirements for reinstatement during the suspension, reissuance of the license or certificate shall be automatic upon the board's receipt of a release issued by the department of social and health services stating that the licensee is in compliance with the order.

(c) The board may request the appointment of administrative law judges under chapter 34.12 RCW who shall have power to administer oaths, issue subpoenas for the attendance of witnesses and the production of papers, books, accounts, documents, and testimony, examine witnesses, and to receive testimony in any inquiry, investigation, hearing, or proceeding in any part of the state, under such rules and regulations as the board may adopt.

(d) Witnesses shall be allowed fees and mileage each way to and from any such inquiry, investigation, hearing, or proceeding at the rate authorized by RCW 34.05.446. Fees need not be paid in advance of appearance of witnesses to testify or to produce books, records, or other legal evidence.

(e) In case of disobedience of any person to comply with the order of the board or a subpoena issued by the board, or any of its members, or administrative law judges, or on the

refusal of a witness to testify to any matter regarding which he or she may be lawfully interrogated, the judge of the superior court of the county in which the person resides, on application of any member of the board or administrative law judge, shall compel obedience by contempt proceedings, as in the case of disobedience of the requirements of a subpoena issued from said court or a refusal to testify therein.

(4) Upon receipt of notice of the suspension or cancellation of a license, the licensee shall forthwith deliver up the license to the board. Where the license has been suspended only, the board shall return the license to the licensee at the expiration or termination of the period of suspension. The board shall notify all vendors in the city or place where the licensee has its premises of the suspension or cancellation of the license; and no employee may allow or cause any liquor to be delivered to or for any person at the premises of that licensee.

(5)(a) At the time of the original issuance of a spirits, beer, and wine restaurant license, the board shall prorate the license fee charged to the new licensee according to the number of calendar quarters, or portion thereof, remaining until the first renewal of that license is required.

(b) Unless sooner canceled, every license issued by the board shall expire at midnight of the thirtieth day of June of the fiscal year for which it was issued. However, if the board deems it feasible and desirable to do so, it may establish, by rule pursuant to chapter 34.05 RCW, a system for staggering the annual renewal dates for any and all licenses authorized by this chapter. If such a system of staggered annual renewal dates is established by the board, the license fees provided by this chapter shall be appropriately prorated during the first year that the system is in effect.

(6) Every license issued under this section shall be subject to all conditions and restrictions imposed by this title or by rules adopted by the board. All conditions and restrictions imposed by the board in the issuance of an individual license shall be listed on the face of the individual license along with the trade name, address, and expiration date.

(7) Every licensee shall post and keep posted its license, or licenses, in a conspicuous place on the premises.

(8)(a) Unless (b) of this subsection applies, before the board issues a new or renewal license to an applicant it shall give notice of such application to the chief executive officer of the incorporated city or town, if the application is for a license within an incorporated city or town, or to the county legislative authority, if the application is for a license outside the boundaries of incorporated cities or towns.

(b) If the application for a special occasion license is for an event held during a county, district, or area fair as defined by RCW 15.76.120, and the county, district, or area fair is located on property owned by the county but located within an incorporated city or town, the county legislative authority shall be the entity notified by the board under (a) of this subsection. The board shall send a duplicate notice to the incorporated city or town within which the fair is located.

(c) The incorporated city or town through the official or employee selected by it, or the county legislative authority or the official or employee selected by it, shall have the right to file with the board within twenty days after the date of transmittal of such notice for applications, or at least thirty days prior to the expiration date for renewals, written objections

against the applicant or against the premises for which the new or renewal license is asked. The board may extend the time period for submitting written objections.

(d) The written objections shall include a statement of all facts upon which such objections are based, and in case written objections are filed, the city or town or county legislative authority may request and the liquor control board may in its discretion hold a hearing subject to the applicable provisions of Title 34 RCW. If the board makes an initial decision to deny a license or renewal based on the written objections of an incorporated city or town or county legislative authority, the applicant may request a hearing subject to the applicable provisions of Title 34 RCW. If such a hearing is held at the request of the applicant, liquor control board representatives shall present and defend the board's initial decision to deny a license or renewal.

(e) Upon the granting of a license under this title the board shall send written notification to the chief executive officer of the incorporated city or town in which the license is granted, or to the county legislative authority if the license is granted outside the boundaries of incorporated cities or towns. When the license is for a special occasion license for an event held during a county, district, or area fair as defined by RCW 15.76.120, and the county, district, or area fair is located on county-owned property but located within an incorporated city or town, the written notification shall be sent to both the incorporated city or town and the county legislative authority.

(9)(a) Before the board issues any license to any applicant, it shall give (i) due consideration to the location of the business to be conducted under such license with respect to the proximity of churches, schools, and public institutions and (ii) written notice, with receipt verification, of the application to public institutions identified by the board as appropriate to receive such notice, churches, and schools within five hundred feet of the premises to be licensed. The board shall not issue a liquor license for either on-premises or off-premises consumption covering any premises not now licensed, if such premises are within five hundred feet of the premises of any tax-supported public elementary or secondary school measured along the most direct route over or across established public walks, streets, or other public passageway from the main entrance of the school to the nearest public entrance of the premises proposed for license, and if, after receipt by the school of the notice as provided in this subsection, the board receives written objection, within twenty days after receiving such notice, from an official representative or representatives of the school within five hundred feet of said proposed licensed premises, indicating to the board that there is an objection to the issuance of such license because of proximity to a school. The board may extend the time period for submitting objections. For the purpose of this section, "church" means a building erected for and used exclusively for religious worship and schooling or other activity in connection therewith. For the purpose of this section, "public institution" means institutions of higher education, parks, community centers, libraries, and transit centers.

(b) No liquor license may be issued or reissued by the board to any motor sports facility or licensee operating within the motor sports facility unless the motor sports facility enforces a program reasonably calculated to prevent alcohol

or alcoholic beverages not purchased within the facility from entering the facility and such program is approved by local law enforcement agencies.

(c) It is the intent under this subsection (9) that a retail license shall not be issued by the board where doing so would, in the judgment of the board, adversely affect a private school meeting the requirements for private schools under Title 28A RCW, which school is within five hundred feet of the proposed licensee. The board shall fully consider and give substantial weight to objections filed by private schools. If a license is issued despite the proximity of a private school, the board shall state in a letter addressed to the private school the board's reasons for issuing the license.

(10) The restrictions set forth in subsection (9) of this section shall not prohibit the board from authorizing the assumption of existing licenses now located within the restricted area by other persons or licenses or relocations of existing licensed premises within the restricted area. In no case may the licensed premises be moved closer to a church or school than it was before the assumption or relocation.

(11)(a) Nothing in this section prohibits the board, in its discretion, from issuing a temporary retail or distributor license to an applicant to operate the retail or distributor premises during the period the application for the license is pending. The board may establish a fee for a temporary license by rule.

(b) A temporary license issued by the board under this section shall be for a period not to exceed sixty days. A temporary license may be extended at the discretion of the board for additional periods of sixty days upon payment of an additional fee and upon compliance with all conditions required in this section.

(c) Refusal by the board to issue or extend a temporary license shall not entitle the applicant to request a hearing. A temporary license may be canceled or suspended summarily at any time if the board determines that good cause for cancellation or suspension exists. RCW 66.08.130 applies to temporary licenses.

(d) Application for a temporary license shall be on such form as the board shall prescribe. If an application for a temporary license is withdrawn before issuance or is refused by the board, the fee which accompanied such application shall be refunded in full.

(12) In determining whether to grant or deny a license or renewal of any license, the board shall give substantial weight to objections from an incorporated city or town or county legislative authority based upon chronic illegal activity associated with the applicant's operations of the premises proposed to be licensed or the applicant's operation of any other licensed premises, or the conduct of the applicant's patrons inside or outside the licensed premises. "Chronic illegal activity" means (a) a pervasive pattern of activity that threatens the public health, safety, and welfare of the city, town, or county including, but not limited to, open container violations, assaults, disturbances, disorderly conduct, or other criminal law violations, or as documented in crime statistics, police reports, emergency medical response data, calls for service, field data, or similar records of a law enforcement agency for the city, town, county, or any other municipal corporation or any state agency; or (b) an unreasonably high number of citations for violations of RCW 46.61.502 associ-

ated with the applicant's or licensee's operation of any licensed premises as indicated by the reported statements given to law enforcement upon arrest. [2009 c 271 § 6; 2007 c 473 § 1; 2006 c 359 § 1; 2004 c 133 § 1; 2002 c 119 § 3; 1998 c 126 § 2. Prior: 1997 c 321 § 1; 1997 c 58 § 873; 1995 c 232 § 1; 1988 c 200 § 1; 1987 c 217 § 1; 1983 c 160 § 3; 1982 c 85 § 2; 1981 1st ex.s. c 5 § 10; 1981 c 67 § 31; 1974 ex.s. c 66 § 1; 1973 1st ex.s. c 209 § 10; 1971 c 70 § 1; 1969 ex.s. c 178 § 3; 1947 c 144 § 1; 1935 c 174 § 3; 1933 ex.s. c 62 § 27; Rem. Supp. 1947 § 7306-27. Formerly RCW 66.24.010, part and 66.24.020 through 66.24.100. FORMER PART OF SECTION: 1937 c 217 § 1 (23U) now codified as RCW 66.24.025.]

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

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**66.24.012 License suspension—Noncompliance with support order—Reissuance.** The board shall immediately suspend the license of a person who has been certified pursuant to RCW 74.20A.320 by the department of social and health services as a person who is not in compliance with a support order or a \*residential or visitation order. If the person has continued to meet all other requirements for reinstatement during the suspension, reissuance of the license shall be automatic upon the board's receipt of a release issued by the department of social and health services stating that the licensee is in compliance with the order. [1997 c 58 § 862.]

**\*Reviser's note:** 1997 c 58 § 886 requiring a court to order certification of noncompliance with residential provisions of a court-ordered parenting plan was vetoed. Provisions ordering the department of social and health services to certify a responsible parent based on a court order to certify for non-compliance with residential provisions of a parenting plan were vetoed. See RCW 74.20A.320.

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

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**66.24.015 Nonrefundable application fee for retail license.** An application for a new annual retail license under this title shall be accompanied by payment of a nonrefundable seventy-five dollar fee to cover expenses incurred in processing the application. If the application is approved, the application fee shall be applied toward the fee charged for the license. [1988 c 200 § 4.]

**66.24.025 Transfer of license—Fee—Exception—Corporate changes, approval—Fee.** (1) If the board approves, a license may be transferred, without charge, to the surviving spouse only of a deceased licensee if the parties were maintaining a marital community and the license was issued in the names of one or both of the parties. For the purpose of considering the qualifications of the surviving party or parties to receive a liquor license, the liquor control board may require a criminal history record information check. The board may submit the criminal history record information check to the Washington state patrol and to the identification division of the federal bureau of investigation in order that these agencies may search their records for prior arrests and convictions of the individual or individuals who filled out the

forms. The board shall require fingerprinting of any applicant whose criminal history record information check is submitted to the federal bureau of investigation.

(2) The proposed sale of more than ten percent of the outstanding and/or issued stock of a licensed corporation or any proposed change in the officers of a licensed corporation must be reported to the board, and board approval must be obtained before such changes are made. A fee of seventy-five dollars will be charged for the processing of such change of stock ownership and/or corporate officers. [2002 c 119 § 4; 1995 c 232 § 2; 1981 1st ex.s. c 5 § 11; 1973 1st ex.s. c 209 § 11; 1971 c 70 § 2; 1937 c 217 § 1 (23U) (adding new section 23-U to 1933 ex.s. c 62); RRS § 7306-23U.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**66.24.120 Vacation of suspension on payment of penalty.** The board in suspending any license may further provide in the order of suspension that such suspension shall be vacated upon payment to the board by the licensee of a monetary penalty in an amount then fixed by the board. [1973 1st ex.s. c 209 § 12; 1939 c 172 § 7 (adding new section 27-C to 1933 ex.s. c 62); RRS § 7306-27C.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**66.24.140 Distiller's license—Fee.** There shall be a license to distillers, including blending, rectifying and bottling; fee two thousand dollars per annum, unless provided otherwise as follows:

(1) For distillers producing sixty thousand gallons or less of spirits with at least half of the raw materials used in the production grown in Washington, the license fee shall be reduced to one hundred dollars per annum;

(2) The board shall license stills used and to be used solely and only by a commercial chemist for laboratory purposes, and not for the manufacture of liquor for sale, at a fee of twenty dollars per annum;

(3) The board shall license stills used and to be used solely and only for laboratory purposes in any school, college or educational institution in the state, without fee; and

(4) The board shall license stills which shall have been duly licensed as fruit and/or wine distilleries by the federal government, used and to be used solely as fruit and/or wine distilleries in the production of fruit brandy and wine spirits, at a fee of two hundred dollars per annum. [2010 c 290 § 1; 2008 c 94 § 1; 1981 1st ex.s. c 5 § 28; 1937 c 217 § 1 (23D) (adding new section 23-D to 1933 ex.s. c 62); RRS § 7306-23D.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**66.24.145 Craft distillery—Sales and samples of spirits.** (1) Any craft distillery may sell spirits of its own production for consumption off the premises, up to two liters per person per day. Spirits sold under this subsection must be purchased from the board and sold at the retail price established by the board. A craft distillery selling spirits under this subsection must comply with the applicable laws and rules relating to retailers.

(2) Any craft distillery may contract distill spirits for, and sell contract distilled spirits to, holders of distillers' or

manufacturers' licenses, including licenses issued under RCW 66.24.520, or for export.

(3) Any craft distillery licensed under this section may provide, free of charge, one-half ounce or less samples of spirits of its own production to persons on the premises of the distillery. The maximum total per person per day is two ounces. Every person who participates in any manner in the service of samples must obtain a class 12 alcohol server permit. Spirits used for samples must be purchased from the board.

(4) The board shall adopt rules to implement the alcohol server permit requirement and may adopt additional rules to implement this section.

(5) Distilling is an agricultural practice. [2010 c 290 § 2; 2008 c 94 § 2.]

#### **66.24.150 Manufacturer's license—Scope—Fee.**

There shall be a license to manufacturers of liquor, including all kinds of manufacturers except those licensed as distillers, domestic brewers, microbreweries, wineries, and domestic wineries, authorizing such licensees to manufacture, import, sell, and export liquor from the state; fee five hundred dollars per annum. [1997 c 321 § 2; 1981 1st ex.s. c 5 § 29; 1937 c 217 § 1 (23A) (adding new section 23-A to 1933 ex.s. c 62); RRS § 7306-23A.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**66.24.160 Liquor importer's license—Fee.** A liquor importer's license may be issued to any qualified person, firm or corporation, entitling the holder thereof to import into the state any liquor other than beer or wine; to store the same within the state, and to sell and export the same from the state; fee six hundred dollars per annum. Such liquor importer's license shall be subject to all conditions and restrictions imposed by this title or by the rules and regulations of the board, and shall be issued only upon such terms and conditions as may be imposed by the board. No liquor importer's license shall be required in sales to the Washington state liquor control board. [1981 1st ex.s. c 5 § 30; 1970 ex.s. c 13 § 1. Prior: 1969 ex.s. c 275 § 2; 1969 ex.s. c 21 § 1; 1937 c 217 § 1 (23J) (adding new section 23-J to 1933 ex.s. c 62); RRS § 7306 (23J).]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**66.24.170 Domestic winery license—Winery as distributor and/or retailer of own wine—Off-premise samples—Domestic wine made into sparkling wine—Sales at qualifying farmers markets.** (1) There shall be a license for domestic wineries; fee to be computed only on the liters manufactured: Less than two hundred fifty thousand liters per year, one hundred dollars per year; and two hundred fifty thousand liters or more per year, four hundred dollars per year.

(2) The license allows for the manufacture of wine in Washington state from grapes or other agricultural products.

(3) Any domestic winery licensed under this section may also act as a retailer of wine of its own production. Any domestic winery licensed under this section may act as a distributor of its own production. Notwithstanding any language in this title to the contrary, a domestic winery may use

(2010 Ed.)

a common carrier to deliver up to one hundred cases of its own production, in the aggregate, per month to licensed Washington retailers. A domestic winery may not arrange for any such common carrier shipments to licensed retailers of wine not of its own production. Except as provided in this section, any winery operating as a distributor and/or retailer under this subsection shall comply with the applicable laws and rules relating to distributors and/or retailers, except that a winery operating as a distributor may maintain a warehouse off the premises of the winery for the distribution of wine of its own production provided that: (a) The warehouse has been approved by the board under RCW 66.24.010; and (b) the number of warehouses off the premises of the winery does not exceed one.

(4) A domestic winery licensed under this section, at locations separate from any of its production or manufacturing sites, may serve samples of its own products, with or without charge, and sell wine of its own production at retail, provided that: (a) Each additional location has been approved by the board under RCW 66.24.010; (b) the total number of additional locations does not exceed two; (c) a winery may not act as a distributor at any such additional location; and (d) any person selling or serving wine at an additional location for on-premise consumption must obtain a class 12 or class 13 alcohol server permit. Each additional location is deemed to be part of the winery license for the purpose of this title. At additional locations operated by multiple wineries under this section, if the board cannot connect a violation of RCW 66.44.200 or 66.44.270 to a single licensee, the board may hold all licensees operating the additional location jointly liable. Nothing in this subsection shall be construed to prevent a domestic winery from holding multiple domestic winery licenses.

(5)(a) A domestic winery licensed under this section may apply to the board for an endorsement to sell wine of its own production at retail for off-premises consumption at a qualifying farmers market. The annual fee for this endorsement is seventy-five dollars. An endorsement issued pursuant to this subsection does not count toward the two additional retail locations limit specified in this section.

(b) For each month during which a domestic winery will sell wine at a qualifying farmers market, the winery must provide the board or its designee a list of the dates, times, and locations at which bottled wine may be offered for sale. This list must be received by the board before the winery may offer wine for sale at a qualifying farmers market.

(c) The wine sold at qualifying farmers markets must be made entirely from grapes grown in a recognized Washington appellation or from other agricultural products grown in this state.

(d) Each approved location in a qualifying farmers market is deemed to be part of the winery license for the purpose of this title. The approved locations under an endorsement granted under this subsection do not include the tasting or sampling privilege of a winery. The winery may not store wine at a farmers market beyond the hours that the winery offers bottled wine for sale. The winery may not act as a distributor from a farmers market location.

(e) Before a winery may sell bottled wine at a qualifying farmers market, the farmers market must apply to the board for authorization for any winery with an endorsement

approved under this subsection to sell bottled wine at retail at the farmers market. This application shall include, at a minimum: (i) A map of the farmers market showing all booths, stalls, or other designated locations at which an approved winery may sell bottled wine; and (ii) the name and contact information for the on-site market managers who may be contacted by the board or its designee to verify the locations at which bottled wine may be sold. Before authorizing a qualifying farmers market to allow an approved winery to sell bottled wine at retail at its farmers market location, the board shall notify the persons or entities of such application for authorization pursuant to RCW 66.24.010 (8) and (9). An authorization granted under this subsection (5)(e) may be withdrawn by the board for any violation of this title or any rules adopted under this title.

(f) The board may adopt rules establishing the application and approval process under this section and such additional rules as may be necessary to implement this section.

(g) For the purposes of this subsection:

(i) "Qualifying farmers market" means an entity that sponsors a regular assembly of vendors at a defined location for the purpose of promoting the sale of agricultural products grown or produced in this state directly to the consumer under conditions that meet the following minimum requirements:

(A) There are at least five participating vendors who are farmers selling their own agricultural products;

(B) The total combined gross annual sales of vendors who are farmers exceeds the total combined gross annual sales of vendors who are processors or resellers;

(C) The total combined gross annual sales of vendors who are farmers, processors, or resellers exceeds the total combined gross annual sales of vendors who are not farmers, processors, or resellers;

(D) The sale of imported items and secondhand items by any vendor is prohibited; and

(E) No vendor is a franchisee.

(ii) "Farmer" means a natural person who sells, with or without processing, agricultural products that he or she raises on land he or she owns or leases in this state or in another state's county that borders this state.

(iii) "Processor" means a natural person who sells processed food that he or she has personally prepared on land he or she owns or leases in this state or in another state's county that borders this state.

(iv) "Reseller" means a natural person who buys agricultural products from a farmer and resells the products directly to the consumer.

(6) Wine produced in Washington state by a domestic winery licensee may be shipped out-of-state for the purpose of making it into sparkling wine and then returned to such licensee for resale. Such wine shall be deemed wine manufactured in the state of Washington for the purposes of RCW 66.24.206, and shall not require a special license. [2009 c 373 § 4; 2008 c 41 § 5; 2007 c 16 § 2; 2006 c 302 § 1; 2003 c 44 § 1; 2000 c 141 § 1; 1997 c 321 § 3; 1991 c 192 § 2; 1982 c 85 § 4; 1981 1st ex.s. c 5 § 31; 1939 c 172 § 1 (23C); 1937 c 217 § 1 (23C) (adding new section 23-C to 1933 ex.s. c 62); RRS § 7306-23C. Formerly RCW 66.24.170, 66.24.180, and 66.24.190.]

**Effective date—2006 c 302:** "Except for sections 10 and 12 of this act, this act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect April 14, 2006." [2006 c 302 § 16.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**66.24.185 Bonded wine warehouse storage license—Qualifications and requirements—Fee.** (1) There shall be a license for bonded wine warehouses which shall authorize the storage and handling of bottled wine. Under this license a licensee may maintain a warehouse for the storage of wine off the premises of a winery.

(2) The board shall adopt similar qualifications for a bonded wine warehouse license as required for obtaining a domestic winery license as specified in RCW 66.24.010 and 66.24.170. A licensee must be a sole proprietor, a partnership, a limited liability company, or a corporation. One or more domestic wineries may operate as a partnership, corporation, business co-op, or agricultural co-op for the purposes of obtaining a bonded wine warehouse license.

(3) All bottled wine shipped to a bonded wine warehouse from a winery or another bonded wine warehouse shall remain under bond and no tax imposed under RCW 66.24.210 shall be due, unless the wine is removed from bond and shipped to a licensed Washington wine distributor. Wine may be removed from a bonded wine warehouse only for the purpose of being (a) exported from the state, (b) shipped to a licensed Washington wine distributor, (c) returned to a winery or bonded wine warehouse, or [(d)] shipped to a consumer pursuant to RCW 66.20.360 through 66.20.390.

(4) Warehousing of wine by any person other than (a) a licensed domestic winery or a bonded wine warehouse licensed under the provisions of this section, (b) a licensed Washington wine distributor, (c) a licensed Washington wine importer, (d) a wine certificate of approval holder (W7), or (e) the liquor control board, is prohibited.

(5) A license applicant shall hold a federal permit for a bonded wine cellar and may be required to post a continuing wine tax bond of such an amount and in such a form as may be required by the board prior to the issuance of a bonded wine warehouse license. The fee for this license shall be one hundred dollars per annum.

(6) The board shall adopt rules requiring a bonded wine warehouse to be physically secure, zoned for the intended use and physically separated from any other use.

(7) Every licensee shall submit to the board a monthly report of movement of bottled wines to and from a bonded wine warehouse in a form prescribed by the board. The board may adopt other necessary procedures by which bonded wine warehouses are licensed and regulated.

(8) Handling of bottled wine, as provided for in this section, includes packaging and repackaging services; bottle labeling services; creating baskets or variety packs that may or may not include nonwine products; and picking, packing, and shipping wine orders direct to consumer. A winery contracting with a bonded wine warehouse for handling bottled wine must comply with all applicable state and federal laws and shall be responsible for financial transactions in direct to consumer shipping activities. [2008 c 41 § 4; 1999 c 281 § 4; 1997 c 321 § 4; 1984 c 19 § 1.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**66.24.191 Wine transfers.** Wine may be transferred from one licensed location to another licensed location so long as both locations are under common ownership. A licensed site may transfer up to a total of twenty cases of wine per calendar year. [2009 c 373 § 10.]

**66.24.200 Wine distributor's license—Fee.** There shall be a license for wine distributors to sell wine, purchased from licensed Washington wineries, wine certificate of approval holders, licensed wine importers, or suppliers of foreign wine located outside of the United States, to licensed wine retailers and other wine distributors and to export the same from the state; fee six hundred sixty dollars per year for each distributing unit. [2004 c 160 § 2; 1997 c 321 § 5; 1981 1st ex.s. c 5 § 32; 1969 ex.s. c 21 § 2; 1937 c 217 § 1 (23K) (adding new section 23-K to 1933 ex.s. c 62); RRS § 7306-23K.]

**Effective date—2004 c 160:** See note following RCW 66.04.010.

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**66.24.203 Wine importer's license—Principal office—Report—Labels—Fee.** There shall be a license for wine importers that authorizes the licensee to import wine purchased from certificate of approval holders into the state of Washington. The licensee may also import, from suppliers located outside of the United States, wine manufactured outside the United States.

(1) Wine so imported may be sold to licensed wine distributors or exported from the state.

(2) Every person, firm, or corporation licensed as a wine importer shall establish and maintain a principal office within the state at which shall be kept proper records of all wine imported into the state under this license.

(3) No wine importer's license shall be granted to a non-resident of the state nor to a corporation whose principal place of business is outside the state until such applicant has established a principal office and agent within the state upon which service can be made.

(4) As a requirement for license approval, a wine importer shall enter into a written agreement with the board to furnish on or before the twentieth day of each month, a report under oath, detailing the quantity of wine sold or delivered to each licensed wine distributor. Failure to file such reports may result in the suspension or cancellation of this license.

(5) Wine imported under this license must conform to the provisions of RCW 66.28.110 and have received label approval from the board. The board shall not certify wines labeled with names that may be confused with other nonalcoholic beverages whether manufactured or produced from a domestic winery or imported nor wines that fail to meet quality standards established by the board.

(6) The license fee shall be one hundred sixty dollars per year. [2004 c 160 § 3; 1997 c 321 § 6.]

**Effective date—2004 c 160:** See note following RCW 66.04.010.

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**66.24.206 Out-of-state winery—Certificate of approval—Fee.** (1)(a) A United States winery located outside the state of Washington must hold a certificate of

approval to allow sales and shipment of the certificate of approval holder's wine to licensed Washington wine distributors, importers, or retailers. A certificate of approval holder with a direct shipment endorsement may act as a distributor of its own production. Notwithstanding any language in this title to the contrary, a certificate of approval holder with a direct shipment endorsement may use a common carrier to deliver up to one hundred cases of its own production, in the aggregate, per month to licensed Washington retailers. A certificate of approval holder may not arrange for any such common carrier shipments to licensed retailers of wine not of its own production.

(b) Authorized representatives must hold a certificate of approval to allow sales and shipment of United States produced wine to licensed Washington wine distributors or importers.

(c) Authorized representatives must also hold a certificate of approval to allow sales and shipments of foreign produced wine to licensed Washington wine distributors or importers.

(2) The certificate of approval shall not be granted unless and until such winery or authorized representative shall have made a written agreement with the board to furnish to the board, on or before the twentieth day of each month, a report under oath, on a form to be prescribed by the board, showing the quantity of wine sold or delivered to each licensed wine distributor, importer, or retailer, during the preceding month, and shall further have agreed with the board, that such wineries, manufacturers, or authorized representatives, and all general sales corporations or agencies maintained by them, and all of their trade representatives, shall and will faithfully comply with all laws of the state of Washington pertaining to the sale of intoxicating liquors and all rules and regulations of the Washington state liquor control board. A violation of the terms of this agreement will cause the board to take action to suspend or revoke such certificate.

(3) The fee for the certificate of approval and related endorsements, issued pursuant to the provisions of this title, shall be from time to time established by the board at a level that is sufficient to defray the costs of administering the certificate of approval program. The fee shall be fixed by rule by the board in accordance with the provisions of the administrative procedure act, chapter 34.05 RCW.

(4) Certificate of approval holders are deemed to have consented to the jurisdiction of Washington concerning enforcement of this chapter and all laws and rules related to the sale and shipment of wine. [2007 c 16 § 1; 2006 c 302 § 4; 2004 c 160 § 4; 1997 c 321 § 7; 1981 1st ex.s. c 5 § 34; 1973 1st ex.s. c 209 § 13; 1969 ex.s. c 21 § 10.]

**Effective date—2006 c 302:** See note following RCW 66.24.170.

**Effective date—2004 c 160:** See note following RCW 66.04.010.

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**66.24.210 Imposition of taxes on sales of wine and cider—Additional taxes—Distributions.** (1) There is hereby imposed upon all wines except cider sold to wine distributors and the Washington state liquor control board, within the state a tax at the rate of twenty and one-fourth cents per liter. Any domestic winery or certificate of approval holder acting as a distributor of its own production

shall pay taxes imposed by this section. There is hereby imposed on all cider sold to wine distributors and the Washington state liquor control board within the state a tax at the rate of three and fifty-nine one-hundredths cents per liter. However, wine sold or shipped in bulk from one winery to another winery shall not be subject to such tax.

(a) The tax provided for in this section shall be collected by direct payments based on wine purchased by wine distributors.

(b) Except as provided in subsection (7) of this section, every person purchasing wine under the provisions of this section shall on or before the twentieth day of each month report to the board all purchases during the preceding calendar month in such manner and upon such forms as may be prescribed by the board, and with such report shall pay the tax due from the purchases covered by such report unless the same has previously been paid. Any such purchaser of wine whose applicable tax payment is not postmarked by the twentieth day following the month of purchase will be assessed a penalty at the rate of two percent a month or fraction thereof. The board may require that every such person shall execute to and file with the board a bond to be approved by the board, in such amount as the board may fix, securing the payment of the tax. If any such person fails to pay the tax when due, the board may forthwith suspend or cancel the license until all taxes are paid.

(c) Any licensed retailer authorized to purchase wine from a certificate of approval holder with a direct shipment endorsement or a domestic winery shall make monthly reports to the liquor control board on wine purchased during the preceding calendar month in the manner and upon such forms as may be prescribed by the board.

(2) An additional tax is imposed equal to the rate specified in RCW 82.02.030 multiplied by the tax payable under subsection (1) of this section. All revenues collected during any month from this additional tax shall be transferred to the state general fund by the twenty-fifth day of the following month.

(3) An additional tax is imposed on wines subject to tax under subsection (1) of this section, at the rate of one-fourth of one cent per liter for wine sold after June 30, 1987. After June 30, 1996, such additional tax does not apply to cider. An additional tax of five one-hundredths of one cent per liter is imposed on cider sold after June 30, 1996. All revenues collected under this subsection (3) shall be disbursed quarterly to the Washington wine commission for use in carrying out the purposes of chapter 15.88 RCW.

(4) An additional tax is imposed on all wine subject to tax under subsection (1) of this section. The additional tax is equal to twenty-three and forty-four one-hundredths cents per liter on fortified wine as defined in RCW 66.04.010 when bottled or packaged by the manufacturer, one cent per liter on all other wine except cider, and eighteen one-hundredths of one cent per liter on cider. All revenues collected during any month from this additional tax shall be deposited in the state general fund by the twenty-fifth day of the following month.

(5)(a) An additional tax is imposed on all cider subject to tax under subsection (1) of this section. The additional tax is equal to two and four one-hundredths cents per liter of cider sold after June 30, 1996, and before July 1, 1997, and is equal

to four and seven one-hundredths cents per liter of cider sold after June 30, 1997.

(b) All revenues collected from the additional tax imposed under this subsection (5) shall be deposited in the state general fund.

(6) For the purposes of this section, "cider" means table wine that contains not less than one-half of one percent of alcohol by volume and not more than seven percent of alcohol by volume and is made from the normal alcoholic fermentation of the juice of sound, ripe apples or pears. "Cider" includes, but is not limited to, flavored, sparkling, or carbonated cider and cider made from condensed apple or pear must.

(7) For the purposes of this section, out-of-state wineries shall pay taxes under this section on wine sold and shipped directly to Washington state residents in a manner consistent with the requirements of a wine distributor under subsections (1) through (4) of this section, except wineries shall be responsible for the tax and not the resident purchaser. [2009 c 479 § 42; 2008 c 94 § 8. Prior: 2006 c 302 § 5; 2006 c 101 § 4; 2006 c 49 § 8; 2001 c 124 § 1; 1997 c 321 § 8; 1996 c 118 § 1; 1995 c 232 § 3; 1994 sp.s. c 7 § 901 (Referendum Bill No. 43, approved November 8, 1994); 1993 c 160 § 2; 1991 c 192 § 3; 1989 c 271 § 501; 1987 c 452 § 11; 1983 2nd ex.s. c 3 § 10; 1982 1st ex.s. c 35 § 23; 1981 1st ex.s. c 5 § 12; 1973 1st ex.s. c 204 § 2; 1969 ex.s. c 21 § 3; 1943 c 216 § 2; 1939 c 172 § 3; 1935 c 158 § 3 (adding new section 24-A to 1933 ex.s. c 62); Rem. Supp. 1943 § 7306-24A. Formerly RCW 66.04.120, 66.24.210, part, 66.24.220, and 66.24.230, part. FORMER PART OF SECTION: 1933 ex.s. c 62 § 25, part, now codified as RCW 66.24.230.]

**Effective date—2009 c 479:** See note following RCW 2.56.030.

**Effective date—2006 c 302:** See note following RCW 66.24.170.

**Effective date—2001 c 124:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 2001." [2001 c 124 § 2.]

**Reviser's note:** Sections 901 through 909, chapter 7, Laws of 1994 sp. sess., were adopted and ratified by the people at the November 8, 1994, general election.

**Finding—Intent—Severability—1994 sp.s. c 7:** See notes following RCW 43.70.540.

**Floor stocks tax:** "There is hereby imposed upon every licensed wine distributor who possesses wine for resale upon which the tax has not been paid under section 2, chapter 204, Laws of 1973, a floor stocks tax of sixty-five cents per wine gallon on wine in his or her possession or under his or her control on June 30, 1973. Each such distributor shall within twenty days after June 30, 1973, file a report with the Washington state liquor control board in such form as the board may prescribe, showing the wine products on hand July 1, 1973, converted to gallons thereof and the amount of tax due thereon. The tax imposed by this section shall be due and payable within twenty days after July 1, 1973, and thereafter bear interest at the rate of one percent per month." [1997 c 321 § 9; 1973 1st ex.s. c 204 § 3.]

*Giving away liquor prohibited—Exceptions:* RCW 66.28.040.

*No tax on wine shipped to bonded warehouse:* RCW 66.24.185.

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**66.24.215 Levy of assessment on wine producers and growers to fund wine commission—Assessment rate changes—Procedures—Disbursement—Continuation.**  
(1) To provide for permanent funding of the wine commission after July 1, 1989, agricultural commodity assessments

shall be levied by the board on wine producers and growers as follows:

(a) Beginning on July 1, 1989, the assessment on wine producers shall be two cents per gallon on sales of packaged Washington wines.

(b) Beginning on July 1, 1989, the assessment on growers of Washington vinifera wine grapes shall be levied as provided in RCW 15.88.130.

(c) After July 1, 1993, assessment rates under subsection (1)(a) of this section may be changed pursuant to a referendum conducted by the Washington wine commission and approved by a majority vote of wine producers. The weight of each producer's vote shall be equal to the percentage of that producer's share of Washington vinifera wine production in the prior year.

(d) After July 1, 1993, assessment amounts under subsection (1)(b) of this section may be changed pursuant to a referendum conducted by the Washington wine commission and approved by a majority vote of grape growers. The weight of each grower's vote shall be equal to the percentage of that grower's share of Washington vinifera grape sales in the prior year.

(2) Assessments collected under this section shall be disbursed quarterly to the Washington wine commission for use in carrying out the purposes of chapter 15.88 RCW.

(3) Prior to July 1, 1996, a referendum shall be conducted to determine whether to continue the Washington wine commission as representing both wine producers and grape growers. The voting shall not be weighted. The wine producers shall vote whether to continue the commission's coverage of wineries and wine production. The grape producers shall vote whether to continue the commission's coverage of issues pertaining to grape growing. If a majority of both wine and grape producers favor the continuation of the commission, the assessments shall continue as provided in subsection (2)(b) and (d) of this section. If only one group of producers favors the continuation, the assessments shall only be levied on the group which favored the continuation. [1988 c 257 § 7; 1987 c 452 § 13.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**66.24.230 Monthly reports of domestic winery, wine certificate of approval holder, wine importer, and wine distributor—Prohibited, authorized sales.** Every domestic winery, wine certificate of approval holder, wine importer, and wine distributor licensed under this title shall make monthly reports to the board pursuant to the regulations. Such domestic winery, wine certificate of approval holder, wine importer, and wine distributor shall make no sales of wine within the state of Washington except to the board, or as otherwise provided in this title. [2004 c 160 § 5; 1997 c 321 § 10; 1969 ex.s. c 21 § 4; 1933 ex.s. c 62 § 25; RRS § 7306-25. Formerly RCW 66.24.210 and 66.24.230. FORMER PART OF SECTION: 1943 c 216 § 2, part, now codified in RCW 66.24.210.]

**Effective date—2004 c 160:** See note following RCW 66.04.010.

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**66.24.240 Domestic brewery's license—Fee.** (1) There shall be a license for domestic breweries; fee to be two (2010 Ed.)

thousand dollars for production of sixty thousand barrels or more of malt liquor per year.

(2) Any domestic brewery, except for a brand owner of malt beverages under \*RCW 66.04.010(6), licensed under this section may also act as a distributor and/or retailer for beer of its own production. Any domestic brewery operating as a distributor and/or retailer under this subsection shall comply with the applicable laws and rules relating to distributors and/or retailers. A domestic brewery holding a spirits, beer, and wine restaurant license may sell beer of its own production for off-premises consumption from its restaurant premises in kegs or in a sanitary container brought to the premises by the purchaser or furnished by the licensee and filled at the tap by the licensee at the time of sale.

(3) A domestic brewery may hold up to two retail licenses to operate an on or off-premise tavern, beer and/or wine restaurant, or spirits, beer, and wine restaurant. This retail license is separate from the brewery license. A brewery that holds a tavern license, a spirits, beer, and wine restaurant license, or a beer and/or wine restaurant license shall hold the same privileges and endorsements as permitted under RCW 66.24.320, 66.24.330, and 66.24.420.

(4) Any domestic brewery licensed under this section may contract-produce beer for a brand owner of malt beverages defined under \*RCW 66.04.010(6), and this contract-production is not a sale for the purposes of RCW 66.28.170 and 66.28.180.

(5)(a) A domestic brewery licensed under this section and qualified for a reduced rate of taxation pursuant to RCW 66.24.290(3)(b) may apply to the board for an endorsement to sell bottled beer of its own production at retail for off-premises consumption at a qualifying farmers market. The annual fee for this endorsement is seventy-five dollars.

(b) For each month during which a domestic brewery will sell beer at a qualifying farmers market, the domestic brewery must provide the board or its designee a list of the dates, times, and locations at which bottled beer may be offered for sale. This list must be received by the board before the domestic brewery may offer beer for sale at a qualifying farmers market.

(c) The beer sold at qualifying farmers markets must be produced in Washington.

(d) Each approved location in a qualifying farmers market is deemed to be part of the domestic brewery license for the purpose of this title. The approved locations under an endorsement granted under this subsection do not include the tasting or sampling privilege of a domestic brewery. The domestic brewery may not store beer at a farmers market beyond the hours that the domestic brewery offers bottled beer for sale. The domestic brewery may not act as a distributor from a farmers market location.

(e) Before a domestic brewery may sell bottled beer at a qualifying farmers market, the farmers market must apply to the board for authorization for any domestic brewery with an endorsement approved under this subsection to sell bottled beer at retail at the farmers market. This application shall include, at a minimum: (i) A map of the farmers market showing all booths, stalls, or other designated locations at which an approved domestic brewery may sell bottled beer; and (ii) the name and contact information for the on-site market managers who may be contacted by the board or its des-

ignee to verify the locations at which bottled beer may be sold. Before authorizing a qualifying farmers market to allow an approved domestic brewery to sell bottled beer at retail at its farmers market location, the board shall notify the persons or entities of such application for authorization pursuant to RCW 66.24.010 (8) and (9). An authorization granted under this subsection (5)(e) may be withdrawn by the board for any violation of this title or any rules adopted under this title.

(f) The board may adopt rules establishing the application and approval process under this section and such additional rules as may be necessary to implement this section.

(g) For the purposes of this subsection:

(i) "Qualifying farmers market" means an entity that sponsors a regular assembly of vendors at a defined location for the purpose of promoting the sale of agricultural products grown or produced in this state directly to the consumer under conditions that meet the following minimum requirements:

(A) There are at least five participating vendors who are farmers selling their own agricultural products;

(B) The total combined gross annual sales of vendors who are farmers exceeds the total combined gross annual sales of vendors who are processors or resellers;

(C) The total combined gross annual sales of vendors who are farmers, processors, or resellers exceeds the total combined gross annual sales of vendors who are not farmers, processors, or resellers;

(D) The sale of imported items and secondhand items by any vendor is prohibited; and

(E) No vendor is a franchisee.

(ii) "Farmer" means a natural person who sells, with or without processing, agricultural products that he or she raises on land he or she owns or leases in this state or in another state's county that borders this state.

(iii) "Processor" means a natural person who sells processed food that he or she has personally prepared on land he or she owns or leases in this state or in another state's county that borders this state.

(iv) "Reseller" means a natural person who buys agricultural products from a farmer and resells the products directly to the consumer. [2008 c 41 § 7; (2008 c 41 § 6 expired June 30, 2008); 2007 c 370 § 7; (2007 c 370 § 6 expired June 30, 2008). Prior: 2006 c 302 § 2; 2006 c 44 § 1; 2003 c 154 § 1; 2000 c 142 § 2; 1997 c 321 § 11; 1985 c 226 § 1; 1982 c 85 § 5; 1981 1st ex.s. c 5 § 13; 1937 c 217 § 1 (23B) (adding new section 23-B to 1933 ex.s. c 62); RRS § 7306-23B.]

**\*Reviser's note:** RCW 66.04.010 was alphabetized pursuant to RCW 1.08.015(2)(k), changing subsection (6) to subsection (7).

**Effective date—2008 c 41 §§ 7 and 9:** "Sections 7 and 9 of this act take effect June 30, 2008." [2008 c 41 § 15.]

**Expiration date—2008 c 41 §§ 6 and 8:** "Sections 6 and 8 of this act expire June 30, 2008." [2008 c 41 § 14.]

**Effective date—2007 c 370 §§ 5 and 7:** See note following RCW 66.24.244.

**Expiration date—2007 c 370 §§ 4 and 6:** See note following RCW 66.24.244.

**Effective date—2006 c 302:** See note following RCW 66.24.170.

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**66.24.244 Microbrewery's license—Fee.** (1) There shall be a license for microbreweries; fee to be one hundred dollars for production of less than sixty thousand barrels of malt liquor, including strong beer, per year.

(2) Any microbrewery licensed under this section may also act as a distributor and/or retailer for beer and strong beer of its own production. Strong beer may not be sold at a farmers market or under any endorsement which may authorize microbreweries to sell beer at farmers markets. Any microbrewery operating as a distributor and/or retailer under this subsection shall comply with the applicable laws and rules relating to distributors and/or retailers, except that a microbrewery operating as a distributor may maintain a warehouse off the premises of the microbrewery for the distribution of beer provided that (a) the warehouse has been approved by the board under RCW 66.24.010 and (b) the number of warehouses off the premises of the microbrewery does not exceed one. A microbrewery holding a spirits, beer, and wine restaurant license may sell beer of its own production for off-premises consumption from its restaurant premises in kegs or in a sanitary container brought to the premises by the purchaser or furnished by the licensee and filled at the tap by the licensee at the time of sale.

(3) The board may issue up to two retail licenses allowing a microbrewery to operate an on or off-premise tavern, beer and/or wine restaurant, or spirits, beer, and wine restaurant.

(4) A microbrewery that holds a tavern license, spirits, beer, and wine restaurant license, or a beer and/or wine restaurant license shall hold the same privileges and endorsements as permitted under RCW 66.24.320, 66.24.330, and 66.24.420.

(5)(a) A microbrewery licensed under this section may apply to the board for an endorsement to sell bottled beer of its own production at retail for off-premises consumption at a qualifying farmers market. The annual fee for this endorsement is seventy-five dollars.

(b) For each month during which a microbrewery will sell beer at a qualifying farmers market, the microbrewery must provide the board or its designee a list of the dates, times, and locations at which bottled beer may be offered for sale. This list must be received by the board before the microbrewery may offer beer for sale at a qualifying farmers market.

(c) The beer sold at qualifying farmers markets must be produced in Washington.

(d) Each approved location in a qualifying farmers market is deemed to be part of the microbrewery license for the purpose of this title. The approved locations under an endorsement granted under this subsection (5) do not constitute the tasting or sampling privilege of a microbrewery. The microbrewery may not store beer at a farmers market beyond the hours that the microbrewery offers bottled beer for sale. The microbrewery may not act as a distributor from a farmers market location.

(e) Before a microbrewery may sell bottled beer at a qualifying farmers market, the farmers market must apply to the board for authorization for any microbrewery with an endorsement approved under this subsection (5) to sell bottled beer at retail at the farmers market. This application shall include, at a minimum: (i) A map of the farmers market

showing all booths, stalls, or other designated locations at which an approved microbrewery may sell bottled beer; and (ii) the name and contact information for the on-site market managers who may be contacted by the board or its designee to verify the locations at which bottled beer may be sold. Before authorizing a qualifying farmers market to allow an approved microbrewery to sell bottled beer at retail at its farmers market location, the board shall notify the persons or entities of the application for authorization pursuant to RCW 66.24.010 (8) and (9). An authorization granted under this subsection (5)(e) may be withdrawn by the board for any violation of this title or any rules adopted under this title.

(f) The board may adopt rules establishing the application and approval process under this section and any additional rules necessary to implement this section.

(g) For the purposes of this subsection (5):

(i) "Qualifying farmers market" means an entity that sponsors a regular assembly of vendors at a defined location for the purpose of promoting the sale of agricultural products grown or produced in this state directly to the consumer under conditions that meet the following minimum requirements:

(A) There are at least five participating vendors who are farmers selling their own agricultural products;

(B) The total combined gross annual sales of vendors who are farmers exceeds the total combined gross annual sales of vendors who are processors or resellers;

(C) The total combined gross annual sales of vendors who are farmers, processors, or resellers exceeds the total combined gross annual sales of vendors who are not farmers, processors, or resellers;

(D) The sale of imported items and secondhand items by any vendor is prohibited; and

(E) No vendor is a franchisee.

(ii) "Farmer" means a natural person who sells, with or without processing, agricultural products that he or she raises on land he or she owns or leases in this state or in another state's county that borders this state.

(iii) "Processor" means a natural person who sells processed food that he or she has personally prepared on land he or she owns or leases in this state or in another state's county that borders this state.

(iv) "Reseller" means a natural person who buys agricultural products from a farmer and resells the products directly to the consumer.

(6) Any microbrewery licensed under this section may contract-produce beer for another microbrewer. This contract-production is not a sale for the purposes of RCW 66.28.170 and 66.28.180. [2008 c 248 § 2; (2008 c 248 § 1 expired June 30, 2008); 2008 c 41 § 9; (2008 c 41 § 8 expired June 30, 2008). Prior: 2007 c 370 § 5; (2007 c 370 § 4 expired June 30, 2008); 2007 c 222 § 2; (2007 c 222 § 1 expired June 30, 2008); 2006 c 302 § 3; 2006 c 44 § 2; prior: 2003 c 167 § 1; 2003 c 154 § 2; 1998 c 126 § 3; 1997 c 321 § 12.]

**Reviser's note:** This section was amended by 2008 c 41 § 9 and by 2008 c 248 § 2, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

**Effective date—2008 c 248 § 2:** "Section 2 of this act takes effect June 30, 2008." [2008 c 248 § 4.]

(2010 Ed.)

**Expiration date—2008 c 248 § 1:** "Section 1 of this act expires June 30, 2008." [2008 c 248 § 3.]

**Effective date—2008 c 41 §§ 7 and 9:** See note following RCW 66.24.240.

**Expiration date—2008 c 41 §§ 6 and 8:** See note following RCW 66.24.240.

**Effective date—2007 c 370 §§ 5 and 7:** "Sections 5 and 7 of this act take effect June 30, 2008." [2007 c 370 § 22.]

**Expiration date—2007 c 370 §§ 4 and 6:** "Sections 4 and 6 of this act expire June 30, 2008." [2007 c 370 § 21.]

**Effective date—2007 c 222 § 2:** "Section 2 of this act takes effect June 30, 2008." [2007 c 222 § 5.]

**Expiration date—2007 c 222 § 1:** "Section 1 of this act expires June 30, 2008." [2007 c 222 § 4.]

**Effective date—2006 c 302:** See note following RCW 66.24.170.

**Effective date—2003 c 167:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 2003." [2003 c 167 § 14.]

**Report to legislature—2003 c 167:** See note following RCW 66.24.250.

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**66.24.250 Beer distributor's license—Fee.** There shall be a license for beer distributors to sell beer and strong beer, purchased from licensed Washington breweries, beer certificate of approval holders, licensed beer importers, or suppliers of foreign beer located outside of the United States, to licensed beer retailers and other beer distributors and to export same from the state of Washington; fee six hundred sixty dollars per year for each distributing unit. [2004 c 160 § 6; 2003 c 167 § 2; 1997 c 321 § 13; 1981 1st ex.s. c 5 § 14; 1937 c 217 § 1 (23E) (adding new section 23-E to 1933 ex.s. c 62); RRS § 7306-23E.]

**Effective date—2004 c 160:** See note following RCW 66.04.010.

**Report to legislature—2003 c 167:** "The liquor control board shall report to the legislature by December 1, 2004, on the impacts of strong beer sales." [2003 c 167 § 13.]

**Effective date—2003 c 167:** See note following RCW 66.24.244.

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**66.24.261 Beer importer's license—Principal office—Report—Labels—Fee.** There shall be a license for beer importers that authorizes the licensee to import beer and strong beer purchased from beer certificate of approval holders into the state of Washington. The licensee may also import, from suppliers located outside of the United States, beer and strong beer manufactured outside the United States.

(1) Beer and strong beer so imported may be sold to licensed beer distributors or exported from the state.

(2) Every person, firm, or corporation licensed as a beer importer shall establish and maintain a principal office within the state at which shall be kept proper records of all beer and strong beer imported into the state under this license.

(3) No beer importer's license shall be granted to a non-resident of the state nor to a corporation whose principal place of business is outside the state until such applicant has established a principal office and agent within the state upon which service can be made.

(4) As a requirement for license approval, a beer importer shall enter into a written agreement with the board to furnish on or before the twentieth day of each month, a

report under oath, detailing the quantity of beer and strong beer sold or delivered to each licensed beer distributor. Failure to file such reports may result in the suspension or cancellation of this license.

(5) Beer and strong beer imported under this license must conform to the provisions of RCW 66.28.120 and have received label approval from the board. The board shall not certify beer or strong beer labeled with names which may be confused with other nonalcoholic beverages whether manufactured or produced from a domestic brewery or imported nor shall it certify beer or strong beer which fails to meet quality standards established by the board.

(6) The license fee shall be one hundred sixty dollars per year. [2004 c 160 § 7; 2003 c 167 § 3; 1997 c 321 § 14.]

**Effective date—2004 c 160:** See note following RCW 66.04.010.

**Effective date—2003 c 167:** See note following RCW 66.24.244.

**Report to legislature—2003 c 167:** See note following RCW 66.24.250.

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**66.24.270 Manufacturer's monthly report of malt liquor or strong beer sales—Certificate of approval—Report for out-of-state or imported beer—Fee.** (1) Every person, firm or corporation, holding a license to manufacture malt liquors or strong beer within the state of Washington, shall, on or before the twentieth day of each month, furnish to the Washington state liquor control board, on a form to be prescribed by the board, a statement showing the quantity of malt liquors and strong beer sold for resale during the preceding calendar month to each beer distributor within the state of Washington.

(2)(a) A United States brewery or manufacturer of beer or strong beer, located outside the state of Washington, must hold a certificate of approval to allow sales and shipment of the certificate of approval holder's beer or strong beer to licensed Washington beer distributors, importers, or retailers. A certificate of approval holder with a direct shipment endorsement may act as a distributor for beer of its own production.

(b) Authorized representatives must hold a certificate of approval to allow sales and shipment of United States produced beer or strong beer to licensed Washington beer distributors or importers.

(c) Authorized representatives must also hold a certificate of approval to allow sales and shipments of foreign produced beer or strong beer to licensed Washington beer distributors or importers.

(3) The certificate of approval shall not be granted unless and until such brewer or manufacturer of beer or strong beer or authorized representative shall have made a written agreement with the board to furnish to the board, on or before the twentieth day of each month, a report under oath, on a form to be prescribed by the board, showing the quantity of beer and strong beer sold or delivered to each licensed beer distributor, importer, or retailer during the preceding month, and shall further have agreed with the board, that such brewer or manufacturer of beer or strong beer or authorized representative and all general sales corporations or agencies maintained by them, and all of their trade representatives, corporations, and agencies, shall and will faithfully comply with all laws of

the state of Washington pertaining to the sale of intoxicating liquors and all rules and regulations of the Washington state liquor control board. A violation of the terms of this agreement will cause the board to take action to suspend or revoke such certificate.

(4) The fee for the certificate of approval and related endorsements, issued pursuant to the provisions of this title, shall be from time to time established by the board at a level that is sufficient to defray the costs of administering the certificate of approval program. The fee shall be fixed by rule by the board in accordance with the provisions of the administrative procedure act, chapter 34.05 RCW.

(5) Certificate of approval holders are deemed to have consented to the jurisdiction of Washington concerning enforcement of this chapter and all laws and rules related to the sale and shipment of beer. [2006 c 302 § 6; 2004 c 160 § 8; 2003 c 167 § 4; 1997 c 321 § 15; 1981 1st ex.s. c 5 § 35; 1973 1st ex.s. c 209 § 14; 1969 ex.s. c 178 § 4; 1937 c 217 § 1 (23F) (adding new section 23-F to 1933 ex.s. c 62); RRS § 7306-23F. Formerly RCW 66.24.270 and 66.24.280.]

**Effective date—2006 c 302:** See note following RCW 66.24.170.

**Effective date—2004 c 160:** See note following RCW 66.04.010.

**Effective date—2003 c 167:** See note following RCW 66.24.244.

**Report to legislature—2003 c 167:** See note following RCW 66.24.250.

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**66.24.290 Authorized, prohibited sales—Monthly reports—Added tax—Distribution—Late payment penalty—Additional taxes, purposes.** (1) Any microbrewer or domestic brewery or beer distributor licensed under this title may sell and deliver beer and strong beer to holders of authorized licenses direct, but to no other person, other than the board. Any certificate of approval holder authorized to act as a distributor under RCW 66.24.270 shall pay the taxes imposed by this section.

(a) Every such brewery or beer distributor shall report all sales to the board monthly, pursuant to the regulations, and shall pay to the board as an added tax for the privilege of manufacturing and selling the beer and strong beer within the state a tax of one dollar and thirty cents per barrel of thirty-one gallons on sales to licensees within the state and on sales to licensees within the state of bottled and canned beer, including strong beer, shall pay a tax computed in gallons at the rate of one dollar and thirty cents per barrel of thirty-one gallons.

(b) Any brewery or beer distributor whose applicable tax payment is not postmarked by the twentieth day following the month of sale will be assessed a penalty at the rate of two percent per month or fraction thereof. Beer and strong beer shall be sold by breweries and distributors in sealed barrels or packages.

(c) The moneys collected under this subsection shall be distributed as follows: (i) Three-tenths of a percent shall be distributed to border areas under RCW 66.08.195; and (ii) of the remaining moneys: (A) Twenty percent shall be distributed to counties in the same manner as under RCW 66.08.200; and (B) eighty percent shall be distributed to incorporated cities and towns in the same manner as under RCW 66.08.210.

(d) Any licensed retailer authorized to purchase beer from a certificate of approval holder with a direct shipment endorsement or a brewery or microbrewery shall make monthly reports to the liquor control board on beer purchased during the preceding calendar month in the manner and upon such forms as may be prescribed by the board.

(2) An additional tax is imposed on all beer and strong beer subject to tax under subsection (1) of this section. The additional tax is equal to two dollars per barrel of thirty-one gallons. All revenues collected during any month from this additional tax shall be deposited in the state general fund by the twenty-fifth day of the following month.

(3)(a) An additional tax is imposed on all beer and strong beer subject to tax under subsection (1) of this section. The additional tax is equal to ninety-six cents per barrel of thirty-one gallons through June 30, 1995, two dollars and thirty-nine cents per barrel of thirty-one gallons for the period July 1, 1995, through June 30, 1997, and four dollars and seventy-eight cents per barrel of thirty-one gallons thereafter.

(b) The additional tax imposed under this subsection does not apply to the sale of the first sixty thousand barrels of beer each year by breweries that are entitled to a reduced rate of tax under 26 U.S.C. Sec. 5051, as existing on July 1, 1993, or such subsequent date as may be provided by the board by rule consistent with the purposes of this exemption.

(c) All revenues collected from the additional tax imposed under this subsection (3) shall be deposited in the state general fund.

(4) An additional tax is imposed on all beer and strong beer that is subject to tax under subsection (1) of this section that is in the first sixty thousand barrels of beer and strong beer by breweries that are entitled to a reduced rate of tax under 26 U.S.C. Sec. 5051, as existing on July 1, 1993, or such subsequent date as may be provided by the board by rule consistent with the purposes of the exemption under subsection (3)(b) of this section. The additional tax is equal to one dollar and forty-eight and two-tenths cents per barrel of thirty-one gallons. By the twenty-fifth day of the following month, three percent of the revenues collected from this additional tax shall be distributed to border areas under RCW 66.08.195 and the remaining moneys shall be transferred to the state general fund.

(5)(a) From June 1, 2010, through June 30, 2013, an additional tax is imposed on all beer and strong beer subject to tax under subsection (1) of this section. The additional tax is equal to fifteen dollars and fifty cents per barrel of thirty-one gallons.

(b) The additional tax imposed under this subsection does not apply to the sale of the first sixty thousand barrels of beer each year by breweries that are entitled to a reduced rate of tax under 26 U.S.C. Sec. 5051 of the federal internal revenue code, as existing on July 1, 1993, or such subsequent date as may be provided by the board by rule consistent with the purposes of this exemption.

(c) All revenues collected from the additional tax imposed under this subsection shall be deposited in the state general fund.

(6) The board may make refunds for all taxes paid on beer and strong beer exported from the state for use outside the state.

(7) The board may require filing with the board of a bond to be approved by it, in such amount as the board may fix, securing the payment of the tax. If any licensee fails to pay the tax when due, the board may forthwith suspend or cancel his or her license until all taxes are paid. [2010 1st sp.s. c 23 § 1301; 2009 c 479 § 43; 2006 c 302 § 7; 2003 c 167 § 5; 1999 c 281 § 14. Prior: 1997 c 451 § 1; 1997 c 321 § 16; 1995 c 232 § 4; 1994 sp.s. c 7 § 902 (Referendum Bill No. 43, approved November 8, 1994); 1993 c 492 § 311; 1989 c 271 § 502; 1983 2nd ex.s. c 3 § 11; 1982 1st ex.s. c 35 § 24; 1981 1st ex.s. c 5 § 16; 1965 ex.s. c 173 § 30; 1933 ex.s. c 62 § 24; RRS § 7306-24.]

**Effective date—2010 1st sp.s. c 23:** See note following RCW 82.04.4292.

**Findings—Intent—2010 1st sp.s. c 23:** See notes following RCW 82.04.220.

**Effective date—2009 c 479:** See note following RCW 2.56.030.

**Effective date—2006 c 302:** See note following RCW 66.24.170.

**Effective date—2003 c 167:** See note following RCW 66.24.244.

**Report to legislature—2003 c 167:** See note following RCW 66.24.250.

**Finding—Intent—Severability—1994 sp.s. c 7:** See notes following RCW 43.70.540.

**Findings—Intent—1993 c 492:** See notes following RCW 43.20.050.

*Giving away of liquor prohibited—Exceptions:* RCW 66.28.040.

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**66.24.305 Refunds of taxes on unsalable wine and beer.** The board may refund the tax on wine imposed by RCW 66.24.210, and the tax on beer imposed by RCW 66.24.290, when such taxpaid products have been deemed to be unsalable and are destroyed within the state in accordance with procedures established by the board. [1975 1st ex.s. c 173 § 11.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**66.24.310 Representative's license—Qualifications—Conditions and restrictions—Fee.** (1) No person shall canvass for, solicit, receive, or take orders for the purchase or sale of liquor, nor contact any licensees of the board in goodwill activities, unless such person shall be the accredited representative of a person, firm, or corporation holding a certificate of approval issued pursuant to RCW 66.24.270 or 66.24.206, a beer distributor's license, a microbrewer's license, a domestic brewer's license, a beer importer's license, a domestic winery license, a wine importer's license, or a wine distributor's license within the state of Washington, or the accredited representative of a distiller, manufacturer, importer, or distributor of spirituous liquor, or foreign produced beer or wine, and shall have applied for and received a representative's license: PROVIDED, HOWEVER, That the provisions of this section shall not apply to drivers who deliver beer or wine;

(2) Every representative's license issued under this title shall be subject to all conditions and restrictions imposed by this title or by the rules and regulations of the board; the board, for the purpose of maintaining an orderly market, may limit the number of representative's licenses issued for representation of specific classes of eligible employers;

(3) Every application for a representative's license must be approved by a holder of a certificate of approval issued pursuant to RCW 66.24.270 or 66.24.206, a licensed beer distributor, a licensed domestic brewer, a licensed beer importer, a licensed microbrewer, a licensed domestic winery, a licensed wine importer, a licensed wine distributor, or by a distiller, manufacturer, importer, or distributor of spirituous liquor, or foreign produced beer or wine, as the rules and regulations of the board shall require;

(4) The fee for a representative's license shall be twenty-five dollars per year;

(5) An accredited representative of a distiller, manufacturer, importer, or distributor of spirituous liquor may, after he or she has applied for and received a representative's license, contact retail licensees of the board only in goodwill activities pertaining to spirituous liquor products. [1997 c 321 § 17; 1981 1st ex.s. c 5 § 36; 1975-'76 2nd ex.s. c 74 § 1; 1971 ex.s. c 138 § 1; 1969 ex.s. c 21 § 5; 1939 c 172 § 2; 1937 c 217 § 1 (23I) (adding new section 23-I to 1933 ex.s. c 62); RRS § 7306-23I.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**66.24.320 Beer and/or wine restaurant license—Containers—Fee—Caterer's endorsement. (Effective until July 1, 2011.)** There shall be a beer and/or wine restaurant license to sell beer, including strong beer, or wine, or both, at retail, for consumption on the premises. A patron of the licensee may remove from the premises, recorked or recapped in its original container, any portion of wine that was purchased for consumption with a meal.

(1) The annual fee shall be two hundred twenty-one dollars for the beer license, two hundred twenty-one dollars for the wine license, or four hundred forty-two dollars for a combination beer and wine license.

(2)(a) The board may issue a caterer's endorsement to this license to allow the licensee to remove from the liquor stocks at the licensed premises, only those types of liquor that are authorized under the on-premises license privileges for sale and service at event locations at a specified date and, except as provided in subsection (3) of this section, place not currently licensed by the board. If the event is open to the public, it must be sponsored by a society or organization as defined by RCW 66.24.375. If attendance at the event is limited to members or invited guests of the sponsoring individual, society, or organization, the requirement that the sponsor must be a society or organization as defined by RCW 66.24.375 is waived. Cost of the endorsement is three hundred eighty-seven dollars.

(b) The holder of this license with a catering endorsement shall, if requested by the board, notify the board or its designee of the date, time, place, and location of any catered event. Upon request, the licensee shall provide to the board all necessary or requested information concerning the society or organization that will be holding the function at which the endorsed license will be utilized.

(c) The holder of this license with a caterer's endorsement may, under conditions established by the board, store liquor on the premises of another not licensed by the board so long as there is a written agreement between the licensee and the other party to provide for ongoing catering services, the

agreement contains no exclusivity clauses regarding the alcoholic beverages to be served, and the agreement is filed with the board.

(d) The holder of this license with a caterer's endorsement may, under conditions established by the board, store liquor on other premises operated by the licensee so long as the other premises are owned or controlled by a leasehold interest by that licensee. A duplicate license may be issued for each additional premises. A license fee of twenty-two dollars shall be required for such duplicate licenses.

(3) Licensees under this section that hold a caterer's endorsement are allowed to use this endorsement on a domestic winery premises or on the premises of a passenger vessel and may store liquor at such premises under conditions established by the board under the following conditions:

(a) Agreements between the domestic winery or the passenger vessel, as the case may be, and the retail licensee shall be in writing, contain no exclusivity clauses regarding the alcoholic beverages to be served, and be filed with the board; and

(b) The domestic winery or passenger vessel, as the case may be, and the retail licensee shall be separately contracted and compensated by the persons sponsoring the event for their respective services.

(4) The holder of this license or its manager may furnish beer or wine to the licensee's employees free of charge as may be required for use in connection with instruction on beer and wine. The instruction may include the history, nature, values, and characteristics of beer or wine, the use of wine lists, and the methods of presenting, serving, storing, and handling beer or wine. The beer and/or wine licensee must use the beer or wine it obtains under its license for the sampling as part of the instruction. The instruction must be given on the premises of the beer and/or wine licensee.

(5) If the license is issued to a person who contracts with the Washington state ferry system to provide food and alcohol service on a designated ferry route, the license shall cover any vessel assigned to the designated route. A separate license is required for each designated ferry route. [2009 c 507 § 1; 2007 c 370 § 9. Prior: 2006 c 362 § 1; 2006 c 101 § 2; 2005 c 152 § 1; 2004 c 62 § 2; prior: 2003 c 345 § 1; 2003 c 167 § 6; 1998 c 126 § 4; 1997 c 321 § 18; 1995 c 232 § 6; 1991 c 42 § 1; 1987 c 458 § 11; 1981 1st ex.s. c 5 § 37; 1977 ex.s. c 9 § 1; 1969 c 117 § 1; 1967 ex.s. c 75 § 2; 1941 c 220 § 1; 1937 c 217 § 1 (23M) (adding new section 23-M to 1933 ex.s. c 62); Rem. Supp. 1941 § 7306-23M.]

**Expiration date—2009 c 507:** See note following RCW 66.08.225.

**Effective date—2003 c 167:** See note following RCW 66.24.244.

**Report to legislature—2003 c 167:** See note following RCW 66.24.250.

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**66.24.320 Beer and/or wine restaurant license—Containers—Fee—Caterer's endorsement. (Effective July 1, 2011.)** There shall be a beer and/or wine restaurant license to sell beer, including strong beer, or wine, or both, at retail, for consumption on the premises. A patron of the licensee may remove from the premises, recorked or recapped in its original container, any portion of wine that was purchased for consumption with a meal.

(1) The annual fee shall be two hundred dollars for the beer license, two hundred dollars for the wine license, or four hundred dollars for a combination beer and wine license.

(2)(a) The board may issue a caterer's endorsement to this license to allow the licensee to remove from the liquor stocks at the licensed premises, only those types of liquor that are authorized under the on-premises license privileges for sale and service at event locations at a specified date and, except as provided in subsection (3) of this section, place not currently licensed by the board. If the event is open to the public, it must be sponsored by a society or organization as defined by RCW 66.24.375. If attendance at the event is limited to members or invited guests of the sponsoring individual, society, or organization, the requirement that the sponsor must be a society or organization as defined by RCW 66.24.375 is waived. Cost of the endorsement is three hundred fifty dollars.

(b) The holder of this license with [a] catering endorsement shall, if requested by the board, notify the board or its designee of the date, time, place, and location of any catered event. Upon request, the licensee shall provide to the board all necessary or requested information concerning the society or organization that will be holding the function at which the endorsed license will be utilized.

(c) The holder of this license with a caterer's endorsement may, under conditions established by the board, store liquor on the premises of another not licensed by the board so long as there is a written agreement between the licensee and the other party to provide for ongoing catering services, the agreement contains no exclusivity clauses regarding the alcoholic beverages to be served, and the agreement is filed with the board.

(d) The holder of this license with a caterer's endorsement may, under conditions established by the board, store liquor on other premises operated by the licensee so long as the other premises are owned or controlled by a leasehold interest by that licensee. A duplicate license may be issued for each additional premises. A license fee of twenty dollars shall be required for such duplicate licenses.

(3) Licensees under this section that hold a caterer's endorsement are allowed to use this endorsement on a domestic winery premises or on the premises of a passenger vessel and may store liquor at such premises under conditions established by the board under the following conditions:

(a) Agreements between the domestic winery or the passenger vessel, as the case may be, and the retail licensee shall be in writing, contain no exclusivity clauses regarding the alcoholic beverages to be served, and be filed with the board; and

(b) The domestic winery or passenger vessel, as the case may be, and the retail licensee shall be separately contracted and compensated by the persons sponsoring the event for their respective services.

(4) The holder of this license or its manager may furnish beer or wine to the licensee's employees free of charge as may be required for use in connection with instruction on beer and wine. The instruction may include the history, nature, values, and characteristics of beer or wine, the use of wine lists, and the methods of presenting, serving, storing, and handling beer or wine. The beer and/or wine licensee must use the beer or wine it obtains under its license for the

sampling as part of the instruction. The instruction must be given on the premises of the beer and/or wine licensee.

(5) If the license is issued to a person who contracts with the Washington state ferry system to provide food and alcohol service on a designated ferry route, the license shall cover any vessel assigned to the designated route. A separate license is required for each designated ferry route. [2007 c 370 § 9. Prior: 2006 c 362 § 1; 2006 c 101 § 2; 2005 c 152 § 1; 2004 c 62 § 2; prior: 2003 c 345 § 1; 2003 c 167 § 6; 1998 c 126 § 4; 1997 c 321 § 18; 1995 c 232 § 6; 1991 c 42 § 1; 1987 c 458 § 11; 1981 1st ex.s. c 5 § 37; 1977 ex.s. c 9 § 1; 1969 c 117 § 1; 1967 ex.s. c 75 § 2; 1941 c 220 § 1; 1937 c 217 § 1 (23M) (adding new section 23-M to 1933 ex.s. c 62); Rem. Supp. 1941 § 7306-23M.]

**Effective date—2003 c 167:** See note following RCW 66.24.244.

**Report to legislature—2003 c 167:** See note following RCW 66.24.250.

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**66.24.330 Tavern license—Fees. (Effective until July 1, 2011.)** There shall be a beer and wine retailer's license to be designated as a tavern license to sell beer, including strong beer, or wine, or both, at retail, for consumption on the premises. Such licenses may be issued only to a person operating a tavern that may be frequented only by persons twenty-one years of age and older.

The annual fee for such license shall be two hundred twenty-one dollars for the beer license, two hundred twenty-one dollars for the wine license, or four hundred forty-two dollars for a combination beer and wine license. [2009 c 507 § 2; 2003 c 167 § 7; 1997 c 321 § 19; 1995 c 232 § 7; 1991 c 42 § 2; 1987 c 458 § 12; 1981 1st ex.s. c 5 § 38; 1977 ex.s. c 9 § 2; 1973 1st ex.s. c 209 § 15; 1967 ex.s. c 75 § 3; 1941 c 220 § 2; 1937 c 217 § 1 (23N) (adding new section 23-N to 1933 ex.s. c 62); Rem. Supp. 1941 § 7306-23N.]

**Expiration date—2009 c 507:** See note following RCW 66.08.225.

**Effective date—2003 c 167:** See note following RCW 66.24.244.

**Report to legislature—2003 c 167:** See note following RCW 66.24.250.

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**66.24.330 Tavern license—Fees. (Effective July 1, 2011.)** There shall be a beer and wine retailer's license to be designated as a tavern license to sell beer, including strong beer, or wine, or both, at retail, for consumption on the premises. Such licenses may be issued only to a person operating a tavern that may be frequented only by persons twenty-one years of age and older.

The annual fee for such license shall be two hundred dollars for the beer license, two hundred dollars for the wine license, or four hundred dollars for a combination beer and wine license. Licensees who have a fee increase of more than one hundred dollars as a result of this change shall have their fees increased fifty percent of the amount the first renewal year and the remaining amount beginning with the second renewal period. New licensees obtaining a license after July 1, 1998, shall pay the full amount of four hundred dollars. [2003 c 167 § 7; 1997 c 321 § 19; 1995 c 232 § 7; 1991 c 42 § 2; 1987 c 458 § 12; 1981 1st ex.s. c 5 § 38; 1977 ex.s. c 9 § 2; 1973 1st ex.s. c 209 § 15; 1967 ex.s. c 75 § 3; 1941 c 220

§ 2; 1937 c 217 § 1 (23N) (adding new section 23-N to 1933 ex.s. c 62); Rem. Supp. 1941 § 7306-23N.]

**Effective date—2003 c 167:** See note following RCW 66.24.244.

**Report to legislature—2003 c 167:** See note following RCW 66.24.250.

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**66.24.350 Snack bar license—Fee. (Effective until July 1, 2011.)** There shall be a beer retailer's license to be designated as a snack bar license to sell beer by the opened bottle or can at retail, for consumption upon the premises only, such license to be issued to places where the sale of beer is not the principal business conducted; fee one hundred thirty-eight dollars per year. [2009 c 507 § 3; 1997 c 321 § 20; 1991 c 42 § 3; 1981 1st ex.s. c 5 § 40; 1967 ex.s. c 75 § 5; 1937 c 217 § 1 (23P) (adding new section 23-P to 1933 ex.s. c 62); RRS § 7306-23P.]

**Expiration date—2009 c 507:** See note following RCW 66.08.225.

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**66.24.350 Snack bar license—Fee. (Effective July 1, 2011.)** There shall be a beer retailer's license to be designated as a snack bar license to sell beer by the opened bottle or can at retail, for consumption upon the premises only, such license to be issued to places where the sale of beer is not the principal business conducted; fee one hundred twenty-five dollars per year. [1997 c 321 § 20; 1991 c 42 § 3; 1981 1st ex.s. c 5 § 40; 1967 ex.s. c 75 § 5; 1937 c 217 § 1 (23P) (adding new section 23-P to 1933 ex.s. c 62); RRS § 7306-23P.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**66.24.354 Combined license—Sale of beer and wine for consumption on and off premises—Conditions—Fee. (Effective until July 1, 2011.)** There shall be a beer and wine retailer's license that may be combined only with the on-premises licenses described in either RCW 66.24.320 or 66.24.330. The combined license permits the sale of beer and wine for consumption off the premises.

(1) Beer and wine sold for consumption off the premises must be in original sealed packages of the manufacturer or bottler.

(2) Beer may be sold to a purchaser in a sanitary container brought to the premises by the purchaser and filled at the tap by the retailer at the time of sale.

(3) Licensees holding this type of license also may sell malt liquor in kegs or other containers that are capable of holding four gallons or more of liquid and are registered in accordance with RCW 66.28.200.

(4) The board may impose conditions upon the issuance of this license to best protect and preserve the health, safety, and welfare of the public.

(5) The annual fee for this license shall be one hundred thirty-three dollars. [2009 c 507 § 4; 1997 c 321 § 21.]

**Expiration date—2009 c 507:** See note following RCW 66.08.225.

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**66.24.354 Combined license—Sale of beer and wine for consumption on and off premises—Conditions—Fee. (Effective July 1, 2011.)** There shall be a beer and wine retailer's license that may be combined only with the on-pre-

mises licenses described in either RCW 66.24.320 or 66.24.330. The combined license permits the sale of beer and wine for consumption off the premises.

(1) Beer and wine sold for consumption off the premises must be in original sealed packages of the manufacturer or bottler.

(2) Beer may be sold to a purchaser in a sanitary container brought to the premises by the purchaser and filled at the tap by the retailer at the time of sale.

(3) Licensees holding this type of license also may sell malt liquor in kegs or other containers that are capable of holding four gallons or more of liquid and are registered in accordance with RCW 66.28.200.

(4) The board may impose conditions upon the issuance of this license to best protect and preserve the health, safety, and welfare of the public.

(5) The annual fee for this license shall be one hundred twenty dollars. [1997 c 321 § 21.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**66.24.360 Grocery store license—Fees—Restricted license—Determination of public interest—Inventory—Endorsements. (Effective until July 1, 2011.)** There shall be a beer and/or wine retailer's license to be designated as a grocery store license to sell beer, strong beer, and/or wine at retail in bottles, cans, and original containers, not to be consumed upon the premises where sold, at any store other than the state liquor stores.

(1) Licensees obtaining a written endorsement from the board may also sell malt liquor in kegs or other containers capable of holding less than five and one-half gallons of liquid.

(2) The annual fee for the grocery store license is one hundred sixty-six dollars for each store.

(3) The board shall issue a restricted grocery store license authorizing the licensee to sell beer and only table wine, if the board finds upon issuance or renewal of the license that the sale of strong beer or fortified wine would be against the public interest. In determining the public interest, the board shall consider at least the following factors:

(a) The likelihood that the applicant will sell strong beer or fortified wine to persons who are intoxicated;

(b) Law enforcement problems in the vicinity of the applicant's establishment that may arise from persons purchasing strong beer or fortified wine at the establishment; and

(c) Whether the sale of strong beer or fortified wine would be detrimental to or inconsistent with a government-operated or funded alcohol treatment or detoxification program in the area.

If the board receives no evidence or objection that the sale of strong beer or fortified wine would be against the public interest, it shall issue or renew the license without restriction, as applicable. The burden of establishing that the sale of strong beer or fortified wine by the licensee would be against the public interest is on those persons objecting.

(4) Licensees holding a grocery store license must maintain a minimum three thousand dollar inventory of food products for human consumption, not including pop, beer, strong beer, or wine.

(5) Upon approval by the board, the grocery store licensee may also receive an endorsement to permit the international export of beer, strong beer, and wine.

(a) Any beer, strong beer, or wine sold under this endorsement must have been purchased from a licensed beer or wine distributor licensed to do business within the state of Washington.

(b) Any beer, strong beer, and wine sold under this endorsement must be intended for consumption outside the state of Washington and the United States and appropriate records must be maintained by the licensee.

(c) A holder of this special endorsement to the grocery store license shall be considered not in violation of \*RCW 66.28.010.

(d) Any beer, strong beer, or wine sold under this license must be sold at a price no less than the acquisition price paid by the holder of the license.

(e) The annual cost of this endorsement is five hundred fifty-three dollars and is in addition to the license fees paid by the licensee for a grocery store license.

(6) A grocery store licensee holding a snack bar license under RCW 66.24.350 may receive an endorsement to allow the sale of confections containing more than one percent but not more than ten percent alcohol by weight to persons twenty-one years of age or older. [2009 c 507 § 5; 2007 c 226 § 2; 2003 c 167 § 8; 1997 c 321 § 22; 1993 c 21 § 1; 1991 c 42 § 4; 1987 c 46 § 1; 1981 1st ex.s. c 5 § 41; 1967 ex.s. c 75 § 6; 1937 c 217 § 1 (23Q) (adding new section 23-Q to 1933 ex.s. c 62); RRS § 7306-23Q.]

**\*Reviser's note:** RCW 66.28.010 was amended by 2009 c 373 § 5 without cognizance of its repeal by 2009 c 506 § 11. For rule of construction concerning sections amended and repealed in the same legislative session, see RCW 1.12.025.

**Expiration date—2009 c 507:** See note following RCW 66.08.225.

**Application to certain retailers—2003 c 167 §§ 8 and 9:** "Sections 8 and 9 of this act apply to retailers who hold a restricted grocery store license or restricted beer and/or wine specialty shop license on or after July 1, 2003." [2003 c 167 § 12.]

**Effective date—2003 c 167:** See note following RCW 66.24.244.

**Report to legislature—2003 c 167:** See note following RCW 66.24.250.

*Employees under eighteen allowed to handle beer or wine: RCW 66.44.340.*

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**66.24.360 Grocery store license—Fees—Restricted license—Determination of public interest—Inventory—Endorsements. (Effective July 1, 2011.)** There shall be a beer and/or wine retailer's license to be designated as a grocery store license to sell beer, strong beer, and/or wine at retail in bottles, cans, and original containers, not to be consumed upon the premises where sold, at any store other than the state liquor stores.

(1) Licensees obtaining a written endorsement from the board may also sell malt liquor in kegs or other containers capable of holding less than five and one-half gallons of liquid.

(2) The annual fee for the grocery store license is one hundred fifty dollars for each store.

(3) The board shall issue a restricted grocery store license authorizing the licensee to sell beer and only table wine, if the board finds upon issuance or renewal of the

(2010 Ed.)

license that the sale of strong beer or fortified wine would be against the public interest. In determining the public interest, the board shall consider at least the following factors:

(a) The likelihood that the applicant will sell strong beer or fortified wine to persons who are intoxicated;

(b) Law enforcement problems in the vicinity of the applicant's establishment that may arise from persons purchasing strong beer or fortified wine at the establishment; and

(c) Whether the sale of strong beer or fortified wine would be detrimental to or inconsistent with a government-operated or funded alcohol treatment or detoxification program in the area.

If the board receives no evidence or objection that the sale of strong beer or fortified wine would be against the public interest, it shall issue or renew the license without restriction, as applicable. The burden of establishing that the sale of strong beer or fortified wine by the licensee would be against the public interest is on those persons objecting.

(4) Licensees holding a grocery store license must maintain a minimum three thousand dollar inventory of food products for human consumption, not including pop, beer, strong beer, or wine.

(5) Upon approval by the board, the grocery store licensee may also receive an endorsement to permit the international export of beer, strong beer, and wine.

(a) Any beer, strong beer, or wine sold under this endorsement must have been purchased from a licensed beer or wine distributor licensed to do business within the state of Washington.

(b) Any beer, strong beer, and wine sold under this endorsement must be intended for consumption outside the state of Washington and the United States and appropriate records must be maintained by the licensee.

(c) A holder of this special endorsement to the grocery store license shall be considered not in violation of RCW 66.28.010.

(d) Any beer, strong beer, or wine sold under this license must be sold at a price no less than the acquisition price paid by the holder of the license.

(e) The annual cost of this endorsement is five hundred dollars and is in addition to the license fees paid by the licensee for a grocery store license.

(6) A grocery store licensee holding a snack bar license under RCW 66.24.350 may receive an endorsement to allow the sale of confections containing more than one percent but not more than ten percent alcohol by weight to persons twenty-one years of age or older. [2007 c 226 § 2; 2003 c 167 § 8; 1997 c 321 § 22; 1993 c 21 § 1; 1991 c 42 § 4; 1987 c 46 § 1; 1981 1st ex.s. c 5 § 41; 1967 ex.s. c 75 § 6; 1937 c 217 § 1 (23Q) (adding new section 23-Q to 1933 ex.s. c 62); RRS § 7306-23Q.]

**Application to certain retailers—2003 c 167 §§ 8 and 9:** "Sections 8 and 9 of this act apply to retailers who hold a restricted grocery store license or restricted beer and/or wine specialty shop license on or after July 1, 2003." [2003 c 167 § 12.]

**Effective date—2003 c 167:** See note following RCW 66.24.244.

**Report to legislature—2003 c 167:** See note following RCW 66.24.250.

*Employees under eighteen allowed to handle beer or wine: RCW 66.44.340.*

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**66.24.363 Grocery store—Beer and wine tasting endorsement.** (1) A grocery store licensed under RCW 66.24.360 may apply for an endorsement to offer beer and wine tasting under this section.

(2) To be issued an endorsement, a licensee must meet the following criteria:

(a) The licensee has retail sales of grocery products for off-premises consumption that are more than fifty percent of the licensee's gross sales or the licensee is a membership organization that requires members to be at least eighteen years of age;

(b) The licensee operates a fully enclosed retail area encompassing at least nine thousand square feet, except that the board may issue an endorsement to a licensee with a retail area encompassing less than nine thousand square feet if the board determines that no licensee in the community the licensee serves meets the square footage requirement and the licensee meets operational requirements established by the board by rule; and

(c) The licensee has not had more than one public safety violation within the past two years.

(3) A tasting must be conducted under the following conditions:

(a) Each sample must be two ounces or less, up to a total of four ounces, per customer during any one visit to the premises;

(b) No more than one sample of the same product offering of beer or wine may be provided to a customer during any one visit to the premises;

(c) The licensee must have food available for the tasting participants;

(d) Customers must remain in the service area while consuming samples; and

(e) The service area and facilities must be located within the licensee's fully enclosed retail area and must be of a size and design such that the licensee can observe and control persons in the area to ensure that persons under twenty-one years of age and apparently intoxicated persons cannot possess or consume alcohol.

(4) Employees of licensees whose duties include serving during tasting activities under this section must hold a class 12 alcohol server permit.

(5) Tasting activities under this section are subject to RCW 66.28.305 and 66.28.040 and the cost of sampling may not be borne, directly or indirectly, by any liquor manufacturer, importer, or distributor.

(6) A licensee may advertise a tasting event only within the store, on a store web site, in store newsletters and flyers, and via e-mail and mail to customers who have requested notice of events. Advertising under this subsection may not be targeted to or appeal principally to youth.

(7)(a) If a licensee is found to have committed a public safety violation in conjunction with tasting activities, the board may suspend the licensee's tasting endorsement and not reissue the endorsement for up to two years from the date of the violation. If mitigating circumstances exist, the board may offer a monetary penalty in lieu of suspension during a settlement conference.

(b) The board may revoke an endorsement granted to a licensee that is located within the boundaries of an alcohol impact area recognized by resolution of the board if the board

finds that the tasting activities by the licensee are having an adverse effect on the reduction of chronic public inebriation in the area.

(c) RCW 66.08.150 applies to the suspension or revocation of an endorsement.

(8) The board may establish additional requirements under this section to assure that persons under twenty-one years of age and apparently intoxicated persons cannot possess or consume alcohol.

(9) The annual fee for the endorsement is two hundred dollars. The board shall review the fee annually and may increase the fee by rule to a level sufficient to defray the cost of administration and enforcement of the endorsement, except that the board may not increase the fee by more than ten percent annually.

(10) The board must adopt rules to implement this section. [2010 c 141 § 1.]

**66.24.371 Beer and/or wine specialty shop license—Fee—Samples—Restricted license—Determination of public interest—Inventory. (Effective until July 1, 2011.)**

(1) There shall be a beer and/or wine retailer's license to be designated as a beer and/or wine specialty shop license to sell beer, strong beer, and/or wine at retail in bottles, cans, and original containers, not to be consumed upon the premises where sold, at any store other than the state liquor stores. Licensees obtaining a written endorsement from the board may also sell malt liquor in kegs or other containers capable of holding four gallons or more of liquid. The annual fee for the beer and/or wine specialty shop license is one hundred eleven dollars for each store. The sale of any container holding four gallons or more must comply with RCW 66.28.200 and 66.28.220.

(2) Licensees under this section may provide, free or for a charge, single-serving samples of two ounces or less to customers for the purpose of sales promotion. Sampling activities of licensees under this section are subject to RCW \*66.28.010 and 66.28.040 and the cost of sampling under this section may not be borne, directly or indirectly, by any manufacturer, importer, or distributor of liquor.

(3) The board shall issue a restricted beer and/or wine specialty shop license, authorizing the licensee to sell beer and only table wine, if the board finds upon issuance or renewal of the license that the sale of strong beer or fortified wine would be against the public interest. In determining the public interest, the board shall consider at least the following factors:

(a) The likelihood that the applicant will sell strong beer or fortified wine to persons who are intoxicated;

(b) Law enforcement problems in the vicinity of the applicant's establishment that may arise from persons purchasing strong beer or fortified wine at the establishment; and

(c) Whether the sale of strong beer or fortified wine would be detrimental to or inconsistent with a government-operated or funded alcohol treatment or detoxification program in the area.

If the board receives no evidence or objection that the sale of strong beer or fortified wine would be against the public interest, it shall issue or renew the license without restriction, as applicable. The burden of establishing that the sale of

strong beer or fortified wine by the licensee would be against the public interest is on those persons objecting.

(4) Licensees holding a beer and/or wine specialty shop license must maintain a minimum three thousand dollar wholesale inventory of beer, strong beer, and/or wine. [2009 c 507 § 6; 2009 c 373 § 6; 2003 c 167 § 9; 1997 c 321 § 23.]

**Reviser's note:** \*(1) RCW 66.28.010 was amended by 2009 c 373 § 5 without cognizance of its repeal by 2009 c 506 § 11. For rule of construction concerning sections amended and repealed in the same legislative session, see RCW 1.12.025.

(2) This section was amended by 2009 c 373 § 6 and by 2009 c 507 § 6, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

**Expiration date—2009 c 507:** See note following RCW 66.08.225.

**Application to certain retailers—2003 c 167 §§ 8 and 9:** See note following RCW 66.24.360.

**Effective date—2003 c 167:** See note following RCW 66.24.244.

**Report to legislature—2003 c 167:** See note following RCW 66.24.250.

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**66.24.371 Beer and/or wine specialty shop license—Fee—Samples—Restricted license—Determination of public interest—Inventory. (Effective July 1, 2011.)** (1) There shall be a beer and/or wine retailer's license to be designated as a beer and/or wine specialty shop license to sell beer, strong beer, and/or wine at retail in bottles, cans, and original containers, not to be consumed upon the premises where sold, at any store other than the state liquor stores. Licensees obtaining a written endorsement from the board may also sell malt liquor in kegs or other containers capable of holding four gallons or more of liquid. The annual fee for the beer and/or wine specialty shop license is one hundred dollars for each store. The sale of any container holding four gallons or more must comply with RCW 66.28.200 and 66.28.220.

(2) Licensees under this section may provide, free or for a charge, single-serving samples of two ounces or less to customers for the purpose of sales promotion. Sampling activities of licensees under this section are subject to RCW \*66.28.010 and 66.28.040 and the cost of sampling under this section may not be borne, directly or indirectly, by any manufacturer, importer, or distributor of liquor.

(3) The board shall issue a restricted beer and/or wine specialty shop license, authorizing the licensee to sell beer and only table wine, if the board finds upon issuance or renewal of the license that the sale of strong beer or fortified wine would be against the public interest. In determining the public interest, the board shall consider at least the following factors:

(a) The likelihood that the applicant will sell strong beer or fortified wine to persons who are intoxicated;

(b) Law enforcement problems in the vicinity of the applicant's establishment that may arise from persons purchasing strong beer or fortified wine at the establishment; and

(c) Whether the sale of strong beer or fortified wine would be detrimental to or inconsistent with a government-operated or funded alcohol treatment or detoxification program in the area.

If the board receives no evidence or objection that the sale of strong beer or fortified wine would be against the pub-

lic interest, it shall issue or renew the license without restriction, as applicable. The burden of establishing that the sale of strong beer or fortified wine by the licensee would be against the public interest is on those persons objecting.

(4) Licensees holding a beer and/or wine specialty shop license must maintain a minimum three thousand dollar wholesale inventory of beer, strong beer, and/or wine. [2009 c 373 § 6; 2003 c 167 § 9; 1997 c 321 § 23.]

**\*Reviser's note:** RCW 66.28.010 was amended by 2009 c 373 § 5 without cognizance of its repeal by 2009 c 506 § 11. For rule of construction concerning sections amended and repealed in the same legislative session, see RCW 1.12.025.

**Application to certain retailers—2003 c 167 §§ 8 and 9:** See note following RCW 66.24.360.

**Effective date—2003 c 167:** See note following RCW 66.24.244.

**Report to legislature—2003 c 167:** See note following RCW 66.24.250.

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**66.24.375 "Society or organization" defined for certain purposes.** "Society or organization" as used in RCW 66.24.380 means a not-for-profit group organized and operated (1) solely for charitable, religious, social, political, educational, civic, fraternal, athletic, or benevolent purposes, or (2) as a local wine industry association registered under section 501(c)(6) of the internal revenue code as it exists on July 22, 2007. No portion of the profits from events sponsored by a not-for-profit group may be paid directly or indirectly to members, officers, directors, or trustees except for services performed for the organization. Any compensation paid to its officers and executives must be only for actual services and at levels comparable to the compensation for like positions within the state. A society or organization which is registered with the secretary of state or the federal internal revenue service as a nonprofit organization shall submit such registration, upon request, as proof that it is a not-for-profit group. [2007 c 370 § 1; 1997 c 321 § 61; 1981 c 287 § 2.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**66.24.380 Special occasion license—Fee—Penalty.** There shall be a retailer's license to be designated as a special occasion license to be issued to a not-for-profit society or organization to sell spirits, beer, and wine by the individual serving for on-premises consumption at a specified event, such as at picnics or other special occasions, at a specified date and place; fee sixty dollars per day.

(1) The not-for-profit society or organization is limited to sales of no more than twelve calendar days per year. For the purposes of this subsection, special occasion licensees that are "agricultural area fairs" or "agricultural county, district, and area fairs," as defined by RCW 15.76.120, that receive a special occasion license may, once per calendar year, count as one event fairs that last multiple days, so long as alcohol sales are at set dates, times, and locations, and the board receives prior notification of the dates, times, and locations. The special occasion license applicant will pay the sixty dollars per day for this event.

(2) The licensee may sell beer and/or wine in original, unopened containers for off-premises consumption if permission is obtained from the board prior to the event.

(3) Sale, service, and consumption of spirits, beer, and wine is to be confined to specified premises or designated areas only.

(4) Spirituous liquor sold under this special occasion license must be purchased at a state liquor store or contract liquor store without discount at retail prices, including all taxes.

(5) Any violation of this section is a class 1 civil infraction having a maximum penalty of two hundred fifty dollars as provided for in chapter 7.80 RCW. [2005 c 151 § 10; 2004 c 133 § 2; 1997 c 321 § 24; 1988 c 200 § 2; 1981 1st ex.s. c 5 § 43; 1973 1st ex.s. c 209 § 17; 1969 ex.s. c 178 § 5; 1937 c 217 § 1 (23S) (adding new section 23-S to 1933 ex.s. c 62); RRS § 7306-23S.]

"Society or organization" defined for certain purposes: RCW 66.24.375.

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**66.24.395 Interstate common carrier's licenses—Class CCI—Fees—Scope. (Effective until July 1, 2011.)**

(1)(a) There shall be a license that may be issued to corporations, associations, or persons operating as federally licensed commercial common passenger carriers engaged in interstate commerce, in or over territorial limits of the state of Washington on passenger trains, vessels, or airplanes. Such license shall permit the sale of spirituous liquor, wine, and beer at retail for passenger consumption within the state upon one such train passenger car, vessel, or airplane, while in or over the territorial limits of the state. Such license shall include the privilege of transporting into and storing within the state such liquor for subsequent retail sale to passengers in passenger train cars, vessels or airplanes. The fees for such master license shall be eight hundred twenty-nine dollars per annum (class CCI-1): PROVIDED, That upon payment of an additional sum of six dollars per annum per car, or vessel, or airplane, the privileges authorized by such license classes shall extend to additional cars, or vessels, or airplanes operated by the same licensee within the state, and a duplicate license for each additional car, or vessel, or airplane shall be issued: PROVIDED, FURTHER, That such licensee may make such sales and/or service upon cars, or vessels, or airplanes in emergency for not more than five consecutive days without such license: AND PROVIDED, FURTHER, That such license shall be valid only while such cars, or vessels, or airplanes are actively operated as common carriers for hire in interstate commerce and not while they are out of such common carrier service.

(b) Alcoholic beverages sold and/or served for consumption by such interstate common carriers while within or over the territorial limits of this state shall be subject to such board markup and state liquor taxes in an amount to approximate the revenue that would have been realized from such markup and taxes had the alcoholic beverages been purchased in Washington: PROVIDED, That the board's markup shall be applied on spirituous liquor only. Such common carriers shall report such sales and/or service and pay such markup and taxes in accordance with procedures prescribed by the board.

(2) Alcoholic beverages sold and delivered in this state to interstate common carriers for use under the provisions of this section shall be considered exported from the state, sub-

ject to the conditions provided in subsection (1)(b) of this section. The storage facilities for liquor within the state by common carriers licensed under this section shall be subject to written approval by the board. [2009 c 507 § 7; 1997 c 321 § 25; 1981 1st ex.s. c 5 § 44; 1975 1st ex.s. c 245 § 2.]

**Expiration date—2009 c 507:** See note following RCW 66.08.225.

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**66.24.395 Interstate common carrier's licenses—**

**Class CCI—Fees—Scope. (Effective July 1, 2011.)** (1)(a) There shall be a license that may be issued to corporations, associations, or persons operating as federally licensed commercial common passenger carriers engaged in interstate commerce, in or over territorial limits of the state of Washington on passenger trains, vessels, or airplanes. Such license shall permit the sale of spirituous liquor, wine, and beer at retail for passenger consumption within the state upon one such train passenger car, vessel, or airplane, while in or over the territorial limits of the state. Such license shall include the privilege of transporting into and storing within the state such liquor for subsequent retail sale to passengers in passenger train cars, vessels or airplanes. The fees for such master license shall be seven hundred fifty dollars per annum (class CCI-1): PROVIDED, That upon payment of an additional sum of five dollars per annum per car, or vessel, or airplane, the privileges authorized by such license classes shall extend to additional cars, or vessels, or airplanes operated by the same licensee within the state, and a duplicate license for each additional car, or vessel, or airplane shall be issued: PROVIDED, FURTHER, That such licensee may make such sales and/or service upon cars, or vessels, or airplanes in emergency for not more than five consecutive days without such license: AND PROVIDED, FURTHER, That such license shall be valid only while such cars, or vessels, or airplanes are actively operated as common carriers for hire in interstate commerce and not while they are out of such common carrier service.

(b) Alcoholic beverages sold and/or served for consumption by such interstate common carriers while within or over the territorial limits of this state shall be subject to such board markup and state liquor taxes in an amount to approximate the revenue that would have been realized from such markup and taxes had the alcoholic beverages been purchased in Washington: PROVIDED, That the board's markup shall be applied on spirituous liquor only. Such common carriers shall report such sales and/or service and pay such markup and taxes in accordance with procedures prescribed by the board.

(2) Alcoholic beverages sold and delivered in this state to interstate common carriers for use under the provisions of this section shall be considered exported from the state, subject to the conditions provided in subsection (1)(b) of this section. The storage facilities for liquor within the state by common carriers licensed under this section shall be subject to written approval by the board. [1997 c 321 § 25; 1981 1st ex.s. c 5 § 44; 1975 1st ex.s. c 245 § 2.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**66.24.400 Liquor by the drink, spirits, beer, and wine restaurant license—Liquor by the bottle for hotel or club guests—Removing unconsumed liquor, when. (Effective**

*until July 1, 2011.*) (1) There shall be a retailer's license, to be known and designated as a spirits, beer, and wine restaurant license, to sell spirituous liquor by the individual glass, beer, and wine, at retail, for consumption on the premises, including mixed drinks and cocktails compounded or mixed on the premises only. A club licensed under chapter 70.62 RCW with overnight sleeping accommodations, that is licensed under this section may sell liquor by the bottle to registered guests of the club for consumption in guest rooms, hospitality rooms, or at banquets in the club. A patron of a bona fide restaurant or club licensed under this section may remove from the premises recorked or recapped in its original container any portion of wine which was purchased for consumption with a meal, and registered guests who have purchased liquor from the club by the bottle may remove from the premises any unused portion of such liquor in its original container. Such license may be issued only to bona fide restaurants and clubs, and to dining, club and buffet cars on passenger trains, and to dining places on passenger boats and airplanes, and to dining places at civic centers with facilities for sports, entertainment, and conventions, and to such other establishments operated and maintained primarily for the benefit of tourists, vacationers and travelers as the board shall determine are qualified to have, and in the discretion of the board should have, a spirits, beer, and wine restaurant license under the provisions and limitations of this title.

(2) The board may issue an endorsement to the spirits, beer, and wine restaurant license that allows the holder of a spirits, beer, and wine restaurant license to sell bottled wine for off-premises consumption. Spirits and beer may not be sold for off-premises consumption under this section except as provided in subsection (4) of this section. The annual fee for the endorsement under this subsection is one hundred thirty-three dollars.

(3) The holder of a spirits, beer, and wine license or its manager may furnish beer, wine, or spirituous liquor to the licensee's employees free of charge as may be required for use in connection with instruction on beer, wine, or spirituous liquor. The instruction may include the history, nature, values, and characteristics of beer, wine, or spirituous liquor, the use of wine lists, and the methods of presenting, serving, storing, and handling beer, wine, and spirituous liquor. The spirits, beer, and wine restaurant licensee must use the beer, wine, or spirituous liquor it obtains under its license for the sampling as part of the instruction. The instruction must be given on the premises of the spirits, beer, and wine restaurant licensee.

(4) The board may issue an endorsement to the spirits, beer, and wine restaurant license that allows the holder of a spirits, beer, and wine restaurant license to sell for off-premises consumption malt liquor in kegs or other containers that are capable of holding four gallons or more of liquid and are registered in accordance with RCW 66.28.200. The annual fee for the endorsement under this subsection is one hundred thirty-three dollars. [2009 c 507 § 8; 2008 c 41 § 10. Prior: 2007 c 370 § 13; 2007 c 53 § 1; 2005 c 152 § 2; 2001 c 199 § 4; 1998 c 126 § 5; 1997 c 321 § 26; 1987 c 196 § 1; 1986 c 208 § 1; 1981 c 94 § 2; 1977 ex.s. c 9 § 4; 1971 ex.s. c 208 § 1; 1949 c 5 § 1 (adding new section 23-S-1 to 1933 ex.s. c 62); Rem. Supp. 1949 § 7306-23S-1.]

**Expiration date—2009 c 507:** See note following RCW 66.08.225.

**Effective date—2008 c 41 §§ 3, 10, and 11:** See note following RCW 66.20.310.

**Effective date—2007 c 370 §§ 10-20:** See note following RCW 66.04.010.

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**66.24.400 Liquor by the drink, spirits, beer, and wine restaurant license—Liquor by the bottle for hotel or club guests—Removing unconsumed liquor, when. (Effective July 1, 2011.)**

(1) There shall be a retailer's license, to be known and designated as a spirits, beer, and wine restaurant license, to sell spirituous liquor by the individual glass, beer, and wine, at retail, for consumption on the premises, including mixed drinks and cocktails compounded or mixed on the premises only. A club licensed under chapter 70.62 RCW with overnight sleeping accommodations, that is licensed under this section may sell liquor by the bottle to registered guests of the club for consumption in guest rooms, hospitality rooms, or at banquets in the club. A patron of a bona fide restaurant or club licensed under this section may remove from the premises recorked or recapped in its original container any portion of wine which was purchased for consumption with a meal, and registered guests who have purchased liquor from the club by the bottle may remove from the premises any unused portion of such liquor in its original container. Such license may be issued only to bona fide restaurants and clubs, and to dining, club and buffet cars on passenger trains, and to dining places on passenger boats and airplanes, and to dining places at civic centers with facilities for sports, entertainment, and conventions, and to such other establishments operated and maintained primarily for the benefit of tourists, vacationers and travelers as the board shall determine are qualified to have, and in the discretion of the board should have, a spirits, beer, and wine restaurant license under the provisions and limitations of this title.

(2) The board may issue an endorsement to the spirits, beer, and wine restaurant license that allows the holder of a spirits, beer, and wine restaurant license to sell bottled wine for off-premises consumption. Spirits and beer may not be sold for off-premises consumption under this section except as provided in subsection (4) of this section. The annual fee for the endorsement under this subsection is one hundred twenty dollars.

(3) The holder of a spirits, beer, and wine license or its manager may furnish beer, wine, or spirituous liquor to the licensee's employees free of charge as may be required for use in connection with instruction on beer, wine, or spirituous liquor. The instruction may include the history, nature, values, and characteristics of beer, wine, or spirituous liquor, the use of wine lists, and the methods of presenting, serving, storing, and handling beer, wine, and spirituous liquor. The spirits, beer, and wine restaurant licensee must use the beer, wine, or spirituous liquor it obtains under its license for the sampling as part of the instruction. The instruction must be given on the premises of the spirits, beer, and wine restaurant licensee.

(4) The board may issue an endorsement to the spirits, beer, and wine restaurant license that allows the holder of a spirits, beer, and wine restaurant license to sell for off-premises consumption malt liquor in kegs or other containers that are capable of holding four gallons or more of liquid and

are registered in accordance with RCW 66.28.200. The annual fee for the endorsement under this subsection is one hundred twenty dollars. [2008 c 41 § 10. Prior: 2007 c 370 § 13; 2007 c 53 § 1; 2005 c 152 § 2; 2001 c 199 § 4; 1998 c 126 § 5; 1997 c 321 § 26; 1987 c 196 § 1; 1986 c 208 § 1; 1981 c 94 § 2; 1977 ex.s. c 9 § 4; 1971 ex.s. c 208 § 1; 1949 c 5 § 1 (adding new section 23-S-1 to 1933 ex.s. c 62); Rem. Supp. 1949 § 7306-23S-1.]

**Effective date—2008 c 41 §§ 3, 10, and 11:** See note following RCW 66.20.310.

**Effective date—2007 c 370 §§ 10-20:** See note following RCW 66.04.010.

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**66.24.410 Liquor by the drink, spirits, beer, and wine restaurant license—Terms defined.** (1) "Spirituous liquor," as used in RCW 66.24.400 to 66.24.450, inclusive, means "liquor" as defined in RCW 66.04.010, except "wine" and "beer" sold as such.

(2) "Restaurant" as used in RCW 66.24.400 to 66.24.450, inclusive, means an establishment provided with special space and accommodations where, in consideration of payment, food, without lodgings, is habitually furnished to the public, not including drug stores and soda fountains: PROVIDED, That such establishments shall be approved by the board and that the board shall be satisfied that such establishment is maintained in a substantial manner as a place for preparing, cooking and serving of complete meals. The service of only fry orders or such food and victuals as sandwiches, hamburgers, or salads shall not be deemed in compliance with this definition.

(3) "Hotel," "clubs," "wine" and "beer" are used in RCW 66.24.400 to 66.24.450, inclusive, with the meaning given in chapter 66.04 RCW. [2007 c 370 § 18; 1983 c 3 § 164; 1981 1st ex.s. c 5 § 17; 1969 ex.s. c 112 § 1; 1957 c 263 § 2. Prior: 1949 c 5 § 2, part (adding new section 23-S-2 to 1933 ex.s. c 62); Rem. Supp. 1949 § 7306-23S-2, part.]

**Effective date—2007 c 370 §§ 10-20:** See note following RCW 66.04.010.

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**66.24.420 Liquor by the drink, spirits, beer, and wine restaurant license—Schedule of fees—Location—Number of licenses—Caterer's endorsement. (Effective until July 1, 2011.)** (1) The spirits, beer, and wine restaurant license shall be issued in accordance with the following schedule of annual fees:

(a) The annual fee for a spirits, beer, and wine restaurant license shall be graduated according to the dedicated dining area and type of service provided as follows:

Less than 50% dedicated dining area	\$2,210
50% or more dedicated dining area	\$1,768
Service bar only	\$1,105

(b) The annual fee for the license when issued to any other spirits, beer, and wine restaurant licensee outside of incorporated cities and towns shall be prorated according to the calendar quarters, or portion thereof, during which the licensee is open for business, except in case of suspension or revocation of the license.

(c) Where the license shall be issued to any corporation, association or person operating a bona fide restaurant in an airport terminal facility providing service to transient passengers with more than one place where liquor is to be dispensed and sold, such license shall be issued upon the payment of the annual fee, which shall be a master license and shall permit such sale within and from one such place. Such license may be extended to additional places on the premises at the discretion of the board and a duplicate license may be issued for each such additional place. The holder of a master license for a restaurant in an airport terminal facility must maintain in a substantial manner at least one place on the premises for preparing, cooking, and serving of complete meals, and such food service shall be available on request in other licensed places on the premises. An additional license fee of twenty-five percent of the annual master license fee shall be required for such duplicate licenses.

(d) Where the license shall be issued to any corporation, association, or person operating dining places at a publicly or privately owned civic or convention center with facilities for sports, entertainment, or conventions, or a combination thereof, with more than one place where liquor is to be dispensed and sold, such license shall be issued upon the payment of the annual fee, which shall be a master license and shall permit such sale within and from one such place. Such license may be extended to additional places on the premises at the discretion of the board and a duplicate license may be issued for each such additional place. The holder of a master license for a dining place at such a publicly or privately owned civic or convention center must maintain in a substantial manner at least one place on the premises for preparing, cooking, and serving of complete meals, and food service shall be available on request in other licensed places on the premises. An additional license fee of eleven dollars shall be required for such duplicate licenses.

(2) The board, so far as in its judgment is reasonably possible, shall confine spirits, beer, and wine restaurant licenses to the business districts of cities and towns and other communities, and not grant such licenses in residential districts, nor within the immediate vicinity of schools, without being limited in the administration of this subsection to any specific distance requirements.

(3) The board shall have discretion to issue spirits, beer, and wine restaurant licenses outside of cities and towns in the state of Washington. The purpose of this subsection is to enable the board, in its discretion, to license in areas outside of cities and towns and other communities, establishments which are operated and maintained primarily for the benefit of tourists, vacationers and travelers, and also golf and country clubs, and common carriers operating dining, club and buffet cars, or boats.

(4) The combined total number of spirits, beer, and wine nightclub licenses, and spirits, beer, and wine restaurant licenses issued in the state of Washington by the board, not including spirits, beer, and wine private club licenses, shall not in the aggregate at any time exceed one license for each one thousand two hundred of population in the state, determined according to the yearly population determination developed by the office of financial management pursuant to RCW 43.62.030.

(5) Notwithstanding the provisions of subsection (4) of this section, the board shall refuse a spirits, beer, and wine restaurant license to any applicant if in the opinion of the board the spirits, beer, and wine restaurant licenses already granted for the particular locality are adequate for the reasonable needs of the community.

(6)(a) The board may issue a caterer's endorsement to this license to allow the licensee to remove the liquor stocks at the licensed premises, for use as liquor for sale and service at event locations at a specified date and, except as provided in subsection (7) of this section, place not currently licensed by the board. If the event is open to the public, it must be sponsored by a society or organization as defined by RCW 66.24.375. If attendance at the event is limited to members or invited guests of the sponsoring individual, society, or organization, the requirement that the sponsor must be a society or organization as defined by RCW 66.24.375 is waived. Cost of the endorsement is three hundred eighty-seven dollars.

(b) The holder of this license with a catering endorsement shall, if requested by the board, notify the board or its designee of the date, time, place, and location of any catered event. Upon request, the licensee shall provide to the board all necessary or requested information concerning the society or organization that will be holding the function at which the endorsed license will be utilized.

(c) The holder of this license with a caterer's endorsement may, under conditions established by the board, store liquor on the premises of another not licensed by the board so long as there is a written agreement between the licensee and the other party to provide for ongoing catering services, the agreement contains no exclusivity clauses regarding the alcoholic beverages to be served, and the agreement is filed with the board.

(d) The holder of this license with a caterer's endorsement may, under conditions established by the board, store liquor on other premises operated by the licensee so long as the other premises are owned or controlled by a leasehold interest by that licensee. A duplicate license may be issued for each additional premises. A license fee of twenty-two dollars shall be required for such duplicate licenses.

(7) Licensees under this section that hold a caterer's endorsement are allowed to use this endorsement on a domestic winery premises or on the premises of a passenger vessel and may store liquor at such premises under conditions established by the board under the following conditions:

(a) Agreements between the domestic winery or passenger vessel, as the case may be, and the retail licensee shall be in writing, contain no exclusivity clauses regarding the alcoholic beverages to be served, and be filed with the board; and

(b) The domestic winery or passenger vessel, as the case may be, and the retail licensee shall be separately contracted and compensated by the persons sponsoring the event for their respective services. [2009 c 507 § 9; 2009 c 271 § 7. Prior: 2007 c 370 § 19; 2007 c 370 § 8; prior: 2006 c 101 § 3; 2006 c 85 § 1; 2004 c 62 § 3; 2003 c 345 § 2; 1998 c 126 § 6; 1997 c 321 § 27; 1996 c 218 § 4; 1995 c 55 § 1; 1981 1st ex.s. c 5 § 45; 1979 c 87 § 1; 1977 ex.s. c 219 § 4; 1975 1st ex.s. c 245 § 1; 1971 ex.s. c 208 § 2; 1970 ex.s. c 13 § 2; prior: 1969 ex.s. c 178 § 6; 1969 ex.s. c 136 § 1; 1965 ex.s. c 143 §

(2010 Ed.)

3; 1949 c 5 § 3 (adding new section 23-S-3 to 1933 ex.s. c 62); Rem. Supp. 1949 § 7306-23S-3.]

**Reviser's note:** This section was amended by 2009 c 271 § 7 and by 2009 c 507 § 9, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

**Expiration date—2009 c 507:** See note following RCW 66.08.225.

**Effective date—2007 c 370 §§ 10-20:** See note following RCW 66.04.010.

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**66.24.420 Liquor by the drink, spirits, beer, and wine restaurant license—Schedule of fees—Location—Number of licenses—Caterer's endorsement. (Effective July 1, 2011.)** (1) The spirits, beer, and wine restaurant license shall be issued in accordance with the following schedule of annual fees:

(a) The annual fee for a spirits, beer, and wine restaurant license shall be graduated according to the dedicated dining area and type of service provided as follows:

Less than 50% dedicated dining area	\$2,000
50% or more dedicated dining area	\$1,600
Service bar only	\$1,000

(b) The annual fee for the license when issued to any other spirits, beer, and wine restaurant licensee outside of incorporated cities and towns shall be prorated according to the calendar quarters, or portion thereof, during which the licensee is open for business, except in case of suspension or revocation of the license.

(c) Where the license shall be issued to any corporation, association or person operating a bona fide restaurant in an airport terminal facility providing service to transient passengers with more than one place where liquor is to be dispensed and sold, such license shall be issued upon the payment of the annual fee, which shall be a master license and shall permit such sale within and from one such place. Such license may be extended to additional places on the premises at the discretion of the board and a duplicate license may be issued for each such additional place. The holder of a master license for a restaurant in an airport terminal facility must maintain in a substantial manner at least one place on the premises for preparing, cooking, and serving of complete meals, and such food service shall be available on request in other licensed places on the premises. An additional license fee of twenty-five percent of the annual master license fee shall be required for such duplicate licenses.

(d) Where the license shall be issued to any corporation, association, or person operating dining places at a publicly or privately owned civic or convention center with facilities for sports, entertainment, or conventions, or a combination thereof, with more than one place where liquor is to be dispensed and sold, such license shall be issued upon the payment of the annual fee, which shall be a master license and shall permit such sale within and from one such place. Such license may be extended to additional places on the premises at the discretion of the board and a duplicate license may be issued for each such additional place. The holder of a master license for a dining place at such a publicly or privately owned civic or convention center must maintain in a substantial manner at least one place on the premises for preparing,

cooking, and serving of complete meals, and food service shall be available on request in other licensed places on the premises. An additional license fee of ten dollars shall be required for such duplicate licenses.

(2) The board, so far as in its judgment is reasonably possible, shall confine spirits, beer, and wine restaurant licenses to the business districts of cities and towns and other communities, and not grant such licenses in residential districts, nor within the immediate vicinity of schools, without being limited in the administration of this subsection to any specific distance requirements.

(3) The board shall have discretion to issue spirits, beer, and wine restaurant licenses outside of cities and towns in the state of Washington. The purpose of this subsection is to enable the board, in its discretion, to license in areas outside of cities and towns and other communities, establishments which are operated and maintained primarily for the benefit of tourists, vacationers and travelers, and also golf and country clubs, and common carriers operating dining, club and buffet cars, or boats.

(4) The combined total number of spirits, beer, and wine nightclub licenses, and spirits, beer, and wine restaurant licenses issued in the state of Washington by the board, not including spirits, beer, and wine private club licenses, shall not in the aggregate at any time exceed one license for each one thousand two hundred of population in the state, determined according to the yearly population determination developed by the office of financial management pursuant to RCW 43.62.030.

(5) Notwithstanding the provisions of subsection (4) of this section, the board shall refuse a spirits, beer, and wine restaurant license to any applicant if in the opinion of the board the spirits, beer, and wine restaurant licenses already granted for the particular locality are adequate for the reasonable needs of the community.

(6)(a) The board may issue a caterer's endorsement to this license to allow the licensee to remove the liquor stocks at the licensed premises, for use as liquor for sale and service at event locations at a specified date and, except as provided in subsection (7) of this section, place not currently licensed by the board. If the event is open to the public, it must be sponsored by a society or organization as defined by RCW 66.24.375. If attendance at the event is limited to members or invited guests of the sponsoring individual, society, or organization, the requirement that the sponsor must be a society or organization as defined by RCW 66.24.375 is waived. Cost of the endorsement is three hundred fifty dollars.

(b) The holder of this license with a catering endorsement shall, if requested by the board, notify the board or its designee of the date, time, place, and location of any catered event. Upon request, the licensee shall provide to the board all necessary or requested information concerning the society or organization that will be holding the function at which the endorsed license will be utilized.

(c) The holder of this license with a caterer's endorsement may, under conditions established by the board, store liquor on the premises of another not licensed by the board so long as there is a written agreement between the licensee and the other party to provide for ongoing catering services, the agreement contains no exclusivity clauses regarding the alco-

holic beverages to be served, and the agreement is filed with the board.

(d) The holder of this license with a caterer's endorsement may, under conditions established by the board, store liquor on other premises operated by the licensee so long as the other premises are owned or controlled by a leasehold interest by that licensee. A duplicate license may be issued for each additional premises. A license fee of twenty dollars shall be required for such duplicate licenses.

(7) Licensees under this section that hold a caterer's endorsement are allowed to use this endorsement on a domestic winery premises or on the premises of a passenger vessel and may store liquor at such premises under conditions established by the board under the following conditions:

(a) Agreements between the domestic winery or passenger vessel, as the case may be, and the retail licensee shall be in writing, contain no exclusivity clauses regarding the alcoholic beverages to be served, and be filed with the board; and

(b) The domestic winery or passenger vessel, as the case may be, and the retail licensee shall be separately contracted and compensated by the persons sponsoring the event for their respective services. [2009 c 271 § 7. Prior: 2007 c 370 § 19; 2007 c 370 § 8; prior: 2006 c 101 § 3; 2006 c 85 § 1; 2004 c 62 § 3; 2003 c 345 § 2; 1998 c 126 § 6; 1997 c 321 § 27; 1996 c 218 § 4; 1995 c 55 § 1; 1981 1st ex.s. c 5 § 45; 1979 c 87 § 1; 1977 ex.s. c 219 § 4; 1975 1st ex.s. c 245 § 1; 1971 ex.s. c 208 § 2; 1970 ex.s. c 13 § 2; prior: 1969 ex.s. c 178 § 6; 1969 ex.s. c 136 § 1; 1965 ex.s. c 143 § 3; 1949 c 5 § 3 (adding new section 23-S-3 to 1933 ex.s. c 62); Rem. Supp. 1949 § 7306-23S-3.]

**Effective date—2007 c 370 §§ 10-20:** See note following RCW 66.04.010.

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**66.24.425 Liquor by the drink, spirits, beer, and wine restaurant license—Restaurants not serving the general public. (Effective until July 1, 2011.)**

(1) The board may, in its discretion, issue a spirits, beer, and wine restaurant license to a business which qualifies as a "restaurant" as that term is defined in RCW 66.24.410 in all respects except that the business does not serve the general public but, through membership qualification, selectively restricts admission to the business. For purposes of RCW 66.24.400 and 66.24.420, all licenses issued under this section shall be considered spirits, beer, and wine restaurant licenses and shall be subject to all requirements, fees, and qualifications in this title, or in rules adopted by the board, as are applicable to spirits, beer, and wine restaurant licenses generally except that no service to the general public may be required.

(2) No license shall be issued under this section to a business:

(a) Which shall not have been in continuous operation for at least one year immediately prior to the date of its application; or

(b) Which denies membership or admission to any person because of race, creed, color, national origin, sex, or the presence of any sensory, mental, or physical handicap.

(3) The board may issue an endorsement to the spirits, beer, and wine restaurant license issued under this section that allows up to forty nonclub, member-sponsored events using club liquor. Visitors and guests may attend these

events only by invitation of the sponsoring member or members. These events may not be open to the general public. The fee for the endorsement is an annual fee of nine hundred ninety-five dollars. Upon the board's request, the holder of the endorsement must provide the board or the board's designee with the following information at least seventy-two hours before the event: The date, time, and location of the event; the name of the sponsor of the event; and a brief description of the purpose of the event.

(4) The board may issue an endorsement to the spirits, beer, and wine restaurant license that allows the holder of a spirits, beer, and wine restaurant license to sell for off-premises consumption wine vinted and bottled in the state of Washington and carrying a label exclusive to the license holder selling the wine. Spirits and beer may not be sold for off-premises consumption under this section. The annual fee for the endorsement under this section is one hundred thirty-three dollars. [2009 c 507 § 10. Prior: 2001 c 199 § 3; 2001 c 198 § 1; 1998 c 126 § 7; 1997 c 321 § 28; 1982 c 85 § 3.]

**Expiration date—2009 c 507:** See note following RCW 66.08.225.

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**66.24.425 Liquor by the drink, spirits, beer, and wine restaurant license—Restaurants not serving the general public. (Effective July 1, 2011.)** (1) The board may, in its discretion, issue a spirits, beer, and wine restaurant license to a business which qualifies as a "restaurant" as that term is defined in RCW 66.24.410 in all respects except that the business does not serve the general public but, through membership qualification, selectively restricts admission to the business. For purposes of RCW 66.24.400 and 66.24.420, all licenses issued under this section shall be considered spirits, beer, and wine restaurant licenses and shall be subject to all requirements, fees, and qualifications in this title, or in rules adopted by the board, as are applicable to spirits, beer, and wine restaurant licenses generally except that no service to the general public may be required.

(2) No license shall be issued under this section to a business:

(a) Which shall not have been in continuous operation for at least one year immediately prior to the date of its application; or

(b) Which denies membership or admission to any person because of race, creed, color, national origin, sex, or the presence of any sensory, mental, or physical handicap.

(3) The board may issue an endorsement to the spirits, beer, and wine restaurant license issued under this section that allows up to forty nonclub, member-sponsored events using club liquor. Visitors and guests may attend these events only by invitation of the sponsoring member or members. These events may not be open to the general public. The fee for the endorsement is an annual fee of nine hundred dollars. Upon the board's request, the holder of the endorsement must provide the board or the board's designee with the following information at least seventy-two hours before the event: The date, time, and location of the event; the name of the sponsor of the event; and a brief description of the purpose of the event.

(4) The board may issue an endorsement to the spirits, beer, and wine restaurant license that allows the holder of a

(2010 Ed.)

spirits, beer, and wine restaurant license to sell for off-premises consumption wine vinted and bottled in the state of Washington and carrying a label exclusive to the license holder selling the wine. Spirits and beer may not be sold for off-premises consumption under this section. The annual fee for the endorsement under this chapter [section] is one hundred twenty dollars. [2001 c 199 § 3; 2001 c 198 § 1; 1998 c 126 § 7; 1997 c 321 § 28; 1982 c 85 § 3.]

**Reviser's note:** This section was amended by 2001 c 198 § 1 and by 2001 c 199 § 3, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**66.24.440 Liquor by the drink, spirits, beer, and wine restaurant, spirits, beer, and wine private club, hotel, spirits, beer, and wine nightclub, and sports entertainment facility license—Purchase of liquor by licensees—Discount.** Each spirits, beer, and wine restaurant, spirits, beer, and wine private club, hotel, spirits, beer, and wine nightclub, and sports entertainment facility licensee shall be entitled to purchase any spirituous liquor items salable under such license from the board at a discount of not less than fifteen percent from the retail price fixed by the board, together with all taxes. [2009 c 271 § 8; 2007 c 370 § 20; 1998 c 126 § 8; 1997 c 321 § 29; 1949 c 5 § 5 (adding new section 23-S-5 to 1933 ex.s. c 62); Rem. Supp. 1949 § 7306-23S-5.]

**Effective date—2007 c 370 §§ 10-20:** See note following RCW 66.04.010.

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**66.24.450 Liquor by the drink, spirits, beer, and wine private club license—Qualifications—Fee. (Effective until July 1, 2011.)** (1) No club shall be entitled to a spirits, beer, and wine private club license:

(a) Unless such private club has been in continuous operation for at least one year immediately prior to the date of its application for such license;

(b) Unless the private club premises be constructed and equipped, conducted, managed, and operated to the satisfaction of the board and in accordance with this title and the regulations made thereunder;

(c) Unless the board shall have determined pursuant to any regulations made by it with respect to private clubs, that such private club is a bona fide private club; it being the intent of this section that license shall not be granted to a club which is, or has been, primarily formed or activated to obtain a license to sell liquor, but solely to a bona fide private club, where the sale of liquor is incidental to the main purposes of the spirits, beer, and wine private club, as defined in RCW 66.04.010(8).

(2) The annual fee for a spirits, beer, and wine private club license, whether inside or outside of an incorporated city or town, is seven hundred ninety-six dollars per year.

(3) The board may issue an endorsement to the spirits, beer, and wine private club license that allows up to forty nonclub, member-sponsored events using club liquor. Visitors and guests may attend these events only by invitation of the sponsoring member or members. These events may not be open to the general public. The fee for the endorsement shall be an annual fee of nine hundred ninety-five dollars.

Upon the board's request, the holder of the endorsement must provide the board or the board's designee with the following information at least seventy-two hours prior to the event: The date, time, and location of the event; the name of the sponsor of the event; and a brief description of the purpose of the event.

(4) The board may issue an endorsement to the spirits, beer, and wine private club license that allows the holder of a spirits, beer, and wine private club license to sell bottled wine for off-premises consumption. Spirits and beer may not be sold for off-premises consumption under this section. The annual fee for the endorsement under this section is one hundred thirty-three dollars. [2009 c 507 § 11; 2009 c 373 § 2; 2001 c 199 § 1; 1999 c 281 § 5. Prior: 1998 c 126 § 9; 1998 c 114 § 1; 1997 c 321 § 30; 1981 1st ex.s. c 5 § 18; 1949 c 5 § 6; 1937 c 217 § 1 (23T) (adding new section 23-T to 1933 ex.s. c 62); Rem. Supp. 1949 § 7306-23T.]

**Reviser's note:** This section was amended by 2009 c 373 § 2 and by 2009 c 507 § 11, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

**Expiration date—2009 c 507:** See note following RCW 66.08.225.

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**66.24.450 Liquor by the drink, spirits, beer, and wine private club license—Qualifications—Fee. (Effective July 1, 2011.)** (1) No club shall be entitled to a spirits, beer, and wine private club license:

(a) Unless such private club has been in continuous operation for at least one year immediately prior to the date of its application for such license;

(b) Unless the private club premises be constructed and equipped, conducted, managed, and operated to the satisfaction of the board and in accordance with this title and the regulations made thereunder;

(c) Unless the board shall have determined pursuant to any regulations made by it with respect to private clubs, that such private club is a bona fide private club; it being the intent of this section that license shall not be granted to a club which is, or has been, primarily formed or activated to obtain a license to sell liquor, but solely to a bona fide private club, where the sale of liquor is incidental to the main purposes of the spirits, beer, and wine private club, as defined in RCW 66.04.010(8).

(2) The annual fee for a spirits, beer, and wine private club license, whether inside or outside of an incorporated city or town, is seven hundred twenty dollars per year.

(3) The board may issue an endorsement to the spirits, beer, and wine private club license that allows up to forty nonclub, member-sponsored events using club liquor. Visitors and guests may attend these events only by invitation of the sponsoring member or members. These events may not be open to the general public. The fee for the endorsement shall be an annual fee of nine hundred dollars. Upon the board's request, the holder of the endorsement must provide the board or the board's designee with the following information at least seventy-two hours prior to the event: The date, time, and location of the event; the name of the sponsor of the event; and a brief description of the purpose of the event.

(4) The board may issue an endorsement to the spirits, beer, and wine private club license that allows the holder of a

spirits, beer, and wine private club license to sell bottled wine for off-premises consumption. Spirits and beer may not be sold for off-premises consumption under this section. The annual fee for the endorsement under this section is one hundred twenty dollars. [2009 c 373 § 2; 2001 c 199 § 1; 1999 c 281 § 5. Prior: 1998 c 126 § 9; 1998 c 114 § 1; 1997 c 321 § 30; 1981 1st ex.s. c 5 § 18; 1949 c 5 § 6; 1937 c 217 § 1 (23T) (adding new section 23-T to 1933 ex.s. c 62); Rem. Supp. 1949 § 7306-23T.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**66.24.452 Private club beer and wine license—Fee. (Effective until July 1, 2011.)** (1) There shall be a beer and wine license to be issued to a private club for sale of beer, strong beer, and wine for on-premises consumption.

(2) Beer, strong beer, and wine sold by the licensee may be on tap or by open bottles or cans.

(3) The fee for the private club beer and wine license is one hundred ninety-nine dollars per year.

(4) The board may issue an endorsement to the private club beer and wine license that allows the holder of a private club beer and wine license to sell bottled wine for off-premises consumption. Spirits, strong beer, and beer may not be sold for off-premises consumption under this section. The annual fee for the endorsement under this section is one hundred thirty-three dollars. [2009 c 507 § 12; 2009 c 373 § 3; 2003 c 167 § 10; 2001 c 199 § 2; 1997 c 321 § 31.]

**Reviser's note:** This section was amended by 2009 c 373 § 3 and by 2009 c 507 § 12, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

**Expiration date—2009 c 507:** See note following RCW 66.08.225.

**Effective date—2003 c 167:** See note following RCW 66.24.244.

**Report to legislature—2003 c 167:** See note following RCW 66.24.250.

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**66.24.452 Private club beer and wine license—Fee. (Effective July 1, 2011.)** (1) There shall be a beer and wine license to be issued to a private club for sale of beer, strong beer, and wine for on-premises consumption.

(2) Beer, strong beer, and wine sold by the licensee may be on tap or by open bottles or cans.

(3) The fee for the private club beer and wine license is one hundred eighty dollars per year.

(4) The board may issue an endorsement to the private club beer and wine license that allows the holder of a private club beer and wine license to sell bottled wine for off-premises consumption. Spirits, strong beer, and beer may not be sold for off-premises consumption under this section. The annual fee for the endorsement under this section is one hundred twenty dollars. [2009 c 373 § 3; 2003 c 167 § 10; 2001 c 199 § 2; 1997 c 321 § 31.]

**Effective date—2003 c 167:** See note following RCW 66.24.244.

**Report to legislature—2003 c 167:** See note following RCW 66.24.250.

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**66.24.455 Bowling establishments—Extension of premises to concourse and lane areas—Beer and/or wine restaurant, tavern, snack bar, spirits, beer, and wine res-**

**restaurant, spirits, beer, and wine private club, or beer and wine private club licensees.** Subject to approval by the board, holders of beer and/or wine restaurant, tavern, snack bar, spirits, beer, and wine restaurant, spirits, beer, and wine private club, or beer and wine private club licenses may extend their premises for the sale, service, and consumption of liquor authorized under their respective licenses to the concourse or lane areas in a bowling establishment where the concourse or lane areas are adjacent to the food preparation service facility. [1998 c 126 § 10; 1997 c 321 § 32; 1994 c 201 § 2; 1974 ex.s. c 65 § 1.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**66.24.480 Bottle clubs—License required.** "Bottle club" means a club or association operating for profit or otherwise and conducting or maintaining premises in which the members or other persons may resort for the primary or incidental purpose of keeping or consuming liquor on the premises.

Except as permitted under a license issued by the Washington state liquor control board, it is unlawful for any person to conduct or maintain by himself or by associating with others, or to in any manner aid, assist, or abet in conducting or maintaining a bottle club. [1951 c 120 § 2 (adding a new section to Title 66 RCW).]

**Reviser's note:** As to the constitutionality of this section, see *Derby Club v. Beckett*, 41 Wn. 2d 869 (1953).

**66.24.481 Public place or club—License or permit required—Penalty.** No public place or club, or agent, servant or employee thereof, shall keep or allow to be kept, either by itself, its agent, servant or employee, or any other person, any liquor in any place maintained or conducted by such public place or club, nor shall it permit the drinking of any liquor in any such place, unless the sale of liquor in said place is authorized by virtue of a valid and subsisting license issued by the Washington state liquor control board, or the consumption of liquor in said place is authorized by a special banquet permit issued by said board. Every person who violates any provision of this section shall be guilty of a gross misdemeanor.

"Public place," for purposes of this section only, shall mean in addition to the definition set forth in RCW 66.04.010, any place to which admission is charged or in which any pecuniary gain is realized by the owner or operator of such place in selling or vending food or soft drinks. [2008 c 94 § 9; 1969 ex.s. c 250 § 2; 1953 c 141 § 1 (adding a new section to chapter 66.24 RCW).]

**66.24.495 Nonprofit arts organization license—Fee.**

(1) There shall be a license to be designated as a nonprofit arts organization license. This shall be a special license to be issued to any nonprofit arts organization which sponsors and presents productions or performances of an artistic or cultural nature in a specific theater or other appropriate designated indoor premises approved by the board. The license shall permit the licensee to sell liquor to patrons of productions or performances for consumption on the premises at these events. The fee for the license shall be two hundred fifty dollars per annum.

(2010 Ed.)

(2) For the purposes of this section, the term "nonprofit arts organization" means an organization which is organized and operated for the purpose of providing artistic or cultural exhibitions, presentations, or performances or cultural or art education programs, as defined in subsection (3) of this section, for viewing or attendance by the general public. The organization must be a not-for-profit corporation under chapter 24.03 RCW and managed by a governing board of not less than eight individuals none of whom is a paid employee of the organization or by a corporation sole under chapter 24.12 RCW. In addition, the corporation must satisfy the following conditions:

(a) No part of its income may be paid directly or indirectly to its members, stockholders, officers, directors, or trustees except in the form of services rendered by the corporation in accordance with its purposes and bylaws;

(b) Salary or compensation paid to its officers and executives must be only for actual services rendered, and at levels comparable to the salary or compensation of like positions within the state;

(c) Assets of the corporation must be irrevocably dedicated to the activities for which the license is granted and, on the liquidation, dissolution, or abandonment by the corporation, may not inure directly or indirectly to the benefit of any member or individual except a nonprofit organization, association, or corporation;

(d) The corporation must be duly licensed or certified when licensing or certification is required by law or regulation;

(e) The proceeds derived from sales of liquor, except for reasonable operating costs, must be used in furtherance of the purposes of the organization;

(f) Services must be available regardless of race, color, national origin, or ancestry; and

(g) The liquor control board shall have access to its books in order to determine whether the corporation is entitled to a license.

(3) The term "artistic or cultural exhibitions, presentations, or performances or cultural or art education programs" includes and is limited to:

(a) An exhibition or presentation of works of art or objects of cultural or historical significance, such as those commonly displayed in art or history museums;

(b) A musical or dramatic performance or series of performances; or

(c) An educational seminar or program, or series of such programs, offered by the organization to the general public on an artistic, cultural, or historical subject. [1997 c 321 § 33; 1981 c 142 § 1.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**66.24.520 Grower's license—Fee.** There shall be a grower's license to sell wine or spirits made from grapes or other agricultural products owned at the time of vinification or distillation by the licensee in bulk to holders of domestic wineries', distillers', or manufacturers' licenses or for export. The wine or spirits shall be made upon the premises of a domestic winery or craft distillery licensee and is referred to in this section as grower's wine or grower's spirits. A grower's license authorizes the agricultural product grower to

contract for the manufacturing of wine or spirits from the grower's own agricultural product, store wine or spirits in bulk made from agricultural products produced by the holder of this license, and to sell wine or spirits in bulk made from the grower's own agricultural products to a winery or distillery in the state of Washington or to export in bulk for sale out-of-state. The annual fee for a grower's license shall be seventy-five dollars. For the purpose of chapter 66.28 RCW, a grower licensee shall be deemed a manufacturer. [2010 c 290 § 4; 1986 c 214 § 1.]

**66.24.530 Duty free exporter's license—Class S—Fee.** (1) There shall be a license to be designated as a class S license to qualified duty free exporters authorizing such exporters to sell beer and wine to vessels for consumption outside the state of Washington.

(2) To qualify for a license under subsection (1) of this section, the exporter shall have:

(a) An importer's basic permit issued by the United States bureau of alcohol, tobacco, and firearms and a customs house license in conjunction with a common carriers bond;

(b) A customs bonded warehouse, or be able to operate from a foreign trade zone; and

(c) A notarized signed statement from the purchaser stating that the product is for consumption outside the state of Washington.

(3) The license for qualified duty free exporters shall authorize the duty free exporter to purchase from a brewery, winery, beer wholesaler, wine wholesaler, beer importer, or wine importer licensed by the state of Washington.

(4) Beer and/or wine sold and delivered in this state to duty free exporters for use under this section shall be considered exported from the state.

(5) The fee for this license shall be one hundred dollars per annum. [1987 c 386 § 1.]

**66.24.540 Motel license—Fee.** There shall be a retailer's license to be designated as a motel license. The motel license may be issued to a motel regardless of whether it holds any other class of license under this title. No license may be issued to a motel offering rooms to its guests on an hourly basis. The license authorizes the licensee to:

(1) Sell, at retail, in locked honor bars, spirits in individual bottles not to exceed fifty milliliters, beer in individual cans or bottles not to exceed twelve ounces, and wine in individual bottles not to exceed one hundred eighty-seven milliliters, to registered guests of the motel for consumption in guest rooms.

(a) Each honor bar must also contain snack foods. No more than one-half of the guest rooms may have honor bars.

(b) All spirits to be sold under the license must be purchased from the board.

(c) The licensee shall require proof of age from the guest renting a guest room and requesting the use of an honor bar. The guest shall also execute an affidavit verifying that no one under twenty-one years of age shall have access to the spirits, beer, and wine in the honor bar.

(2) Provide without additional charge, to overnight guests of the motel, beer and wine by the individual serving for on-premises consumption at a specified regular date,

time, and place as may be fixed by the board. Self-service by attendees is prohibited. All beer and wine service must be done by an alcohol server as defined in RCW 66.20.300 and comply with RCW 66.20.310.

The annual fee for a motel license is five hundred dollars.

"Motel" as used in this section means a transient accommodation licensed under chapter 70.62 RCW.

As used in this section, "spirits," "beer," and "wine" have the meanings defined in RCW 66.04.010. [1999 c 129 § 1; 1997 c 321 § 34; 1993 c 511 § 1.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**66.24.550 Beer and wine gift delivery license—Fee—Limitations.** There shall be a beer and wine retailer's license to be designated as a beer and wine gift delivery license to solicit, take orders for, sell, and deliver beer and/or wine in bottles and original packages to persons other than the person placing the order. A beer and wine gift delivery license may be issued only to a business solely engaged in the sale or sale and delivery of gifts at retail which holds no other class of license under this title or to a person in the business of selling flowers or floral arrangements at retail. No minimum beer and/or wine inventory requirement shall apply to holders of beer and wine gift delivery licenses. The fee for this license is seventy-five dollars per year. Delivery of beer and/or wine under a beer and wine gift delivery license shall be made in accordance with all applicable provisions of this title and the rules of the board, and no beer and/or wine so delivered shall be opened on any premises licensed under this title. A beer and wine gift delivery license does not authorize door-to-door solicitation of gift wine delivery orders. Deliveries of beer and/or wine under a beer and wine gift delivery license shall be made only in conjunction with gifts or flowers. [1997 c 321 § 35; 1989 c 149 § 1; 1986 c 40 § 1; 1982 c 85 § 10.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**66.24.570 Sports entertainment facility license—Fee—Caterer's endorsement—Financial arrangements—Reporting.** (1) There is a license for sports entertainment facilities to be designated as a sports entertainment facility license to sell beer, wine, and spirits at retail, for consumption upon the premises only, the license to be issued to the entity providing food and beverage service at a sports entertainment facility as defined in this section. The cost of the license is two thousand five hundred dollars per annum.

(2) For purposes of this section, a sports entertainment facility includes a publicly or privately owned arena, coliseum, stadium, or facility where sporting events are presented for a price of admission. The facility does not have to be exclusively used for sporting events.

(3) The board may impose reasonable requirements upon a licensee under this section, such as requirements for the availability of food and victuals including but not limited to hamburgers, sandwiches, salads, or other snack food. The board may also restrict the type of events at a sports entertainment facility at which beer, wine, and spirits may be served. When imposing conditions for a licensee, the board must consider the seating accommodations, eating facilities, and

circulation patterns in such a facility, and other amenities available at a sports entertainment facility.

(4)(a) The board may issue a caterer's endorsement to the license under this section to allow the licensee to remove from the liquor stocks at the licensed premises, for use as liquor for sale and service at event locations at a specified date and place not currently licensed by the board. If the event is open to the public, it must be sponsored by a society or organization as defined by RCW 66.24.375. If attendance at the event is limited to members or invited guests of the sponsoring individual, society, or organization, the requirement that the sponsor must be a society or organization as defined by RCW 66.24.375 is waived. Cost of the endorsement is three hundred fifty dollars.

(b) The holder of this license with catering endorsement shall, if requested by the board, notify the board or its designee of the date, time, place, and location of any catered event. Upon request, the licensee shall provide to the board all necessary or requested information concerning the society or organization that will be holding the function at which the endorsed license will be utilized.

(5) The board may issue an endorsement to the beer, wine, and spirits sports entertainment facility license that allows the holder of a beer, wine, and spirits sports entertainment facility license to sell for off-premises consumption wine vinted and bottled in the state of Washington and carrying a label exclusive to the license holder selling the wine. Spirits and beer may not be sold for off-premises consumption under this section. The annual fee for the endorsement under this section is one hundred twenty dollars.

(6)(a) A licensee and an affiliated business may enter into arrangements with a manufacturer, importer, or distributor for brand advertising at the sports entertainment facility or promotion of events held at the sports entertainment facility, with a capacity of five thousand people or more. The financial arrangements providing for the brand advertising or promotion of events shall not be used as an inducement to purchase the products of the manufacturer, importer, or distributor entering into the arrangement nor shall it result in the exclusion of brands or products of other companies.

(b) The arrangements allowed under this subsection (6) are an exception to arrangements prohibited under \*RCW 66.28.010. The board shall monitor the impacts of these arrangements. The board may conduct audits of the licensee and the affiliated business to determine compliance with this subsection (6). Audits may include but are not limited to product selection at the facility; purchase patterns of the licensee; contracts with the liquor manufacturer, importer, or distributor; and the amount allocated or used for liquor advertising by the licensee, affiliated business, manufacturer, importer, or distributor under the arrangements.

(c) The board shall report to the appropriate committees of the legislature by December 30, 2008, and biennially thereafter, on the impacts of arrangements allowed between sports entertainment licensees and liquor manufacturers, importers, and distributors for brand advertising and promotion of events at the facility. [2007 c 369 § 2; 2003 c 345 § 3; 2001 c 199 § 5; 1997 c 321 § 36; 1996 c 218 § 1.]

**\*Reviser's note:** RCW 66.28.010 was amended by 2009 c 373 § 5 without cognizance of its repeal by 2009 c 506 § 11. For rule of construction

(2010 Ed.)

concerning sections amended and repealed in the same legislative session, see RCW 1.12.025.

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**66.24.580 Public house license—Fees—Limitations. (Effective until July 1, 2011.)** (1) A public house license allows the licensee:

(a) To annually manufacture no less than two hundred fifty gallons and no more than two thousand four hundred barrels of beer on the licensed premises;

(b) To sell product, that is produced on the licensed premises, at retail on the licensed premises for consumption on the licensed premises;

(c) To sell beer or wine not of its own manufacture for consumption on the licensed premises if the beer or wine has been purchased from a licensed beer or wine wholesaler;

(d) To hold other classes of retail licenses at other locations without being considered in violation of \*RCW 66.28.010;

(e) To apply for and, if qualified and upon the payment of the appropriate fee, be licensed as a spirits, beer, and wine restaurant to do business at the same location. This fee is in addition to the fee charged for the basic public house license.

(2) While the holder of a public house license is not to be considered in violation of the prohibitions of ownership or interest in a retail license in \*RCW 66.28.010, the remainder of \*RCW 66.28.010 applies to such licensees.

(3) A public house licensee must pay all applicable taxes on production as are required by law, and all appropriate taxes must be paid for any product sold at retail on the licensed premises.

(4) The employees of the licensee must comply with the provisions of mandatory server training in RCW 66.20.300 through 66.20.350.

(5) The holder of a public house license may not hold a wholesaler's or importer's license, act as the agent of another manufacturer, wholesaler, or importer, or hold a brewery or winery license.

(6) The annual license fee for a public house is one thousand one hundred five dollars.

(7) The holder of a public house license may hold other licenses at other locations if the locations are approved by the board.

(8) Existing holders of annual retail liquor licenses may apply for and, if qualified, be granted a public house license at one or more of their existing liquor licensed locations without discontinuing business during the application or construction stages. [2009 c 507 § 13; 1999 c 281 § 6; 1996 c 224 § 2.]

**\*Reviser's note:** RCW 66.28.010 was amended by 2009 c 373 § 5 without cognizance of its repeal by 2009 c 506 § 11. For rule of construction concerning sections amended and repealed in the same legislative session, see RCW 1.12.025.

**Expiration date—2009 c 507:** See note following RCW 66.08.225.

**Intent—1996 c 224:** "It is the intent of the legislature that holders of annual on-premises retail liquor licenses be allowed to operate manufacturing facilities on those premises. This privilege is viewed as a means of enhancing and meeting the needs of the licensees' patrons without being in violation of the tied-house statute prohibitions of RCW 66.28.010. Furthermore, it is the intention of the legislature that this type of business not be viewed as primarily a manufacturing facility. Rather, the public house licensee shall be viewed as an annual retail licensee who is making malt liquor

for on-premises consumption by the patrons of the licensed premises." [1996 c 224 § 1.]

**66.24.580 Public house license—Fees—Limitations.** (Effective July 1, 2011.) (1) A public house license allows the licensee:

(a) To annually manufacture no less than two hundred fifty gallons and no more than two thousand four hundred barrels of beer on the licensed premises;

(b) To sell product, that is produced on the licensed premises, at retail on the licensed premises for consumption on the licensed premises;

(c) To sell beer or wine not of its own manufacture for consumption on the licensed premises if the beer or wine has been purchased from a licensed beer or wine wholesaler;

(d) To hold other classes of retail licenses at other locations without being considered in violation of RCW 66.28.010;

(e) To apply for and, if qualified and upon the payment of the appropriate fee, be licensed as a spirits, beer, and wine restaurant to do business at the same location. This fee is in addition to the fee charged for the basic public house license.

(2) While the holder of a public house license is not to be considered in violation of the prohibitions of ownership or interest in a retail license in RCW 66.28.010, the remainder of RCW 66.28.010 applies to such licensees.

(3) A public house licensee must pay all applicable taxes on production as are required by law, and all appropriate taxes must be paid for any product sold at retail on the licensed premises.

(4) The employees of the licensee must comply with the provisions of mandatory server training in RCW 66.20.300 through 66.20.350.

(5) The holder of a public house license may not hold a wholesaler's or importer's license, act as the agent of another manufacturer, wholesaler, or importer, or hold a brewery or winery license.

(6) The annual license fee for a public house is one thousand dollars.

(7) The holder of a public house license may hold other licenses at other locations if the locations are approved by the board.

(8) Existing holders of annual retail liquor licenses may apply for and, if qualified, be granted a public house license at one or more of their existing liquor licensed locations without discontinuing business during the application or construction stages. [1999 c 281 § 6; 1996 c 224 § 2.]

**Intent—1996 c 224:** "It is the intent of the legislature that holders of annual on-premises retail liquor licenses be allowed to operate manufacturing facilities on those premises. This privilege is viewed as a means of enhancing and meeting the needs of the licensees' patrons without being in violation of the tied-house statute prohibitions of RCW 66.28.010. Furthermore, it is the intention of the legislature that this type of business not be viewed as primarily a manufacturing facility. Rather, the public house licensee shall be viewed as an annual retail licensee who is making malt liquor for on-premises consumption by the patrons of the licensed premises." [1996 c 224 § 1.]

**66.24.590 Hotel license—Fee—Limitations.** (1) There shall be a retailer's license to be designated as a hotel license. No license may be issued to a hotel offering rooms to its guests on an hourly basis. Food service provided for room service, banquets or conferences, or restaurant opera-

tion under this license shall meet the requirements of rules adopted by the board.

(2) The hotel license authorizes the licensee to:

(a) Sell spiritous liquor, beer, and wine, by the individual glass, at retail, for consumption on the premises, including mixed drinks and cocktails compounded and mixed on the premises;

(b) Sell, at retail, from locked honor bars, in individual units, spirits not to exceed fifty milliliters, beer in individual units not to exceed twelve ounces, and wine in individual bottles not to exceed three hundred eighty-five milliliters, to registered guests of the hotel for consumption in guest rooms. The licensee shall require proof of age from the guest renting a guest room and requesting the use of an honor bar. The guest shall also execute an affidavit verifying that no one under twenty-one years of age shall have access to the spirits, beer, and wine in the honor bar;

(c) Provide without additional charge, to overnight guests, spirits, beer, and wine by the individual serving for on-premises consumption at a specified regular date, time, and place as may be fixed by the board. Self-service by attendees is prohibited;

(d) Sell beer, including strong beer, wine, or spirits, in the manufacturer's sealed container or by the individual drink to guests through room service, or through service to occupants of private residential units which are part of the buildings or complex of buildings that include the hotel;

(e) Sell beer, including strong beer, or wine, in the manufacturer's sealed container at retail sales locations within the hotel premises;

(f) Sell for on or off-premises consumption, including through room service and service to occupants of private residential units managed by the hotel, wine carrying a label exclusive to the hotel license holder;

(g) Place in guest rooms at check-in, a complimentary bottle of beer, including strong beer, or wine in a manufacturer-sealed container, and make a reference to this service in promotional material.

(3) If all or any facilities for alcoholic beverage service and the preparation, cooking, and serving of food are operated under contract or joint venture agreement, the operator may hold a license separate from the license held by the operator of the hotel. Food and beverage inventory used in separate licensed operations at the hotel may not be shared and shall be separately owned and stored by the separate licensees.

(4) All spirits to be sold under this license must be purchased from the board.

(5) All on-premise alcoholic beverage service must be done by an alcohol server as defined in RCW 66.20.300 and must comply with RCW 66.20.310.

(6)(a) The hotel license allows the licensee to remove from the liquor stocks at the licensed premises, liquor for sale and service at event locations at a specified date and place not currently licensed by the board. If the event is open to the public, it must be sponsored by a society or organization as defined by RCW 66.24.375. If attendance at the event is limited to members or invited guests of the sponsoring individual, society, or organization, the requirement that the sponsor must be a society or organization as defined by RCW 66.24.375 is waived.

(b) The holder of this license shall, if requested by the board, notify the board or its designee of the date, time, place, and location of any event. Upon request, the licensee shall provide to the board all necessary or requested information concerning the society or organization that will be holding the function at which the endorsed license will be utilized.

(c) Licensees may cater events on a domestic winery premises.

(7) The holder of this license or its manager may furnish spirits, beer, or wine to the licensee's employees who are twenty-one years of age or older free of charge as may be required for use in connection with instruction on spirits, beer, and wine. The instruction may include the history, nature, values, and characteristics of spirits, beer, or wine, the use of wine lists, and the methods of presenting, serving, storing, and handling spirits, beer, or wine. The licensee must use the beer or wine it obtains under its license for the sampling as part of the instruction. The instruction must be given on the premises of the licensee.

(8) Minors may be allowed in all areas of the hotel where alcohol may be consumed; however, the consumption must be incidental to the primary use of the area. These areas include, but are not limited to, tennis courts, hotel lobbies, and swimming pool areas. If an area is not a mixed use area, and is primarily used for alcohol service, the area must be designated and restricted to access by minors.

(9) The annual fee for this license is two thousand dollars.

(10) As used in this section, "hotel," "spirits," "beer," and "wine" have the meanings defined in RCW 66.24.410 and 66.04.010. [2008 c 41 § 11; 2007 c 370 § 11.]

**Effective date—2008 c 41 §§ 3, 10, and 11:** See note following RCW 66.20.310.

**Effective date—2007 c 370 §§ 10-20:** See note following RCW 66.04.010.

**66.24.600 Nightclub license.** (1) There shall be a spirits, beer, and wine nightclub license to sell spirituous liquor by the drink, beer, and wine at retail, for consumption on the licensed premises.

(2) The license may be issued only to a person whose business includes the sale and service of alcohol to the person's customers, has food sales and service incidental to the sale and service of alcohol, and has primary business hours between 9:00 p.m. and 2:00 a.m.

(3) Minors may be allowed on the licensed premises but only in areas where alcohol is not served or consumed.

(4) The annual fee for this license is two thousand dollars. The fee for the license shall be reviewed from time to time and set at such a level sufficient to defray the cost of licensing and enforcing this licensing program. The fee shall be fixed by rule adopted by the board in accordance with the provisions of the administrative procedure act, chapter 34.05 RCW.

(5) Local governments may petition the board to request that further restrictions be imposed on a spirits, beer, and wine nightclub license in the interest of public safety. Examples of further restrictions a local government may request are: No minors allowed on the entire premises, submitting a security plan, or signing a good neighbor agreement with the local government.

(2010 Ed.)

(6) The total number of spirits, beer, and wine nightclub licenses are subject to the requirements of RCW 66.24.420(4). However, the board shall refuse a spirits, beer, and wine nightclub license to any applicant if the board determines that the spirits, beer, and wine nightclub licenses already granted for the particular locality are adequate for the reasonable needs of the community.

(7) The board may adopt rules to implement this section. [2009 c 271 § 1.]

**66.24.900 Construction—Chapter applicable to state registered domestic partnerships—2009 c 521.** For the purposes of this chapter, the terms spouse, marriage, marital, husband, wife, widow, widower, next of kin, and family shall be interpreted as applying equally to state registered domestic partnerships or individuals in state registered domestic partnerships as well as to marital relationships and married persons, and references to dissolution of marriage shall apply equally to state registered domestic partnerships that have been terminated, dissolved, or invalidated, to the extent that such interpretation does not conflict with federal law. Where necessary to implement chapter 521, Laws of 2009, gender-specific terms such as husband and wife used in any statute, rule, or other law shall be construed to be gender neutral, and applicable to individuals in state registered domestic partnerships. [2009 c 521 § 146.]

## Chapter 66.28 RCW

### MISCELLANEOUS REGULATORY PROVISIONS

#### Sections

66.28.010	Manufacturers, importers, distributors, and authorized representatives barred from interest in retail business or location—Advances prohibited—"Financial interest" defined—Exceptions.
66.28.030	Responsibility of breweries, microbreweries, wineries, certificate of approval holders, and importers for conduct of distributors—Penalties.
66.28.040	Giving away of liquor prohibited—Exceptions.
66.28.042	Providing food and beverages for business meetings permitted.
66.28.043	Providing food, beverages, transportation, and admission to events permitted.
66.28.045	Furnishing samples to board—Standards for accountability—Regulations.
66.28.050	Solicitation of orders prohibited.
66.28.060	Distillers to make monthly report—No sale except to board.
66.28.070	Restrictions on purchases of beer or wine by retail beer or wine licensees or special occasion licensees.
66.28.080	Permit for music and dancing upon licensed premises.
66.28.090	Licensed premises or banquet permit premises open to inspection—Failure to allow, violation.
66.28.100	Spirits to be labeled—Contents.
66.28.110	Wine to be labeled—Contents.
66.28.120	Malt liquor to be labeled—Contents.
66.28.130	Selling or serving of liquor to or consumption by standing or walking person.
66.28.140	Removing family beer or wine from home for use at wine tastings or competitions—Conditions.
66.28.150	Breweries, microbreweries, wineries, distilleries, distributors, certificate of approval holders, and agents authorized to conduct courses of instruction on beer and wine.
66.28.155	Breweries, microbreweries, wineries, distilleries, distributors, certificate of approval holders, and agents authorized to conduct educational activities on licensed premises of retailer.
66.28.160	Promotion of liquor at colleges and universities.
66.28.170	Wine or malt beverage manufacturers—Discrimination in price to purchaser for resale prohibited.
66.28.180	Price list—Contents—Contracts and memoranda with distributors.
66.28.190	Sales of nonliquor food and food ingredients.

- 66.28.200 Keg registration—Special endorsement for grocery store license—Requirements of seller.
- 66.28.210 Keg registration—Requirements of purchaser.
- 66.28.220 Keg registration—Identification of containers—Rules—Fees—Sale in violation of rules unlawful.
- 66.28.230 Keg registration—Furnishing to minors—Penalties.
- 66.28.240 Keg registration—State preemption.
- 66.28.260 Beer distributors—Restricted transactions.
- 66.28.270 Cash payments—Electronic funds transfers.
- 66.28.280 Three-tier system—Intent.
- 66.28.285 Three-tier system—Definitions.
- 66.28.290 Three-tier system—Direct or indirect interests between industry members, affiliates, and retailers.
- 66.28.295 Three-tier system—Direct or indirect interests—Allowed activities.
- 66.28.300 Three-tier system—Undue influence—Determination by board.
- 66.28.305 Three-tier system—Money advances—Prohibition.
- 66.28.310 Three-tier system—Promotional items.
- 66.28.315 Three-tier system—Recordkeeping.
- 66.28.320 Three-tier system—Rule adoption.

*Grower licensee deemed a manufacturer: RCW 66.24.520.*

*Labels, unlawful refilling, etc., of trademarked containers: Chapter 19.76 RCW.*

*Minors, access to tobacco, role of liquor control board: Chapter 70.155 RCW.*

**66.28.010 Manufacturers, importers, distributors, and authorized representatives barred from interest in retail business or location—Advances prohibited—"Financial interest" defined—Exceptions.** (1)(a) No manufacturer, importer, distributor, or authorized representative, or person financially interested, directly or indirectly, in such business; whether resident or nonresident, shall have any financial interest, direct or indirect, in any licensed retail business, unless the retail business is owned by a corporation in which a manufacturer or importer has no direct stock ownership and there are no interlocking officers and directors, the retail license is held by a corporation that is not owned directly or indirectly by a manufacturer or importer, the sales of liquor are incidental to the primary activity of operating the property as a hotel, alcoholic beverages produced by the manufacturer or importer or their subsidiaries are not sold at the licensed premises, and the board reviews the ownership and proposed method of operation of all involved entities and determines that there will not be an unacceptable level of control or undue influence over the operation or the retail licensee; nor shall any manufacturer, importer, distributor, or authorized representative own any of the property upon which such licensed persons conduct their business; nor shall any such licensed person, under any arrangement whatsoever, conduct his or her business upon property in which any manufacturer, importer, distributor, or authorized representative has any interest unless title to that property is owned by a corporation in which a manufacturer has no direct stock ownership and there are no interlocking officers or directors, the retail license is held by a corporation that is not owned directly or indirectly by the manufacturer, the sales of liquor are incidental to the primary activity of operating the property either as a hotel or as an amphitheater offering live musical and similar live entertainment activities to the public, alcoholic beverages produced by the manufacturer or any of its subsidiaries are not sold at the licensed premises, and the board reviews the ownership and proposed method of operation of all involved entities and determines that there will not be an unacceptable level of control or undue influence over the operation of the retail licensee. Except as provided in subsection (3) of this section, no manufacturer, importer, distributor, or authorized representative shall advance moneys or moneys' worth to a licensed person under an arrangement, nor shall such licensed person receive, under an arrangement, an advance of moneys or moneys' worth. "Person" as used in this section only shall not include those state or federally chartered banks, state or federally chartered savings and loan associations, state or federally chartered mutual savings banks, or institutional investors which are not controlled directly or indirectly by a manufacturer, importer, distributor, or authorized representative as long as the bank, savings and loan association, or institutional investor does not influence or attempt to influence the purchasing practices of the retailer with respect to alcoholic beverages. Except as otherwise provided in this section, no manufacturer, importer, distributor, or authorized representative shall be eligible to receive or hold a retail license under this title, nor shall such manufacturer, importer, distributor, or authorized representative sell at retail any liquor as herein defined. A corporation granted an exemption under this subsection may use debt instruments issued in connection with financing construction or operations of its facilities.

(b) Nothing in this section shall prohibit a licensed domestic brewery or microbrewery from being licensed as a retailer pursuant to chapter 66.24 RCW for the purpose of selling beer or wine at retail on the brewery premises and at one additional off-site retail only location and nothing in this section shall prohibit a domestic winery from being licensed as a retailer pursuant to chapter 66.24 RCW for the purpose of selling beer or wine at retail on the winery premises. Such beer and wine so sold at retail shall be subject to the taxes imposed by RCW 66.24.290 and 66.24.210 and to reporting and bonding requirements as prescribed by regulations adopted by the board pursuant to chapter 34.05 RCW, and beer and wine that is not produced by the brewery or winery shall be purchased from a licensed beer or wine distributor. Nothing in this section shall prohibit a microbrewery holding a beer and/or wine restaurant license under RCW 66.24.320 from holding the same privileges and endorsements attached to the beer and/or wine restaurant license. Nothing in this section shall prohibit a licensed craft distillery from selling spirits of its own production under RCW 66.24.145.

(c) Nothing in this section shall prohibit a licensed distiller, domestic brewery, microbrewery, domestic winery, or a lessee of a licensed domestic brewer, microbrewery, or domestic winery, from being licensed as a spirits, beer, and wine restaurant pursuant to chapter 66.24 RCW for the purpose of selling liquor at a spirits, beer, and wine restaurant premises on the property on which the primary manufacturing facility of the licensed distiller, domestic brewer, microbrewery, or domestic winery is located or on contiguous property owned or leased by the licensed distiller, domestic brewer, microbrewery, or domestic winery as prescribed by rules adopted by the board pursuant to chapter 34.05 RCW. Nothing in this section shall prohibit a microbrewery holding a spirits, beer, and wine restaurant license under RCW 66.24.420 from holding the same privileges and endorsements attached to the spirits, beer, and wine restaurant license. This section does not prohibit a brewery or microbrewery holding a spirits, beer, and wine restaurant license or a beer and/or wine license under chapter 66.24 RCW operated on the premises of the brewery or microbrewery from holding a second retail only license at a location separate from the premises of the brewery or microbrewery.

(d) Nothing in this section prohibits retail licensees with a caterer's endorsement issued under RCW 66.24.320 or 66.24.420 from operating on a domestic winery premises.

(e) Nothing in this section prohibits an organization qualifying under RCW 66.24.375 formed for the purpose of constructing and operating a facility to promote Washington wines from holding retail licenses on the facility property or leasing all or any portion of such facility property to a retail licensee on the facility property if the members of the board of directors or officers of the board for the organization include officers, directors, owners, or employees of a licensed domestic winery. Financing for the construction of the facility must include both public and private money.

(f) Nothing in this section prohibits a bona fide charitable nonprofit society or association registered under section 501(c)(3) of the internal revenue code, or a local wine industry association registered under section 501(c)(6) of the internal revenue code as it exists on July 22, 2007, and having an officer, director, owner, or employee of a licensed domestic winery or a wine certificate of approval holder on its board of directors from holding a special occasion license under RCW 66.24.380.

(g)(i) Nothing in this section prohibits domestic wineries and retailers licensed under chapter 66.24 RCW from producing, jointly or together with regional, state, or local wine industry associations, brochures and materials promoting tourism in Washington state which contain information regarding retail licensees, domestic wineries, and their products.

(ii) Nothing in this section prohibits: (A) Domestic wineries, domestic breweries, microbreweries, and certificate of approval holders licensed under this chapter from listing on their internet web sites information related to retailers who sell or promote their products, including direct links to the retailers' internet web sites; and (B) retailers licensed under this chapter from listing on their internet web sites information related to domestic wineries, domestic breweries, microbreweries, and certificate of approval holders whose products those retailers sell or promote, including direct links to the domestic wineries', domestic breweries', microbreweries', and certificate of approval holders' web sites.

(h) Nothing in this section prohibits the performance of personal services offered from time to time by a domestic winery or certificate of approval holder licensed under RCW 66.24.206(1)(a) for or on behalf of a licensed retail business when the personal services are (i) conducted at a licensed premises, and (ii) intended to inform, educate, or enhance customers' knowledge or experience of the manufacturer's products. The performance of personal services may include participation and pouring at the premises of a retailer holding a spirits, beer, and wine restaurant license, a wine and/or beer restaurant license, ((☞)) a specialty wine shop license, a special

occasion license, or a private club license; bottle signings; and other similar informational or educational activities. A domestic winery or certificate of approval holder is not obligated to perform any such personal services, and a retail licensee may not require a domestic winery or certificate of approval holder to conduct any personal service as a condition for selling any alcohol to the retail licensee. Except as provided in RCW 66.28.150, the cost of sampling may not be borne, directly or indirectly, by any liquor manufacturer, importer, or distributor. Nothing in this section prohibits domestic wineries and retail licensees from identifying the wineries on private labels authorized under RCW \*66.24.400, 66.24.425, ((and)) 66.24.450, 66.24.360, and 66.24.371.

(i) Until July 1, 2007, nothing in this section prohibits a nonprofit state-wide organization of microbreweries formed for the purpose of promoting Washington's craft beer industry as a trade association registered as a 501(c) with the internal revenue service from holding a special occasion license to conduct up to six beer festivals.

(j) Nothing in this section shall prohibit a manufacturer, importer, or distributor from entering into an arrangement with any holder of a sports/entertainment facility license or an affiliated business for brand advertising at the licensed facility or promoting events held at the sports entertainment facility as authorized under RCW 66.24.570.

(2) Financial interest, direct or indirect, as used in this section, shall include any interest, whether by stock ownership, mortgage, lien, or through interlocking directors, or otherwise. Pursuant to rules promulgated by the board in accordance with chapter 34.05 RCW manufacturers, distributors, and importers may perform, and retailers may accept the service of building, rotating and restocking case displays and stock room inventories; rotating and rearranging can and bottle displays of their own products; provide point of sale material and brand signs; price case goods of their own brands; and perform such similar normal business services as the board may by regulation prescribe.

(3)(a) This section does not prohibit a manufacturer, importer, or distributor from providing services to a special occasion licensee for: (i) Installation of draft beer dispensing equipment or advertising, (ii) advertising, pouring, or dispensing of beer or wine at a beer or wine tasting exhibition or judging event, or (iii) a special occasion licensee from receiving any such services as may be provided by a manufacturer, importer, or distributor. Nothing in this section shall prohibit a retail licensee, or any person financially interested, directly or indirectly, in such a retail licensee from having a financial interest, direct or indirect, in a business which provides, for a compensation commensurate in value to the services provided, bottling, canning or other services to a manufacturer, so long as the retail licensee or person interested therein has no direct financial interest in or control of said manufacturer.

(b) A person holding contractual rights to payment from selling a liquor distributor's business and transferring the license shall not be deemed to have a financial interest under this section if the person (i) lacks any ownership in or control of the distributor, (ii) is not employed by the distributor, and (iii) does not influence or attempt to influence liquor purchases by retail liquor licensees from the distributor.

(c) The board shall adopt such rules as are deemed necessary to carry out the purposes and provisions of subsections (1)(g) and (h) and (3)(a) of this section in accordance with the administrative procedure act, chapter 34.05 RCW.

(4) A license issued under RCW 66.24.395 does not constitute a retail license for the purposes of this section.

(5) A public house license issued under RCW 66.24.580 does not violate the provisions of this section as to a retailer having an interest directly or indirectly in a liquor-licensed manufacturer. [2009 c 373 § 5; 2008 c 94 § 5. Prior: 2007 c 370 § 2; 2007 c 369 § 1; 2007 c 222 § 3; 2007 c 217 § 1; prior: 2006 c 330 § 28; 2006 c 92 § 1; 2006 c 43 § 1; prior: 2004 c 160 § 9; 2004 c 62 § 1; 2002 c 109 § 1; 2000 c 177 § 1; prior: 1998 c 127 § 1; 1998 c 126 § 11; 1997 c 321 § 46; prior: 1996 c 224 § 3; 1996 c 106 § 1; 1994 c 63 § 1; 1992 c 78 § 1; 1985 c 363 § 1; 1982 c 85 § 7; 1977 ex.s. c 219 § 2; 1975-'76 2nd ex.s. c 74 § 3; 1975 1st ex.s. c 173 § 6; 1937 c 217 § 6; 1935 c 174 § 14; 1933 ex.s. c 62 § 90; RRS § 7306-90; prior: 1909 c 84 § 1.]

**Reviser's note:** \*(1) RCW 66.24.400 was amended by 2008 c 41 § 10, removing reference to private label identification from the statute.

(2) RCW 66.28.010 was amended by 2009 c 373 § 5 without cognizance of its repeal by 2009 c 506 § 11. For rule of construction concerning sections amended and repealed in the same legislative session, see RCW 1.12.025.

**Construction—Severability—2006 c 330:** See RCW 15.89.900 and 15.89.901.

**Effective date—2004 c 160:** See note following RCW 66.04.010.

**Intent—1996 c 224:** See note following RCW 66.24.580.

*Giving away of liquor prohibited—Exceptions:* RCW 66.28.040.

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**66.28.010 Manufacturers, importers, distributors, and authorized representatives barred from interest in retail business or location—Advances prohibited—"Financial interest" defined—Exceptions.** [2008 c 94 § 5. Prior: 2007 c 370 § 2; 2007 c 369 § 1; 2007 c 222 § 3; 2007 c 217 § 1; prior: 2006 c 330 § 28; 2006 c 92 § 1; 2006 c 43 § 1; prior: 2004 c 160 § 9; 2004 c 62 § 1; 2002 c 109 § 1; 2000 c 177 § 1; prior: 1998 c 127 § 1; 1998 c 126 § 11; 1997 c 321 § 46; prior: 1996 c 224 § 3; 1996 c 106 § 1; 1994 c 63 § 1; 1992 c 78 § 1; 1985 c 363 § 1; 1982 c 85 § 7; 1977 ex.s. c 219 § 2; 1975-'76 2nd ex.s. c 74 § 3; 1975 1st ex.s. c 173 § 6; 1937 c 217 § 6; 1935 c 174 § 14; 1933 ex.s. c 62 § 90; RRS § 7306-90; prior: 1909 c 84 § 1.] Repealed by 2009 c 506 § 11. See Supplementary Table of Disposition of Former RCW Sections, this volume.

**Reviser's note:** RCW 66.28.010 was amended by 2009 c 373 § 5 without cognizance of its repeal by 2009 c 506 § 11. For rule of construction concerning sections amended and repealed in the same legislative session, see RCW 1.12.025.

**66.28.030 Responsibility of breweries, microbreweries, wineries, certificate of approval holders, and importers for conduct of distributors—Penalties.** Every domestic brewery and microbrewery, domestic winery, certificate of approval holder, licensed wine importer, and licensed beer importer shall be responsible for the conduct of any licensed beer or wine distributor in selling, or contracting to sell, to retail licensees, beer or wine manufactured by such domestic brewery, microbrewery, domestic winery, manufacturer holding a certificate of approval, sold by an authorized representative holding a certificate of approval, or imported by such beer or wine importer. Where the board finds that any licensed beer or wine distributor has violated any of the provisions of this title or of the regulations of the board in selling or contracting to sell beer or wine to retail licensees, the board may, in addition to any punishment inflicted or imposed upon such distributor, prohibit the sale of the brand or brands of beer or wine involved in such violation to any or all retail licensees within the trade territory usually served by such distributor for such period of time as the board may fix, irrespective of whether the brewer manufacturing such beer or the beer importer importing such beer or the domestic winery manufacturing such wine or the wine importer importing such wine or the certificate of approval holder manufacturing such beer or wine or acting as authorized representative actually participated in such violation. [2004 c 160 § 10; 1997 c 321 § 47; 1975 1st ex.s. c 173 § 8; 1969 ex.s. c 21 § 6; 1939 c 172 § 8 (adding new section 27-D to 1933 ex.s. c 62); RRS § 7306-27D.]

**Effective date—2004 c 160:** See note following RCW 66.04.010.

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**66.28.040 Giving away of liquor prohibited—Exceptions.** Except as permitted by the board under RCW 66.20.010, no domestic brewery, microbrewery, distributor, distiller, domestic winery, importer, rectifier, certificate of approval holder, or other manufacturer of liquor shall, within the state of Washington, give to any person any liquor; but nothing in this section nor in \*RCW 66.28.010 shall prevent a domestic brewery, microbrewery, distributor, domestic winery, distiller, certificate of approval holder, or importer from furnishing samples of beer, wine, or spirituous liquor to

authorized licensees for the purpose of negotiating a sale, in accordance with regulations adopted by the liquor control board, provided that the samples are subject to taxes imposed by RCW 66.24.290 and 66.24.210, and in the case of spirituous liquor, any product used for samples must be purchased at retail from the board; nothing in this section shall prevent the furnishing of samples of liquor to the board for the purpose of negotiating the sale of liquor to the state liquor control board; nothing in this section shall prevent a domestic brewery, microbrewery, domestic winery, distillery, certificate of approval holder, or distributor from furnishing beer, wine, or spirituous liquor for instructional purposes under RCW 66.28.150; nothing in this section shall prevent a domestic winery, certificate of approval holder, or distributor from furnishing wine without charge, subject to the taxes imposed by RCW 66.24.210, to a not-for-profit group organized and operated solely for the purpose of enology or the study of viticulture which has been in existence for at least six months and that uses wine so furnished solely for such educational purposes or a domestic winery, or an out-of-state certificate of approval holder, from furnishing wine without charge or a domestic brewery, or an out-of-state certificate of approval holder, from furnishing beer without charge, subject to the taxes imposed by RCW 66.24.210 or 66.24.290, or a domestic distiller licensed under RCW 66.24.140 or an accredited representative of a distiller, manufacturer, importer, or distributor of spirituous liquor licensed under RCW 66.24.310, from furnishing spirits without charge, to a nonprofit charitable corporation or association exempt from taxation under section 501(c)(3) or (6) of the internal revenue code of 1986 (26 U.S.C. Sec. 501(c)(3) or (6)) for use consistent with the purpose or purposes entitling it to such exemption; nothing in this section shall prevent a domestic brewery or microbrewery from serving beer without charge, on the brewery premises; nothing in this section shall prevent donations of wine for the purposes of RCW 66.12.180; nothing in this section shall prevent a domestic winery from serving wine without charge, on the winery premises; and nothing in this section shall prevent a craft distillery from serving spirits without charge, on the distillery premises subject to RCW 66.24.145. [2009 c 373 § 8. Prior: 2008 c 94 § 6; 2008 c 41 § 12; 2004 c 160 § 11; 2000 c 179 § 1; prior: 1998 c 256 § 1; 1998 c 126 § 12; 1997 c 39 § 1; 1987 c 452 § 15; 1983 c 13 § 2; 1983 c 3 § 165; 1982 1st ex.s. c 26 § 2; 1981 c 182 § 2; 1975 1st ex.s. c 173 § 10; 1969 ex.s. c 21 § 7; 1935 c 174 § 4; 1933 ex.s. c 62 § 30; RRS § 7306-30.]

**\*Reviser's note:** RCW 66.28.010 was amended by 2009 c 373 § 5 without cognizance of its repeal by 2009 c 506 § 11. For rule of construction concerning sections amended and repealed in the same legislative session, see RCW 1.12.025.

**Effective date—2004 c 160:** See note following RCW 66.04.010.

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**66.28.042 Providing food and beverages for business meetings permitted.** A liquor manufacturer, importer, authorized representative holding a certificate of approval, or distributor may provide to licensed retailers and their employees food and beverages for consumption at a meeting at which the primary purpose is the discussion of business, and may provide local ground transportation to and from such meetings. The value of the food, beverage, or transpor-

tation provided under this section shall not be considered the advancement of moneys or moneys' worth within the meaning of \*RCW 66.28.010, nor shall it be considered the giving away of liquor within the meaning of \*\*RCW 68.28.040. The board may adopt rules for the implementation of this section. [2004 c 160 § 12; 1990 c 125 § 1.]

**Reviser's note:** \*(1) RCW 66.28.010 was amended by 2009 c 373 § 5 without cognizance of its repeal by 2009 c 506 § 11. For rule of construction concerning sections amended and repealed in the same legislative session, see RCW 1.12.025.

\*\* (2) The reference to RCW 68.28.040 appears to be erroneous. RCW 66.28.040 was apparently intended.

**Effective date—2004 c 160:** See note following RCW 66.04.010.

**66.28.043 Providing food, beverages, transportation, and admission to events permitted.** A liquor manufacturer, importer, authorized representative holding a certificate of approval, or distributor may provide to licensed retailers and their employees tickets or admission fees for athletic events or other forms of entertainment occurring within the state of Washington, if the manufacturer, importer, distributor, authorized representative holding a certificate of approval, or any of their employees accompanies the licensed retailer or its employees to the event. A liquor manufacturer, importer, authorized representative holding a certificate of approval, or distributor may also provide to licensed retailers and their employees food and beverages for consumption at such events, and local ground transportation to and from activities allowed under this section. The value of the food, beverage, transportation, or admission to events provided under this section shall not be considered the advancement of moneys or moneys' worth within the meaning of \*RCW 66.28.010, nor shall it be considered the giving away of liquor within the meaning of \*\*RCW 68.28.040. The board may adopt rules for the implementation of this section. [2004 c 160 § 13; 1990 c 125 § 2.]

**Reviser's note:** \*(1) RCW 66.28.010 was amended by 2009 c 373 § 5 without cognizance of its repeal by 2009 c 506 § 11. For rule of construction concerning sections amended and repealed in the same legislative session, see RCW 1.12.025.

\*\* (2) The reference to RCW 68.28.040 appears to be erroneous. RCW 66.28.040 was apparently intended.

**Effective date—2004 c 160:** See note following RCW 66.04.010.

**66.28.045 Furnishing samples to board—Standards for accountability—Regulations.** The legislature finds the furnishing of samples of liquor to the state liquor control board is an integral and essential part of the operation of the state liquor business. The legislature further finds that it is necessary to establish adequate standards for the accountability of the receipt, use and disposition of liquor samples. The board shall adopt appropriate regulations pursuant to chapter 34.05 RCW for the purpose of carrying out the provisions of this section. [1975 1st ex.s. c 173 § 9.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**66.28.050 Solicitation of orders prohibited.** No person shall canvass for, solicit, receive, or take orders for the purchase or sale of any liquor, or act as representative for the purchase or sale of liquor except as authorized by RCW 66.24.310 or by RCW 66.24.550. [1997 c 321 § 49; 1982 c

85 § 11; 1975-'76 2nd ex.s. c 74 § 2; 1969 ex.s. c 21 § 8; 1937 c 217 § 4; 1933 ex.s. c 62 § 42; RRS § 7306-42.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**66.28.060 Distillers to make monthly report—No sale except to board.** Every distillery licensed under this title shall make monthly reports to the board pursuant to the regulations. No such distillery shall make any sale of spirits within the state of Washington except to the board and as provided in RCW 66.24.145. [2008 c 94 § 7; 1933 ex.s. c 62 § 26; RRS § 7306-26.]

**66.28.070 Restrictions on purchases of beer or wine by retail beer or wine licensees or special occasion licensees.** (1) Except as provided in subsection (2) of this section, it shall be unlawful for any retail beer or wine licensee to purchase beer or wine, except from a duly licensed distributor, domestic winery, domestic brewer, certificate of approval holder with a direct shipment endorsement, or the board.

(2) A beer or wine retailer licensee may purchase beer or wine from a government agency which has lawfully seized beer or wine from a licensed beer or wine retailer, or from a board-authorized retailer, or from a licensed retailer which has discontinued business if the distributor has refused to accept beer or wine from that retailer for return and refund. Beer and wine purchased under this subsection shall meet the quality standards set by its manufacturer.

(3) Special occasion licensees holding a special occasion license may only purchase beer or wine from a beer or wine retailer duly licensed to sell beer or wine for off-premises consumption, the board, or from a duly licensed beer or wine distributor. [2006 c 302 § 8. Prior: 1994 c 201 § 5; 1994 c 63 § 2; 1987 c 205 § 1; 1937 c 217 § 1(23H) (adding new section 23-H to 1933 ex.s. c 62); RRS § 7306-23H.]

**Effective date—2006 c 302:** See note following RCW 66.24.170.

**66.28.080 Permit for music and dancing upon licensed premises.** It shall be unlawful for any person, firm or corporation holding any retailer's license to permit or allow upon the premises licensed any music, dancing, or entertainment whatsoever, unless and until permission thereto is specifically granted by appropriate license or permit of the proper authorities of the city or town in which such licensed premises are situated, or the board of county commissioners, if the same be situated outside an incorporated city or town: PROVIDED, That the words "music and entertainment," as herein used, shall not apply to radios or mechanical musical devices. [1969 ex.s. c 178 § 8; 1949 c 5 § 7; 1937 c 217 § 3 (adding new section 27-A to 1933 ex.s. c 62); Rem. Supp. 1949 § 7306-27A.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**66.28.090 Licensed premises or banquet permit premises open to inspection—Failure to allow, violation.** (1) All licensed premises used in the manufacture, storage, or sale of liquor, or any premises or parts of premises used or in any way connected, physically or otherwise, with the licensed business, and/or any premises where a banquet permit has been granted, shall at all times be open to inspection by any liquor enforcement officer, inspector or peace officer.

(2010 Ed.)

(2) Every person, being on any such premises and having charge thereof, who refuses or fails to admit a liquor enforcement officer, inspector or peace officer demanding to enter therein in pursuance of this section in the execution of his/her duty, or who obstructs or attempts to obstruct the entry of such liquor enforcement officer, inspector or officer of the peace, or who refuses to allow a liquor enforcement officer, and/or an inspector to examine the books of the licensee, or who refuses or neglects to make any return required by this title or the regulations, shall be guilty of a violation of this title. [1981 1st ex.s. c 5 § 20; 1935 c 174 § 7; 1933 ex.s. c 62 § 52; RRS § 7306-52.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**66.28.100 Spirits to be labeled—Contents.** Every person manufacturing spirits as defined in this title shall put upon all packages containing spirits so manufactured a distinctive label, showing the nature of the contents, the name of the person by whom the spirits were manufactured, the place where the spirits were manufactured, and showing the alcoholic content of such spirits. For the purpose of this section the contents of packages containing spirits shall be shown by the use of the words "whiskey", "rum", "brandy", and the like, on the outside of such packages. [1933 ex.s. c 62 § 46; RRS § 7306-46.]

**66.28.110 Wine to be labeled—Contents.** (1) Every person producing, manufacturing, bottling, or distributing wine shall put upon all packages a distinctive label that will provide the consumer with adequate information as to the identity and quality of the product, the alcoholic content thereof, the net contents of the package, the name of the producer, manufacturer, or bottler thereof, and such other information as the board may by rule prescribe.

(2) Subject to subsection (3) of this section:

(a) If the appellation of origin claimed or implied anywhere on a wine label is "Washington," then at least ninety-five percent of the grapes used in the production of the wine must have been grown in Washington.

(b) If the appellation of origin claimed or implied anywhere on a wine label is "Washington" and the name of an American viticultural area located wholly within Washington, then at least ninety-five percent of the grapes used in the production of the wine must have been grown in Washington.

(c) If the appellation of origin claimed or implied anywhere on a wine label is "Washington" and the name of an American viticultural area located within both Washington and an adjoining state, then at least ninety-five percent of the grapes used in the production of the wine must have been grown within the defined boundaries of that American viticultural area or in Washington.

(3) Upon evidence of material damage, destruction, disease, or other loss to one or more vineyards in any American viticultural area, region, subregion, or other discrete area, the director of the department of agriculture must notify the board and the board may suspend the requirements of subsection (2) of this section with respect to the adversely affected area for such period of time as the board reasonably may determine.

(4) For purposes of this section, "American viticultural area" is a delimited grape growing region distinguishable by geographical features, the boundaries of which have been recognized and defined by the federal alcohol and trade tax bureau and recognized by the board.

(5) This section does not apply to wines that are produced with the addition of wine spirits, brandy, or alcohol. [2009 c 404 § 1; 1939 c 172 § 4; 1933 ex.s. c 62 § 45; RRS § 7306-45.]

**Application—2009 c 404:** "This act applies to wine made from grapes harvested after December 31, 2009." [2009 c 404 § 2.]

#### **66.28.120 Malt liquor to be labeled—Contents.**

Every person manufacturing or distributing malt liquor for sale within the state shall put upon all packages containing malt liquor so manufactured or distributed a distinctive label showing the nature of the contents, the name of the person by whom the malt liquor was manufactured, and the place where it was manufactured. For the purpose of this section, the contents of packages containing malt liquor shall be shown by the use of the word "beer," "ale," "malt liquor," "lager," "stout," or "porter," on the outside of the packages. [1997 c 100 § 1; 1982 c 39 § 2; 1961 c 36 § 1; 1933 ex.s. c 62 § 44; RRS § 7306-44.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**66.28.130 Selling or serving of liquor to or consumption by standing or walking person.** It shall not be unlawful for a retail licensee whose premises are open to the general public to sell, supply or serve liquor to a person for consumption on the licensed retail premises if said person is standing or walking, nor shall it be unlawful for such licensee to permit any said person so standing or walking to consume liquor on such premises: PROVIDED HOWEVER, That the retail licensee of such a premises may at his discretion, promulgate a house rule that no person shall be served nor allowed to consume liquor unless said person is seated. [1969 ex.s. c 112 § 2.]

**66.28.140 Removing family beer or wine from home for use at wine tastings or competitions—Conditions.** (1) An adult member of a household may remove family beer or wine from the home subject to the following conditions:

(a) The quantity removed by a producer is limited to a quantity not exceeding twenty gallons;

(b) Family beer or wine is not removed for sale; and

(c) Family beer or wine is removed from the home for private use, including use at organized affairs, exhibitions, or competitions such as homemaker's contests, tastings, or judging.

(2) As used in this section, "family beer or wine" means beer or wine manufactured in the home for private consumption, and not for sale. [2009 c 360 § 2; 1994 c 201 § 6; 1981 c 255 § 2.]

**66.28.150 Breweries, microbreweries, wineries, distilleries, distributors, certificate of approval holders, and agents authorized to conduct courses of instruction on beer and wine.** A domestic brewery, microbrewery, domestic winery, distillery, distributor, certificate of approval

holder, or its licensed agent may, without charge, instruct licensees and their employees, or conduct courses of instruction for licensees and their employees, including chefs, on the subject of beer, wine, or spirituous liquor, including but not limited to, the history, nature, values, and characteristics of beer, wine, or spirituous liquor, the use of wine lists, and the methods of presenting, serving, storing, and handling beer, wine, or spirituous liquor, and what wines go well with different types of food. The domestic brewery, microbrewery, domestic winery, distillery, distributor, certificate of approval holder, or its licensed agent may furnish beer, wine, or spirituous liquor and such other equipment, materials, and utensils as may be required for use in connection with the instruction or courses of instruction. The instruction or courses of instruction may be given at the premises of the domestic brewery, microbrewery, domestic winery, distillery, or authorized representative holding a certificate of approval, at the premises of a retail licensee, or elsewhere within the state of Washington. [2007 c 217 § 2; 2004 c 160 § 14; 1997 c 39 § 2; 1982 1st ex.s. c 26 § 1.]

**Effective date—2004 c 160:** See note following RCW 66.04.010.

**66.28.155 Breweries, microbreweries, wineries, distilleries, distributors, certificate of approval holders, and agents authorized to conduct educational activities on licensed premises of retailer.** A domestic brewery, microbrewery, domestic winery, distillery, distributor, certificate of approval holder, or its licensed agent may conduct educational activities or provide product information to the consumer on the licensed premises of a retailer. Information on the subject of wine, beer, or spirituous liquor, including but not limited to, the history, nature, quality, and characteristics of a wine, beer, or spirituous liquor, methods of harvest, production, storage, handling, and distribution of a wine, beer, or spirituous liquor, and the general development of the wine, beer, and spirituous liquor industry may be provided by a domestic brewery, microbrewery, domestic winery, distillery, distributor, certificate of approval holder, or its licensed agent to the public on the licensed premises of a retailer. The retailer requesting such activity shall attempt to schedule a series of brewery, winery, authorized representative, or distillery and distributor appearances in an effort to equitably represent the industries. Nothing in this section permits a domestic brewery, microbrewery, domestic winery, distillery, distributor, certificate of approval holder, or its licensed agent to receive compensation or financial benefit from the educational activities or product information presented on the licensed premises of a retailer. The promotional value of such educational activities or product information shall not be considered advancement of moneys or of moneys' worth within the meaning of \*RCW 66.28.010. [2004 c 160 § 15; 1997 c 39 § 3; 1984 c 196 § 1.]

**\*Reviser's note:** RCW 66.28.010 was amended by 2009 c 373 § 5 without cognizance of its repeal by 2009 c 506 § 11. For rule of construction concerning sections amended and repealed in the same legislative session, see RCW 1.12.025.

**Effective date—2004 c 160:** See note following RCW 66.04.010.

**66.28.160 Promotion of liquor at colleges and universities.** No liquor manufacturer, importer, distributor, retailer, authorized representative holding a certificate of approval,

agent thereof, or campus representative of any of the foregoing, may conduct promotional activities for any liquor product on the campus of any college or university nor may any such entities engage in activities that facilitate or promote the consumption of alcoholic beverages by the students of the college or university at which the activity takes place. This section does not prohibit the following:

(1) The sale of alcoholic beverages, by retail licensees on their licensed premises, to persons of legal age and condition to consume alcoholic beverages;

(2) Sponsorship of broadcasting services for events on a college or university campus;

(3) Liquor advertising in campus publications; or

(4) Financial assistance to an activity and acknowledgment of the source of the assistance, if the assistance, activity, and acknowledgment are each approved by the college or university administration. [2004 c 160 § 16; 1985 c 352 § 20.]

**Effective date—2004 c 160:** See note following RCW 66.04.010.

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**66.28.170 Wine or malt beverage manufacturers—Discrimination in price to purchaser for resale prohibited.** It is unlawful for a manufacturer of wine or malt beverages holding a certificate of approval issued under RCW 66.24.270 or 66.24.206 or the manufacturer's authorized representative, a brewery, or a domestic winery to discriminate in price in selling to any purchaser for resale in the state of Washington. [2004 c 160 § 17; 1997 c 321 § 50; 1985 c 226 § 3.]

**Effective date—2004 c 160:** See note following RCW 66.04.010.

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**66.28.180 Price list—Contents—Contracts and memoranda with distributors.** (1) Beer and wine distributors.

(a) Every beer or wine distributor shall maintain at its liquor licensed location a price list showing the wholesale prices at which any and all brands of beer and wine sold by such beer and/or wine distributor shall be sold to retailers within the state.

(b) Each price list shall set forth:

(i) All brands, types, packages, and containers of beer or wine offered for sale by such beer and/or wine distributor; and

(ii) The wholesale prices thereof to retail licensees, including allowances, if any, for returned empty containers.

(c) No beer and/or wine distributor may sell or offer to sell any package or container of beer or wine to any retail licensee at a price differing from the price for such package or container as shown in the price list, according to rules adopted by the board.

(d) Quantity discounts are prohibited. No price may be below acquisition cost.

(e) Distributor prices on a "close-out" item shall be allowed if the item to be discontinued has been listed for a period of at least six months, and upon the further condition that the distributor who offers such a close-out price shall not restock the item for a period of one year following the first effective date of such close-out price.

(f) Any beer and/or wine distributor or employee authorized by the distributor-employer may sell beer and/or wine at the distributor's listed prices to any annual or special occasion retail licensee upon presentation to the distributor or employee at the time of purchase of a special permit issued by the board to such licensee.

(g) Every annual or special occasion retail licensee, upon purchasing any beer and/or wine from a distributor, shall immediately cause such beer or wine to be delivered to the licensed premises, and the licensee shall not thereafter permit such beer to be disposed of in any manner except as authorized by the license.

(h) Beer and wine sold as provided in this section shall be delivered by the distributor or an authorized employee either to the retailer's licensed premises or directly to the retailer at the distributor's licensed premises. When a domestic winery, brewery, microbrewery, or certificate of approval holder with a direct shipping endorsement is acting as a distributor of its own production, a licensed retailer may contract with a common carrier to obtain the product directly from the domestic winery, brewery, microbrewery, or certificate of approval holder with a direct shipping endorsement. A distributor's prices to retail licensees shall be the same at both such places of delivery.

(2) Beer and wine suppliers' contracts and memoranda.

(a) Every domestic brewery, microbrewery, domestic winery, certificate of approval holder, and beer and/or wine importer offering beer and/or wine for sale within the state and any beer and/or wine distributor who sells to other beer and/or wine distributors shall maintain at its liquor licensed location a price list and a copy of every written contract and a memorandum of every oral agreement which such brewery or winery may have with any beer or wine distributor, which contracts or memoranda shall contain:

(i) All advertising, sales and trade allowances, and incentive programs; and

(ii) All commissions, bonuses or gifts, and any and all other discounts or allowances.

(b) Whenever changed or modified, such revised contracts or memoranda shall also be maintained at its liquor licensed location.

(c) Each price list shall set forth all brands, types, packages, and containers of beer or wine offered for sale by such licensed brewery or winery.

(d) Prices of a domestic brewery, microbrewery, domestic winery, or certificate of approval holder shall be uniform prices to all distributors or retailers on a statewide basis less bona fide allowances for freight differentials. Quantity discounts are prohibited. No price shall be below acquisition/production cost.

(e) A domestic brewery, microbrewery, domestic winery, certificate of approval holder, beer or wine importer, or beer or wine distributor acting as a supplier to another distributor must file a distributor appointment with the board.

(f) No domestic brewery, microbrewery, domestic winery, or certificate of approval holder may sell or offer to sell any package or container of beer or wine to any distributor at a price differing from the price list for such package or container as shown in the price list of the domestic brewery, microbrewery, domestic winery, or certificate of approval holder and then in effect, according to rules adopted by the

board. [2009 c 506 § 10; 2006 c 302 § 10; (2006 c 302 § 9 expired July 1, 2006); 2005 c 274 § 327. Prior: 2004 c 269 § 1; 2004 c 160 § 18; 1997 c 321 § 51; 1995 c 232 § 10; 1985 c 226 § 4.]

**Effective date—2006 c 302 §§ 10 and 12:** "Sections 10 and 12 of this act take effect July 1, 2006." [2006 c 302 § 15.]

**Expiration date—2006 c 302 §§ 9 and 11:** "Sections 9 and 11 of this act expire July 1, 2006." [2007 c 9 § 1; 2006 c 302 § 14.]

**Part headings not law—Effective date—2005 c 274:** See RCW 42.56.901 and 42.56.902.

**Effective date—2004 c 269:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [March 31, 2004]." [2004 c 269 § 2.]

**Effective date—2004 c 160:** See note following RCW 66.04.010.

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**66.28.190 Sales of nonliquor food and food ingredients.** \*RCW 66.28.010 notwithstanding, persons licensed under RCW 66.24.200 as wine distributors and persons licensed under RCW 66.24.250 as beer distributors may sell at wholesale nonliquor food and food ingredients on thirty-day credit terms to persons licensed as retailers under this title, but complete and separate accounting records shall be maintained on all sales of nonliquor food and food ingredients to ensure that such persons are in compliance with \*RCW 66.28.010.

For the purpose of this section, "nonliquor food and food ingredients" includes all food and food ingredients for human consumption as defined in RCW 82.08.0293 as it exists on July 1, 2004. [2003 c 168 § 305; 1997 c 321 § 52; 1988 c 50 § 1.]

**\*Reviser's note:** RCW 66.28.010 was amended by 2009 c 373 § 5 without cognizance of its repeal by 2009 c 506 § 11. For rule of construction concerning sections amended and repealed in the same legislative session, see RCW 1.12.025.

**Effective dates—Part headings not law—2003 c 168:** See notes following RCW 82.08.010.

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**66.28.200 Keg registration—Special endorsement for grocery store licensee—Requirements of seller.** (1) Licensees holding a beer and/or wine restaurant or a tavern license in combination with an off-premises beer and wine retailer's license, licensees holding a spirits, beer, and wine restaurant license with an endorsement issued under RCW 66.24.400(4), and licensees holding a beer and/or wine specialty shop license with an endorsement issued under RCW 66.24.371(1) may sell malt liquor in kegs or other containers capable of holding four gallons or more of liquid. Under a special endorsement from the board, a grocery store licensee may sell malt liquor in containers no larger than five and one-half gallons. The sale of any container holding four gallons or more must comply with the provisions of this section and RCW 66.28.210 through 66.28.240.

(2) Any person who sells or offers for sale the contents of kegs or other containers containing four gallons or more of malt liquor, or leases kegs or other containers that will hold four gallons of malt liquor, to consumers who are not licensed under chapter 66.24 RCW shall do the following for any transaction involving the container:

(a) Require the purchaser of the malt liquor to sign a declaration and receipt for the keg or other container or beverage in substantially the form provided in RCW 66.28.220;

(b) Require the purchaser to provide one piece of identification pursuant to RCW 66.16.040;

(c) Require the purchaser to sign a sworn statement, under penalty of perjury, that:

(i) The purchaser is of legal age to purchase, possess, or use malt liquor;

(ii) The purchaser will not allow any person under the age of twenty-one years to consume the beverage except as provided by RCW 66.44.270;

(iii) The purchaser will not remove, obliterate, or allow to be removed or obliterated, the identification required under RCW 66.28.220 to be affixed to the container;

(d) Require the purchaser to state the particular address where the malt liquor will be consumed, or the particular address where the keg or other container will be physically located; and

(e) Require the purchaser to maintain a copy of the declaration and receipt next to or adjacent to the keg or other container, in no event a distance greater than five feet, and visible without a physical barrier from the keg, during the time that the keg or other container is in the purchaser's possession or control.

(3) A violation of this section is a gross misdemeanor. [2009 c 373 § 7; 2007 c 53 § 2; 2003 c 53 § 296; 1998 c 126 § 13; 1997 c 321 § 38; 1993 c 21 § 2; 1989 c 271 § 229.]

**Intent—Effective date—2003 c 53:** See notes following RCW 2.48.180.

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**66.28.210 Keg registration—Requirements of purchaser.** (1) Any person who purchases the contents of kegs or other containers containing four gallons or more of malt liquor, or purchases or leases the container shall:

(a) Sign a declaration and receipt for the keg or other container or beverage in substantially the form provided in RCW 66.28.220;

(b) Provide one piece of identification pursuant to RCW 66.16.040;

(c) Be of legal age to purchase, possess, or use malt liquor;

(d) Not allow any person under the age of twenty-one to consume the beverage except as provided by RCW 66.44.270;

(e) Not remove, obliterate, or allow to be removed or obliterated, the identification required under rules adopted by the board;

(f) Not move, keep, or store the keg or its contents, except for transporting to and from the distributor, at any place other than that particular address declared on the receipt and declaration; and

(g) Maintain a copy of the declaration and receipt next to or adjacent to the keg or other container, in no event a distance greater than five feet, and visible without a physical barrier from the keg, during the time that the keg or other container is in the purchaser's possession or control.

(2) A violation of this section is a gross misdemeanor. [2003 c 53 § 297; 1989 c 271 § 230.]

**Intent—Effective date—2003 c 53:** See notes following RCW 2.48.180.

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**66.28.220 Keg registration—Identification of containers—Rules—Fees—Sale in violation of rules unlawful.** (1) The board shall adopt rules requiring retail licensees to affix appropriate identification on all containers of four gallons or more of malt liquor for the purpose of tracing the purchasers of such containers. The rules may provide for identification to be done on a statewide basis or on the basis of smaller geographical areas.

(2) The board shall develop and make available forms for the declaration and receipt required by RCW 66.28.200. The board may charge spirits, beer, and wine restaurant licensees with an endorsement issued under RCW 66.24.400(4) and grocery store licensees for the costs of providing the forms and that money collected for the forms shall be deposited into the liquor revolving fund for use by the board, without further appropriation, to continue to administer the cost of the keg registration program.

(3) It is unlawful for any person to sell or offer for sale kegs or other containers containing four gallons or more of malt liquor to consumers who are not licensed under chapter 66.24 RCW if the kegs or containers are not identified in compliance with rules adopted by the board.

(4) A violation of this section is a gross misdemeanor. [2007 c 53 § 3; 2003 c 53 § 298; 1999 c 281 § 7; 1993 c 21 § 3; 1989 c 271 § 231.]

**Intent—Effective date—2003 c 53:** See notes following RCW 2.48.180.

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**66.28.230 Keg registration—Furnishing to minors—Penalties.** Except as provided in RCW 66.44.270, a person who intentionally furnishes a keg or other container containing four or more gallons of malt liquor to a person under the age of twenty-one years is guilty of a gross misdemeanor punishable under RCW 9.92.020. [1999 c 189 § 1; 1989 c 271 § 232.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**66.28.240 Keg registration—State preemption.** The state of Washington fully occupies and preempts the entire field of keg registration. Cities, towns, and counties or other municipalities may enact only those laws and ordinances relating to keg registration that are consistent with this chapter. Such local ordinances shall have the same or lesser penalties as provided for by state law. Local laws and ordinances that are inconsistent with, more restrictive than, or exceed the requirements of state law shall not be enacted and are preempted and repealed, regardless of the nature of the code, charter, or home rule status of the city, town, county, or municipality. [1989 c 271 § 233.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**66.28.260 Beer distributors—Restricted transactions.** Licensed beer distributors may not buy or sell beer, for purposes of distribution, at farmers market locations authorized by the board pursuant to chapter 154, Laws of 2003. [2003 c 154 § 3.]

(2010 Ed.)

**66.28.270 Cash payments—Electronic funds transfers.** Nothing in this chapter prohibits the use of checks, credit or debit cards, prepaid accounts, electronic funds transfers, and other similar methods as approved by the board, as cash payments for purposes of this title. Electronic fund[s] transfers must be: (1) Voluntary; (2) conducted pursuant to a prior written agreement of the parties that includes a provision that the purchase be initiated by an irrevocable invoice or sale order before the time of delivery; (3) initiated by the retailer, manufacturer, importer, or distributor no later than the first business day following delivery; and (4) completed as promptly as is reasonably practical, and in no event, later than five business days following delivery. [2009 c 373 § 11.]

**66.28.280 Three-tier system—Intent.** The legislature recognizes that Washington's current three-tier system, where the functions of manufacturing, distributing, and retailing are distinct and the financial relationships and business transactions between entities in these tiers are regulated, is a valuable system for the distribution of beer and wine. The legislature further recognizes that the historical total prohibition on ownership of an interest in one tier by a person with an ownership interest in another tier, as well as the historical restriction on financial incentives and business relationships between tiers, is unduly restrictive. The legislature finds the modifications contained in chapter 506, Laws of 2009 are appropriate, because the modifications do not impermissibly interfere with the goals of orderly marketing of alcohol in the state, encouraging moderation in consumption of alcohol by the citizens of the state, protecting the public interest and advancing public safety by preventing the use and consumption of alcohol by minors and other abusive consumption, and promoting the efficient collection of taxes by the state. [2009 c 506 § 1.]

**66.28.285 Three-tier system—Definitions.** The definitions in this section apply throughout RCW 66.28.280 through 66.28.315 unless the context clearly requires otherwise.

(1) "Adverse impact on public health and safety" means that an existing or proposed practice or occurrence has resulted or is more likely than not to result in alcohol being made significantly more attractive or available to minors than would otherwise be the case or has resulted or is more likely than not to result in overconsumption, consumption by minors, or other harmful or abusive forms of consumption.

(2) "Affiliate" means any one of two or more persons if one of those persons has actual or legal control, directly or indirectly, whether by stock ownership or otherwise, of the other person or persons and any one of two or more persons subject to common control, actual or legal, directly or indirectly, whether by stock ownership or otherwise.

(3) "Industry member" means a licensed manufacturer, producer, supplier, importer, wholesaler, distributor, authorized representative, certificate of approval holder, warehouse, and any affiliates, subsidiaries, officers, directors, partners, agents, employees, and representatives of any industry member. "Industry member" does not include the board or any of the board's employees.

(4) "Person" means any individual, partnership, joint stock company, business trust, association, corporation, or other form of business enterprise, including a receiver, trustee, or liquidating agent and includes any officer or employee of a retailer or industry member.

(5) "Retailer" means the holder of a license issued by the board to allow for the sale of alcoholic beverages to consumers for consumption on or off premises and any of the retailer's agents, officers, directors, shareholders, partners, or employees. "Retailer" does not include the board or any of the board's employees.

(6) "Undue influence" means one retailer or industry member directly or indirectly influencing the purchasing, marketing, or sales decisions of another retailer or industry member by any agreement written or unwritten or any other business practices or arrangements such as but not limited to the following:

(a) Any form of coercion between industry members and retailers or between retailers and industry members through acts or threats of physical or economic harm, including threat of loss of supply or threat of curtailment of purchase;

(b) A retailer on an involuntary basis purchasing less than it would have of another industry member's product;

(c) Purchases made by a retailer or industry member as a prerequisite for purchase of other items;

(d) A retailer purchasing a specific or minimum quantity or type of a product or products from an industry member;

(e) An industry member requiring a retailer to take and dispose of a certain product type or quota of the industry member's products;

(f) A retailer having a continuing obligation to purchase or otherwise promote or display an industry member's product;

(g) An industry member having a continuing obligation to sell a product to a retailer;

(h) A retailer having a commitment not to terminate its relationship with an industry member with respect to purchase of the industry member's products or an industry member having a commitment not to terminate its relationship with a retailer with respect to the sale of a particular product or products;

(i) An industry member being involved in the day-to-day operations of a retailer or a retailer being involved in the day-to-day operations of an industry member in a manner that violates the provisions of this section;

(j) Discriminatory pricing practices as prohibited by law or other practices that are discriminatory in that product is not offered to all retailers in the local market on the same terms. [2009 c 506 § 2.]

**66.28.290 Three-tier system—Direct or indirect interests between industry members, affiliates, and retailers.** (1) Notwithstanding any prohibitions and restrictions contained in this title, it shall be lawful for an industry member or affiliate to have a direct or indirect financial interest in another industry member or a retailer, and for a retailer or affiliate to have a direct or indirect financial interest in an industry member unless such interest has resulted or is more likely than not to result in undue influence over the retailer or the industry member or has resulted or is more likely than not to result in an adverse impact on public health and safety.

The structure of any such financial interest must be consistent with subsection (2) of this section.

(2) Subject to subsection (1) of this section and except as provided in RCW 66.28.295:

(a) An industry member in whose name a license or certificate of approval has been issued pursuant to this title may wholly own or hold a financial interest in a separate legal entity licensed pursuant to RCW 66.24.320 through 66.24.570, but may not have such a license issued in its name; and

(b) A retailer in whose name a license has been issued pursuant to this title may wholly own or hold a financial interest in a separate legal entity licensed or holding a certificate of approval pursuant to RCW 66.24.170, 66.24.206, 66.24.240, 66.24.244, 66.24.270(2), 66.24.200, or 66.24.250, but may not have such a license or certificate of approval issued in its name; and

(c) A supplier in whose name a license or certificate of approval has been issued pursuant to this title may wholly own or hold a financial interest in a separate legal entity licensed as a distributor or importer under this title, but such supplier may not have a license as a distributor or importer issued in its own name; and

(d) A distributor or importer in whose name a license has been issued pursuant to this title may wholly own or hold a financial interest in a separate legal entity licensed or holding a certificate of approval as a supplier under this title, but such distributor or importer may not have a license or certificate of approval as a supplier issued in its own name. [2009 c 506 § 3.]

**66.28.295 Three-tier system—Direct or indirect interests—Allowed activities.** Nothing in RCW 66.28.290 shall prohibit:

(1) A licensed domestic brewery or microbrewery from being licensed as a retailer pursuant to chapter 66.24 RCW for the purpose of selling beer or wine at retail on the brewery premises and at one additional off-site retail only location.

(2) A domestic winery from being licensed as a retailer pursuant to chapter 66.24 RCW for the purpose of selling beer or wine at retail on the winery premises. Such beer and wine so sold at retail shall be subject to the taxes imposed by RCW 66.24.290 and 66.24.210 and to reporting and bonding requirements as prescribed by regulations adopted by the board pursuant to chapter 34.05 RCW, and beer and wine that is not produced by the brewery or winery shall be purchased from a licensed beer or wine distributor.

(3) A microbrewery holding a beer and/or wine restaurant license under RCW 66.24.320 from holding the same privileges and endorsements attached to the beer and/or wine restaurant license.

(4) A licensed craft distillery from selling spirits of its own production under RCW 66.24.145.

(5) A licensed distiller, domestic brewery, microbrewery, domestic winery, or a lessee of a licensed domestic brewer, microbrewery, or domestic winery, from being licensed as a spirits, beer, and wine restaurant pursuant to chapter 66.24 RCW for the purpose of selling liquor at a spirits, beer, and wine restaurant premises on the property on which the primary manufacturing facility of the licensed distiller, domestic brewer, microbrewery, or domestic winery is

located or on contiguous property owned or leased by the licensed distiller, domestic brewer, microbrewery, or domestic winery as prescribed by rules adopted by the board pursuant to chapter 34.05 RCW.

(6) A microbrewery holding a spirits, beer, and wine restaurant license under RCW 66.24.420 from holding the same privileges and endorsements attached to the spirits, beer, and wine restaurant license.

(7) A brewery or microbrewery holding a spirits, beer, and wine restaurant license or a beer and/or wine license under chapter 66.24 RCW operated on the premises of the brewery or microbrewery from holding a second retail only license at a location separate from the premises of the brewery or microbrewery.

(8) Retail licensees with a caterer's endorsement issued under RCW 66.24.320 or 66.24.420 from operating on a domestic winery premises.

(9) An organization qualifying under RCW 66.24.375 formed for the purpose of constructing and operating a facility to promote Washington wines from holding retail licenses on the facility property or leasing all or any portion of such facility property to a retail licensee on the facility property if the members of the board of directors or officers of the board for the organization include officers, directors, owners, or employees of a licensed domestic winery. Financing for the construction of the facility must include both public and private money.

(10) A bona fide charitable nonprofit society or association registered under Title 26 U.S.C. Sec. 501(c)(3) of the federal internal revenue code, or a local wine industry association registered under Title 26 U.S.C. Sec. 501(c)(6) of the federal internal revenue code as it existed on July 22, 2007, and having an officer, director, owner, or employee of a licensed domestic winery or a wine certificate of approval holder on its board of directors from holding a special occasion license under RCW 66.24.380.

(11) A person licensed pursuant to RCW 66.24.170, 66.24.240, or 66.24.244 from exercising the privileges of distributing and selling at retail such person's own production or from exercising any other right or privilege that attaches to such license.

(12) A person holding a certificate of approval pursuant to RCW 66.24.206 from obtaining an endorsement to act as a distributor of their own product or from shipping their own product directly to consumers as authorized by RCW 66.20.360.

(13) A person holding a wine shipper's permit pursuant to RCW 66.20.375 from shipping their own product directly to consumers.

(14) A person holding a certificate of approval pursuant to RCW 66.24.270(2) from obtaining an endorsement to act as a distributor of their own product. [2009 c 506 § 4.]

**66.28.300 Three-tier system—Undue influence—Determination by board.** Any industry member or retailer or any other person seeking a determination by the board as to whether a proposed or existing financial interest has resulted or is more likely than not to result in undue influence or has resulted or is more likely than not to result in an adverse impact on public health and safety may file a complaint or request for determination with the board. Upon

receipt of a request or complaint the board may conduct such investigation as it deems appropriate in the circumstances. If the investigation reveals the financial interest has resulted or is more likely than not to result in undue influence or has resulted or is more likely than not to result in an adverse impact on public health and safety the board may issue an administrative violation notice or a notice of intent to deny the license to the industry member, to the retailer, or both. If the financial interest was acquired through a transaction that has already been consummated when the board issues its administrative violation notice, the board shall have the authority to require that the transaction be rescinded or otherwise undone. The recipient of the administrative notice of violation or notice of intent to deny the license may request a hearing under chapter 34.05 RCW. [2009 c 506 § 5.]

**66.28.305 Three-tier system—Money advances—Prohibition.** Except as provided in RCW 66.28.310, no industry member shall advance and no retailer shall receive moneys or moneys' worth under an agreement written or unwritten or by means of any other business practice or arrangement. [2009 c 506 § 6.]

**66.28.310 Three-tier system—Promotional items.**

(1)(a) Nothing in RCW 66.28.305 prohibits an industry member from providing retailers branded promotional items which are of nominal value, singly or in the aggregate. Such items include but are not limited to: Trays, lighters, blotters, postcards, pencils, coasters, menu cards, meal checks, napkins, clocks, mugs, glasses, bottles or can openers, corkscrews, matches, printed recipes, shirts, hats, visors, and other similar items. Branded promotional items:

(i) Must be used exclusively by the retailer or its employees in a manner consistent with its license;

(ii) Must bear imprinted advertising matter of the industry member only;

(iii) May be provided by industry members only to retailers and their employees and may not be provided by or through retailers or their employees to retail customers; and

(iv) May not be targeted to or appeal principally to youth.

(b) An industry member is not obligated to provide any such branded promotional items, and a retailer may not require an industry member to provide such branded promotional items as a condition for selling any alcohol to the retailer.

(c) Any industry member or retailer or any other person asserting that the provision of branded promotional items as allowed in (a) of this subsection has resulted or is more likely than not to result in undue influence or an adverse impact on public health and safety, or is otherwise inconsistent with the criteria in (a) of this subsection may file a complaint with the board. Upon receipt of a complaint the board may conduct such investigation as it deems appropriate in the circumstances. If the investigation reveals the provision of branded promotional items has resulted in or is more likely than not to result in undue influence or has resulted or is more likely than not to result in an adverse impact on public health and safety or is otherwise inconsistent with (a) of this subsection the board may issue an administrative violation notice to the

industry member, to the retailer, or both. The recipient of the administrative violation notice may request a hearing under chapter 34.05 RCW.

(2) Nothing in RCW 66.28.305 prohibits an industry member from providing to a special occasion licensee and a special occasion licensee from receiving services for:

(a) Installation of draft beer dispensing equipment or advertising;

(b) Advertising, pouring, or dispensing of beer or wine at a beer or wine tasting exhibition or judging event; or

(c) Pouring or dispensing of spirits by a licensed domestic distiller or the accredited representative of a distiller, manufacturer, importer, or distributor of spirituous liquor licensed under RCW 66.24.310.

(3) Nothing in RCW 66.28.305 prohibits industry members from performing, and retailers from accepting the service of building, rotating, and restocking displays and stockroom inventories; rotating and rearranging can and bottle displays of their own products; providing point of sale material and brand signs; pricing case goods of their own brands; and performing such similar business services consistent with board rules, or personal services as described in subsection (5) of this section.

(4) Nothing in RCW 66.28.305 prohibits:

(a) Industry members from listing on their internet web sites information related to retailers who sell or promote their products, including direct links to the retailers' internet web sites; and

(b) Retailers from listing on their internet web sites information related to industry members whose products those retailers sell or promote, including direct links to the industry members' web sites; or

(c) Industry members and retailers from producing, jointly or together with regional, state, or local industry associations, brochures and materials promoting tourism in Washington state which contain information regarding retail licensees, industry members, and their products.

(5) Nothing in RCW 66.28.305 prohibits the performance of personal services offered from time to time by a domestic winery or certificate of approval holder to retailers when the personal services are (a) conducted at a licensed premises, and (b) intended to inform, educate, or enhance customers' knowledge or experience of the manufacturer's products. The performance of personal services may include participation and pouring, bottle signing events, and other similar informational or educational activities at the premises of a retailer holding a spirits, beer, and wine restaurant license, a wine and/or beer restaurant license, a specialty wine shop license, a special occasion license, a grocery store license with a tasting endorsement, or a private club license. A domestic winery or certificate of approval holder is not obligated to perform any such personal services, and a retail licensee may not require a domestic winery or certificate of approval holder to conduct any personal service as a condition for selling any alcohol to the retail licensee, or as a condition for including any product of the domestic winery or certificate of approval holder in any tasting conducted by the licensee. Except as provided in RCW 66.28.150, the cost of sampling may not be borne, directly or indirectly, by any domestic winery or certificate of approval holder or any distributor. Nothing in this section prohibits wineries, certifi-

cate of approval holders, and retail licensees from identifying the producers on private labels authorized under RCW 66.24.400, 66.24.425, and 66.24.450.

(6) Nothing in RCW 66.28.305 prohibits an industry member from entering into an arrangement with any holder of a sports entertainment facility license or an affiliated business for brand advertising at the licensed facility or promoting events held at the sports entertainment facility as authorized under RCW 66.24.570.

(7) Nothing in RCW 66.28.305 prohibits the performance of personal services offered from time to time by a domestic brewery, microbrewery, or beer certificate of approval holder to grocery store licensees with a tasting endorsement when the personal services are (a) conducted at a licensed premises in conjunction with a tasting event, and (b) intended to inform, educate, or enhance customers' knowledge or experience of the manufacturer's products. The performance of personal services may include participation and pouring, bottle signing events, and other similar informational or educational activities. A domestic brewery, microbrewery, or beer certificate of approval holder is not obligated to perform any such personal services, and a grocery store licensee may not require the performance of any personal service as a condition for including any product in any tasting conducted by the licensee. [2010 c 290 § 3; 2010 c 141 § 4; 2009 c 506 § 7.]

**Reviser's note:** This section was amended by 2010 c 141 § 4 and by 2010 c 290 § 3, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

**66.28.315 Three-tier system—Recordkeeping.** All industry members and retailers shall keep and maintain the following records on their premises for a three-year period:

(1) Records of all items, services, and moneys' worth furnished to and received by a retailer and of all items, services, and moneys' worth provided to a retailer and purchased by a retailer at fair market value; and

(2) Records of all industry member financial ownership or interests in a retailer and of all retailer financial ownership interests in an industry member. [2009 c 506 § 8.]

**66.28.320 Three-tier system—Rule adoption.** The board shall adopt rules as are deemed necessary to carry out the purposes and provisions of this chapter in accordance with the administrative procedure act, chapter 34.05 RCW. [2009 c 506 § 9.]

## Chapter 66.32 RCW SEARCH AND SEIZURE

### Sections

66.32.010	Possession of contraband liquor.
66.32.020	Search warrant—Search and seizure.
66.32.030	Service of warrant—Receipt for seized property.
66.32.040	Forfeiture of liquor directed if kept unlawfully.
66.32.050	Hearing.
66.32.060	Claimants may appear.
66.32.070	Judgment of forfeiture—Disposition of proceeds of property sold.
66.32.080	Forfeiture action no bar to criminal prosecution.
66.32.090	Seized liquor to be reported to board.

**66.32.010 Possession of contraband liquor.** Except as permitted by the board, no liquor shall be kept or had by any person within this state unless the package in which the liquor was contained had, while containing that liquor, been sealed with the official seal adopted by the board, except in the case of:

- (1) Liquor imported by the board; or
- (2) Liquor manufactured in the state for sale to the board or for export; or
- (3) Beer, purchased in accordance with the provisions of law; or
- (4) Wine or beer exempted in RCW 66.12.010. [1955 c 39 § 3. Prior: 1943 c 216 § 3(1); 1933 ex.s. c 62 § 33(1); Rem. Supp. 1943 § 7306-33(1).]

**66.32.020 Search warrant—Search and seizure.** If, upon the sworn complaint of any person, it is made to appear to any judge of the superior court or district court, that there is probable cause to believe that intoxicating liquor is being manufactured, sold, bartered, exchanged, given away, furnished, or otherwise disposed of or kept in violation of the provisions of this title, such judge shall, with or without the approval of the prosecuting attorney, issue a warrant directed to a civil officer of the state duly authorized to enforce or assist in enforcing any law thereof, or to an inspector of the board, commanding the civil officer or inspector to search the premises, room, house, building, boat, vehicle, structure or place designated and described in the complaint and warrant, and to seize all intoxicating liquor there found, together with the vessels in which it is contained, and all implements, furniture, and fixtures used or kept for the illegal manufacture, sale, barter, exchange, giving away, furnishing, or otherwise disposing of the liquor, and to safely keep the same, and to make a return of the warrant within ten days, showing all acts and things done thereunder, with a particular statement of all articles seized and the name of the person or persons in whose possession they were found, if any, and if no person is found in the possession of the articles, the return shall so state. [1987 c 202 § 220; 1955 c 288 § 1; 1955 c 39 § 4. Prior: 1943 c 216 § 3(2), part; 1933 ex.s. c 62 § 33(2), part; Rem. Supp. 1943 § 7306-33(2), part.]

**Intent—1987 c 202:** See note following RCW 2.04.190.

**66.32.030 Service of warrant—Receipt for seized property.** A copy of the warrant, together with a detailed receipt for the property taken shall be served upon the person found in possession of any intoxicating liquor, furniture, or fixtures so seized, and if no person is found in possession thereof, a copy of the warrant and receipt shall be left in a conspicuous place upon the premises wherein they are found. [1955 c 39 § 5. Prior: 1943 c 216 § 3(2), part; 1933 ex.s. c 62 § 33(2), part; Rem. Supp. 1943 § 7306-33(2), part.]

**66.32.040 Forfeiture of liquor directed if kept unlawfully.** All liquor seized pursuant to the authority of a search warrant or an arrest shall, upon adjudication that it was kept in violation of this title, be forfeited and upon forfeiture be disposed of by the agency seizing the liquor. [1993 c 26 § 1; 1955 c 39 § 6. Prior: 1943 c 216 § 3(2), part; 1933 ex.s. c 62 § 23(2), part; Rem. Supp. 1943 § 7306-33(2), part.]

(2010 Ed.)

**66.32.050 Hearing.** Upon the return of the warrant as provided herein, the judge shall fix a time, not less than ten days, and not more than thirty days thereafter, for the hearing of the return, when he or she shall proceed to hear and determine whether or not the articles seized, or any part thereof, were used or in any manner kept or possessed by any person with the intention of violating any of the provisions of this title. [1987 c 202 § 221; 1955 c 39 § 7. Prior: 1943 c 216 § 3(3), part; 1933 ex.s. c 62 § 33(2), part; Rem. Supp. 1943 § 7306-33(3), part.]

**Intent—1987 c 202:** See note following RCW 2.04.190.

**66.32.060 Claimants may appear.** At the hearing, any person claiming any interest in any of the articles seized may appear and be heard upon filing a written claim setting forth particularly the character and extent of his interest, and the burden shall rest upon the claimant to show, by competent evidence, his property right or interest in the articles claimed, and that they were not used in violation of any of the provisions of this title, and were not in any manner kept or possessed with the intention of violating any of its provisions. [1955 c 39 § 8. Prior: 1943 c 216 § 3(3), part; 1933 ex.s. c 62 § 33(2), part; Rem. Supp. 1943 § 7306-33(3), part.]

**66.32.070 Judgment of forfeiture—Disposition of proceeds of property sold.** If, upon the hearing, the evidence warrants, or, if no person appears as claimant, the judge shall thereupon enter a judgment of forfeiture, and order such articles destroyed forthwith: PROVIDED, That if, in the opinion of the judge, any of the forfeited articles other than intoxicating liquors are of value and adapted to any lawful use, the judge shall, as a part of the order and judgment, direct that the articles other than intoxicating liquor be sold as upon execution by the officer having them in custody, and the proceeds of the sale after payment of all costs of the proceedings shall be paid into the liquor revolving fund. [1987 c 202 § 222; 1955 c 39 § 9. Prior: 1943 c 216 § 3(3), part; 1933 ex.s. c 62 § 33(2), part; Rem. Supp. 1943 § 7306-33(3), part.]

**Intent—1987 c 202:** See note following RCW 2.04.190.

**66.32.080 Forfeiture action no bar to criminal prosecution.** Action under RCW 66.32.010 through 66.32.080 and the forfeiture, destruction, or sale of any articles thereunder shall not bar prosecution under any other provision. [1955 c 39 § 10. Prior: 1943 c 216 § 3(3), part; 1933 ex.s. c 62 § 33(2), part; Rem. Supp. 1943 § 7306-33(3), part.]

**66.32.090 Seized liquor to be reported to board.** In every case in which liquor is seized by a sheriff or deputy of any county or by a police officer of any municipality or by a member of the Washington state patrol, or any other authorized peace officer or inspector, it shall be the duty of the sheriff or deputy of any county, or chief of police of the municipality, or the chief of the Washington state patrol, as the case may be, to forthwith report in writing to the board of particulars of such seizure. [1993 c 26 § 2; 1987 c 202 § 223; 1935 c 174 § 8; 1933 ex.s. c 62 § 55; RRS § 7306-55.]

**Intent—1987 c 202:** See note following RCW 2.04.190.

## Chapter 66.36 RCW

## ABATEMENT PROCEEDINGS

## Sections

- 66.36.010 Places where liquor unlawfully kept declared a nuisance—Abatement of activity and realty—Judgment—Bond to reopen.

**66.36.010 Places where liquor unlawfully kept declared a nuisance—Abatement of activity and realty—Judgment—Bond to reopen.** Any room, house, building, boat, vehicle, structure or place, except premises licensed under this title, where liquor, as defined in this title, is manufactured, kept, sold, bartered, exchanged, given away, furnished or otherwise disposed of in violation of the provisions of this title or of the laws of this state relating to the manufacture, importation, transportation, possession, distribution and sale of liquor, and all property kept in and used in maintaining such a place, are hereby declared to be a common nuisance. The prosecuting attorney of the county in which such nuisance is situated shall institute and maintain an action in the superior court of such county in the name of the state of Washington to abate and perpetually enjoin such nuisance. The plaintiff shall not be required to give bond in such action, and restraining orders, temporary injunctions and permanent injunctions may be granted in said cause as in other injunction proceedings, and upon final judgment against the defendant, such court may also order that said room, house, building, boat, vehicle, structure or place, shall be closed for a period of one year; or until the owner, lessee, tenant or occupant thereof shall give bond with sufficient surety, to be approved by the court making the order, in the penal sum of not less than one thousand dollars payable to the state of Washington, and conditioned that liquor will not thereafter be manufactured, kept, sold, bartered, exchanged, given away, furnished or otherwise disposed of thereon or therein in violation of the provisions of this title or of the laws of this state relating to the manufacture, importation, transportation, possession, distribution and sale of liquor, and that he will pay all fines, costs and damages assessed against him for any violation of this title or of the laws of this state relating to the manufacture, importation, transportation, possession, distribution and sale of liquor. If any condition of such bond be violated, the whole amount may be recovered as a penalty for the use of the county wherein the premises are situated.

In all cases where any person has been convicted of a violation of this title or the laws of this state relating to the manufacture, importation, transportation, possession, distribution and sale of liquor an action may be brought in the superior court of the county in which the premises are situated, to abate as a nuisance any real estate or other property involved in the commission of said offense, and in any such action a certified copy of the record of such conviction shall be admissible in evidence and prima facie evidence that the room, house, building, boat, vehicle, structure or place against which such action is brought is a public nuisance. [1939 c 172 § 9 (adding new section 33-A to 1933 ex.s. c 62); RRS § 7306-33A. Formerly RCW 66.36.010 through 66.36.040.]

## Chapter 66.40 RCW

## LOCAL OPTION

## Sections

- 66.40.010 Local option units.  
 66.40.020 Election may be held.  
 66.40.030 License elections.  
 66.40.040 Petition for election—Contents—Procedure—Signatures, filing, form, copies, fees, etc.—Public inspection.  
 66.40.100 Check of petitions.  
 66.40.110 Form of ballot.  
 66.40.120 Canvass of votes—Effect.  
 66.40.130 Effect of election as to licenses.  
 66.40.140 Certificate of result to board—Grace period—Permitted activities.  
 66.40.150 Concurrent liquor elections in same election unit prohibited.

**66.40.010 Local option units.** For the purpose of an election upon the question of whether the sale of liquors shall be permitted, the election unit shall be any incorporated city or town, or all that portion of any county not included within the limits of incorporated cities and towns. [1957 c 263 § 3. Prior: (i) 1933 ex.s. c 62 § 82; RRS § 7306-82. (ii) 1949 c 5 § 2, part (adding new section 23-S-2 to 1933 ex.s. c 62); Rem. Supp. 1949 § 7306-23S-2, part.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**66.40.020 Election may be held.** Within any unit referred to in RCW 66.40.010, upon compliance with the conditions hereinafter prescribed, there may be held, at the time and as a part of any general election, an election upon the question of whether the sale of liquor shall be permitted within such unit; and in the event that any such election is held in any such unit, no other election under this section shall be held prior to the next succeeding general election. [1933 ex.s. c 62 § 83; RRS § 7306-83.]

**66.40.030 License elections.** Within any unit referred to in RCW 66.40.010, there may be held a separate election upon the question of whether the sale of liquor under spirits, beer, and wine restaurant; spirits, beer, and wine private club; spirits, beer, and wine nightclub; and sports entertainment facility licenses, shall be permitted within such unit. The conditions and procedure for holding such election shall be those prescribed by RCW 66.40.020, 66.40.040, 66.40.100, 66.40.110 and 66.40.120. Whenever a majority of qualified voters voting upon said question in any such unit shall have voted "against the sale of liquor under spirits, beer, and wine restaurant; spirits, beer, and wine private club; spirits, beer, and wine nightclub; and sports entertainment facility licenses", the county auditor shall file with the liquor control board a certificate showing the result of the canvass at such election; and after ninety days from and after the date of the canvass, it shall not be lawful for licensees to maintain and operate premises within the election unit licensed under spirits, beer, and wine restaurant; spirits, beer, and wine private club; spirits, beer, and wine nightclub; and sports entertainment facility licenses. The addition after an election under this section of new territory to a city, town, or county, by annexation, disincorporation, or otherwise, shall not extend the prohibition against the sale of liquor under spirits, beer, and wine restaurant; spirits, beer, and wine private club; spirits, beer, and wine nightclub; and sports entertainment facility licenses to the new territory. Elections held under RCW

66.40.010, 66.40.020, 66.40.040, 66.40.100, 66.40.110, 66.40.120 and 66.40.140, shall be limited to the question of whether the sale of liquor by means other than under spirits, beer, and wine restaurant; spirits, beer, and wine private club; spirits, beer, and wine nightclub; and sports entertainment facility licenses shall be permitted within such election unit. [2009 c 271 § 9; 1999 c 281 § 8; 1994 c 55 § 1; 1949 c 5 § 12 (adding new section 83-A to 1933 ex.s. c 62); Rem. Supp. 1949 § 7306-83A.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**66.40.040 Petition for election—Contents—Procedure—Signatures, filing, form, copies, fees, etc.—Public inspection.** Any unit referred to in RCW 66.40.010 may hold such election upon the question of whether the sale of liquor shall be permitted within the boundaries of such unit, upon the filing with the county auditor of the county within which such unit is located, of a petition subscribed by qualified electors of the unit equal in number to at least thirty percent of the electors voting at the last general election within such unit. Such petition shall designate the unit in which the election is desired to be had, the date upon which the election is desired to be held, and the question that is desired to be submitted. The persons signing such a petition shall state their post office address, the name or number of the precinct in which they reside, and in case the subscriber be a resident of a city, the street and house number, if any, of his residence, and the date of signature. Said petition shall be filed not less than sixty days nor more than ninety days prior to the date upon which the election is to be held. No signature shall be valid unless the above requirements are complied with, and unless the date of signing the same is less than ninety days preceding the date of filing. No signature shall be withdrawn after the filing of such petition. Such petition may consist of one or more sheets and shall be fastened together as one document, filed as a whole, and when filed shall not be withdrawn or added to. Such petition shall be a public document and shall be subject to the inspection of the public. Upon the request of anyone filing such a petition and paying, or tendering to the county auditor one dollar for each hundred names, or fraction thereof, signed thereto, together with a copy thereof, said county auditor shall immediately compare the original and copy and attach to such copy and deliver to such person his official certificate that such copy is a true copy of the original, stating the date when such original was filed in his office; and said officer shall furnish, upon the demand of any person, a copy of said petition, upon payment of the same fee required for the filing of original petitions. [1933 ex.s. c 62 § 84; RRS § 7306-84. Formerly RCW 66.40.040 through 66.40.090.]

**66.40.100 Check of petitions.** Upon the filing of a petition as hereinbefore provided, the county auditor with whom it is filed shall cause the names on said petition to be compared with the names on the voters' official registration records provided for by law with respect to such unit. The officer or deputy making the comparison shall place his initials in ink opposite the signatures of those persons who are shown by such registration records to be legal voters and shall certify that the signatures so initialed are the signatures

of legal voters of the state of Washington and of said unit, and shall sign such certificate. In the event that said petition, after such comparison, shall be found to have been signed by the percentage of legal voters of said unit referred to in RCW 66.40.040, the question shall be placed upon the ballot at the next general election. [1933 ex.s. c 62 § 85; RRS § 7306-85.]

**66.40.110 Form of ballot.** Upon the ballot to be used at such general election the question shall be submitted in the following form:

"Shall the sale of liquor be permitted within . . . . (here specify the unit in which election is to be held)." Immediately below said question shall be placed the alternative answers, as follows:

"For sale of liquor . . . . . ( )  
Against sale of liquor . . . . . ( )."

Each person desiring to vote in favor of permitting the sale of liquor within the unit in which the election is to be held shall designate his choice beside the words "For sale of liquor", and those desiring to vote against the permitting of the sale of liquor within such unit shall designate their choice beside the words "Against sale of liquor", and the ballot shall be counted accordingly. [1933 ex.s. c 62 § 86; RRS § 7306-86.]

**66.40.120 Canvass of votes—Effect.** The returns of any such election shall be canvassed in the manner provided by law. If the majority of qualified electors voting upon said question at said election shall have voted "For sale of liquor" within the unit in which the election is held, the sale of liquor may be continued in accordance with the provisions of this title. If the majority of the qualified electors voting on such question at any such election shall vote "Against sale of liquor", then, within thirty days after such canvass no sale or purchase of liquor, save as herein provided, shall be made within such unit until such permission so to do be subsequently granted at an election held for that purpose under the provisions of this title. [1933 ex.s. c 62 § 87; RRS § 7306-87.]

**66.40.130 Effect of election as to licenses.** Ninety days after December 2, 1948, spirits, beer, and wine restaurant; spirits, beer, and wine private club; spirits, beer, and wine nightclub; and sports entertainment facility licenses may be issued in any election unit in which the sale of liquor is then lawful. No spirits, beer, and wine restaurant; spirits, beer, and wine private club; spirits, beer, and wine nightclub; and sports entertainment facility license shall be issued in any election unit in which the sale of liquor is forbidden as the result of an election held under RCW 66.40.010, 66.40.020, 66.40.040, 66.40.100, 66.40.110, 66.40.120 and 66.40.140, unless a majority of the qualified electors in such election unit voting upon this initiative at the general election in November, 1948, vote in favor of this initiative, or unless at a subsequent general election in which the question of whether the sale of liquor under spirits, beer, and wine restaurant; spirits, beer, and wine private club; spirits, beer, and wine nightclub; and sports entertainment facility licenses shall be permitted within such unit is submitted to the electorate, as

provided in RCW 66.40.030, a majority of the qualified electors voting upon such question vote "for the sale of liquor under spirits, beer, and wine restaurant; spirits, beer, and wine private club; spirits, beer, and wine nightclub; and sports entertainment facility licenses." [2009 c 271 § 10; 1999 c 281 § 9; 1949 c 5 § 13 (adding new section 87-A to 1933 ex.s. c 62); Rem. Supp. 1949 § 7306-87A.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**66.40.140 Certificate of result to board—Grace period—Permitted activities.** Whenever a majority of qualified voters voting upon said question in any such unit shall have voted "Against sale of liquor", the county auditor shall file with the liquor control board a certificate showing the result of the canvass at such election; and thereafter, except as hereinafter provided, it shall not be lawful for a liquor store to be operated therein nor for licensees to maintain and operate licensed premises therein except as hereinafter provided:

(1) As to any stores maintained by the board within any such unit at the time of such licensing, the board shall have a period of thirty days from and after the date of the canvass of the vote upon such election to continue operation of its store or stores therein.

(2) As to any premises licensed hereunder within any such unit at the time of such election, such licensee shall have a period of sixty days from and after the date of the canvass of the vote upon such election in which to discontinue operation of its store or stores therein.

(3) Nothing herein contained shall prevent any distillery, brewery, rectifying plant or winery or the licensed operators thereof from selling its manufactured product, manufactured within such unit, outside the boundaries thereof.

(4) Nothing herein contained shall prevent any person residing in any unit in which the sale of liquor shall have been forbidden by popular vote as herein provided, who is otherwise qualified to receive and hold a permit under this title, from lawfully purchasing without the unit and transporting into or receiving within the unit, liquor lawfully purchased by him outside the boundaries of such unit. [1933 ex.s. c 62 § 88; RRS § 7306-88.]

**66.40.150 Concurrent liquor elections in same election unit prohibited.** No election in any unit referred to in RCW 66.40.010, 66.40.020, 66.40.040, 66.40.100, 66.40.110, 66.40.120 and 66.40.140, upon the question of whether the sale of liquor shall be permitted within the boundaries of such unit shall be held at the same time as an election is held in the same unit upon the question of whether the sale of liquor under the provisions of RCW 66.40.030 shall be permitted. In the event valid and sufficient petitions are filed which would otherwise place both questions on the same ballot that question upon which the petition was filed with the county auditor first shall be placed on the ballot to the exclusion of the other. [1949 c 93 § 1 (adding new section 88-A to 1933 ex.s. c 62); Rem. Supp. 1949 § 7306-88A.]

## Chapter 66.44 RCW ENFORCEMENT—PENALTIES

### Sections

66.44.010	Local officers to enforce law—Authority of board—Liquor enforcement officers.
66.44.040	Sufficiency of description of offenses in complaints, informations, process, etc.
66.44.050	Description of offense in words of statutes—Proof required.
66.44.060	Proof of unlawful sale establishes prima facie intent.
66.44.070	Certified analysis is prima facie evidence of alcoholic content.
66.44.080	Service of process on corporation.
66.44.090	Acting without license.
66.44.100	Opening or consuming liquor in public place—Penalty.
66.44.120	Unlawful use of seal.
66.44.130	Sales of liquor by drink or bottle.
66.44.140	Unlawful sale, transportation of spirituous liquor without stamp or seal—Unlawful operation, possession of still or mash.
66.44.150	Buying liquor illegally.
66.44.160	Illegal possession, transportation of alcoholic beverages.
66.44.170	Illegal possession of liquor with intent to sell—Prima facie evidence, what is.
66.44.175	Violations of law.
66.44.180	General penalties—Jurisdiction for violations.
66.44.193	Sales on university or college campus.
66.44.200	Sales to persons apparently under the influence of liquor—Purchases or consumption by persons apparently under the influence of liquor on licensed premises—Penalty—Notice—Separation of actions.
66.44.210	Obtaining liquor for ineligible person.
66.44.240	Drinking in public conveyance—Penalty against carrier—Exception.
66.44.250	Drinking in public conveyance—Penalty against individual—Restricted application.
66.44.265	Candidates giving or purchasing liquor on election day prohibited.
66.44.270	Furnishing liquor to minors—Possession, use—Penalties—Exhibition of effects—Exceptions.
66.44.280	Minor applying for permit.
66.44.290	Minor purchasing or attempting to purchase liquor—Penalty.
66.44.292	Sales to minors by licensee or employee—Board notification to prosecuting attorney to formulate charges against minors.
66.44.300	Treats, gifts, purchases of liquor for or from minor, or holding out minor as at least twenty-one, in public place where liquor sold.
66.44.310	Minors frequenting off-limits area—Misrepresentation of age—Penalty—Classification of licensees.
66.44.316	Certain persons eighteen years and over permitted to enter and remain upon licensed premises during employment.
66.44.318	Employees aged eighteen to twenty-one stocking, merchandising, and handling beer and wine.
66.44.325	Unlawful transfer to minor of age identification.
66.44.328	Preparation or acquisition and supply to persons under age twenty-one of facsimile of official identification card—Penalty.
66.44.330	Prosecutions to be reported by prosecuting attorney and police court.
66.44.340	Employees eighteen years and over allowed to sell and handle beer and wine for certain licensed employers.
66.44.350	Employees eighteen years and over allowed to serve and carry liquor, clean up, etc., for certain licensed employers.
66.44.365	Juvenile driving privileges—Alcohol or drug violations.
66.44.370	Resisting or opposing officers in enforcement of title.
66.44.800	Compliance by Washington wine and beer commissions.

### Minors

*access to tobacco, role of liquor control board: Chapter 70.155 RCW. prohibited to enter bars or taverns: RCW 26.28.080.*

*Sale or gift of tobacco to persons under certain age is gross misdemeanor: RCW 26.28.080.*

*State institutions, bringing in liquor prohibited: RCW 72.23.300.*

**66.44.010 Local officers to enforce law—Authority of board—Liquor enforcement officers.** (1) All county and municipal peace officers are hereby charged with the duty of investigating and prosecuting all violations of this title, and the penal laws of this state relating to the manufacture, importation, transportation, possession, distribution and sale

of liquor, and all fines imposed for violations of this title and the penal laws of this state relating to the manufacture, importation, transportation, possession, distribution and sale of liquor shall belong to the county, city or town wherein the court imposing the fine is located, and shall be placed in the general fund for payment of the salaries of those engaged in the enforcement of the provisions of this title and the penal laws of this state relating to the manufacture, importation, transportation, possession, distribution and sale of liquor: PROVIDED, That all fees, fines, forfeitures and penalties collected or assessed by a district court because of the violation of a state law shall be remitted as provided in chapter 3.62 RCW as now exists or is later amended.

(2) In addition to any and all other powers granted, the board shall have the power to enforce the penal provisions of this title and the penal laws of this state relating to the manufacture, importation, transportation, possession, distribution and sale of liquor.

(3) In addition to the other duties under this section, the board shall enforce chapters 82.24 and 82.26 RCW.

(4) The board may appoint and employ, assign to duty and fix the compensation of, officers to be designated as liquor enforcement officers. Such liquor enforcement officers shall have the power, under the supervision of the board, to enforce the penal provisions of this title and the penal laws of this state relating to the manufacture, importation, transportation, possession, distribution and sale of liquor. They shall have the power and authority to serve and execute all warrants and process of law issued by the courts in enforcing the penal provisions of this title or of any penal law of this state relating to the manufacture, importation, transportation, possession, distribution and sale of liquor, and the provisions of chapters 82.24 and 82.26 RCW. They shall have the power to arrest without a warrant any person or persons found in the act of violating any of the penal provisions of this title or of any penal law of this state relating to the manufacture, importation, transportation, possession, distribution and sale of liquor, and the provisions of chapters 82.24 and 82.26 RCW. [1998 c 18 § 1; 1987 c 202 § 224; 1969 ex.s. c 199 § 28; 1939 c 172 § 5; 1935 c 174 § 11; 1933 ex.s. c 62 § 70; RRS § 7306-70. Formerly RCW 66.44.010 through 66.44.030.]

**Intent—1987 c 202:** See note following RCW 2.04.190.

**66.44.040 Sufficiency of description of offenses in complaints, informations, process, etc.** In describing the offense respecting the sale, or keeping for sale or other disposal, of liquor, or the having, keeping, giving, purchasing or consumption of liquor in any information, summons, conviction, warrant, or proceeding under this title, it shall be sufficient to simply state the sale, or keeping for sale or disposal, having, keeping, giving, purchasing, or consumption of liquor, without stating the name or kind of such liquor or the price thereof, or to whom it was sold or disposed of, or by whom consumed, or from whom it was purchased or received; and it shall not be necessary to state the quantity of liquor so sold, kept for sale, disposed of, had, kept, given, purchased, or consumed, except in the case of offenses where the quantity is essential, and then it shall be sufficient to allege the sale or disposal of more or less than such quantity. [1933 ex.s. c 62 § 57; RRS § 7306-57.]

(2010 Ed.)

**66.44.050 Description of offense in words of statutes—Proof required.** The description of any offense under this title, in the words of this title, or in any words of like effect, shall be sufficient in law; and any exception, exemption, provision, excuse, or qualification, whether it occurs by way of proviso or in the description of the offense in this title, may be proved by the defendant, but need not be specified or negated in the information; but if it is so specified or negated, no proof in relation to the matter so specified or negated shall be required on the part of the informant or complainant. [1933 ex.s. c 62 § 58; RRS § 7306-58.]

**66.44.060 Proof of unlawful sale establishes prima facie intent.** In any proceeding under this title, proof of one unlawful sale of liquor shall suffice to establish prima facie the intent or purpose of unlawfully keeping liquor for sale in violation of this title. [1933 ex.s. c 62 § 59; RRS § 7306-59.]

**66.44.070 Certified analysis is prima facie evidence of alcoholic content.** A certificate, signed by any person appointed or designated by the board in writing as an analyst, as to the percentage of alcohol contained in any liquid, drink, liquor, or combination of liquors, when produced in any court or before any court shall be prima facie evidence of the percentage of alcohol contained therein. [1933 ex.s. c 62 § 60; RRS § 7306-60.]

**66.44.080 Service of process on corporation.** In all prosecutions, actions, or proceedings under the provisions of this title against a corporation, every summons, warrant, order, writ or other proceeding may be served on the corporation in the same manner as is now provided by law for service of civil process. [1933 ex.s. c 62 § 61; RRS § 7306-61.]

**66.44.090 Acting without license.** Any person doing any act required to be licensed under this title without having in force a license issued to him shall be guilty of a gross misdemeanor. [1955 c 289 § 2. Prior: (i) 1933 ex.s. c 62 § 28; RRS § 7306-28.(ii) 1939 c 172 § 6(1); 1935 c 174 § 6(1); 1933 ex.s. c 62 § 92(1); RRS § 7306-92(1).]

**66.44.100 Opening or consuming liquor in public place—Penalty.** Except as permitted by this title, no person shall open the package containing liquor or consume liquor in a public place. Every person who violates any provision of this section shall be guilty of a class 3 civil infraction under chapter 7.80 RCW. [1999 c 189 § 3; 1981 1st ex.s. c 5 § 21; 1933 ex.s. c 62 § 34; RRS § 7306-34.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**66.44.120 Unlawful use of seal.** (1) No person other than an employee of the board shall keep or have in his or her possession any official seal prescribed under this title, unless the same is attached to a package which has been purchased from a liquor store or contract liquor store; nor shall any person keep or have in his or her possession any design in imitation of any official seal prescribed under this title, or calculated to deceive by its resemblance thereto, or any paper upon which any design in imitation thereof, or calculated to

deceive as aforesaid, is stamped, engraved, lithographed, printed, or otherwise marked.

(2)(a) Except as provided in (b) of this subsection, every person who willfully violates this section is guilty of a gross misdemeanor and shall be liable on conviction thereof for a first offense to imprisonment in the county jail for a period of not less than three months nor more than six months, without the option of the payment of a fine, and for a second offense, to imprisonment in the county jail for not less than six months nor more than one year, without the option of the payment of a fine.

(b) A third or subsequent offense is a class C felony, punishable by imprisonment in a state correctional facility for not less than one year nor more than two years. [2005 c 151 § 11; 2003 c 53 § 299; 1992 c 7 § 42; 1933 ex.s. c 62 § 47; RRS § 7306-47.]

**Intent—Effective date—2003 c 53:** See notes following RCW 2.48.180.

**66.44.130 Sales of liquor by drink or bottle.** Except as otherwise provided in this title, every person who sells by the drink or bottle, any liquor shall be guilty of a violation of this title. [1955 c 289 § 3. Prior: 1939 c 172 § 6(2); 1935 c 174 § 15(2); 1933 ex.s. c 62 § 92(2); RRS § 7306-92(2).]

**66.44.140 Unlawful sale, transportation of spirituous liquor without stamp or seal—Unlawful operation, possession of still or mash.** Every person who shall sell or offer for sale, or transport in any manner, any spirituous liquor, without government stamp or seal attached thereto, or who shall operate without a license, any still or other device for the production of spirituous liquor, or shall have in his possession or under his control any mash capable of being distilled into spirituous liquor except as provided in RCW 66.12.130, shall be guilty of a gross misdemeanor and upon conviction thereof shall upon his first conviction be fined not less than five hundred dollars and confined in the county jail not less than six months, and upon second and subsequent conviction shall be fined not less than one thousand dollars and confined in the county jail not less than one year. [1980 c 140 § 4; 1955 c 289 § 4. Prior: 1939 c 172 § 6(3); 1935 c 174 § 15(3); 1933 ex.s. c 62 § 92(3); RRS § 7306-92(3).]

**66.44.150 Buying liquor illegally.** If any person in this state buys alcoholic beverages from any person other than the board, a state liquor store, or some person authorized by the board to sell them, he shall be guilty of a misdemeanor. [1955 c 289 § 5. Prior: 1939 c 172 § 6(4); 1935 c 174 § 15(4); 1933 ex.s. c 62 § 92(4); RRS § 7306-92(4).]

**66.44.160 Illegal possession, transportation of alcoholic beverages.** Except as otherwise provided in this title, any person who has or keeps or transports alcoholic beverages other than those purchased from the board, a state liquor store, or some person authorized by the board to sell them, shall be guilty of a violation of this title. [1955 c 289 § 6. Prior: 1939 c 172 § 6(5); 1935 c 174 § 15(5); 1933 ex.s. c 62 § 92(5); RRS § 7306-92(5).]

[Title 66 RCW—page 70]

**66.44.170 Illegal possession of liquor with intent to sell—Prima facie evidence, what is.** Any person who keeps or possesses liquor upon his person or in any place, or on premises conducted or maintained by him as principal or agent with the intent to sell it contrary to provisions of this title, shall be guilty of a violation of this title. The possession of liquor by the principal or agent on premises conducted or maintained, under federal authority, as a retail dealer in liquors, shall be prima facie evidence of the intent to sell liquor. [1955 c 289 § 7. Prior: 1937 c 144 § 1 (adding new section 92A to 1933 ex.s. c 62); RRS § 7306-92A.]

**66.44.175 Violations of law.** Every person who violates any provision of this title or the regulations shall be guilty of a violation of this title, whether otherwise declared or not. [1933 ex.s. c 62 § 91; RRS § 7306-91.]

**66.44.180 General penalties—Jurisdiction for violations.** (1) Every person guilty of a violation of this title for which no penalty has been specifically provided:

(a) For a first offense, is guilty of a misdemeanor punishable by a fine of not more than five hundred dollars, or by imprisonment for not more than two months, or both;

(b) For a second offense, is guilty of a gross misdemeanor punishable by imprisonment for not more than six months; and

(c) For a third or subsequent offense, is guilty of a gross misdemeanor punishable by imprisonment for not more than one year.

(2) If the offender convicted of an offense referred to in this section is a corporation, it shall for a first offense be liable to a penalty of not more than five thousand dollars, and for a second or subsequent offense to a penalty of not more than ten thousand dollars, or to forfeiture of its corporate license, or both.

(3) Every district judge and municipal judge shall have concurrent jurisdiction with superior court judges of the state of Washington of all violations of the provisions of this title and may impose any punishment provided therefor. [2003 c 53 § 300; 1987 c 202 § 225; 1981 1st ex.s. c 5 § 22; 1935 c 174 § 16; 1933 ex.s. c 62 § 93; RRS § 7306-93.]

**Intent—Effective date—2003 c 53:** See notes following RCW 2.48.180.

**Intent—1987 c 202:** See note following RCW 2.04.190.

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**66.44.193 Sales on university or college campus.** If an institution of higher education chooses to allow the sale of alcoholic beverages on campus, the legislature encourages the institution to feature products produced in the state of Washington. [2003 c 51 § 2.]

**66.44.200 Sales to persons apparently under the influence of liquor—Purchases or consumption by persons apparently under the influence of liquor on licensed premises—Penalty—Notice—Separation of actions.** (1) No person shall sell any liquor to any person apparently under the influence of liquor.

(2010 Ed.)

(2)(a) No person who is apparently under the influence of liquor may purchase or consume liquor on any premises licensed by the board.

(b) A violation of this subsection is an infraction punishable by a fine of not more than five hundred dollars.

(c) A defendant's intoxication may not be used as a defense in an action under this subsection.

(d) Until July 1, 2000, every establishment licensed under RCW 66.24.330 or 66.24.420 shall conspicuously post in the establishment notice of the prohibition against the purchase or consumption of liquor under this subsection.

(3) An administrative action for violation of subsection (1) of this section and an infraction issued for violation of subsection (2) of this section arising out of the same incident are separate actions and the outcome of one shall not determine the outcome of the other. [1998 c 259 § 1; 1933 ex.s. c 62 § 36; RRS § 7306-36.]

#### **66.44.210 Obtaining liquor for ineligible person.**

Except in the case of liquor administered by a physician or dentist or sold upon a prescription in accordance with the provisions of this title, no person shall procure or supply, or assist directly or indirectly in procuring or supplying, liquor for or to anyone whose permit is suspended or has been canceled. [1933 ex.s. c 62 § 38; RRS § 7306-38.]

**66.44.240 Drinking in public conveyance—Penalty against carrier—Exception.** Every person engaged wholly or in part in the business of carrying passengers for hire, and every agent, servant, or employee of such person, who knowingly permits any person to drink any intoxicating liquor in any public conveyance, except in the compartment where such liquor is sold or served under the authority of a license lawfully issued, is guilty of a misdemeanor. This section does not apply to a public conveyance that is commercially chartered for group use or a for-hire vehicle licensed under city, county, or state law. [1983 c 165 § 29; 1909 c 249 § 442; RRS § 2694.]

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

*Alcoholic beverages, drinking or open container in vehicle on highway, exceptions: RCW 46.61.519.*

**66.44.250 Drinking in public conveyance—Penalty against individual—Restricted application.** Every person who drinks any intoxicating liquor in any public conveyance, except in a compartment or place where sold or served under the authority of a license lawfully issued, is guilty of a misdemeanor. With respect to a public conveyance that is commercially chartered for group use and with respect to a for-hire vehicle licensed under city, county, or state law, this section applies only to the driver of the vehicle. [1983 c 165 § 30; 1909 c 249 § 441; RRS § 2693.]

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

*Alcoholic beverages, drinking or open container in vehicle on highway, exceptions: RCW 46.61.519.*

**66.44.265 Candidates giving or purchasing liquor on election day prohibited.** It shall be unlawful for a candidate for office or for nomination thereto whose name appears

(2010 Ed.)

upon the ballot at any election to give to or purchase for another person, not a member of his or her family, any liquor in or upon any premises licensed by the state for the sale of any such liquor by the drink during the hours that the polls are open on the day of such election. [1971 ex.s. c 112 § 2.]

**66.44.270 Furnishing liquor to minors—Possession, use—Penalties—Exhibition of effects—Exceptions.** (1) It is unlawful for any person to sell, give, or otherwise supply liquor to any person under the age of twenty-one years or permit any person under that age to consume liquor on his or her premises or on any premises under his or her control. For the purposes of this subsection, "premises" includes real property, houses, buildings, and other structures, and motor vehicles and watercraft. A violation of this subsection is a gross misdemeanor punishable as provided for in chapter 9A.20 RCW.

(2)(a) It is unlawful for any person under the age of twenty-one years to possess, consume, or otherwise acquire any liquor. A violation of this subsection is a gross misdemeanor punishable as provided for in chapter 9A.20 RCW.

(b) It is unlawful for a person under the age of twenty-one years to be in a public place, or to be in a motor vehicle in a public place, while exhibiting the effects of having consumed liquor. For purposes of this subsection, exhibiting the effects of having consumed liquor means that a person has the odor of liquor on his or her breath and either: (i) Is in possession of or close proximity to a container that has or recently had liquor in it; or (ii) by speech, manner, appearance, behavior, lack of coordination, or otherwise, exhibits that he or she is under the influence of liquor. This subsection (2)(b) does not apply if the person is in the presence of a parent or guardian or has consumed or is consuming liquor under circumstances described in subsection (4) or (5) of this section.

(3) Subsections (1) and (2)(a) of this section do not apply to liquor given or permitted to be given to a person under the age of twenty-one years by a parent or guardian and consumed in the presence of the parent or guardian. This subsection shall not authorize consumption or possession of liquor by a person under the age of twenty-one years on any premises licensed under chapter 66.24 RCW.

(4) This section does not apply to liquor given for medicinal purposes to a person under the age of twenty-one years by a parent, guardian, physician, or dentist.

(5) This section does not apply to liquor given to a person under the age of twenty-one years when such liquor is being used in connection with religious services and the amount consumed is the minimal amount necessary for the religious service.

(6) Conviction or forfeiture of bail for a violation of this section by a person under the age of twenty-one years at the time of such conviction or forfeiture shall not be a disqualification of that person to acquire a license to sell or dispense any liquor after that person has attained the age of twenty-one years. [1998 c 4 § 1; 1993 c 513 § 1; 1987 c 458 § 3; 1955 c 70 § 2. Prior: 1935 c 174 § 6(1); 1933 ex.s. c 62 § 37(1); RRS § 7306-37(1); prior: Code 1881 § 939; 1877 p 205 § 5.]

*Minors, access to tobacco, role of liquor control board: Chapter 70.155 RCW.*

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**66.44.280 Minor applying for permit.** Every person under the age of twenty-one years who makes application for a permit shall be guilty of an offense against this title. [1955 c 70 § 3. Prior: 1935 c 174 § 6(2); 1933 ex.s. c 62 § 37(2); RRS § 7306-37(2).]

**66.44.290 Minor purchasing or attempting to purchase liquor—Penalty.** (1) Every person under the age of twenty-one years who purchases or attempts to purchase liquor shall be guilty of a violation of this title. This section does not apply to persons between the ages of eighteen and twenty-one years who are participating in a controlled purchase program authorized by the liquor control board under rules adopted by the board. Violations occurring under a private, controlled purchase program authorized by the liquor control board may not be used for criminal or administrative prosecution.

(2) An employer who conducts an in-house controlled purchase program authorized under this section shall provide his or her employees a written description of the employer's in-house controlled purchase program. The written description must include notice of actions an employer may take as a consequence of an employee's failure to comply with company policies regarding the sale of alcohol during an in-house controlled purchase.

(3) An in-house controlled purchase program authorized under this section shall be for the purposes of employee training and employer self-compliance checks. An employer may not terminate an employee solely for a first-time failure to comply with company policies regarding the sale of alcohol during an in-house controlled purchase program authorized under this section.

(4) Every person between the ages of eighteen and twenty, inclusive, who is convicted of a violation of this section is guilty of a misdemeanor punishable as provided by RCW 9A.20.021, except that a minimum fine of two hundred fifty dollars shall be imposed and any sentence requiring community restitution shall require not fewer than twenty-five hours of community restitution. [2003 c 53 § 301; 2001 c 295 § 1; 1965 c 49 § 1; 1955 c 70 § 4. Prior: 1935 c 174 § 6(1); 1933 ex.s. c 62 § 37(1); RRS § 7306-37(1).]

**Intent—Effective date—2003 c 53:** See notes following RCW 2.48.180.

**66.44.292 Sales to minors by licensee or employee—Board notification to prosecuting attorney to formulate charges against minors.** The Washington state liquor control board shall furnish notification of any hearing or hearings held, wherein any licensee or his employee is found to have sold liquor to a minor, to the prosecuting attorney of the county in which the sale took place, upon which the prosecuting attorney may formulate charges against said minor or minors for such violation of RCW 66.44.290 as may appear. [1981 1st ex.s. c 5 § 23; 1965 c 49 § 3.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**66.44.300 Treats, gifts, purchases of liquor for or from minor, or holding out minor as at least twenty-one, in public place where liquor sold.** Any person who invites a minor into a public place where liquor is sold and treats, gives or purchases liquor for such minor, or permits a minor

to treat, give or purchase liquor for the adult; or holds out such minor to be twenty-one years of age or older to the owner or employee of the liquor establishment, a law enforcement officer, or a liquor enforcement officer shall be guilty of a misdemeanor. [1994 c 201 § 7; 1941 c 78 § 1; Rem. Supp. 1941 § 7306-37A.]

**66.44.310 Minors frequenting off-limits area—Misrepresentation of age—Penalty—Classification of licensees.** (1) Except as otherwise provided by RCW 66.44.316, 66.44.350, and 66.24.590, it shall be a misdemeanor:

(a) To serve or allow to remain in any area classified by the board as off-limits to any person under the age of twenty-one years;

(b) For any person under the age of twenty-one years to enter or remain in any area classified as off-limits to such a person, but persons under twenty-one years of age may pass through a restricted area in a facility holding a spirits, beer, and wine private club license;

(c) For any person under the age of twenty-one years to represent his or her age as being twenty-one or more years for the purpose of purchasing liquor or securing admission to, or remaining in any area classified by the board as off-limits to such a person.

(2) The Washington state liquor control board shall have the power and it shall be its duty to classify licensed premises or portions of licensed premises as off-limits to persons under the age of twenty-one years of age. [2007 c 370 § 12; 1998 c 126 § 14; 1997 c 321 § 53; 1994 c 201 § 8; 1981 1st ex.s. c 5 § 24; 1943 c 245 § 1 (adding new section 36-A to 1933 ex.s. c 62); Rem. Supp. 1943 § 7306-36A. Formerly RCW 66.24.130 and 66.44.310.]

**Effective date—2007 c 370 §§ 10-20:** See note following RCW 66.04.010.

*Minors, access to tobacco, role of liquor control board: Chapter 70.155 RCW.*

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**66.44.316 Certain persons eighteen years and over permitted to enter and remain upon licensed premises during employment.** It is lawful for:

(1) Professional musicians, professional disc jockeys, or professional sound or lighting technicians actively engaged in support of professional musicians or professional disc jockeys, eighteen years of age and older, to enter and to remain in any premises licensed under the provisions of Title 66 RCW, but only during and in the course of their employment as musicians, disc jockeys, or sound or lighting technicians;

(2) Persons eighteen years of age and older performing janitorial services to enter and remain on premises licensed under the provisions of Title 66 RCW when the premises are closed but only during and in the course of their performance of janitorial services;

(3) Employees of amusement device companies, which employees are eighteen years of age or older, to enter and to remain in any premises licensed under the provisions of Title 66 RCW, but only during and in the course of their employment for the purpose of installing, maintaining, repairing, or removing an amusement device. For the purposes of this sec-

tion amusement device means coin-operated video games, pinball machines, juke boxes, or other similar devices; and

(4) Security and law enforcement officers, and firefighters eighteen years of age or older to enter and to remain in any premises licensed under Title 66 RCW, but only during and in the course of their official duties and only if they are not the direct employees of the licensee. However, the application of the [this] subsection to security officers is limited to casual, isolated incidents arising in the course of their duties and does not extend to continuous or frequent entering or remaining in any licensed premises.

This section shall not be construed as permitting the sale or distribution of any alcoholic beverages to any person under the age of twenty-one years. [1985 c 323 § 1; 1984 c 136 § 1; 1980 c 22 § 1; 1973 1st ex.s. c 96 § 1.]

**66.44.318 Employees aged eighteen to twenty-one stocking, merchandising, and handling beer and wine.** Licensees holding nonretail class liquor licenses are permitted to allow their employees between [the] ages of eighteen and twenty-one to stock, merchandise, and handle beer or wine on or about the nonretail premises if there is an adult twenty-one years of age or older on duty supervising such activities on the premises. [1995 c 100 § 2.]

**66.44.325 Unlawful transfer to minor of age identification.** Any person who transfers in any manner an identification of age to a minor for the purpose of permitting such minor to obtain alcoholic beverages shall be guilty of a misdemeanor punishable as provided by RCW 9A.20.021, except that a minimum fine of two hundred fifty dollars shall be imposed and any sentence requiring community restitution shall require not fewer than twenty-five hours of community restitution: PROVIDED, That corroborative testimony of a witness other than the minor shall be a condition precedent to conviction. [2002 c 175 § 43; 1987 c 101 § 2; 1961 c 147 § 1.]

**Effective date—2002 c 175:** See note following RCW 7.80.130.

*Cards of identification:* RCW 66.20.160 through 66.20.210.

**66.44.328 Preparation or acquisition and supply to persons under age twenty-one of facsimile of official identification card—Penalty.** No person may forge, alter, counterfeit, otherwise prepare or acquire and supply to a person under the age of twenty-one years a facsimile of any of the officially issued cards of identification that are required for presentation under RCW 66.16.040. A violation of this section is a gross misdemeanor punishable as provided by RCW 9A.20.021 except that a minimum fine of two thousand five hundred dollars shall be imposed. [1987 c 101 § 3.]

**66.44.330 Prosecutions to be reported by prosecuting attorney and police court.** See RCW 36.27.020(12).

**66.44.340 Employees eighteen years and over allowed to sell and handle beer and wine for certain licensed employers.** Employers holding grocery store or beer and/or wine specialty shop licenses exclusively are permitted to allow their employees, between the ages of eighteen and twenty-one years, to sell, stock, and handle beer or wine

in, on or about any establishment holding a grocery store or beer and/or wine specialty shop license exclusively: PROVIDED, That there is an adult twenty-one years of age or older on duty supervising the sale of liquor at the licensed premises: PROVIDED, That minor employees may make deliveries of beer and/or wine purchased from licensees holding grocery store or beer and/or wine specialty shop licenses exclusively, when delivery is made to cars of customers adjacent to such licensed premises but only, however, when the minor employee is accompanied by the purchaser. [1999 c 281 § 11; 1986 c 5 § 1; 1981 1st ex.s. c 5 § 48; 1969 ex.s. c 38 § 1.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**66.44.350 Employees eighteen years and over allowed to serve and carry liquor, clean up, etc., for certain licensed employers.** Notwithstanding provisions of RCW 66.44.310, employees holding beer and/or wine restaurant; beer and/or wine private club; snack bar; spirits, beer, and wine restaurant; spirits, beer, and wine private club; and sports entertainment facility licenses who are licensees eighteen years of age and over may take orders for, serve and sell liquor in any part of the licensed premises except cocktail lounges, bars, or other areas classified by the Washington state liquor control board as off-limits to persons under twenty-one years of age: PROVIDED, That such employees may enter such restricted areas to perform work assignments including picking up liquor for service in other parts of the licensed premises, performing clean up work, setting up and arranging tables, delivering supplies, delivering messages, serving food, and seating patrons: PROVIDED FURTHER, That such employees shall remain in the areas off-limits to minors no longer than is necessary to carry out their aforementioned duties: PROVIDED FURTHER, That such employees shall not be permitted to perform activities or functions of a bartender. [1999 c 281 § 12; 1988 c 160 § 1; 1975 1st ex.s. c 204 § 1.]

**66.44.365 Juvenile driving privileges—Alcohol or drug violations.** (1) If a juvenile thirteen years of age or older and under the age of eighteen is found by a court to have committed any offense that is a violation of this chapter, the court shall notify the department of licensing within twenty-four hours after entry of the judgment.

(2) Except as otherwise provided in subsection (3) of this section, upon petition of a juvenile whose privilege to drive has been revoked pursuant to RCW 46.20.265, the court may notify the department of licensing that the juvenile's privilege to drive should be reinstated.

(3) If the conviction is for the juvenile's first violation of this chapter or chapter 69.41, 69.50, or 69.52 RCW, a juvenile may not petition the court for reinstatement of the juvenile's privilege to drive revoked pursuant to RCW 46.20.265 until the later of ninety days after the date the juvenile turns sixteen or ninety days after the judgment was entered. If the conviction was for the juvenile's second or subsequent violation of this chapter or chapter 69.41, 69.50, or 69.52 RCW, the juvenile may not petition the court for reinstatement of the juvenile's privilege to drive revoked pursuant to RCW 46.20.265 until the later of the date the juvenile turns seven-

teen or one year after the date judgment was entered. [1989 c 271 § 118; 1988 c 148 § 3.]

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

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**66.44.370 Resisting or opposing officers in enforcement of title.** No person shall knowingly or wilfully resist or oppose any state, county, or municipal peace officer, or liquor enforcement officer, in the discharge of his/her duties under Title 66 RCW, or aid and abet such resistance or opposition. Any person who violates this section shall be guilty of a violation of this title and subject to arrest by any such officer. [1981 1st ex.s. c 5 § 27.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**66.44.800 Compliance by Washington wine and beer commissions.** (1) Nothing contained in chapter 15.88 RCW shall affect the compliance by the Washington wine commission with this chapter.

(2) Nothing contained in chapter 15.89 RCW shall affect the compliance by the Washington beer commission with this chapter. [2006 c 330 § 22; 1987 c 452 § 17.]

**Construction—Severability—2006 c 330:** See RCW 15.89.900 and 15.89.901.

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

## Chapter 66.98 RCW CONSTRUCTION

### Sections

66.98.010	Short title.
66.98.020	Severability and construction—1933 ex.s. c 62.
66.98.030	Effect of act on certain laws—1933 ex.s. c 62.
66.98.040	Effective date and application—1937 c 217.
66.98.050	Effective date and application—1939 c 172.
66.98.060	Rights of spirits, beer, and wine restaurant licensees—1949 c 5.
66.98.070	Regulations by board—1949 c 5.
66.98.080	Severability—1949 c 5.
66.98.090	Severability—1981 1st ex.s. c 5.
66.98.100	Effective date—1981 1st ex.s. c 5.

**66.98.010 Short title.** This act may be cited as the "Washington State Liquor Act." [1933 ex.s. c 62 § 1; RRS § 7306-1.]

**66.98.020 Severability and construction—1933 ex.s. c 62.** If any clause, part or section of this act shall be adjudged invalid, such judgment shall not affect nor invalidate the remainder of the act, but shall be confined in its operation to the clause, part or section directly involved in the controversy in which such judgment was rendered. If the operation of any clause, part or section of this act shall be held to impair the obligation of contract, or to deny to any person any right or protection secured to him by the Constitution of the United States of America, or by the Constitution of the state of Washington, it is hereby declared that, had the invalidity of such clause, part or section been considered at the time of the enactment of this act, the remainder of the act would nevertheless have been adopted without such and any and all such invalid clauses, parts or sections. [1933 ex.s. c 62 § 94; RRS § 7306-94.]

[Title 66 RCW—page 74]

**66.98.030 Effect of act on certain laws—1933 ex.s. c 62.** Nothing in this act shall be construed to amend or repeal chapter 2 of the Laws of 1933, or any portion thereof. [1933 ex.s. c 62 § 95; RRS § 7306-95.]

**Reviser's note:** 1933 c 2 referred to herein consisted of two sections, section 1 of which is codified as RCW 66.44.320 and section 2 was a repeal of earlier liquor laws.

**66.98.040 Effective date and application—1937 c 217.** This act is necessary for the support of the state government and its existing public institutions and shall take effect immediately: PROVIDED, HOWEVER, That any person, who shall at the time this act takes effect be the bona fide holder of a license duly issued under \*chapter 62, Laws of 1933, extraordinary session, as amended by chapters 13, 80, 158 and 174, Laws of 1935, shall be entitled to exercise the rights and privileges granted by such license until the 30th day of September, 1937: AND PROVIDED FURTHER, That all persons lawfully engaged in activities not required to be licensed prior to the taking effect of this act but which are required to be licensed under the provisions of this act shall have thirty days from and after the taking effect of this act in which to comply with the same. [1937 c 217 § 8; RRS § 7306-97.]

**\*Reviser's note:** Chapter 62, Laws of 1933, extraordinary session, is the basic liquor act codified in this title. The 1937 act in which it appears amended it.

**66.98.050 Effective date and application—1939 c 172.** This act is necessary for the support of the state government and its existing public institutions and shall take effect immediately: PROVIDED, HOWEVER, That any person, who shall at the time this act takes effect be the bona fide holder of a license duly issued under \*chapter 62, Laws of 1933, extraordinary session, as amended by chapters 13, 80, 158 and 174, Laws of 1935 and chapters 62 and 217, Laws of 1937, shall be entitled to exercise the rights and privileges granted by such license until the 30th day of September, 1939: AND PROVIDED FURTHER, That all persons lawfully engaged in activities not required to be licensed prior to the taking effect of this act but which are required to be licensed under the provisions of this act shall have thirty days from and after the taking effect of this act in which to comply with the same. [1939 c 172 § 11; RRS § 7306-97a.]

**\*Reviser's note:** Chapter 62, Laws of 1933, extraordinary session, is the basic liquor act codified in this title. The 1939 act in which it appears amended it.

**66.98.060 Rights of spirits, beer, and wine restaurant licensees—1949 c 5.** Notwithstanding any provisions of chapter 62, Laws of 1933 ex. sess., as last amended, or of any provisions of any other law which may otherwise be applicable, it shall be lawful for the holder of a spirits, beer, and wine restaurant license to sell beer, wine, and spirituous liquor in this state in accordance with the terms of chapter 5, Laws of 1949. [1998 c 126 § 15; 1997 c 321 § 54; 1949 c 5 § 14; No RRS. Formerly: RCW 66.24.460.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**66.98.070 Regulations by board—1949 c 5.** For the purpose of carrying into effect the provisions of this act, the

board shall have the same power to make regulations not inconsistent with the spirit of this act as is provided by RCW 66.08.030. [1949 c 5 § 15; No RRS. Formerly: RCW 66.24.470.]

**66.98.080 Severability—1949 c 5.** If any section or provision of this act shall be adjudged to be invalid, such adjudication shall not affect the validity of the act as whole or any section, provision, or part thereof not adjudged to be invalid. [1949 c 5 § 17; No RRS.]

**66.98.090 Severability—1981 1st ex.s. c 5.** If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1981 1st ex.s. c 5 § 50.]

**66.98.100 Effective date—1981 1st ex.s. c 5.** This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect July 1, 1981. [1981 1st ex.s. c 5 § 51.]



# Title 67

## SPORTS AND RECREATION—CONVENTION FACILITIES

### Chapters

- 67.04** **Baseball.**
- 67.08** **Boxing, martial arts, and wrestling.**
- 67.12** **Dancing, billiards, pool, and bowling.**
- 67.14** **Billiard tables, bowling alleys, and miscellaneous games—1873 act.**
- 67.16** **Horse racing.**
- 67.17** **Live horse racing compact.**
- 67.20** **Parks, bathing beaches, public camps.**
- 67.24** **Fraud in sporting contest.**
- 67.28** **Public stadium, convention, arts, and tourism facilities.**
- 67.30** **Multipurpose sports stadia.**
- 67.38** **Cultural arts, stadium and convention districts.**
- 67.40** **Convention and trade facilities.**
- 67.42** **Amusement rides.**
- 67.70** **State lottery.**

*Alcoholic beverage control: Title 66 RCW.*

*Bicycles—Operation and equipment: RCW 46.61.750 through 46.61.780.*

*Business and occupation tax—Exemptions—Boxing, sparring, or wrestling matches: RCW 82.04.340.*

#### Cities and towns

*admissions tax: RCW 35.21.280.*

*auditoriums, art museums, swimming pools, etc.—Power to acquire: RCW 35.21.020, 35A.11.020.*

*powers vested in legislative bodies of noncharter and charter code cities: RCW 35A.11.020.*

*Common carriers—Commutation or excursion tickets: RCW 81.28.080.*

*Controlled substances: Chapter 69.50 RCW.*

#### Counties

*admissions tax: Chapter 36.38 RCW.*

*fairs and poultry shows: Chapter 36.37 RCW.*

*joint armory sites: RCW 36.64.050.*

*parks and recreational facilities: Chapter 36.68 RCW.*

*recreation districts act for counties: Chapter 36.69 RCW.*

*southwest Washington fair: Chapter 36.90 RCW.*

*County park and recreation service areas—Use of local service funds in exercise of powers enumerated: Chapter 36.68 RCW.*

*Cruelty to animals—Prevention: Chapter 16.52 RCW.*

*Doors of buildings used by public—Requirements—Penalty: RCW 70.54.070.*

*Driving delinquencies: Chapter 46.61 RCW.*

*Earthquake standards for construction (public meeting places): Chapter 70.86 RCW.*

*Excise taxes: Motor vehicle fuel tax—Exemptions: RCW 82.36.230.*

*Explosives: Chapter 70.74 RCW.*

*Fireworks: Chapter 70.77 RCW.*

#### First-class cities

*additional powers—Auditoriums, art museums: RCW 35.22.290.*

*leasing of land for auditoriums, etc.: RCW 35.22.300.*

#### Food fish and shellfish

*department of fish and wildlife: Chapter 77.04 RCW.*

*unlawful acts: Chapter 77.50 RCW.*

*Game and game fish: Title 77 RCW.*

*Horse racing commission: Chapter 67.16 RCW.*

*Limitation on liability of landowners for injuries to recreation users: RCW 4.24.210.*

*Marine recreation land act: Chapter 79A.25 RCW.*

*Metropolitan municipal corporations: Chapter 35.58 RCW.*

*Metropolitan park districts: Chapter 35.61 RCW.*

#### Militia

*armories and small arms ranges: Chapter 38.20 RCW.*

*membership in clubs, etc.: RCW 38.40.110.*

*social corporations may be formed: RCW 38.40.130.*

*Multipurpose community centers: Chapter 35.59 RCW.*

*Narcotic drugs: Chapter 69.50 RCW.*

*Parks and recreation commission: Chapter 79A.05 RCW.*

*Physical education in schools and higher institutions: RCW 28A.230.040, 28A.230.050.*

*Professional sports franchise, cities authorized to own and operate: RCW 35.21.695.*

*Public bodies may retain collection agencies to collect public debts—Fees: RCW 19.16.500.*

#### Public lands

*director of ecology to assist city parks: RCW 79.125.730.*

*exchange of lands to secure city parks and playgrounds: RCW 79.125.720.*

*grant of lands for city park or playground purposes: RCW 79.125.710.*

*use of public lands for state or city park purposes: RCW 79A.50.010 through 79A.50.030.*

*Regulation of motor boats: Chapter 79A.60 RCW.*

*Second-class cities, additional powers—Acquisition of property for municipal purposes: RCW 35.23.452.*

*State agency for surveys and maps: Chapter 58.24 RCW.*

*Streets—Bicycles—Paths: Chapter 35.75 RCW.*

*Unclassified cities—Additional powers (relating to recreation or entertainment): RCW 35.30.010(4).*

*Use of playgrounds for other than school purposes: RCW 28A.335.150.*

*Vacation of streets or alleys abutting on bodies of water by city or town prohibited with specified exceptions such as when the vacated property is to be used for recreational purposes, etc.: RCW 35.79.035.*

*Watercraft adrift: Chapter 79A.60 RCW.*

*Water recreation facilities: Chapter 70.90 RCW.*

*Wharves and landings—Right of riparian owner to construct: RCW 88.24.010.*

### Chapter 67.04 RCW

#### BASEBALL

#### Sections

- 67.04.010 Penalty for bribery in relation to baseball game.
- 67.04.020 Penalty for acceptance of bribe.
- 67.04.030 Elements of offense outlined.
- 67.04.040 "Bribe" defined.
- 67.04.050 Corrupt baseball playing—Penalty.
- 67.04.060 Venue of action.
- 67.04.070 Bonus or extra compensation.
- 67.04.080 Scope of provisions as to bribes.
- 67.04.090 Baseball contracts with minors—Definitions.
- 67.04.100 Contract with minor void unless approved.
- 67.04.110 Contract with minor—Approval by prosecuting attorney.
- 67.04.120 Contract with minor—Basis of approval.
- 67.04.130 Contract with minor—Effect of disapproval.
- 67.04.140 Negotiations with minor prohibited.

67.04.150 Contract with minor—Penalty for violation.

*Age of majority: Chapter 26.28 RCW.*

**67.04.010 Penalty for bribery in relation to baseball game.** Any person who shall bribe or offer to bribe, any baseball player with intent to influence his play, action or conduct in any baseball game, or any person who shall bribe or offer to bribe any umpire of a baseball game, with intent to influence him to make a wrong decision or to bias his opinion or judgment in relation to any baseball game or any play occurring therein, or any person who shall bribe or offer to bribe any manager, or other official of a baseball club, league or association, by whatsoever name called, conducting said game of baseball to throw or lose a game of baseball, shall be guilty of a gross misdemeanor. [1921 c 181 § 1; RRS § 2321-1.]

**67.04.020 Penalty for acceptance of bribe.** Any baseball player who shall accept or agree to accept, a bribe offered for the purpose of wrongfully influencing his play, action or conduct in any baseball game, or any umpire of a baseball game who shall accept or agree to accept a bribe offered for the purpose of influencing him to make a wrong decision, or biasing his opinions, rulings or judgment with regard to any play, or any manager of a baseball club, or club or league official, who shall accept, or agree to accept, any bribe offered for the purpose of inducing him to lose or cause to be lost any baseball game, as set forth in RCW 67.04.010, shall be guilty of a gross misdemeanor. [1921 c 181 § 2; RRS § 2321-2.]

**67.04.030 Elements of offense outlined.** To complete the offenses mentioned in RCW 67.04.010 and 67.04.020, it shall not be necessary that the baseball player, manager, umpire or official, shall, at the time, have been actually employed, selected or appointed to perform their respective duties; it shall be sufficient if the bribe be offered, accepted or agreed to with the view of probable employment, selection or appointment of the person to whom the bribe is offered, or by whom it is accepted. Neither shall it be necessary that such baseball player, umpire or manager actually play or participate in a game or games concerning which said bribe is offered or accepted; it shall be sufficient if the bribe be given, offered or accepted in view of his or their possibly participating therein. [1921 c 181 § 3; RRS § 2321-3.]

**67.04.040 "Bribe" defined.** By a "bribe" as used in RCW 67.04.010 through 67.04.080, is meant any gift, emolument, money or thing of value, testimonial, privilege, appointment or personal advantage, or the promise of either, bestowed or promised for the purpose of influencing, directly or indirectly, any baseball player, manager, umpire, club or league official, to see which game an admission fee may be charged, or in which game of baseball any player, manager or umpire is paid any compensation for his services. Said bribe as defined in RCW 67.04.010 through 67.04.080 need not be direct; it may be such as is hidden under the semblance of a sale, bet, wager, payment of a debt, or in any other manner designed to cover the true intention of the parties. [1921 c 181 § 4; RRS § 2321-4.]

**67.04.050 Corrupt baseball playing—Penalty.** Any baseball player, manager or club or league official who shall commit any wilful act of omission or commission in playing, or directing the playing, of a baseball game, with intent to cause the ball club, with which he is affiliated, to lose a baseball game; or any umpire officiating in a baseball game, or any club or league official who shall commit any wilful act connected with his official duties for the purpose and with the intent to cause a baseball club to win or lose a baseball game, which it would not otherwise have won or lost under the rules governing the playing of said game, shall be guilty of a gross misdemeanor. [1921 c 181 § 5; RRS § 2321-5.]

**67.04.060 Venue of action.** In all prosecutions under RCW 67.04.010 through 67.04.080 the venue may be laid in any county where the bribe herein referred to was given, offered or accepted, or in which the baseball game was played in relation to which the bribe was offered, given or accepted, or the acts referred to in RCW 67.04.050 committed. [1921 c 181 § 6; RRS § 2321-6.]

**67.04.070 Bonus or extra compensation.** Nothing in RCW 67.04.010 through 67.04.080 shall be construed to prohibit the giving or offering of any bonus or extra compensation to any manager or baseball player by any person to encourage such manager or player to a higher degree of skill, ability or diligence in the performance of his duties. [1921 c 181 § 7; RRS § 2321-7.]

**67.04.080 Scope of provisions as to bribes.** RCW 67.04.010 through 67.04.080 shall apply only to baseball league and club officials, umpires, managers and players who act in such capacity in games where the public is generally invited to attend and a general admission fee is charged. [1921 c 181 § 8; RRS § 2321-8.]

**67.04.090 Baseball contracts with minors—Definitions.** As used in RCW 67.04.090 through 67.04.150 the following terms shall have the following meanings:

- (1) "Minor" shall mean any person under the age of eighteen years, and who has not graduated from high school: PROVIDED, That should he become eighteen during his senior year he shall be a minor until the end of the school year;
- (2) "Contract" shall mean any contract, agreement, bonus or gratuity arrangement, whether oral or written;
- (3) "Organized professional baseball" shall mean and include all persons, firms, corporations, associations, or teams or clubs, or agents thereof, engaged in professional baseball, or in promoting the interest of professional baseball, or sponsoring or managing other persons, firms, corporations, associations, teams, or clubs who play baseball in any of the major or minor professional baseball leagues, or any such league hereafter organized;
- (4) "Agent" shall, in addition to its generally accepted legal meaning, mean and include those persons commonly known as "baseball scouts";
- (5) "Prosecuting attorney" shall mean the prosecuting attorney, or his regular deputy, of the county in which the minor's parent is domiciled;

(6) "Parent" shall mean parent, parents or guardian. [1951 c 78 § 2.]

**Purpose—1951 c 78:** "The welfare of the children of this state is of paramount interest to the people of the state. It is the purpose of this act to foster the education of minors and to protect their moral and physical well-being. Organized professional baseball has in numerous cases induced minors to enter into contracts and agreements which have been unfair and injurious to them." [1951 c 78 § 1.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

#### 67.04.100 Contract with minor void unless approved.

Any contract between organized professional baseball and a minor shall be null and void and contrary to the public policy of the state, unless and until such contract be approved as hereinafter provided. [1951 c 78 § 3.]

**Purpose—Severability—1951 c 78:** See notes following RCW 67.04.090.

**67.04.110 Contract with minor—Approval by prosecuting attorney.** No contract within RCW 67.04.090 through 67.04.150 shall be null and void, nor shall any of the prohibitions or penalties provided in RCW 67.04.090 through 67.04.150 be applicable if such contract be first approved in writing by the prosecuting attorney. Such approval may be sought jointly, or at the request of either party seeking a contract. [1951 c 78 § 4.]

**Purpose—Severability—1951 c 78:** See notes following RCW 67.04.090.

#### 67.04.120 Contract with minor—Basis of approval.

The prosecuting attorney shall have the authority to examine all the parties to the proposed contract and any other interested person and shall approve such contract if the following facts and circumstances are found to exist:

(1) That the minor has not been signed, approached, or contacted, directly or indirectly, pertaining to a professional baseball contract except as herein permitted by approval of the prosecuting attorney;

(2) That the minor has been apprised of the fact that approval of the contract may deprive him of his amateur status;

(3) That the parent of the minor and the minor have consented to the contract;

(4) That the prosecuting attorney has concluded that the contract conforms to the provisions of RCW 67.04.090 through 67.04.150, and is a valid and binding contract;

(5) That the contract permits the minor to have at least five months available each year to continue his high school education. [1951 c 78 § 5.]

**Purpose—Severability—1951 c 78:** See notes following RCW 67.04.090.

*Employment permits: RCW 28A.225.080.*

**67.04.130 Contract with minor—Effect of disapproval.** Should the prosecuting attorney not approve the contract as above provided, then such contract shall be void, and the status of the minor shall remain as if no contract had been made, unless the prosecuting attorney's determination be the result of arbitrary or capricious action. [1951 c 78 § 6.]

**Purpose—Severability—1951 c 78:** See notes following RCW 67.04.090.

(2010 Ed.)

**67.04.140 Negotiations with minor prohibited.** No representative of organized professional baseball nor agent, nor person purporting to be able to represent any institution in organized baseball, whether so authorized to represent such institution or not, shall initiate or participate in any negotiations which would induce an evasion of this law in any way, including the removal of any minor to another state, or violate the minor's high school athletic eligibility. [1951 c 78 § 7.]

**Purpose—Severability—1951 c 78:** See notes following RCW 67.04.090.

**67.04.150 Contract with minor—Penalty for violation.** Any person, firm, corporation, association, or agent thereof, who enters into a contract with a minor, or gives a bonus or any gratuity to any minor to secure the minor's promise to enter into a contract in violation of the provisions of RCW 67.04.090 through 67.04.150, or shall otherwise violate any provisions of RCW 67.04.090 through 67.04.150, shall be guilty of a gross misdemeanor. [1951 c 78 § 8.]

**Purpose—Severability—1951 c 78:** See notes following RCW 67.04.090.

## Chapter 67.08 RCW

### BOXING, MARTIAL ARTS, AND WRESTLING

(Formerly: Boxing, sparring, and wrestling)

#### Sections

67.08.002	Definitions.
67.08.007	Officers, employees, inspectors.
67.08.010	Licenses for boxing, martial arts, and wrestling events—Telecasts.
67.08.015	Duties of department—Exemptions—Rules.
67.08.017	Director—Powers.
67.08.030	Promoters—Bond—Medical insurance.
67.08.040	Issuance of license.
67.08.050	Statement and report of event—Event fee—Complimentary tickets.
67.08.055	Simultaneous or closed circuit telecasts—Report—Event fee.
67.08.060	Inspectors—Duties—Fee and travel expenses for attending events.
67.08.080	Rounds and bouts limited—Weight of gloves—Rules.
67.08.090	Physician's attendance—Examination of contestants—Urinalysis.
67.08.100	Annual licenses—Fees—Qualifications—Revocation—Exceptions.
67.08.105	License, renewal, and event fees.
67.08.110	Unprofessional conduct—Sham or fake event.
67.08.130	Failure to make report—Additional tax—Hearing—Disciplinary action.
67.08.140	Penalty for conducting events without license—Penalty.
67.08.150	General penalty.
67.08.160	Ambulance or paramedical unit at location.
67.08.170	Security—Promoter's responsibility.
67.08.180	Unprofessional conduct—Prohibited acts.
67.08.200	Unprofessional conduct—Written complaint—Investigation—Immunity of complainant.
67.08.220	Unprofessional conduct—Order upon finding—Penalties—Costs.
67.08.240	Unprofessional conduct—What constitutes.
67.08.300	Immunity of director and director's agents.
67.08.310	Uniform regulation of business and professions act.
67.08.900	Severability—1933 c 184.
67.08.901	Severability—1993 c 278.
67.08.902	Effective date—1993 c 278.
67.08.903	Severability—1997 c 205.

**67.08.002 Definitions.** The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Amateur" means a person who has never received nor competed for any purse or other article of value, either for expenses of training or for participating in an event, other than a prize of fifty dollars in value or less.

(2) "Boxing" means the sport of attack and defense which uses the contestants fists and where the contestants compete with the intent not to injure or disable an opponent, but to win by decision, knockout, or technical knockout, but does not include professional wrestling.

(3) "Chiropractor" means a person licensed under chapter 18.25 RCW as a doctor of chiropractic or under the laws of any jurisdiction in which that person resides.

(4) "Department" means the department of licensing.

(5) "Director" means the director of the department of licensing or the director's designee.

(6) "Event" includes, but is not limited to, a boxing, wrestling, or martial arts contest, sparring, fisticuffs, match, show, or exhibition.

(7) "Event physician" means the physician licensed under RCW 67.08.100 and who is responsible for the activities described in RCW 67.08.090.

(8) "Face value" means the dollar value of a ticket or order, which value must reflect the dollar amount that the customer is required to pay or, for a complimentary ticket, would have been required to pay to purchase a ticket with equivalent seating priority, in order to view the event.

(9) "Gross receipts" means the amount received from the face value of all tickets sold and complimentary tickets redeemed.

(10) "Kickboxing" means a type of boxing in which blows are delivered with the fist and any part of the leg below the hip, including the foot and where the contestants compete with the intent not to injure or disable an opponent, but to win by decision, knockout, or technical knockout.

(11) "Martial arts" means a type of boxing including sumo, judo, karate, kung fu, tae kwon do, pankration, muay thai, or other forms of full-contact martial arts or self-defense conducted on a full-contact basis where weapons are not used and the participants utilize kicks, punches, blows, or other techniques with the intent not to injure or disable an opponent, but to defeat an opponent or win by decision, knockout, technical knockout, or submission.

(12) "No holds barred fighting," also known as "frontier fighting" and "extreme fighting," means a contest, exhibition, or match between contestants where any part of the contestant's body may be used as a weapon or any means of fighting may be used with the specific purpose to intentionally injure the other contestant in such a manner that they may not defend themselves and a winner is declared. Rules may or may not be used.

(13) "Combative fighting," also known as "toughman fighting," "toughwoman fighting," "badman fighting," and "so you think you're tough," means a contest, exhibition, or match between contestants who use their fists, with or without gloves, or their feet, or both, and which allows contestants that are not trained in the sport to compete and the object is to defeat an opponent or to win by decision, knockout, or technical knockout.

(14) "Physician" means a person licensed under chapter 18.57, 18.36A, or 18.71 RCW as a physician or a person

holding an osteopathic or allopathic physician license under the laws of any jurisdiction in which the person resides.

(15) "Professional" means a person who has received or competed for any purse or other articles of value greater than fifty dollars, either for the expenses of training or for participating in an event.

(16) "Promoter" means a person, and includes any officer, director, employee, or stockholder of a corporate promoter, who produces, arranges, stages, holds, or gives an event in this state involving a professional boxing, martial arts, or wrestling event, or shows or causes to be shown in this state a closed circuit telecast of a match involving a professional participant whether or not the telecast originates in this state.

(17) "Wrestling exhibition" or "wrestling show" means a form of sports entertainment in which the participants display their skills in a physical struggle against each other in the ring and either the outcome may be predetermined or the participants do not necessarily strive to win, or both.

(18) "Amateur event" means an event in which all the participants are "amateurs" and which is registered and sanctioned by:

- (a) United States Amateur Boxing, Inc.;
- (b) Washington Interscholastic Activities Association;
- (c) National Collegiate Athletic Association;
- (d) Amateur Athletic Union;
- (e) Golden Gloves of America;
- (f) United Full Contact Federation;
- (g) Any similar organization recognized by the department as exclusively or primarily dedicated to advancing the sport of amateur boxing, kickboxing, or martial arts, as those sports are defined in this section; or
- (h) Local affiliate of any organization identified in this subsection.

(19) "Elimination tournament" means any contest in which contestants compete in a series of matches until not more than one contestant remains in any weight category. The term does not include any event that complies with the provisions of RCW 67.08.015(2) (a) or (b). [2004 c 149 § 1; 2002 c 147 § 1; 1999 c 282 § 2; 1997 c 205 § 1; 1993 c 278 § 8; 1989 c 127 § 1.]

**Effective date—2004 c 149:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [March 26, 2004]." [2004 c 149 § 3.]

**Effective date—2002 c 147:** "This act takes effect January 1, 2003." [2002 c 147 § 4.]

**67.08.007 Officers, employees, inspectors.** The department may employ and fix the compensation of such officers, employees, and inspectors as may be necessary to administer the provisions of this chapter as amended. [1993 c 278 § 9; 1959 c 305 § 2; 1933 c 184 § 4; RRS § 8276-4. Formerly RCW 43.48.040.]

**67.08.010 Licenses for boxing, martial arts, and wrestling events—Telecasts.** The department shall have power to issue and take disciplinary action as provided in RCW 18.235.130 against a license to conduct, hold, or promote boxing, martial arts, or wrestling events or closed circuit telecasts of these events as provided in this chapter and

chapter 18.235 RCW under such terms and conditions and at such times and places as the department may determine. [2002 c 86 § 305; 1997 c 205 § 2; 1993 c 278 § 10; 1989 c 127 § 13; 1975-'76 2nd ex.s. c 48 § 2; 1933 c 184 § 7; RRS § 8276-7. Prior: 1909 c 249 § 304; 1890 p 109 § 1; 1886 p 82 § 1.]

**Effective dates—2002 c 86:** See note following RCW 18.08.340.

**Part headings not law—Severability—2002 c 86:** See RCW 18.235.902 and 18.235.903.

**67.08.015 Duties of department—Exemptions—Rules.** (1) In the interest of ensuring the safety and welfare of the participants, the department shall have power and it shall be its duty to direct, supervise, and control all boxing, martial arts, and wrestling events conducted within this state and an event may not be held in this state except in accordance with the provisions of this chapter. The department may, in its discretion, issue and for cause, which includes concern for the safety and welfare of the participants, take any of the actions specified in RCW 18.235.110 against a license to promote, conduct, or hold boxing, kickboxing, martial arts, or wrestling events where an admission fee is charged by any person, club, corporation, organization, association, or fraternal society.

(2) All boxing, kickboxing, martial arts, or wrestling events that:

(a) Are conducted by any common school, college, or university, whether public or private, or by the official student association thereof, whether on or off the school, college, or university grounds, where all the participating contestants are bona fide students enrolled in any common school, college, or university, within or without this state; or

(b) Are entirely amateur events as defined in RCW 67.08.002(18) and promoted on a nonprofit basis or for charitable purposes;

are not subject to the licensing provisions of this chapter. A boxing, martial arts, kickboxing, or wrestling event may not be conducted within the state except under a license issued in accordance with this chapter and the rules of the department except as provided in this section.

(3) The director shall prohibit events unless all of the contestants are licensed or otherwise exempt from licensure as provided under this chapter.

(4) No amateur or professional no holds barred fighting or combative fighting type of contest, exhibition, match, or similar type of event, nor any elimination tournament, may be held in this state. Any person promoting such an event is guilty of a class C felony. Additionally, the director may apply to a superior court for an injunction against any and all promoters of a contest, and may request that the court seize all money and assets relating to the competition. [2004 c 149 § 2; 2002 c 86 § 306; 2000 c 151 § 2; 1999 c 282 § 3; 1997 c 205 § 3; 1993 c 278 § 12; 1989 c 127 § 14; 1977 c 9 § 2. Prior: 1975-'76 2nd ex.s. c 48 § 3; 1975 c 1 § 1; 1973 c 53 § 1; 1951 c 48 § 2.]

**Effective date—2004 c 149:** See note following RCW 67.08.002.

**Effective dates—2002 c 86:** See note following RCW 18.08.340.

**Part headings not law—Severability—2002 c 86:** See RCW 18.235.902 and 18.235.903.

(2010 Ed.)

**67.08.017 Director—Powers.** In addition to the powers described in RCW 18.235.030 and 18.235.040, the director or the director's designee has the following authority in administering this chapter:

(1) Adopt, amend, and rescind rules as deemed necessary to carry out this chapter;

(2) Adopt standards of professional conduct or practice;

(3) Enter into an assurance of discontinuance in lieu of issuing a statement of charges or conducting a hearing. The assurance shall consist of a statement of the law in question and an agreement not to violate the stated provision. The applicant or license holder shall not be required to admit to any violation of the law, and the assurance shall not be construed as such an admission. Violation of an assurance under this subsection is grounds for disciplinary action; and

(4) Establish and assess fines for violations of this chapter that may be subject to payment from a contestant's purse. [2002 c 86 § 307; 1997 c 205 § 4; 1993 c 278 § 11.]

**Effective dates—2002 c 86:** See note following RCW 18.08.340.

**Part headings not law—Severability—2002 c 86:** See RCW 18.235.902 and 18.235.903.

#### **67.08.030 Promoters—Bond—Medical insurance.**

(1) Every promoter, as a condition for receiving a license, shall file with the department a surety bond in an amount to be determined by the department, but not less than ten thousand dollars, to cover all of the event locations applied for within the state during the license period, conditioned upon the faithful performance by such licensee of the provisions of this chapter, the payment of the taxes, officials, and contracts as provided for herein and the observance of all rules of the department.

(2) Boxing promoters must obtain medical insurance in an amount set by the director, but not less than fifty thousand dollars, to cover any injuries incurred by participants at the time of each event held in this state and provide proof of insurance to the department seventy-two hours before each event. The evidence of insurance must specify, at a minimum, the name of the insurance company, the insurance policy number, the effective date of the coverage, and evidence that each participant is covered by the insurance. The promoter must pay any deductible associated with the insurance policy.

(3) In lieu of the insurance requirement of subsection (2) of this section, a promoter of the boxing event who so chooses may, as a condition for receiving a license under this chapter, file proof of medical insurance coverage that is in effect for the entire term of the licensing period.

(4) The department shall cancel a boxing event if the promoter fails to provide proof of medical insurance within the proper time frame. [1997 c 205 § 5; 1993 c 278 § 13; 1989 c 127 § 6; 1933 c 184 § 9; RRS § 8276-9.]

**67.08.040 Issuance of license.** Upon the approval by the department of any application for a license, as hereinabove provided, and the filing of the bond the department shall forthwith issue such license. [1993 c 278 § 14; 1975-'76 2nd ex.s. c 48 § 4; 1933 c 184 § 10; RRS § 8276-10.]

**67.08.050 Statement and report of event—Event fee—Complimentary tickets.** (1) Any promoter shall

within seven days prior to the holding of any event file with the department a statement setting forth the name of each licensee who is a potential participant, his or her manager or managers, and such other information as the department may require. Participant changes regarding a wrestling event may be allowed after notice to the department, if the new participant holds a valid license under this chapter. The department may stop any wrestling event in which a participant is not licensed under this chapter.

(2) Upon the termination of any event the promoter shall file with the designated department representative a written report, duly verified as the department may require showing the number of tickets sold for the event, the price charged for the tickets and the gross proceeds thereof, and such other and further information as the department may require. The promoter shall pay to the department at the time of filing the report under this section an event fee to be determined by the director pursuant to RCW 67.08.105. However, the event fee may not be less than twenty-five dollars. The event fee and license fees collected under this chapter shall be paid by the department into the business and professions account under RCW 43.24.150. [2009 c 429 § 1; 2000 c 151 § 1; 1999 c 282 § 4; 1997 c 205 § 6; 1993 c 278 § 15; 1989 c 127 § 7; 1933 c 184 § 11; RRS § 8276-11. FORMER PART OF SECTION: 1939 c 54 § 1; RRS § 8276-11a, now footnoted below.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**67.08.055 Simultaneous or closed circuit telecasts—Report—Event fee.** Every licensee who charges and receives an admission fee for exhibiting a simultaneous telecast of any live, current, or spontaneous boxing or sparring match, or wrestling exhibition or show on a closed circuit telecast viewed within this state shall, within seventy-two hours after such event, furnish to the department a verified written report on a form which is supplied by the department showing the number of tickets issued or sold, and the gross receipts therefor without any deductions whatsoever. Such licensee shall also, at the same time, pay to the department an event fee to be determined by the director pursuant to RCW 67.08.105. In no event, however, shall the event fee be less than twenty-five dollars. The event fee shall be immediately paid by the department into the business and professions account under RCW 43.24.150. [2009 c 429 § 2; 1993 c 278 § 16; 1989 c 127 § 15; 1975-'76 2nd ex.s. c 48 § 5.]

**67.08.060 Inspectors—Duties—Fee and travel expenses for attending events.** The department may appoint official inspectors at least one of which, in the absence of a member of the department, shall be present at any event held under the provisions of this chapter. Such inspectors shall carry a card signed by the director evidencing their authority. It shall be their duty to see that all rules of the department and the provisions of this chapter are strictly complied with and to be present at the accounting of the gross receipts of any event, and such inspector is authorized to receive from the licensee conducting the event the statement of receipts herein provided for and to immediately transmit such reports to the department. Each inspector shall receive a fee and travel expenses from the promoter to be set by the director for each event officially attended. [1997 c 205 § 7; 1993 c 278 § 17;

1989 c 127 § 16; 1988 c 19 § 2; 1975-'76 2nd ex.s. c 34 § 154; 1959 c 305 § 4; 1933 c 184 § 12; RRS § 8276-12.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**67.08.080 Rounds and bouts limited—Weight of gloves—Rules.** A boxing event held in this state may not be for more than ten rounds and no one round of any bout shall be scheduled for longer than three minutes and there shall be not less than one minute intermission between each round. In the event of bouts involving state, regional, national, or world championships the department may grant an extension of no more than two additional rounds to allow total bouts of twelve rounds. A contestant in any boxing event under this chapter may not be permitted to wear gloves weighing less than eight ounces. The director shall adopt rules to assure clean and sportsmanlike conduct on the part of all contestants and officials, and the orderly and proper conduct of the event in all respects, and to otherwise make rules consistent with this chapter, but such rules shall apply only to events held under the provisions of this chapter. The director may adopt rules with respect to round and bout limitations and clean and sportsmanlike conduct for kickboxing, martial arts, or wrestling events. [1999 c 282 § 5; 1997 c 205 § 8; 1993 c 278 § 18; 1989 c 127 § 8; 1974 ex.s. c 45 § 1; 1959 c 305 § 5; 1933 c 184 § 14; RRS § 8276-14.]

**67.08.090 Physician's attendance—Examination of contestants—Urinalysis.** (1) Each contestant for boxing, kickboxing, or martial arts events shall be examined within twenty-four hours before the contest by an event physician licensed by the department. The event physician shall report in writing and over his or her signature before the event the physical condition of each and every contestant to the inspector present at such contest. No contestant whose physical condition is not approved by the event physician shall be permitted to participate in any event. Blank forms for event physicians' reports shall be provided by the department and all questions upon such blanks shall be answered in full. The event physician shall be paid a fee and travel expenses by the promoter.

(2) The department may require that an event physician be present at a wrestling event. The promoter shall pay the event physician present at a wrestling event. A boxing, kickboxing, or martial arts event may not be held unless an event physician licensed by the department is present throughout the event. In addition to the event physician, a chiropractor may be included as a licensed official at a boxing, kickboxing, or martial arts event. The promoter shall pay the chiropractor present at a boxing, kickboxing, or martial arts event.

(3) Any physician licensed under RCW 67.08.100 may be selected by the department as the event physician. The event physician present at any contest shall have authority to stop any event when in the event physician's opinion it would be dangerous to a contestant to continue, and in such event it shall be the event physician's duty to stop the event.

(4) The department may have a participant in a wrestling event examined by an event physician licensed by the department prior to the event. A participant in a wrestling event whose condition is not approved by the event physician shall not be permitted to participate in the event.

(5) Each contestant for boxing, kickboxing, martial arts, or wrestling events may be subject to a random urinalysis or chemical test within twenty-four hours before or after a contest. In addition to the unprofessional conduct specified in RCW 18.235.130, an applicant or licensee who refuses or fails to submit to the urinalysis or chemical test is subject to disciplinary action under RCW 18.235.110. If the urinalysis or chemical test is positive for substances prohibited by rules adopted by the director, the applicant or licensee has engaged in unprofessional conduct and disciplinary action may be taken under RCW 18.235.110. [2002 c 147 § 2; 2002 c 86 § 308; 1999 c 282 § 6; 1997 c 205 § 9; 1993 c 278 § 19; 1989 c 127 § 9; 1933 c 184 § 15; RRS § 8276-15.]

**Reviser's note:** This section was amended by 2002 c 86 § 308 and by 2002 c 147 § 2, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

**Effective date—2002 c 147:** See note following RCW 67.08.002.

**Effective dates—2002 c 86:** See note following RCW 18.08.340.

**Part headings not law—Severability—2002 c 86:** See RCW 18.235.902 and 18.235.903.

**67.08.100 Annual licenses—Fees—Qualifications—Revocation—Exceptions.** (1) The department upon receipt of a properly completed application and payment of a nonrefundable fee, may grant an annual license to an applicant for the following: (a) Promoter; (b) manager; (c) boxer; (d) second; (e) wrestling participant; (f) inspector; (g) judge; (h) timekeeper; (i) announcer; (j) event physician; (k) chiropractor; (l) referee; (m) matchmaker; (n) kickboxer; and (o) martial arts participant.

(2) The application for the following types of licenses shall include a physical performed by a physician, as defined in RCW 67.08.002, which was performed by the physician with a time period preceding the application as specified by rule: (a) Boxer; (b) wrestling participant; (c) kickboxer; (d) martial arts participant; and (e) referee.

(3) An applicant for the following types of licenses for the sports of boxing, kickboxing, and martial arts shall provide annual proof of certification as having adequate experience, skill, and training from an organization approved by the department, including, but not limited to, the association of boxing commissions, the international boxing federation, the international boxing organization, the Washington state association of professional ring officials, the world boxing association, the world boxing council, or the world boxing organization for boxing officials, and the united full contact federation for kickboxing and martial arts officials: (a) Judge; (b) referee; (c) inspector; (d) timekeeper; or (e) other officials deemed necessary by the department.

(4) No person shall participate or serve in any of the above capacities unless licensed as provided in this chapter.

(5) The referees, judges, timekeepers, event physicians, chiropractors, and inspectors for any boxing, kickboxing, or martial arts event shall be designated by the department from among licensed officials.

(6) The referee for any wrestling event shall be provided by the promoter and shall be licensed as a wrestling participant.

(7) The department shall immediately suspend the license or certificate of a person who has been certified pur-

suant to RCW 74.20A.320 by the department of social and health services as a person who is not in compliance with a support order. If the person has continued to meet all other requirements for reinstatement during the suspension, reissuance of the license or certificate shall be automatic upon the department's receipt of a release issued by the department of social and health services stating that the licensee is in compliance with the order.

(8) A person may not be issued a license if the person has an unpaid fine outstanding to the department.

(9) A person may not be issued a license unless they are at least eighteen years of age.

(10) This section shall not apply to contestants or participants in events at which only amateurs are engaged in contests and/or fraternal organizations and/or veterans' organizations chartered by congress or the defense department or any recognized amateur sanctioning body recognized by the department, holding and promoting athletic events and where all funds are used primarily for the benefit of their members. Upon request of the department, a promoter, contestant, or participant shall provide sufficient information to reasonably determine whether this chapter applies. [2002 c 147 § 3; 2002 c 86 § 309; 2001 c 246 § 1; 1999 c 282 § 7. Prior: 1997 c 205 § 10; 1997 c 58 § 864; 1993 c 278 § 20; 1989 c 127 § 10; 1959 c 305 § 6; 1933 c 184 § 16; RRS § 8276-16. FORMER PART OF SECTION: 1933 c 184 § 20, part; RRS § 8276-20, part, now codified in RCW 67.08.025.]

**Reviser's note:** This section was amended by 2002 c 86 § 309 and by 2002 c 147 § 3, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

**Effective date—2002 c 147:** See note following RCW 67.08.002.

**Effective dates—2002 c 86:** See note following RCW 18.08.340.

**Part headings not law—Severability—2002 c 86:** See RCW 18.235.902 and 18.235.903.

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

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**67.08.105 License, renewal, and event fees.** The department shall set license, renewal, and event fees by rule in amounts that, pursuant to the fee policy established in RCW 43.24.086, when combined with all license and fee revenue under this chapter, are sufficient to defray the costs of the department in administering this chapter. [2009 c 429 § 3; 1999 c 282 § 1.]

**67.08.110 Unprofessional conduct—Sham or fake event.** (1) Any person or any member of any group of persons or corporation promoting boxing events who shall participate directly or indirectly in the purse or fee of any manager of any boxers or any boxer and any licensee who shall conduct or participate in any sham or fake boxing event has engaged in unprofessional conduct and is subject to the sanctions specified in RCW 18.235.110.

(2) A manager of any boxer, kickboxer, or martial arts participant who allows any person or any group of persons or corporation promoting boxing, kickboxing, or martial arts events to participate directly or indirectly in the purse or fee, or any boxer, kickboxer, or martial arts participant or other licensee who conducts or participates in any sham or fake

boxing, kickboxing, or martial arts event has engaged in unprofessional conduct and is subject to the sanctions specified in RCW 18.235.110. [2002 c 86 § 310; 1999 c 282 § 8; 1997 c 205 § 11; 1993 c 278 § 21; 1989 c 127 § 11; 1933 c 184 § 17; RRS § 8276-17.]

**Effective dates—2002 c 86:** See note following RCW 18.08.340.

**Part headings not law—Severability—2002 c 86:** See RCW 18.235.902 and 18.235.903.

**67.08.130 Failure to make report—Additional tax—Hearing—Disciplinary action.** Whenever any licensee shall fail to make a report of any event within the time prescribed by this chapter or when such report is unsatisfactory to the department, the director may examine the books and records of such licensee; he or she may subpoena and examine under oath any officer of such licensee and such other person or persons as he or she may deem necessary to a determination of the total gross receipts from any event and the amount of tax thereon. If, upon the completion of such examination it shall be determined that an additional tax is due, notice thereof shall be served upon the licensee, providing the licensee with an opportunity to request a hearing under chapter 34.05 RCW. The failure to request a hearing within twenty days of service of the notice constitutes a default, whereupon the director will enter a decision on the facts available. Failure to pay such additional tax within twenty days after service of a final order constitutes unprofessional conduct and the licensee may be subject to disciplinary action against its license and shall be disqualified from receiving any new license. [2002 c 86 § 311; 1997 c 205 § 13; 1993 c 278 § 23; 1933 c 184 § 19; RRS § 8276-19.]

**Effective dates—2002 c 86:** See note following RCW 18.08.340.

**Part headings not law—Severability—2002 c 86:** See RCW 18.235.902 and 18.235.903.

**67.08.140 Penalty for conducting events without license—Penalty.** Any person, club, corporation, organization, association, fraternal society, participant, or promoter conducting or participating in boxing or wrestling events within this state without having first obtained a license therefor in the manner provided by this chapter is in violation of this chapter and shall be guilty of a misdemeanor excepting the events excluded from the operation of this chapter by RCW 67.08.015. [2002 c 86 § 312; 1997 c 205 § 14; 1993 c 278 § 24; 1989 c 127 § 17; 1988 c 19 § 3; 1959 c 305 § 7; 1951 c 48 § 1; 1933 c 184 § 22; RRS § 8276-22.]

**Effective dates—2002 c 86:** See note following RCW 18.08.340.

**Part headings not law—Severability—2002 c 86:** See RCW 18.235.902 and 18.235.903.

**67.08.150 General penalty.** Any person, firm or corporation violating any of the provisions of this chapter for which no penalty is herein provided shall be guilty of a misdemeanor. [1933 c 184 § 24; RRS § 8276-24.]

**67.08.160 Ambulance or paramedical unit at location.** A promoter shall have an ambulance or paramedical unit present at the event location. [1999 c 282 § 10; 1989 c 127 § 2.]

**67.08.170 Security—Promoter's responsibility.** A promoter shall ensure that adequate security personnel are in attendance at a wrestling or boxing event to control fans in attendance. The size of the security force shall be determined by mutual agreement of the promoter, the person in charge of operating the arena or other facility, and the department. [1997 c 205 § 15; 1993 c 278 § 25; 1989 c 127 § 3.]

**67.08.180 Unprofessional conduct—Prohibited acts.** In addition to the unprofessional conduct specified in RCW 18.235.130, the following conduct, acts, or conditions constitute unprofessional conduct for which disciplinary action may be taken:

(1) Destruction of any ticket or ticket stub, whether sold or unsold, within three months after the date of any event, by any promoter or person associated with or employed by any promoter.

(2) The deliberate cutting of himself or herself or other self mutilation by a wrestling participant while participating in a wrestling event.

(3) A conviction under chapter 69.50 RCW.

(4) Testing positive for illegal use of a controlled substance as defined in RCW 69.50.101.

(5) The striking of any person that is not a licensed participant at a wrestling event. [2002 c 86 § 313; 1997 c 205 § 16; 1989 c 127 § 4.]

**Effective dates—2002 c 86:** See note following RCW 18.08.340.

**Part headings not law—Severability—2002 c 86:** See RCW 18.235.902 and 18.235.903.

**67.08.200 Unprofessional conduct—Written complaint—Investigation—Immunity of complainant.** A person, including but not limited to a consumer, licensee, corporation, organization, and state and local governmental agency, may submit a written complaint to the department charging a license holder or applicant with unprofessional conduct and specifying the grounds for the complaint. If the department determines that the complaint merits investigation or if the department has reason to believe, without a formal complaint, that a license holder or applicant may have engaged in unprofessional conduct, the department shall investigate to determine whether there has been unprofessional conduct. A person who files a complaint under this section in good faith is immune from suit in any civil action related to the filing or contents of the complaint. [1997 c 205 § 17.]

**67.08.220 Unprofessional conduct—Order upon finding—Penalties—Costs.** Upon a finding that a license holder or applicant has committed unprofessional conduct the director may issue an order providing for one or any combination of the following:

(1) Revocation of the license;

(2) Suspension of the license for a fixed or indefinite term;

(3) Requiring the satisfactory completion of a specific program of remedial education;

(4) Compliance with conditions of probation for a designated period of time;

(5) Payment of a fine not to exceed five hundred dollars for each violation of this chapter;

- (6) Denial of the license request;
- (7) Corrective action, including paying contestants the contracted purse or compensation; or
- (8) Refund of fees billed to and collected from the consumer.

Any of the actions under this section may be totally or partly stayed by the director. All costs associated with compliance with orders issued under this section are the obligation of the license holder or applicant. [1997 c 205 § 19.]

**67.08.240 Unprofessional conduct—What constitutes.** The following conduct, acts, or conditions constitute unprofessional conduct for a license holder or applicant under this chapter:

(1) Conviction of a gross misdemeanor, felony, or the commission of an act involving moral turpitude, dishonesty, or corruption whether the act constitutes a crime or not. If the act constitutes a crime, conviction in a criminal proceeding is not a condition precedent to disciplinary action. Upon such a conviction, however, the judgment and sentence is conclusive evidence at the ensuing disciplinary hearing of the guilt of the license holder or applicant of the crime described in the indictment or information, and of the person's violation of the statute on which it is based. For the purposes of this section, conviction includes all instances in which a plea of guilty or nolo contendere is the basis for the conviction and all proceedings in which the sentence has been deferred or suspended. This section does not abrogate rights guaranteed under chapter 9.96 RCW;

(2) Misrepresentation or concealment of a material fact in obtaining a license or in reinstatement of a license;

(3) Advertising that is false, fraudulent, or misleading;

(4) Incompetence or negligence that results in injury to a person or that creates an unreasonable risk that a person may be harmed;

(5) Suspension, revocation, or restriction of a license to act as a professional athletic licensee by competent authority in a state, federal, or foreign jurisdiction, a certified copy of the order, stipulation, or agreement being conclusive evidence of the revocation, suspension, or restriction;

(6) Violation of a statute or administrative rule regulating professional athletics;

(7) Failure to cooperate with the department's investigations by:

(a) Not furnishing papers or documents;

(b) Not furnishing in writing a full and complete explanation regarding a matter under investigation by the department; or

(c) Not responding to subpoenas issued by the department, whether or not the recipient of the subpoena is the subject of the proceeding;

(8) Failure to comply with an order issued by the director or an assurance of discontinuance entered into by the director;

(9) Aiding or abetting an unlicensed person to act in a manner that requires a professional athletics licensee [license];

(10) Misrepresentation or fraud in any aspect of the conduct of a professional athletics event; and

(11) Interference with an investigation or disciplinary proceeding by willful misrepresentation of facts before the

(2010 Ed.)

department or by the use of threats or harassment against any person to prevent them from providing evidence in a disciplinary proceeding or other legal action. [1997 c 205 § 21.]

**67.08.300 Immunity of director and director's agents.** The director or individuals acting on the director's behalf are immune from suit in an action, civil or criminal, based on official acts performed in the course of their duties in the administration and enforcement of this chapter. [2002 c 86 § 314; 1997 c 205 § 24.]

**Effective dates—2002 c 86:** See note following RCW 18.08.340.

**Part headings not law—Severability—2002 c 86:** See RCW 18.235.902 and 18.235.903.

**67.08.310 Uniform regulation of business and professions act.** The uniform regulation of business and professions act, chapter 18.235 RCW, governs unlicensed practice, the issuance and denial of licenses, and the discipline of licensees under this chapter. [2002 c 86 § 315.]

**Effective dates—2002 c 86:** See note following RCW 18.08.340.

**Part headings not law—Severability—2002 c 86:** See RCW 18.235.902 and 18.235.903.

**67.08.900 Severability—1933 c 184.** If any section or provision of this chapter shall be adjudged to be invalid or unconstitutional, such adjudication shall not affect the validity of this chapter as a whole, or any section, provision or part thereof not adjudged invalid or unconstitutional. [1933 c 184 § 25; RRS § 8276-25.]

**67.08.901 Severability—1993 c 278.** If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1993 c 278 § 27.]

**67.08.902 Effective date—1993 c 278.** This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect July 1, 1993. [1993 c 278 § 28.]

**67.08.903 Severability—1997 c 205.** If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1997 c 205 § 26.]

## Chapter 67.12 RCW

### DANCING, BILLIARDS, POOL, AND BOWLING

#### Sections

- |           |  |
|-----------|--|
| 67.12.021 | Licenses for public dances and public recreational or entertainment activities—Fees. |
| 67.12.110 | License required for rural pool halls, billiard halls, and bowling alleys.           |

*Regulations of places of amusement by cities and towns, see under applicable class of city or town: Title 35 RCW and RCW 35A.11.020.*

**67.12.021 Licenses for public dances and public recreational or entertainment activities—Fees.** Counties are

authorized to adopt ordinances to license and regulate public dances and other public recreational or entertainment activities in the unincorporated areas of the county whether or not held inside or outside of a building and whether or not admission charges are imposed.

License fees may be adequate to finance the costs of issuing the license and enforcing the regulations, including related law enforcement activities. [1987 c 250 § 1.]

**67.12.110 License required for rural pool halls, billiard halls, and bowling alleys.** The county legislative authority of each county in the state of Washington shall have sole and exclusive authority and power to regulate, restrain, license, or prohibit the maintenance or running of pool halls, billiard halls, and bowling alleys outside of the incorporated limits of each incorporated city, town, or village in their respective counties: PROVIDED, That the annual license fee for maintenance or running such pool halls, billiard halls, and bowling alleys shall be fixed in accordance with RCW 36.32.120(3), and which license fee shall be paid annually in advance to the appropriate county official: PROVIDED FURTHER, That nothing herein or elsewhere shall be so construed as to prevent the county legislative authority from revoking any license at any time prior to the expiration thereof for any cause by such county legislative authority deemed proper. And if said county legislative authority revokes said license it shall refund the unearned portion of such license. [1985 c 91 § 10; 1909 c 112 § 1; RRS § 8289.]

*Licensing under 1873 act: Chapter 67.14 RCW.*

### Chapter 67.14 RCW

#### BILLIARD TABLES, BOWLING ALLEYS, AND MISCELLANEOUS GAMES—1873 ACT

##### Sections

67.14.010	Hawkers and auctioneers must procure license—Exceptions.
67.14.020	Sale or other disposition of liquor—County license—Penalty.
67.14.030	Hawkers and auctioneers—Issuance of license.
67.14.040	Retail liquor license.
67.14.050	Wholesale liquor license—Billiard table, bowling alley licenses.
67.14.060	Liquor sales, keeping games, without license—Penalty.
67.14.070	Purchase of license—Bond.
67.14.080	Duration of license.
67.14.090	Issuance of license.
67.14.100	When contrivance deemed kept for hire.
67.14.110	Druggists excepted.
67.14.120	Disposition of fees, fines, and forfeitures.

**Reviser's note:** The territorial act codified in this chapter, though for the most part obsolete, has never been expressly repealed. "An Act in relation to licenses," it empowers the county commissioners to license hawkers and auctioneers, persons dealing in intoxicating liquors, and persons conducting bowling alleys, billiard tables and other games. The auctioneer sections have been codified as RCW 36.71.070 and 36.71.080. As to the sections relating to intoxicating liquors, it seems clear that this field has been preempted by the state; see RCW 66.08.120. For a later enactment concerning the licensing of rural pool halls, billiard halls, and bowling alleys, see RCW 67.12.110.

*Alcoholic beverage control: Title 66 RCW.*

**67.14.010 Hawkets and auctioneers must procure license—Exceptions.** See RCW 36.71.070.

**67.14.020 Sale or other disposition of liquor—County license—Penalty.** If any person shall sell or dispose

of any spirituous, malt, or fermented liquors or wines, in any quantity less than one gallon, without first obtaining a license therefor as hereinafter provided, such person shall, for each and every such offense, be liable to a fine of not less than five nor more than fifty dollars, with costs of prosecution. [1873 p 437 § 2; Code 1881, Bagley's Supp. p 26 § 2.]

**67.14.030 Hawkets and auctioneers—Issuance of license.** See RCW 36.71.080.

**67.14.040 Retail liquor license.** The legislative authorities of each county, in their respective counties, shall have the power to grant license to persons to keep drinking houses or saloons therein, at which spirituous, malt, or fermented liquors and wines may be sold in less quantities than one gallon; and such license shall be called a retail license upon the payment, by the person applying for such license, of the sum of three hundred dollars a year into the county treasury, and the execution of a good and sufficient bond, executed to such county in the sum of one thousand dollars, to be approved by such legislative authority or the county auditor of the county in which such license is granted, conditioned that he will keep such drinking saloon or house in a quiet, peaceable, and orderly manner: PROVIDED, The foregoing shall not be so construed as to prevent the legislative authority of any county from granting licenses to drinking saloons or houses therein, when there is but little business doing, for less than three hundred dollars, but in no case for less than one hundred dollars per annum: AND PROVIDED FURTHER, That such license shall be used only in the precinct to which it shall be granted; PROVIDED FURTHER, that no license shall be used in more than one place at the same time. AND FURTHER PROVIDED, That no license shall be granted to any person to retail spirituous liquors until he shall furnish to the legislative authority satisfactory proof that he is a person of good moral character. [1973 1st ex.s. c 154 § 100; 1875 p 124 § 1; 1873 p 438 § 4; Code 1881, Bagley's Supp. p 26 § 4.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**67.14.050 Wholesale liquor license—Billiard table, bowling alley licenses.** Said county commissioners in their respective counties shall also have power to grant licenses to sell spirituous liquors and wines therein in greater quantities than one gallon, to be called a wholesale license upon payment of the sum of not to exceed one hundred dollars per annum into the county treasury by such person so desiring such license; also, upon payment of not to exceed a like sum into the county treasury by any person desiring a grocery license to sell lager beer to grant such person such license to sell for the period of one year. Also, upon the payment of such sum as the county commissioners may establish and fix, by order duly entered in the record of their proceedings, not exceeding twenty-five dollars per annum for each billiard table, pigeon-hole table, or bowling alley, grant a license to any person applying for the same and giving such bond not exceeding two hundred dollars, as such commissioners may require: PROVIDED, No person shall be required to take out any license to sell any wine made from fruit produced by such person's own labor, in this territory. [1873 p 438 § 5; Code 1881, Bagley's Supp. p 27 § 5.]

*License required for rural pool halls, billiard halls and bowling alleys: RCW 67.12.110.*

**67.14.060 Liquor sales, keeping games, without license—Penalty.** Any person who shall sell spirituous liquors or wines in greater quantities than one gallon, or shall retail lager beer, or keep a billiard table or tables, or bowling alley or alleys for hire, in any county in this territory, without first taking out a license therefor, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined in any sum not exceeding fifty dollars nor less than five dollars, and shall be committed to the county jail of the county where such offense may be committed, and be placed at hard labor until such fine and cost shall be paid or they may otherwise be discharged by due course of law. [1873 p 439 § 6; Code 1881, Bagley's Supp. p 27 § 6; RRS § 8290. Formerly RCW 67.12.120.]

**67.14.070 Purchase of license—Bond.** Any person desiring a license to do any business provided by this chapter that a license shall be taken out for doing, shall have the same granted by paying to the county treasurer of the county where he wishes to carry on such business the maximum sum that the county commissioners are by this chapter authorized to fix therefor, and executing such bond, to be approved by the county auditor, as is provided in this chapter, shall be given before license shall issue for carrying on such business. [1873 p 439 § 7; Code 1881, Bagley's Supp. p 27 § 7.]

**67.14.080 Duration of license.** The licenses authorized to be granted by this chapter shall at the option of the person applying for the same, be granted for six, nine, or twelve months, and the person holding such license may transact the business thereby authorized at any place in the county where such license is granted: PROVIDED, That such business shall not be transacted in but one place in the county at a time. [1873 p 439 § 8; Code 1881, Bagley's Supp. p 27 § 8.]

**67.14.090 Issuance of license.** Upon presentation to the county auditor of any county of the certificate of the county treasurer that any person has paid into the county treasury the amount provided by this chapter, to be paid for the transaction of any business that a license may be granted to transact, and for the time provided in this chapter, and upon the execution and delivery to such auditor of the bond hereinbefore required, it shall be the duty of such county auditor to issue such license to such person so presenting such certificate, executing and delivering such bond and making application therefor, for the period of time that the money as shown by the treasurer's certificate would entitle the person so presenting the same to have a license issued for. [1873 p 439 § 9; Code 1881, Bagley's Supp. p 27 § 9.]

**67.14.100 When contrivance deemed kept for hire.** Any person who shall keep a billiard table or tables, pigeon-hole, Jenny Lind, and all other gaming tables, or bowling alley or bowling alleys in a drinking saloon or house or in a room or building adjoining or attached thereto, and shall allow the same to be used by two or more persons to determine by play thereon which of the persons so playing shall pay for drinks, cigars, or other articles for sale in such saloon

or drinking house, shall, within the meaning of this chapter, be deemed to be keeping the same for hire. [1873 p 440 § 10; Code 1881, Bagley's Supp. p 28 § 10; RRS § 8291. Formerly RCW 67.12.130.]

**67.14.110 Druggists excepted.** None of the provisions of this chapter shall be held to apply to the sale by apothecaries or druggists of spirituous, malt, or fermented liquors or wines for medicinal purposes, upon the prescription of a practicing physician. [1873 p 440 § 11; Code 1881, Bagley's Supp. p 28 § 11.]

**67.14.120 Disposition of fees, fines, and forfeitures.** All fines and forfeitures collected under this chapter, and all moneys paid into the treasury of any county for licenses as aforesaid, shall be applied to school or county purposes as the local laws of such county may direct: PROVIDED, That this chapter shall not affect or apply to any private or local laws upon the subject of license in any county in this territory except King county, and no license shall be construed to mean more than the house or saloon kept by the same party or parties: PROVIDED, FURTHER, That no part of this chapter shall in any way apply to the county of Island: AND PROVIDED, FURTHER, That all moneys for licenses within the corporate limits of the town of Olympia shall be paid directly into the town treasury of said town as a municipal fund for the use of said town: AND PROVIDED FURTHER, That all fees, fines, forfeitures and penalties collected or assessed by a district court because of the violation of a state law shall be remitted as provided in chapter 3.62 RCW as now exists or is later amended. [1987 c 202 § 226; 1969 ex.s. c 199 § 29; 1873 p 440 § 12; Code 1881, Bagley's Supp. p 28 § 12.]

**Intent—1987 c 202:** See note following RCW 2.04.190.

*Collection and disposition of fines and costs: Chapter 10.82 RCW.*

## Chapter 67.16 RCW HORSE RACING

### Sections

67.16.010	Definitions.
67.16.012	Washington horse racing commission—Creation—Terms—Vacancies—Bonds—Oaths.
67.16.014	Washington horse racing commission—Ex officio nonvoting members.
67.16.015	Washington horse racing commission—Organization—Secretary—Records—Annual reports.
67.16.017	Washington horse racing commission—Compensation and travel expenses.
67.16.020	Duties of commission—Race meet license—Suspension.
67.16.040	Commission to regulate and license meets—Inspection.
67.16.045	Criminal history records—Dissemination.
67.16.050	Application for meet—Issuance of license—Fee—Cancellation, grounds, procedure.
67.16.060	Prohibited practices—Parimutuel system permitted—Race meet as public nuisance.
67.16.065	Use of public assistance electronic benefit cards prohibited—Licensee to report violations.
67.16.070	Races for local breeders.
67.16.075	Breeder's awards and owner's bonuses—Eligibility—Certification.
67.16.080	Horses to be registered.
67.16.090	Races not limited to horses of same breed.
67.16.100	Disposition of fees—"Fair fund."
67.16.101	Legislative finding—Responsibilities of horse racing commission—Availability of interest on one percent of gross receipts to support nonprofit race meets.

- 67.16.102 Withholding of additional one percent of gross receipts—Payment to owners—Interest payment on one percent and amount retained by commission—Reimbursement for new racetracks.
- 67.16.105 Gross receipts—Commission's percentage—Distributions.
- 67.16.110 Broadcasting and motion picture rights reserved.
- 67.16.130 Nonprofit race meets—Licensing—Fees.
- 67.16.140 Employees of commission—Employment restriction.
- 67.16.150 Employees of commission—Commissioners—Financial interest restrictions.
- 67.16.160 Rules implementing conflict of interest laws—Wagers by commissioner.
- 67.16.170 Gross receipts—Retention of percentage by licensees.
- 67.16.175 Exotic wagers—Retention of percentage by race meets.
- 67.16.200 Parimutuel wagering at satellite locations—Simulcasts.
- 67.16.230 Satellite locations—Fees.
- 67.16.251 Handicapping contests.
- 67.16.260 Advance deposit wagering.
- 67.16.270 Violation of commission rules—Penalties.
- 67.16.275 Washington horse racing commission Washington bred owners' bonus fund and breeder awards account.
- 67.16.280 Washington horse racing commission operating account.
- 67.16.285 Washington horse racing commission class C purse fund account.
- 67.16.300 Industrial insurance premium assessments.
- 67.16.900 Severability—General repealer—1933 c 55.

*Agister and trainer liens: Chapter 60.56 RCW.*

*Crimes and punishments—Gambling: Chapters 9.46 and 9.47 RCW.*

*Exemptions to commission merchant's act: RCW 20.01.030.*

*Pathological gamblers, information for: RCW 9.46.071.*

**67.16.010 Definitions.** The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Commission" shall mean the Washington horse racing commission, hereinafter created.

(2) "Parimutuel machine" shall mean and include both machines at the track and machines at the satellite locations, that record parimutuel bets and compute the payoff.

(3) "Person" shall mean and include individuals, firms, corporations and associations.

(4) "Race meet" shall mean and include any exhibition of thoroughbred, quarter horse, paint horse, appaloosa horse racing, arabian horse racing, or standard bred harness horse racing, where the parimutuel system is used. [2004 c 246 § 5; 1991 c 270 § 1; 1985 c 146 § 1; 1982 c 132 § 1; 1969 c 22 § 1; 1949 c 236 § 1; 1933 c 55 § 1; Rem. Supp. 1949 § 8312-1.]

**Effective date—2004 c 246:** See note following RCW 67.16.270.

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**67.16.012 Washington horse racing commission—Creation—Terms—Vacancies—Bonds—Oaths.** There is hereby created the Washington horse racing commission, to consist of five commissioners, appointed by the governor and confirmed by the senate. The commissioners shall be citizens, residents, and qualified electors of the state of Washington, one of whom shall be a breeder of race horses and shall be of at least one year's standing. The terms of the members shall be six years. Each member shall hold office until his or her successor is appointed and qualified. Vacancies in the office of commissioner shall be filled by appointment to be made by the governor for the unexpired term. Any commissioner may be removed at any time at the pleasure of the governor. Before entering upon the duties of his or her office, each commissioner shall enter into a surety company bond, to be approved by the governor and attorney general, payable to the state of Washington, in the penal sum of five thousand

dollars, conditioned upon the faithful performance of his or her duties and the correct accounting and payment of all sums received and coming within his or her control under this chapter, and in addition thereto each commissioner shall take and subscribe to an oath of office of the same form as that prescribed by law for elective state officers. [1998 c 345 § 4; 1987 c 453 § 2; 1973 1st ex.s. c 216 § 1; 1969 ex.s. c 233 § 1; 1933 c 55 § 2; RRS § 8312-2. Formerly RCW 43.50.010.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**67.16.014 Washington horse racing commission—Ex officio nonvoting members.** In addition to the commission members appointed under RCW 67.16.012, there shall be four ex officio nonvoting members consisting of: (1) Two members of the senate, one from the majority political party and one from the minority political party, both to be appointed by the president of the senate; and (2) two members of the house of representatives, one from the majority political party and one from the minority political party, both to be appointed by the speaker of the house of representatives. The appointments shall be for the term of two years or for the period in which the appointee serves as a legislator, whichever expires first. Members may be reappointed, and vacancies shall be filled in the same manner as original appointments are made. The ex officio members shall assist in the policy making, rather than administrative, functions of the commission, and shall collect data deemed essential to future legislative proposals and exchange information with the commission. The ex officio members shall be deemed engaged in legislative business while in attendance upon the business of the commission and shall be limited to such allowances therefor as otherwise provided in RCW 44.04.120, the same to be paid from the horse racing commission fund as being expenses relative to commission business. [1991 c 270 § 2; 1987 c 453 § 3.]

**67.16.015 Washington horse racing commission—Organization—Secretary—Records—Annual reports.** The commission shall organize by electing one of its members chairman, and shall appoint and employ a secretary, and such other clerical, office, and other help as is necessary in the performance of the duties imposed upon it by this chapter. The commission shall keep detailed records of all meetings and of the business transacted therein, and of all the collections and disbursements. The commission shall prepare and submit an annual report to the governor. All records of the commission shall be public records and as such, subject to public inspection. [1977 c 75 § 80; 1933 c 55 § 3; RRS § 8312-3. Formerly RCW 43.50.020.]

**67.16.017 Washington horse racing commission—Compensation and travel expenses.** Each member of the Washington horse racing commission shall be compensated in accordance with RCW 43.03.250 and shall be reimbursed for travel expenses in accordance with RCW 43.03.050 and 43.03.060 in going to, attending, and returning from meetings of the commission, and travel expenses incurred in the discharge of such duties as may be requested of him by a majority vote of the commission, but in no event shall a commissioner be paid in any one fiscal year in excess of one hundred

twenty days, except the chairman of the commission who may be paid for not more than one hundred fifty days. [1984 c 287 § 100; 1975-'76 2nd ex.s. c 34 § 155; 1969 ex.s. c 233 § 2.]

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

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**67.16.020 Duties of commission—Race meet license—Suspension.** (1) It shall be the duty of the commission, as soon as it is possible after its organization, to prepare and promulgate a complete set of rules and regulations to govern the race meets in this state. It shall determine and announce the place, time and duration of race meets for which license fees are exacted; and it shall be the duty of each person holding a license under the authority of this chapter, and every owner, trainer, jockey, and attendant at any race course in this state, to comply with all rules and regulations promulgated and all orders issued by the commission. It shall be unlawful for any person to hold any race meet without having first obtained and having in force and effect a license issued by the commission as in this chapter provided; and it shall be unlawful for any owner, trainer or jockey to participate in race meets in this state without first securing a license therefor from the state racing commission, the fee for which shall be set by the commission which shall offset the cost of administration and shall not be for a period exceeding one year.

(2) The commission shall immediately suspend the license of a person who has been certified under RCW 74.20A.320 by the department of social and health services as a person who is not in compliance with a support order. If the person has continued to meet all other requirements for a license under this chapter during the suspension, reissuance of the license shall be automatic upon the department's receipt of a release issued by the department of social and health services stating that the licensee is in compliance with the support order. The procedure in RCW 74.20A.320 is the exclusive administrative remedy for contesting the establishment of noncompliance with a child support order, and suspension of a license under this subsection, and satisfies the requirements of RCW 34.05.422. [2000 c 86 § 5; 1989 c 385 § 5; 1985 c 146 § 2; 1982 c 32 § 1; 1933 c 55 § 4; RRS § 8312-4. Formerly RCW 67.16.020 and 67.16.030.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**67.16.040 Commission to regulate and license meets—Inspection.** The commission created by this chapter is hereby authorized, and it shall be its duty, to license, regulate and supervise all race meets held in this state under the terms of this chapter, and to cause the various race courses of the state to be visited and inspected at least once a year. [1933 c 55 § 5; RRS § 8312-5.]

**67.16.045 Criminal history records—Dissemination.** The commission is authorized to receive criminal history record information that includes nonconviction data for any purpose associated with the investigation for suitability for involvement in horse racing activities authorized under this chapter. Dissemination or use of nonconviction data for pur-

poses other than that authorized in this section is prohibited. [2000 c 204 § 1.]

**67.16.050 Application for meet—Issuance of license—Fee—Cancellation, grounds, procedure.** Every person making application for license to hold a race meet, under the provisions of this chapter shall file an application with the commission which shall set forth the time, the place, the number of days such meet will continue, and such other information as the commission may require. The commission shall be the sole judge of whether or not the race meet shall be licensed and the number of days the meet shall continue. No person who has been convicted of any crime involving moral turpitude shall be issued a license, nor shall any license be issued to any person who has violated the terms or provisions of this chapter, or any of the rules and regulations of the commission made pursuant thereto, or who has failed to pay to the commission any or all sums required under the provisions of this chapter. The license shall specify the number of days the race meet shall continue and the number of races per day, which shall include not less than six nor more than eleven live races per day, and for which a fee shall be paid daily in advance of five hundred dollars for each live race day for those licensees which had gross receipts from parimutuel machines in excess of fifty million dollars in the previous year and two hundred dollars for each day for meets which had gross receipts from parimutuel machines at or below fifty million dollars in the previous year; in addition any newly authorized live race meets shall pay two hundred dollars per day for the first year: PROVIDED, That if unforeseen obstacles arise, which prevent the holding, or completion of any race meet, the license fee for the meet, or for a portion which cannot be held may be refunded the licensee, if the commission deems the reasons for failure to hold or complete the race meet sufficient. Any unexpired license held by any person who violates any of the provisions of this chapter, or any of the rules or regulations of the commission made pursuant thereto, or who fails to pay to the commission any and all sums required under the provisions of this chapter, shall be subject to cancellation and revocation by the commission. Such cancellation shall be made only after a summary hearing before the commission, of which three days' notice, in writing, shall be given the licensee, specifying the grounds for the proposed cancellation, and at which hearing the licensee shall be given an opportunity to be heard in opposition to the proposed cancellation. [1997 c 87 § 2; 1985 c 146 § 3; 1982 c 32 § 2; 1973 1st ex.s. c 39 § 1; 1933 c 55 § 6; RRS § 8312-6.]

**Findings—Purpose—Report by joint legislative audit and review committee—Severability—Effective date—1997 c 87:** See notes following RCW 67.16.200.

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**67.16.060 Prohibited practices—Parimutuel system permitted—Race meet as public nuisance.** (1) It shall be unlawful:

(a) To conduct pool selling, bookmaking, or to circulate hand books; or

(b) To bet or wager on any horse race other than by the parimutuel method; or

(c) For any licensee to take more than the percentage provided in RCW 67.16.170 and 67.16.175; or

(d) For any licensee to compute breaks in the parimutuel system at more than ten cents.

(2) Any willful violation of the terms of this chapter, or of any rule, regulation, or order of the commission shall constitute a gross misdemeanor and when such violation is by a person holding a license under this chapter, the commission may cancel the license held by the offender, and such cancellation shall operate as a forfeiture of all rights and privileges granted by the commission and of all sums of money paid to the commission by the offender; and the action of the commission in that respect shall be final.

(3) The commission shall have power to exclude from any and all race courses of the state of Washington any person whom the commission deems detrimental to the best interests of racing or any person who willfully violates any of the provisions of this chapter or of any rule, regulation, or order issued by the commission.

(4) Every race meet held in this state contrary to the provisions of this chapter is hereby declared to be a public nuisance. [2008 c 24 § 1; 1991 c 270 § 3; 1985 c 146 § 4; 1979 c 31 § 1; 1933 c 55 § 7; RRS § 8312-7.]

*Gambling: Chapters 9.46 and 9.47 RCW.*

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**67.16.065 Use of public assistance electronic benefit cards prohibited—Licensee to report violations.** (1) Any licensee authorized under this chapter is prohibited from allowing the use of public assistance electronic benefit cards for the purpose of parimutuel wagering authorized under this chapter.

(2) Any licensee authorized under this chapter shall report to the department of social and health services any known violations of RCW 74.08.580. [2002 c 252 § 4.]

**67.16.070 Races for local breeders.** For the purpose of encouraging the breeding, within this state, of valuable thoroughbred, quarter and/or standard bred race horses, at least one race of each day's meet shall consist exclusively of Washington bred horses. [1949 c 236 § 2; 1933 c 55 § 8; Rem. Supp. 1949 § 8312-8.]

**67.16.075 Breeder's awards and owner's bonuses—Eligibility—Certification.** Only breeders or owners of Washington-bred horses are eligible to demand and receive a breeder's award, an owner's bonus or both. The commission shall promulgate rules and regulations to certify Washington-bred horses. In setting standards to certify horses as Washington-bred, the commission shall seek the advice of and consult with industry, including (1) the Washington Horse Breeders' Association, for thoroughbreds; (2) the Washington State Standardbred Association, for standardbred harness horses; (3) the Northern Racing Quarter Horse Association, for quarter horses; (4) the Washington State Appaloosa Racing Association, for appaloosas; and (5) the Washington State Arabian Horse Racing Association, for arabian horses. [1985 c 146 § 13.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**67.16.080 Horses to be registered.** A quarter horse to be eligible for a race meet herein shall be duly registered with the American Quarter Horse Association. An appaloosa horse to be eligible for a race meet herein shall be duly registered with the National Appaloosa Horse Club or any successor thereto. An arabian horse to be eligible for a race meet herein shall be duly registered with the Arabian Horse Registry of America, or any successor thereto. [1982 c 132 § 2; 1969 c 22 § 2; 1949 c 236 § 3; Rem. Supp. 1949 § 8312-13.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**67.16.090 Races not limited to horses of same breed.** In any race meet in which quarter horses, thoroughbred horses, appaloosa horses, standard bred harness horses, paint horses, or arabian horses participate horses of different breeds may be allowed to compete in the same race if such mixed races are so designated in the racing conditions. [1985 c 146 § 5; 1982 c 132 § 3; 1969 c 22 § 3; 1949 c 236 § 4; Rem. Supp. 1949 § 8312-14.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**67.16.100 Disposition of fees—"Fair fund."** (1) All sums paid to the commission under this chapter, including those sums collected for license fees and excluding those sums collected under RCW 67.16.102 and 67.16.105(3), shall be disposed of by the commission as follows: One hundred percent thereof shall be retained by the commission for the payment of the salaries of its members, secretary, clerical, office, and other help and all expenses incurred in carrying out the provisions of this chapter. No salary, wages, expenses, or compensation of any kind shall be paid by the state in connection with the work of the commission.

(2) Any moneys collected or paid to the commission under the terms of this chapter and not expended at the close of the fiscal biennium shall be paid to the state treasurer and be placed in the fair fund created in RCW 15.76.115. The commission may, with the approval of the office of financial management, retain any sum required for working capital. [1998 c 345 § 5; 1995 c 399 § 166; 1991 c 270 § 4. Prior: 1985 c 466 § 67; 1985 c 146 § 6; 1980 c 16 § 1; prior: 1979 c 151 § 169; 1979 c 31 § 2; 1977 c 75 § 81; 1965 c 148 § 7; 1955 c 106 § 5; 1947 c 34 § 2; 1941 c 48 § 4; 1935 c 182 § 30; 1933 c 55 § 9; Rem. Supp. 1947 § 8312-9.]

*State international trade fairs: RCW 43.31.800 through 43.31.850.*

*Transfer of surplus funds in state trade fair fund to general fund: RCW 43.31.832 through 43.31.834.*

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**67.16.101 Legislative finding—Responsibilities of horse racing commission—Availability of interest on one percent of gross receipts to support nonprofit race meets.** The legislature finds that:

(1) A primary responsibility of the horse racing commission is the encouragement of the training and development of the equine industry in the state of Washington whether the result of this training and development results in legalized horse racing or in the recreational use of horses;

(2) The horse racing commission has a further major responsibility to assure that any facility used as a race course should be maintained and upgraded to insure the continued

safety of both the public and the horse at any time the facility is used for the training or contesting of these animals;

(3) Nonprofit race meets within the state have difficulty in obtaining sufficient funds to provide the maintenance and upgrading necessary to assure this safety at these facilities, or to permit frequent use of these facilities by 4-H children or other horse owners involved in training; and

(4) The one percent of the parimutuel machine gross receipts used to pay a special purse to the licensed owners of Washington bred horses is available for the purpose of drawing interest, thereby obtaining funds to be disbursed to achieve the necessary support to these nonprofit race meets. [2006 c 174 § 2; 1977 ex.s. c 372 § 1.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**67.16.102 Withholding of additional one percent of gross receipts—Payment to owners—Interest payment on one percent and amount retained by commission—Reimbursement for new racetracks.** (1) Notwithstanding any other provision of chapter 67.16 RCW to the contrary, the licensee shall withhold and shall pay daily to the commission, in addition to the percentages authorized by RCW 67.16.105, one percent of the gross receipts of all parimutuel machines at each race meet which sums shall, at the end of each meet, be paid by the commission to the licensed owners of those Washington bred only horses finishing first, second, third, and fourth at each meet from which the additional one percent is derived in accordance with an equitable distribution formula to be promulgated by the commission prior to the commencement of each race meet: PROVIDED, That nothing in this section shall apply to race meets which are nonprofit in nature, are of ten days or less, and have an average daily handle of less than one hundred twenty thousand dollars.

(2) The additional one percent specified in subsection (1) of this section shall be deposited by the commission in the Washington horse racing commission Washington bred owners' bonus fund and breeder awards account created in RCW 67.16.275. The interest derived from this account shall be distributed annually on an equal basis to those race courses at which independent race meets are held which are nonprofit in nature and are of ten days or less. Prior to receiving a payment under this subsection, any new race course shall meet the qualifications set forth in this section for a period of two years. All funds distributed under this subsection shall be used for the purpose of maintaining and upgrading the respective racing courses and equine quartering areas of said nonprofit meets.

(3) The commission shall not permit the licensees to take into consideration the benefits derived from this section in establishing purses.

(4) The commission is authorized to pay at the end of the calendar year one-half of the one percent collected from a new licensee under subsection (1) of this section for reimbursement of capital construction of that new licensee's new race track for a period of fifteen years. This reimbursement does not include interest earned on that one-half of one percent and such interest shall continue to be collected and disbursed as provided in RCW 67.16.101 and subsection (1) of this section. [2009 c 87 § 1; 2004 c 246 § 6; 2001 c 53 § 1;

(2010 Ed.)

1991 c 270 § 5; 1982 c 132 § 5; 1979 c 31 § 3; 1977 ex.s. c 372 § 2; 1969 ex.s. c 233 § 3.]

**Effective date—2004 c 246:** See note following RCW 67.16.270.

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**67.16.105 Gross receipts—Commission's percentage—Distributions.** (1) Licensees of race meets that are nonprofit in nature and are of ten days or less shall be exempt from payment of a parimutuel tax.

(2) Licensees that do not fall under subsection (1) of this section shall withhold and pay to the commission daily for each authorized day of parimutuel wagering the following applicable percentage of all daily gross receipts from its in-state parimutuel machines:

(a) If the gross receipts of all its in-state parimutuel machines are more than fifty million dollars in the previous calendar year, the licensee shall withhold and pay to the commission daily 1.30 percent of the daily gross receipts; and

(b) If the gross receipts of all its in-state parimutuel machines are fifty million dollars or less in the previous calendar year, the licensee shall withhold and pay to the commission daily 1.803 percent of the daily gross receipts.

(3)(a) In addition to those amounts in subsection (2) of this section, a licensee shall forward one-tenth of one percent of the daily gross receipts of all its in-state parimutuel machines to the commission for payment to those nonprofit race meets as set forth in RCW 67.16.130 and subsection (1) of this section, but said percentage shall not be charged against the licensee.

(b) Payments to nonprofit race meets under this subsection shall be distributed on a per-race-day basis and used only for purses at race tracks that have been operating under RCW 67.16.130 and subsection (1) of this section for the five consecutive years immediately preceding the year of payment.

(c) As provided in this subsection, the commission shall distribute funds equal to fifteen thousand eight hundred dollars per race day from funds generated under this subsection (3).

(4) If the funds generated under subsection (3) of this section are not sufficient to fund purses equal to fifteen thousand eight hundred dollars per race day, the commission is authorized to fund these purses from the following in the order provided below:

(a) First from fines imposed by the board of stewards and the commission in a calendar year;

(b) Second from a commission approved percentage of any source market fee generated from advance deposit wagering as authorized in RCW 67.16.260;

(c) Third from interest earned from the Washington horse racing commission operating account created in RCW 67.16.280; and

(d) Fourth from the Washington horse racing commission operating account created in RCW 67.16.280.

(5) Funds generated under subsection (3) of this section that are in excess of fifteen thousand eight hundred dollars per race day must be returned to the licensee or licensees from which the funds were collected.

(6) Funds generated from any of the sources listed in subsection (4) of this section that are not needed in a calendar year to fund purses under subsection (3) of this section must

be deposited in the Washington horse racing commission operating account.

(7) Beginning July 1, 1999, at the conclusion of each authorized race meet, the commission shall calculate the mathematical average daily gross receipts of parimutuel wagering that is conducted only at the physical location of the live race meet at those race meets of licensees with gross receipts of all their in-state parimutuel machines of more than fifty million dollars. Such calculation shall include only the gross parimutuel receipts from wagering occurring on live racing dates, including live racing receipts and receipts derived from one simulcast race card that is conducted only at the physical location of the live racing meet, which, for the purposes of this subsection, is "the handle." If the calculation exceeds eight hundred eighty-six thousand dollars, the licensee shall within ten days of receipt of written notification by the commission forward to the commission a sum equal to the product obtained by multiplying 0.6 percent by the handle. Sums collected by the commission under this subsection shall be forwarded on the next business day following receipt thereof to the state treasurer to be deposited in the fair fund created in RCW 15.76.115. [2010 c 39 § 1; 2004 c 246 § 7; 2003 1st sp.s. c 27 § 1; 1998 c 345 § 6; 1997 c 87 § 3; 1995 c 173 § 2; 1994 c 159 § 2; 1993 c 170 § 2; 1991 c 270 § 6; 1987 c 347 § 4; 1985 c 146 § 7; 1982 c 32 § 3; 1979 c 31 § 6.]

**Effective date—2004 c 246:** See note following RCW 67.16.270.

**Effective date—2003 1st sp.s. c 27:** "This act takes effect January 1, 2004." [2003 1st sp.s. c 27 § 2.]

**Findings—Purpose—Report by joint legislative audit and review committee—Severability—Effective date—1997 c 87:** See notes following RCW 67.16.200.

**Intent—1995 c 173:** "It is the intent of the legislature that one-half of the money being paid into the Washington thoroughbred racing fund continue to be directed to enhanced purses, and that one-half of the money being paid into the fund continue to be deposited into an escrow or trust account and used for the construction of a new thoroughbred racing facility in western Washington." [1995 c 173 § 1.]

**Intent—1994 c 159:** "It is the intent of the legislature to terminate payments into the Washington thoroughbred racing fund from licensees of nonprofit race meets from March 30, 1994, until June 1, 1995, and to provide that one-half of moneys that otherwise would have been paid into the fund be directed to enhanced purses and one-half of moneys be deposited in an escrow or trust account and used solely for construction of a new thoroughbred race track facility in western Washington." [1994 c 159 § 1.]

**Intent—1993 c 170:** "It is the intent of the legislature that one-half of those moneys that would otherwise have been paid into the Washington thoroughbred racing fund be retained for the purpose of enhancing purses, excluding stakes purses, until that time as a permanent thoroughbred racing facility is built and operating in western Washington. It is recognized by the Washington legislature that the enhancement in purses provided in this legislation will not directly benefit all race tracks in Washington. It is the legislature's intent that the horse racing commission work with the horse racing community to ensure that this opportunity for increased purses will not inadvertently injure horse racing at tracks not directly benefiting from this legislation." [1993 c 170 § 1.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**67.16.110 Broadcasting and motion picture rights reserved.** All radio broadcasting rights, and motion picture rights in connection with meets licensed hereunder are reserved to the state and the commission shall lease or license same only to the highest bidder. The exercise of such rights shall at all times be under the supervision of the commission. [1980 c 32 § 10; 1933 c 55 § 11; RRS § 8312-11.]

[Title 67 RCW—page 16]

### 67.16.130 Nonprofit race meets—Licensing—Fees.

(1) Notwithstanding any other provision of law or of chapter 67.16 RCW, the commission may license race meets which are nonprofit in nature, of ten days or less, and which have an average daily handle of one hundred twenty thousand dollars or less, at a daily licensing fee of ten dollars, and the sponsoring nonprofit association shall be exempt from any other fees as provided for in chapter 67.16 RCW or by rule or regulation of the commission: PROVIDED, That the commission may deny the application for a license to conduct a racing meet by a nonprofit association, if same shall be determined not to be a nonprofit association by the Washington state racing commission.

(2) Notwithstanding any other provision of law or of chapter 67.16 RCW or any rule promulgated by the commission, no license for a race meet which is nonprofit in nature, of ten days or less, and which has an average daily handle of one hundred twenty thousand dollars or less, shall be denied for the reason that the applicant has not installed an electric parimutuel tote board.

(3) As a condition to the reduction in fees as provided for in subsection (1) of this section, all fees charged to horse owners, trainers, or jockeys, or any other fee charged for a permit incident to the running of such race meet shall be retained by the commission as reimbursement for its expenses incurred in connection with the particular race meet. [1991 c 270 § 7; 1985 c 146 § 8; 1982 c 32 § 4; 1979 c 31 § 4; 1969 ex.s. c 94 § 2.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**67.16.140 Employees of commission—Employment restriction.** No employee of the horse racing commission shall serve as an employee of any track at which that individual will also serve as an employee of the commission. [1973 1st ex.s. c 216 § 3.]

**67.16.150 Employees of commission—Commissioners—Financial interest restrictions.** No employee nor any commissioner of the horse racing commission shall have any financial interest whatsoever, other than an ownership interest in a community venture, in any track at which said employee serves as an agent or employee of the commission or at any track with respect to a commissioner. [1973 1st ex.s. c 216 § 4.]

**67.16.160 Rules implementing conflict of interest laws—Wagers by commissioner.** No later than ninety days after July 16, 1973, the horse racing commission shall adopt, pursuant to chapter 34.05 RCW, reasonable rules implementing to the extent applicable to the circumstances of the horse racing commission the conflict of interest laws of the state of Washington as set forth in chapter 42.52 RCW. In no case may a commissioner make any wager on the outcome of a horse race at a race meet conducted under the authority of the commission. [2004 c 274 § 3; 1994 c 154 § 314; 1973 1st ex.s. c 216 § 5.]

**Effective date—2004 c 274:** See note following RCW 67.16.160.

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**67.16.170 Gross receipts—Retention of percentage by licensees.** (1) Licensees of race meets that are nonprofit in nature and are of ten days or less may retain daily for each authorized day of racing fifteen percent of daily gross receipts of all parimutuel machines at each race meet.

(2) Licensees of race meets that do not fall under subsection (1) of this section may retain daily for each authorized day of parimutuel wagering the following percentages from the daily gross receipts of all its in-state parimutuel machines:

(a) If the daily gross receipts of all its in-state parimutuel machines are more than fifty million dollars in the previous calendar year, the licensee may retain daily 13.70 percent of the daily gross receipts; and

(b) If the daily gross receipts of all its in-state parimutuel machines are fifty million dollars or less in the previous calendar year, the licensee may retain daily 14.48 percent of the daily gross receipts. [1998 c 345 § 7; 1991 c 270 § 8; 1987 c 347 § 2; 1985 c 146 § 9; 1983 c 228 § 1; 1979 c 31 § 5.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**67.16.175 Exotic wagers—Retention of percentage by race meets.** (1) In addition to the amounts authorized to be retained in RCW 67.16.170, race meets may retain daily for each authorized day of racing an additional six percent of the daily gross receipts of all parimutuel machines from exotic wagers at each race meet.

(2) Except as provided in subsection (3) of this section, of the amounts retained in subsection (1) of this section, one-sixth shall be paid to the commission at the end of the race meet for deposit in the Washington horse racing commission Washington bred owners' bonus fund and breeder awards account created in RCW 67.16.275. Such amounts shall be used by the commission for Washington bred breeder awards, in accordance with the rules and qualifications adopted by the commission.

(3) Of the amounts retained for breeder awards under subsection (2) of this section, twenty-five percent shall be retained by a new licensee for reimbursement of capital construction of the new licensee's new race track for a period of fifteen years.

(4) As used in this section, "exotic wagers" means any multiple wager. Exotic wagers are subject to approval of the commission. [2009 c 87 § 2; 2001 c 53 § 2; 1991 c 270 § 9. Prior: 1987 c 453 § 1; 1987 c 347 § 3; 1986 c 43 § 1; 1985 c 146 § 10; 1981 c 135 § 1.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**67.16.200 Parimutuel wagering at satellite locations—Simulcasts.** (1) A class 1 racing association licensed by the commission to conduct a race meet may seek approval from the commission to conduct parimutuel wagering at a satellite location or locations within the state of Washington. In order to participate in parimutuel wagering at a satellite location or locations within the state of Washington, the holder of a class 1 racing association license must have conducted at least one full live racing season. All class 1 racing associations must hold a live race meet within each succeeding twelve-month period to maintain eligibility to continue to participate in parimutuel wagering at a satellite location or

locations. The sale of parimutuel pools at satellite locations shall be conducted simultaneous to all parimutuel wagering activity conducted at the licensee's live racing facility in the state of Washington. The commission's authority to approve satellite wagering at a particular location is subject to the following limitations:

(a) The commission may approve only one satellite location in each county in the state; however, the commission may grant approval for more than one licensee to conduct wagering at each satellite location. A satellite location shall not be operated within twenty driving miles of any class 1 racing facility. For the purposes of this section, "driving miles" means miles measured by the most direct route as determined by the commission; and

(b) A licensee shall not conduct satellite wagering at any satellite location within sixty driving miles of any other racing facility conducting a live race meet.

(2) Subject to local zoning and other land use ordinances, the commission shall be the sole judge of whether approval to conduct wagering at a satellite location shall be granted.

(3) The licensee shall combine the parimutuel pools of the satellite location with those of the racing facility for the purpose of determining odds and computing payoffs. The amount wagered at the satellite location shall be combined with the amount wagered at the racing facility for the application of take out formulas and distribution as provided in RCW 67.16.102, 67.16.105, 67.16.170, and 67.16.175. A satellite extension of the licensee's racing facility shall be subject to the same application of the rules of racing as the licensee's racing facility.

(4) Upon written application to the commission, a class 1 racing association may be authorized to transmit simulcasts of live horse races conducted at its racetrack to locations outside of the state of Washington approved by the commission and in accordance with the interstate horse racing act of 1978 (15 U.S.C. Sec. 3001 to 3007) or any other applicable laws. The commission may permit parimutuel pools on the simulcast races to be combined in a common pool. A racing association that transmits simulcasts of its races to locations outside this state shall pay at least fifty percent of the fee that it receives for sale of the simulcast signal to the horsemen's purse account for its live races after first deducting the actual cost of sending the signal out of state.

(5) Upon written application to the commission, a class 1 racing association may be authorized to transmit simulcasts of live horse races conducted at its racetrack to licensed racing associations located within the state of Washington and approved by the commission for the receipt of the simulcasts. The commission shall permit parimutuel pools on the simulcast races to be combined in a common pool. The fee for in-state, track-to-track simulcasts shall be five and one-half percent of the gross parimutuel receipts generated at the receiving location and payable to the sending racing association. A racing association that transmits simulcasts of its races to other licensed racing associations shall pay at least fifty percent of the fee that it receives for the simulcast signal to the horsemen's purse account for its live race meet after first deducting the actual cost of sending the simulcast signal. A racing association that receives races simulcast from class 1 racing associations within the state shall pay at least fifty percent of its share of the parimutuel receipts to the horsemen's

purse account for its live race meet after first deducting the purchase price and the actual direct costs of importing the race.

(6) A class 1 racing association may be allowed to import simulcasts of horse races from out-of-state racing facilities. With the prior approval of the commission, the class 1 racing association may participate in a multijurisdictional common pool and may change its commission and breakage rates to achieve a common rate with other participants in the common pool.

(a) The class 1 racing association shall make written application with the commission for permission to import simulcast horse races for the purpose of parimutuel wagering. Subject to the terms of this section, the commission is the sole authority in determining whether to grant approval for an imported simulcast race.

(b) When open for parimutuel wagering, a class 1 racing association which imports simulcast races shall also conduct simulcast parimutuel wagering within its licensed racing enclosure on all races simulcast from other class 1 racing associations within the state of Washington.

(c) On any imported simulcast race, the class 1 racing association shall pay fifty percent of its share of the parimutuel receipts to the horsemen's purse account for its live race meet after first deducting the purchase price of the imported race and the actual costs of importing and offering the race.

(7) A licensed nonprofit racing association may be approved to import one simulcast race of regional or national interest on each live race day.

(8) For purposes of this section, a class 1 racing association is defined as a licensee approved by the commission to conduct during each twelve-month period at least forty days of live racing. If a live race day is canceled due to reasons directly attributable to acts of God, labor disruptions affecting live race days but not directly involving the licensee or its employees, or other circumstances that the commission decides are beyond the control of the class 1 racing association, then the canceled day counts toward the forty-day requirement. The commission may by rule increase the number of live racing days required to maintain class 1 racing association status or make other rules necessary to implement this section.

(9) This section does not establish a new form of gaming in Washington or allow expanded gaming within the state beyond what has been previously authorized. Simulcast wagering has been allowed in Washington before April 19, 1997. Therefore, this section does not allow gaming of any nature or scope that was prohibited before April 19, 1997. This section is necessary to protect the Washington equine breeding and racing industries, and in particular those sectors of these industries that are dependent upon live horse racing. The purpose of this section is to protect these industries from adverse economic impacts and to promote fan attendance at class 1 racing facilities. Therefore, a licensed class 1 racing association may be approved to disseminate imported simulcast race card programs to satellite locations approved under this section, provided that the class 1 racing association has conducted at least forty live racing days with an average on-track handle on the live racing product of a minimum of one hundred fifty thousand dollars per day during the twelve months immediately preceding the application date. How-

ever, to promote the development of a new class 1 racing association facility and to meet the best interests of the Washington equine breeding and racing industries, the commission may by rule reduce the required minimum average on-track handle on the live racing product from one hundred fifty thousand dollars per day to thirty thousand dollars per day.

(10) A licensee conducting simulcasting under this section shall place signs in the licensee's gambling establishment under RCW 9.46.071. The informational signs concerning problem and compulsive gambling must include a toll-free telephone number for problem and pathological gamblers and be developed under RCW 9.46.071.

(11) Chapter 10, Laws of 2001 1st sp. sess. does not establish a new form of gaming in Washington or allow expanded gaming within the state beyond what has been previously authorized. Simulcast wagering has been allowed in Washington before August 23, 2001. Therefore, this section does not allow gaming of any nature or scope that was prohibited before August 23, 2001. Chapter 10, Laws of 2001 1st sp. sess. is necessary to protect the Washington equine breeding and racing industries, and in particular those sectors of these industries that are dependent upon live horse racing. The purpose of chapter 10, Laws of 2001 1st sp. sess. is to protect these industries from adverse economic impacts and to promote fan attendance at class 1 racing facilities. [2007 c 100 § 1; 2004 c 274 § 2; 2001 1st sp.s. c 10 § 2; 2000 c 223 § 1; 1997 c 87 § 4; 1991 c 270 § 10; 1987 c 347 § 1.]

**Effective date—2007 c 100:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [April 18, 2007]." [2007 c 100 § 2.]

**Effective date—2004 c 274:** See note following RCW 67.16.260.

**Finding—Purpose—2001 1st sp.s. c 10:** "The legislature finds that Washington's equine racing industry creates economic, environmental, and recreational impacts across the state affecting agriculture, horse breeding, the horse training industry, agricultural fairs and youth programs, and tourism and employment opportunities. The Washington equine industry has incurred a financial decline coinciding with increased competition from the gaming industry in the state and from the lack of a class 1 racing facility in western Washington from 1993 through 1995. This act is necessary to preserve, restore, and revitalize the equine breeding and racing industries and to preserve in Washington the economic and social impacts associated with these industries. Preserving Washington's equine breeding and racing industries, and in particular those sectors of the industries that are dependent upon live horse racing, is in the public interest of the state. The purpose of this act is to preserve Washington's equine breeding and racing industries and to protect these industries from adverse economic impacts. This act does not establish a new form of gaming in Washington or allow expanded gaming within the state beyond what has been previously authorized. Simulcast wagering has been allowed in Washington before August 23, 2001. Therefore, this act does not allow gaming of any nature or scope that was prohibited before August 23, 2001." [2001 1st sp.s. c 10 § 1.]

**Findings—Purpose—1997 c 87:** "The legislature finds that Washington's equine racing industry creates economic, environmental, and recreational impacts across the state affecting agriculture, horse breeding, the horse training industry, agricultural fairs and youth programs, and tourism and employment opportunities. The Washington equine industry has incurred a financial decline coinciding with increased competition from the gaming industry in the state and from the lack of a class 1 racing facility in western Washington from 1993 through 1995. This act is necessary to preserve, restore, and revitalize the equine breeding and racing industries and to preserve in Washington the economic and social impacts associated with these industries. Preserving Washington's equine breeding and racing industries, and in particular those sectors of the industries that are dependent upon live horse racing, is in the public interest of the state. The purpose of this act is to preserve Washington's equine breeding and racing industries and to protect these industries from adverse economic impacts. This act does not establish a new form of gaming in Washington or allow expanded gaming

within the state beyond what has been previously authorized. Simulcast wagering has been allowed in Washington before April 19, 1997. Therefore, this act does not allow gaming of any nature or scope that was prohibited before April 19, 1997." [1997 c 87 § 1.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**67.16.230 Satellite locations—Fees.** The commission is authorized to establish and collect an annual fee for each separate satellite location. The fee to be collected from the licensee shall be set to reflect the commission's expected costs of approving, regulating, and monitoring each satellite location, provided commission revenues generated under RCW 67.16.105 from the licensee shall be credited annually towards the licensee's fee assessment under this section. [1991 c 270 § 11; 1987 c 347 § 7.]

**67.16.251 Handicapping contests.** Class 1 racing associations may conduct horse race handicapping contests. The commission shall establish rules for the conduct of handicapping contests involving the outcome of multiple horse races. [2005 c 351 § 2.]

**67.16.260 Advance deposit wagering.** (1) The horse racing commission may authorize advance deposit wagering to be conducted by:

(a) A licensed class 1 racing association operating a live horse racing facility; or

(b) The operator of an advance deposit wagering system accepting wagers pursuant to an agreement with a licensed class 1 racing association. The agreement between the operator and the class 1 racing association must be approved by the commission.

(2) An entity authorized to conduct advance deposit wagering under subsection (1) of this section:

(a) May accept advance deposit wagering for races conducted in this state under a class 1 license or races not conducted within this state on a schedule approved by the class 1 licensee. A system of advance deposit wagering located outside or within this state may not accept wagers from residents or other individuals located within this state, and residents or other individuals located within this state are prohibited from placing wagers through advance deposit wagering systems, except with an entity authorized to conduct advance deposit wagering under subsection (1) of this section;

(b) May not accept an account wager in an amount in excess of the funds on deposit in the advance deposit wagering account of the individual placing the wager;

(c) May not allow individuals under the age of twenty-one to open, own, or have access to an advance deposit wagering account;

(d) Must include a statement in all forms of advertising for advance deposit wagering that individuals under the age of twenty-one are not allowed to open, own, or have access to an advance deposit wagering account; and

(e) Must verify the identification, residence, and age of the advance deposit wagering account holder using methods and technologies approved by the commission.

(3) As used in this section, "advance deposit wagering" means a form of parimutuel wagering in which an individual deposits money in an account with an entity authorized by the commission to conduct advance deposit wagering and then

(2010 Ed.)

the account funds are used to pay for parimutuel wagers made in person, by telephone, or through communication by other electronic means.

(4) In order to participate in advance deposit wagering, the holder of a class 1 racing association license must have conducted at least one full live racing season. All class 1 racing associations must complete a live race meet within each succeeding twelve-month period to maintain eligibility to continue participating in advance deposit wagering.

(5) When more than one class 1 racing association is participating in advance deposit wagering the moneys paid to the racing associations shall be allocated proportionate to the gross amount of all sources of parimutuel wagering during each twelve-month period derived from the associations' live race meets. This percentage must be calculated annually. Revenue derived from advance deposit wagers placed on races conducted by the class 1 racing association shall all be allocated to that association.

(6) The commission shall adopt rules regulating advance deposit wagering. [2007 c 209 § 1; 2004 c 274 § 1.]

**Effective date—2004 c 274:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [April 1, 2004]." [2004 c 274 § 4.]

**67.16.270 Violation of commission rules—Penalties.** Upon making a determination that an individual or licensee has violated a commission rule, the board of stewards may assess a fine, suspend or revoke a person's license, or any combination of these penalties. The commission must adopt by rule standard penalties for a rules violation. All fines collected must be deposited in the Washington horse racing commission class C purse fund account, created in RCW 67.16.285, and used as authorized in RCW 67.16.105(3). [2004 c 246 § 1.]

**Effective date—2004 c 246:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [March 31, 2004]." [2004 c 246 § 9.]

**67.16.275 Washington horse racing commission Washington bred owners' bonus fund and breeder awards account.** The Washington horse racing commission Washington bred owners' bonus fund and breeder awards account is created in the custody of the state treasurer. All receipts collected by the commission under RCW 67.16.102(1) and 67.16.175(2) must be deposited into the account. Expenditures from the account may be used only as authorized in RCW 67.16.102 and 67.16.175. Only the secretary of the commission or the secretary's designee may authorize expenditures from the account. The account is subject to allotment procedures under chapter 43.88 RCW, but an appropriation is not required for expenditures. [2009 c 87 § 3; 2004 c 246 § 2.]

**Effective date—2004 c 246:** See note following RCW 67.16.270.

**67.16.280 Washington horse racing commission operating account.** (1) The Washington horse racing commission operating account is created in the custody of the state treasurer. All receipts collected by the commission under RCW 67.16.105(2) must be deposited into the account.

Moneys in the account may be spent only after appropriation. Except as provided in subsection (2) of this section, expenditures from the account may be used only for operating expenses of the commission. Investment earnings from the account must be distributed to the Washington horse racing commission class C purse fund account, created in RCW 67.16.285, pursuant to RCW 43.79A.040.

(2) In order to provide funding in support of the legislative findings in RCW 67.16.101 (1) through (3), and to provide additional necessary support to the nonprofit race meets beyond the funding provided by RCW 67.16.101(4) and 67.16.102(2), the commission is authorized to spend up to three hundred thousand dollars per fiscal year from its operating account for the purpose of developing the equine industry, maintaining and upgrading racing facilities, and assisting equine health research. When determining how to allocate the funds available for these purposes, the commission shall give first consideration to uses that assist the nonprofit race meets and equine health research. These expenditures may occur only when sufficient funds remain for the continued operations of the horse racing commission. [2006 c 174 § 1; 2004 c 246 § 3.]

**Effective date—2004 c 246:** See note following RCW 67.16.270.

**67.16.285 Washington horse racing commission class C purse fund account.** The Washington horse racing commission class C purse fund account is created in the custody of the state treasurer. All receipts from RCW 67.16.105(3) must be deposited into the account. Expenditures from the account may be used only for the purposes provided in RCW 67.16.105(3). Only the secretary of the commission or the secretary's designee may authorize expenditures from the account. The account is subject to allotment procedures under chapter 43.88 RCW, but an appropriation is not required for expenditures. [2004 c 246 § 4.]

**Effective date—2004 c 246:** See note following RCW 67.16.270.

**67.16.300 Industrial insurance premium assessments.** In addition to the license fees authorized by this chapter, the commission shall collect the industrial insurance premium assessments required under RCW 51.16.210 from trainers, grooms, and owners. The industrial insurance premium assessments required under RCW 51.16.210 shall be retroactive to January 1, 1989, and shall be collected from all licensees whose licenses were issued after that date. The commission shall deposit the industrial insurance premium assessments in the industrial insurance trust fund as required by rules adopted by the department of labor and industries. [1989 c 385 § 2.]

**67.16.900 Severability—General repealer—1933 c 55.** In case any part or portion of this chapter shall be held unconstitutional, such holding shall not affect the validity of this chapter as a whole or any other part or portion of this chapter not adjudged unconstitutional. All acts in conflict herewith are hereby repealed. [1933 c 55 § 10; RRS § 8312-10.]

## Chapter 67.17 RCW

### LIVE HORSE RACING COMPACT

#### Sections

67.17.005	Purpose.
67.17.010	Definitions.
67.17.020	Compact effective date.
67.17.030	Eligibility to enter compact.
67.17.040	Withdrawal from compact.
67.17.050	Creation of compact committee.
67.17.060	Compact committee powers and duties.
67.17.070	Compact committee voting requirements.
67.17.080	Compact committee governance.
67.17.090	Liability of compact committee employees or officials.
67.17.100	Conditions and terms for participating states.
67.17.110	Cooperation by governmental entities with compact committee.
67.17.120	Impact on horse racing commission.
67.17.130	Construction and severability of language.
67.17.900	Short title—2001 c 18.

**67.17.005 Purpose.** The purposes of the live horse racing compact are to:

(1) Establish uniform requirements among the party states for the licensing of participants in live horse racing with pari-mutuel wagering, and ensure that all such participants who are licensed pursuant to the compact meet a uniform minimum standard of honesty and integrity;

(2) Facilitate the growth of the horse racing industry in each party state and nationwide by simplifying the process for licensing participants in live racing, and reduce the duplicative and costly process of separate licensing by the regulatory agency in each state that conducts live horse racing with pari-mutuel wagering;

(3) Authorize the Washington horse racing commission to participate in the live horse racing compact;

(4) Provide for participation in the live horse racing compact by officials of the party states, and permit those officials, through the compact committee established by this chapter, to enter into contracts with governmental agencies and non-governmental persons to carry out the purposes of the live horse racing compact; and

(5) Establish the compact committee created by this chapter as an interstate governmental entity duly authorized to request and receive criminal history record information from the federal bureau of investigation and other state and local law enforcement agencies. [2001 c 18 § 1.]

**67.17.010 Definitions.** Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Compact committee" means the organization of officials from the party states that is authorized and empowered by the live horse racing compact to carry out the purposes of the compact.

(2) "Official" means the appointed, elected, designated, or otherwise duly selected member of a racing commission or the equivalent thereof in a party state who represents that party state as a member of the compact committee.

(3) "Participants in live racing" means participants in live horse racing with pari-mutuel wagering in the party states.

(4) "Party state" means each state that has enacted the live horse racing compact.

(5) "State" means each of the several states of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and each territory or possession of the United States. [2001 c 18 § 2.]

**67.17.020 Compact effective date.** The live horse racing compact shall come into force when enacted by any four states. Thereafter, the compact shall become effective as to any other state upon: (1) That state's enactment of the compact; and (2) the affirmative vote of a majority of the officials on the compact committee as provided in RCW 67.17.070. [2001 c 18 § 3.]

**67.17.030 Eligibility to enter compact.** Any state that has adopted or authorized horse racing with pari-mutuel wagering is eligible to become party to the live horse racing compact. [2001 c 18 § 4.]

**67.17.040 Withdrawal from compact.** Any party state may withdraw from the live horse racing compact by enacting a statute repealing the compact, but no such withdrawal is effective until the head of the executive branch of the withdrawing state has given notice in writing of such withdrawal to the head of the executive branch of all other party states. If, as a result of withdrawals, participation in the compact decreases to less than three party states, the compact no longer shall be in force and effect unless and until there are at least three or more party states again participating in the compact. [2001 c 18 § 5.]

**67.17.050 Creation of compact committee.** (1) There is created an interstate governmental entity to be known as the "compact committee" which shall be comprised of one official from the racing commission or its equivalent in each party state who shall be appointed, serve, and be subject to removal in accordance with the laws of the party state he or she represents. Under the laws of his or her party state, each official shall have the assistance of his or her state's racing commission or the equivalent thereof in considering issues related to licensing of participants in live racing and in fulfilling his or her responsibilities as the representative from his or her state to the compact committee. If an official is unable to perform any duty in connection with the powers and duties of the compact committee, the racing commission or equivalent thereof from his or her state shall designate another of its members as an alternate who shall serve in his or her place and represent the party state as its official on the compact committee until that racing commission or equivalent thereof determines that the original representative official is able once again to perform his or her duties as that party state's representative official on the compact committee. The designation of an alternate shall be communicated by the affected state's racing commission or equivalent thereof to the compact committee as the committee's bylaws may provide.

(2) The governor shall appoint the official to represent the state of Washington on the compact committee for a term of four years. No official may serve more than three consecutive terms. A vacancy shall be filled by the governor for the unexpired term. [2001 c 18 § 6.]

**67.17.060 Compact committee powers and duties.** In order to carry out the live horse racing compact, the compact committee is granted the power and duty to:

(1) Determine which categories of participants in live racing, including but not limited to owners, trainers, jockeys, grooms, mutuel clerks, racing officials, veterinarians, and farriers, should be licensed by the compact committee, and establish the requirements for the initial licensure of applicants in each such category, the term of the license for each category, and the requirements for renewal of licenses in each category. However, with regard to requests for criminal history record information on each applicant for a license, and with regard to the effect of a criminal record on the issuance or renewal of a license, the compact committee shall determine for each category of participants in live racing which licensure requirements for that category are, in its judgment, the most restrictive licensure requirements of any party state for that category and shall adopt licensure requirements for that category that are, in its judgment, comparable to those most restrictive requirements;

(2) Investigate applicants for a license from the compact committee and, as permitted by federal and state law, gather information on such applicants, including criminal history record information from the federal bureau of investigation and relevant state and local law enforcement agencies, and, where appropriate, from the royal Canadian mounted police and law enforcement agencies of other countries, necessary to determine whether a license should be issued under the licensure requirements established by the compact committee under subsection (1) of this section. Only officials on, and employees of, the compact committee may receive and review such criminal history record information, and those officials and employees may use that information only for the purposes of the compact. No such official or employee may disclose or disseminate such information to any person or entity other than another official on or employee of the compact committee. The fingerprints of each applicant for a license from the compact committee shall be taken by the compact committee, its employees, or its designee and shall be forwarded to a state identification bureau, or to an association of state officials regulating pari-mutuel wagering designated by the attorney general of the United States, for submission to the federal bureau of investigation for a criminal history record check. Such fingerprints may be submitted on a fingerprint card or by electronic or other means authorized by the federal bureau of investigation or other receiving law enforcement agency;

(3) Issue licenses to, and renew the licenses of, participants in live racing listed in subsection (1) of this section who are found by the compact committee to have met the licensure and renewal requirements established by the compact committee. The compact committee shall not have the power or authority to deny a license. If it determines that an applicant will not be eligible for the issuance or renewal of a compact committee license, the compact committee shall notify the applicant that it will not be able to process his or her application further. Such notification does not constitute and shall not be considered to be the denial of a license. Any such applicant has the right to present additional evidence to, and to be heard by, the compact committee, but the final decision on issuance or renewal of the license shall be made by the

compact committee using the requirements established under subsection (1) of this section;

(4) Enter into contracts or agreements with governmental agencies and with nongovernmental persons to provide personal services for its activities and such other services as may be necessary to carry out the compact;

(5) Create, appoint, and abolish those offices, employments, and positions, including an executive director, as it deems necessary for the purposes of the compact, prescribe their powers, duties, and qualifications, hire persons to fill those offices, employments, and positions, and provide for the removal, term, tenure, compensation, fringe benefits, retirement benefits, and other conditions of employment of its officers, employees, and other positions;

(6) Borrow, accept, or contract for the services of personnel from any state, the United States, or any other governmental agency, or from any person, firm, association, corporation, or other entity;

(7) Acquire, hold, and dispose of real and personal property by gift, purchase, lease, license, or in other similar manner, in furtherance of the compact;

(8) Charge a fee to each applicant for an initial license or renewal of a license; and

(9) Receive other funds through gifts, grants, and appropriations. [2001 c 18 § 7.]

**67.17.070 Compact committee voting requirements.**

(1) Each official is entitled to one vote on the compact committee.

(2) All action taken by the compact committee with regard to the addition of party states as provided in RCW 67.17.020, the licensure of participants in live racing, and the receipt and disbursement of funds require a majority vote of the total number of officials, or their alternates, on the compact committee. All other action by the compact committee requires a majority vote of those officials, or their alternates, present and voting.

(3) No action of the compact committee may be taken unless a quorum is present. A majority of the officials, or their alternates, on the compact committee constitutes a quorum. [2001 c 18 § 8.]

**67.17.080 Compact committee governance.** (1) The compact committee shall elect annually from among its members a chair, a vice-chair, and a secretary/treasurer.

(2) The compact committee shall adopt bylaws for the conduct of its business by a two-thirds vote of the total number of officials, or their alternates, on the compact committee at that time and shall have the power by the same vote to amend and rescind such bylaws. The compact committee shall publish its bylaws in convenient form and shall file a copy thereof and a copy of any amendments thereto with the secretary of state or equivalent agency of each of the party states.

(3) The compact committee may delegate the day-to-day management and administration of its duties and responsibilities to an executive director and the executive director's support staff.

(4) Employees of the compact committee are considered governmental employees. [2001 c 18 § 9.]

**67.17.090 Liability of compact committee employees or officials.** No official of a party state or employee of the compact committee shall be held personally liable for any good faith act or omission that occurs during the performance and within the scope of his or her responsibilities and duties under the live horse racing compact. [2001 c 18 § 10.]

**67.17.100 Conditions and terms for participating states.** (1) By enacting the compact, each party state:

(a) Agrees: (i) To accept the decisions of the compact committee regarding the issuance of compact committee licenses to participants in live racing under the compact committee's licensure requirements; and (ii) to reimburse or otherwise pay the expenses of its official representative on the compact committee or his or her alternate;

(b) Agrees not to treat a notification to an applicant by the compact committee under RCW 67.17.060(3) that the compact committee will not be able to process the application further as the denial of a license, or to penalize such an applicant in any other way based solely on such a decision by the compact committee; and

(c) Reserves the right: (i) To charge a fee for the use of a compact committee license in that state; (ii) to apply its own standards in determining whether, on the facts of a particular case, a compact committee license should be suspended or revoked; (iii) to apply its own standards in determining licensure eligibility, under the laws of that party state, for categories of participants in live racing that the compact committee determines not to license and for individual participants in live racing who do not meet the licensure requirements of the compact committee; and (iv) to establish its own licensure standards for the licensure of nonracing employees at horse racetracks and employees at separate satellite wagering facilities. Any party state that suspends or revokes a compact committee license shall, through its racing commission or the equivalent thereof or otherwise, promptly notify the compact committee of that suspension or revocation.

(2) No party state shall be held liable for the debts or other financial obligations incurred by the compact committee. [2001 c 18 § 11.]

**67.17.110 Cooperation by governmental entities with compact committee.** All departments, agencies, and officers of the state of Washington and its political subdivisions are authorized to cooperate with the compact committee in furtherance of any of its activities of the live horse racing compact. [2001 c 18 § 12.]

**67.17.120 Impact on horse racing commission.** Nothing in this chapter shall be construed to diminish or limit the powers and responsibilities of the Washington horse racing commission established in chapter 67.16 RCW or to invalidate any action of the Washington horse racing commission previously taken, including without limitation any regulation issued by the commission. [2001 c 18 § 13.]

**67.17.130 Construction and severability of language.** This chapter shall be liberally construed so as to effectuate its purposes. The provisions of this chapter are severable, and, if any phrase, clause, sentence, or provision of the compact is

declared to be contrary to the Constitution of the United States or of any party state, or the applicability of the live horse racing compact to any government, agency, person, or circumstance is held invalid, the validity of the remainder of the compact and the applicability thereof to any government, agency, person, or circumstance shall not be affected thereby. If all or some portion of the live horse racing compact is held to be contrary to the constitution of any party state, the compact shall remain in full force and effect as to the remaining party states and in full force and effect as to the state affected as to all severable matters. [2001 c 18 § 14.]

**67.17.900 Short title—2001 c 18.** This act may be known and cited as the live horse racing compact. [2001 c 18 § 15.]

### Chapter 67.20 RCW

#### PARKS, BATHING BEACHES, PUBLIC CAMPS

##### Sections

- 67.20.010 Authority to acquire and operate certain recreational facilities—Charges—Eminent domain.  
 67.20.015 Authority to establish and operate public camps—Charges.  
 67.20.020 Contracts for cooperation.  
 67.20.030 Scope of chapter.

*County parks and recreational facilities: Chapter 36.68 RCW.*

*Eminent domain: Title 8 RCW.*

*Metropolitan park districts: Chapter 35.61 RCW.*

*Recreation districts act for counties: Chapter 36.69 RCW.*

*State parks and recreation commission: Chapter 79A.05 RCW.*

**67.20.010 Authority to acquire and operate certain recreational facilities—Charges—Eminent domain.** Any city in this state acting through its city council, or its board of park commissioners when authorized by charter or ordinance, any separately organized park district acting through its board of park commissioners or other governing officers, any school district acting through its board of school directors, any county acting through its board of county commissioners, any park and recreation service area acting through its governing body, and any town acting through its town council shall have power, acting independently or in conjunction with the United States, the state of Washington, any county, city, park district, school district or town or any number of such public organizations to acquire any land within this state for park, playground, gymnasiums, swimming pools, field houses and other recreational facilities, bathing beach or public camp purposes and roads leading from said parks, playgrounds, gymnasiums, swimming pools, field houses and other recreational facilities, bathing beaches, or public camps to nearby highways by donation, purchase or condemnation, and to build, construct, care for, control, supervise, improve, operate and maintain parks, playgrounds, gymnasiums, swimming pools, field houses and other recreational facilities, bathing beaches, roads and public camps upon any such land, including the power to enact and enforce such police regulations not inconsistent with the constitution and laws of the state of Washington, as are deemed necessary for the government and control of the same. The power of eminent domain herein granted shall not extend to any land outside the territorial limits of the governmental unit or units

(2010 Ed.)

exercising said power. [1988 c 82 § 7; 1949 c 97 § 1; 1921 c 107 § 1; Rem. Supp. 1949 § 9319. FORMER PART OF SECTION: 1949 c 97 § 3; 1921 c 107 § 3; Rem. Supp. 1949 § 9321 now codified as RCW 67.20.015.]

**67.20.015 Authority to establish and operate public camps—Charges.** Any city, town, county, separately organized park district, or school district shall have power to establish, care for, control, supervise, improve, operate and maintain a public camp, or camps anywhere within the state, and to that end may make, promulgate and enforce any reasonable rules and regulations in reference to such camps and make such charges for the use thereof as may be deemed expedient. [1949 c 97 § 3; 1921 c 107 § 3; Rem. Supp. 1949 § 9321. Formerly RCW 67.20.010, part.]

**67.20.020 Contracts for cooperation.** Any city, park district, school district, county or town shall have power to enter into any contract in writing with any organization or organizations referred to in this chapter for the purpose of conducting a recreation program or exercising any other power granted by this chapter. In the conduct of such recreation program property or facilities owned by any individual, group or organization, whether public or private, may be utilized by consent of the owner. [1949 c 97 § 2; 1921 c 107 § 2; Rem. Supp. 1949 § 9320.]

**67.20.030 Scope of chapter.** This chapter shall not be construed to repeal or limit any existing power of any city or park district, but to grant powers in addition thereto. [1949 c 97 § 4; 1921 c 107 § 4; Rem. Supp. 1949 § 9319 note.]

### Chapter 67.24 RCW

#### FRAUD IN SPORTING CONTEST

##### Sections

- 67.24.010 Commission of—Felony.  
 67.24.020 Scope of 1945 c 107.

**67.24.010 Commission of—Felony.** Every person who shall give, offer, receive, or promise, directly or indirectly, any compensation, gratuity, or reward, or make any promise thereof, or who shall fraudulently commit any act by trick, device, or bunco, or any means whatsoever with intent to influence or change the outcome of any sporting contest between people or between animals, is guilty of a class B felony and shall be punished by imprisonment in a state correctional facility for not less than five years. [2003 c 53 § 302; 1992 c 7 § 43; 1945 c 107 § 1; 1941 c 181 § 1; Rem. Supp. 1945 § 2499-1.]

**Intent—Effective date—2003 c 53:** See notes following RCW 2.48.180.

**67.24.020 Scope of 1945 c 107.** All of the acts and statutes in conflict herewith are hereby repealed except chapter 55, Laws of 1933 [chapters \*43.50 and 67.16 RCW] and amendments thereto. [1945 c 107 § 2; Rem. Supp. 1945 § 2499-1 note.]

**\*Reviser's note:** Chapter 43.50 RCW is now codified as RCW 67.16.012 and 67.16.015.

## Chapter 67.28 RCW

PUBLIC STADIUM, CONVENTION, ARTS,  
AND TOURISM FACILITIES

## Sections

67.28.080	Definitions.
67.28.120	Authorization to acquire and operate tourism-related facilities.
67.28.125	Selling convention center facilities—Smaller counties within national scenic areas.
67.28.130	Conveyance or lease of lands, properties or facilities authorized—Joint participation, use of facilities.
67.28.140	Declaration of public purpose—Right of eminent domain.
67.28.150	Issuance of general obligation bonds—Maturity—Methods of payment.
67.28.160	Revenue bonds—Issuance, sale, form, term, payment, reserves, actions.
67.28.170	Power to lease all or part of facilities—Disposition of proceeds.
67.28.180	Lodging tax authorized—Conditions.
67.28.1801	Credit against sales tax due on same lodging.
67.28.181	Special excise taxes authorized—Rates—Credits for city or town tax by county—Limits.
67.28.1815	Revenue—Special fund—Uses for tourism promotion and tourism facility acquisition and operation.
67.28.1816	Lodging tax—Tourism promotion.
67.28.1817	Lodging tax advisory committee in large municipalities—Submission of proposal for imposition of or change in tax or use—Comments.
67.28.183	Exemption from tax—Emergency lodging for homeless persons—Conditions.
67.28.184	Use of hotel-motel tax revenues by cities for professional sports franchise facilities limited.
67.28.186	Exemption from tax—Temporary medical housing.
67.28.200	Special excise tax authorized—Exemptions may be established—Collection.
67.28.220	Powers additional and supplemental to other laws.
67.28.225	Compliance with prevailing wages on public works provisions.
67.28.8001	Reports by municipalities—Summary and analysis by department of community, trade, and economic development.
67.28.900	Severability—1965 c 15.
67.28.910	Severability—1967 c 236.
67.28.911	Severability—1973 2nd ex.s. c 34.
67.28.912	Severability—1975 1st ex.s. c 225.
67.28.913	Severability—1988 ex.s. c 1.

*Multipurpose community centers: Chapter 35.59 RCW.*

*Stadiums, coliseums, powers of counties to build and operate: RCW 36.68.090.*

*Tax changes: RCW 82.14.055.*

*Tax rate calculation errors: RCW 82.32.430.*

**67.28.080 Definitions. (Expires June 30, 2013.)** The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Acquisition" includes, but is not limited to, siting, acquisition, design, construction, refurbishing, expansion, repair, and improvement, including paying or securing the payment of all or any portion of general obligation bonds, leases, revenue bonds, or other obligations issued or incurred for such purpose or purposes under this chapter.

(2) "Municipality" means any county, city or town of the state of Washington.

(3) "Operation" includes, but is not limited to, operation, management, and marketing.

(4) "Person" means the federal government or any agency thereof, the state or any agency, subdivision, taxing district or municipal corporation thereof other than county, city or town, any private corporation, partnership, association, or individual.

(5) "Tourism" means economic activity resulting from tourists, which may include sales of overnight lodging, meals, tours, gifts, or souvenirs.

(6) "Tourism promotion" means activities, operations, and expenditures designed to increase tourism, including but not limited to advertising, publicizing, or otherwise distributing information for the purpose of attracting and welcoming tourists; developing strategies to expand tourism; operating tourism promotion agencies; and funding the marketing of or the operation of special events and festivals designed to attract tourists.

(7) "Tourism-related facility" means real or tangible personal property with a usable life of three or more years, or constructed with volunteer labor that is: (a)(i) Owned by a public entity; (ii) owned by a nonprofit organization described under section 501(c)(3) of the federal internal revenue code of 1986, as amended; or (iii) owned by a nonprofit organization described under section 501(c)(6) of the federal internal revenue code of 1986, as amended, a business organization, destination marketing organization, main street organization, lodging association, or chamber of commerce and (b) used to support tourism, performing arts, or to accommodate tourist activities.

(8) "Tourist" means a person who travels from a place of residence to a different town, city, county, state, or country, for purposes of business, pleasure, recreation, education, arts, heritage, or culture.

(9) Amendments made in section 1, chapter 497, Laws of 2007 expire June 30, 2013. [2007 c 497 § 1; 1997 c 452 § 2; 1991 c 357 § 1; 1967 c 236 § 1.]

**Intent—1997 c 452:** "The intent of this act is to provide uniform standards for local option excise taxation of lodging." [1997 c 452 § 1.]

*Clarification of permitted use or purpose: 2000 c 256.*

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**67.28.080 Definitions. (Effective June 30, 2013.)** The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Acquisition" includes, but is not limited to, siting, acquisition, design, construction, refurbishing, expansion, repair, and improvement, including paying or securing the payment of all or any portion of general obligation bonds, leases, revenue bonds, or other obligations issued or incurred for such purpose or purposes under this chapter.

(2) "Municipality" means any county, city or town of the state of Washington.

(3) "Operation" includes, but is not limited to, operation, management, and marketing.

(4) "Person" means the federal government or any agency thereof, the state or any agency, subdivision, taxing district or municipal corporation thereof other than county, city or town, any private corporation, partnership, association, or individual.

(5) "Tourism" means economic activity resulting from tourists, which may include sales of overnight lodging, meals, tours, gifts, or souvenirs.

(6) "Tourism promotion" means activities and expenditures designed to increase tourism, including but not limited to advertising, publicizing, or otherwise distributing information for the purpose of attracting and welcoming tourists; developing strategies to expand tourism; operating tourism promotion agencies; and funding marketing of special events and festivals designed to attract tourists.

(7) "Tourism-related facility" means real or tangible personal property with a usable life of three or more years, or constructed with volunteer labor, and used to support tourism, performing arts, or to accommodate tourist activities.

(8) "Tourist" means a person who travels from a place of residence to a different town, city, county, state, or country, for purposes of business, pleasure, recreation, education, arts, heritage, or culture. [1997 c 452 § 2; 1991 c 357 § 1; 1967 c 236 § 1.]

**Intent—1997 c 452:** "The intent of this act is to provide uniform standards for local option excise taxation of lodging." [1997 c 452 § 1.]

*Clarification of permitted use or purpose:* 2000 c 256.

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**67.28.120 Authorization to acquire and operate tourism-related facilities.** Any municipality is authorized either individually or jointly with any other municipality, or person, or any combination thereof, to acquire and to operate tourism-related facilities, whether located within or without such municipality. [1997 c 452 § 7; 1979 ex.s. c 222 § 1; 1973 2nd ex.s. c 34 § 1; 1967 c 236 § 5.]

**Intent—Severability—1997 c 452:** See notes following RCW 67.28.080.

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**67.28.125 Selling convention center facilities—Smaller counties within national scenic areas.** The provisions of this section shall apply to any municipality in any county located in whole or in part in a national scenic area when the population of the county is less than 20,000. The provisions of this section shall also apply to the county when the county contains in whole or in part a national scenic area and the population of the county is less than 20,000.

(1) The legislative body of any municipality or the county legislative authority is authorized to sell to any public or private person, including a corporation, partnership, joint venture, or any other business entity, any convention center facility it owns in whole or in part.

(2) The price and other terms and conditions shall be as the legislative body or authority shall determine. [1991 c 357 § 2.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**67.28.130 Conveyance or lease of lands, properties or facilities authorized—Joint participation, use of facilities.** Any municipality, taxing district, or municipal corporation is authorized to convey or lease any lands, properties or facilities to any other municipality for the development by such other municipality of tourism-related facilities or to provide for the joint use of such lands, properties or facilities, or to participate in the financing of all or any part of the public facilities on such terms as may be fixed by agreement between the respective legislative bodies without submitting the matter to the voters of such municipalities, unless the provisions of general law applicable to the incurring of municipal indebtedness shall require such submission. [1997 c 452 § 8; 1979 ex.s. c 222 § 2; 1973 2nd ex.s. c 34 § 2; 1967 c 236 § 6.]

**Intent—Severability—1997 c 452:** See notes following RCW 67.28.080.

(2010 Ed.)

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**67.28.140 Declaration of public purpose—Right of eminent domain.** The acts authorized herein are declared to be strictly for the public purposes of the municipalities authorized to perform same. Any municipality as defined in RCW 67.28.080 shall have the power to acquire by condemnation and purchase any lands and property rights, both within and without its boundaries, which are necessary to carry out the purposes of this chapter. Such right of eminent domain shall be exercised by the legislative body of each such municipality in the manner provided by applicable general law or under chapter 8.12 RCW. [1967 c 236 § 7.]

**67.28.150 Issuance of general obligation bonds—Maturity—Methods of payment.** To carry out the purposes of this chapter any municipality shall have the power to issue general obligation bonds within the limitations now or hereafter prescribed by the laws of this state. Such general obligation bonds shall be authorized, executed, issued and made payable as other general obligation bonds of such municipality: PROVIDED, That the governing body of such municipality may provide that such bonds mature in not to exceed forty years from the date of their issue, may provide that such bonds also be made payable from any special taxes provided for in this chapter, and may provide that such bonds also be made payable from any otherwise unpledged revenue which may be derived from the ownership or operation of any properties. [1997 c 452 § 9; 1984 c 186 § 56; 1967 c 236 § 8.]

**Intent—Severability—1997 c 452:** See notes following RCW 67.28.080.

**Purpose—1984 c 186:** See note following RCW 39.46.110.

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**67.28.160 Revenue bonds—Issuance, sale, form, term, payment, reserves, actions.** (1) To carry out the purposes of this chapter the legislative body of any municipality shall have the power to issue revenue bonds without submitting the matter to the voters of the municipality: PROVIDED, That the legislative body shall create a special fund or funds for the sole purpose of paying the principal of and interest on the bonds of each such issue, into which fund or funds the legislative body may obligate the municipality to pay all or part of amounts collected from the special taxes provided for in this chapter, and/or to pay such amounts of the gross revenue of all or any part of the facilities constructed, acquired, improved, added to, repaired or replaced pursuant to this chapter, as the legislative body shall determine: PROVIDED, FURTHER, That the principal of and interest on such bonds shall be payable only out of such special fund or funds, and the owners of such bonds shall have a lien and charge against the gross revenue pledged to such fund.

Such revenue bonds and the interest thereon issued against such fund or funds shall constitute a claim of the owners thereof only as against such fund or funds and the revenue pledged therefor, and shall not constitute a general indebtedness of the municipality.

Each such revenue bond shall state upon its face that it is payable from such special fund or funds, and all revenue bonds issued under this chapter shall be negotiable securities

within the provisions of the law of this state. Such revenue bonds may be registered either as to principal only or as to principal and interest as provided in RCW 39.46.030, or may be bearer bonds; shall be in such denominations as the legislative body shall deem proper; shall be payable at such time or times and at such places as shall be determined by the legislative body; shall be executed in such manner and bear interest at such rate or rates as shall be determined by the legislative body.

Such revenue bonds shall be sold in such manner as the legislative body shall deem to be for the best interests of the municipality, either at public or private sale.

The legislative body may at the time of the issuance of such revenue bonds make such covenants with the owners of said bonds as it may deem necessary to secure and guaranty the payment of the principal thereof and the interest thereon, including but not being limited to covenants to set aside adequate reserves to secure or guaranty the payment of such principal and interest, to pledge and apply thereto part or all of any lawfully authorized special taxes provided for in this chapter, to maintain rates, charges or rentals sufficient with other available moneys to pay such principal and interest and to maintain adequate coverage over debt service, to appoint a trustee or trustees for the bond owners, to safeguard the expenditure of the proceeds of sale of such bonds and to fix the powers and duties of such trustee or trustees and to make such other covenants as the legislative body may deem necessary to accomplish the most advantageous sale of such bonds. The legislative body may also provide that revenue bonds payable out of the same source may later be issued on a parity with revenue bonds being issued and sold.

The legislative body may include in the principal amount of any such revenue bond issue an amount for engineering, architectural, planning, financial, legal, and other services and charges incident to the acquisition or construction of public stadium facilities, convention center facilities, performing arts center facilities, and/or visual arts center facilities, an amount to establish necessary reserves, an amount for working capital and an amount necessary for interest during the period of construction of any facilities to be financed from the proceeds of such issue plus six months. The legislative body may, if it deems it in the best interest of the municipality, provide in any contract for the construction or acquisition of any facilities or additions or improvements thereto or replacements or extensions thereof that payment therefor shall be made only in such revenue bonds.

If the municipality shall fail to carry out or perform any of its obligations or covenants made in the authorization, issuance and sale of such bonds, the owner of any such bond may bring action against the municipality and compel the performance of any or all of such covenants.

(2) Notwithstanding subsection (1) of this section, such bonds may be issued and sold in accordance with chapter 39.46 RCW. [1997 c 452 § 10; 1983 c 167 § 168; 1979 ex.s. c 222 § 3; 1973 2nd ex.s. c 34 § 3; 1967 c 236 § 9.]

**Intent—Severability—1997 c 452:** See notes following RCW 67.28.080.

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**67.28.170 Power to lease all or part of facilities—Disposition of proceeds.** The legislative body of any municipal-

[Title 67 RCW—page 26]

ity owning or operating tourism-related facilities acquired under this chapter shall have power to lease to any municipality or person, or to contract for the use or operation by any municipality or person, of all or any part of the facilities authorized by this chapter, including but not limited to parking facilities, concession facilities of all kinds and any property or property rights appurtenant to such tourism-related facilities, for such period and under such terms and conditions and upon such rentals, fees and charges as such legislative body may determine, and may pledge all or any portion of such rentals, fees and charges and all other revenue derived from the ownership and/or operation of such facilities to pay and to secure the payment of general obligation bonds and/or revenue bonds of such municipality issued for authorized tourism-related facilities purposes. [1997 c 452 § 11; 1979 ex.s. c 222 § 4; 1973 2nd ex.s. c 34 § 4; 1967 c 236 § 10.]

**Intent—Severability—1997 c 452:** See notes following RCW 67.28.080.

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**67.28.180 Lodging tax authorized—Conditions.** (1) Subject to the conditions set forth in subsections (2) and (3) of this section, the legislative body of any county or any city, is authorized to levy and collect a special excise tax of not to exceed two percent on the sale of or charge made for the furnishing of lodging that is subject to tax under chapter 82.08 RCW.

(2) Any levy authorized by this section shall be subject to the following:

(a) Any county ordinance or resolution adopted pursuant to this section shall contain, in addition to all other provisions required to conform to this chapter, a provision allowing a credit against the county tax for the full amount of any city tax imposed pursuant to this section upon the same taxable event.

(b) In the event that any county has levied the tax authorized by this section and has, prior to June 26, 1975, either pledged the tax revenues for payment of principal and interest on city revenue or general obligation bonds authorized and issued pursuant to RCW 67.28.150 through 67.28.160 or has authorized and issued revenue or general obligation bonds pursuant to the provisions of RCW 67.28.150 through 67.28.160, such county shall be exempt from the provisions of (a) of this subsection, to the extent that the tax revenues are pledged for payment of principal and interest on bonds issued at any time pursuant to the provisions of RCW 67.28.150 through 67.28.160: PROVIDED, That so much of such pledged tax revenues, together with any investment earnings thereon, not immediately necessary for actual payment of principal and interest on such bonds may be used: (i) In any county with a population of one million or more, for repayment either of limited tax levy general obligation bonds or of any county fund or account from which a loan was made, the proceeds from the bonds or loan being used to pay for constructing, installing, improving, and equipping stadium capital improvement projects, and to pay for any engineering, planning, financial, legal and professional services incident to the development of such stadium capital improvement projects, regardless of the date the debt for such capital improvement projects was or may be incurred; (ii) in any

(2010 Ed.)

county with a population of one million or more, for repayment or refinancing of bonded indebtedness incurred prior to January 1, 1997, for any purpose authorized by this section or relating to stadium repairs or rehabilitation, including but not limited to the cost of settling legal claims, reimbursing operating funds, interest payments on short-term loans, and any other purpose for which such debt has been incurred if the county has created a public stadium authority to develop a stadium and exhibition center under RCW 36.102.030; or (iii) in other counties, for county-owned facilities for agricultural promotion until January 1, 2009, and thereafter for any purpose authorized in this chapter.

A county is exempt under this subsection with respect to city revenue or general obligation bonds issued after April 1, 1991, only if such bonds mature before January 1, 2013. If any county located east of the crest of the Cascade mountains has levied the tax authorized by this section and has, prior to June 26, 1975, pledged the tax revenue for payment of principal and interest on city revenue or general obligation bonds, the county is exempt under this subsection with respect to revenue or general obligation bonds issued after January 1, 2007, only if the bonds mature before January 1, 2021. Such a county may only use funds under this subsection (2)(b) for constructing or improving facilities authorized under this chapter, including county-owned facilities for agricultural promotion, and must perform an annual financial audit of organizations receiving funding on the use of the funds.

As used in this subsection (2)(b), "capital improvement projects" may include, but not be limited to a stadium restaurant facility, restroom facilities, artificial turf system, seating facilities, parking facilities and scoreboard and information system adjacent to or within a county owned stadium, together with equipment, utilities, accessories and appurtenances necessary thereto. The stadium restaurant authorized by this subsection (2)(b) shall be operated by a private concessionaire under a contract with the county.

(c)(i) No city within a county exempt under subsection (2)(b) of this section may levy the tax authorized by this section so long as said county is so exempt.

(ii) If bonds have been issued under RCW 43.99N.020 and any necessary property transfers have been made under RCW 36.102.100, no city within a county with a population of one million or more may levy the tax authorized by this section before January 1, 2021.

(iii) However, in the event that any city in a county described in (i) or (ii) of this subsection (2)(c) has levied the tax authorized by this section and has, prior to June 26, 1975, authorized and issued revenue or general obligation bonds pursuant to the provisions of RCW 67.28.150 through 67.28.160, such city may levy the tax so long as the tax revenues are pledged for payment of principal and interest on bonds issued at any time pursuant to the provisions of RCW 67.28.150 through 67.28.160.

(3) Any levy authorized by this section by a county that has levied the tax authorized by this section and has, prior to June 26, 1975, either pledged the tax revenues for payment of principal and interest on city revenue or general obligation bonds authorized and issued pursuant to RCW 67.28.150 through 67.28.160 or has authorized and issued revenue or general obligation bonds pursuant to the provisions of RCW

67.28.150 through 67.28.160 shall be subject to the following:

(a) Taxes collected under this section in any calendar year before 2013 in excess of five million three hundred thousand dollars shall only be used as follows:

(i) Seventy-five percent from January 1, 1992, through December 31, 2000, and seventy percent from January 1, 2001, through December 31, 2012, for art museums, cultural museums, heritage museums, the arts, and the performing arts. Moneys spent under this subsection (3)(a)(i) shall be used for the purposes of this subsection (3)(a)(i) in all parts of the county.

(ii) Twenty-five percent from January 1, 1992, through December 31, 2000, and thirty percent from January 1, 2001, through December 31, 2012, for the following purposes and in a manner reflecting the following order of priority: Stadium purposes as authorized under subsection (2)(b) of this section; acquisition of open space lands; youth sports activities; and tourism promotion. If all or part of the debt on the stadium is refinanced, all revenues under this subsection (3)(a)(ii) shall be used to retire the debt.

(b) From January 1, 2013, through December 31, 2015, in a county with a population of one million or more, all revenues under this section shall be used to retire the debt on the stadium, or deposited in the stadium and exhibition center account under RCW 43.99N.060 after the debt on the stadium is retired.

(c) From January 1, 2016, through December 31, 2020, in a county with a population of one million or more, all revenues under this section shall be deposited in the stadium and exhibition center account under RCW 43.99N.060.

(d) At least seventy percent of moneys spent under (a)(i) of this subsection for the period January 1, 1992, through December 31, 2000, shall be used only for the purchase, design, construction, and remodeling of performing arts, visual arts, heritage, and cultural facilities, and for the purchase of fixed assets that will benefit art, heritage, and cultural organizations. For purposes of this subsection, fixed assets are tangible objects such as machinery and other equipment intended to be held or used for ten years or more. Moneys received under this subsection (3)(d) may be used for payment of principal and interest on bonds issued for capital projects. Qualifying organizations receiving moneys under this subsection (3)(d) must be financially stable and have at least the following:

(i) A legally constituted and working board of directors;

(ii) A record of artistic, heritage, or cultural accomplishments;

(iii) Been in existence and operating for at least two years;

(iv) Demonstrated ability to maintain net current liabilities at less than thirty percent of general operating expenses;

(v) Demonstrated ability to sustain operational capacity subsequent to completion of projects or purchase of machinery and equipment; and

(vi) Evidence that there has been independent financial review of the organization.

(e) At least forty percent of the revenues distributed pursuant to (a)(i) of this subsection for the period January 1, 2001, through December 31, 2012, shall be deposited in an account and shall be used to establish an endowment. Princi-

pal in the account shall remain permanent and irreducible. The earnings from investments of balances in the account may only be used for the purposes of (a)(i) of this subsection.

(f) School districts and schools shall not receive revenues distributed pursuant to (a)(i) of this subsection.

(g) Moneys distributed to art museums, cultural museums, heritage museums, the arts, and the performing arts, and moneys distributed for tourism promotion shall be in addition to and may not be used to replace or supplant any other funding by the legislative body of the county.

(h) As used in this section, "tourism promotion" includes activities intended to attract visitors for overnight stays, arts, heritage, and cultural events, and recreational, professional, and amateur sports events. Moneys allocated to tourism promotion in a county with a population of one million or more shall be allocated to nonprofit organizations formed for the express purpose of tourism promotion in the county. Such organizations shall use moneys from the taxes to promote events in all parts of the county.

(i) No taxes collected under this section may be used for the operation or maintenance of a public stadium that is financed directly or indirectly by bonds to which the tax is pledged. Expenditures for operation or maintenance include all expenditures other than expenditures that directly result in new fixed assets or that directly increase the capacity, life span, or operating economy of existing fixed assets.

(j) No ad valorem property taxes may be used for debt service on bonds issued for a public stadium that is financed by bonds to which the tax is pledged, unless the taxes collected under this section are or are projected to be insufficient to meet debt service requirements on such bonds.

(k) If a substantial part of the operation and management of a public stadium that is financed directly or indirectly by bonds to which the tax is pledged is performed by a nonpublic entity or if a public stadium is sold that is financed directly or indirectly by bonds to which the tax is pledged, any bonds to which the tax is pledged shall be retired. This subsection (3)(k) does not apply in respect to a public stadium under chapter 36.102 RCW transferred to, owned by, or constructed by a public facilities district under chapter 36.100 RCW or a stadium and exhibition center.

(l) The county shall not lease a public stadium that is financed directly or indirectly by bonds to which the tax is pledged to, or authorize the use of the public stadium by, a professional major league sports franchise unless the sports franchise gives the right of first refusal to purchase the sports franchise, upon its sale, to local government. This subsection (3)(l) does not apply to contracts in existence on April 1, 1986.

If a court of competent jurisdiction declares any provision of this subsection (3) invalid, then that invalid provision shall be null and void and the remainder of this section is not affected. [2010 1st sp.s. c 26 § 8; 2007 c 189 § 1; (2008 c 264 § 2 expired July 1, 2009); 2002 c 178 § 2; 1997 c 220 § 501 (Referendum Bill No. 48, approved June 17, 1997); 1995 1st sp.s. c 14 § 10; 1995 c 386 § 8. Prior: 1991 c 363 § 139; 1991 c 336 § 1; 1987 c 483 § 1; 1986 c 104 § 1; 1985 c 272 § 1; 1975 1st ex.s. c 225 § 1; 1973 2nd ex.s. c 34 § 5; 1970 ex.s. c 89 § 1; 1967 c 236 § 11.]

**Findings—Intent—2008 c 264:** "The legislature finds that locally funded heritage and arts programs build vital communities and preserve

community history and culture. It further finds that within existing revenue sources, local jurisdictions should have the capability to preserve these programs in the future.

The locally funded heritage and arts program in the state's most populated county was established in 1989 using a portion of hotel-motel tax revenues. This program was structured to provide for inflation and an expanding population of the county.

In 1997, the legislature acted to assure the future of the heritage and arts program by creating an endowment fund using these same local funds. This funding mechanism has proved to be inadequate and unless immediately modified will result in a seventy-five percent reduction of funds for the program.

This act will provide a stable and predictable flow of funds to the program, provide for inflation and an expanding population, and assure the future viability of the program within existing revenue flows." [2008 c 264 § 1.]

**Effective date—2008 c 264:** "This act takes effect July 1, 2008." [2008 c 264 § 5.]

**Retroactive application—2002 c 178:** "This act applies retroactively to events occurring on and after September 1, 2001." [2002 c 178 § 6.]

**Effective date—2002 c 178:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [March 27, 2002]." [2002 c 178 § 7.]

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

**Purpose—Captions not law—1991 c 363:** See notes following RCW 2.32.180.

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**67.28.1801 Credit against sales tax due on same lodging.** Tax collected under RCW 67.28.180 on a sale of lodging shall be credited against the amount of sales tax due to the state under chapter 82.08 RCW on the same sale of lodging. [1998 c 35 § 2.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**67.28.181 Special excise taxes authorized—Rates—Credits for city or town tax by county—Limits.** (1) The legislative body of any municipality may impose an excise tax on the sale of or charge made for the furnishing of lodging that is subject to tax under chapter 82.08 RCW. The rate of tax shall not exceed the lesser of two percent or a rate that, when combined with all other taxes imposed upon sales of lodging within the municipality under this chapter and chapters 36.100, 67.40, 82.08, and 82.14 RCW, equals twelve percent. A tax under this chapter shall not be imposed in increments smaller than tenths of a percent.

(2) Notwithstanding subsection (1) of this section:

(a) If a municipality was authorized to impose taxes under this chapter or RCW 67.40.100 or both with a total rate exceeding four percent before July 27, 1997, such total authorization shall continue through January 31, 1999, and thereafter the municipality may impose a tax under this section at a rate not exceeding the rate actually imposed by the municipality on January 31, 1999.

(b) If a city or town, other than a municipality imposing a tax under (a) of this subsection, is located in a county that imposed taxes under this chapter with a total rate of four percent or more on January 1, 1997, the city or town may not impose a tax under this section.

(c) If a city has a population of four hundred thousand or more and is located in a county with a population of one mil-

lion or more, the rate of tax imposed under this chapter by the city shall not exceed the lesser of four percent or a rate that, when combined with all other taxes imposed upon sales of lodging in the municipality under this chapter and chapters 36.100, 67.40, 82.08, and 82.14 RCW, equals fifteen and two-tenths percent.

(d) If a municipality was authorized to impose taxes under this chapter or RCW 67.40.100, or both, at a rate equal to six percent before January 1, 1998, the municipality may impose a tax under this section at a rate not exceeding the rate actually imposed by the municipality on January 1, 1998.

(3) Any county ordinance or resolution adopted under this section shall contain a provision allowing a credit against the county tax for the full amount of any city or town tax imposed under this section upon the same taxable event. [2004 c 79 § 8; 1998 c 35 § 1; 1997 c 452 § 3.]

**Intent—Severability—1997 c 452:** See notes following RCW 67.28.080.

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**67.28.1815 Revenue—Special fund—Uses for tourism promotion and tourism facility acquisition and operation.** Except as provided in RCW 67.28.180, all revenue from taxes imposed under this chapter shall be credited to a special fund in the treasury of the municipality imposing such tax and used solely for the purpose of paying all or any part of the cost of tourism promotion, acquisition of tourism-related facilities, or operation of tourism-related facilities. Municipalities may, under chapter 39.34 RCW, agree to the utilization of revenue from taxes imposed under this chapter for the purposes of funding a multijurisdictional tourism-related facility. [2008 c 264 § 3; 1997 c 452 § 4.]

**Findings—Intent—Effective date—2008 c 264:** See notes following RCW 67.28.180.

**Intent—Severability—1997 c 452:** See notes following RCW 67.28.080.

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**67.28.1816 Lodging tax—Tourism promotion. (Expires June 30, 2013.)** (1) Lodging tax revenues under this chapter may be used, directly by local jurisdictions or indirectly through a convention and visitors bureau or destination marketing organization, for the marketing and operations of special events and festivals and to support the operations and capital expenditures of tourism-related facilities owned by nonprofit organizations described under section 501(c)(3) and section 501(c)(6) of the internal revenue code of 1986, as amended.

(2) Local jurisdictions that use the lodging tax revenues under this section must submit an annual economic impact report to the \*department of community, trade, and economic development for expenditures made beginning January 1, 2008. These reports must include the expenditures by the local jurisdiction for tourism promotion purposes and what is used by a nonprofit organization exempt from taxation under 26 U.S.C. Sec. 501(c)(3) or 501(c)(6). This economic impact report, at a minimum, must include: (a) The total revenue received under this chapter for each year; (b) the list of festivals, special events, or nonprofit 501(c)(3) or 501(c)(6) organizations that received funds under this chapter; (c) the list of festivals, special events, or tourism facilities sponsored or

owned by the local jurisdiction that received funds under this chapter; (d) the amount of revenue expended on each festival, special event, or tourism-related facility owned or sponsored by a nonprofit 501(c)(3) or 501(c)(6) organization or local jurisdiction; (e) the estimated number of tourists, persons traveling over fifty miles to the destination, persons remaining at the destination overnight, and lodging stays generated per festival, special event, or tourism-related facility owned or sponsored by a nonprofit 501(c)(3) or 501(c)(6) organization or local jurisdiction; and (f) any other measurements the local government finds that demonstrate the impact of the increased tourism attributable to the festival, special event, or tourism-related facility owned or sponsored by a nonprofit 501(c)(3) or 501(c)(6) organization or local jurisdiction.

(3) The joint legislative audit and review committee must report to the legislature and the governor on the use and economic impact of lodging tax revenues by local jurisdictions since January 1, 2008, to support festivals, special events, and tourism-related facilities owned or sponsored by a nonprofit organization under section 501(c)(3) or 501(c)(6) of the internal revenue code of 1986, as amended, or a local jurisdiction, and the economic impact generated by these festivals, events, and facilities. This report shall be due September 1, 2012.

(4) Reporting under this section must begin with calendar year 2008.

(5) This section expires June 30, 2013. [2008 c 28 § 1; 2007 c 497 § 2.]

**\*Reviser's note:** The "department of community, trade, and economic development" was renamed the "department of commerce" by 2009 c 565.

**67.28.1817 Lodging tax advisory committee in large municipalities—Submission of proposal for imposition of or change in tax or use—Comments.** (1) Before proposing imposition of a new tax under this chapter, an increase in the rate of a tax imposed under this chapter, repeal of an exemption from a tax imposed under this chapter, or a change in the use of revenue received under this chapter, a municipality with a population of five thousand or more shall establish a lodging tax advisory committee under this section. A lodging tax advisory committee shall consist of at least five members, appointed by the legislative body of the municipality, unless the municipality has a charter providing for a different appointment authority. The committee membership shall include: (a) At least two members who are representatives of businesses required to collect tax under this chapter; and (b) at least two members who are persons involved in activities authorized to be funded by revenue received under this chapter. Persons who are eligible for appointment under (a) of this subsection are not eligible for appointment under (b) of this subsection. Persons who are eligible for appointment under (b) of this subsection are not eligible for appointment under (a) of this subsection. Organizations representing businesses required to collect tax under this chapter, organizations involved in activities authorized to be funded by revenue received under this chapter, and local agencies involved in tourism promotion may submit recommendations for membership on the committee. The number of members who are representatives of businesses required to collect tax under this chapter shall equal the number of members who are involved in activities authorized to be funded by revenue

received under this chapter. One member shall be an elected official of the municipality who shall serve as chair of the committee. An advisory committee for a county may include one nonvoting member who is an elected official of a city or town in the county. An advisory committee for a city or town may include one nonvoting member who is an elected official of the county in which the city or town is located. The appointing authority shall review the membership of the advisory committee annually and make changes as appropriate.

(2) Any municipality that proposes imposition of a tax under this chapter, an increase in the rate of a tax imposed under this chapter, repeal of an exemption from a tax imposed under this chapter, or a change in the use of revenue received under this chapter shall submit the proposal to the lodging tax advisory committee for review and comment. The submission shall occur at least forty-five days before final action on or passage of the proposal by the municipality. The advisory committee shall submit comments on the proposal in a timely manner through generally applicable public comment procedures. The comments shall include an analysis of the extent to which the proposal will accommodate activities for tourists or increase tourism, and the extent to which the proposal will affect the long-term stability of the fund created under RCW 67.28.1815. Failure of the advisory committee to submit comments before final action on or passage of the proposal shall not prevent the municipality from acting on the proposal. A municipality is not required to submit an amended proposal to an advisory committee under this section. [1998 c 35 § 3; 1997 c 452 § 5.]

**Intent—Severability—1997 c 452:** See notes following RCW 67.28.080.

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**67.28.183 Exemption from tax—Emergency lodging for homeless persons—Conditions.** (1) The taxes levied under this chapter shall not apply to emergency lodging provided for homeless persons for a period of less than thirty consecutive days under a shelter voucher program administered by an eligible organization.

(2) For the purposes of this exemption, an eligible organization includes only cities, towns, and counties, or their respective agencies, and groups providing emergency food and shelter services. [1992 c 206 § 5; 1988 c 61 § 2.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**67.28.184 Use of hotel-motel tax revenues by cities for professional sports franchise facilities limited.** No city imposing the tax authorized under this chapter may use the tax proceeds directly or indirectly to acquire, construct, operate, or maintain facilities or land intended to be used by a professional sports franchise if the county within which the city is located uses the proceeds of its tax imposed under this chapter to directly or indirectly acquire, construct, operate, or maintain a facility used by a professional sports franchise. [1997 c 452 § 13; 1987 1st ex.s. c 8 § 7.]

**Intent—Severability—1997 c 452:** See notes following RCW 67.28.080.

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**67.28.186 Exemption from tax—Temporary medical housing.** The taxes on lodging authorized under this chapter do not apply to sales of temporary medical housing exempt under RCW 82.08.997. [2008 c 137 § 3.]

**Effective date—2008 c 137:** See note following RCW 82.08.997.

**67.28.200 Special excise tax authorized—Exemptions may be established—Collection.** The legislative body of any municipality may establish reasonable exemptions for taxes authorized under this chapter. The department of revenue shall perform the collection of such taxes on behalf of such municipality at no cost to such municipality. Except as expressly provided in this chapter, all of the provisions contained in RCW 82.08.050 and 82.08.060 and chapter 82.32 RCW shall have full force and application with respect to taxes imposed under the provisions of this chapter. [2004 c 79 § 9; 1997 c 452 § 14; 1993 c 389 § 2; 1991 c 331 § 2; 1988 ex.s. c 1 § 23; 1987 c 483 § 3; 1970 ex.s. c 89 § 2; 1967 c 236 § 13.]

**Intent—Severability—1997 c 452:** See notes following RCW 67.28.080.

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**67.28.220 Powers additional and supplemental to other laws.** The powers and authority conferred upon municipalities under the provisions of this chapter shall be construed as in addition and supplemental to powers or authority conferred by any other law, and nothing contained herein shall be construed as limiting any other powers or authority of such municipalities. [1967 c 236 § 15.]

**67.28.225 Compliance with prevailing wages on public works provisions.** A port district and any municipality or other entity involved in a joint venture or project with a port district under this chapter shall comply with the provisions of chapter 39.12 RCW. However, nothing in this section should be interpreted as a legislative intent to expand the application of chapter 39.12 RCW. [2007 c 476 § 2.]

**67.28.8001 Reports by municipalities—Summary and analysis by department of community, trade, and economic development.** (1) Each municipality imposing a tax under chapter 67.28 RCW shall submit a report to the \*department of community, trade, and economic development on October 1, 1998, and October 1, 2000. Each report shall include the following information:

- (a) The rate of tax imposed under chapter 67.28 RCW;
- (b) The total revenue received under chapter 67.28 RCW for each of the preceding six years;
- (c) A list of projects and activities funded with revenue received under chapter 67.28 RCW; and
- (d) The amount of revenue under chapter 67.28 RCW expended for each project and activity.

(2) The \*department of community, trade, and economic development shall summarize and analyze the data received under subsection (1) of this section in a report submitted to the legislature on January 1, 1999, and January 1, 2001. The report shall include, but not be limited to, analysis of factors contributing to growth in revenue received under chapter 67.28 RCW and the effects of projects and activities funded

with revenue received under chapter 67.28 RCW on tourism growth. [1997 c 452 § 6.]

**\*Reviser's note:** The "department of community, trade, and economic development" was renamed the "department of commerce" by 2009 c 565.

**Intent—Severability—1997 c 452:** See notes following RCW 67.28.080.

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**67.28.900 Severability—1965 c 15.** If any provision of this chapter, or its application to any person or circumstance is held invalid, the remainder of the chapter, or the application of the provision to other persons or circumstances is not affected. [1965 c 15 § 8.]

**67.28.910 Severability—1967 c 236.** If any provision of this act, or its application to any municipality, person or circumstance is held invalid, the remainder of this act or the application of the provision to other municipalities, persons or circumstances is not affected. [1967 c 236 § 19.]

**67.28.911 Severability—1973 2nd ex.s. c 34.** If any provision of this 1973 amendatory act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected. [1973 2nd ex.s. c 34 § 7.]

**67.28.912 Severability—1975 1st ex.s. c 225.** If any provision of this 1975 amendatory act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected. [1975 1st ex.s. c 225 § 3.]

**67.28.913 Severability—1988 ex.s. c 1.** See RCW 36.100.900.

**Chapter 67.30 RCW**

**MULTIPURPOSE SPORTS STADIA**

Sections

- 67.30.010 Declaration of public purpose and necessity.
- 67.30.020 Participation by cities and counties—Powers—Costs, how paid.
- 67.30.030 Issuance of revenue bonds—Limitations—Retirement.
- 67.30.040 Power to appropriate and raise moneys.
- 67.30.050 Powers additional and supplemental to other laws.
- 67.30.900 Severability—1967 c 166.

*Multipurpose community centers: Chapter 35.59 RCW.*

*Professional sports franchise, cities authorized to own and operate: RCW 35.21.695.*

*Stadia, coliseums, powers of counties to build and operate: RCW 36.68.090.*

**67.30.010 Declaration of public purpose and necessity.** The participation of counties and cities in multipurpose sports stadia which may be used for football, baseball, soccer, conventions, home shows or any and all similar activities; the purchase, lease, condemnation, or other acquisition of necessary real property therefor; the acquisition by condemnation or otherwise, lease, construction, improvement, maintenance, and equipping of buildings or other structures upon such real property or other real property; the operation and maintenance necessary for such participation, and the exercise of any other powers herein granted to counties and cities, are

(2010 Ed.)

hereby declared to be public, governmental, and municipal functions, exercised for a public purpose, and matters of public necessity, and such real property and other property acquired, constructed, improved, maintained, equipped, and used by counties and cities in the manner and for the purposes enumerated in this chapter shall and are hereby declared to be acquired, constructed, improved, maintained, equipped and used for public, governmental, and municipal purposes and as a matter of public necessity. [1967 c 166 § 2.]

**67.30.020 Participation by cities and counties—Powers—Costs, how paid.** The counties and cities are authorized, upon passage of an ordinance in the prescribed manner, to participate in the financing, construction, acquisition, operation, and maintenance of multipurpose sports stadia within their boundaries. Counties and cities are also authorized, through their governing authorities, to purchase, lease, condemn, or otherwise acquire property, real or personal; to construct, improve, maintain and equip buildings or other structures; and expend moneys for investigations, planning, operations, and maintenance necessary for such participation.

The cost of any such acquisition, condemnation, construction, improvement, maintenance, equipping, investigations, planning, operation, or maintenance necessary for such participation may be paid for by appropriation of moneys available therefor, gifts, or wholly or partly from the proceeds of revenue bonds as the governing authority may determine. [1967 c 166 § 3.]

**67.30.030 Issuance of revenue bonds—Limitations—Retirement.** Any revenue bonds to be issued by any county or city pursuant to the provisions of this chapter, shall be authorized and issued in the manner prescribed by the laws of this state for the issuance and authorization of bonds thereof for public purposes generally: PROVIDED, That the bonds shall not be issued for a period beyond the life of the improvement to be acquired by the use of the bonds.

The bonding authority authorized for the purposes of this chapter shall be limited to the issuance of revenue bonds payable from a special fund or funds created solely from revenues derived from the facility. The owners and holders of such bonds shall have a lien and charge against the gross revenue of the facility. Such revenue bonds and the interest thereon against such fund or funds shall be a valid claim of the holders thereof only as against such fund or funds and the revenue pledged therefor, and shall not constitute a general indebtedness of the municipality. The governing authority of any county or city may by ordinance take such action as may be necessary and incidental to the issuance of such bonds and the retirement thereof. The provisions of chapter 36.67 RCW not inconsistent with this chapter shall apply to the issuance and retirement of any such revenue bonds. [1967 c 166 § 4.]

**67.30.040 Power to appropriate and raise moneys.** The governing body having power to appropriate moneys within any county or city for the purpose of purchasing, condemning, leasing or otherwise acquiring property, constructing, improving, maintaining, and equipping buildings or other structures, and the investigations, planning, operation or maintenance necessary to participation in any such all-pur-

pose or multipurpose sports stadium, is hereby authorized to appropriate and cause to be raised by taxation or otherwise moneys sufficient to carry out such purpose. [1967 c 166 § 5.]

**67.30.050 Powers additional and supplemental to other laws.** The powers and authority conferred upon counties and cities under the provisions of this chapter, shall be construed as in addition and supplemental to powers or authority conferred by any other law, and nothing contained herein shall be construed as limiting any other such powers or authority. [1967 c 166 § 6.]

**67.30.900 Severability—1967 c 166.** If any provision of this chapter, or its application to any person or circumstance is held invalid, the remainder of the chapter, or the application of the provision to other persons or circumstances is not affected. [1967 c 166 § 7.]

### Chapter 67.38 RCW

## CULTURAL ARTS, STADIUM AND CONVENTION DISTRICTS

#### Sections

67.38.010	Purpose.
67.38.020	Definitions.
67.38.030	Cultural arts, stadium and convention district—Creation.
67.38.040	Multicounty district—Creation.
67.38.050	Governing body.
67.38.060	Comprehensive plan—Development—Elements.
67.38.070	Comprehensive plan—Review—Approval or disapproval—Resubmission.
67.38.080	Annexation election.
67.38.090	District as quasi municipal corporation—General powers.
67.38.100	Additional powers.
67.38.110	Issuance of general obligation bonds—Maturity—Excess levies.
67.38.115	Community revitalization financing—Public improvements.
67.38.120	Revenue bonds—Issuance, sale, term, payment.
67.38.130	Cultural arts, stadium and convention district tax levies.
67.38.140	Contribution of sums for limited purposes.
67.38.150	Treasurer and auditor—Bond—Duties—Funds—Depositaries.
67.38.160	Dissolution and liquidation.
67.38.900	Captions not law—1982 1st ex.s. c 22.
67.38.905	Severability—1982 1st ex.s. c 22.

**67.38.010 Purpose.** The legislature finds that expansion of a cultural tourism would attract new visitors to our state and aid the development of a nonpolluting industry. The creation or renovation, and operation of cultural arts, stadium and convention facilities benefiting all the citizens of this state would enhance the recreational industry's ability to attract such new visitors. The additional income and employment resulting therefrom would strengthen the economic base of the state.

It is declared that the construction, modification, renovation, and operation of facilities for cultural arts, stadium and convention uses will enhance the progress and economic growth of this state. The continued growth and development of this recreational industry provides for the general welfare and is an appropriate matter of concern for the people of the state of Washington. [1982 1st ex.s. c 22 § 1.]

**67.38.020 Definitions.** Unless the context clearly indicates otherwise, for the purposes of this chapter the following definitions shall apply:

(1) "Cultural arts, stadium and convention district," or "district," means a quasi municipal corporation of the state of Washington created pursuant to this chapter.

(2) "Component city" means an incorporated city within a public cultural arts, stadium and convention benefit area.

(3) "City" means any city or town.

(4) "City council" means the legislative body of any city.

(5) "Municipality" means a port district, public school district or community college district. [1982 1st ex.s. c 22 § 2.]

**67.38.030 Cultural arts, stadium and convention district—Creation.** (1) The process to create a cultural arts, stadium and convention district may be initiated by:

(a) The adoption of a resolution by the county legislative authority calling for a public hearing on the proposed creation of such a district and delineating proposed boundaries of the district; or

(b) The governing bodies of two or more cities located within the same county adopting resolutions calling for a public hearing on the proposed creation of such a district and delineating proposed boundaries of such a district: PROVIDED, That this method may not be used more frequently than once in any twelve month period in the same county; or

(c) The filing of a petition with the county legislative authority, calling for a public hearing on the proposed creation of such a district and delineating proposed boundaries of the district, that is signed by at least ten percent of the registered voters residing in the proposed district at the last general election. Such signatures will be certified by the county auditor or the county elections department.

(2) Within sixty days of the adoption of such resolutions, or presentation of such a petition, the county legislative authority shall hold a public hearing on the proposed creation of such a district. Notice of the hearing shall be published at least once a week for three consecutive weeks in one or more newspapers of general circulation within the proposed boundaries of the district. The notice shall include a general description and map of the proposed boundaries. Additional notice shall also be mailed to the governing body of each city and municipality located all or partially within the proposed district. At such hearing, or any continuation thereof, any interested party may appear and be heard on the formation of the proposed district.

The county legislative authority shall delete the area included within the boundaries of a city from the proposed district if prior to the public hearing the city submits to the county legislative authority a copy of an adopted resolution requesting its deletion from the proposed district. The county legislative authority may delete any other areas from the proposed boundaries. Additional territory may be included within the proposed boundaries, but only if such inclusion is subject to a subsequent hearing, with notice provided in the same manner as for the original hearing.

(3) A proposition to create a cultural arts, stadium and convention district shall be submitted to the voters of the proposed district within two years of the adoption of a resolution providing for such submittal by the county legislative author-

ity at the conclusion of such hearings. The resolution shall establish the boundaries of the district and include a finding that the creation of the district is in the public interest and that the area included within the district can reasonably be expected to benefit from its creation. No portion of a city may be included in such a district unless the entire city is included. The boundaries of such a district shall follow school district or community college boundaries in as far as practicable.

(4) The proposition to create a cultural arts, stadium and convention district shall be submitted to the voters of the proposed district at the next general election held sixty or more days after the adoption of the resolution. The district shall be created upon approval of the proposition by simple majority vote. The ballot proposition submitted to the voters shall be in substantially the following form:

FORMATION OF CULTURAL ARTS,  
STADIUM AND CONVENTION  
DISTRICT . . . . .

Shall a cultural arts, stadium and convention district be established for the area described in a resolution of the legislative authority of . . . . . county, adopted on the . . . . day of . . . . ., 19. . . ?

[1982 1st ex.s. c 22 § 3.]

**67.38.040 Multicounty district—Creation.** A joint hearing by the legislative authorities of two or more counties on the proposed creation of a cultural arts, stadium and convention district including areas within such counties may be held as provided herein:

(1) The process to initiate such a hearing shall be identical with the process provided in RCW 67.38.030(1), except a resolution of all the legislative authorities of each county with territory proposed to be included shall be necessary.

(2) No territory may be added to or deleted from such a proposed district, except by action of the county legislative authority of the county within whose boundaries the territory lies pursuant to the process provided in RCW 67.38.030.

(3) The resolutions shall each contain identical provisions concerning the governing body, as delineated in RCW 67.38.050. [1982 1st ex.s. c 22 § 4.]

**67.38.050 Governing body.** The number of persons on the governing body of the district and how such persons shall be selected and replaced shall be included in the resolution of the county legislative authority providing for the submittal of the proposition to create the district to the voters. Members of the governing body may only consist of a combination of city council members or mayors of the city or cities included within the district, members of the county legislative authority, the county executive of a county operating under a home rule charter, elected members of the governing bodies of municipalities located within the district, and members of the board of regents of a community college district. No governing body may consist of more than nine members. The resolution may also provide for additional, ex officio, nonvoting members consisting of elected officials or appointed officials from the counties, cities, or municipalities which are located all or partially within the boundaries of such a district and

(2010 Ed.)

who [which] do not have elected or appointed officials sitting on the governing body.

Any member of the governing body, or any ex officio member, who is not an elective official whose office is a full-time position may be reimbursed for reasonable expenses actually incurred in attending meetings or engaging in other district business as provided in RCW 42.24.090. [1982 1st ex.s. c 22 § 5.]

**67.38.060 Comprehensive plan—Development—Elements.** The cultural arts, stadium and convention district, as authorized in this chapter, shall develop a comprehensive cultural arts, stadium and convention plan for the district. Such plan shall include, but not be limited to the following elements:

(1) The levels of cultural arts, stadium and convention services that can be reasonably provided for various portions of the district.

(2) The funding requirements, including local tax sources or federal funds, necessary to provide various levels of service within the district.

(3) The impact of such a service on other cultural arts, stadium and convention systems operating within that county or adjacent counties. [1982 1st ex.s. c 22 § 6.]

**67.38.070 Comprehensive plan—Review—Approval or disapproval—Resubmission.** The comprehensive cultural arts, stadium and convention plan adopted by the district shall be reviewed by the \*department of community, trade, and economic development to determine:

(1) Whether the plan will enhance the progress of the state and provide for the general welfare of the population; and

(2) Whether such plan is eligible for matching federal funds.

After reviewing the comprehensive cultural arts, stadium and convention plan, the \*department of community, trade, and economic development shall have sixty days in which to approve such plan and to certify to the state treasurer that such district shall be eligible to receive funds. To be approved a plan shall provide for coordinated cultural arts, stadium and convention planning, and be consistent with the public cultural arts, stadium and convention coordination criteria in a manner prescribed by chapter 35.60 RCW. In the event such comprehensive plan is disapproved and ruled ineligible to receive funds, the \*department of community, trade, and economic development shall provide written notice to the district within thirty days as to the reasons for such plan's disapproval and such ineligibility. The district may resubmit such plan upon reconsideration and correction of such deficiencies cited in such notice of disapproval. [1995 c 399 § 167; 1985 c 6 § 22; 1982 1st ex.s. c 22 § 7.]

**\*Reviser's note:** The "department of community, trade, and economic development" was renamed the "department of commerce" by 2009 c 565.

**67.38.080 Annexation election.** An election to authorize the annexation of contiguous territory to a cultural arts, stadium and convention district may be submitted to the voters of the area proposed to be annexed upon the passage of a resolution of the governing body of the district. Approval by

simple majority vote shall authorize such annexation. [1982 1st ex.s. c 22 § 8.]

**67.38.090 District as quasi municipal corporation—**

**General powers.** A cultural arts, stadium and convention district is a quasi municipal corporation, an independent taxing "authority" within the meaning of Article VII, section 1, of the state Constitution, and a "taxing district" within the meaning of Article VII, section 2, of the state Constitution. A district shall constitute a body corporate and shall possess all the usual powers of a corporation for public purpose. In addition to the powers specifically granted by this chapter, a district shall have all powers which are necessary to carry out the purposes of this chapter. A cultural arts, stadium and convention district may contract with the United States or any agency thereof, any state or agency thereof, any other cultural arts, stadium and convention district, any county, city, metropolitan municipal corporation, special district, or governmental agency, within or without the state, and any private person, firm or corporation for the purpose of receiving gifts or grants or securing loans or advances for preliminary planning and feasibility studies, or for the design, construction or renovation or operation of cultural arts, stadium and convention facilities. In addition, a district may contract with any governmental agency or with any private person, firm or corporation for the use by either contracting party of all or any part of the facilities, structures, lands, interests in lands, air rights over lands and rights-of-way of all kinds which are owned, leased or held by the other party and for the purpose of planning, constructing or operating any facility or performing any service which the cultural arts, stadium and convention district may be authorized to operate or perform, on such terms as may be agreed upon by the contracting parties. Before any contract for the lease or operation of any cultural arts, stadium and convention district facilities shall be let to any private person, firm or corporation, competitive bids shall be called upon such notice, bidder qualifications and bid conditions as the district shall determine.

A district may sue and be sued in its corporate capacity in all courts and in all proceedings. [1982 1st ex.s. c 22 § 9.]

**67.38.100 Additional powers.** The governing body of a cultural arts, stadium and convention district shall have the following powers in addition to the general powers granted by this chapter:

(1) To prepare, adopt and carry out a general comprehensive plan for cultural arts, stadium and convention service which will best serve the residents of the district and to amend said plan from time to time to meet changed conditions and requirements.

(2) To acquire by purchase, gift or grant and to lease, convey, construct, add to, improve, replace, repair, maintain, and operate cultural arts, stadium and convention facilities and properties within the district, including portable and mobile facilities and parking facilities and properties and such other facilities and properties as may be necessary for passenger and vehicular access to and from such facilities and properties, together with all lands, rights-of-way, property, equipment and accessories necessary for such systems and facilities. Cultural arts, stadium and convention facilities and

properties which are presently owned by any component city, county or municipality may be acquired or used by the district only with the consent of the legislative authority, council or governing body of the component city, county or municipality owning such facilities. A component city, county or municipality is hereby authorized to convey or lease such facilities to a district or to contract for their joint use on such terms as may be fixed by agreement between the component city, county or municipality and the district, without submitting the matter to the voters of such component city, county or municipality.

(3) To fix rates and charges for the use of such facilities. [1982 1st ex.s. c 22 § 10.]

**67.38.110 Issuance of general obligation bonds—Maturity—Excess levies.**

To carry out the purpose of this chapter, any cultural arts, stadium and convention district shall have the power to issue general obligation bonds for capital purposes only, not to exceed an amount, together with any outstanding nonvoter approved general obligation indebtedness equal to three-eighths of one percent of the value of taxable property within such district, as the term "value of taxable property" is defined in RCW 39.36.015. A cultural arts, stadium and convention district is additionally authorized to issue general obligation bonds for capital purposes only, together with any outstanding general obligation indebtedness, not to exceed an amount equal to three-fourths of one percent of the value of the taxable property within the district, as the term "value of taxable property" is defined in RCW 39.36.015, and to provide for the retirement thereof by excess levies when the voters approve a ballot proposition providing for both the bond issuance and imposition of such levies at a special election called for that purpose in the manner prescribed by section 6, Article VIII and section 2, Article VII of the Constitution and by RCW 84.52.056. Elections shall be held as provided in RCW 39.36.050. General obligation bonds may not be issued with maturities in excess of forty years. Such bonds shall be issued and sold in accordance with chapter 39.46 RCW. [1984 c 186 § 57; 1983 c 167 § 169; 1982 1st ex.s. c 22 § 11.]

**Purpose—1984 c 186:** See note following RCW 39.46.110.

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**67.38.115 Community revitalization financing—Public improvements.** In addition to other authority that a cultural arts, stadium, and convention center district possesses, a cultural arts, stadium, and convention center district may provide any public improvement as defined under RCW 39.89.020, but this additional authority is limited to participating in the financing of the public improvements as provided under RCW 39.89.050.

This section does not limit the authority of a cultural arts, stadium, and convention center district to otherwise participate in the public improvements if that authority exists elsewhere. [2001 c 212 § 20.]

**Severability—2001 c 212:** See RCW 39.89.902.

**67.38.120 Revenue bonds—Issuance, sale, term, payment.** (1) To carry out the purposes of this chapter, the cultural arts, stadium and convention district shall have the

power to issue revenue bonds: PROVIDED, That the district governing body shall create or have created a special fund or funds for the sole purpose of paying the principal of and interest on the bonds of each such issue, into which fund or funds the governing body may obligate the district to pay such amounts of the gross revenue of all or any part of the facilities constructed, acquired, improved, repaired or replaced pursuant to this chapter, as the governing body shall determine: PROVIDED FURTHER, That the principal of and interest on such bonds shall be payable only out of such special fund or funds, and the owners of such bonds shall have a lien and charge against the gross revenue pledged to such fund. Such bonds may be in any form, including bearer bonds or registered bonds as provided in RCW 39.46.030.

The governing body of a district shall have such further powers and duties in carrying out the purposes of this chapter as provided in RCW 67.28.160.

(2) Notwithstanding subsection (1) of this section, such bonds may be issued and sold in accordance with chapter 39.46 RCW. [1983 c 167 § 170; 1982 1st ex.s. c 22 § 12.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**67.38.130 Cultural arts, stadium and convention district tax levies.** The governing body of a cultural arts, stadium and convention district may levy or cause to levy the following ad valorem taxes:

(1) Regular ad valorem property tax levies in an amount equal to twenty-five cents or less per thousand dollars of the assessed value of property in the district in each year for six consecutive years when specifically authorized so to do by a majority of at least three-fifths of the electors thereof approving a proposition authorizing the levies submitted at a general or special election, at which election the number of persons voting "yes" on the proposition shall constitute three-fifths of a number equal to forty percentum of the total votes cast in such taxing district at the last preceding general election; or by a majority of at least three-fifths of the electors thereof voting on the proposition when the number of electors voting yes on the proposition exceeds forty percentum of the total votes cast in such taxing district in the last preceding general election. Ballot propositions shall conform with \*RCW 29.30.111.

In the event a cultural arts, stadium and convention district is levying property taxes, which in combination with property taxes levied by other taxing districts subject to the one percent limitation provided for in Article VII, section 2, of our state Constitution result in taxes in excess of the limitation provided for in RCW 84.52.043, the cultural arts, stadium and convention district property tax levy shall be reduced or eliminated before the property tax levies of other taxing districts are reduced: PROVIDED, That no cultural arts, stadium, and convention district may pledge anticipated revenues derived from the property tax herein authorized as security for payments of bonds issued pursuant to subsection (1) of this section: PROVIDED, FURTHER, That such limitation shall not apply to property taxes approved pursuant to subsections (2) and (3) of this section.

The limitation in RCW 84.55.010 shall apply to levies after the first levy authorized under this section following the approval of such levy by voters pursuant to this section.

(2010 Ed.)

(2) An annual excess ad valorem property tax for general district purposes when authorized by the district voters in the manner prescribed by section 2, Article VII of the Constitution and by RCW 84.52.052.

(3) Multi-year excess ad valorem property tax levies used to retire general obligation bond issues when authorized by the district voters in the manner prescribed by section 2, Article VII of the Constitution and by RCW 84.52.056.

The district shall include in its regular property tax levy for each year a sum sufficient to pay the interest and principal on all outstanding general obligation bonds issued without voter approval pursuant to RCW 67.38.110 and may include a sum sufficient to create a sinking fund for the redemption of all outstanding bonds. [1984 c 131 § 4; 1982 1st ex.s. c 22 § 13.]

\*Reviser's note: RCW 29.30.111 was recodified as RCW 29A.36.210 pursuant to 2003 c 111 § 2401, effective July 1, 2004.

Purpose—1984 c 131 §§ 3-9: See note following RCW 29A.36.210.

**67.38.140 Contribution of sums for limited purposes.**

The county or counties and each component city included in the district collecting or planning to collect the hotel/motel tax under chapter 67.28 RCW may contribute such revenue in such manner as shall be agreed upon between them, consistent with this chapter and chapter 67.28 RCW. [1997 c 452 § 18; 1982 1st ex.s. c 22 § 14.]

Intent—Severability—1997 c 452: See notes following RCW 67.28.080.

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**67.38.150 Treasurer and auditor—Bond—Duties—Funds—Depositaries.** Unless the cultural arts, stadium and convention district governing body, by resolution, designates some other person having experience in financial or fiscal matters as treasurer of the district, the treasurer of the county in which a cultural arts, stadium and convention district is located shall be ex officio treasurer of the district: PROVIDED, That in the case of a multicounty cultural arts, stadium and convention district, the county treasurer of the county with the greatest amount of area within the district shall be the ex officio treasurer of the district. The district may, and if the treasurer is not a county treasurer shall, require a bond for such treasurer with a surety company authorized to do business in the state of Washington, in an amount and under the terms and conditions as agreed to by the district, by resolution, in such amount from time to time which will protect the authority against loss. The premium on any such bond shall be paid by the authority.

All district funds shall be paid to the treasurer and shall be disbursed by the treasurer only on warrants issued by an auditor appointed by the district, upon orders or vouchers approved by the governing body. The treasurer shall establish a "cultural arts, stadium and convention fund," into which shall be paid district funds as provided in RCW 67.38.140 and the treasurer shall maintain such special funds as may be created by the governing body into which said treasurer shall place all moneys as the governing body may, by resolution, direct.

If the treasurer of the district is a treasurer of the county, all district funds shall be deposited with the county depository under the same restrictions, contracts, and security as

provided for county depositaries; the county auditor of such county shall keep the records of the receipts and disbursements, and shall draw, and such county treasurer shall honor and pay all warrants, which shall be approved before issuance and payment as directed by the district. [1982 1st ex.s. c 22 § 15.]

**67.38.160 Dissolution and liquidation.** A cultural arts, stadium and convention district established in accordance with this chapter shall be dissolved and its affairs liquidated by either of the following methods:

(1) When so directed by a majority of persons in the district voting on such question. An election placing such question before the voters may be called in the following manner:

(a) By resolution of the cultural arts, stadium and convention district governing authority;

(b) By resolution of the county legislative body or bodies with the concurrence therein by resolution of the city council of a component city; or

(c) By petition calling for such election signed by at least ten percent of the qualified voters residing within the district filed with the auditor of the county wherein the largest portion of the district is located. The auditor shall examine the same and certify to the sufficiency of the signatures thereon: PROVIDED, That to be validated, signatures must have been collected within a ninety-day period as designated by the petition sponsors.

With dissolution of the district, any outstanding obligations and bonded indebtedness of the district shall be satisfied or allocated by mutual agreement to the county or counties and component cities of the cultural arts, stadium and convention district.

(2) By submission of a petition signed by at least two-thirds of the legislative bodies who have representatives on the district governing body for an order of dissolution to the superior court of a county of the district. All of the signatures must have been collected within one hundred twenty days of the date of submission to the court. The procedures for dissolution provided in RCW 53.48.030 through 53.48.120 shall apply, except that the balance of any assets, after payment of all costs and expenses, shall be divided among the county or counties and component cities of the district on a per capita basis. Any duties to be performed by a county official pursuant to RCW 53.48.030 through 53.48.120 shall be performed by the relevant official of the county in which the petition for dissolution is filed. [1999 c 254 § 1; 1982 1st ex.s. c 22 § 16.]

**67.38.900 Captions not law—1982 1st ex.s. c 22.** Section captions as used in this amendatory act shall not be construed as and do not constitute any part of the law. [1982 1st ex.s. c 22 § 19.]

**67.38.905 Severability—1982 1st ex.s. c 22.** If any provision of this amendatory act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1982 1st ex.s. c 22 § 21.]

## Chapter 67.40 RCW

## CONVENTION AND TRADE FACILITIES

## Sections

67.40.010	Legislative finding.
67.40.020	State convention and trade center—Public nonprofit corporation authorized—Board of directors—Powers and duties.
67.40.025	State convention and trade center operations account—Operating revenues—Expenditures.
67.40.027	Compensation and travel expenses of board members.
67.40.030	General obligation bonds—Authorized—Appropriation required.
67.40.040	Deposit of proceeds in state convention and trade center account and appropriate subaccounts—Credit against future borrowings—Use.
67.40.045	Authorization to borrow from state treasury for project completion costs—Limits—"Project completion" defined—Legislative intent—Application.
67.40.050	Administration of proceeds.
67.40.055	Transfer of funds to account—Repayment of borrowed funds with interest.
67.40.060	Retirement of bonds from nondebt-limit proprietary appropriated bond retirement account—Transfer from accounts—Pledge and promise—Remedies of bondholders.
67.40.070	Legislature may provide additional means for payment of bonds.
67.40.080	Bonds legal investment for public funds.
67.40.090	Lodging tax imposed in King county—Rates—Proceeds.
67.40.100	Limitation on license fees and taxes on hotels, motels, rooming houses, trailer camps, etc.
67.40.105	Exemption from tax—Emergency lodging for homeless persons—Conditions.
67.40.107	Exemption from tax—Temporary medical housing.
67.40.110	Use of revenues from convention and trade center facilities excise tax by cities for professional sports franchise facilities limited.
67.40.120	Contracts for marketing facility and services.
67.40.130	Convention and trade facilities—Tax on transient lodging authorized—Rates.
67.40.140	Convention and trade facilities—Remittance of tax—Credit.
67.40.150	Convention and trade facilities—Contract of administration and collection to department of revenue—Disposition of tax—Procedure.
67.40.160	Convention and trade facilities—Tax on construction—Disposition.
67.40.170	Convention and trade facilities—Use of collected taxes.
67.40.180	Convention and trade facilities—Use of funds—Acceptance by board of directors of funding commitment.
67.40.190	Convention and trade facilities—Use of funds—Encumbered revenue.
67.40.900	Severability—1982 c 34.
67.40.901	Severability—1988 ex.s. c 1.

*Tax changes: RCW 82.14.055.*

*Tax rate calculation errors: RCW 82.32.430.*

**67.40.010 Legislative finding. (Contingent repealer.)**

The legislature finds and declares as the express purpose of this chapter:

(1) The convention and trade show business will provide both direct and indirect civic and economic benefits to the people of the state of Washington.

(2) The location of a state convention and trade center in the city of Seattle will particularly benefit and increase the occupancy of larger hotels and other lodging facilities in the city of Seattle and to a lesser extent in King county.

(3) Imposing a special excise tax on the price of lodging in Seattle, and at a lower rate elsewhere in King county, is an appropriate method of paying for a substantial part of the cost of constructing, maintaining, and operating a state convention and trade center. [1983 2nd ex.s. c 1 § 1; 1982 c 34 § 1.]

**Reviser's note:** RCW 67.40.010 is repealed if the transfer date in RCW 36.100.230 occurs.

**67.40.020 State convention and trade center—Public nonprofit corporation authorized—Board of directors—Powers and duties. (Contingent repealer.)** (1) The governor is authorized to form a public nonprofit corporation in the same manner as a private nonprofit corporation is formed under chapter 24.03 RCW. The public corporation shall be an instrumentality of the state and have all the powers and be subject to the same restrictions as are permitted or prescribed to private nonprofit corporations, but shall exercise those powers only for carrying out the purposes of this chapter and those purposes necessarily implied therefrom. The governor shall appoint a board of nine directors for the corporation who shall serve terms of six years, except that two of the original directors shall serve for two years and two of the original directors shall serve for four years. After January 1, 1991, at least one position on the board shall be filled by a member representing management in the hotel or motel industry subject to taxation under RCW 67.40.090. The directors may provide for the payment of their expenses. The corporation may acquire, construct, expand, and improve the state convention and trade center within the city of Seattle. Notwithstanding the provisions of subsection (2) of this section, the corporation may acquire, lease, sell, or otherwise encumber property rights, including but not limited to development or condominium rights, deemed by the corporation as necessary for facility expansion.

(2) The corporation may acquire and transfer real and personal property by lease, sublease, purchase, or sale, and further acquire property by condemnation of privately owned property or rights to and interests in such property pursuant to the procedure in chapter 8.04 RCW. However, acquisitions and transfers of real property, other than by lease, may be made only if the acquisition or transfer is approved by the director of financial management in consultation with the chairpersons of the appropriate fiscal committees of the senate and house of representatives. The corporation may accept gifts or grants, request the financing provided for in RCW 67.40.030, cause the state convention and trade center facilities to be constructed, and do whatever is necessary or appropriate to carry out those purposes. Upon approval by the director of financial management in consultation with the chairpersons of the appropriate fiscal committees of the house of representatives and the senate, the corporation may enter into lease and sublease contracts for a term exceeding the fiscal period in which these lease and sublease contracts are made. The terms of sale or lease of properties acquired by the corporation on February 9, 1987, pursuant to the property purchase and settlement agreement entered into by the corporation on June 12, 1986, including the McKay parcel which the corporation is contractually obligated to sell under that agreement, shall also be subject to the approval of the director of financial management in consultation with the chairpersons of the appropriate fiscal committees of the house of representatives and the senate. No approval by the director of financial management is required for leases of individual retail space, meeting rooms, or convention-related facilities. In order to allow the corporation flexibility to secure appropriate insurance by negotiation, the corporation is exempt from RCW 48.30.270. The corporation shall maintain, operate, promote, and manage the state convention and trade center.

(2010 Ed.)

(3) In order to allow the corporation flexibility in its personnel policies, the corporation is exempt from chapter 41.06 RCW, chapter 41.05 RCW, RCW 43.01.040 through 43.01.044, chapter 41.04 RCW and chapter 41.40 RCW. [1995 c 386 § 12; 1993 c 500 § 9; 1988 ex.s. c 1 § 1; 1987 1st ex.s. c 8 § 2; 1984 c 210 § 1; 1983 2nd ex.s. c 1 § 2; 1982 c 34 § 2.]

**Reviser's note:** If the transfer date in RCW 36.100.230 occurs, RCW 67.40.020 is repealed thirty days after the transfer date occurs.

**Finding—Severability—Effective date—1993 c 500:** See notes following RCW 43.41.180.

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**67.40.025 State convention and trade center operations account—Operating revenues—Expenditures. (Contingent repealer.)** All operating revenues received by the corporation formed under RCW 67.40.020 shall be deposited in the state convention and trade center operations account, hereby created in the state treasury. Moneys in the account, including unanticipated revenues under RCW 43.79.270, may be spent only after appropriation by statute, and may be used only for operation and promotion of the center. During the 2007-2009 fiscal biennium, moneys in the account may also be transferred to the state general fund.

Subject to approval by the office of financial management under RCW 43.88.260, the corporation may expend moneys for operational purposes in excess of the balance in the account, to the extent the corporation receives or will receive additional operating revenues.

As used in this section, "operating revenues" does not include any moneys required to be deposited in the state convention and trade center account. [2008 c 329 § 916; 1988 ex.s. c 1 § 2; 1987 1st ex.s. c 8 § 3; 1985 c 233 § 2.]

**Reviser's note:** RCW 67.40.025 is repealed if the transfer date in RCW 36.100.230 occurs.

**Severability—Effective date—2008 c 329:** See notes following RCW 28B.105.110.

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**67.40.027 Compensation and travel expenses of board members. (Contingent repealer.)** Members of the board shall be compensated in accordance with RCW 43.03.250 and shall be reimbursed for travel expenses under RCW 43.03.050 and 43.03.060. [1985 c 233 § 3.]

**Reviser's note:** RCW 67.40.027 is repealed if the transfer date in RCW 36.100.230 occurs.

*Reimbursement for out-of-state travel expenses incurred by employees of state convention and trade center: RCW 43.03.062.*

**67.40.030 General obligation bonds—Authorized—Appropriation required. (Contingent repealer.)** For the purpose of providing funds for the state convention and trade center, the state finance committee is authorized to issue, upon request of the corporation formed under RCW 67.40.020 and in one or more offerings, general obligation bonds of the state of Washington in the sum of one hundred sixty million, seven hundred sixty-five thousand dollars, or so much thereof as may be required, to finance this project and all costs incidental thereto, to capitalize all or a portion of interest during construction, to provide for expansion, renovation, exterior cleanup and repair of the Eagles building,

conversion of various retail and other space to meeting rooms, and contingency costs of the center, purchase of the McKay Parcel as defined in the property and purchase agreement entered into by the corporation on June 12, 1986, development of low-income housing and to reimburse the general fund for expenditures in support of the project. The state finance committee may make such bond covenants as it deems necessary to carry out the purposes of this section and this chapter. No bonds authorized in this section may be offered for sale without prior legislative appropriation. [1990 c 181 § 1; 1988 ex.s. c 1 § 3; 1987 1st ex.s. c 3 § 12; 1985 c 233 § 1; 1983 2nd ex.s. c 1 § 3; 1982 c 34 § 3.]

**Reviser's note:** RCW 67.40.030 is repealed if the transfer date in RCW 36.100.230 occurs.

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**67.40.040 Deposit of proceeds in state convention and trade center account and appropriate subaccounts—Credit against future borrowings—Use. (Contingent repealer.)** (1) The proceeds from the sale of the bonds authorized in \*RCW 67.40.030, proceeds of the taxes imposed under \*RCW 67.40.090 and 67.40.130, and all other moneys received by the state convention and trade center from any public or private source which are intended to fund the acquisition, design, construction, expansion, exterior cleanup and repair of the Eagles building, conversion of various retail and other space to meeting rooms, purchase of the land and building known as the McKay Parcel, development of low-income housing, or renovation of the center, and those expenditures authorized under \*RCW 67.40.170 shall be deposited in the state convention and trade center account hereby created in the state treasury and in such subaccounts as are deemed appropriate by the directors of the corporation.

(2) Moneys in the account, including unanticipated revenues under RCW 43.79.270, shall be used exclusively for the following purposes in the following priority:

(a) For reimbursement of the state general fund under \*RCW 67.40.060;

(b) After appropriation by statute:

(i) For payment of expenses incurred in the issuance and sale of the bonds issued under \*RCW 67.40.030;

(ii) For expenditures authorized in \*RCW 67.40.170, and during the 2009-2011 fiscal biennium, the legislature may transfer from the state convention and trade center account to the general fund such amounts as reflect the excess fund balance in the account;

(iii) For acquisition, design, and construction of the state convention and trade center;

(iv) For debt service for the acquisition, design, and construction and retrofit of the museum of history and industry museum property or other future expansions of the convention center as approved by the legislature; and

(v) For reimbursement of any expenditures from the state general fund in support of the state convention and trade center; and

(c) For transfer to the state convention and trade center operations account.

(3) The corporation shall identify with specificity those facilities of the state convention and trade center that are to be financed with proceeds of general obligation bonds, the interest on which is intended to be excluded from gross income for federal income tax purposes. The corporation shall not permit the extent or manner of private business use of those bond-financed facilities to be inconsistent with treatment of such bonds as governmental bonds under applicable provisions of the Internal Revenue Code of 1986, as amended.

(4) In order to ensure consistent treatment of bonds authorized under \*RCW 67.40.030 with applicable provisions of the Internal Revenue Code of 1986, as amended, and notwithstanding RCW 43.84.092, investment earnings on bond proceeds deposited in the state convention and trade center account in the state treasury shall be retained in the account, and shall be expended by the corporation for the purposes authorized under chapter 386, Laws of 1995 and in a manner consistent with applicable provisions of the Internal Revenue Code of 1986, as amended.

(5) Subject to the conditions in subsection (6) of this section, starting in fiscal year 2008, and except for the 2009-2011 fiscal biennium in which no transfers shall be made, the state treasurer shall transfer:

(a) The sum of four million dollars, or as much as may be available pursuant to conditions set forth in this section, from the state convention and trade center account to the tourism enterprise account, with the maximum transfer being four million dollars per fiscal year; and

(b) The sum of five hundred thousand dollars, or as much as may be available pursuant to conditions set forth in this section, from the state convention and trade center account to the tourism development and promotion account, with the maximum transfer being five hundred thousand dollars per fiscal year.

(6)(a) Funds required for debt service payments and reserves for bonds issued under \*RCW 67.40.030; for debt service authorized under \*RCW 67.40.170; and for the issuance and sale of financial instruments associated with the acquisition, design, construction, and retrofit of the museum of history and industry museum property or for other future expansions of the center, as approved by the legislature, shall be maintained within the state convention and trade center account.

(b) Except for during the 2009-2011 fiscal biennium, during which no reserve shall be retained, no less than six million one hundred fifty thousand dollars per year shall be retained in the state convention and trade center account for funding capital maintenance as required by the center's long-term capital plan, facility enhancements, unanticipated replacements, and operating reserves for the convention center operation. This amount shall be escalated annually as follows:

(i) Four percent for annual inflation for capital maintenance, repairs, and replacement;

(ii) An additional two percent for enhancement to the facility; and

(iii) An additional three percent for growth in expenditure due to aging of the facility and the need to maintain an operating reserve.

(c) Sufficient funds shall be reserved within the state convention and trade center account to fund operating appropriations for the annual operation of the convention center. [2010 1st sp.s. c 37 § 938. Prior: 2008 c 329 § 917; 2008 c 328 § 6011; 2007 c 228 § 106; 2005 c 518 § 936; 2003 1st sp.s. c 25 § 929; 1995 c 386 § 13; 1991 sp.s. c 13 § 11; 1990 c 181 § 2; 1988 ex.s. c 1 § 4; 1987 1st ex.s. c 8 § 4; 1985 c 57 § 66; 1983 2nd ex.s. c 1 § 4; 1982 c 34 § 4.]

**Reviser's note:** \*(1) RCW 67.40.030, 67.40.060, 67.40.090, 67.40.130, and 67.40.170 are repealed by 2010 1st sp.s. c 15 § 14, if the transfer date in RCW 36.100.230 occurs.

(2) RCW 67.40.040 is also repealed by 2010 1st sp.s. c 15 § 14, if the transfer date in RCW 36.100.230 occurs. For rule of construction concerning sections amended and repealed in the same legislative session, see RCW 1.12.025.

**Effective date—2010 1st sp.s. c 37:** See note following RCW 13.06.050.

**Severability—Effective date—2008 c 329:** See notes following RCW 28B.105.110.

**Part headings not law—Severability—Effective date—2008 c 328:** See notes following RCW 43.155.050.

**Part headings not law—2007 c 228:** See RCW 43.336.900.

**Severability—Effective date—2005 c 518:** See notes following RCW 28A.500.030.

**Severability—Effective date—2003 1st sp.s. c 25:** See notes following RCW 19.28.351.

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**67.40.040 Deposit of proceeds in state convention and trade center account and appropriate subaccounts—Credit against future borrowings—Use.** [2008 c 329 § 917; 2008 c 328 § 6011; 2007 c 228 § 106; 2005 c 518 § 936; 2003 1st sp.s. c 25 § 929; 1995 c 386 § 13; 1991 sp.s. c 13 § 11; 1990 c 181 § 2; 1988 ex.s. c 1 § 4; 1987 1st ex.s. c 8 § 4; 1985 c 57 § 66; 1983 2nd ex.s. c 1 § 4; 1982 c 34 § 4.] Repealed by 2010 1st sp.s. c 15 § 14, if the transfer date in RCW 36.100.230 occurs.

**Reviser's note:** RCW 67.40.040 was also amended by 2010 1st sp.s. c 37 § 938 without cognizance of its repeal by 2010 1st sp.s. c 15 § 14, if the transfer date in RCW 36.100.230 occurs. For rule of construction concerning sections amended and repealed in the same legislative session, see RCW 1.12.025.

**67.40.045 Authorization to borrow from state treasury for project completion costs—Limits—"Project completion" defined—Legislative intent—Application.**

**(Contingent repealer.)** (1) The director of financial management, in consultation with the chairpersons of the appropriate fiscal committees of the senate and house of representatives, may authorize temporary borrowing from the state treasury for the purpose of covering cash deficiencies in the state convention and trade center account resulting from project completion costs. Subject to the conditions and limitations provided in this section, lines of credit may be authorized at times and in amounts as the director of financial management determines are advisable to meet current and/or anticipated cash deficiencies. Each authorization shall distinctly specify the maximum amount of cash deficiency which may be incurred and the maximum time period during which the cash deficiency may continue. The total amount of borrowing outstanding at any time shall never exceed the lesser of:

(a) \$58,275,000; or

(b) An amount, as determined by the director of financial management from time to time, which is necessary to provide for payment of project completion costs.

(2) Unless the due date under this subsection is extended by statute, all amounts borrowed under the authority of this section shall be repaid to the state treasury by June 30, 1999, together with interest at a rate determined by the state treasurer to be equivalent to the return on investments of the state treasury during the period the amounts are borrowed. Borrowing may be authorized from any excess balances in the state treasury, except the agricultural permanent fund, the Millersylvania park permanent fund, the state university permanent fund, the normal school permanent fund, the permanent common school fund, and the scientific permanent fund.

(3) As used in this section, "project completion" means:

(a) All remaining development, construction, and administrative costs related to completion of the convention center; and

(b) Costs of the McKay building demolition, Eagles building rehabilitation, development of low-income housing, and construction of rentable retail space and an operable parking garage.

(4) It is the intent of the legislature that project completion costs be paid ultimately from the following sources:

(a) \$29,250,000 to be received by the corporation under an agreement and settlement with Industrial Indemnity Co.;

(b) \$1,070,000 to be received by the corporation as a contribution from the city of Seattle;

(c) \$20,000,000 from additional general obligation bonds to be repaid from the special excise tax under RCW 67.40.090;

(d) \$4,765,000 for contingencies and project reserves from additional general obligation bonds to be repaid from the special excise tax under RCW 67.40.090;

(e) \$13,000,000 for conversion of various retail and other space to meeting rooms, from additional general obligation bonds to be repaid from the special excise tax under RCW 67.40.090;

(f) \$13,300,000 for expansion at the 900 level of the facility, from additional general obligation bonds to be repaid from the special excise tax under RCW 67.40.090;

(g) \$10,400,000 for purchase of the land and building known as the McKay Parcel, for development of low-income housing, for development, construction, and administrative costs related to completion of the state convention and trade

center, including settlement costs related to construction litigation, and for partially refunding obligations under the parking garage revenue note issued by the corporation to Industrial Indemnity Company in connection with the agreement and settlement identified in (a) of this subsection, from additional general obligation bonds to be repaid from the special excise tax under RCW 67.40.090. All proceeds from any sale of the McKay parcel shall be deposited in the state convention and trade center account and shall not be expended without appropriation by law;

(h) \$300,000 for Eagles building exterior cleanup and repair, from additional general obligation bonds to be repaid from the special excise tax under RCW 67.40.090; and

(i) The proceeds of the sale of any properties owned by the state convention and trade center that are not planned for use for state convention and trade center operations, with the proceeds to be used for development, construction, and administrative costs related to completion of the state convention and trade center, including settlement costs related to construction litigation.

(5) The borrowing authority provided in this section is in addition to the authority to borrow from the general fund to meet the bond retirement and interest requirements set forth in RCW 67.40.060. To the extent the specific conditions and limitations provided in this section conflict with the general conditions and limitations provided for temporary cash deficiencies in RCW 43.88.260 (section 7, chapter 502, Laws of 1987), the specific conditions and limitations in this section shall govern.

(6) For expenditures authorized under RCW 67.40.170, the corporation may use the proceeds of the special excise tax authorized under RCW 67.40.090, the sales tax authorized under RCW 67.40.130, contributions to the corporation from public or private participants, and investment earnings on any of the funds listed in this subsection. [1995 c 386 § 14; 1993 sp.s. c 12 § 9; 1992 c 4 § 1; 1991 c 2 § 1; 1990 c 181 § 3; 1988 ex.s. c 1 § 9; 1987 1st ex.s. c 8 § 1.]

**Reviser's note:** RCW 67.40.045 is repealed if the transfer date in RCW 36.100.230 occurs.

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**67.40.050 Administration of proceeds. (Contingent repealer.)** The moneys deposited pursuant to RCW 67.40.040 in the state convention and trade center account of the general fund shall be administered by the corporation formed under RCW 67.40.020, subject to legislative appropriation. [1982 c 34 § 5.]

**Reviser's note:** RCW 67.40.050 is repealed if the transfer date in RCW 36.100.230 occurs.

**67.40.055 Transfer of funds to account—Repayment of borrowed funds with interest. (Contingent repealer.)** The state treasurer shall from time to time transfer from the state general fund, or such other funds as the state treasurer deems appropriate, to the state convention and trade center operations account such amounts as are necessary to fund appropriations from the account, other than, after August 31, 1988, for appropriations for the purpose of marketing the facilities or services of the state convention and trade center. All amounts borrowed under the authority of this section shall be repaid to the appropriate fund, together with interest

at a rate determined by the state treasurer to be equivalent to the return on investments of the state treasury during the period the amounts are borrowed. [1988 ex.s. c 1 § 5; 1987 1st ex.s. c 8 § 11.]

**Reviser's note:** RCW 67.40.055 is repealed if the transfer date in RCW 36.100.230 occurs.

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**67.40.060 Retirement of bonds from nondebt-limit proprietary appropriated bond retirement account—Transfer from accounts—Pledge and promise—Remedies of bondholders. (Contingent repealer.)** The nondebt-limit proprietary appropriated bond retirement account shall be used for the payment of the principal of and interest on the bonds authorized in RCW 67.40.030.

The state finance committee shall, on or before June 30th of each year, certify to the state treasurer the amount needed in the ensuing twelve months to meet the bond retirement and interest requirements. On each date on which any interest or principal and interest payment is due, the state treasurer shall withdraw from any general state revenues received in the state treasury and deposit in the nondebt-limit proprietary appropriated bond retirement account an amount equal to the amount certified by the state finance committee to be due on that payment date. On each date on which any interest or principal and interest is due, the state treasurer shall cause an identical amount to be paid out of the state convention and trade center account, or state convention and trade center operations account, from the proceeds of the special excise tax imposed under RCW 67.40.090, operating revenues of the state convention and trade center, and bond proceeds and earnings on the investment of bond proceeds, for deposit in the general fund of the state treasury. Any deficiency in such transfer shall be made up as soon as special excise taxes are available for transfer and shall constitute a continuing obligation of the state convention and trade center account until all deficiencies are fully paid.

Bonds issued under RCW 67.40.030 shall state that they are a general obligation of the state of Washington, shall pledge the full faith and credit of the state to the payment of the principal thereof and the interest thereon, and shall contain an unconditional promise to pay the principal and interest as the same shall become due.

The owner and holder of each of the bonds or the trustee for the owner and holder of any of the bonds may by mandamus or other appropriate proceeding require the transfer and payment of funds as directed in this section. [2005 c 487 § 9; 1997 c 456 § 25; 1987 1st ex.s. c 8 § 5; 1983 2nd ex.s. c 1 § 5; 1982 c 34 § 6.]

**Reviser's note:** RCW 67.40.060 is repealed if the transfer date in RCW 36.100.230 occurs.

**Severability—Effective date—2005 c 487:** See RCW 43.99S.900 and 43.99S.901.

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**67.40.070 Legislature may provide additional means for payment of bonds. (Contingent repealer.)** The legislature may increase the rate of tax imposed in RCW 67.40.090 (1) and (2) or may provide additional means for raising moneys for the payment of the principal of and interest on the bonds authorized in RCW 67.40.030, and RCW 67.40.060

shall not be deemed to provide an exclusive method for the payment. [1982 c 34 § 7.]

**Reviser's note:** RCW 67.40.070 is repealed if the transfer date in RCW 36.100.230 occurs.

**67.40.080 Bonds legal investment for public funds. (Contingent repealer.)** The bonds authorized in RCW 67.40.030 shall be a legal investment for all state funds or funds under state control and for all funds of any other public body. [1982 c 34 § 8.]

**Reviser's note:** RCW 67.40.080 is repealed if the transfer date in RCW 36.100.230 occurs.

**67.40.090 Lodging tax imposed in King county—Rates—Proceeds. (Contingent repealer.)** (1) Commencing April 1, 1982, there is imposed, and the department of revenue shall collect, in King county a special excise tax on the sale of or charge made for the furnishing of lodging that is subject to tax under chapter 82.08 RCW, except that no such tax may be levied on any premises having fewer than sixty lodging units. The legislature on behalf of the state pledges to maintain and continue this tax until the bonds authorized by this chapter are fully redeemed, both principal and interest.

(2) The rate of the tax imposed under this section shall be as provided in this subsection.

(a) From April 1, 1982, through December 31, 1982, inclusive, the rate shall be three percent in the city of Seattle and two percent in King county outside the city of Seattle.

(b) From January 1, 1983, through June 30, 1988, inclusive, the rate shall be five percent in the city of Seattle and two percent in King county outside the city of Seattle.

(c) From July 1, 1988, through December 31, 1992, inclusive, the rate shall be six percent in the city of Seattle and two and four-tenths percent in King county outside the city of Seattle.

(d) From January 1, 1993, and until bonds and all other borrowings authorized under RCW 67.40.030 are retired, the rate shall be seven percent in the city of Seattle and two and eight-tenths percent in King county outside the city of Seattle.

(e) Except as otherwise provided in (d) of this subsection, on and after the change date, the rate shall be six percent in the city of Seattle and two and four-tenths percent in King county outside the city of Seattle.

(f) As used in this section, "change date" means the October 1st next occurring after certification occurs under (g) of this subsection.

(g) On August 1st of 1998 and of each year thereafter until certification occurs under this subsection, the state treasurer shall determine whether seventy-one and forty-three one-hundredths percent of the revenues actually collected and deposited with the state treasurer for the tax imposed under this section during the twelve months ending June 30th of that year, excluding penalties and interest, exceeds the amount actually paid in debt service during the same period for bonds issued under RCW 67.40.030 by at least two million dollars. If so, the state treasurer shall so certify to the department of revenue.

(3) The proceeds of the special excise tax shall be deposited as provided in this subsection.

(a) Through June 30, 1988, inclusive, all proceeds shall be deposited in the state convention and trade center account.

(b) From July 1, 1988, through December 31, 1992, inclusive, eighty-three and thirty-three one-hundredths percent of the proceeds shall be deposited in the state convention and trade center account. The remainder shall be deposited in the state convention and trade center operations account.

(c) From January 1, 1993, until the change date, eighty-five and seventy-one-hundredths percent of the proceeds shall be deposited in the state convention and trade center account. The remainder shall be deposited in the state convention and trade center operations account.

(d) On and after the change date, eighty-three and thirty-three one-hundredths percent of the proceeds shall be deposited in the state convention and trade center account. The remainder shall be deposited in the state convention and trade center operations account.

(4) Chapter 82.32 RCW applies to the tax imposed under this section. [2002 c 178 § 4; 1995 c 386 § 15; 1991 c 2 § 3; 1988 ex.s. c 1 § 6; 1987 1st ex.s. c 8 § 6; 1982 c 34 § 9.]

**Reviser's note:** RCW 67.40.090 is repealed if the transfer date in RCW 36.100.230 occurs.

**Retroactive application—Effective date—2002 c 178:** See notes following RCW 67.28.180.

**Intent—1988 ex.s. c 1 § 6:** "The legislature intends that the additional revenue generated by the increase in the special excise tax from five to six percent in the city of Seattle and from two percent to two and four-tenths percent in King county outside the city of Seattle be used for marketing the facilities and services of the convention center, for promoting the locale as a convention and visitor destination, and for related activities. Actual use of these funds shall be determined through biennial appropriation by the legislature." [1988 ex.s. c 1 § 7.]

*Special excise taxes authorized for public stadium, convention, performing arts, visual arts, and tourism facilities: Chapter 67.28 RCW.*

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**67.40.100 Limitation on license fees and taxes on hotels, motels, rooming houses, trailer camps, etc. (Contingent repealer.)** Except as provided in chapters 67.28 and 82.14 RCW and RCW 67.28.181, after January 1, 1983, no city, town, or county in which the tax under RCW 67.40.090 is imposed may impose a license fee or tax on the act or privilege of engaging in business to furnish lodging by a hotel, rooming house, tourist court, motel, trailer camp, or similar facilities in excess of the rate imposed upon other persons engaged in the business of making sales at retail as that term is defined in chapter 82.04 RCW. [1997 c 452 § 15; 1990 c 242 § 1; 1988 ex.s. c 1 § 25; 1982 c 34 § 10.]

**Reviser's note:** RCW 67.40.100 is repealed if the transfer date in RCW 36.100.230 occurs.

**Intent—Severability—1997 c 452:** See notes following RCW 67.28.080.

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**67.40.105 Exemption from tax—Emergency lodging for homeless persons—Conditions. (Contingent repealer.)** (1) The tax levied by RCW 67.40.090 and the tax authorized under \*RCW 67.40.100(2) shall not apply to emergency lodging provided for homeless persons for a period of less than thirty consecutive days under a shelter voucher program administered by an eligible organization.

(2010 Ed.)

(2) For the purposes of this exemption, an eligible organization includes only cities, towns, and counties, or their respective agencies, and groups providing emergency food and shelter services. [1988 c 61 § 3.]

**Reviser's note:** \*(1) RCW 67.40.100 was amended by 1997 c 452 § 15, which deleted subsection (2).

(2) RCW 67.40.105 is repealed if the transfer date in RCW 36.100.230 occurs.

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**67.40.107 Exemption from tax—Temporary medical housing. (Contingent repealer.)** The tax imposed in RCW 67.40.090 and the tax authorized under RCW 67.40.130 do not apply to sales of temporary medical housing exempt under RCW 82.08.997. [2008 c 137 § 4.]

**Reviser's note:** RCW 67.40.107 is repealed if the transfer date in RCW 36.100.230 occurs.

**Effective date—2008 c 137:** See note following RCW 82.08.997.

**67.40.110 Use of revenues from convention and trade center facilities excise tax by cities for professional sports franchise facilities limited. (Contingent repealer.)** No city imposing the tax authorized under chapter 67.28 RCW may use the tax proceeds directly or indirectly to acquire, construct, operate, or maintain facilities or land intended to be used by a professional sports franchise if the county within which the city is located uses the proceeds of its tax imposed under chapter 67.28 RCW to directly or indirectly acquire, construct, operate, or maintain a facility used by a professional sports franchise. [1997 c 452 § 19; 1987 1st ex.s. c 8 § 8.]

**Reviser's note:** RCW 67.40.110 is repealed if the transfer date in RCW 36.100.230 occurs.

**Intent—Severability—1997 c 452:** See notes following RCW 67.28.080.

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**67.40.120 Contracts for marketing facility and services. (Contingent repealer.)** The state convention and trade center corporation may contract with the Seattle-King county convention and visitors bureau for marketing the convention and trade center facility and services. [2002 c 182 § 1; 1997 c 452 § 20; 1991 c 336 § 2; 1988 ex.s. c 1 § 8.]

**Reviser's note:** RCW 67.40.120 is repealed if the transfer date in RCW 36.100.230 occurs.

**Intent—Severability—1997 c 452:** See notes following RCW 67.28.080.

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**67.40.130 Convention and trade facilities—Tax on transient lodging authorized—Rates. (Contingent repealer.)** (1) The governing body of a city, while not required by legislative mandate to do so, may, after July 1, 1995, by resolution or ordinance for the purposes authorized under RCW 67.40.170 and 67.40.190, fix and impose a sales tax on the charge for rooms to be used for lodging by transients in accordance with the terms of chapter 386, Laws of 1995. Such tax shall be collected from those persons who are taxable by the state under RCW 67.40.090, but only those taxable persons located within the boundaries of the city imposing the tax. The rate of such tax imposed by a city shall

be two percent of the charge for rooms to be used for lodging by transients. Any such tax imposed under this section shall not be collected prior to January 1, 2000. The tax authorized under this section shall be levied and collected in the same manner as those taxes authorized under chapter 82.14 RCW. Penalties, receipts, abatements, refunds, and all other similar matters relating to the tax shall be as provided in chapter 82.08 RCW.

(2) The tax levied under this section shall remain in effect and not be modified for that period for which the principal and interest obligations of state bonds issued to finance the expansion of the state convention and trade center under RCW 67.40.030 remain outstanding.

(3) As used in this section, the term "city" means a municipality that has within its boundaries a convention and trade facility as defined in RCW 67.40.020. [1995 c 386 § 1.]

**Reviser's note:** RCW 67.40.130 is repealed if the transfer date in RCW 36.100.230 occurs.

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**67.40.140 Convention and trade facilities—Remittance of tax—Credit. (Contingent repealer.)** When remitting sales tax receipts to the state under RCW 82.14.050, the city treasurer, or its designee, shall at the same time remit the sales taxes collected under RCW 67.40.130 for the municipality. The sum so collected and paid over on behalf of the municipality shall be credited against the amount of the tax otherwise due to the state from those same taxpayers under RCW 82.08.020(1). [1995 c 386 § 2.]

**Reviser's note:** RCW 67.40.140 is repealed if the transfer date in RCW 36.100.230 occurs.

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**67.40.150 Convention and trade facilities—Contract of administration and collection to department of revenue—Disposition of tax—Procedure. (Contingent repealer.)** (1) The cities shall contract, prior to the effective date of a resolution or ordinance imposing a sales tax under RCW 67.40.130, the administration and collection of the local option sales tax to the state department of revenue at no cost to the municipality. The tax authorized by chapter 386, Laws of 1995 which is collected by the department of revenue shall be deposited by the state into the account created under RCW 67.40.040 in the state treasury.

(2) The sales tax authorized under RCW 67.40.130 shall be due and payable in the same manner as those taxes authorized under RCW 82.14.030. [1995 c 386 § 3.]

**Reviser's note:** RCW 67.40.150 is repealed if the transfer date in RCW 36.100.230 occurs.

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**67.40.160 Convention and trade facilities—Tax on construction—Disposition. (Contingent repealer.)** The state sales tax on construction performed under RCW 67.40.170 collected by the department of revenue under chapter 82.08 RCW shall be deposited by the state into the account created under RCW 67.40.040 in the state treasury. [1995 c 386 § 4.]

**Reviser's note:** RCW 67.40.160 is repealed if the transfer date in RCW 36.100.230 occurs.

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**67.40.170 Convention and trade facilities—Use of collected taxes. (Contingent repealer.)** All taxes levied and collected under RCW 67.40.130 shall be credited to the state convention and trade center account in the state treasury and used solely by the corporation formed under RCW 67.40.020 for the purpose of paying all or any part of the cost associated with: The financing, design, acquisition, construction, equipping, operating, maintaining, and reequipping of convention center facilities related to the expansion recommended by the convention center expansion and city facilities task force created under section 148, chapter 6, Laws of 1994 sp. sess.; the acquisition, construction, and relocation costs of replacement housing; and the repayment of loans and advances from the state, including loans authorized previously under this chapter, or to pay or secure the payment of all or part of the principal of or interest on any state bonds issued for purposes authorized under this chapter. [1995 c 386 § 5.]

**Reviser's note:** RCW 67.40.170 is repealed if the transfer date in RCW 36.100.230 occurs.

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**67.40.180 Convention and trade facilities—Use of funds—Acceptance by board of directors of funding commitment. (Contingent repealer.)** Upon May 16, 1995, the corporation may proceed with preliminary design and planning activities, environmental studies, and real estate appraisals for convention center improvements. No other expenditures may be made in support of the expansion project recommended by the convention center expansion and city facilities task force created under section 148, chapter 6, Laws of 1994 sp. sess. prior to acceptance by the board of directors of the corporation of an irrevocable commitment for funding from public or private participants consistent with the expansion development study task force recommendations report dated December 1994. [1995 c 386 § 6.]

**Reviser's note:** RCW 67.40.180 is repealed if the transfer date in RCW 36.100.230 occurs.

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**67.40.190 Convention and trade facilities—Use of funds—Encumbered revenue. (Contingent repealer.)** (1) Moneys received from any tax imposed under RCW 67.40.130 shall be used for the purpose of providing funds to the corporation for the costs associated with paying all or any part of the cost associated with: The financing, design, acquisition, construction, equipping, operating, maintaining, and reequipping of convention center facilities; the acquisition, construction, and relocation costs of replacement housing; and repayment of loans and advances from the state, including loans authorized previously under this chapter, or to pay or secure the payment of all or part of the principal of or interest on any state bonds issued for purposes authorized under this chapter.

(2) If any of the revenue from any local sales tax authorized under RCW 67.40.130 shall have been encumbered or pledged by the state to secure the payment of any state bonds as authorized under RCW 67.40.030, then as long as that agreement or pledge shall be in effect, the legislature shall not withdraw from the municipality the authority to levy and collect the tax or the tax credit authorized under RCW 67.40.130 and 67.40.140. [1995 c 386 § 7.]

**Reviser's note:** RCW 67.40.190 is repealed if the transfer date in RCW 36.100.230 occurs.

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**67.40.900 Severability—1982 c 34. (Contingent repealer.)** If any provision of this act or its application to any municipality, person, or circumstance is held invalid, the remainder of the act or the application of the provision to other municipalities, persons, or circumstances is not affected. [1982 c 34 § 13.]

**Reviser's note:** RCW 67.40.900 is repealed if the transfer date in RCW 36.100.230 occurs.

**67.40.901 Severability—1988 ex.s. c 1.** See RCW 36.100.900.

## Chapter 67.42 RCW AMUSEMENT RIDES

### Sections

67.42.010	Definitions.
67.42.020	Requirements—Operation of amusement ride or structure—Bungee jumping device inspection.
67.42.025	Inspections and inspectors—Comparable regulation and comparable qualification.
67.42.030	Permit—Application—Decal.
67.42.040	Permit—Duration—Material modification of ride or structure—Bungee jumping device replacement, movement, purchase.
67.42.050	Rules—Orders to cease operation—Administrative proceedings.
67.42.060	Fees.
67.42.070	Penalty.
67.42.080	Counties and municipalities—Supplemental ordinances.
67.42.090	Bungee jumping—Permission.
67.42.900	Severability—1985 c 262.
67.42.901	Effective date—1985 c 262.

**67.42.010 Definitions.** Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Amusement structure" means electrical or mechanical devices or combinations of devices operated for revenue and to provide amusement or entertainment to viewers or audiences at carnivals, fairs, or amusement parks. "Amusement structure" also means a bungee jumping device regardless of where located. "Amusement structure" does not include games in which a member of the public must perform an act, nor concessions at which customers may make purchases.

(2) "Amusement ride" means any vehicle, boat, bungee jumping device, or other mechanical device moving upon or within a structure, along cables or rails, through the air by centrifugal force or otherwise, or across water, that is used to convey one or more individuals for amusement, entertainment, diversion, or recreation. "Amusement ride" includes, but is not limited to, devices commonly known as skyrides, ferris wheels, carousels, parachute towers, tunnels of love, bungee jumping devices, and roller coasters. "Amusement ride" does not include: (a) Conveyances for persons in recreational winter sports activities such as ski lifts, ski tows, j-bars, t-bars, and similar devices subject to regulation under \*chapter 70.88 RCW; (b) any single-passenger coin-operated ride that is manually, mechanically, or electrically operated and customarily placed in a public location and that does not

normally require the supervision or services of an operator; (c) nonmechanized playground equipment, including but not limited to, swings, seesaws, stationary spring-mounted animal features, rider-propelled merry-go-rounds, climbers, slides, trampolines, and physical fitness devices; or (d) water slides.

(3) "Department" means the department of labor and industries.

(4) "Insurance policy" means an insurance policy written by an insurer authorized to do business in this state under Title 48 RCW. [1993 c 203 § 2; 1985 c 262 § 1.]

**\*Reviser's note:** Chapter 70.88 RCW was recodified as chapter 79A.40 RCW pursuant to 1999 c 249 § 1601.

**Findings—Intent—1993 c 203:** "(1) The legislature finds that:

Bungee jumping is growing in popularity as a new source of entertainment for the citizens of this state;

Individuals have suffered serious injuries in states where the regulation of this activity was minimal or nonexistent; and

The potential for harm to individuals participating in this activity likely increases in the absence of state regulation of these activities.

(2) It is the intent of the legislature to require bungee jumping operations to be regulated by the state to the extent necessary to protect the health and safety of individuals participating in this activity." [1993 c 203 § 1.]

**67.42.020 Requirements—Operation of amusement ride or structure—Bungee jumping device inspection.** Before operating any amusement ride or structure, the owner or operator shall:

(1) Obtain a permit pursuant to RCW 67.42.030;

(2) Have the amusement ride or structure inspected for safety at least once annually by an insurer, a person with whom the insurer has contracted, or a person who meets the qualifications set by the department and obtain from the insurer or person a written certificate that the inspection has been made and that the amusement ride or structure meets the standards for coverage and is covered by the insurer as required by subsection (3) of this section. A bungee jumping device, including, but not limited to, the crane, tower, balloon or bridge, person lift basket, platforms, bungee cords, end attachments, anchors, carabiners or locking devices, harnesses, landing devices, and additional ride operation hardware shall be inspected for safety prior to beginning operation and annually by an insurer, a person with whom the insurer has contracted, or a person authorized by the department to inspect bungee jumping devices. The operator of the bungee jumping device shall obtain a written certificate which states that the required inspection has been made and the bungee jumping device meets the standards for coverage and is covered by the insurer as required by subsection (3) of this section;

(3) Have and keep in effect an insurance policy in an amount not less than one million dollars per occurrence insuring: (a) The owner or operator; and (b) any municipality or county on whose property the amusement ride or structure stands, or any municipality or county which has contracted with the owner or operator against liability for injury to persons arising out of the use of the amusement ride or structure;

(4) File with the department the inspection certificate and insurance policy required by this section; and

(5) File with each sponsor, lessor, landowner, or other person responsible for an amusement structure or ride being offered for use by the public a certificate stating that the

insurance required by subsection (3) of this section is in effect. [1993 c 203 § 3; 1986 c 86 § 1; 1985 c 262 § 2.]

**Findings—Intent—1993 c 203:** See note following RCW 67.42.010.

**67.42.025 Inspections and inspectors—Comparable regulation and comparable qualification.** (1) An amusement ride that has been inspected in any state, territory, or possession of the United States that, in the discretion of the department, has a level of regulation comparable to this chapter, shall be deemed to meet the inspection requirement of this chapter.

(2) An amusement ride inspector who is authorized to inspect amusement rides in any state, territory, or possession of the United States, who, in the discretion of the department, has a level of qualifications comparable to those required under this chapter, shall be deemed qualified to inspect amusement rides under this chapter. [1986 c 86 § 2.]

**67.42.030 Permit—Application—Decal.** (1) Application for an operating permit to operate an amusement ride or structure shall be made on an annual basis by the owner or operator of the amusement ride or structure. The application shall be made on forms prescribed by the department and shall include the certificate required by RCW 67.42.020(2).

(2) The department shall issue a decal with each permit. The decal shall be affixed on or adjacent to the control panel of the amusement ride or structure in a location visible to the patrons of the ride or structure. [1985 c 262 § 3.]

**67.42.040 Permit—Duration—Material modification of ride or structure—Bungee jumping device replacement, movement, purchase.** (1) Except as provided in subsection (2) of this section or unless a shorter period is specified by the department, permits issued under RCW 67.42.030 are valid for a one-year period.

(2) If an amusement ride or structure is materially rebuilt or materially modified so as to change the original action of the amusement ride or structure, the amusement ride or structure shall be subject to a new inspection under RCW 67.42.020 and the owner or operator shall apply for a new permit under RCW 67.42.030.

(3) If an amusement ride or structure for which a permit has been issued pursuant to RCW 67.42.030 is moved and installed in another place but is not materially rebuilt or materially modified so as to change the original action of the amusement ride or structure, no new permit is required prior to the expiration of the permit.

(4) A bungee jumping device or a part of a device, including, but not limited to, the crane, person lift basket, mobile crane, balloon or balloon basket, anchor or anchor attachment structure, or landing device, that is replaced shall be reinspected by an insurer, a person with whom the insurer has contracted, or by a person authorized by the department to inspect bungee jumping devices, and the owner or operator of the device shall apply for a new permit under RCW 67.42.030.

(5) A bungee jumping operator shall have any bungee jumping device or structure that is moved and installed in another location reinspected by an insurer, a person with whom the insurer has contracted, or a person authorized by

the department to inspect bungee jumping devices before beginning operation.

(6) Any new operator who purchases an existing bungee jumping device or structure must have the bungee jumping device inspected and permitted as required under RCW 67.42.020 before beginning operation. [1993 c 203 § 4; 1985 c 262 § 4.]

**Findings—Intent—1993 c 203:** See note following RCW 67.42.010.

**67.42.050 Rules—Orders to cease operation—Administrative proceedings.** (1) The department shall adopt rules under chapter 34.05 RCW to administer this chapter. Such rules may exempt amusement rides or structures otherwise subject to this chapter if the amusement rides or structures are located on lands owned by [the] United States government or its agencies and are required to comply with federal safety standards at least equal to those under this chapter.

(2) The department may order in writing the cessation of the operation of an amusement ride or structure for which no valid permit is in effect or for which the owner or operator does not have an insurance policy as required by RCW 67.42.020.

(3) All proceedings relating to permits or orders to cease operation under this chapter shall be conducted pursuant to chapter 34.05 RCW. [1985 c 262 § 5.]

**67.42.060 Fees.** (1) The department may charge a reasonable fee not to exceed ten dollars for each permit issued under RCW 67.42.030. All fees collected by the department under this chapter shall be deposited in the state general fund. This subsection does not apply to permits issued under RCW 67.42.030 to operate a bungee jumping device.

(2) The department may charge a reasonable fee not to exceed one hundred dollars for each permit issued under RCW 67.42.030 to operate a bungee jumping device. Fees collected under this subsection shall be deposited in the state general fund for appropriation for the permitting and inspection of bungee jumping devices under this chapter. [1993 c 203 § 5; 1985 c 262 § 6.]

**Findings—Intent—1993 c 203:** See note following RCW 67.42.010.

**67.42.070 Penalty.** Any person who operates an amusement ride or structure without complying with the requirements of this chapter is guilty of a gross misdemeanor. [1985 c 262 § 7.]

**67.42.080 Counties and municipalities—Supplemental ordinances.** Nothing contained in this chapter prevents a county or municipality from adopting and enforcing ordinances which relate to the operation of amusement rides or structures and supplement the provisions of this chapter. [1985 c 262 § 8.]

**67.42.090 Bungee jumping—Permission.** (1) Bungee jumping from a publicly owned bridge or publicly owned land is allowed only if permission has been granted by the government body that has jurisdiction over the bridge or land.

(2) Bungee jumping into publicly owned waters is allowed only if permission has been granted by the government body that has jurisdiction over the body of water.

(3) Bungee jumping from a privately owned bridge is allowed only if permission has been granted by the owner of the bridge. [1993 c 203 § 6.]

**Findings—Intent—1993 c 203:** See note following RCW 67.42.010.

**67.42.900 Severability—1985 c 262.** If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1985 c 262 § 10.]

**67.42.901 Effective date—1985 c 262.** This act shall take effect on January 1, 1986. [1985 c 262 § 11.]

## Chapter 67.70 RCW STATE LOTTERY

### Sections

67.70.010	Definitions.
67.70.030	State lottery commission created—Membership—Terms—Vacancies—Chairman—Quorum.
67.70.040	Powers and duties of commission—When legislative approval required.
67.70.042	Scratch games—Baseball stadium construction.
67.70.043	New games—Stadium and exhibition center bonds, operation, and development—Youth athletic facilities.
67.70.044	Shared game lottery.
67.70.050	Office of director created—Appointment—Salary—Duties.
67.70.055	Activities prohibited to officers, employees, and members.
67.70.060	Powers of director.
67.70.070	Licenses for lottery sales agents—Factors—"Person" defined.
67.70.080	License as authority to act.
67.70.090	Denial, suspension, and revocation of licenses.
67.70.100	Assignment of rights prohibited—Exceptions—Notices—Assignment of payment of remainder of an annuity—Intervention—Limitation on payment by director—Rules—Recovery of costs of commission—Federal ruling required—Discharge of liability.
67.70.110	Maximum price of ticket or share limited—Sale by other than licensed agent prohibited.
67.70.120	Sale to minor prohibited—Exception—Penalties.
67.70.125	Use of public assistance electronic benefit cards prohibited—Licensee to report violations.
67.70.130	Prohibited acts—Penalty.
67.70.140	Penalty for unlicensed activity.
67.70.150	Penalty for false or misleading statement or entry or failure to produce documents.
67.70.160	Penalty for violation of chapter—Exceptions.
67.70.170	Penalty for violation of rules—Exceptions.
67.70.180	Persons prohibited from purchasing tickets or shares or receiving prizes—Penalty.
67.70.190	Unclaimed prizes.
67.70.200	Deposit of moneys received by agents from sales—Power of director—Reports.
67.70.210	Other law inapplicable to sale of tickets or shares.
67.70.220	Payment of prizes to minor.
67.70.230	State lottery account created.
67.70.240	Use of moneys in state lottery account limited.
67.70.241	Promotion of lottery by person or entity responsible for operating stadium and exhibition center—Commission approval—Cessation of obligation.
67.70.250	Methods for payment of prizes by installments.
67.70.255	Debts owed to state agency or political subdivision—Debt information to lottery commission—Prize set off against debts.
67.70.260	Lottery administrative account created.
67.70.270	Members of commission—Compensation—Travel expenses.
67.70.280	Application of administrative procedure act.
67.70.290	Post-audits by state auditor.
67.70.300	Investigations by attorney general authorized.
67.70.310	Management review by director of financial management.
67.70.320	Verification by certified public accountant.

(2010 Ed.)

67.70.330	Enforcement powers of director—Office of the director designated law enforcement agency.
67.70.340	Transfer of shared game lottery proceeds.
67.70.360	Marketing lottery as contributor to opportunity pathways—Strategy and implementation.
67.70.902	Construction—1982 2nd ex.s. c 7.
67.70.903	Severability—1982 2nd ex.s. c 7.
67.70.904	Severability—1985 c 375.
67.70.905	Effective date—1985 c 375.
67.70.906	Construction—Chapter applicable to state registered domestic partnerships—2009 c 521.

*Pathological gamblers, information for:* RCW 9.46.071.

*Problem and pathological gambling treatment:* RCW 43.20A.890.

### **67.70.010 Definitions.** For the purposes of this chapter:

(1) "Commission" means the state lottery commission established by this chapter;

(2) "Director" means the director of the state lottery established by this chapter;

(3) "Lottery" or "state lottery" means the lottery established and operated pursuant to this chapter;

(4) "Online game" means a lottery game in which a player pays a fee to a lottery retailer and selects a combination of digits, numbers, or symbols, type and amount of play, and receives a computer-generated ticket with those selections, and the lottery separately draws or selects the winning combination or combinations;

(5) "Shared game lottery" means any lottery activity in which the commission participates under written agreement between the commission, on behalf of the state, and any other state or states. [2002 c 349 § 1; 1994 c 218 § 3; 1987 c 511 § 1; 1982 2nd ex.s. c 7 § 1.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

### **67.70.030 State lottery commission created—Membership—Terms—Vacancies—Chairman—Quorum.**

There is created the state lottery commission to consist of five members appointed by the governor with the consent of the senate. Of the initial members, one shall serve a term of two years, one shall serve a term of three years, one shall serve a term of four years, one shall serve a term of five years, and one shall serve a term of six years. Their successors, all of whom shall be citizen members appointed by the governor with the consent of the senate, upon being appointed and qualified, shall serve six-year terms. No member of the commission who has served a full six-year term is eligible for reappointment. In case of a vacancy, it shall be filled by appointment by the governor for the unexpired portion of the term in which the vacancy occurs.

The governor shall designate one member of the commission to serve as chairman at the governor's pleasure.

A majority of the members shall constitute a quorum for the transaction of business. [1982 2nd ex.s. c 7 § 3.]

**67.70.040 Powers and duties of commission—When legislative approval required.** The commission shall have the power, and it shall be its duty:

(1) To adopt rules governing the establishment and operation of a state lottery as it deems necessary and desirable in order that such a lottery be initiated at the earliest feasible and practicable time, and in order that such lottery produce the maximum amount of net revenues for the state consonant with the dignity of the state and the general welfare of the

people. Such rules shall include, but shall not be limited to, the following:

(a) The type of lottery to be conducted which may include the selling of tickets or shares, but such tickets or shares may not be sold over the internet. The use of electronic or mechanical devices or video terminals which allow for individual play against such devices or terminals shall be prohibited. An affirmative vote of sixty percent of both houses of the legislature is required before offering any game allowing or requiring a player to become eligible for a prize or to otherwise play any portion of the game by interacting with any device or terminal involving digital, video, or other electronic representations of any game of chance, including scratch tickets, pull-tabs, bingo, poker or other cards, dice, roulette, keno, or slot machines. Approval of the legislature shall be required before entering any agreement with other state lotteries to conduct shared games;

(b) The price, or prices, of tickets or shares in the lottery;

(c) The numbers and sizes of the prizes on the winning tickets or shares;

(d) The manner of selecting the winning tickets or shares, except as limited by (a) of this subsection;

(e) The manner and time of payment of prizes to the holder of winning tickets or shares which, at the director's option, may be paid in lump sum amounts or installments over a period of years;

(f) The frequency of the drawings or selections of winning tickets or shares. Approval of the legislature is required before conducting any online game in which the drawing or selection of winning tickets occurs more frequently than once every twenty-four hours;

(g) Without limit as to number, the type or types of locations at which tickets or shares may be sold;

(h) The method to be used in selling tickets or shares, except as limited by (a) of this subsection;

(i) The licensing of agents to sell or distribute tickets or shares, except that a person under the age of eighteen shall not be licensed as an agent;

(j) The manner and amount of compensation, if any, to be paid licensed sales agents necessary to provide for the adequate availability of tickets or shares to prospective buyers and for the convenience of the public;

(k) The apportionment of the total revenues accruing from the sale of lottery tickets or shares and from all other sources among: (i) The payment of prizes to the holders of winning tickets or shares, which shall not be less than forty-five percent of the gross annual revenue from such lottery, (ii) transfers to the lottery administrative account created by RCW 67.70.260, and (iii) transfer to the state's general fund. Transfers to the state general fund shall be made in compliance with RCW 43.01.050;

(l) Such other matters necessary or desirable for the efficient and economical operation and administration of the lottery and for the convenience of the purchasers of tickets or shares and the holders of winning tickets or shares.

(2) To ensure that in each place authorized to sell lottery tickets or shares, on the back of the ticket or share, and in any advertising or promotion there shall be conspicuously displayed an estimate of the probability of purchasing a winning ticket.

(3) To amend, repeal, or supplement any such rules from time to time as it deems necessary or desirable.

(4) To advise and make recommendations to the director for the operation and administration of the lottery. [2006 c 290 § 3; 1994 c 218 § 4; 1991 c 359 § 1; 1988 c 289 § 801; 1987 c 511 § 2; 1985 c 375 § 1; 1982 2nd ex.s. c 7 § 4.]

**State policy—2006 c 290:** See note following RCW 9.46.240.

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**67.70.042 Scratch games—Baseball stadium construction.** The lottery commission shall conduct at least two but not more than four scratch games with sports themes per year. These games are intended to generate additional moneys sufficient to cover the distributions under RCW 67.70.240(4). [1997 c 220 § 207 (Referendum Bill No. 48, approved June 17, 1997); 1995 3rd sp.s. c 1 § 104.]

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

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

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**67.70.043 New games—Stadium and exhibition center bonds, operation, and development—Youth athletic facilities.** The lottery commission shall conduct new games that are in addition to any games conducted under RCW 67.70.042 and are intended to generate additional moneys sufficient to cover the distributions under RCW 67.70.240(5). No game may be conducted under this section before January 1, 1998. No game may be conducted under this section after December 31, 1999, unless the conditions for issuance of the bonds under RCW 43.99N.020(2) are met, and no game is required to be conducted after the distributions cease under RCW 67.70.240(5).

For the purposes of this section, the lottery may accept and market prize promotions provided in conjunction with private-sector marketing efforts. [1997 c 220 § 205 (Referendum Bill No. 48, approved June 17, 1997).]

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

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**67.70.044 Shared game lottery.** (1) Pursuant to RCW 67.70.040(1)(a), the commission may enter into the multi-state agreement establishing a shared game lottery known as "The Big Game," that was entered into by party state lotteries in August 1996 and subsequently amended and a shared game lottery known as "Powerball."

(2) The shared game lottery account is created as a separate account outside the state treasury. The account is managed, maintained, and controlled by the commission and consists of all revenues received from the sale of shared game lottery tickets or shares, and all other moneys credited or transferred to it from any other fund or source under law. The account is allotted according to chapter 43.88 RCW. During the 2009-2011 fiscal biennium, the legislature may transfer from the shared game lottery account to the education legacy trust account such amounts as reflect the excess fund balance

of the account. [2010 1st sp.s. c 37 § 940; 2009 c 576 § 1; 2002 c 349 § 2.]

**Effective date—2010 1st sp.s. c 37:** See note following RCW 13.06.050.

**67.70.050 Office of director created—Appointment—Salary—Duties.** There is created the office of director of the state lottery. The director shall be appointed by the governor with the consent of the senate. The director shall serve at the pleasure of the governor and shall receive such salary as is determined by the governor, but in no case may the director's salary be more than ninety percent of the salary of the governor. The director shall:

(1) Supervise and administer the operation of the lottery in accordance with the provisions of this chapter and with the rules of the commission.

(2) Appoint such deputy and assistant directors as may be required to carry out the functions and duties of his office: PROVIDED, That the provisions of the state civil service law, chapter 41.06 RCW, shall not apply to such deputy and assistant directors.

(3) Appoint such professional, technical, and clerical assistants and employees as may be necessary to perform the duties imposed by this chapter: PROVIDED, That the provisions of the state civil service law, chapter 41.06 RCW, shall not apply to such employees as are engaged in undercover audit or investigative work or security operations but shall apply to other employees appointed by the director, except as provided for in subsection (2) of this section.

(4) In accordance with the provisions of this chapter and the rules of the commission, license as agents to sell or distribute lottery tickets such persons as in his opinion will best serve the public convenience and promote the sale of tickets or shares. The director may require a bond from any licensed agent, in such amount as provided in the rules of the commission. Every licensed agent shall prominently display his license, or a copy thereof, as provided in the rules of the commission. License fees may be established by the commission, and, if established, shall be deposited in the state lottery account created by RCW 67.70.230.

(5) Confer regularly as necessary or desirable with the commission on the operation and administration of the lottery; make available for inspection by the commission, upon request, all books, records, files, and other information and documents of the lottery; and advise the commission and recommend such matters as the director deems necessary and advisable to improve the operation and administration of the lottery.

(6) Subject to the applicable laws relating to public contracts, enter into contracts for the operation of the lottery, or any part thereof, and into contracts for the promotion of the lottery. No contract awarded or entered into by the director may be assigned by the holder thereof except by specific approval of the commission: PROVIDED, That nothing in this chapter authorizes the director to enter into public contracts for the regular and permanent administration of the lottery after the initial development and implementation.

(7) Certify quarterly to the state treasurer and the commission a full and complete statement of lottery revenues, prize disbursements, and other expenses for the preceding quarter.

(2010 Ed.)

(8) Carry on a continuous study and investigation of the lottery throughout the state: (a) For the purpose of ascertaining any defects in this chapter or in the rules issued thereunder by reason whereof any abuses in the administration and operation of the lottery or any evasion of this chapter or the rules may arise or be practiced, (b) for the purpose of formulating recommendations for changes in this chapter and the rules promulgated thereunder to prevent such abuses and evasions, (c) to guard against the use of this chapter and the rules issued thereunder as a cloak for the carrying on of professional gambling and crime, and (d) to ensure that this chapter and rules shall be in such form and be so administered as to serve the true purposes of this chapter.

(9) Make a continuous study and investigation of: (a) The operation and the administration of similar laws which may be in effect in other states or countries, (b) the operation of an additional game or games for the benefit of a particular program or purpose, (c) any literature on the subject which from time to time may be published or available, (d) any federal laws which may affect the operation of the lottery, and (e) the reaction of the citizens of this state to existing and potential features of the lottery with a view to recommending or effecting changes that will tend to serve the purposes of this chapter.

(10) Have all enforcement powers granted in chapter 9.46 RCW.

(11) Perform all other matters and things necessary to carry out the purposes and provisions of this chapter. [1998 c 245 § 106. Prior: 1987 c 511 § 3; 1987 c 505 § 57; 1986 c 158 § 21; 1985 c 375 § 2; 1982 2nd ex.s. c 7 § 5.]

**67.70.055 Activities prohibited to officers, employees, and members.** The director, deputy directors, any assistant directors, and employees of the state lottery and members of the lottery commission shall not:

(1) Serve as an officer or manager of any corporation or organization which conducts a lottery or gambling activity;

(2) Receive or share in, directly or indirectly, the gross profits of any lottery or other gambling activity regulated by the gambling commission;

(3) Be beneficially interested in any contract for the manufacture or sale of gambling devices, the conduct of a lottery or other gambling activity, or the provision of independent consultant services in connection with a lottery or other gambling activity. [1987 c 511 § 4; 1986 c 4 § 2.]

**67.70.060 Powers of director.** (1) The director or the director's authorized representative may:

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

(b) Inspect the books, documents, and records of any person lending money to or in any manner financing any license holder or applicant for a license or receiving any income or profits from the use of such license for the purpose of determining compliance or noncompliance with the provisions of this chapter or the rules and regulations adopted pursuant thereto.

(2) For the purpose of any investigation or proceeding under this chapter, the director or an administrative law judge appointed under chapter 34.12 RCW may conduct hearings, administer oaths or affirmations, or upon the director's or administrative law judge's motion or upon request of any party may subpoena witnesses, compel attendance, take depositions, take evidence, or require the production of any matter which is relevant to the investigation or proceeding, including but not limited to the existence, description, nature, custody, condition, or location of any books, documents, or other tangible things, or the identity or location of persons having knowledge or relevant facts, or any other matter reasonably calculated to lead to the discovery of material evidence.

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

(4) The administrative law judges appointed under chapter 34.12 RCW may conduct hearings respecting the suspension, revocation, or denial of licenses, may administer oaths, admit or deny admission of evidence, compel the attendance of witnesses, issue subpoenas, issue orders, and exercise all other powers and perform all other functions set out in chapter 34.05 RCW.

(5) Except as otherwise provided in this chapter, all proceedings under this chapter shall be in accordance with the Administrative Procedure Act, chapter 34.05 RCW. [1989 c 175 § 123; 1982 2nd ex.s. c 7 § 6.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**67.70.070 Licenses for lottery sales agents—Factors—"Person" defined.** No license as an agent to sell lottery tickets or shares may be issued to any person to engage in business exclusively as a lottery sales agent. Before issuing a license the director shall consider such factors as: (1) The financial responsibility and security of the person and his business or activity, (2) the accessibility of his place of business or activity to the public, (3) the sufficiency of existing licenses to serve the public convenience, and (4) the volume of expected sales.

For purposes of this section, the term "person" means an individual, association, corporation, club, trust, estate, society, company, joint stock company, receiver, trustee, assignee, referee, or any other person acting in a fiduciary or representative capacity, whether appointed by a court or otherwise, and any combination of individuals. "Person" does not mean any department, commission, agency, or instrumentality of the state, or any county or municipality or any agency or instrumentality thereof, except for retail outlets of the state liquor control board. [1982 2nd ex.s. c 7 § 7.]

**67.70.080 License as authority to act.** Any person licensed as provided in this chapter is hereby authorized and empowered to act as a lottery sales agent. [1982 2nd ex.s. c 7 § 8.]

**67.70.090 Denial, suspension, and revocation of licenses.** The director may deny an application for, or sus-

pend or revoke, after notice and hearing, any license issued pursuant to this chapter. Such license may, however, be temporarily suspended by the director without prior notice, pending any prosecution, investigation, or hearing. A license may be suspended or revoked or an application may be denied by the director for one or more of the following reasons:

(1) Failure to account for lottery tickets received or the proceeds of the sale of lottery tickets or to file a bond if required by the director or to comply with the instructions of the director concerning the licensed activity;

(2) For any of the reasons or grounds stated in RCW 9.46.075 or violation of this chapter or the rules of the commission;

(3) Failure to file any return or report or to keep records or to pay any tax required by this chapter;

(4) Fraud, deceit, misrepresentation, or conduct prejudicial to public confidence in the state lottery;

(5) That the number of lottery tickets sold by the lottery sales agent is insufficient to meet administrative costs, or that public convenience is adequately served by other licensees;

(6) A material change, since issuance of the license with respect to any matters required to be considered by the director under RCW 67.70.070.

For the purpose of reviewing any application for a license and for considering the denial, suspension, or revocation of any license the director may consider any prior criminal conduct of the applicant or licensee and the provisions of RCW 9.95.240 and of chapter 9.96A RCW shall not apply to such cases. [1982 2nd ex.s. c 7 § 9.]

**67.70.100 Assignment of rights prohibited—Exceptions—Notices—Assignment of payment of remainder of an annuity—Intervention—Limitation on payment by director—Rules—Recovery of costs of commission—Federal ruling required—Discharge of liability.** (1) Except under subsection (2) of this section, no right of any person to a prize drawn is assignable, except that payment of any prize drawn may be paid to the estate of a deceased prize winner, and except that any person pursuant to an appropriate judicial order may be paid the prize to which the winner is entitled.

(2)(a) The payment of all or part of the remainder of an annuity may be assigned to another person, pursuant to a voluntary assignment of the right to receive future annual prize payments, if the assignment is made pursuant to an appropriate judicial order of the Thurston county superior court or the superior court of the county in which the prize winner resides, if the winner is a resident of Washington state. If the prize winner is not a resident of Washington state, the winner must seek an appropriate order from the Thurston county superior court.

(b) If there is a voluntary assignment under (a) of this subsection, a copy of the petition for an order under (a) of this subsection and all notices of any hearing in the matter shall be served on the attorney general no later than ten days before any hearing or entry of any order.

(c) The court receiving the petition may issue an order approving the assignment and directing the director to pay to the assignee the remainder or portion of an annuity so assigned upon finding that all of the following conditions have been met:

(i) The assignment has been memorialized in writing and executed by the assignor and is subject to Washington law;

(ii) The assignor provides a sworn declaration to the court attesting to the facts that the assignor has had the opportunity to be represented by independent legal counsel in connection with the assignment, has received independent financial and tax advice concerning the effects of the assignment, and is of sound mind and not acting under duress, and the court makes findings determining so;

(iii) The assignee has provided a one-page written disclosure statement that sets forth in bold-face type, fourteen point or larger, the payments being assigned by amount and payment dates, the purchase price, or loan amount being paid; the interest rate or rate of discount to present value, assuming monthly compounding and funding on the contract date; and the amount, if any, of any origination or closing fees that will be charged to the lottery winner. The disclosure statement must also advise the winner that the winner should consult with and rely upon the advice of his or her own independent legal or financial advisors regarding the potential federal and state tax consequences of the transaction; and

(iv) The proposed assignment does not and will not include or cover payments or portions of payments subject to offsets pursuant to RCW 67.70.255 unless appropriate provision is made in the order to satisfy the obligations giving rise to the offset.

(d) The commission may intervene as of right in any proceeding under this section but shall not be deemed an indispensable or necessary party.

(3) The director will not pay the assignee an amount in excess of the annual payment entitled to the assignor.

(4) The commission may adopt rules pertaining to the assignment of prizes under this section, including recovery of actual costs incurred by the commission. The recovery of actual costs shall be deducted from the initial annuity payment made to the assignee.

(5) No voluntary assignment under this section is effective unless and until the national office of the federal internal revenue service provides a ruling that declares that the voluntary assignment of prizes will not affect the federal income tax treatment of prize winners who do not assign their prizes. If at any time the federal internal revenue service or a court of competent jurisdiction provides a determination letter, revenue ruling, other public ruling of the internal revenue service or published decision to any state lottery or state lottery prize winner declaring that the voluntary assignment of prizes will effect the federal income tax treatment of prize winners who do not assign their prizes, the director shall immediately file a copy of that letter, ruling, or published decision with the secretary of state. No further voluntary assignments may be allowed after the date the ruling, letter, or published decision is filed.

(6) The occurrence of any event described in subsection (5) of this section does not render invalid or ineffective assignments validly made and approved pursuant to an appropriate judicial order before the occurrence of any such event.

(7) The requirement for a disclosure statement in subsection (2)(c)(iii) of this section does not apply to any assignment agreement executed before April 21, 1997.

(2010 Ed.)

(8) The commission and the director shall be discharged of all further liability upon payment of a prize pursuant to this section. [1997 c 111 § 1; 1996 c 228 § 2; 1982 2nd ex.s. c 7 § 10.]

**Intent—1996 c 228:** "The Washington state lottery act under chapter 7, Laws of 1982 2nd ex. sess., provides, among other things, that the right of any person to a prize shall not be assignable, except to the estate of a deceased prize winner, or to a person designated pursuant to an appropriate judicial order. Current law and practices provide that those who win lotto jackpots are paid in annual installments over a period of twenty years. The legislature recognizes that some prize winners, particularly elderly persons, those seeking to acquire a small business, and others with unique needs, may not want to wait to be paid over the course of up to twenty years. It is the intent of the legislature to provide a restrictive means to accommodate those prize winners who wish to enjoy more of their winnings currently, without impacting the current fiscal structure of the Washington state lottery commission." [1996 c 228 § 1.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**67.70.110 Maximum price of ticket or share limited—Sale by other than licensed agent prohibited.** A person shall not sell a ticket or share at a price greater than that fixed by rule of the commission. No person other than a licensed lottery sales agent shall sell lottery tickets, except that nothing in this section prevents any person from giving lottery tickets or shares to another as a gift. [1982 2nd ex.s. c 7 § 11.]

**67.70.120 Sale to minor prohibited—Exception—Penalties.** (1) A ticket or share shall not be sold to any person under the age of eighteen, but this shall not be deemed to prohibit the purchase of a ticket or share for the purpose of making a gift by a person eighteen years of age or older to a person less than that age.

(2) Any licensee who knowingly sells or offers to sell a lottery ticket or share to any person under the age of eighteen is guilty of a misdemeanor.

(3) In the event that a person under the age of eighteen years directly purchases a ticket in violation of this section, that person is guilty of a misdemeanor. No prize will be paid to such person and the prize money otherwise payable on the ticket will be treated as unclaimed pursuant to RCW 67.70.190. [2003 c 53 § 303; 1987 c 511 § 6; 1982 2nd ex.s. c 7 § 12.]

**Intent—Effective date—2003 c 53:** See notes following RCW 2.48.180.

**67.70.125 Use of public assistance electronic benefit cards prohibited—Licensee to report violations.** (1) Any licensee authorized under this chapter is prohibited from allowing the use of public assistance electronic benefit cards to purchase lottery tickets or shares authorized under this chapter.

(2) Any licensee authorized under this chapter shall report to the department of social and health services any known violations of RCW 74.08.580. [2002 c 252 § 5.]

**67.70.130 Prohibited acts—Penalty.** (1) A person shall not alter or forge a lottery ticket. A person shall not claim a lottery prize or share of a lottery prize by means of fraud, deceit, or misrepresentation. A person shall not conspire, aid, abet, or agree to aid another person or persons to

claim a lottery prize or share of a lottery prize by means of fraud, deceit, or misrepresentation.

(2) A violation of this section is a class B felony punishable according to chapter 9A.20 RCW. [2003 c 53 § 304; 1982 2nd ex.s. c 7 § 13.]

**Intent—Effective date—2003 c 53:** See notes following RCW 2.48.180.

**67.70.140 Penalty for unlicensed activity.** (1) Any person who conducts any activity for which a license is required by this chapter, or by rule of the commission, without the required license, is guilty of a class B felony punishable according to chapter 9A.20 RCW.

(2) If any corporation conducts any activity for which a license is required by this chapter, or by rule of the commission, without the required license, it may be punished by forfeiture of its corporate charter, in addition to the other penalties set forth in this section. [2003 c 53 § 305; 1982 2nd ex.s. c 7 § 14.]

**Intent—Effective date—2003 c 53:** See notes following RCW 2.48.180.

**67.70.150 Penalty for false or misleading statement or entry or failure to produce documents.** Whoever, in any application for a license or in any book or record required to be maintained or in any report required to be submitted, makes any false or misleading statement, or makes any false or misleading entry or wilfully fails to maintain or make any entry required to be maintained or made, or who wilfully refuses to produce for inspection any book, record, or document required to be maintained or made by federal or state law is guilty of a gross misdemeanor. [1982 2nd ex.s. c 7 § 15.]

**67.70.160 Penalty for violation of chapter—Exceptions.** Any person who violates any provision of this chapter for which no penalty is otherwise provided, or knowingly causes, aids, abets, or conspires with another to cause any person to violate any provision of this chapter is guilty of a class C felony, except where other penalties are specifically provided for in this chapter. [1982 2nd ex.s. c 7 § 16.]

**67.70.170 Penalty for violation of rules—Exceptions.** Any person who violates any rule adopted pursuant to this chapter for which no penalty is otherwise provided, or knowingly causes, aids, abets, or conspires with another to cause any person to violate any rule adopted pursuant to this chapter is guilty of a gross misdemeanor, except where other penalties are specifically provided for in this chapter. [1982 2nd ex.s. c 7 § 17.]

**67.70.180 Persons prohibited from purchasing tickets or shares or receiving prizes—Penalty.** A ticket or share shall not be purchased by, and a prize shall not be paid to any member of the commission, the director, or an employee of the lottery or to any spouse, child, brother, sister, or parent residing as a member of the same household in the principal place of abode of any member of the commission, the director or an employee of the lottery.

A violation of this section is a misdemeanor. [1987 c 511 § 7; 1982 2nd ex.s. c 7 § 18.]

**67.70.190 Unclaimed prizes.** Unclaimed prizes shall be retained in the state lottery account for the person entitled thereto for one hundred eighty days after the drawing in which the prize is won, or after the official end of the game for instant prizes. If no claim is made for the prize within this time, all rights to the prize shall be extinguished, and the prize shall be retained in the state lottery fund for further use as prizes, except that one-third of all unclaimed prize money shall be deposited in the economic development strategic reserve account created in RCW 43.330.250.

On July 1, 2009, June 30, 2010, and June 30, 2011, all unclaimed prize money retained in the state lottery fund [account] in excess of three million dollars, excluding amounts distributed to the economic development strategic reserve account, shall be transferred into the state general fund. [2009 c 564 § 949; 2005 c 427 § 2; 1994 c 218 § 5; 1988 c 289 § 802; 1987 c 511 § 8; 1982 2nd ex.s. c 7 § 19.]

**Effective date—2009 c 564:** See note following RCW 2.68.020.

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**67.70.200 Deposit of moneys received by agents from sales—Power of director—Reports.** The director, in his discretion, may require any or all lottery sales agents to deposit to the credit of the state lottery account in banks designated by the state treasurer, all moneys received by such agents from the sale of lottery tickets or shares, less the amount, if any, retained as compensation for the sale of the tickets or shares, and to file with the director or his designated agents, reports of their receipts and transactions in the sale of lottery tickets in such form and containing such information as he may require. The director may make such arrangements for any person, including a bank, to perform such functions, activities, or services in connection with the operation of the lottery as he or she may deem advisable pursuant to this chapter and the rules of the commission, and such functions, activities, or services shall constitute lawful functions, activities, and services of such person. [1987 c 511 § 9; 1982 2nd ex.s. c 7 § 20.]

**67.70.210 Other law inapplicable to sale of tickets or shares.** No other law, including chapter 9.46 RCW, providing any penalty or disability for the sale of lottery tickets or any acts done in connection with a lottery applies to the sale of tickets or shares performed pursuant to this chapter. [1982 2nd ex.s. c 7 § 21.]

**67.70.220 Payment of prizes to minor.** If the person entitled to a prize is under the age of eighteen years, and such prize is less than five thousand dollars, the director may direct payment of the prize by delivery to an adult member of the minor's family or a guardian of the minor of a check or draft payable to the order of such minor. If the person entitled to a prize is under the age of eighteen years, and such prize is five thousand dollars or more, the director may direct payment to such minor by depositing the amount of the prize in any bank to the credit of an adult member of the minor's family or a guardian of the minor as custodian for such minor.

The person so named as custodian shall have the same duties and powers as a person designated as a custodian in a manner prescribed by the Washington uniform transfers to minors act, chapter 11.114 RCW, and for the purposes of this section the terms "adult member of a minor's family," "guardian of a minor," and "bank" shall have the same meaning as in chapter 11.114 RCW. The commission and the director shall be discharged of all further liability upon payment of a prize to a minor pursuant to this section. [1991 c 193 § 30; 1985 c 7 § 128; 1982 2nd ex.s. c 7 § 22.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**67.70.230 State lottery account created.** There is hereby created and established a separate account, to be known as the state lottery account. Such account shall be managed, maintained, and controlled by the commission and shall consist of all revenues received from the sale of lottery tickets or shares, and all other moneys credited or transferred thereto from any other fund or source pursuant to law. The account shall be a separate account outside the state treasury. No appropriation is required to permit expenditures and payment of obligations from the account. During the 2009-2011 fiscal biennium, the legislature may transfer from the state lottery account to the education legacy trust account such amounts as reflect the excess fund balance of the account. [2010 1st sp.s. c 37 § 941; 1985 c 375 § 4; 1982 2nd ex.s. c 7 § 23.]

**Effective date—2010 1st sp.s. c 37:** See note following RCW 13.06.050.

**67.70.240 Use of moneys in state lottery account limited.** The moneys in the state lottery account shall be used only:

(1) For the payment of prizes to the holders of winning lottery tickets or shares;

(2) For purposes of making deposits into the reserve account created by RCW 67.70.250 and into the lottery administrative account created by RCW 67.70.260;

(3) For purposes of making deposits into the education construction fund created in RCW 43.135.045 and the Washington opportunity pathways account created in RCW 28B.76.526. On and after July 1, 2010, all deposits not otherwise obligated under this section shall be placed in the Washington opportunity pathways account. Moneys in the state lottery account deposited in the Washington opportunity pathways account are included in "general state revenues" under RCW 39.42.070;

(4) For distribution to a county for the purpose of paying the principal and interest payments on bonds issued by the county to construct a baseball stadium, as defined in RCW 82.14.0485, including reasonably necessary preconstruction costs. Three million dollars shall be distributed under this subsection during calendar year 1996. During subsequent years, such distributions shall equal the prior year's distributions increased by four percent. Distributions under this subsection shall cease when the bonds issued for the construction of the baseball stadium are retired, but not more than twenty years after the tax under RCW 82.14.0485 is first imposed;

(5) For distribution to the stadium and exhibition center account, created in RCW 43.99N.060. Subject to the conditions of RCW 43.99N.070, six million dollars shall be distrib-

uted under this subsection during the calendar year 1998. During subsequent years, such distribution shall equal the prior year's distributions increased by four percent. No distribution may be made under this subsection after December 31, 1999, unless the conditions for issuance of the bonds under RCW 43.99N.020(2) are met. Distributions under this subsection shall cease when the bonds are retired, but not later than December 31, 2020;

(6) For the purchase and promotion of lottery games and game-related services; and

(7) For the payment of agent compensation.

The office of financial management shall require the allotment of all expenses paid from the account and shall report to the ways and means committees of the senate and house of representatives any changes in the allotments. [2010 1st sp.s. c 27 § 3. Prior: 2009 c 500 § 11; 2009 c 479 § 44; 2001 c 3 § 4 (Initiative Measure No. 728, approved November 7, 2000); 1997 c 220 § 206 (Referendum Bill No. 48, approved June 17, 1997); 1995 3rd sp.s. c 1 § 105; 1987 c 513 § 7; 1985 c 375 § 5; 1982 2nd ex.s. c 7 § 24.]

**Findings—Intent—2010 1st sp.s. c 27:** See note following RCW 28B.76.526.

**Effective date—2009 c 500:** See note following RCW 39.42.070.

**Effective date—2009 c 479:** See note following RCW 2.56.030.

**Short title—Purpose—Intent—Construction—Severability—Effective dates—2001 c 3 (Initiative Measure No. 728):** See notes following RCW 28A.505.210.

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

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

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**67.70.241 Promotion of lottery by person or entity responsible for operating stadium and exhibition center—Commission approval—Cessation of obligation.** The person or entity responsible for operating a stadium and exhibition center as defined in RCW 36.102.010 shall promote the lottery with any combination of in-kind advertising, sponsorship, or prize promotions, valued at one million dollars annually beginning January 1998 and increased by four percent each year thereafter for the purpose of increasing lottery sales of games authorized under RCW 67.70.043. The content and value of the advertising sponsorship or prize promotions are subject to reasonable approval in advance by the lottery commission. The obligation of this section shall cease when the distributions under RCW 67.70.240(5) end, but not later than December 31, 2020. [1997 c 220 § 208 (Referendum Bill No. 48, approved June 17, 1997).]

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

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**67.70.250 Methods for payment of prizes by installments.** If the director decides to pay any portion of or all of the prizes in the form of installments over a period of years, the director shall provide for the payment of all such installments for any specific lottery game by one, but not both, of the following methods:

(1) The director may enter into contracts with any financially responsible person or firm providing for the payment of such installments; or

(2) The director may establish and maintain a reserve account into which shall be placed sufficient moneys for the director to pay such installments as they become due. Such reserve account shall be maintained as a separate and independent fund outside the state treasury. [1987 c 511 § 11; 1982 2nd ex.s. c 7 § 25.]

**67.70.255 Debts owed to state agency or political subdivision—Debt information to lottery commission—Prize set off against debts.** (1) Any state agency or political subdivision that maintains records of debts owed to the state or political subdivision, or that the state is authorized to enforce or collect, may submit data processing tapes containing debt information to the lottery in a format specified by the lottery. State agencies or political subdivisions submitting debt information tapes shall provide updates on a regular basis at intervals not to exceed one month and shall be solely responsible for the accuracy of the information contained therein.

(2) The lottery shall include the debt information submitted by state agencies or political subdivisions in its validation and prize payment process. The lottery shall delay payment of a prize exceeding six hundred dollars for a period not to exceed two working days, to any person owing a debt to a state agency or political subdivision pursuant to the information submitted in subsection (1) of this section. The lottery shall contact the state agency or political subdivision that provided the information to verify the debt. The prize shall be paid to the claimant if the debt is not verified by the submitting state agency or political subdivision within two working days. If the debt is verified, the prize shall be disbursed pursuant to subsection (3) of this section.

(3) Prior to disbursement, any lottery prize exceeding six hundred dollars shall be set off against any debts owed by the prize winner to a state agency or political subdivision, or that the state is authorized to enforce or collect. [1986 c 83 § 2.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**67.70.260 Lottery administrative account created.** There is hereby created the lottery administrative account in the state treasury. The account shall be managed, controlled, and maintained by the director. The legislature may appropriate from the account for the payment of costs incurred in the operation and administration of the lottery. During the 2001-2003 fiscal biennium, the legislature may transfer from the lottery administrative account to the state general fund such amounts as reflect the appropriations reductions made by the 2002 supplemental appropriations act for administrative efficiencies and savings. [2002 c 371 § 919; 1985 c 375 § 6; 1982 2nd ex.s. c 7 § 26.]

**Severability—Effective date—2002 c 371:** See notes following RCW 9.46.100.

**67.70.270 Members of commission—Compensation—Travel expenses.** Each member of the commission shall be compensated in accordance with RCW 43.03.250 and shall be reimbursed for actual necessary traveling and other expenses in going to, attending, and returning from

meetings of the commission and actual and necessary traveling and other expenses incurred in the discharge of such duties as may be requested by a majority vote of the commission or by the director. [1984 c 287 § 101; 1982 2nd ex.s. c 7 § 27.]

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

**67.70.280 Application of administrative procedure act.** The provisions of the administrative procedure act, chapter 34.05 RCW, shall apply to administrative actions taken by the commission or the director pursuant to this chapter. [1982 2nd ex.s. c 7 § 28.]

**67.70.290 Post-audits by state auditor.** The state auditor shall conduct an annual post-audit of all accounts and transactions of the lottery and such other special post-audits as he may be directed to conduct pursuant to chapter 43.09 RCW. [1982 2nd ex.s. c 7 § 29.]

**67.70.300 Investigations by attorney general authorized.** The attorney general may investigate violations of this chapter, and of the criminal laws within this state, by the commission, the director, or the director's employees, licensees, or agents, in the manner prescribed for criminal investigations in RCW 43.10.090. [1987 c 511 § 13; 1982 2nd ex.s. c 7 § 30.]

**67.70.310 Management review by director of financial management.** The director of financial management may conduct a management review of the commission's lottery operations to assure that:

(1) The manner and time of payment of prizes to the holder of winning tickets or shares is consistent with this chapter and the rules adopted under this chapter;

(2) The apportionment of total revenues accruing from the sale of lottery tickets or shares and from all other sources is consistent with this chapter;

(3) The manner and type of lottery being conducted, and the expenses incidental thereto, are the most efficient and cost-effective; and

(4) The commission is not unnecessarily incurring operating and administrative costs.

In conducting a management review, the director of financial management may inspect the books, documents, and records of the commission. Upon completion of a management review, all irregularities shall be reported to the attorney general, the joint legislative audit and review committee, and the state auditor. The director of financial management shall make such recommendations as may be necessary for the most efficient and cost-effective operation of the lottery. [1996 c 288 § 50; 1982 2nd ex.s. c 7 § 31.]

**67.70.320 Verification by certified public accountant.** The director of financial management shall select a certified public accountant to verify that:

(1) The manner of selecting the winning tickets or shares is consistent with this chapter; and

(2) The manner and time of payment of prizes to the holder of winning tickets or shares is consistent with this

chapter. The cost of these services shall be paid from moneys placed within the lottery administrative account created in RCW 67.70.260. [1987 c 511 § 14; 1982 2nd ex.s. c 7 § 32.]

**67.70.330 Enforcement powers of director—Office of the director designated law enforcement agency.** The director shall have the power to enforce this chapter and the penal laws of this state relating to the conduct of or participation in lottery activities and the manufacturing, importation, transportation, distribution, possession, and sale of equipment or paraphernalia used or for use in connection therewith. The director, the deputy director, assistant directors, and each of the director's investigators, enforcement officers, and inspectors shall have the power to enforce this chapter and the penal laws of this state relating to the conduct of or participation in lottery activities and the manufacturing, importation, transportation, distribution, possession, and sale of equipment or paraphernalia used or for use in connection therewith. They shall have the power and authority to apply for and execute all warrants and serve process of law issued by the courts in enforcing the penal provisions of this chapter and the penal laws of this state relating to the conduct of or participation in lottery activities and the manufacturing, importation, transportation, distribution, possession, and sale of equipment or paraphernalia used or for use in connection therewith. They shall have the power to arrest without a warrant, any person or persons found in the act of violating any of the penal provisions of this chapter and the penal laws of this state relating to the conduct of or participation in lottery activities and the manufacturing, importation, transportation, distribution, possession, and sale of equipment or paraphernalia used or for use in connection therewith. To the extent set forth in this section, the office of the director shall be a law enforcement agency of this state with the power to investigate for violations of and to enforce the provisions of this chapter and to obtain information from and provide information to all other law enforcement agencies. [1987 c 511 § 15; 1982 2nd ex.s. c 7 § 33.]

**67.70.340 Transfer of shared game lottery proceeds.**

(1) The legislature recognizes that creating a shared game lottery could result in less revenue being raised by the existing state lottery ticket sales. The legislature further recognizes that the fund most impacted by this potential event is the Washington opportunity pathways account. Therefore, it is the intent of the legislature to use some of the proceeds from the shared game lottery to make up the difference that the potential state lottery revenue loss would have on the Washington opportunity pathways account. The legislature further intends to use some of the proceeds from the shared game lottery to fund programs and services related to problem and pathological gambling.

(2) The Washington opportunity pathways account is expected to receive one hundred two million dollars annually from state lottery games other than the shared game lottery. For fiscal year 2011 and thereafter, if the amount of lottery revenues earmarked for the Washington opportunity pathways account is less than one hundred two million dollars, the commission, after making the transfer required under subsection (3) of this section, must transfer sufficient moneys

(2010 Ed.)

from revenues derived from the shared game lottery into the Washington opportunity pathways account to bring the total revenue up to one hundred two million dollars.

(3)(a) The commission shall transfer, from revenue derived from the shared game lottery, to the problem gambling account created in RCW 43.20A.892, an amount equal to the percentage specified in (b) of this subsection of net receipts. For purposes of this subsection, "net receipts" means the difference between (i) revenue received from the sale of lottery tickets or shares and revenue received from the sale of shared game lottery tickets or shares; and (ii) the sum of payments made to winners.

(b) In fiscal year 2006, the percentage to be transferred to the problem gambling account is one-tenth of one percent. In fiscal year 2007 and subsequent fiscal years, the percentage to be transferred to the problem gambling account is thirteen one-hundredths of one percent.

(4) The commission shall transfer the remaining net revenues, if any, derived from the shared game lottery "Powerball" authorized in RCW 67.70.044(1) after the transfers pursuant to this section into the state general fund for the student achievement program under RCW 28A.505.220.

(5) The remaining net revenues, if any, in the shared game lottery account after the transfers pursuant to this section shall be deposited into the Washington opportunity pathways account. [2010 1st sp.s. c 27 § 4. Prior: 2009 c 576 § 2; 2009 c 479 § 45; 2005 c 369 § 4; 2002 c 349 § 3.]

**Findings—Intent—2010 1st sp.s. c 27:** See note following RCW 28B.76.526.

**Effective date—2009 c 479:** See note following RCW 2.56.030.

**Findings—Intent—Severability—Effective date—2005 c 369:** See notes following RCW 43.20A.890.

**67.70.360 Marketing lottery as contributor to opportunity pathways—Strategy and implementation.** In consultation with independent experts and in collaboration with the higher education coordinating board, the state lottery commission shall upon July 13, 2010, develop and begin implementation of a strategy and plan for actively marketing the state lottery as an essential contributor to Washington's opportunity pathways. The commission shall report to the economic development, higher education, and commerce committees of the legislature on the key messages, components, performance objectives, and anticipated revenue impacts of the strategy by September 1, 2010, and by December 1, 2010. [2010 1st sp.s. c 27 § 6.]

**Findings—Intent—2010 1st sp.s. c 27:** See note following RCW 28B.76.526.

**67.70.902 Construction—1982 2nd ex.s. c 7.** This act shall be liberally construed to carry out the purposes and policies of the act. [1982 2nd ex.s. c 7 § 35.]

**67.70.903 Severability—1982 2nd ex.s. c 7.** If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1982 2nd ex.s. c 7 § 40.]

**67.70.904 Severability—1985 c 375.** If any provision of this act or its application to any person or circumstance is

held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1985 c 375 § 9.]

**67.70.905 Effective date—1985 c 375.** This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions and shall take effect March 1, 1985. [1985 c 375 § 10.]

**Reviser's note:** 1985 c 375 was signed by the governor May 20, 1985.

**67.70.906 Construction—Chapter applicable to state registered domestic partnerships—2009 c 521.** For the purposes of this chapter, the terms spouse, marriage, marital, husband, wife, widow, widower, next of kin, and family shall be interpreted as applying equally to state registered domestic partnerships or individuals in state registered domestic partnerships as well as to marital relationships and married persons, and references to dissolution of marriage shall apply equally to state registered domestic partnerships that have been terminated, dissolved, or invalidated, to the extent that such interpretation does not conflict with federal law. Where necessary to implement chapter 521, Laws of 2009, gender-specific terms such as husband and wife used in any statute, rule, or other law shall be construed to be gender neutral, and applicable to individuals in state registered domestic partnerships. [2009 c 521 § 147.]

# Title 68

## CEMETERIES, MORGUES, AND HUMAN REMAINS

### Chapters

- 68.04** Definitions.
- 68.05** Funeral and cemetery board.
- 68.20** Private cemeteries.
- 68.24** Cemetery property.
- 68.28** Mausoleums and columbariums.
- 68.32** Title and rights to cemetery plots.
- 68.36** Abandoned lots.
- 68.40** Endowment and nonendowment care.
- 68.44** Endowment care fund.
- 68.46** Prearrangement contracts.
- 68.50** Human remains.
- 68.52** Public cemeteries and morgues.
- 68.54** Annexation and merger of cemetery districts.
- 68.56** Penal and miscellaneous provisions.
- 68.60** Abandoned and historic cemeteries and historic graves.
- 68.64** Uniform anatomical gift act.

*Burial and removal permits, death certificates, vital statistics: Chapter 70.58 RCW.*

*Burial insurance: RCW 18.39.240 through 18.39.360.*

*Cemetery districts, excess levies authorized: RCW 84.52.052.*

*Cemetery funds transferred to state treasury: RCW 43.79.330.*

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

*Embalmers and funeral directors: Chapter 18.39 RCW.*

*Funeral service contracts: RCW 18.39.240 through 18.39.360.*

*Indian graves and records: Chapter 27.44 RCW.*

*Indigent persons: RCW 36.39.030.*

*Veterans, burial: Chapter 73.24 RCW.*

*Vital statistics: Chapter 70.58 RCW.*

*Washington veterans' home and soldiers' home, burial of deceased members: RCW 72.36.110.*

### Chapter 68.04 RCW

#### DEFINITIONS

#### Sections

- 68.04.020 "Human remains," "remains."
- 68.04.030 "Cremated human remains."
- 68.04.040 "Cemetery."
- 68.04.050 "Burial park."
- 68.04.060 "Mausoleum."
- 68.04.070 "Crematory."
- 68.04.080 "Columbarium."
- 68.04.100 "Interment."
- 68.04.110 "Cremation."
- 68.04.120 "Inurnment."
- 68.04.130 "Entombment."
- 68.04.140 "Burial."
- 68.04.150 "Grave."
- 68.04.160 "Crypt."
- 68.04.165 "Outer burial container."
- 68.04.170 "Niche."
- 68.04.190 "Cemetery authority."
- 68.04.210 "Cemetery business."
- 68.04.230 "Lot" or "plot."
- 68.04.240 "Owner of interment rights."
- 68.04.250 "Interment right."
- 68.04.260 "Scattering garden."
- 68.04.270 "Scattering."

68.04.280 "Multiple interment."

68.04.900 Construction—Title applicable to state registered domestic partnerships—2009 c 521.

**68.04.020 "Human remains," "remains."** "Human remains" or "remains" means the body of a deceased person, includes the body in any stage of decomposition, and includes cremated human remains. [2005 c 365 § 27; 1977 c 47 § 1; 1943 c 247 § 2; Rem. Supp. 1943 § 3778-2.]

The annotations apply to 1943 c 247, the general cemetery act, which was codified as RCW 68.04.020 through 68.04.240, 68.08.010 through 68.08.030, 68.08.120 through 68.08.220, 68.08.240, 68.20.010 through 68.20.100, 68.24.010 through 68.24.180, 68.28.010 through 68.28.070, 68.32.010 through 68.32.170, 68.36.010 through 68.36.100, 68.40.010 through 68.40.090, 68.44.010 through 68.44.170, and 68.48.040 through 68.48.090.

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**68.04.030 "Cremated human remains."** "Cremated human remains" means the end products of cremation. [2005 c 365 § 28; 1977 c 47 § 2; 1943 c 247 § 3; Rem. Supp. 1943 § 3778-3.]

**68.04.040 "Cemetery."** "Cemetery" means: (1) Any one, or a combination of more than one, of the following, in a place used, or intended to be used for the placement of human remains and dedicated, for cemetery purposes:

- (a) A burial park, for earth interments.
- (b) A mausoleum, for crypt interments.
- (c) A columbarium, for permanent niche interments; or

(2) For the purposes of chapter 68.60 RCW only, "cemetery" means any burial site, burial grounds, or place where five or more human remains are buried. Unless a cemetery is designated as a parcel of land identifiable and unique as a cemetery within the records of the county assessor, a cemetery's boundaries shall be a minimum of ten feet in any direction from any burials therein. [2005 c 365 § 29; 1990 c 92 § 7; 1979 c 21 § 1; 1943 c 247 § 4; Rem. Supp. § 3778-4.]

**68.04.050 "Burial park."** "Burial park" means a tract of land for the burial of human remains in the ground, used or intended to be used, and dedicated, for cemetery purposes. [1943 c 247 § 5; Rem. Supp. 1943 § 3778-5.]

**68.04.060 "Mausoleum."** "Mausoleum" means a structure or building for the entombment of human remains in crypts in a place used, or intended to be used, and dedicated, for cemetery purposes. [1979 c 21 § 2; 1943 c 247 § 6; Rem. Supp. 1943 § 3778-6.]

**68.04.070 "Crematory."** "Crematory" means a building or area of a building that houses one or more cremation chambers, to be used for the cremation of human remains.

[2005 c 365 § 30; 1943 c 247 § 7; Rem. Supp. 1943 § 3778-7.]

**68.04.080 "Columbarium."** "Columbarium" means a structure, room, or other space in a building or structure containing niches for permanent placement of cremated human remains in a place used, or intended to be used, and dedicated, for cemetery purposes. [2005 c 365 § 31; 1943 c 247 § 8; Rem. Supp. 1943 § 3778-8.]

**68.04.100 "Interment."** "Interment" means the placement of human remains in a cemetery. [2005 c 365 § 32; 1943 c 247 § 10; Rem. Supp. 1943 § 3778-10.]

**68.04.110 "Cremation."** "Cremation" means the reduction of human remains to bone fragments in a crematory by means of incineration. [2005 c 365 § 33; 1987 c 331 § 1; 1977 c 47 § 3; 1943 c 247 § 11; Rem. Supp. 1943 § 3778-11.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**68.04.120 "Inurnment."** "Inurnment" means placing cremated human remains in a cemetery. [2005 c 365 § 34; 1943 c 247 § 12; Rem. Supp. 1943 § 3778-12.]

**68.04.130 "Entombment."** "Entombment" means the placement of human remains in a crypt. [2005 c 365 § 35; 1943 c 247 § 13; Rem. Supp. 1943 § 3778-13.]

**68.04.140 "Burial."** "Burial" means the placement of human remains in a grave. [1943 c 247 § 14; Rem. Supp. 1943 § 3778-14.]

**68.04.150 "Grave."** "Grave" means a space of ground in a burial park, used or intended to be used, for burial. [1943 c 247 § 15; Rem. Supp. 1943 § 3778-15.]

**68.04.160 "Crypt."** "Crypt" means a space in a mausoleum for the placement of human remains. [2005 c 365 § 36; 1979 c 21 § 3; 1943 c 247 § 16; Rem. Supp. 1943 § 3778-16.]

**68.04.165 "Outer burial container."** "Outer burial container" means any container which is buried in the ground for the placement of human remains in the burial process. Outer burial containers include, but are not limited to vaults, lawn crypts, and liners. [2005 c 365 § 37; 1979 c 21 § 4.]

**68.04.170 "Niche."** "Niche" means a space in a columbarium for placement of cremated human remains. [2005 c 365 § 38; 1943 c 247 § 17; Rem. Supp. 1943 § 3778-17.]

**68.04.190 "Cemetery authority."** "Cemetery authority" means an entity that has obtained a certificate of authority to operate a cemetery from the funeral and cemetery board, or any other entity that operates a cemetery that is not under the jurisdiction of the funeral and cemetery board. [2009 c 102 § 6; 2005 c 365 § 39; 1943 c 247 § 19; Rem. Supp. 1943 § 3778-19.]

**Funeral directors and embalmers account and cemetery account abolished, moneys transferred to funeral and cemetery account—2009 c 102:** See note following RCW 18.39.810.

**68.04.210 "Cemetery business."** "Cemetery business" includes establishing, maintaining, operating, and improving a cemetery for the placement of human remains, and the care and preservation of the cemetery property. [2005 c 365 § 40; 1943 c 247 § 21; Rem. Supp. 1943 § 3778-21.]

**68.04.230 "Lot" or "plot."** "Lot" or "plot" means space in a cemetery, used or intended to be used for the interment of human remains. [2005 c 365 § 41; 1943 c 247 § 23; Rem. Supp. 1943 § 3778-23.]

**68.04.240 "Owner of interment rights."** "Owner of interment rights" means any person who is listed as the owner of record of a right or rights of interment in the office of a cemetery authority. [2005 c 365 § 45; 1943 c 247 § 24; Rem. Supp. 1943 § 3778-24.]

**68.04.250 "Interment right."** "Interment right" means the right to inter human remains in a particular space in a cemetery. [2005 c 365 § 42.]

**68.04.260 "Scattering garden."** "Scattering garden" means a designated area in a cemetery for the scattering of cremated human remains. [2005 c 365 § 43.]

**68.04.270 "Scattering."** "Scattering" means the removal of cremated human remains from their container for the purpose of scattering the cremated human remains in any lawful manner. [2005 c 365 § 44.]

**68.04.280 "Multiple interment."** "Multiple interment" means two or more human remains are buried in the ground, in outer burial enclosures or chambers, placed one on top of another, with a ground level surface the same size as a single grave or right of interment. [2005 c 359 § 1.]

**68.04.900 Construction—Title applicable to state registered domestic partnerships—2009 c 521.** For the purposes of this title, the terms spouse, marriage, marital, husband, wife, widow, widower, next of kin, and family shall be interpreted as applying equally to state registered domestic partnerships or individuals in state registered domestic partnerships as well as to marital relationships and married persons, and references to dissolution of marriage shall apply equally to state registered domestic partnerships that have been terminated, dissolved, or invalidated, to the extent that such interpretation does not conflict with federal law. Where necessary to implement chapter 521, Laws of 2009, gender-specific terms such as husband and wife used in any statute, rule, or other law shall be construed to be gender neutral, and applicable to individuals in state registered domestic partnerships. [2009 c 521 § 148.]

## Chapter 68.05 RCW

### FUNERAL AND CEMETERY BOARD

#### Sections

68.05.010	Definitions.
68.05.020	"Board" defined.
68.05.024	"Department" defined.
68.05.028	"Director" defined.

68.05.030	"Endowment care," "endowed care" defined.
68.05.090	Administration and enforcement of title.
68.05.095	Program administrator or manager.
68.05.100	Rules.
68.05.105	Authority of the board.
68.05.115	Sale or transfer of cemetery authority or creation of a new cemetery—Penalty for noncompliance.
68.05.120	Actions to enforce law—Attorney general.
68.05.150	Examination of funds—Powers, duties.
68.05.155	Prearrangement sales license.
68.05.160	Action required when authority fails to deposit minimum endowment amount or comply with prearrangement contract provisions.
68.05.170	Order requiring reinvestment in compliance with title—Actions for preservation and protection.
68.05.173	Revocation, suspension of certificate or license.
68.05.175	Permit or endorsement required for cremation.
68.05.180	Annual report of authority—Contents—Verification.
68.05.190	Examination of reports.
68.05.195	Burial or scatter of cremated remains—Permit.
68.05.205	Fees.
68.05.210	Proof of applicant's compliance with laws and financial responsibility.
68.05.215	Certificates—Regulatory charges—Expiration.
68.05.225	Sales licenses—Terms—Fees.
68.05.235	Reports—Failure to file.
68.05.240	Interment, certificate of authority required—Penalty.
68.05.245	Crematory permits or endorsements—Terms—Fees.
68.05.254	Examination of endowment funds and prearrangement trust funds.
68.05.259	Payment of examination expenses.
68.05.290	Board members' immunity from suits.
68.05.300	Unprofessional conduct—Disciplinary action.
68.05.310	Prearrangement sales—Disciplinary action.
68.05.320	Board action against authorities—Administrative procedures.
68.05.330	Violation—Penalty—Unfair practice—Other laws applicable.
68.05.340	Board action against authorities—Cease and desist orders.
68.05.350	Delaying board action pending administrative proceedings.
68.05.360	Board action against authorities—Hearing location—Decision—Review.
68.05.370	Board action against authorities—Enforcement of orders.
68.05.390	Permit or endorsement required for cremation—Penalty.
68.05.400	Exemptions from chapter.
68.05.430	Uniform regulation of business and professions act.
68.05.900	Effective date—1987 c 331.

**68.05.010 Definitions.** The definitions in chapter 68.04 RCW are applicable to this chapter and govern the meaning of terms used in this chapter, except as otherwise provided. [2005 c 365 § 46; 1953 c 290 § 26.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**68.05.020 "Board" defined.** The term "board" used in this chapter means the funeral and cemetery board. [2009 c 102 § 7; 1953 c 290 § 27.]

**Funeral directors and embalmers account and cemetery account abolished, moneys transferred to funeral and cemetery account—2009 c 102:** See note following RCW 18.39.810.

**68.05.024 "Department" defined.** "Department" used in this chapter means the department of licensing. [1987 c 331 § 2.]

**68.05.028 "Director" defined.** "Director" used in this chapter means the director of licensing. [1987 c 331 § 3.]

**68.05.030 "Endowment care," "endowed care" defined.** The terms "endowment care" or "endowed care" used in this chapter shall include special care funds and all funds held for or represented as maintenance funds. [2005 c 365 § 47; 1987 c 331 § 4; 1953 c 290 § 28.]

(2010 Ed.)

### 68.05.090 Administration and enforcement of title.

The board shall enforce and administer the provisions of chapters 68.04 through 68.50 RCW, subject to provisions of RCW 68.05.400. The board may adopt and amend bylaws establishing its organization and method of operation. The board may refer such evidence as may be available concerning violations of chapters 68.04 through 68.50 RCW to the attorney general or the proper prosecuting attorney, who may in his or her discretion, with or without such a reference, in addition to any other action the board might commence, bring an action against any person to restrain or prevent the doing of any act or practice prohibited or declared unlawful in chapters 68.04 through 68.50 RCW and shall have standing to seek enforcement of said provisions in the superior court of the state of Washington for the county in which the principal office of the cemetery authority is located. [2005 c 365 § 51; 1987 c 331 § 7; 1979 c 21 § 6; 1953 c 290 § 39.]

**68.05.095 Program administrator or manager.** The director, in consultation with the board, may employ and prescribe the duties of the program administrator or manager. The program administrator or manager must have a minimum of five years' experience in either cemetery or funeral management, or both, unless this requirement is waived by the board. [2009 c 102 § 8; 1987 c 331 § 8; 1953 c 290 § 34. Formerly RCW 68.05.070.]

**Funeral directors and embalmers account and cemetery account abolished, moneys transferred to funeral and cemetery account—2009 c 102:** See note following RCW 18.39.810.

**68.05.100 Rules.** The board may establish necessary rules for the enforcement of this title and the laws subject to its jurisdiction. The board shall prescribe the application forms and reports provided for in this title. [2009 c 102 § 9; 2005 c 365 § 52; 1993 c 43 § 3; 1987 c 331 § 9; 1985 c 402 § 8; 1953 c 290 § 36.]

**Funeral directors and embalmers account and cemetery account abolished, moneys transferred to funeral and cemetery account—2009 c 102:** See note following RCW 18.39.810.

**Legislative finding—1985 c 402:** See note following RCW 68.50.185.

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**68.05.105 Authority of the board.** In addition to the authority in RCW 18.235.030, the board has the following authority under this chapter:

(1) To adopt, amend, and rescind rules necessary to carry out this title; and

(2) To adopt standards of professional conduct or practice. [2009 c 102 § 10; 2005 c 365 § 53; 2002 c 86 § 316; 1987 c 331 § 10.]

**Funeral directors and embalmers account and cemetery account abolished, moneys transferred to funeral and cemetery account—2009 c 102:** See note following RCW 18.39.810.

**Effective dates—2002 c 86:** See note following RCW 18.08.340.

**Part headings not law—Severability—2002 c 86:** See RCW 18.235.902 and 18.235.903.

**68.05.115 Sale or transfer of cemetery authority or creation of a new cemetery—Penalty for noncompliance.** Prior to the sale or transfer of ownership or control of any cemetery authority or the creation of a new cemetery, any

person or entity desiring to acquire such ownership or control or to create a new cemetery shall apply in writing to the board for a new certificate of authority to operate a cemetery. The board shall enter any order deemed necessary for the protection of all endowment care funds and/or prearrangement trust fund during such transfer. As a condition of applying for a new certificate of authority, the entity desiring to acquire such ownership or control must agree to be bound by all then existing prearrangement contracts. Persons and business entities selling and persons and business entities purchasing ownership or control of a cemetery authority shall each verify and attest to an endowment care fund report and/or a prearrangement trust fund report showing the status of such funds on the date of the sale on a written report form prescribed by the board. Such reports shall be considered part of the application for authority to operate. Failure to comply with this section shall be a gross misdemeanor and any sale or transfer in violation of this section shall be void. [2005 c 365 § 54; 1987 c 331 § 11; 1979 c 21 § 11; 1973 1st ex.s. c 68 § 17; 1969 ex.s. c 99 § 5. Formerly RCW 68.05.255.]

**68.05.120 Actions to enforce law—Attorney general.**

The board is authorized to bring actions to enforce the provisions of the law subject to its jurisdiction, in which actions it shall be represented by the attorney general. [1953 c 290 § 38.]

**68.05.150 Examination of funds—Powers, duties.** In making such examination the board:

(1) Shall have free access to the books and records relating to the endowment care funds and prearrangement trust funds;

(2) Shall inspect and examine the endowment care funds and prearrangement trust funds to determine their condition and the status of the investments; and

(3) Shall verify that the cemetery authority has complied with all the laws applicable to endowment care funds and prearrangement trust funds. [2005 c 365 § 55; 1979 c 21 § 8; 1973 1st ex.s. c 68 § 14; 1953 c 290 § 44.]

**68.05.155 Prearrangement sales license.** To enter into prearrangement contracts as defined in RCW 68.46.010, a cemetery authority shall have a valid prearrangement sales license. To apply for a prearrangement sales license, a cemetery authority shall:

(1) File with the board its request showing:

(a) Its name, location, and organization date;

(b) The kinds of cemetery business or merchandise it proposes to transact;

(c) A statement of its current financial condition, management, and affairs on a form satisfactory to or furnished by the board; and

(d) Such other documents, stipulations, or information as the board may reasonably require to evidence compliance with the provisions of this chapter; and

(2) Deposit with the department the fees required by this chapter to be paid for filing the accompanying documents, and for the prearrangement sales license, if granted. [1987 c 331 § 12; 1979 c 21 § 28. Formerly RCW 68.46.140.]

**68.05.160 Action required when authority fails to deposit minimum endowment amount or comply with prearrangement contract provisions.** If any examination made by the board, or any report filed with it, shows that there has not been collected and deposited in the endowment care funds the minimum amounts required by this title, or if the board finds that the cemetery authority has failed to comply with the requirements of this chapter and chapter 68.46 RCW with respect to prearrangement contracts, merchandise, or services, unconstructed crypts or niches or undeveloped graves, or prearrangement trust funds, the board shall require such cemetery authority to comply with this chapter or with chapter 68.40 or 68.46 RCW, as the case may be. [1979 c 21 § 9; 1973 1st ex.s. c 68 § 15; 1953 c 290 § 45.]

**68.05.170 Order requiring reinvestment in compliance with title—Actions for preservation and protection.**

(1) Whenever the board finds, after notice and hearing, that any endowment care funds have been invested in violation of this title, it may by written order mailed to the person or body in charge of the fund require the reinvestment of the funds in conformity with this title within the period specified by it which shall be not more than six months. Such period may be extended by the board in its discretion.

(2) The board may bring actions for the preservation and protection of endowment care funds in the superior court of the county in which the cemetery is located. The court shall appoint substitute trustees and make any other order which may be necessary for the preservation, protection, and recovery of endowment care funds, whenever a cemetery authority or the trustees of its fund have:

(a) Transferred or attempted to transfer any property to, or made any loan from, the endowment care funds for the benefit of the cemetery authority or any director, officer, agent or employee of the cemetery authority or trustee of any endowment care funds; or,

(b) Failed to reinvest endowment care funds in accordance with a board order issued under subsection (1) of this section; or,

(c) Invested endowment care funds in violation of this title; or,

(d) Taken action or failed to take action to preserve and protect the endowment care funds; or,

(e) Become financially irresponsible or transferred control of the cemetery authority to any person who, or business entity which, is financially irresponsible; or,

(f) Is in danger of becoming insolvent or has gone into bankruptcy or receivership; or,

(g) Taken any action in violation of Title 68 RCW or failed to take action required by Title 68 RCW or has failed to comply with lawful rules and orders of the board.

(3) Whenever the board or its representative has reason to believe that endowment care funds or prearrangement trust funds are in danger of being lost or diminished during the time required for notice and hearing, it may immediately impound or seize documents, financial instruments, or other trust fund assets, or take other actions deemed necessary under the circumstances for the preservation and protection of endowment care funds or prearrangement trust funds, including, but not limited to, immediate substitutions of trust-

ees. [2005 c 365 § 56; 2002 c 86 § 317; 1987 c 331 § 23; 1969 ex.s. c 99 § 1; 1953 c 290 § 46.]

**Effective dates—2002 c 86:** See note following RCW 18.08.340.

**Part headings not law—Severability—2002 c 86:** See RCW 18.235.902 and 18.235.903.

**68.05.173 Revocation, suspension of certificate or license.** Upon violation of any of the provisions of this title, the board may revoke or suspend the certificate of authority or any other license issued by the board. [2005 c 365 § 57; 1987 c 331 § 24; 1953 c 290 § 49. Formerly RCW 68.05.250.]

**68.05.175 Permit or endorsement required for cremation.** A permit or endorsement issued by the board or under chapter 18.39 RCW is required in order to operate a crematory or conduct a cremation. [2009 c 102 § 11; 1987 c 331 § 13; 1985 c 402 § 4. Formerly RCW 68.05.257.]

**Funeral directors and embalmers account and cemetery account abolished, moneys transferred to funeral and cemetery account—2009 c 102:** See note following RCW 18.39.810.

**Legislative finding—1985 c 402:** See note following RCW 68.50.185.

**68.05.180 Annual report of authority—Contents—Verification.** Each cemetery authority in charge of cemetery endowment care funds shall annually, and within ninety days after the end of the calendar or fiscal year of the cemetery authority, file with the board a written report in form and content prescribed by the board.

These reports shall be verified by the president or vice president, one other officer of the cemetery authority, the accountant or auditor preparing the same, and, if required by the board for good cause, a certified public accountant in accordance with generally accepted auditing standards. [1979 c 21 § 10; 1977 ex.s. c 351 § 3; 1973 1st ex.s. c 68 § 16; 1953 c 290 § 40.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**68.05.190 Examination of reports.** The board shall examine the reports filed with it as to their compliance with the requirements of the law. [1953 c 290 § 41.]

**68.05.195 Burial or scatter of cremated remains—Permit.** Any person other than persons defined in RCW 68.50.160 who buries or scatters cremated remains by land, air, or sea or performs any other disposition of cremated human remains outside of a cemetery shall have a permit issued in accordance with RCW 68.05.100 and shall be subject to that section. [2005 c 365 § 58; 1987 c 331 § 15.]

**68.05.205 Fees.** The director with the consent of the board shall set all fees for chapters 68.05, 68.20, 68.24, 68.28, 68.32, 68.36, 68.40, 68.44, and 68.46 RCW in accordance with RCW 43.24.086, including fees for licenses, certificates, regulatory charges, permits, or endorsements, and the department shall collect the fees. [2009 c 102 § 12; 1993 c 43 § 4; 1987 c 331 § 16; 1983 1st ex.s. c 5 § 1; 1977 ex.s. c 351 § 4; 1969 ex.s. c 99 § 4; 1953 c 290 § 51. Formerly RCW 68.05.230.]

(2010 Ed.)

**Funeral directors and embalmers account and cemetery account abolished, moneys transferred to funeral and cemetery account—2009 c 102:** See note following RCW 18.39.810.

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**68.05.210 Proof of applicant's compliance with laws and financial responsibility.** The board may require such proof as it deems advisable concerning the compliance by such applicant to all the laws, rules, regulations, ordinances and orders applicable to it. The board shall also require proof that the applicant and its officers and directors are financially responsible, in order that only cemeteries of permanent benefit to the community in which they are located will be established in this state. [2005 c 365 § 59; 1969 ex.s. c 99 § 2; 1953 c 290 § 48.]

**68.05.215 Certificates—Regulatory charges—Expiration.** The regulatory charges for cemetery certificates at all periods of the year are the same as provided in this chapter. All regulatory charges are payable at the time of the filing of the application and in advance of the issuance of the certificates. All certificates shall be issued for the year and shall expire at midnight, the thirty-first day of January of each year, or at whatever time during any year that ownership or control of any cemetery authority is transferred or sold. Cemetery certificates shall not be transferable. [2005 c 365 § 60; 1987 c 331 § 17; 1969 ex.s. c 99 § 3; 1953 c 290 § 50. Formerly RCW 68.05.220.]

**68.05.225 Sales licenses—Terms—Fees.** All prearrangement sales licenses issued under this chapter shall be issued for the year and shall expire at midnight, the thirty-first day of January of each year, or at whatever time during any year that ownership or control of any cemetery authority is transferred or sold.

The director, in accordance with RCW 43.24.086, shall set and the department shall collect in advance the fees required for licensing. [2005 c 365 § 61; 1987 c 331 § 18; 1979 c 21 § 29. Formerly RCW 68.46.180.]

**68.05.235 Reports—Failure to file.** (1) Each authorized cemetery authority shall, within ninety days after the close of its accounting year, file with the board an endowment care trust fund report and a prearrangement trust fund report for the preceding year. The reports shall be on such forms and shall contain such information as required by this chapter and by the board.

(2) The failure to file a report as required under subsection (1) of this section constitutes unprofessional conduct for which the board may take disciplinary action against the prearrangement sales license of the cemetery authority. In addition, the board may take disciplinary action against any other license held by the cemetery authority. [2005 c 365 § 62; 2002 c 86 § 318; 1987 c 331 § 19; 1979 c 21 § 37. Formerly RCW 68.46.095.]

**Effective dates—2002 c 86:** See note following RCW 18.08.340.

**Part headings not law—Severability—2002 c 86:** See RCW 18.235.902 and 18.235.903.

**68.05.240 Interment, certificate of authority required—Penalty.** It shall be a misdemeanor for any cem-

etery authority to make any interment without a valid, unsuspended certificate of authority. Each interment shall be a separate violation. [2005 c 365 § 63; 1953 c 290 § 52.]

**68.05.245 Crematory permits or endorsements—Terms—Fees.** All crematory permits or endorsements issued under this chapter shall be issued for the year and shall expire at midnight, the thirty-first day of January of each year, or at whatever time during any year that ownership or control of any cemetery authority which operates such crematory is transferred or sold.

The director shall set and the department shall collect in advance the fees required for licensing. [2005 c 365 § 64; 1987 c 331 § 20.]

**68.05.254 Examination of endowment funds and prearrangement trust funds.** (1) The board shall examine the endowment care and prearrangement trust fund or funds of a cemetery authority:

(a) Whenever it deems necessary, but at least once every three years after the original examination except where the cemetery authority is either required by the board to, or voluntarily files an annual financial report for the fund certified by a certified public accountant or a licensed public accountant in accordance with generally accepted auditing standards;

(b) One year following the issuance of a new certificate of authority;

(c) Whenever the cemetery authority in charge of endowment care or prearrangement trust fund or funds fails after reasonable notice from the board to file the reports required by this chapter; or

(d) Whenever it is requested by verified petition signed by twenty-five lot owners alleging that the endowment care funds are not in compliance with this title, or whenever it is requested by verified petition signed by twenty-five purchasers or beneficiaries of prearrangement merchandise or services alleging that the prearrangement trust funds are not in compliance with this title, in either of which cases, the examination shall be at the expense of the petitioners.

(2) The expense of the endowment care and prearrangement trust fund examination as provided in subsection (1)(a) and (b) of this section shall be paid by the cemetery authority. Such examination shall be privately conducted in the principal office of the cemetery authority.

(3) The requirements that examinations be conducted once every three years and that they be conducted in the principal office of the cemetery authority do not apply to any endowment care or prearrangement fund that is less than twenty-five thousand dollars. The board shall, at its discretion, decide when and where the examinations shall take place.

(4) Examination expenses incurred in conjunction with a transfer of ownership of a cemetery must be paid by the selling entity.

(5) All examination expense moneys collected by the department must be paid to the cemetery account created in \*RCW 68.05.285. [2005 c 365 § 65; 1987 c 331 § 21; 1979 c 21 § 7; 1973 1st ex.s. c 68 § 12; 1953 c 290 § 42. Formerly RCW 68.05.130.]

\*Reviser's note: RCW 68.05.285 was repealed by 2009 c 102 § 26.

**68.05.259 Payment of examination expenses.** If any cemetery authority refuses to pay any examination expenses within thirty days of completion of the examination or refuses to pay certain examination expenses in advance as required by the department for cause, the board may take disciplinary action against any existing certificate of authority. [2005 c 365 § 66; 2002 c 86 § 319; 1987 c 331 § 22; 1973 1st ex.s. c 68 § 13; 1953 c 290 § 43. Formerly RCW 68.05.140.]

**Effective dates—2002 c 86:** See note following RCW 18.08.340.

**Part headings not law—Severability—2002 c 86:** See RCW 18.235.902 and 18.235.903.

**68.05.290 Board members' immunity from suits.** Members of the board shall be immune from suit in any action, civil or criminal, based upon any official acts performed in good faith as members of the board. The state shall defend, indemnify, and hold the members of the board harmless from all claims or suits arising in any manner from such acts. Expenses incurred by the state under this section shall be paid from the general fund. [2005 c 365 § 68; 1979 c 21 § 12.]

**68.05.300 Unprofessional conduct—Disciplinary action.** In addition to the unprofessional conduct described in RCW 18.235.130, the board may take disciplinary action if the cemetery authority:

(1) Fails to comply with any provision of this chapter or any proper order or regulation of the board;

(2) Is found by the board to be in such condition that further execution of prearrangement contracts would be hazardous to purchasers or beneficiaries and the people of this state; or

(3) Is found by the board after investigation or receipt of reliable information to be managed by persons who are incompetent or untrustworthy or so lacking in managerial experience as to make the proposed or continued operation hazardous to purchasers, beneficiaries, or the public. [2002 c 86 § 320; 1987 c 331 § 25; 1979 c 21 § 30. Formerly RCW 68.46.190.]

**Effective dates—2002 c 86:** See note following RCW 18.08.340.

**Part headings not law—Severability—2002 c 86:** See RCW 18.235.902 and 18.235.903.

**68.05.310 Prearrangement sales—Disciplinary action.** No cemetery authority whose prearrangement sales license has been the subject of disciplinary action shall be authorized to enter into prearrangement contracts unless specifically authorized by the board and only upon full compliance with the conditions required by the board. Any prearrangement sale by an unlicensed cemetery authority shall be voidable by the purchaser who shall be entitled to a full refund. [2002 c 86 § 321; 1989 c 175 § 124; 1987 c 331 § 26; 1979 c 21 § 31. Formerly RCW 68.46.200.]

**Effective dates—2002 c 86:** See note following RCW 18.08.340.

**Part headings not law—Severability—2002 c 86:** See RCW 18.235.902 and 18.235.903.

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**68.05.320 Board action against authorities—Administrative procedures.** (1) The board or its authorized representative may issue and serve upon a cemetery authority a notice of charges if in the opinion of the board or its authorized representative the cemetery authority:

(a) Is engaging in or has engaged in practices likely to endanger the future delivery of cemetery merchandise or services, unconstructed crypts or niches, or undeveloped graves;

(b) Is violating or has violated any statute of the state of Washington or any rule of the board; or

(c) Is about to do an act prohibited in (a) or (b) of this subsection when the opinion is based upon reasonable cause.

(2) The notice shall contain a statement of the facts constituting the alleged violation or practice and shall fix a time and place at which a hearing will be held to determine whether an order to cease and desist should issue against the cemetery authority. The hearing shall be set not earlier than ten nor later than thirty days after service of the notice unless a later date is set by the board or its authorized representative at the request of the cemetery authority.

Unless the cemetery authority appears at the hearing by a duly authorized representative it shall be deemed to have consented to the issuance of a cease and desist order. In the event of this consent or if upon the record made at the hearing the board finds that any violation or practice specified in the notice of charges has been established, the board may issue and serve upon the cemetery authority an order to cease and desist from the violation or practice. The order may require the cemetery authority and its directors, officers, employees, and agents to cease and desist from the violation or practice and may require the cemetery authority to take affirmative action to correct the conditions resulting from the violation or practice.

(3) A cease and desist order shall become effective at the expiration of ten days after service of the order upon the cemetery authority except that a cease and desist order issued upon consent shall become effective as provided in the order unless it is stayed, modified, terminated, or set aside by action of the board or a reviewing court.

(4) The powers of the board under this section are in addition to the power of the board to take disciplinary action against a cemetery authority's prearrangement sales license. [2002 c 86 § 322; 1979 c 21 § 32. Formerly RCW 68.46.220.]

**Effective dates—2002 c 86:** See note following RCW 18.08.340.

**Part headings not law—Severability—2002 c 86:** See RCW 18.235.902 and 18.235.903.

**68.05.330 Violation—Penalty—Unfair practice—Other laws applicable.** Unless specified otherwise in this title, any person who violates or aids or abets any person in the violation of any of the provisions of this title shall be guilty of a class C felony punishable under chapter 9A.20 RCW. A violation shall constitute an unfair practice under chapter 19.86 RCW and shall be grounds for disciplinary action against the certificate of authority or any other license issued by the board under this chapter and chapter 18.235 RCW. Retail installment transactions under this chapter shall be governed by chapter 63.14 RCW. The provisions of this chapter shall not affect any other remedy available at law. [2005 c 365 § 69; 2002 c 86 § 323; 1987 c 331 § 27; 1984 c 53 § 6; 1979 c 21 § 39. Formerly RCW 68.46.210.]

(2010 Ed.)

**Effective dates—2002 c 86:** See note following RCW 18.08.340.

**Part headings not law—Severability—2002 c 86:** See RCW 18.235.902 and 18.235.903.

**68.05.340 Board action against authorities—Cease and desist orders.** Whenever the board or its authorized representative determines that a cemetery authority is in violation of this title or that the continuation of acts or practices of the cemetery authority is likely to cause insolvency or substantial loss of assets or earnings of the cemetery authority's endowment care or prearrangement trust fund, the board, or its authorized representative, may issue a temporary order requiring the cemetery authority to cease and desist from the violation or practice. The order shall become effective upon service on the cemetery authority. The order shall remain effective unless set aside, limited, or suspended by a court in proceedings under RCW 68.05.350, until the board dismisses the charges specified in the notice, or until the effective date of a cease and desist order issued against the cemetery authority under RCW 68.05.320. Actions for unlicensed activity must be conducted under RCW 18.235.150. [2005 c 365 § 70; 2002 c 86 § 324; 1987 c 331 § 28; 1979 c 21 § 33. Formerly RCW 68.46.230.]

**Effective dates—2002 c 86:** See note following RCW 18.08.340.

**Part headings not law—Severability—2002 c 86:** See RCW 18.235.902 and 18.235.903.

**68.05.350 Delaying board action pending administrative proceedings.** Within ten days after a cemetery authority has been served with a temporary cease and desist order issued under RCW 68.05.320, the cemetery authority may apply to the superior court in the county of its principal place of business for an injunction setting aside, limiting, or suspending the order pending completion of the administrative proceedings under RCW 68.05.320. [2002 c 86 § 325; 1987 c 331 § 29; 1979 c 21 § 34. Formerly RCW 68.46.240.]

**Effective dates—2002 c 86:** See note following RCW 18.08.340.

**Part headings not law—Severability—2002 c 86:** See RCW 18.235.902 and 18.235.903.

**68.05.360 Board action against authorities—Hearing location—Decision—Review.** Any administrative hearing under RCW 68.05.320 may be held at such place as is designated by the board and shall be conducted in accordance with chapter 34.05 RCW.

Within sixty days after the hearing the board shall render a decision which shall include findings of fact upon which the decision is based and shall issue and serve upon each party to the proceeding an order or orders consistent with RCW 68.05.320.

Review of the decision shall be as provided in chapter 34.05 RCW. [1987 c 331 § 30; 1979 c 21 § 35. Formerly RCW 68.46.250.]

**68.05.370 Board action against authorities—Enforcement of orders.** The board may apply to the superior court of the county of the principal place of business of the cemetery authority affected for enforcement of any effective and outstanding order issued under RCW 68.05.320 or 68.05.340, and the court shall have jurisdiction to order com-

pliance with the order. [1987 c 331 § 31; 1979 c 21 § 36. Formerly RCW 68.46.260.]

**68.05.390 Permit or endorsement required for cremation—Penalty.** Conducting a cremation without a permit or endorsement is a misdemeanor. Each such cremation is a violation. [1987 c 331 § 32.]

**68.05.400 Exemptions from chapter.** The provisions of this chapter do not apply to any of the following:

(1) Nonprofit cemeteries which are owned or operated by any recognized religious denomination which qualifies for an exemption from real estate taxation under RCW 84.36.020 on any of its churches or the ground upon which any of its churches are or will be built; or

(2) Any cemetery controlled and operated by a coroner, county, city, town, or cemetery district. [1979 c 21 § 13; 1961 c 133 § 1; 1953 c 290 § 30. Formerly RCW 68.05.280.]

**68.05.430 Uniform regulation of business and professions act.** The uniform regulation of business and professions act, chapter 18.235 RCW, governs unlicensed practice, the issuance and denial of licenses, and the discipline of licensees under this chapter. [2002 c 86 § 326.]

**Effective dates—2002 c 86:** See note following RCW 18.08.340.

**Part headings not law—Severability—2002 c 86:** See RCW 18.235.902 and 18.235.903.

**68.05.900 Effective date—1987 c 331.** This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect July 1, 1987. [1987 c 331 § 91.]

## Chapter 68.20 RCW PRIVATE CEMETERIES

### Sections

68.20.010	Incorporation required.
68.20.020	Corporations, how organized.
68.20.030	Powers of existing corporations enlarged.
68.20.040	Prior corporations not affected.
68.20.050	General powers of cemetery corporations.
68.20.060	Specific powers—Rule making and enforcement.
68.20.061	Specific powers—Control of property.
68.20.062	Specific powers—Regulation as to type of markers, monuments, etc.
68.20.063	Specific powers—Regulation or prohibition as to the erection of monuments, effigies, etc.
68.20.064	Specific powers—Regulation of plants and shrubs.
68.20.065	Specific powers—Prevention of interment.
68.20.066	Specific powers—Prevention of improper assemblages.
68.20.067	Specific powers—Rules and regulations for general purposes.
68.20.070	Rules and regulations—Posting.
68.20.080	Cities and counties may regulate cemeteries.
68.20.110	Nonprofit cemetery association—Tax exempt land.
68.20.120	Sold lots exempt from taxes, etc.—Nonprofit associations.
68.20.140	Certain cemeteries exempt from chapter.

**68.20.010 Incorporation required.** It is unlawful for any corporation, copartnership, firm, trust, association, or individual to engage in or transact any of the businesses of a cemetery within this state except by means of a corporation duly organized for that purpose. [1943 c 247 § 42; Rem. Supp. 1943 § 3778-42.]

[Title 68 RCW—page 8]

**68.20.020 Corporations, how organized.** Any private corporation authorized by its articles so to do, may establish, maintain, manage, improve, or operate a cemetery, and conduct any or all of the businesses of a cemetery, either for or without profit to its members or stockholders. A nonprofit cemetery corporation may be organized in the manner provided in chapter 24.03 RCW. A profit corporation may be organized in the manner provided in the general corporation laws of the state of Washington. [1983 c 3 § 167; 1943 c 247 § 43; Rem. Supp. 1943 § 3778-43. Prior: 1899 c 33 § 1; 1856-7 p 28 § 1.]

**68.20.030 Powers of existing corporations enlarged.** The powers, privileges and duties conferred and imposed upon any corporation, firm, copartnership, association, trust, or individual, existing and doing business under the laws of this state, are hereby enlarged as each particular case may require to conform to the provisions of \*this act. [1943 c 247 § 45; Rem. Supp. 1943 § 3778-45.]

\*Reviser's note: For "this act," see note following RCW 68.04.020.

**68.20.040 Prior corporations not affected.** The provisions of \*this act do not affect the corporate existence or rights or powers of any cemetery organized under any law then existing prior to June 9, 1943, and as to such cemeteries and their rights, powers specified in their charters or articles of incorporation, the laws under which the corporation was organized and existed and under which such rights and powers become fixed or vested are applicable. [1943 c 247 § 44; Rem. Supp. 1943 § 3778-44.]

\*Reviser's note: For "this act," see note following RCW 68.04.020.

**68.20.050 General powers of cemetery corporations.** Unless otherwise limited by the law under which created[,] cemetery authorities shall in the conduct of their business have the same powers granted by law to corporations in general, including the right to contract such pecuniary obligations within the limitation of general law as may be required, and may secure them by mortgage, deed of trust, or otherwise upon their property. [1943 c 247 § 59; Rem. Supp. 1943 § 3778-59.]

**68.20.060 Specific powers—Rule making and enforcement.** A cemetery authority may make, adopt, amend, add to, revise, or modify, and enforce rules and regulations for the use, care, control, management, restriction and protection of all or any part of its cemetery and for the other purposes specified in RCW 68.20.061 through 68.20.067, 68.20.070 and \*68.48.080. [1943 c 247 § 46; Rem. Supp. 1943 § 3778-46. Formerly RCW 68.20.070, part. FORMER PART OF SECTION: 1943 c 247 §§ 47 through 52 now codified as RCW 68.20.061 through 68.20.066.]

\*Reviser's note: RCW 68.48.080 was recodified as RCW 68.56.050 pursuant to 1987 c 331 § 89.

**68.20.061 Specific powers—Control of property.** It may restrict and limit the use of all property within its cemetery, including interment rights. [2005 c 365 § 71; 1943 c 247 § 47; Rem. Supp. 1943 § 3778-47. Formerly RCW 68.20.060, part.]

**68.20.062 Specific powers—Regulation as to type of markers, monuments, etc.** It may regulate the uniformity, class, and kind of all markers, monuments, and other structures within the cemetery and its subdivisions. [1943 c 247 § 48; Rem. Supp. 1943 § 3778-48. Formerly RCW 68.20.060, part.]

**68.20.063 Specific powers—Regulation or prohibition as to the erection of monuments, effigies, etc.** It may regulate or prohibit the erection of monuments, markers, effigies, and structures within any portion of the cemetery. [1943 c 247 § 49; Rem. Supp. 1943 § 3778-49. Formerly RCW 68.20.060, part.]

**68.20.064 Specific powers—Regulation of plants and shrubs.** It may regulate or prevent the introduction or care of plants or shrubs within the cemetery. [1943 c 247 § 50; Rem. Supp. 1943 § 3778-50. Formerly RCW 68.20.060, part.]

**68.20.065 Specific powers—Prevention of interment.** It may prevent interment in any part of the cemetery of human remains not entitled to interment and prevent the use of interment plots for purposes violative of its restrictions or rules and regulations. [1943 c 247 § 51; Rem. Supp. 1943 § 3778-51. Formerly RCW 68.20.060, part.]

**68.20.066 Specific powers—Prevention of improper assemblages.** It may regulate the conduct of persons and prevent improper assemblages in the cemetery. [1943 c 247 § 52; Rem. Supp. 1943 § 3778-52. Formerly RCW 68.20.060, part.]

**68.20.067 Specific powers—Rules and regulations for general purposes.** It may make and enforce rules and regulations for all other purposes deemed necessary by the cemetery authority for the proper conduct of the business of the cemetery, for the transfer of any plot or the right of interment, and the protection and safeguarding of the premises, and the principles, plans, and ideals on which the cemetery is conducted. [1943 c 247 § 53; Rem. Supp. 1943 § 3778-53. Formerly RCW 68.20.070, part.]

**68.20.070 Rules and regulations—Posting.** The rules and regulations made pursuant to RCW 68.20.060 shall be plainly printed or typewritten and maintained subject to inspection in the office of the cemetery authority or in such place or places within the cemetery as the cemetery authority may prescribe. [1943 c 247 § 54; Rem. Supp. 1943 § 3778-54. FORMER PART OF SECTION: 1943 c 247 §§ 46 and 53 now codified as RCW 68.20.060 and 68.20.067.]

**68.20.080 Cities and counties may regulate cemeteries.** Cities and counties are authorized to enact ordinances regulating or prohibiting the establishment of new cemeteries or the extension of existing ones and to give power to local planning commissions to pass upon and make recommendations to local legislative bodies concerning the establishment or extension of cemeteries. [1943 c 247 § 143; Rem. Supp. 1943 § 3778-143.]

(2010 Ed.)

*Section applies to certain mausoleums, columbariums, etc.: RCW 68.28.010.*

**68.20.110 Nonprofit cemetery association—Tax exempt land.** Nonprofit cemetery associations shall be authorized to purchase or take by gift or devise, and hold land exempt from execution and from any appropriation to public purposes for the sole purpose of a cemetery not exceeding eighty acres, which shall be exempt from taxation if intended to be used exclusively for burial purposes without discrimination as to race, color, national origin or ancestry, and in nowise with a view to profit of the members of such association: PROVIDED, That when the land already held by the association is all practically used then the amount thereof may be increased by adding thereto not exceeding twenty acres at a time. [2005 c 365 § 72; 1961 c 103 § 2; 1899 c 33 § 3; RRS § 3766. Formerly RCW 68.20.110 and 68.24.200.]

*Property taxes, exemptions: RCW 84.36.020.*

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**68.20.120 Sold lots exempt from taxes, etc.—Non-profit associations.** Burial lots, sold by \*such association shall be for the sole purpose of interment, and shall be exempt from taxation, execution, attachment or other claims, lien or process whatsoever, if used as intended, exclusively for burial purposes and in nowise with a view to profit. [1899 c 33 § 5; RRS § 3768. Formerly RCW 68.24.210.]

\*Reviser's note: For "such association," see note following RCW 68.20.110.

*Cemetery property exempt from execution: RCW 68.24.220.  
taxation: RCW 84.36.020.*

**68.20.140 Certain cemeteries exempt from chapter.** This chapter does not apply to any cemetery controlled and operated by a coroner, county, city, town, or cemetery district. [1987 c 331 § 33.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

## Chapter 68.24 RCW CEMETERY PROPERTY

### Sections

68.24.010	Right to acquire property.
68.24.020	Surveys and maps.
68.24.030	Declaration of dedication and maps—Filing.
68.24.040	Dedication, when complete.
68.24.050	Constructive notice.
68.24.060	Maps and plats—Amendment.
68.24.070	Permanency of dedication.
68.24.080	Rule against perpetuities, etc., inapplicable.
68.24.090	Removal of dedication—Procedure.
68.24.100	Notice of hearing.
68.24.110	Sale of plots or rights of interment.
68.24.115	Execution of conveyances.
68.24.120	Plots or rights of interment indivisible.
68.24.130	Sale for resale prohibited—Penalty.
68.24.140	Commission on sales prohibited—Penalty.
68.24.150	Unlawful employment of others to dispose of human remains.
68.24.160	Liens subordinate to dedication.
68.24.170	Record of ownership and transfers.
68.24.180	Opening of roads, railroads through cemetery—Consent required.
68.24.190	Opening road through cemetery—Penalty.
68.24.220	Burying place exempt from execution.

68.24.240 Certain cemetery lands exempt from taxes, etc.—1901 c 147.  
 68.24.250 Cemetery arrangements, notice requirements—Disclosure of multiple interment.

**68.24.010 Right to acquire property.** Cemetery authorities may take by purchase, donation, or devise, property consisting of lands, mausoleums, crematories, and columbariums, or other property within which the placement of human remains may be authorized by law. [2005 c 365 § 73; 1943 c 247 § 61; Rem. Supp. 1943 § 3778-61.]

**68.24.020 Surveys and maps.** Every cemetery authority, from time to time as its property may be required for cemetery purposes, shall:

(1) In case of land, survey and subdivide it into sections, blocks, plots, avenues, walks, or other subdivisions; make a good and substantial map or plat showing the sections, plots, avenues, walks or other subdivisions, with descriptive names or numbers.

(2) In case of a mausoleum, or columbarium, it shall make a good and substantial map or plat on which shall be delineated the sections, halls, rooms, corridors, elevation, and other divisions, with descriptive names or numbers. [1943 c 247 § 62; Rem. Supp. 1943 § 3778-62.]

**68.24.030 Declaration of dedication and maps—Filing.** The cemetery authority shall file the map or plat in the office of the recorder of the county in which all or a portion of the property is situated. The cemetery authority shall also file for record in the county recorder's office a written declaration of dedication of the property delineated on the plat or map, dedicating the property exclusively to cemetery purposes. [1943 c 247 § 63; Rem. Supp. 1943 § 3778-63.]

*County auditor: Chapter 36.22 RCW.*

*County auditor fees, generally: RCW 36.18.010.*

**68.24.040 Dedication, when complete.** Upon the filing of the map or plat and the filing of the declaration for record, the dedication is complete for all purposes and thereafter the property shall be held, occupied, and used exclusively for a cemetery and for cemetery purposes. [1943 c 247 § 64; Rem. Supp. 1943 § 3778-64.]

**68.24.050 Constructive notice.** The filed map or plat and the recorded declaration are constructive notice to all persons of the dedication of the property to cemetery purposes. [1943 c 247 § 66; Rem. Supp. 1943 § 3778-66.]

**68.24.060 Maps and plats—Amendment.** Any part or subdivision of the property so mapped and plotted may, by order of the directors, be resurveyed and altered in shape and size and an amended map or plat filed, so long as such change does not disturb the interred remains of any deceased person. [1943 c 247 § 65; Rem. Supp. 1943 § 3778-65.]

**68.24.070 Permanency of dedication.** After property is dedicated to cemetery purposes pursuant to RCW 68.24.010 through 68.24.060, neither the dedication, nor the title of a plot owner, shall be affected by the dissolution of the cemetery authority, by nonuser on its part, by alienation of the property, by any incumbrances, by sale under execution,

or otherwise except as provided in \*this act. [1943 c 247 § 67; Rem. Supp. 1943 § 3778-67.]

\*Reviser's note: For "this act," see note following RCW 68.04.020.

**68.24.080 Rule against perpetuities, etc., inapplicable.** Dedication to cemetery purposes pursuant to \*this act is not invalid as violating any laws against perpetuities or the suspension of the power of alienation of title to or use of property, but is expressly permitted and shall be deemed to be in respect for the dead, a provision for the placement of human remains, and a duty to, and for the benefit of, the general public. [2005 c 365 § 74; 1943 c 247 § 68; Rem. Supp. 1943 § 3778-68.]

\*Reviser's note: For "this act," see note following RCW 68.04.020.

**68.24.090 Removal of dedication—Procedure.** Property dedicated to cemetery purposes shall be held and used exclusively for cemetery purposes, unless and until the dedication is removed from all or any part of it by an order and decree of the superior court of the county in which the property is situated, in a proceeding brought by the cemetery authority for that purpose and upon notice of hearing and proof satisfactory to the court:

(1) That no placements of human remains were made in or that all placements of human remains have been removed from that portion of the property from which dedication is sought to be removed.

(2) That the portion of the property from which dedication is sought to be removed is not being used for placement of human remains.

(3) That notice of the proposed removal of dedication has been given in writing to both the funeral and cemetery board and the department of archaeology and historic preservation. This notice must be given at least sixty days before filing the proceedings in superior court. The notice of the proposed removal of dedication shall be recorded with the auditor or recording officer of the county where the cemetery is located at least sixty days before filing the proceedings in superior court. [2009 c 102 § 13; 2005 c 365 § 75; 1999 c 367 § 2; 1987 c 331 § 34; 1943 c 247 § 76; Rem. Supp. 1943 § 3778-76.]

**Funeral directors and embalmers account and cemetery account abolished, moneys transferred to funeral and cemetery account—2009 c 102:** See note following RCW 18.39.810.

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**68.24.100 Notice of hearing.** The notice of hearing provided in RCW 68.24.090 shall be given by publication once a week for at least three consecutive weeks in a newspaper of general circulation in the county where said cemetery is located, and the posting of copies of the notice in three conspicuous places on that portion of the property from which the dedication is to be removed. The notice shall:

(1) Describe the portion of the cemetery property sought to be removed from dedication.

(2) State that all human remains have been removed or that no interments have been made in the portion of the cemetery property sought to be removed from dedication.

(3) Specify the time and place of the hearing. [2005 c 365 § 76; 1943 c 247 § 77; Rem. Supp. 1943 § 3778-77.]

**68.24.110 Sale of plots or rights of interment.** After filing the map or plat and recording the declaration of dedication, a cemetery authority may sell and convey plots or rights of interment subject to the rules in effect or thereafter adopted by the cemetery authority. Plots or rights of interment may be subject to other limitations, conditions, and restrictions as may be part of the declaration of dedication by reference, or included in the instrument of conveyance of the plot or rights of interment. [2005 c 365 § 77; 1943 c 247 § 70; Rem. Supp. 1943 § 3778-70. FORMER PART OF SECTION: 1943 c 247 § 72 now codified as RCW 68.24.115.]

**68.24.115 Execution of conveyances.** All conveyances made by a cemetery authority shall be signed by such officer or officers as are authorized by the cemetery authority. [1943 c 247 § 72; Rem. Supp. 1943 § 3778-72. Formerly RCW 68.24.110, part.]

**68.24.120 Plots or rights of interment indivisible.** All plots or rights of interment, the use of which has been conveyed by deed or certificate of ownership as a separate plot or right of interment, are indivisible except with the consent of the cemetery authority, or as provided by law. [2005 c 365 § 78; 1943 c 247 § 71; Rem. Supp. 1943 § 3778-71.]

**68.24.130 Sale for resale prohibited—Penalty.** It shall be unlawful for any person, firm, or corporation to sell or offer to sell a cemetery plot or right of interment upon the promise, representation, or inducement of resale at a financial profit. Each person violating this section shall be guilty of a misdemeanor and each violation shall constitute a separate offense. [2005 c 365 § 79; 1943 c 247 § 73; Rem. Supp. 1943 § 3778-73.]

**68.24.140 Commission on sales prohibited—Penalty.** It shall be unlawful for a cemetery authority to pay or offer to pay to any person, firm, or corporation, directly or indirectly, a commission or bonus or rebate or other thing of value for the sale of a plot, right of interment, or services. This shall not apply to an owner or a person regularly employed by the cemetery authority for such purpose. Each person violating this section shall be guilty of a misdemeanor and each violation shall constitute a separate offense. [2005 c 365 § 80; 1943 c 247 § 74; Rem. Supp. 1943 § 3778-74.]

**68.24.150 Unlawful employment of others to dispose of human remains.** Every person who pays, causes to be paid, or offers to pay to any other person, firm, or corporation, directly or indirectly, except as provided in RCW 68.24.140, any commission, bonus, or rebate, or other thing of value in consideration of recommending or causing the disposition of human remains in any crematory or cemetery, is guilty of a misdemeanor. Each violation shall constitute a separate offense. [2005 c 365 § 81; 1943 c 247 § 75; Rem. Supp. 1943 § 3778-75.]

**68.24.160 Liens subordinate to dedication.** All mortgages, deeds of trust, and other liens placed upon property which has been dedicated as a cemetery, or which is afterwards dedicated to cemetery purposes pursuant to this sec-

tion, shall not affect or defeat the dedication. The mortgage, deed of trust, or other lien is subject and subordinate to the dedication. Any and all sales made upon foreclosure are subject and subordinate to the dedication for cemetery purposes. [2005 c 365 § 82; 1943 c 247 § 60; Rem. Supp. 1943 § 3778-60.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**68.24.170 Record of ownership and transfers.** A record shall be kept of the ownership of all plots or rights of interment in the cemetery, which have been conveyed by the cemetery authority and of all transfers of plots and rights of interment in the cemetery. No transfer of any plot or right of interment, shall be complete or effective until recorded on the books of the cemetery authority. [2005 c 365 § 83; 1943 c 247 § 40; Rem. Supp. 1943 § 3778-40. FORMER PART OF SECTION: 1943 c 247 § 41 now codified as RCW 68.24.175.]

**68.24.180 Opening of roads, railroads through cemetery—Consent required.** After dedication under this title, and as long as the property remains dedicated to cemetery purposes, a railroad, street, road, alley, pipe line, pole line, or other public thoroughfare or utility shall not be laid out, through, over, or across any part of it without the consent of the cemetery authority or of not less than two-thirds of the owners of plots or rights of interment. [2005 c 365 § 84; 1994 c 273 § 20; 1984 c 7 § 369; 1959 c 217 § 1; 1947 c 69 § 1; 1943 c 247 § 69; Rem. Supp. 1947 § 3778-69.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**68.24.190 Opening road through cemetery—Penalty.** Every person who shall make or open any road, or construct any railway, turnpike, canal, or other public easement over, through, in, or upon any property used for the burial of human remains, without authority of law or the consent of the owner, shall be guilty of a misdemeanor. [2005 c 365 § 85; 1909 c 249 § 241; RRS § 2493.]

**68.24.220 Burying place exempt from execution.** Whenever any part of such burying ground shall have been designated and appropriated by the owners as the burying place of any particular person or family, the same shall not be liable to be taken or disposed of by any warrant, execution, tax, or debt whatever; nor shall the same be liable to be sold to satisfy the demands of creditors whenever the estate of the owner shall be insolvent. [2005 c 365 § 86; 1857 p 28 § 2; RRS § 3760.]

*Cemetery property exempt from taxation: RCW 84.36.020.*

**68.24.240 Certain cemetery lands exempt from taxes, etc.—1901 c 147.** Upon compliance with the requirements of this act said lands shall forever be exempt from taxation, judgment and other liens and executions. [1901 c 147 § 4; RRS § 3763.]

**\*Reviser's note:** "this act" appears in 1901 c 147, the remaining sections of which were repealed by 1943 c 247 § 148. These sections read as follows:

"Section 1. Any person owning any land, exclusive of encumbrances of any kind, situate two miles outside of the corporate limits of any incorporated city or town, may have the same reserved exclusively for burial and

cemetery purposes by complying with the terms of this act, provided said lands so sought to be reserved shall not exceed in area one acre.

Sec. 2. Such person or persons shall cause such land to be surveyed and platted.

Sec. 3. A deed of dedication of said tract for burial and cemetery purposes with a copy of said plat shall be filed with the county auditor of the county in which said lands are situated and the title thereto shall be and remain in the owner, his heirs and assigns, subject to the trust aforesaid."

*Property taxes, exemptions: RCW 84.36.020.*

**68.24.250 Cemetery arrangements, notice requirements—Disclosure of multiple interment.** (1) Every cemetery shall disclose and give to the person making cemetery arrangements a written statement, contract, or other document that indicates all the items of property, merchandise, and service that the customer is purchasing, and the price of those items.

(2) Any cemetery offering single burial use of multiple interment space must include the following disclosure on the written statement, contract, or other document in conspicuous bold face type no smaller than other text provisions in the written statement, contract, or other document, to be initialed by the person making the cemetery arrangements in immediate proximity to the space reserved for the signature lines:

"DISCLOSURE OF MULTIPLE INTERMENT

State law provides that "multiple interment" means two or more noncremated human remains are buried in the ground, in outer burial enclosures or chambers, placed one on top of another, with a ground level surface the same size as a single grave or right of interment." [2005 c 359 § 2.]

### Chapter 68.28 RCW

#### MAUSOLEUMS AND COLUMBARIUMS

##### Sections

68.28.010	Sections applicable to mausoleums, columbariums, etc.
68.28.020	Building converted to use for human remains placement.
68.28.030	Standards of construction.
68.28.040	Fireproof construction.
68.28.050	Ordinances and specifications to be complied with.
68.28.060	Improper construction a nuisance—Penalty.
68.28.065	Court to fix costs.
68.28.070	Construction in compliance with existing laws.

**68.28.010 Sections applicable to mausoleums, columbariums, etc.** RCW 68.28.020 through 68.28.070, 68.20.080, \*68.20.090, 68.56.040, and 68.56.050, apply to all buildings, mausoleums, and columbariums used or intended to be used for the placement of the human remains of fifteen or more persons, whether erected under or above the surface of the earth, where any portion of the building is exposed to view or, when interment is completed, is less than three feet below the surface of the earth and covered by earth. [2005 c 365 § 87; 1943 c 247 § 134; Rem. Supp. 1943 § 3778-134.]

\*Reviser's note: RCW 68.20.090 was repealed by 2005 c 365 § 161.

**68.28.020 Building converted to use for human remains placement.** A building not erected for, or which is not used as, a place for placement of human remains which is converted or altered for such use is subject to \*this act. [2005 c 365 § 88; 1943 c 247 § 135; Rem. Supp. 1943 § 3778-135.]

\*Reviser's note: For "this act," see note following RCW 68.04.020.

**68.28.030 Standards of construction.** No building or structure intended to be used for the placement of human remains shall be constructed, and a building not used for the placement of human remains shall not be altered for use or used for interment purposes, unless constructed of such material and workmanship as will ensure its durability and permanence as dictated and determined at the time by modern mausoleum construction and engineering science. [2005 c 365 § 89; 1943 c 247 § 136; Rem. Supp. 1943 § 3778-136.]

**68.28.040 Fireproof construction.** All mausoleums or columbariums hereafter constructed shall be of class A fireproof construction. [1943 c 247 § 137; Rem. Supp. 1943 § 3778-137.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**68.28.050 Ordinances and specifications to be complied with.** If the proposed site is within the jurisdiction of a city having ordinances and specifications governing class A construction, the provisions of the local ordinances and specifications shall not be violated. [1943 c 247 § 138; Rem. Supp. 1943 § 3778-138.]

**68.28.060 Improper construction a nuisance—Penalty.** Every owner or operator of a mausoleum or columbarium erected in violation of \*this act is guilty of maintaining a public nuisance. A violation of this section is a gross misdemeanor. [2005 c 365 § 90; 2003 c 53 § 306; 1943 c 247 § 140; Rem. Supp. 1943 § 3778-140.]

\*Reviser's note: For "this act," see note following RCW 68.04.020.

**Intent—Effective date—2003 c 53:** See notes following RCW 2.48.180.

**68.28.065 Court to fix costs.** The costs, expenses and disbursements shall be fixed by the court having jurisdiction of the case. [1943 c 247 § 141; Rem. Supp. 1943 § 3778-141.]

**68.28.070 Construction in compliance with existing laws.** The penalties of \*this act shall not apply as to any building which, at the time of construction was constructed in compliance with the laws then existing, if its use is not in violation of the laws for the protection of public health. [1943 c 247 § 142; Rem. Supp. 1943 § 3778-142.]

\*Reviser's note: For "this act," see note following RCW 68.04.020.

### Chapter 68.32 RCW

#### TITLE AND RIGHTS TO CEMETERY PLOTS

##### Sections

68.32.010	Presumption as to title.
68.32.020	Vested right of spouse or state registered domestic partner.
68.32.030	Vested right—Termination.
68.32.040	Descent of title to plot or right of interment.
68.32.050	Affidavit as authorization.
68.32.060	Family plot—Sale.
68.32.070	Joint tenants—Vested rights.
68.32.080	Joint tenants—Survivorship.
68.32.090	Joint tenants—Identification.
68.32.100	Co-owners may designate representative.
68.32.110	Order of interment—General.
68.32.130	Waiver of right of placement.
68.32.140	Termination of vested right by waiver.

- 68.32.150 Limitations on vested rights.  
 68.32.160 Conveyance of plot or right of interment to cemetery authority, effect.  
 68.32.170 Exemption from inheritance tax.

**68.32.010 Presumption as to title.** All plots or rights of interment conveyed to individuals are presumed to be the sole and separate property rights of the owner named in the instrument of conveyance. [2005 c 365 § 91; 1943 c 247 § 88; Rem. Supp. 1943 § 3778-88.]

**68.32.020 Vested right of spouse or state registered domestic partner.** The spouse or state registered domestic partner, of an owner of any plot or right of interment containing more than one placement space has a vested right of placement in the plot and any person thereafter becoming the spouse or state registered domestic partner, of the owner has a vested right of placement in the plot if more than one space is unoccupied at the time the person becomes the spouse or state registered domestic partner, of the owner. [2007 c 156 § 15; 2005 c 365 § 92; 1943 c 247 § 89; Rem. Supp. 1943 § 3778-89.]

**68.32.030 Vested right—Termination.** No conveyance or other action of the owner without the written consent of the spouse or state registered domestic partner, of the owner divests the spouse or state registered domestic partner, of a vested right of placement. A final decree of divorce between them or certification of termination of the state registered domestic partnership terminates the vested right of placement unless otherwise provided in the decree. [2007 c 156 § 16; 2005 c 365 § 93; 1943 c 247 § 90; Rem. Supp. 1943 § 3778-90.]

**68.32.040 Descent of title to plot or right of interment.** If no placement is made in a plot or right of interment, which has been transferred by deed or certificate of ownership to an individual owner, the title descends to the surviving spouse or state registered domestic partner. If there is no surviving spouse or state registered domestic partner, the title descends to the heirs at law of the owner. Following death of the owner, if all remains previously placed are lawfully removed and the owner did not dispose of the plot or right of interment by specific devise or by a written declaration filed and recorded in the office of the cemetery authority, the title descends to the surviving spouse or state registered domestic partner. If there is no surviving spouse or state registered domestic partner, the title descends to the heirs at law of the owner. [2007 c 156 § 17; 2005 c 365 § 94; 1979 c 21 § 15; 1943 c 247 § 91; Rem. Supp. 1943 § 3778-91.]

**68.32.050 Affidavit as authorization.** An affidavit by a person having knowledge of the facts setting forth the fact of the death of the owner and the name of the person or persons entitled to the use of the plot or right of interment pursuant to RCW 68.32.010 through 68.32.040, is complete authorization to the cemetery authority to permit the use of the unoccupied portions of the plot or interment right by the person entitled to the use of it. [2005 c 365 § 95; 1943 c 247 § 93; Rem. Supp. 1943 § 3778-93.]

(2010 Ed.)

**68.32.060 Family plot—Sale.** Whenever an interment of the human remains of a member or of a relative of a member of the family of the record owner or of the remains of the record owner is made in a plot transferred by deed or certificate of ownership to an individual owner and both the owner and the surviving spouse or state registered domestic partner, if any, die with children then living without making disposition of the plot either by a specific devise, or by a written declaration filed and recorded in the office of the cemetery authority, the plot shall thereafter be held as a family plot and shall be subject to sale only upon agreement of the children of the owner living at the time of sale. [2007 c 156 § 18; 2005 c 365 § 96; 1979 c 21 § 16; 1943 c 247 § 98; Rem. Supp. 1943 § 3778-98.]

**68.32.070 Joint tenants—Vested rights.** In a conveyance to two or more persons as joint tenants each joint tenant has a vested right of placement in the plot or right of interment conveyed. [2005 c 365 § 97; 1943 c 247 § 94; Rem. Supp. 1943 § 3778-94.]

**68.32.080 Joint tenants—Survivorship.** Upon the death of a joint tenant, the title to the plot or right of interment held in joint tenancy immediately vests in the survivors, subject to the vested right of interment of the deceased joint tenant. [2005 c 365 § 98; 1943 c 247 § 95; Rem. Supp. 1943 § 3778-95.]

*Co-owners, simultaneous death: RCW 11.05A.040.*

**68.32.090 Joint tenants—Identification.** An affidavit by any person having knowledge of the fact of the death of one joint tenant and establishing the identity of the surviving joint tenants named in the deed to any plot or right of interment, when filed with the cemetery authority, is complete authorization to the cemetery authority to permit the use of the unoccupied portion of the plot or right of interment in accordance with the directions of the surviving joint tenants. [2005 c 365 § 99; 1943 c 247 § 96; Rem. Supp. 1943 § 3778-96.]

**68.32.100 Co-owners may designate representative.** When there are several owners of a plot or right of interment, they may designate one or more persons to represent the plot or interment right and file written notice of designation with the cemetery authority. In the absence of such notice or of written objection to its so doing, the cemetery authority is not liable to any owner for permitting the placement in the plot or right of interment upon the request or direction of any co-owner of the plot or right of interment. [2005 c 365 § 100; 1943 c 247 § 97; Rem. Supp. 1943 § 3778-97.]

**68.32.110 Order of interment—General.** In a family plot one right of interment may be used for the owner's interment and one for the owner's surviving spouse or state registered domestic partner, if any. Any unoccupied spaces may then be used by the remaining parents and children of the deceased owner, if any, then to the spouse or state registered domestic partner of any child of the owner, then to the heirs at law of the owner, in the order of death. [2007 c 156 § 19;

2005 c 365 § 101; 1943 c 247 § 99; Rem. Supp. 1943 § 3778-99.]

**68.32.130 Waiver of right of placement.** Any surviving spouse, state registered domestic partner, parent, child, or heir having a right of placement in a family plot may waive such right in favor of any other relative, spouse, or state registered domestic partner of a relative of the deceased owner. Upon such a waiver, the remains of the person in whose favor the waiver is made may be placed in the plot. [2007 c 156 § 20; 2005 c 365 § 102; 1943 c 247 § 101; Rem. Supp. 1943 § 3778-101.]

**68.32.140 Termination of vested right by waiver.** A vested right of placement may be waived and is terminated upon the placement elsewhere of the remains of the person in whom vested. [2005 c 365 § 103; 1943 c 247 § 102; Rem. Supp. 1943 § 3778-102.]

**68.32.150 Limitations on vested rights.** No vested right of interment gives any person the right to have his or her remains interred in any interment space in which the remains of any deceased person having a prior vested right of interment have been interred. No vested right of interment gives any person the right to have the remains of more than one deceased person placed in a single space in violation of the rules and regulations of the cemetery in which the space is located. [2005 c 365 § 104; 1943 c 247 § 103; Rem. Supp. 1943 § 3778-103.]

**68.32.160 Conveyance of plot or right of interment to cemetery authority, effect.** A cemetery authority may take and hold any plot or right of interment conveyed to it by the plot owner so that it will be nontransferable. Placements shall be restricted to the persons designated in the conveyance. [2005 c 365 § 105; 1943 c 247 § 104; Rem. Supp. 1943 § 3778-104.]

**68.32.170 Exemption from inheritance tax.** Cemetery property passing to an individual by reason of the death of the owner is exempt from all inheritance taxes. [1943 c 247 § 92; Rem. Supp. 1943 § 3778-92.]

**Reviser's note:** The inheritance tax was repealed by 1981 2nd ex.s. c 7 § 83.100.160 (Initiative Measure No. 402). See RCW 83.100.900. For later enactment, see chapter 83.100 RCW.

## Chapter 68.36 RCW ABANDONED LOTS

### Sections

68.36.010	Sale of abandoned space—Presumption of abandonment.
68.36.020	Notice—Requirements—Limitation on placing.
68.36.030	Petition for order of abandonment—Notice and hearing.
68.36.040	Service of notice.
68.36.050	Hearing—Order—Attorneys' fees.
68.36.060	Contract for care before adjudication.
68.36.070	Contract for care within one year after adjudication.
68.36.080	Sale after one year.
68.36.100	Petition may cover several lots.

**68.36.010 Sale of abandoned space—Presumption of abandonment.** The ownership or right to unoccupied ceme-

tery space in this state shall, upon abandonment, be subject to forfeiture and sale by the person or entity having ownership or management of the cemetery. Unoccupied cemetery space is presumed to be abandoned if it has been neglected and in a state of disrepair for a period of five years. [2005 c 365 § 106; 1943 c 247 § 78; Rem. Supp. 1943 § 3778-78.]

**68.36.020 Notice—Requirements—Limitation on placing.** Cemetery management shall place a suitable notice on each unoccupied space, setting forth the date the notice is placed and that the unoccupied space is subject to forfeiture and sale by the cemetery. If the owner of the unoccupied space fails during the next three years following the date of the notice to maintain or care for the unoccupied space, the cemetery may reclaim the unoccupied space. However, such a notice cannot be placed on the unoccupied space in any cemetery lot until twenty years have elapsed since the last interment in any such lot of a member of the immediate family of the record owner. [2005 c 365 § 107; 1943 c 247 § 79; Rem. Supp. 1943 § 3778-79.]

**68.36.030 Petition for order of abandonment—Notice and hearing.** After a three-year period, the owner or manager of the cemetery may file a verified petition in the office of the county clerk, setting forth the facts relating to the abandonment. The petition may ask for an order of the superior court for abandonment.

At the time of filing the petition, the cemetery authority shall request a hearing of the petition. The superior court will fix the time for the hearing. Not less than sixty days before the time fixed for the hearing of the petition, notice and nature of the hearing shall be given to the owner of such unoccupied space. [2005 c 365 § 108; 1943 c 247 § 80; Rem. Supp. 1943 § 3778-80.]

**68.36.040 Service of notice.** The notice may be served personally upon the owner, or may be given by the mailing of the notice by registered mail to the owner to his or her last known address and by publishing the notice three times in a legal newspaper published in the county in which the cemetery is located. In the event that the whereabouts of the owner is unknown, then the notice may be given by publishing the notice three times in a legal newspaper as required by this section. The cemetery authority may file an affidavit in the proceeding to the effect that the owner is unknown and that the cemetery exercised diligence in attempting to locate the unknown parties. The affidavit shall be conclusive to that effect. [2005 c 365 § 109; 1943 c 247 § 81; Rem. Supp. 1943 § 3778-81.]

**68.36.050 Hearing—Order—Attorneys' fees.** An owner or claimant may appear and answer the allegations of the petition. If an owner fails to do so prior to the day fixed for hearing, a default shall be entered and it shall then be the duty of the superior court to immediately enter an order adjudging the unoccupied space to have been abandoned and subject to sale. In the event the owner or claimant shall appear and file his or her answer prior to the day fixed for the hearing, the presumption of abandonment shall no longer exist, and on the day fixed for the hearing of the petition or on

any subsequent day to which the hearing of the cause is adjourned, the allegations and proof of the parties shall be presented to the court and if the court shall determine that there has been a continued failure to maintain or care for the unoccupied space for a period of three consecutive years preceding the filing of the petition, an order shall be entered accordingly adjudging the unoccupied space to have been abandoned and subject to sale at the expiration of one year by the person, association, corporation, or municipality having ownership of the cemetery containing the same. Upon any adjudication of abandonment, the court shall fix such sum as it shall deem reasonable as attorneys' fees for petitioner's attorney for rights of interment adjudged to have been abandoned in such proceedings. [2005 c 365 § 110; 1943 c 247 § 82; Rem. Supp. 1943 § 3778-82.]

**68.36.060 Contract for care before adjudication.** If at any time before the adjudication of abandonment the owner of an unoccupied space contracts with the owner or manager of the cemetery for the endowment care of the space, the court shall dismiss the proceedings as to such unoccupied space. [1953 c 290 § 1; 1943 c 247 § 83; Rem. Supp. 1943 § 3778-83.]

**68.36.070 Contract for care within one year after adjudication.** If at any time within one year after the adjudication of abandonment, the former owner of the unoccupied space shall contract for its endowment care, and reimburse the owner or manager of the cemetery for the expense of the proceedings, including attorney's fees, the space shall not be sold and the order adjudging it to have been abandoned shall be vacated upon petition of the former owner. [1953 c 290 § 2; 1943 c 247 § 84; Rem. Supp. 1943 § 3778-84.]

**68.36.080 Sale after one year.** One year after the entry of the order adjudging such lot, part of lot, lots or parts of lots to have been abandoned, the owner or manager of the cemetery in which the same is located shall have the power to sell the same, in whole or in part, at public or private sale, and convey by deed good, clear and sufficient title thereto. [1943 c 247 § 85; Rem. Supp. 1943 § 3778-85.]

**68.36.100 Petition may cover several lots.** In any one petition for abandonment, a petitioner may, irrespective of diversity of ownership, include in any such petition as many lots or parts of lots as come within the provisions of \*this act. The petition for abandonment shall be entitled: "In the Matter of the Abandonment, Forfeiture and Sale of Unoccupied and Uncared for Space located in . . . . . Cemetery." [1943 c 247 § 87; Rem. Supp. 1943 § 3778-87.]

\*Reviser's note: For "this act," see note following RCW 68.04.020.

**Chapter 68.40 RCW**

**ENDOWMENT AND NONENDOWMENT CARE**

Sections

- 68.40.010 Cemetery authorities—Deposit in endowment care fund required.
- 68.40.025 Nonendowed sections—Identification.
- 68.40.040 Endowment care fiscal reports—Review by plot owners.
- 68.40.060 May accept property in trust—Application of income.

(2010 Ed.)

- 68.40.085 Representing fund as perpetual—Penalty.
- 68.40.090 Penalty.
- 68.40.095 Certain cemeteries exempt from chapter.
- 68.40.100 Only nonendowment care cemeteries now in existence are authorized.
- 68.40.900 Effective date—1987 c 331.

**68.40.010 Cemetery authorities—Deposit in endowment care fund required.** A cemetery authority not exempt under this chapter shall deposit in an endowment care fund not less than the following amounts for plots or interment rights sold: Ten percent of the gross sales price for each grave, niche, or crypt.

In the event that a cemetery authority sells an interment right at a price that is less than its current list price, or gives away, bequeaths, or otherwise gives title to an interment right, the interment right shall be endowed at the rate at which it would normally be endowed.

The deposits shall be made not later than the twentieth day of the month following the final payment on the sale price. If a contract for interment rights is sold, pledged, or otherwise encumbered as security for a loan by the cemetery authority, the cemetery authority shall pay into the endowment care fund ten percent of the gross sales price of the interment right within twenty days of receipt of payment of the proceeds from such sale or loan.

Any cemetery hereafter established shall have deposited in an endowment care fund the sum of twenty-five thousand dollars before selling any interment right. [2005 c 365 § 111; 1987 c 331 § 35; 1984 c 53 § 1; 1961 c 133 § 2; 1953 c 290 § 4; 1943 c 247 § 118; Rem. Supp. 1943 § 3778-118.]

**68.40.025 Nonendowed sections—Identification.** Cemeteries with nonendowed sections opened before July 1, 1987, shall only be required to endow sections opened after July 1, 1987. On the face of any contract, receipt, or deed used for sales of nonendowed interment rights shall be prominently displayed the words "Nonendowment section." All nonendowed sections shall be identified as such by posting of a legible sign containing the following phrase: "Nonendowment section." [2005 c 365 § 112; 1987 c 331 § 36.]

**68.40.040 Endowment care fiscal reports—Review by plot owners.** A cemetery authority not exempt under this chapter shall file in its principal office for review by plot owners the previous seven fiscal years' endowment care reports as filed with the funeral and cemetery board in accordance with RCW 68.44.150. [2009 c 102 § 14; 1987 c 331 § 37; 1953 c 290 § 7; 1943 c 247 § 122; Rem. Supp. 1943 § 3778-122.]

**Funeral directors and embalmers account and cemetery account abolished, moneys transferred to funeral and cemetery account—2009 c 102:** See note following RCW 18.39.810.

**68.40.060 May accept property in trust—Application of income.** The cemetery authority of an endowment care cemetery may accept any property bequeathed, granted, or given to it in trust and may apply the income from such property to any or all of the following purposes:

- (1) Improvement or embellishment of all or any part of the cemetery;

(2) Erection, renewal, repair, or preservation of any monument, fence, building, or other structure in the cemetery;

(3) Planting or cultivation of trees, shrubs, or plants in or around any part of the cemetery;

(4) Special care or ornamenting of any part of any interment right, section, or building in the cemetery; and

(5) Any purpose or use consistent with the purpose for which the cemetery was established or is maintained. [2005 c 365 § 113; 1987 c 331 § 38; 1953 c 290 § 8; 1943 c 247 § 129; Rem. Supp. 1943 § 3778-129.]

#### **68.40.085 Representing fund as perpetual—Penalty.**

It is a misdemeanor for any cemetery authority, its officers, employees, or agents, or a cemetery broker or salesman to represent that an endowment care fund, or any other fund set up for maintaining care, is perpetual. [1953 c 290 § 24.]

**68.40.090 Penalty.** Any person, partnership, corporation, association, or his or its agents or representatives who shall violate any of the provisions of this chapter or make any false statement appearing on any sign, contract, agreement, receipt, statement, literature or other publication shall be guilty of a misdemeanor. [1987 c 331 § 39; 1943 c 247 § 125; Rem. Supp. 1943 § 3778-125.]

**68.40.095 Certain cemeteries exempt from chapter.** This chapter does not apply to any cemetery controlled and operated by a coroner, county, city, town, or cemetery district. [1987 c 331 § 40.]

**68.40.100 Only nonendowment care cemeteries now in existence are authorized.** After June 7, 1979, no nonendowment care cemetery may be established. However, any nonendowment care cemetery in existence on June 7, 1979, may continue to operate as a nonendowment care cemetery. [1979 c 21 § 18.]

**68.40.900 Effective date—1987 c 331.** See RCW 68.05.900.

### **Chapter 68.44 RCW ENDOWMENT CARE FUND**

#### Sections

68.44.010	Funds authorized—Investments.
68.44.020	Use and care of funds.
68.44.030	Authorized investments.
68.44.060	Unauthorized loans—Penalty.
68.44.070	Use of contributions to funds.
68.44.080	Plans for care—Financing.
68.44.090	Covenant to care for cemetery.
68.44.100	Agreement by owner to care for plot.
68.44.110	Trustees of fund.
68.44.115	Trustee to file statement with board—Resignation of trusteeship.
68.44.120	Directors as trustees—Secretary.
68.44.130	Bank or trust company as trustee.
68.44.140	Compensation of trustees.
68.44.150	Annual report.
68.44.160	Contributions.
68.44.170	Use of income from fund.
68.44.180	Certain cemeteries exempt from chapter.
68.44.900	Effective date—1987 c 331.

**68.44.010 Funds authorized—Investments.** Any cemetery authority not exempt under chapter 68.40 RCW shall establish, maintain, and operate an inviolable endowment care fund. Endowment care, special care, and other cemetery authorities' endowment care funds may be commingled for investment and the income therefrom shall be divided between the funds in the proportion that each contributed to the sum invested. The funds shall be held in the name of the trustees appointed by the cemetery authority with the words "endowment care fund" being a part of the name. [1987 c 331 § 41; 1953 c 290 § 11; 1943 c 247 § 105; Rem. Supp. 1943 § 3778-105.]

**68.44.020 Use and care of funds.** Endowment care funds shall not be used for any purpose other than to provide, through income only, for the endowment care stipulated in the instrument by which the fund was established. Endowment care funds shall be kept separate and distinct from all assets of the cemetery authority. Endowment care principal shall remain inviolable and may not be reduced in any way not found within RCW 11.100.020. [2005 c 365 § 114; 1987 c 331 § 42; 1953 c 290 § 12. Prior: (i) 1943 c 247 § 106; Rem. Supp. 1943 § 3778-106. (ii) 1943 c 247 § 126; Rem. Supp. 1943 § 3778-126.]

**68.44.030 Authorized investments.** Endowment care funds shall be kept invested in accordance with the provisions of RCW 11.100.020 subject to the following restrictions:

(1) No officer or director of the cemetery authority, trustee of the endowment care or special care funds, or spouse, sibling, parent, grandparent, or issue of such officer, director, or trustee, shall borrow any of such funds for himself, directly or indirectly.

(2) No funds shall be loaned to the cemetery authority, its agents, or employees, or to any corporation, partnership, or other business entity in which the cemetery authority has any ownership interest.

(3) No funds shall be invested with persons or business entities operating in a business field directly related to cemeteries, including, but not limited to, mortuaries, monument production and sales, florists, and rental of funeral facilities.

(4) Notwithstanding any other provisions contained in this section, funds may be invested in any commercial bank, mutual savings bank, or savings and loan association duly chartered and operating under the laws of the United States or statutes of the state of Washington. [1985 c 30 § 138. Prior: 1984 c 149 § 175; 1979 c 21 § 19; 1953 c 290 § 13; 1943 c 247 § 127; Rem. Supp. 1943 § 3778-127.]

**Short title—Application—Purpose—Severability—1985 c 30:** See RCW 11.02.900 through 11.02.903.

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**68.44.060 Unauthorized loans—Penalty.** Every director or officer authorizing or consenting to a loan, and the person who receives a loan, in violation of RCW 68.44.030 are severally guilty of a class C felony punishable under chapter 9A.20 RCW. [1984 c 53 § 2; 1943 c 247 § 133; Rem. Supp. 1943 § 3778-133.]

**68.44.070 Use of contributions to funds.** Contributions to endowment care and special care funds are permitted for charitable purposes. Endowment care and such contributions are provisions for the discharge of a duty from the persons contributing to the persons interred or to be interred in the cemetery. This provision is for the benefit and protection of the public by preserving and keeping cemeteries from becoming neglected places of disgrace in the communities they serve. [2005 c 365 § 115; 1953 c 290 § 16. Prior: (i) 1943 c 247 § 130; Rem. Supp. 1943 § 3778-130. (ii) 1943 c 247 § 117; Rem. Supp. 1943 § 3778-117.]

**68.44.080 Plans for care—Financing.** The cemetery authority may adopt plans for the care, maintenance, and embellishment of its cemetery. A cemetery authority may charge and collect from all purchasers of plots or rights of interment a reasonable sum that will generate a fund, and the income from the fund will provide care, maintenance, and embellishment on an endowment basis. [2005 c 365 § 116; 1953 c 290 § 17; 1943 c 247 § 108; Rem. Supp. 1943 § 3778-108.]

**68.44.090 Covenant to care for cemetery.** Upon payment of the purchase price and the contribution for endowment care, a deed of conveyance or other instrument may include an agreement to care for the cemetery, on an endowment basis to the extent the income will permit. [2005 c 365 § 117; 1953 c 290 § 18; 1943 c 247 § 109; Rem. Supp. 1943 § 3778-109.]

**68.44.100 Agreement by owner to care for plot.** Upon the application of an owner of a plot, and upon the payment by the owner of the amount fixed as a reasonable and proportionate contribution for endowment care, a cemetery authority may enter into an agreement with the owner for the special care of his or her plot and its appurtenances. [2005 c 365 § 118; 1953 c 290 § 19; 1943 c 247 § 110; Rem. Supp. 1943 § 3778-110.]

**68.44.110 Trustees of fund.** Unless an association of lot owners has been created for the purpose of appointing trustees, the cemetery authority shall appoint a minimum of three trustees for its endowment care fund, who shall hold office subject to the direction of the cemetery authority. [2005 c 365 § 119; 1987 c 331 § 43; 1953 c 290 § 20; 1943 c 247 § 111; Rem. Supp. 1943 § 3778-111.]

**68.44.115 Trustee to file statement with board—Resignation of trusteeship.** To be considered qualified as a trustee, each trustee of an endowment care fund appointed in accordance with this chapter shall file with the board a statement of acceptance of fiduciary responsibility, on a form approved by the board, before assuming the duties of trustee. The trustee shall remain in the trustee's fiduciary capacity until such time as the trustee advises the funeral and cemetery board in writing of the trustee's resignation of trusteeship. [2009 c 102 § 15; 1987 c 331 § 44.]

**Funeral directors and embalmers account and cemetery account abolished, moneys transferred to funeral and cemetery account—2009 c 102:** See note following RCW 18.39.810.

(2010 Ed.)

**68.44.120 Directors as trustees—Secretary.** The directors of a cemetery authority may be the trustees of its endowment care fund. When the fund is in the care of the directors, the secretary of the cemetery authority shall keep a true record of all of its proceedings. [2005 c 365 § 120; 1987 c 331 § 45; 1953 c 290 § 21; 1943 c 247 § 112; Rem. Supp. 1943 § 3778-112.]

**68.44.130 Bank or trust company as trustee.** In lieu of the appointment of a board of trustees of its endowment care fund, a cemetery authority may appoint, as sole trustee of its endowment care fund, any bank or trust company qualified to engage in the trust business. The bank or trust company shall be authorized to receive and accept the endowment care fund at the time of its appointment. [2005 c 365 § 121; 1987 c 331 § 46; 1943 c 247 § 113; Rem. Supp. 1943 § 3778-113.]

**68.44.140 Compensation of trustees.** Compensation to the board of trustees or trustee for services as trustee and other compensation for administration of trust funds shall not exceed the customary fees charged by banks and trust companies for like services. Such fees may not be paid from the fund principal. [2005 c 365 § 122; 1987 c 331 § 47; 1979 c 21 § 20; 1943 c 247 § 114; Rem. Supp. 1943 § 3778-114.]

**68.44.150 Annual report.** The cemetery authority or the trustees in whose names the funds are held shall, annually, and within ninety days after the end of the calendar or fiscal year of the cemetery authority, file in its office and with the funeral and cemetery board endowment care trust fund, a report showing the actual financial condition of the funds. The report must be signed by an officer of the cemetery authority or one or more of the trustees. The report must be maintained for a period of seven years. [2009 c 102 § 16; 2005 c 365 § 123; 1987 c 331 § 48; 1979 c 21 § 21; 1943 c 247 § 115; Rem. Supp. 1943 § 3778-115.]

**Funeral directors and embalmers account and cemetery account abolished, moneys transferred to funeral and cemetery account—2009 c 102:** See note following RCW 18.39.810.

**68.44.160 Contributions.** A cemetery authority which has established an endowment care fund may take and hold, as a part of the fund, any property, real, personal, or mixed, bequeathed, devised, granted, given, or otherwise contributed to it for its endowment care fund. [2005 c 365 § 124; 1953 c 290 § 22; 1943 c 247 § 116; Rem. Supp. 1943 § 3778-116.]

**68.44.170 Use of income from fund.** The income from the endowment care fund shall be used solely for the general care, maintenance, and embellishment of the cemetery, and shall be applied in such manner as the cemetery authority may from time to time determine to be for the best interest of the cemetery. [1953 c 290 § 23; 1943 c 247 § 107; Rem. Supp. 1943 § 3778-107.]

**68.44.180 Certain cemeteries exempt from chapter.** This chapter does not apply to any cemetery controlled and operated by a coroner, county, city, town, or cemetery district. [1987 c 331 § 49.]

**68.44.900 Effective date—1987 c 331.** See RCW 68.05.900.

### Chapter 68.46 RCW

#### PREARRANGEMENT CONTRACTS

##### Sections

68.46.010	Definitions.
68.46.020	Prearrangement trust funds—Required.
68.46.030	Prearrangement trust funds—Deposits—Bond requirements.
68.46.040	Prearrangement trust funds—Deposit of funds.
68.46.050	Withdrawals from trust funds—Notice of department of social and health services' claim.
68.46.055	Indebtedness limitations.
68.46.060	Termination of contract by purchaser or beneficiary.
68.46.070	Involuntary termination of contract—Refund.
68.46.075	Inactive contracts—Funds transfer—Obligations.
68.46.080	Other use of trust funds prohibited.
68.46.090	Financial reports—Filing—Verification.
68.46.100	Prearrangement contract requirements.
68.46.110	Compliance required.
68.46.125	Certain cemeteries exempt from chapter.
68.46.130	Exemptions from chapter granted by board.
68.46.160	Contract forms—Filing.
68.46.170	Sales licenses—Requirement.
68.46.175	Unconstructed crypts, etc., as part of contract—Requirements.
68.46.900	Effective date—1987 c 331.

*Prearrangement funeral service contracts: RCW 18.39.240 through 18.39.360.*

**68.46.010 Definitions.** The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Board" means the funeral and cemetery board established under RCW 18.39.173 or its authorized representative.

(2) "Cemetery merchandise or services" and "merchandise or services" mean those services normally performed by cemetery authorities, including the sale of monuments, markers, memorials, nameplates, liners, vaults, boxes, urns, vases, interment services, or any one or more of them.

(3) "Prearrangement contract" means a contract for purchase of cemetery merchandise or services, unconstructed crypts or niches, or undeveloped graves to be furnished at a future date for a specific consideration which is paid in advance by one or more payments in one sum or by installment payments.

(4) "Prearrangement trust fund" means all funds required to be maintained in one or more funds for the benefit of beneficiaries by either this chapter or by the terms of a prearrangement contract, as herein defined.

(5) "Undeveloped grave" means any grave in an area which a cemetery authority has not landscaped, groomed, or developed to the extent customary in the cemetery industry. [2009 c 102 § 17; 2005 c 365 § 125; 1979 c 21 § 22; 1975 1st ex.s. c 55 § 1; 1973 1st ex.s. c 68 § 1.]

**Reviser's note:** The definitions in this section have been alphabetized pursuant to RCW 1.08.015(2)(k).

**Funeral directors and embalmers account and cemetery account abolished, moneys transferred to funeral and cemetery account—2009 c 102:** See note following RCW 18.39.810.

**68.46.020 Prearrangement trust funds—Required.** Any cemetery authority selling by prearrangement contracts any merchandise or services shall establish and maintain one or more prearrangement trust funds for the benefit of benefi-

ciaries of prearrangement contracts. [2005 c 365 § 126; 1973 1st ex.s. c 68 § 2.]

**68.46.030 Prearrangement trust funds—Deposits—Bond requirements.** (1) For each prearrangement contract, a cemetery authority shall deposit the greater of the following amounts in its prearrangement trust fund:

(a) For merchandise:

(i) Fifty percent of the contract price; or

(ii) The wholesale cost of the item.

(b) For services:

(i) Fifty percent of the contract price; or

(ii) The direct cost of providing the service.

(2) Any cemetery authority which does not file and maintain with the board a bond as provided in subsection (4) of this section shall deposit in its prearrangement trust fund an amount as determined under subsection (1) of this section, excluding sales tax and endowment care if such charge is made.

(3) Any cemetery authority which files and maintains with the board a bond as provided in subsection (4) of this section may retain the nontrustable portion of the contract before depositing the balance of payments into its prearrangement trust fund, as determined under subsection (1) of this section, excluding sales tax and endowment care, if such charge is made.

(4) Each cemetery authority electing to make payments to its prearrangement trust fund pursuant to subsection (3) of this section shall file and maintain with the board a bond, issued by a surety company authorized to do business in the state, in the amount by which the cemetery authority's contingent liability for refunds pursuant to RCW 68.46.060 exceeds the amount deposited in its prearrangement trust fund. The bond shall be conditioned that it is for the use and benefit of any person requesting a refund pursuant to RCW 68.46.060 if the cemetery authority does not promptly pay to the person the refund due pursuant to RCW 68.46.060. In addition to any other remedy, every person not promptly receiving the refund due pursuant to RCW 68.46.060 may sue the surety for the refund. The liability of the surety shall not exceed the amount of the bond. Termination or cancellation shall not be effective unless notice is delivered by the surety to the board at least thirty days prior to the date of termination or cancellation. The board shall immediately notify the cemetery authority affected by the termination or cancellation by certified mail, return receipt requested. The cemetery authority shall thereupon obtain another bond or make such other arrangement as may be satisfactory to the board to ensure its ability to make refunds pursuant to RCW 68.46.060.

(5) Deposits to the prearrangement trust fund shall be made not later than the twentieth day of each month following receipt of each payment required to be deposited. If a prearrangement contract is sold, pledged, or otherwise encumbered as security for a loan by the cemetery authority, the cemetery authority shall pay into the prearrangement trust fund fifty percent of the total sale price of the prearrangement contract within twenty days of receipt of payment of the proceeds from the sale or loan.

(6) Any failure to fund a prearrangement contract as required by this section shall be grounds for disciplinary

action against the cemetery authority and the cemetery authority's prearrangement sales license. [2005 c 365 § 127; 1984 c 53 § 3; 1979 c 21 § 24; 1973 1st ex.s. c 68 § 3.]

**68.46.040 Prearrangement trust funds—Deposit of funds.** All prearrangement trust funds shall be deposited in a public depository as defined by RCW 39.58.010, in a state or federally chartered credit union, or in instruments issued or insured by any agency of the federal government. Such accounts shall be designated as the "prearrangement trust fund" by name and the particular cemetery authority for the benefit of the beneficiaries named in any prearrangement contract. [2005 c 365 § 128; 1987 c 331 § 50; 1973 1st ex.s. c 68 § 4.]

**68.46.050 Withdrawals from trust funds—Notice of department of social and health services' claim.** (1) A depository of prearrangement funds shall permit a cemetery authority to withdraw all funds deposited under any specific prearrangement contract plus interest accrued thereon, under the following circumstances and conditions:

(a) If the cemetery authority files a verified statement with the depository that the prearrangement merchandise and services covered by a contract have been furnished and delivered; or

(b) If the cemetery authority files a verified statement that a specific prearrangement contract has been canceled in accordance with its terms.

(2) The department of social and health services shall notify the cemetery authority maintaining a prearrangement trust fund regulated by this chapter that the department has a claim on the estate of a beneficiary for long-term care services. Such notice shall be renewed at least every three years. The cemetery authority, upon becoming aware of the death of a beneficiary, shall give notice to the department of social and health services, office of financial recovery, who shall file any claim there may be within thirty days of the notice. [2005 c 365 § 129; 1995 1st sp.s. c 18 § 65; 1973 1st ex.s. c 68 § 5.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**68.46.055 Indebtedness limitations.** No cemetery authority may enter into a retail contract for the purchase of debentures, shares, scrip, bonds, notes, or any instrument or evidence of indebtedness that requires the cemetery authority to furnish cemetery merchandise, services, or interment rights to the holder at a future date. This section does not include retail installment sales transactions governed by chapter 63.14 RCW. [2005 c 365 § 130; 1984 c 53 § 8.]

**68.46.060 Termination of contract by purchaser or beneficiary.** Any purchaser or beneficiary may, upon written demand of any cemetery authority, demand that any prearrangement contract with such cemetery authority be terminated. In such event, the cemetery authority shall, within thirty days, refund to the purchaser or beneficiary fifty percent of the moneys received less the contractual price of any merchandise delivered or services performed before the termination plus interest earned. In any case, where, under a prearrangement contract there is more than one beneficiary,

no written demand as provided in this section shall be honored by any cemetery authority unless the written demand provided for in this section shall bear the signatures of all of such beneficiaries. [2005 c 365 § 132; 1987 c 331 § 51; 1984 c 53 § 4; 1979 c 21 § 25; 1973 1st ex.s. c 68 § 6.]

**68.46.070 Involuntary termination of contract—Refund.** Prearrangement contracts shall terminate upon demand of the purchaser of the contract if the cemetery authority shall go out of business, become insolvent or bankrupt, make an assignment for the benefit of creditors, or for any other reason be unable to fulfill the obligations under the contract. Upon demand by the purchaser or beneficiary or beneficiaries of any prearrangement contract, the cemetery authority shall refund one hundred percent of the original contract, less delivered services and merchandise, including funds held in deposit and interest earned thereon, unless otherwise ordered by a court of competent jurisdiction. [1987 c 331 § 52; 1979 c 21 § 26; 1973 1st ex.s. c 68 § 7.]

**68.46.075 Inactive contracts—Funds transfer—Obligations.** In the event the beneficiary of a prearrangement contract make[s] no claim within fifty years of the date of the contract for the merchandise and services provided in the prearrangement contract, the funds deposited in the prearrangement trust for that contract, plus interest, shall be transferred to the cemetery authority's endowment fund, to be used for the purposes for which the endowment fund was established. However, the cemetery authority shall remain obligated for merchandise and services, unconstructed crypts, niches, and undeveloped property under the terms of the prearrangement contract. Claims may be made for merchandise and services, unconstructed crypts, niches, and undeveloped property on a prearrangement contract after the funds have been transferred to the endowment fund. These claims shall be paid for from the endowment fund income on a contract by contract basis. [2005 c 365 § 133; 1979 c 21 § 27.]

**68.46.080 Other use of trust funds prohibited.** Prearrangement trust funds shall not be used in any way for the benefit of the cemetery authority or any director, officer, agent, or employee of any cemetery authority, including, but not limited to any encumbrance, pledge, or other utilization or prearrangement trust funds as collateral or other security. [2005 c 365 § 134; 1973 1st ex.s. c 68 § 8.]

**68.46.090 Financial reports—Filing—Verification.** Any cemetery authority selling prearrangement merchandise or other prearrangement services shall file in its office and with the board a written report upon forms prepared by the board which shall state the amount of the principle of the prearrangement trust fund, the depository of such fund, and cash on hand which is or may be due to the fund as well as other information the board may deem appropriate. All information appearing on such written reports shall be revised at least annually. These reports shall be verified by the president, or the vice president, and one other officer of the cemetery authority, the accountant or auditor who prepared the report, and, if required by the board for good cause, a certified public accountant in accordance with generally accepted auditing

standards. [2009 c 102 § 18; 2005 c 365 § 135; 1983 c 190 § 1; 1977 ex.s. c 351 § 5; 1973 1st ex.s. c 68 § 9.]

**Funeral directors and embalmers account and cemetery account abolished, moneys transferred to funeral and cemetery account—2009 c 102:** See note following RCW 18.39.810.

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

#### 68.46.100 Prearrangement contract requirements.

Every prearrangement contract shall contain language which informs the purchaser of the prearrangement trust fund and the amount to be deposited in the prearrangement trust fund. The amount deposited to the prearrangement trust fund must meet the requirements of RCW 68.46.030.

Every prearrangement contract shall contain language prominently featured on the face of the contract disclosing to the purchaser what items will be delivered before need, either stored or installed, and thus not subject to funding or refund.

Every prearrangement contract for the sale of unconstructed crypts, niches, or undeveloped property shall contain language which informs the purchaser that sales of unconstructed or undeveloped property are subject to the provisions of RCW 68.46.030. [2005 c 365 § 136; 1987 c 331 § 53; 1984 c 53 § 5; 1973 1st ex.s. c 68 § 10.]

**68.46.110 Compliance required.** No cemetery authority shall sell, offer to sell, or authorize the sale of cemetery merchandise or services or accept funds in payment of any prearrangement contract unless such acts are performed in compliance with this title and under the authority of a valid and unsuspended certificate of authority to operate a cemetery in this state. [2005 c 365 § 137; 1973 1st ex.s. c 68 § 11.]

**68.46.125 Certain cemeteries exempt from chapter.** This chapter does not apply to any cemetery controlled and operated by a coroner, county, city, town, or cemetery district. [1987 c 331 § 54.]

**68.46.130 Exemptions from chapter granted by board.** The board may grant an exemption from any or all of the requirements of this chapter relating to prearrangement contracts to any cemetery authority which:

- (1) Sells less than twenty prearrangement contracts per year; and
- (2) Deposits one hundred percent of all funds received into a trust fund under RCW 68.46.030, as now or hereafter amended. [2009 c 102 § 19; 1979 c 21 § 43.]

**Funeral directors and embalmers account and cemetery account abolished, moneys transferred to funeral and cemetery account—2009 c 102:** See note following RCW 18.39.810.

**68.46.160 Contract forms—Filing.** No cemetery authority shall use a prearrangement contract without first filing the form of such contract with the board: PROVIDED, That the board may order the cemetery authority to cease using any prearrangement contract form which:

- (1) Is in violation of any provision of this chapter;
- (2) Is misleading or deceptive; or
- (3) Is being used in connection with solicitation by false, misleading or deceptive advertising or sales practices.

Use of a prearrangement contract form which is not on file with the board or which the board has ordered the ceme-

tery authority not to use shall be a violation of this chapter. [1979 c 21 § 38.]

**68.46.170 Sales licenses—Requirement.** No cemetery authority shall enter into prearrangement contracts in this state unless the cemetery authority has obtained a prearrangement sales license issued by the board or its authorized representative and such license is then current and valid. [1979 c 21 § 23.]

**68.46.175 Unconstructed crypts, etc., as part of contract—Requirements.** (1) A cemetery authority that enters into prearrangement contracts for the sale of unconstructed crypts, niches, or undeveloped property, or that conveys undeveloped property by gift, shall maintain an adequate inventory of constructed crypts or niches and developed property. The inventory shall be a minimum of ten percent of the unconstructed or undeveloped property sales. The inventory shall be equal or better in quality than the unconstructed crypts or niches, or undeveloped property if they were constructed or developed.

(2) If the death of a purchaser or owner of an unconstructed crypt, niche, or undeveloped property occurs before the property is constructed or developed, the cemetery authority shall provide a constructed crypt, niche, or developed property of equal or better quality without additional cost or charge.

(3) If two or more unconstructed crypts, niches, or undeveloped properties are conveyed with the intention that the crypts, niches, or properties shall be contiguous to each other or maintained together as a group and the death of any one purchaser or owner in such group occurs before the unconstructed crypts, niches, or undeveloped property is developed, the cemetery authority shall provide additional constructed crypts, niches, or developed property of equal or better quality, contiguous to each other or together as a group, as originally intended, to other purchasers or owners in the group without additional cost or charge.

(4) The representative of the deceased purchaser may agree to the placement of the decedent in a temporary crypt, niche, or grave until the construction is completed and the decedent is placed in the new crypt, niche, or grave.

(5) Prearrangement sales of unconstructed crypts, niches, or undeveloped property must meet the requirements of RCW 68.46.030. [2005 c 365 § 131.]

**68.46.900 Effective date—1987 c 331.** See RCW 68.05.900.

## Chapter 68.50 RCW HUMAN REMAINS

### Sections

68.50.010	Coroner's jurisdiction over remains.
68.50.015	Immunity for determining cause and manner of death—Judicial review of determination.
68.50.020	Notice to coroner—Penalty.
68.50.032	Transportation of remains directed by coroner or medical examiner—Costs.
68.50.035	Unlawful to refuse burial to non-Caucasian.
68.50.040	Deceased's effects to be listed.
68.50.050	Removal or concealment of body—Penalty.
68.50.060	Bodies for instruction purposes.

- 68.50.070 Bodies, when may be used for dissection.
- 68.50.080 Certificate and bond before receiving bodies.
- 68.50.090 Penalty.
- 68.50.100 Dissection, when permitted—Autopsy of person under the age of three years.
- 68.50.101 Autopsy, post mortem—Who may authorize.
- 68.50.102 Court petition for autopsy—Cost.
- 68.50.103 Autopsies in industrial deaths.
- 68.50.104 Cost of autopsy.
- 68.50.105 Autopsies, post mortems—Reports and records confidential—Exceptions.
- 68.50.106 Autopsies, post mortems—Analyses—Opinions—Evidence—Costs.
- 68.50.107 State toxicological laboratory established—State toxicologist.
- 68.50.108 Autopsies, post mortems—Consent to embalm or cremate body—Time limitation.
- 68.50.110 Burial or cremating.
- 68.50.120 Holding body for debt—Penalty.
- 68.50.130 Unlawful disposal of remains.
- 68.50.140 Unlawful disturbance, removal, or sale of human remains—Penalty.
- 68.50.160 Right to control disposition of remains—Liability of funeral establishment or cemetery authority—Liability for cost.
- 68.50.170 Effect of authorization.
- 68.50.185 Individual cremation—Exception—Penalty.
- 68.50.200 Permission to remove human remains.
- 68.50.210 Notice for order to remove remains.
- 68.50.220 Exceptions.
- 68.50.230 Human remains that have not been disposed—Rules.
- 68.50.232 Remains—Entrusting to funeral homes or mortuaries.
- 68.50.240 Record of human remains to be kept.
- 68.50.270 Possession of cremated human remains.
- 68.50.290 Corneal tissue for transplantation—Presumption of good faith.
- 68.50.300 Release of information concerning a death.
- 68.50.310 Dental identification system established—Powers and duties.
- 68.50.320 Procedures for investigating missing persons—Availability of files.
- 68.50.330 Identification of body or human remains by dental examination—Comparison of dental examination records with dental records of dental identification system.
- 68.50.645 Skeletal human remains—Duty to notify—Ground disturbing activities—Coroner determination—Definitions.
- 68.50.900 Effective date—1987 c 331.
- 68.50.901 Application—1993 c 228.
- 68.50.902 Application—Construction—1993 c 228.
- 68.50.903 Severability—1993 c 228.
- 68.50.904 Short title—1993 c 228.

*Burial and removal permits: RCW 70.58.230.*

*Coroners to submit blood samples to state toxicologist—Analysis—Utilization of reports: RCW 46.52.065.*

*County commissioners to dispose of remains of indigents: RCW 36.39.030.*

*Disposal of remains prohibited unless accompanied by proper permit: RCW 70.58.260.*

*Fetal deaths: Chapter 70.58 RCW.*

*Undertaker must file death certificate: RCW 70.58.240.*

*Veterans and relatives: Chapter 73.24 RCW.*

**68.50.010 Coroner's jurisdiction over remains.** The jurisdiction of bodies of all deceased persons who come to their death suddenly when in apparent good health without medical attendance within the thirty-six hours preceding death; or where the circumstances of death indicate death was caused by unnatural or unlawful means; or where death occurs under suspicious circumstances; or where a coroner's autopsy or post mortem or coroner's inquest is to be held; or where death results from unknown or obscure causes, or where death occurs within one year following an accident; or where the death is caused by any violence whatsoever, or where death results from a known or suspected abortion; whether self-induced or otherwise; where death apparently results from drowning, hanging, burns, electrocution, gunshot wounds, stabs or cuts, lightning, starvation, radiation, exposure, alcoholism, narcotics or other addictions, tetanus,

strangulations, suffocation or smothering; or where death is due to premature birth or still birth; or where death is due to a violent contagious disease or suspected contagious disease which may be a public health hazard; or where death results from alleged rape, carnal knowledge or sodomy, where death occurs in a jail or prison; where a body is found dead or is not claimed by relatives or friends, is hereby vested in the county coroner, which bodies may be removed and placed in the morgue under such rules as are adopted by the coroner with the approval of the county commissioners, having jurisdiction, providing therein how the bodies shall be brought to and cared for at the morgue and held for the proper identification where necessary. [1963 c 178 § 1; 1953 c 188 § 1; 1917 c 90 § 3; RRS § 6042. Formerly RCW 68.08.010.]

**68.50.015 Immunity for determining cause and manner of death—Judicial review of determination.** A county coroner or county medical examiner or persons acting in that capacity shall be immune from civil liability for determining the cause and manner of death. The accuracy of the determinations is subject to judicial review. [1987 c 263 § 1.]

**68.50.020 Notice to coroner—Penalty.** It shall be the duty of every person who knows of the existence and location of a dead body coming under the jurisdiction of the coroner as set forth in RCW 68.50.010, to notify the coroner thereof in the most expeditious manner possible, unless such person shall have good reason to believe that such notice has already been given. Any person knowing of the existence of such dead body and not having good reason to believe that the coroner has notice thereof and who shall fail to give notice to the coroner as aforesaid, shall be guilty of a misdemeanor. [1987 c 331 § 55; 1917 c 90 § 4; RRS § 6043. Formerly RCW 68.08.020.]

**68.50.032 Transportation of remains directed by coroner or medical examiner—Costs.** Whenever a coroner or medical examiner assumes jurisdiction over human remains and directs transportation of those remains by a funeral establishment, as defined in RCW 18.39.010, the reasonable costs of transporting shall be borne by the county if: (1) The funeral establishment transporting the remains is not providing the funeral or disposition services; or (2) the funeral establishment providing the funeral or disposition services is required to transport the remains to a facility other than its own.

Except as provided in RCW 36.39.030, 68.52.030, and 73.08.070, any transportation costs or other costs incurred after the coroner or medical examiner has released jurisdiction over the human remains shall not be borne by the county. [1991 c 176 § 1.]

**68.50.035 Unlawful to refuse burial to non-Caucasian.** It shall be unlawful for any cemetery under this chapter to refuse burial to any person because such person may not be of the Caucasian race. [1953 c 290 § 53. Formerly RCW 68.05.260.]

**Reviser's note:** RCW 68.50.035 (formerly RCW 68.05.260) was declared unconstitutional in *Price v. Evergreen Cemetery Co. of Seattle* (1960) 157 Wash. Dec. 249.

**68.50.040 Deceased's effects to be listed.** Duplicate lists of all jewelry, moneys, papers, and other personal property of the deceased shall be made immediately upon finding the same by the coroner or his assistants. The original of such lists shall be kept as a public record at the morgue and the duplicate thereof shall be forthwith duly certified to by the coroner and filed with the county auditor. [1917 c 90 § 6; RRS § 6045. Formerly RCW 68.08.040.]

**68.50.050 Removal or concealment of body—Penalty.** Any person, not authorized by the coroner or his deputies, who removes the body of a deceased person not claimed by a relative or friend, or who came to their death by reason of violence or from unnatural causes or where there shall exist reasonable grounds for the belief that such death has been caused by unlawful means at the hands of another, to any undertaking rooms or elsewhere, or any person who directs, aids or abets such taking, and any person who in any way conceals the body of a deceased person for the purpose of taking the same to any undertaking rooms or elsewhere, shall in each of said cases be guilty of a gross misdemeanor and upon conviction thereof shall be punished by fine of not more than one thousand dollars, or by imprisonment in the county jail for not more than one year or by both fine and imprisonment in the discretion of the court. [1917 c 90 § 7; RRS § 6046. Formerly RCW 68.08.050.]

**68.50.060 Bodies for instruction purposes.** Any physician or surgeon of this state, or any medical student under the authority of any such physician or surgeon, may obtain, as hereinafter provided, and have in his possession human dead bodies, or the parts thereof, for the purposes of anatomical inquiry or instruction. [1891 c 123 § 1; RRS § 10026. Formerly RCW 68.08.060.]

**68.50.070 Bodies, when may be used for dissection.** Any sheriff, coroner, keeper or superintendent of a county poorhouse, public hospital, county jail, or state institution shall surrender the dead bodies of persons required to be buried at the public expense, to any physician or surgeon, to be by him used for the advancement of anatomical science, preference being given to medical schools in this state, for their use in the instruction of medical students. If the deceased person during his last sickness requested to be buried, or if within thirty days after his death some person claiming to be a relative or a responsible officer of a church organization with which the deceased at the time of his death was affiliated requires the body to be buried, his body shall be buried. [1959 c 23 § 1; 1953 c 224 § 2; 1891 c 123 § 2; RRS § 10027. Formerly RCW 68.08.070.]

**68.50.080 Certificate and bond before receiving bodies.** Every physician or surgeon before receiving the dead body must give to the board or officer surrendering the same to him a certificate from the medical society of the county in which he resides, or if there is none, from the board of supervisors of the same, that he is a fit person to receive such dead body. He must also give a bond with two sureties, that each body so by him received will be used only for the promotion of anatomical science, and that it will be used for such pur-

pose in this state only, and so as in no event to outrage the public feeling. [1891 c 123 § 3; RRS § 10028. Formerly RCW 68.08.080.]

**68.50.090 Penalty.** Any person violating any provision of RCW 68.50.060 through 68.50.080 shall upon conviction thereof be fined in any sum not exceeding five hundred dollars. [1987 c 331 § 56; 1891 c 123 § 4; RRS § 10029. Formerly RCW 68.08.090.]

**68.50.100 Dissection, when permitted—Autopsy of person under the age of three years.** (1) The right to dissect a dead body shall be limited to cases specially provided by statute or by the direction or will of the deceased; cases where a coroner is authorized to hold an inquest upon the body, and then only as he or she may authorize dissection; and cases where the spouse, state registered domestic partner, or next of kin charged by law with the duty of burial shall authorize dissection for the purpose of ascertaining the cause of death, and then only to the extent so authorized: PROVIDED, That the coroner, in his or her discretion, may make or cause to be made by a competent pathologist, toxicologist, or physician, an autopsy or postmortem in any case in which the coroner has jurisdiction of a body: PROVIDED, FURTHER, That the coroner may with the approval of the University of Washington and with the consent of a parent or guardian deliver any body of a deceased person under the age of three years over which he or she has jurisdiction to the University of Washington medical school for the purpose of having an autopsy made to determine the cause of death.

(2) Every person who shall make, cause, or procure to be made any dissection of a body, except as provided in this section, is guilty of a gross misdemeanor. [2007 c 156 § 21; 2003 c 53 § 307; 1963 c 178 § 2; 1953 c 188 § 2; 1909 c 249 § 237; RRS § 2489. Formerly RCW 68.08.100.]

**Intent—Effective date—2003 c 53:** See notes following RCW 2.48.180.

**68.50.101 Autopsy, post mortem—Who may authorize.** Autopsy or post mortem may be performed in any case where authorization has been given by a member of one of the following classes of persons in the following order of priority:

- (1) The surviving spouse or state registered domestic partner;
- (2) Any child of the decedent who is eighteen years of age or older;
- (3) One of the parents of the decedent;
- (4) Any adult brother or sister of the decedent;
- (5) A person who was guardian of the decedent at the time of death;
- (6) Any other person or agency authorized or under an obligation to dispose of the remains of the decedent. The chief official of any such agency shall designate one or more persons to execute authorizations pursuant to the provisions of this section.

If the person seeking authority to perform an autopsy or post mortem makes reasonable efforts to locate and secure authorization from a competent person in the first or succeeding class and finds no such person available, authorization

may be given by any person in the next class, in the order of descending priority. However, no person under this section shall have the power to authorize an autopsy or post mortem if a person of higher priority under this section has refused such authorization: PROVIDED, That this section shall not affect autopsies performed pursuant to RCW 68.50.010 or 68.50.103. [2007 c 156 § 22; 1987 c 331 § 57; 1977 c 79 § 1; 1953 c 188 § 11. Formerly RCW 68.08.101.]

**68.50.102 Court petition for autopsy—Cost.** Any party by showing just cause may petition the court to have autopsy made and results thereof made known to said party at his own expense. [1953 c 188 § 12. Formerly RCW 68.08.102.]

**68.50.103 Autopsies in industrial deaths.** In an industrial death where the cause of death is unknown, and where the department of labor and industries is concerned, said department in its discretion, may request the coroner in writing to perform an autopsy to determine the cause of death. The coroner shall be required to promptly perform such autopsy upon receipt of the written request from the department of labor and industries. [1953 c 188 § 6. Formerly RCW 68.08.103.]

**68.50.104 Cost of autopsy.** (1) The cost of autopsy shall be borne by the county in which the autopsy is performed, except when requested by the department of labor and industries, in which case, the department shall bear the cost of such autopsy.

(2) Except as provided in (c) of this subsection, when the county bears the cost of an autopsy, it shall be reimbursed from the death investigations account, established by RCW 43.79.445, as follows:

(a) Up to forty percent of the cost of contracting for the services of a pathologist to perform an autopsy;

(b) Up to twenty-five percent of the salary of pathologists who are primarily engaged in performing autopsies and are (i) county coroners or county medical examiners, or (ii) employees of a county coroner or county medical examiner; and

(c) When the county bears the cost of an autopsy of a child under the age of three whose death was sudden and unexplained, the county shall be reimbursed for the expenses of the autopsy when the death scene investigation and the autopsy have been conducted under RCW 43.103.100 (4) and (5), and the autopsy has been done at a facility designed for the performance of autopsies.

Payments from the account shall be made pursuant to biennial appropriation: PROVIDED, That no county may reduce funds appropriated for this purpose below 1983 budgeted levels. [2001 c 82 § 2; 1983 1st ex.s. c 16 § 14; 1963 c 178 § 3; 1953 c 188 § 7. Formerly RCW 68.08.104.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**68.50.105 Autopsies, post mortems—Reports and records confidential—Exceptions.** Reports and records of autopsies or post mortems shall be confidential, except that the following persons may examine and obtain copies of any such report or record: The personal representative of the

(2010 Ed.)

decedent as defined in RCW 11.02.005, any family member, the attending physician or advanced registered nurse practitioner, the prosecuting attorney or law enforcement agencies having jurisdiction, public health officials, or to the department of labor and industries in cases in which it has an interest under RCW 68.50.103.

The coroner, the medical examiner, or the attending physician shall, upon request, meet with the family of the decedent to discuss the findings of the autopsy or post mortem. For the purposes of this section, the term "family" means the surviving spouse, state registered domestic partner, or any child, parent, grandparent, grandchild, brother, or sister of the decedent, or any person who was guardian of the decedent at the time of death. [2007 c 439 § 1; 2007 c 156 § 23; 1987 c 331 § 58; 1985 c 300 § 1; 1977 c 79 § 2; 1953 c 188 § 9. Formerly RCW 68.08.105.]

**Reviser's note:** This section was amended by 2007 c 156 § 23 and by 2007 c 439 § 1, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

**68.50.106 Autopsies, post mortems—Analyses—Opinions—Evidence—Costs.** In any case in which an autopsy or post mortem is performed, the coroner or medical examiner, upon his or her own authority or upon the request of the prosecuting attorney or other law enforcement agency having jurisdiction, may make or cause to be made an analysis of the stomach contents, blood, or organs, or tissues of a deceased person and secure professional opinions thereon and retain or dispose of any specimens or organs of the deceased which in his or her discretion are desirable or needful for anatomic, bacteriological, chemical, or toxicological examination or upon lawful request are needed or desired for evidence to be presented in court. Costs shall be borne by the county. [1993 c 228 § 19; 1987 c 331 § 59; 1975-'76 2nd ex.s. c 28 § 1; 1953 c 188 § 10. Formerly RCW 68.08.106.]

**68.50.107 State toxicological laboratory established—State toxicologist.** There shall be established in conjunction with the chief of the Washington state patrol and under the authority of the state forensic investigations council a state toxicological laboratory under the direction of the state toxicologist whose duty it will be to perform all necessary toxicologic procedures requested by all coroners, medical examiners, and prosecuting attorneys. The state forensic investigations council, after consulting with the chief of the Washington state patrol and director of the bureau of forensic laboratory services, shall appoint a toxicologist as state toxicologist, who shall report to the director of the bureau of forensic laboratory services and the office of the chief of the Washington state patrol. Toxicological services shall be funded by disbursement from the spirits, beer, and wine restaurant; spirits, beer, and wine private club; spirits, beer, and wine nightclub; and sports entertainment facility license fees as provided in RCW 66.08.180 and by appropriation from the death investigations account as provided in RCW 43.79.445. [2009 c 271 § 11. Prior: 1999 c 281 § 13; 1999 c 40 § 8; 1995 c 398 § 10; 1986 c 87 § 2; 1983 1st ex.s. c 16 § 10; 1975-'76 2nd ex.s. c 84 § 1; 1970 ex.s. c 24 § 1; 1953 c 188 § 13. Formerly RCW 68.08.107.]

*State forensic investigations council: Chapter 43.103 RCW.*

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**68.50.108 Autopsies, post mortems—Consent to embalm or cremate body—Time limitation.** No dead body upon which the coroner, or prosecuting attorney, if there be no coroner in the county, may perform an autopsy or post mortem, shall be embalmed or cremated without the consent of the coroner having jurisdiction, and failure to obtain such consent shall be a misdemeanor: PROVIDED, That such autopsy or post mortem must be performed within five days, unless the coroner shall obtain an order from the superior court extending such time. [1953 c 188 § 8. Formerly RCW 68.08.108.]

**68.50.110 Burial or cremating.** Except in cases of dissection provided for in RCW 68.50.100, and where human remains shall rightfully be carried through or removed from the state for the purpose of burial elsewhere, human remains lying within this state, and the remains of any dissected body, after dissection, shall be decently buried, or cremated within a reasonable time after death. [2005 c 365 § 138; 1987 c 331 § 60; 1909 c 249 § 238; RRS § 2490. Formerly RCW 68.08.110.]

**68.50.120 Holding body for debt—Penalty.** Every person who arrests, attaches, detains, or claims to detain any human remains for any debt or demand, or upon any pretended lien or charge, is guilty of a gross misdemeanor. [1943 c 247 § 27; Rem. Supp. 1943 § 3778-27. Formerly RCW 68.08.120.]

**68.50.130 Unlawful disposal of remains.** Every person who performs a disposition of any human remains, except as otherwise provided by law, in any place, except in a cemetery or a building dedicated exclusively for religious purposes, is guilty of a misdemeanor. Disposition of cremated human remains may also occur on private property, with the consent of the property owner; and on public or government lands or waters with the approval of the government agency that has either jurisdiction or control, or both, of the lands or waters. [2005 c 365 § 139; 1943 c 247 § 28; Rem. Supp. 1943 § 3778-28. Formerly RCW 68.08.130.]

**68.50.140 Unlawful disturbance, removal, or sale of human remains—Penalty.** (1) Every person who shall remove human remains, or any part thereof, from a grave, vault, or other place where the same has been buried or deposited awaiting burial or cremation, without authority of law, with intent to sell the same, or for the purpose of securing a reward for its return, or for dissection, or from malice or wantonness, is guilty of a class C felony.

(2) Every person who shall purchase or receive, except for burial or cremation, human remains or any part thereof, knowing that the same has been removed contrary to the foregoing provisions, is guilty of a class C felony.

(3) Every person who shall open a grave or other place of interment, temporary or otherwise, or a building where human remains are placed, with intent to sell or remove the casket, urn, or of any part thereof, or anything attached thereto, or any vestment, or other article interred, or intended

to be interred with the human remains, is guilty of a class C felony.

(4) Every person who removes, disinters, or mutilates human remains from a place of interment, without authority of law, is guilty of a class C felony. [2005 c 365 § 140; 2003 c 53 § 308; 1992 c 7 § 44; 1909 c 249 § 239; RRS § 2491. FORMER PART OF SECTION: 1943 c 247 § 25 now codified as RCW 68.50.145. Formerly RCW 68.08.140.]

**Intent—Effective date—2003 c 53:** See notes following RCW 2.48.180.

**68.50.160 Right to control disposition of remains—Liability of funeral establishment or cemetery authority—Liability for cost.** (1) A person has the right to control the disposition of his or her own remains without the predeath or postdeath consent of another person. A valid written document expressing the decedent's wishes regarding the place or method of disposition of his or her remains, signed by the decedent in the presence of a witness, is sufficient legal authorization for the procedures to be accomplished.

(2) Prearrangements that are prepaid, or filed with a licensed funeral establishment or cemetery authority, under RCW 18.39.280 through 18.39.345 and chapter 68.46 RCW are not subject to cancellation or substantial revision by survivors. Absent actual knowledge of contrary legal authorization under this section, a licensed funeral establishment or cemetery authority shall not be held criminally nor civilly liable for acting upon such prearrangements.

(3) If the decedent has not made a prearrangement as set forth in subsection (2) of this section or the costs of executing the decedent's wishes regarding the disposition of the decedent's remains exceeds a reasonable amount or directions have not been given by the decedent, the right to control the disposition of the remains of a deceased person vests in, and the duty of disposition and the liability for the reasonable cost of preparation, care, and disposition of such remains devolves upon the following in the order named:

(a) The surviving spouse or state registered domestic partner.

(b) The surviving adult children of the decedent.

(c) The surviving parents of the decedent.

(d) The surviving siblings of the decedent.

(e) A person acting as a representative of the decedent under the signed authorization of the decedent.

(4) If any person to whom the right of control has vested pursuant to subsection (3) of this section has been arrested or charged with first or second degree murder or first degree manslaughter in connection with the decedent's death, the right of control is relinquished and passed on in accordance with subsection (3) of this section.

(5) If a cemetery authority as defined in RCW 68.04.190 or a funeral establishment licensed under chapter 18.39 RCW has made a good faith effort to locate the person cited in subsection (3)(a) through (e) of this section or the legal representative of the decedent's estate, the cemetery authority or funeral establishment shall have the right to rely on an authority to bury or cremate the human remains, executed by the most responsible party available, and the cemetery authority or funeral establishment may not be held criminally or civilly liable for burying or cremating the human remains. In the event any government agency provides the funds for

the disposition of any human remains and the government agency elects to provide funds for cremation only, the cemetery authority or funeral establishment may not be held criminally or civilly liable for cremating the human remains.

(6) The liability for the reasonable cost of preparation, care, and disposition devolves jointly and severally upon all kin of the decedent in the same degree of kindred, in the order listed in subsection (3) of this section, and upon the estate of the decedent. [2010 c 274 § 602; 2007 c 156 § 24; 2005 c 365 § 141; 1993 c 297 § 1; 1992 c 108 § 1; 1943 c 247 § 29; Rem. Supp. 1943 § 3778-29. Formerly RCW 68.08.160.]

**Intent—2010 c 274:** See note following RCW 10.31.100.

*Disposal of remains of indigent persons:* RCW 36.39.030.

*Order of payment of debts of estate:* RCW 11.76.110.

**68.50.170 Effect of authorization.** Any person signing any authorization for the interment or cremation of any human remains warrants the truthfulness of any fact set forth in the authorization, the identity of the person whose human remains are sought to be interred or cremated, and his or her authority to order interments or cremation. That person is personally liable for all damage occasioned by or resulting from breach of such warranty. [2005 c 365 § 142; 1943 c 247 § 30; Rem. Supp. 1943 § 3778-30. Formerly RCW 68.08.170.]

**68.50.185 Individual cremation—Exception—Penalty.** (1) A person authorized to dispose of human remains shall not cremate or cause to be cremated more than one human remains at a time unless written permission, after full and adequate disclosure regarding the manner of cremation, has been received from the person or persons under RCW 68.50.160 having the authority to order cremation. This restriction shall not apply when equipment, techniques, or devices are employed that keep human remains separate and distinct before, during, and after the cremation process.

(2) Violation of this section is a gross misdemeanor. [2005 c 365 § 143; 1987 c 331 § 61; 1985 c 402 § 3. Formerly RCW 68.08.185.]

**Legislative finding—1985 c 402:** "The legislature finds that certain practices in storing human remains and in performing cremations violate common notions of decency and generally held expectations. In enacting this legislation, the legislature is reaffirming that certain practices, which have never been acceptable, violate principles of human dignity." [1985 c 402 § 1.]

**68.50.200 Permission to remove human remains.** Human remains may be removed from a plot in a cemetery with the consent of the cemetery authority and the written consent of one of the following in the order named:

- (1) The surviving spouse or state registered domestic partner.
- (2) The surviving children of the decedent.
- (3) The surviving parents of the decedent.
- (4) The surviving brothers or sisters of the decedent.

If the required consent cannot be obtained, permission by the superior court of the county where the cemetery is situated is sufficient: PROVIDED, That the permission shall not violate the terms of a written contract or the rules and regulations of the cemetery authority. [2007 c 156 § 25; 2005 c

(2010 Ed.)

365 § 144; 1943 c 247 § 33; Rem. Supp. 1943 § 3778-33. Formerly RCW 68.08.200.]

**68.50.210 Notice for order to remove remains.** Notice of application to the court for such permission shall be given, at least ten days prior thereto, personally, or at least fifteen days prior thereto if by mail, to the cemetery authority and to the persons not consenting, and to every other person on whom service of notice may be required by the court. [1943 c 247 § 34; Rem. Supp. 1943 § 3778-34. Formerly RCW 68.08.210.]

**68.50.220 Exceptions.** RCW 68.50.200 and 68.50.210 do not apply to or prohibit the removal of any human remains from one plot to another in the same cemetery or the removal of [human] remains by a cemetery authority from a plot for which the purchase price is past due and unpaid, to some other suitable place; nor do they apply to the disinterment of human remains upon order of court or coroner. However, a cemetery authority shall provide notification to the person cited in RCW 68.50.200 before moving human remains. [2005 c 365 § 145; 1987 c 331 § 62; 1943 c 247 § 35; Rem. Supp. 1943 § 3778-35. Formerly RCW 68.08.220.]

**68.50.230 Human remains that have not been disposed—Rules.** (1) Whenever any human remains shall have been in the lawful possession of any person, firm, corporation, or association for a period of ninety days or more, and the relatives of, or persons interested in, the deceased person shall fail, neglect, or refuse to direct the disposition, the human remains may be disposed of by the person, firm, corporation, or association having such lawful possession thereof, under and in accordance with rules adopted by the funeral and cemetery board, not inconsistent with any statute of the state of Washington or rule adopted by the state board of health.

(2)(a) The department of veterans affairs may certify that the deceased person to whom subsection (1) of this section applies was a veteran or the dependent of a veteran eligible for interment at a federal or state veterans' cemetery.

(b) Upon certification of eligible veteran or dependent of a veteran status under (a) of this subsection, the person, firm, corporation, or association in possession of the veteran's or veteran's dependent's remains shall transfer the custody and control of the remains to the department of veterans affairs.

(c) The transfer of human remains under (b) of this subsection does not create:

(i) A private right of action against the state or its officers and employees or instrumentalities, or against any person, firm, corporation, or association transferring the remains; or

(ii) Liability on behalf of the state, the state's officers, employees, or instrumentalities; or on behalf of the person, firm, corporation, or association transferring the remains. [2009 c 102 § 20; 2009 c 56 § 1; 2005 c 365 § 146; 1985 c 402 § 9; 1979 c 158 § 218; 1937 c 108 § 14; RRS § 8323-3. Formerly RCW 68.08.230.]

**Reviser's note:** This section was amended by 2009 c 56 § 1 and by 2009 c 102 § 20, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

**Funeral directors and embalmers account and cemetery account abolished, moneys transferred to funeral and cemetery account—2009 c 102:** See note following RCW 18.39.810.

**Legislative finding—1985 c 402:** See note following RCW 68.50.185.

**68.50.232 Remains—Entrusting to funeral homes or mortuaries.** See RCW 36.24.155.

**68.50.240 Record of human remains to be kept.** The person in charge of any premises on which interments or cremations are made shall keep a record of all human remains interred or cremated on the premises under his or her charge, in each case stating the name of each deceased person, date of cremation or interment, and name and address of the funeral establishment. [2005 c 365 § 147; 1943 c 247 § 39; Rem. Supp. 1943 § 3778-39. Formerly RCW 68.08.240.]

**68.50.270 Possession of cremated human remains.** The person or persons determined under RCW 68.50.160 as having authority to order cremation shall be entitled to possession of the cremated human remains without further intervention by the state or its political subdivisions. [2005 c 365 § 148; 1987 c 331 § 63; 1977 c 47 § 4. Formerly RCW 68.08.245.]

**68.50.290 Corneal tissue for transplantation—Presumption of good faith.** In any subsequent civil action in which the next of kin of a decedent contends that he/she affirmatively informed the county coroner or medical examiner or designee of his/her objection to removal of corneal tissue from the decedent, it shall be presumed that the county coroner or medical examiner acted in good faith and without knowledge of the objection. [1975-'76 2nd ex.s. c 60 § 2. Formerly RCW 68.08.305.]

**68.50.300 Release of information concerning a death.** (1) The county coroner, medical examiner, or prosecuting attorney having jurisdiction may in such official's discretion release information concerning a person's death to the media and general public, in order to aid in identifying the deceased, when the identity of the deceased is unknown to the official and when he does not know the information to be readily available through other sources.

(2) The county coroner, medical examiner, or prosecuting attorney may withhold any information which directly or indirectly identifies a decedent until either:

(a) A notification period of forty-eight hours has elapsed after identification of the decedent by such official; or

(b) The next of kin of the decedent has been notified.

During the forty-eight hour notification period, such official shall make a good faith attempt to locate and notify the next of kin of the decedent. [1981 c 176 § 2. Formerly RCW 68.08.320.]

**68.50.310 Dental identification system established—Powers and duties.** A dental identification system is established in the identification section of the Washington state patrol. The dental identification system shall act as a repository or computer center or both for dental examination records and it shall be responsible for comparing such records with dental records filed under RCW 68.50.330. It

shall also determine which scoring probabilities are the highest for purposes of identification and shall submit such information to the coroner or medical examiner who prepared and forwarded the dental examination records. Once the dental identification system is established, operating funds shall come from the state general fund. [1987 c 331 § 65; 1983 1st ex.s. c 16 § 15. Formerly RCW 68.08.350.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**68.50.320 Procedures for investigating missing persons—Availability of files.** When a person reported missing has not been found within thirty days of the report, or at any time the investigating agency suspects criminal activity to be the basis of the victim being missing, the sheriff, chief of police, county coroner or county medical examiner, or other law enforcement authority initiating and conducting the investigation for the missing person shall: (1) File a missing person's report with the Washington state patrol missing and unidentified persons unit; (2) initiate the collection of DNA samples from the known missing person and their family members for nuclear and mitochondrial DNA testing along with the necessary consent forms; and (3) ask the missing person's family or next of kin to give written consent to contact the dentist or dentists of the missing person and request the person's dental records.

The missing person's dentist or dentists shall provide diagnostic quality copies of the missing person's dental records or original dental records to the sheriff, chief of police, county coroner or county medical examiner, or other law enforcement authority, when presented with the written consent from the missing person's family or next of kin or with a statement from the sheriff, chief of police, county coroner or county medical examiner, or other law enforcement authority that the missing person's family or next of kin could not be located in the exercise of due diligence or that the missing person's family or next of kin refuse to consent to the release of the missing person's dental records and there is reason to believe that the missing person's family or next of kin may have been involved in the missing person's disappearance.

As soon as possible after collecting the DNA samples, the sheriff, chief of police, or other law enforcement authority shall submit the DNA samples to the appropriate laboratory. Dental records shall be submitted as soon as possible to the Washington state patrol missing and unidentified persons unit.

The descriptive information from missing person's reports and dental data submitted to the Washington state patrol missing and unidentified persons unit shall be recorded and maintained by the Washington state patrol missing and unidentified persons unit in the applicable dedicated missing person's databases.

When a person reported missing has been found, the sheriff, chief of police, coroner or medical examiner, or other law enforcement authority shall report such information to the Washington state patrol.

The dental identification system shall maintain a file of information regarding persons reported to it as missing. The file shall contain the information referred to in this section

and such other information as the Washington state patrol finds relevant to assist in the location of a missing person.

The files of the dental identification system shall, upon request, be made available to law enforcement agencies attempting to locate missing persons. [2007 c 10 § 5. Prior: 2006 c 235 § 4; 2006 c 102 § 6; 2001 c 223 § 1; 1984 c 17 § 18; 1983 1st ex.s. c 16 § 16. Formerly RCW 68.08.355.]

**Intent—2007 c 10:** See note following RCW 43.103.110.

**Purpose—Effective date—2006 c 235:** See notes following RCW 70.02.050.

**Finding—Intent—2006 c 102:** See note following RCW 36.28A.100. *Missing children clearinghouse and hot line: Chapter 13.60 RCW.*

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**68.50.330 Identification of body or human remains by dental examination—Comparison of dental examination records with dental records of dental identification system.** If the county coroner or county medical examiner investigating a death is unable to establish the identity of a body or human remains by visual means, fingerprints, or other identifying data, he or she shall have a qualified dentist, as determined by the county coroner or county medical examiner, carry out a dental examination of the body or human remains. If the county coroner or county medical examiner with the aid of the dental examination and other identifying findings is still unable to establish the identity of the body or human remains, he or she shall prepare and forward such dental examination records within thirty days of the date the body or human remains were found to the dental identification system of the state patrol identification and criminal history section on forms supplied by the state patrol for such purposes.

The dental identification system shall act as a repository or computer center or both with respect to such dental examination records. It shall compare such dental examination records with dental records filed with it and shall determine which scoring probabilities are the highest for the purposes of identification. It shall then submit such information to the county coroner or county medical examiner who prepared and forwarded the dental examination records. [2001 c 172 § 1; 1984 c 17 § 19; 1983 1st ex.s. c 16 § 17. Formerly RCW 68.08.360.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**68.50.645 Skeletal human remains—Duty to notify—Ground disturbing activities—Coroner determination—Definitions.** (1) It is the duty of every person who knows of the existence and location of skeletal human remains to notify the coroner and local law enforcement in the most expeditious manner possible, unless such person has good reason to believe that such notice has already been given. Any person knowing of the existence of skeletal human remains and not having good reason to believe that the coroner and local law enforcement has notice thereof and who fails to give notice to the coroner and local law enforcement, is guilty of a misdemeanor.

(2) Any person engaged in ground disturbing activity and who encounters or discovers skeletal human remains in or on the ground shall:

(a) Immediately cease any activity which may cause further disturbance;

(b) Make a reasonable effort to protect the area from further disturbance;

(c) Report the presence and location of the remains to the coroner and local law enforcement in the most expeditious manner possible; and

(d) Be held harmless from criminal and civil liability arising under the provisions of this section provided the following criteria are met:

(i) The finding of the remains was based on inadvertent discovery;

(ii) The requirements of the subsection are otherwise met; and

(iii) The person is otherwise in compliance with applicable law.

(3) The coroner must make a determination of whether the skeletal human remains are forensic or nonforensic within five business days of receiving notification of a finding of such human remains provided that there is sufficient evidence to make such a determination within that time period. The coroner will retain jurisdiction over forensic remains.

(a) Upon determination that the remains are nonforensic, the coroner must notify the department of archaeology and historic preservation within two business days. The department will have jurisdiction over such remains until provenance of the remains is established. A determination that remains are nonforensic does not create a presumption of removal or nonremoval.

(b) Upon receiving notice from a coroner of a finding of nonforensic skeletal human remains, the department must notify the appropriate local cemeteries, and all affected Indian tribes via certified mail to the head of the appropriate tribal government, and contact the appropriate tribal cultural resources staff within two business days of the finding. The determination of what are appropriate local cemeteries to be notified is at the discretion of the department. A notification to tribes of a finding of such nonforensic skeletal human remains does not create a presumption that the remains are Indian.

(c) The state physical anthropologist must make an initial determination of whether nonforensic skeletal human remains are Indian or non-Indian to the extent possible based on the remains within two business days of notification of a finding of nonforensic remains. If the remains are determined to be Indian, the department must notify all affected Indian tribes via certified mail to the head of the appropriate tribal government within two business days and contact the appropriate tribal cultural resources staff.

(d) The affected tribes have five business days to respond via telephone or writing to the department as to their interest in the remains.

(4) For the purposes of this section:

(a) "Affected tribes" are:

(i) Those federally recognized tribes with usual and accustomed areas in the jurisdiction where the remains were found;

(ii) Those federally recognized tribes that submit to the department maps that reflect the tribe's geographical area of cultural affiliation; and

(iii) Other tribes with historical and cultural affiliation in the jurisdiction where the remains were found.

(b) "Forensic remains" are those that come under the jurisdiction of the coroner pursuant to RCW 68.50.010.

(c) "Inadvertent discovery" has the same meaning as used in RCW 27.44.040.

(5) Nothing in this section constitutes, advocates, or otherwise grants, confers, or implies federal or state recognition of those tribes that are not federally recognized pursuant to 25 C.F.R. part 83, procedures for establishing that an American Indian group exists as an Indian tribe. [2008 c 275 § 1.]

**Reporting requirements—2008 c 275:** "The department of archaeology and historic preservation must communicate with the appropriate committees of the legislature by November 15, 2009, and biennially thereafter, regarding the numbers of inadvertent discoveries of skeletal human remains and other associated activities pursuant to this act." [2008 c 275 § 8.]

**68.50.900 Effective date—1987 c 331.** See RCW 68.05.900.

**68.50.901 Application—1993 c 228.** RCW \*68.50.520 through \*\*68.50.630 and 68.50.901 through 68.50.904 apply to a document of gift, revocation, or refusal to make an anatomical gift signed by the donor or a person authorized to make or object to making an anatomical gift before, on, or after July 25, 1993. [1993 c 228 § 12.]

**Reviser's note:** \*(1) RCW 68.50.520 through 68.50.620 were repealed by 2008 c 139 § 31.

\*\* (2) RCW 68.50.630 was repealed by 2002 c 45 § 1.

**68.50.902 Application—Construction—1993 c 228.** This act shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this act among states enacting it. [1993 c 228 § 13.]

**68.50.903 Severability—1993 c 228.** If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1993 c 228 § 14.]

**68.50.904 Short title—1993 c 228.** RCW \*68.50.520 through \*\*68.50.630 and 68.50.901 through 68.50.903 may be cited as the "uniform anatomical gift act." [1993 c 228 § 16.]

**Reviser's note:** \*(1) RCW 68.50.520 through 68.50.620 were repealed by 2008 c 139 § 31.

\*\* (2) RCW 68.50.630 was repealed by 2002 c 45 § 1.

## Chapter 68.52 RCW

### PUBLIC CEMETERIES AND MORGUES

#### Sections

68.52.010	Morgues authorized in counties.
68.52.020	Coroner to control morgue—Expense.
68.52.030	Counties and cities may provide for burial, acquire cemeteries, etc.
68.52.040	Cities and towns may own, improve, etc., cemeteries.
68.52.045	Cities and towns may provide for a cemetery board.
68.52.050	Cemetery improvement fund.
68.52.060	Care and investment of fund.
68.52.065	Approval of investments.
68.52.070	Cemetery improvement fund—Management.
68.52.080	Books of account—Audit.

68.52.090	Establishment authorized.
68.52.100	Petition—Requisites—Examination.
68.52.110	Hearing—Place and date.
68.52.120	Publication and posting of petition and notice of hearing.
68.52.130	Hearing—Inclusion and exclusion of lands.
68.52.140	Election on formation of district and first commissioners.
68.52.150	Election, how conducted—Notice.
68.52.155	Conformity with election laws—Exception—Vacancies.
68.52.160	Election ballot.
68.52.170	Canvass of returns—Resolution of organization.
68.52.180	Review—Organization complete.
68.52.185	Ballot proposition authorized for district formation.
68.52.190	General powers of district.
68.52.192	Public cemetery facilities or services—Cooperation with public or private agencies—Joint purchasing.
68.52.193	Public cemetery facilities or services—"Public agency" defined.
68.52.195	Community revitalization financing—Public improvements.
68.52.200	Right of eminent domain.
68.52.210	Power to do cemetery business—District boundaries may include cities and towns—Eminent domain exception.
68.52.220	District commissioners—Compensation—Election.
68.52.250	Special elections.
68.52.260	Oath of commissioners.
68.52.270	Organization of board—Secretary—Office—Meetings—Powers.
68.52.280	Duty of county treasurer—Cemetery district fund.
68.52.290	Tax levy authorized for fund.
68.52.300	Disbursement of fund.
68.52.310	Limitation of indebtedness—Limitation of tax levy.
68.52.320	Dissolution of districts.
68.52.330	Disincorporation of district located in county with a population of two hundred ten thousand or more and inactive for five years.
68.52.900	Severability—1947 c 6.
68.52.901	Effective date—1987 c 331.

*Public bodies may retain collection agencies to collect public debts—Fees: RCW 19.16.500.*

*Taxation, exemptions: RCW 84.36.020.*

**68.52.010 Morgues authorized in counties.** The county legislative authority of each county may at its discretion provide and equip a public morgue together with suitable morgue wagon for the conveyance, receipt and proper disposition of the bodies of all deceased persons not claimed by relatives, and of all dead bodies which are by law subject to a post mortem or coroner's inquest: PROVIDED, HOWEVER, That only one public morgue may be established in any county: PROVIDED FURTHER, That counties may agree to establish joint morgue facilities pursuant to chapter 39.34 RCW. [1983 1st ex.s. c 16 § 19; 1917 c 90 § 1; RRS § 6040. Formerly RCW 68.12.010.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**68.52.020 Coroner to control morgue—Expense.** Such morgue shall be under the control and management of the coroner who shall have power with the advice and consent of the county commissioners, to employ the necessary deputies and employees; and, with the advice and consent of the county commissioners, to fix their salaries and compensation, which, together with the expenses of operating such morgue, shall be paid monthly out of the county treasury. [1917 c 90 § 2; RRS § 6041. Formerly RCW 68.12.020.]

**68.52.030 Counties and cities may provide for burial, acquire cemeteries, etc.** Each and every county, town or city, shall have power to provide a hearse and pall for burial of the dead, and to procure and hold lands for burying grounds, and to make regulations and fence the same, and to preserve the monuments erected therein, and to levy and col-

lect the necessary taxes for that purpose, in the same manner as other taxes are levied and collected. [1857 p 28 § 3; RRS § 3772. Formerly RCW 68.12.030.]

**68.52.040 Cities and towns may own, improve, etc., cemeteries.** Any city or town may acquire, hold, or improve land for cemetery purposes, and may sell lots therein, and may provide by ordinance that a specified percentage of the proceeds therefrom be set aside and invested, and the income from the investment be used in the care of the lots, and may take and hold any property devised, bequeathed or given upon trust, and apply the income thereof for the improvement or embellishment of the cemeteries or the erection or preservation of structures, fences, or walks therein, or for the repair, preservation, erection, or renewal of any tomb, monument, gravestone, fence, railing, or other erection at or around a cemetery, lot, or plat, or for planting and cultivating trees, shrubs, flowers, or plants in or around the lot or plot, or for improving or embellishing the cemetery in any other manner or form consistent with the design and purpose of the city, according to the terms of the grant, devise, or bequest. [1955 c 378 § 1; 1909 c 156 § 1; RRS § 3773. Formerly RCW 68.12.040.]

**68.52.045 Cities and towns may provide for a cemetery board.** The legislative body of any city or town may provide by ordinance for a cemetery board to be appointed by the mayor in cities and towns operating under the mayor-council form of government, by the city commission in cities operating under the commission form of government, and by the city manager in cities and towns operating under the council-manager form of government: PROVIDED FURTHER, That no ordinance shall be enacted, pursuant to this section, in conflict with provisions contained in charters of cities of the first class. [1955 c 378 § 2. Formerly RCW 68.12.045.]

**68.52.050 Cemetery improvement fund.** All moneys received in the manner above provided shall be deposited with the city treasurer, and shall be kept apart in a fund known as the cemetery improvement fund, and shall be paid out only upon warrants drawn by the order of the cemetery board, if such a board exists, or by order of the body, department, commission, or committee duly authorized by ordinance to issue such an order, or by the legislative body of a city or town, which order shall be approved by such legislative body if such order is not issued by the legislative body, and shall be indorsed by the mayor and attested by the city comptroller or other authorized officer. [1955 c 378 § 3; 1909 c 156 § 4; RRS § 3776. Formerly RCW 68.12.050.]

**68.52.060 Care and investment of fund.** It shall be the duty of the cemetery board and other body or commission having in charge the care and operation of cemeteries to invest all sums set aside from the sale of lots, and all sums of money received, and to care for the income of all money and property held in trust for the purposes designated herein: PROVIDED, HOWEVER, That all investments shall be made in municipal, county, school or state bonds, general obligation warrants of the city owning such cemetery, or in

first mortgages on good and improved real estate. [1933 c 91 § 1; 1909 c 156 § 2; RRS § 3774. FORMER PART OF SECTION: 1909 c 156 § 3 now codified as RCW 68.52.065. Formerly RCW 68.12.060.]

**68.52.065 Approval of investments.** All investments shall be approved by the council or legislative body of the city. [1909 c 156 § 3; RRS § 3775. Formerly RCW 68.12.060, part, and 68.12.065.]

**68.52.070 Cemetery improvement fund—Management.** The said city shall, by ordinance, make all necessary rules and regulations concerning the control and management of said fund to properly safeguard the same, but shall in nowise be liable for any of said funds except a misappropriation thereof, and shall not have power to bind the city or said fund for any further liability than whatever net interest may be actually realized from such investments, and shall not be liable to any particular person for more than the proportionate part of such net earnings. [1909 c 156 § 6; RRS § 3778. Formerly RCW 68.12.070.]

**68.52.080 Books of account—Audit.** Accurate books of account shall be kept of all transactions pertaining to said fund, which books shall be open to the public for inspection and shall be audited by the auditing committee of said city. [1909 c 156 § 5; RRS § 3777. Formerly RCW 68.12.080.]

**68.52.090 Establishment authorized.** Cemetery districts may be established in all counties and on any island in any county, as in this chapter provided. [1971 c 19 § 1; 1957 c 99 § 1; 1953 c 41 § 1; 1947 c 27 § 1; 1947 c 6 § 1; Rem. Supp. 1947 § 3778-150. Formerly RCW 68.16.010.]

**68.52.100 Petition—Requisites—Examination.** For the purpose of forming a cemetery district, a petition designating the boundaries of the proposed district by metes and bounds or describing the lands to be included in the proposed district by government townships, ranges, and legal subdivisions, signed by not less than ten percent of the registered voters who reside within the boundaries of the proposed district, setting forth the object of the formation of such district and stating that the establishment thereof will be conducive to the public welfare and convenience, shall be filed with the county auditor of the county within which the proposed district is located, accompanied by an obligation signed by two or more petitioners agreeing to pay the cost of publishing the notice hereinafter provided for. The county auditor shall, within thirty days from the date of filing of such petition, examine the signatures and certify to the sufficiency or insufficiency thereof. The name of any person who signed a petition shall not be withdrawn from the petition after it has been filed with the county auditor. If the petition is found to contain a sufficient number of valid signatures, the county auditor shall transmit it, with a certificate of sufficiency attached, to the county legislative authority, which shall thereupon, by resolution entered upon its minutes, receive the same and fix a day and hour when it will publicly hear the petition. [2008 c 96 § 1; 1994 c 223 § 74; 1947 c 6 § 2; Rem. Supp. 1947 § 3778-151. Formerly RCW 68.16.020.]



thereof in writing to the board of county commissioners. If upon examination of the certificate of the canvassing officials it is found that two-thirds of all the votes cast at said election were in favor of the formation of the cemetery district, the board of county commissioners shall, by resolution entered upon its minutes, declare such territory duly organized as a cemetery district under the name theretofore designated and shall declare the three candidates receiving the highest number of votes for cemetery commissioners, the duly elected first cemetery commissioners of the district. The clerk of the board of county commissioners shall certify a copy of the resolution and cause it to be filed for record in the offices of the county auditor and the county assessor of the county. The certified copy shall be entitled to record without payment of a recording fee. If the certificate of the canvassing officials shows that the proposition to organize the proposed cemetery district failed to receive two-thirds of the votes cast at said election, the board of county commissioners shall enter a minute to that effect and all proceedings theretofore had shall become null and void. [1947 c 6 § 9; Rem. Supp. 1947 § 3778-158. Formerly RCW 68.16.090.]

**68.52.180 Review—Organization complete.** Any person, firm or corporation having a substantial interest involved, and feeling aggrieved by any finding, determination or resolution of the board of county commissioners under the provisions of this chapter, may appeal within five days after such finding, determination or resolution was made to the superior court of the county in the same manner as provided by law for appeals from orders of said board. After the expiration of five days from the date of the resolution declaring the district organized, and upon filing of certified copies thereof in the offices of the county auditor and county assessor, the formation of the district shall be complete and its legal existence shall not thereafter be questioned by any person by reason of any defect in the proceedings had for the creation thereof. [1947 c 6 § 10; Rem. Supp. 1947 § 3778-159. Formerly RCW 68.16.100.]

*Appeals from action of board of county commissioners: RCW 36.32.330.*

**68.52.185 Ballot proposition authorized for district formation.** A county legislative authority may, by ordinance or resolution, provide for a ballot proposition to form a cemetery district. When proposed by ordinance or resolution of the county legislative authority, a ballot proposition shall designate the boundaries of the proposed district by metes and bounds or describing the lands to be included in the proposed district by government townships, ranges, and legal subdivisions. The ballot proposition authorizing the formation of a cemetery district shall be submitted to the voters residing within the proposed district consistent with the provisions of this chapter. [2008 c 96 § 2.]

**68.52.190 General powers of district.** Cemetery districts created under this chapter shall be deemed to be municipal corporations within the purview of the Constitution and laws of the state of Washington. They shall constitute bodies corporate and possess all the usual powers of corporations for public purposes. They shall have full authority to carry out the objects of their creation, and to that end are empowered to

acquire, hold, lease, manage, occupy and sell real and personal property or any interest therein; to enter into and perform any and all necessary contracts; to appoint and employ necessary officers, agents and employees; to contract indebtedness, to borrow money, and to issue general obligation bonds in accordance with chapter 39.46 RCW; to levy and enforce the collection of taxes against the lands within the district, and to do any and all lawful acts to effectuate the purposes of this chapter. [1984 c 186 § 58; 1967 c 164 § 6; 1947 c 6 § 11; Rem. Supp. 1947 § 3778-160. Formerly RCW 68.16.110.]

**Purpose—1984 c 186:** See note following RCW 39.46.110.

**Purpose—Severability—1967 c 164:** See notes following RCW 4.96.010.

*Tortious conduct of local governmental entities: RCW 4.96.010.*

**68.52.192 Public cemetery facilities or services—Cooperation with public or private agencies—Joint purchasing.** A cemetery district may jointly operate or provide, cooperate to operate and provide and/or contract for a term of not to exceed five years to provide or have provided public cemetery facilities or services, with any other public or private agency, including out of state public agencies, which each is separately authorized to operate or provide, under terms mutually agreed upon by such public or private agencies. The governing body of a cemetery district may join with any other public or private agency in buying supplies, equipment, and services collectively. [1963 c 112 § 3. Formerly RCW 68.16.112.]

**68.52.193 Public cemetery facilities or services—"Public agency" defined.** As used in RCW 68.52.192, "public agency" means counties, cities and towns, special districts, or quasi municipal corporations. [1987 c 331 § 73; 1963 c 112 § 2. Formerly RCW 68.16.113.]

**68.52.195 Community revitalization financing—Public improvements.** In addition to other authority that a cemetery district possesses, a cemetery district may provide any public improvement as defined under RCW 39.89.020, but this additional authority is limited to participating in the financing of the public improvements as provided under RCW 39.89.050.

This section does not limit the authority of a cemetery district to otherwise participate in the public improvements if that authority exists elsewhere. [2001 c 212 § 21.]

**Severability—2001 c 212:** See RCW 39.89.902.

**68.52.200 Right of eminent domain.** The taking and damaging of property or rights therein by any cemetery district to carry out the purposes of its creation, are hereby declared to be for a public use, and any such district shall have and exercise the power of eminent domain to acquire any property or rights therein, either inside or outside the district for the use of such district. In exercising the power of eminent domain, a district shall proceed in the manner provided by law for the appropriation of real property or rights therein by private corporations. It may at its option unite in a single action proceedings to condemn property held by separate owners. Two or more condemnation suits instituted sep-

arately may also in the discretion of the court be consolidated upon motion of any interested party into a single action. In such cases the jury shall render separate verdicts for each tract of land in different ownership. No finding of the jury or decree of the court as to damages in any condemnation suit instituted by the district shall be held or construed to destroy the right of the district to levy and collect taxes for any and all district purposes against the uncondemned land situated within the district. [1947 c 6 § 12; Rem. Supp. 1947 § 3778-161. Formerly RCW 68.16.120.]

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

*Eminent domain by corporations: Chapter 8.20 RCW.*

**68.52.210 Power to do cemetery business—District boundaries may include cities and towns—Eminent domain exception.** (1) A cemetery district organized under this chapter shall have power to acquire, establish, maintain, manage, improve and operate cemeteries and conduct any and all of the businesses of a cemetery as defined in this title. A cemetery district shall constitute a cemetery authority as defined in this title and shall have and exercise all powers conferred thereby upon a cemetery authority and be subject to the provisions thereof.

(2) A cemetery district may include within its boundaries the lands embraced within the corporate limits of any incorporated city or town and in any such cases the district may acquire any cemetery or cemeteries theretofore maintained and operated by any such city or town and proceed to maintain, manage, improve and operate the same under the provisions hereof. In such event the governing body of the city or town, after the transfer takes place, shall levy no cemetery tax. The power of eminent domain heretofore conferred shall not extend to the condemnation of existing cemeteries within the district: PROVIDED, That no cemetery district shall operate a cemetery within the corporate limits of any city or town where there is a private cemetery operated for profit. [2006 c 335 § 1; 1994 c 81 § 82; 1971 c 19 § 2; 1959 c 23 § 2; 1957 c 39 § 1; 1947 c 6 § 13; Rem. Supp. 1947 § 3778-162. Formerly RCW 68.16.130.]

**68.52.220 District commissioners—Compensation—Election.** The affairs of the district shall be managed by a board of cemetery district commissioners composed of three members. The board may provide, by resolution passed by the commissioners, for the payment of compensation to each of its commissioners at a rate of up to ninety dollars for each day or portion of a day spent in actual attendance at official meetings of the district commission, or in performance of other official services or duties on behalf of the district. However, the compensation for each commissioner must not exceed eight thousand six hundred forty dollars per year.

Any commissioner may waive all or any portion of his or her compensation payable under this section as to any month or months during his or her term of office, by a written waiver filed with the clerk of the board. The waiver, to be effective, must be filed any time after the commissioner's election and prior to the date on which the compensation would otherwise be paid. The waiver shall specify the month or period of months for which it is made. The board shall fix the compensation to be paid the secretary and other employees of the dis-

trict. Cemetery district commissioners and candidates for cemetery district commissioner are exempt from the requirements of \*chapter 42.17 RCW.

The initial cemetery district commissioners shall assume office immediately upon their election and qualification. Staggering of terms of office shall be accomplished as follows: (1) The person elected receiving the greatest number of votes shall be elected to a six-year term of office if the election is held in an odd-numbered year or a five-year term of office if the election is held in an even-numbered year; (2) the person who is elected receiving the next greatest number of votes shall be elected to a four-year term of office if the election is held in an odd-numbered year or a three-year term of office if the election is held in an even-numbered year; and (3) the other person who is elected shall be elected to a two-year term of office if the election is held in an odd-numbered year or a one-year term of office if the election is held in an even-numbered year. The initial commissioners shall assume office immediately after they are elected and qualified but their terms of office shall be calculated from the first day of January after the election.

Thereafter, commissioners shall be elected to six-year terms of office. Commissioners shall serve until their successors are elected and qualified and assume office as provided in RCW 29A.20.040.

The polling places for a cemetery district election may be located inside or outside the boundaries of the district, as determined by the auditor of the county in which the cemetery district is located, and no such election shall be held irregular or void on that account.

The dollar thresholds established in this section must be adjusted for inflation by the office of financial management every five years, beginning July 1, 2008, based upon changes in the consumer price index during that time period. "Consumer price index" means, for any calendar year, that year's annual average consumer price index, for Washington state, for wage earners and clerical workers, all items, compiled by the bureau of labor and statistics, United States department of labor. If the bureau of labor and statistics develops more than one consumer price index for areas within the state, the index covering the greatest number of people, covering areas exclusively within the boundaries of the state, and including all items shall be used for the adjustments for inflation in this section. The office of financial management must calculate the new dollar threshold and transmit it to the office of the code reviser for publication in the Washington State Register at least one month before the new dollar threshold is to take effect.

A person holding office as commissioner for two or more special purpose districts shall receive only that per diem compensation authorized for one of his or her commissioner positions as compensation for attending an official meeting or conducting official services or duties while representing more than one of his or her districts. However, such commissioner may receive additional per diem compensation if approved by resolution of all boards of the affected commissions. [2007 c 469 § 6; 1998 c 121 § 6; 1994 c 223 § 77; 1990 c 259 § 33; 1982 c 60 § 3; 1979 ex.s. c 126 § 40; 1947 c 6 § 14; Rem. Supp. 1947 § 3778-163. Formerly RCW 68.16.140.]

**\*Reviser's note:** Provisions in chapter 42.17 RCW relating to campaign finance were recodified in chapter 42.17A RCW by 2010 c 204, effective January 1, 2012.

**Purpose—1979 ex.s. c 126:** See RCW 29A.20.040(1).

**68.52.250 Special elections.** Special elections submitting propositions to the registered voters of the district may be called at any time by resolution of the cemetery commissioners in accordance with \*RCW 29.13.010 and 29.13.020, and shall be called, noticed, held, conducted and canvassed in the same manner and by the same officials as provided for the election to determine whether the district shall be created. [1990 c 259 § 34; 1947 c 6 § 17; Rem. Supp. 1947 § 3778-166. Formerly RCW 68.16.170.]

**\*Reviser's note:** RCW 29.13.010 and 29.13.020 were recodified as RCW 29A.04.320 and 29A.04.330, respectively, pursuant to 2003 c 111 § 2401, effective July 1, 2004. RCW 29A.04.320 was subsequently repealed by 2004 c 271 § 193. Later enactment of RCW 29A.04.320, see RCW 29A.04.321.

*Qualifications of electors:* RCW 29A.08.210.

**68.52.260 Oath of commissioners.** Each cemetery commissioner, before assuming the duties of his office, shall take and subscribe an official oath to faithfully discharge the duties of his office, which oath shall be filed in the office of the county auditor. [1986 c 167 § 24; 1947 c 6 § 18; Rem. Supp. 1947 § 3778-167. Formerly RCW 68.16.180.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**68.52.270 Organization of board—Secretary—Office—Meetings—Powers.** The board of cemetery district commissioners shall organize and elect a chairman from their number and shall appoint a secretary for such term as they may determine. The secretary shall keep a record of proceedings of the board and perform such other duties as may be prescribed by law or by the board, and shall also take and subscribe an oath for the faithful discharge of his duties, which shall be filed with the county clerk. The office of the board of cemetery commissioners and principal place of business of the district shall be at some place in the district designated by the board. The board shall hold regular monthly meetings at its office on such day as it may by resolution determine and may adjourn such meetings as may be required for the transaction of business. Special meetings of the board may be called at any time by a majority of the commissioners or by the secretary and the chairman of the board. Any commissioner not joining in the call of a special meeting shall be entitled to three days written notice by mail of such meeting, specifying generally the business to be transacted. All meetings of the board of cemetery commissioners shall be public and a majority shall constitute a quorum. All records of the board shall be open to the inspection of any elector of the district at any meeting of the board. The board shall adopt a seal for the district; manage and conduct the affairs of the district; make and execute all necessary contracts; employ any necessary service, and promulgate reasonable rules and regulations for the government of the district and the performance of its functions and generally perform all acts which may be necessary to carry out the purposes for which the district was formed. [1947 c 6 § 19; Rem. Supp. 1947 § 3778-168. Formerly RCW 68.16.190.]

(2010 Ed.)

**68.52.280 Duty of county treasurer—Cemetery district fund.** It shall be the duty of the county treasurer of the county in which any cemetery district is situated to receive and disburse all district revenues and collect all taxes authorized and levied under this chapter. There is hereby created in the office of county treasurer of each county in which a cemetery district shall be organized for the use of the district, a cemetery district fund. All taxes levied for district purposes when collected shall be placed by the county treasurer in the cemetery district fund. [1947 c 6 § 20; Rem. Supp. 1947 § 3778-169. Formerly RCW 68.16.200.]

**68.52.290 Tax levy authorized for fund.** Annually, after the county board of equalization has equalized assessments for general tax purposes, the secretary of the district shall prepare a budget of the requirements of the cemetery district fund, certify the same and deliver it to the board of county commissioners in ample time for such board to levy district taxes. At the time of making general tax levies in each year, the board of county commissioners shall levy taxes required for cemetery district purposes against the real and personal property in the district in accordance with the equalized valuation thereof for general tax purposes, and as a part of said general taxes. Such levies shall be part of the general tax roll and be collected as a part of general taxes against the property in the district. [1947 c 6 § 21; Rem. Supp. 1947 § 3778-170. Formerly RCW 68.16.210.]

**68.52.300 Disbursement of fund.** The county treasurer shall disburse the cemetery district fund upon warrants issued by the county auditor on vouchers approved and signed by a majority of the board of cemetery commissioners and the secretary thereof. [1947 c 6 § 22; Rem. Supp. 1947 § 3778-171. Formerly RCW 68.16.220.]

**68.52.310 Limitation of indebtedness—Limitation of tax levy.** The board of cemetery commissioners shall have no authority to contract indebtedness in any year in excess of the aggregate amount of the currently levied taxes, which annual tax levy for cemetery district purposes shall not exceed eleven and one-quarter cents per thousand dollars of assessed valuation. [1973 1st ex.s. c 195 § 77; 1947 c 6 § 23; Rem. Supp. 1947 § 3778-172. Formerly RCW 68.16.230.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**68.52.320 Dissolution of districts.** Cemetery districts may be dissolved by a majority vote of the electors at an election called for that purpose, which shall be conducted in the same manner as provided for special elections, and no further district obligations shall thereafter be incurred, but such dissolution shall not abridge or cancel any of the outstanding obligations of the district, and the board of county commissioners shall have authority to make annual levies against the lands included within the district until the obligations of the district are fully paid. When the obligations are fully paid, any moneys remaining in the cemetery district fund and all collections of unpaid district taxes shall be transferred to the current expense fund of the county. [1947 c 6 § 24; Rem. Supp. 1947 § 3778-173. Formerly RCW 68.16.240.]

*Dissolution of districts:* Chapter 53.48 RCW.

*Dissolution of inactive special purpose districts: Chapter 36.96 RCW.*

**68.52.330 Disincorporation of district located in county with a population of two hundred ten thousand or more and inactive for five years.** See chapter 57.90 RCW.

**68.52.900 Severability—1947 c 6.** If any portion of this act shall be adjudged invalid or unconstitutional for any reason, such adjudication shall not affect, impair or invalidate the remaining portions of the act. [1947 c 6 § 25; no RRS. Formerly RCW 68.16.900.]

**68.52.901 Effective date—1987 c 331.** See RCW 68.05.900.

### Chapter 68.54 RCW ANNEXATION AND MERGER OF CEMETERY DISTRICTS

#### Sections

68.54.010	Annexation—Petition—Procedure.
68.54.020	Merger—Authorized.
68.54.030	Merger—Petition—Procedure—Contents.
68.54.040	Merger—Petition—Rejection, concurrence or modification—Signatures.
68.54.050	Merger—Petition—Special election.
68.54.060	Merger—Petition—Election—Vote required—Merger effected.
68.54.070	Merger—Petition—When election dispensed with.
68.54.080	Merger—Preexisting obligations.
68.54.090	Merger—Transfer of all property, funds, assessments.
68.54.100	Merger and transfer of part of one district to adjacent district—Petition—Election—Vote.
68.54.110	Merger and transfer of part of one district to adjacent district—When election dispensed with.
68.54.120	Merger and transfer of part of one district to adjacent district—Preexisting indebtedness.
68.54.900	Effective date—1987 c 331.

**68.54.010 Annexation—Petition—Procedure.** Any territory contiguous to a cemetery district and not within the boundaries of a city or town other than as set forth in RCW 68.52.210 or other cemetery district may be annexed to such cemetery district by petition of ten percent of the registered voters residing within the territory proposed to be annexed who voted in the last general municipal election. Such petition shall be filed with the cemetery commissioners of the cemetery district and if the cemetery commissioners shall concur in the petition they shall then file such petition with the county auditor who shall within thirty days from the date of filing such petition examine the signatures thereof and certify to the sufficiency or insufficiency thereof. After the county auditor shall have certified to the sufficiency of the petition, the proceedings thereafter by the county legislative authority, and the rights and powers and duties of the county legislative authority, petitioners and objectors and the election and canvass thereof shall be the same as in the original proceedings to form a cemetery district: PROVIDED, That the county legislative authority shall have authority and it shall be its duty to determine on an equitable basis, the amount of obligation which the territory to be annexed to the district shall assume, if any, to place the taxpayers of the existing district on a fair and equitable relationship with the taxpayers of the territory to be annexed by reason of the benefits of coming into a going district previously supported by

the taxpayers of the existing district, and such obligation may be paid to the district in yearly installments to be fixed by the county legislative authority if within the limits as outlined in RCW 68.52.310 and included in the annual tax levies against the property in such annexed territory until fully paid. The amount of the obligation and the plan of payment thereof filed by the county legislative authority shall be set out in general terms in the notice of election for annexation: PROVIDED, That the special election shall be held only within the boundaries of the territory proposed to be annexed to the cemetery district. Upon the entry of the order of the county legislative authority incorporating such contiguous territory within such existing cemetery district, the territory shall become subject to the indebtedness, bonded or otherwise, of the existing district in like manner as the territory of the district. Should such petition be signed by sixty percent of the registered voters residing within the territory proposed to be annexed, and should the cemetery commissioners concur therein, an election in such territory and a hearing on such petition shall be dispensed with and the county legislative authority shall enter its order incorporating such territory within the existing cemetery district. [1990 c 259 § 35; 1987 c 331 § 74; 1969 ex.s. c 78 § 1. Formerly RCW 68.18.010.]

**68.54.020 Merger—Authorized.** A cemetery district organized under chapter 68.52 RCW may merge with another such district lying adjacent thereto, upon such terms and conditions as they agree upon, in the manner hereinafter provided. The district desiring to merge with another district shall hereinafter be called the "merging district", and the district into which the merger is to be made shall be called the "merger district". [1990 c 259 § 36; 1969 ex.s. c 78 § 2. Formerly RCW 68.18.020.]

**68.54.030 Merger—Petition—Procedure—Contents.** To effect such a merger, a petition therefor shall be filed with the board of the merger district by the commissioners of the merging district. The commissioners of the merging district may sign and file the petition upon their own initiative, and they shall file such a petition when it is signed by ten percent of the registered voters resident in the merging district who voted in the last general municipal election and presented to them. The petition shall state the reasons for the merger; give a detailed statement of the district's finances, listing its assets and liabilities; state the terms and conditions under which the merger is proposed; and pray for the merger. [1990 c 259 § 37; 1969 ex.s. c 78 § 3. Formerly RCW 68.18.030.]

**68.54.040 Merger—Petition—Rejection, concurrence or modification—Signatures.** The board of the merger district may, by resolution, reject the petition, or it may concur therein as presented, or it may modify the terms and conditions of the proposed merger, and shall transmit the petition, together with a copy of its resolution thereon to the merging district. If the petition is concurred in as presented or as modified, the board of the merging district shall forthwith present the petition to the auditor of the county in which the merging district is situated, who shall within thirty days examine the signatures thereon and certify to the sufficiency or insufficiency thereof, and for that purpose he shall have

access to all registration books and records in the possession of the registration officers of the election precincts included, in whole or in part, within the merging district. Such books and records shall be prima facie evidence of truth of the certificate. No signatures may be withdrawn from the petition after the filing. [1969 ex.s. c 78 § 4. Formerly RCW 68.18.040.]

**68.54.050 Merger—Petition—Special election.** If the auditor finds that the petition contains the signatures of a sufficient number of qualified electors, he shall return it, together with his certificate of sufficiency attached thereto, to the board of the merging district. Thereupon such board shall adopt a resolution, calling a special election in the merging district, at which shall be submitted to the electors thereof, the question of the merger. [1969 ex.s. c 78 § 5. Formerly RCW 68.18.050.]

**68.54.060 Merger—Petition—Election—Vote required—Merger effected.** The board of [the] merging district shall notify the board of the merger district of the results of the election. If three-fifths of the votes cast at the election favor the merger, the respective district boards shall adopt concurrent resolutions, declaring the districts merged, under the name of the merger district. Thereupon the districts are merged into one district, under the name of the merger district; the merging district is dissolved without further proceedings; and the boundaries of the merger district are thereby extended to include all the area of the merging district. Thereafter the legal existence cannot be questioned by any person by reason of any defect in the proceedings had for the merger. [1969 ex.s. c 78 § 6. Formerly RCW 68.18.060.]

**68.54.070 Merger—Petition—When election dispensed with.** If three-fifths of all the qualified electors in the merging district sign the petition to merge, no election on the question of the merger is necessary. In such case the auditor shall return the petition, together with his certificate of sufficiency attached thereto, to the board of the merging district. Thereupon the boards of the respective districts shall adopt their concurrent resolutions of merger in the same manner and to the same effect as if the merger had been authorized by an election. [1969 ex.s. c 78 § 7. Formerly RCW 68.18.070.]

**68.54.080 Merger—Preexisting obligations.** None of the obligations of the merged districts or of a local improvement district therein shall be affected by the merger and dissolution, and all land liable to be assessed to pay any of such indebtedness shall remain liable to the same extent as if the merger had not been made, and any assessments theretofore levied against the land shall remain unimpaired and shall be collected in the same manner as if no merger had been made. The commissioners of the merged district shall have all the powers possessed at the time of the merger by the commissioners of the two districts, to levy, assess and cause to be collected all assessments against any land in both districts which may be necessary to provide for the payment of the indebtedness thereof, and until the assessments are collected and all indebtedness of the districts paid, separate funds shall be maintained for each district as were maintained before the

merger: PROVIDED, That the board of the merged district may, with the consent of the creditors of the districts merged, cancel any or all assessments theretofore levied, in accordance with the terms and conditions of the merger, to the end that the lands in the respective districts shall bear their fair and proportionate share of such indebtedness. [1969 ex.s. c 78 § 8. Formerly RCW 68.18.080.]

**68.54.090 Merger—Transfer of all property, funds, assessments.** The commissioners of the merging district shall, forthwith upon completion of the merger, transfer, convey, and deliver to the merged district all property and funds of the merging district, together with all interest in and right to collect any assessments theretofore levied. [1969 ex.s. c 78 § 9. Formerly RCW 68.18.090.]

**68.54.100 Merger and transfer of part of one district to adjacent district—Petition—Election—Vote.** A part of one district may be transferred and merged with an adjacent district whenever such area can be better served by the merged district. To effect such a merger a petition, signed by not less than fifteen percent of the qualified electors residing in the area to be merged, shall be filed with the commissioners of the merging district. Such petition shall be promoted by one or more qualified electors within the area to be transferred. If the commissioners of the merging district act favorably upon the petition, then the petition shall be presented to the commissioners of the merger district. If the commissioners of the merger district act favorably upon the petition, an election shall be called in the area merged.

In the event that either board of cemetery commissioners should not concur with the petition, the petition may then be presented to a county review board established for such purposes, if there be no county review board for such purposes then to the state review board and if there be no state review board, then to the county commissioners of the county in which the area to be merged is situated, who shall decide if the area can be better served by such a merger; upon an affirmative decision an election shall be called in the area merged.

A majority of the votes cast shall be necessary to approve the transfer. [1969 ex.s. c 78 § 10. Formerly RCW 68.18.100.]

**68.54.110 Merger and transfer of part of one district to adjacent district—When election dispensed with.** If three-fifths of all the qualified electors in the area to be merged sign a petition to merge the districts, no election on the question of the merger is necessary, in which case the auditor shall return the petition, together with his certificate of sufficiency attached thereto, to the boards of the merging districts. Thereupon the boards of the respective districts shall adopt their concurrent resolutions of transfer in the same manner and to the same effect as if the same had been authorized by an election. [1969 ex.s. c 78 § 11. Formerly RCW 68.18.110.]

**68.54.120 Merger and transfer of part of one district to adjacent district—Preexisting indebtedness.** When a part of one cemetery district is transferred to another as provided by RCW 68.54.100 and 68.54.110, said part shall be

relieved of all liability for any indebtedness of the district from which it is withdrawn. However, the acquiring district shall pay to the losing district that portion of the latter's indebtedness for which the transferred part was liable. This amount shall not exceed the proportion that the assessed valuation of the transferred part bears to the assessed valuation of the whole district from which said part is withdrawn. The adjustment of such indebtedness shall be based on the assessment for the year in which the transfer is made. The boards of commissioners of the districts involved in the said transfer and merger shall enter into a contract for the payment by the acquiring district of the above-referred to indebtedness under such terms as they deem proper, provided such contract shall not impair the security of existing creditors. [1987 c 331 § 75; 1969 ex.s. c 78 § 12. Formerly RCW 68.18.120.]

**68.54.900 Effective date—1987 c 331.** See RCW 68.05.900.

### Chapter 68.56 RCW

#### PENAL AND MISCELLANEOUS PROVISIONS

##### Sections

68.56.010	Unlawful damage to graves, markers, shrubs, etc.—Interfering with funeral.
68.56.020	Unlawful damage to graves, markers, shrubs, etc.—Civil liability for damage.
68.56.030	Unlawful damage to graves, markers, shrubs, etc.—Exceptions.
68.56.040	Nonconforming cemetery a nuisance—Penalty.
68.56.050	Defendant liable for costs.
68.56.060	Police authority—Who may exercise.
68.56.070	Forfeiture of office for inattention to duty.
68.56.900	Effective date—1987 c 331.

*Burial, removal permits required:* RCW 70.58.230.

*Care of veterans' plot at Olympia:* RCW 73.24.020.

**68.56.010 Unlawful damage to graves, markers, shrubs, etc.—Interfering with funeral.** Every person is guilty of a gross misdemeanor who unlawfully or without right wilfully does any of the following:

(1) Destroys, cuts, mutilates, effaces, or otherwise injures, tears down or removes, any tomb, plot, monument, memorial or marker in a cemetery, or any gate, door, fence, wall, post or railing, or any enclosure for the protection of a cemetery or any property in a cemetery.

(2) Destroys, cuts, breaks, removes or injures any building, statuary, ornamentation, tree, shrub, flower or plant within the limits of a cemetery.

(3) Disturbs, obstructs, detains or interferes with any person carrying or accompanying human remains to a cemetery or funeral establishment, or engaged in a funeral service, or an interment. [1943 c 247 § 36; Rem. Supp. 1943 § 3778-36. Cf. 1909 c 249 § 240 and 1856-57 p 28 §§ 4, 5. Formerly RCW 68.48.010.]

**68.56.020 Unlawful damage to graves, markers, shrubs, etc.—Civil liability for damage.** Any person violating any provision of \*RCW 68.48.010 is liable, in a civil action by and in the name of the cemetery authority, to pay all damages occasioned by his unlawful acts. The sum recovered shall be applied in payment for the repair and restoration of

the property injured or destroyed. [1943 c 247 § 37; Rem. Supp. 1943 § 3778-37. Formerly RCW 68.48.020.]

**\*Reviser's note:** RCW 68.48.010 was recodified as RCW 68.56.010 pursuant to 1987 c 331 § 89.

**68.56.030 Unlawful damage to graves, markers, shrubs, etc.—Exceptions.** The provisions of \*RCW 68.48.010 do not apply to the removal or unavoidable breakage or injury, by a cemetery authority, of any thing placed in or upon any portion of its cemetery in violation of any of the rules or regulations of the cemetery authority, nor to the removal of anything placed in the cemetery by or with the consent of the cemetery authority which has become in a wrecked, unsightly or dilapidated condition. [1943 c 247 § 37; Rem. Supp. 1943 § 3778-37. Formerly RCW 68.48.030.]

**\*Reviser's note:** RCW 68.48.010 was recodified as RCW 68.56.010 pursuant to 1987 c 331 § 89.

**68.56.040 Nonconforming cemetery a nuisance—Penalty.** Every person, firm, or corporation who is the owner or operator of a cemetery established in violation of \*this act is guilty of maintaining a public nuisance, which is a gross misdemeanor. [2005 c 365 § 149; 2003 c 53 § 313; 1943 c 247 § 145; Rem. Supp. 1943 § 3778-145. Formerly RCW 68.48.040.]

**\*Reviser's note:** For "this act," see note following RCW 68.04.020.

**Intent—Effective date—2003 c 53:** See notes following RCW 2.48.180.

*Section applies to certain mausoleums, columbariums, etc.:* RCW 68.28.010.

**68.56.050 Defendant liable for costs.** Every person who violates any provision of \*this act is guilty of a misdemeanor, and in addition is liable for all costs, expenses, and disbursements paid or incurred by a person prosecuting the case. [1943 c 247 § 139; Rem. Supp. 1943 § 3778-139. Formerly RCW 68.48.060.]

**\*Reviser's note:** For "this act," see note following RCW 68.04.020.

*Costs, etc., to be fixed by court having jurisdiction:* RCW 68.28.065.

*Section applies to certain mausoleums, columbariums, etc.:* RCW 68.28.010.

**68.56.060 Police authority—Who may exercise.** The sexton, superintendent or other person in charge of a cemetery, and such other persons as the cemetery authority designates have the authority of a police officer for the purpose of maintaining order, enforcing the rules and regulations of the cemetery association, the laws of the state, and the ordinances of the city or county, within the cemetery over which he has charge, and within such radius as may be necessary to protect the cemetery property. [1943 c 247 § 55; Rem. Supp. 1943 § 3778-55. Formerly RCW 68.48.080.]

**68.56.070 Forfeiture of office for inattention to duty.** The office of any director or officer who acts or permits action contrary to \*this act immediately thereupon becomes vacant. [1943 c 247 § 132; Rem. Supp. 1943 § 3778-132. Formerly RCW 68.48.090.]

**\*Reviser's note:** For "this act," see note following RCW 68.04.020.

**68.56.900 Effective date—1987 c 331.** See RCW 68.05.900.

### Chapter 68.60 RCW

## ABANDONED AND HISTORIC CEMETERIES AND HISTORIC GRAVES

### Sections

68.60.010	Definitions.
68.60.020	Dedication.
68.60.030	Preservation and maintenance corporations—Authorization of other corporations to restore, maintain, and protect abandoned cemeteries.
68.60.040	Protection of cemeteries—Penalties.
68.60.050	Protection of historic graves—Penalty.
68.60.055	Skeletal human remains—Duty to notify—Ground disturbing activities—Coroner determination—Definitions.
68.60.060	Violations—Civil liability.

**68.60.010 Definitions.** Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Abandoned cemetery" means a burial ground of the human dead in [for] which the county assessor can find no record of an owner; or where the last known owner is deceased and lawful conveyance of the title has not been made; or in which a cemetery company, cemetery association, corporation, or other organization formed for the purposes of burying the human dead has either disbanded, been administratively dissolved by the secretary of state, or otherwise ceased to exist, and for which title has not been conveyed.

(2) "Historical cemetery" means any burial site or grounds which contain within them human remains buried prior to November 11, 1889; except that (a) cemeteries holding a valid certificate of authority to operate granted under RCW 68.05.115 and 68.05.215, (b) cemeteries owned or operated by any recognized religious denomination that qualifies for an exemption from real estate taxation under RCW 84.36.020 on any of its churches or the ground upon which any of its churches are or will be built, and (c) cemeteries controlled or operated by a coroner, county, city, town, or cemetery district shall not be considered historical cemeteries.

(3) "Historic grave" means a grave or graves that were placed outside a cemetery dedicated pursuant to this chapter and to chapter 68.24 RCW, prior to June 7, 1990, except Indian graves and burial cairns protected under chapter 27.44 RCW.

(4) "Cemetery" has the meaning provided in RCW 68.04.040(2). [1990 c 92 § 1.]

**68.60.020 Dedication.** Any cemetery, abandoned cemetery, historical cemetery, or historic grave that has not been dedicated pursuant to RCW 68.24.030 and 68.24.040 shall be considered permanently dedicated and subject to RCW 68.24.070. Removal of dedication may only be made pursuant to RCW 68.24.090 and 68.24.100. [1999 c 367 § 3; 1990 c 92 § 2.]

**68.60.030 Preservation and maintenance corporations—Authorization of other corporations to restore, maintain, and protect abandoned cemeteries.** (1)(a) The

(2010 Ed.)

department of archaeology and historic preservation may grant by nontransferable certificate authority to maintain and protect an abandoned cemetery upon application made by a preservation organization which has been incorporated for the purpose of restoring, maintaining, and protecting an abandoned cemetery. Such authority shall be limited to the care, maintenance, restoration, protection, and historical preservation of the abandoned cemetery, and shall not include authority to make burials. In order to activate a historical cemetery for burials, an applicant must apply for a certificate of authority to operate a cemetery from the funeral and cemetery board.

(b) Those preservation and maintenance corporations that are granted authority to maintain and protect an abandoned cemetery shall be entitled to hold and possess burial records, maps, and other historical documents as may exist. Maintenance and preservation corporations that are granted authority to maintain and protect an abandoned cemetery shall not be liable to those claiming burial rights, ancestral ownership, or to any other person or organization alleging to have control by any form of conveyance not previously recorded at the county auditor's office within the county in which the abandoned cemetery exists. Such organizations shall not be liable for any reasonable alterations made during restoration work on memorials, roadways, walkways, features, plantings, or any other detail of the abandoned cemetery.

(c) Should the maintenance and preservation corporation be dissolved, the department of archaeology and historic preservation shall revoke the certificate of authority.

(d) Maintenance and preservation corporations that are granted authority to maintain and protect an abandoned cemetery may establish care funds.

(2) Except as provided in subsection (1) of this section, the department of archaeology and historic preservation may, in its sole discretion, authorize any Washington nonprofit corporation that is not expressly incorporated for the purpose of restoring, maintaining, and protecting an abandoned cemetery, to restore, maintain, and protect one or more abandoned cemeteries. The authorization may include the right of access to any burial records, maps, and other historical documents, but shall not include the right to be the permanent custodian of original records, maps, or documents. This authorization shall be granted by a nontransferable certificate of authority. Any nonprofit corporation authorized and acting under this subsection is immune from liability to the same extent as if it were a preservation organization holding a certificate of authority under subsection (1) of this section.

(3) The department of archaeology and historic preservation shall establish standards and guidelines for granting certificates of authority under subsections (1) and (2) of this section to assure that any restoration, maintenance, and protection activities authorized under this subsection are conducted and supervised in an appropriate manner. [2009 c 102 § 21; 2005 c 365 § 150; 1995 c 399 § 168; 1993 c 67 § 1; 1990 c 92 § 3.]

**Funeral directors and embalmers account and cemetery account abolished, moneys transferred to funeral and cemetery account—2009 c 102:** See note following RCW 18.39.810.

**68.60.040 Protection of cemeteries—Penalties.** (1)

Every person who in a cemetery unlawfully or without right willfully destroys, cuts, mutilates, effaces, or otherwise injures, tears down or removes, any tomb, plot, monument, memorial, or marker in a cemetery, or any gate, door, fence, wall, post, or railing, or any enclosure for the protection of a cemetery or any property in a cemetery is guilty of a class C felony punishable under chapter 9A.20 RCW.

(2) Every person who in a cemetery unlawfully or without right willfully destroys, cuts, breaks, removes, or injures any building, statuary, ornamentation, tree, shrub, flower, or plant within the limits of a cemetery is guilty of a gross misdemeanor punishable under chapter 9A.20 RCW.

(3) Every person who in a cemetery unlawfully or without right willfully opens a grave; removes personal effects of the decedent; removes all or portions of human remains; removes or damages caskets, surrounds, outer burial containers, or any other device used in making the original burial; transports unlawfully removed human remains from the cemetery; or knowingly receives unlawfully removed human remains from the cemetery is guilty of a class C felony punishable under chapter 9A.20 RCW. [1990 c 92 § 4.]

**68.60.050 Protection of historic graves—Penalty.** (1)

Any person who knowingly removes, mutilates, defaces, injures, or destroys any historic grave shall be guilty of a class C felony punishable under chapter 9A.20 RCW. Persons disturbing historic graves through inadvertence, including disturbance through construction, shall reinter the human remains under the supervision of the department of archaeology and historic preservation. Expenses to reinter such human remains are to be provided by the department of archaeology and historic preservation to the extent that funds for this purpose are appropriated by the legislature.

(2) This section does not apply to actions taken in the performance of official law enforcement duties.

(3) It shall be a complete defense in a prosecution under subsection (1) of this section if the defendant can prove by a preponderance of evidence that the alleged acts were accidental or inadvertent and that reasonable efforts were made to preserve the remains accidentally disturbed or discovered, and that the accidental discovery or disturbance was properly reported. [2009 c 102 § 22; 1999 c 67 § 1; 1989 c 44 § 5. Formerly RCW 68.05.420.]

**Funeral directors and embalmers account and cemetery account abolished, moneys transferred to funeral and cemetery account—2009 c 102:** See note following RCW 18.39.810.

**Intent—1989 c 44:** See RCW 27.44.030.

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**68.60.055 Skeletal human remains—Duty to notify—Ground disturbing activities—Coroner determination—Definitions.** (1)

Any person who discovers skeletal human remains shall notify the coroner and local law enforcement in the most expeditious manner possible. Any person knowing of the existence of skeletal human remains and not having good reason to believe that the coroner and local law enforcement has notice thereof and who fails to give notice thereof is guilty of a misdemeanor.

(2) Any person engaged in ground disturbing activity and who encounters or discovers skeletal human remains in or on the ground shall:

(a) Immediately cease any activity which may cause further disturbance;

(b) Make a reasonable effort to protect the area from further disturbance;

(c) Report the presence and location of the remains to the coroner and local law enforcement in the most expeditious manner possible; and

(d) Be held harmless from criminal and civil liability arising under the provisions of this section provided the following criteria are met:

(i) The finding of the remains was based on inadvertent discovery;

(ii) The requirements of the subsection are otherwise met; and

(iii) The person is otherwise in compliance with applicable law.

(3) The coroner must make a determination whether the skeletal human remains are forensic or nonforensic within five business days of receiving notification of a finding of such remains provided that there is sufficient evidence to make such a determination within that time period. The coroner will retain jurisdiction over forensic remains.

(a) Upon determination that the remains are nonforensic, the coroner must notify the department of archaeology and historic preservation within two business days. The department will have jurisdiction over such remains until provenance of the remains is established. A determination that remains are nonforensic does not create a presumption of removal or nonremoval.

(b) Upon receiving notice from a coroner of a finding of nonforensic skeletal human remains, the department must notify the appropriate local cemeteries, and all affected Indian tribes via certified mail to the head of the appropriate tribal government, and contact the appropriate tribal cultural resources staff within two business days of the finding. The determination of what are appropriate local cemeteries to be notified is at the discretion of the department. A notification to tribes of a finding of such nonforensic skeletal human remains does not create a presumption that the remains are Indian.

(c) The state physical anthropologist must make an initial determination of whether nonforensic skeletal human remains are Indian or non-Indian to the extent possible based on the remains within two business days of notification of a finding of such nonforensic remains. If the remains are determined to be Indian, the department must notify all affected Indian tribes via certified mail to the head of the appropriate tribal government within two business days and contact the appropriate tribal cultural resources staff.

(d) The affected tribes have five business days to respond via telephone or writing to the department as to their interest in the remains.

(4) For the purposes of this section:

(a) "Affected tribes" are:

(i) Those federally recognized tribes with usual and accustomed areas in the jurisdiction where the remains were found;

(ii) Those federally recognized tribes that submit to the department maps that reflect the tribe's geographical area of cultural affiliation; and

(iii) Other tribes with historical and cultural affiliation in the jurisdiction where the remains were found.

(b) "Forensic remains" are those that come under the jurisdiction of the coroner pursuant to RCW 68.50.010.

(c) "Inadvertent discovery" has the same meaning as used in RCW 27.44.040.

(5) Nothing in this section constitutes, advocates, or otherwise grants, confers, or implies federal or state recognition of those tribes that are not federally recognized pursuant to 25 C.F.R. part 83, procedures for establishing that an American Indian group exists as an Indian tribe. [2008 c 275 § 3.]

**Reporting requirements—2008 c 275:** See note following RCW 68.50.645.

**68.60.060 Violations—Civil liability.** Any person who violates any provision of this chapter is liable in a civil action by and in the name of the department of archaeology and historic preservation to pay all damages occasioned by their unlawful acts. The sum recovered shall be applied in payment for the repair and restoration of the property injured or destroyed and to the care fund if one is established. [2009 c 102 § 23; 1990 c 92 § 5.]

**Funeral directors and embalmers account and cemetery account abolished, moneys transferred to funeral and cemetery account—2009 c 102:** See note following RCW 18.39.810.

## Chapter 68.64 RCW

### UNIFORM ANATOMICAL GIFT ACT

#### Sections

68.64.010	Definitions.
68.64.020	Scope.
68.64.030	Persons authorized to make an anatomical gift—During life of donor.
68.64.040	Manner in which an anatomical gift may be made.
68.64.050	Amending or revoking an anatomical gift.
68.64.060	Refusal to make an anatomical gift.
68.64.070	Making, amending, or revoking a gift by a person other than donor—Making additional gifts.
68.64.080	Persons authorized to make an anatomical gift—After donor's death.
68.64.090	Manner in which an anatomical gift may be made—After donor's death.
68.64.100	Persons to whom an anatomical gift may be made.
68.64.105	Document of gift—Validity requirements.
68.64.110	Document of gift or refusal—Examination and copying.
68.64.120	Procurement organizations—Reasonable examinations—Donee's rights—Physician removal of donated part.
68.64.130	Nonnative English speakers—Interpreter services and translations.
68.64.140	Hospitals—Agreements or affiliations with procurement organizations required.
68.64.150	Illegal purchases or sales—Felony.
68.64.160	Illegal financial gain—Altering a document, amendment, or revocation of gift—Felony.
68.64.170	Liability.
68.64.180	Declarations or advance health care directives—Conflicts with medical suitability measures.
68.64.190	Coroner or medical examiner—Duties.
68.64.200	Organ and tissue donor registry.
68.64.210	Organ and tissue donation awareness account.
68.64.900	Short title.
68.64.901	Applicable state laws.
68.64.902	Uniformity of application and construction—2008 c 139.
68.64.903	Supersedes, in part, the federal electronic signatures in global and national commerce act.

(2010 Ed.)

### 68.64.010 Definitions. (Effective until July 1, 2011.)

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

(1) "Adult" means an individual who is at least eighteen years old.

(2) "Agent" means an individual:

(a) Authorized to make health care decisions on the principal's behalf by a power of attorney for health care; or

(b) Expressly authorized to make an anatomical gift on the principal's behalf by any other record signed by the principal.

(3) "Anatomical gift" means a donation of all or part of a human body to take effect after the donor's death for the purpose of transplantation, therapy, research, or education.

(4) "Decedent" means a deceased individual whose body or part is or may be the source of an anatomical gift.

(5) "Disinterested witness" means a witness other than the spouse or state registered domestic partner, child, parent, sibling, grandchild, grandparent, or guardian of the individual who makes, amends, revokes, or refuses to make an anatomical gift. The term does not include a person to which an anatomical gift could pass under RCW 68.64.100.

(6) "Document of gift" means a donor card or other record used to make an anatomical gift. The term includes a statement or symbol on a driver's license, identification card, or donor registry.

(7) "Donor" means an individual whose body or part is the subject of an anatomical gift.

(8) "Donor registry" means a database that contains records of anatomical gifts and amendments to or revocations of anatomical gifts.

(9) "Driver's license" means a license or permit issued by the department of licensing to operate a vehicle, whether or not conditions are attached to the license or permit.

(10) "Eye bank" means a person that is licensed, accredited, or regulated under federal or state law to engage in the recovery, screening, testing, processing, storage, or distribution of human eyes or portions of human eyes.

(11) "Guardian" means a person appointed by a court to make decisions regarding the support, care, education, health, or welfare of an individual. The term does not include a guardian ad litem.

(12) "Hospital" means a facility licensed as a hospital under the law of any state or a facility operated as a hospital by the United States, a state, or a subdivision of a state.

(13) "Identification card" means an identification card issued by the department of licensing.

(14) "Know" means to have actual knowledge.

(15) "Minor" means an individual who is less than eighteen years old.

(16) "Organ procurement organization" means a person designated by the secretary of the United States department of health and human services as an organ procurement organization.

(17) "Parent" means a parent whose parental rights have not been terminated.

(18) "Part" means an organ, an eye, or tissue of a human being. The term does not include the whole body.

(19) "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, public corporation, government or

governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.

(20) "Physician" means an individual licensed or otherwise authorized to practice medicine and surgery or osteopathic medicine and surgery under the law of any state.

(21) "Procurement organization" means an eye bank, organ procurement organization, or tissue bank.

(22) "Prospective donor" means an individual whose death is imminent and has been determined by a procurement organization to have a part that could be medically suitable for transplantation, therapy, research, or education. "Prospective donor" does not include an individual who has made a refusal.

(23) "Reasonable costs" include: (a) Programming and software installation and upgrades; (b) employee training that is specific to the organ and tissue donor registry or the donation program created in RCW 46.12.510; (c) literature that is specific to the organ and tissue donor registry or the donation program created in RCW 46.12.510; and (d) hardware upgrades or other issues important to the organ and tissue donor registry or the donation program created in RCW 46.12.510 that have been mutually agreed upon in advance by the department of licensing and the Washington state organ procurement organizations.

(24) "Reasonably available" means able to be contacted by a procurement organization without undue effort and willing and able to act in a timely manner consistent with existing medical criteria necessary for the making of an anatomical gift.

(25) "Recipient" means an individual into whose body a decedent's part has been or is intended to be transplanted.

(26) "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(27) "Refusal" means a record created under RCW 68.64.060 that expressly states an intent to bar other persons from making an anatomical gift of an individual's body or part.

(28) "Sign" means, with the present intent to authenticate or adopt a record:

- (a) To execute or adopt a tangible symbol; or
- (b) To attach to or logically associate with the record an electronic symbol, sound, or process.

(29) "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

(30) "Technician" means an individual determined to be qualified to remove or process parts by an appropriate organization that is licensed, accredited, or regulated under federal or state law. The term includes an enucleator.

(31) "Tissue" means a portion of the human body other than an organ or an eye. The term does not include blood unless the blood is donated for the purpose of research or education.

(32) "Tissue bank" means a person that is licensed to conduct business in this state, accredited, and regulated under federal or state law to engage in the recovery, screening, testing, processing, storage, or distribution of tissue.

(33) "Transplant hospital" means a hospital that furnishes organ transplants and other medical and surgical specialty services required for the care of transplant patients.

(34) "Washington state organ procurement organization" means an organ procurement organization that has been designated by the United States department of health and human services to coordinate organ procurement activities for any portion of Washington state. [2008 c 139 § 2.]

**68.64.010 Definitions.** (*Effective July 1, 2011.*) The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Adult" means an individual who is at least eighteen years old.

(2) "Agent" means an individual:

(a) Authorized to make health care decisions on the principal's behalf by a power of attorney for health care; or

(b) Expressly authorized to make an anatomical gift on the principal's behalf by any other record signed by the principal.

(3) "Anatomical gift" means a donation of all or part of a human body to take effect after the donor's death for the purpose of transplantation, therapy, research, or education.

(4) "Decedent" means a deceased individual whose body or part is or may be the source of an anatomical gift.

(5) "Disinterested witness" means a witness other than the spouse or state registered domestic partner, child, parent, sibling, grandchild, grandparent, or guardian of the individual who makes, amends, revokes, or refuses to make an anatomical gift. The term does not include a person to which an anatomical gift could pass under RCW 68.64.100.

(6) "Document of gift" means a donor card or other record used to make an anatomical gift. The term includes a statement or symbol on a driver's license, identification card, or donor registry.

(7) "Donor" means an individual whose body or part is the subject of an anatomical gift.

(8) "Donor registry" means a database that contains records of anatomical gifts and amendments to or revocations of anatomical gifts.

(9) "Driver's license" means a license or permit issued by the department of licensing to operate a vehicle, whether or not conditions are attached to the license or permit.

(10) "Eye bank" means a person that is licensed, accredited, or regulated under federal or state law to engage in the recovery, screening, testing, processing, storage, or distribution of human eyes or portions of human eyes.

(11) "Guardian" means a person appointed by a court to make decisions regarding the support, care, education, health, or welfare of an individual. The term does not include a guardian ad litem.

(12) "Hospital" means a facility licensed as a hospital under the law of any state or a facility operated as a hospital by the United States, a state, or a subdivision of a state.

(13) "Identification card" means an identification card issued by the department of licensing.

(14) "Know" means to have actual knowledge.

(15) "Minor" means an individual who is less than eighteen years old.

(16) "Organ procurement organization" means a person designated by the secretary of the United States department

of health and human services as an organ procurement organization.

(17) "Parent" means a parent whose parental rights have not been terminated.

(18) "Part" means an organ, an eye, or tissue of a human being. The term does not include the whole body.

(19) "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, public corporation, government or governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.

(20) "Physician" means an individual licensed or otherwise authorized to practice medicine and surgery or osteopathic medicine and surgery under the law of any state.

(21) "Procurement organization" means an eye bank, organ procurement organization, or tissue bank.

(22) "Prospective donor" means an individual whose death is imminent and has been determined by a procurement organization to have a part that could be medically suitable for transplantation, therapy, research, or education. "Prospective donor" does not include an individual who has made a refusal.

(23) "Reasonable costs" include: (a) Programming and software installation and upgrades; (b) employee training that is specific to the organ and tissue donor registry or the donation program created in RCW 46.16A.090(2); (c) literature that is specific to the organ and tissue donor registry or the donation program created in RCW 46.16A.090(2); and (d) hardware upgrades or other issues important to the organ and tissue donor registry or the donation program created in RCW 46.16A.090(2) that have been mutually agreed upon in advance by the department of licensing and the Washington state organ procurement organizations.

(24) "Reasonably available" means able to be contacted by a procurement organization without undue effort and willing and able to act in a timely manner consistent with existing medical criteria necessary for the making of an anatomical gift.

(25) "Recipient" means an individual into whose body a decedent's part has been or is intended to be transplanted.

(26) "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(27) "Refusal" means a record created under RCW 68.64.060 that expressly states an intent to bar other persons from making an anatomical gift of an individual's body or part.

(28) "Sign" means, with the present intent to authenticate or adopt a record:

(a) To execute or adopt a tangible symbol; or

(b) To attach to or logically associate with the record an electronic symbol, sound, or process.

(29) "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

(30) "Technician" means an individual determined to be qualified to remove or process parts by an appropriate organization that is licensed, accredited, or regulated under federal or state law. The term includes an enucleator.

(31) "Tissue" means a portion of the human body other than an organ or an eye. The term does not include blood unless the blood is donated for the purpose of research or education.

(32) "Tissue bank" means a person that is licensed to conduct business in this state, accredited, and regulated under federal or state law to engage in the recovery, screening, testing, processing, storage, or distribution of tissue.

(33) "Transplant hospital" means a hospital that furnishes organ transplants and other medical and surgical specialty services required for the care of transplant patients.

(34) "Washington state organ procurement organization" means an organ procurement organization that has been designated by the United States department of health and human services to coordinate organ procurement activities for any portion of Washington state. [2010 c 161 § 1156; 2008 c 139 § 2.]

**Effective date—Intent—Legislation to reconcile chapter 161, Laws of 2010 and other amendments made during the 2010 legislative session—2010 c 161:** See notes following RCW 46.04.013.

**68.64.020 Scope.** This chapter applies to an anatomical gift or amendment to, revocation of, or refusal to make an anatomical gift, whenever made. [2008 c 139 § 3.]

**68.64.030 Persons authorized to make an anatomical gift—During life of donor.** Subject to RCW 68.64.070, an anatomical gift of a donor's body or part may be made during the life of the donor in the manner provided in RCW 68.64.040 by:

(1) The donor, if the donor is an adult or if the donor is a minor and is:

(a) Emancipated; or

(b) Authorized under state law to apply for a driver's license because the donor is at least fifteen and one-half years old;

(2) An agent of the donor, unless the power of attorney for health care or other record prohibits the agent from making an anatomical gift;

(3) A parent of the donor, if the donor is an unemancipated minor; provided, however, that an anatomical gift made pursuant to this subsection shall cease to be valid once the donor becomes either an emancipated minor or an adult; or

(4) The donor's guardian. [2008 c 139 § 4.]

**68.64.040 Manner in which an anatomical gift may be made.** (1) A donor may make an anatomical gift:

(a) By authorizing a statement or symbol indicating that the donor has made an anatomical gift to be imprinted on the donor's driver's license or identification card;

(b) In a will;

(c) During a terminal illness or injury of the donor, by any form of communication addressed to at least two adults, at least one of whom is a disinterested witness; or

(d) As provided in subsection (2) of this section.

(2) A donor or other person authorized to make an anatomical gift under RCW 68.64.030 may make a gift by a donor card or other record signed by the donor or other person making the gift or by authorizing that a statement or symbol indicating that the donor has made an anatomical gift be included on a donor registry. If the donor or other person is

physically unable to sign a record, the record may be signed by another individual at the direction of the donor or other person and must:

(a) Be witnessed by at least two adults, at least one of whom is a disinterested witness, who have signed at the request of the donor or the other person; and

(b) State that it has been signed and witnessed as provided in (a) of this subsection.

(3) Revocation, suspension, expiration, or cancellation of a driver's license or identification card through which an anatomical gift has been made does not invalidate the gift.

(4) An anatomical gift made by will takes effect upon the donor's death whether or not the will is probated. Invalidation of the will after the donor's death does not invalidate the gift. [2008 c 139 § 5.]

**68.64.050 Amending or revoking an anatomical gift.**

(1) Subject to RCW 68.64.070, a donor or other person authorized to make an anatomical gift under RCW 68.64.030 may amend or revoke an anatomical gift by:

(a) A record signed by:

(i) The donor;

(ii) The other person; or

(iii) Subject to subsection (2) of this section, another individual acting at the direction of the donor or the other person if the donor or other person is physically unable to sign; or

(b) A later-executed document of gift that amends or revokes a previous anatomical gift or portion of an anatomical gift, either expressly or by inconsistency.

(2) A record signed pursuant to subsection (1)(a)(iii) of this section must:

(a) Be witnessed by at least two adults, at least one of whom is a disinterested witness, who have signed at the request of the donor or the other person; and

(b) State that it has been signed and witnessed as provided in (a) of this subsection.

(3) Subject to RCW 68.64.070, a donor or other person authorized to make an anatomical gift under RCW 68.64.030 may revoke an anatomical gift by the destruction or cancellation of the document of gift, or the portion of the document of gift used to make the gift, with the intent to revoke the gift. The donor or other person shall notify the Washington organ procurement organization of the destruction or cancellation of the document of gift for the purpose of removing the individual's name from the organ and tissue donor registry created in RCW 68.64.200. If the Washington state organ procurement organization that is notified does not maintain a registry for Washington residents, it shall notify all Washington state procurement organizations that do maintain such a registry.

(4) A donor may amend or revoke an anatomical gift that was not made in a will by any form of communication during a terminal illness or injury addressed to at least two adults, at least one of whom is a disinterested witness.

(5) A donor who makes an anatomical gift in a will may amend or revoke the gift in the manner provided for amendment or revocation of wills or as provided in subsection (1) of this section. [2008 c 139 § 6.]

**68.64.060 Refusal to make an anatomical gift.** (1) An individual may refuse to make an anatomical gift of the individual's body or part by:

(a) A record signed by:

(i) The individual; or

(ii) Subject to subsection (2) of this section, another individual acting at the direction of the individual if the individual is physically unable to sign;

(b) The individual's will, whether or not the will is admitted to probate or invalidated after the individual's death; or

(c) Any form of communication made by the individual during the individual's terminal illness or injury addressed to at least two adults, at least one of whom is a disinterested witness.

(2) A record signed pursuant to subsection (1)(a)(ii) of this section must:

(a) Be witnessed by at least two adults, at least one of whom is a disinterested witness, who have signed at the request of the individual; and

(b) State that it has been signed and witnessed as provided in (a) of this subsection.

(3) An individual who has made a refusal may amend or revoke the refusal:

(a) In the manner provided in subsection (1) of this section for making a refusal;

(b) By subsequently making an anatomical gift pursuant to RCW 68.64.040 that is inconsistent with the refusal; or

(c) By destroying or canceling the record evidencing the refusal, or the portion of the record used to make the refusal, with the intent to revoke the refusal.

(4) Except as otherwise provided in RCW 68.64.070(8), in the absence of an express, contrary indication by the individual set forth in the refusal, an individual's unrevoked refusal to make an anatomical gift of the individual's body or part bars all other persons from making an anatomical gift of the individual's body or part. [2008 c 139 § 7.]

**68.64.070 Making, amending, or revoking a gift by a person other than donor—Making additional gifts.** (1)

Except as otherwise provided in subsection (7) of this section and subject to subsection (6) of this section, in the absence of an express, contrary indication by the donor, a person other than the donor is barred from making, amending, or revoking an anatomical gift of a donor's body or part if the donor made an anatomical gift of the donor's body or part under RCW 68.64.040 or an amendment to an anatomical gift of the donor's body or part under RCW 68.64.050.

(2) A donor's revocation of an anatomical gift of the donor's body or part under RCW 68.64.050 is not a refusal and does not bar another person specified in RCW 68.64.030 or 68.64.080 from making an anatomical gift of the donor's body or part under RCW 68.64.040 or 68.64.090.

(3) If a person other than the donor makes an unrevoked anatomical gift of the donor's body or part under RCW 68.64.040 or an amendment to an anatomical gift of the donor's body or part under RCW 68.64.050, another person may not make, amend, or revoke the gift of the donor's body or part under RCW 68.64.090.

(4) A revocation of an anatomical gift of a donor's body or part under RCW 68.64.050 by a person other than the

donor does not bar another person from making an anatomical gift of the body or part under RCW 68.64.040 or 68.64.090.

(5) In the absence of an express, contrary indication by the donor or other person authorized to make an anatomical gift under RCW 68.64.030, an anatomical gift of a part is neither a refusal to give another part nor a limitation on the making of an anatomical gift of another part at a later time by the donor or another person.

(6) In the absence of an express, contrary indication by the donor or other person authorized to make an anatomical gift under RCW 68.64.030, an anatomical gift of a part for one or more of the permitted purposes is not a limitation on the making of an anatomical gift of the part for any of the other purposes by the donor or any other person under RCW 68.64.040 or 68.64.090.

(7) If a donor who is an unemancipated minor dies, a parent of the donor who is reasonably available may revoke or amend an anatomical gift of the donor's body or part.

(8) If an unemancipated minor who signed a refusal dies, a parent of the minor who is reasonably available may revoke the minor's refusal. [2008 c 139 § 8.]

**68.64.080 Persons authorized to make an anatomical gift—After donor's death.** (1) Subject to subsections (2) and (3) of this section and unless barred by RCW 68.64.060 or 68.64.070, an anatomical gift of a decedent's body or part may be made by any member of the following classes of persons who is reasonably available, in the order of priority listed:

(a) An agent of the decedent at the time of death who could have made an anatomical gift under RCW 68.64.030(2) immediately before the decedent's death;

(b) The spouse, or domestic partner registered as required by state law, of the decedent;

(c) Adult children of the decedent;

(d) Parents of the decedent;

(e) Adult siblings of the decedent;

(f) Adult grandchildren of the decedent;

(g) Grandparents of the decedent;

(h) The persons who were acting as the guardians of the person of the decedent at the time of death; and

(i) Any other person having the authority under applicable law to dispose of the decedent's body.

(2) If there is more than one member of a class listed in subsection (1)(a), (c), (d), (e), (f), (g), or (h) of this section entitled to make an anatomical gift, an anatomical gift may be made by a member of the class unless that member or a person to which the gift may pass under RCW 68.64.100 knows of an objection by another member of the class. If an objection is known, the gift may be made only by a majority of the members of the class who are reasonably available.

(3) A person may not make an anatomical gift if, at the time of the decedent's death, a person in a prior class under subsection (1) of this section is reasonably available to make or to object to the making of an anatomical gift. [2008 c 139 § 9.]

**68.64.090 Manner in which an anatomical gift may be made—After donor's death.** (1) A person authorized to

(2010 Ed.)

make an anatomical gift under RCW 68.64.080 may make an anatomical gift by a document of gift signed by the person making the gift or by that person's oral communication that is electronically recorded or is contemporaneously reduced to a record and signed by the individual receiving the oral communication.

(2) Subject to subsection (3) of this section, an anatomical gift by a person authorized under RCW 68.64.080 may be amended or revoked orally or in a record by any member of a prior class who is reasonably available. If more than one member of the prior class is reasonably available, the gift made by a person authorized under RCW 68.64.080 may be:

(a) Amended only if a majority of the reasonably available members agree to the amending of the gift; or

(b) Revoked only if a majority of the reasonably available members agree to the revoking of the gift or if they are equally divided as to whether to revoke the gift.

(3) A revocation under subsection (2) of this section is effective only if, before an incision has been made to remove a part from the donor's body or before transplant procedures have begun on the recipient, the procurement organization, transplant hospital, or physician or technician knows of the revocation. [2008 c 139 § 10.]

**68.64.100 Persons to whom an anatomical gift may be made.** (1) An anatomical gift may be made to the following persons named in the document of gift:

(a) For research or education: A hospital; an accredited medical school, dental school, college, or university; or an organ procurement organization;

(b) Subject to subsection (2) of this section, an individual designated by the person making the anatomical gift if the individual is the recipient of the part;

(c) An eye bank or tissue bank.

(2) If an anatomical gift to an individual under subsection (1)(b) of this section cannot be transplanted into the individual, the part passes in accordance with subsection (7) of this section in the absence of an express, contrary indication by the person making the anatomical gift.

(3) If an anatomical gift of one or more specific parts or of all parts is made in a document of gift that does not name a person described in subsection (1) of this section but identifies the purpose for which an anatomical gift may be used, the following rules apply:

(a) If the part is an eye and the gift is for the purpose of transplantation or therapy, the gift passes to the appropriate eye bank.

(b) If the part is tissue and the gift is for the purpose of transplantation or therapy, the gift passes to the appropriate tissue bank.

(c) If the part is an organ and the gift is for the purpose of transplantation or therapy, the gift passes to the appropriate organ procurement organization as custodian of the organ.

(d) If the part is an organ, an eye, or tissue and the gift is for the purpose of research or education, the gift passes to the appropriate procurement organization.

(4) For the purpose of subsection (3) of this section, if there is more than one purpose of an anatomical gift set forth in the document of gift but the purposes are not set forth in any priority, the gift must be used for transplantation or ther-

apy, if suitable. If the gift cannot be used for transplantation or therapy, the gift may be used for research or education.

(5) If an anatomical gift of one or more specific parts is made in a document of gift that does not name a person described in subsection (1) of this section and does not identify the purpose of the gift, the gift may be used only for transplantation or therapy, and the gift passes in accordance with subsection (7) of this section.

(6) If a document of gift specifies only a general intent to make an anatomical gift by words such as "donor," "organ donor," or "body donor," or by a symbol or statement of similar import, the gift may be used only for transplantation or therapy, and the gift passes in accordance with subsection (7) of this section.

(7) For purposes of subsections (2), (5), and (6) of this section the following rules apply:

(a) If the part is an eye, the gift passes to the appropriate eye bank.

(b) If the part is tissue, the gift passes to the appropriate tissue bank.

(c) If the part is an organ, the gift passes to the appropriate organ procurement organization as custodian of the organ.

(8) An anatomical gift of an organ for transplantation or therapy, other than an anatomical gift under subsection (1)(b) of this section, passes to the organ procurement organization as custodian of the organ.

(9) If an anatomical gift does not pass pursuant to subsections (1) through (8) of this section or the decedent's body or part is not used for transplantation, therapy, research, or education, custody of the body or part passes to the person under obligation to dispose of the body or part.

(10) A person may not accept an anatomical gift if the person knows that the gift was not effectively made under RCW 68.64.040 or 68.64.090 or if the person knows that the decedent made a refusal under RCW 68.64.060 that was not revoked. For purposes of this subsection (10), if a person knows that an anatomical gift was made on a document of gift, the person is deemed to know of any amendment or revocation of the gift or any refusal to make an anatomical gift on the same document of gift.

(11) Except as otherwise provided in subsection (1)(b) of this section, nothing in this chapter affects the allocation of organs for transplantation or therapy. [2008 c 139 § 11.]

**68.64.105 Document of gift—Validity requirements.**

(1) A document of gift is valid if executed in accordance with:

(a) This chapter;

(b) The laws of the state or country where it was executed; or

(c) The laws of the state or country where the person making the anatomical gift was domiciled, has a place of residence, or was a national at the time the document of gift was executed.

(2) If a document of gift is valid under this section, the law of this state governs the interpretation of the document of gift.

(3) A person may presume that a document of gift or amendment of an anatomical gift is valid unless that person knows that it was not validly executed or was revoked. [2008 c 139 § 19.]

**68.64.110 Document of gift or refusal—Examination and copying.** (1) A document of gift need not be delivered during the donor's lifetime to be effective.

(2) Upon or after an individual's death, a person in possession of a document of gift or a refusal to make an anatomical gift with respect to the individual shall allow examination and copying of the document of gift or refusal by a person authorized to make or object to the making of an anatomical gift with respect to the individual or by a person to which the gift could pass under RCW 68.64.100. [2008 c 139 § 12.]

**68.64.120 Procurement organizations—Reasonable examinations—Donee's rights—Physician removal of donated part.**

(1) When a hospital refers an individual at or near death to a procurement organization, the organization shall make a reasonable search of the records of the department of licensing and any donor registry that it knows exists for the geographical area in which the individual resides to ascertain whether the individual has made an anatomical gift.

(2) A procurement organization must be allowed reasonable access to information in the records of the department of licensing to ascertain whether an individual at or near death is a donor.

(3) When a hospital refers an individual at or near death to a procurement organization, the organization may conduct any reasonable examination necessary to ensure the medical suitability of a part that is or could be the subject of an anatomical gift for transplantation, therapy, research, or education from a donor or a prospective donor. During the examination period, measures necessary to ensure the medical suitability of the part may not be withdrawn unless the hospital or procurement organization knows that the individual expressed a contrary intent.

(4) Unless prohibited by law other than this chapter, at any time after a donor's death, the person to which a part passes under RCW 68.64.100 may conduct any reasonable examination necessary to ensure the medical suitability of the body or part for its intended purpose.

(5) Unless prohibited by law other than this chapter, an examination under subsection (3) or (4) of this section may include an examination of all medical records of the donor or prospective donor.

(6) Upon the death of a minor who was a donor or had signed a refusal, unless a procurement organization knows the minor is emancipated, the procurement organization shall conduct a reasonable search for the parents of the minor and provide the parents with an opportunity to revoke or amend the anatomical gift or revoke the refusal.

(7) Upon referral by a hospital under subsection (1) of this section, a procurement organization shall make a reasonable search for any person listed in RCW 68.64.080 having priority to make an anatomical gift on behalf of a prospective donor. If a procurement organization receives information that an anatomical gift to any other person was made, amended, or revoked, it shall promptly advise the other person of all relevant information.

(8) Subject to RCW 68.64.100(9), 68.64.190, and 68.64.901, the rights of the person to which a part passes under RCW 68.64.100 are superior to the rights of all others with respect to the part. The person may accept or reject an

anatomical gift in whole or in part. Subject to the terms of the document of gift and this chapter, a person that accepts an anatomical gift of an entire body may allow embalming, burial, or cremation, and use of remains in a funeral service. If the gift is of a part, the person to which the part passes under RCW 68.64.100, upon the death of the donor and before embalming, burial, or cremation, shall cause the part to be removed without unnecessary mutilation.

(9) Neither the physician who attends the decedent at death nor the physician who determines the time of the decedent's death may participate in the procedures for removing or transplanting a part from the decedent.

(10) A physician or technician may remove a donated part from the body of a donor that the physician or technician is qualified to remove. [2008 c 139 § 13.]

**68.64.130 Nonnative English speakers—Interpreter services and translations.** When English is not the first language of the person or persons making, amending, revoking, or refusing anatomical gifts as defined in chapter 139, Laws of 2008, organ procurement organizations are responsible for providing, at no cost, appropriate interpreter services or translations to such persons for the purpose of making such decisions. [2008 c 139 § 14.]

**68.64.140 Hospitals—Agreements or affiliations with procurement organizations required.** Each hospital in this state shall enter into agreements or affiliations with procurement organizations for coordination of procurement and use of anatomical gifts. [2008 c 139 § 15.]

**68.64.150 Illegal purchases or sales—Felony.** (1) Except as otherwise provided in subsection (2) of this section, a person who, for valuable consideration, knowingly purchases or sells a part for transplantation or therapy if removal of a part from an individual is intended to occur after the individual's death is guilty of a class C felony under RCW 9A.20.010.

(2) A person may charge a reasonable amount for the removal, processing, preservation, quality control, storage, transportation, implantation, or disposal of a part. [2008 c 139 § 16.]

**68.64.160 Illegal financial gain—Altering a document, amendment, or revocation of gift—Felony.** A person who, in order to obtain financial gain, intentionally falsifies, forges, conceals, defaces, or obliterates a document of gift, an amendment or revocation of a document of gift, or a refusal is guilty of a class C felony under RCW 9A.20.010. [2008 c 139 § 17.]

**68.64.170 Liability.** (1) A person who acts in accordance with this chapter or with the applicable anatomical gift law of another state, or attempts in good faith to do so, is not liable for the act in a civil action, criminal prosecution, or administrative proceeding.

(2) Neither the person making an anatomical gift nor the donor's estate is liable for any injury or damage that results from the making or use of the gift.

(3) In determining whether an anatomical gift has been made, amended, or revoked under this chapter, a person may rely upon representations of an individual listed in RCW 68.64.080(1) (b) through (g) relating to the individual's relationship to the donor or prospective donor unless the person knows that the representation is untrue. [2008 c 139 § 18.]

**68.64.180 Declarations or advance health care directives—Conflicts with medical suitability measures.** (1) The definitions in this subsection apply throughout this section unless the context clearly requires otherwise.

(a) "Advance health care directive" means a power of attorney for health care or a "directive" as defined in RCW 70.122.020.

(b) "Declaration" means a record signed by a prospective donor specifying the circumstances under which a life support system may be withheld or withdrawn from the prospective donor.

(c) "Health care decision" means any decision made regarding the health care of the prospective donor.

(2) If a prospective donor has a declaration or advance health care directive, and the terms of the declaration or directive and the express or implied terms of a potential anatomical gift are in conflict with regard to the administration of measures necessary to ensure the medical suitability of a part for transplantation or therapy, the prospective donor's attending physician and the prospective donor shall confer to resolve the conflict. If the prospective donor is incapable of resolving the conflict, an agent acting under the prospective donor's declaration or directive, or, if none or the agent is not reasonably available, another person authorized by law other than this chapter to make health care decisions on behalf of the prospective donor, shall act for the donor to resolve the conflict. The conflict must be resolved as expeditiously as possible. Information relevant to the resolution of the conflict may be obtained from the appropriate procurement organization and any other person authorized to make an anatomical gift for the prospective donor under RCW 68.64.080. Before resolution of the conflict, measures necessary to ensure the medical suitability of the part may not be withheld or withdrawn from the prospective donor if withholding or withdrawing the measures is not contraindicated by appropriate end-of-life care. [2008 c 139 § 20.]

**68.64.190 Coroner or medical examiner—Duties.** (1)(a) A coroner or medical examiner shall cooperate with procurement organizations, to the extent that such cooperation does not prevent, hinder, or impede the timely investigation of death, to facilitate the opportunity to recover anatomical gifts for the purpose of transplantation or therapy. However, a coroner or medical examiner may limit the number of procurement organizations with which he or she cooperates.

(b) The coroner or medical examiner may release the initial investigative information to the tissue or organ procurement organization for the purpose of determining the suitability of the potential donor by those organizations. The information released for this purpose shall remain confidential. The coroner or medical examiner is not liable for any release of confidential information by the procurement organization.

(2)(a) Procurement organizations shall cooperate with the coroner or medical examiner to ensure the preservation of and timely transfer to the coroner or medical examiner any physical or biological evidence from a prospective donor that the procurement organization may have contact with or access to that is required by the coroner or medical examiner for the investigation of death.

(b) If the coroner or medical examiner or a designee releases a part for donation under subsection (4) of this section, the procurement organization, upon request, shall cause the physician or technician who removes the part to provide the coroner or medical examiner with a record describing the condition of the part, biopsies, residual tissue, photographs, and any other information and observations requested by the coroner or medical examiner that would assist in the investigation of death.

(3) A part may not be removed from the body of a decedent under the jurisdiction of a coroner or medical examiner for transplantation, therapy, research, or education unless the part is the subject of an anatomical gift, and has been released by the coroner or medical examiner. The body of a decedent under the jurisdiction of the coroner or medical examiner may not be delivered to a person for research or education unless the body is the subject of an anatomical gift. This subsection does not preclude a coroner or medical examiner from performing the medicolegal investigation upon the body or relevant parts of a decedent under the jurisdiction of the coroner or medical examiner.

(4) If an anatomical gift of a part from the decedent under the jurisdiction of the coroner or medical examiner has been or might be made, but the coroner or medical examiner initially believes that the recovery of the part could interfere with the postmortem investigation into the decedent's cause or manner of death, the collection of evidence, or the description, documentation, or interpretation of injuries on the body, the coroner or medical examiner may consult with the procurement organization or physician or technician designated by the procurement organization about the proposed recovery. After consultation, the coroner or medical examiner may release the part for recovery. [2008 c 139 § 21.]

**68.64.200 Organ and tissue donor registry.** (1) The department of licensing shall electronically transfer all information that appears on the front of a driver's license or identicard including the name, gender, date of birth, and most recent address of any person who obtains a driver's license or identicard and volunteers to donate organs or tissue upon death to any Washington state organ procurement organization that intends to establish a statewide organ and tissue donor registry as provided under subsection (2) of this section. All subsequent electronic transfers of donor information shall be at no charge to this Washington state organ procurement organization.

(2) Information obtained by a Washington state organ procurement organization under subsection (1) of this section shall be used for the purpose of establishing a statewide organ and tissue donor registry accessible to in-state recognized cadaveric organ and cadaveric tissue agencies for the recovery or placement of organs and tissue and to procurement agencies in another state when a Washington state resident is a donor of an anatomical gift and is not located in this state at

the time of death or immediately before the death of the donor. Any registry created using information acquired under subsection (1) of this section must include all residents of Washington state regardless of their residence within the service area designated by the federal government.

(3) No organ or tissue donation organization may obtain information from the organ and tissue donor registry for the purposes of fund-raising. Organ and tissue donor registry information may not be further disseminated unless authorized in this section or by federal law. Dissemination of organ and tissue donor registry information may be made by a Washington state organ procurement organization to another Washington state organ procurement organization, a recognized in-state procurement agency for other tissue recovery, or an out-of-state federally designated organ procurement organization that has been designated by the United States department of health and human services to serve an area outside Washington.

(4) A Washington state organ procurement organization may acquire donor information from sources other than the department of licensing.

(5) All reasonable costs associated with the creation of an organ and tissue donor registry shall be paid by the Washington state organ procurement organization that has requested the information. The reasonable costs associated with the initial installation and setup for electronic transfer of the donor information at the department of licensing shall be paid by the Washington state organ procurement organization that requested the information.

(6) An individual does not need to participate in the organ and tissue donor registry to be a donor of organs or tissue. The registry is to facilitate organ and tissue donations and not inhibit persons from being donors upon death. [2003 c 94 § 3. Formerly RCW 68.50.635.]

**Findings—2003 c 94:** "The legislature finds that the use of anatomical gifts, including the donation of organ[s] or tissue, for the purpose of transplantation is of great interest to the citizens of Washington state and may save or prolong the life or improve the health of extremely ill and dying persons.

The legislation further finds that more than eighty thousand people are currently waiting for life-saving organ transplants on the national transplant waiting list. More than one thousand two hundred of these people are listed at Washington state transplant centers. Nationally, seventeen people die each day as a result of the shortage of donated organs.

The creation of a statewide organ and tissue donor registry is crucial to facilitate timely and successful organ and tissue procurement. The legislature further finds that continuing education as to the existence and maintenance of a statewide organ and tissue donor registry is in the best interest of the people of the state of Washington." [2003 c 94 § 1.]

**68.64.210 Organ and tissue donation awareness account. (Effective until July 1, 2011.)** (1) The organ and tissue donation awareness account is created in the custody of the state treasurer. All receipts from donations made under RCW 46.12.510, and other contributions and appropriations specifically made for the purposes of organ and tissue donor awareness, shall be deposited into the account. Except as provided in subsection (2) of this section, expenditures from the account may be authorized by the director of the department of licensing or the director's designee and do not require an appropriation.

(2) The department of licensing shall submit a funding request to the legislature covering the reasonable costs asso-

ciated with the ongoing maintenance associated with the electronic transfer of the donor information to the organ and tissue donor registry and the donation program established in RCW 46.12.510. The legislature shall appropriate to the department of licensing an amount it deems reasonable from the organ and tissue donation awareness account to the department of licensing for these purposes.

(3) At least quarterly, the department of licensing shall transmit any remaining moneys in the organ and tissue donation awareness account to the foundation established in RCW 46.12.510 for the costs associated with educating the public about the organ and tissue donor registry and related organ and tissue donation education programs.

(4) Funding for donation awareness programs must be proportional across the state regardless of which Washington state organ procurement organization may be designated by the United States department of health and human services to serve a particular geographic area. No funds from the account may be used to fund activities outside Washington state. [2003 c 94 § 7. Formerly RCW 68.50.640.]

**Findings—2003 c 94:** See note following RCW 68.64.200.

**68.64.210 Organ and tissue donation awareness account. (Effective July 1, 2011.)** (1) The organ and tissue donation awareness account is created in the custody of the state treasurer. All receipts from donations made under RCW 46.16A.090(2), and other contributions and appropriations specifically made for the purposes of organ and tissue donor awareness, shall be deposited into the account. Except as provided in subsection (2) of this section, expenditures from the account may be authorized by the director of the department of licensing or the director's designee and do not require an appropriation.

(2) The department of licensing shall submit a funding request to the legislature covering the reasonable costs associated with the ongoing maintenance associated with the electronic transfer of the donor information to the organ and tissue donor registry and the donation program established in RCW 46.16A.090(2). The legislature shall appropriate to the department of licensing an amount it deems reasonable from the organ and tissue donation awareness account to the department of licensing for these purposes.

(3) At least quarterly, the department of licensing shall transmit any remaining moneys in the organ and tissue donation awareness account to the foundation established in RCW 46.16A.090(2) for the costs associated with educating the public about the organ and tissue donor registry and related organ and tissue donation education programs.

(4) Funding for donation awareness programs must be proportional across the state regardless of which Washington state organ procurement organization may be designated by the United States department of health and human services to serve a particular geographic area. No funds from the account may be used to fund activities outside Washington state. [2010 c 161 § 1157; 2003 c 94 § 7. Formerly RCW 68.50.640.]

**Effective date—Intent—Legislation to reconcile chapter 161, Laws of 2010 and other amendments made during the 2010 legislative session—2010 c 161:** See notes following RCW 46.04.013.

**Findings—2003 c 94:** See note following RCW 68.64.200.

**68.64.900 Short title.** This chapter may be cited as the revised uniform anatomical gift act. [2008 c 139 § 1.]

**68.64.901 Applicable state laws.** This chapter is subject to the laws of this state governing the jurisdiction of the coroner or medical examiner. [2008 c 139 § 22.]

**68.64.902 Uniformity of application and construction—2008 c 139.** In applying and construing this uniform act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it. [2008 c 139 § 23.]

**68.64.903 Supersedes, in part, the federal electronic signatures in global and national commerce act.** This chapter modifies, limits, and supersedes the federal electronic signatures in global and national commerce act (15 U.S.C. Sec. 7001 et seq.) with respect to electronic signatures and anatomical gifts, but does not modify, limit, or supersede section 101(a) of that act (15 U.S.C. Sec. 7001), or authorize electronic delivery of any of the notices described in section 103(b) of that act (15 U.S.C. Sec. 7003(b)). [2008 c 139 § 24.]



# Title 69

## FOOD, DRUGS, COSMETICS, AND POISONS

### Chapters

- 69.04 Intrastate commerce in food, drugs, and cosmetics.**
- 69.06 Food and beverage establishment workers' permits.**
- 69.07 Washington food processing act.**
- 69.10 Food storage warehouses.**
- 69.25 Washington wholesome eggs and egg products act.**
- 69.28 Honey.**
- 69.30 Sanitary control of shellfish.**
- 69.36 Washington caustic poison act of 1929.**
- 69.38 Poisons—Sales and manufacturing.**
- 69.40 Poisons and dangerous drugs.**
- 69.41 Legend drugs—Prescription drugs.**
- 69.43 Precursor drugs.**
- 69.45 Drug samples.**
- 69.50 Uniform controlled substances act.**
- 69.51 Controlled substances therapeutic research act.**
- 69.51A Medical marijuana.**
- 69.52 Imitation controlled substances.**
- 69.53 Use of buildings for unlawful drugs.**
- 69.55 Ammonia.**
- 69.60 Over-the-counter medications.**
- 69.80 Food donation and distribution—Liability.**
- 69.90 Kosher food products.**

*Board of health and bureau of vital statistics authorized: State Constitution Art. 20 § 1.*

*Board of pharmacy: Chapter 18.64 RCW.*

*Controlled atmosphere storage of fruits and vegetables: Chapter 15.30 RCW.*

*Hazardous substances (poison prevention): Chapter 70.106 RCW.*

*Horse meat: RCW 16.68.140.*

*Hotel and restaurant safety regulations: Chapter 70.62 RCW.*

*Inhaling toxic fumes: Chapter 9.47A RCW.*

*Milk and milk products for animal food: Chapter 15.37 RCW.*

*Poison information centers: Chapter 18.76 RCW.*

*Preparations, patent medicines containing alcohol: Chapter 66.12 RCW.*

*Regulation of sale of drugs and medicines authorized: State Constitution Art. 20 § 2.*

*Unlawful to refill trademarked containers: RCW 19.76.110.*

### Chapter 69.04 RCW

#### INTRASTATE COMMERCE IN FOOD, DRUGS, AND COSMETICS (Formerly: Food, drug, and cosmetic act)

### Sections

- 69.04.001 Statement of purpose.
- 69.04.002 Introductory.
- 69.04.003 "Federal act" defined.
- 69.04.004 "Intrastate commerce."
- 69.04.005 "Sale."
- 69.04.006 "Director."
- 69.04.007 "Person."
- 69.04.008 "Food."
- 69.04.009 "Drugs."

- 69.04.010 "Device."
- 69.04.011 "Cosmetic."
- 69.04.012 "Official compendium."
- 69.04.013 "Label."
- 69.04.014 "Immediate container."
- 69.04.015 "Labeling."
- 69.04.016 "Misleading labeling or advertisement," how determined.
- 69.04.017 "Antiseptic" as germicide.
- 69.04.018 "New drug" defined.
- 69.04.019 "Advertisement."
- 69.04.020 "Contaminated with filth."
- 69.04.021 "Package."
- 69.04.022 "Pesticide chemical."
- 69.04.023 "Raw agricultural commodity."
- 69.04.024 "Food additive," "safe."
- 69.04.025 "Color additive," "color."
- 69.04.040 Prohibited acts.
- 69.04.050 Remedy by injunction.
- 69.04.060 Criminal penalty for violations.
- 69.04.070 Additional penalty.
- 69.04.080 Avoidance of penalty.
- 69.04.090 Liability of disseminator of advertisement.
- 69.04.100 Condemnation of adulterated or misbranded article.
- 69.04.110 Embargo of articles.
- 69.04.120 Procedure on embargo.
- 69.04.123 Exception to petition requirement under RCW 69.04.120.
- 69.04.130 Petitions may be consolidated.
- 69.04.140 Claimant entitled to sample.
- 69.04.150 Damages not recoverable if probable cause existed.
- 69.04.160 Prosecutions.
- 69.04.170 Minor infractions.
- 69.04.180 Proceedings to be in name of state.
- 69.04.190 Standards may be prescribed by regulations.
- 69.04.200 Conformance with federal standards.
- 69.04.205 Bacon—Packaging at retail to reveal quality and leanness.
- 69.04.206 Bacon—Rules, regulations and standards—Withholding packaging use—Hearing—Final determination—Appeal.
- 69.04.207 Bacon—Effective date.
- 69.04.210 Food—Adulteration by poisonous or deleterious substance.
- 69.04.220 Food—Adulteration by abstraction, addition, substitution, etc.
- 69.04.231 Food—Adulteration by color additive.
- 69.04.240 Confectionery—Adulteration.
- 69.04.245 Poultry—Improper use of state's geographic outline.
- 69.04.250 Food—Misbranding by false label, etc.
- 69.04.260 Packaged food—Misbranding.
- 69.04.270 Food—Misbranding by lack of prominent label.
- 69.04.280 Food—Misbranding for nonconformity with standard of identity.
- 69.04.290 Food—Misbranding for nonconformity with standard of quality.
- 69.04.300 Food—Misbranding for nonconformity with standard of fill.
- 69.04.310 Food—Misbranding by failure to show usual name and ingredients.
- 69.04.315 Halibut—Misbranding by failure to show proper name.
- 69.04.320 Food—Misbranding by failure to show dietary properties.
- 69.04.330 Food—Misbranding by failure to show artificial flavoring, coloring, etc.
- 69.04.331 Popcorn sold by theaters or commercial food service establishments—Misbranded if the use of butter or ingredients of butter-like flavoring not disclosed.
- 69.04.333 Poultry and poultry products—Label to indicate if product frozen.
- 69.04.334 Turkeys—Label requirement as to grading.
- 69.04.335 RCW 69.04.333 and 69.04.334 subject to enforcement and penalty provisions of chapter.
- 69.04.340 Natural vitamin, mineral, or dietary properties need not be shown.
- 69.04.350 Permits to manufacture or process certain foods.
- 69.04.360 Suspension of permit.
- 69.04.370 Right of access for inspection.
- 69.04.380 Food exempt if in transit for completion purposes.
- 69.04.390 Regulations permitting tolerance of harmful matter.
- 69.04.392 Regulations permitting tolerance of harmful matter—Pesticide chemicals in or on raw agricultural commodities.

69.04.394 Regulations permitting tolerance of harmful matter—Food additives.

69.04.396 Regulations permitting tolerance of harmful matter—Color additives.

69.04.398 Purpose of RCW 69.04.110, 69.04.392, 69.04.394, 69.04.396—Uniformity with federal laws and regulations—Application to production of kosher food products—Adoption of rules.

69.04.399 Civil penalty for violations of standards for component parts of fluid dairy products adopted under RCW 69.04.398.

69.04.400 Conformance with federal regulations.

69.04.410 Drugs—Adulteration by harmful substances.

69.04.420 Drugs—Adulteration for failure to comply with compendium standard.

69.04.430 Drugs—Adulteration for lack of represented purity or quality.

69.04.440 Drugs—Adulteration by admixture or substitution of ingredients.

69.04.450 Drugs—Misbranding by false labeling.

69.04.460 Packaged drugs—Misbranding.

69.04.470 Drugs—Misbranding by lack of prominent label.

69.04.480 Drugs—Misbranding for failure to state content of habit forming drug.

69.04.490 Drugs—Misbranding by failure to show usual name and ingredients.

69.04.500 Drugs—Misbranding by failure to give directions for use and warnings.

69.04.510 Drugs—Misbranding for improper packaging and labeling.

69.04.520 Drugs—Misbranding for failure to show possibility of deterioration.

69.04.530 Drugs—Misbranding by misleading representation.

69.04.540 Drugs—Misbranding by sale without prescription of drug requiring it.

69.04.550 Drugs exempt if in transit for completion purposes.

69.04.560 Dispensing of certain drugs exempt.

69.04.565 DMSO (dimethyl sulfoxide) authorized.

69.04.570 Introduction of new drug.

69.04.580 Application for introduction.

69.04.590 Effective date of application.

69.04.600 Denial of application.

69.04.610 Revocation of denial.

69.04.620 Service of order of denial.

69.04.630 Drug for investigational use exempt.

69.04.640 Court review of denial.

69.04.650 Dispensing of certain drugs exempt.

69.04.660 Federally licensed drugs exempt.

69.04.670 Cosmetics—Adulteration by injurious substances.

69.04.680 Cosmetics—Misbranding by false label, etc.

69.04.690 Cosmetics—Misbranding by lack of prominent label.

69.04.700 Cosmetics exempt if in transit for completion purposes.

69.04.710 Advertisement, when deemed false.

69.04.720 Advertising of cure of certain diseases deemed false.

69.04.730 Enforcement, where vested—Regulations.

69.04.740 Regulations to conform with federal regulations.

69.04.750 Hearings.

69.04.761 Hearing on proposed regulation—Procedure.

69.04.770 Review on petition prior to effective date.

69.04.780 Investigations—Samples—Right of entry—Verified statements.

69.04.790 Owner may obtain part of sample.

69.04.800 Access to records of other agencies.

69.04.810 Access to records of intrastate carriers.

69.04.820 Right of entry to factories, warehouses, vehicles, etc.

69.04.830 Publication of reports of judgments, orders and decrees.

69.04.840 Dissemination of information.

69.04.845 Severability—1945 c 257.

69.04.850 Construction—1945 c 257.

69.04.860 Effective date of chapter—1945 c 257.

69.04.870 Short title.

69.04.880 Civil penalty.

69.04.900 Perishable packaged food—Pull date labeling—Definitions.

69.04.905 Perishable packaged food—Pull date labeling—Required.

69.04.910 Perishable packaged food—Pull date labeling—Selling or trading goods beyond pull date—Repackaging to substitute for original date—Exception.

69.04.915 Perishable packaged food—Pull date labeling—Storage—Rules and regulations.

69.04.920 Perishable packaged food—Pull date labeling—Penalties.

69.04.928 Seafood labeling requirements—Pamphlet—Direct retail endorsement.

69.04.930 Frozen fish and meat—Labeling requirements—Exceptions.

69.04.932 Salmon labeling—Definitions.

69.04.933 Salmon labeling—Identification of species—Exceptions—Penalty.

69.04.934 Salmon labeling—Identification as farm-raised or commercially caught—Exceptions—Penalty.

69.04.935 Salmon labeling—Rules for identification and enforcement.

69.04.940 Imported lamb products—Labeling requirements.

69.04.950 Transport of bulk foods—Definitions.

69.04.955 Transport of bulk foods—Prohibitions—Exemption.

69.04.960 Transport of bulk foods—Compatible substances—Cleaning vehicle or vessel—Vehicle or vessel marking.

69.04.965 Transport of bulk foods—Transports not constituting violations.

69.04.970 Transport of bulk foods—Substances rendering vehicle or vessel permanently unsuitable for bulk food transport—Procedures to rehabilitate vehicles and vessels.

69.04.975 Transport of bulk foods—Rehabilitation of vehicles and vessels—Inspection—Certification—Marking—Costs.

69.04.980 Transport of bulk foods—Penalties.

*Chapter 69.07 RCW does not impair authority of director or department under this chapter: RCW 69.07.160.*

*Dairies and dairy products: Chapter 15.36 RCW.*

*Food processing inspection account: RCW 69.07.120.*

*Patent medicine peddlers: Chapter 18.64 RCW.*

**69.04.001 Statement of purpose.** This chapter is intended to enact state legislation (1) which safeguards the public health and promotes the public welfare by protecting the consuming public from (a) potential injury by product use; (b) products that are adulterated; or (c) products that have been produced under unsanitary conditions, and the purchasing public from injury by merchandising deceit flowing from intrastate commerce in food, drugs, devices, and cosmetics; and (2) which is uniform, as provided in this chapter, with the federal food, drug, and cosmetic act; and with the federal trade commission act, to the extent it expressly outlaws the false advertisement of food, drugs, devices, and cosmetics; and (3) which thus promotes uniformity of such law and its administration and enforcement, in and throughout the United States. [1991 c 162 § 1; 1945 c 257 § 2; Rem. Supp. 1945 § 6163-51.]

*Conformity with federal regulations: RCW 69.04.190 and 69.04.200.*

**69.04.002 Introductory.** For the purposes of this chapter, terms shall apply as herein defined unless the context clearly indicates otherwise. [1945 c 257 § 3; Rem. Supp. 1945 § 6163-52.]

**69.04.003 "Federal act" defined.** The term "federal act" means the federal food, drug, and cosmetic act, approved on June 25, 1938. (Title 21 U.S.C. 301 et seq.; 52 Stat. 1040 et seq.) [1945 c 257 § 4; Rem. Supp. 1945 § 6163-53.]

**69.04.004 "Intrastate commerce."** The term "intrastate commerce" means any and all commerce within the state of Washington and subject to the jurisdiction thereof; and includes the operation of any business or service establishment. [1945 c 257 § 5; Rem. Supp. 1945 § 6163-54.]

**69.04.005 "Sale."** The term "sale" means any and every sale and includes (1) manufacture, processing, packing, canning, bottling, or any other production, preparation, or putting up; (2) exposure, offer, or any other proffer; (3) holding, storing, or any other possessing; (4) dispensing, giving, delivering, serving, or any other supplying; and (5) applying, administering, or any other using. [1945 c 257 § 6; Rem. Supp. 1945 § 6163-55.]

**69.04.006 "Director."** The term "director" means the director of the department of agriculture of the state of Washington and his duly authorized representatives. [1945 c 257 § 7; Rem. Supp. 1945 § 6163-56.]

*Director of agriculture, general duties: Chapter 43.23 RCW.*

**69.04.007 "Person."** The term "person" includes individual, partnership, corporation, and association. [1945 c 257 § 8; Rem. Supp. 1945 § 6163-57.]

**69.04.008 "Food."** The term "food" means (1) articles used for food or drink for people or other animals, (2) bottled water, (3) chewing gum, and (4) articles used for components of any such article. [1992 c 34 § 2; 1945 c 257 § 9; Rem. Supp. 1945 § 6163-58.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**69.04.009 "Drugs."** The term "drug" means (1) articles recognized in the official United States pharmacopoeia, official homeopathic pharmacopoeia of the United States, or official national formulary, or any supplement to any of them; and (2) articles intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in human beings or other animals; and (3) articles (other than food) intended to affect the structure or any function of the body of human beings or other animals; and (4) articles intended for use as a component of any article specified in clause (1), (2), or (3); but does not include devices or their components, parts, or accessories. [2009 c 549 § 1018; 1945 c 257 § 10; Rem. Supp. 1945 § 6163-59. Prior: 1907 c 211 § 2.]

**69.04.010 "Device."** The term "device" (except when used in RCW 69.04.016 and in RCW 69.04.040(10), 69.04.270, 69.04.690, and in RCW 69.04.470 as used in the sentence "(as compared with other words, statements, designs, or devices, in the labeling)") means instruments, apparatus, and contrivances, including their components, parts and accessories, intended (1) for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in human beings or other animals; or (2) to affect the structure or any function of the body of human beings or other animals. [2009 c 549 § 1019; 1945 c 257 § 11; Rem. Supp. 1945 § 6163-60.]

**69.04.011 "Cosmetic."** The term "cosmetic" means (1) articles intended to be rubbed, poured, sprinkled, or sprayed on, introduced into, or otherwise applied to the human body or any part thereof for cleansing, beautifying, promoting attractiveness, or altering the appearance, and (2) articles intended for use as a component of any such article; except that such term shall not include soap. [1945 c 257 § 12; Rem. Supp. 1945 § 6163-61.]

**69.04.012 "Official compendium."** The term "official compendium" mean the official United States pharmacopoeia, official homeopathic pharmacopoeia of the United States, official national formulary, or any supplement to any of them. [1945 c 257 § 13; Rem. Supp. 1945 § 6163-62.]

**69.04.013 "Label."** The term "label" means a display of written, printed, or graphic matter upon the immediate

container of any article; and a requirement made by or under authority of this chapter that any word, statement, or other information appear on the label shall not be considered to be complied with unless such word, statement, or other information also appears on the outside container or wrapper, if any there be, of the retail package of such article, or is easily legible through the outside container or wrapper. [1945 c 257 § 14; Rem. Supp. 1945 § 6163-63.]

**69.04.014 "Immediate container."** The term "immediate container" does not include package liners. [1945 c 257 § 15; Rem. Supp. 1945 § 6163-64.]

**69.04.015 "Labeling."** The term "labeling" means all labels and other written, printed, or graphic matter (1) upon any article or any of its containers or wrappers, or (2) accompanying such article. [1945 c 257 § 16; Rem. Supp. 1945 § 6163-65.]

*Crimes relating to labeling: Chapter 9.16 RCW, RCW 69.40.055.*

**69.04.016 "Misleading labeling or advertisement, how determined."** If any article is alleged to be misbranded because the labeling is misleading, or if an advertisement is alleged to be false because it is misleading, then in determining whether the labeling or advertisement is misleading there shall be taken into account (among other things) not only representations made or suggested by statement, word, design, device, sound, or any combination thereof, but also the extent to which the labeling or advertisement fails to reveal facts material in the light of such representations or material with respect to consequences which may result from the use of the article to which the labeling or advertisement relates under the conditions of use prescribed in the labeling or advertisement thereof or under such conditions of use as are customary or usual. [1945 c 257 § 17; Rem. Supp. 1945 § 6163-66.]

*Crimes relating to advertising: Chapter 9.04 RCW.*

**69.04.017 "Antiseptic" as germicide.** The representation of a drug, in its labeling or advertisement, as an antiseptic shall be considered to be a representation that it is a germicide, except in the case of a drug purporting to be, or represented as, an antiseptic for inhibitory use as a wet dressing, ointment, dusting powder, or such other use as involves prolonged contact with the body. [1945 c 257 § 18; Rem. Supp. 1945 § 6163-67.]

**69.04.018 "New drug" defined.** The term "new drug" means (1) any drug the composition of which is such that such drug is not generally recognized, among experts qualified by scientific training and experience to evaluate the safety of drugs, as safe for use under the conditions prescribed, recommended, or suggested in the labeling thereof; or (2) any drug the composition of which is such that such drug, as a result of investigations to determine its safety for use under such conditions, has become so recognized, but which has not, otherwise than in such investigations, been used to a material extent or for a material time under such conditions: PROVIDED, That no drug in use on the \*effective date of this chapter shall be regarded as a new drug. [1945 c 257 § 19; Rem. Supp. 1945 § 6163-68.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**69.04.019 "Advertisement."** The term "advertisement" means all representations, other than by labeling, for the purpose of inducing, or which are likely to induce, directly or indirectly, the purchase of food, drugs, devices, or cosmetics. [1945 c 257 § 20; Rem. Supp. 1945 § 6163-69.]

**69.04.020 "Contaminated with filth."** The term "contaminated with filth" applies to any food, drug, device, or cosmetic not securely protected from dust, dirt, and as far as may be necessary by all reasonable means, from all foreign or injurious contaminations. [1945 c 257 § 21; Rem. Supp. 1945 § 6163-70.]

**69.04.021 "Package."** The word "package" shall include, and be construed to include, wrapped meats enclosed in papers or other materials as prepared by the manufacturers thereof for sale. [1963 c 198 § 8.]

**69.04.022 "Pesticide chemical."** The term "pesticide chemical" means any substance defined as an economic poison and/or agricultural pesticide in Title 15 RCW as now enacted or hereafter amended. [1963 c 198 § 9.]

**69.04.023 "Raw agricultural commodity."** The term "raw agricultural commodity" means any food in its raw or natural state, including all fruits that are washed, colored or otherwise treated in their unpeeled natural form prior to marketing. [1963 c 198 § 10.]

**69.04.024 "Food additive," "safe."** (1) The term "food additive" means any substance the intended use of which results or may reasonably be expected to result, directly or indirectly, in its becoming a component or otherwise affecting the characteristics of any food (including any substance intended for use in producing, manufacturing, packing, processing, preparing, treating, packaging, transporting, or holding food; and including any source of radiation intended for any such use), if such substance generally is recognized, among experts qualified by scientific training and experience to evaluate its safety, as having been adequately shown through scientific procedures (or, in the case of a substance used in food prior to January 1, 1958; through either scientific procedures or experience based on common use in food) to be unsafe under the conditions of its intended use; except that such term does not include; (a) a pesticide chemical in or on a raw agricultural commodity; or (b) a pesticide chemical to the extent that it is intended for use or is used in the production, storage, or transportation of any raw agricultural commodity; or (c) a color additive.

(2) The term "safe" as used in the food additive definition has reference to the health of human beings or animals. [2009 c 549 § 1020; 1963 c 198 § 11.]

**69.04.025 "Color additive," "color."** (1) The term "color additive" means a material which (a) is a dye, pigment, or other substance made by a process of synthesis or similar artifice, or extracted, isolated, or otherwise derived, with or without intermediate or final change of identity, from a vege-

table, animal, mineral, or other source, and (b) when added or applied to a food is capable (alone or through reaction with other substance) of imparting color thereto; except that such term does not include any material which the director, by regulation, determines is used (or intended to be used) solely for a purpose or purposes other than coloring.

(2) The term "color" includes black, white, and intermediate grays.

(3) Nothing in subsection (1) hereof shall be construed to apply to any pesticide chemical, soil or plant nutrient, or other agricultural chemical solely because of its effect in aiding, retarding, or otherwise affecting, directly or indirectly, the growth or other natural physiological processes of produce of the soil and thereby affecting its color, whether before or after harvest. [1963 c 198 § 12.]

**69.04.040 Prohibited acts.** The following acts and the causing thereof are hereby prohibited:

(1) The sale in intrastate commerce of any food, drug, device, or cosmetic that is adulterated or misbranded.

(2) The adulteration or misbranding of any food, drug, device, or cosmetic in intrastate commerce.

(3) The receipt in intrastate commerce of any food, drug, device, or cosmetic that is adulterated or misbranded, and the sale thereof in such commerce for pay or otherwise.

(4) The introduction or delivery for introduction into intrastate commerce of (a) any food in violation of RCW 69.04.350; or (b) any new drug in violation of RCW 69.04.570.

(5) The dissemination within this state, in any manner or by any means or through any medium, of any false advertisement.

(6) The refusal to permit (a) entry and the taking of a sample or specimen or the making of any investigation or examination as authorized by RCW 69.04.780; or (b) access to or copying of any record as authorized by RCW 69.04.810.

(7) The refusal to permit entry or inspection as authorized by RCW 69.04.820.

(8) The removal, mutilation, or violation of an embargo notice as authorized by RCW 69.04.110.

(9) The giving of a guaranty or undertaking in intrastate commerce, referred to in RCW 69.04.080, that is false.

(10) The forging, counterfeiting, simulating, or falsely representing, or without proper authority, using any mark, stamp, tag, label, or other identification device authorized or required by regulations promulgated under RCW 69.04.350.

(11) The alteration, mutilation, destruction, obliteration, or removal of the whole or any part of the labeling of a food, drug, device, or cosmetic, or the doing of any other act with respect to a food, drug, device, or cosmetic, or the labeling or advertisement thereof, which results in a violation of this chapter.

(12) The using in intrastate commerce, in the labeling or advertisement of any drug, of any representation or suggestion that an application with respect to such drug is effective under section 505 of the federal act or under RCW 69.04.570, or that such drug complies with the provisions of either such section. [1945 c 257 § 22; Rem. Supp. 1945 § 6163-71. Prior: 1917 c 168 § 1; 1907 c 211 § 1; 1901 c 94 § 1.]

**69.04.050 Remedy by injunction.** (1) In addition to the remedies hereinafter provided the director is hereby authorized to apply to the superior court of Thurston county for, and such court shall have jurisdiction upon prompt hearing and for cause shown to grant, a temporary or permanent injunction restraining any person from violating any provision of RCW 69.04.040; without proof that an adequate remedy at law does not exist.

(2) Whenever it appears to the satisfaction of the court in the case of a newspaper, magazine, periodical, or other publication, published at regular intervals (a) that restraining the dissemination of a false advertisement in any particular issue of such publication would delay the delivery of such issue after the regular time therefor, and (b) that such delay would be due to the method by which the manufacture and distribution of such publication is customarily conducted by the publisher in accordance with sound business practice, and not to any method or device adopted for the evasion of this section or to prevent or delay the issuance of an injunction or restraining order with respect to such false advertisement or any other advertisement, the court shall exclude such issue from the operation of the restraining order or injunction. [1945 c 257 § 23; Rem. Supp. 1945 § 6163-72.]

*Injunctions, generally: Chapter 7.40 RCW.*

**69.04.060 Criminal penalty for violations.** Any person who violates any provision of RCW 69.04.040 is guilty of a misdemeanor and shall on conviction thereof be subject to the following penalties:

(1) A fine of not more than two hundred dollars; or

(2) If the violation is committed after a conviction of such person under this section has become final, imprisonment for not more than thirty days, or a fine of not more than five hundred dollars, or both such imprisonment and fine. [2003 c 53 § 314; 1945 c 257 § 24; Rem. Supp. 1945 § 6163-73. Prior: 1907 c 211 § 12; 1901 c 94 § 11.]

**Intent—Effective date—2003 c 53:** See notes following RCW 2.48.180.

**69.04.070 Additional penalty.** Notwithstanding the provisions of RCW 69.04.060, a person who violates RCW 69.04.040 with intent to defraud or mislead is guilty of a misdemeanor and the penalty shall be imprisonment for not more than ninety days, or a fine of not more than one thousand dollars, or both such imprisonment and fine. [2003 c 53 § 315; 1945 c 257 § 25; Rem. Supp. 1945 § 6163-74.]

**Intent—Effective date—2003 c 53:** See notes following RCW 2.48.180.

**69.04.080 Avoidance of penalty.** No person shall be subject to the penalties of RCW 69.04.060:

(1) For having violated RCW 69.04.040(3), if he establishes that he received and sold such article in good faith, unless he refuses on request of the director to furnish the name and address of the person in the state of Washington from whom he received such article and copies of all available documents pertaining to his receipt thereof; or

(2) For having violated RCW 69.04.040 (1), (3), or (4), if he establishes a guaranty or undertaking signed by, and containing the name and address of, the person in the state of Washington from whom he received such article in good

faith, to the effect that such article complies with this chapter; or

(3) For having violated RCW 69.04.040(5), if he establishes a guaranty or undertaking signed by, and containing the name and address of, the person in the state of Washington from whom he received such advertisement in good faith, to the effect that such advertisement complies with this chapter; or

(4) For having violated RCW 69.04.040(9), if he establishes that he gave such guaranty or undertaking in good faith and in reliance on a guaranty or undertaking to him, which guaranty or undertaking was to the same effect and was signed by, and contained the name and address of, a person in the state of Washington. [1945 c 257 § 26; Rem. Supp. 1945 § 6163-75.]

**69.04.090 Liability of disseminator of advertisement.**

No publisher, radio broadcast licensee, advertising agency, or agency or medium for the dissemination of an advertisement, except the manufacturer, packer, distributor, or seller of the article to which the advertisement relates, shall be subject to the penalties of RCW 69.04.060 by reason of his dissemination of any false advertisement, unless he has refused on the request of the director to furnish the name and address of the manufacturer, packer, distributor, seller, or advertising agency in the state of Washington, who caused him to disseminate such false advertisement. [1945 c 257 § 27; Rem. Supp. 1945 § 6163-76.]

**69.04.100 Condemnation of adulterated or misbranded article.**

Whenever the director shall find in intrastate commerce an article subject to this chapter which is so adulterated or misbranded that it is unfit or unsafe for human use and its immediate condemnation is required to protect the public health, such article is hereby declared to be a nuisance and the director is hereby authorized forthwith to destroy such article or to render it unsalable for human use. [1945 c 257 § 28; Rem. Supp. 1945 § 6163-77.]

**69.04.110 Embargo of articles.** Whenever the director shall find, or shall have probable cause to believe, that an article subject to this chapter is in intrastate commerce in violation of this chapter, and that its embargo under this section is required to protect the consuming or purchasing public, due to its being adulterated or misbranded, or to otherwise protect the public from injury, or possible injury, he or she is hereby authorized to affix to such article a notice of its embargo and against its sale in intrastate commerce, without permission given under this chapter. But if, after such article has been so embargoed, the director shall find that such article does not involve a violation of this chapter, such embargo shall be forthwith removed. [1991 c 162 § 3; 1975 1st ex.s. c 7 § 25; 1945 c 257 § 29; Rem. Supp. 1945 § 6163-78.]

**Purpose of section:** See RCW 69.04.398.

**69.04.120 Procedure on embargo.** When the director has embargoed an article, he or she shall, forthwith and without delay and in no event later than thirty days after the affixing of notice of its embargo, petition the superior court for an order affirming the embargo. The court then has jurisdiction,

for cause shown and after prompt hearing to any claimant of the embargoed article, to issue an order which directs the removal of the embargo or the destruction or the correction and release of the article. An order for destruction or correction and release shall contain such provision for the payment of pertinent court costs and fees and administrative expenses as is equitable and which the court deems appropriate in the circumstances. An order for correction and release may contain such provision for a bond as the court finds indicated in the circumstances. [1991 c 162 § 4; 1983 c 95 § 8; 1945 c 257 § 30; Rem. Supp. 1945 § 6163-79.]

**69.04.123 Exception to petition requirement under RCW 69.04.120.** The director need not petition the superior court as provided for in RCW 69.04.120 if the owner or claimant of such food or food products agrees in writing to the disposition of such food or food products as the director may order. [1995 c 374 § 20.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**69.04.130 Petitions may be consolidated.** Two or more petitions under RCW 69.04.120, which pend at the same time and which present the same issue and claimant hereunder, shall be consolidated for simultaneous determination by one court of jurisdiction, upon application to any court of jurisdiction by the director or by such claimant. [1945 c 257 § 31; Rem. Supp. 1945 § 6163-80.]

**69.04.140 Claimant entitled to sample.** The claimant in any proceeding by petition under RCW 69.04.120 shall be entitled to receive a representative sample of the article subject to such proceeding, upon application to the court of jurisdiction made at any time after such petition and prior to the hearing thereon. [1945 c 257 § 32; Rem. Supp. 1945 § 6163-81.]

**69.04.150 Damages not recoverable if probable cause existed.** No state court shall allow the recovery of damages from administrative action for condemnation under RCW 69.04.100 or for embargo under RCW 69.04.110, if the court finds that there was probable cause for such action. [1945 c 257 § 33; Rem. Supp. 1945 § 6163-82.]

**69.04.160 Prosecutions.** (1) It shall be the duty of each state attorney, county attorney, or city attorney to whom the director reports any violation of this chapter, or regulations promulgated under it, to cause appropriate proceedings to be instituted in the proper courts, without delay, and to be duly prosecuted as prescribed by law.

(2) Before any violation of this chapter is reported by the director to any such attorney for the institution of a criminal proceeding, the person against whom such proceeding is contemplated shall be given appropriate notice and an opportunity to present his views to the director, either orally or in writing, with regard to such contemplated proceeding. [1945 c 257 § 34; Rem. Supp. 1945 § 6163-83.]

**69.04.170 Minor infractions.** Nothing in this chapter shall be construed as requiring the director to report for the institution of proceedings under this chapter, minor viola-

tions of this chapter, whenever he believes that the public interest will be adequately served in the circumstances by a suitable written notice or warning. [1945 c 257 § 35; Rem. Supp. 1945 § 6163-84.]

**69.04.180 Proceedings to be in name of state.** All such proceedings for the enforcement, or to restrain violations, of this chapter shall be by and in the name of the state of Washington. [1945 c 257 § 36; Rem. Supp. 1945 § 6163-85.]

**69.04.190 Standards may be prescribed by regulations.** Whenever in the judgment of the director such action will promote honesty and fair dealing in the interest of consumers, he shall promulgate regulations fixing and establishing for any food, under its common or usual name so far as practicable, a reasonable definition and standard of identity, a reasonable standard of quality, and/or reasonable standards of fill of container. In prescribing any standard of fill of container, consideration shall be given to and due allowance shall be made for product or volume shrinkage or expansion unavoidable in good commercial practice, and need for packing and protective material. In prescribing any standard of quality for any canned fruit or canned vegetable, consideration shall be given to and due allowance shall be made for the differing characteristics of the several varieties thereof. In prescribing a definition and standard of identity for any food or class of food in which optional ingredients are permitted, the director shall, for the purpose of promoting honesty and fair dealing in the interest of consumers, designate the optional ingredients which shall be named on the label. [1945 c 257 § 37; Rem. Supp. 1945 § 6163-86. Prior: 1917 c 168 § 2.]

**69.04.200 Conformance with federal standards.** The definitions and standards of identity, the standards of quality and fill of container, and the label requirements prescribed by regulations promulgated under \*this section shall conform, insofar as practicable, with those prescribed by regulations promulgated under section 401 of the federal act and to the definitions and standards promulgated under the meat inspection act approved March 4, 1907, as amended. [1945 c 257 § 38; Rem. Supp. 1945 § 6163-87.]

\*Reviser's note: The language "this section" appears in 1945 c 257 § 38 but apparently refers to 1945 c 257 § 37 codified as RCW 69.04.190.

**69.04.205 Bacon—Packaging at retail to reveal quality and leanness.** All packaged bacon other than that packaged in cans shall be offered and exposed for sale and sold, within the state of Washington only at retail in packages which permit the buyer to readily view the quality and degree of leanness of the product. [1971 c 49 § 1.]

**69.04.206 Bacon—Rules, regulations and standards—Withholding packaging use—Hearing—Final determination—Appeal.** The director of the department of agriculture is hereby authorized to promulgate rules, regulations, and standards for the implementation of RCW 69.04.205 through 69.04.207. If the director has reason to believe that any packaging method, package, or container in

use or proposed for use with respect to the marketing of bacon is false or misleading in any particular, or does not meet the requirements of RCW 69.04.205, he may direct that such use be withheld unless the packaging method, package, or container is modified in such manner as he may prescribe so that it will not be false or misleading. If the person, firm, or corporation using or proposing to use the packaging method, package, or container does not accept the determination of the director such person, firm, or corporation may request a hearing, but the use of the packaging method, package, or container shall, if the director so directs, be withheld pending hearing and final determination by the director. Any such determination by the director shall be conclusive unless, within thirty days after receipt of notice of such final determination, the person, firm, or corporation adversely affected thereby appeals to a court of proper jurisdiction. [1971 c 49 § 2.]

**69.04.207 Bacon—Effective date.** RCW 69.04.205 through 69.04.207 shall take effect on January 1, 1972. [1971 c 49 § 3.]

**69.04.210 Food—Adulteration by poisonous or deleterious substance.** A food shall be deemed to be adulterated:

(1) If it bears or contains any poisonous or deleterious substance which may render it injurious to health; but in case the substance is not an added substance such food shall not be considered adulterated under this clause if the quantity of such substance in such food does not ordinarily render it injurious to health; or

(2)(a) If it bears or contains any added poisonous or added deleterious substance (other than one which is (i) a pesticide chemical in or on a raw agricultural commodity; (ii) a food additive, or (iii) a color additive) which is unsafe within the meaning of RCW 69.04.390, or (b) if it is a raw agricultural commodity and it bears or contains a pesticide chemical which is unsafe within the meaning of RCW 69.04.392, or (c) if it is, or it bears or contains, any food additive which is unsafe within the meaning of RCW 69.04.394: PROVIDED, That where a pesticide chemical has been used in or on a raw agricultural commodity in conformity with an exemption granted or a tolerance prescribed under RCW 69.04.392 and such raw agricultural commodity has been subjected to processing such as canning, cooking, freezing, dehydrating, or milling, the residue of such pesticide chemical remaining in or on such processed food shall, notwithstanding the provisions of RCW 69.04.390 and 69.04.394, not be deemed unsafe if such residue in or on the raw agricultural commodity has been removed to the extent possible in good manufacturing practice and the concentration of such residue in the processed food when ready to eat is not greater than the tolerance prescribed for the raw agricultural commodity; or

(3) If it consists in whole or in part of any diseased, contaminated, filthy, putrid, or decomposed substance, or if it is otherwise unfit for food; or

(4) If it has been produced, prepared, packed, or held under insanitary conditions whereby it may have become contaminated with filth, or whereby it may have been rendered diseased, unwholesome, or injurious to health; or

(5) If it is in whole or in part the product of a diseased animal or of an animal which has died otherwise than by slaughter or which has been fed on the uncooked offal from a slaughterhouse; or

(6) If its container is composed in whole or in part of any poisonous or deleterious substance which may render the contents injurious to health; or

(7) If it has been intentionally subjected to radiation, unless the use of the radiation was in conformity with a regulation or exemption in effect pursuant to RCW 69.04.394. [1963 c 198 § 1; 1945 c 257 § 39; Rem. Supp. 1945 § 6163-88. Prior: 1923 c 36 § 1; 1907 c 211 § 3; 1901 c 94 § 3.]

**69.04.220 Food—Adulteration by abstraction, addition, substitution, etc.** A food shall be deemed to be adulterated (1) if any valuable constituent has been in whole or in part omitted or abstracted therefrom; or (2) if any substance has been substituted wholly or in part therefor; or (3) if damage or inferiority has been concealed in any manner; or (4) if any substance has been added thereto or mixed or packed therewith so as to increase its bulk or weight, or reduce its quality or strength, or make it appear better or of greater value than it is. [1945 c 257 § 40; Rem. Supp. 1945 § 6163-89.]

**69.04.231 Food—Adulteration by color additive.** A food shall be deemed to be adulterated if it is, or it bears or contains a color additive which is unsafe within the meaning of RCW 69.04.396. [1963 c 198 § 5.]

**69.04.240 Confectionery—Adulteration.** A food shall be deemed to be adulterated if it is confectionery and it bears or contains any alcohol from natural or artificial alcohol flavoring in excess of one percent of the weight of the confection or any nonnutritive article or substance except harmless coloring, harmless flavoring, harmless resinous glaze not in excess of four-tenths of one percent, natural gum, and pectin. This section shall not apply to any chewing gum by reason of its containing harmless nonnutritive masticatory substances, or to any confection permitted to be sold by an endorsement from the liquor control board under RCW 66.24.360. [2007 c 226 § 3; 1984 c 78 § 2; 1945 c 257 § 42; Rem. Supp. 1945 § 6163-91. Prior: 1923 c 36 § 1, part; 1907 c 211 § 3, part.]

**Finding and declaration—Severability—1984 c 78:** See notes following RCW 66.12.160.

**69.04.245 Poultry—Improper use of state's geographic outline.** Uncooked poultry is deemed to be misbranded if it is produced outside of this state but the label for the poultry contains the geographic outline of this state. [1989 c 257 § 2.]

**Legislative findings—1989 c 257:** "The legislature finds that: Poultry produced in this state is known throughout the state for its high quality; and one of the sources of that quality is the proximity of production centers to retail outlets in the state. The legislature also finds that labeling which misrepresents poultry produced elsewhere as being a product of this state may lead consumers to purchase products which they would not otherwise purchase. The legislature further finds that the presence of the geographic outline of this state on a label for poultry produced outside of the state misrepresents the product as having been produced in this state." [1989 c 257 § 1.]

**69.04.250 Food—Misbranding by false label, etc.** A food shall be deemed to be misbranded (1) if its labeling is false or misleading in any particular; or (2) if it is offered for sale under the name of another food; or (3) if it is an imitation of another food, unless its label bears, in type of uniform size and prominence, the word "imitation" and, immediately thereafter, the name of the food imitated; or (4) if its container is so made, formed or filled as to be misleading. [1945 c 257 § 43; Rem. Supp. 1945 § 6163-92. Prior: 1923 c 36 § 2; 1907 c 211 § 4.]

**69.04.260 Packaged food—Misbranding.** If a food is in package form, it shall be deemed to be misbranded, unless it bears a label containing (1) the name and place of business of the manufacturer, packer, or distributor; and (2) an accurate statement of the quantity of the contents in terms of weight, measure, or numerical count: PROVIDED, That under clause (2) of this section reasonable variations shall be permitted, and exemptions as to small packages shall be established, by regulations promulgated by the director. [1945 c 257 § 44; Rem. Supp. 1945 § 6163-93.]

**69.04.270 Food—Misbranding by lack of prominent label.** A food shall be deemed to be misbranded if any word, statement, or other information required by or under authority of this chapter to appear on the label or labeling is not prominently placed thereon with such conspicuousness (as compared with other words, statements, designs, or devices, in the labeling) and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use. [1945 c 257 § 45; Rem. Supp. 1945 § 6163-94.]

**69.04.280 Food—Misbranding for nonconformity with standard of identity.** If a food purports to be or is represented as a food for which a definition and standard of identity has been prescribed by regulations as provided by RCW 69.04.190, it shall be deemed to be misbranded unless (1) it conforms to such definition and standard, and (2) its label bears the name of the food specified in the definition and standard, and, insofar as may be required by such regulations, the common names of optional ingredients (other than spices, flavoring, and coloring) present in such food. [1945 c 257 § 46; Rem. Supp. 1945 § 6163-95.]

**69.04.290 Food—Misbranding for nonconformity with standard of quality.** If a food purports to be or is represented as a food for which a standard of quality has been prescribed by regulations as provided by RCW 69.04.190, and its quality falls below such standard, it shall be deemed to be misbranded unless its label bears in such manner and form as such regulations specify, a statement that it falls below such standard. [1945 c 257 § 47; Rem. Supp. 1945 § 6163-96.]

**69.04.300 Food—Misbranding for nonconformity with standard of fill.** If a food purports to be or is represented as a food for which a standard or standards of fill of container have been prescribed by regulations as provided by RCW 69.04.190, and it falls below the standard of fill of con-

tainer applicable thereto, it shall be deemed to be misbranded unless its label bears, in such manner and form as such regulations specify, a statement that it falls below such standard. [1945 c 257 § 48; Rem. Supp. 1945 § 6163-97.]

**69.04.310 Food—Misbranding by failure to show usual name and ingredients.** If a food is not subject to the provisions of RCW 69.04.280, it shall be deemed to be misbranded unless its label bears (1) the common or usual name of the food, if any there be, and (2) in case it is fabricated from two or more ingredients, the common or usual name of each such ingredient; except that spices, flavorings, and colorings, other than those sold as such, may be designated as spices, flavorings, and colorings without naming each: PROVIDED, That, to the extent that compliance with the requirements of clause (2) of this section is impracticable, or results in deception or unfair competition, exemptions shall be established by regulations promulgated by the director. [1945 c 257 § 49; Rem. Supp. 1945 § 6163-98.]

**69.04.315 Halibut—Misbranding by failure to show proper name.** No person shall label or offer for sale any food fish product designated as halibut, with or without additional descriptive words unless such food fish product is Hippoglossus Hippoglossus or Hippoglossus Stenolepsis. Any person violating the provisions of this section shall be guilty of misbranding under the provisions of this chapter. [1967 ex.s. c 79 § 1.]

**69.04.320 Food—Misbranding by failure to show dietary properties.** If a food purports to be or is represented for special dietary uses, it shall be deemed to be misbranded, unless its label bears such information concerning its vitamin, mineral and other dietary properties as is necessary in order to fully inform purchasers as to its value for such uses, as provided by regulations promulgated by the director, such regulations to conform insofar as practicable with regulations under section 403(j) of the federal act. [1945 c 257 § 50; Rem. Supp. 1945 § 6163-99.]

**69.04.330 Food—Misbranding by failure to show artificial flavoring, coloring, etc.** If a food bears or contains any artificial flavoring, artificial coloring, or chemical preservative, it shall be deemed to be misbranded unless it bears labeling stating that fact: PROVIDED, That to the extent that compliance with the requirements of this section is impracticable, exemptions shall be established by regulations promulgated by the director. The provisions of this section and of RCW 69.04.280 and 69.04.310, with respect to artificial coloring, shall not apply in the case of butter, cheese, or ice cream. [1945 c 257 § 51; Rem. Supp. 1945 § 6163-100.]

**69.04.331 Popcorn sold by theaters or commercial food service establishments—Misbranded if the use of butter or ingredients of butter-like flavoring not disclosed.** (1) If a theater or other commercial food service establishment prepares and sells popcorn for human consumption, the establishment, at the point of sale, shall disclose by posting a sign in a conspicuous manner to prospective consumers a statement as to whether the butter or butter-

like flavoring added to or attributed to the popcorn offered for sale is butter as defined in \*RCW 15.32.010 or is some other product. If the flavoring is some other product, the establishment shall also disclose the ingredients of the product.

The director of agriculture shall adopt rules prescribing the size and content of the sign upon which the disclosure is to be made. Any popcorn sold by or offered for sale by such an establishment to a consumer in violation of this section or the rules of the director implementing this section shall be deemed to be misbranded for the purposes of this chapter.

(2) The provisions of subsection (1) of this section do not apply to packaged popcorn labeled so as to disclose ingredients as required by law for prepackaged foods. [1986 c 203 § 17.]

**\*Reviser's note:** RCW 15.32.010 was recodified as RCW 15.36.012 pursuant to 1994 c 143 § 514.

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**69.04.333 Poultry and poultry products—Label to indicate if product frozen.** It shall be unlawful for any person to sell at retail or display for sale at retail any poultry and poultry products, including turkey, which has been frozen at any time, without having the package or container in which the same is sold bear a label clearly discernible to a customer that such product has been frozen and whether or not the same has since been thawed. No such poultry or poultry product shall be sold unless in such a package or container bearing said label. [1969 ex.s. c 194 § 1.]

**69.04.334 Turkeys—Label requirement as to grading.** No person shall advertise for sale, sell, offer for sale or hold for sale in intrastate commerce any turkey that does not bear a label. Such label shall be properly displayed on the package if such turkey is prepackaged, or attached to the turkey if not prepackaged. Such label shall, if the turkey has been graded, state the name of the governmental agency, whether federal or state, and the grade. No turkey which has been graded may be labeled as being ungraded. Any advertisement in any media concerning the sale of turkeys shall state or set forth whether a turkey is ungraded or graded and the specific grade if graded. [1969 ex.s. c 194 § 2.]

**69.04.335 RCW 69.04.333 and 69.04.334 subject to enforcement and penalty provisions of chapter.** The provisions of this chapter shall be applicable to the enforcement of RCW 69.04.333 and 69.04.334 and any person violating the provisions of RCW 69.04.333 and 69.04.334 shall be subject to the applicable civil and criminal penalties for such violations as provided for in this chapter. [1969 ex.s. c 194 § 3.]

**69.04.340 Natural vitamin, mineral, or dietary properties need not be shown.** Nothing in this chapter shall be construed to require the labeling or advertising to indicate the natural vitamin, natural mineral, or other natural dietary properties of dairy products or other agricultural products when sold as food. [1945 c 257 § 52; Rem. Supp. 1945 § 6163-101.]

**69.04.350 Permits to manufacture or process certain foods.** Whenever the director finds after investigation that

the distribution in intrastate commerce of any class of food may, by reason of contamination with micro-organisms during the manufacture, processing, or packing thereof in any locality, be injurious to health, and that such injurious nature cannot be adequately determined after such articles have entered intrastate commerce, he then, and in such case only, shall promulgate regulations providing for the issuance, to manufacturers, processors, or packers of such class of food in such locality, of permits to which shall be attached such conditions governing the manufacture, processing, or packing of such class of food, for such temporary period of time, as may be necessary to protect the public health; and after the effective date of such regulations, and during such temporary period, no person shall introduce or deliver for introduction into intrastate commerce, any such food manufactured, processed, or packed by any such manufacturer, processor, or packer unless such manufacturer, processor, or packer holds a permit issued by the director as provided by such regulations. Insofar as practicable such regulations shall conform with, shall specify the conditions prescribed by, and shall remain in effect only so long as those promulgated under section 404(a) of the federal act. [1945 c 257 § 53; Rem. Supp. 1945 § 6163-102.]

**69.04.360 Suspension of permit.** The director is authorized to suspend immediately upon notice any permit issued under authority of \*this section, if it is found that any of the conditions of the permit have been violated. The holder of a permit so suspended shall be privileged at any time to apply for the reinstatement of such permit, and the director shall, immediately after prompt hearing and an inspection of the factory or establishment, reinstate such permit, if it is found that adequate measures have been taken to comply with and maintain the conditions of the permit, as originally issued or as amended. [1945 c 257 § 54; Rem. Supp. 1945 § 6163-103.]

**\*Reviser's note:** The language "this section" appears in 1945 c 257 § 54 but apparently refers to 1945 c 257 § 53 codified as RCW 69.04.350.

**69.04.370 Right of access for inspection.** Any officer or employee duly designated by the director shall have access to any factory or establishment, the operator of which holds a permit from the director, for the purpose of ascertaining whether or not the conditions of the permit are being complied with, and denial of access for such inspection shall be ground for suspension of the permit until such access is freely given by the operator. [1945 c 257 § 55; Rem. Supp. 1945 § 6163-104.]

**69.04.380 Food exempt if in transit for completion purposes.** Food which is, in accordance with the practice of the trade, to be processed, labeled, or repacked in substantial quantities at an establishment other than the establishment where it was originally processed or packed, is exempted from the affirmative labeling requirements of this chapter, while it is in transit in intrastate commerce from the one establishment to the other, if such transit is made in good faith for such completion purposes only; but it is otherwise subject to all the applicable provisions of this chapter. [1945 c 257 § 56; Rem. Supp. 1945 § 6163-105.]

**69.04.390 Regulations permitting tolerance of harmful matter.** Any poisonous or deleterious substance added to any food, except where such substance is required in the production thereof or cannot be avoided by good manufacturing practice, shall be deemed unsafe for purposes of the application of clause (2)(a) of RCW 69.04.210; but when such substance is so required or cannot be so avoided, the director shall promulgate regulations limiting the quantity therein or thereon to such extent as he finds necessary for the protection of public health, and any quantity exceeding the limits so fixed shall also be deemed unsafe for purposes of the application of clause (2)(a) of RCW 69.04.210. While such a regulation is in effect limiting the quantity of any such substance in the case of any food, such food shall not, by reason of bearing or containing any added amount of such substance, be considered to be adulterated within the meaning of clause (1) of RCW 69.04.210. In determining the quantity of such added substance to be tolerated in or on different articles of food, the director shall take into account the extent to which the use of such substance is required or cannot be avoided in the production of each such article, and the other ways in which the consumer may be affected by the same or other poisonous or deleterious substances. [1963 c 198 § 2; 1945 c 257 § 57; Rem. Supp. 1945 § 6163-106.]

**69.04.392 Regulations permitting tolerance of harmful matter—Pesticide chemicals in or on raw agricultural commodities.** (1) Any poisonous or deleterious pesticide chemical, or any pesticide chemical which generally is recognized among experts qualified by scientific training and experience to evaluate the safety of pesticide chemicals as unsafe for use, added to a raw agricultural commodity, shall be deemed unsafe for the purpose of the application of clause (2) of RCW 69.04.210 unless:

(a) A tolerance for such pesticide chemical in or on the raw agricultural commodity has been prescribed pursuant to subsection (2) hereof and the quantity of such pesticide chemical in or on the raw agricultural commodity is within the limits of the tolerance so prescribed; or

(b) With respect to use in or on such raw agricultural commodity, the pesticide chemical has been exempted from the requirement of a tolerance pursuant to subsection (2) hereof.

While a tolerance or exemption from tolerance is in effect for a pesticide chemical with respect to any raw agricultural commodity, such raw agricultural commodity shall not, by reason of bearing or containing any added amount of such pesticide chemical, be considered to be adulterated within the meaning of clause (1) of RCW 69.04.210.

(2) The regulations promulgated under section 408 of the Federal Food, Drug and Cosmetic Act, as of July 1, 1975, setting forth the tolerances for pesticide chemicals in or on any raw agricultural commodity, are hereby adopted as the regulations for tolerances applicable to this chapter: PROVIDED, That the director is hereby authorized to adopt by regulation any new or future amendments to such federal regulations for tolerances, including exemption from tolerance and zero tolerances, to the extent necessary to protect the public health. The director is also authorized to issue regulations in the absence of federal regulations and to prescribe therein tolerances for pesticides, exemptions, and zero tolerances, upon

his own motion or upon the petition of any interested party requesting that such a regulation be established. It shall be incumbent upon such petitioner to establish, by data submitted to the director, that a necessity exists for such regulation and that the effect of such regulation will not be detrimental to the public health. If the data furnished by the petitioner is not sufficient to allow the director to determine whether such a regulation should be promulgated, the director may require additional data to be submitted and failure to comply with this request shall be sufficient grounds to deny the request of the petitioner for the issuance of such regulation.

(3) In adopting any new or amended tolerances by regulation issued pursuant to this section, the director shall give appropriate consideration, among other relevant factors, to the following: (a) The purpose of this chapter being to promote uniformity of state legislation with the federal act; (b) the necessity for the production of an adequate, wholesome, and economical food supply; (c) the other ways in which the consumer may be affected by the same pesticide chemical or by other related substances that are poisonous or deleterious; and (d) the opinion of experts qualified by scientific training and experience to determine the proper tolerance to be allowed for any pesticide chemical. [1975 1st ex.s. c 7 § 26; 1963 c 198 § 3.]

**Purpose of section:** See RCW 69.04.398.

**69.04.394 Regulations permitting tolerance of harmful matter—Food additives.** (1) A food additive shall, with respect to any particular use or intended use of such additives, be deemed unsafe for the purpose of the application of clause (2)(c) of RCW 69.04.210, unless:

(a) It and its use or intended use conform to the terms of an exemption granted, pursuant to a regulation under subsection (2) hereof providing for the exemption from the requirements of this section for any food additive, and any food bearing or containing such additive, intended solely for investigational use by qualified experts when in the director's opinion such exemption is consistent with the public health; or

(b) There is in effect, and it and its use or intended use are in conformity with a regulation issued or effective under subsection (2) hereof prescribing the conditions under which such additive may be safely used.

While such a regulation relating to a food additive is in effect, a food shall not, by reason of bearing or containing such an additive in accordance with the regulation, be considered adulterated within the meaning of clause (1) of RCW 69.04.210.

(2) The regulations promulgated under section 409 of the Federal Food, Drug and Cosmetic Act, as of July 1, 1975, prescribing the conditions under which such food additive may be safely used, are hereby adopted as the regulations applicable to this chapter: PROVIDED, That the director is hereby authorized to adopt by regulation any new or future amendments to the federal regulations. The director is also authorized to issue regulations in the absence of federal regulations and to prescribe the conditions under which a food additive may be safely used and exemptions where such food additive is to be used solely for investigational purposes; either upon his or her own motion or upon the petition of any

interested party requesting that such a regulation be established. It shall be incumbent upon such petitioner to establish, by data submitted to the director, that a necessity exists for such regulation and that the effect of such a regulation will not be detrimental to the public health. If the data furnished by the petitioner is not sufficient to allow the director to determine whether such a regulation should be promulgated, the director may require additional data to be submitted and failure to comply with this request shall be sufficient grounds to deny the request of the petitioner for the issuance of such a regulation.

(3) In adopting any new or amended regulations pursuant to this section, the director shall give appropriate consideration, among other relevant factors, to the following: (a) The purpose of this chapter being to promote uniformity of state legislation with the federal act; (b) the probable consumption of the additive and of any substance formed in or on food because of the use of the additive; (c) the cumulative effect of such additive in the diet of human beings or animals, taking into account any chemically or pharmacologically related substance or substances in such diet; and (d) safety factors which in the opinion of experts qualified by scientific training and experience to evaluate the safety of food additives are generally recognized as appropriate for the use of animal experimentation data. [2009 c 549 § 1021; 1975 1st ex.s. c 7 § 27; 1963 c 198 § 4.]

**Purpose of section:** See RCW 69.04.398.

**69.04.396 Regulations permitting tolerance of harmful matter—Color additives.** (1) A color additive shall, with respect to any particular use (for which it is being used or intended to be used or is represented as suitable) in or on food, be deemed unsafe for the purpose of the application of RCW 69.04.231, unless:

(a) There is in effect, and such color additive and such use are in conformity with, a regulation issued under this section listing such additive for such use, including any provision of such regulation prescribing the conditions under which such additive may be safely used;

(b) Such additive and such use thereof conform to the terms of an exemption for experimental use which is in effect pursuant to regulation under this section.

While there are in effect regulations under this section relating to a color additive or an exemption with respect to such additive a food shall not, by reason of bearing or containing such additive in all respects in accordance with such regulations or such exemption, be considered adulterated within the meaning of clause (1) of RCW 69.04.210.

(2) The regulations promulgated under section 706 of the Federal Food, Drug and Cosmetic Act, as of July 1, 1975, prescribing the use or limited use of such color additive, are hereby adopted as the regulations applicable to this chapter: PROVIDED, That the director is hereby authorized to adopt by regulation any new or future amendments to the federal regulations. The director is also authorized to issue regulations in the absence of federal regulations and to prescribe therein the conditions under which a color additive may be safely used including exemptions for experimental purposes. Such a regulation may be issued either upon the director's own motion or upon the petition of any interested party

(2010 Ed.)

requesting that such a regulation be established. It shall be incumbent upon such petitioner to establish, by data submitted to the director, that a necessity exists for such regulation and that the effect of such a regulation will not be detrimental to the public health. If the data furnished by the petitioner is not sufficient to allow the director to determine whether such a regulation should be promulgated, the director may require additional data to be submitted and failure to comply with this request shall be sufficient grounds to deny the request of the petitioner for the issuance of such a regulation.

(3) In adopting any new or amended regulations pursuant to this section, the director shall give appropriate consideration, among other relevant factors, to the following: (a) The purpose of this chapter being to promote uniformity of state legislation with the federal act; (b) the probable consumption of, or other relevant exposure from, the additive and of any substance formed in or on food because of the use of the additive; (c) the cumulative effect, if any, of such additive in the diet of human beings or animals, taking into account the same or any chemically or pharmacologically related substance or substances in such diet; (d) safety factors which, in the opinion of experts qualified by scientific training and experience to evaluate the safety of color additives for the use or uses for which the additive is proposed to be listed, are generally recognized as appropriate for the use of animal experimentation data; (e) the availability of any needed practicable methods of analysis for determining the identity and quantity of (i) the pure dye and all intermediates and other impurities contained in such color additives, (ii) such additive in or on any article of food, and (iii) any substance formed in or on such article because of the use of such additive; and (f) the conformity by the manufacturer with the established standards in the industry relating to the proper formation of such color additive so as to result in a finished product safe for use as a color additive. [2009 c 549 § 1022; 1975 1st ex.s. c 7 § 28; 1963 c 198 § 6.]

**Purpose of section:** See RCW 69.04.398.

*Food—Adulteration by color additive: RCW 69.04.231.*

**69.04.398 Purpose of RCW 69.04.110, 69.04.392, 69.04.394, 69.04.396—Uniformity with federal laws and regulations—Application to production of kosher food products—Adoption of rules.** (1) The purpose of RCW 69.04.110, 69.04.392, 69.04.394, and 69.04.396 is to promote uniformity of state legislation and rules with the Federal Food, Drug and Cosmetic Act 21 USC 301 et seq. and regulations adopted thereunder. In accord with such declared purpose any regulation adopted under said federal food, drug and cosmetic act concerning food in effect on July 1, 1975, and not adopted under any other specific provision of RCW 69.04.110, 69.04.392, 69.04.394, and 69.04.396 are hereby deemed to have been adopted under the provision hereof. Further, to promote such uniformity any regulation adopted hereafter under the provisions of the federal food, drug and cosmetic act concerning food and published in the federal register shall be deemed to have been adopted under the provisions of RCW 69.04.110, 69.04.392, 69.04.394, and 69.04.396 in accord with chapter 34.05 RCW as enacted or hereafter amended. The director may, however, within thirty days of the publication of the adoption of any such regulation

under the federal food, drug and cosmetic act give public notice that a hearing will be held to determine if such regulation shall not be applicable under the provisions of RCW 69.04.110, 69.04.392, 69.04.394, and 69.04.396. Such hearing shall be in accord with the requirements of chapter 34.05 RCW as enacted or hereafter amended.

(2) The provisions of subsection (1) of this section do not apply to rules adopted by the director as necessary to permit the production of kosher food products as defined in RCW 69.90.010.

(3) Notwithstanding the provisions of subsections (1) and (2) of this section the director may adopt rules necessary to carry out the provisions of this chapter. [1991 c 162 § 5; 1986 c 203 § 18; 1975 1st ex.s. c 7 § 36.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**69.04.399 Civil penalty for violations of standards for component parts of fluid dairy products adopted under RCW 69.04.398.** See RCW 15.36.471.

**69.04.400 Conformance with federal regulations.** The regulations promulgated under RCW 69.04.390 shall conform, insofar as practicable, with those promulgated under section 406 of the federal act. [1963 c 198 § 7; 1945 c 257 § 58; Rem. Supp. 1945 § 6163-107.]

**69.04.410 Drugs—Adulteration by harmful substances.** A drug or device shall be deemed to be adulterated (1) if it consists in whole or in part of any filthy, putrid, or decomposed substance; or (2) if it has been produced, prepared, packed, or held under insanitary conditions whereby it may have been contaminated with filth, or whereby it may have been rendered injurious to health; or (3) if it is a drug and its container is composed in whole or in part of any poisonous or deleterious substance which may render the contents injurious to health; or (4) if it is a drug and it bears or contains, for purposes of coloring only, a coal tar color other than one that is harmless and suitable for use in drugs for such purposes, as provided by regulations promulgated under section 504 of the federal act. [1945 c 257 § 59; Rem. Supp. 1945 § 6163-108. Prior: 1923 c 36 § 1; 1907 c 211 § 3; 1901 c 94 § 3.]

**69.04.420 Drugs—Adulteration for failure to comply with compendium standard.** If a drug or device purports to be or is represented as a drug the name of which is recognized in an official compendium, and its strength differs from, or its quality or purity falls below, the standard set forth in such compendium, it shall be deemed to be adulterated. Such determination as to strength, quality or purity shall be made in accordance with the tests or methods of assay set forth in such compendium or prescribed by regulations promulgated under section 501(b) of the federal act. No drug defined in an official compendium shall be deemed to be adulterated under this section because it differs from the standard of strength, quality, or purity therefor set forth in such compendium, if its difference in strength, quality, or purity from such standard is plainly stated on its label. Whenever a drug is recognized in both the United States pharmacopoeia and the homeopathic pharmacopoeia of the United States, it shall be subject to the

requirements of the United States pharmacopoeia unless it is labeled and offered for sale as a homeopathic drug, in which case it shall be subject to the provisions of the homeopathic pharmacopoeia of the United States and not to those of the United States pharmacopoeia. [1945 c 257 § 60; Rem. Supp. 1945 § 6163-109.]

**69.04.430 Drugs—Adulteration for lack of represented purity or quality.** If a drug or device is not subject to the provisions of RCW 69.04.420 and its strength differs from, or its purity or quality falls below, that which it purports or is represented to possess, it shall be deemed to be adulterated. [1945 c 257 § 61; Rem. Supp. 1945 § 6163-110.]

**69.04.440 Drugs—Adulteration by admixture or substitution of ingredients.** A drug shall be deemed to be adulterated if any substance has been (1) mixed or packed therewith so as to reduce its quality or strength or (2) substituted wholly or in part therefor. [1945 c 257 § 62; Rem. Supp. 1945 § 6163-111.]

**69.04.450 Drugs—Misbranding by false labeling.** A drug or device shall be deemed to be misbranded if its labeling is false or misleading in any particular. [1945 c 257 § 63; Rem. Supp. 1945 § 6163-112. Prior: 1923 c 36 § 2; 1907 c 211 § 4.]

**69.04.460 Packaged drugs—Misbranding.** If a drug or device is in package form, it shall be deemed to be misbranded unless it bears a label containing (1) the name and place of business of the manufacturer, packer, or distributor; and (2) an accurate statement of the quantity of the contents in terms of weight, measure, or numerical count: PROVIDED, That under clause (2) of this section reasonable variations shall be permitted, and exemptions as to small packages shall be established, by regulations promulgated by the director. [1945 c 257 § 64; Rem. Supp. 1945 § 6163-113. Prior: 1923 c 36 § 2; 1907 c 211 § 4.]

**69.04.470 Drugs—Misbranding by lack of prominent label.** A drug or device shall be deemed to be misbranded if any word, statement, or other information required by or under authority of this chapter to appear on the label or labeling is not prominently placed thereon with such conspicuousness (as compared with other words, statements, designs, or devices, in the labeling) and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use. [1945 c 257 § 65; Rem. Supp. 1945 § 6163-114. Prior: 1923 c 36 § 2; 1907 c 211 § 4.]

**69.04.480 Drugs—Misbranding for failure to state content of habit forming drug.** A drug or device shall be deemed to be misbranded if it is for use by human beings and contains any quantity of the narcotic or hypnotic substance alpha eucaïne, barbituric acid, beta eucaïne, bromal, cannabis, carbromal, chloral, coca, cocaine, codeine, heroin, marijuana, morphine, opium, paraldehyde, peyote, or sulphomethane; or any chemical derivative of such substance, which derivative has been designated as habit forming by

regulations promulgated under section 502(d) of the federal act; unless its label bears the name and quantity or proportion of such substance or derivative and in juxtaposition therewith the statement "Warning—May be habit forming." [2009 c 549 § 1023; 1945 c 257 § 66; Rem. Supp. 1945 § 6163-115. Prior: 1923 c 36 § 2; 1907 c 211 § 4.]

**69.04.490 Drugs—Misbranding by failure to show usual name and ingredients.** If a drug is not designated solely by a name recognized in an official compendium it shall be deemed to be misbranded unless its label bears (1) the common or usual name of the drug, if such there be; and (2), in case it is fabricated from two or more ingredients, the common or usual name of each active ingredient, including the quantity, kind, and proportion of any alcohol, and also including, whether active or not, the name and quantity or proportion of any bromides, ether, chloroform, acetanilid, acetphenetidin, amidopyrine, antipyrine, atropine, hyoscyne, hyoscyamine, arsenic, digitalis, glucosides, mercury, ouabain, strophanthin, strychnine, thyroid, or any derivative or preparation of any such substances, contained therein: PROVIDED, That to the extent that compliance with the requirements of clause (2) of this section is impracticable, exemptions shall be established by regulations promulgated by the director. [1945 c 257 § 67; Rem. Supp. 1945 § 6163-116. Prior: 1923 c 36 § 2; 1907 c 211 § 4.]

**69.04.500 Drugs—Misbranding by failure to give directions for use and warnings.** A drug or device shall be deemed to be misbranded unless its labeling bears (1) adequate directions for use; and (2) such adequate warnings against use in those pathological conditions or by children where its use may be dangerous to health, or against unsafe dosage or methods or duration of administration or application, in such manner and form, as are necessary for the protection of users: PROVIDED, That where any requirement of clause (1) of this section as applied to any drug or device, is not necessary for the protection of the public health, the director shall promulgate regulations exempting such drug or device from such requirements. Such regulations shall include the exemptions prescribed under section 502(f)(1) of the federal act, insofar as such exemptions are applicable hereunder. [1945 c 257 § 68; Rem. Supp. 1945 § 6163-117. Prior: 1923 c 36 § 2; 1907 c 211 § 4.]

**69.04.510 Drugs—Misbranding for improper packaging and labeling.** A drug or device shall be deemed to be misbranded if it purports to be a drug the name of which is recognized in an official compendium, unless it is packaged and labeled as prescribed therein: PROVIDED, That the method of packing may be modified with the consent of the director, as permitted under section 502(g) of the federal act. Whenever a drug is recognized in both the United States pharmacopoeia and the homeopathic pharmacopoeia of the United States, it shall be subject to the requirements of the United States pharmacopoeia with respect to packaging and labeling unless it is labeled and offered for sale as a homeopathic drug, in which case it shall be subject to the provisions of the homeopathic pharmacopoeia of the United States, and not to those of the United States pharmacopoeia. [1945 c 257

§ 69; Rem. Supp. 1945 § 6163-118. Prior: 1923 c 36 § 2; 1907 c 211 § 4.]

**69.04.520 Drugs—Misbranding for failure to show possibility of deterioration.** If a drug or device has been found by the secretary of agriculture of the United States to be a drug liable to deterioration, it shall be deemed to be misbranded unless it is packaged in such form and manner, and its label bears a statement of such precautions, as required in an official compendium or by regulations promulgated under section 502(h) of the federal act for the protection of the public health. [1945 c 257 § 70; Rem. Supp. 1945 § 6163-119. Prior: 1923 c 36 § 2; 1907 c 211 § 4.]

**69.04.530 Drugs—Misbranding by misleading representation.** A drug shall be deemed to be misbranded if (1) its container is so made, formed, or filled as to be misleading; or (2) if it is an imitation of another drug; or (3) if it is offered for sale under the name of another drug; or (4) if it is dangerous to health when used in the dosage, or with the frequency or duration prescribed, recommended, or suggested in the labeling thereof. [1945 c 257 § 71; Rem. Supp. 1945 § 6163-120. Prior: 1923 c 36 § 2; 1907 c 211 § 4.]

**69.04.540 Drugs—Misbranding by sale without prescription of drug requiring it.** A drug or device shall be deemed to be misbranded if it is a drug which by label provides, or which the federal act or any applicable law requires by label to provide, in effect, that it shall be used only upon the prescription of a physician, dentist, or veterinarian, unless it is dispensed at retail on a written prescription signed by a physician, dentist, or veterinarian, who is licensed by law to administer such a drug. [1945 c 257 § 72; Rem. Supp. 1945 § 6163-121. Prior: 1923 c 36 § 2; 1907 c 211 § 4.]

**69.04.550 Drugs exempt if in transit for completion purposes.** A drug or device which is, in accordance with the practice of the trade, to be processed, labeled, or repacked in substantial quantities at an establishment other than the establishment where it was originally processed or packed, is exempted from the affirmative labeling and packaging requirements of this chapter, while it is in transit in intrastate commerce from the one establishment to the other, if such transit is made in good faith for such completion purposes only; but it is otherwise subject to all the applicable provisions of this chapter. [1945 c 257 § 73; Rem. Supp. 1945 § 6163-122.]

**69.04.560 Dispensing of certain drugs exempt.** A drug dispensed on a written prescription signed by a physician, dentist, or veterinarian (except a drug dispensed in the course of the conduct of a business of dispensing drugs pursuant to diagnosis by mail) shall, if (1) such physician, dentist, or veterinarian is licensed by law to administer such drug, and (2) such drug bears a label containing the name and place of business of the dispenser, the serial number and date of such prescription, and the name of such physician, dentist, or veterinarian, be exempt from the requirements of RCW 69.04.450 through 69.04.540. [1945 c 257 § 74; Rem. Supp. 1945 § 6163-123.]

**69.04.565 DMSO (dimethyl sulfoxide) authorized.** Notwithstanding any other provision of state law, DMSO (dimethyl sulfoxide) may be introduced into intrastate commerce as long as (1) it is manufactured or distributed by persons licensed pursuant to chapter 18.64 RCW or chapter 18.92 RCW, and (2) it is used, or intended to be used, in the treatment of human beings or animals for any ailment or adverse condition: PROVIDED, That DMSO intended for topical application, consistent with rules governing purity and labeling promulgated by the state board of pharmacy, shall not be considered a legend drug and may be sold by any retailer. [1981 c 50 § 1.]

*DMSO use by health facilities, physicians: RCW 70.54.190.*

**69.04.570 Introduction of new drug.** No person shall introduce or deliver for introduction into intrastate commerce any new drug which is subject to section 505 of the federal act unless an application with respect to such drug has become effective thereunder. No person shall introduce or deliver for introduction into intrastate commerce any new drug which is not subject to section 505 of the federal act, unless (1) it has been found, by appropriate tests, that such drug is not unsafe for use under the conditions prescribed, recommended, or suggested in the labeling thereof; and (2) an application has been filed under this section of this chapter with respect to such drug: PROVIDED, That the requirement of clause (2) shall not apply to any drug introduced into intrastate commerce at any time prior to the enactment of this chapter or introduced into interstate commerce at any time prior to the enactment of the federal act: PROVIDED FURTHER, That if the director finds that the requirement of clause (2) as applied to any drug or class of drugs, is not necessary for the protection of the public health, he shall promulgate regulations of exemption accordingly. [1945 c 257 § 75; Rem. Supp. 1945 § 6163-124.]

**69.04.580 Application for introduction.** An application under RCW 69.04.570 shall be filed with the director, and subject to any waiver by the director, shall include (1) full reports of investigations which have been made to show whether or not the drug, subject to the application, is safe for use under the conditions prescribed, recommended, or suggested in the labeling thereof; (2) a full list of the articles used as components of such drug; (3) a full statement of the composition of such drug; (4) a full description of the methods used in, and the facilities and controls used for, the manufacture, processing, and packing of such drug; (5) such samples of such drug and of the articles used as components thereof as the director may require; and (6) specimens of the labeling proposed to be used for such drug. [1945 c 257 § 76; Rem. Supp. 1945 § 6163-125.]

**69.04.590 Effective date of application.** An application filed under RCW 69.04.570 shall become effective on the sixtieth day after the filing thereof, unless the director (1) makes such application effective prior to such day; or (2) issues an order with respect to such application pursuant to RCW 69.04.600. [1945 c 257 § 77; Rem. Supp. 1945 § 6163-126.]

**69.04.600 Denial of application.** If the director finds, upon the basis of the information before him and after due notice and opportunity for hearing to the applicant, that the drug, subject to the application, is not safe for use under the conditions prescribed, recommended, or suggested in the labeling thereof, he shall, prior to such effective date, issue an order refusing to permit such application to become effective and stating the findings upon which it is based. [1945 c 257 § 78; Rem. Supp. 1945 § 6163-127.]

**69.04.610 Revocation of denial.** An order refusing to permit an application under RCW 69.04.570 to become effective may be suspended or revoked by the director, for cause and by order stating the findings upon which it is based. [1945 c 257 § 79; Rem. Supp. 1945 § 6163-128.]

**69.04.620 Service of order of denial.** Orders of the director issued under RCW 69.04.600 shall be served (1) in person by a duly authorized representative of the director or (2) by mailing the order by registered mail addressed to the applicant or respondent at his address last known to the director. [1945 c 257 § 80; Rem. Supp. 1945 § 6163-129.]

**69.04.630 Drug for investigational use exempt.** A drug shall be exempt from the operation of RCW 69.04.570 which is intended, and introduced or delivered for introduction into intrastate commerce, solely for investigational use by experts qualified by scientific training and experience to investigate the safety of drugs and which is plainly labeled "For investigational use only." [1945 c 257 § 81; Rem. Supp. 1945 § 6163-130.]

**69.04.640 Court review of denial.** The superior court of Thurston county shall have jurisdiction to review and to affirm, modify, or set aside any order issued under RCW 69.04.600, upon petition seasonably made by the person to whom the order is addressed and after prompt hearing upon due notice to both parties. [1945 c 257 § 82; Rem. Supp. 1945 § 6163-131.]

**69.04.650 Dispensing of certain drugs exempt.** A drug dispensed on a written prescription signed by a physician, dentist, or veterinarian (except a drug dispensed in the course of the conduct of a business of dispensing drugs pursuant to diagnosis by mail) shall, if (1) such physician, dentist, or veterinarian is licensed by law to administer such drug, and (2) such drug bears a label containing the name and place of business of the dispenser, the serial number and date of such prescription, and the name of such physician, dentist, or veterinarian, be exempt from the operation of RCW 69.04.570 through 69.04.640. [1945 c 257 § 83; Rem. Supp. 1945 § 6163-132.]

**69.04.660 Federally licensed drugs exempt.** The provisions of RCW 69.04.570 shall not apply to any drug which is licensed under the federal virus, serum, and toxin act of July 1, 1902; or under the federal virus, serums, toxins, anti-toxins, and analogous products act of March 4, 1913. [1945 c 257 § 84; Rem. Supp. 1945 § 6163-133.]

**69.04.670 Cosmetics—Adulteration by injurious substances.** A cosmetic shall be deemed to be adulterated (1) if it bears or contains any poisonous or deleterious substance which may render it injurious to users under the conditions of use prescribed in the labeling thereof, or under such conditions of use as are customary or usual: PROVIDED, That this provision shall not apply to coal tar hair dye, the label of which bears the following legend conspicuously displayed thereon: "Caution—This product contains ingredients which may cause skin irritation on certain individuals and a preliminary test according to accompanying direction should first be made. This product must not be used for dyeing the eyelashes or eyebrows; to do so may cause blindness.", and the labeling of which bears adequate directions for such preliminary testing. For the purposes of this paragraph and paragraph (5) the term "hair dye" shall not include eyelash dyes or eyebrow dyes; or (2) if it consists in whole or in part of any filthy, putrid, or decomposed substance; or (3) if it has been produced, prepared, packed, or held under insanitary conditions whereby it may have become contaminated with filth, or whereby it may have been rendered injurious to health; or (4) if its container is composed in whole or in part of any poisonous or deleterious substance which may render the contents injurious to health; or (5) if it is not a hair dye and it bears or contains a coal tar color other than one that is harmless and suitable for use in cosmetics, as provided by regulations promulgated under section 604 of the federal act. [1945 c 257 § 85; Rem. Supp. 1945 § 6163-134.]

**69.04.680 Cosmetics—Misbranding by false label, etc.** A cosmetic shall be deemed to be misbranded (1) if its labeling is false or misleading in any particular; or (2) if in package form, unless it bears a label containing (a) the name and place of business of the manufacturer, packer, or distributor; and (b) an accurate statement of the quantity of the contents in terms of weight, measure, or numerical count: PROVIDED, That under clause (b) of this section reasonable variations shall be permitted, and exemptions as to small packages shall be established, by regulations prescribed by the director. [1945 c 257 § 86; Rem. Supp. 1945 § 6163-135.]

**69.04.690 Cosmetics—Misbranding by lack of prominent label.** A cosmetic shall be deemed to be misbranded (1) if any word, statement, or other information required by or under authority of this chapter to appear on the label or labeling is not prominently placed thereon with such conspicuousness (as compared with other words, statements, designs, or devices, in the labeling) and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use; or (2) if its container is so made, formed, or filled as to be misleading. [1945 c 257 § 87; Rem. Supp. 1945 § 6163-136.]

**69.04.700 Cosmetics exempt if in transit for completion purposes.** A cosmetic which is, in accordance with the practice of the trade, to be processed, labeled, or repacked in substantial quantities at an establishment other than the establishment where it was originally processed or packed, is exempted from the affirmative labeling requirements of this chapter, while it is in transit in intrastate commerce from the

one establishment to the other, if such transit is made in good faith for such completion purposes only; but it is otherwise subject to all the applicable provisions of this chapter. [1945 c 257 § 88; Rem. Supp. 1945 § 6163-137.]

**69.04.710 Advertisement, when deemed false.** An advertisement of a food, drug, device, or cosmetic shall be deemed to be false, if it is false or misleading in any particular. [1945 c 257 § 89; Rem. Supp. 1945 § 6163-138.]

**69.04.720 Advertising of cure of certain diseases deemed false.** The advertisement of a drug or device representing it to have any effect in albuminuria, appendicitis, arteriosclerosis, blood poison, bone disease, Bright's disease, cancer, carbuncles, cholecystitis, diabetes, diphtheria, dropsy, erysipelas, gallstones, heart and vascular diseases, high blood pressure, mastoiditis, measles, meningitis, mumps, nephritis, otitis media, paralysis, pneumonia, poliomyelitis (infantile paralysis), prostate gland disorders, pyelitis, scarlet fever, sexual impotence, sinus infection, smallpox, tuberculosis, tumors, typhoid, uremia, \*venereal disease, shall also be deemed to be false; except that no advertisement not in violation of RCW 69.04.710 shall be deemed to be false under this section if it is disseminated only to members of the medical, veterinary, dental, pharmacal, and other legally recognized professions dealing with the healing arts, or appears only in the scientific periodicals of these professions, or is disseminated only for the purpose of public health education by persons not commercially interested, directly or indirectly, in the sale of such drugs or devices: PROVIDED, That whenever the director determines that an advance in medical science has made any type of self-medication safe as to any of the diseases named above, the director shall by regulation authorize the advertisement of drugs having curative or therapeutic effect for such disease, subject to such conditions and restrictions as the director may deem necessary in the interest of public health: PROVIDED FURTHER, That this section shall not be construed as indicating that self-medication for diseases other than those named herein is safe or efficacious. [1945 c 257 § 90; Rem. Supp. 1945 § 6163-139.]

\*Reviser's note: The term "venereal disease" was changed to "sexually transmitted disease" by 1988 c 206.

**69.04.730 Enforcement, where vested—Regulations.** The authority to promulgate regulations for the efficient enforcement of this chapter is hereby vested in the director: PROVIDED, HOWEVER, That the director shall designate the Washington state board of pharmacy to carry out all the provisions of this chapter pertaining to drugs and cosmetics, with authority to promulgate regulations for the efficient enforcement thereof. [1945 c 257 § 91 (vetoed); 1947 c 25 (passed notwithstanding veto); Rem. Supp. 1947 § 6163-139a.]

**69.04.740 Regulations to conform with federal regulations.** The purpose of this chapter being to promote uniformity of state legislation with the federal act, the director is hereby authorized (1) to adopt, insofar as applicable, the regulations from time to time promulgated under the federal act; and (2) to make the regulations promulgated under this chap-

ter conform, insofar as practicable, with those promulgated under the federal act. [1945 c 257 § 92; Rem. Supp. 1945 § 6163-140.]

**69.04.750 Hearings.** Hearings authorized or required by this chapter shall be conducted by the director or his duly authorized representative designated for the purpose. [1945 c 257 § 93; Rem. Supp. 1945 § 6163-141.]

**69.04.761 Hearing on proposed regulation—Procedure.** The director shall hold a public hearing upon a proposal to promulgate any new or amended regulation under this chapter. The procedure to be followed concerning such hearings shall comply in all respects with chapter 34.05 RCW (Administrative Procedure Act) as now enacted or hereafter amended. [1963 c 198 § 13.]

**69.04.770 Review on petition prior to effective date.** The director shall have jurisdiction to review and to affirm, modify, or set aside any order issued under \*RCW 69.04.760, promulgating a new or amended regulation under this chapter, upon petition made at any time prior to the effective date of such regulation, by any person adversely affected by such order. [1945 c 257 § 95; Rem. Supp. 1945 § 6163-143.]

**\*Reviser's note:** RCW 69.04.760 was repealed by 1963 c 198 § 15. Later enactment, see RCW 69.04.761.

**69.04.780 Investigations—Samples—Right of entry—Verified statements.** The director shall cause the investigation and examination of food, drugs, devices, and cosmetics subject to this chapter. The director shall have the right (1) to take a sample or specimen of any such article, for examination under this chapter, upon tendering the market price therefor to the person having such article in custody; and (2) to enter any place or establishment within this state, at reasonable times, for the purpose of taking a sample or specimen of any such article, for such examination.

The director and the director's deputies, assistants, and inspectors are authorized to do all acts and things necessary to carry out the provisions of this chapter, including the taking of verified statements. Such department personnel are empowered to administer oaths of verification on the statements. [1991 c 162 § 6; 1945 c 257 § 96; Rem. Supp. 1945 § 6163-144.]

**69.04.790 Owner may obtain part of sample.** Where a sample or specimen of any such article is taken for examination under this chapter the director shall, upon request, provide a part thereof for examination by any person named on the label of such article, or the owner thereof, or his attorney or agent; except that the director is authorized, by regulation, to make such reasonable exceptions from, and to impose such reasonable terms and conditions relating to, the operation of this section as he finds necessary for the proper administration of the provisions of this chapter. [1945 c 257 § 97; Rem. Supp. 1945 § 6163-145.]

**69.04.800 Access to records of other agencies.** For the purpose of enforcing the provisions of this chapter, pertinent records of any administrative agency of the state government

shall be open to inspection by the director. [1945 c 257 § 98; Rem. Supp. 1945 § 6163-146.]

**69.04.810 Access to records of intrastate carriers.** For the purpose of enforcing the provisions of this chapter, carriers engaged in intrastate commerce, and persons receiving food, drugs, devices, or cosmetics in intrastate commerce or holding such articles so received, shall, upon the request of the director, permit the director at reasonable times, to have access to and to copy all records showing the movement in intrastate commerce of any food, drug, device, or cosmetic, or the holding thereof during or after such movement, and the quantity, shipper, and consignee thereof; and it shall be unlawful for any such carrier or person to fail to permit such access to and the copying of any such records so requested when such request is accompanied by a statement in writing specifying the nature or kind of food, drug, device, or cosmetic to which such request relates: PROVIDED, That evidence obtained under this section shall not be used in a criminal prosecution of the person from whom obtained: PROVIDED FURTHER, That except for violations of RCW 69.04.955, penalties levied under RCW 69.04.980, the requirements of RCW 69.04.950 through 69.04.980, and the requirements of this section, carriers shall not be subject to the other provisions of this chapter by reason of their receipt, carriage, holding, or delivery of food, drugs, devices, or cosmetics in the usual course of business as carriers. [1990 c 202 § 9; 1945 c 257 § 99; Rem. Supp. 1945 § 6163-147.]

**69.04.820 Right of entry to factories, warehouses, vehicles, etc.** For the purpose of enforcing the provisions of this chapter, the director is authorized (1) to enter, at reasonable times, any factory, warehouse, or establishment subject to this chapter, or to enter any vehicle being used to transport or hold food, drugs, devices, or cosmetics in intrastate commerce; and (2) to inspect, at reasonable times, such factory, warehouse, establishment, or vehicle and all pertinent equipment, finished and unfinished materials, containers, labeling, and advertisements therein. [1945 c 257 § 100; Rem. Supp. 1945 § 6163-148.]

**69.04.830 Publication of reports of judgments, orders and decrees.** The director may cause to be published from time to time reports summarizing all judgments, decrees, and court orders which have been rendered under this chapter, including the nature of the charge and the disposition thereof. [1945 c 257 § 101; Rem. Supp. 1945 § 6163-149.]

**69.04.840 Dissemination of information.** The director may cause to be disseminated information regarding food, drugs, devices, or cosmetics in situations involving, in the opinion of the director, imminent danger to health or gross deception of, or fraud upon, the consumer. Nothing in this section shall be construed to prohibit the director from collecting, reporting, and illustrating the results of his examinations and investigations under this chapter. [1945 c 257 § 102; Rem. Supp. 1945 § 6163-150.]

**69.04.845 Severability—1945 c 257.** If any provision of this chapter is declared unconstitutional, or the applicability thereof to any person or circumstances is held invalid, the constitutionality of the remainder of the chapter and the applicability thereof to other persons and circumstances shall not be affected thereby. [1945 c 257 § 103; Rem. Supp. 1945 § 6163-151.]

**69.04.850 Construction—1945 c 257.** This chapter and the regulations promulgated hereunder shall be so interpreted and construed as to effectuate its general purpose to secure uniformity with federal acts and regulations relating to adulterating, misbranding and false advertising of food, drugs, devices, and cosmetics. [1945 c 257 § 104; Rem. Supp. 1945 § 6163-152.]

**69.04.860 Effective date of chapter—1945 c 257.** This chapter shall take effect ninety days after the date of its enactment, and all state laws or parts of laws in conflict with this chapter are then repealed: PROVIDED, That the provisions of section 91 shall become effective on the enactment of this chapter, and thereafter the director is hereby authorized to conduct hearings and to promulgate regulations which shall become effective on or after the effective date of this chapter as the director shall direct: PROVIDED FURTHER, That all other provisions of this chapter to the extent that they may relate to the enforcement of such sections, shall take effect on the date of the enactment of this chapter. [1945 c 257 § 105; Rem. Supp. 1945 § 6163-153.]

**Reviser's note:** 1945 c 257 § 91 referred to herein was vetoed by the governor but was subsequently reenacted as 1947 c 25 notwithstanding the veto. Section 91 is codified as RCW 69.04.730. For effective date of section 91 see preface 1947 session laws.

**69.04.870 Short title.** This chapter may be cited as the Uniform Washington Food, Drug, and Cosmetic Act. [1945 c 257 § 1; Rem. Supp. 1945 § 6163-50.]

**69.04.880 Civil penalty.** Whenever the director finds that a person has committed a violation of a provision of this chapter, the director may impose upon and collect from the violator a civil penalty not exceeding one thousand dollars per violation per day. Each and every such violation shall be a separate and distinct offense. Imposition of the civil penalty shall be subject to a hearing in conformance with chapter 34.05 RCW. [1991 c 162 § 2.]

**69.04.900 Perishable packaged food—Pull date labeling—Definitions.** For the purpose of RCW 69.04.900 through 69.04.920:

(1) "Perishable packaged food goods" means and includes all foods and beverages, except alcoholic beverages, frozen foods, fresh meat, poultry and fish and a raw agricultural commodity as defined in this chapter, intended for human consumption which are canned, bottled, or packaged other than at the time and point of retail sale, which have a high risk of spoilage within a period of thirty days, and as determined by the director of the department of agriculture by rule and regulation to be perishable.

(2) "Pull date" means the latest date a packaged food product shall be offered for sale to the public.

(3) "Shelf life" means the length of time during which a packaged food product will retain its safe consumption quality if stored under proper temperature conditions.

(4) "Fish" as used in subsection (1) of this section shall mean any water breathing animals, including, but not limited to, shellfish such as lobster, clams, crab, or other mollusca which are prepared, processed, sold, or intended or offered for sale. [1974 ex.s. c 57 § 1; 1973 1st ex.s. c 112 § 1.]

**69.04.905 Perishable packaged food—Pull date labeling—Required.** All perishable packaged food goods with a projected shelf life of thirty days or less, which are offered for sale to the public after January 1, 1974 shall state on the package the pull date. The pull date must be stated in day, and month and be in a style and format that is readily decipherable by consumers: PROVIDED, That the director of the department of agriculture may exclude the monthly requirement on the pull date for perishable packaged food goods which have a shelf life of seven days or less. No perishable packaged food goods shall be offered for sale after the pull date, except as provided in RCW 69.04.910. [1974 ex.s. c 57 § 2; 1973 1st ex.s. c 112 § 2.]

**69.04.910 Perishable packaged food—Pull date labeling—Selling or trading goods beyond pull date—Repackaging to substitute for original date—Exception.** No person shall sell, trade or barter any perishable packaged food goods beyond the pull date appearing thereon, nor shall any person rewrap or repackage any packaged perishable food goods with the intention of placing a pull date thereon which is different from the original: PROVIDED, HOWEVER, That those packaged perishable food goods whose pull dates have expired may be sold if they are still wholesome and are without danger to health, and are clearly identified as having passed the pull date. [1973 1st ex.s. c 112 § 3.]

**69.04.915 Perishable packaged food—Pull date labeling—Storage—Rules and regulations.** The director of the department of agriculture shall by rule and regulation establish uniform standards for pull date labeling, and optimum storage conditions of perishable packaged food goods. In addition to his other duties the director, in consultation with the secretary of the department of health where appropriate, may promulgate such other rules and regulations as may be necessary to carry out the purposes of RCW 69.04.900 through 69.04.920. [1989 1st ex.s. c 9 § 225; 1973 1st ex.s. c 112 § 4.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**69.04.920 Perishable packaged food—Pull date labeling—Penalties.** Any person convicted of a violation of RCW 69.04.905 or 69.04.910 shall be punishable by a fine not to exceed five hundred dollars. [1973 1st ex.s. c 112 § 5.]

**69.04.928 Seafood labeling requirements—Pamphlet—Direct retail endorsement.** The department of agriculture must develop a pamphlet that generally describes the labeling requirements for seafood, as set forth in this chapter, and provide an adequate quantity of the pamphlets to the department of fish and wildlife to distribute with the issuance

of a direct retail endorsement under RCW 77.65.510. [2002 c 301 § 11.]

**Finding—Effective date—2002 c 301:** See notes following RCW 77.65.510.

**69.04.930 Frozen fish and meat—Labeling requirements—Exceptions.** It shall be unlawful for any person to sell at retail or display for sale at retail any food fish as defined in RCW 77.08.022 or shellfish as defined in RCW 77.08.010, any meat, or any meat food product which has been frozen at any time, without having the package or container in which the same is sold bear a label clearly discernible to a customer that such product has been frozen and whether or not the same has since been thawed. No such food fish or shellfish, meat or meat food product shall be sold unless in such a package or container bearing said label: PROVIDED, That this section shall not include any of the aforementioned food or food products that have been frozen prior to being smoked, cured, cooked or subjected to the heat of commercial sterilization. [2003 c 39 § 28; 1999 c 291 § 32; 1988 c 254 § 8; 1983 1st ex.s. c 46 § 179; 1975 c 39 § 1.]

**69.04.932 Salmon labeling—Definitions.** Unless the context clearly requires otherwise, the definitions in this section apply throughout RCW 69.04.933 through 69.04.935.

(1) "Salmon" means all species of the genus *Oncorhynchus*, except those classified as game fish in Title 77 RCW, and includes:

SCIENTIFIC NAME	COMMON NAME
<i>Oncorhynchus tshawytscha</i>	Chinook salmon or king salmon
<i>Oncorhynchus kisutch</i>	Coho salmon or silver salmon
<i>Oncorhynchus keta</i>	Chum salmon
<i>Oncorhynchus gorbuscha</i>	Pink salmon
<i>Oncorhynchus nerka</i>	Sockeye salmon
<i>Salmo salar</i> (in other than its landlocked form)	Atlantic salmon

(2) "Commercially caught" means salmon harvested by commercial fishers. [1993 c 282 § 2.]

**Finding—1993 c 282:** "The legislature finds that salmon consumers in Washington benefit from knowing the species and origin of the salmon they purchase. The accurate identification of such species, as well as knowledge of the country or state of origin and of whether they were caught commercially or were farm-raised, is important to consumers." [1993 c 282 § 1.]

**69.04.933 Salmon labeling—Identification of species—Exceptions—Penalty.** With the exception of a commercial fisher engaged in sales of fish to a fish buyer, no person may sell at wholesale or retail any fresh or frozen salmon food fish or cultured aquatic salmon without identifying the species of salmon by its common name to the buyer at the point of sale such that the buyer can make an informed decision in purchasing. A person knowingly violating this section is guilty of misbranding under this chapter. A person who receives misleading or erroneous information about the species of salmon and subsequently inaccurately identifies salmon shall not be guilty of misbranding. This section shall not apply to salmon that is minced, pulverized, coated with batter, or breaded. [1993 c 282 § 3.]

**Finding—1993 c 282:** See note following RCW 69.04.932.

**69.04.934 Salmon labeling—Identification as farm-raised or commercially caught—Exceptions—Penalty.**

With the exception of a commercial fisher engaged in sales of fish to a fish buyer, no person may sell at wholesale or retail any fresh or frozen:

(1) Private sector cultured aquatic salmon without identifying the product as farm-raised salmon; or

(2) Commercially caught salmon designated as food fish under Title 77 RCW without identifying the product as commercially caught salmon.

Identification of the products under subsections (1) and (2) of this section shall be made to the buyer at the point of sale such that the buyer can make an informed decision in purchasing.

A person knowingly violating this section is guilty of misbranding under this chapter. A person who receives misleading or erroneous information about whether the salmon is farm-raised or commercially caught, and subsequently inaccurately identifies salmon shall not be guilty of misbranding. This section shall not apply to salmon that is minced, pulverized, coated with batter, or breaded. [2003 c 39 § 29; 1993 c 282 § 4.]

**Finding—1993 c 282:** See note following RCW 69.04.932.

**69.04.935 Salmon labeling—Rules for identification and enforcement.** To promote honesty and fair dealing for consumers, the director, in consultation with the director of the department of fish and wildlife, shall adopt rules:

(1) Fixing and establishing a reasonable definition and standard of identity for salmon for purposes of identifying and selling salmon;

(2) Enforcing RCW 69.04.933 and 69.04.934. [1994 c 264 § 39; 1993 c 282 § 5.]

**Finding—1993 c 282:** See note following RCW 69.04.932.

**69.04.940 Imported lamb products—Labeling requirements.** All retail sales of fresh or frozen lamb products which are imported from another country shall be labelled with the country of origin. For the purposes of this section "imported lamb products" shall include but not be limited to, live lambs imported from another country but slaughtered in the United States. [1987 c 393 § 25.]

**69.04.950 Transport of bulk foods—Definitions.** The definitions in this section apply throughout RCW 69.04.950 through 69.04.980:

(1) "Food" means: (a) Any article used for food or drink for humans or used as a component of such an article; or (b) a food grade substance.

(2) "Food grade substance" means a substance which satisfies the requirements of the federal food, drug, and cosmetic act, meat inspection act, and poultry products act and rules promulgated thereunder as materials approved by the federal food and drug administration, United States department of agriculture, or United States environmental protection agency for use: (a) As an additive in food or drink for human consumption, (b) in sanitizing food or drink for human consumption, (c) in processing food or drink for human consumption, or (d) in maintaining equipment with food contact surfaces during which maintenance the substance is expected to come in contact with food or drink for human consumption.

(3) "In bulk form" means a food or substance which is not packaged or contained by anything other than the cargo carrying portion of the vehicle or vessel.

(4) "Vehicle or vessel" means a commercial vehicle or commercial vessel which has a gross weight of more than ten thousand pounds, is used to transport property, and is a motor vehicle, motor truck, trailer, railroad car, or vessel. [1990 c 202 § 1.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**69.04.955 Transport of bulk foods—Prohibitions—Exemption.** (1) Except as provided in RCW 69.04.965 and 69.04.975, no person may transport in intrastate commerce food in bulk form in the cargo carrying portion of a vehicle or vessel that has been used for transporting in bulk form a cargo other than food.

(2) No person may transport in intrastate commerce food in bulk form in the cargo carrying portion of a vehicle or vessel unless the vehicle or vessel is marked "Food or Food Compatible Only" in conformance with rules adopted under RCW 69.04.960.

(3) No person may transport in intrastate commerce a substance in bulk form other than food or a substance on a list adopted under RCW 69.04.960 in the cargo carrying portion of a vehicle or vessel marked "Food or Food Compatible Only."

(4) This section does not apply to the transportation of a raw agricultural commodity from the point of its production to the facility at which the commodity is first processed or packaged. [1990 c 202 § 2.]

**69.04.960 Transport of bulk foods—Compatible substances—Cleaning vehicle or vessel—Vehicle or vessel marking.** (1) The director of agriculture and the secretary of health shall jointly adopt by rule:

(a) A list of food compatible substances other than food that may be transported in bulk form as cargo in a vehicle or vessel that is also used, on separate occasions, to transport food in bulk form as cargo. The list shall contain those substances that the director and the secretary determine will not pose a health hazard if food in bulk form were transported in the vehicle or vessel after it transported the substance. In making this determination, the director and the secretary shall assume that some residual portion of the substance will remain in the cargo carrying portion of the vehicle or vessel when the food is transported;

(b) The procedures to be used to clean the vehicle or vessel after transporting the substance and prior to transporting the food;

(c) The form of the certificates to be used under RCW 69.04.965; and

(d) Requirements for the "Food or Food Compatible Only" marking which must be borne by a vehicle or vessel under RCW 69.04.955 or 69.04.965.

(2) In developing and adopting rules under this section and RCW 69.04.970, the director and the secretary shall consult with the secretary of transportation, the chief of the state patrol, the chair of the utilities and transportation commission, and representatives of the vehicle and vessel transporta-

(2010 Ed.)

tion industries, food processors, and agricultural commodity organizations. [1990 c 202 § 3.]

**69.04.965 Transport of bulk foods—Transports not constituting violations.** Transporting food as cargo in bulk form in intrastate commerce in a vehicle or vessel that has previously been used to transport in bulk form a cargo other than food does not constitute a violation of RCW 69.04.955 if:

(1) The cargo is a food compatible substance contained on the list adopted by the director and secretary under RCW 69.04.960;

(2) The vehicle or vessel has been cleaned as required by the rules adopted under RCW 69.04.960;

(3) The vehicle or vessel is marked "Food or Food Compatible" in conformance with rules adopted under RCW 69.04.960; and

(4) A certificate accompanies the vehicle or vessel when the food is transported by other than railroad car which attests, under penalty of perjury, to the fact that the vehicle or vessel has been cleaned as required by those rules and is dated and signed by the party responsible for that cleaning. Such certificates shall be maintained by the owner of the vehicle or vessel for not less than three years and shall be available for inspection concerning compliance with RCW 69.04.950 through 69.04.980. The director of agriculture and the secretary of health shall jointly adopt rules requiring such certificates for the transportation of food under this section by railroad car and requiring such certificates to be available for inspection concerning compliance with RCW 69.04.950 through 69.04.980. Forms for the certificates shall be provided by the department of agriculture. [1990 c 202 § 4.]

**69.04.970 Transport of bulk foods—Substances rendering vehicle or vessel permanently unsuitable for bulk food transport—Procedures to rehabilitate vehicles and vessels.** The director of agriculture and the secretary of health shall jointly adopt by rule:

(1) A list of substances which, if transported in bulk form in the cargo carrying portion of a vehicle or vessel, render the vehicle or vessel permanently unsuitable for use in transporting food in bulk form because the prospect that any residue might be present in the vehicle or vessel when it transports food poses a hazard to the public health; and

(2) Procedures to be used to rehabilitate a vehicle or vessel that has been used to transport a substance other than a substance contained on a list adopted under RCW 69.04.960 or under subsection (1) of this section. The procedures shall ensure that transporting food in the cargo carrying portion of the vehicle or vessel after its rehabilitation will not pose a health hazard. [1990 c 202 § 5.]

**69.04.975 Transport of bulk foods—Rehabilitation of vehicles and vessels—Inspection—Certification—Marking—Costs.** A vehicle or vessel that has been used to transport a substance other than food or a substance contained on the lists adopted by the director and secretary under RCW 69.04.960 and 69.04.970, may be rehabilitated and used to transport food only if:

(1) The vehicle or vessel is rehabilitated in accordance with the procedures established by the director and secretary in RCW 69.04.970;

(2) The vehicle or vessel is inspected by the department of agriculture, and the department determines that transporting food in the cargo carrying portion of the vehicle or vessel will not pose a health hazard;

(3) A certificate accompanies the vehicle or vessel certifying that the vehicle or vessel has been rehabilitated and inspected and is authorized to transport food, and is dated and signed by the director of agriculture, or an authorized agent of the director. Such certificates shall be maintained for the life of the vehicle by the owner of the vehicle or vessel, and shall be available for inspection concerning compliance with RCW 69.04.950 through 69.04.980. Forms for the certificates shall be provided by the department of agriculture; and

(4) The vehicle or vessel is marked as required by RCW 69.04.955 or is marked and satisfies the requirements of RCW 69.04.965 which are not inconsistent with the rehabilitation authorized by this section.

No vehicle or vessel that has transported in bulk form a substance contained on the list adopted under RCW 69.04.970 qualifies for rehabilitation.

The cost of rehabilitation shall be borne by the vehicle or vessel owner. The director shall determine a reasonable fee to be imposed on the vehicle or vessel owner based on inspection, laboratory, and administrative costs incurred by the department in rehabilitating the vehicle or vessel. [1990 c 202 § 6.]

**69.04.980 Transport of bulk foods—Penalties.** A person who knowingly transports a cargo in violation of RCW 69.04.955 or who knowingly causes a cargo to be transported in violation of RCW 69.04.955 is subject to a civil penalty, as determined by the director of agriculture, for each such violation as follows:

(1) For a person's first violation or first violation in a period of five years, not more than five thousand dollars;

(2) For a person's second or subsequent violation within five years of a previous violation, not more than ten thousand dollars.

The director shall impose the penalty by an order which is subject to the provisions of chapter 34.05 RCW.

The director shall, wherever practical, secure the assistance of other public agencies, including but not limited to the department of health, the utilities and transportation commission, and the state patrol, in identifying and investigating potential violations of RCW 69.04.955. [1990 c 202 § 7.]

## Chapter 69.06 RCW

### FOOD AND BEVERAGE ESTABLISHMENT WORKERS' PERMITS

#### Sections

69.06.010	Food and beverage service worker's permit—Filing, duration—Minimum training requirements.
69.06.020	Permit exclusive and valid throughout state—Fee.
69.06.030	Diseased persons—May not work—Employer may not hire.
69.06.040	Application of chapter to retail food establishments.
69.06.045	Application of chapter to temporary food service establishments.
69.06.050	Permit to be secured within fourteen days from time of employment.

69.06.060 Penalty.

69.06.070 Limited duty permit.

69.06.080 Chapter not applicable to persons who meet requirements of RCW 70.128.250.

#### **69.06.010 Food and beverage service worker's permit—Filing, duration—Minimum training requirements.**

It shall be unlawful for any person to be employed in the handling of unwrapped or unpackaged food unless he or she shall furnish and place on file with the person in charge of such establishment, a food and beverage service worker's permit, as prescribed by the state board of health. Such permit shall be kept on file by the employer or kept by the employee on his or her person and open for inspection at all reasonable hours by authorized public health officials. Such permit shall be returned to the employee upon termination of employment. Initial permits, including limited duty permits, shall be valid for two years from the date of issuance. Subsequent renewal permits shall be valid for three years from the date of issuance, except an employee may be granted a renewal permit that is valid for five years from the date of issuance if the employee demonstrates that he or she has obtained additional food safety training prior to renewal of the permit. Rules establishing minimum training requirements must be adopted by the state board of health and developed by the department of health in conjunction with local health jurisdictions and representatives of the food service industry. [1998 c 136 § 1; 1987 c 223 § 5; 1957 c 197 § 1.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

#### **69.06.020 Permit exclusive and valid throughout state—Fee.**

The permit provided in RCW 69.06.010 or 69.06.070 shall be valid in every city, town and county in the state, for the period for which it is issued, and no other health certificate shall be required of such employees by any municipal corporation or political subdivision of the state. The cost of the permit shall be uniform throughout the state and shall be in that amount set by the state board of health. The cost of the permit shall reflect actual costs of food worker training and education, administration of the program, and testing of applicants. The state board of health shall periodically review the costs associated with the permit program and adjust the fee accordingly. The board shall also ensure that the fee is not set at an amount that would prohibit low-income persons from obtaining permits. [1998 c 136 § 3; 1987 c 223 § 6; 1957 c 197 § 2.]

#### **69.06.030 Diseased persons—May not work—Employer may not hire.**

It shall be unlawful for any person afflicted with any contagious or infectious disease that may be transmitted by food or beverage to work in or about any place where unwrapped or unpackaged food and/or beverage products are prepared or sold, or offered for sale for human consumption and it shall be unlawful for any person knowingly to employ a person so afflicted. Nothing in this section eliminates any authority or requirement to control or suppress communicable diseases pursuant to chapter 70.05 RCW and \*RCW 43.20.050(2)(e). [1998 c 136 § 4; 1957 c 197 § 3.]

\*Reviser's note: RCW 43.20.050 was amended by 2009 c 495 § 1, changing subsection (2)(e) to subsection (2)(f).

**69.06.040 Application of chapter to retail food establishments.** This chapter shall apply to any retail establishment engaged in the business of food handling or food service. [1987 c 223 § 7; 1957 c 197 § 4.]

**69.06.045 Application of chapter to temporary food service establishments.** As used in this section, "temporary food service establishment" means a food service establishment operating at a fixed location for a period of time of not more than twenty-one consecutive days in conjunction with a single event or celebration. This chapter applies to temporary food service establishments with the following exceptions:

(1) Only the operator or person in charge of a temporary food service establishment shall be required to secure a food and beverage service workers' permit; and

(2) The operator or person in charge of a temporary food service establishment shall secure a valid food and beverage service workers' permit before commencing the food handling operation. [1987 c 223 § 8.]

**69.06.050 Permit to be secured within fourteen days from time of employment.** Individuals under this chapter must obtain a food and beverage service workers' permit within fourteen days from commencement of employment. Individuals under this chapter may work for up to fourteen calendar days without a food and beverage service workers' permit, provided that they receive information or training regarding safe food handling practices from the employer prior to commencement of employment. Documentation that the information or training has been provided to the individual must be kept on file by the employer. [1998 c 136 § 5; 1957 c 197 § 5.]

**69.06.060 Penalty.** Any violation of the provisions of this chapter shall be a misdemeanor. [1957 c 197 § 6.]

**69.06.070 Limited duty permit.** The local health officer may issue a limited duty permit when necessary to reasonably accommodate a person with a disability. The limited duty permit must specify the activities that the permit holder may perform, and must include only activities having low public health risk. [1998 c 136 § 2.]

**69.06.080 Chapter not applicable to persons who meet requirements of RCW 70.128.250.** Except for the food safety training standards adopted by the state board of health under RCW 69.06.010, the provisions of this chapter do not apply to persons who work in adult family homes and successfully complete training and continuing education as required by RCW 70.128.250. [2005 c 505 § 7.]

## Chapter 69.07 RCW

### WASHINGTON FOOD PROCESSING ACT

#### Sections

69.07.005	Legislative declaration.
69.07.010	Definitions.
69.07.020	Enforcement—Rules—Adoption—Contents—Standards.
69.07.040	Food processing license—Waiver if licensed under chapter 15.36 RCW—Expiration date—Application, contents—Fee.
69.07.050	Renewal of license—Additional fee, when.
69.07.060	Denial, suspension or revocation of license—Grounds.

(2010 Ed.)

69.07.065	Suspension of license summarily—Reinstatement.
69.07.070	Rules and regulations, hearings subject to Administrative Procedure Act.
69.07.080	Inspections by department—Access—When.
69.07.085	Sanitary certificates—Fee.
69.07.095	Authority of director and personnel.
69.07.100	Establishments exempted from provisions of chapter.
69.07.103	Poultry—Slaughter, preparation, sale—One thousand or fewer—Special permit—Rules—Fee.
69.07.110	Enforcement of chapter.
69.07.120	Disposition of money into food processing inspection account.
69.07.135	Unlawful to sell or distribute food from unlicensed processor.
69.07.140	Violations—Warning notice.
69.07.150	Violations—Penalties.
69.07.160	Authority of director and department under chapter 69.04 RCW not impaired by any provision of chapter 69.07 RCW.
69.07.170	Definitions.
69.07.180	Bottled water labeling standards.
69.07.190	Bottled soft drinks, soda, or seltzer exempt from bottled water labeling requirements.
69.07.900	Chapter is cumulative and nonexclusive.
69.07.910	Severability—1967 ex.s. c 121.
69.07.920	Short title.

**69.07.005 Legislative declaration.** The processing of food intended for public consumption is important and vital to the health and welfare both immediate and future and is hereby declared to be a business affected with the public interest. The provisions of this chapter [1991 c 137] are enacted to safeguard the consuming public from unsafe, adulterated, or misbranded food by requiring licensing of all food processing plants as defined in this chapter and setting forth the requirements for such licensing. [1991 c 137 § 1.]

**69.07.010 Definitions.** For the purposes of this chapter:

(1) "Department" means the department of agriculture of the state of Washington;

(2) "Director" means the director of the department;

(3) "Food" means any substance used for food or drink by any person, including ice, bottled water, and any ingredient used for components of any such substance regardless of the quantity of such component;

(4) "Sale" means selling, offering for sale, holding for sale, preparing for sale, trading, bartering, offering a gift as an inducement for sale of, and advertising for sale in any media;

(5) "Food processing" means the handling or processing of any food in any manner in preparation for sale for human consumption: PROVIDED, That it shall not include fresh fruit or vegetables merely washed or trimmed while being prepared or packaged for sale in their natural state;

(6) "Food processing plant" includes but is not limited to any premises, plant, establishment, building, room, area, facilities and the appurtenances thereto, in whole or in part, where food is prepared, handled or processed in any manner for distribution or sale for resale by retail outlets, restaurants, and any such other facility selling or distributing to the ultimate consumer: PROVIDED, That, as set forth herein, establishments processing foods in any manner for resale shall be considered a food processing plant as to such processing;

(7) "Food service establishment" shall mean any fixed or mobile restaurant, coffee shop, cafeteria, short order cafe, luncheonette, grill, tearoom, sandwich shop, soda fountain, tavern, bar, cocktail lounge, night club, roadside stand, industrial-feeding establishment, retail grocery, retail food market, retail meat market, retail bakery, private, public, or nonprofit organization routinely serving food, catering kitchen, com-

missary or similar place in which food or drink is prepared for sale or for service on the premises or elsewhere, and any other eating or drinking establishment or operation where food is served or provided for the public with or without charge.

For the purpose of this chapter any custom cannery or processing plant where raw food products, food, or food products are processed for the owner thereof, or the food processing facilities are made available to the owners or persons in control of raw food products or food or food products for processing in any manner, shall be considered to be food processing plants;

(8) "Person" means an individual, partnership, corporation, or association. [1992 c 34 § 3; 1991 c 137 § 2; 1967 ex.s. c 121 § 1.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**69.07.020 Enforcement—Rules—Adoption—Contents—Standards.** (1) The department shall enforce and carry out the provisions of this chapter, and may adopt the necessary rules to carry out its purposes.

(2) Such rules may include:

(a) Standards for temperature controls in the storage of foods, so as to provide proper refrigeration.

(b) Standards for temperatures at which low acid foods must be processed and the length of time such temperatures must be applied and at what pressure in the processing of such low acid foods.

(c) Standards and types of recording devices that must be used in providing records of the processing of low acid foods, and how they shall be made available to the department of agriculture for inspection.

(d) Requirements for the keeping of records of the temperatures, times and pressures at which foods were processed, or for the temperatures at which refrigerated products were stored by the licensee and the furnishing of such records to the department.

(e) Standards that must be used to establish the temperature and purity of water used in the processing of foods. [1969 c 68 § 1; 1967 ex.s. c 121 § 2.]

**69.07.040 Food processing license—Waiver if licensed under chapter 15.36 RCW—Expiration date—Application, contents—Fee.** It shall be unlawful for any person to operate a food processing plant or process foods in the state without first having obtained an annual license from the department, which shall expire on a date set by rule by the director. License fees shall be prorated where necessary to accommodate staggering of expiration dates. Application for a license shall be on a form prescribed by the director and accompanied by the license fee. The license fee is determined by computing the gross annual sales for the accounting year immediately preceding the license year. If the license is for a new operator, the license fee shall be based on an estimated gross annual sales for the initial license period.

If gross annual sales are:	The license fee is:
\$0 to \$50,000	\$ 55.00
\$50,001 to \$500,000	\$110.00
\$500,001 to \$1,000,000	\$220.00
\$1,000,001 to \$5,000,000	\$385.00

\$5,000,001 to \$10,000,000	\$550.00
Greater than \$10,000,000	\$825.00

Such application shall include the full name of the applicant for the license and the location of the food processing plant he or she intends to operate. If such applicant is an individual, receiver, trustee, firm, partnership, association or corporation, the full name of each member of the firm or partnership, or names of the officers of the association or corporation shall be given on the application. Such application shall further state the principal business address of the applicant in the state and elsewhere and the name of a person domiciled in this state authorized to receive and accept service of summons of legal notices of all kinds for the applicant. The application shall also specify the type of food to be processed and the method or nature of processing operation or preservation of that food and any other necessary information. Upon the approval of the application by the director and compliance with the provisions of this chapter, including the applicable regulations adopted hereunder by the department, the applicant shall be issued a license or renewal thereof.

Licenses shall be issued to cover only those products, processes, and operations specified in the license application and approved for licensing. Wherever a license holder wishes to engage in processing a type of food product that is different than the type specified on the application supporting the licensee's existing license and processing that type of food product would require a major addition to or modification of the licensee's processing facilities or has a high potential for harm, the licensee shall submit an amendment to the current license application. In such a case, the licensee may engage in processing the new type of food product only after the amendment has been approved by the department.

If upon investigation by the director, it is determined that a person is processing food for retail sale and is not under permit, license, or inspection by a local health authority, then that person may be considered a food processor and subject to the provisions of this chapter. The director may waive the licensure requirements of this chapter for a person's operations at a facility if the person has obtained a milk processing plant license under chapter 15.36 RCW to conduct the same or a similar operation at the facility. [1995 c 374 § 21. Prior: 1993 sp.s. c 19 § 11; 1993 c 212 § 2; 1992 c 160 § 3; 1991 c 137 § 3; 1988 c 5 § 1; 1969 c 68 § 2; 1967 ex.s. c 121 § 4.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**69.07.050 Renewal of license—Additional fee, when.** If the application for renewal of any license provided for under this chapter is not filed prior to the expiration date as established by rule by the director, an additional fee of ten percent of the cost of the license shall be assessed and added to the original fee and shall be paid by the applicant before the renewal license shall be issued: PROVIDED, That such additional fee shall not be charged if the applicant furnishes an affidavit certifying that he or she has not operated a food processing plant or processed foods subsequent to the expiration of his or her license. [1992 c 160 § 4; 1991 c 137 § 4; 1988 c 5 § 2; 1967 ex.s. c 121 § 5.]

**69.07.060 Denial, suspension or revocation of license—Grounds.** The director may, subsequent to a hear-

ing thereon, deny, suspend or revoke any license provided for in this chapter if he determines that an applicant has committed any of the following acts:

(1) Refused, neglected or failed to comply with the provisions of this chapter, the rules and regulations adopted hereunder, or any lawful order of the director.

(2) Refused, neglected or failed to keep and maintain records required by this chapter, or to make such records available when requested pursuant to the provisions of this chapter.

(3) Refused the department access to any portion or area of the food processing plant for the purpose of carrying out the provisions of this chapter.

(4) Refused the department access to any records required to be kept under the provisions of this chapter.

(5) Refused, neglected, or failed to comply with any provisions of chapter 69.04 RCW, Washington Food, Drug, and Cosmetic Act, or any regulations adopted thereunder.

The provisions of this section requiring that a hearing be conducted before an action may be taken against a license do not apply to an action taken under RCW 69.07.065. [1991 c 137 § 5; 1979 c 154 § 19; 1967 ex.s. c 121 § 6.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**69.07.065 Suspension of license summarily—Reinstatement.** (1) Whenever the director finds an establishment operating under conditions that constitute an immediate danger to public health or whenever the licensee or any employee of the licensee actively prevents the director or the director's representative, during an onsite inspection, from determining whether such a condition exists, the director may summarily suspend, pending a hearing, a license provided for in this chapter.

(2) Whenever a license is summarily suspended, the holder of the license shall be notified in writing that the license is, upon service of the notice, immediately suspended and that prompt opportunity for a hearing will be provided.

(3) Whenever a license is summarily suspended, food processing operations shall immediately cease. However, the director may reinstate the license when the condition that caused the suspension has been abated to the director's satisfaction. [1991 c 137 § 6.]

**69.07.070 Rules and regulations, hearings subject to Administrative Procedure Act.** The adoption of any rules and regulations under the provisions of this chapter, or the holding of a hearing in regard to a license issued or which may be issued under the provisions of this chapter shall be subject to the applicable provisions of chapter 34.05 RCW, the Administrative Procedure Act, as enacted or hereafter amended. [1967 ex.s. c 121 § 7.]

**69.07.080 Inspections by department—Access—When.** For purpose of determining whether the rules adopted pursuant to RCW 69.07.020, as now or hereafter amended are complied with, the department shall have access for inspection purposes to any part, portion or area of a food processing plant, and any records required to be kept under the provisions of this chapter or rules and regulations adopted hereunder. Such inspection shall, when possible, be made

(2010 Ed.)

during regular business hours or during any working shift of said food processing plant. The department may, however, inspect such food processing plant at any time when it has received information that an emergency affecting the public health has arisen and such food processing plant is or may be involved in the matters causing such emergency. [1969 c 68 § 3; 1967 ex.s. c 121 § 8.]

**69.07.085 Sanitary certificates—Fee.** The department may issue sanitary certificates to food processors under this chapter subject to such requirements as it may establish by rule. The fee for issuance shall be fifty dollars per certificate. Fees collected under this section shall be deposited in the agricultural local fund. [1995 c 374 § 23; 1988 c 254 § 9.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**69.07.095 Authority of director and personnel.** The director or the director's deputies, assistants, and inspectors are authorized to do all acts and things necessary to carry out the provisions of this chapter, including the taking of verified statements. The department personnel are empowered to administer oaths of verification on the statement. [1991 c 137 § 7.]

**69.07.100 Establishments exempted from provisions of chapter.** The provisions of this chapter shall not apply to establishments issued a permit or licensed under the provisions of:

(1) Chapter 69.25 RCW, the Washington wholesome eggs and egg products act;

(2) Chapter 69.28 RCW, the Washington state honey act;

(3) Chapter 16.49 RCW, the Meat inspection act;

(4) Chapter 77.65 RCW, relating to the direct retail endorsement for wild-caught seafood;

(5) Title 66 RCW, relating to alcoholic beverage control; and

(6) Chapter 69.30 RCW, the Sanitary control of shellfish act. However, if any such establishments process foods not specifically provided for in the above entitled acts, such establishments shall be subject to the provisions of this chapter.

The provisions of this chapter shall not apply to restaurants or food service establishments. [2002 c 301 § 10; 1995 c 374 § 22; 1988 c 5 § 4; 1983 c 3 § 168; 1967 ex.s. c 121 § 10.]

**Finding—Effective date—2002 c 301:** See notes following RCW 77.65.510.

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**69.07.103 Poultry—Slaughter, preparation, sale—One thousand or fewer—Special permit—Rules—Fee.** (1) A special permit issued by the department under this section is required for the slaughter, preparation, and sale of one thousand or fewer poultry in a calendar year by a poultry producer for the sale of whole raw poultry directly to the ultimate consumer at the producer's farm. Activities conducted under the permit are exempt from any other licensing requirements of this chapter.

(2)(a) The department must adopt by rule requirements for the permit. The requirements must be generally patterned

after those established by the state board of health for temporary food service establishments, but must be tailored specifically to poultry slaughter, preparation, and sale activities. The requirements must include, but are not limited to, those for: Cooling procedures, when applicable; sanitary facilities, equipment, and utensils; clean water; washing and other hygienic practices; and waste and wastewater disposal.

(b) A permit expires December 31st and may be issued for either one or two years as requested by the permit applicant upon payment of the applicable fee in accordance with subsection (4) of this section.

(3) The department shall conduct such inspections as are reasonably necessary to ensure compliance with permit requirements.

(4) The fee for a special permit is seventy-five dollars for one year, or one hundred twenty-five dollars for two years. [2009 c 114 § 1; 2003 c 397 § 2.]

**69.07.110 Enforcement of chapter.** The department may use all the civil remedies provided for in chapter 69.04 RCW (The Uniform Washington Food, Drug, and Cosmetic Act) in carrying out and enforcing the provisions of this chapter. [1967 ex.s. c 121 § 11.]

**69.07.120 Disposition of money into food processing inspection account.** All moneys received by the department under the provisions of this chapter shall be paid into the food processing inspection account hereby created within the agricultural local fund established in RCW 43.23.230 and shall be used solely to carry out the provisions of this chapter and chapter 69.04 RCW. [1992 c 160 § 5; 1967 ex.s. c 121 § 12.]

**69.07.135 Unlawful to sell or distribute food from unlicensed processor.** It shall be unlawful to resell, to offer for resale, or to distribute for resale in intrastate commerce any food processed in a food processing plant, which has not obtained a license, as provided for in this chapter, once notification by the director has been given to the person or persons reselling, offering, or distributing food for resale, that said food is from an unlicensed processing operation. [1991 c 137 § 8.]

**69.07.140 Violations—Warning notice.** Nothing in this chapter shall be construed as requiring the department to report for prosecution violations of this chapter when it believes that the public interest will best be served by a suitable notice of warning in writing. [1967 ex.s. c 121 § 14.]

**69.07.150 Violations—Penalties.** (1)(a) Except as provided in (b) of this subsection, any person violating any provision of this chapter or any rule or regulation adopted hereunder is guilty of a misdemeanor.

(b) A second or subsequent violation is a gross misdemeanor. Any offense committed more than five years after a previous conviction shall be considered a first offense.

(2) Whenever the director finds that a person has committed a violation of any of the provisions of this chapter, and that violation has not been punished pursuant to subsection (1) of this section, the director may impose upon and collect from the violator a civil penalty not exceeding one thousand

dollars per violation per day. Each violation shall be a separate and distinct offense. [2003 c 53 § 316; 1991 c 137 § 9; 1967 ex.s. c 121 § 15.]

**Intent—Effective date—2003 c 53:** See notes following RCW 2.48.180.

**69.07.160 Authority of director and department under chapter 69.04 RCW not impaired by any provision of chapter 69.07 RCW.** The authority granted to the director and to the department under the provisions of the Uniform Washington Food, Drug, and Cosmetic Act (chapter 69.04 RCW), as now or hereafter amended, shall not be deemed to be reduced or otherwise impaired as a result of any provision or provisions of the Washington Food Processing Act (chapter 69.07 RCW). [1969 c 68 § 4.]

**69.07.170 Definitions.** As used in RCW 69.07.180 and 69.07.190:

(1) "Artesian water" means bottled water from a well tapping a confined aquifer in which the water level stands above the water table. "Artesian water" shall meet the requirements of "natural water."

(2) "Bottled water" means water that is placed in a sealed container or package and is offered for sale for human consumption or other consumer uses.

(3) "Carbonated water" or "sparkling water" means bottled water containing carbon dioxide.

(4) "Department" means the department of agriculture.

(5) "Distilled water" means bottled water that has been produced by a process of distillation and meets the definition of purified water in the most recent edition of the United States Pharmacopeia.

(6) "Drinking water" means bottled water obtained from an approved source that has at minimum undergone treatment consisting of filtration, activated carbon or particulate, and ozonation or an equivalent disinfection process, or that meets the requirements of the federal safe drinking water act of 1974 as amended and complies with all department of health rules regarding drinking water.

(7) "Mineral water" means bottled water that contains not less than five hundred parts per million total dissolved solids. "Natural mineral water" shall meet the requirements of "natural water."

(8) "Natural water" means bottled spring, mineral, artesian, or well water that is derived from an underground formation and may be derived from a public water system as defined in RCW 70.119A.020 only if that supply has a single source such as an actual spring, artesian well, or pumped well, and has not undergone any treatment that changes its original chemical makeup except ozonation or an equivalent disinfection process.

(9) "Plant operator" means a person who owns or operates a bottled water plant.

(10) "Purified water" means bottled water produced by distillation, deionization, reverse osmosis, or other suitable process and that meets the definition of purified water in the most recent edition of the United States Pharmacopeia. Water that meets this definition and is vaporized, then condensed, may be labeled "distilled water."

(11) "Spring water" means water derived from an underground formation from which water flows naturally to the

surface of the earth. "Spring water" shall meet the requirements of "natural water."

(12) "Water dealer" means a person who imports bottled water or causes bulk water to be transported for bottling for human consumption or other consumer uses.

(13) "Well water" means water from a hole bored, drilled, or otherwise constructed in the ground that taps the water of an aquifer. "Well water" shall meet the requirements of "natural water." [1992 c 34 § 1.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**69.07.180 Bottled water labeling standards.** All bottled water must conform to applicable federal and state labeling laws and be labeled in compliance with the following standards:

(1) Mineral water may be labeled "mineral water." Bottled water to which minerals are added shall be labeled so as to disclose that minerals are added, and may not be labeled "natural mineral water."

(2) Spring water may be labeled "spring water" or "natural spring water."

(3) Water containing carbon dioxide that emerges from the source and is bottled directly with its entrapped gas or from which the gas is mechanically separated and later reintroduced at a level not higher than naturally occurring in the water may bear on its label the words "naturally carbonated" or "naturally sparkling."

(4) Bottled water that contains carbon dioxide other than that naturally occurring in the source of the product shall be labeled with the words "carbonated," "carbonation added," or "sparkling" if the carbonation is obtained from a natural or manufactured source.

(5) Well water may be labeled "well water" or "natural well water."

(6) Artesian water may be labeled "artesian water" or "natural artesian water."

(7) Purified water may be labeled "purified water" and the method of preparation shall be stated on the label, except that purified water produced by distillation may be labeled as "distilled water."

(8) Drinking water may be labeled "drinking water."

(9) The use of the word "spring," or any derivative of "spring" other than in a trademark, trade name, or company name, to describe water that is not spring water is prohibited.

(10) A product meeting more than one of the definitions in RCW 69.07.170 may be identified by any of the applicable product types defined in RCW 69.07.170, except where otherwise specifically prohibited.

(11) Supplemental printed information and graphics may appear on the label but shall not imply properties of the product or preparation methods that are not factual. [1992 c 34 § 6.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**69.07.190 Bottled soft drinks, soda, or seltzer exempt from bottled water labeling requirements.** Bottled soft drinks, soda, or seltzer products commonly recognized as soft drinks and identified on the product identity panel with a common or usual name other than one of those specified in RCW 69.07.170 are exempt from the requirements of RCW

(2010 Ed.)

69.07.180. Water that is not in compliance with the requirements of RCW 69.07.180 may not be identified, labeled, or advertised as "artesian water," "bottled water," "distilled water," "natural water," "purified water," "spring water," or "well water." [1992 c 34 § 7.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**69.07.900 Chapter is cumulative and nonexclusive.** The provisions of this chapter shall be cumulative and nonexclusive and shall not affect any other remedy. [1967 ex.s. c 121 § 16.]

**69.07.910 Severability—1967 ex.s. c 121.** If any provision of this chapter, or its application to any person or circumstance is held invalid, the remainder of the chapter, or the application of the provision to other persons or circumstances is not affected. [1967 ex.s. c 121 § 17.]

**69.07.920 Short title.** This chapter shall be known and designated as the Washington food processing act. [1967 ex.s. c 121 § 18.]

## Chapter 69.10 RCW

### FOOD STORAGE WAREHOUSES

#### Sections

69.10.005	Definitions.
69.10.010	Inspection of food storage warehouses—Powers of director.
69.10.015	Annual license required—Director's duties—Fee—Application—Renewal.
69.10.020	Exemption from licensure—Independent inspection—Report to department.
69.10.025	Application for renewal of license after expiration date—Additional fee.
69.10.030	Director may deny, suspend, or revoke license—Actions by applicant—Hearing required.
69.10.035	Immediate danger to public health—Summarily suspending license—Written notification—Hearing—Reinstatement of license.
69.10.040	Unlicensed food storage warehouse—Unlawful to sell, offer for sale, or distribute in intrastate commerce.
69.10.045	Disposition of moneys received under this chapter.
69.10.050	Civil remedies—Restrictions on civil penalties—Fee limitations for inspections and analyses.
69.10.055	Rules.
69.10.060	Director and deputies, assistants, and inspectors authorized to act—May take verified statements.
69.10.900	Effective date—1995 c 374 §§ 1-47, 50-53, and 59-68.

**69.10.005 Definitions.** For the purpose of this chapter:

(1) "Food storage warehouse" means any premises, establishment, building, room area, facility, or place, in whole or in part, where food is stored, kept, or held for wholesale distribution to other wholesalers or to retail outlets, restaurants, and any such other facility selling or distributing to the ultimate consumer. Food storage warehouses include, but are not limited to, facilities where food is kept or held refrigerated or frozen and include facilities where food is stored to the account of another firm and/or is owned by the food storage warehouse. "Food storage warehouse" does not include grain elevators or fruit and vegetable storage and packing houses that store, pack, and ship fresh fruit and vegetables even though they may use refrigerated or controlled atmosphere storage practices in their operation. However, this chapter applies to multiple food storage operations that also distribute or ripen fruits and vegetables.

(2) "Department" means the Washington department of agriculture.

(3) "Director" means the director of the Washington department of agriculture.

(4) "Food" means the same as defined in RCW 69.04.008.

(5) "Independent sanitation consultant" means an individual, partnership, cooperative, or corporation that by reason of education, certification, and experience has satisfactorily demonstrated expertise in food and dairy sanitation and is approved by the director to advise on such areas including, but not limited to: Principles of cleaning and sanitizing food processing plants and equipment; rodent, insect, bird, and other pest control; principals [principles] of hazard analysis critical control point; basic food product labeling; principles of proper food storage and protection; proper personnel work practices and attire; sanitary design, construction, and installation of food plant facilities, equipment, and utensils; and other pertinent food safety issues. [1995 c 374 § 8.]

**69.10.010 Inspection of food storage warehouses—Powers of director.** The director or his or her representative may inspect food storage warehouses for compliance with the provisions of chapter 69.04 RCW and the rules adopted under chapter 69.04 RCW as deemed necessary by the director. Any food storage warehouse found to not be in substantial compliance with chapter 69.04 RCW and the rules adopted under chapter 69.04 RCW will be reinspected as deemed necessary by the director to determine compliance. This does not preclude the director from using any other remedies as provided under chapter 69.04 RCW to gain compliance or to embargo products as provided under RCW 69.04.110 to protect the public from adulterated foods. [1995 c 374 § 9.]

**69.10.015 Annual license required—Director's duties—Fee—Application—Renewal.** Except as provided in this section and RCW 69.10.020, it shall be unlawful for any person to operate a food storage warehouse in the state without first having obtained an annual license from the department, which shall expire on a date set by rule by the director. Application for a license or license renewal shall be on a form prescribed by the director and accompanied by the license fee. The license fee is fifty dollars.

For a food storage warehouse that has been inspected on at least an annual basis for compliance with the provisions of the current good manufacturing practices (Title 21 C.F.R. part 110) by a federal agency or by a state agency acting on behalf of and under contract with a federal agency and that is not exempted from licensure by RCW 69.10.020, the annual license fee for the warehouse is twenty-five dollars.

The application shall include the full name of the applicant for the license and the location of the food storage warehouse he or she intends to operate. If such applicant is an individual, receiver, trustee, firm, partnership, association, or corporation, the full name of each member of the firm or partnership, or names of the officers of the association or corporation must be given on the application. The application shall further state the principal business address of the applicant in the state and elsewhere and the name of a person domiciled in this state authorized to receive and accept service of sum-

mons of legal notices of all kinds for the applicant. Upon the approval of the application by the director and compliance with the provisions of this chapter, including the applicable regulations adopted under this chapter by the department, the applicant shall be issued a license or renewal thereof. The director shall waive licensure under this chapter for firms that are licensed under the provisions of chapter 69.07 or 15.36 RCW. [1995 c 374 § 10.]

**69.10.020 Exemption from licensure—Independent inspection—Report to department.** A food storage warehouse that is inspected for compliance with the current good manufacturing practices (Title 21 C.F.R. part 110) on at least an annual basis by an independent sanitation consultant approved by the department shall be exempted from licensure under this chapter.

A report identifying the inspector and the inspecting entity, the date of the inspection, and any violations noted on such inspection shall be forwarded to the department by the food storage warehouse within sixty days of the completion of the inspection. An inspection shall be conducted and an inspection report for a food storage warehouse shall be filed with the department at least once every twelve months or the warehouse shall be licensed under this chapter and inspected by the department for a period of two years. [1995 c 374 § 11.]

**69.10.025 Application for renewal of license after expiration date—Additional fee.** If the application for renewal of any license provided for under this chapter is not filed prior to the expiration date as established by rule by the director, an additional fee of ten percent of the cost of the license shall be assessed and added to the original fee and must be paid by the applicant before the renewal license is issued. [1995 c 374 § 12.]

**69.10.030 Director may deny, suspend, or revoke license—Actions by applicant—Hearing required.** The director may, subsequent to a hearing thereon, deny, suspend, or revoke any license provided for in this chapter if he or she determines that an applicant has committed any of the following acts:

(1) Refused, neglected, or failed to comply with the provisions of this chapter, the rules adopted under this chapter, or any lawful order of the director;

(2) Refused, neglected, or failed to keep and maintain records required by this chapter, or to make such records available if requested pursuant to the provisions of this chapter;

(3) Refused the department access to any portion or area of the food storage warehouse for the purpose of carrying out the provisions of this chapter;

(4) Refused the department access to any records required to be kept under the provisions of this chapter;

(5) Refused, neglected, or failed to comply with any provisions of chapter 69.04 RCW, Washington food, drug, and cosmetic act, or any rules adopted under chapter 69.04 RCW.

The provisions of this section requiring that a hearing be conducted before an action may be taken against a license do

not apply to an action taken under RCW 69.10.035. [1995 c 374 § 13.]

**69.10.035 Immediate danger to public health—Summarily suspending license—Written notification—Hearing—Reinstatement of license.** (1) Whenever the director finds a food storage warehouse operating under conditions that constitute an immediate danger to public health or whenever the licensee or any employee of the licensee actively prevents the director or the director's representative, during an on-site inspection, from determining whether such a condition exists, the director may summarily suspend, pending a hearing, a license provided for in this chapter.

(2) Whenever a license is summarily suspended, the holder of the license shall be notified in writing that the license is, upon service of the notice, immediately suspended and that prompt opportunity for a hearing will be provided.

(3) Whenever a license is summarily suspended, food distribution operations shall immediately cease. However, the director may reinstate the license if the condition that caused the suspension has been abated to the director's satisfaction. [1995 c 374 § 14.]

**69.10.040 Unlicensed food storage warehouse—Unlawful to sell, offer for sale, or distribute in intrastate commerce.** It is unlawful to sell, offer for sale, or distribute in intrastate commerce food from or stored in a food storage warehouse that is required to be licensed under this chapter but that has not obtained a license, once notification by the director has been given to the persons selling, offering, or distributing food for sale, that the food is in or from such an unlicensed food storage warehouse. [1995 c 374 § 15.]

**69.10.045 Disposition of moneys received under this chapter.** All moneys received by the department under provisions of this chapter, except moneys collected for civil penalties levied under this chapter, shall be paid into an account created in the agricultural local fund established in RCW 43.23.230 and shall be used solely to carry out provisions of this chapter and chapter 69.04 RCW. All moneys collected for civil penalties levied under this chapter shall be deposited in the state general fund. [1995 c 374 § 16.]

**69.10.050 Civil remedies—Restrictions on civil penalties—Fee limitations for inspections and analyses.** (1) Except as provided in subsection (2) of this section, the department may use all the civil remedies provided under chapter 69.04 RCW in carrying out and enforcing the provisions of this chapter.

(2) Civil penalties are intended to be used to obtain compliance and shall not be collected if a warehouse successfully completes a mutually agreed upon compliance agreement with the department. A warehouse that enters into a compliance agreement with the department shall pay only for inspections conducted by the department and any laboratory analyses as required by the inspections as outlined and agreed to in the compliance agreement. In no event shall the fee for these inspections and analyses exceed four hundred dollars per inspection or one thousand dollars in total. [1995 c 374 § 17.]

**69.10.055 Rules.** (1) The department shall enforce and carry out the provisions of this chapter and may adopt the necessary rules to carry out its purpose.

(2) The adoption of rules under the provisions of this chapter are subject to the applicable provisions of chapter 34.05 RCW, the administrative procedure act. [1995 c 374 § 18.]

**69.10.060 Director and deputies, assistants, and inspectors authorized to act—May take verified statements.** The director or director's deputies, assistants, and inspectors are authorized to do all acts and things necessary to carry out the provisions of this chapter, including the taking of verified statements. The department personnel are empowered to administer oaths of verification on the statement. [1995 c 374 § 19.]

**69.10.900 Effective date—1995 c 374 §§ 1-47, 50-53, and 59-68.** See note following RCW 15.36.012.

### Chapter 69.25 RCW

#### WASHINGTON WHOLESOME EGGS AND EGG PRODUCTS ACT

##### Sections

69.25.010	Legislative finding.
69.25.020	Definitions.
69.25.030	Purpose—Certain federal rules adopted by reference—Hearing, notice by director—Adoption of rules by director.
69.25.040	Application of administrative procedure act.
69.25.050	Egg handler's or dealer's license and number—Branch license—Application, fee, posting required, procedure.
69.25.060	Egg handler's or dealer's license—Late renewal fee.
69.25.070	Egg handler's or dealer's license—Denial, suspension, revocation, or conditional issuance.
69.25.080	Continuous inspection at processing plants—Exemptions—Condemnation and destruction of adulterated eggs and egg products—Reprocessing—Appeal—Inspections of egg handlers.
69.25.090	Sanitary operation of official plants—Inspection refused if requirements not met.
69.25.100	Egg products—Pasteurization—Labeling requirements—False or misleading labels or containers—Director may order use of withheld—Hearing, determination, and appeal.
69.25.110	Prohibited acts and practices.
69.25.120	Director to cooperate with other agencies—May conduct examinations.
69.25.130	Eggs or egg products not intended for use as human food—Identification or denaturing required.
69.25.140	Records required, access to and copying of.
69.25.150	Penalties—Liability of employer—Defense.
69.25.155	Interference with person performing official duties.
69.25.160	Notice of violation—May take place of prosecution.
69.25.170	Exemptions permitted by rule of director.
69.25.180	Limiting entry of eggs and egg products into official plants.
69.25.190	Embargo of eggs or egg products in violation of this chapter—Time limit—Removal of official marks.
69.25.200	Embargo—Petition for court order affirming—Removal of embargo or destruction or correction and release—Court costs, fees, administrative expenses—Bond may be required.
69.25.210	Embargo—Order affirming not required, when.
69.25.220	Embargo—Consolidation of petitions.
69.25.230	Embargo—Sampling of article.
69.25.240	Condemnation—Recovery of damages restricted.
69.25.250	Assessment—Rate, applicability, time of payment—Reports—Contents, frequency.
69.25.260	Assessment—Prepayment by purchase of egg seals—Permit for printing seal on containers or labels.
69.25.270	Assessment—Monthly payment—Audit—Failure to pay, penalty.
69.25.280	Assessment—Use of proceeds.
69.25.290	Assessment—Exclusions.
69.25.300	Transfer of moneys in state egg account.

69.25.310	Containers—Marking required—Obliteration of previous markings required for reuse—Temporary use of another handler's or dealer's permanent number—Penalty.
69.25.320	Records required, additional—Sales to retailer or food service—Exception—Defense to charged violation—Sale of eggs deteriorated due to storage time—Requirements for storage, display, or transportation.
69.25.900	Savings.
69.25.910	Chapter is cumulative and nonexclusive.
69.25.920	Severability—1975 1st ex.s. c 201.
69.25.930	Short title.

**69.25.010 Legislative finding.** Eggs and egg products are an important source of the state's total supply of food, and are used in food in various forms. They are consumed throughout the state and the major portion thereof moves in intrastate commerce. It is essential, in the public interest, that the health and welfare of consumers be protected by the adoption of measures prescribed herein for assuring that eggs and egg products distributed to them and used in products consumed by them are wholesome, otherwise not adulterated, and properly labeled and packaged. Lack of effective regulation for the handling or disposition of unwholesome, otherwise adulterated, or improperly labeled or packaged egg products and certain qualities of eggs is injurious to the public welfare and destroys markets for wholesome, unadulterated, and properly labeled and packaged eggs and egg products and results in sundry losses to producers and processors, as well as injury to consumers. Unwholesome, otherwise adulterated, or improperly labeled or packaged products can be sold at lower prices and compete unfairly with the wholesome, unadulterated, and properly labeled and packaged products, to the detriment of consumers and the public generally. It is hereby found that all egg products and the qualities of eggs which are regulated under this chapter are either in intrastate commerce, or substantially affect such commerce, and that regulation by the director, as contemplated by this chapter, is appropriate to protect the health and welfare of consumers. [1975 1st ex.s. c 201 § 2.]

**69.25.020 Definitions.** When used in this chapter the following terms shall have the indicated meanings, unless the context otherwise requires:

- (1) "Department" means the department of agriculture of the state of Washington.
- (2) "Director" means the director of the department or his duly authorized representative.
- (3) "Person" means any natural person, firm, partnership, exchange, association, trustee, receiver, corporation, and any member, officer, or employee thereof, or assignee for the benefit of creditors.
- (4) "Adulterated" applies to any egg or egg product under one or more of the following circumstances:
  - (a) If it bears or contains any poisonous or deleterious substance which may render it injurious to health; but in case the substance is not an added substance, such article shall not be considered adulterated under this clause if the quantity of such substance in or on such article does not ordinarily render it injurious to health;
  - (b) If it bears or contains any added poisonous or added deleterious substance (other than one which is: (i) A pesticide chemical in or on a raw agricultural commodity; (ii) a food additive; or (iii) a color additive) which may, in the

judgment of the director, make such article unfit for human food;

(c) If it is, in whole or in part, a raw agricultural commodity and such commodity bears or contains a pesticide chemical which is unsafe within the meaning of RCW 69.04.392, as enacted or hereafter amended;

(d) If it bears or contains any food additive which is unsafe within the meaning of RCW 69.04.394, as enacted or hereafter amended;

(e) If it bears or contains any color additive which is unsafe within the meaning of RCW 69.04.396, as enacted or hereafter amended: PROVIDED, That an article which is not otherwise deemed adulterated under subsection (4)(c), (d), or (e) of this section shall nevertheless be deemed adulterated if use of the pesticide chemical, food additive, or color additive, in or on such article, is prohibited by regulations of the director in official plants;

(f) If it consists in whole or in part of any filthy, putrid, or decomposed substance, or if it is otherwise unfit for human food;

(g) If it consists in whole or in part of any damaged egg or eggs to the extent that the egg meat or white is leaking, or it has been contacted by egg meat or white leaking from other eggs;

(h) If it has been prepared, packaged, or held under insanitary conditions whereby it may have become contaminated with filth, or whereby it may have been rendered injurious to health;

(i) If it is an egg which has been subjected to incubation or the product of any egg which has been subjected to incubation;

(j) If its container is composed, in whole or in part, of any poisonous or deleterious substance which may render the contents injurious to health;

(k) If it has been intentionally subjected to radiation, unless the use of the radiation was in conformity with a regulation or exemption in effect pursuant to RCW 69.04.394; or

(l) If any valuable constituent has been in whole or in part omitted or abstracted therefrom; or if any substance has been substituted, wholly or in part therefor; or if damage or inferiority has been concealed in any manner; or if any substance has been added thereto or mixed or packed therewith so as to increase its bulk or weight, or reduce its quality or strength, or make it appear better or of greater value than it is.

(5) "Capable of use as human food" shall apply to any egg or egg product unless it is denatured, or otherwise identified, as required by regulations prescribed by the director, to deter its use as human food.

(6) "Intrastate commerce" means any eggs or egg products in intrastate commerce, whether such eggs or egg products are intended for sale, held for sale, offered for sale, sold, stored, transported, or handled in this state in any manner and prepared for eventual distribution in this state, whether at wholesale or retail.

(7) "Container" or "package" includes any box, can, tin, plastic, or other receptacle, wrapper, or cover.

(8) "Immediate container" means any consumer package, or any other container in which egg products, not consumer-packaged, are packed.

(9) "Shipping container" means any container used in packaging a product packed in an immediate container.

(10) "Egg handler" or "dealer" means any person who produces, contracts for or obtains possession or control of any eggs for the purpose of sale to another dealer or retailer, or for processing and sale to a dealer, retailer or consumer: PROVIDED, That for the purpose of this chapter, "sell" or "sale" includes the following: Offer for sale, expose for sale, have in possession for sale, exchange, barter, trade, or as an inducement for the sale of another product.

(11) "Egg product" means any dried, frozen, or liquid eggs, with or without added ingredients, excepting products which contain eggs only in a relatively small proportion, or historically have not been, in the judgment of the director, considered by consumers as products of the egg food industry, and which may be exempted by the director under such conditions as he may prescribe to assure that the egg ingredients are not adulterated and such products are not represented as egg products.

(12) "Egg" means the shell egg of the domesticated chicken, turkey, duck, goose, or guinea, or any other specie of fowl.

(13) "Check" means an egg that has a broken shell or crack in the shell but has its shell membranes intact and contents not leaking.

(14) "Clean and sound shell egg" means any egg whose shell is free of adhering dirt or foreign material and is not cracked or broken.

(15) "Dirty egg" means an egg that has a shell that is unbroken and has adhering dirt or foreign material.

(16) "Incubator reject" means an egg that has been subjected to incubation and has been removed from incubation during the hatching operations as infertile or otherwise unhatchable.

(17) "Inedible" means eggs of the following descriptions: Black rots, yellow rots, white rots, mixed rots (addled eggs), sour eggs, eggs with green whites, eggs with stuck yolks, moldy eggs, musty eggs, eggs showing blood rings, and eggs containing embryo chicks (at or beyond the blood ring stage).

(18) "Leaker" means an egg that has a crack or break in the shell and shell membranes to the extent that the egg contents are exposed or are exuding or free to exude through the shell.

(19) "Loss" means an egg that is unfit for human food because it is smashed or broken so that its contents are leaking; or overheated, frozen, or contaminated; or an incubator reject; or because it contains a bloody white, large meat spots, a large quantity of blood, or other foreign material.

(20) "Restricted egg" means any check, dirty egg, incubator reject, inedible, leaker, or loss.

(21) "Inspection" means the application of such inspection methods and techniques as are deemed necessary by the director to carry out the provisions of this chapter.

(22) "Inspector" means any employee or official of the department authorized to inspect eggs or egg products under the authority of this chapter.

(23) "Misbranded" shall apply to egg products which are not labeled and packaged in accordance with the requirements prescribed by regulations of the director under RCW 69.25.100.

(24) "Official certificate" means any certificate prescribed by regulations of the director for issuance by an

inspector or other person performing official functions under this chapter.

(25) "Official device" means any device prescribed or authorized by the director for use in applying any official mark.

(26) "Official inspection legend" means any symbol prescribed by regulations of the director showing that egg products were inspected in accordance with this chapter.

(27) "Official mark" means the official inspection legend or any other symbol prescribed by regulations of the director to identify the status of any article under this chapter.

(28) "Official plant" means any plant which is licensed under the provisions of this chapter, at which inspection of the processing of egg products is maintained by the United States department of agriculture or by the state under cooperative agreements with the United States department of agriculture or by the state.

(29) "Official standards" means the standards of quality, grades, and weight classes for eggs, adopted under the provisions of this chapter.

(30) "Pasteurize" means the subjecting of each particle of egg products to heat or other treatments to destroy harmful, viable micro-organisms by such processes as may be prescribed by regulations of the director.

(31) "Pesticide chemical", "food additive", "color additive", and "raw agricultural commodity" shall have the same meaning for purposes of this chapter as prescribed in chapter 69.04 RCW.

(32) "Plant" means any place of business where egg products are processed.

(33) "Processing" means manufacturing egg products, including breaking eggs or filtering, mixing, blending, pasteurizing, stabilizing, cooling, freezing, drying, or packaging egg products.

(34) "Retailer" means any person in intrastate commerce who sells eggs to a consumer.

(35) "At retail" means any transaction in intrastate commerce between a retailer and a consumer.

(36) "Consumer" means any person who purchases eggs for his or her own family use or consumption; or any restaurant, hotel, boarding house, bakery, or other institution or concern which purchases eggs for serving to guests or patrons thereof, or for its own use in cooking or baking.

(37) "Candling" means the examination of the interior of eggs by the use of transmitted light used in a partially dark room or place.

(38) "Master license system" means the mechanism established by chapter 19.02 RCW by which master licenses, endorsed for individual state-issued licenses, are issued and renewed utilizing a master application and a master license expiration date common to each renewable license endorsement.

(39) "Ambient temperature" means the atmospheric temperature surrounding or encircling shell eggs. [1995 c 374 § 25; 1982 c 182 § 42; 1975 1st ex.s. c 201 § 3.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**69.25.030 Purpose—Certain federal rules adopted by reference—Hearing, notice by director—Adoption of rules by director.** The purpose of this chapter is to promote

uniformity of state legislation and regulations with the federal egg products inspection act, 21 U.S.C. sec. 1031, et seq., and regulations adopted thereunder. In accord with such declared purpose, any regulations adopted under the federal egg products inspection act relating to eggs and egg products, as defined in RCW 69.25.020 (11) and (12), in effect on July 1, 1975, are hereby deemed to have been adopted under the provisions hereof. Further, to promote such uniformity, any regulations adopted hereafter under the provisions of the federal egg products inspection act relating to eggs and egg products, as defined in RCW 69.25.020 (11) and (12), and published in the federal register, shall be deemed to have been adopted under the provisions of this chapter in accord with chapter 34.05 RCW, as now or hereafter amended. The director may, however, within thirty days of the publication of the adoption of any such regulation under the federal egg products inspection act, give public notice that a hearing will be held to determine if such regulations shall not be applicable under the provisions of this chapter. Such hearing shall be in accord with the requirements of chapter 34.05 RCW, as now or hereafter amended.

The director, in addition to the foregoing, may adopt any rule and regulation necessary to carry out the purpose and provisions of this chapter. [1975 1st ex.s. c 201 § 4.]

**69.25.040 Application of administrative procedure act.** The adoption, amendment, modification, or revocation of any rules or regulations under the provisions of this chapter, or the holding of a hearing in regard to a license issued or which may be issued or denied under the provisions of this chapter, shall be subject to the applicable provisions of chapter 34.05 RCW, the administrative procedure act, as now or hereafter amended. [1975 1st ex.s. c 201 § 5.]

**69.25.050 Egg handler's or dealer's license and number—Branch license—Application, fee, posting required, procedure.** No person shall act as an egg handler or dealer without first obtaining an annual license and permanent dealer's number from the department; such license shall expire on the master license expiration date. Application for an egg dealer license or egg dealer branch license, shall be made through the master license system. The annual egg dealer license fee shall be thirty dollars and the annual egg dealer branch license fee shall be fifteen dollars. A copy of the master license shall be posted at each location where such licensee operates. Such application shall include the full name of the applicant for the license and the location of each facility he intends to operate. If such applicant is an individual, receiver, trustee, firm, partnership, association or corporation, the full name of each member of the firm or partnership or the names of the officers of the association or corporation shall be given on the application. Such application shall further state the principal business address of the applicant in the state and elsewhere and the name of a person domiciled in this state authorized to receive and accept service of summons of legal notices of all kinds for the applicant and any other necessary information prescribed by the director. Upon the approval of the application and compliance with the provisions of this chapter, including the applicable regulations adopted hereunder by the department, the appli-

cant shall be issued a license or renewal thereof. Such license and permanent egg handler or dealer's number shall be non-transferable. [1995 c 374 § 26; 1982 c 182 § 43; 1975 1st ex.s. c 201 § 6.]

*Master license—Expiration date:* RCW 19.02.090.

*Master license system*

*definition:* RCW 69.25.020(38).

*existing licenses or permits registered under, when:* RCW 19.02.810.

*to include additional licenses:* RCW 19.02.110.

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**69.25.060 Egg handler's or dealer's license—Late renewal fee.** If the application for the renewal of an egg handler's or dealer's license is not filed before the master license expiration date, the master license delinquency fee shall be assessed under chapter 19.02 RCW and shall be paid by the applicant before the renewal license shall be issued. [1982 c 182 § 44; 1975 1st ex.s. c 201 § 7.]

*Master license*

*delinquency fee—Rate—Disposition:* RCW 19.02.085.

*expiration date:* RCW 19.02.090.

*system—Existing licenses or permits registered under, when:* RCW 19.02.810.

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**69.25.070 Egg handler's or dealer's license—Denial, suspension, revocation, or conditional issuance.** The department may deny, suspend, revoke, or issue a license or a conditional license if it determines that an applicant or licensee has committed any of the following acts:

(1) That the applicant or licensee is violating or has violated any of the provisions of this chapter or rules and regulations adopted thereunder.

(2) That the application contains any materially false or misleading statement or involves any misrepresentation by any officer, agent, or employee of the applicant.

(3) That the applicant or licensee has concealed or withheld any facts regarding any violation of this chapter by any officer, agent, or employee of the applicant or licensee. [1975 1st ex.s. c 201 § 8.]

**69.25.080 Continuous inspection at processing plants—Exemptions—Condemnation and destruction of adulterated eggs and egg products—Reprocessing—Appeal—Inspections of egg handlers.** (1) For the purpose of preventing the entry into or movement in intrastate commerce of any egg product which is capable of use as human food and is misbranded or adulterated, the director shall, whenever processing operations are being conducted, unless under inspection by the United States department of agriculture, cause continuous inspection to be made, in accordance with the regulations promulgated under this chapter, of the processing of egg products, in each plant processing egg products for commerce, unless exempted under RCW 69.25.170. Without restricting the application of the preceding sentence to other kinds of establishments within its provisions, any food manufacturing establishment, institution, or restaurant which uses any eggs that do not meet the requirements of RCW 69.25.170(1)(a) in the preparation of any articles for human food, shall be deemed to be a plant processing egg products, with respect to such operations.

(2) The director, at any time, shall cause such retention, segregation, and reinspection as he deems necessary of eggs and egg products capable of use as human food in each official plant.

(3) Eggs and egg products found to be adulterated at official plants shall be condemned, and if no appeal be taken from such determination or condemnation, such articles shall be destroyed for human food purposes under the supervision of an inspector: PROVIDED, That articles which may be reprocessing be made not adulterated need not be condemned and destroyed if so reprocessed under the supervision of an inspector and thereafter found to be not adulterated. If an appeal be taken from such determination, the eggs or egg products shall be appropriately marked and segregated pending completion of an appeal inspection, which appeal shall be at the cost of the appellant if the director determines that the appeal is frivolous. If the determination of condemnation is sustained, the eggs or egg products shall be destroyed for human food purposes under the supervision of an inspector.

(4) The director shall cause such other inspections to be made of the business premises, facilities, inventory, operations, and records of egg handlers, and the records and inventory of other persons required to keep records under RCW 69.25.140, as he deems appropriate (and in the case of shell egg packers, packing eggs for the ultimate consumer, at least once each calendar quarter) to assure that only eggs fit for human food are used for such purpose, and otherwise to assure compliance by egg handlers and other persons with the requirements of RCW 69.25.140, except that the director shall cause such inspections to be made as he deems appropriate to assure compliance with such requirements at food manufacturing establishments, institutions, and restaurants, other than plants processing egg products. Representatives of the director shall be afforded access to all such places of business for purposes of making the inspections provided for in this chapter. [1975 1st ex.s. c 201 § 9.]

**69.25.090 Sanitary operation of official plants—Inspection refused if requirements not met.** (1) The operator of each official plant shall operate such plant in accordance with such sanitary practices and shall have such premises, facilities, and equipment as are required by regulations promulgated by the director to effectuate the purposes of this chapter, including requirements for segregation and disposition of restricted eggs.

(2) The director shall refuse to render inspection to any plant whose premises, facilities, or equipment, or the operation thereof, fail to meet the requirements of this section. [1975 1st ex.s. c 201 § 10.]

**69.25.100 Egg products—Pasteurization—Labeling requirements—False or misleading labels or containers—Director may order use of withheld—Hearing, determination, and appeal.** (1) Egg products inspected at any official plant under the authority of this chapter and found to be not adulterated shall be pasteurized before they leave the official plant, except as otherwise permitted by regulations of the director, and shall at the time they leave the official plant, bear in distinctly legible form on their shipping containers or immediate containers, or both, when required by regulations

of the director, the official inspection legend and official plant number, of the plant where the products were processed, and such other information as the director may require by regulations to describe the products adequately and to assure that they will not have false or misleading labeling.

(2) No labeling or container shall be used for egg products at official plants if it is false or misleading or has not been approved as required by the regulations of the director. If the director has reason to believe that any labeling or the size or form of any container in use or proposed for use with respect to egg products at any official plant is false or misleading in any particular, he may direct that such use be withheld unless the labeling or container is modified in such manner as he may prescribe so that it will not be false or misleading. If the person using or proposing to use the labeling or container does not accept the determination of the director, such person may request a hearing, but the use of the labeling or container shall, if the director so directs, be withheld pending hearing and final determination by the director. Any such determination by the director shall be conclusive unless, within thirty days after receipt of notice of such final determination, the person adversely affected thereby appeals to the superior court in the county in which such person has its principal place of business. [1975 1st ex.s. c 201 § 11.]

**69.25.110 Prohibited acts and practices.** (1) No person shall buy, sell, or transport, or offer to buy or sell, or offer or receive for transportation, in any business in intrastate commerce any restricted eggs, capable of use as human food, except as authorized by regulations of the director under such conditions as he may prescribe to assure that only eggs fit for human food are used for such purpose.

(2) No egg handler shall possess with intent to use, or use, any restricted eggs in the preparation of human food for intrastate commerce except that such eggs may be so possessed and used when authorized by regulations of the director under such conditions as he may prescribe to assure that only eggs fit for human food are used for such purpose.

(3) No person shall process any egg products for intrastate commerce at any plant except in compliance with the requirements of this chapter.

(4) No person shall buy, sell, or transport, or offer to buy or sell, or offer or receive for transportation, in intrastate commerce any egg products required to be inspected under this chapter unless they have been so inspected and are labeled and packaged in accordance with the requirements of RCW 69.25.100.

(5) No operator of any official plant shall allow any egg products to be moved from such plant if they are adulterated or misbranded and capable of use as human food.

(6) No person shall:

(a) Manufacture, cast, print, lithograph, or otherwise make any device containing any official mark or simulation thereof, or any label bearing any such mark or simulation, or any form of official certificate or simulation thereof, except as authorized by the director;

(b) Forge or alter any official device, mark, or certificate;

(c) Without authorization from the director, use any official device, mark, or certificate, or simulation thereof, or detach, deface, or destroy any official device or mark; or use

any labeling or container ordered to be withheld from use under RCW 69.25.100 after final judicial affirmance of such order or expiration of the time for appeal if no appeal is taken under said section;

(d) Contrary to the regulations prescribed by the director, fail to use, or to detach, deface, or destroy any official device, mark, or certificate;

(e) Knowingly possess, without promptly notifying the director or his representative, any official device or any counterfeit, simulated, forged, or improperly altered official certificate or any device or label, or any eggs or egg products bearing any counterfeit, simulated, forged, or improperly altered official mark;

(f) Knowingly make any false statement in any shipper's certificate or other nonofficial or official certificate provided for in the regulations prescribed by the director;

(g) Knowingly represent that any article has been inspected or exempted, under this chapter when in fact it has not been so inspected or exempted; and

(h) Refuse access, at any reasonable time, to any representative of the director, to any plant or other place of business subject to inspection under any provisions of this chapter.

(7) No person, while an official or employee of the state or local governmental agency, or thereafter, shall use to his own advantage, or reveal other than to the authorized representatives of the United States government or the state in their official capacity, or as ordered by a court in a judicial proceeding, any information acquired under the authority of this chapter concerning any matter which the originator or relator of such information claims to be entitled to protection as a trade secret. [1975 1st ex.s. c 201 § 12.]

**69.25.120 Director to cooperate with other agencies—May conduct examinations.** The director shall, whenever he determines that it would effectuate the purposes of this chapter, cooperate with any state, federal or other governmental agencies in carrying out any provisions of this chapter. In carrying out the provisions of this chapter, the director may conduct such examinations, investigations, and inspections as he determines practicable through any officer or employee of any such agency commissioned by him for such purpose. [1975 1st ex.s. c 201 § 13.]

**69.25.130 Eggs or egg products not intended for use as human food—Identification or denaturing required.** Inspection shall not be provided under this chapter at any plant for the processing of any egg products which are not intended for use as human food, but such articles, prior to their offer for sale or transportation in intrastate commerce, shall be denatured or identified as prescribed by regulations of the director to deter their use for human food. No person shall buy, sell, or transport or offer to buy or sell, or offer or receive for transportation, in intrastate commerce, any restricted eggs or egg products which are not intended for use as human food unless they are denatured or identified as required by the regulations of the director. [1975 1st ex.s. c 201 § 14.]

**69.25.140 Records required, access to and copying of.**

For the purpose of enforcing the provisions of this chapter and the regulations promulgated thereunder, all persons engaged in the business of transporting, shipping, or receiving any eggs or egg products in intrastate commerce or in interstate commerce, or holding such articles so received, and all egg handlers, shall maintain such records showing, for such time and in such form and manner, as the director may prescribe, to the extent that they are concerned therewith, the receipt, delivery, sale, movement, and disposition of all eggs and egg products handled by them, and shall, upon the request of the director, permit him at reasonable times to have access to and to copy all such records. [1975 1st ex.s. c 201 § 15.]

**69.25.150 Penalties—Liability of employer—Defense.** (1)(a) Except as provided in (b) of this subsection, any person violating any provision of this chapter or any rule adopted under this chapter is guilty of a misdemeanor.

(b) A second or subsequent violation is a gross misdemeanor. Any offense committed more than five years after a previous conviction shall be considered a first offense.

(2) Whenever the director finds that a person has committed a violation of any of the provisions of this chapter, and that violation has not been punished pursuant to subsection (1) of this section, the director may impose upon and collect from the violator a civil penalty not exceeding one thousand dollars per violation per day. Each violation shall be a separate and distinct offense.

(3) When construing or enforcing the provisions of RCW 69.25.110, the act, omission, or failure of any person acting for or employed by any individual, partnership, corporation, or association within the scope of the person's employment or office shall in every case be deemed the act, omission, or failure of such individual, partnership, corporation, or association, as well as of such person.

(4) No carrier or warehouseman shall be subject to the penalties of this chapter, other than the penalties for violation of RCW 69.25.140, or 69.25.155, by reason of his or her receipt, carriage, holding, or delivery, in the usual course of business, as a carrier or warehouseman of eggs or egg products owned by another person unless the carrier or warehouseman has knowledge, or is in possession of facts which would cause a reasonable person to believe that such eggs or egg products were not eligible for transportation under, or were otherwise in violation of, this chapter, or unless the carrier or warehouseman refuses to furnish on request of a representative of the director the name and address of the person from whom he or she received such eggs or egg products and copies of all documents, if there be any, pertaining to the delivery of the eggs or egg products to, or by, such carrier or warehouseman. [2003 c 53 § 317; 1995 c 374 § 27; 1992 c 7 § 47; 1975 1st ex.s. c 201 § 16.]

**Intent—Effective date—2003 c 53:** See notes following RCW 2.48.180.

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**69.25.155 Interference with person performing official duties.** (1) Notwithstanding any other provision of law, any person who forcibly assaults, resists, impedes, intimidates, or interferes with any person while engaged in or on

account of the performance of his or her official duties under this chapter is guilty of a class C felony and shall be punished by a fine of not more than five thousand dollars or imprisonment in a state correctional facility for not more than three years, or both.

(2) Whoever, in the commission of any act described in subsection (1) of this section, uses a deadly or dangerous weapon is guilty of a class B felony and shall be punished by a fine of not more than ten thousand dollars or by imprisonment in a state correctional facility for not more than ten years, or both. [2003 c 53 § 318.]

**Intent—Effective date—2003 c 53:** See notes following RCW 2.48.180.

**69.25.160 Notice of violation—May take place of prosecution.** Before any violation of this chapter, other than RCW 69.25.155, is reported by the director to any prosecuting attorney for institution of a criminal proceeding, the person against whom such proceeding is contemplated shall be given reasonable notice of the alleged violation and opportunity to present his or her views orally or in writing with regard to such contemplated proceeding. Nothing in this chapter shall be construed as requiring the director to report for criminal prosecution violation of this chapter whenever he or she believes that the public interest will be adequately served and compliance with this chapter obtained by a suitable written notice of warning. [2003 c 53 § 319; 1975 1st ex.s. c 201 § 17.]

**Intent—Effective date—2003 c 53:** See notes following RCW 2.48.180.

**69.25.170 Exemptions permitted by rule of director.**

(1) The director may, by regulation and under such conditions and procedures as he may prescribe, exempt from specific provisions of this chapter:

(a) The sale, transportation, possession, or use of eggs which contain no more restricted eggs than are allowed by the tolerance in the official state standards for consumer grades for shell eggs;

(b) The processing of egg products at any plant where the facilities and operating procedures meet such sanitary standards as may be prescribed by the director, and where the eggs received or used in the manufacture of egg products contain no more restricted eggs than are allowed by the official standards of the state consumer grades for shell eggs, and the egg products processed at such plant;

(c) The sale of eggs by any poultry producer from his own flocks directly to a household consumer exclusively for use by such consumer and members of his household and his nonpaying guests and employees, and the transportation, possession, and use of such eggs in accordance with this subsection;

(d) The sale of eggs by shell egg packers on his own premises directly to household consumers for use by such consumer and members of his household and his nonpaying guests and employees, and the transportation, possession, and use of such eggs in accordance with this subsection;

(e) The sale of eggs by any egg producer with an annual egg production from a flock of three thousand hens or less.

(2) The director may modify or revoke any regulation granting exemption under this chapter whenever he deems

(2010 Ed.)

such action appropriate to effectuate the purposes of this chapter. [1995 c 374 § 28; 1975 1st ex.s. c 201 § 18.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**69.25.180 Limiting entry of eggs and egg products into official plants.** The director may limit the entry of eggs and egg products and other materials into official plants under such conditions as he may prescribe to assure that allowing the entry of such articles into such plants will be consistent with the purposes of this chapter. [1975 1st ex.s. c 201 § 19.]

**69.25.190 Embargo of eggs or egg products in violation of this chapter—Time limit—Removal of official marks.** Whenever any eggs or egg products subject to this chapter are found by any authorized representative of the director upon any premises and there is reason to believe that they are or have been processed, bought, sold, possessed, used, transported, or offered or received for sale or transportation in violation of this chapter, or that they are in any other way in violation of this chapter, or whenever any restricted eggs capable of use as human food are found by such a representative in the possession of any person not authorized to acquire such eggs under the regulations of the director, such articles may be embargoed by such representative for a reasonable period but not to exceed twenty days, pending action under RCW 69.25.200 or notification of any federal or other governmental authorities having jurisdiction over such articles, and shall not be moved by any person from the place at which they are located when so detained until released by such representative. All official marks may be required by such representative to be removed from such articles before they are released unless it appears to the satisfaction of the director that the articles are eligible to retain such marks. [1975 1st ex.s. c 201 § 20.]

**69.25.200 Embargo—Petition for court order affirming—Removal of embargo or destruction or correction and release—Court costs, fees, administrative expenses—Bond may be required.** When the director has embargoed any eggs or egg products, he shall petition the superior court of the county in which the eggs or egg products are located for an order affirming such embargo. Such court shall have jurisdiction for cause shown and after a prompt hearing to any claimant of eggs or egg products, shall issue an order which directs the removal of such embargo or the destruction or correction and release of such eggs and egg products. An order for destruction or the correction and release of such eggs and egg products shall contain such provision for the payment of pertinent court costs and fees and administrative expenses as is equitable and which the court deems appropriate in the circumstances. An order for correction and release may contain such provisions for a bond as the court finds indicated in the circumstance. [1975 1st ex.s. c 201 § 21.]

**69.25.210 Embargo—Order affirming not required, when.** The director need not petition the superior court as provided for in RCW 69.25.200 if the owner or claimant of such eggs or egg products agrees in writing to the disposition

of such eggs or egg products as the director may order. [1975 1st ex.s. c 201 § 22.]

**69.25.220 Embargo—Consolidation of petitions.** Two or more petitions under RCW 69.25.200 which pend at the same time and which present the same issue and claimant hereunder may be consolidated for simultaneous determination by one court of competent jurisdiction, upon application to any court of jurisdiction by the director or claimant. [1975 1st ex.s. c 201 § 23.]

**69.25.230 Embargo—Sampling of article.** The claimant in any proceeding by petition under RCW 69.25.200 shall be entitled to receive a representative sample of the article subject to such proceedings upon application to the court of competent jurisdiction made at any time after such petition and prior to the hearing thereon. [1975 1st ex.s. c 201 § 24.]

**69.25.240 Condemnation—Recovery of damages restricted.** No state court shall allow the recovery of damages for administrative action for condemnation under the provisions of this chapter, if the court finds that there was probable cause for such action. [1975 1st ex.s. c 201 § 25.]

**69.25.250 Assessment—Rate, applicability, time of payment—Reports—Contents, frequency.** There is hereby levied an assessment not to exceed three mills per dozen eggs entering intrastate commerce, as prescribed by rules and regulations issued by the director. Such assessment shall be applicable to all eggs entering intrastate commerce except as provided in RCW 69.25.170 and 69.25.290. Such assessment shall be paid to the director on a monthly basis on or before the tenth day following the month such eggs enter intrastate commerce. The director may require reports by egg handlers or dealers along with the payment of the assessment fee. Such reports may include any and all pertinent information necessary to carry out the purposes of this chapter. The director may, by regulations, require egg container manufacturers to report on a monthly basis all egg containers sold to any egg handler or dealer and bearing such egg handler or dealer's permanent number. [1995 c 374 § 29; 1993 sp.s. c 19 § 12; 1975 1st ex.s. c 201 § 26.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**69.25.260 Assessment—Prepayment by purchase of egg seals—Permit for printing seal on containers or labels.** Any egg handler or dealer may prepay the assessment provided for in RCW 69.25.250 by purchasing Washington state egg seals from the director to be placed on egg containers showing that the proper assessment has been paid. Any carton manufacturer or printer may apply to the director for a permit to place reasonable facsimiles of the Washington state egg seals to be imprinted on egg containers or on the identification labels which show egg grade and size and the name of the egg handler or dealer. The director shall, from time to time, prescribe rules and regulations governing the affixing of seals and he is authorized to cancel any such permit issued pursuant to this chapter, whenever he finds that a violation of the terms under which the permit has been granted has been violated. [1979 ex.s. c 238 § 10; 1975 1st ex.s. c 201 § 27.]

[Title 69 RCW—page 34]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**69.25.270 Assessment—Monthly payment—Audit—Failure to pay, penalty.** Every egg handler or dealer who pays assessments required under the provisions of this chapter on a monthly basis in lieu of seals shall be subject to audit by the director at such frequency as is deemed necessary by the director. The cost to the director for performing such audit shall be chargeable to and payable by the egg handler or dealer subject to audit. Failure to pay assessments when due or refusal to pay for audit costs may be cause for a summary suspension of an egg handler's or dealer's license and a charge of one percent per month, or fraction thereof shall be added to the sum due the director, for each remittance not received by the director when due. The conditions and charges applicable to egg handlers and dealers set forth herein shall also be applicable to payments due the director for facsimiles of seals placed on egg containers. [1987 c 393 § 16; 1975 1st ex.s. c 201 § 28.]

**69.25.280 Assessment—Use of proceeds.** The proceeds from assessment fees paid to the director shall be retained for the inspection of eggs and carrying out the provisions of this chapter relating to eggs. [1975 1st ex.s. c 201 § 29.]

**69.25.290 Assessment—Exclusions.** The assessments provided in this chapter shall not apply to:

- (1) Sale and shipment to points outside of this state;
- (2) Sale to the United States government and its instrumentalities;
- (3) Sale to breaking plants for processing into egg products;
- (4) Sale between egg dealers. [1975 1st ex.s. c 201 § 30.]

**69.25.300 Transfer of moneys in state egg account.** All moneys in the state egg account, created by \*RCW 69.24.450, at the time of July 1, 1975, shall be transferred to the director and shall be retained and expended for administering and carrying out the purposes of this chapter. [1975 1st ex.s. c 201 § 31.]

\*Reviser's note: RCW 69.24.450 was repealed by 1975 1st ex.s. c 201 § 40.

**69.25.310 Containers—Marking required—Obliteration of previous markings required for reuse—Temporary use of another handler's or dealer's permanent number—Penalty.** (1) All containers used by an egg handler or dealer to package eggs shall bear the name and address or the permanent number issued by the director to said egg handler or dealer. Such permanent number shall be displayed in a size and location prescribed by the director. It shall be a violation for any egg handler or dealer to use a container that bears the permanent number of another egg handler or dealer unless such number is totally obliterated prior to use. The director may in addition require the obliteration of any or all markings that may be on any container which will be used for eggs by an egg handler or dealer.

(2) Notwithstanding subsection (1) of this section and following written notice to the director, licensed egg handlers

(2010 Ed.)

and dealers may use new containers bearing another handler's or dealer's permanent number on a temporary basis, in any event not longer than one year, with the consent of such other handler or dealer for the purpose of using up existing container stocks. Sale of container stock shall constitute agreement by the parties to use the permanent number. [1995 c 374 § 30; 1975 1st ex.s. c 201 § 32.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**69.25.320 Records required, additional—Sales to retailer or food service—Exception—Defense to charged violation—Sale of eggs deteriorated due to storage time—Requirements for storage, display, or transportation.** (1)

In addition to any other records required to be kept and furnished the director under the provisions of this chapter, the director may require any person who sells to any retailer, or to any restaurant, hotel, boarding house, bakery, or any institution or concern which purchases eggs for serving to guests or patrons thereof or for its use in preparation of any food product for human consumption, candled or graded eggs other than those of his own production sold and delivered on the premises where produced, to furnish that retailer or other purchaser with an invoice covering each such sale, showing the exact grade or quality, and the size or weight of the eggs sold, according to the standards prescribed by the director, together with the name and address of the person by whom the eggs were sold. The person selling and the retailer or other purchaser shall keep a copy of said invoice on file at his place of business for a period of thirty days, during which time the copy shall be available for inspection at all reasonable times by the director: PROVIDED, That no retailer or other purchaser shall be guilty of a violation of this chapter if he can establish a guarantee from the person from whom the eggs were purchased to the effect that they, at the time of purchase, conformed to the information required by the director on such invoice: PROVIDED FURTHER, That if the retailer or other purchaser having labeled any such eggs in accordance with the invoice keeps them for such a time after they are purchased as to cause them to deteriorate to a lower grade or standard, and sells them under the label of the invoice grade or standard, he shall be guilty of a violation of this chapter.

(2) Each retailer and each distributor shall store shell eggs awaiting sale or display eggs under clean and sanitary conditions in areas free from rodents and insects. Shell eggs must be stored up off the floor away from strong odors, pesticides, and cleaners.

(3) After being received at the point of first purchase, all graded shell eggs packed in containers for the purpose of sale to consumers shall be held and transported under refrigeration at ambient temperatures no greater than forty-five degrees Fahrenheit (seven and two-tenths degrees Celsius). This provision shall apply without limitation to retailers, institutional users, dealer/wholesalers, food handlers, transportation firms, or any person who handles eggs after the point of first purchase.

(4) No invoice shall be required on eggs when packed for sale to the United States department of defense, or a component thereof, if labeled with grades promulgated by the

United States secretary of agriculture. [1995 c 374 § 31; 1975 1st ex.s. c 201 § 33.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**69.25.900 Savings.** The enactment of this chapter shall not have the effect of terminating or in any way modifying any liability, civil or criminal, which shall already be in existence on July 1, 1975. [1975 1st ex.s. c 201 § 35.]

**69.25.910 Chapter is cumulative and nonexclusive.** The provisions of this chapter shall be cumulative and nonexclusive and shall not affect any other remedy at law. [1975 1st ex.s. c 201 § 37.]

**69.25.920 Severability—1975 1st ex.s. c 201.** If any provision of this chapter, or its application to any person or circumstance is held invalid, the remainder of the chapter, or the application of the provision to other persons or circumstances is not affected. [1975 1st ex.s. c 201 § 38.]

**69.25.930 Short title.** This act may be known and cited as the "Washington wholesome eggs and egg products act". [1975 1st ex.s. c 201 § 39.]

## Chapter 69.28 RCW

### HONEY

#### Sections

69.28.020	Enforcement power and duty of director and agents.
69.28.025	Rules and regulations have force of law.
69.28.030	Rules prescribing standards.
69.28.040	Right to enter, inspect, and take samples.
69.28.050	Containers to be labeled.
69.28.060	Requisites of markings.
69.28.070	"Marked" defined—When honey need not be marked.
69.28.080	Purchaser to be advised of standards—Exceptions.
69.28.090	Forgery, simulation, etc., of marks, labels, etc., unlawful.
69.28.095	Unlawful mutilation or removal of seals, marks, etc., used by director.
69.28.100	Marks for "slack-filled" container.
69.28.110	Use of used containers.
69.28.120	Floral source labels.
69.28.130	Adulterated honey—Sale or offer unlawful.
69.28.133	Nonconforming honey—Sale or offer unlawful.
69.28.135	Warning-tagged honey—Movement prohibited.
69.28.140	Possession of unlawful honey as evidence.
69.28.170	Inspectors—Prosecutions.
69.28.180	Violation of rules and regulations unlawful.
69.28.185	Penalty.
69.28.190	"Director" defined.
69.28.200	"Container" defined.
69.28.210	"Subcontainer" defined.
69.28.220	"Section box" defined.
69.28.230	"Clean and sound containers" defined.
69.28.240	"Pack", "packing", or "packed" defined.
69.28.250	"Label" defined.
69.28.260	"Person" defined.
69.28.270	"Slack-filled" defined.
69.28.280	"Deceptive arrangement" defined.
69.28.290	"Mislabelled" defined.
69.28.300	"Placard" defined.
69.28.310	"Honey" defined.
69.28.320	"Comb-honey" defined.
69.28.330	"Extracted honey" defined.
69.28.340	"Crystallized honey" defined.
69.28.350	"Honeydew" defined.
69.28.360	"Foreign material" defined.
69.28.370	"Foreign honey" defined.
69.28.380	"Adulterated honey" defined.
69.28.390	"Serious damage" defined.
69.28.400	Labeling requirements for artificial honey or mixtures containing honey.

- 69.28.410 Embargo on honey or product—Notice by director—Removal.  
 69.28.420 Embargo on honey or product—Court order affirming,  
     required—Order for destruction or correction and release—  
     Bond.  
 69.28.430 Consolidation of petitions presenting same issue and claimant.  
 69.28.440 Sample of honey or product may be obtained—Procedure.  
 69.28.450 Recovery of damages barred if probable cause for embargo.  
 69.28.900 Severability—1939 c 199.  
 69.28.910 Short title.

*Bees and apiaries: Chapter 15.60 RCW.*

*Commission merchants, agricultural products: Title 20 RCW.*

**69.28.020 Enforcement power and duty of director and agents.** The director is hereby empowered, through his duly authorized agents, to enforce all provisions of this chapter. The director shall have the power to define, promulgate and enforce such reasonable regulations as he may deem necessary in carrying out the provisions of this chapter. [1939 c 199 § 29; RRS § 6163-29. FORMER PART OF SECTION: 1939 c 199 § 44 now codified as RCW 69.28.025.]

**69.28.025 Rules and regulations have force of law.** Any rules or regulations promulgated and published by the director under the provisions of this chapter shall have the force and effect of law. [1939 c 199 § 44; RRS § 6163-44. Formerly RCW 69.28.020, part.]

**69.28.030 Rules prescribing standards.** The director is hereby authorized, and it shall be his duty, upon the taking effect of this chapter and from time to time thereafter, to adopt, establish and promulgate reasonable rules and regulations specifying grades or standards of quality governing the sale of honey: PROVIDED, That, in the interest of uniformity, such grades and standards of quality shall conform as nearly to those established by the United States department of agriculture as local conditions will permit. [1939 c 199 § 24; RRS § 6163-24.]

**69.28.040 Right to enter, inspect, and take samples.** The director or any of his duly authorized agents shall have the power to enter and inspect at reasonable times every place, vehicle, plant or other place where honey is being produced, stored, packed, transported, exposed, or offered for sale, and to inspect all such honey and the containers thereof and to take for inspection such samples of said honey as may be necessary. [1939 c 199 § 28; RRS § 6163-28.]

**69.28.050 Containers to be labeled.** It shall be unlawful to deliver for shipment, ship, transport, sell, expose or offer for sale any containers or subcontainers of honey within this state unless they shall be conspicuously marked with the name and address of the producer or distributor, the net weight of the honey, the grade of the honey, and, if imported from any foreign country, the name of the country or territory from which the said honey was imported, or if a blend of honey, any part of which is foreign honey, the container must be labeled with the name of the country or territory where such honey was produced and the proportion of each foreign honey used in the blend. [1939 c 199 § 32; RRS § 6163-32.]

**69.28.060 Requisites of markings.** When any markings are used or required to be used under this chapter on any

container of honey to identify the container or describe the contents thereof, such markings must be plainly and conspicuously marked, stamped, stenciled, printed, labeled or branded in the English language, in letters large enough to be discernible by any person, on the front, side or top of any container. [1939 c 199 § 35; RRS § 6163-35.]

**69.28.070 "Marked" defined—When honey need not be marked.** The term "marked" shall mean printed in the English language on the top, front or side of any container containing honey: PROVIDED, That it shall not be necessary to mark honey sold by the producer thereof to any distributor, packer or manufacturer with the net weight, color or grade if the honey is to be used in the manufacture of honey products or is to be graded and packaged by the distributor or packer for resale. [1939 c 199 § 21; RRS § 6163-21.]

**69.28.080 Purchaser to be advised of standards—Exceptions.** It shall be unlawful for any person to deliver, sell, offer, or expose for sale any honey for human consumption within the state without notifying the person or persons purchasing or intending to purchase the same, of the exact grade or quality of such honey, according to the standards prescribed by the director, by stamping or printing on the container of any such honey such grade or quality: PROVIDED, This section shall not apply to honey while it is in transit in intrastate commerce from one establishment to the other, to be processed, labeled, or repacked. [1961 c 60 § 1; 1957 c 103 § 1; 1949 c 105 § 6; 1939 c 199 § 39; Rem. Supp. 1949 § 6163-39.]

**69.28.090 Forgery, simulation, etc., of marks, labels, etc., unlawful.** It shall be unlawful to forge, counterfeit, simulate, falsely represent or alter without proper authority any mark, stamp, tab, label, seal, sticker or other identification device provided by this chapter. [1961 c 60 § 2; 1939 c 199 § 40; RRS § 6163-40. FORMER PART OF SECTION: 1939 c 199 § 41 now codified as RCW 69.28.095.]

**69.28.095 Unlawful mutilation or removal of seals, marks, etc., used by director.** It shall be unlawful to mutilate, destroy, obliterate, or remove without proper authority, any mark, stamp, tag, label, seal, sticker or other identification device used by the director under the provisions of this chapter. [1939 c 199 § 41; RRS § 6163-41. Formerly RCW 69.28.090, part.]

**69.28.100 Marks for "slack-filled" container.** Any slack-filled container shall be conspicuously marked "slack-filled". [1939 c 199 § 36; RRS § 6163-36. FORMER PART OF SECTION: 1939 c 199 § 10 now codified as RCW 69.28.270.]

**69.28.110 Use of used containers.** It shall be unlawful to sell, offer, or expose for sale to the consumer any honey in any secondhand or used containers which formerly contained honey, unless all markings as to grade, name and weight have been obliterated, removed or erased. [1939 c 199 § 37; RRS § 6163-37.]

**69.28.120 Floral source labels.** Any honey which is a blend of two or more floral types of honey shall not be labeled as a honey product from any one particular floral source alone. [1939 c 199 § 34; RRS § 6163-34.]

**69.28.130 Adulterated honey—Sale or offer unlawful.** It shall be unlawful for any person to sell, offer or intend for sale any adulterated honey as honey. [1939 c 199 § 26; RRS § 6163-26. FORMER PART OF SECTION: 1939 c 199 §§ 27 and 33 now codified as RCW 69.28.133 and 69.28.135.]

**69.28.133 Nonconforming honey—Sale or offer unlawful.** It shall be unlawful for any person to sell, offer or intend for sale any honey which does not conform to the provisions of this chapter or any regulation promulgated by the director under this chapter. [1939 c 199 § 27; RRS § 6163-27. Formerly RCW 69.28.130, part.]

**69.28.135 Warning-tagged honey—Movement prohibited.** It shall be unlawful to move any honey or containers of honey to which any warning tag or notice has been affixed except under authority from the director. [1939 c 199 § 33; RRS § 6163-33. Formerly RCW 69.28.130, part.]

**69.28.140 Possession of unlawful honey as evidence.** Possession by any person, of any honey which is sold, exposed or offered for sale in violation of this chapter shall be prima facie evidence that the same is kept or shipped to the said person, in violation of the provisions of this chapter. [1939 c 199 § 30; RRS § 6163-30.]

**69.28.170 Inspectors—Prosecutions.** It shall be the duty of the director to enforce this chapter and to appoint and employment [employ] such inspectors as may be necessary therefor. The director shall notify the prosecuting attorneys for the counties of the state of violations of this chapter occurring in their respective counties, and it shall be the duty of the respective prosecuting attorneys immediately to institute and prosecute proceeding in their respective counties and to enforce the penalties provided for by this chapter. [1939 c 199 § 43; RRS § 6163-43.]

**69.28.180 Violation of rules and regulations unlawful.** It shall be unlawful for any person to violate any rule or regulation promulgated by the director under the provisions of this chapter. [1939 c 199 § 25; RRS § 6163-25. FORMER PART OF SECTION: 1939 c 199 § 44 now codified in RCW 69.28.185.]

**69.28.185 Penalty.** Any person who violates any of the provisions of this chapter shall be guilty of a misdemeanor, and upon violation thereof shall be punishable by a fine of not more than five hundred dollars or imprisonment in the county jail for a period of not more than six months or by both such fine and imprisonment. [1939 c 199 § 42; RRS § 6163-42. Formerly RCW 69.28.180, part.]

**69.28.190 "Director" defined.** The term "director" means the director of agriculture of the state of Washington

or his duly authorized representative. [1939 c 199 § 2; RRS § 6163-2. Formerly RCW 69.28.010, part.]

**69.28.200 "Container" defined.** The term "container" shall mean any box, crate, chest, carton, barrel, keg, bottle, jar, can or any other receptacle containing honey. [1939 c 199 § 3; RRS § 6163-3.]

**69.28.210 "Subcontainer" defined.** The term "sub-container" shall mean any section box or other receptacle used within a container. [1939 c 199 § 4; RRS § 6163-4.]

**69.28.220 "Section box" defined.** The term "section box" shall mean the wood or other frame in which bees have built a small comb of honey. [1939 c 199 § 5; RRS § 6163-5.]

**69.28.230 "Clean and sound containers" defined.** The term "clean and sound containers" shall mean containers which are virtually free from rust, stains or leaks. [1939 c 199 § 6; RRS § 6163-6.]

**69.28.240 "Pack", "packing", or "packed" defined.** The term "pack", "packing", or "packed" shall mean the arrangement of all or part of the subcontainers in any container. [1939 c 199 § 7; RRS § 6163-7.]

**69.28.250 "Label" defined.** The term "label" shall mean a display of written, printed or graphic matter upon the immediate container of any article. [1939 c 199 § 8; RRS § 6163-8.]

**69.28.260 "Person" defined.** The term "person" includes individual, partnership, corporation and/or association. [1939 c 199 § 9; RRS § 6163-9.]

**69.28.270 "Slack-filled" defined.** The term "slack-filled" shall mean that the contents of any container occupy less than ninety-five percent of the volume of the closed container. [1939 c 199 § 10; RRS § 6163-10. Formerly RCW 69.28.100, part.]

**69.28.280 "Deceptive arrangement" defined.** The term "deceptive arrangement" shall mean any lot or load, arrangement or display of honey which has in any exposed surface, honey which is so superior in quality, appearance or condition, or in any other respects, to any of that which is concealed or unexposed as to materially misrepresent any part of the lot, load, arrangement or display. [1939 c 199 § 11; RRS § 6163-11.]

**69.28.290 "Misabeled" defined.** The term "misabeled" shall mean the placing or presence of any false or misleading statement, design or device upon, or in connection with, any container or lot of honey, or upon the label, lining or wrapper of any such container, or any placard used in connection therewith, and having reference to such honey. A statement, design or device is false and misleading when the honey to which it refers does not conform in every respect to such statement. [1939 c 199 § 12; RRS § 6163-12.]

**69.28.300 "Placard" defined.** The term "placard" means any sign, label or designation, other than an oral designation, used with any honey as a description or identification thereof. [1939 c 199 § 13; RRS § 6163-13.]

**69.28.310 "Honey" defined.** The term "honey" as used herein is the nectar of floral exudations of plants, gathered and stored in the comb by honey bees (*apis mellifica*). It is laevo-rotatory, contains not more than twenty-five percent of water, not more than twenty-five one-hundredths of one percent of ash, not more than eight percent of sucrose, its specific gravity is 1.412, its weight not less than eleven pounds twelve ounces per standard gallon of 231 cubic inches at sixty-eight degrees Fahrenheit. [1939 c 199 § 14; RRS § 6163-14. Formerly RCW 69.28.010, part.]

**69.28.320 "Comb-honey" defined.** The term "comb-honey" means honey which has not been extracted from the comb. [1939 c 199 § 15; RRS § 6163-15.]

**69.28.330 "Extracted honey" defined.** The term "extracted honey" means honey which has been removed from the comb. [1939 c 199 § 16; RRS § 6163-16.]

**69.28.340 "Crystallized honey" defined.** The term "crystallized honey" means honey which has assumed a solid form due to the crystallization of one or more of the natural sugars therein. [1939 c 199 § 17; RRS § 6163-17.]

**69.28.350 "Honeydew" defined.** The term "honeydew" is the saccharine exudation of plants, other than nectarous exudations, gathered and stored in the comb by honey bees (*apis mellifica*) and is dextrorotatory. [1939 c 199 § 18; RRS § 6163-18. Formerly RCW 69.28.010, part.]

**69.28.360 "Foreign material" defined.** The term "foreign material" means pollen, wax particles, insects, or materials not deposited by bees. [1937 c 199 § 19; RRS § 6163-19.]

**69.28.370 "Foreign honey" defined.** The term "foreign honey" means any honey not produced within the continental United States. [1939 c 199 § 20; RRS § 6163-20.]

**69.28.380 "Adulterated honey" defined.** The term "adulterated honey" means any honey to which has been added honeydew, glucose, dextrose, molasses, sugar, sugar syrup, invert sugar, or any other similar product or products, other than the nectar of floral exudations of plants gathered and stored in the comb by honey bees. [1939 c 199 § 22; RRS § 6163-22. Formerly RCW 69.28.010, part.]

**69.28.390 "Serious damage" defined.** The term "serious damage" means any injury or defect that seriously affects the edibility or shipping quality of the honey. [1939 c 199 § 23; RRS § 6163-23.]

**69.28.400 Labeling requirements for artificial honey or mixtures containing honey.** (1) No person shall sell, keep for sale, expose or offer for sale, any article or product

in imitation or semblance of honey branded exclusively as "honey", "liquid or extracted honey", "strained honey" or "pure honey".

(2) No person, firm, association, company or corporation shall manufacture, sell, expose or offer for sale, any compound or mixture branded or labeled exclusively as honey which shall be made up of honey mixed with any other substance or ingredient.

(3) Whenever honey is mixed with any other substance or ingredient and the commodity is to be marketed in imitation or semblance of honey, the product shall be labeled with the word "artificial" or "imitation" in the same type size and style as the word "honey";

(4) Whenever any substance or commodity is to be marketed in imitation or semblance of honey, but contains no honey, the product shall not be branded or labeled with the word "honey" and/or depict thereon a picture or drawing of a bee, bee hive, or honeycomb;

(5) Whenever honey is mixed with any other substance or ingredient and the commodity is to be marketed, there shall be printed on the package containing such compound or mixture a statement giving the ingredients of which it is made; if honey is one of such ingredients it shall be so stated in the same size type as are the other ingredients; nor shall such compound or mixture be branded or labeled exclusively with the word "honey" in any form other than as herein provided; nor shall any product in semblance of honey, whether a mixture or not, be sold, exposed or offered for sale as honey, or branded or labeled exclusively with the word "honey", unless such article is pure honey. [1975 1st ex.s. c 283 § 1.]

**69.28.410 Embargo on honey or product—Notice by director—Removal.** Whenever the director shall find, or shall have probable cause to believe, that any honey or product subject to the provisions of this chapter, as now or hereafter amended, is in intrastate commerce, which was introduced into such intrastate commerce in violation of the provisions of this chapter, as now or hereafter amended, he is hereby authorized to affix to such honey or product a notice placing an embargo on such honey or product, and prohibiting its sale in intrastate commerce, and no person shall move or sell such honey or product without first receiving permission from the director to move or sell such honey or product. But if, after such honey or product has been embargoed, the director shall find that such honey or product does not involve a violation of this chapter, as now or hereafter amended, such embargo shall be forthwith removed. [1975 1st ex.s. c 283 § 3.]

**69.28.420 Embargo on honey or product—Court order affirming, required—Order for destruction or correction and release—Bond.** When the director has embargoed any honey or product he shall, no later than twenty days after the affixing of notice of its embargo, petition the superior court for an order affirming such embargo. Such court shall then have jurisdiction, for cause shown and after prompt hearing to any claimant of such honey or product, to issue an order which directs the removal of such embargo or the destruction or the correction and release of such honey or product. An order for destruction or correction and release

shall contain such provision for the payment of pertinent court costs and fees and administrative expenses, as is equitable and which the court deems appropriate in the circumstances. An order for correction and release may contain such provision for bond, as the court finds indicated in the circumstances. [1975 1st ex.s. c 283 § 4.]

**69.28.430 Consolidation of petitions presenting same issue and claimant.** Two or more petitions under this chapter, as now or hereafter amended, which pend at the same time and which present the same issue and claimant hereunder, shall be consolidated for simultaneous determination by one court of jurisdiction, upon application to any court of jurisdiction by the director or by such claimant. [1975 1st ex.s. c 283 § 5.]

**69.28.440 Sample of honey or product may be obtained—Procedure.** The claimant in any proceeding by petition under this chapter, as now or hereafter amended, shall be entitled to receive a representative sample of the honey or product subject to such proceeding, upon application to the court of jurisdiction made at any time after such petition and prior to the hearing thereon. [1975 1st ex.s. c 283 § 6.]

**69.28.450 Recovery of damages barred if probable cause for embargo.** No state court shall allow the recovery of damages for embargo under this chapter, as now or hereafter amended, if the court finds that there was probable cause for such action. [1975 1st ex.s. c 283 § 7.]

**69.28.900 Severability—1939 c 199.** If any provisions of this chapter, or the application thereof to any person or circumstance, is held invalid, the remainder of the chapter, and the application of such provisions to other persons or circumstances, shall not be affected thereby. If any section, subsection, sentence, clause, or phrase of this chapter is for any reason held to be unconstitutional, such decisions shall not affect the validity of the remaining portions of this chapter. The legislature hereby declares that it would have passed this chapter and each section, subsection, sentence, clause and phrase thereof, irrespective of the fact that any one or more of the other sections, subsections, sentences, clauses and phrases be declared unconstitutional. [1939 c 199 § 45; RRS § 6163-45.]

**69.28.910 Short title.** This chapter may be known and cited as the Washington state honey act. [1939 c 199 § 1; RRS § 6163-1.]

### Chapter 69.30 RCW

#### SANITARY CONTROL OF SHELLFISH

##### Sections

69.30.005	Purpose.
69.30.010	Definitions.
69.30.020	Certificate of compliance required for sale.
69.30.030	Rules and regulations—Duties of state board of health.
69.30.050	Certificates of approval—Shellfish growing areas.
69.30.060	Certificates of approval—Culling, shucking, packing establishments.

(2010 Ed.)

69.30.070	Certificates of approval—Compliance with other laws and rules required.
69.30.080	Certificates of approval—Denial, revocation, suspension, modification—Procedure.
69.30.085	License, certificate of approval—Denial, revocation, suspension—Prohibited acts.
69.30.110	Possession or sale in violation of chapter—Enforcement—Seizure—Disposal.
69.30.120	Inspection by department—Access to regulated business or entity—Administrative inspection warrant.
69.30.130	Water pollution laws and rules applicable.
69.30.140	Penalties.
69.30.145	Civil penalties.
69.30.150	Civil penalties—General provisions.
69.30.900	Severability—1955 c 144.

*Shellfish: Chapter 77.60 RCW.*

**69.30.005 Purpose.** The purpose of this chapter is to provide for the sanitary control of shellfish. Protection of the public health requires assurances that commercial shellfish are harvested only from approved growing areas and that processing of shellfish is conducted in a safe and sanitary manner. [1989 c 200 § 2.]

**69.30.010 Definitions.** When used in this chapter, the following terms shall have the following meanings:

(1) "Shellfish" means all varieties of fresh and frozen oysters, mussels, clams, and scallops, either shucked or in the shell, and any fresh or frozen edible products thereof.

(2) "Sale" means to sell, offer for sale, barter, trade, deliver, consign, hold for sale, consignment, barter, trade, or delivery, and/or possess with intent to sell or dispose of in any commercial manner.

(3) "Shellfish growing areas" means the lands and waters in and upon which shellfish are grown for harvesting in commercial quantity or for sale for human consumption.

(4) "Establishment" means the buildings, together with the necessary equipment and appurtenances, used for the storage, culling, shucking, packing and/or shipping of shellfish in commercial quantity or for sale for human consumption.

(5) "Person" means any individual, partnership, firm, company, corporation, association, or the authorized agents of any such entities.

(6) "Department" means the state department of health.

(7) "Secretary" means the secretary of health or his or her authorized representatives.

(8) "Commercial quantity" means any quantity exceeding: (a) Forty pounds of mussels; (b) one hundred oysters; (c) fourteen horse clams; (d) six geoducks; (e) fifty pounds of hard or soft shell clams; or (f) fifty pounds of scallops. The poundage in this subsection (8) constitutes weight with the shell.

(9) "Fish and wildlife officer" means a fish and wildlife officer as defined in RCW 77.08.010.

(10) "Ex officio fish and wildlife officer" means an ex officio fish and wildlife officer as defined in RCW 77.08.010. [2001 c 253 § 5; 1995 c 147 § 1; 1991 c 3 § 303; 1989 c 200 § 1; 1985 c 51 § 1; 1979 c 141 § 70; 1955 c 144 § 1.]

**69.30.020 Certificate of compliance required for sale.** Only shellfish bearing a certificate of compliance with the sanitary requirements of this state or a state, territory, province or country of origin whose requirements are equal or

comparable to those established pursuant to this chapter may be sold or offered for sale in the state of Washington. [1955 c 144 § 2.]

**69.30.030 Rules and regulations—Duties of state board of health.** The state board of health shall cause such investigations to be made as are necessary to determine reasonable requirements governing the sanitation of shellfish, shellfish growing areas, and shellfish plant facilities and operations, in order to protect public health and carry out the provisions of this chapter; and shall adopt such requirements as rules and regulations of the state board of health. Such rules and regulations may include reasonable sanitary requirements relative to the quality of shellfish growing waters and areas, boat and barge sanitation, building construction, water supply, sewage and waste water disposal, lighting and ventilation, insect and rodent control, shell disposal, garbage and waste disposal, cleanliness of establishment, the handling, storage, construction and maintenance of equipment, the handling, storage and refrigeration of shellfish, the identification of containers, and the handling, maintenance, and storage of permits, certificates, and records regarding shellfish taken under this chapter. [1995 c 147 § 2; 1955 c 144 § 3.]

**69.30.050 Certificates of approval—Shellfish growing areas.** Shellfish growing areas, from which shellfish are removed in a commercial quantity or for sale for human consumption shall meet the requirements of this chapter and the state board of health; and such shellfish growing areas shall be so certified by the department. Any person desiring to remove shellfish in a commercial quantity or for sale for human consumption from a growing area in the state of Washington shall first apply to the department for a certificate of approval of the growing area. The department shall cause the shellfish growing area to be inspected and if the area meets the requirements of this chapter and the state board of health, the department shall issue a certificate of approval for that area. Such certificates shall be issued for a period not to exceed twelve months and may be revoked at any time the area is found not to be in compliance with the requirements of this chapter and the state board of health.

Shellfish growing areas from which shellfish are removed in a commercial quantity for purposes other than human consumption including but not limited to bait or seed, shall be readily subject to monitoring and inspections, and shall otherwise be of a character ensuring that shellfish harvested from such areas are not diverted for use as food. A certificate of approval issued by the department for shellfish growing areas from which shellfish are to be removed for purposes other than human consumption shall specify the date or dates and time of harvest and all applicable conditions of harvest, identification by tagging, dyeing, or other means, transportation, processing, sale, and other factors to ensure that shellfish harvested from such areas are not diverted for use as food. [1995 c 147 § 3; 1985 c 51 § 2; 1955 c 144 § 5.]

**69.30.060 Certificates of approval—Culling, shucking, packing establishments.** No person shall cull, shuck, or pack shellfish in the state of Washington in a commercial

quantity or for sale for human consumption unless the establishment in which such operations are conducted has been certified by the department as meeting the requirements of the state board of health. Any person desiring to cull, shuck, or pack shellfish within the state of Washington in a commercial quantity or for sale for human consumption, shall apply to the department for a certificate of approval for the establishment in which such operations will be done. The department shall cause such establishment to be inspected, and if the establishment meets the sanitary requirements of the state board of health, the department shall issue a certificate of approval. Such certificates of approval shall be issued for a period not to exceed twelve months, and may be revoked at any time the establishment or the operations are found not to be in compliance with the sanitary requirements of the state board of health. [1985 c 51 § 3; 1955 c 144 § 6.]

**69.30.070 Certificates of approval—Compliance with other laws and rules required.** Any certificate of approval issued under the provisions of this chapter shall not relieve any person from complying with the laws, rules and/or regulations of the department of fish and wildlife, relative to shellfish. [1994 c 264 § 40; 1955 c 144 § 7.]

**69.30.080 Certificates of approval—Denial, revocation, suspension, modification—Procedure.** The department may deny, revoke, suspend, or modify a certificate of approval, license, or other necessary departmental approval in any case in which it determines there has been a failure or refusal to comply with this chapter or rules adopted under it. RCW 43.70.115 governs notice of a license denial, revocation, suspension, or modification and provides the right to an adjudicative proceeding. [1991 c 3 § 304; 1989 c 175 § 125; 1979 c 141 § 71; 1955 c 144 § 8.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**69.30.085 License, certificate of approval—Denial, revocation, suspension—Prohibited acts.** (1) A person whose license or certificate of approval is denied, revoked, or suspended as a result of violations of this chapter or rules adopted under this chapter may not:

(a) Serve as the person in charge of, be employed by, manage, or otherwise participate to any degree in a shellfish operation licensed or certified under this chapter or rules adopted under this chapter; or

(b) Participate in the harvesting, shucking, packing, or shipping of shellfish in commercial quantities or for sale for human consumption.

(2) This section applies to a person only during the period of time in which that person's license or certificate of approval is denied, revoked, or suspended. [1998 c 44 § 1.]

**69.30.110 Possession or sale in violation of chapter—Enforcement—Seizure—Disposal.** It is unlawful for any person to possess a commercial quantity of shellfish or to sell or offer to sell shellfish in the state which have not been grown, shucked, packed, or shipped in accordance with the provisions of this chapter. Failure of a shellfish grower to display immediately a certificate of approval issued under RCW 69.30.050 to an authorized representative of the department,

a fish and wildlife officer, or an ex officio fish and wildlife officer subjects the grower to the penalty provisions of this chapter, as well as immediate seizure of the shellfish by the representative or officer.

Failure of a shellfish processor to display a certificate of approval issued under RCW 69.30.060 to an authorized representative of the department, a fish and wildlife officer, or an ex officio fish and wildlife officer subjects the processor to the penalty provisions of this chapter, as well as immediate seizure of the shellfish by the representative or officer.

Shellfish seized under this section shall be subject to prompt disposal by the representative or officer and may not be used for human consumption. The state board of health shall develop by rule procedures for the disposal of the seized shellfish. [2001 c 253 § 6; 1995 c 147 § 4; 1985 c 51 § 4; 1979 c 141 § 74; 1955 c 144 § 11.]

**69.30.120 Inspection by department—Access to regulated business or entity—Administrative inspection warrant.** The department may enter and inspect any shellfish growing area or establishment for the purposes of determining compliance with this chapter and rules adopted under this chapter. The department may inspect all shellfish, all permits, all certificates of approval and all records.

During such inspections the department shall have free and unimpeded access to all buildings, yards, warehouses, storage and transportation facilities, vehicles, and other places reasonably considered to be or to have been part of the regulated business or entity, to all ledgers, books, accounts, memorandums, or records required to be compiled or maintained under this chapter or under rules adopted pursuant to this chapter, and to any products, components, or other materials reasonably believed to be or to have been used, processed, or produced by or in connection with the regulated business or activity. In connection with such inspections the department may take such samples or specimens as may be reasonably necessary to determine whether there exists a violation of this chapter or rules adopted under this chapter.

Inspection of establishments may be conducted between eight a.m. and five p.m. on any weekday that is not a legal holiday, during any time the regulated business or entity has established as its usual business hours, at any time the regulated business or entity is open for business or is otherwise in operation, and at any other time with the consent of the owner or authorized agent of the regulated business or entity.

The department may apply for an administrative inspection warrant to a court of competent jurisdiction and an administrative inspection warrant may issue where:

(1) The department has attempted an inspection under this chapter and access to all or part of the regulated business or entity has been actually or constructively denied; or

(2) There is reasonable cause to believe that a violation of this chapter or of rules adopted under this chapter is occurring or has occurred. [1995 c 147 § 5; 1985 c 51 § 5; 1955 c 144 § 12.]

**69.30.130 Water pollution laws and rules applicable.** All existing laws and rules and regulations governing the pollution of waters of the state shall apply in the control of pollution of shellfish growing areas. [1955 c 144 § 13.]

**69.30.140 Penalties.** Any person convicted of violating any of the provisions of this chapter shall be guilty of a gross misdemeanor. A conviction is an unvacated forfeiture of bail or collateral deposited to secure the defendant's appearance in court, the payment of a fine, a plea of guilty, or a finding of guilt on a violation of this chapter, regardless of whether imposition of sentence is deferred or the penalty is suspended, and shall be treated as a conviction for purposes of license revocation and suspension of privileges under \*RCW 77.15.700(5). [2001 c 253 § 7; 1995 c 147 § 6; 1985 c 51 § 6; 1955 c 144 § 14.]

\*Reviser's note: RCW 77.15.700 was amended by 2003 c 386 § 2, deleting subsection (5).

**69.30.145 Civil penalties.** As limited by RCW 69.30.150, the department may impose civil penalties for violations of standards set forth in this chapter or rules adopted under RCW 69.30.030. [1989 c 200 § 3.]

**69.30.150 Civil penalties—General provisions.** (1) In addition to any other penalty provided by law, every person who violates standards set forth in this chapter or rules adopted under RCW 69.30.030 is subject to a penalty of not more than five hundred dollars per day for every violation. Every violation is a separate and distinct offense. In case of a continuing violation, every day's continuance is a separate and distinct violation. Every person who, through an act of commission or omission, procures, aids, or abets in the violation is in violation of this section and is subject to the penalty provided in this section.

(2) The penalty provided for in this section shall be imposed by a notice in writing to the person against whom the civil fine is assessed and shall describe the violation with reasonable particularity. The notice shall be personally served in the manner of service of a summons in a civil action or in a manner which shows proof of receipt. Any penalty imposed by this section shall become due and payable twenty-eight days after receipt of notice unless application for remission or mitigation is made as provided in subsection (3) of this section or unless application for an adjudicative proceeding is filed as provided in subsection (4) of this section.

(3) Within fourteen days after the notice is received, the person incurring the penalty may apply in writing to the department for the remission or mitigation of the penalty. Upon receipt of the application, the department may remit or mitigate the penalty upon whatever terms the department deems proper, giving consideration to the degree of hazard associated with the violation. The department may only grant a remission or mitigation that it deems to be in the best interests of carrying out the purposes of this chapter. The department may ascertain the facts regarding all such applications in a manner it deems proper. When an application for remission or mitigation is made, any penalty incurred pursuant to this section becomes due and payable twenty-eight days after receipt of the notice setting forth the disposition of the application, unless an application for an adjudicative proceeding to contest the disposition is filed as provided in subsection (4) of this section.

(4) Within twenty-eight days after notice is received, the person incurring the penalty may file an application for an

adjudicative proceeding and may pursue subsequent review as provided in chapter 34.05 RCW and applicable rules of the department or board of health.

(5) Any penalty imposed by final order following an adjudicative proceeding becomes due and payable upon service of the final order.

(6) The attorney general may bring an action in the name of the department in the superior court of Thurston county or of any county in which the violator may do business to collect any penalty imposed under this chapter.

(7) All penalties imposed under this section shall be paid to the state treasury and credited to the general fund. [1989 c 200 § 4.]

**69.30.900 Severability—1955 c 144.** If any provision of this chapter or the application thereof to any person or circumstances shall be held invalid, such invalidity shall not affect the provisions of the application of this chapter which can be given effect without the invalid provision or application, and to this end the provisions of the chapter are declared to be severable. [1955 c 144 § 15.]

### Chapter 69.36 RCW

#### WASHINGTON CAUSTIC POISON ACT OF 1929

##### Sections

69.36.010	Definitions.
69.36.020	Misbranded sales, etc., prohibited—Exceptions.
69.36.030	Condemnation of misbranded packages.
69.36.040	Enforcement—Approval of labels.
69.36.050	Duty to prosecute.
69.36.060	Penalty.
69.36.070	Short title.

*Highway transportation of poisons, corrosives, etc.: RCW 46.48.170, 46.48.175.*

**69.36.010 Definitions.** In this chapter, unless the context or subject matter otherwise requires,

(1) The term "dangerous caustic or corrosive substance" means each and all of the acids, alkalis, and substances named below: (a) Hydrochloric acid and any preparation containing free or chemically unneutralized hydrochloric acid (HCl) in a concentration of ten percent or more; (b) sulphuric acid and any preparation containing free or chemically unneutralized sulphuric acid (H<sub>2</sub>SO<sub>4</sub>) in concentration of ten percent or more; (c) nitric acid or any preparation containing free or chemically unneutralized nitric acid (HNO<sub>3</sub>) in a concentration of five percent or more; (d) carboic acid (C<sub>6</sub>H<sub>5</sub>OH), otherwise known as phenol, and any preparation containing carboic acid in a concentration of five percent or more; (e) oxalic acid and any preparation containing free or chemically unneutralized oxalic acid (H<sub>2</sub>C<sub>2</sub>O<sub>4</sub>) in a concentration of ten percent or more; (f) any salt of oxalic acid and any preparation containing any such salt in a concentration of ten percent or more; (g) acetic acid or any preparation containing free or chemically unneutralized acetic acid (HC<sub>2</sub>H<sub>3</sub>O<sub>2</sub>) in a concentration of twenty percent or more; (h) hypochlorous acid, either free or combined, and any preparation containing the same in a concentration so as to yield ten percent or more by weight of available chlorine, excluding calx chlorinata, bleaching powder, and chloride of lime; (i) potassium hydroxide and any preparation containing free or

chemically unneutralized potassium hydroxide (KOH), including caustic potash and Vienna paste, in a concentration of ten percent or more; (j) sodium hydroxide and any preparation containing free or chemically unneutralized sodium hydroxide (NaOH), including caustic soda and lye, in a concentration of ten percent or more; (k) silver nitrate, sometimes known as lunar caustic, and any preparation containing silver nitrate (AgNO<sub>3</sub>) in a concentration of five percent or more, and (l) ammonia water and any preparation yielding free or chemically uncombined ammonia (NH<sub>3</sub>), including ammonium hydroxide and "hartshorn", in a concentration of five percent or more.

(2) The term "misbranded parcel, package, or container" means a retail parcel, package, or container of any dangerous caustic or corrosive substance for household use, not bearing a conspicuous, easily legible label or sticker, containing (a) the name of the article; (b) the name and place of business of the manufacturer, packer, seller, or distributor; (c) the word "POISON", running parallel with the main body of reading matter on said label or sticker, on a clear, plain background of a distinctly contrasting color, in uncondensed gothic capital letters, the letters to be not less than twenty-four point size, unless there is on said label or sticker no other type so large, in which event the type shall be not smaller than the largest type on the label or sticker, and (d) directions for treatment in case of accidental personal injury by the dangerous caustic or corrosive substance; PROVIDED, That such directions need not appear on labels or stickers on parcels, packages or containers at the time of shipment or of delivery for shipment by manufacturers or wholesalers for other than household use. PROVIDED FURTHER, That this chapter is not to be construed as applying to any substance subject to the chapter, sold at wholesale or retail for use by a retail druggist in filling prescriptions or in dispensing, in pursuance of a prescription by a physician, dentist, or veterinarian; or for use by or under the direction of a physician, dentist, or veterinarian; or for use by a chemist in the practice or teaching of his profession; or for any industrial or professional use, or for use in any of the arts and sciences. [1929 c 82 § 1; RRS § 2508-1. Formerly RCW 69.36.010 and 69.36.020, part.]

**69.36.020 Misbranded sales, etc., prohibited—Exceptions.** No person shall sell, barter, or exchange, or receive, hold, pack, display, or offer for sale, barter, or exchange, in this state any dangerous caustic or corrosive substance in a misbranded parcel, package, or container, said parcel, package, or container being designed for household use; PROVIDED, That household products for cleaning and washing purposes, subject to this chapter and labeled in accordance therewith, may be sold, offered for sale, held for sale and distributed in this state by any dealer, wholesale or retail; PROVIDED FURTHER, That no person shall be liable to prosecution and conviction under this chapter when he establishes a guaranty bearing the signature and address of a vendor residing in the United States from whom he purchased the dangerous caustic or corrosive substance, to the effect that such substance is not misbranded within the meaning of this chapter. No person in this state shall give any such guaranty when such dangerous caustic or corrosive substance is in fact misbranded within the meaning of this chapter.

[1929 c 82 § 2; RRS § 2508-2. FORMER PART OF SECTION: 1929 c 82 § 1 now codified in RCW 69.32.010.]

**69.36.030 Condemnation of misbranded packages.**

Any dangerous caustic or corrosive substance in a misbranded parcel, package, or container suitable for household use, that is being sold, bartered, or exchanged, or held, displayed, or offered for sale, barter, or exchange, shall be liable to be proceeded against in any superior court within the jurisdiction of which the same is found and seized for confiscation, and if such substance is condemned as misbranded, by said court, it shall be disposed of by destruction or sale, as the court may direct; and if sold, the proceeds, less the actual costs and charges, shall be paid over to the state treasurer; but such substance shall not be sold contrary to the laws of the state: PROVIDED, HOWEVER, That upon the payment of the costs of such proceedings and the execution and delivery of a good and sufficient bond to the effect that such substance will not be unlawfully sold or otherwise disposed of, the court may by order direct that such substance be delivered to the owner thereof. Such condemnation proceedings shall conform as near as may be to proceedings in the seizure, and condemnation of substances unfit for human consumption. [1929 c 82 § 3; RRS § 2508-3.]

**69.36.040 Enforcement—Approval of labels.** The director of agriculture shall enforce the provisions of this chapter, and he is hereby authorized and empowered to approve and register such brands and labels intended for use under the provisions of this chapter as may be submitted to him for that purpose and as may in his judgment conform to the requirements of this statute: PROVIDED, HOWEVER, That in any prosecution under this chapter the fact that any brand or label involved in said prosecution has not been submitted to said director for approval, or if submitted, has not been approved by him, shall be immaterial. [1929 c 82 § 5; RRS § 2508-5.]

**69.36.050 Duty to prosecute.** Every prosecuting attorney to whom there is presented, or who in any way procures, satisfactory evidence of any violation of the provisions of this chapter shall cause appropriate proceedings to be commenced and prosecuted in the proper courts, without delay, for the enforcement of the penalties as in such cases herein provided. [1929 c 82 § 6; RRS § 2508-6.]

**69.36.060 Penalty.** Any person violating the provisions of this chapter shall be guilty of a misdemeanor. [1929 c 82 § 4; RRS § 2508-4.]

**69.36.070 Short title.** This chapter may be cited as the Washington Caustic Poison Act of 1929. [1929 c 82 § 7; RRS § 2508-7.]

**Chapter 69.38 RCW**

**POISONS—SALES AND MANUFACTURING**

Sections

69.38.010 "Poison" defined.  
69.38.020 Exemptions from chapter.

(2010 Ed.)

69.38.030 Poison register—Identification of purchaser.  
69.38.040 Inspection of poison register—Penalty for failure to maintain register.  
69.38.050 False representation—Penalty.  
69.38.060 Manufacturers and sellers of poisons—License required—Penalty.

**69.38.010 "Poison" defined.** As used in this chapter "poison" means:

- (1) Arsenic and its preparations;
- (2) Cyanide and its preparations, including hydrocyanic acid;
- (3) Strychnine; and
- (4) Any other substance designated by the state board of pharmacy which, when introduced into the human body in quantities of sixty grains or less, causes violent sickness or death. [1987 c 34 § 1.]

**69.38.020 Exemptions from chapter.** All substances regulated under chapters 15.58, 17.21, 69.04, 69.41, and 69.50 RCW, and chapter 69.45 RCW are exempt from the provisions of this chapter. [1987 c 34 § 2.]

**69.38.030 Poison register—Identification of purchaser.** It is unlawful for any person, either on the person's own behalf or while an employee of another, to sell any poison without first recording in ink in a "poison register" kept solely for this purpose the following information:

- (1) The date and hour of the sale;
- (2) The full name and home address of the purchaser;
- (3) The kind and quantity of poison sold; and
- (4) The purpose for which the poison is being purchased.

The purchaser shall present to the seller identification which contains the purchaser's photograph and signature. No sale may be made unless the seller is satisfied that the purchaser's representations are true and that the poison will be used for a lawful purpose. Both the purchaser and the seller shall sign the poison register entry.

If a delivery of a poison will be made outside the confines of the seller's premises, the seller may require the business purchasing the poison to submit a letter of authorization as a substitute for the purchaser's photograph and signature requirements. The letter of authorization shall include the unified business identifier and address of the business, a full description of how the substance will be used, and the signature of the purchaser. Either the seller or the employee of the seller delivering or transferring the poison shall affix his or her signature to the letter as a witness to the signature and identification of the purchaser. The transaction shall be recorded in the poison register as provided in this section. Letters of authorization shall be kept with the poison register and shall be subject to the inspection and preservation requirements contained in RCW 69.38.040. [1988 c 197 § 1; 1987 c 34 § 3.]

**69.38.040 Inspection of poison register—Penalty for failure to maintain register.** Every poison register shall be open for inspection by law enforcement and health officials at all times and shall be preserved for at least two years after the date of the last entry. Any person failing to maintain the poison register as required in this chapter is guilty of a misdemeanor. [1987 c 34 § 4.]

**69.38.050 False representation—Penalty.** Any person making any false representation to a seller when purchasing a poison is guilty of a gross misdemeanor. [1987 c 34 § 5.]

**69.38.060 Manufacturers and sellers of poisons—License required—Penalty.** The state board of pharmacy, after consulting with the department of health, shall require and provide for the annual licensure of every person now or hereafter engaged in manufacturing or selling poisons within this state. Upon a payment of a fee as set by the department, the department shall issue a license in such form as it may prescribe to such manufacturer or seller. Such license shall be displayed in a conspicuous place in such manufacturer's or seller's place of business for which it is issued.

Any person manufacturing or selling poison within this state without a license is guilty of a misdemeanor. [1989 1st ex.s. c 9 § 440; 1987 c 34 § 6.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

## Chapter 69.40 RCW

### POISONS AND DANGEROUS DRUGS

#### Sections

69.40.010	Poison in edible products.
69.40.015	Poison in edible products—Penalty.
69.40.020	Poison in milk or food products—Penalty.
69.40.025	Supplementary to existing laws—Enforcement.
69.40.030	Placing poison or other harmful object or substance in food, drinks, medicine, or water—Penalty.
69.40.055	Selling repackaged poison without labeling—Penalty.
69.40.150	Drug control assistance unit investigative assistance for enforcement of chapter.

*Pharmacists: Chapter 18.64 RCW.*

*Poison information centers: Chapter 18.76 RCW.*

*Poisoning animals—Strychnine sales: RCW 16.52.190 and 16.52.193.*

*Washington pesticide application act: Chapter 17.21 RCW.*

**69.40.010 Poison in edible products.** It shall be unlawful for any person to sell, offer for sale, use, distribute, or leave in any place, any crackers, biscuit, bread or any other preparation resembling or in similitude, of any edible product, containing arsenic, strychnine or any other poison. [1905 c 141 § 1; RRS § 6140. FORMER PART OF SECTION: 1905 c 141 § 2 now codified as RCW 69.40.015.]

**69.40.015 Poison in edible products—Penalty.** Any person violating the provisions of RCW 69.40.010 shall upon conviction be punished by a fine of not less than ten dollars nor more than five hundred dollars. [1905 c 141 § 2; RRS § 6141. Formerly RCW 69.40.010, part.]

**69.40.020 Poison in milk or food products—Penalty.** Any person who shall sell, offer to sell, or have in his or her possession for the purpose of sale, either as owner, proprietor, or assistant, or in any manner whatsoever, whether for hire or otherwise, any milk or any food products, containing the chemical ingredient commonly known as formaldehyde, or in which any formaldehyde or other poisonous substance has been mixed, for the purpose of preservation or otherwise, is guilty of a class C felony, and upon conviction thereof shall be imprisoned in the penitentiary for the period of not less than one year nor more than three years. [2003 c 53 § 320;

1905 c 50 § 1; RRS § 6142. FORMER PART OF SECTION: 1905 c 50 § 2, now codified as RCW 69.40.025.]

**Intent—Effective date—2003 c 53:** See notes following RCW 2.48.180.

**69.40.025 Supplementary to existing laws—Enforcement.** \*This act shall be supplementary to the laws of this state now in force prohibiting the adulteration of food and fraud in the sale thereof; and the state dairy and food commissioner, the chemist of the state agricultural experiment station, the state attorney general and the prosecuting attorneys of the several counties of this state are hereby required, without additional compensation, to assist in the execution of \*this act, and in the prosecution of all persons charged with the violation thereof, in like manner and with like powers as they are now authorized and required by law to enforce the laws of this state against the adulteration of food and fraud in the sale thereof. [1905 c 50 § 2; RRS § 6143. Formerly RCW 69.40.020, part.]

**Reviser's note:** \*(1) "This act" appears in 1905 c 50 and the sections of the act are codified as RCW 69.40.020 and 69.40.025.

(2) The duties of the state dairy and food commissioner have devolved upon the director of agriculture through a chain of statute as follows: 1913 c 60 § 6(2); 1921 c 7 § 93(1). See RCW 43.23.090(1).

**69.40.030 Placing poison or other harmful object or substance in food, drinks, medicine, or water—Penalty.**

(1) Every person who willfully mingles poison or places any harmful object or substance, including but not limited to pins, tacks, needles, nails, razor blades, wire, or glass in any food, drink, medicine, or other edible substance intended or prepared for the use of a human being or who shall knowingly furnish, with intent to harm another person, any food, drink, medicine, or other edible substance containing such poison or harmful object or substance to another human being, and every person who willfully poisons any spring, well, or reservoir of water, is guilty of a class B felony and shall be punished by imprisonment in a state correctional facility for not less than five years or by a fine of not less than one thousand dollars.

(2) \*This act shall not apply to the employer or employers of a person who violates this section without such employer's knowledge. [2003 c 53 § 321; 1992 c 7 § 48; 1973 c 119 § 1; 1909 c 249 § 264; RRS § 2516. Prior: Code 1881 § 802; 1873 p 185 § 27; 1869 p 202 § 25; 1854 p 79 § 25.]

**\*Reviser's note:** "this act" refers to the 1973 c 119 § 1 amendment to this section.

**Intent—Effective date—2003 c 53:** See notes following RCW 2.48.180.

**69.40.055 Selling repackaged poison without labeling—Penalty.** It shall be unlawful for any person to sell at retail or furnish any repackaged poison drug or product without affixing or causing to be affixed to the bottle, box, vessel, or package a label containing the name of the article, all labeling required by the Food and Drug Administration and other federal or state laws or regulations, and the word "poison" distinctly shown with the name and place of the business of the seller.

This section shall not apply to the dispensing of drugs or poisons on the prescription of a practitioner.

The board of pharmacy shall have the authority to promulgate rules for the enforcement and implementation of this section.

Every person who shall violate any of the provisions of this section shall be guilty of a misdemeanor. [1981 c 147 § 4.]

**69.40.150 Drug control assistance unit investigative assistance for enforcement of chapter.** See RCW 43.43.610.

### Chapter 69.41 RCW

#### LEGEND DRUGS—PRESCRIPTION DRUGS

##### Sections

69.41.010	Definitions.
69.41.020	Prohibited acts—Information not privileged communication.
69.41.030	Sale, delivery, or possession of legend drug without prescription or order prohibited—Exceptions—Penalty.
69.41.032	Prescription of legend drugs by dialysis programs.
69.41.040	Prescription requirements—Penalty.
69.41.042	Record requirements.
69.41.044	Confidentiality.
69.41.050	Labeling requirements—Penalty.
69.41.055	Electronic communication of prescription information—Board may adopt rules.
69.41.060	Search and seizure.
69.41.062	Search and seizure at rental premises—Notification of landlord.
69.41.065	Violations—Juvenile driving privileges.
69.41.072	Violations of chapter 69.50 RCW not to be charged under chapter 69.41 RCW—Exception.
69.41.075	Rules—Availability of lists of drugs.
69.41.080	Animal control—Rules for possession and use of legend drugs.
69.41.085	Medication assistance—Community-based care setting.

#### SUBSTITUTION OF PRESCRIPTION DRUGS

69.41.100	Legislative recognition and declaration.
69.41.110	Definitions.
69.41.120	Prescriptions to contain instruction as to whether or not a therapeutically equivalent generic drug may be substituted—Out-of-state prescriptions—Form—Contents—Procedure.
69.41.130	Savings in price to be passed on to purchaser.
69.41.140	Minimum manufacturing standards and practices.
69.41.150	Liability of practitioner, pharmacist.
69.41.160	Pharmacy signs as to substitution for prescribed drugs.
69.41.170	Coercion of pharmacist prohibited—Penalty.
69.41.180	Rules.
69.41.190	Preferred drug substitution—Exceptions—Notice—Limited restrictions.

#### IDENTIFICATION OF LEGEND DRUGS—MARKING

69.41.200	Requirements for identification of legend drugs—Marking.
69.41.210	Definitions.
69.41.220	Published lists of drug imprints—Requirements for.
69.41.230	Drugs in violation are contraband.
69.41.240	Rules—Labeling and marking.
69.41.250	Exemptions.
69.41.260	Manufacture or distribution for resale—Requirements.
69.41.280	Confidentiality.

#### USE OF STEROIDS

69.41.300	Definitions.
69.41.310	Rules.
69.41.320	Practitioners—Restricted use—Medical records.
69.41.330	Public warnings—School districts.
69.41.340	Student athletes—Violations—Penalty.
69.41.350	Penalties.
69.41.900	Severability—1979 c 110.

*Drug nuisances—Injunctions: Chapter 7.43 RCW.*

(2010 Ed.)

**69.41.010 Definitions.** As used in this chapter, the following terms have the meanings indicated unless the context clearly requires otherwise:

(1) "Administer" means the direct application of a legend drug whether by injection, inhalation, ingestion, or any other means, to the body of a patient or research subject by:

(a) A practitioner; or

(b) The patient or research subject at the direction of the practitioner.

(2) "Community-based care settings" include: Community residential programs for the developmentally disabled, certified by the department of social and health services under chapter 71A.12 RCW; adult family homes licensed under chapter 70.128 RCW; and boarding homes licensed under chapter 18.20 RCW. Community-based care settings do not include acute care or skilled nursing facilities.

(3) "Deliver" or "delivery" means the actual, constructive, or attempted transfer from one person to another of a legend drug, whether or not there is an agency relationship.

(4) "Department" means the department of health.

(5) "Dispense" means the interpretation of a prescription or order for a legend drug and, pursuant to that prescription or order, the proper selection, measuring, compounding, labeling, or packaging necessary to prepare that prescription or order for delivery.

(6) "Dispenser" means a practitioner who dispenses.

(7) "Distribute" means to deliver other than by administering or dispensing a legend drug.

(8) "Distributor" means a person who distributes.

(9) "Drug" means:

(a) Substances recognized as drugs in the official United States pharmacopoeia, official homeopathic pharmacopoeia of the United States, or official national formulary, or any supplement to any of them;

(b) Substances intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in human beings or animals;

(c) Substances (other than food, minerals or vitamins) intended to affect the structure or any function of the body of human beings or animals; and

(d) Substances intended for use as a component of any article specified in (a), (b), or (c) of this subsection. It does not include devices or their components, parts, or accessories.

(10) "Electronic communication of prescription information" means the communication of prescription information by computer, or the transmission of an exact visual image of a prescription by facsimile, or other electronic means for original prescription information or prescription refill information for a legend drug between an authorized practitioner and a pharmacy or the transfer of prescription information for a legend drug from one pharmacy to another pharmacy.

(11) "In-home care settings" include an individual's place of temporary and permanent residence, but does not include acute care or skilled nursing facilities, and does not include community-based care settings.

(12) "Legend drugs" means any drugs which are required by state law or regulation of the state board of pharmacy to be dispensed on prescription only or are restricted to use by practitioners only.

(13) "Legible prescription" means a prescription or medication order issued by a practitioner that is capable of being

read and understood by the pharmacist filling the prescription or the nurse or other practitioner implementing the medication order. A prescription must be hand printed, typewritten, or electronically generated.

(14) "Medication assistance" means assistance rendered by a nonpractitioner to an individual residing in a community-based care setting or in-home care setting to facilitate the individual's self-administration of a legend drug or controlled substance. It includes reminding or coaching the individual, handing the medication container to the individual, opening the individual's medication container, using an enabler, or placing the medication in the individual's hand, and such other means of medication assistance as defined by rule adopted by the department. A nonpractitioner may help in the preparation of legend drugs or controlled substances for self-administration where a practitioner has determined and communicated orally or by written direction that such medication preparation assistance is necessary and appropriate. Medication assistance shall not include assistance with intravenous medications or injectable medications, except prefilled insulin syringes.

(15) "Person" means individual, corporation, government or governmental subdivision or agency, business trust, estate, trust, partnership or association, or any other legal entity.

(16) "Practitioner" means:

(a) A physician under chapter 18.71 RCW, an osteopathic physician or an osteopathic physician and surgeon under chapter 18.57 RCW, a dentist under chapter 18.32 RCW, a podiatric physician and surgeon under chapter 18.22 RCW, a veterinarian under chapter 18.92 RCW, a registered nurse, advanced registered nurse practitioner, or licensed practical nurse under chapter 18.79 RCW, an optometrist under chapter 18.53 RCW who is certified by the optometry board under RCW 18.53.010, an osteopathic physician assistant under chapter 18.57A RCW, a physician assistant under chapter 18.71A RCW, a naturopath licensed under chapter 18.36A RCW, a pharmacist under chapter 18.64 RCW, or, when acting under the required supervision of a dentist licensed under chapter 18.32 RCW, a dental hygienist licensed under chapter 18.29 RCW;

(b) A pharmacy, hospital, or other institution licensed, registered, or otherwise permitted to distribute, dispense, conduct research with respect to, or to administer a legend drug in the course of professional practice or research in this state; and

(c) A physician licensed to practice medicine and surgery or a physician licensed to practice osteopathic medicine and surgery in any state, or province of Canada, which shares a common border with the state of Washington.

(17) "Secretary" means the secretary of health or the secretary's designee. [2009 c 549 § 1024; 2006 c 8 § 115. Prior: 2003 c 257 § 2; 2003 c 140 § 11; 2000 c 8 § 2; prior: 1998 c 222 § 1; 1998 c 70 § 2; 1996 c 178 § 16; 1994 sp.s. c 9 § 736; prior: 1989 1st ex.s. c 9 § 426; 1989 c 36 § 3; 1984 c 153 § 17; 1980 c 71 § 1; 1979 ex.s. c 139 § 1; 1973 1st ex.s. c 186 § 1.]

**Findings—2006 c 8:** "The legislature finds that prescription drug errors occur because the pharmacist or nurse cannot read the prescription from the physician or other provider with prescriptive authority. The legislature fur-

ther finds that legible prescriptions can prevent these errors." [2006 c 8 § 114.]

**Findings—Intent—Part headings and subheadings not law—Severability—2006 c 8:** See notes following RCW 5.64.010.

**Effective date—2003 c 140:** See note following RCW 18.79.040.

**Findings—Intent—2000 c 8:** "The legislature finds that we have one of the finest health care systems in the world and excellent professionals to deliver that care. However, there are incidents of medication errors that are avoidable and serious mistakes that are preventable. Medical errors throughout the health care system constitute one of the nation's leading causes of death and injury resulting in over seven thousand deaths a year, according to a recent report from the institute of medicine. The majority of medical errors do not result from individual recklessness, but from basic flaws in the way the health system is organized. There is a need for a comprehensive strategy for government, industry, consumers, and health providers to reduce medical errors. The legislature declares a need to bring about greater safety for patients in this state who depend on prescription drugs.

It is the intent of the legislature to promote medical safety as a top priority for all citizens of our state." [2000 c 8 § 1.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**69.41.020 Prohibited acts—Information not privileged communication.** Legend drugs shall not be sold, delivered, dispensed or administered except in accordance with this chapter.

(1) No person shall obtain or attempt to obtain a legend drug, or procure or attempt to procure the administration of a legend drug:

- (a) By fraud, deceit, misrepresentation, or subterfuge; or
- (b) By the forgery or alteration of a prescription or of any written order; or
- (c) By the concealment of a material fact; or
- (d) By the use of a false name or the giving of a false address.

(2) Information communicated to a practitioner in an effort unlawfully to procure a legend drug, or unlawfully to procure the administration of any such drug, shall not be deemed a privileged communication.

(3) No person shall willfully make a false statement in any prescription, order, report, or record, required by this chapter.

(4) No person shall, for the purpose of obtaining a legend drug, falsely assume the title of, or represent himself or herself to be, a manufacturer, wholesaler, or any practitioner.

(5) No person shall make or utter any false or forged prescription or other written order for legend drugs.

(6) No person shall affix any false or forged label to a package or receptacle containing legend drugs.

(7) No person shall willfully fail to maintain the records required by RCW 69.41.042 and \*69.41.270.

(8) A violation of this section is a class B felony punishable according to chapter 9A.20 RCW. [2003 c 53 § 322. Prior: 1989 1st ex.s. c 9 § 408; 1989 c 352 § 8; 1973 1st ex.s. c 186 § 2.]

**\*Reviser's note:** RCW 69.41.270 was repealed by 2003 c 275 § 5.

**Intent—Effective date—2003 c 53:** See notes following RCW 2.48.180.

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**69.41.030 Sale, delivery, or possession of legend drug without prescription or order prohibited—Exceptions—Penalty.** (1) It shall be unlawful for any person to sell, deliver, or possess any legend drug except upon the order or

prescription of a physician under chapter 18.71 RCW, an osteopathic physician and surgeon under chapter 18.57 RCW, an optometrist licensed under chapter 18.53 RCW who is certified by the optometry board under RCW 18.53.010, a dentist under chapter 18.32 RCW, a podiatric physician and surgeon under chapter 18.22 RCW, a veterinarian under chapter 18.92 RCW, a commissioned medical or dental officer in the United States armed forces or public health service in the discharge of his or her official duties, a duly licensed physician or dentist employed by the veterans administration in the discharge of his or her official duties, a registered nurse or advanced registered nurse practitioner under chapter 18.79 RCW when authorized by the nursing care quality assurance commission, an osteopathic physician assistant under chapter 18.57A RCW when authorized by the board of osteopathic medicine and surgery, a physician assistant under chapter 18.71A RCW when authorized by the medical quality assurance commission, or any of the following professionals in any province of Canada that shares a common border with the state of Washington or in any state of the United States: A physician licensed to practice medicine and surgery or a physician licensed to practice osteopathic medicine and surgery, a dentist licensed to practice dentistry, a podiatric physician and surgeon licensed to practice podiatric medicine and surgery, a licensed advanced registered nurse practitioner, or a veterinarian licensed to practice veterinary medicine: PROVIDED, HOWEVER, That the above provisions shall not apply to sale, delivery, or possession by drug wholesalers or drug manufacturers, or their agents or employees, or to any practitioner acting within the scope of his or her license, or to a common or contract carrier or warehouseman, or any employee thereof, whose possession of any legend drug is in the usual course of business or employment: PROVIDED FURTHER, That nothing in this chapter or chapter 18.64 RCW shall prevent a family planning clinic that is under contract with the department of social and health services from selling, delivering, possessing, and dispensing commercially prepackaged oral contraceptives prescribed by authorized, licensed health care practitioners.

(2)(a) A violation of this section involving the sale, delivery, or possession with intent to sell or deliver is a class B felony punishable according to chapter 9A.20 RCW.

(b) A violation of this section involving possession is a misdemeanor. [2010 c 83 § 1. Prior: 2003 c 142 § 3; 2003 c 53 § 323; 1996 c 178 § 17; 1994 sp.s. c 9 § 737; 1991 c 30 § 1; 1990 c 219 § 2; 1987 c 144 § 1; 1981 c 120 § 1; 1979 ex.s. c 139 § 2; 1977 c 69 § 1; 1973 1st ex.s. c 186 § 3.]

**Severability—2003 c 142:** See note following RCW 18.53.010.

**Intent—Effective date—2003 c 53:** See notes following RCW 2.48.180.

**Finding—1990 c 219:** "The legislature finds that Washington citizens in the border areas of this state are prohibited from having prescriptions from out-of-state dentists and veterinarians filled at their in-state pharmacies, and that it is in the public interest to remove this barrier for the state's citizens." [1990 c 219 § 1.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**69.41.032 Prescription of legend drugs by dialysis programs.** This chapter shall not prevent a medicare-approved dialysis center or facility operating a medicare-approved home dialysis program from selling, delivering,

(2010 Ed.)

possessing, or dispensing directly to its dialysis patients, in case or full shelf lots, if prescribed by a physician licensed under chapter 18.57 or 18.71 RCW, those legend drugs determined by the board pursuant to rule. [1987 c 41 § 2.]

*Application of pharmacy statutes to dialysis programs: RCW 18.64.257.*

**69.41.040 Prescription requirements—Penalty.** (1)

A prescription, in order to be effective in legalizing the possession of legend drugs, must be issued for a legitimate medical purpose by one authorized to prescribe the use of such legend drugs. An order purporting to be a prescription issued to a drug abuser or habitual user of legend drugs, not in the course of professional treatment, is not a prescription within the meaning and intent of this section; and the person who knows or should know that he or she is filling such an order, as well as the person issuing it, may be charged with violation of this chapter. A legitimate medical purpose shall include use in the course of a bona fide research program in conjunction with a hospital or university.

(2) A violation of this section is a class B felony punishable according to chapter 9A.20 RCW. [2003 c 53 § 324; 1973 1st ex.s. c 186 § 4.]

**Intent—Effective date—2003 c 53:** See notes following RCW 2.48.180.

**69.41.042 Record requirements.** A pharmaceutical manufacturer, wholesaler, pharmacy, or practitioner who purchases, dispenses, or distributes legend drugs shall maintain invoices or such other records as are necessary to account for the receipt and disposition of the legend drugs.

The records maintained pursuant to this section shall be available for inspection by the board and its authorized representatives and shall be maintained for two years. [1989 1st ex.s. c 9 § 405.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**69.41.044 Confidentiality.** All records, reports, and information obtained by the board or its authorized representatives from or on behalf of a pharmaceutical manufacturer, representative of a manufacturer, wholesaler, pharmacy, or practitioner who purchases, dispenses, or distributes legend drugs under this chapter are confidential and exempt from public inspection and copying under chapter 42.56 RCW. Nothing in this section restricts the investigations or the proceedings of the board so long as the board and its authorized representatives comply with the provisions of chapter 42.56 RCW. [2005 c 274 § 328; 1989 1st ex.s. c 9 § 406.]

**Part headings not law—Effective date—2005 c 274:** See RCW 42.56.901 and 42.56.902.

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**69.41.050 Labeling requirements—Penalty.** (1) To every box, bottle, jar, tube or other container of a legend drug, which is dispensed by a practitioner authorized to prescribe legend drugs, there shall be affixed a label bearing the name of the prescriber, complete directions for use, the name of the drug either by the brand or generic name and strength per unit dose, name of patient and date: PROVIDED, That the practitioner may omit the name and dosage of the drug if he or she determines that his or her patient should not have

this information and that, if the drug dispensed is a trial sample in its original package and which is labeled in accordance with federal law or regulation, there need be set forth additionally only the name of the issuing practitioner and the name of the patient.

(2) A violation of this section is a misdemeanor. [2003 c 53 § 325; 1980 c 83 § 8; 1973 1st ex.s. c 186 § 5.]

**Intent—Effective date—2003 c 53:** See notes following RCW 2.48.180.

**69.41.055 Electronic communication of prescription information—Board may adopt rules.** (1) Information concerning an original prescription or information concerning a prescription refill for a legend drug may be electronically communicated between an authorized practitioner and a pharmacy of the patient's choice with no intervening person having access to the prescription drug order pursuant to the provisions of this chapter if the electronically communicated prescription information complies with the following:

(a) Electronically communicated prescription information must comply with all applicable statutes and rules regarding the form, content, recordkeeping, and processing of a prescription for a legend drug;

(b) The system used for transmitting electronically communicated prescription information and the system used for receiving electronically communicated prescription information must be approved by the board. This subsection does not apply to currently used facsimile equipment transmitting an exact visual image of the prescription. The board shall maintain and provide, upon request, a list of systems used for electronically communicating prescription information currently approved by the board;

(c) An explicit opportunity for practitioners must be made to indicate their preference on whether a therapeutically equivalent generic drug may be substituted;

(d) Prescription drug orders are confidential health information, and may be released only to the patient or the patient's authorized representative, the prescriber or other authorized practitioner then caring for the patient, or other persons specifically authorized by law to receive such information;

(e) To maintain confidentiality of prescription records, the electronic system shall have adequate security and systems safeguards designed to prevent and detect unauthorized access, modification, or manipulation of these records. The pharmacist in charge shall establish or verify the existence of policies and procedures which ensure the integrity and confidentiality of prescription information transmitted to the pharmacy by electronic means. All managers, employees, and agents of the pharmacy are required to read, sign, and comply with the established policies and procedures; and

(f) The pharmacist shall exercise professional judgment regarding the accuracy, validity, and authenticity of the prescription drug order received by way of electronic transmission, consistent with federal and state laws and rules and guidelines of the board.

(2) The board may adopt rules implementing this section. [1998 c 222 § 2.]

**69.41.060 Search and seizure.** If, upon the sworn complaint of any person, it shall be made to appear to any judge

of the superior or district court that there is probable cause to believe that any legend drug is being used, manufactured, sold, bartered, exchanged, given away, furnished or otherwise disposed of or kept in violation of the provisions of this chapter, such judge shall, with or without the approval of the prosecuting attorney, issue a warrant directed to any peace officer in the county, commanding the peace officer to search the premises designated and described in such complaint and warrant, and to seize all legend drugs there found, together with the vessels in which they are contained, and all implements, furniture and fixtures used or kept for the illegal manufacture, sale, barter, exchange, giving away, furnishing or otherwise disposing of such legend drugs and to safely keep the same, and to make a return of said warrant within three days, showing all acts and things done thereunder, with a particular statement of all articles seized and the name of the person or persons in whose possession the same were found, if any, and if no person be found in the possession of said articles, the returns shall so state. A copy of said warrant shall be served upon the person or persons found in possession of any such legend drugs, furniture or fixtures so seized, and if no person be found in the possession thereof, a copy of said warrant shall be posted on the door of the building or room wherein the same are found, or, if there be no door, then in any conspicuous place upon the premises. [1987 c 202 § 227; 1973 1st ex.s. c 186 § 6.]

**Intent—1987 c 202:** See note following RCW 2.04.190.

**69.41.062 Search and seizure at rental premises—Notification of landlord.** Whenever a legend drug which is sold, delivered, or possessed in violation of this chapter is seized at rental premises, the law enforcement agency shall make a reasonable attempt to discover the identity of the landlord and shall notify the landlord in writing, at the last address listed in the property tax records and at any other address known by the law enforcement agency, of the seizure and the location of the seizure. [1988 c 150 § 8.]

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

**69.41.065 Violations—Juvenile driving privileges.** (1) If a juvenile thirteen years of age or older and under the age of twenty-one is found by a court to have committed any offense that is a violation of this chapter, the court shall notify the department of licensing within twenty-four hours after entry of the judgment.

(2) Except as otherwise provided in subsection (3) of this section, upon petition of a juvenile whose privilege to drive has been revoked pursuant to RCW 46.20.265, the court may notify the department of licensing that the juvenile's privilege to drive should be reinstated.

(3) If the conviction is for the juvenile's first violation of this chapter or chapter 66.44, 69.50, or 69.52 RCW, the juvenile may not petition the court for reinstatement of the juvenile's privilege to drive revoked pursuant to RCW 46.20.265 until the later of ninety days after the date the juvenile turns sixteen or ninety days after the judgment was entered. If the conviction was for the juvenile's second or subsequent violation of this chapter or chapter 66.44, 69.50, or 69.52 RCW, the juvenile may not petition the court for reinstatement of the juvenile's privilege to drive revoked pursuant to RCW

46.20.265 until the later of the date the juvenile turns seventeen or one year after the date judgment was entered. [1989 c 271 § 119; 1988 c 148 § 4.]

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

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**69.41.072 Violations of chapter 69.50 RCW not to be charged under chapter 69.41 RCW—Exception.** Any offense which is a violation of chapter 69.50 RCW other than RCW 69.50.4012 shall not be charged under this chapter. [2003 c 53 § 327.]

**Intent—Effective date—2003 c 53:** See notes following RCW 2.48.180.

**69.41.075 Rules—Availability of lists of drugs.** The state board of pharmacy may make such rules for the enforcement of this chapter as are deemed necessary or advisable. The board shall identify, by rule-making pursuant to chapter 34.05 RCW, those drugs which may be dispensed only on prescription or are restricted to use by practitioners, only. In so doing the board shall consider the toxicity or other potentiality for harmful effect of the drug, the method of its use, and any collateral safeguards necessary to its use. The board shall classify a drug as a legend drug where these considerations indicate the drug is not safe for use except under the supervision of a practitioner.

In identifying legend drugs the board may incorporate in its rules lists of drugs contained in commercial pharmaceutical publications by making specific reference to each such list and the date and edition of the commercial publication containing it. Any such lists so incorporated shall be available for public inspection at the headquarters of the department of health and shall be available on request from the department of health upon payment of a reasonable fee to be set by the department. [1989 1st ex.s. c 9 § 427; 1979 ex.s. c 139 § 3.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**69.41.080 Animal control—Rules for possession and use of legend drugs.** Humane societies and animal control agencies registered with the state board of pharmacy under chapter 69.50 RCW and authorized to euthanize animals may purchase, possess, and administer approved legend drugs for the sole purpose of sedating animals prior to euthanasia, when necessary, and for use in chemical capture programs. For the purposes of this section, "approved legend drugs" means those legend drugs designated by the board by rule as being approved for use by such societies and agencies for animal sedating or capture and does not include any substance regulated under chapter 69.50 RCW. Any society or agency so registered shall not permit persons to administer any legend drugs unless such person has demonstrated to the satisfaction of the board adequate knowledge of the potential hazards involved in and the proper techniques to be used in administering the drugs.

The board shall promulgate rules to regulate the purchase, possession, and administration of legend drugs by such societies and agencies and to insure strict compliance with the provisions of this section. Such rules shall require

(2010 Ed.)

that the storage, inventory control, administration, and recordkeeping for approved legend drugs conform to the standards adopted by the board under chapter 69.50 RCW to regulate the use of controlled substances by such societies and agencies. The board may suspend or revoke a registration under chapter 69.50 RCW upon a determination by the board that the person administering legend drugs has not demonstrated adequate knowledge as herein provided. This authority is granted in addition to any other power to suspend or revoke a registration as provided by law. [1989 c 242 § 1.]

**69.41.085 Medication assistance—Community-based care setting.** Individuals residing in community-based care settings, such as adult family homes, boarding homes, and residential care settings for the developmentally disabled, including an individual's home, may receive medication assistance. Nothing in this chapter affects the right of an individual to refuse medication or requirements relating to informed consent. [2003 c 140 § 12; 1998 c 70 § 1.]

**Effective date—2003 c 140:** See note following RCW 18.79.040.

## SUBSTITUTION OF PRESCRIPTION DRUGS

**69.41.100 Legislative recognition and declaration.** The legislature recognizes the responsibility of the state to insure that the citizens of the state are offered a choice between generic drugs and brand name drugs and the benefit of quality pharmaceutical products at competitive prices. Advances in the drug industry resulting from research and the elimination of counterfeiting of prescription drugs should benefit the users of the drugs. Pharmacy must continue to operate with accountability and effectiveness. The legislature hereby declares it to be the policy of the state that its citizens receive safe and therapeutically effective drug products at the most reasonable cost consistent with high drug quality standards. [1986 c 52 § 1; 1977 ex.s. c 352 § 1.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**69.41.110 Definitions.** As used in RCW 69.41.100 through 69.41.180, the following words shall have the following meanings:

- (1) "Brand name" means the proprietary or trade name selected by the manufacturer and placed upon a drug, its container, label, or wrapping at the time of packaging;
- (2) "Generic name" means the official title of a drug or drug ingredients published in the latest edition of a nationally recognized pharmacopoeia or formulary;
- (3) "Substitute" means to dispense, with the practitioner's authorization, a "therapeutically equivalent" drug product of the identical base or salt as the specific drug product prescribed: PROVIDED, That with the practitioner's prior consent, therapeutically equivalent drugs other than the identical base or salt may be dispensed;
- (4) "Therapeutically equivalent" means essentially the same efficacy and toxicity when administered to an individual in the same dosage regimen; and
- (5) "Practitioner" means a physician, osteopathic physician and surgeon, dentist, veterinarian, or any other person authorized to prescribe drugs under the laws of this state. [1979 c 110 § 1; 1977 ex.s. c 352 § 2.]

**69.41.120 Prescriptions to contain instruction as to whether or not a therapeutically equivalent generic drug may be substituted—Out-of-state prescriptions—Form—Contents—Procedure.** Every drug prescription shall contain an instruction on whether or not a therapeutically equivalent generic drug may be substituted in its place, unless substitution is permitted under a prior-consent authorization.

If a written prescription is involved, the prescription must be legible and the form shall have two signature lines at opposite ends on the bottom of the form. Under the line at the right side shall be clearly printed the words "DISPENSE AS WRITTEN". Under the line at the left side shall be clearly printed the words "SUBSTITUTION PERMITTED". The practitioner shall communicate the instructions to the pharmacist by signing the appropriate line. No prescription shall be valid without the signature of the practitioner on one of these lines. In the case of a prescription issued by a practitioner in another state that uses a one-line prescription form or variation thereof, the pharmacist may substitute a therapeutically equivalent generic drug unless otherwise instructed by the practitioner through the use of the words "dispense as written", words of similar meaning, or some other indication.

If an oral prescription is involved, the practitioner or the practitioner's agent shall instruct the pharmacist as to whether or not a therapeutically equivalent generic drug may be substituted in its place. The pharmacist shall note the instructions on the file copy of the prescription.

The pharmacist shall note the manufacturer of the drug dispensed on the file copy of a written or oral prescription. [2000 c 8 § 3; 1990 c 218 § 1; 1979 c 110 § 2; 1977 ex.s. c 352 § 3.]

**Findings—Intent—2000 c 8:** See note following RCW 69.41.010.

**69.41.130 Savings in price to be passed on to purchaser.** Unless the brand name drug is requested by the patient or the patient's representative, the pharmacist shall substitute an equivalent drug product which he has in stock if its wholesale price to the pharmacist is less than the wholesale price of the prescribed drug product, and at least sixty percent of the savings shall be passed on to the purchaser. [1986 c 52 § 2; 1979 c 110 § 3; 1977 ex.s. c 352 § 4.]

**69.41.140 Minimum manufacturing standards and practices.** A pharmacist may not substitute a product under the provisions of this section unless the manufacturer has shown that the drug has been manufactured with the following minimum good manufacturing standards and practices:

(1) Maintain quality control standards equal to those of the Food and Drug Administration;

(2) Comply with regulations promulgated by the Food and Drug Administration. [1979 c 110 § 4; 1977 ex.s. c 352 § 5.]

**69.41.150 Liability of practitioner, pharmacist.** (1) A practitioner who authorizes a prescribed drug shall not be liable for any side effects or adverse reactions caused by the manner or method by which a substituted drug product is selected or dispensed.

(2) A pharmacist who substitutes an equivalent drug product pursuant to RCW 69.41.100 through 69.41.180 as

now or hereafter amended assumes no greater liability for selecting the dispensed drug product than would be incurred in filling a prescription for a drug product prescribed by its established name.

(3) A pharmacist who substitutes a preferred drug for a nonpreferred drug pursuant to RCW 69.41.190 assumes no greater liability for substituting the preferred drug than would be incurred in filling a prescription for the preferred drug when prescribed by name. [2003 1st sp.s. c 29 § 6; 1979 c 110 § 5; 1977 ex.s. c 352 § 6.]

**Finding—Intent—Severability—Conflict with federal requirements—Effective date—2003 1st sp.s. c 29:** See notes following RCW 74.09.650.

**69.41.160 Pharmacy signs as to substitution for prescribed drugs.** Every pharmacy shall post a sign in a location at the prescription counter that is readily visible to patrons stating, "Under Washington law, an equivalent but less expensive drug may in some cases be substituted for the drug prescribed by your doctor. Such substitution, however, may only be made with the consent of your doctor. Please consult your pharmacist or physician for more information." [1979 c 110 § 6; 1977 ex.s. c 352 § 7.]

**69.41.170 Coercion of pharmacist prohibited—Penalty.** It shall be unlawful for any employer to coerce, within the meaning of RCW 9A.36.070, any pharmacist to dispense a generic drug or to substitute a generic drug for another drug. A violation of this section shall be punishable as a misdemeanor. [1977 ex.s. c 352 § 8.]

**69.41.180 Rules.** The state board of pharmacy may adopt any necessary rules under chapter 34.05 RCW for the implementation, continuation, or enforcement of RCW 69.41.100 through 69.41.180, including, but not limited to, a list of therapeutically or nontherapeutically equivalent drugs which, when adopted, shall be provided to all registered pharmacists in the state and shall be updated as necessary. [1979 c 110 § 7; 1977 ex.s. c 352 § 9.]

**69.41.190 Preferred drug substitution—Exceptions—Notice—Limited restrictions.** (1)(a) Except as provided in subsection (2) of this section, any pharmacist filling a prescription under a state purchased health care program as defined in RCW 41.05.011(2) shall substitute, where identified, a preferred drug for any nonpreferred drug in a given therapeutic class, unless the endorsing practitioner has indicated on the prescription that the nonpreferred drug must be dispensed as written, or the prescription is for a refill of an antipsychotic, antidepressant, antiepileptic, chemotherapy, antiretroviral, or immunosuppressive drug, or for the refill of an immunomodulator/antiviral treatment for hepatitis C for which an established, fixed duration of therapy is prescribed for at least twenty-four weeks but no more than forty-eight weeks, in which case the pharmacist shall dispense the prescribed nonpreferred drug.

(b) When a substitution is made under (a) of this subsection, the dispensing pharmacist shall notify the prescribing practitioner of the specific drug and dose dispensed.

(2)(a) A state purchased health care program may impose limited restrictions on an endorsing practitioner's

authority to write a prescription to dispense as written only under the following circumstances:

(i) There is statistical or clear data demonstrating the endorsing practitioner's frequency of prescribing dispensed as written for nonpreferred drugs varies significantly from the prescribing patterns of his or her peers;

(ii) The medical director of a state purchased health program has: (A) Presented the endorsing practitioner with data that indicates the endorsing practitioner's prescribing patterns vary significantly from his or her peers, (B) provided the endorsing practitioner an opportunity to explain the variation in his or her prescribing patterns to those of his or her peers, and (C) if the variation in prescribing patterns cannot be explained, provided the endorsing practitioner sufficient time to change his or her prescribing patterns to align with those of his or her peers; and

(iii) The restrictions imposed under (a) of this subsection (2) must be limited to the extent possible to reduce variation in prescribing patterns and shall remain in effect only until such time as the endorsing practitioner can demonstrate a reduction in variation in line with his or her peers.

(b) A state purchased health care program may immediately designate an available, less expensive, equally effective generic product in a previously reviewed drug class as a preferred drug, without first submitting the product to review by the pharmacy and therapeutics committee established pursuant to RCW 70.14.050.

(c) For a patient's first course of treatment within a therapeutic class of drugs, a state purchased health care program may impose limited restrictions on endorsing practitioners' authority to write a prescription to dispense as written, only under the following circumstances:

(i) There is a less expensive, equally effective therapeutic alternative generic product available to treat the condition;

(ii) The drug use review board established under WAC 388-530-4000 reviews and provides recommendations as to the appropriateness of the limitation;

(iii) Notwithstanding the limitation set forth in (c)(ii) of this subsection (2), the endorsing practitioner shall have an opportunity to request as medically necessary, that the brand name drug be prescribed as the first course of treatment;

(iv) The state purchased health care program may provide, where available, prescription, emergency room, diagnosis, and hospitalization history with the endorsing practitioner; and

(v) Specifically for antipsychotic restrictions, the state purchased health care program shall effectively guide good practice without interfering with the timeliness of clinical decision making. Department of social and health services prior authorization programs must provide for responses within twenty-four hours and at least a seventy-two hour emergency supply of the requested drug.

(d) If, within a therapeutic class, there is an equally effective therapeutic alternative over-the-counter drug available, a state purchased health care program may designate the over-the-counter drug as the preferred drug.

(e) A state purchased health care program may impose limited restrictions on endorsing practitioners' authority to prescribe pharmaceuticals to be dispensed as written for a purpose outside the scope of their approved labels only under the following circumstances:

(i) There is a less expensive, equally effective on-label product available to treat the condition;

(ii) The drug use review board established under WAC 388-530-4000 reviews and provides recommendations as to the appropriateness of the limitation; and

(iii) Notwithstanding the limitation set forth in (e)(ii) of this subsection (2), the endorsing practitioner shall have an opportunity to request as medically necessary, that the drug be prescribed for a covered off-label purpose.

(f) The provisions of this subsection related to the definition of medically necessary, prior authorization procedures and patient appeal rights shall be implemented in a manner consistent with applicable federal and state law.

(3) Notwithstanding the limitations in subsection (2) of this section, for refills for an antipsychotic, antidepressant, antiepileptic, chemotherapy, antiretroviral, or immunosuppressive drug, or for the refill of an immunomodulator antiviral treatment for hepatitis C for which an established, fixed duration of therapy is prescribed for at least twenty-four weeks by no more than forty-eight weeks, the pharmacist shall dispense the prescribed nonpreferred drug. [2009 c 575 § 1; 2006 c 233 § 1; 2003 1st sp.s. c 29 § 5.]

**Effective date—2009 c 575:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [May 19, 2009]." [2009 c 575 § 2.]

**Finding—Intent—Severability—Conflict with federal requirements—Effective date—2003 1st sp.s. c 29:** See notes following RCW 74.09.650.

## IDENTIFICATION OF LEGEND DRUGS—MARKING

**69.41.200 Requirements for identification of legend drugs—Marking.** (1) No legend drug in solid dosage form may be manufactured or commercially distributed within this state unless it has clearly marked or imprinted on it an individual symbol, number, company name, words, letters, marking, or National Drug Code number identifying the drug and the manufacturer or distributor of such drug.

(2) No manufacturer or distributor may sell any legend drug contained within a bottle, vial, carton, or other container, or in any way affixed or appended to or enclosed within a package of any kind designed or intended for delivery in such container or package to an ultimate consumer within this state unless such container or package has clearly and permanently marked or imprinted on it an individual symbol, number, company name, words, letters, marking, or National Drug Code number identifying the drug and the manufacturer or distributor of such drug.

(3) Whenever the distributor of a legend drug does not also manufacture it, the names and places of businesses of both shall appear on the stock container or package label in words that truly distinguish each. [1980 c 83 § 1.]

**69.41.210 Definitions.** The terms defined in this section shall have the meanings indicated when used in RCW 69.41.200 through 69.41.260.

(1) "Distributor" means any corporation, person, or other entity which distributes for sale a legend drug under its own label even though it is not the actual manufacturer of the legend drug.

(2) "Solid dosage form" means capsules or tablets or similar legend drug products intended for administration and which could be ingested orally.

(3) "Legend drug" means any drugs which are required by state law or regulation of the board to be dispensed as prescription only or are restricted to use by prescribing practitioners only and shall include controlled substances in Schedules II through V of chapter 69.50 RCW.

(4) "Board" means the state board of pharmacy. [1980 c 83 § 2.]

**69.41.220 Published lists of drug imprints—Requirements for.** Each manufacturer and distributor shall publish and provide to the board by filing with the department printed material which will identify each current imprint used by the manufacturer or distributor. The board shall be notified of any change by the filing of any change with the department. This information shall be provided by the department to all pharmacies licensed in the state of Washington, poison control centers, and hospital emergency rooms. [1989 1st ex.s. c 9 § 428; 1980 c 83 § 3.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**69.41.230 Drugs in violation are contraband.** Any legend drug prepared or manufactured or offered for sale in violation of this chapter or implementing rules shall be contraband and subject to seizure under the provisions of RCW 69.41.060. [1980 c 83 § 4.]

**69.41.240 Rules—Labeling and marking.** The board shall have authority to promulgate rules and regulations for the enforcement and implementation of RCW 69.41.050 and 69.41.200 through 69.41.260. [1980 c 83 § 5.]

**69.41.250 Exemptions.** (1) The board, upon application of a manufacturer, may exempt a particular legend drug from the requirements of RCW 69.41.050 and 69.41.200 through 69.41.260 on the grounds that imprinting is infeasible because of size, texture, or other unique characteristics.

(2) The provisions of RCW 69.41.050 and 69.41.200 through 69.41.260 shall not apply to any legend drug which is prepared or manufactured by a pharmacy in this state and is for the purpose of retail sale from such pharmacy and not intended for resale. [1980 c 83 § 6.]

**69.41.260 Manufacture or distribution for resale—Requirements.** All legend drugs manufactured or distributed for resale to any entity in this state other than the ultimate consumer shall meet the requirements of RCW 69.41.050 and 69.41.200 through 69.41.260 from a date eighteen months after June 12, 1980. [1980 c 83 § 7.]

**69.41.280 Confidentiality.** All records, reports, and information obtained by the board or its authorized representatives from or on behalf of a pharmaceutical manufacturer, representative of a manufacturer, wholesaler, pharmacy, or practitioner who purchases, dispenses, or distributes legend drugs under this chapter are confidential and exempt from public inspection and copying under chapter 42.56 RCW. Nothing in this section restricts the investigations or the pro-

ceedings of the board so long as the board and its authorized representatives comply with the provisions of chapter 42.56 RCW. [2005 c 274 § 329; 1989 c 352 § 6.]

**Part headings not law—Effective date—2005 c 274:** See RCW 42.56.901 and 42.56.902.

## USE OF STEROIDS

**69.41.300 Definitions.** For the purposes of RCW 69.41.300 through 69.41.350, "steroids" shall include the following:

(1) "Anabolic steroids" means synthetic derivatives of testosterone or any isomer, ester, salt, or derivative that act in the same manner on the human body;

(2) "Androgens" means testosterone in one of its forms or a derivative, isomer, ester, or salt, that act in the same manner on the human body; and

(3) "Human growth hormones" means growth hormones, or a derivative, isomer, ester, or salt that act in the same manner on the human body. [2003 c 53 § 328; 1989 c 369 § 1.]

**Intent—Effective date—2003 c 53:** See notes following RCW 2.48.180.

**69.41.310 Rules.** The state board of pharmacy shall specify by rule drugs to be classified as steroids as defined in RCW 69.41.300.

On or before December 1 of each year, the board shall inform the appropriate legislative committees of reference of the drugs that the board has added to the steroids in RCW 69.41.300. The board shall submit a statement of rationale for the changes. [1989 c 369 § 2.]

**69.41.320 Practitioners—Restricted use—Medical records.** (1)(a) A practitioner shall not prescribe, administer, or dispense steroids, as defined in RCW 69.41.300, or any form of autotransfusion for the purpose of manipulating hormones to increase muscle mass, strength, or weight, or for the purpose of enhancing athletic ability, without a medical necessity to do so.

(b) A person violating this subsection is guilty of a gross misdemeanor and is subject to disciplinary action under RCW 18.130.180.

(2) A practitioner shall complete and maintain patient medical records which accurately reflect the prescribing, administering, or dispensing of any substance or drug described in this section or any form of autotransfusion. Patient medical records shall indicate the diagnosis and purpose for which the substance, drug, or autotransfusion is prescribed, administered, or dispensed and any additional information upon which the diagnosis is based. [2003 c 53 § 329; 1989 c 369 § 3.]

**Intent—Effective date—2003 c 53:** See notes following RCW 2.48.180.

**69.41.330 Public warnings—School districts.** The superintendent of public instruction shall develop and distribute to all school districts signs of appropriate design and dimensions advising students of the health risks that steroids present when used solely to enhance athletic ability, and of the penalties for their unlawful possession provided by RCW 69.41.300 through 69.41.350.

School districts shall post or cause the signs to be posted in a prominent place for ease of viewing on the premises of school athletic departments. [2003 c 53 § 330; 1989 c 369 § 5.]

**Intent—Effective date—2003 c 53:** See notes following RCW 2.48.180.

**69.41.340 Student athletes—Violations—Penalty.** The superintendent of public instruction, in consultation with the Washington interscholastic activity association, shall promulgate rules by January 1, 1990, regarding loss of eligibility to participate in school-sponsored athletic events for any student athlete found to have violated this chapter. The regents or trustees of each institution of higher education shall promulgate rules by January 1, 1990, regarding loss of eligibility to participate in school-sponsored athletic events for any student athlete found to have violated this chapter. [1989 c 369 § 6.]

**69.41.350 Penalties.** (1) A person who violates the provisions of this chapter by possessing under two hundred tablets or eight 2cc bottles of steroid without a valid prescription is guilty of a gross misdemeanor.

(2) A person who violates the provisions of this chapter by possessing over two hundred tablets or eight 2cc bottles of steroid without a valid prescription is guilty of a class C felony and shall be punished according to chapter 9A.20 RCW. [2003 c 53 § 326; 1989 c 369 § 4; 1983 1st ex.s. c 4 § 4; 1973 1st ex.s. c 186 § 7. Formerly RCW 69.41.070.]

**Intent—Effective date—2003 c 53:** See notes following RCW 2.48.180.

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**69.41.900 Severability—1979 c 110.** If any provision of this 1979 act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1979 c 110 § 8.]

## Chapter 69.43 RCW PRECURSOR DRUGS

### Sections

69.43.010	Report to state board of pharmacy—List of substances—Modification of list—Identification of purchasers—Report of transactions—Penalties.
69.43.020	Receipt of substance from source outside state—Report—Penalty.
69.43.030	Exemptions.
69.43.035	Suspicious transactions—Report—Penalty.
69.43.040	Reporting form.
69.43.043	Recordkeeping requirements—Penalty.
69.43.048	Reporting and recordkeeping requirements—Submission of computer readable data, copies of federal reports.
69.43.050	Rules.
69.43.060	Theft—Missing quantity—Reporting.
69.43.070	Sale, transfer, or furnishing of substance for unlawful purpose—Receipt of substance with intent to use unlawfully—Class B felony.
69.43.080	False statement in report or record—Class C felony.
69.43.090	Permit to sell, transfer, furnish, or receive substance—Exemptions—Application for permit—Fee—Renewal—Penalty.
69.43.100	Refusal, suspension, or revocation of a manufacturer's or wholesaler's permit.
69.43.105	Ephedrine, pseudoephedrine, phenylpropanolamine—Sales restrictions—Record of transaction—Exceptions—Penalty.

69.43.110	Ephedrine, pseudoephedrine, phenylpropanolamine—Sales restrictions—Electronic sales tracking system—Penalty.
69.43.120	Ephedrine, pseudoephedrine, phenylpropanolamine—Possession of more than fifteen grams—Penalty—Exceptions.
69.43.130	Exemptions—Pediatric products—Products exempted by the state board of pharmacy.
69.43.135	Iodine, methylsulfonylmethane—Sales restrictions—Recording of transactions—Penalties.
69.43.140	Civil penalty—State board of pharmacy waiver.
69.43.150	Application of chapter to local government.
69.43.160	Ephedrine, pseudoephedrine, phenylpropanolamine—Methods to prevent sales violations—Department of health preparation of sign summarizing prohibitions.
69.43.165	Ephedrine, pseudoephedrine, phenylpropanolamine—Electronic sales tracking system—Board of pharmacy authority to adopt rules.
69.43.168	Pharmacy, shopkeeper, or itinerant vendor—Electronic sales tracking system—Liability.
69.43.180	Expansion of log requirements—Petition by law enforcement.
69.43.190	Products found at methamphetamine sites—Report.

**69.43.010 Report to state board of pharmacy—List of substances—Modification of list—Identification of purchasers—Report of transactions—Penalties.** (1) A report to the state board of pharmacy shall be submitted in accordance with this chapter by a manufacturer, wholesaler, retailer, or other person who sells, transfers, or otherwise furnishes to any person any of the following substances or their salts or isomers:

- (a) Anthranilic acid;
- (b) Barbituric acid;
- (c) Chlorephedrine;
- (d) Diethyl malonate;
- (e) D-lysergic acid;
- (f) Ephedrine;
- (g) Ergotamine tartrate;
- (h) Ethylamine;
- (i) Ethyl malonate;
- (j) Ethylephedrine;
- (k) Lead acetate;
- (l) Malonic acid;
- (m) Methylamine;
- (n) Methylformamide;
- (o) Methylephedrine;
- (p) Methylpseudoephedrine;
- (q) N-acetylanthranilic acid;
- (r) Norpseudoephedrine;
- (s) Phenylacetic acid;
- (t) Phenylpropanolamine;
- (u) Piperidine;
- (v) Pseudoephedrine; and
- (w) Pyrrolidine.

(2) The state board of pharmacy shall administer this chapter and may, by rule adopted pursuant to chapter 34.05 RCW, add a substance to or remove a substance from the list in subsection (1) of this section. In determining whether to add or remove a substance, the board shall consider the following:

- (a) The likelihood that the substance is useable as a precursor in the illegal production of a controlled substance as defined in chapter 69.50 RCW;
- (b) The availability of the substance;
- (c) The relative appropriateness of including the substance in this chapter or in chapter 69.50 RCW; and
- (d) The extent and nature of legitimate uses for the substance.

(3)(a) Any manufacturer, wholesaler, retailer, or other person shall, before selling, transferring, or otherwise furnishing any substance specified in subsection (1) of this section to any person, require proper identification from the purchaser.

(b) For the purposes of this subsection, "proper identification" means:

(i) A motor vehicle operator's license or other official state-issued identification of the purchaser containing a photograph of the purchaser, and includes the residential or mailing address of the purchaser, other than a post office box number;

(ii) The motor vehicle license number of any motor vehicle owned or operated by the purchaser;

(iii) A letter of authorization from any business for which any substance specified in subsection (1) of this section is being furnished, which includes the business license number and address of the business;

(iv) A description of how the substance is to be used; and

(v) The signature of the purchaser.

The person selling, transferring, or otherwise furnishing any substance specified in subsection (1) of this section shall affix his or her signature as a witness to the signature and identification of the purchaser.

(c) A violation of or a failure to comply with this subsection is a misdemeanor.

(4) Any manufacturer, wholesaler, retailer, or other person who sells, transfers, or otherwise furnishes the substance specified in subsection (1) of this section to any person shall, not less than twenty-one days before delivery of the substance, submit a report of the transaction, which includes the identification information specified in subsection (3) of this section to the state board of pharmacy. However, the state board of pharmacy may authorize the submission of the reports on a monthly basis with respect to repeated, regular transactions between the furnisher and the recipient involving the same substance if the state board of pharmacy determines that either of the following exist:

(a) A pattern of regular supply of the substance exists between the manufacturer, wholesaler, retailer, or other person who sells, transfers, or otherwise furnishes such substance and the recipient of the substance; or

(b) The recipient has established a record of using the substance for lawful purposes.

(5) Any person specified in subsection (4) of this section who does not submit a report as required by subsection (4) of this section is guilty of a gross misdemeanor. [2001 c 96 § 2; 1998 c 245 § 107; 1988 c 147 § 1.]

**Intent—2001 c 96:** "Communities all over the state of Washington have experienced an increase in the illegal manufacture of methamphetamine. Illegal methamphetamine labs create a significant threat to the health and safety of the people of the state. Some of the chemicals and compounds used to make methamphetamine, and the toxic wastes the process generates, are hazards to the public health. Increases in crime, violence, and the abuse and neglect of children present at laboratory sites are also associated with the increasing number of illegal laboratory sites. The drugs ephedrine, pseudoephedrine, and phenylpropanolamine, which are used in the illegal manufacture of methamphetamine, have been identified as factors in the increase in the number of illegal methamphetamine labs. Therefore, it is the intent of the legislature to place restrictions on the sale and possession of those three drugs in order to reduce the proliferation of illegal methamphetamine laboratories and the associated threats to public health and safety." [2001 c 96 § 1.]

**Severability—2001 c 96:** "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [2001 c 96 § 15.]

**69.43.020 Receipt of substance from source outside state—Report—Penalty.** (1) Any manufacturer, wholesaler, retailer, or other person who receives from a source outside of this state any substance specified in RCW 69.43.010(1) shall submit a report of such transaction to the state board of pharmacy under rules adopted by the board.

(2) Any person specified in subsection (1) of this section who does not submit a report as required by subsection (1) of this section is guilty of a gross misdemeanor. [2001 c 96 § 3; 1988 c 147 § 2.]

**Intent—Severability—2001 c 96:** See notes following RCW 69.43.010.

**69.43.030 Exemptions.** RCW 69.43.010 and 69.43.020 do not apply to any of the following:

(1) Any pharmacist or other authorized person who sells or furnishes a substance upon the prescription of a practitioner, as defined in chapter 69.41 RCW;

(2) Any practitioner who administers or furnishes a substance to his or her patients;

(3) Any manufacturer or wholesaler licensed by the state board of pharmacy who sells, transfers, or otherwise furnishes a substance to a licensed pharmacy or practitioner;

(4) Any sale, transfer, furnishing, or receipt of any drug that contains ephedrine, phenylpropanolamine, or pseudoephedrine, or of any cosmetic that contains a substance specified in RCW 69.43.010(1), if such drug or cosmetic is lawfully sold, transferred, or furnished, over the counter without a prescription under chapter 69.04 or 69.41 RCW. [1988 c 147 § 3.]

**69.43.035 Suspicious transactions—Report—Penalty.** (1) Any manufacturer or wholesaler who sells, transfers, or otherwise furnishes any substance specified in RCW 69.43.010(1) to any person in a suspicious transaction shall report the transaction in writing to the state board of pharmacy.

(2) Any person specified in subsection (1) of this section who does not submit a report as required by subsection (1) of this section is guilty of a gross misdemeanor.

(3) For the purposes of this section, "suspicious transaction" means a sale or transfer to which any of the following applies:

(a) The circumstances of the sale or transfer would lead a reasonable person to believe that the substance is likely to be used for the purpose of unlawfully manufacturing a controlled substance under chapter 69.50 RCW, based on such factors as the amount involved, the method of payment, the method of delivery, and any past dealings with any participant in the transaction. The state board of pharmacy shall adopt by rule criteria for determining whether a transaction is suspicious, taking into consideration the recommendations in appendix A of the report to the United States attorney general by the suspicious orders task force under the federal comprehensive methamphetamine control act of 1996.

(b) The transaction involves payment for any substance specified in RCW 69.43.010(1) in cash or money orders in a total amount of more than two hundred dollars.

(4) The board of pharmacy shall transmit to the department of revenue a copy of each report of a suspicious transaction that it receives under this section. [2004 c 52 § 6; 2001 c 96 § 4.]

**Finding—Severability—Effective date—2004 c 52:** See notes following RCW 18.64.044.

**Intent—Severability—2001 c 96:** See notes following RCW 69.43.010.

**69.43.040 Reporting form.** (1) The department of health, in accordance with rules developed by the state board of pharmacy shall provide a common reporting form for the substances in RCW 69.43.010 that contains at least the following information:

- (a) Name of the substance;
- (b) Quantity of the substance sold, transferred, or furnished;
- (c) The date the substance was sold, transferred, or furnished;
- (d) The name and address of the person buying or receiving the substance; and
- (e) The name and address of the manufacturer, wholesaler, retailer, or other person selling, transferring, or furnishing the substance.

(2) Monthly reports authorized under RCW 69.43.010(4) may be computer-generated in accordance with rules adopted by the department. [2001 c 96 § 7; 1989 1st ex.s. c 9 § 441; 1988 c 147 § 4.]

**Intent—Severability—2001 c 96:** See notes following RCW 69.43.010.

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**69.43.043 Recordkeeping requirements—Penalty.**

(1) Any manufacturer or wholesaler who sells, transfers, or otherwise furnishes any substance specified in RCW 69.43.010(1) to any person shall maintain a record of each such sale or transfer. The records must contain:

- (a) The name of the substance;
- (b) The quantity of the substance sold, transferred, or furnished;
- (c) The date the substance was sold, transferred, or furnished;
- (d) The name and address of the person buying or receiving the substance; and
- (e) The method of and amount of payment for the substance.

(2) The records of sales and transfers required by this section shall be available for inspection by the state board of pharmacy and its authorized representatives and shall be maintained for two years.

(3) A violation of this section is a gross misdemeanor. [2001 c 96 § 5.]

**Intent—Severability—2001 c 96:** See notes following RCW 69.43.010.

**69.43.048 Reporting and recordkeeping requirements—Submission of computer readable data, copies of federal reports.** A manufacturer, wholesaler, retailer, or

(2010 Ed.)

other person who sells, transfers, or otherwise furnishes any substance specified in RCW 69.43.010(1) and who is subject to the reporting or recordkeeping requirements of this chapter may satisfy the requirements by submitting to the state board of pharmacy, and its authorized representatives:

(1) Computer readable data from which all of the required information may be readily derived; or

(2) Copies of reports that are filed under federal law that contain all of the information required by the particular reporting or recordkeeping requirement of this chapter which it is submitted to satisfy. [2001 c 96 § 6.]

**Intent—Severability—2001 c 96:** See notes following RCW 69.43.010.

**69.43.050 Rules.** (1) The state board of pharmacy may adopt all rules necessary to carry out this chapter.

(2) Notwithstanding subsection (1) of this section, the department of health may adopt rules necessary for the administration of this chapter. [1989 1st ex.s. c 9 § 442; 1988 c 147 § 5.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**69.43.060 Theft—Missing quantity—Reporting.** (1) The theft or loss of any substance under RCW 69.43.010 discovered by any person regulated by this chapter shall be reported to the state board of pharmacy within seven days after such discovery.

(2) Any difference between the quantity of any substance under RCW 69.43.010 received and the quantity shipped shall be reported to the state board of pharmacy within seven days of the receipt of actual knowledge of the discrepancy. When applicable, any report made pursuant to this subsection shall also include the name of any common carrier or person who transported the substance and the date of shipment of the substance. [1988 c 147 § 6.]

**69.43.070 Sale, transfer, or furnishing of substance for unlawful purpose—Receipt of substance with intent to use unlawfully—Class B felony.** (1) Any manufacturer, wholesaler, retailer, or other person who sells, transfers, or otherwise furnishes any substance listed in RCW 69.43.010 with knowledge or the intent that the recipient will use the substance unlawfully to manufacture a controlled substance under chapter 69.50 RCW is guilty of a class B felony under chapter 9A.20 RCW.

(2) Any person who receives any substance listed in RCW 69.43.010 with intent to use the substance unlawfully to manufacture a controlled substance under chapter 69.50 RCW is guilty of a class B felony under chapter 9A.20 RCW. [1988 c 147 § 7.]

**69.43.080 False statement in report or record—Class C felony.** It is unlawful for any person knowingly to make a false statement in connection with any report or record required under this chapter. A violation of this section is a class C felony under chapter 9A.20 RCW. [1988 c 147 § 8.]

**69.43.090 Permit to sell, transfer, furnish, or receive substance—Exemptions—Application for permit—Fee—Renewal—Penalty.** (1) Any manufacturer, wholesaler,

[Title 69 RCW—page 55]

retailer, or other person who sells, transfers, or otherwise furnishes any substance specified in RCW 69.43.010 to any person or who receives from a source outside of the state any substance specified in RCW 69.43.010 shall obtain a permit for the conduct of that business from the state board of pharmacy. However, a permit shall not be required of any manufacturer, wholesaler, retailer, or other person for the sale, transfer, furnishing, or receipt of any drug that contains ephedrine, phenylpropanolamine, or pseudoephedrine, or of any cosmetic that contains a substance specified in RCW 69.43.010(1), if such drug or cosmetic is lawfully sold, transferred, or furnished over the counter without a prescription or by a prescription under chapter 69.04 or 69.41 RCW.

(2) Applications for permits shall be filed with the department in writing and signed by the applicant, and shall set forth the name of the applicant, the business in which the applicant is engaged, the business address of the applicant, and a full description of any substance sold, transferred, or otherwise furnished, or received.

(3) The board may grant permits on forms prescribed by it. The permits shall be effective for not more than one year from the date of issuance.

(4) Each applicant shall pay at the time of filing an application for a permit a fee determined by the department.

(5) A permit granted under this chapter may be renewed on a date to be determined by the board, and annually thereafter, upon the filing of a renewal application and the payment of a permit renewal fee determined by the department.

(6) Permit fees charged by the department shall not exceed the costs incurred by the department in administering this chapter.

(7) Selling, transferring, or otherwise furnishing, or receiving any substance specified in RCW 69.43.010 without a required permit, is a gross misdemeanor. [2001 c 96 § 8; 1989 1st ex.s. c 9 § 443; 1988 c 147 § 9.]

**Intent—Severability—2001 c 96:** See notes following RCW 69.43.010.

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**69.43.100 Refusal, suspension, or revocation of a manufacturer's or wholesaler's permit.** The board shall have the power to refuse, suspend, or revoke the permit of any manufacturer or wholesaler upon proof that:

(1) The permit was procured through fraud, misrepresentation, or deceit;

(2) The permittee has violated or has permitted any employee to violate any of the laws of this state relating to drugs, controlled substances, cosmetics, or nonprescription drugs, or has violated any of the rules and regulations of the board of pharmacy. [1988 c 147 § 10.]

**69.43.105 Ephedrine, pseudoephedrine, phenylpropanolamine—Sales restrictions—Record of transaction—Exceptions—Penalty.** (1) For purposes of this section, "traditional Chinese herbal practitioner" means a person who is certified as a diplomate in Chinese herbology from the national certification commission for acupuncture and oriental medicine or who has received a certificate in Chinese herbology from a school accredited by the accreditation council on acupuncture and oriental medicine.

(2) A pharmacy licensed by, or shopkeeper or itinerant vendor registered with, the department of health under chapter 18.64 RCW, or an employee thereof, a practitioner as defined in RCW 18.64.011, or a traditional Chinese herbal practitioner may not knowingly sell, transfer, or otherwise furnish to any person a product at retail that he or she knows to contain any detectable quantity of ephedrine, pseudoephedrine, or phenylpropanolamine, or their salts, isomers, or salts of isomers, without first obtaining photo identification of the person that shows the date of birth of the person.

(3) A person buying or receiving a product at retail containing any detectable quantity of ephedrine, pseudoephedrine, or phenylpropanolamine, or their salts, isomers, or salts of isomers, from a pharmacy licensed by, or shopkeeper or itinerant vendor registered with, the department of health under chapter 18.64 RCW, or an employee thereof, a practitioner as defined in RCW 18.64.011, or a traditional Chinese herbal practitioner must first produce photo identification of the person that shows the date of birth of the person.

(4) Any product containing any detectable quantity of ephedrine, pseudoephedrine, or phenylpropanolamine, or their salts, isomers, or salts of isomers, shall be kept (a) behind a counter where the public is not permitted, or (b) in a locked display case so that a customer wanting access must ask an employee of the merchant for assistance.

(5) No pharmacy licensed by, or shopkeeper or itinerant vendor registered with, the department of health under chapter 18.64 RCW, or an employee thereof, a practitioner as defined in RCW 18.64.011, or a traditional Chinese herbal practitioner may sell any product containing any detectable quantity of ephedrine, pseudoephedrine, or phenylpropanolamine, or their salts, isomers, or salts of isomers, to a person that is not at least eighteen years old.

(6) A pharmacy licensed by, or shopkeeper or itinerant vendor registered with, the department of health under chapter 18.64 RCW selling a nonprescription drug containing ephedrine, pseudoephedrine, phenylpropanolamine, or their salts, isomers, or salts of isomers shall require the purchaser to electronically or manually sign a record of the transaction. The record must include the name and address of the purchaser, the date and time of the sale, the name and initials of the shopkeeper, itinerant vendor, pharmacist, pharmacy technician, or employee conducting the transaction, the name of the product being sold, as well as the total quantity in grams, of ephedrine, pseudoephedrine, phenylpropanolamine, or their salts, isomers, or salts of isomers, being sold.

(7) The board of pharmacy, by rule, may exempt products containing ephedrine, pseudoephedrine, or phenylpropanolamine, or their salts, isomers, or salts of isomers, in combination with another active ingredient from the requirements of this section if they are found not to be used in the illegal manufacture of methamphetamine or other controlled dangerous substances. A manufacturer of a drug product may apply for removal of the product from the requirements of this section if the product is determined by the board to have been formulated in such a way as to effectively prevent the conversion of the active ingredient into methamphetamine. The burden of proof for exemption is upon the person requesting the exemption. The petitioner shall provide the board with evidence that the product has been formulated in such a way as to serve as an effective general deterrent to the

conversion of pseudoephedrine into methamphetamine. The evidence must include the furnishing of a valid scientific study, conducted by an independent, professional laboratory and evincing professional quality chemical analysis. Factors to be considered in whether a product should be excluded from this section include but are not limited to:

(a) Ease with which the product can be converted to methamphetamine;

(b) Ease with which ephedrine, pseudoephedrine, or phenylpropanolamine is extracted from the substance and whether it forms an emulsion, salt, or other form;

(c) Whether the product contains a "molecular lock" that renders it incapable of being converted into methamphetamine;

(d) Presence of other ingredients that render the product less likely to be used in the manufacture of methamphetamine; and

(e) Any pertinent data that can be used to determine the risk of the substance being used in the illegal manufacture of methamphetamine or any other controlled substance.

(8) Nothing in this section applies:

(a) To any product containing ephedrine, pseudoephedrine, or phenylpropanolamine, or their salts, isomers, or salts of isomers that is not the only active ingredient and that is in liquid, liquid capsule, or gel capsule form;

(b) To the sale of a product that may only be sold upon the presentation of a prescription;

(c) To the sale of a product by a traditional Chinese herbal practitioner to a patient; or

(d) When the details of the transaction are recorded in a pharmacy profile individually identified with the recipient and maintained by a licensed pharmacy.

(9)(a) No pharmacy licensed by, or shopkeeper or itinerant vendor registered with, the department of health under chapter 18.64 RCW, a practitioner as defined in RCW 18.64.011, or a traditional Chinese herbal practitioner may retaliate against any employee that has made a good faith attempt to comply with the requirements of this section by requesting that a customer present photo identification, making a reasonable effort to determine the customer's age.

(b) No pharmacy licensed by, or shopkeeper or itinerant vendor registered with, the department of health under chapter 18.64 RCW, a practitioner as defined in RCW 18.64.011, or a traditional Chinese herbal practitioner is subject to prosecution under subsection (10) of this section if they made a good faith attempt to comply with the requirements of this section by requesting that a customer present photo identification, making a reasonable effort to determine the customer's age.

(10) A violation of this section is a gross misdemeanor. [2010 c 182 § 1; 2005 c 388 § 2.]

**Finding—2005 c 388:** "Restricting access to certain precursor drugs used to manufacture methamphetamine to ensure that they are only sold at retail to individuals who will use them for legitimate purposes upon production of proper identification is an essential step to controlling the manufacture of methamphetamine." [2005 c 388 § 1.]

**Effective dates—2005 c 388:** "(1) Section 2 of this act takes effect October 1, 2005.

(2) Sections 1, 3 through 7, 9, and 10 of this act take effect January 1, 2006.

(3) Section 8 of this act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its (2010 Ed.)

existing public institutions, and takes effect immediately [May 11, 2005]." [2005 c 388 § 11.]

**Severability—2005 c 388:** "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [2005 c 388 § 10.]

**69.43.110 Ephedrine, pseudoephedrine, phenylpropanolamine—Sales restrictions—Electronic sales tracking system—Penalty.** (1) It is unlawful for a pharmacy licensed by, or shopkeeper or itinerant vendor registered with, the department of health under chapter 18.64 RCW, or an employee thereof, or a practitioner as defined in RCW 18.64.011, knowingly to sell, transfer, or to otherwise furnish, in a single transaction a total of more than 3.6 grams of ephedrine, pseudoephedrine, or phenylpropanolamine, their salts, isomers, or salts of isomers, in any twenty-four hour period or more than a total of nine grams per purchaser in any thirty-day period.

(2) It is unlawful for a person who is not a manufacturer, wholesaler, pharmacy, practitioner, shopkeeper, or itinerant vendor licensed by or registered with the department of health under chapter 18.64 RCW to purchase or acquire more than 3.6 grams in any twenty-four hour period, or more than a total of nine grams in any thirty-day period, of the substances specified in subsection (1) of this section.

(3) It is unlawful for any person to sell or distribute any of the substances specified in subsection (1) of this section unless the person is licensed by or registered with the department of health under chapter 18.64 RCW, or is a practitioner as defined in RCW 18.64.011.

(4)(a) Beginning July 1, 2011, or the date upon which the electronic sales tracking system established under RCW 69.43.165 is available, whichever is later, a pharmacy licensed by, or shopkeeper or itinerant vendor registered with, the department of health under chapter 18.64 RCW shall, before completing a sale under this section, submit the required information to the electronic sales tracking system established under RCW 69.43.165, as long as such a system is available without cost to the pharmacy, shopkeeper, or itinerant vendor for accessing the system. The pharmacy, shopkeeper, or itinerant vendor may not complete the sale if the system generates a stop sale alert, except as permitted in RCW 69.43.165.

(b) If a pharmacy, shopkeeper, or itinerant vendor selling a nonprescription drug containing ephedrine, pseudoephedrine, or phenylpropanolamine, or their salts, isomers, or salts of isomers experiences mechanical or electronic failure of the electronic sales tracking system and is unable to comply with the electronic sales tracking requirement, he or she shall maintain a written log or an alternative electronic recordkeeping mechanism until such time as he or she is able to comply with the electronic sales tracking requirement.

(c) A pharmacy, shopkeeper, or itinerant vendor selling a nonprescription drug containing ephedrine, pseudoephedrine, or phenylpropanolamine, or their salts, isomers, or salts of isomers may seek an exemption from submitting transactions to the electronic sales tracking system in writing to the board of pharmacy stating the reasons for the exemption. The board may grant an exemption for good cause shown, but in no event shall a granted exemption exceed one

hundred eighty days. The board may grant multiple exemptions for any pharmacy, shopkeeper, or itinerant vendor if the good cause shown indicates significant hardship for compliance with this section. A pharmacy, shopkeeper, or itinerant vendor that receives an exemption shall maintain a logbook in hardcopy form and must require the purchaser to provide the information required under this section before the completion of any sale. The logbook shall be maintained as a record of each sale for inspection by any law enforcement officer or board inspector during normal business hours in accordance with any rules adopted pursuant to RCW 69.43.165. For purposes of this subsection (4)(c), "good cause" includes, but is not limited to, situations where the installation of the necessary equipment to access the system is unavailable or cost prohibitive to the pharmacy, shopkeeper, or itinerant vendor.

(d) A pharmacy, shopkeeper, or itinerant vendor may withdraw from participating in the electronic sales tracking system if the system is no longer being furnished without cost for accessing the system. A pharmacy, shopkeeper, or itinerant vendor who withdraws from the electronic sales tracking system is subject to the same requirements as a pharmacy, shopkeeper, or itinerant vendor who has been granted an exemption under (c) of this subsection.

(e) For the purposes of this subsection (4) and RCW 69.43.165:

(i) "Cost for accessing the system" means costs relating to:

(A) Access to the web-based electronic sales tracking software, including inputting and retrieving data;

(B) The web-based software known as software as a service;

(C) Training; and

(D) Technical support to integrate to point of sale vendors, if necessary.

(ii) "Cost for accessing the system" does not include:

(A) Costs relating to required internet access;

(B) Optional hardware that a pharmacy may choose to purchase for work flow purposes; or

(C) Other equipment.

(5) A violation of this section is a gross misdemeanor. [2010 c 182 § 2; 2005 c 388 § 4; 2004 c 52 § 5; 2001 c 96 § 9.]

**Finding—Effective dates—Severability—2005 c 388:** See notes following RCW 69.43.105.

**Finding—Severability—Effective date—2004 c 52:** See notes following RCW 18.64.044.

**Intent—Severability—2001 c 96:** See notes following RCW 69.43.010.

**69.43.120 Ephedrine, pseudoephedrine, phenylpropanolamine—Possession of more than fifteen grams—Penalty—Exceptions.** (1) Any person who possesses more than fifteen grams of ephedrine, pseudoephedrine, or phenylpropanolamine, their salts, isomers, or salts of isomers, or a combination of any of those substances, is guilty of a gross misdemeanor.

(2) This section does not apply to any of the following:

(a) A pharmacist or other authorized person who sells or furnishes ephedrine, pseudoephedrine, or phenylpropanolamine, their salts, isomers, or salts of isomers upon the prescription of a practitioner, as defined in RCW 69.41.010;

(b) A practitioner who administers or furnishes ephedrine, pseudoephedrine, or phenylpropanolamine, their salts, isomers, or salts of isomers to his or her patients;

(c) A pharmacy, manufacturer, or wholesaler licensed by, or shopkeeper or itinerant vendor registered with, the department of health under chapter 18.64 RCW;

(d) A person in the course of his or her business of selling, transporting, or storing ephedrine, pseudoephedrine, or phenylpropanolamine, their salts, isomers, or salts of isomers, for a person described in (a), (b), or (c) of this subsection; or

(e) A person in possession of more than fifteen grams of ephedrine, pseudoephedrine, or phenylpropanolamine, their salts, isomers, or salts of isomers in their home or residence under circumstances consistent with typical medicinal or household use as indicated by, but not limited to, storage location and possession of products in a variety of strengths, brands, types, purposes, and expiration dates. [2001 c 96 § 10.]

**Intent—Severability—2001 c 96:** See notes following RCW 69.43.010.

**69.43.130 Exemptions—Pediatric products—Products exempted by the state board of pharmacy.** RCW 69.43.110 and 69.43.120 do not apply to:

(1) Pediatric products primarily intended for administration to children under twelve years of age, according to label instructions, either: (a) In solid dosage form whose individual dosage units do not exceed fifteen milligrams of ephedrine, pseudoephedrine, or phenylpropanolamine; or (b) in liquid form whose recommended dosage, according to label instructions, does not exceed fifteen milligrams of ephedrine, pseudoephedrine, or phenylpropanolamine per five milliliters of liquid product;

(2) Pediatric liquid products primarily intended for administration to children under two years of age for which the recommended dosage does not exceed two milliliters and the total package content does not exceed one fluid ounce;

(3) Products that the state board of pharmacy, upon application of a manufacturer, exempts by rule from RCW 69.43.110 and 69.43.120 because the product has been formulated in such a way as to effectively prevent the conversion of the active ingredient into methamphetamine, or its salts or precursors; or

(4) Products, as packaged, that the board of pharmacy, upon application of a manufacturer, exempts from RCW \*69.43.110(1)(b) and 69.43.120 because:

(a) The product meets the federal definition of an ordinary over-the-counter pseudoephedrine product as defined in 21 U.S.C. 802;

(b) The product is a salt, isomer, or salts of isomers of pseudoephedrine and, as packaged, has a total weight of more than three grams but the net weight of the pseudoephedrine base is equal to or less than three grams; and

(c) The board of pharmacy determines that the value to the people of the state of having the product, as packaged, available for sale to consumers outweighs the danger, and the product, as packaged, has not been used in the illegal manufacture of methamphetamine. [2004 c 52 § 7; 2001 c 96 § 11.]

**\*Reviser's note:** RCW 69.43.110 was amended by 2010 c 182 § 2, changing subsection (1)(b) to subsection (1).

**Finding—Severability—Effective date—2004 c 52:** See notes following RCW 18.64.044.

**Intent—Severability—2001 c 96:** See notes following RCW 69.43.010.

**69.43.135 Iodine, methylsulfonylmethane—Sales restrictions—Recording of transactions—Penalties.** (1) The definitions in this subsection apply throughout this section unless the context clearly requires otherwise.

(a) "Iodine matrix" means iodine at a concentration greater than two percent by weight in a matrix or solution.

(b) "Matrix" means something, as a substance, in which something else originates, develops, or is contained.

(c) "Methylsulfonylmethane" means methylsulfonylmethane in its powder form only, and does not include products containing methylsulfonylmethane in other forms such as liquids, tablets, capsules not containing methylsulfonylmethane in pure powder form, ointments, creams, cosmetics, foods, and beverages.

(2) Any person who knowingly purchases in a thirty-day period or possesses any quantity of iodine in its elemental form, an iodine matrix, or more than two pounds of methylsulfonylmethane is guilty of a gross misdemeanor, except as provided in subsection (3) of this section.

(3) Subsection (2) of this section does not apply to:

(a) A person who possesses iodine in its elemental form or an iodine matrix as a prescription drug, under a prescription issued by a licensed veterinarian, physician, or advanced registered nurse practitioner;

(b) A person who possesses iodine in its elemental form, an iodine matrix, or any quantity of methylsulfonylmethane in its powder form and is actively engaged in the practice of animal husbandry of livestock;

(c) A person who possesses iodine in its elemental form or an iodine matrix in conjunction with experiments conducted in a chemistry or chemistry-related laboratory maintained by a:

(i) Public or private secondary school;

(ii) Public or private institution of higher education that is accredited by a regional or national accrediting agency recognized by the United States department of education;

(iii) Manufacturing facility, government agency, or research facility in the course of lawful business activities;

(d) A veterinarian, physician, advanced registered nurse practitioner, pharmacist, retail distributor, wholesaler, manufacturer, warehouseman, or common carrier, or an agent of any of these persons who possesses iodine in its elemental form, an iodine matrix, or methylsulfonylmethane in its powder form in the regular course of lawful business activities; or

(e) A person working in a general hospital who possesses iodine in its elemental form or an iodine matrix in the regular course of employment at the hospital.

(4) Any person who purchases any quantity of iodine in its elemental form, an iodine matrix, or any quantity of methylsulfonylmethane must present an identification card or driver's license issued by any state in the United States or jurisdiction of another country before purchasing the item.

(5) The Washington state patrol shall develop a form to be used in recording transactions involving iodine in its ele-

(2010 Ed.)

mental form, an iodine matrix, or methylsulfonylmethane. A person who sells or otherwise transfers any quantity of iodine in its elemental form, an iodine matrix, or any quantity of methylsulfonylmethane to a person for any purpose authorized in subsection (3) of this section must record each sale or transfer. The record must be made on the form developed by the Washington state patrol and must be retained by the person for at least three years. The Washington state patrol or any local law enforcement agency may request access to the records:

(a) Failure to make or retain a record required under this subsection is a misdemeanor.

(b) Failure to comply with a request for access to records required under this subsection to the Washington state patrol or a local law enforcement agency is a misdemeanor. [2006 c 188 § 1.]

**Reviser's note:** This section was directed to be codified in chapter 9.91 RCW, but placement in chapter 69.43 RCW appears to be more appropriate.

**69.43.140 Civil penalty—State board of pharmacy waiver.** (1) In addition to the other penalties provided for in this chapter or in chapter 18.64 RCW, the state board of pharmacy may impose a civil penalty, not to exceed ten thousand dollars for each violation, on any licensee or registrant who has failed to comply with this chapter or the rules adopted under this chapter. In the case of a continuing violation, every day the violation continues shall be considered a separate violation.

(2) The state board of pharmacy may waive the suspension or revocation of a license or registration issued under chapter 18.64 RCW, or waive any civil penalty under this chapter, if the licensee or registrant establishes that he or she acted in good faith to prevent violations of this chapter, and the violation occurred despite the licensee's or registrant's exercise of due diligence. In making such a determination, the state board of pharmacy may consider evidence that an employer trained employees on how to sell, transfer, or otherwise furnish substances specified in RCW 69.43.010(1) in accordance with applicable laws. [2001 c 96 § 12.]

**Intent—Severability—2001 c 96:** See notes following RCW 69.43.010.

**69.43.150 Application of chapter to local government.** This chapter is applicable and uniform throughout this state and in all counties, cities, code cities, and towns therein. A county, city, code city, or town may not adopt or enforce any ordinance, pertaining to this chapter, which prohibits conduct that is not prohibited under this chapter, or defining violations or penalties different from those provided under this chapter. However, this section does not preclude a county, city, code city, or town from revoking, canceling, suspending, or otherwise limiting a business or professional license it has issued for conduct that violates any provision of this chapter. [2001 c 96 § 13.]

**Intent—Severability—2001 c 96:** See notes following RCW 69.43.010.

**69.43.160 Ephedrine, pseudoephedrine, phenylpropanolamine—Methods to prevent sales violations—Department of health preparation of sign summarizing prohibitions.** (1) To prevent violations of RCW 69.43.110,

every licensee and registrant under chapter 18.64 RCW, who sells at retail any products containing ephedrine, pseudoephedrine, or phenylpropanolamine, or their salts, isomers, or salts of isomers, shall do either or may do both of the following:

(a) Program scanners, cash registers, or other electronic devices used to record sales in a manner that will alert persons handling transactions to potential violations of RCW 69.43.110(1) and/or prevent such violations; or

(b) Place one or more signs on the premises to notify customers of the prohibitions of RCW 69.43.110. Any such sign may, but is not required to, conform to the language and format prepared by the department of health under subsection (2) of this section.

(2) The department of health shall prepare language and format for a sign summarizing the prohibitions in RCW 69.43.110 and 69.43.120 and make the language and format available to licensees and registrants under chapter 18.64 RCW, for voluntary use in their places of business to inform customers and employees of the prohibitions. Nothing in this section requires the department of health to provide licensees or registrants with copies of signs, or any licensee or registrant to use the specific language or format prepared by the department under this subsection. [2001 c 96 § 14.]

**Intent—Severability—2001 c 96:** See notes following RCW 69.43.010.

**69.43.165 Ephedrine, pseudoephedrine, phenylpropanolamine—Electronic sales tracking system—Board of pharmacy authority to adopt rules.** (1) The board of pharmacy shall implement a real-time electronic sales tracking system to monitor the nonprescription sale of products in this state containing any detectable quantity of ephedrine, pseudoephedrine, phenylpropanolamine, or their salts, isomers, or salts of isomers, provided that the system is available to the state without cost for accessing the system to the state or retailers. The board is authorized to enter into a public-private partnership, through a memorandum of understanding or similar arrangement, to make the system available.

(2) The records submitted to the tracking system are for the confidential use of the pharmacy, shopkeeper, or itinerant vendor who submitted them, except that:

(a) The records must be produced in court when lawfully required;

(b) The records must be open for inspection by the board of pharmacy; and

(c) The records must be available to any general or limited authority Washington peace officer to enforce the provisions of this chapter or to federal law enforcement officers in accordance with rules adopted by the board of pharmacy regarding the privacy of the purchaser of products covered by chapter 182, Laws of 2010 and law enforcement access to the records submitted to the tracking system as provided in this section consistent with the federal combat meth act.

(3) The electronic sales tracking system shall be capable of generating a stop sale alert, which shall be a notification that completion of the sale would result in the seller or purchaser violating the quantity limits in RCW 69.43.110 (1) and (2). The system shall contain an override function for use by a dispenser of ephedrine, pseudoephedrine, phenylpropanolamine, or their salts, isomers, or salts of isomers, who

has a reasonable fear of imminent bodily harm. Each instance in which the override function is utilized shall be logged by the system.

(4) The board of pharmacy shall have the authority to adopt rules necessary to implement and enforce the provisions of this section. The board of pharmacy shall adopt rules regarding the privacy of the purchaser of products covered by chapter 182, Laws of 2010, and any public or law enforcement access to the records submitted to the tracking system as provided in subsection (2)(c) of this section consistent with the federal combat meth act.

(5) The board of pharmacy may not raise licensing or registration fees to fund the rule making or implementation of this section. [2010 c 182 § 3.]

**69.43.168 Pharmacy, shopkeeper, or itinerant vendor—Electronic sales tracking system—Liability.** A pharmacy, shopkeeper, or itinerant vendor participating in the electronic sales tracking system under RCW 69.43.110(4):

(1) Is not liable for civil damages resulting from any act or omission in carrying out the requirements of RCW 69.43.110(4), other than an act or omission constituting gross negligence or willful or wanton misconduct; and

(2) Is not liable for civil damages resulting from a data breach that was proximately caused by a failure on the part of the electronic sales tracking system to take reasonable care through the use of industry standard levels of encryption to guard against unauthorized access to account information that is in the possession or control of the system. [2010 c 182 § 4.]

**69.43.180 Expansion of log requirements—Petition by law enforcement.** (1) The Washington association of sheriffs and police chiefs or the Washington state patrol may petition the state board of pharmacy to apply the log requirements in \*RCW 69.43.170 to one or more products that contain ephedrine, pseudoephedrine, or phenylpropanolamine, or their salts, isomers, or salts of isomers, that is not the only active ingredient and that is in liquid, liquid capsule, or gel capsule form. The petition shall establish that:

(a) Ephedrine, pseudoephedrine, or phenylpropanolamine can be effectively extracted from the product and converted into methamphetamine or another controlled dangerous substance; and

(b) Law enforcement, the Washington state patrol, or the department of ecology are finding substantial evidence that the product is being used for the illegal manufacture of methamphetamine or another controlled dangerous substance.

(2) The board of pharmacy shall adopt rules when a petition establishes that requiring the application of the log requirements in \*RCW 69.43.170 to the sale of the product at retail is warranted based upon the effectiveness and extent of use of the product for the illegal manufacture of methamphetamine or other controlled dangerous substances and the extent of the burden of any restrictions upon consumers. The board of pharmacy may adopt emergency rules to apply the log requirements to the sale of a product when the petition establishes that the immediate restriction of the product is necessary in order to protect public health and safety. [2005 c 388 § 3.]

\*Reviser's note: RCW 69.43.170 was repealed by 2010 c 182 § 6.

**Finding—Effective dates—Severability—2005 c 388:** See notes following RCW 69.43.105.

**69.43.190 Products found at methamphetamine sites—Report.** Each county sheriff shall compile and maintain a record of commercial products containing ephedrine, pseudoephedrine, or phenylpropanolamine and packaging found at methamphetamine laboratory sites. The data shall be forwarded to the Washington association of sheriffs and police chiefs and shall be reported to the legislature by November 1, 2007, and annually thereafter. [2005 c 388 § 9.]

**Finding—Effective dates—Severability—2005 c 388:** See notes following RCW 69.43.105.

## Chapter 69.45 RCW DRUG SAMPLES

### Sections

69.45.010	Definitions.
69.45.020	Registration of manufacturers—Additional information required by the department.
69.45.030	Records maintained by manufacturer—Report of loss or theft of drug samples—Reports of practitioners receiving controlled substance drug samples.
69.45.040	Storage and transportation of drug samples—Disposal of samples which have exceeded their expiration dates.
69.45.050	Distribution of drug samples—Written request—No fee or charge permitted—Possession of legend drugs or controlled substances by manufacturers' representatives.
69.45.060	Disposal of surplus, outdated, or damaged drug samples.
69.45.070	Registration fees—Penalty.
69.45.080	Violations of chapter—Manufacturer's liability—Penalty—Seizure of drug samples.
69.45.090	Confidentiality.
69.45.900	Severability—1987 c 411.

**69.45.010 Definitions.** The definitions in this section apply throughout this chapter.

(1) "Board" means the board of pharmacy.

(2) "Drug samples" means any federal food and drug administration approved controlled substance, legend drug, or products requiring prescriptions in this state, which is distributed at no charge to a practitioner by a manufacturer or a manufacturer's representative, exclusive of drugs under clinical investigations approved by the federal food and drug administration.

(3) "Controlled substance" means a drug, substance, or immediate precursor of such drug or substance, so designated under or pursuant to chapter 69.50 RCW, the uniform controlled substances act.

(4) "Deliver" or "delivery" means the actual, constructive, or attempted transfer from one person to another of a drug or device, whether or not there is an agency relationship.

(5) "Dispense" means the interpretation of a prescription or order for a drug, biological, or device and, pursuant to that prescription or order, the proper selection, measuring, compounding, labeling, or packaging necessary to prepare that prescription or order for delivery.

(6) "Distribute" means to deliver, other than by administering or dispensing, a legend drug.

(7) "Legend drug" means any drug that is required by state law or by regulations of the board to be dispensed on prescription only or is restricted to use by practitioners only.

(2010 Ed.)

(8) "Manufacturer" means a person or other entity engaged in the manufacture or distribution of drugs or devices, but does not include a manufacturer's representative.

(9) "Person" means any individual, corporation, government or governmental subdivision or agency, business trust, estate, trust, partnership, association, or any other legal entity.

(10) "Practitioner" means a physician under chapter 18.71 RCW, an osteopathic physician or an osteopathic physician and surgeon under chapter 18.57 RCW, a dentist under chapter 18.32 RCW, a podiatric physician and surgeon under chapter 18.22 RCW, a veterinarian under chapter 18.92 RCW, a pharmacist under chapter 18.64 RCW, a commissioned medical or dental officer in the United States armed forces or the public health service in the discharge of his or her official duties, a duly licensed physician or dentist employed by the veterans administration in the discharge of his or her official duties, a registered nurse or advanced registered nurse practitioner under chapter 18.79 RCW when authorized to prescribe by the nursing care quality assurance commission, an osteopathic physician assistant under chapter 18.57A RCW when authorized by the board of osteopathic medicine and surgery, or a physician assistant under chapter 18.71A RCW when authorized by the medical quality assurance commission.

(11) "Manufacturer's representative" means an agent or employee of a drug manufacturer who is authorized by the drug manufacturer to possess drug samples for the purpose of distribution in this state to appropriately authorized health care practitioners.

(12) "Reasonable cause" means a state of facts found to exist that would warrant a reasonably intelligent and prudent person to believe that a person has violated state or federal drug laws or regulations.

(13) "Department" means the department of health.

(14) "Secretary" means the secretary of health or the secretary's designee. [1994 sp.s. c 9 § 738; 1989 1st ex.s. c 9 § 444; 1987 c 411 § 1.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**69.45.020 Registration of manufacturers—Additional information required by the department.** A manufacturer that intends to distribute drug samples in this state shall register annually with the department, providing the name and address of the manufacturer, and shall:

(1) Provide a twenty-four hour telephone number and the name of the individual(s) who shall respond to reasonable official inquiries from the department, as directed by the board, based on reasonable cause, regarding required records, reports, or requests for information pursuant to a specific investigation of a possible violation. Each official request by the department and each response by a manufacturer shall be limited to the information specifically relevant to the particular official investigation. Requests for the address of sites in this state at which drug samples are stored by the manufacturer's representative and the names and addresses of the individuals who are responsible for the storage or distribution of the drug samples shall be responded to as soon as possible but not later than the close of business on the next business day following the request; or

(2) If a twenty-four hour telephone number is not available, provide the addresses of sites in this state at which drug samples are stored by the manufacturer's representative, and the names and addresses of the individuals who are responsible for the storage or distribution of the drug samples. The manufacturer shall annually submit a complete updated list of the sites and individuals to the department. [1989 1st ex.s. c 9 § 445; 1987 c 411 § 2.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**69.45.030 Records maintained by manufacturer—Report of loss or theft of drug samples—Reports of practitioners receiving controlled substance drug samples.** (1) The following records shall be maintained by the manufacturer distributing drug samples in this state and shall be available for inspection by authorized representatives of the department based on reasonable cause and pursuant to an official investigation:

(a) An inventory of drug samples held in this state for distribution, taken at least annually by a representative of the manufacturer other than the individual in direct control of the drug samples;

(b) Records or documents to account for all drug samples distributed, destroyed, or returned to the manufacturer. The records shall include records for sample drugs signed for by practitioners, dates and methods of destruction, and any dates of returns; and

(c) Copies of all reports of lost or stolen drug samples.

(2) All required records shall be maintained for two years and shall include transaction dates.

(3) Manufacturers shall report to the department the discovery of any loss or theft of drug samples as soon as possible but not later than the close of business on the next business day following the discovery.

(4) Manufacturers shall report to the department as frequently as, and at the same time as, their other reports to the federal drug enforcement administration, or its lawful successor, the name, address and federal registration number for each practitioner who has received controlled substance drug samples and the name, strength and quantity of the controlled substance drug samples distributed. [1989 1st ex.s. c 9 § 446; 1987 c 411 § 3.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**69.45.040 Storage and transportation of drug samples—Disposal of samples which have exceeded their expiration dates.** (1) Drug samples shall be stored in compliance with the requirements of federal and state laws, rules, and regulations.

(2) Drug samples shall be maintained in a locked area to which access is limited to persons authorized by the manufacturer.

(3) Drug samples shall be stored and transported in such a manner as to be free of contamination, deterioration, and adulteration.

(4) Drug samples shall be stored under conditions of temperature, light, moisture, and ventilation so as to meet the label instructions for each drug.

(5) Drug samples which have exceeded the expiration date shall be physically separated from other drug samples

until disposed of or returned to the manufacturer. [1987 c 411 § 4.]

**69.45.050 Distribution of drug samples—Written request—No fee or charge permitted—Possession of legend drugs or controlled substances by manufacturers' representatives.** (1) Drug samples may be distributed by a manufacturer or a manufacturer's representative only to practitioners legally authorized to prescribe such drugs or, at the request of such practitioner, to pharmacies of hospitals or other health care entities. The recipient of the drug sample must execute a written receipt upon delivery that is returned to the manufacturer or the manufacturer's representative.

(2) Drug samples may be distributed by a manufacturer or a manufacturer's representative only to a practitioner legally authorized to prescribe such drugs pursuant to a written request for such samples. The request shall contain:

(a) The recipient's name, address, and professional designation;

(b) The name, strength, and quantity of the drug samples delivered;

(c) The name or identification of the manufacturer and of the individual distributing the drug sample; and

(d) The dated signature of the practitioner requesting the drug sample.

(3) No fee or charge may be imposed for sample drugs distributed in this state.

(4) A manufacturer's representative shall not possess legend drugs or controlled substances other than those distributed by the manufacturer they represent. Nothing in this section prevents a manufacturer's representative from possessing a legally prescribed and dispensed legend drug or controlled substance. [1989 c 164 § 2; 1987 c 411 § 5.]

**Legislative finding—1989 c 164:** "The legislature finds that chapter 69.45 RCW is more restrictive than the federal prescription drug marketing act of 1987, and the legislature further finds that a change in chapter 69.45 RCW accepting the position of the federal law is beneficial to the citizens of this state." [1989 c 164 § 1.]

**69.45.060 Disposal of surplus, outdated, or damaged drug samples.** Surplus, outdated, or damaged drug samples shall be disposed of as follows:

(1) Returned to the manufacturer; or

(2) Witnessed destruction by such means as to assure that the drug cannot be retrieved. However, controlled substances shall be returned to the manufacturer or disposed of in accordance with rules adopted by the board: PROVIDED, That the board shall adopt by rule the regulations of the federal drug enforcement administration or its lawful successor unless, stating reasonable grounds, it adopts rules consistent with such regulations. [1987 c 411 § 6.]

**69.45.070 Registration fees—Penalty.** The department may charge reasonable fees for registration. The registration fee shall not exceed the fee charged by the department for a pharmacy location license. If the registration fee is not paid on or before the date due, a renewal or new registration may be issued only upon payment of the registration renewal fee and a penalty fee equal to the registration renewal fee. [1991 c 229 § 8; 1989 1st ex.s. c 9 § 447; 1987 c 411 § 7.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**69.45.080 Violations of chapter—Manufacturer’s liability—Penalty—Seizure of drug samples.** (1) The manufacturer is responsible for the actions and conduct of its representatives with regard to drug samples.

(2) The board may hold a public hearing to examine a possible violation and may require a designated representative of the manufacturer to attend.

(3) If a manufacturer fails to comply with this chapter following notification by the board, the board may impose a civil penalty of up to five thousand dollars. The board shall take no action to impose any civil penalty except pursuant to a hearing held in accordance with chapter 34.05 RCW.

(4) Specific drug samples which are distributed in this state in violation of this chapter, following notification by the board, shall be subject to seizure following the procedures set out in RCW 69.41.060. [1987 c 411 § 8.]

**69.45.090 Confidentiality.** All records, reports, and information obtained by the board from or on behalf of a manufacturer or manufacturer’s representative under this chapter are confidential and exempt from public inspection and copying under chapter 42.56 RCW. This section does not apply to public disclosure of the identity of persons found by the board to have violated state or federal law, rules, or regulations. This section is not intended to restrict the investigations and proceedings of the board so long as the board maintains the confidentiality required by this section. [2005 c 274 § 330; 1987 c 411 § 9.]

**Part headings not law—Effective date—2005 c 274:** See RCW 42.56.901 and 42.56.902.

**69.45.900 Severability—1987 c 411.** If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1987 c 411 § 12.]

**Chapter 69.50 RCW**

**UNIFORM CONTROLLED SUBSTANCES ACT**

Sections

ARTICLE I—DEFINITIONS

- 69.50.101 Definitions.
- 69.50.102 Drug paraphernalia—Definitions.

ARTICLE II—STANDARDS AND SCHEDULES

- 69.50.201 Enforcement of chapter—Authority to change schedules of controlled substances.
- 69.50.202 Nomenclature.
- 69.50.203 Schedule I tests.
- 69.50.204 Schedule I.
- 69.50.205 Schedule II tests.
- 69.50.206 Schedule II.
- 69.50.207 Schedule III tests.
- 69.50.208 Schedule III.
- 69.50.209 Schedule IV tests.
- 69.50.210 Schedule IV.
- 69.50.211 Schedule V tests.
- 69.50.212 Schedule V.
- 69.50.213 Republishing of schedules.
- 69.50.214 Controlled substance analog.

ARTICLE III—REGULATION OF MANUFACTURE, DISTRIBUTION, AND DISPENSING OF CONTROLLED SUBSTANCES

- 69.50.301 Rules—Fees.
- 69.50.302 Registration requirements.

- 69.50.303 Registration.
- 69.50.304 Revocation and suspension of registration—Seizure or placement under seal of controlled substances.
- 69.50.305 Procedure for denial, suspension, or revocation of registration.
- 69.50.306 Records of registrants.
- 69.50.308 Prescriptions.
- 69.50.309 Containers.
- 69.50.310 Sodium pentobarbital—Registration of humane societies and animal control agencies for use in animal control.
- 69.50.311 Triplicate prescription form program—Compliance by health care practitioners.
- 69.50.312 Electronic communication of prescription information—Board may adopt rules.
- 69.50.315 Medical assistance—Drug-related overdose—Naloxone—Prosecution for possession.
- 69.50.320 Registration of department of fish and wildlife for use in chemical capture programs—Rules.

ARTICLE IV—OFFENSES AND PENALTIES

- 69.50.401 Prohibited acts: A—Penalties.
- 69.50.4011 Counterfeit substances—Penalties.
- 69.50.4012 Delivery of substance in lieu of controlled substance—Penalty.
- 69.50.4013 Possession of controlled substance—Penalty.
- 69.50.4014 Possession of forty grams or less of marijuana—Penalty.
- 69.50.4015 Involving a person under eighteen in unlawful controlled substance transaction—Penalty.
- 69.50.4016 Provisions not applicable to offenses under RCW 69.50.410.
- 69.50.402 Prohibited acts: B—Penalties.
- 69.50.403 Prohibited acts: C—Penalties.
- 69.50.404 Penalties under other laws.
- 69.50.405 Bar to prosecution.
- 69.50.406 Distribution to persons under age eighteen.
- 69.50.407 Conspiracy.
- 69.50.408 Second or subsequent offenses.
- 69.50.410 Prohibited acts: D—Penalties.
- 69.50.412 Prohibited acts: E—Penalties.
- 69.50.4121 Drug paraphernalia—Selling or giving—Penalty.
- 69.50.413 Health care practitioners—Suspension of license for violation of chapter.
- 69.50.414 Sale or transfer of controlled substance to minor—Cause of action by parent—Damages.
- 69.50.415 Controlled substances homicide—Penalty.
- 69.50.416 Counterfeit substances prohibited—Penalties.
- 69.50.420 Violations—Juvenile driving privileges.
- 69.50.425 Misdemeanor violations—Minimum penalties.
- 69.50.430 Additional fine for certain felony violations.
- 69.50.435 Violations committed in or on certain public places or facilities—Additional penalty—Defenses—Construction—Definitions.
- 69.50.440 Possession with intent to manufacture—Penalty.

ARTICLE V—ENFORCEMENT AND ADMINISTRATIVE PROVISIONS

- 69.50.500 Powers of enforcement personnel.
- 69.50.501 Administrative inspections.
- 69.50.502 Warrants for administrative inspections.
- 69.50.503 Injunctions.
- 69.50.504 Cooperative arrangements.
- 69.50.505 Seizure and forfeiture.
- 69.50.506 Burden of proof; liabilities.
- 69.50.507 Judicial review.
- 69.50.508 Education and research.
- 69.50.509 Search and seizure of controlled substances.
- 69.50.510 Search and seizure at rental premises—Notification of landlord.
- 69.50.511 Cleanup of hazardous substances at illegal drug manufacturing facility—Rules.
- 69.50.525 Diversion prevention and control—Report.

ARTICLE VI—MISCELLANEOUS

- 69.50.601 Pending proceedings.
- 69.50.602 Continuation of rules.
- 69.50.603 Uniformity of interpretation.
- 69.50.604 Short title.
- 69.50.605 Severability—1971 ex.s. c 308.
- 69.50.606 Repealers.
- 69.50.607 Effective date—1971 ex.s. c 308.
- 69.50.608 State preemption.
- 69.50.609 Captions not law—1993 c 187.

*Drug nuisances—Injunctions: Chapter 7.43 RCW.*

ARTICLE I  
DEFINITIONS

**69.50.101 Definitions.** Unless the context clearly requires otherwise, definitions of terms shall be as indicated where used in this chapter:

(a) "Administer" means to apply a controlled substance, whether by injection, inhalation, ingestion, or any other means, directly to the body of a patient or research subject by:

- (1) a practitioner authorized to prescribe (or, by the practitioner's authorized agent); or
- (2) the patient or research subject at the direction and in the presence of the practitioner.

(b) "Agent" means an authorized person who acts on behalf of or at the direction of a manufacturer, distributor, or dispenser. It does not include a common or contract carrier, public warehouseperson, or employee of the carrier or warehouseperson.

(c) "Board" means the state board of pharmacy.

(d) "Controlled substance" means a drug, substance, or immediate precursor included in Schedules I through V as set forth in federal or state laws, or federal or board rules.

(e)(1) "Controlled substance analog" means a substance the chemical structure of which is substantially similar to the chemical structure of a controlled substance in Schedule I or II and:

(i) that has a stimulant, depressant, or hallucinogenic effect on the central nervous system substantially similar to the stimulant, depressant, or hallucinogenic effect on the central nervous system of a controlled substance included in Schedule I or II; or

(ii) with respect to a particular individual, that the individual represents or intends to have a stimulant, depressant, or hallucinogenic effect on the central nervous system substantially similar to the stimulant, depressant, or hallucinogenic effect on the central nervous system of a controlled substance included in Schedule I or II.

(2) The term does not include:

- (i) a controlled substance;
- (ii) a substance for which there is an approved new drug application;

(iii) a substance with respect to which an exemption is in effect for investigational use by a particular person under Section 505 of the federal Food, Drug and Cosmetic Act, 21 U.S.C. Sec. 355, to the extent conduct with respect to the substance is pursuant to the exemption; or

(iv) any substance to the extent not intended for human consumption before an exemption takes effect with respect to the substance.

(f) "Deliver" or "delivery," means the actual or constructive transfer from one person to another of a substance, whether or not there is an agency relationship.

(g) "Department" means the department of health.

(h) "Dispense" means the interpretation of a prescription or order for a controlled substance and, pursuant to that prescription or order, the proper selection, measuring, compounding, labeling, or packaging necessary to prepare that prescription or order for delivery.

(i) "Dispenser" means a practitioner who dispenses.

(j) "Distribute" means to deliver other than by administering or dispensing a controlled substance.

(k) "Distributor" means a person who distributes.

(l) "Drug" means (1) a controlled substance recognized as a drug in the official United States pharmacopoeia/national formulary or the official homeopathic pharmacopoeia of the United States, or any supplement to them; (2) controlled substances intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in individuals or animals; (3) controlled substances (other than food) intended to affect the structure or any function of the body of individuals or animals; and (4) controlled substances intended for use as a component of any article specified in (1), (2), or (3) of this subsection. The term does not include devices or their components, parts, or accessories.

(m) "Drug enforcement administration" means the drug enforcement administration in the United States Department of Justice, or its successor agency.

(n) "Immediate precursor" means a substance:

(1) that the state board of pharmacy has found to be and by rule designates as being the principal compound commonly used, or produced primarily for use, in the manufacture of a controlled substance;

(2) that is an immediate chemical intermediary used or likely to be used in the manufacture of a controlled substance; and

(3) the control of which is necessary to prevent, curtail, or limit the manufacture of the controlled substance.

(o) "Isomer" means an optical isomer, but in RCW 69.50.101(r)(5), 69.50.204(a) (12) and (34), and 69.50.206(b)(4), the term includes any geometrical isomer; in RCW 69.50.204(a) (8) and (42), and 69.50.210(c) the term includes any positional isomer; and in RCW 69.50.204(a)(35), 69.50.204(c), and 69.50.208(a) the term includes any positional or geometric isomer.

(p) "Manufacture" means the production, preparation, propagation, compounding, conversion, or processing of a controlled substance, either directly or indirectly or by extraction from substances of natural origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis, and includes any packaging or repackaging of the substance or labeling or relabeling of its container. The term does not include the preparation, compounding, packaging, repackaging, labeling, or relabeling of a controlled substance:

(1) by a practitioner as an incident to the practitioner's administering or dispensing of a controlled substance in the course of the practitioner's professional practice; or

(2) by a practitioner, or by the practitioner's authorized agent under the practitioner's supervision, for the purpose of, or as an incident to, research, teaching, or chemical analysis and not for sale.

(q) "Marijuana" or "marihuana" means all parts of the plant *Cannabis*, whether growing or not; the seeds thereof; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds or resin. The term does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks (except the resin extracted therefrom), fiber, oil, or cake, or the sterilized seed of the plant which is incapable of germination.

(r) "Narcotic drug" means any of the following, whether produced directly or indirectly by extraction from substances of vegetable origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis:

(1) Opium, opium derivative, and any derivative of opium or opium derivative, including their salts, isomers, and salts of isomers, whenever the existence of the salts, isomers, and salts of isomers is possible within the specific chemical designation. The term does not include the isoquinoline alkaloids of opium.

(2) Synthetic opiate and any derivative of synthetic opiate, including their isomers, esters, ethers, salts, and salts of isomers, esters, and ethers, whenever the existence of the isomers, esters, ethers, and salts is possible within the specific chemical designation.

(3) Poppy straw and concentrate of poppy straw.

(4) Coca leaves, except coca leaves and extracts of coca leaves from which cocaine, ecgonine, and derivatives or ecgonine or their salts have been removed.

(5) Cocaine, or any salt, isomer, or salt of isomer thereof.

(6) Cocaine base.

(7) Ecgonine, or any derivative, salt, isomer, or salt of isomer thereof.

(8) Any compound, mixture, or preparation containing any quantity of any substance referred to in subparagraphs (1) through (7).

(s) "Opiate" means any substance having an addiction-forming or addiction-sustaining liability similar to morphine or being capable of conversion into a drug having addiction-forming or addiction-sustaining liability. The term includes opium, substances derived from opium (opium derivatives), and synthetic opiates. The term does not include, unless specifically designated as controlled under RCW 69.50.201, the dextrorotatory isomer of 3-methoxy-n-methylmorphinan and its salts (dextromethorphan). The term includes the racemic and levorotatory forms of dextromethorphan.

(t) "Opium poppy" means the plant of the species *Papaver somniferum* L., except its seeds.

(u) "Person" means individual, corporation, business trust, estate, trust, partnership, association, joint venture, government, governmental subdivision or agency, or any other legal or commercial entity.

(v) "Poppy straw" means all parts, except the seeds, of the opium poppy, after mowing.

(w) "Practitioner" means:

(1) A physician under chapter 18.71 RCW; a physician assistant under chapter 18.71A RCW; an osteopathic physician and surgeon under chapter 18.57 RCW; an osteopathic physician assistant under chapter 18.57A RCW who is licensed under RCW 18.57A.020 subject to any limitations in RCW 18.57A.040; an optometrist licensed under chapter 18.53 RCW who is certified by the optometry board under RCW 18.53.010 subject to any limitations in RCW 18.53.010; a dentist under chapter 18.32 RCW; a podiatric physician and surgeon under chapter 18.22 RCW; a veterinarian under chapter 18.92 RCW; a registered nurse, advanced registered nurse practitioner, or licensed practical nurse under chapter 18.79 RCW; a naturopathic physician under chapter 18.36A RCW who is licensed under RCW 18.36A.030 subject to any limitations in RCW 18.36A.040; a

(2010 Ed.)

pharmacist under chapter 18.64 RCW or a scientific investigator under this chapter, licensed, registered or otherwise permitted insofar as is consistent with those licensing laws to distribute, dispense, conduct research with respect to or administer a controlled substance in the course of their professional practice or research in this state.

(2) A pharmacy, hospital or other institution licensed, registered, or otherwise permitted to distribute, dispense, conduct research with respect to or to administer a controlled substance in the course of professional practice or research in this state.

(3) A physician licensed to practice medicine and surgery, a physician licensed to practice osteopathic medicine and surgery, a dentist licensed to practice dentistry, a podiatric physician and surgeon licensed to practice podiatric medicine and surgery, or a veterinarian licensed to practice veterinary medicine in any state of the United States.

(x) "Prescription" means an order for controlled substances issued by a practitioner duly authorized by law or rule in the state of Washington to prescribe controlled substances within the scope of his or her professional practice for a legitimate medical purpose.

(y) "Production" includes the manufacturing, planting, cultivating, growing, or harvesting of a controlled substance.

(z) "Secretary" means the secretary of health or the secretary's designee.

(aa) "State," unless the context otherwise requires, means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or a territory or insular possession subject to the jurisdiction of the United States.

(bb) "Ultimate user" means an individual who lawfully possesses a controlled substance for the individual's own use or for the use of a member of the individual's household or for administering to an animal owned by the individual or by a member of the individual's household.

(cc) "Electronic communication of prescription information" means the communication of prescription information by computer, or the transmission of an exact visual image of a prescription by facsimile, or other electronic means for original prescription information or prescription refill information for a Schedule III-V controlled substance between an authorized practitioner and a pharmacy or the transfer of prescription information for a controlled substance from one pharmacy to another pharmacy. [2010 c 177 § 1; 2003 c 142 § 4; 1998 c 222 § 3; 1996 c 178 § 18; 1994 sp.s. c 9 § 739; 1993 c 187 § 1. Prior: 1990 c 248 § 1; 1990 c 219 § 3; 1990 c 196 § 8; 1989 1st ex.s. c 9 § 429; 1987 c 144 § 2; 1986 c 124 § 1; 1984 c 153 § 18; 1980 c 71 § 2; 1973 2nd ex.s. c 38 § 1; 1971 ex.s. c 308 § 69.50.101.]

**Severability—2003 c 142:** See note following RCW 18.53.010.

**Finding—1990 c 219:** See note following RCW 69.41.030.

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**69.50.102 Drug paraphernalia—Definitions.** (a) As used in this chapter, "drug paraphernalia" means all equipment, products, and materials of any kind which are used, intended for use, or designed for use in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, containing, con-

cealing, injecting, ingesting, inhaling, or otherwise introducing into the human body a controlled substance. It includes, but is not limited to:

(1) Kits used, intended for use, or designed for use in planting, propagating, cultivating, growing, or harvesting of any species of plant which is a controlled substance or from which a controlled substance can be derived;

(2) Kits used, intended for use, or designed for use in manufacturing, compounding, converting, producing, processing, or preparing controlled substances;

(3) Isomerization devices used, intended for use, or designed for use in increasing the potency of any species of plant which is a controlled substance;

(4) Testing equipment used, intended for use, or designed for use in identifying or in analyzing the strength, effectiveness, or purity of controlled substances;

(5) Scales and balances used, intended for use, or designed for use in weighing or measuring controlled substances;

(6) Diluents and adulterants, such as quinine hydrochloride, mannitol, mannite, dextrose, and lactose, used, intended for use, or designed for use in cutting controlled substances;

(7) Separation gins and sifters used, intended for use, or designed for use in removing twigs and seeds from, or in otherwise cleaning or refining, marihuana;

(8) Blenders, bowls, containers, spoons, and mixing devices used, intended for use, or designed for use in compounding controlled substances;

(9) Capsules, balloons, envelopes, and other containers used, intended for use, or designed for use in packaging small quantities of controlled substances;

(10) Containers and other objects used, intended for use, or designed for use in storing or concealing controlled substances;

(11) Hypodermic syringes, needles, and other objects used, intended for use, or designed for use in parenterally injecting controlled substances into the human body;

(12) Objects used, intended for use, or designed for use in ingesting, inhaling, or otherwise introducing marihuana, cocaine, hashish, or hashish oil into the human body, such as:

(i) Metal, wooden, acrylic, glass, stone, plastic, or ceramic pipes with or without screens, permanent screens, hashish heads, or punctured metal bowls;

(ii) Water pipes;

(iii) Carburetion tubes and devices;

(iv) Smoking and carburetion masks;

(v) Roach clips: Meaning objects used to hold burning material, such as a marihuana cigarette, that has become too small or too short to be held in the hand;

(vi) Miniature cocaine spoons, and cocaine vials;

(vii) Chamber pipes;

(viii) Carburetor pipes;

(ix) Electric pipes;

(x) Air-driven pipes;

(xi) Chillums;

(xii) Bongs; and

(xiii) Ice pipes or chillers.

(b) In determining whether an object is drug paraphernalia under this section, a court or other authority should consider, in addition to all other logically relevant factors, the following:

(1) Statements by an owner or by anyone in control of the object concerning its use;

(2) Prior convictions, if any, of an owner, or of anyone in control of the object, under any state or federal law relating to any controlled substance;

(3) The proximity of the object, in time and space, to a direct violation of this chapter;

(4) The proximity of the object to controlled substances;

(5) The existence of any residue of controlled substances on the object;

(6) Direct or circumstantial evidence of the intent of an owner, or of anyone in control of the object, to deliver it to persons whom he knows, or should reasonably know, intend to use the object to facilitate a violation of this chapter; the innocence of an owner, or of anyone in control of the object, as to a direct violation of this chapter shall not prevent a finding that the object is intended or designed for use as drug paraphernalia;

(7) Instructions, oral or written, provided with the object concerning its use;

(8) Descriptive materials accompanying the object which explain or depict its use;

(9) National and local advertising concerning its use;

(10) The manner in which the object is displayed for sale;

(11) Whether the owner, or anyone in control of the object, is a legitimate supplier of like or related items to the community, such as a licensed distributor or dealer of tobacco products;

(12) Direct or circumstantial evidence of the ratio of sales of the object(s) to the total sales of the business enterprise;

(13) The existence and scope of legitimate uses for the object in the community; and

(14) Expert testimony concerning its use. [1981 c 48 § 1.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

## ARTICLE II STANDARDS AND SCHEDULES

**69.50.201 Enforcement of chapter—Authority to change schedules of controlled substances.** (a) The state board of pharmacy shall enforce this chapter and may add substances to or delete or reschedule substances listed in RCW 69.50.204, 69.50.206, 69.50.208, 69.50.210, or 69.50.212 pursuant to the procedures of chapter 34.05 RCW.

(1) In making a determination regarding a substance, the board shall consider the following:

(i) the actual or relative potential for abuse;

(ii) the scientific evidence of its pharmacological effect, if known;

(iii) the state of current scientific knowledge regarding the substance;

(iv) the history and current pattern of abuse;

(v) the scope, duration, and significance of abuse;

(vi) the risk to the public health;

(vii) the potential of the substance to produce psychic or physiological dependence liability; and

(viii) whether the substance is an immediate precursor of a controlled substance.

(2) The board may consider findings of the federal Food and Drug Administration or the Drug Enforcement Administration as prima facie evidence relating to one or more of the determinative factors.

(b) After considering the factors enumerated in subsection (a) of this section, the board shall make findings with respect thereto and adopt and cause to be published a rule controlling the substance upon finding the substance has a potential for abuse.

(c) The board, without regard to the findings required by subsection (a) of this section or RCW 69.50.203, 69.50.205, 69.50.207, 69.50.209, and 69.50.211 or the procedures prescribed by subsections (a) and (b) of this section, may place an immediate precursor in the same schedule in which the controlled substance of which it is an immediate precursor is placed or in any other schedule. If the board designates a substance as an immediate precursor, substances that are precursors of the controlled precursor are not subject to control solely because they are precursors of the controlled precursor.

(d) If a substance is designated, rescheduled, or deleted as a controlled substance under federal law, the board shall similarly control the substance under this chapter after the expiration of thirty days from the date of publication in the federal register of a final order designating the substance as a controlled substance or rescheduling or deleting the substance or from the date of issuance of an order of temporary scheduling under Section 508 of the federal Dangerous Drug Diversion Control Act of 1984, 21 U.S.C. Sec. 811(h), unless within that thirty-day period, the board or an interested party objects to inclusion, rescheduling, temporary scheduling, or deletion. If no objection is made, the board shall adopt and cause to be published, without the necessity of making determinations or findings as required by subsection (a) of this section or RCW 69.50.203, 69.50.205, 69.50.207, 69.50.209, and 69.50.211, a final rule, for which notice of proposed rule making is omitted, designating, rescheduling, temporarily scheduling, or deleting the substance. If an objection is made, the board shall make a determination with respect to the designation, rescheduling, or deletion of the substance as provided by subsection (a) of this section. Upon receipt of an objection to inclusion, rescheduling, or deletion under this chapter by the board, the board shall publish notice of the receipt of the objection, and control under this chapter is stayed until the board adopts a rule as provided by subsection (a) of this section.

(e) The board, by rule and without regard to the requirements of subsection (a) of this section, may schedule a substance in Schedule I regardless of whether the substance is substantially similar to a controlled substance in Schedule I or II if the board finds that scheduling of the substance on an emergency basis is necessary to avoid an imminent hazard to the public safety and the substance is not included in any other schedule or no exemption or approval is in effect for the substance under Section 505 of the federal Food, Drug, and Cosmetic Act, 21 U.S.C. Sec. 355. Upon receipt of notice under RCW 69.50.214, the board shall initiate scheduling of the controlled substance analog on an emergency basis pursuant to this subsection. The scheduling of a substance under this subsection expires one year after the adoption of the scheduling rule. With respect to the finding of an imminent

hazard to the public safety, the board shall consider whether the substance has been scheduled on a temporary basis under federal law or factors set forth in subsection (a)(1)(iv), (v), and (vi) of this section, and may also consider clandestine importation, manufacture, or distribution, and, if available, information concerning the other factors set forth in subsection (a)(1) of this section. A rule may not be adopted under this subsection until the board initiates a rule-making proceeding under subsection (a) of this section with respect to the substance. A rule adopted under this subsection must be vacated upon the conclusion of the rule-making proceeding initiated under subsection (a) of this section with respect to the substance.

(g) [(f)] Authority to control under this section does not extend to distilled spirits, wine, malt beverages, or tobacco as those terms are defined or used in Titles 66 and 26 RCW. [1998 c 245 § 108; 1993 c 187 § 2; 1989 1st ex.s. c 9 § 430; 1986 c 124 § 2; 1971 ex.s. c 308 § 69.50.201.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**69.50.202 Nomenclature.** The controlled substances listed or to be listed in the schedules in RCW 69.50.204, 69.50.206, 69.50.208, 69.50.210, and 69.50.212 are included by whatever official, common, usual, chemical, or trade name designated. [1971 ex.s. c 308 § 69.50.202.]

**69.50.203 Schedule I tests.** (a) The state board of pharmacy shall place a substance in Schedule I upon finding that the substance:

- (1) has high potential for abuse;
- (2) has no currently accepted medical use in treatment in the United States; and
- (3) lacks accepted safety for use in treatment under medical supervision.

(b) The board may place a substance in Schedule I without making the findings required by subsection (a) of this section if the substance is controlled under Schedule I of the federal Controlled Substances Act by a federal agency as the result of an international treaty, convention, or protocol. [1993 c 187 § 3; 1971 ex.s. c 308 § 69.50.203.]

**69.50.204 Schedule I.** Unless specifically excepted by state or federal law or regulation or more specifically included in another schedule, the following controlled substances are listed in Schedule I:

(a) Any of the following opiates, including their isomers, esters, ethers, salts, and salts of isomers, esters, and ethers whenever the existence of these isomers, esters, ethers, and salts is possible within the specific chemical designation:

- (1) Acetyl-alpha-methylfentanyl (N-[1-(1-methyl-2-phenethyl)-4-piperidiny]-N-phenylacetamide);
- (2) Acetylmethadol;
- (3) Allylprodine;
- (4) Alphacetylmethadol, except levo-alpha-cetylmethadol, also known as levo-alpha-acetylmethadol, levomethadyl acetate, or LAAM;
- (5) Alphameprodine;
- (6) Alphamethadol;

(7) Alpha-methylfentanyl (N-[1-(alpha-methyl-beta-phenyl) ethyl-4-piperidyl] propionanilide); (1-(1-methyl-2-phenylethyl)-4-(N-propanilido) piperidine);

(8) Alpha-methylthiofentanyl (N-[1-methyl-2-(2-thienyl)ethyl-4-piperidinyl]-N-phenylpropanamide);

(9) Benzethidine;

(10) Betacetylmethadol;

(11) Beta-hydroxyfentanyl (N-[1-(2-hydroxy-2-phenethyl)-4-piperidinyl]-N-phenylpropanamide);

(12) Beta-hydroxy-3-methylfentanyl, some trade or other names: N-[1-(2-hydroxy-2-phenethyl)-3-methyl-4-piperidinyl]-N-phenylpropanamide;

(13) Betameprodine;

(14) Betamethadol;

(15) Betaprodine;

(16) Clonitazene;

(17) Dextromoramide;

(18) Diampromide;

(19) Diethylthiambutene;

(20) Difenoxyin;

(21) Dimenoxadol;

(22) Dimpheptanol;

(23) Dimethylthiambutene;

(24) Dioxaphetyl butyrate;

(25) Dipipanone;

(26) Ethylmethylthiambutene;

(27) Etonitazene;

(28) Etoxadine;

(29) Furethidine;

(30) Hydroxypethidine;

(31) Ketobemidone;

(32) Levomoramide;

(33) Levophenacymorphan;

(34) 3-Methylfentanyl (N-[3-methyl-1-(2-phenylethyl)-4-piperidyl]-N-phenylpropanamide);

(35) 3-Methylthiofentanyl (N-[3-methyl-1-(2-thienyl)ethyl-4-piperidinyl]-N-phenylpropanamide);

(36) Morpheridine;

(37) MPPP (1-methyl-4-phenyl-4-propionoxypiperidine);

(38) Noracymethadol;

(39) Norlevorphanol;

(40) Normethadone;

(41) Norpipanone;

(42) Para-fluorofentanyl (N-(4-fluorophenyl)-N-[1-(2-phenethyl)-4-piperidinyl] propanamide);

(43) PEPAP(1-(2-phenethyl)-4-phenyl-4-acetoxypiperidine);

(44) Phenadoxone;

(45) Phenampromide;

(46) Phenomorphan;

(47) Phenoperidine;

(48) Piritramide;

(49) Proheptazine;

(50) Properidine;

(51) Propiram;

(52) Racemoramide;

(53) Thiofentanyl (N-phenyl-N-[1-(2-thienyl)ethyl-4-piperidinyl]-propanamide);

(54) Tilidine;

(55) Trimeperidine.

(b) Opium derivatives. Unless specifically excepted or unless listed in another schedule, any of the following opium derivatives, including their salts, isomers, and salts of isomers whenever the existence of those salts, isomers, and salts of isomers is possible within the specific chemical designation:

(1) Acetorphine;

(2) Acetyldihydrocodeine;

(3) Benzylmorphine;

(4) Codeine methylbromide;

(5) Codeine-N-Oxide;

(6) Cyprenorphine;

(7) Desomorphine;

(8) Dihydromorphine;

(9) Drotebanol;

(10) Etorphine, except hydrochloride salt;

(11) Heroin;

(12) Hydromorphanol;

(13) Methyl-desorphine;

(14) Methyl-dihydromorphine;

(15) Morphine methylbromide;

(16) Morphine methylsulfonate;

(17) Morphine-N-Oxide;

(18) Myrophine;

(19) Nicocodeine;

(20) Nicomorphine;

(21) Normorphine;

(22) Pholcodine;

(23) Thebacon.

(c) Hallucinogenic substances. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following hallucinogenic substances, including their salts, isomers, and salts of isomers whenever the existence of those salts, isomers, and salts of isomers is possible within the specific chemical designation. For the purposes of this subsection only, the term "isomer" includes the optical, position, and geometric isomers:

(1) Alpha-ethyltryptamine: Some trade or other names: Etryptamine; monase; a-ethyl-1H-indole-3-ethanamine; 3-(2-aminobutyl) indole; a-ET; and AET;

(2) 4-bromo-2,5-dimethoxy-amphetamine: Some trade or other names: 4-bromo-2,5-dimethoxy-a-methylphenethylamine; 4-bromo-2,5-DMA;

(3) 4-bromo-2,5-dimethoxyphenethylamine: Some trade or other names: 2-(4-bromo-2,5-dimethoxyphenyl)-1-aminoethane; alpha-desmethyl DOB; 2C-B, nexus;

(4) 2,5-dimethoxyamphetamine: Some trade or other names: 2,5-dimethoxy-a-methylphenethylamine; 2,5-DMA;

(5) 2,5-dimethoxy-4-ethylamphetamine (DOET);

(6) 2,5-dimethoxy-4-(n)-propylthiophenethylamine: Other name: 2C-T-7;

(7) 4-methoxyamphetamine: Some trade or other names: 4-methoxy-a-methylphenethylamine; paramethoxyamphetamine, PMA;

(8) 5-methoxy-3,4-methylenedioxy-amphetamine;

(9) 4-methyl-2,5-dimethoxy-amphetamine: Some trade and other names: 4-methyl-2,5-dimethoxy-a-methylphenethylamine; "DOM"; and "STP";

(10) 3,4-methylenedioxy amphetamine;

(11) 3,4-methylenedioxy-methamphetamine (MDMA);

(12) 3,4-methylenedioxy-N-ethylamphetamine, also known as N-ethyl-alpha-methyl-3,4(methylenedioxy)phenethylamine, N-ethyl MDA, MDE, MDEA;

(13) N-hydroxy-3,4-methylenedioxyamphetamine also known as N-hydroxy-alpha-methyl-3,4(methylenedioxy)phenethylamine, N-hydroxy MDA;

(14) 3,4,5-trimethoxy amphetamine;

(15) Alpha-methyltryptamine: Other name: AMT;

(16) Bufotenine: Some trade or other names: 3-(beta-Dimethylaminoethyl)-5-hydroxyindole; 3-(2-dimethylaminoethyl)-5-indolol; N, N-dimethylserotonin; 5-hydroxy-N,N-dimethyltryptamine; mappine;

(17) Diethyltryptamine: Some trade or other names: N,N-Diethyltryptamine; DET;

(18) Dimethyltryptamine: Some trade or other names: DMT;

(19) 5-methoxy-N,N-diisopropyltryptamine: Other name: 5-MeO-DIPT;

(20) Ibogaine: Some trade or other names: 7-Ethyl-6,6 beta,7,8,9,10,12,13,-octahydro-2-methoxy-6,9-methano-5H-pyrido (1',2' 1,2) azepero (5,4-b) indole; Tabernanthe iboga;

(21) Lysergic acid diethylamide;

(22) Marihuana or marijuana;

(23) Mescaline;

(24) Parahexyl-7374: Some trade or other names: 3-Hexyl-1-hydroxy-7, 8, 9, 10-tetrahydro-6, 6, 9-trimethyl-6H-dibenzo[b,d]pyran; synhexyl;

(25) Peyote, meaning all parts of the plant presently classified botanically as *Lophophora Williamsii* Lemaire, whether growing or not, the seeds thereof, any extract from any part of such plant, and every compound, manufacture, salts, derivative, mixture, or preparation of such plant, its seeds, or extracts; (interprets 21 U.S.C. Sec. 812 (c), Schedule I (c)(12));

(26) N-ethyl-3-piperidyl benzilate;

(27) N-methyl-3-piperidyl benzilate;

(28) Psilocybin;

(29) Psilocyn;

(30) Tetrahydrocannabinols, meaning tetrahydrocannabinols naturally contained in a plant of the genus *Cannabis* (cannabis plant), as well as synthetic equivalents of the substances contained in the plant, or in the resinous extractives of *Cannabis*, species, and/or synthetic substances, derivatives, and their isomers with similar chemical structure and pharmacological activity such as the following:

(i) 1 - cis - or trans tetrahydrocannabinol, and their optical isomers, excluding tetrahydrocannabinol in sesame oil and encapsulated in a soft gelatin capsule in a drug product approved by the United States Food and Drug Administration;

(ii) 6 - cis - or trans tetrahydrocannabinol, and their optical isomers;

(iii) 3,4 - cis - or trans tetrahydrocannabinol, and its optical isomers;

(Since nomenclature of these substances is not internationally standardized, compounds of these structures, regardless of numerical designation of atomic positions covered.)

(31) Ethylamine analog of phencyclidine: Some trade or other names: N-ethyl-1-phenylcyclohexylamine, (1-phenylcyclohexyl) ethylamine; N-(1-phenylcyclohexyl)ethylamine; cyclohexamine; PCE;

(32) Pyrrolidine analog of phencyclidine: Some trade or other names: 1-(1-phenylcyclohexyl)pyrrolidine; PCPy; PHP;

(33) Thiophene analog of phencyclidine: Some trade or other names: 1-(1-[2-thienyl]-cyclohexyl)-piperidine; 2-thienyl analog of phencyclidine; TPCP; TCP;

(34) 1-[1-(2-thienyl)cyclohexyl]pyrrolidine: A trade or other name is TCPy.

(d) Depressants. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a depressant effect on the central nervous system, including its salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation.

(1) Gamma-hydroxybutyric acid: Some other names include GHB; gamma-hydroxybutyrate; 4-hydroxybutyrate; 4-hydroxybutanoic acid; sodium oxybate; sodium oxybutyrate;

(2) Mecloqualone;

(3) Methaqualone.

(e) Stimulants. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a stimulant effect on the central nervous system, including its salts, isomers, and salts of isomers:

(1) Aminorex: Some other names: aminoxaphen; 2-amino-5-phenyl-2-oxazoline; or 4, 5-dihydro-5-phenyl-2-oxazolamine;

(2) N-Benzylpiperazine: Some other names: BZP, 1-benzylpiperazine;

(3) Cathinone, also known as 2-amino-1-phenyl-1-propanone, alpha-aminopropiophenone, 2-aminopropiophenone and norephedrone;

(4) Fenethylamine;

(5) Methcathinone: Some other names: 2-(methylamino)-propionophenone; alpha-(methylamino)propionophenone; 2-(methylamino)-1-phenylpropan-1-one; alpha-N-methylaminopropiophenone; monomethylpropion; ephedrone; N-methylcathinone; methylcathinone; AL-464; AL-422; AL-463 and UR1432, its salts, optical isomers, and salts of optical isomers;

(6) (+-)-cis-4-methylaminorex ((+)-cis-4,5-dihydro-4-methyl-5-phenyl-2-oxazolamine);

(7) N-ethylamphetamine;

(8) N,N-dimethylamphetamine: Some trade or other names: N,N-alpha-trimethyl-benzeneethanamine; N,N-alpha-trimethylphenoethylene.

The controlled substances in this section may be added, rescheduled, or deleted as provided for in RCW 69.50.201. [2010 c 177 § 2; 1993 c 187 § 4; 1986 c 124 § 3; 1980 c 138 § 1; 1971 ex.s. c 308 § 69.50.204.]

*State board of pharmacy may change schedules of controlled substances: RCW 69.50.201.*

**69.50.205 Schedule II tests.** (a) The state board of pharmacy shall place a substance in Schedule II upon finding that:

(1) the substance has high potential for abuse;

(2) the substance has currently accepted medical use in treatment in the United States, or currently accepted medical use with severe restrictions; and

(3) the abuse of the substance may lead to severe psychological or physical dependence.

(b) The state board of pharmacy may place a substance in Schedule II without making the findings required by subsection (a) of this section if the substance is controlled under Schedule II of the federal Controlled Substances Act by a federal agency as the result of an international treaty, convention, or protocol. [1993 c 187 § 5; 1971 ex.s. c 308 § 69.50.205.]

**69.50.206 Schedule II.** (a) The drugs and other substances listed in this section, by whatever official name, common or usual name, chemical name, or brand name designated, are included in Schedule II.

(b) Substances. (Vegetable origin or chemical synthesis.) Unless specifically excepted, any of the following substances, except those listed in other schedules, whether produced directly or indirectly by extraction from substances of vegetable origin, or independently by means of chemical synthesis, or by combination of extraction and chemical synthesis:

(1) Opium and opiate, and any salt, compound, derivative, or preparation of opium or opiate, excluding apomorphine, thebaine-derived butorphanol, dextrorphan, nalbuphine, nalmefene, naloxone, and naltrexone, and their respective salts, but including the following:

- (i) Raw opium;
- (ii) Opium extracts;
- (iii) Opium fluid;
- (iv) Powdered opium;
- (v) Granulated opium;
- (vi) Tincture of opium;
- (vii) Codeine;
- (viii) Dihydroetorphine;
- (ix) Ethylmorphine;
- (x) Etorphine hydrochloride;
- (xi) Hydrocodone;
- (xii) Hydromorphone;
- (xiii) Metopon;
- (xiv) Morphine;
- (xv) Oripavine;
- (xvi) Oxycodone;
- (xvii) Oxymorphone; and
- (xviii) Thebaine.

(2) Any salt, compound, isomer, derivative, or preparation thereof that is chemically equivalent or identical with any of the substances referred to in subsection (b)(1) of this section, but not including the isoquinoline alkaloids of opium.

(3) Opium poppy and poppy straw.

(4) Coca leaves and any salt, compound, derivative, or preparation of coca leaves including cocaine and ecgonine, and their salts, isomers, derivatives, and salts of isomers and derivatives, and any salt, compound, derivative, or preparation thereof which is chemically equivalent or identical with any of these substances, except that the substances shall not include decocainized coca leaves or extractions of coca leaves which do not contain cocaine or ecgonine.

(5) Concentrate of poppy straw (The crude extract of poppy straw in either liquid, solid, or powder form which contains the phenanthrene alkaloids of the opium poppy.)

(c) Opiates. Unless specifically excepted or unless in another schedule, any of the following synthetic opiates, including its isomers, esters, ethers, salts, and salts of isomers, esters, and ethers, whenever the existence of such isomers, esters, ethers, and salts is possible within the specific chemical designation, dextrorphan and levopropoxyphene excepted:

- (1) Alfentanil;
- (2) Alphaprodine;
- (3) Anileridine;
- (4) Bezitramide;
- (5) Bulk dextropropoxyphene (nondosage forms);
- (6) Carfentanil;
- (7) Dihydrocodeine;
- (8) Diphenoxylate;
- (9) Fentanyl;
- (10) Isomethadone;
- (11) Levo-alpha-acetylmethadol, also known as levo-alpha-acetylmethadol, levomethadyl acetate, or LAAM;
- (12) Levomethorphan;
- (13) Levorphanol;
- (14) Metazocine;
- (15) Methadone;
- (16) Methadone—Intermediate, 4-cyano-2-dimethylamino-4, 4-diphenyl butane;
- (17) Moramide—Intermediate, 2-methyl-3-morpholino-1, 1-diphenylpropane-carboxylic acid;
- (18) Pethidine (meperidine);
- (19) Pethidine—Intermediate-A, 4-cyano-1-methyl-4-phenylpiperidine;
- (20) Pethidine—Intermediate-B, ethyl-4-phenylpiperidine-4-carboxylate;
- (21) Pethidine-Intermediate-C, 1-methyl-4-phenylpiperidine-4-carboxylic acid;
- (22) Phenazocine;
- (23) Piminodine;
- (24) Racemethorphan;
- (25) Racemorphan;
- (26) Remifentanil;
- (27) Sufentanil;
- (28) Tapentadol.

(d) Stimulants. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a stimulant effect on the central nervous system:

- (1) Amphetamine, its salts, optical isomers, and salts of its optical isomers;
- (2) Methamphetamine, its salts, isomers, and salts of its isomers;
- (3) Phenmetrazine and its salts;
- (4) Methylphenidate;
- (5) Lisdexamphetamine, its salts, isomers, and salts of its isomers.

(e) Depressants. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a depressant effect on the central nervous system, including its salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:

- (1) Amobarbital;
- (2) Glutethimide;
- (3) Pentobarbital;
- (4) Phencyclidine;
- (5) Secobarbital.
- (f) Hallucinogenic substances.

Nabilone: Some trade or other names are ( $\pm$ )-trans-3-(1,1-dimethylheptyl)-6,6a,7,8,10,10a-hexahydro-1-hydroxy-6,6-dimethyl-9H-dibenzol[b,d]pyran-9-one.

(g) Immediate precursors. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances:

(1) Immediate precursor to amphetamine and methamphetamine:

(i) Phenylacetone: Some trade or other names phenyl-2-propanone, P2P, benzyl methyl ketone, methyl benzyl ketone.

(2) Immediate precursors to phencyclidine (PCP):

(i) 1-phenylcyclohexylamine;

(ii) 1-piperidinocyclohexanecarbonitrile (PCC).

The controlled substances in this section may be added, rescheduled, or deleted as provided for in RCW 69.50.201. [2010 c 177 § 3; 1993 c 187 § 6; 1986 c 124 § 4; 1980 c 138 § 2; 1971 ex.s. c 308 § 69.50.206.]

*State board of pharmacy may change schedules of controlled substances: RCW 69.50.201.*

**69.50.207 Schedule III tests.** (a) The state board of pharmacy shall place a substance in Schedule III upon finding that:

(1) the substance has a potential for abuse less than the substances included in Schedules I and II;

(2) the substance has currently accepted medical use in treatment in the United States; and

(3) abuse of the substance may lead to moderate or low physical dependence or high psychological dependence.

(b) The state board of pharmacy may place a substance in Schedule III without making the findings required by subsection (a) of this section if the substance is controlled under Schedule III of the federal Controlled Substances Act by a federal agency as the result of an international treaty, convention, or protocol. [1993 c 187 § 7; 1971 ex.s. c 308 § 69.50.207.]

**69.50.208 Schedule III.** Unless specifically excepted by state or federal law or regulation or more specifically included in another schedule, the following controlled substances are listed in Schedule III:

(a) Stimulants. Any material, compound, mixture, or preparation containing any quantity of the following substances having a stimulant effect on the central nervous system, including their salts, isomers, whether optical, position, or geometric, and salts of isomers whenever the existence of those salts, isomers, and salts of isomers is possible within the specific chemical designation:

(1) Any compound, mixture, or preparation in dosage unit form containing any stimulant substance included in Schedule II and which was listed as an excepted compound on August 25, 1971, pursuant to the federal Controlled Sub-

stances Act, and any other drug of the quantitative composition shown in that list for those drugs or which is the same except for containing a lesser quantity of controlled substances;

- (2) Benzphetamine;
- (3) Chlorphentermine;
- (4) Clortermine;
- (5) Phendimetrazine.

(b) Depressants. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a depressant effect on the central nervous system:

(1) Any compound, mixture, or preparation containing:

- (i) Amobarbital;
- (ii) Secobarbital;
- (iii) Pentobarbital;

or any salt thereof and one or more other active medicinal ingredients which are not listed in any schedule;

(2) Any suppository dosage form containing:

- (i) Amobarbital;
- (ii) Secobarbital;
- (iii) Pentobarbital;

or any salt of any of these drugs and approved by the Food and Drug Administration for marketing only as a suppository;

(3) Any substance which contains any quantity of a derivative of barbituric acid, or any salt of a derivative of barbituric acid;

(4) Chlorhexadol;

(5) Embutramide;

(6) Any drug product containing gamma hydroxybutyric acid, including its salts, isomers, and salts of isomers, for which an application is approved under section 505 of the federal food, drug, and cosmetic act;

(7) Ketamine, its salts, isomers, and salts of isomers, some other names for ketamine: (<plus-minus>)-2-(2-chlorophenyl)-2-(methylamino)-cyclohexanone;

(8) Lysergic acid;

(9) Lysergic acid amide;

(10) Methyprylon;

(11) Sulfondiethylmethane;

(12) Sulfonethylmethane;

(13) Sulfonmethane;

(14) Tiletamine and zolazepam or any of their salts—some trade or other names for a tiletamine-zolazepam combination product: Telazol, some trade or other names for tiletamine: 2-(ethylamino)-2-(2-thienyl) cyclohexanone, some trade or other names for zolazepam: 4-(2-fluorophenyl)-6,8-dihydro-1,3,8-trimethylpyrazolo-[3,4-e][1,4]-diazepin-7(1H)-one flupyrzapon.

(c) Nalorphine.

(d) Narcotic drugs. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation containing limited quantities of any of the following narcotic drugs, or any salts thereof calculated as the free anhydrous base or alkaloid, in limited quantities as set forth in this subsection:

(1) Not more than 1.8 grams of codeine per 100 milliliters or not more than 90 milligrams per dosage unit, with an

equal or greater quantity of an isoquinoline alkaloid of opium;

(2) Not more than 1.8 grams of codeine per 100 milliliters or not more than 90 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts;

(3) Not more than 300 milligrams of dihydrocodeinone (hydrocodone) per 100 milliliters or not more than 15 milligrams per dosage unit, with a fourfold or greater quantity of an isoquinoline alkaloid of opium;

(4) Not more than 300 milligrams of dihydrocodeinone (hydrocodone) per 100 milliliters or not more than 15 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts;

(5) Not more than 1.8 grams of dihydrocodeine per 100 milliliters or not more than 90 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts;

(6) Not more than 300 milligrams of ethylmorphine per 100 milliliters or not more than 15 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts;

(7) Not more than 500 milligrams of opium per 100 milliliters or per 100 grams, or not more than 25 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts; and

(8) Not more than 50 milligrams of morphine per 100 milliliters or per 100 grams with one or more active, nonnarcotic ingredients in recognized therapeutic amounts.

(e) Any material, compound, mixture, or preparation containing any of the following narcotic drugs or their salts: Buprenorphine.

(f) Hallucinogenic substances. Dronabinol (synthetic) in sesame oil and encapsulated in a soft gelatin capsule in a United States food and drug administration approved product. Some other names for dronabinol: [6a R-trans]-6a,7,8,10a-tetrahydro-6,6,9-trimethyl-3-pentyl-6H-dibenzo[b,d]pyran-i-ol, or (-)-delta-9-(trans)-tetrahydrocannabinol.

(g) Anabolic steroids. The term "anabolic steroids" means any drug or hormonal substance, chemically and pharmacologically related to testosterone, other than estrogens, progestins, corticosteroids, and dehydroepiandrosterone, that promotes muscle growth and includes:

- (1) 3 $\beta$ ,17-dihydroxy-5 $\alpha$ -androstane;
- (2) 3 $\alpha$ ,17 $\beta$ -dihydroxy-5 $\alpha$ -androstane;
- (3) 5 $\alpha$ -androstan-3,17-dione;
- (4) 1-androstenediol (3 $\beta$ ,17 $\beta$ -dihydroxy-5 $\alpha$ -androst-1-ene);
- (5) 1-androstenediol (3 $\alpha$ ,17 $\beta$ -dihydroxy-5 $\alpha$ -androst-1-ene);
- (6) 4-androstenediol (3 $\beta$ ,17 $\beta$ -dihydroxy-androst-4-ene);
- (7) 5-androstenediol (3 $\beta$ ,17 $\beta$ -dihydroxy-androst-5-ene);
- (8) 1-androstenedione ([5 $\alpha$ ]-androst-1-en-3,17-dione);
- (9) 4-androstenedione (androst-4-en-3,17-dione);
- (10) 5-androstenedione (androst-5-en-3,17-dione);
- (11) Bolasterone (7 $\alpha$ ,17 $\alpha$ -dimethyl-17 $\beta$ -hydroxyandrost-4-en-3-one);
- (12) Boldenone (17 $\beta$ -hydroxyandrost-1,4,-diene-3-one);

(13) Calusterone (7 $\beta$ ,17 $\alpha$ -dimethyl-17 $\beta$ -hydroxyandrost-4-en-3-one);

(14) Clostebol (4-chloro-17 $\beta$ -hydroxyandrost-4-en-3-one);

(15) Dehydrochloromethyltestosterone (4-chloro-17 $\beta$ -hydroxy-17 $\alpha$ -methyl-androst-1,4-dien-3-one);

(16)  $\Delta$ 1-dihydrotestosterone (a.k.a. '1-testosterone') (17 $\beta$ -hydroxy-5 $\alpha$ -androst-1-en-3-one);

(17) 4-dihydrotestosterone (17 $\beta$ -hydroxy-androstan-3-one);

(18) Drostanolone (17 $\beta$ -hydroxy-2 $\alpha$ -methyl-5 $\alpha$ -androstan-3-one);

(19) Ethylestrenol (17 $\alpha$ -ethyl-17 $\beta$ -hydroxyestr-4-ene);

(20) Fluoxymesterone (9-fluoro-17 $\alpha$ -methyl-11 $\beta$ ,17 $\beta$ -dihydroxyandrost-4-en-3-one);

(21) Formebolone (2-formyl-17 $\alpha$ -methyl-11 $\alpha$ ,17 $\beta$ -dihydroxyandrost-1,4-dien-3-one);

(22) Furazabol (17 $\alpha$ -methyl-17 $\beta$ -hydroxyandrostano[2,3-c]-furan);

(23) 13 $\beta$ -ethyl-17 $\beta$ -hydroxygon-4-en-3-one;

(24) 4-hydroxytestosterone (4,17 $\beta$ -dihydroxy-androst-4-en-3-one);

(25) 4-hydroxy-19-nortestosterone (4,17 $\beta$ -dihydroxyestr-4-en-3-one);

(26) Mestanolone (17 $\alpha$ -methyl-17 $\beta$ -hydroxy-5-androstan-3-one);

(27) Mesterolone (1 $\alpha$ -methyl-17 $\beta$ -hydroxy-[5 $\alpha$ ]-androstan-3-one);

(28) Methandienone (17 $\alpha$ -methyl-17 $\beta$ -hydroxyandrost-1,4-dien-3-one);

(29) Methandriol (17 $\alpha$ -methyl-3 $\beta$ ,17 $\beta$ -dihydroxyandrost-5-ene);

(30) Methenolone (1-methyl-17 $\beta$ -hydroxy-5 $\alpha$ -androst-1-en-3-one);

(31) 17 $\alpha$ -methyl-3 $\beta$ ,17 $\beta$ -dihydroxy-5 $\alpha$ -androstane;

(32) 17 $\alpha$ -methyl-3 $\alpha$ ,17 $\beta$ -dihydroxy-5 $\alpha$ -androstane;

(33) 17 $\alpha$ -methyl-3 $\beta$ ,17 $\beta$ -dihydroxyandrost-4-ene;

(34) 17 $\alpha$ -methyl-4-hydroxynandrolone (17 $\alpha$ -methyl-4-hydroxy-17 $\beta$ -hydroxyestr-4-en-3-one);

(35) Methyldienolone (17 $\alpha$ -methyl-17 $\beta$ -hydroxyestra-4,9(10)-dien-3-one);

(36) Methyltrienolone (17 $\alpha$ -methyl-17 $\beta$ -hydroxyestra-4,9-11-trien-3-one);

(37) Methyltestosterone (17 $\alpha$ -methyl-17 $\beta$ -hydroxyandrost-4-en-3-one);

(38) Mibolerone (7 $\alpha$ ,17 $\alpha$ -dimethyl-17 $\beta$ -hydroxyestr-4-en-3-one);

(39) 17 $\alpha$ -methyl- $\Delta$ 1-dihydrotestosterone (17 $\beta$ -hydroxy-17 $\alpha$ -methyl-5 $\alpha$ -androst-1-en-3-one) (also known as '17 $\alpha$ -methyl-1-testosterone');

(40) Nandrolone (17 $\beta$ -hydroxyestr-4-en-3-one);

(41) 19-nor-4-androstenediol (3 $\beta$ , 17 $\beta$ -dihydroxyestr-4-ene);

(42) 19-nor-4-androstenediol (3 $\alpha$ , 17 $\beta$ -dihydroxyestr-4-ene);

(43) 19-nor-5-androstenediol (3 $\beta$ , 17 $\beta$ -dihydroxyestr-5-ene);

- (44) 19-nor-5-androstenediol (3 $\alpha$ , 17 $\beta$ -dihydroxyestr-5-ene);
- (45) 19-nor-4-androstenedione (estr-4-en-3,17-dione);
- (46) 19-nor-5-androstenedione (estr-5-en-3,17-dione);
- (47) Norbolethone (13 $\beta$ , 17 $\alpha$ -diethyl-17 $\beta$ -hydroxygon-4-en-3-one);
- (48) Norclostebol (4-chloro-17 $\beta$ -hydroxyestr-4-en-3-one);
- (49) Norethandrolone (17 $\alpha$ -ethyl-17 $\beta$ -hydroxyestr-4-en-3-one);
- (50) Normethandrolone (17 $\alpha$ -methyl-17 $\beta$ -hydroxyestr-4-en-3-one);
- (51) Oxandrolone (17 $\alpha$ -methyl-17 $\beta$ -hydroxy-2-oxa[5 $\alpha$ ]-androst-3-one);
- (52) Oxymesterone (17 $\alpha$ -methyl-4,17 $\beta$ -dihydroxyandrost-4-en-3-one);
- (53) Oxymetholone (17 $\alpha$ -methyl-2-hydroxymethylene-17 $\beta$ -hydroxy-[5 $\alpha$ ]-androst-3-one);
- (54) Stanozolol (17 $\alpha$ -methyl-17 $\beta$ -hydroxy-[5 $\alpha$ ]-androst-2-eno[3,2-c]-pyrazole);
- (55) Stenbolone (17 $\beta$ -hydroxy-2-methyl-[5 $\alpha$ ]-androst-1-en-3-one);
- (56) Testolactone (13-hydroxy-3-oxo-13,17-secoandrost-1,4-dien-17-oic acid lactone);
- (57) Testosterone (17 $\beta$ -hydroxyandrost-4-en-3-one);
- (58) Tetrahydrogestrinone (13 $\beta$ , 17 $\alpha$ -diethyl-17 $\beta$ -hydroxygon-4,9,11-trien-3-one);
- (59) Trenbolone (17 $\beta$ -hydroxyestr-4,9,11-trien-3-one);
- and
- (60) Any salt, ester, or ether of a drug or substance described in this section. Such term does not include an anabolic steroid that is expressly intended for administration through implants to cattle or other nonhuman species and that has been approved by the secretary of the department of health and human services for such administration. If any person prescribes, dispenses, or distributes such steroid for human use, the person shall be considered to have prescribed, dispensed, or distributed an anabolic steroid within the meaning of this section.

The state board of pharmacy may except by rule any compound, mixture, or preparation containing any stimulant or depressant substance listed in subsection (a)(1) and (2) of this section from the application of all or any part of this chapter if the compound, mixture, or preparation contains one or more active medicinal ingredients not having a stimulant or depressant effect on the central nervous system, and if the admixtures are in combinations, quantity, proportion, or concentration that vitiate the potential for abuse of the substances having a stimulant or depressant effect on the central nervous system.

The controlled substances listed in this section may be added, rescheduled, or deleted as provided for in RCW 69.50.201. [2010 c 177 § 4; 1993 c 187 § 8; 1986 c 124 § 5; 1980 c 138 § 3; 1971 ex.s. c 308 § 69.50.208.]

The controlled substances listed in this section may be added, rescheduled, or deleted as provided for in RCW 69.50.201. [2010 c 177 § 4; 1993 c 187 § 8; 1986 c 124 § 5; 1980 c 138 § 3; 1971 ex.s. c 308 § 69.50.208.]

*State board of pharmacy may change schedules of controlled substances: RCW 69.50.201.*

(2010 Ed.)

**69.50.209 Schedule IV tests.** (a) The state board of pharmacy shall place a substance in Schedule IV upon finding that:

(1) the substance has a low potential for abuse relative to substances in Schedule III;

(2) the substance has currently accepted medical use in treatment in the United States; and

(3) abuse of the substance may lead to limited physical dependence or psychological dependence relative to the substances included in Schedule III.

(b) The state board of pharmacy may place a substance in Schedule IV without making the findings required by subsection (a) of this section if the substance is controlled under Schedule IV of the federal Controlled Substances Act by a federal agency as the result of an international treaty, convention, or protocol. [1993 c 187 § 9; 1971 ex.s. c 308 § 69.50.209.]

**69.50.210 Schedule IV.** Unless specifically excepted by state or federal law or regulation or more specifically included in another schedule, the following controlled substances are listed in Schedule IV:

(a) Any material, compound, mixture, or preparation containing any of the following narcotic drugs, or their salts calculated as the free anhydrous base or alkaloid, in limited quantities as set forth below:

(1) Not more than 1 milligram of difenoxin and not less than 25 micrograms of atropine sulfate per dosage unit.

(2) Dextropropoxyphene (alpha-(+)-4-dimethylamino-1,2-diphenyl-3-methyl-2-propionoxybutane).

(b) Depressants. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation containing any quantity of the following substances having a depressant effect on the central nervous system, including their salts, isomers, and salts of isomers whenever the existence of those salts, isomers, and salts of isomers is possible within the specific chemical designation:

- (1) Alprazolam;
- (2) Barbitol;
- (3) Bromazepam;
- (4) Camazepam;
- (5) Carisoprodol;
- (6) Chloral betaine;
- (7) Chloral hydrate;
- (8) Chlordiazepoxide;
- (9) Clobazam;
- (10) Clonazepam;
- (11) Clorazepate;
- (12) Clotiazepam;
- (13) Cloxazolam;
- (14) Delorazepam;
- (15) Diazepam;
- (16) Dichloralphenazone;
- (17) Estazolam;
- (18) Ethchlorvynol;
- (19) Ethinamate;
- (20) Ethyl loflazepate;
- (21) Fludiazepam;
- (22) Flunitrazepam;
- (23) Flurazepam;
- (24) Halazepam;

- (25) Haloxazolam;
- (26) Ketazolam;
- (27) Loprazolam;
- (28) Lorazepam;
- (29) Lormetazepam;
- (30) Mebutamate;
- (31) Medazepam;
- (32) Meprobamate;
- (33) Methohexital;
- (34) Methylphenobarbital (mephobarbital);
- (35) Midazolam;
- (36) Nimetazepam;
- (37) Nitrazepam;
- (38) Nordiazepam;
- (39) Oxazepam;
- (40) Oxazolam;
- (41) Paraldehyde;
- (42) Petrichloral;
- (43) Phenobarbital;
- (44) Pinazepam;
- (45) Prazepam;
- (46) Quazepam;
- (47) Temazepam;
- (48) Tetrazepam;
- (49) Triazolam;
- (50) Zaleplon;
- (51) Zolpidem; and
- (52) Zopiclone.

(c) Fenfluramine. Any material, compound, mixture, or preparation containing any quantity of the following substance, including its salts, isomers, and salts of such isomers, whenever the existence of such salts, isomers, and salts of isomers is possible: Fenfluramine.

(d) Stimulants. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation containing any quantity of the following substances having a stimulant effect on the central nervous system, including their salts, isomers, and salts of isomers:

- (1) Cathine((+)norpseudoephedrine);
- (2) Diethylpropion;
- (3) Fencamfamin;
- (4) Fenproporex;
- (5) Mazindol;
- (6) Mefenorex;
- (7) Modafinil;
- (8) Pemoline (including organometallic complexes and chelates thereof);
- (9) Phentermine;
- (10) Pipradrol;
- (11) Sibutramine;
- (12) SPA ((-)-1-dimethylamino-1, 2-dephenylethane).

(e) Other substances. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation containing any quantity of the following substance, including its salts:

- (1) Pentazocine;
- (2) Butorphanol, including its optical isomers.

The state board of pharmacy may except by rule any compound, mixture, or preparation containing any depressant substance listed in subsection (b) of this section from the application of all or any part of this chapter if the compound,

mixture, or preparation contains one or more active medicinal ingredients not having a depressant effect on the central nervous system, and if the admixtures are in combinations, quantity, proportion, or concentration that vitiate the potential for abuse of the substances having a depressant effect on the central nervous system.

The controlled substances listed in this section may be added, rescheduled, or deleted as provided for in RCW 69.50.201. [2010 c 177 § 5; 1993 c 187 § 10; 1986 c 124 § 6; 1981 c 147 § 2; 1980 c 138 § 4; 1971 ex.s. c 308 § 69.50.210.]

*State board of pharmacy may change schedules of controlled substances: RCW 69.50.201.*

**69.50.211 Schedule V tests.** (a) The state board of pharmacy shall place a substance in Schedule V upon finding that:

(1) the substance has low potential for abuse relative to the controlled substances included in Schedule IV;

(2) the substance has currently accepted medical use in treatment in the United States; and

(3) abuse of the substance may lead to limited physical dependence or psychological dependence relative to the substances included in Schedule IV.

(b) The state board of pharmacy may place a substance in Schedule V without being required to make the findings required by subsection (a) of this section if the substance is controlled under Schedule V of the federal Controlled Substances Act by a federal agency as the result of an international treaty, convention, or protocol. [1993 c 187 § 11; 1971 ex.s. c 308 § 69.50.211.]

**69.50.212 Schedule V.** Unless specifically excepted by state or federal law or regulation or more specifically included in another schedule, the following controlled substances are listed in Schedule V:

(a) Any compound, mixture, or preparation containing any of the following narcotic drugs, or their salts calculated as the free anhydrous base or alkaloid, in limited quantities as set forth in this subsection, which also contains one or more nonnarcotic active medicinal ingredients in sufficient proportion to confer upon the compound, mixture, or preparation, valuable medicinal qualities other than those possessed by the narcotic drug alone:

(1) Not more than 200 milligrams of codeine per 100 milliliters or per 100 grams;

(2) Not more than 100 milligrams of dihydrocodeine per 100 milliliters or per 100 grams;

(3) Not more than 100 milligrams of ethylmorphine per 100 milliliters or per 100 grams;

(4) Not more than 2.5 milligrams of diphenoxylate and not less than 25 micrograms of atropine sulfate per dosage unit;

(5) Not more than 100 milligrams of opium per 100 milliliters or per 100 grams;

(6) Not more than 0.5 milligrams of difenoxin and not less than 25 micrograms of atropine sulfate per dosage unit.

(b) Stimulants. Unless specifically exempted or excluded or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a stimulant effect on

the central nervous system, including its salts, isomers, and salts of isomers: Pyrovalerone.

(c) Depressants. Unless specifically exempted or excluded or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a depressant effect on the central nervous system, including its salts:

(1) Lacosamid, [(R)-2-acetoamido-N-benzyl-3-methoxy-propionamide];

(2) Pregabalin{(S)-3-(aminomethyl)-5-methylhexanoic acid}.

The controlled substances listed in this section may be added, rescheduled, or deleted as provided for in RCW 69.50.201. [2010 c 177 § 6; 1993 c 187 § 12; 1986 c 124 § 7; 1980 c 138 § 5; 1971 ex.s. c 308 § 69.50.212.]

*State board of pharmacy may change schedules of controlled substances: RCW 69.50.201.*

**69.50.213 Republishing of schedules.** The state board of pharmacy shall publish updated schedules annually. Failure to publish updated schedules is not a defense in any administrative or judicial proceeding under this chapter. [1993 c 187 § 13; 1971 ex.s. c 308 § 69.50.213.]

**69.50.214 Controlled substance analog.** A controlled substance analog, to the extent intended for human consumption, shall be treated, for the purposes of this chapter, as a substance included in Schedule I. Within thirty days after the initiation of prosecution with respect to a controlled substance analog by indictment or information, the prosecuting attorney shall notify the state board of pharmacy of information relevant to emergency scheduling as provided for in \*RCW 69.50.201(f). After final determination that the controlled substance analog should not be scheduled, no prosecution relating to that substance as a controlled substance analog may continue or take place. [1993 c 187 § 14.]

\*Reviser's note: RCW 69.50.201 was amended by 1998 c 245 § 108, changing subsection (f) to subsection (e).

### ARTICLE III

#### REGULATION OF MANUFACTURE, DISTRIBUTION, AND DISPENSING OF CONTROLLED SUBSTANCES

**69.50.301 Rules—Fees.** The board may adopt rules and the department may charge reasonable fees, relating to the registration and control of the manufacture, distribution, and dispensing of controlled substances within this state. [1993 c 187 § 15; 1991 c 229 § 9; 1989 1st ex.s. c 9 § 431; 1971 ex.s. c 308 § 69.50.301.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**69.50.302 Registration requirements.** (a) Every person who manufactures, distributes, or dispenses any controlled substance within this state or who proposes to engage in the manufacture, distribution, or dispensing of any controlled substance within this state, shall obtain annually a registration issued by the department in accordance with the board's rules.

(b) A person registered by the department under this chapter to manufacture, distribute, dispense, or conduct research with controlled substances may possess, manufac-

ture, distribute, dispense, or conduct research with those substances to the extent authorized by the registration and in conformity with this Article.

(c) The following persons need not register and may lawfully possess controlled substances under this chapter:

(1) an agent or employee of any registered manufacturer, distributor, or dispenser of any controlled substance if the agent or employee is acting in the usual course of business or employment. This exemption shall not include any agent or employee distributing sample controlled substances to practitioners without an order;

(2) a common or contract carrier or warehouseman, or an employee thereof, whose possession of any controlled substance is in the usual course of business or employment;

(3) an ultimate user or a person in possession of any controlled substance pursuant to a lawful order of a practitioner or in lawful possession of a substance included in Schedule V.

(d) The board may waive by rule the requirement for registration of certain manufacturers, distributors, or dispensers upon finding it consistent with the public health and safety. Personal practitioners licensed or registered in the state of Washington under the respective professional licensing acts shall not be required to be registered under this chapter unless the specific exemption is denied pursuant to RCW 69.50.305 for violation of any provisions of this chapter.

(e) A separate registration is required at each principal place of business or professional practice where the applicant manufactures, distributes, or dispenses controlled substances.

(f) The department may inspect the establishment of a registrant or applicant for registration in accordance with rules adopted by the board. [1993 c 187 § 16; 1989 1st ex.s. c 9 § 432; 1971 ex.s. c 308 § 69.50.302.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**69.50.303 Registration.** (a) The department shall register an applicant to manufacture or distribute controlled substances included in RCW 69.50.204, 69.50.206, 69.50.208, 69.50.210, and 69.50.212 unless the board determines that the issuance of that registration would be inconsistent with the public interest. In determining the public interest, the board shall consider the following factors:

(1) maintenance of effective controls against diversion of controlled substances into other than legitimate medical, scientific, research, or industrial channels;

(2) compliance with applicable state and local law;

(3) promotion of technical advances in the art of manufacturing controlled substances and the development of new substances;

(4) any convictions of the applicant under any laws of another country or federal or state laws relating to any controlled substance;

(5) past experience in the manufacture or distribution of controlled substances, and the existence in the applicant's establishment of effective controls against diversion of controlled substances into other than legitimate medical, scientific, research, or industrial channels;

(6) furnishing by the applicant of false or fraudulent material in any application filed under this chapter;

(7) suspension or revocation of the applicant's federal registration to manufacture, distribute, or dispense controlled substances as authorized by federal law; and

(8) any other factors relevant to and consistent with the public health and safety.

(b) Registration under subsection (a) of this section does not entitle a registrant to manufacture or distribute controlled substances included in Schedule I or II other than those specified in the registration.

(c) Practitioners must be registered, or exempted under RCW 69.50.302(d), to dispense any controlled substances or to conduct research with controlled substances included in Schedules II through V if they are authorized to dispense or conduct research under the law of this state. The board need not require separate registration under this Article for practitioners engaging in research with nonnarcotic substances included in Schedules II through V where the registrant is already registered under this Article in another capacity. Practitioners registered under federal law to conduct research with substances included in Schedule I may conduct research with substances included in Schedule I within this state upon furnishing the board evidence of that federal registration.

(d) A manufacturer or distributor registered under the federal Controlled Substances Act, 21 U.S.C. Sec. 801 et seq., may submit a copy of the federal application as an application for registration as a manufacturer or distributor under this section. The board may require a manufacturer or distributor to submit information in addition to the application for registration under the federal act. [1993 c 187 § 17; 1989 1st ex.s. c 9 § 433; 1971 ex.s. c 308 § 69.50.303.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**69.50.304 Revocation and suspension of registration—Seizure or placement under seal of controlled substances.** (a) A registration, or exemption from registration, under RCW 69.50.303 to manufacture, distribute, or dispense a controlled substance may be suspended or revoked by the state board of pharmacy upon finding that the registrant has:

(1) furnished false or fraudulent material information in any application filed under this chapter;

(2) been convicted of a felony under any state or federal law relating to any controlled substance;

(3) had the registrant's federal registration suspended or revoked and is no longer authorized by federal law to manufacture, distribute, or dispense controlled substances; or

(4) committed acts that would render registration under RCW 69.50.303 inconsistent with the public interest as determined under that section.

(b) The board may limit revocation or suspension of a registration to the particular controlled substance or schedule of controlled substances, with respect to which grounds for revocation or suspension exist.

(c) If the board suspends or revokes a registration, all controlled substances owned or possessed by the registrant at the time of suspension or the effective date of the revocation order may be placed under seal. No disposition may be made of substances under seal until the time for taking an appeal has elapsed or until all appeals have been concluded unless a court, upon application, orders the sale of perishable substances and the deposit of the proceeds of the sale with the

court. Upon a revocation order becoming final, all controlled substances may be forfeited to the state.

(d) The department may seize or place under seal any controlled substance owned or possessed by a registrant whose registration has expired or who has ceased to practice or do business in the manner contemplated by the registration. The controlled substance must be held for the benefit of the registrant or the registrant's successor in interest. The department shall notify a registrant, or the registrant's successor in interest, who has any controlled substance seized or placed under seal, of the procedures to be followed to secure the return of the controlled substance and the conditions under which it will be returned. The department may not dispose of any controlled substance seized or placed under seal under this subsection until the expiration of one hundred eighty days after the controlled substance was seized or placed under seal. The costs incurred by the department in seizing, placing under seal, maintaining custody, and disposing of any controlled substance under this subsection may be recovered from the registrant, any proceeds obtained from the disposition of the controlled substance, or from both. Any balance remaining after the costs have been recovered from the proceeds of any disposition must be delivered to the registrant or the registrant's successor in interest.

(e) The department shall promptly notify the drug enforcement administration of all orders restricting, suspending, or revoking registration and all forfeitures of controlled substances. [1993 c 187 § 18; 1989 1st ex.s. c 9 § 434; 1986 c 124 § 8; 1971 ex.s. c 308 § 69.50.304.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**69.50.305 Procedure for denial, suspension, or revocation of registration.** (a) Any registration, or exemption from registration, issued pursuant to the provisions of this chapter shall not be denied, suspended, or revoked unless the board denies, suspends, or revokes such registration, or exemption from registration, by proceedings consistent with the administrative procedure act, chapter 34.05 RCW.

(b) The board may suspend any registration simultaneously with the institution of proceedings under RCW 69.50.304, or where renewal of registration is refused, if it finds that there is an imminent danger to the public health or safety which warrants this action. The suspension shall continue in effect until the conclusion of the proceedings, including judicial review thereof, unless sooner withdrawn by the board or dissolved by a court of competent jurisdiction. [1971 ex.s. c 308 § 69.50.305.]

**69.50.306 Records of registrants.** Persons registered, or exempted from registration under RCW 69.50.302(d), to manufacture, distribute, dispense, or administer controlled substances under this chapter shall keep records and maintain inventories in conformance with the record-keeping and inventory requirements of federal law and with any additional rules the state board of pharmacy issues. [1971 ex.s. c 308 § 69.50.306.]

**69.50.308 Prescriptions.** (a) A controlled substance may be dispensed only as provided in this section.

(b) Except when dispensed directly by a practitioner authorized to prescribe or administer a controlled substance, other than a pharmacy, to an ultimate user, a substance included in Schedule II may not be dispensed without the written prescription of a practitioner.

(1) Schedule II narcotic substances may be dispensed by a pharmacy pursuant to a facsimile prescription under the following circumstances:

(i) The facsimile prescription is transmitted by a practitioner to the pharmacy; and

(ii) The facsimile prescription is for a patient in a long-term care facility. "Long-term care facility" means nursing homes licensed under chapter 18.51 RCW, boarding homes licensed under chapter 18.20 RCW, and adult family homes licensed under chapter 70.128 RCW; or

(iii) The facsimile prescription is for a patient of a hospice program certified or paid for by medicare under Title XVIII; or

(iv) The facsimile prescription is for a patient of a hospice program licensed by the state; and

(v) The practitioner or the practitioner's agent notes on the facsimile prescription that the patient is a long-term care or hospice patient.

(2) Injectable Schedule II narcotic substances that are to be compounded for patient use may be dispensed by a pharmacy pursuant to a facsimile prescription if the facsimile prescription is transmitted by a practitioner to the pharmacy.

(3) Under (1) and (2) of this subsection the facsimile prescription shall serve as the original prescription and shall be maintained as other Schedule II narcotic substances prescriptions.

(c) In emergency situations, as defined by rule of the state board of pharmacy, a substance included in Schedule II may be dispensed upon oral prescription of a practitioner, reduced promptly to writing and filed by the pharmacy. Prescriptions shall be retained in conformity with the requirements of RCW 69.50.306. A prescription for a substance included in Schedule II may not be refilled.

(d) Except when dispensed directly by a practitioner authorized to prescribe or administer a controlled substance, other than a pharmacy, to an ultimate user, a substance included in Schedule III or IV, which is a prescription drug as determined under RCW 69.04.560, may not be dispensed without a written or oral prescription of a practitioner. Any oral prescription must be promptly reduced to writing. The prescription shall not be filled or refilled more than six months after the date thereof or be refilled more than five times, unless renewed by the practitioner.

(e) A valid prescription or lawful order of a practitioner, in order to be effective in legalizing the possession of controlled substances, must be issued in good faith for a legitimate medical purpose by one authorized to prescribe the use of such controlled substance. An order purporting to be a prescription not in the course of professional treatment is not a valid prescription or lawful order of a practitioner within the meaning and intent of this chapter; and the person who knows or should know that the person is filling such an order, as well as the person issuing it, can be charged with a violation of this chapter.

(f) A substance included in Schedule V must be distributed or dispensed only for a medical purpose.

(g) A practitioner may dispense or deliver a controlled substance to or for an individual or animal only for medical treatment or authorized research in the ordinary course of that practitioner's profession. Medical treatment includes dispensing or administering a narcotic drug for pain, including intractable pain.

(h) No administrative sanction, or civil or criminal liability, authorized or created by this chapter may be imposed on a pharmacist for action taken in reliance on a reasonable belief that an order purporting to be a prescription was issued by a practitioner in the usual course of professional treatment or in authorized research.

(i) An individual practitioner may not dispense a substance included in Schedule II, III, or IV for that individual practitioner's personal use. [2001 c 248 § 1; 1993 c 187 § 19; 1971 ex.s. c 308 § 69.50.308.]

**69.50.309 Containers.** A person to whom or for whose use any controlled substance has been prescribed, sold, or dispensed by a practitioner, and the owner of any animal for which such controlled substance has been prescribed, sold, or dispensed may lawfully possess it only in the container in which it was delivered to him by the person selling or dispensing the same. [1971 ex.s. c 308 § 69.50.309.]

**69.50.310 Sodium pentobarbital—Registration of humane societies and animal control agencies for use in animal control.** On and after September 21, 1977, a humane society and animal control agency may apply to the department for registration pursuant to the applicable provisions of this chapter for the sole purpose of being authorized to purchase, possess, and administer sodium pentobarbital to euthanize injured, sick, homeless, or unwanted domestic pets and animals. Any agency so registered shall not permit a person to administer sodium pentobarbital unless such person has demonstrated adequate knowledge of the potential hazards and proper techniques to be used in administering this drug.

The department may issue a limited registration to carry out the provisions of this section. The board shall promulgate such rules as it deems necessary to insure strict compliance with the provisions of this section. The board may suspend or revoke registration upon determination that the person administering sodium pentobarbital has not demonstrated adequate knowledge as herein provided. This authority is granted in addition to any other power to suspend or revoke registration as provided by law. [1989 1st ex.s. c 9 § 435; 1977 ex.s. c 197 § 1.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**69.50.311 Triplicate prescription form program—Compliance by health care practitioners.** Any licensed health care practitioner with prescription or dispensing authority shall, as a condition of licensure and as directed by the practitioner's disciplinary board, consent to the requirement, if imposed, of complying with a triplicate prescription form program as may be established by rule by the department of health. [1989 1st ex.s. c 9 § 436; 1984 c 153 § 20.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**69.50.312 Electronic communication of prescription information—Board may adopt rules.** (1) Information concerning an original prescription or information concerning a prescription refill for a controlled substance may be electronically communicated to a pharmacy of the patient's choice pursuant to the provisions of this chapter if the electronically communicated prescription information complies with the following:

(a) Electronically communicated prescription information must comply with all applicable statutes and rules regarding the form, content, recordkeeping, and processing of a prescription for a legend drug;

(b) The system used for transmitting electronically communicated prescription information and the system used for receiving electronically communicated prescription information must be approved by the board. This subsection does not apply to currently used facsimile equipment transmitting an exact visual image of the prescription. The board shall maintain and provide, upon request, a list of systems used for electronically communicating prescription information currently approved by the board;

(c) An explicit opportunity for practitioners must be made to indicate their preference on whether a therapeutically equivalent generic drug may be substituted;

(d) Prescription drug orders are confidential health information, and may be released only to the patient or the patient's authorized representative, the prescriber or other authorized practitioner then caring for the patient, or other persons specifically authorized by law to receive such information;

(e) To maintain confidentiality of prescription records, the electronic system shall have adequate security and systems safeguards designed to prevent and detect unauthorized access, modification, or manipulation of these records. The pharmacist in charge shall establish or verify the existence of policies and procedures which ensure the integrity and confidentiality of prescription information transmitted to the pharmacy by electronic means. All managers, employees, and agents of the pharmacy are required to read, sign, and comply with the established policies and procedures; and

(f) The pharmacist shall exercise professional judgment regarding the accuracy, validity, and authenticity of the prescription drug order received by way of electronic transmission, consistent with federal and state laws and rules and guidelines of the board.

(2) The board may adopt rules implementing this section. [1998 c 222 § 4.]

**69.50.315 Medical assistance—Drug-related overdose—Naloxone—Prosecution for possession.** (1)(a) A person acting in good faith who seeks medical assistance for someone experiencing a drug-related overdose shall not be charged or prosecuted for possession of a controlled substance pursuant to RCW 69.50.4013, or penalized under RCW 69.50.4014, if the evidence for the charge of possession of a controlled substance was obtained as a result of the person seeking medical assistance.

(b) A person acting in good faith may receive a naloxone prescription, possess naloxone, and administer naloxone to an individual suffering from an apparent opiate-related overdose.

(2) A person who experiences a drug-related overdose and is in need of medical assistance shall not be charged or prosecuted for possession of a controlled substance pursuant to RCW 69.50.4013, or penalized under RCW 69.50.4014, if the evidence for the charge of possession of a controlled substance was obtained as a result of the overdose and the need for medical assistance.

(3) The protection in this section from prosecution for possession crimes under RCW 69.50.4013 shall not be grounds for suppression of evidence in other criminal charges. [2010 c 9 § 2.]

**Intent—2010 c 9:** "The legislature intends to save lives by increasing timely medical attention to drug overdose victims through the establishment of limited immunity from prosecution for people who seek medical assistance in a drug overdose situation. Drug overdose is the leading cause of unintentional injury death in Washington state, ahead of motor vehicle-related deaths. Washington state is one of sixteen states in which drug overdoses cause more deaths than traffic accidents. Drug overdose mortality rates have increased significantly since the 1990s, according to the centers for disease control and prevention, and illegal and prescription drug overdoses killed more than thirty-eight thousand people nationwide in 2006, the last year for which firm data is available. The Washington state department of health reports that in 1999 unintentional drug poisoning was responsible for four hundred three deaths in this state; in 2007, the number had increased to seven hundred sixty-one, compared with six hundred ten motor vehicle-related deaths that same year. Many drug overdose fatalities occur because peers delay or forego calling 911 for fear of arrest or police involvement, which researchers continually identify as the most significant barrier to the ideal first response of calling emergency services." [2010 c 9 § 1.]

**69.50.320 Registration of department of fish and wildlife for use in chemical capture programs—Rules.** The department of fish and wildlife may apply to the department of health for registration pursuant to the applicable provisions of this chapter to purchase, possess, and administer controlled substances for use in chemical capture programs. The department of fish and wildlife must not permit a person to administer controlled substances unless the person has demonstrated adequate knowledge of the potential hazards and proper techniques to be used in administering controlled substances.

The department of health may issue a limited registration to carry out the provisions of this section. The board may adopt rules to ensure strict compliance with the provisions of this section. The board, in consultation with the department of fish and wildlife, must by rule add or remove additional controlled substances for use in chemical capture programs. The board shall suspend or revoke registration upon determination that the person administering controlled substances has not demonstrated adequate knowledge as required by this section. This authority is granted in addition to any other power to suspend or revoke registration as provided by law. [2003 c 175 § 2.]

**Findings—2003 c 175:** "The legislature finds that the department of fish and wildlife is responsible for the proper management of the state's diverse wildlife resources. Wildlife management often requires the department of fish and wildlife to immobilize individual animals in order for the animals to be moved, treated, examined, or for other legitimate purposes. The legislature finds that it is often necessary for the department to use certain controlled substances to accomplish these purposes. Therefore, the legislature finds that the department of fish and wildlife, in coordination with the board of pharmacy, must be enabled to use approved controlled substances in order to accomplish its legitimate wildlife management goals." [2003 c 175 § 1.]

ARTICLE IV  
OFFENSES AND PENALTIES

**69.50.401 Prohibited acts: A—Penalties.** (1) Except as authorized by this chapter, it is unlawful for any person to manufacture, deliver, or possess with intent to manufacture or deliver, a controlled substance.

(2) Any person who violates this section with respect to:

(a) A controlled substance classified in Schedule I or II which is a narcotic drug or flunitrazepam, including its salts, isomers, and salts of isomers, classified in Schedule IV, is guilty of a class B felony and upon conviction may be imprisoned for not more than ten years, or (i) fined not more than twenty-five thousand dollars if the crime involved less than two kilograms of the drug, or both such imprisonment and fine; or (ii) if the crime involved two or more kilograms of the drug, then fined not more than one hundred thousand dollars for the first two kilograms and not more than fifty dollars for each gram in excess of two kilograms, or both such imprisonment and fine;

(b) Amphetamine, including its salts, isomers, and salts of isomers, or methamphetamine, including its salts, isomers, and salts of isomers, is guilty of a class B felony and upon conviction may be imprisoned for not more than ten years, or (i) fined not more than twenty-five thousand dollars if the crime involved less than two kilograms of the drug, or both such imprisonment and fine; or (ii) if the crime involved two or more kilograms of the drug, then fined not more than one hundred thousand dollars for the first two kilograms and not more than fifty dollars for each gram in excess of two kilograms, or both such imprisonment and fine. Three thousand dollars of the fine may not be suspended. As collected, the first three thousand dollars of the fine must be deposited with the law enforcement agency having responsibility for cleanup of laboratories, sites, or substances used in the manufacture of the methamphetamine, including its salts, isomers, and salts of isomers. The fine moneys deposited with that law enforcement agency must be used for such clean-up cost;

(c) Any other controlled substance classified in Schedule I, II, or III, is guilty of a class C felony punishable according to chapter 9A.20 RCW;

(d) A substance classified in Schedule IV, except flunitrazepam, including its salts, isomers, and salts of isomers, is guilty of a class C felony punishable according to chapter 9A.20 RCW; or

(e) A substance classified in Schedule V, is guilty of a class C felony punishable according to chapter 9A.20 RCW. [2005 c 218 § 1; 2003 c 53 § 331. Prior: 1998 c 290 § 1; 1998 c 82 § 2; 1997 c 71 § 2; 1996 c 205 § 2; 1989 c 271 § 104; 1987 c 458 § 4; 1979 c 67 § 1; 1973 2nd ex.s. c 2 § 1; 1971 ex.s. c 308 § 69.50.401.]

**Intent—Effective date—2003 c 53:** See notes following RCW 2.48.180.

*Severed drug offenders, notice of release or escape: RCW 72.09.710.*

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**69.50.4011 Counterfeit substances—Penalties.** (1) Except as authorized by this chapter, it is unlawful for any person to create, deliver, or possess a counterfeit substance.

(2) Any person who violates this section with respect to:

(a) A counterfeit substance classified in Schedule I or II which is a narcotic drug, or flunitrazepam classified in Schedule IV, is guilty of a class B felony and upon conviction may be imprisoned for not more than ten years, fined not more than twenty-five thousand dollars, or both;

(b) A counterfeit substance which is methamphetamine, is guilty of a class B felony and upon conviction may be imprisoned for not more than ten years, fined not more than twenty-five thousand dollars, or both;

(c) Any other counterfeit substance classified in Schedule I, II, or III, is guilty of a class C felony punishable according to chapter 9A.20 RCW;

(d) A counterfeit substance classified in Schedule IV, except flunitrazepam, is guilty of a class C felony punishable according to chapter 9A.20 RCW;

(e) A counterfeit substance classified in Schedule V, is guilty of a class C felony punishable according to chapter 9A.20 RCW. [2003 c 53 § 332.]

**Intent—Effective date—2003 c 53:** See notes following RCW 2.48.180.

**69.50.4012 Delivery of substance in lieu of controlled substance—Penalty.** (1) It is unlawful, except as authorized in this chapter and chapter 69.41 RCW, for any person to offer, arrange, or negotiate for the sale, gift, delivery, dispensing, distribution, or administration of a controlled substance to any person and then sell, give, deliver, dispense, distribute, or administer to that person any other liquid, substance, or material in lieu of such controlled substance.

(2) Any person who violates this section is guilty of a class C felony punishable according to chapter 9A.20 RCW. [2003 c 53 § 333.]

**Intent—Effective date—2003 c 53:** See notes following RCW 2.48.180.

**69.50.4013 Possession of controlled substance—Penalty.** (1) It is unlawful for any person to possess a controlled substance unless the substance was obtained directly from, or pursuant to, a valid prescription or order of a practitioner while acting in the course of his or her professional practice, or except as otherwise authorized by this chapter.

(2) Except as provided in RCW 69.50.4014, any person who violates this section is guilty of a class C felony punishable under chapter 9A.20 RCW. [2003 c 53 § 334.]

**Intent—Effective date—2003 c 53:** See notes following RCW 2.48.180.

**69.50.4014 Possession of forty grams or less of marijuana—Penalty.** Except as provided in RCW 69.50.401(2)(c), any person found guilty of possession of forty grams or less of marijuana is guilty of a misdemeanor. [2003 c 53 § 335.]

**Intent—Effective date—2003 c 53:** See notes following RCW 2.48.180.

**69.50.4015 Involving a person under eighteen in unlawful controlled substance transaction—Penalty.** (1) It is unlawful to compensate, threaten, solicit, or in any other manner involve a person under the age of eighteen years in a transaction unlawful to manufacture, sell, or deliver a controlled substance.

(2) A violation of this section is a class C felony punishable according to chapter 9A.20 RCW. [2003 c 53 § 336.]

**Intent—Effective date—2003 c 53:** See notes following RCW 2.48.180.

**69.50.4016 Provisions not applicable to offenses under RCW 69.50.410.** RCW 69.50.401 through 69.50.4015 shall not apply to offenses defined and punishable under the provisions of RCW 69.50.410. [2003 c 53 § 337.]

**Intent—Effective date—2003 c 53:** See notes following RCW 2.48.180.

**69.50.402 Prohibited acts: B—Penalties.** (1) It is unlawful for any person:

(a) Who is subject to Article III to distribute or dispense a controlled substance in violation of RCW 69.50.308;

(b) Who is a registrant, to manufacture a controlled substance not authorized by his or her registration, or to distribute or dispense a controlled substance not authorized by his or her registration to another registrant or other authorized person;

(c) Who is a practitioner, to prescribe, order, dispense, administer, supply, or give to any person:

(i) Any amphetamine, including its salts, optical isomers, and salts of optical isomers classified as a schedule II controlled substance by the board of pharmacy pursuant to chapter 34.05 RCW; or

(ii) Any nonnarcotic stimulant classified as a schedule II controlled substance and designated as a nonnarcotic stimulant by the board of pharmacy pursuant to chapter 34.05 RCW;

except for the treatment of narcolepsy or for the treatment of hyperkinesia, or for the treatment of drug-induced brain dysfunction, or for the treatment of epilepsy, or for the differential diagnostic psychiatric evaluation of depression, or for the treatment of depression shown to be refractory to other therapeutic modalities, or for the treatment of multiple sclerosis, or for the clinical investigation of the effects of such drugs or compounds, in which case an investigative protocol therefor shall have been submitted to and reviewed and approved by the state board of pharmacy before the investigation has been begun: PROVIDED, That the board of pharmacy, in consultation with the medical quality assurance commission and the osteopathic disciplinary board, may establish by rule, pursuant to chapter 34.05 RCW, disease states or conditions in addition to those listed in this subsection for the treatment of which Schedule II nonnarcotic stimulants may be prescribed, ordered, dispensed, administered, supplied, or given to patients by practitioners: AND PROVIDED, FURTHER, That investigations by the board of pharmacy of abuse of prescriptive authority by physicians, licensed pursuant to chapter 18.71 RCW, pursuant to subsection (1)(c) of this section shall be done in consultation with the medical quality assurance commission;

(d) To refuse or fail to make, keep or furnish any record, notification, order form, statement, invoice, or information required under this chapter;

(e) To refuse an entry into any premises for any inspection authorized by this chapter; or

(f) Knowingly to keep or maintain any store, shop, warehouse, dwelling, building, vehicle, boat, aircraft, or other structure or place, which is resorted to by persons using controlled substances in violation of this chapter for the purpose of using these substances, or which is used for keeping or selling them in violation of this chapter.

(2) Any person who violates this section is guilty of a class C felony and upon conviction may be imprisoned for not more than two years, fined not more than two thousand dollars, or both. [2010 c 177 § 7; 2003 c 53 § 338; 1994 sp.s. c 9 § 740; 1980 c 138 § 6; 1979 ex.s. c 119 § 1; 1971 ex.s. c 308 § 69.50.402.]

**Intent—Effective date—2003 c 53:** See notes following RCW 2.48.180.

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**69.50.403 Prohibited acts: C—Penalties.** (1) It is unlawful for any person knowingly or intentionally:

(a) To distribute as a registrant a controlled substance classified in Schedules I or II, except pursuant to an order form as required by \*RCW 69.50.307;

(b) To use in the course of the manufacture, distribution, or dispensing of a controlled substance, or to use for the purpose of acquiring or obtaining a controlled substance, a registration number which is fictitious, revoked, suspended, or issued to another person;

(c) To obtain or attempt to obtain a controlled substance, or procure or attempt to procure the administration of a controlled substance, (i) by fraud, deceit, misrepresentation, or subterfuge; or (ii) by forgery or alteration of a prescription or any written order; or (iii) by the concealment of material fact; or (iv) by the use of a false name or the giving of a false address;

(d) To falsely assume the title of, or represent herself or himself to be, a manufacturer, wholesaler, pharmacist, physician, dentist, veterinarian, or other authorized person for the purpose of obtaining a controlled substance;

(e) To make or utter any false or forged prescription or false or forged written order;

(f) To affix any false or forged label to a package or receptacle containing controlled substances;

(g) To furnish false or fraudulent material information in, or omit any material information from, any application, report, or other document required to be kept or filed under this chapter, or any record required to be kept by this chapter;

(h) To possess a false or fraudulent prescription with intent to obtain a controlled substance; or

(i) To attempt to illegally obtain controlled substances by providing more than one name to a practitioner when obtaining a prescription for a controlled substance. If a person's name is legally changed during the time period that he or she is receiving health care from a practitioner, the person shall inform all providers of care so that the medical and pharmacy records for the person may be filed under a single name identifier.

(2) Information communicated to a practitioner in an effort unlawfully to procure a controlled substance or unlawfully to procure the administration of such substance, shall not be deemed a privileged communication.

(3) A person who violates this section is guilty of a class C felony and upon conviction may be imprisoned for not

more than two years, or fined not more than two thousand dollars, or both. [2003 c 53 § 339; 1996 c 255 § 1; 1993 c 187 § 21; 1971 ex.s. c 308 § 69.50.403.]

\*Reviser's note: RCW 69.50.307 was repealed by 2001 c 248 § 2.

**Intent—Effective date—2003 c 53:** See notes following RCW 2.48.180.

**69.50.404 Penalties under other laws.** Any penalty imposed for violation of this chapter is in addition to, and not in lieu of, any civil or administrative penalty or sanction otherwise authorized by law. [1971 ex.s. c 308 § 69.50.404.]

**69.50.405 Bar to prosecution.** If a violation of this chapter is a violation of a federal law or the law of another state, a conviction or acquittal under federal law or the law of another state for the same act is a bar to prosecution in this state. [1971 ex.s. c 308 § 69.50.405.]

**69.50.406 Distribution to persons under age eighteen.**

(1) Any person eighteen years of age or over who violates RCW 69.50.401 by distributing a controlled substance listed in Schedules I or II which is a narcotic drug or methamphetamine, including its salts, isomers, and salts of isomers, or flunitrazepam, including its salts, isomers, and salts of isomers, listed in Schedule IV, to a person under eighteen years of age is guilty of a class A felony punishable by the fine authorized by RCW 69.50.401(2) (a) or (b), by a term of imprisonment of up to twice that authorized by RCW 69.50.401(2) (a) or (b), or by both.

(2) Any person eighteen years of age or over who violates RCW 69.50.401 by distributing any other controlled substance listed in Schedules I, II, III, IV, and V to a person under eighteen years of age who is at least three years his or her junior is guilty of a class B felony punishable by the fine authorized by RCW 69.50.401(2) (c), (d), or (e), by a term of imprisonment up to twice that authorized by RCW 69.50.401(2) (c), (d), or (e), or both. [2005 c 218 § 2; 2003 c 53 § 340; 1998 c 290 § 2; 1996 c 205 § 7; 1987 c 458 § 5; 1971 ex.s. c 308 § 69.50.406.]

**Intent—Effective date—2003 c 53:** See notes following RCW 2.48.180.

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**69.50.407 Conspiracy.** Any person who attempts or conspires to commit any offense defined in this chapter is punishable by imprisonment or fine or both which may not exceed the maximum punishment prescribed for the offense, the commission of which was the object of the attempt or conspiracy. [1971 ex.s. c 308 § 69.50.407.]

**69.50.408 Second or subsequent offenses.** (1) Any person convicted of a second or subsequent offense under this chapter may be imprisoned for a term up to twice the term otherwise authorized, fined an amount up to twice that otherwise authorized, or both.

(2) For purposes of this section, an offense is considered a second or subsequent offense, if, prior to his or her conviction of the offense, the offender has at any time been convicted under this chapter or under any statute of the United

States or of any state relating to narcotic drugs, marihuana, depressant, stimulant, or hallucinogenic drugs.

(3) This section does not apply to offenses under RCW 69.50.4013. [2003 c 53 § 341; 1989 c 8 § 3; 1971 ex.s. c 308 § 69.50.408.]

**Intent—Effective date—2003 c 53:** See notes following RCW 2.48.180.

**69.50.410 Prohibited acts: D—Penalties.** (1) Except as authorized by this chapter it is a class C felony for any person to sell for profit any controlled substance or counterfeit substance classified in Schedule I, RCW 69.50.204, except leaves and flowering tops of marihuana.

For the purposes of this section only, the following words and phrases shall have the following meanings:

(a) "To sell" means the passing of title and possession of a controlled substance from the seller to the buyer for a price whether or not the price is paid immediately or at a future date.

(b) "For profit" means the obtaining of anything of value in exchange for a controlled substance.

(c) "Price" means anything of value.

(2)(a) Any person convicted of a violation of subsection (1) of this section shall receive a sentence of not more than five years in a correctional facility of the department of social and health services for the first offense.

(b) Any person convicted on a second or subsequent cause, the sale having transpired after prosecution and conviction on the first cause, of subsection (1) of this section shall receive a mandatory sentence of five years in a correctional facility of the department of social and health services and no judge of any court shall suspend or defer the sentence imposed for the second or subsequent violation of subsection (1) of this section.

(3)(a) Any person convicted of a violation of subsection (1) of this section by selling heroin shall receive a mandatory sentence of two years in a correctional facility of the department of social and health services and no judge of any court shall suspend or defer the sentence imposed for such violation.

(b) Any person convicted on a second or subsequent sale of heroin, the sale having transpired after prosecution and conviction on the first cause of the sale of heroin shall receive a mandatory sentence of ten years in a correctional facility of the department of social and health services and no judge of any court shall suspend or defer the sentence imposed for this second or subsequent violation: PROVIDED, That the indeterminate sentence review board under RCW 9.95.040 shall not reduce the minimum term imposed for a violation under this subsection.

(4) Whether or not a mandatory minimum term has expired, an offender serving a sentence under this section may be granted an extraordinary medical placement when authorized under \*RCW 9.94A.728(4).

(5) In addition to the sentences provided in subsection (2) of this section, any person convicted of a violation of subsection (1) of this section shall be fined in an amount calculated to at least eliminate any and all proceeds or profits directly or indirectly gained by such person as a result of sales of controlled substances in violation of the laws of this

or other states, or the United States, up to the amount of five hundred thousand dollars on each count.

(6) Any person, addicted to the use of controlled substances, who voluntarily applies to the department of social and health services for the purpose of participating in a rehabilitation program approved by the department for addicts of controlled substances shall be immune from prosecution for subsection (1) offenses unless a filing of an information or indictment against such person for a violation of subsection (1) of this section is made prior to his or her voluntary participation in the program of the department of social and health services. All applications for immunity under this section shall be sent to the department of social and health services in Olympia. It shall be the duty of the department to stamp each application received pursuant to this section with the date and time of receipt.

(7) This section shall not apply to offenses defined and punishable under the provisions of RCW 69.50.401 through 69.50.4015. [2003 c 53 § 342; 1999 c 324 § 6; 1975-'76 2nd ex.s. c 103 § 1; 1973 2nd ex.s. c 2 § 2.]

**\*Reviser's note:** RCW 9.94A.728 was amended by 2009 c 455 § 2, changing subsection (4) to subsection (3).

**Intent—Effective date—2003 c 53:** See notes following RCW 2.48.180.

**69.50.412 Prohibited acts: E—Penalties.** (1) It is unlawful for any person to use drug paraphernalia to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain, conceal, inject, ingest, inhale, or otherwise introduce into the human body a controlled substance. Any person who violates this subsection is guilty of a misdemeanor.

(2) It is unlawful for any person to deliver, possess with intent to deliver, or manufacture with intent to deliver drug paraphernalia, knowing, or under circumstances where one reasonably should know, that it will be used to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain, conceal, inject, ingest, inhale, or otherwise introduce into the human body a controlled substance. Any person who violates this subsection is guilty of a misdemeanor.

(3) Any person eighteen years of age or over who violates subsection (2) of this section by delivering drug paraphernalia to a person under eighteen years of age who is at least three years his junior is guilty of a gross misdemeanor.

(4) It is unlawful for any person to place in any newspaper, magazine, handbill, or other publication any advertisement, knowing, or under circumstances where one reasonably should know, that the purpose of the advertisement, in whole or in part, is to promote the sale of objects designed or intended for use as drug paraphernalia. Any person who violates this subsection is guilty of a misdemeanor.

(5) It is lawful for any person over the age of eighteen to possess sterile hypodermic syringes and needles for the purpose of reducing bloodborne diseases. [2002 c 213 § 1; 1981 c 48 § 2.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**69.50.4121 Drug paraphernalia—Selling or giving—Penalty.** (1) Every person who sells or gives, or permits to be sold or given to any person any drug paraphernalia in any form commits a class I civil infraction under chapter 7.80 RCW. For purposes of this subsection, "drug paraphernalia" means all equipment, products, and materials of any kind which are used, intended for use, or designed for use in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, containing, concealing, injecting, ingesting, inhaling, or otherwise introducing into the human body a controlled substance. Drug paraphernalia includes, but is not limited to objects used, intended for use, or designed for use in ingesting, inhaling, or otherwise introducing marijuana, cocaine, hashish, or hashish oil into the human body, such as:

(a) Metal, wooden, acrylic, glass, stone, plastic, or ceramic pipes with or without screens, permanent screens, hashish heads, or punctured metal bowls;

(b) Water pipes;

(c) Carburetion tubes and devices;

(d) Smoking and carburetion masks;

(e) Roach clips: Meaning objects used to hold burning material, such as a marijuana cigarette, that has become too small or too short to be held in the hand;

(f) Miniature cocaine spoons and cocaine vials;

(g) Chamber pipes;

(h) Carburetor pipes;

(i) Electric pipes;

(j) Air-driven pipes;

(k) Chillums;

(l) Bongs; and

(m) Ice pipes or chillers.

(2) It shall be no defense to a prosecution for a violation of this section that the person acted, or was believed by the defendant to act, as agent or representative of another.

(3) Nothing in subsection (1) of this section prohibits legal distribution of injection syringe equipment through public health and community based HIV prevention programs, and pharmacies. [2002 c 213 § 2; 1998 c 317 § 1.]

**69.50.413 Health care practitioners—Suspension of license for violation of chapter.** The license of any licensed health care practitioner shall be suspended for any violation of this chapter. The suspension shall run concurrently with, and not less than, the term of the sentence for the violation. [1984 c 153 § 21.]

**69.50.414 Sale or transfer of controlled substance to minor—Cause of action by parent—Damages.** The parent or legal guardian of any minor to whom a controlled substance, as defined in RCW 69.50.101, is sold or transferred, shall have a cause of action against the person who sold or transferred the controlled substance for all damages to the minor or his or her parent or legal guardian caused by such sale or transfer. Damages shall include: (a) Actual damages, including the cost for treatment or rehabilitation of the minor child's drug dependency, (b) forfeiture to the parent or legal guardian of the cash value of any proceeds received from such sale or transfer of a controlled substance, and (c) reasonable attorney fees.

This section shall not apply to a practitioner, as defined in \*RCW 69.50.101(t), who sells or transfers a controlled substance to a minor pursuant to a valid prescription or order. [1986 c 124 § 10.]

**\*Reviser's note:** The reference to RCW 69.50.101(t) is erroneous. "Practitioner" is defined in (w) of that section.

#### **69.50.415 Controlled substances homicide—Penalty.**

(1) A person who unlawfully delivers a controlled substance in violation of RCW 69.50.401(2) (a), (b), or (c) which controlled substance is subsequently used by the person to whom it was delivered, resulting in the death of the user, is guilty of controlled substances homicide.

(2) Controlled substances homicide is a class B felony punishable according to chapter 9A.20 RCW. [2003 c 53 § 343; 1996 c 205 § 8; 1987 c 458 § 2.]

**Intent—Effective date—2003 c 53:** See notes following RCW 2.48.180.

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

#### **69.50.416 Counterfeit substances prohibited—Penalties.**

(1) It is unlawful for any person knowingly or intentionally to manufacture, deliver, or possess with intent to manufacture or deliver, a controlled substance which, or the container or labeling of which, without authorization, bears the trademark, trade name, or other identifying mark, imprint, number, or device, or any likeness thereof, of a manufacturer, distributor, or dispenser, other than the person who in fact manufactured, distributed, or dispensed the substance.

(2) It is unlawful for any person knowingly or intentionally to make, distribute, or possess a punch, die, plate, stone, or other thing designed to print, imprint, or reproduce the trademark, trade name, or other identifying mark, imprint, or device of another or any likeness of any of the foregoing upon any drug or container or labeling thereof.

(3) A person who violates this section is guilty of a class C felony and upon conviction may be imprisoned for not more than two years, fined not more than two thousand dollars, or both. [2003 c 53 § 344; 1993 c 187 § 22.]

**Intent—Effective date—2003 c 53:** See notes following RCW 2.48.180.

#### **69.50.420 Violations—Juvenile driving privileges.**

(1) If a juvenile thirteen years of age or older and under the age of twenty-one is found by a court to have committed any offense that is a violation of this chapter, the court shall notify the department of licensing within twenty-four hours after entry of the judgment.

(2) Except as otherwise provided in subsection (3) of this section, upon petition of a juvenile whose privilege to drive has been revoked pursuant to RCW 46.20.265, the court may at any time the court deems appropriate notify the department of licensing to reinstate the juvenile's privilege to drive.

(3) If the conviction is for the juvenile's first violation of this chapter or chapter 66.44, 69.41, or 69.52 RCW, the juvenile may not petition the court for reinstatement of the juvenile's privilege to drive revoked pursuant to RCW 46.20.265 until the later of ninety days after the date the juvenile turns sixteen or ninety days after the judgment was entered. If the conviction was for the juvenile's second or subsequent violation of this chapter or chapter 66.44, 69.41, or 69.52 RCW,

(2010 Ed.)

the juvenile may not petition the court for reinstatement of the juvenile's privilege to drive revoked pursuant to RCW 46.20.265 until the later of the date the juvenile turns seventeen or one year after the date judgment was entered. [1989 c 271 § 120; 1988 c 148 § 5.]

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

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

#### **69.50.425 Misdemeanor violations—Minimum penalties.**

A person who is convicted of a misdemeanor violation of any provision of this chapter shall be punished by imprisonment for not less than twenty-four consecutive hours, and by a fine of not less than two hundred fifty dollars. On a second or subsequent conviction, the fine shall not be less than five hundred dollars. These fines shall be in addition to any other fine or penalty imposed. Unless the court finds that the imposition of the minimum imprisonment will pose a substantial risk to the defendant's physical or mental well-being or that local jail facilities are in an overcrowded condition, the minimum term of imprisonment shall not be suspended or deferred. If the court finds such risk or overcrowding exists, it shall sentence the defendant to a minimum of forty hours of community restitution. If a minimum term of imprisonment is suspended or deferred, the court shall state in writing the reason for granting the suspension or deferral and the facts upon which the suspension or deferral is based. Unless the court finds the person to be indigent, the minimum fine shall not be suspended or deferred. [2002 c 175 § 44; 1989 c 271 § 105.]

**Effective date—2002 c 175:** See note following RCW 7.80.130.

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

#### **69.50.430 Additional fine for certain felony violations.**

(1) Every person convicted of a felony violation of RCW 69.50.401 through 69.50.4013, 69.50.4015, 69.50.402, 69.50.403, 69.50.406, 69.50.407, 69.50.410, or 69.50.415 shall be fined one thousand dollars in addition to any other fine or penalty imposed. Unless the court finds the person to be indigent, this additional fine shall not be suspended or deferred by the court.

(2) On a second or subsequent conviction for violation of any of the laws listed in subsection (1) of this section, the person shall be fined two thousand dollars in addition to any other fine or penalty imposed. Unless the court finds the person to be indigent, this additional fine shall not be suspended or deferred by the court. [2003 c 53 § 345; 1989 c 271 § 106.]

**Intent—Effective date—2003 c 53:** See notes following RCW 2.48.180.

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

#### **69.50.435 Violations committed in or on certain public places or facilities—Additional penalty—Defenses—Construction—Definitions.**

(1) Any person who violates RCW 69.50.401 by manufacturing, selling, delivering, or possessing with the intent to manufacture, sell, or deliver a controlled substance listed under RCW 69.50.401 or who violates RCW 69.50.410 by selling for profit any controlled substance or counterfeit substance classified in schedule I,

RCW 69.50.204, except leaves and flowering tops of marijuana to a person:

- (a) In a school;
- (b) On a school bus;
- (c) Within one thousand feet of a school bus route stop designated by the school district;
- (d) Within one thousand feet of the perimeter of the school grounds;
- (e) In a public park;
- (f) In a public housing project designated by a local governing authority as a drug-free zone;
- (g) On a public transit vehicle;
- (h) In a public transit stop shelter;
- (i) At a civic center designated as a drug-free zone by the local governing authority; or
- (j) Within one thousand feet of the perimeter of a facility designated under (i) of this subsection, if the local governing authority specifically designates the one thousand foot perimeter

may be punished by a fine of up to twice the fine otherwise authorized by this chapter, but not including twice the fine authorized by RCW 69.50.406, or by imprisonment of up to twice the imprisonment otherwise authorized by this chapter, but not including twice the imprisonment authorized by RCW 69.50.406, or by both such fine and imprisonment. The provisions of this section shall not operate to more than double the fine or imprisonment otherwise authorized by this chapter for an offense.

(2) It is not a defense to a prosecution for a violation of this section that the person was unaware that the prohibited conduct took place while in a school or school bus or within one thousand feet of the school or school bus route stop, in a public park, in a public housing project designated by a local governing authority as a drug-free zone, on a public transit vehicle, in a public transit stop shelter, at a civic center designated as a drug-free zone by the local governing authority, or within one thousand feet of the perimeter of a facility designated under subsection (1)(i) of this section, if the local governing authority specifically designates the one thousand foot perimeter.

(3) It is not a defense to a prosecution for a violation of this section or any other prosecution under this chapter that persons under the age of eighteen were not present in the school, the school bus, the public park, the public housing project designated by a local governing authority as a drug-free zone, or the public transit vehicle, or at the school bus route stop, the public transit vehicle stop shelter, at a civic center designated as a drug-free zone by the local governing authority, or within one thousand feet of the perimeter of a facility designated under subsection (1)(i) of this section, if the local governing authority specifically designates the one thousand foot perimeter at the time of the offense or that school was not in session.

(4) It is an affirmative defense to a prosecution for a violation of this section that the prohibited conduct took place entirely within a private residence, that no person under eighteen years of age or younger was present in such private residence at any time during the commission of the offense, and that the prohibited conduct did not involve delivering, manufacturing, selling, or possessing with the intent to manufacture, sell, or deliver any controlled substance in RCW

69.50.401 for profit. The affirmative defense established in this section shall be proved by the defendant by a preponderance of the evidence. This section shall not be construed to establish an affirmative defense with respect to a prosecution for an offense defined in any other section of this chapter.

(5) In a prosecution under this section, a map produced or reproduced by any municipality, school district, county, transit authority engineer, or public housing authority for the purpose of depicting the location and boundaries of the area on or within one thousand feet of any property used for a school, school bus route stop, public park, public housing project designated by a local governing authority as a drug-free zone, public transit vehicle stop shelter, or a civic center designated as a drug-free zone by a local governing authority, or a true copy of such a map, shall under proper authentication, be admissible and shall constitute prima facie evidence of the location and boundaries of those areas if the governing body of the municipality, school district, county, or transit authority has adopted a resolution or ordinance approving the map as the official location and record of the location and boundaries of the area on or within one thousand feet of the school, school bus route stop, public park, public housing project designated by a local governing authority as a drug-free zone, public transit vehicle stop shelter, or civic center designated as a drug-free zone by a local governing authority. Any map approved under this section or a true copy of the map shall be filed with the clerk of the municipality or county, and shall be maintained as an official record of the municipality or county. This section shall not be construed as precluding the prosecution from introducing or relying upon any other evidence or testimony to establish any element of the offense. This section shall not be construed as precluding the use or admissibility of any map or diagram other than the one which has been approved by the governing body of a municipality, school district, county, transit authority, or public housing authority if the map or diagram is otherwise admissible under court rule.

(6) As used in this section the following terms have the meanings indicated unless the context clearly requires otherwise:

(a) "School" has the meaning under RCW 28A.150.010 or 28A.150.020. The term "school" also includes a private school approved under RCW 28A.195.010;

(b) "School bus" means a school bus as defined by the superintendent of public instruction by rule which is owned and operated by any school district and all school buses which are privately owned and operated under contract or otherwise with any school district in the state for the transportation of students. The term does not include buses operated by common carriers in the urban transportation of students such as transportation of students through a municipal transportation system;

(c) "School bus route stop" means a school bus stop as designated by a school district;

(d) "Public park" means land, including any facilities or improvements on the land, that is operated as a park by the state or a local government;

(e) "Public transit vehicle" means any motor vehicle, streetcar, train, trolley vehicle, or any other device, vessel, or vehicle which is owned or operated by a transit authority and

which is used for the purpose of carrying passengers on a regular schedule;

(f) "Transit authority" means a city, county, or state transportation system, transportation authority, public transportation benefit area, public transit authority, or metropolitan municipal corporation within the state that operates public transit vehicles;

(g) "Stop shelter" means a passenger shelter designated by a transit authority;

(h) "Civic center" means a publicly owned or publicly operated place or facility used for recreational, educational, or cultural activities;

(i) "Public housing project" means the same as "housing project" as defined in RCW 35.82.020. [2003 c 53 § 346. Prior: 1997 c 30 § 2; 1997 c 23 § 1; 1996 c 14 § 2; 1991 c 32 § 4; prior: 1990 c 244 § 1; 1990 c 33 § 588; 1989 c 271 § 112.]

**Intent—Effective date—2003 c 53:** See notes following RCW 2.48.180.

**Findings—Intent—1997 c 30:** "The legislature finds that a large number of illegal drug transactions occur in or near public housing projects. The legislature also finds that this activity places the families and children residing in these housing projects at risk for drug-related crimes and increases the general level of fear among the residents of the housing project and the areas surrounding these projects. The intent of the legislature is to allow local governments to designate public housing projects as drug-free zones." [1997 c 30 § 1.]

**Findings—Intent—1996 c 14:** "The legislature finds that a large number of illegal drug transactions occur in or near publicly owned places used for recreational, educational, and cultural purposes. The legislature also finds that this activity places the people using these facilities at risk for drug-related crimes, discourages the use of recreational, educational, and cultural facilities, blights the economic development around these facilities, and increases the general level of fear among the residents of the areas surrounding these facilities. The intent of the legislature is to allow local governments to designate a perimeter of one thousand feet around publicly owned places used primarily for recreation, education, and cultural activities as drug-free zones." [1996 c 14 § 1.]

**Purpose—Statutory references—Severability—1990 c 33:** See RCW 28A.900.100 through 28A.900.102.

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**69.50.440 Possession with intent to manufacture—Penalty.** (1) It is unlawful for any person to possess ephedrine or any of its salts or isomers or salts of isomers, pseudoephedrine or any of its salts or isomers or salts of isomers, pressurized ammonia gas, or pressurized ammonia gas solution with intent to manufacture methamphetamine, including its salts, isomers, and salts of isomers.

(2) Any person who violates this section is guilty of a class B felony and may be imprisoned for not more than ten years, fined not more than twenty-five thousand dollars, or both. Three thousand dollars of the fine may not be suspended. As collected, the first three thousand dollars of the fine must be deposited with the law enforcement agency having responsibility for cleanup of laboratories, sites, or substances used in the manufacture of the methamphetamine, including its salts, isomers, and salts of isomers. The fine moneys deposited with that law enforcement agency must be used for such clean-up cost. [2005 c 218 § 3; 2003 c 53 § 347; 2002 c 134 § 1; 2000 c 225 § 4; 1997 c 71 § 3; 1996 c 205 § 1.]

**Intent—Effective date—2003 c 53:** See notes following RCW 2.48.180.

(2010 Ed.)

**Effective date—2002 c 134:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [March 26, 2002]." [2002 c 134 § 5.]

**Severability—2000 c 225:** See note following RCW 69.55.010.

## ARTICLE V ENFORCEMENT AND ADMINISTRATIVE PROVISIONS

**69.50.500 Powers of enforcement personnel.** (a) It is hereby made the duty of the state board of pharmacy, the department, and their officers, agents, inspectors and representatives, and all law enforcement officers within the state, and of all prosecuting attorneys, to enforce all provisions of this chapter, except those specifically delegated, and to cooperate with all agencies charged with the enforcement of the laws of the United States, of this state, and all other states, relating to controlled substances as defined in this chapter.

(b) Employees of the department of health, who are so designated by the board as enforcement officers are declared to be peace officers and shall be vested with police powers to enforce the drug laws of this state, including this chapter. [1989 1st ex.s. c 9 § 437; 1971 ex.s. c 308 § 69.50.500.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**69.50.501 Administrative inspections.** The state board of pharmacy may make administrative inspections of controlled premises in accordance with the following provisions:

(1) For purposes of this section only, "controlled premises" means:

(a) places where persons registered or exempted from registration requirements under this chapter are required to keep records; and

(b) places including factories, warehouses, establishments, and conveyances in which persons registered or exempted from registration requirements under this chapter are permitted to hold, manufacture, compound, process, sell, deliver, or otherwise dispose of any controlled substance.

(2) When authorized by an administrative inspection warrant issued pursuant to RCW 69.50.502 an officer or employee designated by the board, upon presenting the warrant and appropriate credentials to the owner, operator, or agent in charge, may enter controlled premises for the purpose of conducting an administrative inspection.

(3) When authorized by an administrative inspection warrant, an officer or employee designated by the board may:

(a) inspect and copy records required by this chapter to be kept;

(b) inspect, within reasonable limits and in a reasonable manner, controlled premises and all pertinent equipment, finished and unfinished material, containers and labeling found therein, and, except as provided in subsection (5) of this section, all other things therein, including records, files, papers, processes, controls, and facilities bearing on violation of this chapter; and

(c) inventory any stock of any controlled substance therein and obtain samples thereof;

(4) This section does not prevent the inspection without a warrant of books and records pursuant to an administrative subpoena issued in accordance with chapter 34.05 RCW, nor

does it prevent entries and administrative inspections, including seizures of property, without a warrant:

(a) if the owner, operator, or agent in charge of the controlled premises consents;

(b) in situations presenting imminent danger to health or safety;

(c) in situations involving inspection of conveyances if there is reasonable cause to believe that the mobility of the conveyance makes it impracticable to obtain a warrant;

(d) in any other exceptional or emergency circumstance where time or opportunity to apply for a warrant is lacking; or,

(e) in all other situations in which a warrant is not constitutionally required;

(5) An inspection authorized by this section shall not extend to financial data, sales data, other than shipment data, or pricing data unless the owner, operator, or agent in charge of the controlled premises consents in writing. [1971 ex.s. c 308 § 69.50.501.]

#### **69.50.502 Warrants for administrative inspections.**

Issuance and execution of administrative inspection warrants shall be as follows:

(1) A judge of a superior court, or a judge of a district court within his jurisdiction, and upon proper oath or affirmation showing probable cause, may issue warrants for the purpose of conducting administrative inspections authorized by this chapter or rules hereunder, and seizures of property appropriate to the inspections. For purposes of the issuance of administrative inspection warrants, probable cause exists upon showing a valid public interest in the effective enforcement of this chapter or rules hereunder, sufficient to justify administrative inspection of the area, premises, building or conveyance in the circumstances specified in the application for the warrant;

(2) A warrant shall issue only upon an affidavit of a designated officer or employee having knowledge of the facts alleged, sworn to before the judge and establishing the grounds for issuing the warrant. If the judge is satisfied that grounds for the application exist or that there is probable cause to believe they exist, he shall issue a warrant identifying the area, premises, building, or conveyance to be inspected, the purpose of the inspection, and, if appropriate, the type of property to be inspected, if any. The warrant shall:

(a) state the grounds for its issuance and the name of each person whose affidavit has been taken in support thereof;

(b) be directed to a person authorized by RCW 69.50.500 to execute it;

(c) command the person to whom it is directed to inspect the area, premises, building, or conveyance identified for the purpose specified and, if appropriate, direct the seizure of the property specified;

(d) identify the item or types of property to be seized, if any;

(e) direct that it be served during normal business hours and designate the judge to whom it shall be returned;

(3) A warrant issued pursuant to this section must be executed and returned within ten days of its date unless, upon a showing of a need for additional time, the court orders otherwise. If property is seized pursuant to a warrant, a copy

shall be given to the person from whom or from whose premises the property is taken, together with a receipt for the property taken. The return of the warrant shall be made promptly, accompanied by a written inventory of any property taken. The inventory shall be made in the presence of the person executing the warrant and of the person from whose possession or premises the property was taken, if present, or in the presence of at least one credible person other than the person executing the warrant. A copy of the inventory shall be delivered to the person from whom or from whose premises the property was taken and to the applicant for the warrant;

(4) The judge who has issued a warrant shall attach thereto a copy of the return and all papers returnable in connection therewith and file them with the clerk of the court in which the inspection was made. [1971 ex.s. c 308 § 69.50.502.]

**69.50.503 Injunctions.** (a) The superior courts of this state have jurisdiction to restrain or enjoin violations of this chapter.

(b) The defendant may demand trial by jury for an alleged violation of an injunction or restraining order under this section. [1971 ex.s. c 308 § 69.50.503.]

**69.50.504 Cooperative arrangements.** The state board of pharmacy shall cooperate with federal and other state agencies in discharging its responsibilities concerning traffic in controlled substances and in suppressing the abuse of controlled substances. [1971 ex.s. c 308 § 69.50.504.]

**69.50.505 Seizure and forfeiture.** (1) The following are subject to seizure and forfeiture and no property right exists in them:

(a) All controlled substances which have been manufactured, distributed, dispensed, acquired, or possessed in violation of this chapter or chapter 69.41 or 69.52 RCW, and all hazardous chemicals, as defined in RCW 64.44.010, used or intended to be used in the manufacture of controlled substances;

(b) All raw materials, products, and equipment of any kind which are used, or intended for use, in manufacturing, compounding, processing, delivering, importing, or exporting any controlled substance in violation of this chapter or chapter 69.41 or 69.52 RCW;

(c) All property which is used, or intended for use, as a container for property described in (a) or (b) of this subsection;

(d) All conveyances, including aircraft, vehicles, or vessels, which are used, or intended for use, in any manner to facilitate the sale, delivery, or receipt of property described in (a) or (b) of this subsection, except that:

(i) No conveyance used by any person as a common carrier in the transaction of business as a common carrier is subject to forfeiture under this section unless it appears that the owner or other person in charge of the conveyance is a consenting party or privy to a violation of this chapter or chapter 69.41 or 69.52 RCW;

(ii) No conveyance is subject to forfeiture under this section by reason of any act or omission established by the

owner thereof to have been committed or omitted without the owner's knowledge or consent;

(iii) No conveyance is subject to forfeiture under this section if used in the receipt of only an amount of marijuana for which possession constitutes a misdemeanor under RCW 69.50.4014;

(iv) A forfeiture of a conveyance encumbered by a bona fide security interest is subject to the interest of the secured party if the secured party neither had knowledge of nor consented to the act or omission; and

(v) When the owner of a conveyance has been arrested under this chapter or chapter 69.41 or 69.52 RCW the conveyance in which the person is arrested may not be subject to forfeiture unless it is seized or process is issued for its seizure within ten days of the owner's arrest;

(e) All books, records, and research products and materials, including formulas, microfilm, tapes, and data which are used, or intended for use, in violation of this chapter or chapter 69.41 or 69.52 RCW;

(f) All drug paraphernalia;

(g) All moneys, negotiable instruments, securities, or other tangible or intangible property of value furnished or intended to be furnished by any person in exchange for a controlled substance in violation of this chapter or chapter 69.41 or 69.52 RCW, all tangible or intangible personal property, proceeds, or assets acquired in whole or in part with proceeds traceable to an exchange or series of exchanges in violation of this chapter or chapter 69.41 or 69.52 RCW, and all moneys, negotiable instruments, and securities used or intended to be used to facilitate any violation of this chapter or chapter 69.41 or 69.52 RCW. A forfeiture of money, negotiable instruments, securities, or other tangible or intangible property encumbered by a bona fide security interest is subject to the interest of the secured party if, at the time the security interest was created, the secured party neither had knowledge of nor consented to the act or omission. No personal property may be forfeited under this subsection (1)(g), to the extent of the interest of an owner, by reason of any act or omission which that owner establishes was committed or omitted without the owner's knowledge or consent; and

(h) All real property, including any right, title, and interest in the whole of any lot or tract of land, and any appurtenances or improvements which are being used with the knowledge of the owner for the manufacturing, compounding, processing, delivery, importing, or exporting of any controlled substance, or which have been acquired in whole or in part with proceeds traceable to an exchange or series of exchanges in violation of this chapter or chapter 69.41 or 69.52 RCW, if such activity is not less than a class C felony and a substantial nexus exists between the commercial production or sale of the controlled substance and the real property. However:

(i) No property may be forfeited pursuant to this subsection (1)(h), to the extent of the interest of an owner, by reason of any act or omission committed or omitted without the owner's knowledge or consent;

(ii) The bona fide gift of a controlled substance, legend drug, or imitation controlled substance shall not result in the forfeiture of real property;

(iii) The possession of marijuana shall not result in the forfeiture of real property unless the marijuana is possessed

for commercial purposes, the amount possessed is five or more plants or one pound or more of marijuana, and a substantial nexus exists between the possession of marijuana and the real property. In such a case, the intent of the offender shall be determined by the preponderance of the evidence, including the offender's prior criminal history, the amount of marijuana possessed by the offender, the sophistication of the activity or equipment used by the offender, and other evidence which demonstrates the offender's intent to engage in commercial activity;

(iv) The unlawful sale of marijuana or a legend drug shall not result in the forfeiture of real property unless the sale was forty grams or more in the case of marijuana or one hundred dollars or more in the case of a legend drug, and a substantial nexus exists between the unlawful sale and the real property; and

(v) A forfeiture of real property encumbered by a bona fide security interest is subject to the interest of the secured party if the secured party, at the time the security interest was created, neither had knowledge of nor consented to the act or omission.

(2) Real or personal property subject to forfeiture under this chapter may be seized by any board inspector or law enforcement officer of this state upon process issued by any superior court having jurisdiction over the property. Seizure of real property shall include the filing of a lis pendens by the seizing agency. Real property seized under this section shall not be transferred or otherwise conveyed until ninety days after seizure or until a judgment of forfeiture is entered, whichever is later: PROVIDED, That real property seized under this section may be transferred or conveyed to any person or entity who acquires title by foreclosure or deed in lieu of foreclosure of a security interest. Seizure of personal property without process may be made if:

(a) The seizure is incident to an arrest or a search under a search warrant or an inspection under an administrative inspection warrant;

(b) The property subject to seizure has been the subject of a prior judgment in favor of the state in a criminal injunction or forfeiture proceeding based upon this chapter;

(c) A board inspector or law enforcement officer has probable cause to believe that the property is directly or indirectly dangerous to health or safety; or

(d) The board inspector or law enforcement officer has probable cause to believe that the property was used or is intended to be used in violation of this chapter.

(3) In the event of seizure pursuant to subsection (2) of this section, proceedings for forfeiture shall be deemed commenced by the seizure. The law enforcement agency under whose authority the seizure was made shall cause notice to be served within fifteen days following the seizure on the owner of the property seized and the person in charge thereof and any person having any known right or interest therein, including any community property interest, of the seizure and intended forfeiture of the seized property. Service of notice of seizure of real property shall be made according to the rules of civil procedure. However, the state may not obtain a default judgment with respect to real property against a party who is served by substituted service absent an affidavit stating that a good faith effort has been made to ascertain if the defaulted party is incarcerated within the state, and that there

is no present basis to believe that the party is incarcerated within the state. Notice of seizure in the case of property subject to a security interest that has been perfected by filing a financing statement in accordance with chapter 62A.9A RCW, or a certificate of title, shall be made by service upon the secured party or the secured party's assignee at the address shown on the financing statement or the certificate of title. The notice of seizure in other cases may be served by any method authorized by law or court rule including but not limited to service by certified mail with return receipt requested. Service by mail shall be deemed complete upon mailing within the fifteen day period following the seizure.

(4) If no person notifies the seizing law enforcement agency in writing of the person's claim of ownership or right to possession of items specified in subsection (1)(d), (g), or (h) of this section within forty-five days of the service of notice from the seizing agency in the case of personal property and ninety days in the case of real property, the item seized shall be deemed forfeited. The community property interest in real property of a person whose spouse or domestic partner committed a violation giving rise to seizure of the real property may not be forfeited if the person did not participate in the violation.

(5) If any person notifies the seizing law enforcement agency in writing of the person's claim of ownership or right to possession of items specified in subsection (1)(b), (c), (d), (e), (f), (g), or (h) of this section within forty-five days of the service of notice from the seizing agency in the case of personal property and ninety days in the case of real property, the person or persons shall be afforded a reasonable opportunity to be heard as to the claim or right. The notice of claim may be served by any method authorized by law or court rule including, but not limited to, service by first-class mail. Service by mail shall be deemed complete upon mailing within the forty-five day period following service of the notice of seizure in the case of personal property and within the ninety-day period following service of the notice of seizure in the case of real property. The hearing shall be before the chief law enforcement officer of the seizing agency or the chief law enforcement officer's designee, except where the seizing agency is a state agency as defined in RCW 34.12.020(4), the hearing shall be before the chief law enforcement officer of the seizing agency or an administrative law judge appointed under chapter 34.12 RCW, except that any person asserting a claim or right may remove the matter to a court of competent jurisdiction. Removal of any matter involving personal property may only be accomplished according to the rules of civil procedure. The person seeking removal of the matter must serve process against the state, county, political subdivision, or municipality that operates the seizing agency, and any other party of interest, in accordance with RCW 4.28.080 or 4.92.020, within forty-five days after the person seeking removal has notified the seizing law enforcement agency of the person's claim of ownership or right to possession. The court to which the matter is to be removed shall be the district court when the aggregate value of personal property is within the jurisdictional limit set forth in RCW 3.66.020. A hearing before the seizing agency and any appeal therefrom shall be under Title 34 RCW. In all cases, the burden of proof is upon the law enforcement agency to establish, by a preponderance of the evidence, that the property is subject to forfeiture.

The seizing law enforcement agency shall promptly return the article or articles to the claimant upon a determination by the administrative law judge or court that the claimant is the present lawful owner or is lawfully entitled to possession thereof of items specified in subsection (1)(b), (c), (d), (e), (f), (g), or (h) of this section.

(6) In any proceeding to forfeit property under this title, where the claimant substantially prevails, the claimant is entitled to reasonable attorneys' fees reasonably incurred by the claimant. In addition, in a court hearing between two or more claimants to the article or articles involved, the prevailing party is entitled to a judgment for costs and reasonable attorneys' fees.

(7) When property is forfeited under this chapter the board or seizing law enforcement agency may:

(a) Retain it for official use or upon application by any law enforcement agency of this state release such property to such agency for the exclusive use of enforcing the provisions of this chapter;

(b) Sell that which is not required to be destroyed by law and which is not harmful to the public;

(c) Request the appropriate sheriff or director of public safety to take custody of the property and remove it for disposition in accordance with law; or

(d) Forward it to the drug enforcement administration for disposition.

(8)(a) When property is forfeited, the seizing agency shall keep a record indicating the identity of the prior owner, if known, a description of the property, the disposition of the property, the value of the property at the time of seizure, and the amount of proceeds realized from disposition of the property.

(b) Each seizing agency shall retain records of forfeited property for at least seven years.

(c) Each seizing agency shall file a report including a copy of the records of forfeited property with the state treasurer each calendar quarter.

(d) The quarterly report need not include a record of forfeited property that is still being held for use as evidence during the investigation or prosecution of a case or during the appeal from a conviction.

(9)(a) By January 31st of each year, each seizing agency shall remit to the state treasurer an amount equal to ten percent of the net proceeds of any property forfeited during the preceding calendar year. Money remitted shall be deposited in the state general fund.

(b) The net proceeds of forfeited property is the value of the forfeitable interest in the property after deducting the cost of satisfying any bona fide security interest to which the property is subject at the time of seizure; and in the case of sold property, after deducting the cost of sale, including reasonable fees or commissions paid to independent selling agents, and the cost of any valid landlord's claim for damages under subsection (15) of this section.

(c) The value of sold forfeited property is the sale price. The value of retained forfeited property is the fair market value of the property at the time of seizure, determined when possible by reference to an applicable commonly used index, such as the index used by the department of licensing for valuation of motor vehicles. A seizing agency may use, but need not use, an independent qualified appraiser to determine the

value of retained property. If an appraiser is used, the value of the property appraised is net of the cost of the appraisal. The value of destroyed property and retained firearms or illegal property is zero.

(10) Forfeited property and net proceeds not required to be paid to the state treasurer shall be retained by the seizing law enforcement agency exclusively for the expansion and improvement of controlled substances related law enforcement activity. Money retained under this section may not be used to supplant preexisting funding sources.

(11) Controlled substances listed in Schedule I, II, III, IV, and V that are possessed, transferred, sold, or offered for sale in violation of this chapter are contraband and shall be seized and summarily forfeited to the state. Controlled substances listed in Schedule I, II, III, IV, and V, which are seized or come into the possession of the board, the owners of which are unknown, are contraband and shall be summarily forfeited to the board.

(12) Species of plants from which controlled substances in Schedules I and II may be derived which have been planted or cultivated in violation of this chapter, or of which the owners or cultivators are unknown, or which are wild growths, may be seized and summarily forfeited to the board.

(13) The failure, upon demand by a board inspector or law enforcement officer, of the person in occupancy or in control of land or premises upon which the species of plants are growing or being stored to produce an appropriate registration or proof that he or she is the holder thereof constitutes authority for the seizure and forfeiture of the plants.

(14) Upon the entry of an order of forfeiture of real property, the court shall forward a copy of the order to the assessor of the county in which the property is located. Orders for the forfeiture of real property shall be entered by the superior court, subject to court rules. Such an order shall be filed by the seizing agency in the county auditor's records in the county in which the real property is located.

(15) A landlord may assert a claim against proceeds from the sale of assets seized and forfeited under subsection (7)(b) of this section, only if:

(a) A law enforcement officer, while acting in his or her official capacity, directly caused damage to the complaining landlord's property while executing a search of a tenant's residence; and

(b) The landlord has applied any funds remaining in the tenant's deposit, to which the landlord has a right under chapter 59.18 RCW, to cover the damage directly caused by a law enforcement officer prior to asserting a claim under the provisions of this section;

(i) Only if the funds applied under (b) of this subsection are insufficient to satisfy the damage directly caused by a law enforcement officer, may the landlord seek compensation for the damage by filing a claim against the governmental entity under whose authority the law enforcement agency operates within thirty days after the search;

(ii) Only if the governmental entity denies or fails to respond to the landlord's claim within sixty days of the date of filing, may the landlord collect damages under this subsection by filing within thirty days of denial or the expiration of the sixty-day period, whichever occurs first, a claim with the seizing law enforcement agency. The seizing law enforcement agency must notify the landlord of the status of the

claim by the end of the thirty-day period. Nothing in this section requires the claim to be paid by the end of the sixty-day or thirty-day period.

(c) For any claim filed under (b) of this subsection, the law enforcement agency shall pay the claim unless the agency provides substantial proof that the landlord either:

(i) Knew or consented to actions of the tenant in violation of this chapter or chapter 69.41 or 69.52 RCW; or

(ii) Failed to respond to a notification of the illegal activity, provided by a law enforcement agency under RCW 59.18.075, within seven days of receipt of notification of the illegal activity.

(16) The landlord's claim for damages under subsection (15) of this section may not include a claim for loss of business and is limited to:

(a) Damage to tangible property and clean-up costs;

(b) The lesser of the cost of repair or fair market value of the damage directly caused by a law enforcement officer;

(c) The proceeds from the sale of the specific tenant's property seized and forfeited under subsection (7)(b) of this section; and

(d) The proceeds available after the seizing law enforcement agency satisfies any bona fide security interest in the tenant's property and costs related to sale of the tenant's property as provided by subsection (9)(b) of this section.

(17) Subsections (15) and (16) of this section do not limit any other rights a landlord may have against a tenant to collect for damages. However, if a law enforcement agency satisfies a landlord's claim under subsection (15) of this section, the rights the landlord has against the tenant for damages directly caused by a law enforcement officer under the terms of the landlord and tenant's contract are subrogated to the law enforcement agency. [2009 c 479 § 46; 2009 c 364 § 1; 2008 c 6 § 631; 2003 c 53 § 348; 2001 c 168 § 1; 1993 c 487 § 1; 1992 c 211 § 1. Prior: (1992 c 210 § 5 repealed by 1992 c 211 § 2); 1990 c 248 § 2; 1990 c 213 § 12; 1989 c 271 § 212; 1988 c 282 § 2; 1986 c 124 § 9; 1984 c 258 § 333; 1983 c 2 § 15; prior: 1982 c 189 § 6; 1982 c 171 § 1; prior: 1981 c 67 § 32; 1981 c 48 § 3; 1977 ex.s. c 77 § 1; 1971 ex.s. c 308 § 69.50.505.]

**Reviser's note:** This section was amended by 2009 c 364 § 1 and by 2009 c 479 § 46, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

**Effective date—2009 c 479:** See note following RCW 2.56.030.

**Part headings not law—Severability—2008 c 6:** See RCW 26.60.900 and 26.60.901.

**Intent—Effective date—2003 c 53:** See notes following RCW 2.48.180.

**Severability—2001 c 168:** "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [2001 c 168 § 5.]

**Findings—1989 c 271:** "The legislature finds that: Drug offenses and crimes resulting from illegal drug use are destructive to society; the nature of drug trafficking results in many property crimes and crimes of violence; state and local governmental agencies incur immense expenses in the investigation, prosecution, adjudication, incarceration, and treatment of drug-related offenders and the compensation of their victims; drug-related offenses are difficult to eradicate because of the profits derived from the criminal activities, which can be invested in legitimate assets and later used for further criminal activities; and the forfeiture of real assets where a substantial nexus exists between the commercial production or sale of the substances and the real property will provide a significant deterrent to crime by removing the

profit incentive of drug trafficking, and will provide a revenue source that will partially defray the large costs incurred by government as a result of these crimes. The legislature recognizes that seizure of real property is a very powerful tool and should not be applied in cases in which a manifest injustice would occur as a result of forfeiture of an innocent spouse's community property interest." [1989 c 271 § 211.]

**Intent—1984 c 258:** See note following RCW 3.34.130.

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**69.50.506 Burden of proof; liabilities.** (a) It is not necessary for the state to negate any exemption or exception in this chapter in any complaint, information, indictment or other pleading or in any trial, hearing, or other proceeding under this chapter. The burden of proof of any exemption or exception is upon the person claiming it.

(b) In the absence of proof that a person is the duly authorized holder of an appropriate registration or order form issued under this chapter, he is presumed not to be the holder of the registration or form. The burden of proof is upon him to rebut the presumption.

(c) No liability is imposed by this chapter upon any authorized state, county or municipal officer, engaged in the lawful performance of his duties. [1971 ex.s. c 308 § 69.50.506.]

**69.50.507 Judicial review.** All final determinations, findings and conclusions of the state board of pharmacy under this chapter are final and conclusive decisions of the matters involved. Any person aggrieved by the decision may obtain review of the decision in the superior court wherein he resides or in the superior court of Thurston county, such review to be in conformity with the administrative procedure act, chapter 34.05 RCW. [1971 ex.s. c 308 § 69.50.507.]

**69.50.508 Education and research.** (a) The state board of pharmacy may carry out educational programs designed to prevent and deter misuse and abuse of controlled substances. In connection with these programs it may:

(1) promote better recognition of the problems of misuse and abuse of controlled substances within the regulated industry and among interested groups and organizations;

(2) assist the regulated industry and interested groups and organizations in contributing to the reduction of misuse and abuse of controlled substances;

(3) consult with interested groups and organizations to aid them in solving administrative and organizational problems;

(4) evaluate procedures, projects, techniques, and controls conducted or proposed as part of educational programs on misuse and abuse of controlled substances;

(5) disseminate the results of research on misuse and abuse of controlled substances to promote a better public understanding of what problems exist and what can be done to combat them; and

(6) assist in the education and training of state and local law enforcement officials in their efforts to control misuse and abuse of controlled substances.

(b) The board may encourage research on misuse and abuse of controlled substances. In connection with the research, and in furtherance of the enforcement of this chapter, it may:

(1) establish methods to assess accurately the effects of controlled substances and identify and characterize those with potential for abuse;

(2) make studies and undertake programs of research to:

(i) develop new or improved approaches, techniques, systems, equipment and devices to strengthen the enforcement of this chapter;

(ii) determine patterns of misuse and abuse of controlled substances and the social effects thereof; and,

(iii) improve methods for preventing, predicting, understanding and dealing with the misuse and abuse of controlled substances; and,

(3) enter into contracts with public agencies, institutions of higher education, and private organizations or individuals for the purpose of conducting research, demonstrations, or special projects which bear directly on misuse and abuse of controlled substances.

(c) The board may enter into contracts for educational and research activities without performance bonds.

(d) The board may authorize persons engaged in research on the use and effects of controlled substances to withhold the names and other identifying characteristics of individuals who are the subjects of the research. Persons who obtain this authorization are not compelled in any civil, criminal, administrative, legislative, or other proceeding to identify the individuals who are the subjects of research for which the authorization was obtained.

(e) The board may authorize the possession and distribution of controlled substances by persons engaged in research. Persons who obtain this authorization are exempt from state prosecution for possession and distribution of controlled substances to the extent of the authorization. [1971 ex.s. c 308 § 69.50.508.]

**69.50.509 Search and seizure of controlled substances.** If, upon the sworn complaint of any person, it shall be made to appear to any judge of the superior court, district court, or municipal court that there is probable cause to believe that any controlled substance is being used, manufactured, sold, bartered, exchanged, administered, dispensed, delivered, distributed, produced, possessed, given away, furnished or otherwise disposed of or kept in violation of the provisions of this chapter, such judge shall, with or without the approval of the prosecuting attorney, issue a warrant directed to any law enforcement officer of the state, commanding him or her to search the premises designated and described in such complaint and warrant, and to seize all controlled substances there found, together with the vessels in which they are contained, and all implements, furniture and fixtures used or kept for the illegal manufacture, sale, barter, exchange, administering, dispensing, delivering, distributing, producing, possessing, giving away, furnishing or otherwise disposing of such controlled substances, and to safely keep the same, and to make a return of said warrant within three days, showing all acts and things done thereunder, with a particular statement of all articles seized and the name of the person or persons in whose possession the same were found, if any, and if no person be found in the possession of said articles, the returns shall so state. The provisions of RCW 10.31.030 as now or hereafter amended shall apply to actions

taken pursuant to this chapter. [1987 c 202 § 228; 1971 ex.s. c 308 § 69.50.509.]

**Intent—1987 c 202:** See note following RCW 2.04.190.

**69.50.510 Search and seizure at rental premises—Notification of landlord.** Whenever a controlled substance which is manufactured, distributed, dispensed, or acquired in violation of this chapter is seized at rental premises, the law enforcement agency shall make a reasonable attempt to discover the identity of the landlord and shall notify the landlord in writing, at the last address listed in the property tax records and at any other address known by the law enforcement agency, of the seizure and the location of the seizure. [1988 c 150 § 9.]

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

**69.50.511 Cleanup of hazardous substances at illegal drug manufacturing facility—Rules.** Law enforcement agencies who during the official investigation or enforcement of any illegal drug manufacturing facility come in contact with or are aware of any substances suspected of being hazardous as defined in RCW 70.105D.020, shall notify the department of ecology for the purpose of securing a contractor to identify, clean up, store, and dispose of suspected hazardous substances, except for those random and representative samples obtained for evidentiary purposes. Whenever possible, a destruct order covering hazardous substances which may be described in general terms shall be obtained concurrently with a search warrant. Materials that have been photographed, fingerprinted, and subsampled by police shall be destroyed as soon as practical. The department of ecology shall make every effort to recover costs from the parties responsible for the suspected hazardous substance. All recoveries shall be deposited in the account or fund from which contractor payments are made.

The department of ecology may adopt rules to carry out its responsibilities under this section. The department of ecology shall consult with law enforcement agencies prior to adopting any rule or policy relating to this section. [2007 c 104 § 17; 1990 c 213 § 13; 1989 c 271 § 228.]

**Application—Construction—Severability—2007 c 104:** See RCW 64.70.015 and 64.70.900.

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**69.50.525 Diversion prevention and control—Report.** (a) As used in this section, "diversion" means the transfer of any controlled substance from a licit to an illicit channel of distribution or use.

(b) The department shall regularly prepare and make available to other state regulatory, licensing, and law enforcement agencies a report on the patterns and trends of actual distribution, diversion, and abuse of controlled substances.

(c) The department shall enter into written agreements with local, state, and federal agencies for the purpose of improving identification of sources of diversion and to improve enforcement of and compliance with this chapter and other laws and regulations pertaining to unlawful conduct involving controlled substances. An agreement must specify the roles and responsibilities of each agency that has

(2010 Ed.)

information or authority to identify, prevent, and control drug diversion and drug abuse. The department shall convene periodic meetings to coordinate a state diversion prevention and control program. The department shall arrange for cooperation and exchange of information among agencies and with neighboring states and the federal government. [1998 c 245 § 109; 1993 c 187 § 20.]

## ARTICLE VI MISCELLANEOUS

**69.50.601 Pending proceedings.** (a) Prosecution for any violation of law occurring prior to May 21, 1971 is not affected or abated by this chapter. If the offense being prosecuted is similar to one set out in Article IV of this chapter, then the penalties under Article IV apply if they are less than those under prior law.

(b) Civil seizures or forfeitures and injunctive proceedings commenced prior to May 21, 1971 are not affected by this chapter.

(c) All administrative proceedings pending under prior laws which are superseded by this chapter shall be continued and brought to a final determination in accord with the laws and rules in effect prior to May 21, 1971. Any substance controlled under prior law which is not listed within Schedules I through V, is automatically controlled without further proceedings and shall be listed in the appropriate schedule.

(d) The state board of pharmacy shall initially permit persons to register who own or operate any establishment engaged in the manufacture, distribution, or dispensing of any controlled substance prior to May 21, 1971 and who are registered or licensed by the state.

(e) This chapter applies to violations of law, seizures and forfeiture, injunctive proceedings, administrative proceedings and investigations which occur following May 21, 1971. [1971 ex.s. c 308 § 69.50.601.]

**69.50.602 Continuation of rules.** Any orders and rules promulgated under any law affected by this chapter and in effect on May 21, 1971 and not in conflict with it continue in effect until modified, superseded or repealed. [1971 ex.s. c 308 § 69.50.602.]

**69.50.603 Uniformity of interpretation.** This chapter shall be so applied and construed as to effectuate its general purpose to make uniform the law with respect to the subject of this chapter among those states which enact it. [1971 ex.s. c 308 § 69.50.603.]

**69.50.604 Short title.** This chapter may be cited as the Uniform Controlled Substances Act. [1971 ex.s. c 308 § 69.50.604.]

**69.50.605 Severability—1971 ex.s. c 308.** If any provision of this act or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are severable. [1971 ex.s. c 308 § 69.50.605.]

**69.50.606 Repealers.** The laws specified below are repealed except with respect to rights and duties which matured, penalties which were incurred and proceedings which were begun before the effective date of this act:

(1) Section 2072, Code of 1881, section 418, chapter 249, Laws of 1909, section 4, chapter 205, Laws of 1963 and RCW 9.91.030;

(2) Section 69.33.220, chapter 27, Laws of 1959, section 7, chapter 256, Laws of 1969 ex. sess. and RCW 69.33.220;

(3) Sections 69.33.230 through 69.33.280, chapter 27, Laws of 1959 and RCW 69.33.230 through 69.33.280;

(4) Section 69.33.290, chapter 27, Laws of 1959, section 1, chapter 97, Laws of 1959 and RCW 69.33.290;

(5) Section 69.33.300, chapter 27, Laws of 1959, section 8, chapter 256, Laws of 1969 ex. sess. and RCW 69.33.300;

(6) Sections 69.33.310 through 69.33.400, chapter 27, Laws of 1959 and RCW 69.33.310 through 69.33.400;

(7) Section 69.33.410, chapter 27, Laws of 1959, section 20, chapter 38, Laws of 1963 and RCW 69.33.410;

(8) Sections 69.33.420 through 69.33.440, 69.33.900 through 69.33.950, chapter 27, Laws of 1959 and RCW 69.33.420 through 69.33.440, 69.33.900 through 69.33.950;

(9) Section 255, chapter 249, Laws of 1909 and RCW 69.40.040;

(10) Section 1, chapter 6, Laws of 1939, section 1, chapter 29, Laws of 1939, section 1, chapter 57, Laws of 1945, section 1, chapter 24, Laws of 1955, section 1, chapter 49, Laws of 1961, section 1, chapter 71, Laws of 1967, section 9, chapter 256, Laws of 1969 ex. sess. and RCW 69.40.060;

(11) Section 1, chapter 23, Laws of 1955, section 2, chapter 49, Laws of 1961, section 2, chapter 71, Laws of 1967 and RCW 69.40.061;

(12) Section 21, chapter 38, Laws of 1963 and RCW 69.40.063;

(13) Section 2, chapter 6, Laws of 1939, section 23, chapter 38, Laws of 1963, section 10, chapter 256, Laws of 1969 ex. sess. and RCW 69.40.070;

(14) Section 12, chapter 256, Laws of 1969 ex. sess. and RCW 69.40.075;

(15) Section 1, chapter 205, Laws of 1963 and RCW 69.40.080;

(16) Section 2, chapter 205, Laws of 1963 and RCW 69.40.090;

(17) Section 3, chapter 205, Laws of 1963 and RCW 69.40.100;

(18) Section 11, chapter 256, Laws of 1969 ex. sess. and RCW 69.40.110;

(19) Section 1, chapter 33, Laws of 1970 ex. sess. and RCW 69.40.120; and

(20) Section 1, chapter 80, Laws of 1970 ex. sess. [1971 ex.s. c 308 § 69.50.606.]

**69.50.607 Effective date—1971 ex.s. c 308.** This act is necessary for the immediate preservation of the public peace, health and safety, the support of the state government and its existing public institutions, and shall take effect immediately. [1971 ex.s. c 308 § 69.50.607.]

**69.50.608 State preemption.** The state of Washington fully occupies and preempts the entire field of setting penalties for violations of the controlled substances act. Cities,

towns, and counties or other municipalities may enact only those laws and ordinances relating to controlled substances that are consistent with this chapter. Such local ordinances shall have the same penalties as provided for by state law. Local laws and ordinances that are inconsistent with the requirements of state law shall not be enacted and are preempted and repealed, regardless of the nature of the code, charter, or home rule status of the city, town, county, or municipality. [1989 c 271 § 601.]

**69.50.609 Captions not law—1993 c 187.** Section captions as used in this act constitute no part of the law. [1993 c 187 § 23.]

## Chapter 69.51 RCW CONTROLLED SUBSTANCES THERAPEUTIC RESEARCH ACT

### Sections

69.51.010	Short title.
69.51.020	Legislative purpose.
69.51.030	Definitions.
69.51.040	Controlled substances therapeutic research program.
69.51.050	Patient qualification review committee.
69.51.060	Sources and distribution of marijuana.
69.51.080	Cannabis and related products considered Schedule II substances.

**69.51.010 Short title.** This chapter may be cited as the Controlled Substances Therapeutic Research Act. [1979 c 136 § 1.]

**69.51.020 Legislative purpose.** The legislature finds that recent research has shown that the use of marijuana may alleviate the nausea and ill effects of cancer chemotherapy and radiology, and, additionally, may alleviate the ill effects of glaucoma. The legislature further finds that there is a need for further research and experimentation regarding the use of marijuana under strictly controlled circumstances. It is for this purpose that the Controlled Substances Therapeutic Research Act is hereby enacted. [1979 c 136 § 2.]

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

- (1) "Board" means the state board of pharmacy;
- (2) "Department" means the department of health.
- (3) "Marijuana" means all parts of the plant of the genus *Cannabis* L., whether growing or not, the seeds thereof, the resin extracted from any part of the plant, and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds, or resin; and

(4) "Practitioner" means a physician licensed pursuant to chapter 18.71 or 18.57 RCW. [1989 1st ex.s. c 9 § 438; 1979 c 136 § 3.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**69.51.040 Controlled substances therapeutic research program.** (1) There is established in the board the controlled substances therapeutic research program. The program shall be administered by the department. The board shall promulgate rules necessary for the proper administration of the Controlled Substances Therapeutic Research Act. In such promulgation, the board shall take into consideration

those pertinent rules promulgated by the United States drug enforcement agency, the food and drug administration, and the national institute on drug abuse.

(2) Except as provided in RCW 69.51.050(4), the controlled substances therapeutic research program shall be limited to cancer chemotherapy and radiology patients and glaucoma patients, who are certified to the patient qualification review committee by a practitioner as being involved in a life-threatening or sense-threatening situation. No patient may be admitted to the controlled substances therapeutic research program without full disclosure by the practitioner of the experimental nature of this program and of the possible risks and side effects of the proposed treatment in accordance with the informed consent provisions of chapter 7.70 RCW.

(3) The board shall provide by rule for a program of registration with the department of bona fide controlled substance therapeutic research projects. [1989 1st ex.s. c 9 § 439; 1979 c 136 § 4.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**69.51.050 Patient qualification review committee.** (1) The board shall appoint a patient qualification review committee to serve at its pleasure. The patient qualification review committee shall be comprised of:

- (a) A physician licensed to practice medicine in Washington state and specializing in the practice of ophthalmology;
- (b) A physician licensed to practice medicine in Washington state and specializing in the subspecialty of medical oncology;
- (c) A physician licensed to practice medicine in Washington state and specializing in the practice of psychiatry; and
- (d) A physician licensed to practice medicine in Washington state and specializing in the practice of radiology.

Members of the committee shall be compensated at the rate of fifty dollars per day for each day spent in the performance of their official duties, and shall receive reimbursement for their travel expenses as provided in RCW 43.03.050 and 43.03.060.

(2) The patient qualification review committee shall review all applicants for the controlled substance therapeutic research program and their licensed practitioners and certify their participation in the program.

(3) The patient qualification review committee and the board shall insure that the privacy of individuals who participate in the controlled substance therapeutic research program is protected by withholding from all persons not connected with the conduct of the research the names and other identifying characteristics of such individuals. Persons authorized to engage in research under the controlled substance therapeutic research program may not be compelled in any civil, criminal, administrative, legislative, or other proceeding to identify the individuals who are the subjects of research for which the authorization was granted, except to the extent necessary to permit the board to determine whether the research is being conducted in accordance with the authorization.

(4) The patient qualification review committee may include other disease groups for participation in the controlled substances therapeutic research program after pertinent medical data have been presented by a practitioner to

both the committee and the board, and after approval for such participation has been granted pursuant to pertinent rules promulgated by the United States drug enforcement agency, the food and drug administration, and the national institute on drug abuse. [1979 c 136 § 5.]

**69.51.060 Sources and distribution of marijuana.** (1) The board shall obtain marijuana through whatever means it deems most appropriate and consistent with regulations promulgated by the United States food and drug administration, the drug enforcement agency, and the national institute on drug abuse, and pursuant to the provisions of this chapter.

(2) The board may use marijuana which has been confiscated by local or state law enforcement agencies and has been determined to be free from contamination.

(3) The board shall distribute the analyzed marijuana to approved practitioners and/or institutions in accordance with rules promulgated by the board. [1979 c 136 § 6.]

**69.51.080 Cannabis and related products considered Schedule II substances.** (1) The enumeration of tetrahydrocannabinols, or a chemical derivative of tetrahydrocannabinols in RCW 69.50.204 as a Schedule I controlled substance does not apply to the use of cannabis, tetrahydrocannabinols, or a chemical derivative of tetrahydrocannabinols by certified patients pursuant to the provisions of this chapter.

(2) Cannabis, tetrahydrocannabinols, or a chemical derivative of tetrahydrocannabinols shall be considered Schedule II substances as enumerated in RCW 69.50.206 only for the purposes enumerated in this chapter. [1979 c 136 § 8.]

**Chapter 69.51A RCW  
MEDICAL MARIJUANA**

Sections

69.51A.005	Purpose and intent.
69.51A.010	Definitions.
69.51A.020	Construction of chapter.
69.51A.030	Health care professionals excepted from state's criminal laws.
69.51A.040	Failure to seize marijuana, qualifying patients' affirmative defense.
69.51A.050	Medical marijuana, lawful possession—State not liable.
69.51A.060	Crimes—Limitations of chapter.
69.51A.070	Addition of medical conditions.
69.51A.080	Adoption of rules by the department of health—Sixty-day supply for qualifying patients.
69.51A.090	Applicability of valid documentation definition.
69.51A.900	Short title—1999 c 2.
69.51A.901	Severability—1999 c 2.
69.51A.902	Captions not law—1999 c 2.

**69.51A.005 Purpose and intent.** The people of Washington state find that some patients with terminal or debilitating illnesses, under their health care professional's care, may benefit from the medical use of marijuana. Some of the illnesses for which marijuana appears to be beneficial include chemotherapy-related nausea and vomiting in cancer patients; AIDS wasting syndrome; severe muscle spasms associated with multiple sclerosis and other spasticity disorders; epilepsy; acute or chronic glaucoma; and some forms of intractable pain.

The people find that humanitarian compassion necessitates that the decision to authorize the medical use of marijuana by patients with terminal or debilitating illnesses is a personal, individual decision, based upon their health care professional's professional medical judgment and discretion.

Therefore, the people of the state of Washington intend that:

Qualifying patients with terminal or debilitating illnesses who, in the judgment of their health care professionals, may benefit from the medical use of marijuana, shall not be found guilty of a crime under state law for their possession and limited use of marijuana;

Persons who act as designated providers to such patients shall also not be found guilty of a crime under state law for assisting with the medical use of marijuana; and

Health care professionals also be excepted from liability and prosecution for the authorization of marijuana use to qualifying patients for whom, in the health care professional's professional judgment, medical marijuana may prove beneficial. [2010 c 284 § 1; 2007 c 371 § 2; 1999 c 2 § 2 (Initiative Measure No. 692, approved November 3, 1998).]

**Intent—2007 c 371:** "The legislature intends to clarify the law on medical marijuana so that the lawful use of this substance is not impaired and medical practitioners are able to exercise their best professional judgment in the delivery of medical treatment, qualifying patients may fully participate in the medical use of marijuana, and designated providers may assist patients in the manner provided by this act without fear of state criminal prosecution. This act is also intended to provide clarification to law enforcement and to all participants in the judicial system." [2007 c 371 § 1.]

**69.51A.010 Definitions.** The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Designated provider" means a person who:

- (a) Is eighteen years of age or older;
- (b) Has been designated in writing by a patient to serve as a designated provider under this chapter;
- (c) Is prohibited from consuming marijuana obtained for the personal, medical use of the patient for whom the individual is acting as designated provider; and
- (d) Is the designated provider to only one patient at any one time.

(2) "Health care professional," for purposes of this chapter only, means a physician licensed under chapter 18.71 RCW, a physician assistant licensed under chapter 18.71A RCW, an osteopathic physician licensed under chapter 18.57 RCW, an osteopathic physicians' assistant licensed under chapter 18.57A RCW, a naturopath licensed under chapter 18.36A RCW, or an advanced registered nurse practitioner licensed under chapter 18.79 RCW.

(3) "Medical use of marijuana" means the production, possession, or administration of marijuana, as defined in RCW 69.50.101(q), for the exclusive benefit of a qualifying patient in the treatment of his or her terminal or debilitating illness.

(4) "Qualifying patient" means a person who:

- (a) Is a patient of a health care professional;
- (b) Has been diagnosed by that health care professional as having a terminal or debilitating medical condition;
- (c) Is a resident of the state of Washington at the time of such diagnosis;

(d) Has been advised by that health care professional about the risks and benefits of the medical use of marijuana; and

(e) Has been advised by that health care professional that they may benefit from the medical use of marijuana.

(5) "Tamper-resistant paper" means paper that meets one or more of the following industry-recognized features:

(a) One or more features designed to prevent copying of the paper;

(b) One or more features designed to prevent the erasure or modification of information on the paper; or

(c) One or more features designed to prevent the use of counterfeit valid documentation.

(6) "Terminal or debilitating medical condition" means:

(a) Cancer, human immunodeficiency virus (HIV), multiple sclerosis, epilepsy or other seizure disorder, or spasticity disorders; or

(b) Intractable pain, limited for the purpose of this chapter to mean pain unrelieved by standard medical treatments and medications; or

(c) Glaucoma, either acute or chronic, limited for the purpose of this chapter to mean increased intraocular pressure unrelieved by standard treatments and medications; or

(d) Crohn's disease with debilitating symptoms unrelieved by standard treatments or medications; or

(e) Hepatitis C with debilitating nausea or intractable pain unrelieved by standard treatments or medications; or

(f) Diseases, including anorexia, which result in nausea, vomiting, wasting, appetite loss, cramping, seizures, muscle spasms, or spasticity, when these symptoms are unrelieved by standard treatments or medications; or

(g) Any other medical condition duly approved by the Washington state medical quality assurance commission in consultation with the board of osteopathic medicine and surgery as directed in this chapter.

(7) "Valid documentation" means:

(a) A statement signed and dated by a qualifying patient's health care professional written on tamper-resistant paper, which states that, in the health care professional's professional opinion, the patient may benefit from the medical use of marijuana; and

(b) Proof of identity such as a Washington state driver's license or identicard, as defined in RCW 46.20.035. [2010 c 284 § 2; 2007 c 371 § 3; 1999 c 2 § 6 (Initiative Measure No. 692, approved November 3, 1998).]

**Intent—2007 c 371:** See note following RCW 69.51A.005.

**69.51A.020 Construction of chapter.** Nothing in this chapter shall be construed to supersede Washington state law prohibiting the acquisition, possession, manufacture, sale, or use of marijuana for nonmedical purposes. [1999 c 2 § 3 (Initiative Measure No. 692, approved November 3, 1998).]

**69.51A.030 Health care professionals excepted from state's criminal laws.** A health care professional shall be excepted from the state's criminal laws and shall not be penalized in any manner, or denied any right or privilege, for:

(1) Advising a qualifying patient about the risks and benefits of medical use of marijuana or that the qualifying patient may benefit from the medical use of marijuana where such

use is within a professional standard of care or in the individual health care professional's medical judgment; or

(2) Providing a qualifying patient with valid documentation, based upon the health care professional's assessment of the qualifying patient's medical history and current medical condition, that the medical use of marijuana may benefit a particular qualifying patient. [2010 c 284 § 3; 2007 c 371 § 4; 1999 c 2 § 4 (Initiative Measure No. 692, approved November 3, 1998).]

**Intent—2007 c 371:** See note following RCW 69.51A.005.

**69.51A.040 Failure to seize marijuana, qualifying patients' affirmative defense.** (1) If a law enforcement officer determines that marijuana is being possessed lawfully under the medical marijuana law, the officer may document the amount of marijuana, take a representative sample that is large enough to test, but not seize the marijuana. A law enforcement officer or agency shall not be held civilly liable for failure to seize marijuana in this circumstance.

(2) If charged with a violation of state law relating to marijuana, any qualifying patient who is engaged in the medical use of marijuana, or any designated provider who assists a qualifying patient in the medical use of marijuana, will be deemed to have established an affirmative defense to such charges by proof of his or her compliance with the requirements provided in this chapter. Any person meeting the requirements appropriate to his or her status under this chapter shall be considered to have engaged in activities permitted by this chapter and shall not be penalized in any manner, or denied any right or privilege, for such actions.

(3) A qualifying patient, if eighteen years of age or older, or a designated provider shall:

(a) Meet all criteria for status as a qualifying patient or designated provider;

(b) Possess no more marijuana than is necessary for the patient's personal, medical use, not exceeding the amount necessary for a sixty-day supply; and

(c) Present his or her valid documentation to any law enforcement official who questions the patient or provider regarding his or her medical use of marijuana.

(4) A qualifying patient, if under eighteen years of age at the time he or she is alleged to have committed the offense, shall demonstrate compliance with subsection (3)(a) and (c) of this section. However, any possession under subsection (3)(b) of this section, as well as any production, acquisition, and decision as to dosage and frequency of use, shall be the responsibility of the parent or legal guardian of the qualifying patient. [2007 c 371 § 5; 1999 c 2 § 5 (Initiative Measure No. 692, approved November 3, 1998).]

**Intent—2007 c 371:** See note following RCW 69.51A.005.

**69.51A.050 Medical marijuana, lawful possession—State not liable.** (1) The lawful possession or manufacture of medical marijuana as authorized by this chapter shall not result in the forfeiture or seizure of any property.

(2) No person shall be prosecuted for constructive possession, conspiracy, or any other criminal offense solely for being in the presence or vicinity of medical marijuana or its use as authorized by this chapter.

(2010 Ed.)

(3) The state shall not be held liable for any deleterious outcomes from the medical use of marijuana by any qualifying patient. [1999 c 2 § 7 (Initiative Measure No. 692, approved November 3, 1998).]

**69.51A.060 Crimes—Limitations of chapter.** (1) It shall be a misdemeanor to use or display medical marijuana in a manner or place which is open to the view of the general public.

(2) Nothing in this chapter requires any health insurance provider to be liable for any claim for reimbursement for the medical use of marijuana.

(3) Nothing in this chapter requires any health care professional to authorize the use of medical marijuana for a patient.

(4) Nothing in this chapter requires any accommodation of any on-site medical use of marijuana in any place of employment, in any school bus or on any school grounds, in any youth center, in any correctional facility, or smoking medical marijuana in any public place as that term is defined in RCW 70.160.020.

(5) It is a class C felony to fraudulently produce any record purporting to be, or tamper with the content of any record for the purpose of having it accepted as, valid documentation under RCW 69.51A.010(7)(a).

(6) No person shall be entitled to claim the affirmative defense provided in RCW 69.51A.040 for engaging in the medical use of marijuana in a way that endangers the health or well-being of any person through the use of a motorized vehicle on a street, road, or highway. [2010 c 284 § 4; 2007 c 371 § 6; 1999 c 2 § 8 (Initiative Measure No. 692, approved November 3, 1998).]

**Intent—2007 c 371:** See note following RCW 69.51A.005.

**69.51A.070 Addition of medical conditions.** The Washington state medical quality assurance commission in consultation with the board of osteopathic medicine and surgery, or other appropriate agency as designated by the governor, shall accept for consideration petitions submitted to add terminal or debilitating conditions to those included in this chapter. In considering such petitions, the Washington state medical quality assurance commission in consultation with the board of osteopathic medicine and surgery shall include public notice of, and an opportunity to comment in a public hearing upon, such petitions. The Washington state medical quality assurance commission in consultation with the board of osteopathic medicine and surgery shall, after hearing, approve or deny such petitions within one hundred eighty days of submission. The approval or denial of such a petition shall be considered a final agency action, subject to judicial review. [2007 c 371 § 7; 1999 c 2 § 9 (Initiative Measure No. 692, approved November 3, 1998).]

**Intent—2007 c 371:** See note following RCW 69.51A.005.

**69.51A.080 Adoption of rules by the department of health—Sixty-day supply for qualifying patients.** (1) By July 1, 2008, the department of health shall adopt rules defining the quantity of marijuana that could reasonably be presumed to be a sixty-day supply for qualifying patients; this

[Title 69 RCW—page 95]

presumption may be overcome with evidence of a qualifying patient's necessary medical use.

(2) As used in this chapter, "sixty-day supply" means that amount of marijuana that qualifying patients would reasonably be expected to need over a period of sixty days for their personal medical use. During the rule-making process, the department shall make a good faith effort to include all stakeholders identified in the rule-making analysis as being impacted by the rule.

(3) The department of health shall gather information from medical and scientific literature, consulting with experts and the public, and reviewing the best practices of other states regarding access to an adequate, safe, consistent, and secure source, including alternative distribution systems, of medical marijuana for qualifying patients. The department shall report its findings to the legislature by July 1, 2008. [2007 c 371 § 8.]

**Intent—2007 c 371:** See note following RCW 69.51A.005.

**69.51A.090 Applicability of valid documentation definition.** The provisions of RCW 69.51A.010, relating to the definition of "valid documentation," apply prospectively only, not retroactively, and do not affect valid documentation obtained prior to June 10, 2010. [2010 c 284 § 5.]

**69.51A.900 Short title—1999 c 2.** This chapter may be known and cited as the Washington state medical use of marijuana act. [1999 c 2 § 1 (Initiative Measure No. 692, approved November 3, 1998).]

**69.51A.901 Severability—1999 c 2.** If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1999 c 2 § 10 (Initiative Measure No. 692, approved November 3, 1998).]

**69.51A.902 Captions not law—1999 c 2.** Captions used in this chapter are not any part of the law. [1999 c 2 § 11 (Initiative Measure No. 692, approved November 3, 1998).]

## Chapter 69.52 RCW

### IMITATION CONTROLLED SUBSTANCES

#### Sections

69.52.010	Legislative findings.
69.52.020	Definitions.
69.52.030	Violations—Exceptions.
69.52.040	Seizure of contraband.
69.52.045	Seizure at rental premises—Notification of landlord.
69.52.050	Injunctive action by attorney general authorized.
69.52.060	Injunctive or other legal action by manufacturer of controlled substances authorized.
69.52.070	Violations—Juvenile driving privileges.
69.52.900	Severability—1982 c 171.
69.52.901	Effective date—1982 c 171.

*Drug nuisances—Injunctions: Chapter 7.43 RCW.*

**69.52.010 Legislative findings.** The legislature finds that imitation controlled substances are being manufactured to imitate the appearance of the dosage units of controlled

substances for sale to school age youths and others to facilitate the fraudulent sale of controlled substances. The legislature further finds that manufacturers are endeavoring to profit from the manufacture of these imitation controlled substances while avoiding liability by accurately labeling the containers or packaging which contain these imitation controlled substances. The close similarity of appearance between dosage units of imitation controlled substances and controlled substances is indicative of a deliberate and wilful attempt to profit by deception without regard to the tragic human consequences. The use of imitation controlled substances is responsible for a growing number of injuries and deaths, and the legislature hereby declares that this chapter is necessary for the protection and preservation of the public health and safety. [1982 c 171 § 2.]

**69.52.020 Definitions.** Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Controlled substance" means a substance as that term is defined in chapter 69.50 RCW.

(2) "Distribute" means the actual or constructive transfer (or attempted transfer) or delivery or dispensing to another of an imitation controlled substance.

(3) "Imitation controlled substance" means a substance that is not a controlled substance, but which by appearance or representation would lead a reasonable person to believe that the substance is a controlled substance. Appearance includes, but is not limited to, color, shape, size, and markings of the dosage unit. Representation includes, but is not limited to, representations or factors of the following nature:

(a) Statements made by an owner or by anyone else in control of the substance concerning the nature of the substance, or its use or effect;

(b) Statements made to the recipient that the substance may be resold for inordinate profit; or

(c) Whether the substance is packaged in a manner normally used for illicit controlled substances.

(4) "Manufacture" means the production, preparation, compounding, processing, encapsulating, packaging or repackaging, or labeling or relabeling of an imitation controlled substance. [1982 c 171 § 3.]

**69.52.030 Violations—Exceptions.** (1) It is unlawful for any person to manufacture, distribute, or possess with intent to distribute, an imitation controlled substance. Any person who violates this subsection shall, upon conviction, be guilty of a class C felony.

(2) Any person eighteen years of age or over who violates subsection (1) of this section by distributing an imitation controlled substance to a person under eighteen years of age is guilty of a class B felony.

(3) It is unlawful for any person to cause to be placed in any newspaper, magazine, handbill, or other publication, or to post or distribute in any public place, any advertisement or solicitation offering for sale imitation controlled substances. Any person who violates this subsection is guilty of a class C felony.

(4) No civil or criminal liability shall be imposed by virtue of this chapter on any person registered under the Uni-

form Controlled Substances Act pursuant to RCW 69.50.301 or 69.50.303 who manufactures, distributes, or possesses an imitation controlled substance for use as a placebo or other use by a registered practitioner, as defined in \*RCW 69.50.101(t), in the course of professional practice or research.

(5) No prosecution under this chapter shall be dismissed solely by reason of the fact that the dosage units were contained in a bottle or other container with a label accurately describing the ingredients of the imitation controlled substance dosage units. The good faith of the defendant shall be an issue of fact for the trier of fact. [1983 1st ex.s. c 4 § 5; 1982 c 171 § 4.]

**\*Reviser's note:** The reference to RCW 69.50.101(t) is erroneous. "Practitioner" is defined in (w) of that section.

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**69.52.040 Seizure of contraband.** Imitation controlled substances shall be subject to seizure, forfeiture, and disposition in the same manner as are controlled substances under RCW 69.50.505. [1982 c 171 § 5.]

**69.52.045 Seizure at rental premises—Notification of landlord.** Whenever an imitation controlled substance which is manufactured, distributed, or possessed in violation of this chapter is seized at rental premises, the law enforcement agency shall make a reasonable attempt to discover the identity of the landlord and shall notify the landlord in writing, at the last address listed in the property tax records and at any other address known to the law enforcement agency, of the seizure and the location of the seizure. [1988 c 150 § 10.]

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

**69.52.050 Injunctive action by attorney general authorized.** The attorney general is authorized to apply for injunctive action against a manufacturer or distributor of imitation controlled substances in this state. [1982 c 171 § 6.]

**69.52.060 Injunctive or other legal action by manufacturer of controlled substances authorized.** Any manufacturer of controlled substances licensed or registered in a state requiring such licensure or registration, may bring injunctive or other action against a manufacturer or distributor of imitation controlled substances in this state. [1982 c 171 § 7.]

**69.52.070 Violations—Juvenile driving privileges.** (1) If a juvenile thirteen years of age or older and under the age of twenty-one is found by a court to have committed any offense that is a violation of this chapter, the court shall notify the department of licensing within twenty-four hours after entry of the judgment.

(2) Except as otherwise provided in subsection (3) of this section, upon petition of a juvenile whose privilege to drive has been revoked pursuant to RCW 46.20.265, the court may at any time the court deems appropriate notify the department of licensing to reinstate the juvenile's privilege to drive.

(3) If the conviction is for the juvenile's first violation of this chapter or chapter 66.44, 69.41, or 69.50 RCW, the juvenile may not petition the court for reinstatement of the juvenile's privilege to drive revoked pursuant to RCW 46.20.265 until the later of ninety days after the date the juvenile turns sixteen or ninety days after the judgment was entered. If the conviction was for the juvenile's second or subsequent violation of this chapter or chapter 66.44, 69.41, or 69.50 RCW, the juvenile may not petition the court for reinstatement of the juvenile's privilege to drive revoked pursuant to RCW 46.20.265 until the later of the date the juvenile turns seventeen or one year after the date judgment was entered. [1989 c 271 § 121; 1988 c 148 § 6.]

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

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**69.52.900 Severability—1982 c 171.** If any provision of this chapter or its application to any person or circumstance is held invalid, the remainder of the chapter or the application of the provision to other persons or circumstances is not affected. [1982 c 171 § 8.]

**69.52.901 Effective date—1982 c 171.** This act shall take effect on July 1, 1982. [1982 c 171 § 10.]

## Chapter 69.53 RCW

### USE OF BUILDINGS FOR UNLAWFUL DRUGS

#### Sections

69.53.010	Unlawful use of building for drug purposes—Liability of owner or manager—Penalty.
69.53.020	Unlawful fortification of building for drug purposes—Penalty.
69.53.030	Unlawful use of fortified building—Penalty.

**69.53.010 Unlawful use of building for drug purposes—Liability of owner or manager—Penalty.** (1) It is unlawful for any person who has under his or her management or control any building, room, space, or enclosure, either as an owner, lessee, agent, employee, or mortgagee, to knowingly rent, lease, or make available for use, with or without compensation, the building, room, space, or enclosure for the purpose of unlawfully manufacturing, delivering, selling, storing, or giving away any controlled substance under chapter 69.50 RCW, legend drug under chapter 69.41 RCW, or imitation controlled substance under chapter 69.52 RCW.

(2) It shall be a defense for an owner, manager, or other person in control pursuant to subsection (1) of this section to, in good faith, notify a law enforcement agency of suspected drug activity pursuant to subsection (1) of this section, or to process an unlawful detainer action for drug-related activity against the tenant or occupant.

(3) A violation of this section is a class C felony punishable under chapter 9A.20 RCW. [1988 c 150 § 13; 1987 c 458 § 7.]

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

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**69.53.020 Unlawful fortification of building for drug purposes—Penalty.** (1) It is unlawful for any person who has under his or her management or control any building,

room, space, or enclosure, either as an owner, lessee, agent, employee, or mortgagee, to knowingly allow the building, room, space, or enclosure to be fortified to suppress law enforcement entry in order to further the unlawful manufacture, delivery, sale, storage, or gift of any controlled substance under chapter 69.50 RCW, legend drug under chapter 69.41 RCW, or imitation controlled substance under chapter 69.52 RCW.

(2) It shall be a defense for an owner, manager, or other person in control pursuant to subsection (1) of this section to, in good faith, notify a law enforcement agency of suspected drug activity pursuant to subsection (1) of this section, or to process an unlawful detainer action for drug-related activity against the tenant or occupant.

(3) A violation of this section is a class C felony punishable under chapter 9A.20 RCW. [1988 c 150 § 14; 1987 c 458 § 8.]

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

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**69.53.030 Unlawful use of fortified building—Penalty.** (1) It is unlawful for any person to use a building, room, space, or enclosure specifically designed to suppress law enforcement entry in order to unlawfully manufacture, deliver, sell, store, or give away any controlled substance under chapter 69.50 RCW, legend drug under chapter 69.41 RCW, or imitation controlled substance under chapter 69.52 RCW.

(2) A violation of this section is a class C felony punishable under chapter 9A.20 RCW. [1987 c 458 § 9.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

## Chapter 69.55 RCW

### AMMONIA

(Formerly: Anhydrous ammonia)

#### Sections

69.55.010	Theft of ammonia.
69.55.020	Unlawful storage of ammonia.
69.55.030	Damages—Liability.

**69.55.010 Theft of ammonia.** (1) A person who, with intent to deprive the owner or owner's agent, wrongfully obtains pressurized ammonia gas or pressurized ammonia gas solution, is guilty of theft of ammonia.

(2) Theft of ammonia is a class C felony. [2002 c 133 § 1; 2000 c 225 § 1.]

**Effective date—2002 c 133:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [March 26, 2002]." [2002 c 133 § 5.]

**Severability—2000 c 225:** "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [2000 c 225 § 8.]

**69.55.020 Unlawful storage of ammonia.** A person is guilty of the crime of unlawful storage of ammonia if the person possesses, transports, or delivers pressurized ammonia gas or pressurized ammonia gas solution in a container that (1) is not approved by the United States department of trans-

portation to hold ammonia, or (2) was not constructed to meet state and federal industrial health and safety standards for holding ammonia. Violation of this section is a class C felony.

This section does not apply to public employees or private contractors authorized to clean up and dispose of hazardous waste or toxic substances under chapter 70.105 or 70.105D RCW or to solid waste haulers and their employees who unknowingly possess, transport, or deliver pressurized ammonia gas or pressurized ammonia gas solution during the course of the performance of their duties. [2002 c 133 § 2; 2000 c 225 § 2.]

**Effective date—2002 c 133:** See note following RCW 69.55.010.

**Severability—2000 c 225:** See note following RCW 69.55.010.

**69.55.030 Damages—Liability.** Any damages arising out of the unlawful possession of, storage of, or tampering with pressurized ammonia gas or pressurized ammonia gas solution, or pressurized ammonia gas equipment or pressurized ammonia gas solution equipment, shall be the sole responsibility of the unlawful possessor, storer, or tamperer. In no case shall liability for damages arising out of the unlawful possession of, storage of, or tampering with pressurized ammonia gas or pressurized ammonia gas solution, or pressurized ammonia gas equipment or pressurized ammonia gas solution equipment, extend to the lawful owner, installer, maintainer, designer, manufacturer, possessor, or seller of the pressurized ammonia gas or pressurized ammonia gas solution, or pressurized ammonia gas equipment or pressurized ammonia gas solution equipment, unless such damages arise out of the owner, installer, maintainer, designer, manufacturer, possessor, or seller's acts or omissions that constitute negligent misconduct to abide by the laws regarding pressurized ammonia gas or pressurized ammonia gas solution possession and storage. [2002 c 133 § 3; 2000 c 225 § 3.]

**Effective date—2002 c 133:** See note following RCW 69.55.010.

**Severability—2000 c 225:** See note following RCW 69.55.010.

## Chapter 69.60 RCW

### OVER-THE-COUNTER MEDICATIONS

#### Sections

69.60.010	Legislative findings.
69.60.020	Definitions.
69.60.030	Identification required.
69.60.040	Imprint information—Publication—Availability.
69.60.050	Noncompliance—Contraband—Fine.
69.60.060	Rules.
69.60.070	Imprinting requirements—Retailers and wholesalers.
69.60.080	Exemptions—Application by manufacturer.
69.60.090	Implementation of federal system—Termination of state system.
69.60.900	Severability—1993 c 135.
69.60.901	Effective date—1993 c 135.

**69.60.010 Legislative findings.** The legislature of the state of Washington finds that:

(1) Accidental and purposeful ingestions of solid medication forms continue to be the most frequent cause of poisoning in our state;

(2) Modern treatment is dependent upon knowing the ingredients of the ingestant;

(3) The imprinting of identifying characteristics on all tablets, capsules, and caplets of prescription medication forms, both trade name products and generic products, has been extremely beneficial in our state and was accomplished at trivial cost to the manufacturers and consumers;

(4) Although over-the-counter medications usually constitute a lower order of risk to ingesters, treatment after overdose is equally dependent upon knowing the ingredients involved, but there is no coding index uniformly used by this class of medication;

(5) Approximately seventy percent of over-the-counter medications in solid form already have some type of an identifier imprinted on their surfaces;

(6) While particular efforts are being instituted to prevent recurrent tampering with over-the-counter medications, the added benefit of rapid and prompt identification of all possible contaminated products, including over-the-counter medications, would make for a significant improvement in planning for appropriate tracking and monitoring programs;

(7) At the same time, health care professionals serving the elderly find it especially advantageous to be able to identify and confirm the ingredients of their multiple medications, including over-the-counter products, as are often consumed by such patients;

(8) The legislature supports and encourages efforts that are being made to establish a national, legally enforceable system governing the imprinting of solid dosage form over-the-counter medications, which system is consistent with the requirements of this chapter. [1989 c 247 § 1.]

**69.60.020 Definitions.** The terms defined in this section shall have the meanings indicated when used in this chapter.

(1) "Solid dosage form" means capsules or tablets or similar over-the-counter medication products intended for administration and which could be ingested orally.

(2) "Over-the-counter medication" means a drug that can be obtained without a prescription and is not restricted to use by prescribing practitioners. For purposes of this chapter, over-the-counter medication does not include vitamins.

(3) "Board" means the state board of pharmacy.

(4) "Purveyor" means any corporation, person, or other entity that offers over-the-counter medications for wholesale, retail, or other type of sale. [1989 c 247 § 3.]

**69.60.030 Identification required.** (1) No over-the-counter medication in solid dosage form may be manufactured or commercially distributed within this state unless it has clearly marked or imprinted on it an individual symbol, number, company name, words, letters, marking, or national drug code number identifying the medication and the manufacturer or distributor of the medication: PROVIDED, HOWEVER, That an over-the-counter medication which has clearly marked or imprinted on it a distinctive logo, symbol, product name, letters, or other identifying mark, or which by its color, shape, or size together with a distinctive logo, symbol, product name, letters, or other mark is identifiable, shall be deemed in compliance with the provisions of this chapter.

(2) No manufacturer may sell any over-the-counter medication in solid dosage form contained within a bottle, vial,

carton, or other container, or in any way affixed or appended to or enclosed within a package of any kind designed or intended for delivery in such container or package to an ultimate consumer within this state unless such container or package has clearly and permanently marked or imprinted on it an individual symbol, number, company name, words, letters, marking, or national drug code number identifying the medication and the manufacturer, packer, or distributor of the medication. [1993 c 135 § 1; 1989 c 247 § 2.]

**69.60.040 Imprint information—Publication—Availability.** Each manufacturer shall publish and provide to the board printed material which will identify each current imprint used by the manufacturer and the board shall be notified of any change. This information shall be provided by the board to all pharmacies licensed in the state of Washington, poison control centers, and hospital emergency rooms. [1989 c 247 § 4.]

**69.60.050 Noncompliance—Contraband—Fine.** (1) Any over-the-counter medication prepared or manufactured or offered for sale in violation of this chapter or implementing rules shall be contraband and subject to seizure, in the same manner as contraband legend drugs under RCW 69.41.060.

(2) A purveyor who fails to comply with this chapter after one notice of noncompliance by the board is subject to a one thousand dollar civil fine for each instance of noncompliance. [1989 c 247 § 5.]

**69.60.060 Rules.** The board shall have authority to promulgate rules for the enforcement and implementation of this chapter. [1989 c 247 § 6.]

**69.60.070 Imprinting requirements—Retailers and wholesalers.** All over-the-counter medications manufactured in, received by, distributed to, or shipped to any retailer or wholesaler in this state after January 1, 1994, shall meet the requirements of this chapter. No over-the-counter medication may be sold to a consumer in this state after January 1, 1995, unless such over-the-counter medication complies with the imprinting requirements of this chapter. [1993 c 135 § 2; 1989 c 247 § 7.]

**69.60.080 Exemptions—Application by manufacturer.** The board, upon application of a manufacturer, may exempt an over-the-counter drug from the requirements of chapter 69.60 RCW on the grounds that imprinting is infeasible because of size, texture, or other unique characteristics. [1989 c 247 § 8.]

**69.60.090 Implementation of federal system—Termination of state system.** Before January 1, 1994, the board of pharmacy will consult with the state toxicologist to determine whether the federal government has established a legally enforceable system that is substantially equivalent to the requirements of this chapter that govern the imprinting of solid dosage form over-the-counter medication. To be substantially equivalent, the effective dates for implementation of the federal system for imprinting solid dosage form over-

the-counter medication must be the same or earlier than the dates of implementation set out in the state system for imprinting solid dosage form over-the-counter medication. If the board determines that the federal system for imprinting solid dosage form over-the-counter medication is substantially equivalent to the state system for imprinting solid dosage form over-the-counter medication, this chapter will cease to exist on January 1, 1994. If the board determines that the federal system is substantially equivalent, except that the federal dates for implementation are later than the Washington state dates, this chapter will cease to exist when the federal system is implemented. [1993 c 135 § 3; 1989 c 247 § 9.]

**69.60.900 Severability—1993 c 135.** If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1993 c 135 § 4.]

**69.60.901 Effective date—1993 c 135.** This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately [April 30, 1993]. [1993 c 135 § 5.]

### Chapter 69.80 RCW FOOD DONATION AND DISTRIBUTION—LIABILITY

#### Sections

69.80.010	Purpose.
69.80.020	Definitions.
69.80.031	Good samaritan food donation act—Definitions—Collecting, distributing, gleaning—Liability.
69.80.040	Information and referral service for food donation program.
69.80.050	Inspection of donated food by state and local agencies—Variance.
69.80.060	Safe receipt, preparation, and handling of donated food—Rules—Educational materials.
69.80.900	Construction.

**69.80.010 Purpose.** The purpose of this chapter is to promote the free distribution of food to needy persons, prevent waste of food products, and provide liability protection for persons and organizations donating or distributing such food products. [1983 c 241 § 1.]

**69.80.020 Definitions.** Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Distributing organization" means a charitable nonprofit organization under section 501(c) of the federal internal revenue code which distributes food free of charge and includes any nonprofit organization that distributes food free of charge to other nonprofit organizations or to the public.

(2) "Donor" means a person, corporation, association, or other organization which donates food to a distributing organization. "Donor" includes, but is not limited to, farmers, processors, distributors, wholesalers, and retailers of food. "Donor" also includes persons who harvest agricultural crops or perishable foods which have been donated by the owner to a distributing organization.

(3) "Food" means food products for human consumption as defined in RCW 69.04.008. [1983 c 241 § 2.]

**69.80.031 Good samaritan food donation act—Definitions—Collecting, distributing, gleaning—Liability.** (1) This section may be cited as the "good samaritan food donation act."

(2) As used in this section:

(a) "Apparently fit grocery product" means a grocery product that meets all quality and labeling standards imposed by federal, state, and local laws and regulations even though the product may not be readily marketable due to appearance, age, freshness, grade, size, surplus, or other conditions.

(b) "Apparently wholesome food" means food that meets all quality and labeling standards imposed by federal, state, and local laws and regulations even though the food may not be readily marketable due to appearance, age, freshness, grade, size, surplus, or other conditions.

(c) "Donate" means to give without requiring anything of monetary value from the recipient, except that the term shall include giving by a nonprofit organization to another nonprofit organization, notwithstanding that the donor organization has charged a nominal fee to the donee organization, if the ultimate recipient or user is not required to give anything of monetary value.

(d) "Food" means a raw, cooked, processed, or prepared edible substance, ice, beverage, or ingredient used or intended for use in whole or in part for human consumption.

(e) "Gleaner" means a person who harvests for free distribution to the needy, or for donation to a nonprofit organization for ultimate distribution to the needy, an agricultural crop that has been donated by the owner.

(f) "Grocery product" means a nonfood grocery product, including a disposable paper or plastic product, household cleaning product, laundry detergent, cleaning product, or miscellaneous household item.

(g) "Gross negligence" means voluntary and conscious conduct by a person with knowledge, at the time of the conduct, that the conduct is likely to be harmful to the health or well-being of another person.

(h) "Intentional misconduct" means conduct by a person with knowledge, at the time of the conduct, that the conduct is harmful to the health or well-being of another person.

(i) "Nonprofit organization" means an incorporated or unincorporated entity that:

(i) Is operating for religious, charitable, or educational purposes; and

(ii) Does not provide net earnings to, or operate in any other manner that inures to the benefit of, any officer, employee, or shareholder of the entity.

(j) "Person" means an individual, corporation, partnership, organization, association, or governmental entity, including a retail grocer, wholesaler, hotel, motel, manufacturer, restaurant, caterer, farmer, and nonprofit food distributor or hospital. In the case of a corporation, partnership, organization, association, or governmental entity, the term includes an officer, director, partner, deacon, trustee, councilmember, or other elected or appointed individual responsible for the governance of the entity.

(3) A person or gleaner is not subject to civil or criminal liability arising from the nature, age, packaging, or condition

of apparently wholesome food or an apparently fit grocery product that the person or gleaner donates in good faith to a nonprofit organization for ultimate distribution to needy individuals, except that this subsection does not apply to an injury to or death of an ultimate user or recipient of the food or grocery product that results from an act or omission of the donor constituting gross negligence or intentional misconduct.

(4) A person who allows the collection or gleaned of donations on property owned or occupied by the person by gleaners, or paid or unpaid representatives of a nonprofit organization, for ultimate distribution to needy individuals is not subject to civil or criminal liability that arises due to the injury or death of the gleaner or representative, except that this subsection does not apply to an injury or death that results from an act or omission of the person constituting gross negligence or intentional misconduct.

(5) If some or all of the donated food and grocery products do not meet all quality and labeling standards imposed by federal, state, and local laws and regulations, the person or gleaner who donates the food and grocery products is not subject to civil or criminal liability in accordance with this section if the nonprofit organization that receives the donated food or grocery products:

(a) Is informed by the donor of the distressed or defective condition of the donated food or grocery products;

(b) Agrees to recondition the donated food or grocery products to comply with all the quality and labeling standards prior to distribution; and

(c) Is knowledgeable of the standards to properly recondition the donated food or grocery product.

(6) This section may not be construed to create liability. [1994 c 299 § 36.]

**Intent—Finding—Severability—Conflict with federal requirements—1994 c 299:** See notes following RCW 74.12.400.

**69.80.040 Information and referral service for food donation program.** The department of agriculture shall maintain an information and referral service for persons and organizations that have notified the department of their desire to participate in the food donation program under this chapter. [1983 c 241 § 4.]

**69.80.050 Inspection of donated food by state and local agencies—Variance.** (1) Appropriate state and local agencies are authorized to inspect donated food items for wholesomeness and may establish procedures for the handling of food items.

(2) To facilitate the free distribution of food to needy persons, the local health officer, upon request from either a donor or distributing organization, may grant a variance to chapter 246-215 WAC covering physical facilities, equipment standards, and food source requirements when no known or expected health hazard would exist as a result of the action. [2002 c 217 § 3; 1983 c 241 § 6.]

**Effective date—2002 c 217 § 3:** "Section 3 of this act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [March 28, 2002]." [2002 c 217 § 4.]

**Finding—Purpose—2002 c 217:** "The legislature finds and declares that the distribution of food by donors to charitable organizations, such as

shelters, churches, and fraternal organizations, serving communal meals to needy individuals can be done safely consistent with rules and recommended health and safety guidelines. The establishment of recommended donor guidelines by the department of health can educate the public about the preparation and handling of food donated to charitable organizations for distribution to homeless and other needy people. The purpose of this act is to authorize and facilitate the donation of food to needy persons in accordance with health and safety guidelines and rules, to assure that the donated food will not place needy recipients at risk, and to encourage businesses and individuals to donate surplus food to charitable organizations serving our state's needy population." [2002 c 217 § 1.]

**69.80.060 Safe receipt, preparation, and handling of donated food—Rules—Educational materials.** (1) No later than December 31, 2004, the state board of health shall promulgate rules for the safe receipt, preparation, and handling by distributing organizations of food accepted from donors in order to facilitate the donation of food, free of charge, and to protect the health and safety of needy people.

(2) No later than December 31, 2004, the department of health, in consultation with the state board of health, shall develop educational materials for donors containing recommended health and safety guidelines for the preparation and handling of food donated to distributing organizations. [2002 c 217 § 2.]

**Finding—Purpose—2002 c 217:** See note following RCW 69.80.050.

**69.80.900 Construction.** Nothing in this chapter may be construed to create any liability of, or penalty against a donor or distributing organization except as provided in RCW 69.80.031. [1994 c 299 § 38; 1983 c 241 § 5.]

**Intent—Finding—Severability—Conflict with federal requirements—1994 c 299:** See notes following RCW 74.12.400.

## Chapter 69.90 RCW

### KOSHER FOOD PRODUCTS

#### Sections

69.90.010	Definitions.
69.90.020	Sale of "kosher" and "kosher style" food products prohibited if not kosher—Representations—Penalty.
69.90.030	Violation of chapter is violation of consumer protection act.
69.90.900	Short title.

*Organic products: Chapter 15.86 RCW.*

**69.90.010 Definitions.** Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Food product" includes any article other than drugs, whether in raw or prepared form, liquid or solid, or packaged or unpackaged, and which is used for human consumption.

(2) "Kosher" means a food product which has been prepared, processed, manufactured, maintained, and sold in accordance with the requisites of traditional Jewish dietary law.

(3) "Person" includes individuals, partnerships, corporations, and associations. [1985 c 127 § 2.]

**69.90.020 Sale of "kosher" and "kosher style" food products prohibited if not kosher—Representations—Penalty.** (1) No person may knowingly sell or offer for sale any food product represented as "kosher" or "kosher style" when that person knows that the food product is not kosher

and when the representation is likely to cause a prospective purchaser to believe that it is kosher. Such a representation can be made orally or in writing, or by display of a sign, mark, insignia, or simulation.

(2) A person violating this section is guilty of a gross misdemeanor. [2003 c 53 § 349; 1985 c 127 § 3.]

**Intent—Effective date—2003 c 53:** See notes following RCW 2.48.180.

**69.90.030 Violation of chapter is violation of consumer protection act.** A violation of this chapter shall constitute a violation of the consumer protection act, chapter 19.86 RCW. [1985 c 127 § 4.]

**69.90.900 Short title.** This chapter shall be known as the sale of kosher food products act of 1985. [1985 c 127 § 1.]

# Title 70

## PUBLIC HEALTH AND SAFETY

<b>Chapters</b>			
70.01	General provisions.	70.87	Elevators, lifting devices, and moving walks.
70.02	Medical records—Health care information access and disclosure.	70.90	Water recreation facilities.
70.05	Local health departments, boards, officers—Regulations.	70.92	Provisions in buildings for aged and handicapped persons.
70.08	Combined city-county health departments.	70.93	Waste reduction, recycling, and model litter control act.
70.10	Comprehensive community health centers.	70.94	Washington clean air act.
70.12	Public health funds.	70.95	Solid waste management—Reduction and recycling.
70.14	Health care services purchased by state agencies.	70.95A	Pollution control—Municipal bonding authority.
70.22	Mosquito control.	70.95B	Domestic waste treatment plants—Operators.
70.24	Control and treatment of sexually transmitted diseases.	70.95C	Waste reduction.
70.26	Pandemic influenza preparedness.	70.95D	Solid waste incinerator and landfill operators.
70.28	Control of tuberculosis.	70.95E	Hazardous waste fees.
70.30	Tuberculosis hospitals, facilities, and funding.	70.95F	Labeling of plastics.
70.37	Health care facilities.	70.95G	Packages containing metals.
70.38	Health planning and development.	70.95H	Clean Washington center.
70.40	Hospital and medical facilities survey and construction act.	70.95I	Used oil recycling.
70.41	Hospital licensing and regulation.	70.95J	Municipal sewage sludge—Biosolids.
70.42	Medical test sites.	70.95K	Biomedical waste.
70.43	Hospital staff membership or privileges.	70.95L	Detergent phosphorus content.
70.44	Public hospital districts.	70.95M	Mercury.
70.45	Acquisition of nonprofit hospitals.	70.95N	Electronic product recycling.
70.46	Health districts.	70.96	Alcoholism.
70.47	Basic health plan—Health care access act.	70.96A	Treatment for alcoholism, intoxication, and drug addiction.
70.47A	Small employer health insurance partnership program.	70.96B	Integrated crisis response and involuntary treatment—Pilot programs.
70.48	City and county jails act.	70.96C	Screening and assessment of chemical dependency and mental disorders.
70.48A	Jail improvement and construction—Bond issue.	70.97	Enhanced services facilities.
70.50	State otologist.	70.98	Nuclear energy and radiation.
70.54	Miscellaneous health and safety provisions.	70.99	Radioactive waste storage and transportation act of 1980.
70.56	Adverse health events and incident reporting system.	70.100	Eye protection—Public and private educational institutions.
70.58	Vital statistics.	70.102	Hazardous substance information.
70.62	Transient accommodations—Licensing—Inspections.	70.103	Lead-based paint.
70.74	Washington state explosives act.	70.104	Pesticides—Health hazards.
70.75	Firefighting equipment—Standardization.	70.105	Hazardous waste management.
70.76	Polybrominated diphenyl ethers—Flame retardants.	70.105A	Hazardous waste fees.
70.77	State fireworks law.	70.105D	Hazardous waste cleanup—Model toxics control act.
70.79	Boilers and unfired pressure vessels.	70.105E	Mixed radioactive and hazardous waste.
70.82	Cerebral palsy program.	70.106	Poison prevention—Labeling and packaging.
70.83	Phenylketonuria and other preventable heritable disorders.	70.107	Noise control.
70.83C	Alcohol and drug use treatment associated with pregnancy—Fetal alcohol syndrome.	70.108	Outdoor music festivals.
70.83E	Prenatal newborn screening for exposure to harmful drugs.	70.110	Flammable fabrics—Children's sleepwear.
70.84	Blind, handicapped, and disabled persons—"White cane law."	70.111	Infant crib safety act.
70.85	Emergency party line telephone calls—Limiting telephone communication in hostage situations.	70.112	Family medicine—Education and residency programs.
70.86	Earthquake standards for construction.	70.114	Migrant labor housing.
		70.114A	Temporary worker housing—Health and safety regulation.
		70.115	Drug injection devices.
		70.116	Public water system coordination act of 1977.
		70.118	On-site sewage disposal systems.

- 70.118A On-site sewage disposal systems—Marine recovery areas.
- 70.118B Large on-site sewage disposal systems.
- 70.119 Public water supply systems—Operators.
- 70.119A Public water systems—Penalties and compliance.
- 70.120 Motor vehicle emission control.
- 70.120A Motor vehicle emission standards.
- 70.121 Mill tailings—Licensing and perpetual care.
- 70.122 Natural death act.
- 70.123 Shelters for victims of domestic violence.
- 70.124 Abuse of patients.
- 70.125 Victims of sexual assault act.
- 70.126 Home health care and hospice care.
- 70.127 In-home services agencies.
- 70.128 Adult family homes.
- 70.129 Long-term care resident rights.
- 70.132 Beverage containers.
- 70.136 Hazardous materials incidents.
- 70.138 Incinerator ash residue.
- 70.140 Area-wide soil contamination.
- 70.142 Chemical contaminants and water quality.
- 70.146 Water pollution control facilities financing.
- 70.148 Underground petroleum storage tanks.
- 70.149 Heating oil pollution liability protection act.
- 70.150 Water quality joint development act.
- 70.155 Tobacco—Access to minors.
- 70.157 National uniform tobacco settlement—Non-participating tobacco product manufacturers.
- 70.158 Tobacco product manufacturers.
- 70.160 Smoking in public places.
- 70.162 Indoor air quality in public buildings.
- 70.164 Low-income residential weatherization program.
- 70.168 Statewide trauma care system.
- 70.170 Health data and charity care.
- 70.175 Rural health system project.
- 70.180 Rural health care.
- 70.185 Rural and underserved areas—Health care professional recruitment and retention.
- 70.190 Family policy council.
- 70.195 Early intervention services—Birth to six.
- 70.198 Early intervention services—Hearing loss.
- 70.200 Donations for children.
- 70.210 Investing in innovation grants program.
- 70.220 Washington academy of sciences.
- 70.225 Prescription monitoring program.
- 70.230 Ambulatory surgical facilities.
- 70.235 Limiting greenhouse gas emissions.
- 70.240 Children's safe products.
- 70.245 The Washington death with dignity act.
- 70.250 Advanced diagnostic imaging work group.
- 70.255 Novelty lighters.
- 70.260 Energy efficiency improvements.
- 70.265 Public hospital capital facility areas.
- 70.270 Replacement of lead wheel weights.
- 70.275 Mercury-containing lights—Proper disposal.
- 70.280 Bisphenol A—Restrictions on sale.
- 70.285 Brake friction material.
- 70.290 Washington vaccine association.

*Asbestos, regulation of use: Chapter 49.26 RCW.*

*Autopsies, coroner cooperation with procurement organizations: Chapter 68.64 RCW.*

*Board of health and bureau of vital statistics authorized: State Constitution Art. 20 § 1.*

*Child labor: Chapter 49.12 RCW.*

*Civil defense: Chapter 38.52 RCW.*

*Control of pet animals infected with diseases communicable to humans: Chapter 16.70 RCW.*

*Council for children and families: Chapter 43.121 RCW.*

*Dangerous caustic and corrosive substances: Chapter 69.36 RCW.*

*Department of social and health services: Chapter 43.20A RCW.*

*Electricians and electrical installations: Chapter 19.28 RCW.*

*Fire protection board, state: Chapter 43.44 RCW.*

*Food processing act: Chapter 69.07 RCW.*

*Health care service contractors: Chapter 48.44 RCW.*

*Health measures in public schools: Chapter 28A.210 RCW, RCW 28A.210.300.*

*Immunization program, local health department participation: RCW 28A.210.060 through 28A.210.170.*

*Industrial safety and health: Chapter 49.17 RCW.*

*Inhaling toxic fumes: Chapter 9.47A RCW.*

*Milk and milk products for animal food: Chapter 15.37 RCW.*

*Public bodies may retain collection agencies to collect public debts—Fees: RCW 19.16.500.*

*Regulation of passenger watercraft for hire: Chapter 88.04 RCW.*

*Rural public hospital districts: RCW 70.44.450.*

*Safety in coal mines: Title 78 RCW.*

*Safety with respect to electrical construction: Chapter 19.29 RCW.*

*Sale or gift of tobacco to minor is gross misdemeanor: RCW 26.28.080.*

*Sanitary control of shellfish: Chapter 69.30 RCW.*

*Social and health services, department of: Chapter 43.20A RCW.*

*State board of health: Chapter 43.20 RCW.*

*State coordinator of search and rescue operations: RCW 38.52.030.*

*State patrol: Chapter 43.43 RCW.*

*Water pollution control: Chapter 90.48 RCW.*

## Chapter 70.01 RCW GENERAL PROVISIONS

### Sections

- 70.01.010 Cooperation with federal government—Construction.
- 70.01.020 Donation of blood by person eighteen or over without parental consent authorized.
- 70.01.030 Health care fees and charges—Estimate.

**70.01.010 Cooperation with federal government—Construction.** In furtherance of the policy of this state to cooperate with the federal government in the public health programs, the department of social and health services shall adopt such rules and regulations as may become necessary to entitle this state to participate in federal funds unless the same be expressly prohibited by law. Any section or provision of the public health laws of this state which may be susceptible to more than one construction shall be interpreted in favor of the construction most likely to satisfy federal laws entitling this state to receive federal funds for the various programs of public health. [1985 c 213 § 14; 1969 ex.s. c 25 § 1; 1967 ex.s. c 102 § 12.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**70.01.020 Donation of blood by person eighteen or over without parental consent authorized.** Any person of the age of eighteen years or over shall be eligible to donate blood in any voluntary and noncompensatory blood program

without the necessity of obtaining parental permission or authorization. [1969 c 51 § 1.]

**70.01.030 Health care fees and charges—Estimate.**

(1) Health care providers licensed under Title 18 RCW and health care facilities licensed under Title 70 RCW shall provide the following to a patient upon request:

(a) An estimate of fees and charges related to a specific service, visit, or stay; and

(b) Information regarding other types of fees or charges a patient may receive in conjunction with their visit to the provider or facility. Hospitals licensed under chapter 70.41 RCW may fulfill this requirement by providing a statement and contact information as described in RCW 70.41.400.

(2) Providers and facilities listed in subsection (1) of this section may, after disclosing estimated charges and fees to a patient, refer the patient to the patient's insurer, if applicable, for specific information on the insurer's charges and fees, any cost-sharing responsibilities required of the patient, and the network status of ancillary providers who may or may not share the same network status as the provider or facility.

(3) Except for hospitals licensed under chapter 70.41 RCW, providers and facilities listed in subsection (1) of this section shall post a sign in patient registration areas containing at least the following language: "Information about the estimated charges of your health services is available upon request. Please do not hesitate to ask for information." [2009 c 529 § 1.]

**Chapter 70.02 RCW**

**MEDICAL RECORDS—HEALTH CARE INFORMATION ACCESS AND DISCLOSURE**

Sections

70.02.005	Findings.
70.02.010	Definitions.
70.02.020	Disclosure by health care provider.
70.02.030	Patient authorization of disclosure.
70.02.040	Patient's revocation of authorization for disclosure.
70.02.045	Third-party payor release of information.
70.02.050	Disclosure without patient's authorization.
70.02.060	Discovery request or compulsory process.
70.02.070	Certification of record.
70.02.080	Patient's examination and copying—Requirements.
70.02.090	Patient's request—Denial of examination and copying.
70.02.100	Correction or amendment of record.
70.02.110	Correction or amendment or statement of disagreement—Procedure.
70.02.120	Notice of information practices—Display conspicuously.
70.02.130	Consent by others—Health care representatives.
70.02.140	Representative of deceased patient.
70.02.150	Security safeguards.
70.02.160	Retention of record.
70.02.170	Civil remedies.
70.02.180	Licenses under chapter 18.225 RCW—Subject to chapter.
70.02.900	Conflicting laws.
70.02.901	Application and construction—1991 c 335.
70.02.902	Short title.
70.02.903	Severability—1991 c 335.
70.02.904	Captions not law—1991 c 335.
70.02.905	Construction—Chapter applicable to state registered domestic partnerships—2009 c 521.

*Record retention by hospitals: RCW 70.41.190.*

**70.02.005 Findings.** The legislature finds that:

(1) Health care information is personal and sensitive information that if improperly used or released may do sig-

nificant harm to a patient's interests in privacy, health care, or other interests.

(2) Patients need access to their own health care information as a matter of fairness to enable them to make informed decisions about their health care and correct inaccurate or incomplete information about themselves.

(3) In order to retain the full trust and confidence of patients, health care providers have an interest in assuring that health care information is not improperly disclosed and in having clear and certain rules for the disclosure of health care information.

(4) Persons other than health care providers obtain, use, and disclose health record information in many different contexts and for many different purposes. It is the public policy of this state that a patient's interest in the proper use and disclosure of the patient's health care information survives even when the information is held by persons other than health care providers.

(5) The movement of patients and their health care information across state lines, access to and exchange of health care information from automated data banks, and the emergence of multistate health care providers creates a compelling need for uniform law, rules, and procedures governing the use and disclosure of health care information. [1991 c 335 § 101.]

**70.02.010 Definitions.** The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Audit" means an assessment, evaluation, determination, or investigation of a health care provider by a person not employed by or affiliated with the provider to determine compliance with:

(a) Statutory, regulatory, fiscal, medical, or scientific standards;

(b) A private or public program of payments to a health care provider; or

(c) Requirements for licensing, accreditation, or certification.

(2) "Directory information" means information disclosing the presence, and for the purpose of identification, the name, location within a health care facility, and the general health condition of a particular patient who is a patient in a health care facility or who is currently receiving emergency health care in a health care facility.

(3) "Federal, state, or local law enforcement authorities" means an officer of any agency or authority in the United States, a state, a tribe, a territory, or a political subdivision of a state, a tribe, or a territory who is empowered by law to: (a) Investigate or conduct an official inquiry into a potential criminal violation of law; or (b) prosecute or otherwise conduct a criminal proceeding arising from an alleged violation of law.

(4) "General health condition" means the patient's health status described in terms of "critical," "poor," "fair," "good," "excellent," or terms denoting similar conditions.

(5) "Health care" means any care, service, or procedure provided by a health care provider:

(a) To diagnose, treat, or maintain a patient's physical or mental condition; or

(b) That affects the structure or any function of the human body.

(6) "Health care facility" means a hospital, clinic, nursing home, laboratory, office, or similar place where a health care provider provides health care to patients.

(7) "Health care information" means any information, whether oral or recorded in any form or medium, that identifies or can readily be associated with the identity of a patient and directly relates to the patient's health care, including a patient's deoxyribonucleic acid and identified sequence of chemical base pairs. The term includes any required accounting of disclosures of health care information.

(8) "Health care operations" means any of the following activities of a health care provider, health care facility, or third-party payor to the extent that the activities are related to functions that make an entity a health care provider, a health care facility, or a third-party payor:

(a) Conducting: Quality assessment and improvement activities, including outcomes evaluation and development of clinical guidelines, if the obtaining of generalizable knowledge is not the primary purpose of any studies resulting from such activities; population-based activities relating to improving health or reducing health care costs, protocol development, case management and care coordination, contacting of health care providers and patients with information about treatment alternatives; and related functions that do not include treatment;

(b) Reviewing the competence or qualifications of health care professionals, evaluating practitioner and provider performance and third-party payor performance, conducting training programs in which students, trainees, or practitioners in areas of health care learn under supervision to practice or improve their skills as health care providers, training of non-health care professionals, accreditation, certification, licensing, or credentialing activities;

(c) Underwriting, premium rating, and other activities relating to the creation, renewal, or replacement of a contract of health insurance or health benefits, and ceding, securing, or placing a contract for reinsurance of risk relating to claims for health care, including stop-loss insurance and excess of loss insurance, if any applicable legal requirements are met;

(d) Conducting or arranging for medical review, legal services, and auditing functions, including fraud and abuse detection and compliance programs;

(e) Business planning and development, such as conducting cost-management and planning-related analyses related to managing and operating the health care facility or third-party payor, including formulary development and administration, development, or improvement of methods of payment or coverage policies; and

(f) Business management and general administrative activities of the health care facility, health care provider, or third-party payor including, but not limited to:

(i) Management activities relating to implementation of and compliance with the requirements of this chapter;

(ii) Customer service, including the provision of data analyses for policy holders, plan sponsors, or other customers, provided that health care information is not disclosed to such policy holder, plan sponsor, or customer;

(iii) Resolution of internal grievances;

(iv) The sale, transfer, merger, or consolidation of all or part of a health care provider, health care facility, or third-party payor with another health care provider, health care facility, or third-party payor or an entity that following such activity will become a health care provider, health care facility, or third-party payor, and due diligence related to such activity; and

(v) Consistent with applicable legal requirements, creating deidentified health care information or a limited dataset and fund-raising for the benefit of the health care provider, health care facility, or third-party payor.

(9) "Health care provider" means a person who is licensed, certified, registered, or otherwise authorized by the law of this state to provide health care in the ordinary course of business or practice of a profession.

(10) "Institutional review board" means any board, committee, or other group formally designated by an institution, or authorized under federal or state law, to review, approve the initiation of, or conduct periodic review of research programs to assure the protection of the rights and welfare of human research subjects.

(11) "Maintain," as related to health care information, means to hold, possess, preserve, retain, store, or control that information.

(12) "Patient" means an individual who receives or has received health care. The term includes a deceased individual who has received health care.

(13) "Payment" means:

(a) The activities undertaken by:

(i) A third-party payor to obtain premiums or to determine or fulfill its responsibility for coverage and provision of benefits by the third-party payor; or

(ii) A health care provider, health care facility, or third-party payor, to obtain or provide reimbursement for the provision of health care; and

(b) The activities in (a) of this subsection that relate to the patient to whom health care is provided and that include, but are not limited to:

(i) Determinations of eligibility or coverage, including coordination of benefits or the determination of cost-sharing amounts, and adjudication or subrogation of health benefit claims;

(ii) Risk adjusting amounts due based on enrollee health status and demographic characteristics;

(iii) Billing, claims management, collection activities, obtaining payment under a contract for reinsurance, including stop-loss insurance and excess of loss insurance, and related health care data processing;

(iv) Review of health care services with respect to medical necessity, coverage under a health plan, appropriateness of care, or justification of charges;

(v) Utilization review activities, including precertification and preauthorization of services, and concurrent and retrospective review of services; and

(vi) Disclosure to consumer reporting agencies of any of the following health care information relating to collection of premiums or reimbursement:

(A) Name and address;

(B) Date of birth;

(C) Social security number;

(D) Payment history;

(E) Account number; and

(F) Name and address of the health care provider, health care facility, and/or third-party payor.

(14) "Person" means an individual, corporation, business trust, estate, trust, partnership, association, joint venture, government, governmental subdivision or agency, or any other legal or commercial entity.

(15) "Reasonable fee" means the charges for duplicating or searching the record, but shall not exceed sixty-five cents per page for the first thirty pages and fifty cents per page for all other pages. In addition, a clerical fee for searching and handling may be charged not to exceed fifteen dollars. These amounts shall be adjusted biennially in accordance with changes in the consumer price index, all consumers, for Seattle-Tacoma metropolitan statistical area as determined by the secretary of health. However, where editing of records by a health care provider is required by statute and is done by the provider personally, the fee may be the usual and customary charge for a basic office visit.

(16) "Third-party payor" means an insurer regulated under Title 48 RCW authorized to transact business in this state or other jurisdiction, including a health care service contractor, and health maintenance organization; or an employee welfare benefit plan; or a state or federal health benefit program.

(17) "Treatment" means the provision, coordination, or management of health care and related services by one or more health care providers or health care facilities, including the coordination or management of health care by a health care provider or health care facility with a third party; consultation between health care providers or health care facilities relating to a patient; or the referral of a patient for health care from one health care provider or health care facility to another. [2006 c 235 § 2; 2005 c 468 § 1; 2002 c 318 § 1; 1993 c 448 § 1; 1991 c 335 § 102.]

**Reviser's note:** For charges or fees under subsection (15) of this section as adjusted by the secretary of health, see chapter 246-08 WAC.

**Purpose—Effective date—2006 c 235:** See notes following RCW 70.02.050.

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**70.02.020 Disclosure by health care provider.** (1) Except as authorized in RCW 70.02.050, a health care provider, an individual who assists a health care provider in the delivery of health care, or an agent and employee of a health care provider may not disclose health care information about a patient to any other person without the patient's written authorization. A disclosure made under a patient's written authorization must conform to the authorization.

(2) A patient has a right to receive an accounting of disclosures of health care information made by a health care provider or a health care facility in the six years before the date on which the accounting is requested, except for disclosures:

- (a) To carry out treatment, payment, and health care operations;
- (b) To the patient of health care information about him or her;
- (c) Incident to a use or disclosure that is otherwise permitted or required;

(d) Pursuant to an authorization where the patient authorized the disclosure of health care information about himself or herself;

(e) Of directory information;

(f) To persons involved in the patient's care;

(g) For national security or intelligence purposes if an accounting of disclosures is not permitted by law;

(h) To correctional institutions or law enforcement officials if an accounting of disclosures is not permitted by law; and

(i) Of a limited data set that excludes direct identifiers of the patient or of relatives, employers, or household members of the patient. [2005 c 468 § 2; 1993 c 448 § 2; 1991 c 335 § 201.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**70.02.030 Patient authorization of disclosure.** (1) A patient may authorize a health care provider or health care facility to disclose the patient's health care information. A health care provider or health care facility shall honor an authorization and, if requested, provide a copy of the recorded health care information unless the health care provider or health care facility denies the patient access to health care information under RCW 70.02.090.

(2) A health care provider or health care facility may charge a reasonable fee for providing the health care information and is not required to honor an authorization until the fee is paid.

(3) To be valid, a disclosure authorization to a health care provider or health care facility shall:

- (a) Be in writing, dated, and signed by the patient;
- (b) Identify the nature of the information to be disclosed;
- (c) Identify the name and institutional affiliation of the person or class of persons to whom the information is to be disclosed;
- (d) Identify the provider or class of providers who are to make the disclosure;
- (e) Identify the patient; and
- (f) Contain an expiration date or an expiration event that relates to the patient or the purpose of the use or disclosure.

(4) Unless disclosure without authorization is otherwise permitted under RCW 70.02.050 or the federal health insurance portability and accountability act of 1996 and its implementing regulations, an authorization may permit the disclosure of health care information to a class of persons that includes:

- (a) Researchers if the health care provider or health care facility obtains the informed consent for the use of the patient's health care information for research purposes; or
- (b) Third-party payors if the information is only disclosed for payment purposes.

(5) Except as provided by this chapter, the signing of an authorization by a patient is not a waiver of any rights a patient has under other statutes, the rules of evidence, or common law.

(6) When an authorization permits the disclosure of health care information to a financial institution or an employer of the patient for purposes other than payment, the authorization as it pertains to those disclosures shall expire

ninety days after the signing of the authorization, unless the authorization is renewed by the patient.

(7) A health care provider or health care facility shall retain the original or a copy of each authorization or revocation in conjunction with any health care information from which disclosures are made.

(8) Where the patient is under the supervision of the department of corrections, an authorization signed pursuant to this section for health care information related to mental health or drug or alcohol treatment expires at the end of the term of supervision, unless the patient is part of a treatment program that requires the continued exchange of information until the end of the period of treatment. [2005 c 468 § 3; 2004 c 166 § 19; 1994 sp.s. c 9 § 741; 1993 c 448 § 3; 1991 c 335 § 202.]

**Severability—Effective dates—2004 c 166:** See notes following RCW 71.05.040.

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**70.02.040 Patient's revocation of authorization for disclosure.** A patient may revoke in writing a disclosure authorization to a health care provider at any time unless disclosure is required to effectuate payments for health care that has been provided or other substantial action has been taken in reliance on the authorization. A patient may not maintain an action against the health care provider for disclosures made in good-faith reliance on an authorization if the health care provider had no actual notice of the revocation of the authorization. [1991 c 335 § 203.]

**70.02.045 Third-party payor release of information.** Third-party payors shall not release health care information disclosed under this chapter, except to the extent that health care providers are authorized to do so under RCW 70.02.050. [2000 c 5 § 2.]

**Intent—Purpose—2000 c 5:** See RCW 48.43.500.

**Application—Short title—Captions not law—Construction—Severability—Application to contracts—Effective dates—2000 c 5:** See notes following RCW 48.43.500.

**70.02.050 Disclosure without patient's authorization.**

(1) A health care provider or health care facility may disclose health care information about a patient without the patient's authorization to the extent a recipient needs to know the information, if the disclosure is:

(a) To a person who the provider or facility reasonably believes is providing health care to the patient;

(b) To any other person who requires health care information for health care education, or to provide planning, quality assurance, peer review, or administrative, legal, financial, actuarial services to, or other health care operations for or on behalf of the health care provider or health care facility; or for assisting the health care provider or health care facility in the delivery of health care and the health care provider or health care facility reasonably believes that the person:

(i) Will not use or disclose the health care information for any other purpose; and

(ii) Will take appropriate steps to protect the health care information;

(c) To any other health care provider or health care facility reasonably believed to have previously provided health care to the patient, to the extent necessary to provide health care to the patient, unless the patient has instructed the health care provider or health care facility in writing not to make the disclosure;

(d) To any person if the health care provider or health care facility reasonably believes that disclosure will avoid or minimize an imminent danger to the health or safety of the patient or any other individual, however there is no obligation under this chapter on the part of the provider or facility to so disclose;

(e) To immediate family members of the patient, including a patient's state registered domestic partner, or any other individual with whom the patient is known to have a close personal relationship, if made in accordance with good medical or other professional practice, unless the patient has instructed the health care provider or health care facility in writing not to make the disclosure;

(f) To a health care provider or health care facility who is the successor in interest to the health care provider or health care facility maintaining the health care information;

(g) For use in a research project that an institutional review board has determined:

(i) Is of sufficient importance to outweigh the intrusion into the privacy of the patient that would result from the disclosure;

(ii) Is impracticable without the use or disclosure of the health care information in individually identifiable form;

(iii) Contains reasonable safeguards to protect the information from redisclosure;

(iv) Contains reasonable safeguards to protect against identifying, directly or indirectly, any patient in any report of the research project; and

(v) Contains procedures to remove or destroy at the earliest opportunity, consistent with the purposes of the project, information that would enable the patient to be identified, unless an institutional review board authorizes retention of identifying information for purposes of another research project;

(h) To a person who obtains information for purposes of an audit, if that person agrees in writing to:

(i) Remove or destroy, at the earliest opportunity consistent with the purpose of the audit, information that would enable the patient to be identified; and

(ii) Not to disclose the information further, except to accomplish the audit or report unlawful or improper conduct involving fraud in payment for health care by a health care provider or patient, or other unlawful conduct by the health care provider;

(i) To an official of a penal or other custodial institution in which the patient is detained;

(j) To provide directory information, unless the patient has instructed the health care provider or health care facility not to make the disclosure;

(k) To fire, police, sheriff, or another public authority, that brought, or caused to be brought, the patient to the health care facility or health care provider if the disclosure is limited to the patient's name, residence, sex, age, occupation, condition, diagnosis, estimated or actual discharge date, or extent

and location of injuries as determined by a physician, and whether the patient was conscious when admitted;

(l) To federal, state, or local law enforcement authorities and the health care provider, health care facility, or third-party payor believes in good faith that the health care information disclosed constitutes evidence of criminal conduct that occurred on the premises of the health care provider, health care facility, or third-party payor;

(m) To another health care provider, health care facility, or third-party payor for the health care operations of the health care provider, health care facility, or third-party payor that receives the information, if each entity has or had a relationship with the patient who is the subject of the health care information being requested, the health care information pertains to such relationship, and the disclosure is for the purposes described in RCW 70.02.010(8) (a) and (b); or

(n) For payment.

(2) A health care provider shall disclose health care information about a patient without the patient's authorization if the disclosure is:

(a) To federal, state, or local public health authorities, to the extent the health care provider is required by law to report health care information; when needed to determine compliance with state or federal licensure, certification or registration rules or laws; or when needed to protect the public health;

(b) To federal, state, or local law enforcement authorities to the extent the health care provider is required by law;

(c) To federal, state, or local law enforcement authorities, upon receipt of a written or oral request made to a nursing supervisor, administrator, or designated privacy official, in a case in which the patient is being treated or has been treated for a bullet wound, gunshot wound, powder burn, or other injury arising from or caused by the discharge of a firearm, or an injury caused by a knife, an ice pick, or any other sharp or pointed instrument which federal, state, or local law enforcement authorities reasonably believe to have been intentionally inflicted upon a person, or a blunt force injury that federal, state, or local law enforcement authorities reasonably believe resulted from a criminal act, the following information, if known:

(i) The name of the patient;

(ii) The patient's residence;

(iii) The patient's sex;

(iv) The patient's age;

(v) The patient's condition;

(vi) The patient's diagnosis, or extent and location of injuries as determined by a health care provider;

(vii) Whether the patient was conscious when admitted;

(viii) The name of the health care provider making the determination in (c)(v), (vi), and (vii) of this subsection;

(ix) Whether the patient has been transferred to another facility; and

(x) The patient's discharge time and date;

(d) To county coroners and medical examiners for the investigations of deaths;

(e) Pursuant to compulsory process in accordance with RCW 70.02.060.

(3) All state or local agencies obtaining patient health care information pursuant to this section shall adopt rules establishing their record acquisition, retention, and security

(2010 Ed.)

policies that are consistent with this chapter. [2007 c 156 § 12; 2006 c 235 § 3; 2005 c 468 § 4; 1998 c 158 § 1; 1993 c 448 § 4; 1991 c 335 § 204.]

**Purpose—2006 c 235:** "The purpose of this act is to aid law enforcement in combating crime through the rapid identification of all persons who require medical treatment as a result of a criminal act and to assist in the rapid identification of human remains." [2006 c 235 § 1.]

**Effective date—2006 c 235:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [March 27, 2006]." [2006 c 235 § 5.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

#### 70.02.060 Discovery request or compulsory process.

(1) Before service of a discovery request or compulsory process on a health care provider for health care information, an attorney shall provide advance notice to the health care provider and the patient or the patient's attorney involved through service of process or first-class mail, indicating the health care provider from whom the information is sought, what health care information is sought, and the date by which a protective order must be obtained to prevent the health care provider from complying. Such date shall give the patient and the health care provider adequate time to seek a protective order, but in no event be less than fourteen days since the date of service or delivery to the patient and the health care provider of the foregoing. Thereafter the request for discovery or compulsory process shall be served on the health care provider.

(2) Without the written consent of the patient, the health care provider may not disclose the health care information sought under subsection (1) of this section if the requestor has not complied with the requirements of subsection (1) of this section. In the absence of a protective order issued by a court of competent jurisdiction forbidding compliance, the health care provider shall disclose the information in accordance with this chapter. In the case of compliance, the request for discovery or compulsory process shall be made a part of the patient record.

(3) Production of health care information under this section, in and of itself, does not constitute a waiver of any privilege, objection, or defense existing under other law or rule of evidence or procedure. [1991 c 335 § 205.]

**70.02.070 Certification of record.** Upon the request of the person requesting the record, the health care provider or facility shall certify the record furnished and may charge for such certification in accordance with RCW 36.18.016(5). No record need be certified until the fee is paid. The certification shall be affixed to the record and disclose:

(1) The identity of the patient;

(2) The kind of health care information involved;

(3) The identity of the person to whom the information is being furnished;

(4) The identity of the health care provider or facility furnishing the information;

(5) The number of pages of the health care information;

(6) The date on which the health care information is furnished; and

(7) That the certification is to fulfill and meet the requirements of this section. [1995 c 292 § 20; 1991 c 335 § 206.]

**70.02.080 Patient's examination and copying—Requirements.** (1) Upon receipt of a written request from a patient to examine or copy all or part of the patient's recorded health care information, a health care provider, as promptly as required under the circumstances, but no later than fifteen working days after receiving the request shall:

(a) Make the information available for examination during regular business hours and provide a copy, if requested, to the patient;

(b) Inform the patient if the information does not exist or cannot be found;

(c) If the health care provider does not maintain a record of the information, inform the patient and provide the name and address, if known, of the health care provider who maintains the record;

(d) If the information is in use or unusual circumstances have delayed handling the request, inform the patient and specify in writing the reasons for the delay and the earliest date, not later than twenty-one working days after receiving the request, when the information will be available for examination or copying or when the request will be otherwise disposed of; or

(e) Deny the request, in whole or in part, under RCW 70.02.090 and inform the patient.

(2) Upon request, the health care provider shall provide an explanation of any code or abbreviation used in the health care information. If a record of the particular health care information requested is not maintained by the health care provider in the requested form, the health care provider is not required to create a new record or reformulate an existing record to make the health care information available in the requested form. The health care provider may charge a reasonable fee for providing the health care information and is not required to permit examination or copying until the fee is paid. [1993 c 448 § 5; 1991 c 335 § 301.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**70.02.090 Patient's request—Denial of examination and copying.** (1) Subject to any conflicting requirement in the public records act, chapter 42.56 RCW, a health care provider may deny access to health care information by a patient if the health care provider reasonably concludes that:

(a) Knowledge of the health care information would be injurious to the health of the patient;

(b) Knowledge of the health care information could reasonably be expected to lead to the patient's identification of an individual who provided the information in confidence and under circumstances in which confidentiality was appropriate;

(c) Knowledge of the health care information could reasonably be expected to cause danger to the life or safety of any individual;

(d) The health care information was compiled and is used solely for litigation, quality assurance, peer review, or administrative purposes; or

(e) Access to the health care information is otherwise prohibited by law.

(2) If a health care provider denies a request for examination and copying under this section, the provider, to the extent possible, shall segregate health care information for which access has been denied under subsection (1) of this section from information for which access cannot be denied and permit the patient to examine or copy the disclosable information.

(3) If a health care provider denies a patient's request for examination and copying, in whole or in part, under subsection (1)(a) or (c) of this section, the provider shall permit examination and copying of the record by another health care provider, selected by the patient, who is licensed, certified, registered, or otherwise authorized under the laws of this state to treat the patient for the same condition as the health care provider denying the request. The health care provider denying the request shall inform the patient of the patient's right to select another health care provider under this subsection. The patient shall be responsible for arranging for compensation of the other health care provider so selected. [2005 c 274 § 331; 1991 c 335 § 302.]

**Part headings not law—Effective date—2005 c 274:** See RCW 42.56.901 and 42.56.902.

**70.02.100 Correction or amendment of record.** (1) For purposes of accuracy or completeness, a patient may request in writing that a health care provider correct or amend its record of the patient's health care information to which a patient has access under RCW 70.02.080.

(2) As promptly as required under the circumstances, but no later than ten days after receiving a request from a patient to correct or amend its record of the patient's health care information, the health care provider shall:

(a) Make the requested correction or amendment and inform the patient of the action;

(b) Inform the patient if the record no longer exists or cannot be found;

(c) If the health care provider does not maintain the record, inform the patient and provide the patient with the name and address, if known, of the person who maintains the record;

(d) If the record is in use or unusual circumstances have delayed the handling of the correction or amendment request, inform the patient and specify in writing, the earliest date, not later than twenty-one days after receiving the request, when the correction or amendment will be made or when the request will otherwise be disposed of; or

(e) Inform the patient in writing of the provider's refusal to correct or amend the record as requested and the patient's right to add a statement of disagreement. [1991 c 335 § 401.]

**70.02.110 Correction or amendment or statement of disagreement—Procedure.** (1) In making a correction or amendment, the health care provider shall:

(a) Add the amending information as a part of the health record; and

(b) Mark the challenged entries as corrected or amended entries and indicate the place in the record where the corrected or amended information is located, in a manner practicable under the circumstances.

(2) If the health care provider maintaining the record of the patient's health care information refuses to make the patient's proposed correction or amendment, the provider shall:

(a) Permit the patient to file as a part of the record of the patient's health care information a concise statement of the correction or amendment requested and the reasons therefor; and

(b) Mark the challenged entry to indicate that the patient claims the entry is inaccurate or incomplete and indicate the place in the record where the statement of disagreement is located, in a manner practicable under the circumstances.

(3) A health care provider who receives a request from a patient to amend or correct the patient's health care information, as provided in RCW 70.02.100, shall forward any changes made in the patient's health care information or health record, including any statement of disagreement, to any third-party payor or insurer to which the health care provider has disclosed the health care information that is the subject of the request. [2000 c 5 § 3; 1991 c 335 § 402.]

**Intent—Purpose—2000 c 5:** See RCW 48.43.500.

**Application—Short title—Captions not law—Construction—Severability—Application to contracts—Effective dates—2000 c 5:** See notes following RCW 48.43.500.

**70.02.120 Notice of information practices—Display conspicuously.** (1) A health care provider who provides health care at a health care facility that the provider operates and who maintains a record of a patient's health care information shall create a "notice of information practices" that contains substantially the following:

NOTICE

"We keep a record of the health care services we provide you. You may ask us to see and copy that record. You may also ask us to correct that record. We will not disclose your record to others unless you direct us to do so or unless the law authorizes or compels us to do so. You may see your record or get more information about it at . . . ."

(2) The health care provider shall place a copy of the notice of information practices in a conspicuous place in the health care facility, on a consent form or with a billing or other notice provided to the patient. [1991 c 335 § 501.]

**70.02.130 Consent by others—Health care representatives.** (1) A person authorized to consent to health care for another may exercise the rights of that person under this chapter to the extent necessary to effectuate the terms or purposes of the grant of authority. If the patient is a minor and is authorized to consent to health care without parental consent under federal and state law, only the minor may exercise the rights of a patient under this chapter as to information pertaining to health care to which the minor lawfully consented. In cases where parental consent is required, a health care provider may rely, without incurring any civil or criminal liability for such reliance, on the representation of a parent that he or she is authorized to consent to health care for the minor patient regardless of whether:

(a) The parents are married, unmarried, or separated at the time of the representation;

(b) The consenting parent is, or is not, a custodial parent of the minor;

(c) The giving of consent by a parent is, or is not, full performance of any agreement between the parents, or of any order or decree in any action entered pursuant to chapter 26.09 RCW.

(2) A person authorized to act for a patient shall act in good faith to represent the best interests of the patient. [1991 c 335 § 601.]

**70.02.140 Representative of deceased patient.** A personal representative of a deceased patient may exercise all of the deceased patient's rights under this chapter. If there is no personal representative, or upon discharge of the personal representative, a deceased patient's rights under this chapter may be exercised by persons who would have been authorized to make health care decisions for the deceased patient when the patient was living under RCW 7.70.065. [1991 c 335 § 602.]

**70.02.150 Security safeguards.** A health care provider shall effect reasonable safeguards for the security of all health care information it maintains.

Reasonable safeguards shall include affirmative action to delete outdated and incorrect facsimile transmission or other telephone transmittal numbers from computer, facsimile, or other databases. When health care information is transmitted electronically to a recipient who is not regularly transmitted health care information from the health care provider, the health care provider shall verify that the number is accurate prior to transmission. [2001 c 16 § 2; 1991 c 335 § 701.]

**70.02.160 Retention of record.** A health care provider shall maintain a record of existing health care information for at least one year following receipt of an authorization to disclose that health care information under RCW 70.02.040, and during the pendency of a request for examination and copying under RCW 70.02.080 or a request for correction or amendment under RCW 70.02.100. [1991 c 335 § 702.]

**70.02.170 Civil remedies.** (1) A person who has complied with this chapter may maintain an action for the relief provided in this section against a health care provider or facility who has not complied with this chapter.

(2) The court may order the health care provider or other person to comply with this chapter. Such relief may include actual damages, but shall not include consequential or incidental damages. The court shall award reasonable attorneys' fees and all other expenses reasonably incurred to the prevailing party.

(3) Any action under this chapter is barred unless the action is commenced within two years after the cause of action is discovered.

(4) A violation of this chapter shall not be deemed a violation of the consumer protection act, chapter 19.86 RCW. [1991 c 335 § 801.]

**70.02.180 Licensees under chapter 18.225 RCW—Subject to chapter.** Mental health counselors, marriage and family therapists, and social workers licensed under chapter 18.225 RCW are subject to this chapter. [2001 c 251 § 34.]

**Severability—2001 c 251:** See RCW 18.225.900.

**70.02.900 Conflicting laws.** (1) This chapter does not restrict a health care provider, a third-party payor, or an insurer regulated under Title 48 RCW from complying with obligations imposed by federal or state health care payment programs or federal or state law.

(2) This chapter does not modify the terms and conditions of disclosure under Title 51 RCW and chapters 13.50, 26.09, 70.24, \*70.39, 70.96A, 71.05, and 71.34 RCW and rules adopted under these provisions. [2000 c 5 § 4; 1991 c 335 § 901.]

**\*Reviser's note:** Chapter 70.39 RCW was repealed by 1982 c 223 § 10, effective June 30, 1990.

**Intent—Purpose—2000 c 5:** See RCW 48.43.500.

**Application—Short title—Captions not law—Construction—Severability—Application to contracts—Effective dates—2000 c 5:** See notes following RCW 48.43.500.

**70.02.901 Application and construction—1991 c 335.** This act shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this act among states enacting it. [1991 c 335 § 903.]

**70.02.902 Short title.** This act may be cited as the uniform health care information act. [1991 c 335 § 904.]

**70.02.903 Severability—1991 c 335.** If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1991 c 335 § 905.]

**70.02.904 Captions not law—1991 c 335.** As used in this act, captions constitute no part of the law. [1991 c 335 § 906.]

**70.02.905 Construction—Chapter applicable to state registered domestic partnerships—2009 c 521.** For the purposes of this chapter, the terms spouse, marriage, marital, husband, wife, widow, widower, next of kin, and family shall be interpreted as applying equally to state registered domestic partnerships or individuals in state registered domestic partnerships as well as to marital relationships and married persons, and references to dissolution of marriage shall apply equally to state registered domestic partnerships that have been terminated, dissolved, or invalidated, to the extent that such interpretation does not conflict with federal law. Where necessary to implement chapter 521, Laws of 2009, gender-specific terms such as husband and wife used in any statute, rule, or other law shall be construed to be gender neutral, and applicable to individuals in state registered domestic partnerships. [2009 c 521 § 149.]

## Chapter 70.05 RCW

### LOCAL HEALTH DEPARTMENTS, BOARDS, OFFICERS—REGULATIONS

#### Sections

70.05.010	Definitions.
70.05.030	Counties—Local health board—Jurisdiction.
70.05.035	Home rule charter—Local board of health.
70.05.040	Local board of health—Chair—Administrative officer—Vacancies.
70.05.045	Administrative officer—Responsibilities.
70.05.050	Local health officer—Qualifications—Employment of personnel—Salary and expenses.
70.05.051	Local health officer—Qualifications.
70.05.053	Provisionally qualified local health officers—Appointment—Term—Requirements.
70.05.054	Provisionally qualified local health officers—In-service public health orientation program.
70.05.055	Provisionally qualified local health officers—Interview—Evaluation as to qualification as local public health officer.
70.05.060	Powers and duties of local board of health.
70.05.070	Local health officer—Powers and duties.
70.05.072	Local health officer—Authority to grant waiver from on-site sewage system requirements.
70.05.074	On-site sewage system permits—Application—Limitation of alternative sewage systems.
70.05.077	Department of health—Training—On-site sewage systems—Application of the waiver authority—Topics—Availability.
70.05.080	Local health officer—Failure to appoint—Procedure.
70.05.090	Physicians to report diseases.
70.05.100	Determination of character of disease.
70.05.110	Local health officials and physicians to report contagious diseases.
70.05.120	Violations—Remedies—Penalties.
70.05.125	County public health account—Distribution to local public health jurisdictions.
70.05.130	Expenses of state, health district, or county in enforcing health laws and rules—Payment by county.
70.05.135	Treasurer—District funds—Contributions by counties and cities.
70.05.140	County to bear expense of providing public health services.
70.05.150	Contracts for sale or purchase of health services authorized.
70.05.160	Moratorium on water, sewer hookups, or septic systems—Public hearing—Limitation on length.
70.05.170	Child mortality review.
70.05.180	Infectious disease testing—Good samaritans—Rules.

*Health districts: Chapter 70.46 RCW.*

*State board of health: Chapter 43.20 RCW.*

**70.05.010 Definitions.** For the purposes of chapters 70.05 and 70.46 RCW and unless the context thereof clearly indicates to the contrary:

(1) "Local health departments" means the county or district which provides public health services to persons within the area.

(2) "Local health officer" means the legally qualified physician who has been appointed as the health officer for the county or district public health department.

(3) "Local board of health" means the county or district board of health.

(4) "Health district" means all the territory consisting of one or more counties organized pursuant to the provisions of chapters 70.05 and 70.46 RCW.

(5) "Department" means the department of health. [1993 c 492 § 234; 1967 ex.s. c 51 § 1.]

**Findings—Intent—1993 c 492:** See notes following RCW 43.20.050.

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**70.05.030 Counties—Local health board—Jurisdiction.** In counties without a home rule charter, the board of county commissioners shall constitute the local board of health, unless the county is part of a health district pursuant to

chapter 70.46 RCW. The jurisdiction of the local board of health shall be coextensive with the boundaries of said county. The board of county commissioners may, at its discretion, adopt an ordinance expanding the size and composition of the board of health to include elected officials from cities and towns and persons other than elected officials as members so long as persons other than elected officials do not constitute a majority. An ordinance adopted under this section shall include provisions for the appointment, term, and compensation, or reimbursement of expenses. [1995 c 43 § 6; 1993 c 492 § 235; 1967 ex.s. c 51 § 3.]

**\*Reviser's note:** The 1995 omnibus appropriations act, chapter 18, Laws of 1995 2nd sp. sess. provided two million two hundred fifty thousand dollars.

**Findings—Intent—1993 c 492:** See notes following RCW 43.20.050. Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

#### **70.05.035 Home rule charter—Local board of health.**

In counties with a home rule charter, the county legislative authority shall establish a local board of health and may prescribe the membership and selection process for the board. The county legislative authority may appoint to the board of health elected officials from cities and towns and persons other than elected officials as members so long as persons other than elected officials do not constitute a majority. The county legislative authority shall specify the appointment, term, and compensation or reimbursement of expenses. The jurisdiction of the local board of health shall be coextensive with the boundaries of the county. The local health officer, as described in RCW 70.05.050, shall be appointed by the official designated under the provisions of the county charter. The same official designated under the provisions of the county charter may appoint an administrative officer, as described in RCW 70.05.045. [1995 c 43 § 7; 1993 c 492 § 237.]

**Findings—Intent—1993 c 492:** See notes following RCW 43.20.050. Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**70.05.040 Local board of health—Chair—Administrative officer—Vacancies.** The local board of health shall elect a chair and may appoint an administrative officer. A local health officer shall be appointed pursuant to RCW 70.05.050. Vacancies on the local board of health shall be filled by appointment within thirty days and made in the same manner as was the original appointment. At the first meeting of the local board of health, the members shall elect a chair to serve for a period of one year. [1993 c 492 § 236; 1984 c 25 § 1; 1983 1st ex.s. c 39 § 1; 1967 ex.s. c 51 § 4.]

**Findings—Intent—1993 c 492:** See notes following RCW 43.20.050. Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**70.05.045 Administrative officer—Responsibilities.** The administrative officer shall act as executive secretary and administrative officer for the local board of health, and shall be responsible for administering the operations of the board including such other administrative duties required by the local health board, except for duties assigned to the health officer as enumerated in RCW 70.05.070 and other applicable state law. [1984 c 25 § 2.]

(2010 Ed.)

**70.05.050 Local health officer—Qualifications—Employment of personnel—Salary and expenses.** The local health officer shall be an experienced physician licensed to practice medicine and surgery or osteopathic medicine and surgery in this state and who is qualified or provisionally qualified in accordance with the standards prescribed in RCW 70.05.051 through 70.05.055 to hold the office of local health officer. No term of office shall be established for the local health officer but the local health officer shall not be removed until after notice is given, and an opportunity for a hearing before the board or official responsible for his or her appointment under this section as to the reason for his or her removal. The local health officer shall act as executive secretary to, and administrative officer for the local board of health and shall also be empowered to employ such technical and other personnel as approved by the local board of health except where the local board of health has appointed an administrative officer under RCW 70.05.040. The local health officer shall be paid such salary and allowed such expenses as shall be determined by the local board of health. In home rule counties that are part of a health district under this chapter and chapter 70.46 RCW the local health officer and administrative officer shall be appointed by the local board of health. [1996 c 178 § 19; 1995 c 43 § 8; 1993 c 492 § 238; 1984 c 25 § 5; 1983 1st ex.s. c 39 § 2; 1969 ex.s. c 114 § 1; 1967 ex.s. c 51 § 9.]

**Findings—Intent—1993 c 492:** See notes following RCW 43.20.050. Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**70.05.051 Local health officer—Qualifications.** The following persons holding licenses as required by RCW 70.05.050 shall be deemed qualified to hold the position of local health officer:

- (1) Persons holding the degree of master of public health or its equivalent;
- (2) Persons not meeting the requirements of subsection (1) of this section, who upon August 11, 1969 are currently employed in this state as a local health officer and whom the secretary of social and health services recommends in writing to the local board of health as qualified; and
- (3) Persons qualified by virtue of completing three years of service as a provisionally qualified officer pursuant to RCW 70.05.053 through 70.05.055. [1979 c 141 § 75; 1969 ex.s. c 114 § 2.]

**70.05.053 Provisionally qualified local health officers—Appointment—Term—Requirements.** A person holding a license required by RCW 70.05.050 but not meeting any of the requirements for qualification prescribed by RCW 70.05.051 may be appointed by the board or official responsible for appointing the local health officer under RCW 70.05.050 as a provisionally qualified local health officer for a maximum period of three years upon the following conditions and in accordance with the following procedures:

- (1) He or she shall participate in an in-service orientation to the field of public health as provided in RCW 70.05.054, and
- (2) He or she shall satisfy the secretary of health pursuant to the periodic interviews prescribed by RCW 70.05.055

that he or she has successfully completed such in-service orientation and is conducting such program of good health practices as may be required by the jurisdictional area concerned. [1991 c 3 § 305; 1983 1st ex.s. c 39 § 3; 1979 c 141 § 76; 1969 ex.s. c 114 § 3.]

**70.05.054 Provisionally qualified local health officers—In-service public health orientation program.** The secretary of health shall provide an in-service public health orientation program for the benefit of provisionally qualified local health officers.

Such program shall consist of—

(1) A three months course in public health training conducted by the secretary either in the state department of health, in a county and/or city health department, in a local health district, or in an institution of higher education; or

(2) An on-the-job, self-training program pursuant to a standardized syllabus setting forth the major duties of a local health officer including the techniques and practices of public health principles expected of qualified local health officers: PROVIDED, That each provisionally qualified local health officer may choose which type of training he or she shall pursue. [1991 c 3 § 306; 1979 c 141 § 77; 1969 ex.s. c 114 § 4.]

**70.05.055 Provisionally qualified local health officers—Interview—Evaluation as to qualification as local public health officer.** Each year, on a date which shall be as near as possible to the anniversary date of appointment as provisional local health officer, the secretary of health or his or her designee shall personally visit such provisional officer's office for a personal review and discussion of the activity, plans, and study being carried on relative to the provisional officer's jurisdictional area: PROVIDED, That the third such interview shall occur three months prior to the end of the three year provisional term. A standardized checklist shall be used for all such interviews, but such checklist shall not constitute a grading sheet or evaluation form for use in the ultimate decision of qualification of the provisional appointee as a public health officer.

Copies of the results of each interview shall be supplied to the provisional officer within two weeks following each such interview.

Following the third such interview, the secretary shall evaluate the provisional local health officer's in-service performance and shall notify such officer by certified mail of his or her decision whether or not to qualify such officer as a local public health officer. Such notice shall be mailed at least sixty days prior to the third anniversary date of provisional appointment. Failure to so mail such notice shall constitute a decision that such provisional officer is qualified. [1991 c 3 § 307; 1979 c 141 § 78; 1969 ex.s. c 114 § 5.]

**70.05.060 Powers and duties of local board of health.** Each local board of health shall have supervision over all matters pertaining to the preservation of the life and health of the people within its jurisdiction and shall:

(1) Enforce through the local health officer or the administrative officer appointed under RCW 70.05.040, if any, the public health statutes of the state and rules promulgated by the state board of health and the secretary of health;

(2) Supervise the maintenance of all health and sanitary measures for the protection of the public health within its jurisdiction;

(3) Enact such local rules and regulations as are necessary in order to preserve, promote and improve the public health and provide for the enforcement thereof;

(4) Provide for the control and prevention of any dangerous, contagious or infectious disease within the jurisdiction of the local health department;

(5) Provide for the prevention, control and abatement of nuisances detrimental to the public health;

(6) Make such reports to the state board of health through the local health officer or the administrative officer as the state board of health may require; and

(7) Establish fee schedules for issuing or renewing licenses or permits or for such other services as are authorized by the law and the rules of the state board of health: PROVIDED, That such fees for services shall not exceed the actual cost of providing any such services. [1991 c 3 § 308; 1984 c 25 § 6; 1979 c 141 § 79; 1967 ex.s. c 51 § 10.]

**70.05.070 Local health officer—Powers and duties.** The local health officer, acting under the direction of the local board of health or under direction of the administrative officer appointed under RCW 70.05.040 or 70.05.035, if any, shall:

(1) Enforce the public health statutes of the state, rules of the state board of health and the secretary of health, and all local health rules, regulations and ordinances within his or her jurisdiction including imposition of penalties authorized under RCW 70.119A.030 and 70.118.130, the confidentiality provisions in RCW 70.24.105 and rules adopted to implement those provisions, and filing of actions authorized by RCW 43.70.190;

(2) Take such action as is necessary to maintain health and sanitation supervision over the territory within his or her jurisdiction;

(3) Control and prevent the spread of any dangerous, contagious or infectious diseases that may occur within his or her jurisdiction;

(4) Inform the public as to the causes, nature, and prevention of disease and disability and the preservation, promotion and improvement of health within his or her jurisdiction;

(5) Prevent, control or abate nuisances which are detrimental to the public health;

(6) Attend all conferences called by the secretary of health or his or her authorized representative;

(7) Collect such fees as are established by the state board of health or the local board of health for the issuance or renewal of licenses or permits or such other fees as may be authorized by law or by the rules of the state board of health;

(8) Inspect, as necessary, expansion or modification of existing public water systems, and the construction of new public water systems, to assure that the expansion, modification, or construction conforms to system design and plans;

(9) Take such measures as he or she deems necessary in order to promote the public health, to participate in the establishment of health educational or training activities, and to authorize the attendance of employees of the local health department or individuals engaged in community health programs related to or part of the programs of the local health

department. [2007 c 343 § 10; 1999 c 391 § 5; 1993 c 492 § 239; 1991 c 3 § 309; 1990 c 133 § 10; 1984 c 25 § 7; 1979 c 141 § 80; 1967 ex.s. c 51 § 12.]

**Captions and part headings not law—2007 c 343:** See RCW 70.118B.900.

**Findings—Purpose—1999 c 391:** See note following RCW 70.05.180.

**Findings—Intent—1993 c 492:** See notes following RCW 43.20.050.

**Findings—Severability—1990 c 133:** See notes following RCW 36.94.140.

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**70.05.072 Local health officer—Authority to grant waiver from on-site sewage system requirements.** The local health officer may grant a waiver from specific requirements adopted by the state board of health for on-site sewage systems if:

(1) The on-site sewage system for which a waiver is requested is for sewage flows under three thousand five hundred gallons per day;

(2) The waiver request is evaluated by the local health officer on an individual, site-by-site basis;

(3) The local health officer determines that the waiver is consistent with the standards in, and the intent of, the state board of health rules; and

(4) The local health officer submits quarterly reports to the department regarding any waivers approved or denied.

Based on review of the quarterly reports, if the department finds that the waivers previously granted have not been consistent with the standards in, and intent of, the state board of health rules, the department shall provide technical assistance to the local health officer to correct the inconsistency, and may notify the local and state boards of health of the department's concerns.

If upon further review of the quarterly reports, the department finds that the inconsistency between the waivers granted and the state board of health standards has not been corrected, the department may suspend the authority of the local health officer to grant waivers under this section until such inconsistencies have been corrected. [1995 c 263 § 1.]

**70.05.074 On-site sewage system permits—Application—Limitation of alternative sewage systems.** (1) The local health officer must respond to the applicant for an on-site sewage system permit within thirty days after receiving a fully completed application. The local health officer must respond that the application is either approved, denied, or pending.

(2) If the local health officer denies an application to install an on-site sewage system, the denial must be for cause and based upon public health and environmental protection concerns, including concerns regarding the ability to operate and maintain the system, or conflicts with other existing laws, regulations, or ordinances. The local health officer must provide the applicant with a written justification for the denial, along with an explanation of the procedure for appeal.

(3) If the local health officer identifies the application as pending and subject to review beyond thirty days, the local health officer must provide the applicant with a written justification that the site-specific conditions or circumstances necessitate a longer time period for a decision on the applica-

tion. The local health officer must include any specific information necessary to make a decision and the estimated time required for a decision to be made.

(4) A local health officer may not limit the number of alternative sewage systems within his or her jurisdiction without cause. Any such limitation must be based upon public health and environmental protection concerns, including concerns regarding the ability to operate and maintain the system, or conflicts with other existing laws, regulations, or ordinances. If such a limitation is established, the local health officer must justify the limitation in writing, with specific reasons, and must provide an explanation of the procedure for appealing the limitation. [1997 c 447 § 2.]

**Finding—Purpose—1997 c 447:** "The legislature finds that improperly designed, installed, or maintained on-site sewage disposal systems are a major contributor to water pollution in this state. The legislature also recognizes that evolving technology has produced many viable alternatives to traditional on-site septic systems. It is the purpose of this act to help facilitate the siting of new alternative on-site septic systems and to assist local governments in promoting efficient operation of on-site septic \*these systems." [1997 c 447 § 1.]

**\*Reviser's note:** Due to a drafting error, the word "these" was not removed when this sentence was rewritten.

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**70.05.077 Department of health—Training—On-site sewage systems—Application of the waiver authority—Topics—Availability.** (1) The department of health, in consultation and cooperation with local environmental health officers, shall develop a one-day course to train local environmental health officers, health officers, and environmental health specialists and technicians to address the application of the waiver authority granted under RCW 70.05.072 as well as other existing statutory or regulatory flexibility for siting on-site sewage systems.

(2) The training course shall include the following topics:

(a) The statutory authority to grant waivers from the state on-site sewage system rules;

(b) The regulatory framework for the application of on-site sewage treatment and disposal technologies, with an emphasis on the differences between rules, standards, and guidance. The course shall include instruction on interpreting the intent of a rule rather than the strict reading of the language of a rule, and also discuss the liability assumed by a unit of local government when local rules, policies, or practices deviate from the state administrative code;

(c) The application of site evaluation and assessment methods to match the particular site and development plans with the on-site sewage treatment and disposal technology suitable to protect public health to at least the level provided by state rule; and

(d) Instruction in the concept and application of mitigation waivers.

(3) The training course shall be made available to all local health departments and districts in various locations in the state without fee. Updated guidance documents and materials shall be provided to all participants, including examples of the types of waivers and processes that other jurisdictions in the region have granted and used. The first training conducted under this section shall take place by June 30, 1999. [1998 c 34 § 3.]

**Intent—1998 c 34:** "(1) The 1997 legislature directed the department of health to convene a work group for the purpose of making recommendations to the legislature for the development of a certification program for occupations related to on-site septic systems, including those who pump, install, design, perform maintenance, inspect, or regulate on-site septic systems. The work group was convened and studied issues relating to certification of people employed in these occupations, bonding levels, and other standards related to these occupations. In addition, the work group examined the application of a risk analysis pertaining to the installation and maintenance of different types of septic systems in different parts of the state. A written report containing the work group's findings and recommendations was submitted to the legislature as directed.

(2) The legislature recognizes that the recommendations of the work group must be phased-in over a time period in order to develop the necessary scope of work requirements, knowledge requirements, public protection requirements, and other criteria for the upgrading of these occupations. It is the intent of the legislature to start implementing the work group's recommendations by focusing first on the occupations that are considered to be the highest priority, and to address the other occupational recommendations in subsequent sessions." [1998 c 34 § 1.]

**70.05.080 Local health officer—Failure to appoint—Procedure.** If the local board of health or other official responsible for appointing a local health officer under RCW 70.05.050 refuses or neglects to appoint a local health officer after a vacancy exists, the secretary of health may appoint a local health officer and fix the compensation. The local health officer so appointed shall have the same duties, powers and authority as though appointed under RCW 70.05.050. Such local health officer shall serve until a qualified individual is appointed according to the procedures set forth in RCW 70.05.050. The board or official responsible for appointing the local health officer under RCW 70.05.050 shall also be authorized to appoint an acting health officer to serve whenever the health officer is absent or incapacitated and unable to fulfill his or her responsibilities under the provisions of chapters 70.05 and 70.46 RCW. [1993 c 492 § 240; 1991 c 3 § 310; 1983 1st ex.s. c 39 § 4; 1979 c 141 § 81; 1967 ex.s. c 51 § 13.]

**Findings—Intent—1993 c 492:** See notes following RCW 43.20.050. Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**70.05.090 Physicians to report diseases.** Whenever any physician shall attend any person sick with any dangerous contagious or infectious disease, or with any diseases required by the state board of health to be reported, he or she shall, within twenty-four hours, give notice thereof to the local health officer within whose jurisdiction such sick person may then be or to the state department of health in Olympia. [1991 c 3 § 311; 1979 c 141 § 82; 1967 ex.s. c 51 § 14.]

**70.05.100 Determination of character of disease.** In case of the question arising as to whether or not any person is affected or is sick with a dangerous, contagious or infectious disease, the opinion of the local health officer shall prevail until the state department of health can be notified, and then the opinion of the executive officer of the state department of health, or any physician he or she may appoint to examine such case, shall be final. [1991 c 3 § 312; 1979 c 141 § 83; 1967 ex.s. c 51 § 15.]

**70.05.110 Local health officials and physicians to report contagious diseases.** It shall be the duty of the local board of health, health authorities or officials, and of physi-

cians in localities where there are no local health authorities or officials, to report to the state board of health, promptly upon discovery thereof, the existence of any one of the following diseases which may come under their observation, to wit: Asiatic cholera, yellow fever, smallpox, scarlet fever, diphtheria, typhus, typhoid fever, bubonic plague or leprosy, and of such other contagious or infectious diseases as the state board may from time to time specify. [1967 ex.s. c 51 § 16.]

**70.05.120 Violations—Remedies—Penalties.** (1) Any local health officer or administrative officer appointed under RCW 70.05.040, if any, who shall refuse or neglect to obey or enforce the provisions of chapters 70.05, 70.24, and 70.46 RCW or the rules, regulations or orders of the state board of health or who shall refuse or neglect to make prompt and accurate reports to the state board of health, may be removed as local health officer or administrative officer by the state board of health and shall not again be reappointed except with the consent of the state board of health. Any person may complain to the state board of health concerning the failure of the local health officer or administrative officer to carry out the laws or the rules and regulations concerning public health, and the state board of health shall, if a preliminary investigation so warrants, call a hearing to determine whether the local health officer or administrative officer is guilty of the alleged acts. Such hearings shall be held pursuant to the provisions of chapter 34.05 RCW, and the rules and regulations of the state board of health adopted thereunder.

(2) Any member of a local board of health who shall violate any of the provisions of chapters 70.05, 70.24, and 70.46 RCW or refuse or neglect to obey or enforce any of the rules, regulations or orders of the state board of health made for the prevention, suppression or control of any dangerous contagious or infectious disease or for the protection of the health of the people of this state, is guilty of a misdemeanor, and upon conviction shall be fined not less than ten dollars nor more than two hundred dollars.

(3) Any physician who shall refuse or neglect to report to the proper health officer or administrative officer within twelve hours after first attending any case of contagious or infectious disease or any diseases required by the state board of health to be reported or any case suspicious of being one of such diseases, is guilty of a misdemeanor, and upon conviction shall be fined not less than ten dollars nor more than two hundred dollars for each case that is not reported.

(4) Any person violating any of the provisions of chapters 70.05, 70.24, and 70.46 RCW or violating or refusing or neglecting to obey any of the rules, regulations or orders made for the prevention, suppression and control of dangerous contagious and infectious diseases by the local board of health or local health officer or administrative officer or state board of health, or who shall leave any isolation hospital or quarantined house or place without the consent of the proper health officer or who evades or breaks quarantine or conceals a case of contagious or infectious disease or assists in evading or breaking any quarantine or concealing any case of contagious or infectious disease, is guilty of a misdemeanor, and upon conviction thereof shall be subject to a fine of not less than twenty-five dollars nor more than one hundred dollars or to imprisonment in the county jail not to exceed ninety days

or to both fine and imprisonment. [2003 c 53 § 350; 1999 c 391 § 6; 1993 c 492 § 241; 1984 c 25 § 8; 1967 ex.s. c 51 § 17.]

**Intent—Effective date—2003 c 53:** See notes following RCW 2.48.180.

**Findings—Purpose—1999 c 391:** See note following RCW 70.05.180.

**Findings—Intent—1993 c 492:** See notes following RCW 43.20.050. Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**70.05.125 County public health account—Distribution to local public health jurisdictions.** (1) The county public health account is created in the state treasury. Funds deposited in the county public health account shall be distributed by the state treasurer to each local public health jurisdiction based upon amounts certified to it by the department of health in consultation with the Washington state association of counties. The account shall include funds distributed under RCW 82.14.200(8) and such funds as are appropriated to the account from the state general fund, the public health services account under RCW 43.72.902, and such other funds as the legislature may appropriate to it.

(2)(a) The secretary of the department of health shall certify the amounts to be distributed to each local public health jurisdiction using 1995 as the base year of actual city contributions to local public health.

(b) Only if funds are available and in an amount no greater than available funds under RCW 82.14.200(8), the \*department of community, trade, and economic development shall adjust the amount certified under (a) of this subsection to compensate for any annexation of an area with fifty thousand residents or more to any city as a result of a petition during calendar year 1996 or 1997, or for any city that became newly incorporated as a result of an election during calendar year 1994 or 1995. The amount to be adjusted shall be equal to the amount which otherwise would have been lost to the health jurisdiction due to the annexation or incorporation as calculated using the jurisdiction's 1995 funding formula.

(c) The county treasurer shall certify the actual 1995 city contribution to the department. Funds in excess of the base shall be distributed proportionately among the health jurisdictions based on incorporated population figures as last determined by the office of financial management.

(3) Moneys distributed under this section shall be expended exclusively for local public health purposes. [2010 c 271 § 101; 2009 c 479 § 48; 1998 c 266 § 1; 1997 c 333 § 1; 1995 1st sp.s. c 15 § 1.]

**\*Reviser's note:** The "department of community, trade, and economic development" was renamed the "department of commerce" by 2009 c 565.

**Purpose—Effective date—2010 c 271:** See notes following RCW 43.330.005.

**Effective date—2009 c 479:** See note following RCW 2.56.030.

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**70.05.130 Expenses of state, health district, or county in enforcing health laws and rules—Payment by county.** All expenses incurred by the state, health district, or county in carrying out the provisions of chapters 70.05 and 70.46 RCW or any other public health law, or the rules of the department of health enacted under such laws, shall be paid by the county

(2010 Ed.)

and such expenses shall constitute a claim against the general fund as provided in this section. [1993 c 492 § 242; 1991 c 3 § 313; 1979 c 141 § 84; 1967 ex.s. c 51 § 18.]

**Findings—Intent—1993 c 492:** See notes following RCW 43.20.050. Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**70.05.135 Treasurer—District funds—Contributions by counties and cities.** See RCW 70.46.080.

**70.05.140 County to bear expense of providing public health services.** See RCW 70.46.085.

**70.05.150 Contracts for sale or purchase of health services authorized.** In addition to powers already granted them, any county, district, or local health department may contract for either the sale or purchase of any or all health services from any local health department. Such contract shall require the approval of the state board of health. [1993 c 492 § 243; 1967 ex.s. c 51 § 22.]

**Findings—Intent—1993 c 492:** See notes following RCW 43.20.050. Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**70.05.160 Moratorium on water, sewer hookups, or septic systems—Public hearing—Limitation on length.** A local board of health that adopts a moratorium affecting water hookups, sewer hookups, or septic systems without holding a public hearing on the proposed moratorium, shall hold a public hearing on the adopted moratorium within at least sixty days of its adoption. If the board does not adopt findings of fact justifying its action before this hearing, then the board shall do so immediately after this public hearing. A moratorium adopted under this section may be effective for not longer than six months, but may be effective for up to one year if a work plan is developed for related studies providing for such a longer period. A moratorium may be renewed for one or more six-month periods if a subsequent public hearing is held and findings of fact are made prior to each renewal. [1992 c 207 § 7.]

**70.05.170 Child mortality review.** (1)(a) The legislature finds that the mortality rate in Washington state among infants and children less than eighteen years of age is unacceptably high, and that such mortality may be preventable. The legislature further finds that, through the performance of child mortality reviews, preventable causes of child mortality can be identified and addressed, thereby reducing the infant and child mortality in Washington state.

(b) It is the intent of the legislature to encourage the performance of child death reviews by local health departments by providing necessary legal protections to the families of children whose deaths are studied, local health department officials and employees, and health care professionals participating in child mortality review committee activities.

(2) As used in this section, "child mortality review" means a process authorized by a local health department as such department is defined in RCW 70.05.010 for examining factors that contribute to deaths of children less than eighteen years of age. The process may include a systematic review of medical, clinical, and hospital records; home interviews of parents and caretakers of children who have died; analysis of

individual case information; and review of this information by a team of professionals in order to identify modifiable medical, socioeconomic, public health, behavioral, administrative, educational, and environmental factors associated with each death.

(3) Local health departments are authorized to conduct child mortality reviews. In conducting such reviews, the following provisions shall apply:

(a) All health care information collected as part of a child mortality review is confidential, subject to the restrictions on disclosure provided for in chapter 70.02 RCW. When documents are collected as part of a child mortality review, the records may be used solely by local health departments for the purposes of the review.

(b) No identifying information related to the deceased child, the child's guardians, or anyone interviewed as part of the child mortality review may be disclosed. Any such information shall be redacted from any records produced as part of the review.

(c) Any witness statements or documents collected from witnesses, or summaries or analyses of those statements or records prepared exclusively for purposes of a child mortality review, are not subject to public disclosure, discovery, subpoena, or introduction into evidence in any administrative, civil, or criminal proceeding related to the death of a child reviewed. This provision does not restrict or limit the discovery or subpoena from a health care provider of records or documents maintained by such health care provider in the ordinary course of business, whether or not such records or documents may have been supplied to a local health department pursuant to this section. This provision shall not restrict or limit the discovery or subpoena of documents from such witnesses simply because a copy of a document was collected as part of a child mortality review.

(d) No local health department official or employee, and no members of technical committees established to perform case reviews of selected child deaths may be examined in any administrative, civil, or criminal proceeding as to the existence or contents of documents assembled, prepared, or maintained for purposes of a child mortality review.

(e) This section shall not be construed to prohibit or restrict any person from reporting suspected child abuse or neglect under chapter 26.44 RCW nor to limit access to or use of any records, documents, information, or testimony in any civil or criminal action arising out of any report made pursuant to chapter 26.44 RCW.

(4) The department shall assist local health departments to collect the reports of any child mortality reviews conducted by local health departments and assist with entering the reports into a database to the extent that the data is not protected under subsection (3) of this section. Notwithstanding subsection (3) of this section, the department shall respond to any requests for data from the database to the extent permitted for health care information under chapter 70.02 RCW. In addition, the department shall provide technical assistance to local health departments and child death review coordinators conducting child mortality reviews and encourage communication among child death review teams. The department shall conduct these activities using only federal and private funding.

(5) This section does not prevent a local health department from publishing statistical compilations and reports related to the child mortality review. Any portions of such compilations and reports that identify individual cases and sources of information must be redacted. [2010 c 128 § 1; 2009 c 134 § 1; 1993 c 41 § 1; 1992 c 179 § 1.]

**70.05.180 Infectious disease testing—Good samaritans—Rules.** A person rendering emergency care or transportation, commonly known as a "Good Samaritan," as described in RCW 4.24.300 and 4.24.310, may request and receive appropriate infectious disease testing free of charge from the local health department of the county of her or his residence, if: (1) While rendering emergency care she or he came into contact with bodily fluids; and (2) she or he does not have health insurance that covers the testing. Nothing in this section requires a local health department to provide health care services beyond testing. The department shall adopt rules implementing this section.

The information obtained from infectious disease testing is subject to statutory confidentiality provisions, including those of chapters 70.24 and 70.05 RCW. [1999 c 391 § 2.]

**Findings—Purpose—1999 c 391:** "The legislature finds that citizens who assist individuals in emergency situations perform a needed and valuable role that deserves recognition and support. The legislature further finds that emergency assistance in the form of mouth to mouth resuscitation or other emergency medical procedures resulting in the exchange of bodily fluids significantly increases the odds of being exposed to a deadly infectious disease. Some of the more life-threatening diseases that can be transferred during an emergency procedure where bodily fluids are exchanged include hepatitis A, B, and C, and human immunodeficiency virus (HIV). Individuals infected by these diseases value confidentiality regarding this information. A number of good samaritans who perform life-saving emergency procedures such as cardiopulmonary resuscitation are unable to pay for the tests necessary for detecting infectious diseases that could have been transmitted during the emergency procedure. It is the purpose of this act to provide infectious disease testing at no cost to good samaritans who request testing for infectious diseases after rendering emergency assistance that has brought them into contact with a bodily fluid and to further protect the testing information once obtained through confidentiality provisions." [1999 c 391 § 1.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

## Chapter 70.08 RCW COMBINED CITY-COUNTY HEALTH DEPARTMENTS

### Sections

70.08.005	Transfer of duties to the department of health.
70.08.010	Combined city-county health departments—Establishment.
70.08.020	Director of public health—Powers and duties.
70.08.030	Qualifications.
70.08.040	Director of public health—Appointment.
70.08.050	May act as health officer for other cities or towns.
70.08.060	Director of public health shall be registrar of vital statistics.
70.08.070	Employees may be included in civil service or retirement plans of city, county, or combined department.
70.08.080	Pooling of funds.
70.08.090	Other cities or agencies may contract for services.
70.08.100	Termination of agreement to operate combined city-county health department.
70.08.110	Prior expenditures in operating combined health department ratified.
70.08.900	Severability—1980 c 57.

*Control of cities and towns over water pollution: Chapter 35.88 RCW.*

**70.08.005 Transfer of duties to the department of health.** The powers and duties of the secretary of social and

health services under this chapter shall be performed by the secretary of health. [1989 1st ex.s. c 9 § 244.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**70.08.010 Combined city-county health departments—Establishment.** Any city with one hundred thousand or more population and the county in which it is located, are authorized, as shall be agreed upon between the respective governing bodies of such city and said county, to establish and operate a combined city and county health department, and to appoint the director of public health. [1985 c 124 § 1; (1993 c 492 § 244 repealed by 1995 c 43 § 16); 1949 c 46 § 1; Rem. Supp. 1949 § 6099-30. Formerly RCW 70.05.037.]

**70.08.020 Director of public health—Powers and duties.** The director of public health is authorized to and shall exercise all powers and perform all duties by law vested in the local health officer. [1985 c 124 § 2; 1949 c 46 § 2; Rem. Supp. 1949 § 6099-31.]

**70.08.030 Qualifications.** Notwithstanding any provisions to the contrary contained in any city or county charter, the director of public health, under this chapter shall meet as a minimum one of the following standards of educational achievement and vocational experience to be qualified for appointment to the office:

(1) Bachelor's degree in business administration, public administration, hospital administration, management, nursing, environmental health, epidemiology, public health, or its equivalent and five years of experience in administration in a community-related field; or

(2) A graduate degree in any of the fields listed in subsection (1) of this section, or in medicine or osteopathic medicine and surgery, plus three years of administrative experience in a community-related field.

The director shall not engage in the private practice of the director's profession during such tenure of office and shall not be included in the classified civil service of the said city or the said county.

If the director of public health does not meet the qualifications of a health officer or a physician under RCW 70.05.050, the director shall employ a person so qualified to advise the director on medical or public health matters. [1996 c 178 § 20; 1985 c 124 § 3; 1984 c 25 § 3; 1949 c 46 § 3; Rem. Supp. 1949 § 6099-32.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**70.08.040 Director of public health—Appointment.** Notwithstanding any provisions to the contrary contained in any city or county charter, where a combined department is established under this chapter, the director of public health under this chapter shall be appointed by the county executive of the county and the mayor of the city. The appointment shall be effective only upon a majority vote confirmation of the legislative authority of the county and the legislative authority of the city. The director may be removed by the county executive of the county, after consultation with the mayor of the city, upon filing a statement of reasons therefor with the legislative authorities of the county and the city.

(2010 Ed.)

[1995 c 188 § 1; 1995 c 43 § 9; 1985 c 124 § 4; 1980 c 57 § 1; 1949 c 46 § 4; Rem. Supp. 1949 § 6099-33.]

**Reviser's note:** This section was amended by 1995 c 43 § 9 and by 1995 c 188 § 1, each without reference to the other. Both amendments are incorporated in the publication of this section pursuant to RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**70.08.050 May act as health officer for other cities or towns.** Nothing in this chapter shall prohibit the director of public health as provided herein from acting as health officer for any other city or town within the county, nor from acting as health officer in any adjoining county or any city or town within such county having a contract or agreement as provided in RCW 70.08.090: PROVIDED, HOWEVER, That before being appointed health officer for such adjoining county, the secretary of health shall first give his or her approval thereto. [1991 c 3 § 314; 1979 c 141 § 85; 1949 c 46 § 8; Rem. Supp. 1949 § 6099-37.]

**70.08.060 Director of public health shall be registrar of vital statistics.** The director of public health under this chapter shall be registrar of vital statistics for all cities and counties under his jurisdiction and shall conduct such vital statistics work in accordance with the same laws and/or rules and regulations pertaining to vital statistics for a city of the first class. [1961 ex.s. c 5 § 4; 1949 c 46 § 9; Rem. Supp. 1949 § 6099-38.]

*Vital statistics: Chapter 70.58 RCW.*

**70.08.070 Employees may be included in civil service or retirement plans of city, county, or combined department.** Notwithstanding any provisions to the contrary contained in any city or county charter, and to the extent provided by the city and the county pursuant to appropriate legislative enactment, employees of the combined city and county health department may be included in the personnel system or civil service and retirement plans of the city or the county or a personnel system for the combined city and county health department that is separate from the personnel system or civil service of either county or city: PROVIDED, That residential requirements for such positions shall be coextensive with the county boundaries: PROVIDED FURTHER, That the city or county is authorized to pay such parts of the expense of operating and maintaining such personnel system or civil service and retirement system and to contribute to the retirement fund in behalf of employees such sums as may be agreed upon between the legislative authorities of such city and county. [1982 c 203 § 1; 1980 c 57 § 2; 1949 c 46 § 5; Rem. Supp. 1949 § 6099-34.]

**70.08.080 Pooling of funds.** The city by ordinance, and the county by appropriate legislative enactment, under this chapter may pool all or any part of their respective funds available for public health purposes, in the office of the city treasurer or the office of the county treasurer in a special pooling fund to be established in accordance with agreements between the legislative authorities of said city and county and which shall be expended for the combined health department. [1980 c 57 § 3; 1949 c 46 § 6; Rem. Supp. 1949 § 6099-35.]

**70.08.090 Other cities or agencies may contract for services.** Any other city in said county, other governmental agency or any charitable or health agency may by contract or by agreement with the governing bodies of the combined health department receive public health services. [1949 c 46 § 7; Rem. Supp. 1949 § 6099-36.]

**70.08.100 Termination of agreement to operate combined city-county health department.** Agreement to operate a combined city and county health department made under this chapter may after two years from the date of such agreement, be terminated by either party at the end of any calendar year upon notice in writing given at least six months prior thereto. The termination of such agreement shall not relieve either party of any obligations to which it has been previously committed. [1949 c 46 § 10; Rem. Supp. 1949 § 6099-39.]

**70.08.110 Prior expenditures in operating combined health department ratified.** Any expenditures heretofore made by a city of one hundred thousand population or more, and by the county in which it is located, not made fraudulently and which were within the legal limits of indebtedness, towards the expense of maintenance and operation of a combined health department, are hereby legalized and ratified. [1949 c 46 § 11; Rem. Supp. 1949 § 6099-40.]

**70.08.900 Severability—1980 c 57.** If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1980 c 57 § 4.]

## Chapter 70.10 RCW COMPREHENSIVE COMMUNITY HEALTH CENTERS

### Sections

70.10.010	Declaration of policy—Combining health services—State authorized to cooperate with other entities in constructing.
70.10.020	"Comprehensive community health center" defined.
70.10.030	Authorization to apply for and administer federal or state funds.
70.10.040	Application for federal or state funds for construction of facility as part of or separate from health center—Processing and approval by administering agencies—Decision on use as part of comprehensive health center.
70.10.050	Application for federal or state funds for construction of facility as part of or separate from health center—Cooperation between agencies in standardizing application procedures and forms.
70.10.060	Adoption of rules and regulations—Liberal construction of chapter.

*Community mental health services act: Chapter 71.24 RCW.*

*Mental health services, interstate contracts: RCW 71.28.010.*

**70.10.010 Declaration of policy—Combining health services—State authorized to cooperate with other entities in constructing.** It is declared to be the policy of the legislature of the state of Washington that, wherever feasible, community health services and services for persons with mental illness or intellectual disabilities shall be combined within single facilities in order to provide maximum utilization of available funds and personnel, and to assure the great-

est possible coordination of such services for the benefit of those requiring them. It is further declared to be the policy of the legislature to authorize the state to cooperate with counties, cities, and other municipal corporations in order to encourage them to take such steps as may be necessary to construct comprehensive community health centers in communities throughout the state. [2010 c 94 § 15; 1967 ex.s. c 4 § 1.]

**Purpose—2010 c 94:** See note following RCW 44.04.280.

**70.10.020 "Comprehensive community health center" defined.** The term "comprehensive community health center" as used in this chapter shall mean a health facility housing community health, mental health, and developmental disabilities services. [1977 ex.s. c 80 § 37; 1967 ex.s. c 4 § 2.]

**Purpose—Intent—Severability—1977 ex.s. c 80:** See notes following RCW 4.16.190.

**70.10.030 Authorization to apply for and administer federal or state funds.** The several agencies of the state authorized to administer within the state the various federal acts providing federal moneys to assist in the cost of establishing facilities for community health and mental health and facilities for persons with intellectual disabilities, are authorized to apply for and disburse federal grants, matching funds, or other funds, including gifts or donations from any source, available for use by counties, cities, other municipal corporations or nonprofit corporations. Upon application, these agencies shall also be authorized to distribute such state funds as may be appropriated by the legislature for such local construction projects: PROVIDED, That where state funds have been appropriated to assist in covering the cost of constructing a comprehensive community health center, or a facility for community health and mental health or a facility for persons with intellectual disabilities, and where any county, city, other municipal corporation or nonprofit corporation has submitted an approved application for such state funds, then, after any applicable federal grant has been deducted from the total cost of construction, the state agency or agencies in charge of each program may allocate to such applicant an amount not to exceed fifty percent of that particular program's contribution toward the balance of remaining construction costs. [2010 c 94 § 16; 1967 ex.s. c 4 § 3.]

**Purpose—2010 c 94:** See note following RCW 44.04.280.

**70.10.040 Application for federal or state funds for construction of facility as part of or separate from health center—Processing and approval by administering agencies—Decision on use as part of comprehensive health center.** Any application for federal or state funds to be used for construction of the community health, mental health, or developmental disabilities facility, which will be part of the comprehensive community health center as defined in RCW 70.10.020, shall be separately processed and approved by the state agency which has been designated to administer the particular federal or state program involved. Any application for federal or state funds for a construction project to establish a community health, mental health, or developmental disabilities facility not part of a comprehensive health center shall be

processed by the state agency which is designated to administer the particular federal or state program involved. This agency shall also forward a copy of the application to the other agency or agencies designated to administer the program or programs providing funds for construction of the facilities which make up a comprehensive health center. The agency or agencies receiving this copy of the application shall have a period of time not to exceed sixty days in which to file a statement with the agency to which the application has been submitted and to any statutory advisory council or committee which has been designated to advise the administering agency with regard to the program, stating that the proposed facility should or should not be part of a comprehensive health center. [1977 ex.s. c 80 § 38; 1967 ex.s. c 4 § 4.]

**Purpose—Intent—Severability—1977 ex.s. c 80:** See notes following RCW 4.16.190.

**70.10.050 Application for federal or state funds for construction of facility as part of or separate from health center—Cooperation between agencies in standardizing application procedures and forms.** The several state agencies processing applications for the construction of comprehensive health centers for community health, mental health, or developmental disability facilities shall cooperate to develop general procedures to be used in implementing the statute and to attempt to develop application forms and procedures which are as nearly standard as possible, after taking cognizance of the different information required in the various programs, to assist applicants in applying to various state agencies. [1977 ex.s. c 80 § 39; 1967 ex.s. c 4 § 5.]

**Purpose—Intent—Severability—1977 ex.s. c 80:** See notes following RCW 4.16.190.

**70.10.060 Adoption of rules and regulations—Liberal construction of chapter.** In furtherance of the legislative policy to authorize the state to cooperate with the federal government in facilitating the construction of comprehensive community health centers, the state agencies involved shall adopt such rules and regulations as may become necessary to entitle the state and local units of government to share in federal grants, matching funds, or other funds, unless the same be expressly prohibited by this chapter. Any section or provision of this chapter susceptible to more than one construction shall be interpreted in favor of the construction most likely to satisfy federal laws entitling the state and local units of government to receive federal grants, matching funds or other funds for the construction of comprehensive community health centers. [1967 ex.s. c 4 § 6.]

## Chapter 70.12 RCW PUBLIC HEALTH FUNDS

### Sections

#### COUNTY FUNDS

70.12.015 Secretary may expend funds in counties.  
70.12.025 County funds for public health.

#### PUBLIC HEALTH POOLING FUND

70.12.030 Public health pooling fund.  
70.12.040 Fund, how maintained and disbursed.  
70.12.050 Expenditures from fund.

(2010 Ed.)

70.12.060 Expenditures geared to budget.  
70.12.070 Fund subject to audit and check by state.

### COUNTY FUNDS

#### 70.12.015 Secretary may expend funds in counties.

The secretary of health is hereby authorized to apportion and expend such sums as he or she shall deem necessary for public health work in the counties of the state, from the appropriations made to the state department of health for county public health work. [1991 c 3 § 315; 1979 c 141 § 86; 1939 c 191 § 2; RRS § 6001-1. Formerly RCW 70.12.080.]

**70.12.025 County funds for public health.** Each county legislative authority shall annually budget and appropriate a sum for public health work. [1975 1st ex.s. c 291 § 2.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

### PUBLIC HEALTH POOLING FUND

**70.12.030 Public health pooling fund.** Any county, combined city-county health department, or health district is hereby authorized and empowered to create a "public health pooling fund", hereafter called the "fund", for the efficient management and control of all moneys coming to such county, combined department, or district for public health purposes. [1993 c 492 § 245; 1945 c 46 § 1; 1943 c 190 § 1; Rem. Supp. 1945 § 6099-1.]

**Findings—Intent—1993 c 492:** See notes following RCW 43.20.050.

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**70.12.040 Fund, how maintained and disbursed.** Any such fund may be established in the county treasurer's office or the city treasurer's office of a first-class city according to the type of local health department organization existing.

In a district composed of more than one county, the county treasurer of the county having the largest population shall be the custodian of the fund, and the county auditor of said county shall keep the record of receipts and disbursements; and shall draw and the county treasurer shall honor and pay all such warrants.

Into any such fund so established may be paid:

- (1) All grants from any state fund for county public health work;
- (2) Any county current expense funds appropriated for the health department;
- (3) Any other money appropriated by the county for health work;
- (4) City funds appropriated for the health department;
- (5) All moneys received from any governmental agency, local, state or federal which may contribute to the local health department; and
- (6) Any contributions from any charitable or voluntary agency or contributions from any individual or estate.

Any school district may contract in writing for health services with the health department of the county, first-class city or health district, and place such funds in the public health pooling fund in accordance with the contract. [1983 c 3 § 170; 1945 c 46 § 2; 1943 c 190 § 2; Rem. Supp. 1945 § 6099-2.]

**70.12.050 Expenditures from fund.** All expenditures in connection with salaries, wages and operations incurred in carrying on the health department of the county, combined city-county health department, or health district shall be paid out of such fund. [1993 c 492 § 246; 1945 c 46 § 3; 1943 c 190 § 3; Rem. Supp. 1945 § 6099-3.]

**Findings—Intent—1993 c 492:** See notes following RCW 43.20.050. Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**70.12.060 Expenditures geared to budget.** Any fund established as herein provided shall be expended so as to make the expenditures thereof agree with any respective appropriation period. Any accumulation in any such fund so established shall be taken into consideration when preparing any budget for the operations for the ensuing year. [1943 c 190 § 4; Rem. Supp. 1943 § 6099-4.]

**70.12.070 Fund subject to audit and check by state.** The public health pool fund shall be subject to audit by the state auditor and shall be subject to check by the state department of health. [1995 c 301 § 77; 1991 c 3 § 316; 1979 c 141 § 87; 1943 c 190 § 5; Rem. Supp. 1943 § 6099-5.]

## Chapter 70.14 RCW

### HEALTH CARE SERVICES PURCHASED BY STATE AGENCIES

#### Sections

70.14.020	State agencies to identify alternative health care providers.
70.14.030	Health care utilization review procedures.
70.14.040	Review of prospective rate setting methods.
70.14.050	Drug purchasing cost controls—Establishment of evidence-based prescription drug program.
70.14.060	Prescription drug purchasing consortium—Participation—Exceptions—Rules.
70.14.070	Prescription drug consortium account.
70.14.080	Definitions.
70.14.090	Health technology clinical committee.
70.14.100	Health technology selection and assessment.
70.14.110	Health technology clinical committee determinations.
70.14.120	Agency compliance with committee determination—Coverage and reimbursement determinations for nonreviewed health technologies—Appeals.
70.14.130	Health technology clinical committee—Public notice.
70.14.140	Applicability to health care services purchased from health carriers.
70.14.150	Data-sharing agreements—Report.
70.14.155	Streamlined health care administration—Agency participation.

*State health care cost containment policies: RCW 43.41.160.*

**70.14.020 State agencies to identify alternative health care providers.** Each of the agencies listed in \*RCW 70.14.010, with the exception of the department of labor and industries, which expends more than five hundred thousand dollars annually of state funds for purchase of health care shall identify the availability and costs of nonfee for service providers of health care, including preferred provider organizations, health maintenance organizations, managed health care or case management systems, or other nonfee for service alternatives. In each case where feasible in which an alternative health care provider arrangement, of similar scope and quality, is available at lower cost than fee for service providers, such state agencies shall make the services of the alternative provider available to clients, consumers, or employees for whom state dollars are spent to purchase health care. As

consistent with other state and federal law, requirements for copayments, deductibles, the scope of available services, or other incentives shall be used to encourage clients, consumers, or employees to use the lowest cost providers, except that copayments or deductibles shall not be required where they might have the impact of denying access to necessary health care in a timely manner. [1986 c 303 § 7.]

**\*Reviser's note:** RCW 70.14.010 was repealed by 1988 c 107 § 35, effective October 1, 1988.

*Medical assistance—Agreements with managed health care systems: RCW 74.09.522.*

**70.14.030 Health care utilization review procedures.** Plans for establishing or improving utilization review procedures for purchased health care services shall be developed by each agency listed in \*RCW 70.14.010. The plans shall specifically address such utilization review procedures as prior authorization of services, hospital inpatient length of stay review, requirements for use of outpatient surgeries and the obtaining of second opinions for surgeries, review of invoices or claims submitted by service providers, and performance audit of providers. [1986 c 303 § 8.]

**\*Reviser's note:** RCW 70.14.010 was repealed by 1988 c 107 § 35, effective October 1, 1988.

**70.14.040 Review of prospective rate setting methods.** The state agencies listed in \*RCW 70.14.010 shall review the feasibility of establishing prospective payment approaches within their health care programs. Work plans or timetables shall be prepared for the development of prospective rates. The agencies shall identify legislative actions that may be necessary to facilitate the adoption of prospective rate setting methods. [1986 c 303 § 9.]

**\*Reviser's note:** RCW 70.14.010 was repealed by 1988 c 107 § 35, effective October 1, 1988.

**70.14.050 Drug purchasing cost controls—Establishment of evidence-based prescription drug program.** (1) Each agency administering a state purchased health care program as defined in RCW 41.05.011(2) shall, in cooperation with other agencies, take any necessary actions to control costs without reducing the quality of care when reimbursing for or purchasing drugs. To accomplish this purpose, participating agencies may establish an evidence-based prescription drug program.

(2) In developing the evidence-based prescription drug program authorized by this section, agencies:

(a) Shall prohibit reimbursement for drugs that are determined to be ineffective by the United States food and drug administration;

(b) Shall adopt rules in order to ensure that less expensive generic drugs will be substituted for brand name drugs in those instances where the quality of care is not diminished;

(c) Where possible, may authorize reimbursement for drugs only in economical quantities;

(d) May limit the prices paid for drugs by such means as negotiated discounts from pharmaceutical manufacturers, central purchasing, volume contracting, or setting maximum prices to be paid;

(e) Shall consider the approval of drugs with lower abuse potential in substitution for drugs with significant abuse potential;

(f) May take other necessary measures to control costs of drugs without reducing the quality of care; and

(g) Shall adopt rules governing practitioner endorsement and use of any list developed as part of the program authorized by this section.

(3) Agencies shall provide for reasonable exceptions, consistent with RCW 69.41.190, to any list developed as part of the program authorized by this section.

(4) Agencies shall establish an independent pharmacy and therapeutics committee to evaluate the effectiveness of prescription drugs in the development of the program authorized by this section. [2003 1st sp.s. c 29 § 9; 1986 c 303 § 10.]

**Finding—Intent—Severability—Conflict with federal requirements—Effective date—2003 1st sp.s. c 29:** See notes following RCW 74.09.650.

**70.14.060 Prescription drug purchasing consortium—Participation—Exceptions—Rules.** (1) The administrator of the state health care authority shall, directly or by contract, adopt policies necessary for establishment of a prescription drug purchasing consortium. The consortium's purchasing activities shall be based upon the evidence-based prescription drug program established under RCW 70.14.050. State purchased health care programs as defined in RCW 41.05.011 shall purchase prescription drugs through the consortium for those prescription drugs that are purchased directly by the state and those that are purchased through reimbursement of pharmacies, unless exempted under this section. The administrator shall not require any supplemental rebate offered to the department of social and health services by a pharmaceutical manufacturer for prescription drugs purchased for medical assistance program clients under chapter 74.09 RCW be extended to any other state purchased health care program, or to any other individuals or entities participating in the consortium. The administrator shall explore joint purchasing opportunities with other states.

(2) Participation in the purchasing consortium shall be offered as an option beginning January 1, 2006. Participation in the consortium is purely voluntary for units of local government, private entities, labor organizations, and for individuals who lack or are underinsured for prescription drug coverage. The administrator may set reasonable fees, including enrollment fees, to cover administrative costs attributable to participation in the prescription drug consortium.

(3) This section does not apply to state purchased health care services that are purchased from or through health carriers as defined in RCW 48.43.005, or group model health maintenance organizations that are accredited by the national committee for quality assurance.

(4) The state health care authority is authorized to adopt rules implementing chapter 129, Laws of 2005.

(5) State purchased health care programs are exempt from the requirements of this section if they can demonstrate to the administrator that, as a result of the availability of federal programs or other purchasing arrangements, their other purchasing mechanisms will result in greater discounts and

(2010 Ed.)

aggregate cost savings than would be realized through participation in the consortium. [2009 c 560 § 13; 2005 c 129 § 1.]

**Intent—Effective date—Disposition of property and funds—Assignment/delegation of contractual rights or duties—2009 c 560:** See notes following RCW 18.06.080.

**Performance audit—2005 c 129 § 1:** "By December 1, 2008, the joint legislative audit and review committee shall conduct a performance audit on the operation of the consortium created in section 1 of this act. The audit shall review the operations and outcomes associated with the implementation of this consortium and identify the net savings, if any, to the members of the consortium, the percentage of targeted populations participating, and changes in the health outcomes of participants." [2005 c 129 § 3.]

**Severability—2005 c 129:** "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [2005 c 129 § 4.]

**Conflict with federal requirements—2005 c 129:** "If any part of this act is found to be in conflict with federal requirements that are a prescribed condition to the allocation of federal funds to the state, the conflicting part of this act is inoperative solely to the extent of the conflict and with respect to the agencies directly affected, and this finding does not affect the operation of the remainder of this act in its application to the agencies concerned. Rules adopted under this act must meet federal requirements that are a necessary condition to the receipt of federal funds by the state." [2005 c 129 § 5.]

**70.14.070 Prescription drug consortium account.** The prescription drug consortium account is created in the custody of the state treasurer. All receipts from activities related to administration of the state drug purchasing consortium on behalf of participating individuals and organizations, other than state purchased health care programs, shall be deposited into the account. The receipts include but are not limited to rebates from manufacturers, and the fees established under RCW 70.14.060(2). Expenditures from the account may be used only for the purposes of RCW 70.14.060. Only the administrator of the state health care authority or the administrator's designee may authorize expenditures from the account. The account is subject to allotment procedures under chapter 43.88 RCW, but an appropriation is not required for expenditures. [2005 c 129 § 2.]

**Severability—Conflict with federal requirements—2005 c 129:** See notes following RCW 70.14.060.

**70.14.080 Definitions.** The definitions in this section apply throughout RCW 70.14.090 through 70.14.130 unless the context clearly requires otherwise.

(1) "Administrator" means the administrator of the Washington state health care authority under chapter 41.05 RCW.

(2) "Advisory group" means a group established under RCW 70.14.110(2)(c).

(3) "Committee" means the health technology clinical committee established under RCW 70.14.090.

(4) "Coverage determination" means a determination of the circumstances, if any, under which a health technology will be included as a covered benefit in a state purchased health care program.

(5) "Health technology" means medical and surgical devices and procedures, medical equipment, and diagnostic tests. Health technologies does not include prescription drugs governed by RCW 70.14.050.

(6) "Participating agency" means the department of social and health services, the state health care authority, and the department of labor and industries.

(7) "Reimbursement determination" means a determination to provide or deny reimbursement for a health technology included as a covered benefit in a specific circumstance for an individual patient who is eligible to receive health care services from the state purchased health care program making the determination. [2006 c 307 § 1.]

**Captions not law—2006 c 307:** "Captions used in this act are not any part of the law." [2006 c 307 § 10.]

**Conflict with federal requirements—2006 c 307:** "If any part of this act is found to be in conflict with federal requirements that are a prescribed condition to the allocation of federal funds to the state, the conflicting part of this act is inoperative solely to the extent of the conflict and with respect to the agencies directly affected, and this finding does not affect the operation of the remainder of this act in its application to the agencies concerned. Rules adopted under this act must meet federal requirements that are a necessary condition to the receipt of federal funds by the state." [2006 c 307 § 11.]

**70.14.090 Health technology clinical committee.** (1) A health technology clinical committee is established, to include the following eleven members appointed by the administrator in consultation with participating state agencies:

(a) Six practicing physicians licensed under chapter 18.57 or 18.71 RCW; and

(b) Five other practicing licensed health professionals who use health technology in their scope of practice.

At least two members of the committee must have professional experience treating women, children, elderly persons, and people with diverse ethnic and racial backgrounds.

(2) Members of the committee:

(a) Shall not contract with or be employed by a health technology manufacturer or a participating agency during their term or for eighteen months before their appointment. As a condition of appointment, each person shall agree to the terms and conditions imposed by the administrator regarding conflicts of interest;

(b) Are immune from civil liability for any official acts performed in good faith as members of the committee; and

(c) Shall be compensated for participation in the work of the committee in accordance with a personal services contract to be executed after appointment and before commencement of activities related to the work of the committee.

(3) Meetings of the committee and any advisory group are subject to chapter 42.30 RCW, the open public meetings act, including RCW 42.30.110(1)(1), which authorizes an executive session during a regular or special meeting to consider proprietary or confidential nonpublished information.

(4) Neither the committee nor any advisory group is an agency for purposes of chapter 34.05 RCW.

(5) The health care authority shall provide administrative support to the committee and any advisory group, and may adopt rules governing their operation. [2006 c 307 § 2.]

**Captions not law—Conflict with federal requirements—2006 c 307:** See notes following RCW 70.14.080.

**70.14.100 Health technology selection and assessment.** (1) The administrator, in consultation with participating agencies and the committee, shall select the health tech-

nologies to be reviewed by the committee under RCW 70.14.110. Up to six may be selected for review in the first year after June 7, 2006, and up to eight may be selected in the second year after June 7, 2006. In making the selection, priority shall be given to any technology for which:

(a) There are concerns about its safety, efficacy, or cost-effectiveness, especially relative to existing alternatives, or significant variations in its use;

(b) Actual or expected state expenditures are high, due to demand for the technology, its cost, or both; and

(c) There is adequate evidence available to conduct the complete review.

(2) A health technology for which the committee has made a determination under RCW 70.14.110 shall be considered for rereview at least once every eighteen months, beginning the date the determination is made. The administrator, in consultation with participating agencies and the committee, shall select the technology for rereview if he or she decides that evidence has since become available that could change a previous determination. Upon rereview, consideration shall be given only to evidence made available since the previous determination.

(3) Pursuant to a petition submitted by an interested party, the health technology clinical committee may select health technologies for review that have not otherwise been selected by the administrator under subsection (1) or (2) of this section.

(4) Upon the selection of a health technology for review, the administrator shall contract for a systematic evidence-based assessment of the technology's safety, efficacy, and cost-effectiveness. The contract shall:

(a) Be with an evidence-based practice center designated as such by the federal agency for health care research and quality, or other appropriate entity;

(b) Require the assessment be initiated no sooner than thirty days after notice of the selection of the health technology for review is posted on the internet under RCW 70.14.130;

(c) Require, in addition to other information considered as part of the assessment, consideration of: (i) Safety, health outcome, and cost data submitted by a participating agency; and (ii) evidence submitted by any interested party; and

(d) Require the assessment to: (i) Give the greatest weight to the evidence determined, based on objective indicators, to be the most valid and reliable, considering the nature and source of the evidence, the empirical characteristic of the studies or trials upon which the evidence is based, and the consistency of the outcome with comparable studies; and (ii) take into account any unique impacts of the technology on specific populations based upon factors such as sex, age, ethnicity, race, or disability. [2006 c 307 § 3.]

**Captions not law—Conflict with federal requirements—2006 c 307:** See notes following RCW 70.14.080.

**70.14.110 Health technology clinical committee determinations.** (1) The committee shall determine, for each health technology selected for review under RCW 70.14.100: (a) The conditions, if any, under which the health technology will be included as a covered benefit in health care programs of participating agencies; and (b) if covered, the criteria which the participating agency administering the

program must use to decide whether the technology is medically necessary, or proper and necessary treatment.

(2) In making a determination under subsection (1) of this section, the committee:

(a) Shall consider, in an open and transparent process, evidence regarding the safety, efficacy, and cost-effectiveness of the technology as set forth in the systematic assessment conducted under RCW 70.14.100(4);

(b) Shall provide an opportunity for public comment; and

(c) May establish ad hoc temporary advisory groups if specialized expertise is needed to review a particular health technology or group of health technologies, or to seek input from enrollees or clients of state purchased health care programs. Advisory group members are immune from civil liability for any official act performed in good faith as a member of the group. As a condition of appointment, each person shall agree to the terms and conditions imposed by the administrator regarding conflicts of interest.

(3) Determinations of the committee under subsection (1) of this section shall be consistent with decisions made under the federal medicare program and in expert treatment guidelines, including those from specialty physician organizations and patient advocacy organizations, unless the committee concludes, based on its review of the systematic assessment, that substantial evidence regarding the safety, efficacy, and cost-effectiveness of the technology supports a contrary determination. [2006 c 307 § 4.]

**Captions not law—Conflict with federal requirements—2006 c 307:**  
See notes following RCW 70.14.080.

**70.14.120 Agency compliance with committee determination—Coverage and reimbursement determinations for nonreviewed health technologies—Appeals.** (1) A participating agency shall comply with a determination of the committee under RCW 70.14.110 unless:

(a) The determination conflicts with an applicable federal statute or regulation, or applicable state statute; or

(b) Reimbursement is provided under an agency policy regarding experimental or investigational treatment, services under a clinical investigation approved by an institutional review board, or health technologies that have a humanitarian device exemption from the federal food and drug administration.

(2) For a health technology not selected for review under RCW 70.14.100, a participating agency may use its existing statutory and administrative authority to make coverage and reimbursement determinations. Such determinations shall be shared among agencies, with a goal of maximizing each agency's understanding of the basis for the other's decisions and providing opportunities for agency collaboration.

(3) A health technology not included as a covered benefit under a state purchased health care program pursuant to a determination of the health technology clinical committee under RCW 70.14.110, or for which a condition of coverage established by the committee is not met, shall not be subject to a determination in the case of an individual patient as to whether it is medically necessary, or proper and necessary treatment.

(4) Nothing in chapter 307, Laws of 2006 diminishes an individual's right under existing law to appeal an action or

(2010 Ed.)

decision of a participating agency regarding a state purchased health care program. Appeals shall be governed by state and federal law applicable to participating agency decisions. [2006 c 307 § 5.]

**Captions not law—Conflict with federal requirements—2006 c 307:**  
See notes following RCW 70.14.080.

**70.14.130 Health technology clinical committee—Public notice.** (1) The administrator shall develop a centralized, internet-based communication tool that provides, at a minimum:

(a) Notification when a health technology is selected for review under RCW 70.14.100, indicating when the review will be initiated and how an interested party may submit evidence, or provide public comment, for consideration during the review;

(b) Notification of any determination made by the committee under RCW 70.14.110(1), its effective date, and an explanation of the basis for the determination; and

(c) Access to the systematic assessment completed under RCW 70.14.100(4), and reports completed under subsection (2) of this section.

(2) Participating agencies shall develop methods to report on the implementation of this section and RCW 70.14.080 through 70.14.120 with respect to health care outcomes, frequency of exceptions, cost outcomes, and other matters deemed appropriate by the administrator. [2006 c 307 § 7.]

**Captions not law—Conflict with federal requirements—2006 c 307:**  
See notes following RCW 70.14.080.

**70.14.140 Applicability to health care services purchased from health carriers.** RCW 70.14.080 through 70.14.130 and 41.05.013 do not apply to state purchased health care services that are purchased from or through health carriers as defined in RCW 48.43.005. [2006 c 307 § 9.]

**Captions not law—Conflict with federal requirements—2006 c 307:**  
See notes following RCW 70.14.080.

**70.14.150 Data-sharing agreements—Report.** (1) The department of social and health services and the health care authority shall enter into data-sharing agreements with the appropriate agencies in the states of Oregon and Idaho to assure the valid Washington state residence of applicants for health care services in Washington. Such agreements shall include appropriate safeguards related to the confidentiality of the shared information.

(2) The department of social and health services and the health care authority must jointly report on the status of the data-sharing agreements to the appropriate committees of the legislature no later than November 30, 2007. [2007 c 60 § 1.]

**70.14.155 Streamlined health care administration—Agency participation.** The following state agencies are directed to cooperate with the insurance commissioner and, within funds appropriated specifically for this purpose, adopt the processes, guidelines, and standards to streamline health care administration pursuant to chapter 48.165 RCW: The department of social and health services, the health care authority, and, to the extent permissible under Title 51 RCW, the department of labor and industries. [2009 c 298 § 3.]

**Chapter 70.22 RCW**  
**MOSQUITO CONTROL**

## Sections

70.22.005	Transfer of duties to the department of health.
70.22.010	Declaration of purpose.
70.22.020	Secretary may make inspections, investigations, and determinations and provide for control.
70.22.030	Secretary to coordinate plans.
70.22.040	Secretary may contract with, receive funds from entities and individuals—Authorization for governmental entities to contract, grant funds, levy taxes.
70.22.050	Powers and duties of secretary.
70.22.060	Governmental entities to cooperate with secretary.
70.22.900	Severability—1961 c 283.

**70.22.005 Transfer of duties to the department of health.** The powers and duties of the secretary of social and health services under this chapter shall be performed by the secretary of health. [1989 1st ex.s. c 9 § 246.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**70.22.010 Declaration of purpose.** The purpose of this chapter is to establish a statewide program for the control or elimination of mosquitoes as a health hazard. [1961 c 283 § 1.]

*Mosquito control districts: Chapter 17.28 RCW.*

**70.22.020 Secretary may make inspections, investigations, and determinations and provide for control.** The secretary of health is hereby authorized and empowered to make or cause to be made such inspections, investigations, studies and determinations as he or she may from time to time deem advisable in order to ascertain the effect of mosquitoes as a health hazard, and, to the extent to which funds are available, to provide for the control or elimination thereof in any or all parts of the state. [1991 c 3 § 317; 1979 c 141 § 88; 1961 c 283 § 2.]

**70.22.030 Secretary to coordinate plans.** The secretary of health shall coordinate plans for mosquito control work which may be projected by any county, city or town, municipal corporation, taxing district, state department or agency, federal government agency, or any person, group or organization, and arrange for cooperation between any such districts, departments, agencies, persons, groups or organizations. [1991 c 3 § 318; 1979 c 141 § 89; 1961 c 283 § 3.]

**70.22.040 Secretary may contract with, receive funds from entities and individuals—Authorization for governmental entities to contract, grant funds, levy taxes.** The secretary of health is authorized and empowered to receive funds from any county, city or town, municipal corporation, taxing district, the federal government, or any person, group or organization to carry out the purpose of this chapter. In connection therewith the secretary is authorized and empowered to contract with any such county, city, or town, municipal corporation, taxing district, the federal government, person, group or organization with respect to the construction and maintenance of facilities and other work for the purpose of effecting mosquito control or elimination, and any such county, city or town, municipal corporation, or taxing district obligated to carry out the provisions of any such contract

entered into with the secretary is authorized, empowered and directed to appropriate, and if necessary, to levy taxes for and pay over such funds as its contract with the secretary may from time to time require. [1991 c 3 § 319; 1979 c 141 § 90; 1961 c 283 § 4.]

**70.22.050 Powers and duties of secretary.** To carry out the purpose of this chapter, the secretary of health may:

(1) Abate as nuisances breeding places for mosquitoes as defined in RCW 17.28.170;

(2) Acquire by gift, devise, bequest, lease, or purchase, real and personal property necessary or convenient for carrying out the purpose of this chapter;

(3) Make contracts, employ engineers, health officers, sanitarians, physicians, laboratory personnel, attorneys, and other technical or professional assistants;

(4) Publish information or literature; and

(5) Do any and all other things necessary to carry out the purpose of this chapter: PROVIDED, That no program shall be permitted nor any action taken in pursuance thereof which may be injurious to the life or health of game or fish. [1991 c 3 § 320; 1989 c 11 § 25; 1979 c 141 § 91; 1961 c 283 § 5.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**70.22.060 Governmental entities to cooperate with secretary.** Each state department, agency, and political subdivision shall cooperate with the secretary of health in carrying out the purposes of this chapter. [1991 c 3 § 321; 1979 c 141 § 92; 1961 c 283 § 6.]

**70.22.900 Severability—1961 c 283.** If any provision of this act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected. [1961 c 283 § 7.]

**Chapter 70.24 RCW**

**CONTROL AND TREATMENT OF  
SEXUALLY TRANSMITTED DISEASES**

(Formerly: Control and treatment of venereal diseases)

## Sections

70.24.005	Transfer of duties to the department of health.
70.24.015	Legislative finding.
70.24.017	Definitions.
70.24.022	Interviews, examination, counseling, or treatment of infected persons or persons believed to be infected—Dissemination of false information—Penalty.
70.24.024	Orders for examinations and counseling—Restrictive measures—Investigation—Issuance of order—Confidential notice and hearing—Exception.
70.24.034	Detention—Grounds—Order—Hearing.
70.24.050	Diagnosis of sexually transmitted diseases—Confirmation—Anonymous prevalence reports.
70.24.070	Detention and treatment facilities.
70.24.080	Penalty.
70.24.084	Violations of chapter—Aggrieved persons—Right of action.
70.24.090	Pregnant women—Test for syphilis.
70.24.095	Pregnant women—Drug treatment program participants—AIDS counseling.
70.24.100	Syphilis laboratory tests.
70.24.105	Disclosure of HIV antibody test or testing or treatment of sexually transmitted diseases—Exchange of medical information.
70.24.107	Rule-making authority—1997 c 345.
70.24.110	Minors—Treatment, consent, liability for payment for care.

- 70.24.120 Sexually transmitted disease case investigators—Authority to withdraw blood.
- 70.24.125 Reporting requirements for sexually transmitted diseases—Rules.
- 70.24.130 Adoption of rules.
- 70.24.140 Certain infected persons—Sexual intercourse unlawful without notification.
- 70.24.150 Immunity of certain public employees.
- 70.24.200 Information for the general public on sexually transmitted diseases—Emphasis.
- 70.24.210 Information for children on sexually transmitted diseases—Emphasis.
- 70.24.220 AIDS education in public schools—Finding.
- 70.24.240 Clearinghouse for AIDS educational materials.
- 70.24.250 Office on AIDS—Repository and clearinghouse for AIDS education and training material—University of Washington duties.
- 70.24.260 Emergency medical personnel—Rules for AIDS education and training.
- 70.24.270 Health professionals—Rules for AIDS education and training.
- 70.24.280 Board of pharmacy—Rules for AIDS education and training.
- 70.24.290 Public school employees—Rules for AIDS education and training.
- 70.24.300 State and local government employees—Determination of substantial likelihood of exposure—Rules for AIDS education and training.
- 70.24.310 Health care facility employees—Rules for AIDS education and training.
- 70.24.320 Counseling and testing—AIDS and HIV—Definitions.
- 70.24.325 Counseling and testing—Insurance requirements.
- 70.24.330 HIV testing—Consent, exceptions.
- 70.24.340 Convicted persons—Mandatory testing and counseling for certain offenses—Employees' substantial exposure to bodily fluids—Procedure and court orders.
- 70.24.350 Prostitution and drug offenses—Voluntary testing and counseling.
- 70.24.360 Jail detainees—Testing and counseling of persons who present a possible risk.
- 70.24.370 Correction facility inmates—Counseling and testing of persons who present a possible risk—Training for administrators and superintendents—Procedure.
- 70.24.380 Board of health—Rules for counseling and testing.
- 70.24.400 Department to establish regional AIDS service networks—Funding—Lead counties—Regional plans—University of Washington, center for AIDS education.
- 70.24.410 AIDS advisory committee—Duties, review of insurance problems—Termination.
- 70.24.420 Additional local funding of treatment programs not required.
- 70.24.430 Application of chapter to persons subject to jurisdiction of department of corrections.
- 70.24.450 Confidentiality—Reports—Unauthorized disclosures.
- 70.24.900 Severability—1988 c 206.
- 70.24.901 Construction—Chapter applicable to state registered domestic partnerships—2009 c 521.

*Center for volunteerism and citizen service: RCW 43.150.050.*

**70.24.005 Transfer of duties to the department of health.** The powers and duties of the department of social and health services, the department of licensing, and the secretary of social and health services under this chapter shall be performed by the department of health and the secretary of health. [1989 1st ex.s. c 9 § 247.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**70.24.015 Legislative finding.** The legislature declares that sexually transmitted diseases constitute a serious and sometimes fatal threat to the public and individual health and welfare of the people of the state. The legislature finds that the incidence of sexually transmitted diseases is rising at an alarming rate and that these diseases result in significant social, health, and economic costs, including infant and maternal mortality, temporary and lifelong disability, and premature death. The legislature further finds that sexually transmitted diseases, by their nature, involve sensitive issues of privacy, and it is the intent of the legislature that all pro-

(2010 Ed.)

grams designed to deal with these diseases afford patients privacy, confidentiality, and dignity. The legislature also finds that medical knowledge and information about sexually transmitted diseases are rapidly changing. It is therefore the intent of the legislature to provide a program that is sufficiently flexible to meet emerging needs, deals efficiently and effectively with reducing the incidence of sexually transmitted diseases, and provides patients with a secure knowledge that information they provide will remain private and confidential. [1988 c 206 § 901.]

**70.24.017 Definitions.** Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter:

(1) "Acquired immunodeficiency syndrome" or "AIDS" means the clinical syndrome of HIV-related illness as defined by the board of health by rule.

(2) "Board" means the state board of health.

(3) "Department" means the department of health, or any successor department with jurisdiction over public health matters.

(4) "Health care provider" means any person who is a member of a profession under RCW 18.130.040 or other person providing medical, nursing, psychological, or other health care services regulated by the department of health.

(5) "Health care facility" means a hospital, nursing home, neuropsychiatric or mental health facility, home health agency, hospice, child care agency, group care facility, family foster home, clinic, blood bank, blood center, sperm bank, laboratory, or other social service or health care institution regulated or operated by the department of health.

(6) "HIV-related condition" means any medical condition resulting from infection with HIV including, but not limited to, seropositivity for HIV.

(7) "Human immunodeficiency virus" or "HIV" means all HIV and HIV-related viruses which damage the cellular branch of the human immune or neurological systems and leave the infected person immunodeficient or neurologically impaired.

(8) "Test for a sexually transmitted disease" means a test approved by the board by rule.

(9) "Legal guardian" means a person appointed by a court to assume legal authority for another who has been found incompetent or, in the case of a minor, a person who has legal custody of the child.

(10) "Local public health officer" means the officer directing the county health department or his or her designee who has been given the responsibility and authority to protect the health of the public within his or her jurisdiction.

(11) "Person" includes any natural person, partnership, association, joint venture, trust, public or private corporation, or health facility.

(12) "Release of test results" means a written authorization for disclosure of any sexually transmitted disease test result which is signed, dated, and which specifies to whom disclosure is authorized and the time period during which the release is to be effective.

(13) "Sexually transmitted disease" means a bacterial, viral, fungal, or parasitic disease, determined by the board by rule to be sexually transmitted, to be a threat to the public health and welfare, and to be a disease for which a legitimate

public interest will be served by providing for regulation and treatment. The board shall designate chancroid, gonorrhea, granuloma inguinale, lymphogranuloma venereum, genital herpes simplex, chlamydia, nongonococcal urethritis (NGU), trachomitis, genital human papilloma virus infection, syphilis, acquired immunodeficiency syndrome (AIDS), and human immunodeficiency virus (HIV) infection as sexually transmitted diseases, and shall consider the recommendations and classifications of the centers for disease control and other nationally recognized medical authorities in designating other diseases as sexually transmitted.

(14) "State public health officer" means the secretary of health or an officer appointed by the secretary. [2001 c 319 § 4; 1991 c 3 § 322; 1988 c 206 § 101.]

**70.24.022 Interviews, examination, counseling, or treatment of infected persons or persons believed to be infected—Dissemination of false information—Penalty.**

(1) The board shall adopt rules authorizing interviews and the state and local public health officers and their authorized representatives may interview, or cause to be interviewed, all persons infected with a sexually transmitted disease and all persons who, in accordance with standards adopted by the board by rule, are reasonably believed to be infected with such diseases for the purpose of investigating the source and spread of the diseases and for the purpose of ordering a person to submit to examination, counseling, or treatment as necessary for the protection of the public health and safety, subject to RCW 70.24.024.

(2) State and local public health officers or their authorized representatives shall investigate identified partners of persons infected with sexually transmitted diseases in accordance with procedures prescribed by the board.

(3) All information gathered in the course of contact investigation pursuant to this section shall be considered confidential.

(4) No person contacted under this section or reasonably believed to be infected with a sexually transmitted disease who reveals the name or names of sexual contacts during the course of an investigation shall be held liable in a civil action for such revelation, unless the revelation is made with a knowing or reckless disregard for the truth.

(5) Any person who knowingly or maliciously disseminates any false information or report concerning the existence of any sexually transmitted disease under this section is guilty of a gross misdemeanor punishable as provided under RCW 9A.20.021. [1988 c 206 § 906.]

**70.24.024 Orders for examinations and counseling—Restrictive measures—Investigation—Issuance of order—Confidential notice and hearing—Exception.**

(1) Subject to the provisions of this chapter, the state and local public health officers or their authorized representatives may examine and counsel or cause to be examined and counseled persons reasonably believed to be infected with or to have been exposed to a sexually transmitted disease.

(2) Orders or restrictive measures directed to persons with a sexually transmitted disease shall be used as the last resort when other measures to protect the public health have failed, including reasonable efforts, which shall be docu-

mented, to obtain the voluntary cooperation of the person who may be subject to such an order. The orders and measures shall be applied serially with the least intrusive measures used first. The burden of proof shall be on the state or local public health officer to show that specified grounds exist for the issuance of the orders or restrictive measures and that the terms and conditions imposed are no more restrictive than necessary to protect the public health.

(3) When the state or local public health officer within his or her respective jurisdiction knows or has reason to believe, because of direct medical knowledge or reliable testimony of others in a position to have direct knowledge of a person's behavior, that a person has a sexually transmitted disease and is engaging in specified conduct, as determined by the board by rule based upon generally accepted standards of medical and public health science, that endangers the public health, he or she shall conduct an investigation in accordance with procedures prescribed by the board to evaluate the specific facts alleged, if any, and the reliability and credibility of the person or persons providing such information and, if satisfied that the allegations are true, he or she may issue an order according to the following priority to:

(a) Order a person to submit to a medical examination or testing, seek counseling, or obtain medical treatment for curable diseases, or any combination of these, within a period of time determined by the public health officer, not to exceed fourteen days.

(b) Order a person to immediately cease and desist from specified conduct which endangers the health of others by imposing such restrictions upon the person as are necessary to prevent the specified conduct that endangers the health of others only if the public health officer has determined that clear and convincing evidence exists to believe that such person has been ordered to report for counseling as provided in (a) of this subsection and continues to demonstrate behavior which endangers the health of others. Any restriction shall be in writing, setting forth the name of the person to be restricted and the initial period of time, not to exceed three months, during which the order shall remain effective, the terms of the restrictions, and such other conditions as may be necessary to protect the public health. Restrictions shall be imposed in the least-restrictive manner necessary to protect the public health.

(4)(a) Upon the issuance of any order by the state or local public health officer or an authorized representative pursuant to subsection (3) of this section or RCW 70.24.340(4), such public health officer shall give written notice promptly, personally, and confidentially to the person who is the subject of the order stating the grounds and provisions of the order, including the factual bases therefor, the evidence relied upon for proof of infection and dangerous behavior, and the likelihood of repetition of such behaviors in the absence of such an order, and notifying the person who is the subject of the order that, if he or she contests the order, he or she may appear at a judicial hearing on the enforceability of the order, to be held in superior court. He or she may have an attorney appear on his or her behalf in the hearing at public expense, if necessary. The hearing shall be held within seventy-two hours of receipt of the notice, unless the person subject to the order agrees to comply. If the person contests the order, no invasive medical procedures shall be carried out prior to a hearing

being held pursuant to this subsection. If the person does not contest the order within seventy-two hours of receiving it, and the person does not comply with the order within the time period specified for compliance with the order, the state or local public health officer may request a warrant be issued by the superior court to insure appearance at the hearing. The hearing shall be within seventy-two hours of the expiration date of the time specified for compliance with the original order. The burden of proof shall be on the public health officer to show by clear and convincing evidence that the specified grounds exist for the issuance of the order and for the need for compliance and that the terms and conditions imposed therein are no more restrictive than necessary to protect the public health. Upon conclusion of the hearing, the court shall issue appropriate orders affirming, modifying, or dismissing the order.

(b) If the superior court dismisses the order of the public health officer, the fact that the order was issued shall be expunged from the records of the department or local department of health.

(5) Any hearing conducted pursuant to this section shall be closed and confidential unless a public hearing is requested by the person who is the subject of the order, in which case the hearing will be conducted in open court. Unless in open hearing, any transcripts or records relating thereto shall also be confidential and may be sealed by the order of the court. [1988 c 206 § 909.]

#### **70.24.034 Detention—Grounds—Order—Hearing.**

(1) When the procedures of RCW 70.24.024 have been exhausted and the state or local public health officer, within his or her respective jurisdiction, knows or has reason to believe, because of medical information, that a person has a sexually transmitted disease and that the person continues to engage in behaviors that present an imminent danger to the public health as defined by the board by rule based upon generally accepted standards of medical and public health science, the public health officer may bring an action in superior court to detain the person in a facility designated by the board for a period of time necessary to accomplish a program of counseling and education, excluding any coercive techniques or procedures, designed to get the person to adopt nondangerous behavior. In no case may the period exceed ninety days under each order. The board shall establish, by rule, standards for counseling and education under this subsection. The public health officer shall request the prosecuting attorney to file such action in superior court. During that period, reasonable efforts will be made in a noncoercive manner to get the person to adopt nondangerous behavior.

(2) If an action is filed as outlined in subsection (1) of this section, the superior court, upon the petition of the prosecuting attorney, shall issue other appropriate court orders including, but not limited to, an order to take the person into custody immediately, for a period not to exceed seventy-two hours, and place him or her in a facility designated or approved by the board. The person who is the subject of the order shall be given written notice of the order promptly, personally, and confidentially, stating the grounds and provisions of the order, including the factual bases therefor, the evidence relied upon for proof of infection and dangerous behavior, and the likelihood of repetition of such behaviors in

the absence of such an order, and notifying the person that if he or she refuses to comply with the order he or she may appear at a hearing to review the order and that he or she may have an attorney appear on his or her behalf in the hearing at public expense, if necessary. If the person contests testing or treatment, no invasive medical procedures shall be carried out prior to a hearing being held pursuant to subsection (3) of this section.

(3) The hearing shall be conducted no later than forty-eight hours after the receipt of the order. The person who is subject to the order has a right to be present at the hearing and may have an attorney appear on his or her behalf in the hearing, at public expense if necessary. If the order being contested includes detention for a period of fourteen days or longer, the person shall also have the right to a trial by jury upon request. Upon conclusion of the hearing or trial by jury, the court shall issue appropriate orders.

The court may continue the hearing upon the request of the person who is subject to the order for good cause shown for no more than five additional judicial days. If a trial by jury is requested, the court, upon motion, may continue the hearing for no more than ten additional judicial days. During the pendency of the continuance, the court may order that the person contesting the order remain in detention or may place terms and conditions upon the person which the court deems appropriate to protect public health.

(4) The burden of proof shall be on the state or local public health officer to show by clear and convincing evidence that grounds exist for the issuance of any court order pursuant to subsection (2) or (3) of this section. If the superior court dismisses the order, the fact that the order was issued shall be expunged from the records of the state or local department of health.

(5) Any hearing conducted by the superior court pursuant to subsection (2) or (3) of this section shall be closed and confidential unless a public hearing is requested by the person who is the subject of the order, in which case the hearing will be conducted in open court. Unless in open hearing, any transcripts or records relating thereto shall also be confidential and may be sealed by order of the court.

(6) Any order entered by the superior court pursuant to subsection (1) or (2) of this section shall impose terms and conditions no more restrictive than necessary to protect the public health. [1988 c 206 § 910.]

#### **70.24.050 Diagnosis of sexually transmitted diseases—Confirmation—Anonymous prevalence reports.**

Diagnosis of a sexually transmitted disease in every instance must be confirmed by laboratory tests or examinations in a laboratory approved or conducted in accordance with procedures and such other requirements as may be established by the board. Laboratories testing for HIV shall report anonymous HIV prevalence results to the department, for health statistics purposes, in a manner established by the board. [1988 c 206 § 907; 1919 c 114 § 6; RRS § 6105.]

**70.24.070 Detention and treatment facilities.** For the purpose of carrying out this chapter, the board shall have the power and authority to designate facilities for the detention and treatment of persons found to be infected with a sexually

transmitted disease and to designate any such facility in any hospital or other public or private institution, other than a jail or correctional facility, having, or which may be provided with, such necessary detention, segregation, isolation, clinic and hospital facilities as may be required and prescribed by the board, and to enter into arrangements for the conduct of such facilities with the public officials or persons, associations, or corporations in charge of or maintaining and operating such institutions. [1988 c 206 § 908; 1919 c 114 § 8; RRS § 6107.]

**70.24.080 Penalty.** Any person who shall violate any of the provisions of this chapter or any lawful rule adopted by the board pursuant to the authority herein granted, or who shall fail or refuse to obey any lawful order issued by any state, county or municipal public health officer, pursuant to the authority granted in this chapter, shall be deemed guilty of a gross misdemeanor punishable as provided under RCW 9A.20.021. [1988 c 206 § 911; 1919 c 114 § 5; RRS § 6104.]

**70.24.084 Violations of chapter—Aggrieved persons—Right of action.** (1) Any person aggrieved by a violation of this chapter shall have a right of action in superior court and may recover for each violation:

(a) Against any person who negligently violates a provision of this chapter, one thousand dollars, or actual damages, whichever is greater, for each violation.

(b) Against any person who intentionally or recklessly violates a provision of this chapter, ten thousand dollars, or actual damages, whichever is greater, for each violation.

(c) Reasonable attorneys' fees and costs.

(d) Such other relief, including an injunction, as the court may deem appropriate.

(2) Any action under this chapter is barred unless the action is commenced within three years after the cause of action accrues.

(3) Nothing in this chapter limits the rights of the subject of a test for a sexually transmitted disease to recover damages or other relief under any other applicable law.

(4) Nothing in this chapter may be construed to impose civil liability or criminal sanction for disclosure of a test result for a sexually transmitted disease in accordance with any reporting requirement for a diagnosed case of sexually transmitted disease by the department or the centers for disease control of the United States public health service.

(5) It is a negligent violation of this chapter to cause an unauthorized communication of confidential sexually transmitted disease information by facsimile transmission or otherwise communicating the information to an unauthorized recipient when the sender knew or had reason to know the facsimile transmission telephone number or other transmittal information was incorrect or outdated. [2001 c 16 § 1; 1999 c 391 § 4; 1988 c 206 § 914.]

**Findings—Purpose—1999 c 391:** See note following RCW 70.05.180.

**70.24.090 Pregnant women—Test for syphilis.** Every physician attending a pregnant woman in the state of Washington during gestation shall, in the case of each woman so attended, take or cause to be taken a sample of blood of such

woman at the time of first examination, and submit such sample to an approved laboratory for a standard serological test for syphilis. If the pregnant woman first presents herself for examination after the fifth month of gestation the physician or other attendant shall in addition to the above, advise and urge the patient to secure a medical examination and blood test before the fifth month of any subsequent pregnancies. [1939 c 165 § 1; RRS § 6002-1.]

**70.24.095 Pregnant women—Drug treatment program participants—AIDS counseling.** (1) Every health care practitioner attending a pregnant woman or a person seeking treatment of a sexually transmitted disease shall insure that AIDS counseling of the patient is conducted.

(2) AIDS counseling shall be provided to each person in a drug treatment program under \*chapter 69.54 RCW. [1988 c 206 § 705.]

\*Reviser's note: Chapter 69.54 RCW was repealed by 1989 c 270 § 35.

**70.24.100 Syphilis laboratory tests.** A standard serological test shall be a laboratory test for syphilis approved by the secretary of health and shall be performed either by a laboratory approved by the secretary of health for the performance of the particular serological test used or by the state department of health, on request of the physician free of charge. [1991 c 3 § 323; 1979 c 141 § 95; 1939 c 165 § 2; RRS § 6002-2.]

**70.24.105 Disclosure of HIV antibody test or testing or treatment of sexually transmitted diseases—Exchange of medical information.** (1) No person may disclose or be compelled to disclose the identity of any person who has investigated, considered, or requested a test or treatment for a sexually transmitted disease, except as authorized by this chapter.

(2) No person may disclose or be compelled to disclose the identity of any person upon whom an HIV antibody test is performed, or the results of such a test, nor may the result of a test for any other sexually transmitted disease when it is positive be disclosed. This protection against disclosure of test subject, diagnosis, or treatment also applies to any information relating to diagnosis of or treatment for HIV infection and for any other confirmed sexually transmitted disease. The following persons, however, may receive such information:

(a) The subject of the test or the subject's legal representative for health care decisions in accordance with RCW 7.70.065, with the exception of such a representative of a minor child over fourteen years of age and otherwise competent;

(b) Any person who secures a specific release of test results or information relating to HIV or confirmed diagnosis of or treatment for any other sexually transmitted disease executed by the subject or the subject's legal representative for health care decisions in accordance with RCW 7.70.065, with the exception of such a representative of a minor child over fourteen years of age and otherwise competent;

(c) The state public health officer, a local public health officer, or the centers for disease control of the United States public health service in accordance with reporting requirements for a diagnosed case of a sexually transmitted disease;

(d) A health facility or health care provider that procures, processes, distributes, or uses: (i) A human body part, tissue, or blood from a deceased person with respect to medical information regarding that person; (ii) semen, including that provided prior to March 23, 1988, for the purpose of artificial insemination; or (iii) blood specimens;

(e) Any state or local public health officer conducting an investigation pursuant to RCW 70.24.024, provided that such record was obtained by means of court ordered HIV testing pursuant to RCW 70.24.340 or 70.24.024;

(f) A person allowed access to the record by a court order granted after application showing good cause therefor. In assessing good cause, the court shall weigh the public interest and the need for disclosure against the injury to the patient, to the physician-patient relationship, and to the treatment services. Upon the granting of the order, the court, in determining the extent to which any disclosure of all or any part of the record of any such test is necessary, shall impose appropriate safeguards against unauthorized disclosure. An order authorizing disclosure shall: (i) Limit disclosure to those parts of the patient's record deemed essential to fulfill the objective for which the order was granted; (ii) limit disclosure to those persons whose need for information is the basis for the order; and (iii) include any other appropriate measures to keep disclosure to a minimum for the protection of the patient, the physician-patient relationship, and the treatment services, including but not limited to the written statement set forth in subsection (5) of this section;

(g) \*Local law enforcement agencies to the extent provided in RCW 70.24.034;

(h) Persons who, because of their behavioral interaction with the infected individual, have been placed at risk for acquisition of a sexually transmitted disease, as provided in RCW 70.24.022, if the health officer or authorized representative believes that the exposed person was unaware that a risk of disease exposure existed and that the disclosure of the identity of the infected person is necessary;

(i) A law enforcement officer, firefighter, health care provider, health care facility staff person, department of correction's staff person, jail staff person, or other persons as defined by the board in rule pursuant to RCW 70.24.340(4), who has requested a test of a person whose bodily fluids he or she has been substantially exposed to, pursuant to RCW 70.24.340(4), if a state or local public health officer performs the test;

(j) Claims management personnel employed by or associated with an insurer, health care service contractor, health maintenance organization, self-funded health plan, state-administered health care claims payer, or any other payer of health care claims where such disclosure is to be used solely for the prompt and accurate evaluation and payment of medical or related claims. Information released under this subsection shall be confidential and shall not be released or available to persons who are not involved in handling or determining medical claims payment; and

(k) A department of social and health services worker, a child placing agency worker, or a guardian ad litem who is responsible for making or reviewing placement or case-planning decisions or recommendations to the court regarding a child, who is less than fourteen years of age, has a sexually transmitted disease, and is in the custody of the department of

social and health services or a licensed child placing agency; this information may also be received by a person responsible for providing residential care for such a child when the department of social and health services or a licensed child placing agency determines that it is necessary for the provision of child care services.

(3) No person to whom the results of a test for a sexually transmitted disease have been disclosed pursuant to subsection (2) of this section may disclose the test results to another person except as authorized by that subsection.

(4) The release of sexually transmitted disease information regarding an offender or detained person, except as provided in subsection (2)(e) of this section, shall be governed as follows:

(a) The sexually transmitted disease status of a department of corrections offender who has had a mandatory test conducted pursuant to RCW 70.24.340(1), 70.24.360, or 70.24.370 shall be made available by department of corrections health care providers and local public health officers to the department of corrections health care administrator or infection control coordinator of the facility in which the offender is housed. The information made available to the health care administrator or the infection control coordinator under this subsection (4)(a) shall be used only for disease prevention or control and for protection of the safety and security of the staff, offenders, and the public. The information may be submitted to transporting officers and receiving facilities, including facilities that are not under the department of corrections' jurisdiction according to the provisions of (d) and (e) of this subsection.

(b) The sexually transmitted disease status of a person detained in a jail who has had a mandatory test conducted pursuant to RCW 70.24.340(1), 70.24.360, or 70.24.370 shall be made available by the local public health officer to a jail health care administrator or infection control coordinator. The information made available to a health care administrator under this subsection (4)(b) shall be used only for disease prevention or control and for protection of the safety and security of the staff, offenders, detainees, and the public. The information may be submitted to transporting officers and receiving facilities according to the provisions of (d) and (e) of this subsection.

(c) Information regarding the sexually transmitted disease status of an offender or detained person is confidential and may be disclosed by a correctional health care administrator or infection control coordinator or local jail health care administrator or infection control coordinator only as necessary for disease prevention or control and for protection of the safety and security of the staff, offenders, and the public. Unauthorized disclosure of this information to any person may result in disciplinary action, in addition to the penalties prescribed in RCW 70.24.080 or any other penalties as may be prescribed by law.

(d) Notwithstanding the limitations on disclosure contained in (a), (b), and (c) of this subsection, whenever any member of a jail staff or department of corrections staff has been substantially exposed to the bodily fluids of an offender or detained person, then the results of any tests conducted pursuant to RCW 70.24.340(1), 70.24.360, or 70.24.370, shall be immediately disclosed to the staff person in accordance with the Washington Administrative Code rules gov-

erning employees' occupational exposure to bloodborne pathogens. Disclosure must be accompanied by appropriate counseling for the staff member, including information regarding follow-up testing and treatment. Disclosure shall also include notice that subsequent disclosure of the information in violation of this chapter or use of the information to harass or discriminate against the offender or detainee may result in disciplinary action, in addition to the penalties prescribed in RCW 70.24.080, and imposition of other penalties prescribed by law.

(e) The staff member shall also be informed whether the offender or detained person had any other communicable disease, as defined in RCW 72.09.251(3), when the staff person was substantially exposed to the offender's or detainee's bodily fluids.

(f) The test results of voluntary and anonymous HIV testing or HIV-related condition may not be disclosed to a staff person except as provided in subsection (2)(i) of this section and RCW 70.24.340(4). A health care administrator or infection control coordinator may provide the staff member with information about how to obtain the offender's or detainee's test results under subsection (2)(i) of this section and RCW 70.24.340(4).

(5) Whenever disclosure is made pursuant to this section, except for subsections (2)(a) and (6) of this section, it shall be accompanied by a statement in writing which includes the following or substantially similar language: "This information has been disclosed to you from records whose confidentiality is protected by state law. State law prohibits you from making any further disclosure of it without the specific written consent of the person to whom it pertains, or as otherwise permitted by state law. A general authorization for the release of medical or other information is NOT sufficient for this purpose." An oral disclosure shall be accompanied or followed by such a notice within ten days.

(6) The requirements of this section shall not apply to the customary methods utilized for the exchange of medical information among health care providers in order to provide health care services to the patient, nor shall they apply within health care facilities where there is a need for access to confidential medical information to fulfill professional duties.

(7) Upon request of the victim, disclosure of test results under this section to victims of sexual offenses under chapter 9A.44 RCW shall be made if the result is negative or positive. The county prosecuting attorney shall notify the victim of the right to such disclosure. Such disclosure shall be accompanied by appropriate counseling, including information regarding follow-up testing. [1997 c 345 § 2; 1997 c 196 § 6; 1994 c 72 § 1; 1989 c 123 § 1; 1988 c 206 § 904.]

**Reviser's note:** \*(1) The governor vetoed 1997 c 196 § 5, the amendment directing disclosure to local law enforcement agencies.

(2) This section was amended by 1997 c 196 § 6 and by 1997 c 345 § 2, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

**Findings—Intent—1997 c 345:** "(1) The legislature finds that department of corrections staff and jail staff perform essential public functions that are vital to our communities. The health and safety of these workers is often placed in jeopardy while they perform the responsibilities of their jobs. Therefore, the legislature intends that the results of any HIV tests conducted on an offender or detainee pursuant to RCW 70.24.340(1), 70.24.360, or 70.24.370 shall be disclosed to the health care administrator or infection control coordinator of the department of corrections facility or the local jail that

houses the offender or detainee. The legislature intends that these test results also be disclosed to any corrections or jail staff who have been substantially exposed to the bodily fluids of the offender or detainee when the disclosure is provided by a licensed health care provider in accordance with Washington Administrative Code rules governing employees' occupational exposure to bloodborne pathogens.

(2) The legislature further finds that, through the efforts of health care professionals and corrections staff, offenders in department of corrections facilities and people detained in local jails are being encouraged to take responsibility for their health by requesting voluntary and anonymous pretest counseling, HIV testing, posttest counseling, and AIDS counseling. The legislature does not intend, through chapter 345, Laws of 1997, to mandate disclosure of the results of voluntary and anonymous tests. The legislature intends to continue to protect the confidential exchange of medical information related to voluntary and anonymous pretest counseling, HIV testing, posttest counseling, and AIDS counseling as provided by chapter 70.24 RCW." [1997 c 345 § 1.]

**70.24.107 Rule-making authority—1997 c 345.** The department of health and the department of corrections shall each adopt rules to implement chapter 345, Laws of 1997. The department of health and the department of corrections shall cooperate with local jail administrators to obtain the information from local jail administrators that is necessary to comply with this section. [1999 c 372 § 14; 1997 c 345 § 6.]

**Findings—Intent—1997 c 345:** See note following RCW 70.24.105.

**70.24.110 Minors—Treatment, consent, liability for payment for care.** A minor fourteen years of age or older who may have come in contact with any sexually transmitted disease or suspected sexually transmitted disease may give consent to the furnishing of hospital, medical and surgical care related to the diagnosis or treatment of such disease. Such consent shall not be subject to disaffirmance because of minority. The consent of the parent, parents, or legal guardian of such minor shall not be necessary to authorize hospital, medical and surgical care related to such disease and such parent, parents, or legal guardian shall not be liable for payment for any care rendered pursuant to this section. [1988 c 206 § 912; 1969 ex.s. c 164 § 1.]

**70.24.120 Sexually transmitted disease case investigators—Authority to withdraw blood.** Sexually transmitted disease case investigators, upon specific authorization from a physician, are hereby authorized to perform venipuncture or skin puncture on a person for the sole purpose of withdrawing blood for use in sexually transmitted disease tests.

The term "sexually transmitted disease case investigator" shall mean only those persons who:

- (1) Are employed by public health authorities; and
- (2) Have been trained by a physician in proper procedures to be employed when withdrawing blood in accordance with training requirements established by the department of health; and
- (3) Possess a statement signed by the instructing physician that the training required by subsection (2) of this section has been successfully completed.

The term "physician" means any person licensed under the provisions of chapters 18.57 or 18.71 RCW. [1991 c 3 § 324; 1988 c 206 § 913; 1977 c 59 § 1.]

**70.24.125 Reporting requirements for sexually transmitted diseases—Rules.** The board shall establish reporting requirements for sexually transmitted diseases by rule.

Reporting under this section may be required for such sexually transmitted diseases included under this chapter as the board finds appropriate. [1988 c 206 § 905.]

**70.24.130 Adoption of rules.** The board shall adopt such rules as are necessary to implement and enforce this chapter. Rules may also be adopted by the department of health for the purposes of this chapter. The rules may include procedures for taking appropriate action, in addition to any other penalty under this chapter, with regard to health care facilities or health care providers which violate this chapter or the rules adopted under this chapter. The rules shall prescribe stringent safeguards to protect the confidentiality of the persons and records subject to this chapter. The procedures set forth in chapter 34.05 RCW apply to the administration of this chapter, except that in case of conflict between chapter 34.05 RCW and this chapter, the provisions of this chapter shall control. [1991 c 3 § 325; 1988 c 206 § 915.]

**70.24.140 Certain infected persons—Sexual intercourse unlawful without notification.** It is unlawful for any person who has a sexually transmitted disease, except HIV infection, when such person knows he or she is infected with such a disease and when such person has been informed that he or she may communicate the disease to another person through sexual intercourse, to have sexual intercourse with any other person, unless such other person has been informed of the presence of the sexually transmitted disease. [1988 c 206 § 917.]

*Criminal sanctions: RCW 9A.36.021.*

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**70.24.150 Immunity of certain public employees.** Members of the state board of health and local boards of health, public health officers, and employees of the department of health and local health departments are immune from civil action for damages arising out of the good faith performance of their duties as prescribed by this chapter, unless such performance constitutes gross negligence. [1991 c 3 § 326; 1988 c 206 § 918.]

**70.24.200 Information for the general public on sexually transmitted diseases—Emphasis.** Information directed to the general public and providing education regarding any sexually transmitted disease that is written, published, distributed, or used by any public entity, and all such information paid for, in whole or in part, with any public moneys shall give emphasis to the importance of sexual abstinence, sexual fidelity, and avoidance of substance abuse in controlling disease. [1988 c 206 § 201.]

**70.24.210 Information for children on sexually transmitted diseases—Emphasis.** All material directed to children in grades kindergarten through twelve and providing education regarding any sexually transmitted disease that is written, published, distributed, or used by any public entity, and all such information paid for, in whole or in part, with any public moneys shall give emphasis to the importance of sexual abstinence outside lawful marriage and avoidance of substance abuse in controlling disease. [1988 c 206 § 202.]

(2010 Ed.)

*Common school curriculum: RCW 28A.230.020.*

**70.24.220 AIDS education in public schools—Finding.** The legislature finds that the public schools provide a unique and appropriate setting for educating young people about the pathology and prevention of acquired immunodeficiency syndrome (AIDS). The legislature recognizes that schools and communities vary throughout the state and that locally elected school directors should have a significant role in establishing a program of AIDS education in their districts. [1988 c 206 § 401.]

**70.24.240 Clearinghouse for AIDS educational materials.** The number of acquired immunodeficiency syndrome (AIDS) cases in the state may reach five thousand by 1991. This makes it necessary to provide our state's workforce with the resources and knowledge to deal with the epidemic. To ensure that accurate information is available to the state's workforce, a clearinghouse for all technically correct educational materials related to AIDS should be created. [1988 c 206 § 601.]

**70.24.250 Office on AIDS—Repository and clearinghouse for AIDS education and training material—University of Washington duties.** There is established in the department an office on AIDS. If a department of health is created, the office on AIDS shall be transferred to the department of health, and its chief shall report directly to the secretary of health. The office on AIDS shall have as its chief a physician licensed under chapter 18.57 or 18.71 RCW or a person experienced in public health who shall report directly to the assistant secretary for health. This office shall be the repository and clearinghouse for all education and training material related to the treatment, transmission, and prevention of AIDS. The office on AIDS shall have the responsibility for coordinating all publicly funded education and service activities related to AIDS. The University of Washington shall provide the office on AIDS with appropriate training and educational materials necessary to carry out its duties. The office on AIDS shall assist state agencies with information necessary to carry out the purposes of this chapter. The department shall work with state and county agencies and specific employee and professional groups to provide information appropriate to their needs, and shall make educational materials available to private employers and encourage them to distribute this information to their employees. [1988 c 206 § 602.]

**70.24.260 Emergency medical personnel—Rules for AIDS education and training.** The department shall adopt rules that recommend appropriate education and training for licensed and certified emergency medical personnel under chapter 18.73 RCW on the prevention, transmission, and treatment of AIDS. The department shall require appropriate education or training as a condition of certification or license issuance or renewal. [1988 c 206 § 603.]

**70.24.270 Health professionals—Rules for AIDS education and training.** Each disciplining authority under chapter 18.130 RCW shall adopt rules that require appropri-

ate education and training for licensees on the prevention, transmission, and treatment of AIDS. The disciplining authorities shall work with the office on AIDS under RCW 70.24.250 to develop the training and educational material necessary for health professionals. [1988 c 206 § 604.]

**70.24.280 Board of pharmacy—Rules for AIDS education and training.** The state board of pharmacy shall adopt rules that require appropriate education and training for licensees on the prevention, transmission, and treatment of AIDS. The board shall work with the office on AIDS under RCW 70.24.250 to develop the training and educational material necessary for health professionals. [1988 c 206 § 605.]

**70.24.290 Public school employees—Rules for AIDS education and training.** The superintendent of public instruction shall adopt rules that require appropriate education and training, to be included as part of their present continuing education requirements, for public school employees on the prevention, transmission, and treatment of AIDS. The superintendent of public instruction shall work with the office on AIDS under RCW 70.24.250 to develop the educational and training material necessary for school employees. [1988 c 206 § 606.]

**70.24.300 State and local government employees—Determination of substantial likelihood of exposure—Rules for AIDS education and training.** The Washington personnel resources board and each unit of local government shall determine whether any employees under their jurisdiction have a substantial likelihood of exposure in the course of their employment to the human immunodeficiency virus. If so, the agency or unit of government shall adopt rules requiring appropriate training and education for the employees on the prevention, transmission, and treatment of AIDS. The rules shall specifically provide for such training and education for law enforcement, correctional, and health care workers. The Washington personnel resources board and each unit of local government shall work with the office on AIDS under RCW 70.24.250 to develop the educational and training material necessary for employees. [1993 c 281 § 60; 1988 c 206 § 607.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**70.24.310 Health care facility employees—Rules for AIDS education and training.** The department shall adopt rules requiring appropriate education and training of employees of state licensed or certified health care facilities. The education and training shall be on the prevention, transmission, and treatment of AIDS and shall not be required for employees who are covered by comparable rules adopted under other sections of this chapter. In adopting rules under this section, the department shall consider infection control standards and educational materials available from appropriate professional associations and professionally prepared publications. [1988 c 206 § 608.]

**70.24.320 Counseling and testing—AIDS and HIV—Definitions.** Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Pretest counseling" means counseling aimed at helping the individual understand ways to reduce the risk of HIV infection, the nature and purpose of the tests, the significance of the results, and the potential dangers of the disease, and to assess the individual's ability to cope with the results.

(2) "Posttest counseling" means further counseling following testing usually directed toward increasing the individual's understanding of the human immunodeficiency virus infection, changing the individual's behavior, and, if necessary, encouraging the individual to notify persons with whom there has been contact capable of spreading HIV.

(3) "AIDS counseling" means counseling directed toward increasing the individual's understanding of acquired immunodeficiency syndrome and changing the individual's behavior.

(4) "HIV testing" means a test indicative of infection with the human immunodeficiency virus as specified by the board of health by rule. [1988 c 206 § 701.]

**70.24.325 Counseling and testing—Insurance requirements.** (1) This section shall apply to counseling and consent for HIV testing administered as part of an application for coverage authorized under Title 48 RCW.

(2) Persons subject to regulation under Title 48 RCW who are requesting an insured, a subscriber, or a potential insured or subscriber to furnish the results of an HIV test for underwriting purposes as a condition for obtaining or renewing coverage under an insurance contract, health care service contract, or health maintenance organization agreement shall:

(a) Provide written information to the individual prior to being tested which explains:

(i) What an HIV test is;

(ii) Behaviors that place a person at risk for HIV infection;

(iii) That the purpose of HIV testing in this setting is to determine eligibility for coverage;

(iv) The potential risks of HIV testing; and

(v) Where to obtain HIV pretest counseling.

(b) Obtain informed specific written consent for an HIV test. The written informed consent shall include:

(i) An explanation of the confidential treatment of the test results which limits access to the results to persons involved in handling or determining applications for coverage or claims of the applicant or claimant and to those persons designated under (c)(iii) of this subsection; and

(ii) Requirements under (c)(iii) of this subsection.

(c) Establish procedures to inform an applicant of the following:

(i) That post-test counseling, as specified under WAC 248-100-209(4), is required if an HIV test is positive or indeterminate;

(ii) That post-test counseling occurs at the time a positive or indeterminate HIV test result is given to the tested individual;

(iii) That the applicant may designate a health care provider or health care agency to whom the insurer, the health care service contractor, or health maintenance organization will provide positive or indeterminate test results for interpre-

tation and post-test counseling. When an applicant does not identify a designated health care provider or health care agency and the applicant's test results are either positive or indeterminate, the insurer, the health care service contractor, or health maintenance organization shall provide the test results to the local health department for interpretation and post-test counseling; and

(iv) That positive or indeterminate HIV test results shall not be sent directly to the applicant. [1989 c 387 § 1.]

**70.24.330 HIV testing—Consent, exceptions.** No person may undergo HIV testing without the person's consent except:

(1) Pursuant to RCW 7.70.065 for incompetent persons;

(2) In seroprevalence studies where neither the persons whose blood is being tested know the test results nor the persons conducting the tests know who is undergoing testing;

(3) If the department of labor and industries determines that it is relevant, in which case payments made under Title 51 RCW may be conditioned on the taking of an HIV antibody test; or

(4) As otherwise expressly authorized by this chapter. [1988 c 206 § 702.]

**70.24.340 Convicted persons—Mandatory testing and counseling for certain offenses—Employees' substantial exposure to bodily fluids—Procedure and court orders.** (1) Local health departments authorized under this chapter shall conduct or cause to be conducted pretest counseling, HIV testing, and posttest counseling of all persons:

(a) Convicted of a sexual offense under chapter 9A.44 RCW;

(b) Convicted of prostitution or offenses relating to prostitution under chapter 9A.88 RCW; or

(c) Convicted of drug offenses under chapter 69.50 RCW if the court determines at the time of conviction that the related drug offense is one associated with the use of hypodermic needles.

(2) Such testing shall be conducted as soon as possible after sentencing and shall be so ordered by the sentencing judge.

(3) This section applies only to offenses committed after March 23, 1988.

(4) A law enforcement officer, firefighter, health care provider, health care facility staff person, department of corrections' staff person, jail staff person, or other categories of employment determined by the board in rule to be at risk of substantial exposure to HIV, who has experienced a substantial exposure to another person's bodily fluids in the course of his or her employment, may request a state or local public health officer to order pretest counseling, HIV testing, and posttest counseling for the person whose bodily fluids he or she has been exposed to. If the state or local public health officer refuses to order counseling and testing under this subsection, the person who made the request may petition the superior court for a hearing to determine whether an order shall be issued. The hearing on the petition shall be held within seventy-two hours of filing the petition, exclusive of Saturdays, Sundays, and holidays. The standard of review to determine whether the public health officer shall be required

to issue the order is whether substantial exposure occurred and whether that exposure presents a possible risk of transmission of the HIV virus as defined by the board by rule. Upon conclusion of the hearing, the court shall issue the appropriate order.

The person who is subject to the state or local public health officer's order to receive counseling and testing shall be given written notice of the order promptly, personally, and confidentially, stating the grounds and provisions of the order, including the factual basis therefor. If the person who is subject to the order refuses to comply, the state or local public health officer may petition the superior court for a hearing. The hearing on the petition shall be held within seventy-two hours of filing the petition, exclusive of Saturdays, Sundays, and holidays. The standard of review for the order is whether substantial exposure occurred and whether that exposure presents a possible risk of transmission of the HIV virus as defined by the board by rule. Upon conclusion of the hearing, the court shall issue the appropriate order.

The state or local public health officer shall perform counseling and testing under this subsection if he or she finds that the exposure was substantial and presents a possible risk as defined by the board of health by rule or if he or she is ordered to do so by a court.

The counseling and testing required under this subsection shall be completed as soon as possible after the substantial exposure or after an order is issued by a court, but shall begin not later than seventy-two hours after the substantial exposure or an order is issued by the court. [1997 c 345 § 3; 1988 c 206 § 703.]

**Findings—Intent—1997 c 345:** See note following RCW 70.24.105.

**70.24.350 Prostitution and drug offenses—Voluntary testing and counseling.** Local health departments, in cooperation with the regional AIDS services networks, shall make available voluntary testing and counseling services to all persons arrested for prostitution offenses under chapter 9A.88 RCW and drug offenses under chapter 69.50 RCW. Services shall include educational materials that outline the seriousness of AIDS and encourage voluntary participation. [1988 c 206 § 704.]

**70.24.360 Jail detainees—Testing and counseling of persons who present a possible risk.** Jail administrators, with the approval of the local public health officer, may order pretest counseling, HIV testing, and posttest counseling for persons detained in the jail if the local public health officer determines that actual or threatened behavior presents a possible risk to the staff, general public, or other persons. Approval of the local public health officer shall be based on RCW 70.24.024(3) and may be contested through RCW 70.24.024(4). The administrator shall establish, pursuant to RCW 70.48.071, a procedure to document the possible risk which is the basis for the HIV testing. "Possible risk," as used in this section, shall be defined by the board in rule. Documentation of the behavior, or threat thereof, shall be reviewed with the person to try to assure that the person understands the basis for testing. [1988 c 206 § 706.]

**70.24.370 Correction facility inmates—Counseling and testing of persons who present a possible risk—Training for administrators and superintendents—Procedure.** (1) Department of corrections facility administrators may order pretest counseling, HIV testing, and posttest counseling for inmates if the secretary of corrections or the secretary's designee determines that actual or threatened behavior presents a possible risk to the staff, general public, or other inmates. The department of corrections shall establish a procedure to document the possible risk which is the basis for the HIV testing. "Possible risk," as used in this section, shall be defined by the department of corrections after consultation with the board. Possible risk, as used in the documentation of the behavior, or threat thereof, shall be reviewed with the inmate.

(2) Department of corrections administrators and superintendents who are authorized to make decisions about testing and dissemination of test information shall, at least annually, participate in training seminars on public health considerations conducted by the assistant secretary for public health or her or his designee.

(3) Administrative hearing requirements set forth in chapter 34.05 RCW do not apply to the procedure developed by the department of corrections pursuant to this section. This section shall not be construed as requiring any hearing process except as may be required under existing federal constitutional law.

(4) RCW 70.24.340 does not apply to the department of corrections or to inmates in its custody or subject to its jurisdiction. [1988 c 206 § 707.]

**70.24.380 Board of health—Rules for counseling and testing.** The board of health shall adopt rules establishing minimum standards for pretest counseling, HIV testing, posttest counseling, and AIDS counseling. [1988 c 206 § 709.]

**70.24.400 Department to establish regional AIDS service networks—Funding—Lead counties—Regional plans—University of Washington, center for AIDS education.** (*Effective until January 1, 2011.*) The department shall establish a statewide system of regional acquired immunodeficiency syndrome (AIDS) service networks as follows:

(1) The secretary of health shall direct that all state or federal funds, excluding those from federal Title XIX for services or other activities authorized in this chapter, shall be allocated to the office on AIDS established in RCW 70.24.250. The secretary shall further direct that all funds for services and activities specified in subsection (3) of this section shall be provided to lead counties through contractual agreements based on plans developed as provided in subsection (2) of this section, unless direction of such funds is explicitly prohibited by federal law, federal regulation, or federal policy. The department shall deny funding allocations to lead counties only if the denial is based upon documented incidents of nonfeasance, misfeasance, or malfeasance. However, the department shall give written notice and thirty days for corrective action in incidents of misfeasance or nonfeasance before funding may be denied. The department shall designate six AIDS service network regions encompassing the state. In doing so, the department shall use the boundaries

of the regional structures in place for the community services administration on January 1, 1988.

(2) The department shall request that a lead county within each region, which shall be the county with the largest population, prepare, through a cooperative effort of local health departments within the region, a regional organizational and service plan, which meets the requirements set forth in subsection (3) of this section. Efforts should be made to use existing plans, where appropriate. The plan should place emphasis on contracting with existing hospitals, major voluntary organizations, or health care organizations within a region that have in the past provided quality services similar to those mentioned in subsection (3) of this section and that have demonstrated an interest in providing any of the components listed in subsection (3) of this section. If any of the counties within a region do not participate, it shall be the lead county's responsibility to develop the part of the plan for the nonparticipating county or counties. If all of the counties within a region do not participate, the department shall assume the responsibility.

(3) The regional AIDS service network plan shall include the following components:

(a) A designated single administrative or coordinating agency;

(b) A complement of services to include:

(i) Voluntary and anonymous counseling and testing;

(ii) Mandatory testing and/or counseling services for certain individuals, as required by law;

(iii) Notification of sexual partners of infected persons, as required by law;

(iv) Education for the general public, health professionals, and high-risk groups;

(v) Intervention strategies to reduce the incidence of HIV infection among high-risk groups, possibly including needle sterilization and methadone maintenance;

(vi) Related community outreach services for runaway youth;

(vii) Case management;

(viii) Strategies for the development of volunteer networks;

(ix) Strategies for the coordination of related agencies within the network; and

(x) Other necessary information, including needs particular to the region;

(c) A service delivery model that includes:

(i) Case management services; and

(ii) A community-based continuum-of-care model encompassing both medical, mental health, and social services with the goal of maintaining persons with AIDS in a home-like setting, to the extent possible, in the least-expensive manner; and

(d) Budget, caseload, and staffing projections.

(4) Efforts shall be made by both the counties and the department to use existing service delivery systems, where possible, in developing the networks.

(5) The University of Washington health science program, in cooperation with the office on AIDS may, within available resources, establish a center for AIDS education, which shall be linked to the networks. The center for AIDS education is not intended to engage in state-funded research related to HIV infection, AIDS, or HIV-related conditions. Its

duties shall include providing the office on AIDS with the appropriate educational materials necessary to carry out that office's duties.

(6) The department shall implement this section, consistent with available funds, by October 1, 1988, by establishing six regional AIDS service networks whose combined jurisdictions shall include the entire state.

(a) Until June 30, 1991, available funding for each regional AIDS service network shall be allocated as follows:

(i) Seventy-five percent of the amount provided for regional AIDS service networks shall be allocated per capita based on the number of persons residing within each region, but in no case less than one hundred fifty thousand dollars for each regional AIDS service network per fiscal year. This amount shall be expended for testing, counseling, education, case management, notification of sexual partners of infected persons, planning, coordination, and other services required by law, except for those enumerated in (a)(ii) of this subsection.

(ii) Twenty-five percent of the amount provided for regional AIDS service networks shall be allocated for intervention strategies specifically addressing groups that are at a high risk of being infected with the human immunodeficiency virus. The allocation shall be made by the office on AIDS based on documented need as specified in regional AIDS network plans.

(b) After June 30, 1991, the funding shall be allocated as provided by law.

(7) The regional AIDS service networks shall be the official state regional agencies for AIDS information education and coordination of services. The state public health officer, as designated by the secretary of health, shall make adequate efforts to publicize the existence and functions of the networks.

(8) If the department is not able to establish a network by an agreement solely with counties, it may contract with non-profit agencies for any or all of the designated network responsibilities.

(9) The department, in establishing the networks, shall study mechanisms that could lead to reduced costs and/or increased access to services. The methods shall include capitation.

(10) The department shall reflect in its departmental biennial budget request the funds necessary to implement this section.

(11) The use of appropriate materials may be authorized by regional AIDS service networks in the prevention or control of HIV infection. [1998 c 245 § 126; 1991 c 3 § 327; 1988 c 206 § 801.]

**70.24.400 Funding for office on AIDS—Center for AIDS education—Department's duties for awarding grants.** (*Effective January 1, 2011.*) (1) The secretary of health shall direct that all state or federal funds, excluding those from federal Title XIX for services or other activities authorized in this chapter, shall be allocated to the office on AIDS established in RCW 70.24.250. The secretary shall further direct that all funds for services and activities specified in subsection (4) of this section shall be provided by the department directly to public and private providers in the communities.

(2) Efforts shall be made by both the counties and the department to use existing service delivery systems, where possible.

(3) The University of Washington health science program, in cooperation with the office on AIDS, may, within available resources, establish a center for AIDS education. The center for AIDS education is not intended to engage in state-funded research related to HIV infection, AIDS, or HIV-related conditions. Its duties shall include providing the office on AIDS with the appropriate educational materials necessary to carry out that office's duties.

(4) The department shall develop standards and criteria for awarding grants to support testing, counseling, education, case management, notification of sexual partners of infected persons, planning, coordination, and other services required by law. In addition, funds shall be allocated for intervention strategies specifically addressing groups that are at a high risk of being infected with the human immunodeficiency virus.

(5) The department shall reflect in its departmental biennial budget request the funds necessary to implement this section.

(6) The use of appropriate materials may be authorized by the department in the prevention or control of HIV infection. [2010 1st sp.s. c 3 § 1; 1998 c 245 § 126; 1991 c 3 § 327; 1988 c 206 § 801.]

**Effective date—2010 1st sp.s. c 3:** "This act takes effect January 1, 2011." [2010 1st sp.s. c 3 § 2.]

**70.24.410 AIDS advisory committee—Duties, review of insurance problems—Termination.** To assist the secretary of health in the development and implementation of AIDS programs, the governor shall appoint an AIDS advisory committee. Among its duties shall be a review of insurance problems as related to persons with AIDS. The committee shall terminate on June 30, 1991. [1991 c 3 § 328; 1988 c 206 § 803.]

**70.24.420 Additional local funding of treatment programs not required.** Nothing in this chapter may be construed to require additional local funding of programs to treat communicable disease established as of March 23, 1988. [1988 c 206 § 919.]

**70.24.430 Application of chapter to persons subject to jurisdiction of department of corrections.** Nothing in this chapter is intended to create a state-mandated liberty interest of any nature for offenders or inmates confined in department of corrections facilities or subject to the jurisdiction of the department of corrections. [1988 c 206 § 920.]

**70.24.450 Confidentiality—Reports—Unauthorized disclosures.** (1) In order to assure compliance with the protections under this chapter and the rules of the board, and to assure public confidence in the confidentiality of reported information, the department shall:

(a) Report annually to the board any incidents of unauthorized disclosure by the department, local health departments, or their employees of information protected under RCW 70.24.105. The report shall include recommendations

for preventing future unauthorized disclosures and improving the system of confidentiality for reported information; and

(b) Assist health care providers, facilities that conduct tests, local health departments, and other persons involved in disease reporting to understand, implement, and comply with this chapter and the rules of the board related to disease reporting.

(2) This section is exempt from RCW 70.24.084, 70.05.070, and 70.05.120. [1999 c 391 § 3.]

**Findings—Purpose—1999 c 391:** See note following RCW 70.05.180.

**70.24.900 Severability—1988 c 206.** If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1988 c 206 § 1001.]

**70.24.901 Construction—Chapter applicable to state registered domestic partnerships—2009 c 521.** For the purposes of this chapter, the terms spouse, marriage, marital, husband, wife, widow, widower, next of kin, and family shall be interpreted as applying equally to state registered domestic partnerships or individuals in state registered domestic partnerships as well as to marital relationships and married persons, and references to dissolution of marriage shall apply equally to state registered domestic partnerships that have been terminated, dissolved, or invalidated, to the extent that such interpretation does not conflict with federal law. Where necessary to implement chapter 521, Laws of 2009, gender-specific terms such as husband and wife used in any statute, rule, or other law shall be construed to be gender neutral, and applicable to individuals in state registered domestic partnerships. [2009 c 521 § 150.]

**Chapter 70.26 RCW**

**PANDEMIC INFLUENZA PREPAREDNESS**

Sections

70.26.010	Findings—Intent.
70.26.020	Definitions.
70.26.030	Local preparedness and response plans—Requirements.
70.26.040	Local preparedness and response plans—Consultation with public, private sector—Department to provide technical assistance and disburse funds.
70.26.050	Plans to be submitted to secretary for approval, rejection—Funding—Preparedness and response activities.
70.26.060	Secretary to develop a formula for fund distribution—Requirements.
70.26.070	Secretary duties—Report.

**70.26.010 Findings—Intent.** The legislature finds that:

(1) Pandemic influenza is a global outbreak of disease that occurs when a new virus appears in the human population, causes serious illness, and then spreads easily from person to person.

(2) Historically, pandemic influenza has occurred on average every thirty years. Most recently, the Asian flu in 1957-58 and the Hong Kong flu in 1968-69 killed seventy thousand and thirty-four thousand, respectively, in the United States.

(3) Another influenza pandemic could emerge with little warning, affecting a large number of people. Estimates are

that another pandemic influenza would cause more than two hundred thousand deaths in our country, with as many as five thousand in Washington. Our state could also expect ten thousand to twenty-four thousand people needing hospital stays, and as many as a million people requiring outpatient visits. During a severe pandemic these numbers could be much higher. The economic losses could also be substantial.

(4) The current Avian or bird flu that is spreading around the world has the potential to start a pandemic. There is yet no proven vaccine, and antiviral medication supplies are limited and of unknown effectiveness against a human version of the virus, leaving traditional public health measures as the only means to slow the spread of the disease. Given the global nature of a pandemic, as much as possible, the state must be able to respond assuming only limited outside resources and assistance will be available.

(5) An effective response to pandemic influenza in Washington must focus at the local level and will depend on preestablished partnerships and collaborative planning on a range of best-case and worst-case scenarios. It will require flexibility and real-time decision making, guided by accurate information. It will also depend on a well-informed public that understands the dangers of pandemic influenza and the steps necessary to prevent the spread of the disease.

(6) Avian flu is but one example of an infectious disease that, were an outbreak to occur, could pose a significant state-wide health hazard. As such, preparation for pandemic flu will also enhance the capacity of local public health jurisdictions to respond to other emergencies.

It is therefore the intent of the legislature that adequate pandemic flu preparedness and response plans be developed and implemented by local public health jurisdictions state-wide in order to limit the number of illnesses and deaths, preserve the continuity of essential government and other community services, and minimize social disruption and economic loss in the event of an influenza pandemic. [2006 c 63 § 1.]

**70.26.020 Definitions.** The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Department" means the department of health.

(2) "Local health jurisdiction" means a local health department as established under chapter 70.05 RCW, a combined city-county health department as established under chapter 70.08 RCW, or a health district established under chapter 70.05 or 70.46 RCW.

(3) "Secretary" means the secretary of the department of health. [2006 c 63 § 2.]

**70.26.030 Local preparedness and response plans—Requirements.** (1) The secretary shall establish requirements and performance standards, consistent with any requirements or standards established by the United States department of health and human services, regarding the development and implementation of local pandemic flu preparedness and response plans.

(2) To the extent state or federal funds are provided for this purpose, by November 1, 2006, each local health jurisdiction shall develop a pandemic flu preparedness and

response plan, consistent with requirements and performance standards established in subsection (1) of this section, for the purpose of:

(a) Defining preparedness activities that should be undertaken before a pandemic occurs that will enhance the effectiveness of response measures;

(b) Describing the response, coordination, and decision-making structure that will incorporate the local health jurisdiction, the local health care system, other local response agencies, and state and federal agencies during the pandemic;

(c) Defining the roles and responsibilities for the local health jurisdiction, local health care partners, and local response agencies during all phases of a pandemic;

(d) Describing public health interventions in a pandemic response and the timing of such interventions;

(e) Serving as a guide for local health care system partners, response agencies, and businesses in the development of pandemic influenza response plans; and

(f) Providing technical support and information on which preparedness and response actions are based.

Each plan shall be developed based on an assessment by the local health jurisdiction of its current capacity to respond to pandemic flu and otherwise meet department outcome measures related to infectious disease outbreaks of statewide significance. [2006 c 63 § 3.]

**70.26.040 Local preparedness and response plans—Consultation with public, private sector—Department to provide technical assistance and disburse funds.** (1) Each local health jurisdiction shall develop its pandemic flu preparedness and response plan based on the requirements and performance standards established under RCW 70.26.030(1) and an assessment of the jurisdiction's current capacity to respond to pandemic flu. The plan shall be developed in consultation with appropriate public and private sector partners, including departments of emergency management, law enforcement, school districts, hospitals and medical professionals, tribal governments, and business organizations. At a minimum, each plan shall address:

(a) Strategies to educate the public about the consequences of influenza pandemic and what each person can do to prepare, including the adoption of universal infectious disease prevention practices and maintaining appropriate emergency supplies;

(b) Jurisdiction-wide disease surveillance programs, coordinated with state and federal efforts, to detect pandemic influenza strains in humans and animals, including health care provider compliance with reportable conditions requirements, and investigation and analysis of reported illness or outbreaks;

(c) Communication systems, including the availability of and access to specialized communications equipment by health officials and community leaders, and the use of mass media outlets;

(d) Mass vaccination plans and protocols to rapidly administer vaccine and monitor vaccine effectiveness and safety;

(e) Guidelines for the utilization of antiviral medications for the treatment and prevention of influenza;

(f) Implementation of nonmedical measures to decrease the spread of the disease as guided by the epidemiology of the

(2010 Ed.)

pandemic, including increasing adherence to public health advisories, voluntary social isolation during outbreaks, and health officer orders related to quarantines;

(g) Medical system mobilization, including improving the linkages and coordination of emergency responses across health care organizations, and assuring the availability of adequate facilities and trained personnel;

(h) Strategies for maintaining social order and essential community services while limiting the spread of disease throughout the duration of the pandemic; and

(i) The jurisdiction's relative priorities related to implementation of the above activities, based on available funding.

(2) To the extent state or federal funds are provided for this purpose, the department, in consultation with the state director of emergency management, shall provide technical assistance and disburse funds as needed, based on the formula developed under RCW 70.26.060, to support local health jurisdictions in developing their pandemic flu preparedness and response plans. [2006 c 63 § 4.]

**70.26.050 Plans to be submitted to secretary for approval, rejection—Funding—Preparedness and response activities.** Local health jurisdictions shall submit their pandemic flu preparedness and response plans to the secretary by November 1, 2006. Upon receipt of a plan, the secretary shall approve or reject the plan. When the plan is determined by the department to comply with the requirements and integrate the performance standards established under RCW 70.26.030(1), any additional state or federal funding appropriated in the budget shall be provided to the local health jurisdiction to support the preparedness response activities identified in the plan, based upon a formula developed by the secretary under RCW 70.26.060. Preparedness and response activities include but are not limited to:

(1) Education, information, and outreach, in multiple languages, to increase community preparedness and reduce the spread of the disease should it occur;

(2) Development of materials and systems to be used in the event of a pandemic to keep the public informed about the influenza, the course of the pandemic, and response activities;

(3) Development of the legal documents necessary to facilitate and support the necessary government response;

(4) Training and response drills for local health jurisdiction staff, law enforcement, health care providers, and others with responsibilities identified in the plan;

(5) Enhancement of the communicable disease surveillance system; and

(6) Development of coordination and communication systems among responding agencies.

Where appropriate, these activities shall be coordinated and funded on a regional or statewide basis. The secretary, in consultation with the state director of emergency management, shall provide implementation support and assistance to a local health jurisdiction when the secretary or the local health jurisdiction has concerns regarding a jurisdiction's progress toward implementing its plan. [2006 c 63 § 5.]

**70.26.060 Secretary to develop a formula for fund distribution—Requirements.** The secretary shall develop a

formula for distribution of any federal and state funds appropriated in the omnibus appropriations act on or before July 1, 2006, to local health jurisdictions for development and implementation of their pandemic flu preparedness and response plans. The formula developed by the secretary shall ensure that each local health jurisdiction receives a minimum amount of funds for plan development and that any additional funds for plan development be distributed equitably, including consideration of population and factors that increase susceptibility to an outbreak, upon soliciting the advice of the local health jurisdictions. [2006 c 63 § 6.]

**70.26.070 Secretary duties—Report.** The secretary shall:

(1) Develop a process for assessing the compliance of each local health jurisdiction with the requirements and performance standards developed under RCW 70.26.030(1) at least biannually;

(2) By November 15, 2008, report to the legislature on the level of compliance with the performance standards established under RCW 70.26.030(1). The report shall consider the extent to which local health jurisdictions comply with each performance standard and any impediments to meeting the expected level of performance. [2006 c 63 § 7.]

## Chapter 70.28 RCW

### CONTROL OF TUBERCULOSIS

#### Sections

70.28.005	Health officials, broad powers to protect public health.
70.28.008	Definitions.
70.28.010	Health care providers required to report cases.
70.28.020	Record of reports.
70.28.025	Secretary's administrative responsibility—Scope.
70.28.031	Powers and duties of health officers.
70.28.032	Due process standards for testing, treating, detaining—Reporting requirements—Training and scope for skin test administration.
70.28.033	Treatment, isolation, or examination order of health officer—Violation—Penalty.
70.28.035	Order of health officer—Refusal to obey—Application for superior court order.
70.28.037	Superior court order for confinement of individuals having active tuberculosis.

**Reviser's note:** Powers and duties of the department of social and health services and the secretary of social and health services transferred to the department of health and the secretary of health. See RCW 43.70.060.

**70.28.005 Health officials, broad powers to protect public health.** (1) Tuberculosis has been and continues to be a threat to the public's health in the state of Washington.

(2) While it is important to respect the rights of individuals, the legitimate public interest in protecting the public health and welfare from the spread of a deadly infectious disease outweighs incidental curtailment of individual rights that may occur in implementing effective testing, treatment, and infection control strategies.

(3) To protect the public's health, it is the intent of the legislature that local health officials provide culturally sensitive and medically appropriate early diagnosis, treatment, education, and follow-up to prevent tuberculosis. Further, it is imperative that public health officials and their staff have the necessary authority and discretion to take actions as are necessary to protect the health and welfare of the public, sub-

ject to the constitutional protection required under the federal and state constitutions. Nothing in this chapter shall be construed as in any way limiting the broad powers of health officials to act as necessary to protect the public health. [1994 c 145 § 1.]

**70.28.008 Definitions.** The definitions in this section apply throughout this chapter unless the context clearly requires otherwise:

(1) "Department" means the department of health;

(2) "Secretary" means the secretary of the department of health or his or her designee;

(3) "Tuberculosis control" refers to the procedures administered in the counties for the control, prevention, and treatment of tuberculosis. [1999 c 172 § 7; 1991 c 3 § 330; 1983 c 3 § 171; 1971 ex.s. c 277 § 15. Formerly RCW 70.33.010.]

**Finding—Severability—1999 c 172:** See notes following RCW 70.28.010.

**70.28.010 Health care providers required to report cases.** All practicing health care providers in the state are hereby required to report to the local health department cases of every person having tuberculosis who has been attended by, or who has come under the observation of, the health care provider within one day thereof. [1999 c 172 § 2; 1996 c 209 § 1; 1967 c 54 § 1; 1899 c 71 § 1; RRS § 6109.]

**Finding—1999 c 172:** "The legislature finds that current statutes relating to the reporting, treatment, and payment for tuberculosis are outdated, and not in concert with current clinical practice and tuberculosis care management. Updating reporting requirements for local health departments will benefit providers, local health, and individuals requiring treatment for tuberculosis." [1999 c 172 § 1.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**70.28.020 Record of reports.** All local health departments in this state are hereby required to receive and keep a record, for a period of ten years from the date of the report, of the reports required by RCW 70.28.010 to be made to them; such records shall not be open to public inspection, but shall be submitted to the proper inspection of other local health departments and of the department of health alone, and such records shall not be published nor made public. [1999 c 172 § 3; 1967 c 54 § 2; 1899 c 71 § 2; RRS § 6110.]

**Finding—Severability—1999 c 172:** See notes following RCW 70.28.010.

**70.28.025 Secretary's administrative responsibility—Scope.** The secretary shall have responsibility for establishing standards for the control, prevention, and treatment of tuberculosis and hospitals approved to treat tuberculosis in the state operated under this chapter and chapter 70.30 RCW and for providing, either directly or through agreement, contract, or purchase, appropriate facilities and services for persons who are, or may be suffering from tuberculosis except as otherwise provided by RCW 70.30.061 or this section.

Under that responsibility, the secretary shall have the following powers and duties:

(1) To develop and enter into such agreements, contracts, or purchase arrangements with counties and public and pri-

vate agencies or institutions to provide for hospitalization, nursing home, or other appropriate facilities and services, including laboratory services, for persons who are or may be suffering from tuberculosis;

(2) Adopt such rules as are necessary to assure effective patient care and treatment of tuberculosis. [1999 c 172 § 8; 1983 c 3 § 172; 1973 1st ex.s. c 213 § 2; 1971 ex.s. c 277 § 16. Formerly RCW 70.33.020.]

**Finding—Severability—1999 c 172:** See notes following RCW 70.28.010.

**70.28.031 Powers and duties of health officers.** Each health officer is hereby directed to use every available means to ascertain the existence of, and immediately to investigate, all reported or suspected cases of tuberculosis in the infectious stages within his or her jurisdiction and to ascertain the sources of such infections. In carrying out such investigations, each health officer is hereby invested with full powers of inspection, examination, treatment, and quarantine or isolation of all persons known to be infected with tuberculosis in an infectious stage or persons who have been previously diagnosed as having tuberculosis and who are under medical orders for treatment or periodic follow-up examinations and is hereby directed:

(a) To make such examinations as are deemed necessary of persons reasonably suspected of having tuberculosis in an infectious stage and to isolate and treat or isolate, treat, and quarantine such persons, whenever deemed necessary for the protection of the public health.

(b) To make such examinations as deemed necessary of persons who have been previously diagnosed as having tuberculosis and who are under medical orders for periodic follow-up examinations.

(c) Follow local rules and regulations regarding examinations, treatment, quarantine, or isolation, and all rules, regulations, and orders of the state board and of the department in carrying out such examination, treatment, quarantine, or isolation.

(d) Whenever the health officer shall determine on reasonable grounds that an examination or treatment of any person is necessary for the preservation and protection of the public health, he or she shall make an examination order in writing, setting forth the name of the person to be examined, the time and place of the examination, the treatment, and such other terms and conditions as may be necessary to protect the public health. Nothing contained in this subdivision shall be construed to prevent any person whom the health officer determines should have an examination or treatment for infectious tuberculosis from having such an examination or treatment made by a physician of his or her own choice who is licensed to practice osteopathic medicine and surgery under chapter 18.57 RCW or medicine and surgery under chapter 18.71 RCW under such terms and conditions as the health officer shall determine on reasonable grounds to be necessary to protect the public health.

(e) Whenever the health officer shall determine that quarantine, treatment, or isolation in a particular case is necessary for the preservation and protection of the public health, he or she shall make an order to that effect in writing, setting forth the name of the person, the period of time during which the order shall remain effective, the place of treatment,

isolation, or quarantine, and such other terms and conditions as may be necessary to protect the public health.

(f) Upon the making of an examination, treatment, isolation, or quarantine order as provided in this section, a copy of such order shall be served upon the person named in such order.

(g) Upon the receipt of information that any examination, treatment, quarantine, or isolation order, made and served as herein provided, has been violated, the health officer shall advise the prosecuting attorney of the county in which such violation has occurred, in writing, and shall submit to such prosecuting attorney the information in his or her possession relating to the subject matter of such examination, treatment, isolation, or quarantine order, and of such violation or violations thereof.

(h) Any and all orders authorized under this section shall be made by the health officer or his or her tuberculosis control officer.

(i) Nothing in this chapter shall be construed to abridge the right of any person to rely exclusively on spiritual means alone through prayer to treat tuberculosis in accordance with the tenets and practice of any well-recognized church or religious denomination, nor shall anything in this chapter be deemed to prohibit a person who is inflicted with tuberculosis from being isolated or quarantined in a private place of his own choice, provided, it is approved by the local health officer, and all laws, rules and regulations governing control, sanitation, isolation, and quarantine are complied with. [1996 c 209 § 2; 1996 c 178 § 21; 1967 c 54 § 4.]

**Reviser's note:** This section was amended by 1996 c 178 § 21 and by 1996 c 209 § 2, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**70.28.032 Due process standards for testing, treating, detaining—Reporting requirements—Training and scope for skin test administration.** (1) The state board of health shall adopt rules establishing the requirements for:

(a) Reporting confirmed or suspected cases of tuberculosis by health care providers and reporting of laboratory results consistent with tuberculosis by medical test sites;

(b) Due process standards for health officers exercising their authority to involuntarily detain, test, treat, or isolate persons with suspected or confirmed tuberculosis under RCW 70.28.031 and 70.05.070 that provide for release from any involuntary detention, testing, treatment, or isolation as soon as the health officer determines the patient no longer represents a risk to the public's health;

(c) Training of persons to perform tuberculosis skin testing and to administer tuberculosis medications.

(2) Notwithstanding any other provision of law, persons trained under subsection (1)(c) of this section may perform skin testing and administer medications if doing so as part of a program established by a state or local health officer to control tuberculosis. [1996 c 209 § 3; 1994 c 145 § 2.]

**70.28.033 Treatment, isolation, or examination order of health officer—Violation—Penalty.** Inasmuch as the order provided for by RCW 70.28.031 is for the protection of the public health, any person who, after service upon him or

her of an order of a health officer directing his or her treatment, isolation, or examination as provided for in RCW 70.28.031, violates or fails to comply with the same or any provision thereof, is guilty of a misdemeanor, and, upon conviction thereof, in addition to any and all other penalties which may be imposed by law upon such conviction, may be ordered by the court confined until such order of such health officer shall have been fully complied with or terminated by such health officer, but not exceeding six months from the date of passing judgment upon such conviction: PROVIDED, That the court, upon suitable assurances that such order of such health officer will be complied with, may place any person convicted of a violation of such order of such health officer upon probation for a period not to exceed two years, upon condition that the said order of said health officer be fully complied with: AND PROVIDED FURTHER, That upon any subsequent violation of such order of such health officer, such probation shall be terminated and confinement as herein provided ordered by the court. [1996 c 209 § 4; 1967 c 54 § 5.]

**70.28.035 Order of health officer—Refusal to obey—Application for superior court order.** In addition to the proceedings set forth in RCW 70.28.031, where a local health officer has reasonable cause to believe that an individual has tuberculosis as defined in the rules and regulations of the state board of health, and the individual refuses to obey the order of the local health officer to appear for an initial examination or a follow-up examination or an order for treatment, isolation, or quarantine, the health officer may apply to the superior court for an order requiring the individual to comply with the order of the local health officer. [1996 c 209 § 5; 1967 c 54 § 6.]

**70.28.037 Superior court order for confinement of individuals having active tuberculosis.** Where it has been determined after an examination as prescribed in this chapter that an individual has active tuberculosis, upon application to the superior court by the local health officer, the superior court shall order the sheriff to transport the individual to a designated facility for isolation, treatment, and care until such time as the local health officer or designee determines that the patient's condition is such that it is safe for the patient to be discharged from the facility. [1999 c 172 § 4; 1967 c 54 § 7.]

**Finding—Severability—1999 c 172:** See notes following RCW 70.28.010.

## Chapter 70.30 RCW

### TUBERCULOSIS HOSPITALS, FACILITIES, AND FUNDING

(Formerly: Tuberculosis hospitals and facilities)

#### Sections

70.30.015	Definitions.
70.30.045	Expenditures for tuberculosis control directed—Standards—Payment for treatment.
70.30.055	County budget for tuberculosis facilities.
70.30.061	Admissions to facility.
70.30.081	Annual inspections.

**Reviser's note:** Powers and duties of the department of social and health services and the secretary of social and health services transferred to the department of health and the secretary of health. See RCW 43.70.060.

*County hospitals:* Chapter 36.62 RCW.

*Hospital's lien:* Chapter 60.44 RCW.

*Labor regulations, collective bargaining—Health care activities:* Chapter 49.66 RCW.

**70.30.015 Definitions.** The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Department" means the department of health.

(2) "Secretary" means the secretary of the department of health or his or her designee.

(3) "Tuberculosis control" refers to the procedures administered in the counties for the control, prevention, and treatment of tuberculosis. [1999 c 172 § 10.]

**Finding—Severability—1999 c 172:** See notes following RCW 70.28.010.

**70.30.045 Expenditures for tuberculosis control directed—Standards—Payment for treatment.** Tuberculosis is a communicable disease and tuberculosis prevention, treatment, control, and follow up of known cases of tuberculosis are the basic steps in the control of this major health problem. In order to carry on such work effectively in accordance with the standards set by the secretary under RCW 70.28.025, the legislative authority of each county shall budget a sum to be used for the control of tuberculosis, including case finding, prevention, treatment, and follow up of known cases of tuberculosis. Under no circumstances should this section be construed to mean that the legislative authority of each county shall budget sums to provide tuberculosis treatment when the patient has the ability to pay for the treatment. Each patient's ability to pay for the treatment shall be assessed by the local health department. [1999 c 172 § 6; 1975 1st ex.s. c 291 § 3; 1973 1st ex.s. c 195 § 79; 1971 ex.s. c 277 § 21; 1970 ex.s. c 47 § 7; 1967 ex.s. c 110 § 11; 1959 c 117 § 1; 1945 c 66 § 1; 1943 c 162 § 1; Rem. Supp. 1945 § 6113-1. Formerly RCW 70.32.010.]

**Finding—Severability—1999 c 172:** See notes following RCW 70.28.010.

*County budget for tuberculosis facilities:* RCW 70.30.055.

*County treasurer:* Chapter 36.29 RCW.

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**70.30.055 County budget for tuberculosis facilities.** In order to maintain adequate facilities and services for the residents of the state of Washington who are or may be suffering from tuberculosis and to assure their proper care, the legislative authority of each county shall budget annually a sum to provide such services in the county.

The funds may be retained by the county for operating its own services for the prevention and treatment of tuberculosis. None of the counties shall be required to make any payments to the state or any other agency from these funds except as authorized by the local health department. However, if the counties do not comply with the adopted standards of the department, the secretary shall take action to provide the required services and to charge the affected county directly for the provision of these services by the state. [1999 c 172 §

9; 1975 1st ex.s. c 291 § 4. Prior: 1973 1st ex.s. c 213 § 4; 1973 1st ex.s. c 195 § 81; 1971 ex.s. c 277 § 18. Formerly RCW 70.33.040.]

**Finding—Severability—1999 c 172:** See notes following RCW 70.28.010.

*Expenditures for tuberculosis control directed—Standards—Payment for treatment: RCW 70.30.045.*

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**70.30.061 Admissions to facility.** Any person residing in the state and needing treatment for tuberculosis may apply in person to the local health officer or to any licensed physician, advanced registered nurse practitioner, or licensed physician assistant for examination and if that health care provider has reasonable cause to believe that the person is suffering from tuberculosis in any form he or she may apply to the local health officer or designee for admission of the person to an appropriate facility for the care and treatment of tuberculosis. [1999 c 172 § 5; 1973 1st ex.s. c 213 § 1; 1972 ex.s. c 143 § 2.]

**Finding—Severability—1999 c 172:** See notes following RCW 70.28.010.

**70.30.081 Annual inspections.** All hospitals established or maintained for the treatment of persons suffering from tuberculosis shall be subject to annual inspection, or more frequently if required by federal law, by agents of the department of health, and the medical director shall admit such agents into every part of the facility and its buildings, and give them access on demand to all records, reports, books, papers, and accounts pertaining to the facility. [1991 c 3 § 329; 1972 ex.s. c 143 § 4.]

**Chapter 70.37 RCW**

**HEALTH CARE FACILITIES**

Sections

70.37.010	Declaration of public policies—Purpose.
70.37.020	Definitions.
70.37.030	Washington health care facilities authority established—Members—Chairman—Terms—Quorum—Vacancies—Compensation and travel expenses.
70.37.040	Washington health care facilities authority—Powers—Special fund bonds—Revenue bonds.
70.37.050	Requests for financing—Financing plan—Bond issue, special fund authorized.
70.37.060	Bond issues—Terms—Payment—Legal investment, etc.
70.37.070	Bond issues—Special trust fund—Payments—Status—Administration of fund.
70.37.080	Bond issues—Disposition of proceeds—Special fund.
70.37.090	Payment of authority for expenses incurred in investigating and financing projects.
70.37.100	Powers of authority.
70.37.110	Advancements and contributions by political subdivisions.
70.37.900	Severability—1974 ex.s. c 147.

**70.37.010 Declaration of public policies—Purpose.** The good health of the people of our state is a most important public concern. The state has a direct interest in seeing to it that health care facilities adequate for good public health are established and maintained in sufficient numbers and in proper locations. The rising costs of care of the infirm constitute a grave challenge not only to health care providers but to our state and the people of our state who will seek such care. It is hereby declared to be the public policy of the state of

Washington to assist and encourage the building, providing and utilization of modern, well equipped and reasonably priced health care facilities, and the improvement, expansion and modernization of health care facilities in a manner that will minimize the capital costs of construction, financing and use thereof and thereby the costs to the public of the use of such facilities, and to contribute to improving the quality of health care available to our citizens. In order to accomplish these and related purposes this chapter is adopted and shall be liberally construed to carry out its purposes and objects. [1974 ex.s. c 147 § 1.]

**70.37.020 Definitions.** As used in this chapter, the following words and terms have the following meanings, unless the context indicates or requires another or different meaning or intent and the singular of any term shall encompass the plural and the plural the singular unless the context indicates otherwise:

(1) "Authority" means the Washington health care facilities authority created by RCW 70.37.030 or any board, body, commission, department or officer succeeding to the principal functions thereof or to whom the powers conferred upon the authority shall be given by law.

(2) "Bonds" mean bonds, notes or other evidences of indebtedness of the authority issued pursuant hereto.

(3) "Health care facility" means any land, structure, system, machinery, equipment or other real or personal property or appurtenances useful for or associated with delivery of inpatient or outpatient health care service or support for such care or any combination thereof which is operated or undertaken in connection with hospital, clinic, health maintenance organization, diagnostic or treatment center, extended care facility, or any facility providing or designed to provide therapeutic, convalescent or preventive health care services, and shall include research and support facilities of a comprehensive cancer center, but excluding, however, any facility which is maintained by a participant primarily for rental or lease to self-employed health care professionals or as an independent nursing home or other facility primarily offering domiciliary care.

(4) "Participant" means any city, county or other municipal corporation or agency or political subdivision of the state or any corporation, hospital, comprehensive cancer center, or health maintenance organization authorized by law to operate nonprofit health care facilities, or any affiliate, as defined by regulations promulgated by the director of the department of financial institutions pursuant to RCW 21.20.450, which is a nonprofit corporation acting for the benefit of any entity described in this subsection.

(5) "Project" means a specific health care facility or any combination of health care facilities, constructed, purchased, acquired, leased, used, owned or operated by a participant, and alterations, additions to, renovations, enlargements, betterments and reconstructions thereof. [1994 c 92 § 505; 1989 c 65 § 1; 1983 c 210 § 3; 1974 ex.s. c 147 § 2.]

**70.37.030 Washington health care facilities authority established—Members—Chairman—Terms—Quorum—Vacancies—Compensation and travel expenses.** There is hereby established a public body corporate and poli-

tic, with perpetual corporate succession, to be known as the Washington health care facilities authority. The authority shall constitute a political subdivision of the state established as an instrumentality exercising essential governmental functions. The authority is a "public body" within the meaning of RCW 39.53.010. The authority shall consist of the governor who shall serve as chairman, the lieutenant governor, the insurance commissioner, the secretary of health, and one member of the public who shall be appointed by the governor, subject to confirmation by the senate, on the basis of the member's interest or expertise in health care delivery, for a term expiring on the fourth anniversary of the date of appointment. In the event that any of the offices referred to shall be abolished the resulting vacancy on the authority shall be filled by the officer who shall succeed substantially to the powers and duties thereof. The members of the authority shall be compensated in accordance with RCW 43.03.240 and shall be entitled to reimbursement, solely from the funds of the authority, for travel expenses incurred in the discharge of their duties under this chapter, subject to the provisions of RCW 43.03.050 and 43.03.060. A majority shall constitute a quorum.

The governor and the insurance commissioner each may designate an employee of his or her office to act on his or her behalf during the absence of the governor or the insurance commissioner at one or more of the meetings of the authority. The vote of the designee shall have the same effect as if cast by the governor or the insurance commissioner if the designation is in writing and is presented to the person presiding at the meetings included within the designation.

The governor may designate a member to preside during the governor's absence. [2002 c 91 § 1; 1989 1st ex.s. c 9 § 261; 1984 c 287 § 103; 1983 c 210 § 1; 1975-'76 2nd ex.s. c 34 § 157; 1974 ex.s. c 147 § 3.]

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

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**70.37.040 Washington health care facilities authority—Powers—Special fund bonds—Revenue bonds.** (1) The authority is hereby empowered to issue bonds for the construction, purchase, acquisition, rental, leasing or use by participants of projects for which bonds to provide funds therefor have been approved by the authority. Such bonds shall be issued in the name of the authority. They shall not be obligations of the state of Washington or general obligations of the authority but shall be payable only from the special funds created by the authority for their payment. They shall contain a recital on their face that their payment and the payment of interest thereon shall be a valid claim only as against the special fund relating thereto derived by the authority in whole or in part from the revenues received by the authority from the operation by the participant of the health care facilities for which the bonds are issued but that they shall constitute a prior charge over all other charges or claims whatever against such special fund. The lien of any such pledge on such revenues shall attach thereto immediately on their receipt by the authority and shall be valid and binding as against parties having claims of any kind in tort, contract or otherwise against the participant, without recordation thereof and whether or not they have notice thereof. For inclusion in

such special funds and for other uses in or for such projects of participants the authority is empowered to accept and receive funds, grants, gifts, pledges, guarantees, mortgages, trust deeds and other security instruments, and property from the federal government or the state of Washington or other public body, entity or agency and from any public or private institution, association, corporation or organization, including participants, except that it shall not accept or receive from the state or any taxing agency any money derived from taxes save money to be devoted to the purposes of a project of the state or taxing agency.

(2) For the purposes outlined in subsection (1) of this section the authority is empowered to provide for the issuance of its special fund bonds and other limited obligation security instruments subordinate to the first and prior lien bonds, if any, relating to a project or projects of a participant and to create special funds relating thereto against which such subordinate securities shall be liens, but the authority shall not have power to incur general obligations with respect thereto.

(3) The authority may also issue special fund bonds to redeem or to fund or refund outstanding bonds or any part thereof at maturity, or before maturity if subject to prior redemption, with the right in the authority to include various series and issues of such outstanding special fund bonds in a single issue of funding or refunding special fund bonds and to pay any redemption premiums out of the proceeds thereto. Such funding or refunding bonds shall be limited special fund bonds issued in accordance with the provisions of this chapter, including this section and shall not be general obligations of the authority.

(4) Such special fund bonds of either first lien or subordinate lien nature may also be issued by the authority, the proceeds of which may be used to refund already existing mortgages or other obligations on health care facilities already constructed and operating incurred by a participant in the construction, purchase or acquisition thereof.

(5) The authority may also lease to participants, lease to them with option to purchase, or sell to them, facilities which it has acquired by construction, purchase, devise, gift, or leasing: PROVIDED, That the terms thereof shall at least fully reimburse the authority for its costs with respect to such facilities, including costs of financing, and provide fully for the debt service on any bonds issued by the authority to finance acquisition by it of the facilities. To pay the cost of acquiring or improving such facilities or to refund any bonds issued for such purpose, the authority may issue its revenue bonds secured solely by revenues derived from the sale or lease of the facility, but which may additionally be secured by mortgage, lease, pledge or assignment, trust agreement or other security device. Such bonds and such security devices shall not be obligations of the state of Washington or general obligations of the authority but shall be payable only from the special funds created by the authority for their payment. Such health care facilities may be acquired, constructed, reconstructed, and improved and may be leased, sold or otherwise disposed of in the manner determined by the authority in its sole discretion and any requirement of competitive bidding, lease performance bonds or other restriction imposed on the procedure for award of contracts for such purpose or the lease, sale or other disposition of property of the state, or any

agency thereof, is not applicable to any action so taken by the authority. [1974 ex.s. c 147 § 4.]

**70.37.050 Requests for financing—Financing plan—Bond issue, special fund authorized.** The authority shall establish rules concerning its exercise of the powers authorized by this chapter. The authority shall receive from applicants requests for the providing of bonds for financing of health care facilities and shall investigate and determine the need and the feasibility of providing such bonds. Whenever the authority deems it necessary or advisable for the benefit of the public health to provide financing for a health care facility, it shall adopt a financing plan therefor and shall declare the estimated cost thereof, as near as may be, including as part of such cost funds necessary for the expenses incurred in the financing as well as in the construction or purchase or other acquisition or in connection with the rental or other payment for the use thereof, interest during construction, reserve funds and any funds necessary for initial start-up costs, and shall issue and sell its bonds for the purposes of carrying out the proposed financing plan: PROVIDED, That if a certificate of need is required for the proposed project, no such financing plan shall be adopted until such certificate has been issued pursuant to chapter 70.38 RCW by the secretary of the department of social and health services. The authority shall have power as a part of such plan to create a special fund or funds for the purpose of defraying the cost of such project and for other projects of the same participant subsequently or at the same time approved by it and for their maintenance, improvement, reconstruction, remodeling and rehabilitation, into which special fund or funds it shall obligate and bind the participant to set aside and pay from the gross revenues of the project or from other sources an amount sufficient to pay the principal and interest of the bonds being issued, reserves and other requirements of the special fund and to issue and sell bonds payable as to both principal and interest out of such fund or funds relating to the project or projects of such participant.

Such bonds shall bear such date or dates, mature at such time or times, be in such denominations, be in such form, either coupon or registered, or both, as provided in RCW 39.46.030, carry such registration privileges, be made transferable, exchangeable, and interchangeable, be payable in such medium of payment, at such place or places, be subject to such terms of redemption, bear such fixed or variable rate or rates of interest, and be sold in such manner, at such price, as the authority shall determine. Such bonds shall be executed by the chairman, by either its duly elected secretary or its executive director, and by the trustee if the authority determines to utilize a trustee for the bonds. Execution of the bonds may be by manual or facsimile signature: PROVIDED, That at least one signature placed thereon shall be manually subscribed. Any interest coupons appurtenant to the bonds shall be executed by facsimile or manual signature or signatures, as the authority shall determine. [1983 c 210 § 2; 1983 c 167 § 171; 1981 c 121 § 1; 1974 ex.s. c 147 § 5.]

**Reviser's note:** This section was amended by 1983 c 167 § 171 and by 1983 c 210 § 2, each without reference to the other. Both amendments are incorporated in the publication of this section pursuant to RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**70.37.060 Bond issues—Terms—Payment—Legal investment, etc.** The bonds of the authority shall be subject to such terms, conditions and covenants and protective provisions as shall be found necessary or desirable by the authority, which may include but shall not be limited to provisions for the establishment and maintenance by the participant of rates for health services of the project, fees and other charges of every kind and nature sufficient in amount and adequate, over and above costs of operation and maintenance and all other costs other than costs and expenses of capital, associated with the project, to pay the principal of and interest on the bonds payable out of the special fund or funds of the project, to set aside and maintain reserves as determined by the authority to secure the payment of such principal and interest, to set aside and maintain reserves for repairs and replacement, to maintain coverage which may be agreed upon over and above the requirements of payment of principal and interest, and for other needs found by the authority to be required for the security of the bonds. When issuing bonds the authority may provide for the future issuance of additional bonds on a parity with outstanding bonds, and the terms and conditions of their issuance.

All bonds issued under the authority of this chapter shall constitute legal investments for trustees and other fiduciaries and for savings and loan associations, banks, and insurance companies doing business in this state. All such bonds and all coupons appertaining thereto shall be negotiable instruments within the meaning of and for all purposes of the negotiable instruments law of this state. [1974 ex.s. c 147 § 6.]

**70.37.070 Bond issues—Special trust fund—Payments—Status—Administration of fund.** All revenues received by the authority from a participant derived from a particular project of such participant to be applied on principal and interest of bonds or for other bond requirements such as reserves and all other funds for the bond requirements of a particular project received from contributions or grants or in any other form shall be deposited by the authority in qualified public depositories to the credit of a special trust fund to be designated as the authority special bond fund for the particular project or projects producing such revenue or to which the contribution or grant relates. Such fund shall not be or constitute funds of the state of Washington but at all times shall be kept segregated and set apart from other funds. From such funds, the authority shall make payment of principal and interest of the bonds of the particular project or projects; and the authority may set up subaccounts in the bond fund for reserve accounts for payment of principal and interest, for repairs and replacement and for other special requirements of the bonds of the project or projects as determined by the authority. In lieu of itself receiving and handling these moneys as here outlined the authority may appoint trustees, depositories and paying agents to perform the functions outlined and to receive, hold, disburse, invest and reinvest such funds on its behalf and for the protection of the bondholders. [1974 ex.s. c 147 § 7.]

**70.37.080 Bond issues—Disposition of proceeds—Special fund.** Proceeds from the sale of all bonds of a project issued under the provisions of this chapter received by the authority shall be deposited forthwith by the authority in

qualified public depositaries in a special fund for the particular project for which the bonds were issued and sold, which money shall not be funds of the state of Washington. Such fund shall at all times be segregated and set apart from all other funds and in trust for the purposes of purchase, construction, acquisition, leasing, or use of a project or projects, and for other special needs of the project declared by the authority, including the manner of disposition of any money not finally needed in the construction, purchase, or other acquisition. Money other than bond sale proceeds received by the authority for these same purposes, such as contributions from a participant or a grant from the federal government may be deposited in the same project fund. Proceeds received from the sale of the bonds may also be used to defray the expenses of the authority in connection with and incidental to the issuance and sale of bonds for the project, as well as expenses for studies, surveys, estimates, inspections and examinations of or relating to the particular project, and other costs advanced therefor by the participant or by the authority. In lieu of itself receiving and handling these moneys in the manner here outlined the authority may appoint trustees, depositaries and paying agents to perform the functions outlined and to receive, hold, disburse, invest and reinvest such funds on its behalf and for the protection of the participants and of bondholders. [1974 ex.s. c 147 § 8.]

**70.37.090 Payment of authority for expenses incurred in investigating and financing projects.** The authority shall have power to require persons applying for its assistance in connection with the investigation and financing of projects to pay fees and charges to provide the authority with funds for investigation, financial feasibility studies, expenses of issuance and sale of bonds and other charges for services provided by the authority in connection with such projects. All other expenses of the authority including compensation of its employees and consultants, expenses of administration and conduct of its work and business and other expenses shall be paid out of such fees and charges, out of contributions and grants to it, out of the proceeds of bonds issued for projects of participants or out of revenues of such projects; none by the state of Washington. The authority shall have power to establish special funds into which such money shall be received and out of which it may be disbursed by the persons and with the procedure and in the manner established by the authority. [1974 ex.s. c 147 § 9.]

**70.37.100 Powers of authority.** The authority may make contracts, employ or engage engineers, architects, attorneys, an executive director, and other technical or professional assistants, and such other personnel as are necessary. It may delegate to the executive director or other appropriate persons the power to execute legal instruments on its behalf. It may enter into contracts with the United States, accept gifts for its purposes, and exercise any other power reasonably required to implement the principal powers granted in this chapter. No provision of this chapter shall be construed so as to limit the power of the authority to provide bond financing to more than one participant and/or project by means of a single issue of revenue bonds utilizing a single bond fund and/or a single special fund into which proceeds of

such bonds are deposited. The authority shall have no power to levy any taxes of any kind or nature and no power to incur obligations on behalf of the state of Washington. [1982 c 10 § 14. Prior: 1981 c 121 § 2; 1981 c 31 § 1; 1974 ex.s. c 147 § 10.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**70.37.110 Advancements and contributions by political subdivisions.** Any city, county or other political subdivision of this state and any public health care facility is hereby authorized to advance or contribute to the authority real property, money, and other personal property of any kind towards the expense of preliminary surveys and studies and other preliminary expenses of projects which they are by other statutes of this state authorized to own or operate which are a part of a plan or system which has been submitted by them and is under consideration by the authority for assistance under the provisions of this chapter. [1974 ex.s. c 147 § 11.]

**70.37.900 Severability—1974 ex.s. c 147.** If any provision of this act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected. [1974 ex.s. c 147 § 12.]

## Chapter 70.38 RCW

### HEALTH PLANNING AND DEVELOPMENT

#### Sections

70.38.015	Declaration of public policy.
70.38.018	Statewide health resources strategy—Consistency—Waivers.
70.38.025	Definitions.
70.38.095	Public disclosure.
70.38.105	Health services and facilities requiring certificate of need—Fees.
70.38.111	Certificates of need—Exemptions.
70.38.115	Certificates of need—Procedures—Rules—Criteria for review—Conditional certificates of need—Concurrent review—Review periods—Hearing—Adjudicative proceeding—Amended certificates of need.
70.38.118	Certificates of need—Applications submitted by hospice agencies.
70.38.125	Certificates of need—Issuance—Duration—Penalties for violations.
70.38.128	Certificates of need—Elective percutaneous coronary interventions—Rules.
70.38.135	Services and surveys—Rules.
70.38.155	Certificates of need—Savings—1979 ex.s. c 161.
70.38.156	Certificates of need—Savings—1980 c 139.
70.38.157	Certificates of need—Savings—1983 c 235.
70.38.158	Certificates of need—Savings—1989 1st ex.s. c 9 §§ 601 through 607.
70.38.220	Ethnic minorities—Nursing home beds that reflect cultural differences.
70.38.230	Residential hospice care centers—Defined—Change in bed capacity—Applicability of chapter.
70.38.250	Redistribution and addition of beds—Determination.
70.38.905	Conflict with federal law—Construction.
70.38.910	Severability—1983 c 235; 1979 ex.s. c 161.
70.38.911	Severability—1980 c 139.
70.38.912	Severability—1989 1st ex.s. c 9.
70.38.914	Pending certificates of need—1983 c 235.
70.38.915	Effective dates—Pending certificates of need—1979 ex.s. c 161.
70.38.916	Effective date—1980 c 139.
70.38.917	Effective date—1989 1st ex.s. c 9.
70.38.918	Effective dates—Pending certificates of need—1989 1st ex.s. c 9.
70.38.920	Short title.

**70.38.015 Declaration of public policy.** It is declared to be the public policy of this state:

(1) That strategic health planning efforts must be supported by appropriately tailored regulatory activities that can effectuate the goals and principles of the statewide health resources strategy developed pursuant to chapter 43.370 RCW. The implementation of the strategy can promote, maintain, and assure the health of all citizens in the state, provide accessible health services, health manpower, health facilities, and other resources while controlling increases in costs, and recognize prevention as a high priority in health programs. Involvement in health planning from both consumers and providers throughout the state should be encouraged;

(2) That the certificate of need program is a component of a health planning regulatory process that is consistent with the statewide health resources strategy and public policy goals that are clearly articulated and regularly updated;

(3) That the development and maintenance of adequate health care information, statistics and projections of need for health facilities and services is essential to effective health planning and resources development;

(4) That the development of nonregulatory approaches to health care cost containment should be considered, including the strengthening of price competition; and

(5) That health planning should be concerned with public health and health care financing, access, and quality, recognizing their close interrelationship and emphasizing cost control of health services, including cost-effectiveness and cost-benefit analysis. [2007 c 259 § 55; 1989 1st ex.s. c 9 § 601; 1983 c 235 § 1; 1980 c 139 § 1; 1979 ex.s. c 161 § 1.]

**Severability—Subheadings not law—2007 c 259:** See notes following RCW 41.05.033.

**70.38.018 Statewide health resources strategy—Consistency—Waivers.** (1) For the purposes of this section and RCW 70.38.015 and 70.38.135, "statewide health resource strategy" or "strategy" means the statewide health resource strategy developed by the office of financial management pursuant to chapter 43.370 RCW.

(2) Effective January 1, 2010, for those facilities and services covered by the certificate of need programs, certificate of need determinations must be consistent with the statewide health resources strategy developed pursuant to RCW 43.370.030, including any health planning policies and goals identified in the statewide health resources strategy in effect at the time of application. The department may waive specific terms of the strategy if the applicant demonstrates that consistency with those terms will create an undue burden on the population that a particular project would serve, or in emergency circumstances which pose a threat to public health. [2007 c 259 § 56.]

**Severability—Subheadings not law—2007 c 259:** See notes following RCW 41.05.033.

**70.38.025 Definitions.** When used in this chapter, the terms defined in this section shall have the meanings indicated.

(1) "Board of health" means the state board of health created pursuant to chapter 43.20 RCW.

(2010 Ed.)

(2) "Capital expenditure" is an expenditure, including a force account expenditure (i.e., an expenditure for a construction project undertaken by a nursing home facility as its own contractor) which, under generally accepted accounting principles, is not properly chargeable as an expense of operation or maintenance. Where a person makes an acquisition under lease or comparable arrangement, or through donation, which would have required review if the acquisition had been made by purchase, such expenditure shall be deemed a capital expenditure. Capital expenditures include donations of equipment or facilities to a nursing home facility which if acquired directly by such facility would be subject to certificate of need review under the provisions of this chapter and transfer of equipment or facilities for less than fair market value if a transfer of the equipment or facilities at fair market value would be subject to such review. The cost of any studies, surveys, designs, plans, working drawings, specifications, and other activities essential to the acquisition, improvement, expansion, or replacement of any plant or equipment with respect to which such expenditure is made shall be included in determining the amount of the expenditure.

(3) "Continuing care retirement community" means an entity which provides shelter and services under continuing care contracts with its members and which sponsors or includes a health care facility or a health service. A "continuing care contract" means a contract to provide a person, for the duration of that person's life or for a term in excess of one year, shelter along with nursing, medical, health-related, or personal care services, which is conditioned upon the transfer of property, the payment of an entrance fee to the provider of such services, or the payment of periodic charges for the care and services involved. A continuing care contract is not excluded from this definition because the contract is mutually terminable or because shelter and services are not provided at the same location.

(4) "Department" means the department of health.

(5) "Expenditure minimum" means, for the purposes of the certificate of need program, one million dollars adjusted by the department by rule to reflect changes in the United States department of commerce composite construction cost index; or a lesser amount required by federal law and established by the department by rule.

(6) "Health care facility" means hospices, hospice care centers, hospitals, psychiatric hospitals, nursing homes, kidney disease treatment centers, ambulatory surgical facilities, and home health agencies, and includes such facilities when owned and operated by a political subdivision or instrumentality of the state and such other facilities as required by federal law and implementing regulations, but does not include any health facility or institution conducted by and for those who rely exclusively upon treatment by prayer or spiritual means in accordance with the creed or tenets of any well-recognized church or religious denomination, or any health facility or institution operated for the exclusive care of members of a convent as defined in RCW 84.36.800 or rectory, monastery, or other institution operated for the care of members of the clergy. In addition, the term does not include any nonprofit hospital: (a) Which is operated exclusively to provide health care services for children; (b) which does not

charge fees for such services; and (c) if not contrary to federal law as necessary to the receipt of federal funds by the state.

(7) "Health maintenance organization" means a public or private organization, organized under the laws of the state, which:

(a) Is a qualified health maintenance organization under Title XIII, section 1310(d) of the Public Health Services Act; or

(b)(i) Provides or otherwise makes available to enrolled participants health care services, including at least the following basic health care services: Usual physician services, hospitalization, laboratory, X-ray, emergency, and preventive services, and out-of-area coverage; (ii) is compensated (except for copayments) for the provision of the basic health care services listed in (b)(i) to enrolled participants by a payment which is paid on a periodic basis without regard to the date the health care services are provided and which is fixed without regard to the frequency, extent, or kind of health service actually provided; and (iii) provides physicians' services primarily (A) directly through physicians who are either employees or partners of such organization, or (B) through arrangements with individual physicians or one or more groups of physicians (organized on a group practice or individual practice basis).

(8) "Health services" means clinically related (i.e., preventive, diagnostic, curative, rehabilitative, or palliative) services and includes alcoholism, drug abuse, and mental health services and as defined in federal law.

(9) "Health service area" means a geographic region appropriate for effective health planning which includes a broad range of health services.

(10) "Person" means an individual, a trust or estate, a partnership, a corporation (including associations, joint stock companies, and insurance companies), the state, or a political subdivision or instrumentality of the state, including a municipal corporation or a hospital district.

(11) "Provider" generally means a health care professional or an organization, institution, or other entity providing health care but the precise definition for this term shall be established by rule of the department, consistent with federal law.

(12) "Public health" means the level of well-being of the general population; those actions in a community necessary to preserve, protect, and promote the health of the people for which government is responsible; and the governmental system developed to guarantee the preservation of the health of the people.

(13) "Secretary" means the secretary of health or the secretary's designee.

(14) "Tertiary health service" means a specialized service that meets complicated medical needs of people and requires sufficient patient volume to optimize provider effectiveness, quality of service, and improved outcomes of care.

(15) "Hospital" means any health care institution which is required to qualify for a license under \*RCW 70.41.020(2); or as a psychiatric hospital under chapter 71.12 RCW. [2000 c 175 § 22; 1997 c 210 § 2; 1991 c 158 § 1; 1989 1st ex.s. c 9 § 602; 1988 c 20 § 1; 1983 1st ex.s. c 41 § 43; 1983 c 235 § 2; 1982 c 119 § 1; 1980 c 139 § 2; 1979 ex.s. c 161 § 2.]

\*Reviser's note: RCW 70.41.020 was amended by 2002 c 116 § 2, changing subsection (2) to subsection (4).

**Effective date—2000 c 175:** See note following RCW 70.127.010.

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**70.38.095 Public disclosure.** Public accessibility to records shall be accorded by health systems agencies pursuant to Public Law 93-641 and chapter 42.56 RCW. A health systems agency shall be considered a "public agency" for the sole purpose of complying with the public records act, chapter 42.56 RCW. [2005 c 274 § 332; 1979 ex.s. c 161 § 9.]

**Part headings not law—Effective date—2005 c 274:** See RCW 42.56.901 and 42.56.902.

**70.38.105 Health services and facilities requiring certificate of need—Fees.** (1) The department is authorized and directed to implement the certificate of need program in this state pursuant to the provisions of this chapter.

(2) There shall be a state certificate of need program which is administered consistent with the requirements of federal law as necessary to the receipt of federal funds by the state.

(3) No person shall engage in any undertaking which is subject to certificate of need review under subsection (4) of this section without first having received from the department either a certificate of need or an exception granted in accordance with this chapter.

(4) The following shall be subject to certificate of need review under this chapter:

(a) The construction, development, or other establishment of a new health care facility including, but not limited to, a hospital constructed, developed, or established by a health maintenance organization or by a combination of health maintenance organizations except as provided in subsection (7)(a) of this section;

(b) The sale, purchase, or lease of part or all of any existing hospital as defined in RCW 70.38.025 including, but not limited to, a hospital sold, purchased, or leased by a health maintenance organization or by a combination of health maintenance organizations except as provided in subsection (7)(b) of this section;

(c) Any capital expenditure for the construction, renovation, or alteration of a nursing home which substantially changes the services of the facility after January 1, 1981, provided that the substantial changes in services are specified by the department in rule;

(d) Any capital expenditure for the construction, renovation, or alteration of a nursing home which exceeds the expenditure minimum as defined by RCW 70.38.025. However, a capital expenditure which is not subject to certificate of need review under (a), (b), (c), or (e) of this subsection and which is solely for any one or more of the following is not subject to certificate of need review:

(i) Communications and parking facilities;

(ii) Mechanical, electrical, ventilation, heating, and air conditioning systems;

(iii) Energy conservation systems;

(iv) Repairs to, or the correction of, deficiencies in existing physical plant facilities which are necessary to maintain state licensure, however, other additional repairs, remodeling, or replacement projects that are not related to one or more deficiency citations and are not necessary to maintain state licensure are not exempt from certificate of need review

except as otherwise permitted by (d)(vi) of this subsection or RCW 70.38.115(13);

(v) Acquisition of equipment, including data processing equipment, which is not or will not be used in the direct provision of health services;

(vi) Construction or renovation at an existing nursing home which involves physical plant facilities, including administrative, dining areas, kitchen, laundry, therapy areas, and support facilities, by an existing licensee who has operated the beds for at least one year;

(vii) Acquisition of land; and

(viii) Refinancing of existing debt;

(e) A change in bed capacity of a health care facility which increases the total number of licensed beds or redistributes beds among acute care, nursing home care, and boarding home care if the bed redistribution is to be effective for a period in excess of six months, or a change in bed capacity of a rural health care facility licensed under RCW 70.175.100 that increases the total number of nursing home beds or redistributes beds from acute care or boarding home care to nursing home care if the bed redistribution is to be effective for a period in excess of six months. A health care facility certified as a critical access hospital under 42 U.S.C. 1395i-4 may increase its total number of licensed beds to the total number of beds permitted under 42 U.S.C. 1395i-4 for acute care and may redistribute beds permitted under 42 U.S.C. 1395i-4 among acute care and nursing home care without being subject to certificate of need review. If there is a nursing home licensed under chapter 18.51 RCW within twenty-seven miles of the critical access hospital, the critical access hospital is subject to certificate of need review except for:

(i) Critical access hospitals which had designated beds to provide nursing home care, in excess of five swing beds, prior to December 31, 2003;

(ii) Up to five swing beds; or

(iii) Up to twenty-five swing beds for critical access hospitals which do not have a nursing home licensed under chapter 18.51 RCW within the same city or town limits. Up to one-half of the additional beds designated for swing bed services under this subsection (4)(e)(iii) may be so designated before July 1, 2010, with the balance designated on or after July 1, 2010.

Critical access hospital beds not subject to certificate of need review under this subsection (4)(e) will not be counted as either acute care or nursing home care for certificate of need review purposes. If a health care facility ceases to be certified as a critical access hospital under 42 U.S.C. 1395i-4, the hospital may revert back to the type and number of licensed hospital beds as it had when it requested critical access hospital designation;

(f) Any new tertiary health services which are offered in or through a health care facility or rural health care facility licensed under RCW 70.175.100, and which were not offered on a regular basis by, in, or through such health care facility or rural health care facility within the twelve-month period prior to the time such services would be offered;

(g) Any expenditure for the construction, renovation, or alteration of a nursing home or change in nursing home services in excess of the expenditure minimum made in preparation for any undertaking under subsection (4) of this section

and any arrangement or commitment made for financing such undertaking. Expenditures of preparation shall include expenditures for architectural designs, plans, working drawings, and specifications. The department may issue certificates of need permitting predevelopment expenditures, only, without authorizing any subsequent undertaking with respect to which such predevelopment expenditures are made; and

(h) Any increase in the number of dialysis stations in a kidney disease center.

(5) The department is authorized to charge fees for the review of certificate of need applications and requests for exemptions from certificate of need review. The fees shall be sufficient to cover the full cost of review and exemption, which may include the development of standards, criteria, and policies.

(6) No person may divide a project in order to avoid review requirements under any of the thresholds specified in this section.

(7)(a) The requirement that a health maintenance organization obtain a certificate of need under subsection (4)(a) of this section for the construction, development, or other establishment of a hospital does not apply to a health maintenance organization operating a group practice that has been continuously licensed as a health maintenance organization since January 1, 2009;

(b) The requirement that a health maintenance organization obtain a certificate of need under subsection (4)(b) of this section to sell, purchase, or lease a hospital does not apply to a health maintenance organization operating a group practice that has been continuously licensed as a health maintenance organization since January 1, 2009. [2009 c 315 § 1; 2009 c 242 § 3; 2009 c 54 § 1; 2004 c 261 § 6; 1996 c 50 § 1; 1992 c 27 § 1; 1991 sp.s. c 8 § 4; 1989 1st ex.s. c 9 § 603; 1984 c 288 § 21; 1983 c 235 § 7; 1982 c 119 § 2; 1980 c 139 § 7; 1979 ex.s. c 161 § 10.]

**Reviser's note:** This section was amended by 2009 c 242 § 3 and by 2009 c 315 § 1, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**70.38.111 Certificates of need—Exemptions.** (1) The department shall not require a certificate of need for the offering of an inpatient tertiary health service by:

(a) A health maintenance organization or a combination of health maintenance organizations if (i) the organization or combination of organizations has, in the service area of the organization or the service areas of the organizations in the combination, an enrollment of at least fifty thousand individuals, (ii) the facility in which the service will be provided is or will be geographically located so that the service will be reasonably accessible to such enrolled individuals, and (iii) at least seventy-five percent of the patients who can reasonably be expected to receive the tertiary health service will be individuals enrolled with such organization or organizations in the combination;

(b) A health care facility if (i) the facility primarily provides or will provide inpatient health services, (ii) the facility is or will be controlled, directly or indirectly, by a health maintenance organization or a combination of health maintenance organizations which has, in the service area of the

organization or service areas of the organizations in the combination, an enrollment of at least fifty thousand individuals, (iii) the facility is or will be geographically located so that the service will be reasonably accessible to such enrolled individuals, and (iv) at least seventy-five percent of the patients who can reasonably be expected to receive the tertiary health service will be individuals enrolled with such organization or organizations in the combination; or

(c) A health care facility (or portion thereof) if (i) the facility is or will be leased by a health maintenance organization or combination of health maintenance organizations which has, in the service area of the organization or the service areas of the organizations in the combination, an enrollment of at least fifty thousand individuals and, on the date the application is submitted under subsection (2) of this section, at least fifteen years remain in the term of the lease, (ii) the facility is or will be geographically located so that the service will be reasonably accessible to such enrolled individuals, and (iii) at least seventy-five percent of the patients who can reasonably be expected to receive the tertiary health service will be individuals enrolled with such organization;

if, with respect to such offering or obligation by a nursing home, the department has, upon application under subsection (2) of this section, granted an exemption from such requirement to the organization, combination of organizations, or facility.

(2) A health maintenance organization, combination of health maintenance organizations, or health care facility shall not be exempt under subsection (1) of this section from obtaining a certificate of need before offering a tertiary health service unless:

(a) It has submitted at least thirty days prior to the offering of services reviewable under RCW 70.38.105(4)(d) an application for such exemption; and

(b) The application contains such information respecting the organization, combination, or facility and the proposed offering or obligation by a nursing home as the department may require to determine if the organization or combination meets the requirements of subsection (1) of this section or the facility meets or will meet such requirements; and

(c) The department approves such application. The department shall approve or disapprove an application for exemption within thirty days of receipt of a completed application. In the case of a proposed health care facility (or portion thereof) which has not begun to provide tertiary health services on the date an application is submitted under this subsection with respect to such facility (or portion), the facility (or portion) shall meet the applicable requirements of subsection (1) of this section when the facility first provides such services. The department shall approve an application submitted under this subsection if it determines that the applicable requirements of subsection (1) of this section are met.

(3) A health care facility (or any part thereof) with respect to which an exemption was granted under subsection (1) of this section may not be sold or leased and a controlling interest in such facility or in a lease of such facility may not be acquired and a health care facility described in (1)(c) which was granted an exemption under subsection (1) of this section may not be used by any person other than the lessee described in (1)(c) unless:

(a) The department issues a certificate of need approving the sale, lease, acquisition, or use; or

(b) The department determines, upon application, that (i) the entity to which the facility is proposed to be sold or leased, which intends to acquire the controlling interest, or which intends to use the facility is a health maintenance organization or a combination of health maintenance organizations which meets the requirements of (1)(a)(i), and (ii) with respect to such facility, meets the requirements of (1)(a)(ii) or (iii) or the requirements of (1)(b)(i) and (ii).

(4) In the case of a health maintenance organization, an ambulatory care facility, or a health care facility, which ambulatory or health care facility is controlled, directly or indirectly, by a health maintenance organization or a combination of health maintenance organizations, the department may under the program apply its certificate of need requirements to the offering of inpatient tertiary health services to the extent that such offering is not exempt under the provisions of this section or RCW 70.38.105(7).

(5)(a) The department shall not require a certificate of need for the construction, development, or other establishment of a nursing home, or the addition of beds to an existing nursing home, that is owned and operated by a continuing care retirement community that:

(i) Offers services only to contractual members;

(ii) Provides its members a contractually guaranteed range of services from independent living through skilled nursing, including some assistance with daily living activities;

(iii) Contractually assumes responsibility for the cost of services exceeding the member's financial responsibility under the contract, so that no third party, with the exception of insurance purchased by the retirement community or its members, but including the medicaid program, is liable for costs of care even if the member depletes his or her personal resources;

(iv) Has offered continuing care contracts and operated a nursing home continuously since January 1, 1988, or has obtained a certificate of need to establish a nursing home;

(v) Maintains a binding agreement with the state assuring that financial liability for services to members, including nursing home services, will not fall upon the state;

(vi) Does not operate, and has not undertaken a project that would result in a number of nursing home beds in excess of one for every four living units operated by the continuing care retirement community, exclusive of nursing home beds; and

(vii) Has obtained a professional review of pricing and long-term solvency within the prior five years which was fully disclosed to members.

(b) A continuing care retirement community shall not be exempt under this subsection from obtaining a certificate of need unless:

(i) It has submitted an application for exemption at least thirty days prior to commencing construction of, is submitting an application for the licensure of, or is commencing operation of a nursing home, whichever comes first; and

(ii) The application documents to the department that the continuing care retirement community qualifies for exemption.

(c) The sale, lease, acquisition, or use of part or all of a continuing care retirement community nursing home that qualifies for exemption under this subsection shall require prior certificate of need approval to qualify for licensure as a nursing home unless the department determines such sale, lease, acquisition, or use is by a continuing care retirement community that meets the conditions of (a) of this subsection.

(6) A rural hospital, as defined by the department, reducing the number of licensed beds to become a rural primary care hospital under the provisions of Part A Title XVIII of the Social Security Act Section 1820, 42 U.S.C., 1395c et seq. may, within three years of the reduction of beds licensed under chapter 70.41 RCW, increase the number of licensed beds to no more than the previously licensed number without being subject to the provisions of this chapter.

(7) A rural health care facility licensed under RCW 70.175.100 formerly licensed as a hospital under chapter 70.41 RCW may, within three years of the effective date of the rural health care facility license, apply to the department for a hospital license and not be subject to the requirements of RCW 70.38.105(4)(a) as the construction, development, or other establishment of a new hospital, provided there is no increase in the number of beds previously licensed under chapter 70.41 RCW and there is no redistribution in the number of beds used for acute care or long-term care, the rural health care facility has been in continuous operation, and the rural health care facility has not been purchased or leased.

(8)(a) A nursing home that voluntarily reduces the number of its licensed beds to provide assisted living, licensed boarding home care, adult day care, adult day health, respite care, hospice, outpatient therapy services, congregate meals, home health, or senior wellness clinic, or to reduce to one or two the number of beds per room or to otherwise enhance the quality of life for residents in the nursing home, may convert the original facility or portion of the facility back, and thereby increase the number of nursing home beds to no more than the previously licensed number of nursing home beds without obtaining a certificate of need under this chapter, provided the facility has been in continuous operation and has not been purchased or leased. Any conversion to the original licensed bed capacity, or to any portion thereof, shall comply with the same life and safety code requirements as existed at the time the nursing home voluntarily reduced its licensed beds; unless waivers from such requirements were issued, in which case the converted beds shall reflect the conditions or standards that then existed pursuant to the approved waivers.

(b) To convert beds back to nursing home beds under this subsection, the nursing home must:

(i) Give notice of its intent to preserve conversion options to the department of health no later than thirty days after the effective date of the license reduction; and

(ii) Give notice to the department of health and to the department of social and health services of the intent to convert beds back. If construction is required for the conversion of beds back, the notice of intent to convert beds back must be given, at a minimum, one year prior to the effective date of license modification reflecting the restored beds; otherwise, the notice must be given a minimum of ninety days prior to the effective date of license modification reflecting the restored beds. Prior to any license modification to convert

beds back to nursing home beds under this section, the licensee must demonstrate that the nursing home meets the certificate of need exemption requirements of this section.

The term "construction," as used in (b)(ii) of this subsection, is limited to those projects that are expected to equal or exceed the expenditure minimum amount, as determined under this chapter.

(c) Conversion of beds back under this subsection must be completed no later than four years after the effective date of the license reduction. However, for good cause shown, the four-year period for conversion may be extended by the department of health for one additional four-year period.

(d) Nursing home beds that have been voluntarily reduced under this section shall be counted as available nursing home beds for the purpose of evaluating need under RCW 70.38.115(2) (a) and (k) so long as the facility retains the ability to convert them back to nursing home use under the terms of this section.

(e) When a building owner has secured an interest in the nursing home beds, which are intended to be voluntarily reduced by the licensee under (a) of this subsection, the applicant shall provide the department with a written statement indicating the building owner's approval of the bed reduction.

(9)(a) The department shall not require a certificate of need for a hospice agency if:

(i) The hospice agency is designed to serve the unique religious or cultural needs of a religious group or an ethnic minority and commits to furnishing hospice services in a manner specifically aimed at meeting the unique religious or cultural needs of the religious group or ethnic minority;

(ii) The hospice agency is operated by an organization that:

(A) Operates a facility, or group of facilities, that offers a comprehensive continuum of long-term care services, including, at a minimum, a licensed, medicare-certified nursing home, assisted living, independent living, day health, and various community-based support services, designed to meet the unique social, cultural, and religious needs of a specific cultural and ethnic minority group;

(B) Has operated the facility or group of facilities for at least ten continuous years prior to the establishment of the hospice agency;

(iii) The hospice agency commits to coordinating with existing hospice programs in its community when appropriate;

(iv) The hospice agency has a census of no more than forty patients;

(v) The hospice agency commits to obtaining and maintaining medicare certification;

(vi) The hospice agency only serves patients located in the same county as the majority of the long-term care services offered by the organization that operates the agency; and

(vii) The hospice agency is not sold or transferred to another agency.

(b) The department shall include the patient census for an agency exempted under this subsection (9) in its calculations for future certificate of need applications. [2009 c 315 § 2; 2009 c 89 § 1; 1997 c 210 § 1; 1995 1st sp.s. c 18 § 71; 1993 c 508 § 5; 1992 c 27 § 2; 1991 c 158 § 2; 1989 1st ex.s. c 9 § 604; 1982 c 119 § 3; 1980 c 139 § 9.]

**Reviser's note:** This section was amended by 2009 c 89 § 1 and by 2009 c 315 § 2, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**70.38.115 Certificates of need—Procedures—Rules—Criteria for review—Conditional certificates of need—Concurrent review—Review periods—Hearing—Adjudicative proceeding—Amended certificates of need.**

(1) Certificates of need shall be issued, denied, suspended, or revoked by the designee of the secretary in accord with the provisions of this chapter and rules of the department which establish review procedures and criteria for the certificate of need program.

(2) Criteria for the review of certificate of need applications, except as provided in subsection (3) of this section for health maintenance organizations, shall include but not be limited to consideration of the following:

(a) The need that the population served or to be served by such services has for such services;

(b) The availability of less costly or more effective alternative methods of providing such services;

(c) The financial feasibility and the probable impact of the proposal on the cost of and charges for providing health services in the community to be served;

(d) In the case of health services to be provided, (i) the availability of alternative uses of project resources for the provision of other health services, (ii) the extent to which such proposed services will be accessible to all residents of the area to be served, and (iii) the need for and the availability in the community of services and facilities for osteopathic physicians and surgeons and allopathic physicians and their patients. The department shall consider the application in terms of its impact on existing and proposed institutional training programs for doctors of osteopathic medicine and surgery and medicine at the student, internship, and residency training levels;

(e) In the case of a construction project, the costs and methods of the proposed construction, including the cost and methods of energy provision, and the probable impact of the construction project reviewed (i) on the cost of providing health services by the person proposing such construction project and (ii) on the cost and charges to the public of providing health services by other persons;

(f) The special needs and circumstances of osteopathic hospitals, nonallopathic services and children's hospitals;

(g) Improvements or innovations in the financing and delivery of health services which foster cost containment and serve to promote quality assurance and cost-effectiveness;

(h) In the case of health services proposed to be provided, the efficiency and appropriateness of the use of existing services and facilities similar to those proposed;

(i) In the case of existing services or facilities, the quality of care provided by such services or facilities in the past;

(j) In the case of hospital certificate of need applications, whether the hospital meets or exceeds the regional average level of charity care, as determined by the secretary; and

(k) In the case of nursing home applications:

(i) The availability of other nursing home beds in the planning area to be served; and

(ii) The availability of other services in the community to be served. Data used to determine the availability of other services will include but not be limited to data provided by the department of social and health services.

(3) A certificate of need application of a health maintenance organization or a health care facility which is controlled, directly or indirectly, by a health maintenance organization, shall be approved by the department if the department finds:

(a) Approval of such application is required to meet the needs of the members of the health maintenance organization and of the new members which such organization can reasonably be expected to enroll; and

(b) The health maintenance organization is unable to provide, through services or facilities which can reasonably be expected to be available to the organization, its health services in a reasonable and cost-effective manner which is consistent with the basic method of operation of the organization and which makes such services available on a long-term basis through physicians and other health professionals associated with it.

A health care facility, or any part thereof, with respect to which a certificate of need was issued under this subsection may not be sold or leased and a controlling interest in such facility or in a lease of such facility may not be acquired unless the department issues a certificate of need approving the sale, acquisition, or lease.

(4) Until the final expiration of the state health plan as provided under \*RCW 70.38.919, the decision of the department on a certificate of need application shall be consistent with the state health plan in effect, except in emergency circumstances which pose a threat to the public health. The department in making its final decision may issue a conditional certificate of need if it finds that the project is justified only under specific circumstances. The conditions shall directly relate to the project being reviewed. The conditions may be released if it can be substantiated that the conditions are no longer valid and the release of such conditions would be consistent with the purposes of this chapter.

(5) Criteria adopted for review in accordance with subsection (2) of this section may vary according to the purpose for which the particular review is being conducted or the type of health service reviewed.

(6) The department shall specify information to be required for certificate of need applications. Within fifteen days of receipt of the application, the department shall request additional information considered necessary to the application or start the review process. Applicants may decline to submit requested information through written notice to the department, in which case review starts on the date of receipt of the notice. Applications may be denied or limited because of failure to submit required and necessary information.

(7) Concurrent review is for the purpose of comparative analysis and evaluation of competing or similar projects in order to determine which of the projects may best meet identified needs. Categories of projects subject to concurrent review include at least new health care facilities, new services, and expansion of existing health care facilities. The department shall specify time periods for the submission of applications for certificates of need subject to concurrent

review, which shall not exceed ninety days. Review of concurrent applications shall start fifteen days after the conclusion of the time period for submission of applications subject to concurrent review. Concurrent review periods shall be limited to one hundred fifty days, except as provided for in rules adopted by the department authorizing and limiting amendment during the course of the review, or for an unresolved pivotal issue declared by the department.

(8) Review periods for certificate of need applications other than those subject to concurrent review shall be limited to ninety days. Review periods may be extended up to thirty days if needed by a review agency, and for unresolved pivotal issues the department may extend up to an additional thirty days. A review may be extended in any case if the applicant agrees to the extension.

(9) The department or its designee, shall conduct a public hearing on a certificate of need application if requested unless the review is expedited or subject to emergency review. The department by rule shall specify the period of time within which a public hearing must be requested and requirements related to public notice of the hearing, procedures, record-keeping and related matters.

(10)(a) Any applicant denied a certificate of need or whose certificate of need has been suspended or revoked has the right to an adjudicative proceeding. The proceeding is governed by chapter 34.05 RCW, the Administrative Procedure Act.

(b) Any health care facility or health maintenance organization that: (i) Provides services similar to the services provided by the applicant and under review pursuant to this subsection; (ii) is located within the applicant's health service area; and (iii) testified or submitted evidence at a public hearing held pursuant to subsection (9) of this section, shall be provided an opportunity to present oral or written testimony and argument in a proceeding under this subsection: PROVIDED, That the health care facility or health maintenance organization had, in writing, requested to be informed of the department's decisions.

(c) If the department desires to settle with the applicant prior to the conclusion of the adjudicative proceeding, the department shall so inform the health care facility or health maintenance organization and afford them an opportunity to comment, in advance, on the proposed settlement.

(11) An amended certificate of need shall be required for the following modifications of an approved project:

- (a) A new service requiring review under this chapter;
- (b) An expansion of a service subject to review beyond that originally approved;
- (c) An increase in bed capacity;
- (d) A significant reduction in the scope of a nursing home project without a commensurate reduction in the cost of the nursing home project, or a cost increase (as represented in bids on a nursing home construction project or final cost estimates acceptable to the person to whom the certificate of need was issued) if the total of such increases exceeds twelve percent or fifty thousand dollars, whichever is greater, over the maximum capital expenditure approved. The review of reductions or cost increases shall be restricted to the continued conformance of the nursing home project with the review criteria pertaining to financial feasibility and cost containment.

(2010 Ed.)

(12) An application for a certificate of need for a nursing home capital expenditure which is determined by the department to be required to eliminate or prevent imminent safety hazards or correct violations of applicable licensure and accreditation standards shall be approved.

(13)(a) Replacement of existing nursing home beds in the same planning area by an existing licensee who has operated the beds for at least one year shall not require a certificate of need under this chapter. The licensee shall give written notice of its intent to replace the existing nursing home beds to the department and shall provide the department with information as may be required pursuant to rule. Replacement of the beds by a party other than the licensee is subject to certificate of need review under this chapter, except as otherwise permitted by subsection (14) of this section.

(b) When an entire nursing home ceases operation, the licensee or any other party who has secured an interest in the beds may reserve his or her interest in the beds for eight years or until a certificate of need to replace them is issued, whichever occurs first. However, the nursing home, licensee, or any other party who has secured an interest in the beds must give notice of its intent to retain the beds to the department of health no later than thirty days after the effective date of the facility's closure. Certificate of need review shall be required for any party who has reserved the nursing home beds except that the need criteria shall be deemed met when the applicant is the licensee who had operated the beds for at least one year, who has operated the beds for at least one year immediately preceding the reservation of the beds, and who is replacing the beds in the same planning area.

(14) In the event that a licensee, who has provided the department with notice of his or her intent to replace nursing home beds under subsection (13)(a) of this section, engages in unprofessional conduct or becomes unable to practice with reasonable skill and safety by reason of mental or physical condition, pursuant to chapter 18.130 RCW, or dies, the building owner shall be permitted to complete the nursing home bed replacement project, provided the building owner has secured an interest in the beds. [1996 c 178 § 22; 1995 1st sp.s. c 18 § 72; 1993 c 508 § 6. Prior: 1989 1st ex.s. c 9 § 605; 1989 c 175 § 126; 1984 c 288 § 22; 1983 c 235 § 8; 1980 c 139 § 8; 1979 ex.s. c 161 § 11.]

\*Reviser's note: RCW 70.38.919 was repealed by 2007 c 259 § 67.

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**70.38.118 Certificates of need—Applications submitted by hospice agencies.** All certificate of need applications submitted by hospice agencies for the construction, development, or other establishment of a facility to be licensed as either a hospital under chapter 70.41 RCW or as a nursing home under chapter 18.51 RCW, for the purpose of operating the functional equivalent of a hospice care center shall not require a separate certificate of need for a hospice care center provided the certificate of need application was declared complete prior to July 1, 2001, the applicant has been issued a certificate of need, and has applied for and received an in-home services agency license by July 1, 2002. [2000 c 175 § 23.]

**Effective date—2000 c 175:** See note following RCW 70.127.010.

**70.38.125 Certificates of need—Issuance—Duration—Penalties for violations.** (1) A certificate of need shall be valid for two years. One six-month extension may be made if it can be substantiated that substantial and continuing progress toward commencement of the project has been made as defined by regulations to be adopted pursuant to this chapter.

(2) A project for which a certificate of need has been issued shall be commenced during the validity period for the certificate of need.

(3) The department shall monitor the approved projects to assure conformance with certificates of need that have been issued. Rules and regulations adopted shall specify when changes in the project require reevaluation of the project. The department may require applicants to submit periodic progress reports on approved projects or other information as may be necessary to effectuate its monitoring responsibilities.

(4) The secretary, in the case of a new health facility, shall not issue any license unless and until a prior certificate of need shall have been issued by the department for the offering or development of such new health facility.

(5) Any person who engages in any undertaking which requires certificate of need review without first having received from the department either a certificate of need or an exception granted in accordance with this chapter shall be liable to the state in an amount not to exceed one hundred dollars a day for each day of such unauthorized offering or development. Such amounts of money shall be recoverable in an action brought by the attorney general on behalf of the state in the superior court of any county in which the unauthorized undertaking occurred. Any amounts of money so recovered by the attorney general shall be deposited in the state general fund.

(6) The department may bring any action to enjoin a violation or the threatened violation of the provisions of this chapter or any rules and regulations adopted pursuant to this chapter, or may bring any legal proceeding authorized by law, including but not limited to the special proceedings authorized in Title 7 RCW, in the superior court in the county in which such violation occurs or is about to occur, or in the superior court of Thurston county. [1989 1st ex.s. c 9 § 606; 1983 c 235 § 9; 1980 c 139 § 10; 1979 ex.s. c 161 § 12.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**70.38.128 Certificates of need—Elective percutaneous coronary interventions—Rules.** To promote the stability of Washington's cardiac care delivery system, by July 1, 2008, the department of health shall adopt rules establishing criteria for the issuance of a certificate of need under this chapter for the performance of elective percutaneous coronary interventions at hospitals that do not otherwise provide on-site cardiac surgery.

Prior to initiating rule making, the department shall contract for an independent evidence-based review of the circumstances under which elective percutaneous coronary interventions should be allowed in Washington at hospitals that do not otherwise provide on-site cardiac surgery. The review shall address, at a minimum, factors related to access to care, patient safety, quality outcomes, costs, and the stability of Washington's cardiac care delivery system and of

existing cardiac care providers, and ensure that elective coronary intervention volumes at the University of Washington academic medical center are maintained at levels required for training of cardiologists consistent with applicable accreditation requirements. The department shall consider the results of this review, and any associated recommendations, in adopting these rules. [2007 c 440 § 1.]

**70.38.135 Services and surveys—Rules.** The secretary shall have authority to:

(1) Provide when needed temporary or intermittent services of experts or consultants or organizations thereof, by contract, when such services are to be performed on a part time or fee-for-service basis;

(2) Make or cause to be made such on-site surveys of health care or medical facilities as may be necessary for the administration of the certificate of need program;

(3) Upon review of recommendations, if any, from the board of health or the office of financial management as contained in the Washington health resources strategy:

(a) Promulgate rules under which health care facilities providers doing business within the state shall submit to the department such data related to health and health care as the department finds necessary to the performance of its functions under this chapter;

(b) Promulgate rules pertaining to the maintenance and operation of medical facilities which receive federal assistance under the provisions of Title XVI;

(c) Promulgate rules in implementation of the provisions of this chapter, including the establishment of procedures for public hearings for predecisions and post-decisions on applications for certificate of need;

(d) Promulgate rules providing circumstances and procedures of expedited certificate of need review if there has not been a significant change in existing health facilities of the same type or in the need for such health facilities and services;

(4) Grant allocated state funds to qualified entities, as defined by the department, to fund not more than seventy-five percent of the costs of regional planning activities, excluding costs related to review of applications for certificates of need, provided for in this chapter or approved by the department; and

(5) Contract with and provide reasonable reimbursement for qualified entities to assist in determinations of certificates of need. [2007 c 259 § 57; 1989 1st ex.s. c 9 § 607; 1983 c 235 § 10; 1979 ex.s. c 161 § 13.]

**Severability—Subheadings not law—2007 c 259:** See notes following RCW 41.05.033.

**70.38.155 Certificates of need—Savings—1979 ex.s. c 161.** The enactment of this chapter shall not have the effect of terminating, or in any way modifying the validity of any certificate of need which shall already have been issued prior to \*the effective date of this act. [1979 ex.s. c 161 § 15.]

\*Reviser's note: For "the effective date of this act," see RCW 70.38.915.

**70.38.156 Certificates of need—Savings—1980 c 139.** The enactment of this chapter as amended shall not have the effect of terminating, or in any way modifying the validity of

any certificate of need which shall already have been issued prior to \*the effective date of this 1980 act. [1980 c 139 § 11.]

\*Reviser's note: For "the effective date of this 1980 act," see RCW 70.38.916.

#### **70.38.157 Certificates of need—Savings—1983 c 235.**

The enactment of amendments to chapter 70.38 RCW by chapter 235, Laws of 1983 shall not have the effect of terminating or in any way modifying the validity of a certificate of need which was issued prior to \*the effective date of this 1983 act. [1983 c 235 § 11.]

\*Reviser's note: "the effective date of this 1983 act" [1983 c 235] for sections 16 and 17 of that act was May 17, 1983. For all other sections of that act the effective date was July 24, 1983.

**70.38.158 Certificates of need—Savings—1989 1st ex.s. c 9 §§ 601 through 607.** The enactment of \*sections 601 through 607 of this act shall not have the effect of terminating, or in any way modifying, the validity of any certificate of need which shall already have been issued prior to July 1, 1989. [1989 1st ex.s. c 9 § 608.]

\*Reviser's note: "Sections 601 through 607 of this act" consist of the 1989 1st ex.s. c 9 amendments to RCW 70.38.015, 70.38.025, 70.38.105, 70.38.111, 70.38.115, 70.38.125, and 70.38.135.

**70.38.220 Ethnic minorities—Nursing home beds that reflect cultural differences.** (1) The legislature recognizes that in this state ethnic minorities currently use nursing home care at a lower rate than the general population. The legislature also recognizes and supports the federal mandate that nursing homes receiving federal funds provide residents with a homelike environment. The legislature finds that certain ethnic minorities have special cultural, language, dietary, and other needs not generally met by existing nursing homes which are intended to serve the general population. Accordingly, the legislature further finds that there is a need to foster the development of nursing homes designed to serve the special cultural, language, dietary, and other needs of ethnic minorities.

(2) The department shall establish a separate pool of no more than two hundred fifty beds for nursing homes designed to serve the special needs of ethnic minorities. The pool shall be made up of nursing home beds that become available on or after March 15, 1991, due to:

(a) Loss of license or reduction in licensed bed capacity if the beds are not otherwise obligated for replacement; or

(b) Expiration of a certificate of need.

(3) The department shall develop procedures for the fair and efficient award of beds from the special pool. In making its decisions regarding the award of beds from the pool, the department shall consider at least the following:

(a) The relative degree to which the long-term care needs of an ethnic minority are not otherwise being met;

(b) The percentage of low-income persons who would be served by the proposed nursing home;

(c) The financial feasibility of the proposed nursing home; and

(d) The impact of the proposal on the area's total need for nursing home beds.

(2010 Ed.)

(4) To be eligible to apply for or receive an award of beds from the special pool, an application must be to build a new nursing home, or add beds to a nursing home, that:

(a) Will be owned and operated by a nonprofit corporation, and at least fifty percent of the board of directors of the corporation are members of the ethnic minority the nursing home is intended to serve;

(b) Will be designed, managed, and administered to serve the special cultural, language, dietary, and other needs of an ethnic minority; and

(c) Will not discriminate in admissions against persons who are not members of the ethnic minority whose special needs the nursing home is designed to serve.

(5) If a nursing home or portion of a nursing home that is built as a result of an award from the special pool is sold or leased within ten years to a party not eligible under subsection (4) of this section:

(a) The purchaser or lessee may not operate those beds as nursing home beds without first obtaining a certificate of need for new beds under this chapter; and

(b) The beds that had been awarded from the special pool shall be returned to the special pool.

(6) The department shall initially award up to one hundred beds before that number of beds are actually in the special pool, provided that the number of beds so awarded are subtracted from the total of two hundred fifty beds that can be awarded from the special pool. [1991 c 271 § 1.]

**70.38.230 Residential hospice care centers—Defined—Change in bed capacity—Applicability of chapter.** (1) A change in bed capacity at a residential hospice care center shall not be subject to certificate of need review under this chapter if the department determined prior to June 1994 that the construction, development, or other establishment of the residential hospice care center was not subject to certificate of need review under this chapter.

(2) For purposes of this section, a "residential hospice care center" means any building, facility, place, or equivalent that opened in December 1996 and is organized, maintained, and operated specifically to provide beds, accommodations, facilities, and services over a continuous period of twenty-four hours or more for palliative care of two or more individuals, not related to the operator, who are diagnosed as being in the latter stages of an advanced disease that is expected to lead to death. [1998 c 322 § 50.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**70.38.250 Redistribution and addition of beds—Determination.** (1) The need for projects identified in \*RCW 70.38.240 shall be determined using the individual planning area's estimated nursing home bed need ratio and includes but is not limited to the following criteria:

(a) The current capacity of nursing homes and other long-term care services;

(b) The occupancy rates of nursing homes and other long-term care services over the previous two-year period; and

(c) The ability of the other long-term care services to serve all people regardless of payor source.

(2) For the purposes of this section, nursing home beds include long-term care units or distinct part long-term care units located in a hospital that is licensed under chapter 70.41 RCW. [1999 c 376 § 2.]

\*Reviser's note: RCW 70.38.240 expired June 30, 2004.

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

#### 70.38.905 Conflict with federal law—Construction.

In any case where the provisions of this chapter may directly conflict with federal law, or regulations promulgated thereunder, the federal law shall supersede and be paramount as necessary to the receipt of federal funds by the state. [1983 c 235 § 12; 1979 ex.s. c 161 § 16.]

#### 70.38.910 Severability—1983 c 235; 1979 ex.s. c 161.

If any provision of this chapter or its application to any person or circumstance is held invalid, the remainder of the chapter or the application of the provision to other persons or circumstances is not affected. [1983 c 235 § 13; 1979 ex.s. c 161 § 17.]

**70.38.911 Severability—1980 c 139.** If any provision of this 1980 act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1980 c 139 § 12.]

**70.38.912 Severability—1989 1st ex.s. c 9.** See RCW 43.70.920.

#### 70.38.914 Pending certificates of need—1983 c 235.

A certificate of need application which was submitted and declared complete, but upon which final action had not been taken prior to \*the effective date of this act, shall be reviewed and action taken based on chapter 70.38 RCW, as in effect prior to \*the effective date of this act, and the rules adopted thereunder. [1983 c 235 § 14.]

\*Reviser's note: For "the effective date of this act," see note following RCW 70.38.157.

**70.38.915 Effective dates—Pending certificates of need—1979 ex.s. c 161.** (1) \*Sections 10, 11, 12, and 21 shall take effect on January 1, 1980.

(2) Any certificate of need application which was submitted and declared complete, but upon which final action had not been taken prior to January 1, 1980, shall be reviewed and action taken based on chapter 70.38 RCW, as in effect prior to \*\*the effective date of this 1979 act, and the regulations adopted thereunder. [1979 ex.s. c 161 § 19.]

**Reviser's note:** \*(1) Sections 10, 11, and 12 are codified as RCW 70.38.105, 70.38.115, and 70.38.125. Section 21 was a repealer which repealed RCW 70.38.020, 70.38.110 through 70.38.190, and 70.38.210.

\*\* (2) The effective date of those remaining sections of 1979 ex.s. c 161 which do not have a specific effective date indicated in this section is September 1, 1979.

**70.38.916 Effective date—1980 c 139.** \*Sections 7, 8, and 10 of this 1980 act shall take effect January 1, 1981. [1980 c 139 § 14.]

**Reviser's note:** \*(1) "Sections 7, 8, and 10 of this 1980 act" consist of amendments to RCW 70.38.105, 70.38.115, and 70.38.125.

(2) The effective date of those remaining sections of 1980 c 139 is June 12, 1980.

**70.38.917 Effective date—1989 1st ex.s. c 9.** See RCW 43.70.910.

**70.38.918 Effective dates—Pending certificates of need—1989 1st ex.s. c 9.** Any certificate of need application which was submitted and declared complete, but upon which final action had not been taken prior to July 1, 1989, shall be reviewed and action taken based on chapter 70.38 RCW, as in effect prior to July 1, 1989, and the rules adopted thereunder. [1989 1st ex.s. c 9 § 609.]

**70.38.920 Short title.** This act may be cited as the "State Health Planning and Resources Development Act". [1979 ex.s. c 161 § 22.]

### Chapter 70.40 RCW

#### HOSPITAL AND MEDICAL FACILITIES SURVEY AND CONSTRUCTION ACT

##### Sections

70.40.005	Transfer of duties to the department of health.
70.40.010	Short title.
70.40.020	Definitions.
70.40.030	Section of hospital and medical facility survey and construction established—Duties.
70.40.040	General duties of the secretary.
70.40.060	Development of program for construction of facilities needed.
70.40.070	Distribution of facilities.
70.40.080	Federal funds—Application for—Deposit, use.
70.40.090	State plan—Publication—Hearing—Approval by surgeon general—Modifications.
70.40.100	Plan shall provide for construction in order of relative needs.
70.40.110	Minimum standards for maintenance and operation.
70.40.120	Applications for construction projects—Diagnostic, treatment centers.
70.40.130	Hearing—Approval.
70.40.140	Inspection of project under construction—Certification as to federal funds due.
70.40.150	Hospital and medical facility construction fund—Deposits, use.
70.40.900	Severability—1949 c 197.

**70.40.005 Transfer of duties to the department of health.** The powers and duties of the department of social and health services and the secretary of social and health services under this chapter shall be performed by the department of health and the secretary of health. [1989 1st ex.s. c 9 § 248.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**70.40.010 Short title.** This chapter may be cited as the "Washington Hospital and Medical Facilities Survey and Construction Act." [1959 c 252 § 1; 1949 c 197 § 1; Rem. Supp. 1949 § 6090-60.]

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

(1) "Secretary" means the secretary of the state department of health;

(2) "The federal act" means Title VI of the public health service act, as amended, or as hereafter amended by congress;

(3) "The surgeon general" means the surgeon general of the public health service of the United States;

(4) "Hospital" includes public health centers and general, tuberculosis, mental, chronic disease, and other types of hospitals, and related facilities, such as laboratories, outpatient departments, nurses' home and training facilities, and central service facilities operated in connection with hospitals;

(5) "Public health center" means a publicly owned facility for the provision of public health services, including related facilities such as laboratories, clinics, and administrative offices operated in connection with public health centers;

(6) "Nonprofit hospital" and "nonprofit medical facility" means any hospital or medical facility owned and operated by a corporation or association, no part of the net earnings of which inures, or may lawfully inure, to the benefit of any private shareholder or individual;

(7) "Medical facilities" means diagnostic or diagnostic and treatment centers, rehabilitation facilities and nursing homes as those terms are defined in the federal act. [1991 c 3 § 331; 1979 c 141 § 96; 1959 c 252 § 2; 1949 c 197 § 2; Rem. Supp. 1949 § 6090-61.]

**70.40.030 Section of hospital and medical facility survey and construction established—Duties.** There is hereby established in the state department of health a "section of hospital and medical facility survey and construction" which shall be administered by a full time salaried head under the supervision and direction of the secretary. The state department of health, through such section, shall constitute the sole agency of the state for the purpose of:

(1) Making an inventory of existing hospitals and medical facilities, surveying the need for construction of hospitals and medical facilities, and developing a program of hospital and medical facility construction; and

(2) Developing and administering a state plan for the construction of public and other nonprofit hospitals and medical facilities as provided in this chapter. [1991 c 3 § 332; 1979 c 141 § 97; 1959 c 252 § 3; 1949 c 197 § 3; Rem. Supp. 1949 § 6090-62.]

**70.40.040 General duties of the secretary.** In carrying out the purposes of the chapter the secretary is authorized and directed:

(1) To require such reports, make such inspections and investigations and prescribe such regulations as he deems necessary;

(2) To provide such methods of administration, appoint a head and other personnel of the section and take such other action as may be necessary to comply with the requirements of the federal act and the regulations thereunder;

(3) To procure in his discretion the temporary or intermittent services of experts or consultants or organizations thereof, by contract, when such services are to be performed on a part time or fee for service basis and do not involve the performance of administrative duties;

(4) To the extent that he considers desirable to effectuate the purposes of this chapter, to enter into agreements for the utilization of the facilities and services of other departments, agencies, and institutions public or private;

(5) To accept on behalf of the state and to deposit with the state treasurer, any grant, gift, or contribution made to

(2010 Ed.)

assist in meeting the cost of carrying out the purposes of this chapter, and to expend the same for such purpose; and

(6) To make an annual report to the governor on activities pursuant to this chapter, including recommendations for such additional legislation as the secretary considers appropriate to furnish adequate hospital and medical facilities to the people of this state. [1979 c 141 § 98; 1977 c 75 § 83; 1959 c 252 § 4; 1949 c 197 § 4; Rem. Supp. 1949 § 6090-63.]

**70.40.060 Development of program for construction of facilities needed.** The secretary is authorized and directed to make an inventory of existing hospitals and medical facilities, including public nonprofit and proprietary hospitals and medical facilities, to survey the need for construction of hospitals and medical facilities, and, on the basis of such inventory and survey, to develop a program for the construction of such public and other nonprofit hospitals and medical facilities as will, in conjunction with existing facilities, afford the necessary physical facilities for furnishing adequate hospital and medical facility services to all the people of the state. [1979 c 141 § 99; 1959 c 252 § 6; 1949 c 197 § 6; Rem. Supp. 1949 § 6090-65.]

**70.40.070 Distribution of facilities.** The construction program shall provide, in accordance with regulations prescribed under the federal act, for adequate hospital and medical facilities for the people residing in this state and insofar as possible shall provide for their distribution throughout the state in such manner as to make all types of hospital and medical facility service reasonably accessible to all persons in the state. [1959 c 252 § 7; 1949 c 197 § 7; Rem. Supp. 1949 § 6090-66.]

**70.40.080 Federal funds—Application for—Deposit, use.** The secretary is authorized to make application to the surgeon general for federal funds to assist in carrying out the survey and planning activities herein provided. Such funds shall be deposited with the state treasurer and shall be available to the secretary for expenditure in carrying out the purposes of this part. Any such funds received and not expended for such purposes shall be repaid to the treasurer of the United States. [1979 c 141 § 100; 1949 c 197 § 8; Rem. Supp. 1949 § 6090-67.]

**70.40.090 State plan—Publication—Hearing—Approval by surgeon general—Modifications.** The secretary shall prepare and submit to the surgeon general a state plan which shall include the hospital and medical facility construction program developed under this chapter and which shall provide for the establishment, administration, and operation of hospital and medical facility construction activities in accordance with the requirements of the federal act and the regulations thereunder. The secretary shall, prior to the submission of such plan to the surgeon general, give adequate publicity to a general description of all the provisions proposed to be included therein, and hold a public hearing at which all persons or organizations with a legitimate interest in such plan may be given an opportunity to express their views. After approval of the plan by the surgeon general, the secretary shall publish a general description of the

provisions thereof in at least one newspaper having general circulation in the state, and shall make the plan, or a copy thereof, available upon request to all interested persons or organizations. The secretary shall from time to time review the hospital and medical facility construction program and submit to the surgeon general any modifications thereof which he may find necessary and may submit to the surgeon general such modifications of the state plan, not inconsistent with the requirements of the federal act, as he may deem advisable. [1979 c 141 § 101; 1959 c 252 § 8; 1949 c 197 § 9; Rem. Supp. 1949 § 6090-68.]

**70.40.100 Plan shall provide for construction in order of relative needs.** The state plan shall set forth the relative need for the several projects included in the construction program determined in accordance with regulations prescribed pursuant to the federal act, and provide for the construction, insofar as financial resources available therefor and for maintenance and operations make possible, in the order of such relative need. [1949 c 197 § 11; Rem. Supp. 1949 § 6090-70.]

**70.40.110 Minimum standards for maintenance and operation.** The secretary shall by regulation prescribe minimum standards for the maintenance and operation of hospitals and medical facilities which receive federal aid for construction under the state plan. [1979 c 141 § 102; 1959 c 252 § 9; 1949 c 197 § 10; Rem. Supp. 1949 § 6090-69.]

**70.40.120 Applications for construction projects—Diagnostic, treatment centers.** Applications for hospital and medical facility construction projects for which federal funds are requested shall be submitted to the secretary and may be submitted by the state or any political subdivision thereof or by any public or nonprofit agency authorized to construct and operate a hospital or medical facility: PROVIDED, That except as may be permitted by federal law no application for a diagnostic or treatment center shall be approved unless the applicant is (1) a state, political subdivision, or public agency, or (2) a corporation or association which owns and operates a nonprofit hospital. Each application for a construction project shall conform to federal and state requirements. [1979 c 141 § 103; 1959 c 252 § 10; 1949 c 197 § 12; Rem. Supp. 1949 § 6090-71.]

**70.40.130 Hearing—Approval.** The secretary shall afford to every applicant for a construction project an opportunity for a fair hearing. If the secretary, after affording reasonable opportunity for development and presentation of applications in the order of relative need, finds that a project application complies with the requirements of RCW 70.40.120 and is otherwise in conformity with the state plan, he shall approve such application and shall recommend and forward it to the surgeon general. [1979 c 141 § 104; 1949 c 197 § 13; Rem. Supp. 1949 § 6090-72.]

**70.40.140 Inspection of project under construction—Certification as to federal funds due.** From time to time the secretary shall inspect each construction project approved by the surgeon general, and, if the inspection so warrants, the

secretary shall certify to the surgeon general that work has been performed upon the project, or purchases have been made, in accordance with the approved plans and specifications, and that payment of an installment of federal funds is due to the applicant. [1979 c 141 § 105; 1949 c 197 § 14; Rem. Supp. 1949 § 6090-73.]

**70.40.150 Hospital and medical facility construction fund—Deposits, use.** The secretary is hereby authorized to receive federal funds in behalf of, and transmit them to, such applicants or to approve applicants for federal funds and authorize the payment of such funds directly to such applicants as may be allowed by federal law. To achieve that end there is hereby established, separate and apart from all public moneys and funds of this state, a trust fund to be known as the "hospital and medical facility construction fund", of which the state treasurer shall ex officio be custodian. Moneys received from the federal government for construction projects approved by the surgeon general shall be deposited to the credit of this fund, shall be used solely for payments due applicants for work performed, or purchases made, in carrying out approved projects. Vouchers covering all payments from the hospital and medical facility construction fund shall be prepared by the department of health and shall bear the signature of the secretary or his or her duly authorized agent for such purpose, and warrants therefor shall be signed by the state treasurer. [1991 c 3 § 333; 1973 c 106 § 31; 1959 c 252 § 11; 1949 c 197 § 15; Rem. Supp. 1949 § 6090-74.]

**70.40.900 Severability—1949 c 197.** If any provision of this chapter or the application thereof to any person or circumstance shall be held invalid, such invalidity shall not affect the provisions or applications of this chapter which can be given effect without the invalid provision or application, and to this end the provisions of the chapter are declared to be severable. [1949 c 197 § 16; no RRS.]

## Chapter 70.41 RCW

### HOSPITAL LICENSING AND REGULATION

#### Sections

70.41.005	Transfer of duties to the department of health.
70.41.010	Declaration of purpose.
70.41.020	Definitions.
70.41.030	Standards and rules.
70.41.040	Enforcement of chapter—Personnel—Merit system.
70.41.045	Hospital surveys or audits—Frequent problems to be posted on agency web sites—Hospital evaluation of survey or audit, form—Notice.
70.41.080	Fire protection.
70.41.090	Hospital license required—Certificate of need required.
70.41.100	Applications for licenses and renewals—Fees.
70.41.110	Licenses, provisional licenses—Issuance, duration, assignment, posting.
70.41.115	Specialty hospitals—Licenses—Exemptions.
70.41.120	Inspection of hospitals—Final report—Alterations or additions, new facilities—Coordination with state and local agencies—Notice of inspection.
70.41.122	Exemption from RCW 70.41.120 for hospitals accredited by other entities.
70.41.125	Hospital construction review process—Coordination with state and local agencies.
70.41.130	Denial, suspension, revocation, modification of license—Procedure.
70.41.150	Denial, suspension, revocation of license—Disclosure of information.

- 70.41.155 Duty to investigate patient well-being.  
 70.41.160 Remedies available to department—Duty of attorney general.  
 70.41.170 Operating or maintaining unlicensed hospital or unapproved tertiary health service—Penalty.  
 70.41.180 Physicians' services.  
 70.41.190 Medical records of patients—Retention and preservation.  
 70.41.200 Quality improvement and medical malpractice prevention program—Quality improvement committee—Sanction and grievance procedures—Information collection, reporting, and sharing.  
 70.41.210 Duty to report restrictions on health care practitioners' privileges based on unprofessional conduct—Penalty.  
 70.41.220 Duty to keep records of restrictions on practitioners' privileges—Penalty.  
 70.41.230 Duty of hospital to request information on physicians granted privileges.  
 70.41.235 Doctor of osteopathic medicine and surgery—Discrimination based on board certification is prohibited.  
 70.41.240 Information regarding conversion of hospitals to nonhospital health care facilities.  
 70.41.250 Cost disclosure to health care providers.  
 70.41.300 Long-term care—Definitions.  
 70.41.310 Long-term care—Program information to be provided to hospitals—Information on options to be provided to patients.  
 70.41.320 Long-term care—Patient discharge requirements for hospitals and acute care facilities—Pilot projects.  
 70.41.330 Hospital complaint toll-free telephone number.  
 70.41.340 Investigation of hospital complaints—Rules.  
 70.41.350 Emergency care provided to victims of sexual assault—Development of informational materials on emergency contraception—Rules.  
 70.41.360 Emergency care provided to victims of sexual assault—Department to respond to violations—Task force.  
 70.41.370 Investigation of complaints of violations concerning nursing technicians.  
 70.41.380 Notice of unanticipated outcomes.  
 70.41.390 Safe patient handling.  
 70.41.400 Patient billing—Written statement describing who may be billing the patient required—Contact phone numbers—Exceptions.  
 70.41.410 Nurse staffing committee—Definitions.  
 70.41.420 Nurse staffing committee.  
 70.41.430 Licensed hospitals must adopt a policy regarding methicillin-resistant staphylococcus aureus (MRSA)—Elements.  
 70.41.440 Duty to report violent injuries—Preservation of evidence—Immunity—Privilege.  
 70.41.450 Estimated charges of hospital services—Notice.  
 70.41.900 Severability—1955 c 267.

*Actions for negligence against hospitals, evidence and proof required to prevail: RCW 4.24.290.*

*Employment of dental hygienist without supervision of dentist authorized: RCW 18.29.056.*

*Hospitals, hospital personnel, actions against, limitation of: RCW 4.16.350.*

*Identification of potential anatomical parts donors—Procurement organizations: RCW 68.64.120.*

*Immunity from civil liability for certain types of medical care: RCW 4.24.300, 18.71.220.*

*Labor regulations, collective bargaining—Health care activities: Chapter 49.66 RCW.*

*Records of hospital committee or board, immunity from process: RCW 4.24.250.*

*Standards and procedures for hospital staff membership or privileges: Chapter 70.43 RCW.*

**70.41.005 Transfer of duties to the department of health.** The powers and duties of the department of social and health services under this chapter shall be performed by the department of health. [1989 1st ex.s. c 9 § 249.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**70.41.010 Declaration of purpose.** The primary purpose of this chapter is to promote safe and adequate care of individuals in hospitals through the development, establishment and enforcement of minimum hospital standards for

maintenance and operation. To accomplish these purposes, this chapter provides for:

- (1) The licensing and inspection of hospitals;
- (2) The establishment of a Washington state hospital advisory council;
- (3) The establishment by the department of standards, rules and regulations for the construction, maintenance and operation of hospitals;
- (4) The enforcement by the department of the standards, rules, and regulations established under this chapter. [1985 c 213 § 15; 1979 c 141 § 106; 1955 c 267 § 1.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**70.41.020 Definitions.** Unless the context clearly indicates otherwise, the following terms, whenever used in this chapter, shall be deemed to have the following meanings:

- (1) "Department" means the Washington state department of health.
- (2) "Emergency care to victims of sexual assault" means medical examinations, procedures, and services provided by a hospital emergency room to a victim of sexual assault following an alleged sexual assault.
- (3) "Emergency contraception" means any health care treatment approved by the food and drug administration that prevents pregnancy, including but not limited to administering two increased doses of certain oral contraceptive pills within seventy-two hours of sexual contact.
- (4) "Hospital" means any institution, place, building, or agency which provides accommodations, facilities and services over a continuous period of twenty-four hours or more, for observation, diagnosis, or care, of two or more individuals not related to the operator who are suffering from illness, injury, deformity, or abnormality, or from any other condition for which obstetrical, medical, or surgical services would be appropriate for care or diagnosis. "Hospital" as used in this chapter does not include hotels, or similar places furnishing only food and lodging, or simply domiciliary care; nor does it include clinics, or physician's offices where patients are not regularly kept as bed patients for twenty-four hours or more; nor does it include nursing homes, as defined and which come within the scope of chapter 18.51 RCW; nor does it include birthing centers, which come within the scope of chapter 18.46 RCW; nor does it include psychiatric hospitals, which come within the scope of chapter 71.12 RCW; nor any other hospital, or institution specifically intended for use in the diagnosis and care of those suffering from mental illness, intellectual disability, convulsive disorders, or other abnormal mental condition. Furthermore, nothing in this chapter or the rules adopted pursuant thereto shall be construed as authorizing the supervision, regulation, or control of the remedial care or treatment of residents or patients in any hospital conducted for those who rely primarily upon treatment by prayer or spiritual means in accordance with the creed or tenets of any well recognized church or religious denominations.
- (5) "Person" means any individual, firm, partnership, corporation, company, association, or joint stock association, and the legal successor thereof.
- (6) "Secretary" means the secretary of health.

(7) "Sexual assault" has the same meaning as in RCW 70.125.030.

(8) "Victim of sexual assault" means a person who alleges or is alleged to have been sexually assaulted and who presents as a patient. [2010 c 94 § 17; 2002 c 116 § 2; 1991 c 3 § 334; 1985 c 213 § 16; 1971 ex.s. c 189 § 8; 1955 c 267 § 2.]

**Purpose—2010 c 94:** See note following RCW 44.04.280.

**Findings—2002 c 116:** See note following RCW 70.41.350.

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**70.41.030 Standards and rules.** The department shall establish and adopt such minimum standards and rules pertaining to the construction, maintenance, and operation of hospitals, and rescind, amend, or modify such rules from time to time, as are necessary in the public interest, and particularly for the establishment and maintenance of standards of hospitalization required for the safe and adequate care and treatment of patients. To the extent possible, the department shall endeavor to make such minimum standards and rules consistent in format and general content with the applicable hospital survey standards of the joint commission on the accreditation of health care organizations. The department shall adopt standards that are at least equal to recognized applicable national standards pertaining to medical gas piping systems. [1995 c 282 § 1; 1989 c 175 § 127; 1985 c 213 § 17; 1971 ex.s. c 189 § 9; 1955 c 267 § 3.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**70.41.040 Enforcement of chapter—Personnel—Merit system.** The enforcement of the provisions of this chapter and the standards, rules and regulations established under this chapter, shall be the responsibility of the department which shall cooperate with the joint commission on the accreditation of health care organizations. The department shall advise on the employment of personnel and the personnel shall be under the merit system or its successor. [1995 c 282 § 3; 1985 c 213 § 18; 1955 c 267 § 4.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**70.41.045 Hospital surveys or audits—Frequent problems to be posted on agency web sites—Hospital evaluation of survey or audit, form—Notice.** (1) Unless the context clearly requires otherwise, the definitions in this subsection apply throughout this section.

(a) "Agency" means a department of state government created under RCW 43.17.010 and the office of the state auditor.

(b) "Audit" means an examination of records or financial accounts to evaluate accuracy and monitor compliance with statutory or regulatory requirements.

(c) "Hospital" means a hospital licensed under chapter 70.41 RCW.

(d) "Survey" means an inspection, examination, or site visit conducted by an agency to evaluate and monitor the compliance of a hospital or hospital services or facilities with statutory or regulatory requirements.

(2) By July 1, 2004, each state agency which conducts hospital surveys or audits shall post to its agency web site a list of the most frequent problems identified in its hospital

surveys or audits along with information on how to avoid or address the identified problems, and a person within the agency that a hospital may contact with questions or for further assistance.

(3) By July 1, 2004, the department of health, in cooperation with other state agencies which conduct hospital surveys or audits, shall develop an instrument, to be provided to every hospital upon completion of a state survey or audit, which allows the hospital to anonymously evaluate the survey or audit process in terms of quality, efficacy, and the extent to which it supported improved patient care and compliance with state law without placing an unnecessary administrative burden on the hospital. The evaluation may be returned to the department of health for distribution to the appropriate agency. The department of health shall annually compile the evaluations in a report to the legislature.

(4) Except when responding to complaints or immediate public health and safety concerns or when such prior notice would conflict with other state or federal law, any state agency that provides notice of a hospital survey or audit must provide such notice to the hospital no less than four weeks prior to the date of the survey or audit. [2004 c 261 § 2.]

**70.41.080 Fire protection.** Standards for fire protection and the enforcement thereof, with respect to all hospitals to be licensed hereunder shall be the responsibility of the chief of the Washington state patrol, through the director of fire protection, who shall adopt, after approval by the department, the recognized standards applicable to hospitals for the protection of life against the cause and spread of fire and fire hazards adopted by the federal centers for medicare and medicaid services for hospitals that care for medicare or medicaid beneficiaries. The standards used for an inspection of an existing hospital, or existing portion thereof, shall be standards for existing buildings and not standards for new construction. The department upon receipt of an application for a license, shall submit to the director of fire protection in writing, a request for an inspection, giving the applicant's name and the location of the premises to be licensed. Upon receipt of such a request, the chief of the Washington state patrol, through the director of fire protection, or his or her deputy, shall make an inspection of the hospital to be licensed during the department's inspection. If it is found that the premises do not comply with the required safety standards and fire regulations as adopted pursuant to this chapter, the director of fire protection, or his or her deputy, shall promptly make a written report to the department listing the corrective actions required. The department shall incorporate the written report into the department's final inspection report. The applicant or licensee shall submit corrections to comply with the fire protection standards along with any other licensing inspection corrections to the department. The department shall submit the section of the statement of corrections from the applicant or licensee regarding fire protection standards to the director of fire protection. If extensive and serious corrections are required, the director of fire protection, or his or her deputy, may reinspect the premises. The director of fire protection, or his or her deputy, shall utilize the scope and severity matrix developed by the centers for medicare and medicaid services when determining what corrections will require a reinspection. Whenever the hospital to be licensed

meets with the approval of the chief of the Washington state patrol, through the director of fire protection, he or she shall submit to the department, in a timely manner so the license will not be delayed, a written report approving the hospital with respect to fire protection, and such report is required before a full license can be issued. The chief of the Washington state patrol, through the director of fire protection, shall make or cause to be made inspections of such hospitals on average at least once every eighteen months. Inspections conducted by the joint commission on hospitals accredited by it shall be deemed equivalent to an inspection by the chief of the Washington state patrol, through the director of fire protection, for purposes of meeting the requirements for the inspections specified in this section.

The director of fire protection shall designate one lead deputy state fire marshal on a regional basis to provide consistency with each of the department's survey teams for the purpose of conducting the fire protection inspection during the department's licensing inspection. The director of fire protection shall ensure deputy state fire marshals are provided orientation with the department on the unique environment of hospitals before they conduct fire protection inspections in hospitals. The orientation shall include, but not be limited to: Clinical environment of hospitals; operating room environment; fire protection practices in hospitals; full participation in a complete licensing inspection of at least one urban hospital; and full participation in a complete licensing inspection of at least one rural hospital.

In cities which have in force a comprehensive building code, the provisions of which are determined by the chief of the Washington state patrol, through the director of fire protection, to be equal to the minimum standards of the code for hospitals adopted by the chief of the Washington state patrol, through the director of fire protection, the chief of the fire department, provided the latter is a paid chief of a paid fire department, shall make the inspection with the chief of the Washington state patrol, through the director of fire protection, or his or her deputy and they shall jointly approve the premises before a full license can be issued. [2008 c 155 § 1; 2004 c 261 § 3; 1995 c 369 § 40; 1986 c 266 § 94; 1985 c 213 § 19; 1955 c 267 § 8.]

*State fire protection: Chapter 43.44 RCW.*

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**70.41.090 Hospital license required—Certificate of need required.** (1) No person or governmental unit of the state of Washington, acting separately or jointly with any other person or governmental unit, shall establish, maintain, or conduct a hospital in this state, or use the word "hospital" to describe or identify an institution, without a license under this chapter: PROVIDED, That the provisions of this section shall not apply to state mental institutions and psychiatric hospitals which come within the scope of chapter 71.12 RCW.

(2) After June 30, 1989, no hospital shall initiate a tertiary health service as defined in RCW 70.38.025(14) unless it has received a certificate of need as provided in RCW 70.38.105 and 70.38.115.

(3) A rural health care facility licensed under RCW 70.175.100 formerly licensed as a hospital under this chapter

(2010 Ed.)

may, within three years of the effective date of the rural health care facility license, apply to the department for a hospital license and not be required to meet certificate of need requirements under chapter 70.38 RCW as a new health care facility and not be required to meet new construction requirements as a new hospital under this chapter. These exceptions are subject to the following: The facility at the time of initial conversion was considered by the department to be in compliance with the hospital licensing rules and the condition of the physical plant and equipment is equal to or exceeds the level of compliance that existed at the time of conversion to a rural health care facility. The department shall inspect and determine compliance with the hospital rules prior to reissuing a hospital license.

A rural hospital, as defined by the department, reducing the number of licensed beds to become a rural primary care hospital under the provisions of Part A Title XVIII of the Social Security Act Section 1820, 42 U.S.C., 1395c et seq. may, within three years of the reduction of licensed beds, increase the number of beds licensed under this chapter to no more than the previously licensed number of beds without being subject to the provisions of chapter 70.38 RCW and without being required to meet new construction requirements under this chapter. These exceptions are subject to the following: The facility at the time of the reduction in licensed beds was considered by the department to be in compliance with the hospital licensing rules and the condition of the physical plant and equipment is equal to or exceeds the level of compliance that existed at the time of the reduction in licensed beds. The department may inspect and determine compliance with the hospital rules prior to increasing the hospital license. [1992 c 27 § 3; 1989 1st ex.s. c 9 § 611; 1955 c 267 § 9.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**70.41.100 Applications for licenses and renewals—Fees.** An application for license shall be made to the department upon forms provided by it and shall contain such information as the department reasonably requires which may include affirmative evidence of ability to comply with the standards, rules, and regulations as are lawfully prescribed hereunder. An application for renewal of license shall be made to the department upon forms provided by it and submitted thirty days prior to the date of expiration of the license. Each application for a license or renewal thereof by a hospital as defined by this chapter shall be accompanied by a fee as established by the department under RCW 43.20B.110. [1987 c 75 § 8; 1982 c 201 § 9; 1955 c 267 § 10.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**70.41.110 Licenses, provisional licenses—Issuance, duration, assignment, posting.** Upon receipt of an application for license and the license fee, the department shall issue a license or a provisional license if the applicant and the hospital facilities meet the requirements of this chapter and the standards, rules and regulations established by the department. All licenses issued under the provisions of this chapter shall expire on a date to be set by the department: PROVIDED, That no license issued pursuant to this chapter shall exceed thirty-six months in duration. Each license shall be

issued only for the premises and persons named in the application, and no license shall be transferable or assignable except with the written approval of the department. Licenses shall be posted in a conspicuous place on the licensed premises.

If there be a failure to comply with the provisions of this chapter or the standards, rules and regulations promulgated pursuant thereto, the department may in its discretion issue to an applicant for a license, or for the renewal of a license, a provisional license which will permit the operation of the hospital for a period to be determined by the department. [1985 c 213 § 20; 1982 c 201 § 12; 1971 ex.s. c 247 § 3; 1955 c 267 § 11.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**70.41.115 Specialty hospitals—Licenses—Exemptions.** (1) The definitions in this subsection apply throughout this section unless the context clearly requires otherwise.

(a) "Emergency services" means health care services medically necessary to evaluate and treat a medical condition that manifests itself by the acute onset of a symptom or symptoms, including severe pain, that would lead a prudent layperson acting reasonably to believe that a health condition exists that requires immediate medical attention, and that the absence of immediate medical attention could reasonably be expected to result in serious impairment to bodily functions or serious dysfunction of an organ or part of the body, or would place the person's health, or in the case of a pregnant woman, the health of the woman or her unborn child, in serious jeopardy.

(b) "General hospital" means a hospital that provides general acute care services, including emergency services.

(c) "Specialty hospital" means a subclass of hospital that is primarily or exclusively engaged in the care and treatment of one of the following categories: (i) Patients with a cardiac condition; (ii) patients with an orthopedic condition; (iii) patients receiving a surgical procedure; and (iv) any other specialized category of services that the secretary of health and human services designates as a specialty hospital.

(d) "Transfer agreement" means a written agreement providing an effective process for the transfer of a patient requiring emergency services to a general hospital providing emergency services and for continuity of care for that patient.

(e) "Health service area" has the same meaning as in RCW 70.38.025.

(2) To be licensed under this chapter, a specialty hospital shall:

- (a) Be significantly engaged in providing inpatient care;
- (b) Comply with all standards and rules adopted by the department for hospitals;
- (c) Provide appropriate discharge planning;
- (d) Provide staff proficient in resuscitation and respiration maintenance twenty-four hours per day, seven days per week;

(e) Participate in the medicare and medicaid programs and provide at least the same percentage of services to medicare and medicaid beneficiaries, as a percent of gross revenues, as the lowest percentage of services provided to medicare and medicaid beneficiaries by a general hospital in the same health service area. The lowest percentage of services

provided to medicare and medicaid beneficiaries shall be determined by the department in consultation with the general hospitals in the health service area but shall not be the percentage of medicare and medicaid services of a hospital that serves primarily members of a particular health plan or government sponsor;

(f) Provide at least the same percentage of charity care, as a percent of gross revenues, as the lowest percentage of charity care provided by a general hospital in the same health service area. The lowest percentage of charity care shall be determined by the department in consultation with the general hospitals in the health service area but shall not be the percentage of charity care of a hospital that serves primarily members of a particular health plan or government sponsor;

(g) Require any physician owner to: (i) In accordance with chapter 19.68 RCW, disclose a financial interest in the specialty hospital and provide a list of alternative hospitals before referring a patient to the specialty hospital; and (ii) if the specialty hospital does not have an intensive care unit, notify the patient that if intensive care services are required, the patient will be transferred to another hospital;

(h) Provide emergency services twenty-four hours per day, seven days per week in a designated area of the hospital, and comply with requirements for emergency facilities that are established by the department;

(i) Establish procedures to stabilize a patient with an emergency medical condition until the patient is transported or transferred to another hospital if emergency services cannot be provided at the specialty hospital to meet the needs of the patient in an emergency, and maintain a transfer agreement with a general hospital in the same health service area that establishes a process for patient transfers in a situation in which the specialty hospital cannot provide continuing care for a patient because of the specialty hospital's scope of services and for the transfer of patients; and

(j) Accept the transfer of patients from general hospitals when the patients require the category of care or treatment provided by the specialty hospital.

(3) This section does not apply to:

(a) A specialty hospital that provides only psychiatric, pediatric, long-term acute care, cancer, or rehabilitative services; or

(b) A hospital that was licensed under this chapter before January 1, 2007. [2007 c 102 § 2.]

**Finding—2007 c 102:** "The legislature finds that specialty hospitals jeopardize the financial balance of community hospitals by selectively providing care to less ill patients, treating fewer medicare, medicaid, and uninsured patients, providing primarily care that is profitable to investors, and reducing community hospital staffing. To assure that private and public hospitals in Washington remain financially viable institutions able to provide general acute care in their communities and maintain the capacity to respond to local, state, and national emergencies, the legislature has concluded that specialty hospitals must meet certain conditions in order to be licensed. These conditions will ensure that specialty hospitals and community hospitals compete on a level playing field and, therefore, will minimize the adverse impacts of specialty hospitals on community general hospitals while assuring quality patient care." [2007 c 102 § 1.]

**70.41.120 Inspection of hospitals—Final report—Alterations or additions, new facilities—Coordination with state and local agencies—Notice of inspection.** (1) The department shall make or cause to be made an unannounced inspection of all hospitals on average at least every

eighteen months. Every inspection of a hospital may include an inspection of every part of the premises. The department may make an examination of all phases of the hospital operation necessary to determine compliance with the law and the standards, rules and regulations adopted thereunder.

(2) The department shall not issue its final report regarding an unannounced inspection by the department until: (a) The hospital is given at least two weeks following the inspection to provide any information or documentation requested by the department during the unannounced inspection that was not available at the time of the request; and (b) at least one person from the department conducting the inspection meets personally with the chief administrator or executive officer of the hospital following the inspection or the chief administrator or executive officer declines such a meeting.

(3) Any licensee or applicant desiring to make alterations or additions to its facilities or to construct new facilities shall, before commencing such alteration, addition or new construction, comply with the regulations prescribed by the department.

(4) No hospital licensed pursuant to the provisions of this chapter shall be required to be inspected or licensed under other state laws or rules and regulations promulgated thereunder, or local ordinances, relative to hotels, restaurants, lodging houses, boarding houses, places of refreshment, nursing homes, maternity homes, or psychiatric hospitals.

(5) To avoid unnecessary duplication in inspections, the department shall coordinate with the department of social and health services, the office of the state fire marshal, and local agencies when inspecting facilities over which each agency has jurisdiction, the facilities including but not necessarily being limited to hospitals with both acute care and skilled nursing or psychiatric nursing functions. The department shall notify the office of the state fire marshal and the relevant local agency at least four weeks prior to any inspection conducted under this section and invite their attendance at the inspection, and shall provide a copy of its inspection report to each agency upon completion. [2009 c 242 § 1; 2005 c 447 § 1; 2004 c 261 § 4; 1995 c 282 § 4; 1985 c 213 § 21; 1955 c 267 § 12.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**70.41.122 Exemption from RCW 70.41.120 for hospitals accredited by other entities.** Surveys conducted on hospitals by the joint commission on the accreditation of health care organizations, the American osteopathic association, or Det Norske Veritas shall be deemed equivalent to a department survey for purposes of meeting the requirements for the survey specified in RCW 70.41.120 if the department determines that the applicable survey standards are substantially equivalent to its own.

(1) Hospitals so surveyed shall provide to the department within thirty days of learning the result of a survey documentary evidence that the hospital has been certified as a result of a survey and the date of the survey.

(2) Hospitals shall make available to department surveyors the written reports of such surveys during department surveys, upon request. [2009 c 242 § 2; 2005 c 447 § 2; 1999 c 41 § 1; 1995 c 282 § 6.]

(2010 Ed.)

**70.41.125 Hospital construction review process—Coordination with state and local agencies.** (1) The department shall coordinate its hospital construction review process with other state and local agencies having similar review responsibilities, including the department of labor and industries, the office of the state fire marshal, and local building and fire officials. Inconsistencies or conflicts among the agencies shall be identified and eliminated. The department shall provide local agencies with relevant information derived from its construction review process.

(2) By September 1, 2004, the department shall report to the legislature regarding its implementation of subsection (1) of this section. [2004 c 261 § 5.]

**70.41.130 Denial, suspension, revocation, modification of license—Procedure.** The department is authorized to deny, suspend, revoke, or modify a license or provisional license in any case in which it finds that there has been a failure or refusal to comply with the requirements of this chapter or the standards or rules adopted under this chapter. RCW 43.70.115 governs notice of a license denial, revocation, suspension, or modification and provides the right to an adjudicative proceeding. [1991 c 3 § 335; 1989 c 175 § 128; 1985 c 213 § 22; 1955 c 267 § 13.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**70.41.150 Denial, suspension, revocation of license—Disclosure of information.** Information received by the department through filed reports, inspection, or as otherwise authorized under this chapter, may be disclosed publicly, as permitted under chapter 42.56 RCW, subject to the following provisions:

(1) Licensing inspections, or complaint investigations regardless of findings, shall, as requested, be disclosed no sooner than three business days after the hospital has received the resulting assessment report;

(2) Information regarding administrative action against the license shall, as requested, be disclosed after the hospital has received the documents initiating the administrative action;

(3) Information about complaints that did not warrant an investigation shall not be disclosed except to notify the hospital and the complainant that the complaint did not warrant an investigation. If requested, the individual complainant shall receive information on other like complaints that have been reported against the hospital; and

(4) Information disclosed pursuant to this section shall not disclose individual names. [2005 c 274 § 333; 2000 c 6 § 1; 1985 c 213 § 24; 1955 c 267 § 15.]

**Part headings not law—Effective date—2005 c 274:** See RCW 42.56.901 and 42.56.902.

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**70.41.155 Duty to investigate patient well-being.** Any complaint against a hospital and event notification required by the department that concerns patient well-being shall be investigated. [2000 c 6 § 2.]

**70.41.160 Remedies available to department—Duty of attorney general.** Notwithstanding the existence or pur-

suit of any other remedy, the department may, in the manner provided by law, upon the advice of the attorney general who shall represent the department in the proceedings, maintain an action in the name of the state for an injunction or other process against any person or governmental unit to restrain or prevent the establishment, conduct, or operation of a hospital without a license under this law. [1985 c 213 § 25; 1955 c 267 § 16.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**70.41.170 Operating or maintaining unlicensed hospital or unapproved tertiary health service—Penalty.**

Any person operating or maintaining a hospital without a license under this chapter, or, after June 30, 1989, initiating a tertiary health service as defined in RCW 70.38.025(14) that is not approved under RCW 70.38.105 and 70.38.115, shall be guilty of a misdemeanor, and each day of operation of an unlicensed hospital or unapproved tertiary health service, shall constitute a separate offense. [1989 1st ex.s. c 9 § 612; 1955 c 267 § 17.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**70.41.180 Physicians' services.** Nothing contained in this chapter shall in any way authorize the department to establish standards, rules and regulations governing the professional services rendered by any physician. [1985 c 213 § 26; 1955 c 267 § 18.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**70.41.190 Medical records of patients—Retention and preservation.** Unless specified otherwise by the department, a hospital shall retain and preserve all medical records which relate directly to the care and treatment of a patient for a period of no less than ten years following the most recent discharge of the patient; except the records of minors, which shall be retained and preserved for a period of no less than three years following attainment of the age of eighteen years, or ten years following such discharge, whichever is longer.

If a hospital ceases operations, it shall make immediate arrangements, as approved by the department, for preservation of its records.

The department shall by regulation define the type of records and the information required to be included in the medical records to be retained and preserved under this section; which records may be retained in photographic form pursuant to chapter 5.46 RCW. [1985 c 213 § 27; 1975 1st ex.s. c 175 § 1.]

*Medical records, disclosure: Chapter 70.02 RCW.*

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**70.41.200 Quality improvement and medical malpractice prevention program—Quality improvement committee—Sanction and grievance procedures—Information collection, reporting, and sharing.** (1) Every hospital shall maintain a coordinated quality improvement program for the improvement of the quality of health care services rendered to patients and the identification and prevention of medical malpractice. The program shall include at least the following:

(a) The establishment of a quality improvement committee with the responsibility to review the services rendered in the hospital, both retrospectively and prospectively, in order to improve the quality of medical care of patients and to prevent medical malpractice. The committee shall oversee and coordinate the quality improvement and medical malpractice prevention program and shall ensure that information gathered pursuant to the program is used to review and to revise hospital policies and procedures;

(b) A medical staff privileges sanction procedure through which credentials, physical and mental capacity, and competence in delivering health care services are periodically reviewed as part of an evaluation of staff privileges;

(c) The periodic review of the credentials, physical and mental capacity, and competence in delivering health care services of all persons who are employed or associated with the hospital;

(d) A procedure for the prompt resolution of grievances by patients or their representatives related to accidents, injuries, treatment, and other events that may result in claims of medical malpractice;

(e) The maintenance and continuous collection of information concerning the hospital's experience with negative health care outcomes and incidents injurious to patients including health care-associated infections as defined in RCW 43.70.056, patient grievances, professional liability premiums, settlements, awards, costs incurred by the hospital for patient injury prevention, and safety improvement activities;

(f) The maintenance of relevant and appropriate information gathered pursuant to (a) through (e) of this subsection concerning individual physicians within the physician's personnel or credential file maintained by the hospital;

(g) Education programs dealing with quality improvement, patient safety, medication errors, injury prevention, infection control, staff responsibility to report professional misconduct, the legal aspects of patient care, improved communication with patients, and causes of malpractice claims for staff personnel engaged in patient care activities; and

(h) Policies to ensure compliance with the reporting requirements of this section.

(2) Any person who, in substantial good faith, provides information to further the purposes of the quality improvement and medical malpractice prevention program or who, in substantial good faith, participates on the quality improvement committee shall not be subject to an action for civil damages or other relief as a result of such activity. Any person or entity participating in a coordinated quality improvement program that, in substantial good faith, shares information or documents with one or more other programs, committees, or boards under subsection (8) of this section is not subject to an action for civil damages or other relief as a result of the activity. For the purposes of this section, sharing information is presumed to be in substantial good faith. However, the presumption may be rebutted upon a showing of clear, cogent, and convincing evidence that the information shared was knowingly false or deliberately misleading.

(3) Information and documents, including complaints and incident reports, created specifically for, and collected and maintained by, a quality improvement committee are not subject to review or disclosure, except as provided in this sec-

tion, or discovery or introduction into evidence in any civil action, and no person who was in attendance at a meeting of such committee or who participated in the creation, collection, or maintenance of information or documents specifically for the committee shall be permitted or required to testify in any civil action as to the content of such proceedings or the documents and information prepared specifically for the committee. This subsection does not preclude: (a) In any civil action, the discovery of the identity of persons involved in the medical care that is the basis of the civil action whose involvement was independent of any quality improvement activity; (b) in any civil action, the testimony of any person concerning the facts which form the basis for the institution of such proceedings of which the person had personal knowledge acquired independently of such proceedings; (c) in any civil action by a health care provider regarding the restriction or revocation of that individual's clinical or staff privileges, introduction into evidence information collected and maintained by quality improvement committees regarding such health care provider; (d) in any civil action, disclosure of the fact that staff privileges were terminated or restricted, including the specific restrictions imposed, if any and the reasons for the restrictions; or (e) in any civil action, discovery and introduction into evidence of the patient's medical records required by regulation of the department of health to be made regarding the care and treatment received.

(4) Each quality improvement committee shall, on at least a semiannual basis, report to the governing board of the hospital in which the committee is located. The report shall review the quality improvement activities conducted by the committee, and any actions taken as a result of those activities.

(5) The department of health shall adopt such rules as are deemed appropriate to effectuate the purposes of this section.

(6) The medical quality assurance commission or the board of osteopathic medicine and surgery, as appropriate, may review and audit the records of committee decisions in which a physician's privileges are terminated or restricted. Each hospital shall produce and make accessible to the commission or board the appropriate records and otherwise facilitate the review and audit. Information so gained shall not be subject to the discovery process and confidentiality shall be respected as required by subsection (3) of this section. Failure of a hospital to comply with this subsection is punishable by a civil penalty not to exceed two hundred fifty dollars.

(7) The department, the joint commission on accreditation of health care organizations, and any other accrediting organization may review and audit the records of a quality improvement committee or peer review committee in connection with their inspection and review of hospitals. Information so obtained shall not be subject to the discovery process, and confidentiality shall be respected as required by subsection (3) of this section. Each hospital shall produce and make accessible to the department the appropriate records and otherwise facilitate the review and audit.

(8) A coordinated quality improvement program may share information and documents, including complaints and incident reports, created specifically for, and collected and maintained by, a quality improvement committee or a peer review committee under RCW 4.24.250 with one or more other coordinated quality improvement programs maintained

in accordance with this section or RCW 43.70.510, a coordinated quality improvement committee maintained by an ambulatory surgical facility under RCW 70.230.070, a quality assurance committee maintained in accordance with RCW 18.20.390 or 74.42.640, or a peer review committee under RCW 4.24.250, for the improvement of the quality of health care services rendered to patients and the identification and prevention of medical malpractice. The privacy protections of chapter 70.02 RCW and the federal health insurance portability and accountability act of 1996 and its implementing regulations apply to the sharing of individually identifiable patient information held by a coordinated quality improvement program. Any rules necessary to implement this section shall meet the requirements of applicable federal and state privacy laws. Information and documents disclosed by one coordinated quality improvement program to another coordinated quality improvement program or a peer review committee under RCW 4.24.250 and any information and documents created or maintained as a result of the sharing of information and documents shall not be subject to the discovery process and confidentiality shall be respected as required by subsection (3) of this section, RCW 18.20.390 (6) and (8), 74.42.640 (7) and (9), and 4.24.250.

(9) A hospital that operates a nursing home as defined in RCW 18.51.010 may conduct quality improvement activities for both the hospital and the nursing home through a quality improvement committee under this section, and such activities shall be subject to the provisions of subsections (2) through (8) of this section.

(10) Violation of this section shall not be considered negligence per se. [2007 c 273 § 22; 2007 c 261 § 3. Prior: 2005 c 291 § 3; 2005 c 33 § 7; 2004 c 145 § 3; 2000 c 6 § 3; 1994 sp.s. c 9 § 742; 1993 c 492 § 415; 1991 c 3 § 336; 1987 c 269 § 5; 1986 c 300 § 4.]

**Reviser's note:** This section was amended by 2007 c 261 § 3 and by 2007 c 273 § 22, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

**Effective date—Implementation—2007 c 273:** See RCW 70.230.900 and 70.230.901.

**Finding—2007 c 261:** See note following RCW 43.70.056.

**Findings—2005 c 33:** See note following RCW 18.20.390.

**Findings—Intent—1993 c 492:** See notes following RCW 43.20.050.

**Legislative findings—Severability—1986 c 300:** See notes following RCW 18.57.245.

*Board of osteopathic medicine and surgery:* Chapter 18.57 RCW.

*Medical quality assurance commission:* Chapter 18.71 RCW.

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**70.41.210 Duty to report restrictions on health care practitioners' privileges based on unprofessional conduct—Penalty.** (1) The chief administrator or executive officer of a hospital shall report to the department when the practice of a health care practitioner as defined in subsection (2) of this section is restricted, suspended, limited, or terminated based upon a conviction, determination, or finding by the hospital that the health care practitioner has committed an action defined as unprofessional conduct under RCW 18.130.180. The chief administrator or executive officer shall also report any voluntary restriction or termination of the practice of a health care practitioner as defined in subsec-

tion (2) of this section while the practitioner is under investigation or the subject of a proceeding by the hospital regarding unprofessional conduct, or in return for the hospital not conducting such an investigation or proceeding or not taking action. The department will forward the report to the appropriate disciplining authority.

(2) The reporting requirements apply to the following health care practitioners: Pharmacists as defined in chapter 18.64 RCW; advanced registered nurse practitioners as defined in chapter 18.79 RCW; dentists as defined in chapter 18.32 RCW; naturopaths as defined in chapter 18.36A RCW; optometrists as defined in chapter 18.53 RCW; osteopathic physicians and surgeons as defined in chapter 18.57 RCW; osteopathic physicians' assistants as defined in chapter 18.57A RCW; physicians as defined in chapter 18.71 RCW; physician assistants as defined in chapter 18.71A RCW; podiatric physicians and surgeons as defined in chapter 18.22 RCW; and psychologists as defined in chapter 18.83 RCW.

(3) Reports made under subsection (1) of this section shall be made within fifteen days of the date: (a) A conviction, determination, or finding is made by the hospital that the health care practitioner has committed an action defined as unprofessional conduct under RCW 18.130.180; or (b) the voluntary restriction or termination of the practice of a health care practitioner, including his or her voluntary resignation, while under investigation or the subject of proceedings regarding unprofessional conduct under RCW 18.130.180 is accepted by the hospital.

(4) Failure of a hospital to comply with this section is punishable by a civil penalty not to exceed five hundred dollars.

(5) A hospital, its chief administrator, or its executive officer who files a report under this section is immune from suit, whether direct or derivative, in any civil action related to the filing or contents of the report, unless the conviction, determination, or finding on which the report and its content are based is proven to not have been made in good faith. The prevailing party in any action brought alleging the conviction, determination, finding, or report was not made in good faith, shall be entitled to recover the costs of litigation, including reasonable attorneys' fees.

(6) The department shall forward reports made under subsection (1) of this section to the appropriate disciplining authority designated under Title 18 RCW within fifteen days of the date the report is received by the department. The department shall notify a hospital that has made a report under subsection (1) of this section of the results of the disciplining authority's case disposition decision within fifteen days after the case disposition. Case disposition is the decision whether to issue a statement of charges, take informal action, or close the complaint without action against a practitioner. In its biennial report to the legislature under RCW 18.130.310, the department shall specifically identify the case dispositions of reports made by hospitals under subsection (1) of this section.

(7) The department shall not increase hospital license fees to carry out this section before July 1, 2008. [2008 c 134 § 14; 2005 c 470 § 1; 1994 sp.s. c 9 § 743; 1986 c 300 § 7.]

**Finding—Intent—Severability—2008 c 134:** See notes following RCW 18.130.020.

**Legislative findings—Severability—1986 c 300:** See notes following RCW 18.57.245.

*Medical quality assurance commission: Chapter 18.71 RCW.*

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**70.41.220 Duty to keep records of restrictions on practitioners' privileges—Penalty.** Each hospital shall keep written records of decisions to restrict or terminate privileges of practitioners. Copies of such records shall be made available to the board within thirty days of a request and all information so gained shall remain confidential in accordance with RCW 70.41.200 and 70.41.230 and shall be protected from the discovery process. Failure of a hospital to comply with this section is punishable by [a] civil penalty not to exceed two hundred fifty dollars. [1986 c 300 § 8.]

**Legislative findings—Severability—1986 c 300:** See notes following RCW 18.57.245.

**70.41.230 Duty of hospital to request information on physicians granted privileges.** (1) Prior to granting or renewing clinical privileges or association of any physician or hiring a physician, a hospital or facility approved pursuant to this chapter shall request from the physician and the physician shall provide the following information:

(a) The name of any hospital or facility with or at which the physician had or has any association, employment, privileges, or practice;

(b) If such association, employment, privilege, or practice was discontinued, the reasons for its discontinuation;

(c) Any pending professional medical misconduct proceedings or any pending medical malpractice actions in this state or another state, the substance of the allegations in the proceedings or actions, and any additional information concerning the proceedings or actions as the physician deems appropriate;

(d) The substance of the findings in the actions or proceedings and any additional information concerning the actions or proceedings as the physician deems appropriate;

(e) A waiver by the physician of any confidentiality provisions concerning the information required to be provided to hospitals pursuant to this subsection; and

(f) A verification by the physician that the information provided by the physician is accurate and complete.

(2) Prior to granting privileges or association to any physician or hiring a physician, a hospital or facility approved pursuant to this chapter shall request from any hospital with or at which the physician had or has privileges, was associated, or was employed, the following information concerning the physician:

(a) Any pending professional medical misconduct proceedings or any pending medical malpractice actions, in this state or another state;

(b) Any judgment or settlement of a medical malpractice action and any finding of professional misconduct in this state or another state by a licensing or disciplinary board; and

(c) Any information required to be reported by hospitals pursuant to RCW 18.71.0195.

(3) The medical quality assurance commission shall be advised within thirty days of the name of any physician denied staff privileges, association, or employment on the basis of adverse findings under subsection (1) of this section.

(4) A hospital or facility that receives a request for information from another hospital or facility pursuant to subsections (1) and (2) of this section shall provide such information concerning the physician in question to the extent such information is known to the hospital or facility receiving such a request, including the reasons for suspension, termination, or curtailment of employment or privileges at the hospital or facility. A hospital, facility, or other person providing such information in good faith is not liable in any civil action for the release of such information.

(5) Information and documents, including complaints and incident reports, created specifically for, and collected, and maintained by a quality improvement committee are not subject to discovery or introduction into evidence in any civil action, and no person who was in attendance at a meeting of such committee or who participated in the creation, collection, or maintenance of information or documents specifically for the committee shall be permitted or required to testify in any civil action as to the content of such proceedings or the documents and information prepared specifically for the committee. This subsection does not preclude: (a) In any civil action, the discovery of the identity of persons involved in the medical care that is the basis of the civil action whose involvement was independent of any quality improvement activity; (b) in any civil action, the testimony of any person concerning the facts which form the basis for the institution of such proceedings of which the person had personal knowledge acquired independently of such proceedings; (c) in any civil action by a health care provider regarding the restriction or revocation of that individual's clinical or staff privileges, introduction into evidence information collected and maintained by quality improvement committees regarding such health care provider; (d) in any civil action, disclosure of the fact that staff privileges were terminated or restricted, including the specific restrictions imposed, if any and the reasons for the restrictions; or (e) in any civil action, discovery and introduction into evidence of the patient's medical records required by regulation of the department of health to be made regarding the care and treatment received.

(6) Hospitals shall be granted access to information held by the medical quality assurance commission and the board of osteopathic medicine and surgery pertinent to decisions of the hospital regarding credentialing and recredentialing of practitioners.

(7) Violation of this section shall not be considered negligence per se. [1994 sp.s. c 9 § 744; 1993 c 492 § 416; 1991 c 3 § 337; 1987 c 269 § 6; 1986 c 300 § 11.]

**Findings—Intent—1993 c 492:** See notes following RCW 43.20.050.

**Legislative findings—Severability—1986 c 300:** See notes following RCW 18.57.245.

*Medical quality assurance commission: Chapter 18.71 RCW.*

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**70.41.235 Doctor of osteopathic medicine and surgery—Discrimination based on board certification is prohibited.** A hospital that provides health care services to the general public may not discriminate against a qualified doctor of osteopathic medicine and surgery licensed under chapter 18.57 RCW, who has applied to practice with the hospital, solely because that practitioner was board certified or eligible

(2010 Ed.)

under an approved osteopathic certifying board instead of board certified or eligible respectively under an approved medical certifying board. [1995 c 64 § 3.]

**70.41.240 Information regarding conversion of hospitals to nonhospital health care facilities.** The department of health shall compile and make available to the public information regarding medicare health care facility certification options available to hospitals licensed under this title that desire to convert to nonhospital health care facilities. The information provided shall include standards and requirements for certification and procedures for acquiring certification. [1991 c 3 § 338; 1988 c 207 § 3.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**70.41.250 Cost disclosure to health care providers.** (1) The legislature finds that the spiraling costs of health care continue to surmount efforts to contain them, increasing at approximately twice the inflationary rate. The causes of this phenomenon are complex. By making physicians and other health care providers with hospital admitting privileges more aware of the cost consequences of health care services for consumers, these providers may be inclined to exercise more restraint in providing only the most relevant and cost-beneficial hospital services, with a potential for reducing the utilization of those services. The requirement of the hospital to inform physicians and other health care providers of the charges of the health care services that they order may have a positive effect on containing health costs. Further, the option of the physician or other health care provider to inform the patient of these charges may strengthen the necessary dialogue in the provider-patient relationship that tends to be diminished by intervening third-party payers.

(2) The chief executive officer of a hospital licensed under this chapter and the superintendent of a state hospital shall establish and maintain a procedure for disclosing to physicians and other health care providers with admitting privileges the charges of all health care services ordered for their patients. Copies of hospital charges shall be made available to any physician and/or other health care provider ordering care in hospital inpatient/outpatient services. The physician and/or other health care provider may inform the patient of these charges and may specifically review them. Hospitals are also directed to study methods for making daily charges available to prescribing physicians through the use of interactive software and/or computerized information thereby allowing physicians and other health care providers to review not only the costs of present and past services but also future contemplated costs for additional diagnostic studies and therapeutic medications. [1993 c 492 § 265.]

**Findings—Intent—1993 c 492:** See notes following RCW 43.20.050.

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**70.41.300 Long-term care—Definitions.** "Cost-effective care" and "long-term care services," where used in RCW 70.41.310 and 70.41.320, shall have the same meaning as that given in \*RCW 74.39A.008. [1995 1st sp.s. c 18 § 4.]

\*Reviser's note: RCW 74.39A.008 was repealed by 1997 c 392 § 530.

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**70.41.310 Long-term care—Program information to be provided to hospitals—Information on options to be provided to patients.** (1)(a) The department of social and health services, in consultation with hospitals and acute care facilities, shall promote the most appropriate and cost-effective use of long-term care services by developing and distributing to hospitals and other appropriate health care settings information on the various chronic long-term care programs that it administers directly or through contract. The information developed by the department of social and health services shall, at a minimum, include the following:

- (i) An identification and detailed description of each long-term care service available in the state;
- (ii) Functional, cognitive, and medicaid eligibility criteria that may be required for placement or admission to each long-term care service; and
- (iii) A long-term care services resource manual for each hospital, that identifies the long-term care services operating within each hospital's patient service area. The long-term care services resource manual shall, at a minimum, identify the name, address, and telephone number of each entity known to be providing long-term care services; a brief description of the programs or services provided by each of the identified entities; and the name or names of a person or persons who may be contacted for further information or assistance in accessing the programs or services at each of the identified entities.

(b) The information required in (a) of this subsection shall be periodically updated and distributed to hospitals by the department of social and health services so that the information reflects current long-term care service options available within each hospital's patient service area.

(2) To the extent that a patient will have continuing care needs, once discharged from the hospital setting, hospitals shall, during the course of the patient's hospital stay, promote each patient's family member's and/or legal representative's understanding of available long-term care service discharge options by, at a minimum:

- (a) Discussing the various and relevant long-term care services available, including eligibility criteria;
- (b) Making available, to patients, their family members, and/or legal representative, a copy of the most current long-term care services resource manual;
- (c) Responding to long-term care questions posed by patients, their family members, and/or legal representative;
- (d) Assisting the patient, their family members, and/or legal representative in contacting appropriate persons or entities to respond to the question or questions posed; and
- (e) Linking the patient and family to the local, state-designated aging and long-term care network to ensure effective transitions to appropriate levels of care and ongoing support. [1995 1st sp.s. c 18 § 3.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**70.41.320 Long-term care—Patient discharge requirements for hospitals and acute care facilities—Pilot projects.** (1) Hospitals and acute care facilities shall:

(a) Work cooperatively with the department of social and health services, area agencies on aging, and local long-term care information and assistance organizations in the planning

and implementation of patient discharges to long-term care services.

(b) Establish and maintain a system for discharge planning and designate a person responsible for system management and implementation.

(c) Establish written policies and procedures to:

- (i) Identify patients needing further nursing, therapy, or supportive care following discharge from the hospital;
- (ii) Develop a documented discharge plan for each identified patient, including relevant patient history, specific care requirements, and date such follow-up care is to be initiated;
- (iii) Coordinate with patient, family, caregiver, and appropriate members of the health care team;
- (iv) Provide any patient, regardless of income status, written information and verbal consultation regarding the array of long-term care options available in the community, including the relative cost, eligibility criteria, location, and contact persons;
- (v) Promote an informed choice of long-term care services on the part of patients, family members, and legal representatives; and
- (vi) Coordinate with the department and specialized case management agencies, including area agencies on aging and other appropriate long-term care providers, as necessary, to ensure timely transition to appropriate home, community residential, or nursing facility care.

(d) Work in cooperation with the department which is responsible for ensuring that patients eligible for medicaid long-term care receive prompt assessment and appropriate service authorization.

(2) In partnership with selected hospitals, the department of social and health services shall develop and implement pilot projects in up to three areas of the state with the goal of providing information about appropriate in-home and community services to individuals and their families early during the individual's hospital stay.

The department shall not delay hospital discharges but shall assist and support the activities of hospital discharge planners. The department also shall coordinate with home health and hospice agencies whenever appropriate. The role of the department is to assist the hospital and to assist patients and their families in making informed choices by providing information regarding home and community options.

In conducting the pilot projects, the department shall:

- (a) Assess and offer information regarding appropriate in-home and community services to individuals who are medicaid clients or applicants; and
- (b) Offer assessment and information regarding appropriate in-home and community services to individuals who are reasonably expected to become medicaid recipients within one hundred eighty days of admission to a nursing facility. [1998 c 245 § 127; 1995 1st sp.s. c 18 § 5.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**70.41.330 Hospital complaint toll-free telephone number.** Every hospital shall post in conspicuous locations a notice of the department's hospital complaint toll-free telephone number. The form of the notice shall be approved by the department. [2000 c 6 § 4.]

**70.41.340 Investigation of hospital complaints—**

**Rules.** The department is authorized to adopt rules necessary to implement RCW 70.41.150, 70.41.155, and 70.41.330. [2000 c 6 § 6.]

**70.41.350 Emergency care provided to victims of sexual assault—Development of informational materials on emergency contraception—Rules.** (1) Every hospital providing emergency care to a victim of sexual assault shall:

(a) Provide the victim with medically and factually accurate and unbiased written and oral information about emergency contraception;

(b) Orally inform each victim of sexual assault of her option to be provided emergency contraception at the hospital; and

(c) If not medically contraindicated, provide emergency contraception immediately at the hospital to each victim of sexual assault who requests it.

(2) The secretary, in collaboration with community sexual assault programs and other relevant stakeholders, shall develop, prepare, and produce informational materials relating to emergency contraception for the prevention of pregnancy in rape victims for distribution to and use in all emergency rooms in the state, in quantities sufficient to comply with the requirements of this section. The secretary, in collaboration with community sexual assault programs and other relevant stakeholders, may also approve informational materials from other sources for the purposes of this section. The informational materials must be clearly written and readily comprehensible in a culturally competent manner, as the secretary, in collaboration with community sexual assault programs and other relevant stakeholders, deems necessary to inform victims of sexual assault. The materials must explain the nature of emergency contraception, including that it is effective in preventing pregnancy, treatment options, and where they can be obtained.

(3) The secretary shall adopt rules necessary to implement this section. [2002 c 116 § 3.]

**Findings—2002 c 116:** "(1) The legislature finds that:

(a) Each year, over three hundred thousand women are sexually assaulted in the United States;

(b) Nationally, over thirty-two thousand women become pregnant each year as a result of sexual assault. Approximately fifty percent of these pregnancies end in abortion;

(c) Approximately thirty-eight percent of women in Washington are sexually assaulted over the course of their lifetime. This is twenty percent more than the national average;

(d) Only fifteen percent of sexual assaults in Washington are reported; however, even the numbers of reported attacks are staggering. For example, last year, two thousand six hundred fifty-nine rapes were reported in Washington, this is more than seven rapes per day.

(2) The legislature deems it essential that all hospital emergency rooms provide emergency contraception as a treatment option to any woman who seeks treatment as a result of a sexual assault." [2002 c 116 § 1.]

**70.41.360 Emergency care provided to victims of sexual assault—Department to respond to violations—Task force.** The department must respond to complaints of violations of RCW 70.41.350. The department shall convene a task force, composed of representatives from community sexual assault programs and other relevant stakeholders including advocacy agencies, medical agencies, and hospital associations, to provide input into the development and eval-

(2010 Ed.)

uation of the education materials and rule development. The task force shall expire on January 1, 2004. [2002 c 116 § 4.]

**Findings—2002 c 116:** See note following RCW 70.41.350.

**70.41.370 Investigation of complaints of violations concerning nursing technicians.** The department shall investigate complaints of violations of RCW 18.79.350 and 18.79.360 by an employer. The department shall maintain records of all employers that have violated RCW 18.79.350 and 18.79.360. [2003 c 258 § 8.]

**Severability—Effective date—2003 c 258:** See notes following RCW 18.79.330.

**70.41.380 Notice of unanticipated outcomes.** Hospitals shall have in place policies to assure that, when appropriate, information about unanticipated outcomes is provided to patients or their families or any surrogate decision makers identified pursuant to RCW 7.70.065. Notifications of unanticipated outcomes under this section do not constitute an acknowledgement or admission of liability, nor can the fact of notification, the content disclosed, or any and all statements, affirmations, gestures, or conduct expressing apology be introduced as evidence in a civil action. [2005 c 118 § 1.]

**Policy to be in place beginning January 1, 2006—2005 c 118:** "Beginning January 1, 2006, the department shall, during the survey of a hospital, ensure that the policy required in RCW 70.41.380 is in place." [2005 c 118 § 2.]

**70.41.390 Safe patient handling.** (1) The definitions in this subsection apply throughout this section unless the context clearly requires otherwise.

(a) "Lift team" means hospital employees specially trained to conduct patient lifts, transfers, and repositioning using lifting equipment when appropriate.

(b) "Safe patient handling" means the use of engineering controls, lifting and transfer aids, or assistive devices, by lift teams or other staff, instead of manual lifting to perform the acts of lifting, transferring, and repositioning health care patients and residents.

(c) "Musculoskeletal disorders" means conditions that involve the nerves, tendons, muscles, and supporting structures of the body.

(2) By February 1, 2007, each hospital must establish a safe patient handling committee either by creating a new committee or assigning the functions of a safe patient handling committee to an existing committee. The purpose of the committee is to design and recommend the process for implementing a safe patient handling program. At least half of the members of the safe patient handling committee shall be frontline nonmanagerial employees who provide direct care to patients unless doing so will adversely affect patient care.

(3) By December 1, 2007, each hospital must establish a safe patient handling program. As part of this program, a hospital must:

(a) Implement a safe patient handling policy for all shifts and units of the hospital. Implementation of the safe patient handling policy may be phased-in with the acquisition of equipment under subsection (4) of this section;

(b) Conduct a patient handling hazard assessment. This assessment should consider such variables as patient-hand-

dling tasks, types of nursing units, patient populations, and the physical environment of patient care areas;

(c) Develop a process to identify the appropriate use of the safe patient handling policy based on the patient's physical and medical condition and the availability of lifting equipment or lift teams. The policy shall include a means to address circumstances under which it would be medically contraindicated to use lifting or transfer aids or assistive devices for particular patients;

(d) Conduct an annual performance evaluation of the program to determine its effectiveness, with the results of the evaluation reported to the safe patient handling committee. The evaluation shall determine the extent to which implementation of the program has resulted in a reduction in musculoskeletal disorder claims and days of lost work attributable to musculoskeletal disorder caused by patient handling, and include recommendations to increase the program's effectiveness; and

(e) When developing architectural plans for constructing or remodeling a hospital or a unit of a hospital in which patient handling and movement occurs, consider the feasibility of incorporating patient handling equipment or the physical space and construction design needed to incorporate that equipment at a later date.

(4) By January 30, 2010, each hospital must complete, at a minimum, acquisition of their choice of: (a) One readily available lift per acute care unit on the same floor unless the safe patient handling committee determines a lift is unnecessary in the unit; (b) one lift for every ten acute care available inpatient beds; or (c) equipment for use by lift teams. Hospitals must train staff on policies, equipment, and devices at least annually.

(5) Nothing in this section precludes lift team members from performing other duties as assigned during their shift.

(6) A hospital shall develop procedures for hospital employees to refuse to perform or be involved in patient handling or movement that the hospital employee believes in good faith will expose a patient or a hospital employee to an unacceptable risk of injury. A hospital employee who in good faith follows the procedure developed by the hospital in accordance with this subsection shall not be the subject of disciplinary action by the hospital for the refusal to perform or be involved in the patient handling or movement. [2006 c 165 § 2.]

**Findings—2006 c 165:** "The legislature finds that:

(1) Patients are not at optimum levels of safety while being lifted, transferred, or repositioned manually. Mechanical lift programs can reduce skin tears suffered by patients by threefold. Nurses, thirty-eight percent of whom have previous back injuries, can drop patients if their pain thresholds are triggered.

(2) According to the bureau of labor statistics, hospitals in Washington have a nonfatal employee injury incidence rate that exceeds the rate of construction, agriculture, manufacturing, and transportation.

(3) The physical demands of the nursing profession lead many nurses to leave the profession. Research shows that the annual prevalence rate for nursing back injury is over forty percent and many nurses who suffer a back injury do not return to nursing. Considering the present nursing shortage in Washington, measures must be taken to protect nurses from disabling injury.

(4) Washington hospitals have made progress toward implementation of safe patient handling programs that are effective in decreasing employee injuries. It is not the intent of this act to place an undue financial burden on hospitals." [2006 c 165 § 1.]

**70.41.400 Patient billing—Written statement describing who may be billing the patient required—Contact phone numbers—Exceptions.** (1) Prior to or upon discharge, a hospital must furnish each patient receiving inpatient services a written statement providing a list of physician groups and other professional partners that commonly provide care for patients at the hospital and from whom the patient may receive a bill, along with contact phone numbers for those groups. The statement must prominently display a phone number that a patient can call for assistance if the patient has any questions about any of the bills they receive after discharge that relate to their hospital stay.

(2) This section does not apply to any hospital owned or operated by a health maintenance organization under chapter 48.46 RCW when providing prepaid health care services to enrollees of the health maintenance organization or any of its wholly owned subsidiary carriers. [2006 c 60 § 2.]

**Findings—Intent—2006 c 60:** "The legislature finds that the implementation of health information technologies in hospitals, including electronic medical records, has the potential to significantly reduce cost, improve patient outcomes, and simplify the administration of health care. Further, the legislature finds that the number of and complexity of the bills that result from a hospital stay can be confusing to patients. Therefore, it is the intent of the legislature to encourage hospitals to design the implementation of health information technologies so as to allow the hospital to provide the patient, prior to or upon discharge, clearly understandable information about the services provided during the hospital stay, and the bills the patient is likely to receive related to each of those services. Recognizing that complete implementation of the technologies required to achieve this goal will take a number of years, the legislature intends to require that hospitals immediately begin working toward the goal by compiling and communicating information to assist patients in understanding their bills." [2006 c 60 § 1.]

**70.41.410 Nurse staffing committee—Definitions.** The definitions in this section apply throughout this section and RCW 70.41.420 unless the context clearly requires otherwise.

(1) "Hospital" has the same meaning as defined in RCW 70.41.020, and also includes state hospitals as defined in RCW 72.23.010.

(2) "Intensity" means the level of patient need for nursing care, as determined by the nursing assessment.

(3) "Nursing personnel" means registered nurses, licensed practical nurses, and unlicensed assistive nursing personnel providing direct patient care.

(4) "Nurse staffing committee" means the committee established by a hospital under RCW 70.41.420.

(5) "Patient care unit" means any unit or area of the hospital that provides patient care by registered nurses.

(6) "Skill mix" means the number and relative percentages of registered nurses, licensed practical nurses, and unlicensed assistive personnel among the total number of nursing personnel. [2008 c 47 § 2.]

**Findings—Intent—2008 c 47:** "(1) The legislature finds that:

(a) Research evidence demonstrates that registered nurses play a critical role in patient safety and quality of care. The ever-worsening shortage of nurses available to provide care in acute care hospitals has necessitated multiple strategies to generate more nurses and improve the recruitment and retention of nurses in hospitals; and

(b) Evidence-based nurse staffing that can help ensure quality and safe patient care while increasing nurse satisfaction in the work environment is key to solving an urgent public health issue in Washington state. Hospitals and nursing organizations recognize a mutual interest in patient safety initiatives that create a healthy environment for nurses and safe care for patients.

(2) In order to protect patients and to support greater retention of registered nurses, and to promote evidence-based nurse staffing, the legislature

intends to establish a mechanism whereby direct care nurses and hospital management shall participate in a joint process regarding decisions about nurse staffing." [2008 c 47 § 1.]

**70.41.420 Nurse staffing committee.** (1) By September 1, 2008, each hospital shall establish a nurse staffing committee, either by creating a new committee or assigning the functions of a nurse staffing committee to an existing committee. At least one-half of the members of the nurse staffing committee shall be registered nurses currently providing direct patient care and up to one-half of the members shall be determined by the hospital administration. The selection of the registered nurses providing direct patient care shall be according to the collective bargaining agreement if there is one in effect at the hospital. If there is no applicable collective bargaining agreement, the members of the nurse staffing committee who are registered nurses providing direct patient care shall be selected by their peers.

(2) Participation in the nurse staffing committee by a hospital employee shall be on scheduled work time and compensated at the appropriate rate of pay. Nurse staffing committee members shall be relieved of all other work duties during meetings of the committee.

(3) Primary responsibilities of the nurse staffing committee shall include:

(a) Development and oversight of an annual patient care unit and shift-based nurse staffing plan, based on the needs of patients, to be used as the primary component of the staffing budget. Factors to be considered in the development of the plan should include, but are not limited to:

(i) Census, including total numbers of patients on the unit on each shift and activity such as patient discharges, admissions, and transfers;

(ii) Level of intensity of all patients and nature of the care to be delivered on each shift;

(iii) Skill mix;

(iv) Level of experience and specialty certification or training of nursing personnel providing care;

(v) The need for specialized or intensive equipment;

(vi) The architecture and geography of the patient care unit, including but not limited to placement of patient rooms, treatment areas, nursing stations, medication preparation areas, and equipment; and

(vii) Staffing guidelines adopted or published by national nursing professional associations, specialty nursing organizations, and other health professional organizations;

(b) Semiannual review of the staffing plan against patient need and known evidence-based staffing information, including the nursing sensitive quality indicators collected by the hospital;

(c) Review, assessment, and response to staffing concerns presented to the committee.

(4) In addition to the factors listed in subsection (3)(a) of this section, hospital finances and resources may be taken into account in the development of the nurse staffing plan.

(5) The staffing plan must not diminish other standards contained in state or federal law and rules, or the terms of an applicable collective bargaining agreement, if any, between the hospital and a representative of the nursing staff.

(6) The committee will produce the hospital's annual nurse staffing plan. If this staffing plan is not adopted by the

(2010 Ed.)

hospital, the chief executive officer shall provide a written explanation of the reasons why to the committee.

(7) Each hospital shall post, in a public area on each patient care unit, the nurse staffing plan and the nurse staffing schedule for that shift on that unit, as well as the relevant clinical staffing for that shift. The staffing plan and current staffing levels must also be made available to patients and visitors upon request.

(8) A hospital may not retaliate against or engage in any form of intimidation of:

(a) An employee for performing any duties or responsibilities in connection with the nurse staffing committee; or

(b) An employee, patient, or other individual who notifies the nurse staffing committee or the hospital administration of his or her concerns on nurse staffing.

(9) This section is not intended to create unreasonable burdens on critical access hospitals under 42 U.S.C. Sec. 1395i-4. Critical access hospitals may develop flexible approaches to accomplish the requirements of this section that may include but are not limited to having nurse staffing committees work by telephone or electronic mail. [2008 c 47 § 3.]

**Findings—Intent—2008 c 47:** See note following RCW 70.41.410.

**70.41.430 Licensed hospitals must adopt a policy regarding methicillin-resistant staphylococcus aureus (MRSA)—Elements.**

(1) Each hospital licensed under this chapter shall, by January 1, 2010, adopt a policy regarding methicillin-resistant staphylococcus aureus. The policy shall, at a minimum, contain the following elements:

(a) A requirement to test any patient for methicillin-resistant staphylococcus aureus who is a member of a patient population identified as appropriate to test based on the hospital's risk assessment for methicillin-resistant staphylococcus aureus;

(b) A requirement that a patient in the hospital's adult or pediatric, but not neonatal, intensive care unit be tested for methicillin-resistant staphylococcus aureus within twenty-four hours of admission unless the patient has been previously tested during that hospital stay or has a known history of methicillin-resistant staphylococcus aureus;

(c) Appropriate procedures to help prevent patients who test positive for methicillin-resistant staphylococcus aureus from transmitting to other patients. For purposes of this subsection, "appropriate procedures" include, but are not limited to, isolation or cohorting of patients colonized or infected with methicillin-resistant staphylococcus aureus. In a hospital where patients, whose methicillin-resistant staphylococcus aureus status is either unknown or uncolonized, may be roomed with colonized or infected patients, patients must be notified they may be roomed with patients who have tested positive for methicillin-resistant staphylococcus aureus; and

(d) A requirement that every patient who has a methicillin-resistant staphylococcus aureus infection receive oral and written instructions regarding aftercare and precautions to prevent the spread of the infection to others.

(2) A hospital that has identified a hospitalized patient who has a diagnosis of methicillin-resistant staphylococcus aureus shall report the infection to the department using the department's comprehensive hospital abstract reporting sys-

tem. When making its report, the hospital shall use codes used by the United States centers for medicare and medicaid services, when available. [2009 c 244 § 1.]

**70.41.440 Duty to report violent injuries—Preservation of evidence—Immunity—Privilege.** (1) A hospital shall report to a local law enforcement authority as soon as reasonably possible, taking into consideration a patient's emergency care needs, when the hospital provides treatment for a bullet wound, gunshot wound, or stab wound to a patient who is unconscious. A hospital shall establish a written policy to identify the person or persons responsible for making the report.

(2) The report required under subsection (1) of this section must include the following information, if known:

- (a) The name, residence, sex, and age of the patient;
- (b) Whether the patient has received a bullet wound, gunshot wound, or stab wound; and
- (c) The name of the health care provider providing treatment for the bullet wound, gunshot wound, or stab wound.

(3) Nothing in this section shall limit a person's duty to report under RCW 26.44.030 or 74.34.035.

(4) Any bullets, clothing, or other foreign objects that are removed from a patient for whom a hospital is required to make a report pursuant to subsection (1) of this section shall be preserved and kept in custody in such a way that the identity and integrity thereof are reasonably maintained until the bullets, clothing, or other foreign objects are taken into possession by a law enforcement authority or the hospital's normal period for retention of such items expires, whichever occurs first.

(5) Any hospital or person who in good faith, and without gross negligence or willful or wanton misconduct, makes a report required by this section, cooperates in an investigation or criminal or judicial proceeding related to such report, or maintains bullets, clothing, or other foreign objects, or provides such items to a law enforcement authority as described in subsection (4) of this section, is immune from civil or criminal liability or professional licensure action arising out of or related to the report and its contents or the absence of information in the report, cooperation in an investigation or criminal or judicial proceeding, and the maintenance or provision to a law enforcement authority of bullets, clothing, or other foreign objects under subsection (4) of this section.

(6) The physician-patient privilege described in RCW 5.60.060(4), the registered nurse-patient privilege described in RCW 5.62.020, and any other health care provider-patient privilege created or recognized by law are not a basis for excluding as evidence in any criminal proceeding any report, or information contained in a report made under this section.

(7) All reporting, preservation, or other requirements of this section are secondary to patient care needs and may be delayed or compromised without penalty to the hospital or person required to fulfill the requirements of this section. [2009 c 359 § 2.]

**70.41.450 Estimated charges of hospital services—Notice.** Hospitals licensed under this chapter shall post a sign in patient registration areas containing at least the following language: "Information about the estimated charges

of your hospital services is available upon request. Please do not hesitate to ask for information." [2009 c 529 § 2.]

**70.41.900 Severability—1955 c 267.** If any part, or parts, of this chapter shall be held unconstitutional, the remaining provisions shall be given full force and effect, as completely as if the part held unconstitutional had not been included herein, if any such remaining part can then be administered for the purpose of establishing and maintaining standards for hospitals. [1955 c 267 § 21.]

## Chapter 70.42 RCW MEDICAL TEST SITES

### Sections

70.42.005	Intent—Construction.
70.42.010	Definitions.
70.42.020	License required.
70.42.030	Waiver of license—Conditions.
70.42.040	Sites approved under federal law—Automatic licensure.
70.42.050	Permission to perform tests not covered by license—License amendment.
70.42.060	Quality control, quality assurance, recordkeeping, and personnel standards.
70.42.070	Proficiency testing program.
70.42.080	Test site supervisor.
70.42.090	Fees—Account.
70.42.100	Applicants—Requirements.
70.42.110	Issuance of license—Renewal.
70.42.120	Denial of license.
70.42.130	Conditions upon license.
70.42.140	Suspension of license.
70.42.150	Revocation of license.
70.42.160	Penalties—Acts constituting violations.
70.42.170	On-site reviews.
70.42.180	Operating without a license—Injunctions or other remedies—Penalty.
70.42.190	Petition of superior court for review of disciplinary action.
70.42.200	Persons who may not own or operate test site.
70.42.210	Confidentiality of certain information.
70.42.220	Rules.
70.42.900	Effective dates—1989 c 386.

**70.42.005 Intent—Construction.** The legislature intends that medical test sites meet criteria known to promote accurate and reliable analysis, thus improving health care through uniform test site licensure and regulation including quality control, quality assurance, and proficiency testing. The legislature also intends to meet the requirements of federal laws licensing and regulating medical testing.

The legislature intends that nothing in this chapter shall be interpreted to place any liability whatsoever on the state for the action or inaction of test sites or test site personnel. The legislature further intends that nothing in this chapter shall be interpreted to expand the state's role regarding medical testing beyond the provisions of this chapter. [1989 c 386 § 1.]

**70.42.010 Definitions.** Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Department" means the \*department of health if enacted, otherwise the department of social and health services.

(2) "Designated test site supervisor" means the available individual who is responsible for the technical functions of

the test site and who meets the department's qualifications set out in rule by the department.

(3) "Person" means any individual, or any public or private organization, agent, agency, corporation, firm, association, partnership, or business.

(4) "Proficiency testing program" means an external service approved by the department which provides samples to evaluate the accuracy, reliability and performance of the tests at each test site.

(5) "Quality assurance" means a comprehensive set of policies, procedures, and practices to assure that a test site's results are accurate and reliable. Quality assurance means a total program of internal and external quality control, equipment preventative maintenance, calibration, recordkeeping, and proficiency testing evaluation, including a written quality assurance plan.

(6) "Quality control" means internal written procedures and day-to-day analysis of laboratory reference materials at each test site to insure precision and accuracy of test methodology, equipment, and results.

(7) "Test" means any examination or procedure conducted on a sample taken from the human body, including screening.

(8) "Test site" means any facility or site, public or private, which analyzes materials derived from the human body for the purposes of health care, treatment, or screening. A test site does not mean a facility or site, including a residence, where a test approved for home use by the federal food and drug administration is used by an individual to test himself or herself without direct supervision or guidance by another and where this test is not part of a commercial transaction. [1989 c 386 § 2.]

**\*Reviser's note:** 1989 1st ex.s. c 14 created the department of health.

**70.42.020 License required.** After July 1, 1990, no person may advertise, operate, manage, own, conduct, open, or maintain a test site without first obtaining a license for the tests to be performed, except as provided in RCW 70.42.030. [1989 c 386 § 3.]

**70.42.030 Waiver of license—Conditions.** (1) As a part of the application for licensure, a test site may request a waiver from licensure under this chapter if the test site performs only examinations which are determined to have insignificant risk of an erroneous result, including those which (a) are approved by the federal food and drug administration for home use; (b) are so simple and accurate as to render the likelihood of erroneous results negligible; or (c) pose no reasonable risk of harm to the patient if performed incorrectly.

(2) The department shall determine by rule which tests meet the criteria in subsection (1) of this section and shall be exempt from coverage of this chapter. The standards applied in developing the list shall be consistent with federal law and regulations.

(3) The department shall grant a waiver from licensure for two years for a valid request based on subsections (1) and (2) of this section.

(4) Any test site which has received a waiver under subsection (3) of this section shall report to the department any changes in the type of tests it intends to perform thirty days in

(2010 Ed.)

advance of the changes. In no case shall a test site with a waiver perform tests which require a license under this chapter. [1989 c 386 § 4.]

**70.42.040 Sites approved under federal law—Automatic licensure.** Test sites accredited, certified, or licensed by an organization or agency approved by the department consistent with federal law and regulations shall receive a license under RCW 70.42.110. [1989 c 386 § 5.]

**70.42.050 Permission to perform tests not covered by license—License amendment.** A licensee that desires to perform tests for which it is not currently licensed shall notify the department. To the extent allowed by federal law and regulations, upon notification and pending the department's determination, the department shall grant the licensee temporary permission to perform the additional tests. The department shall amend the license if it determines that the licensee meets all applicable requirements. [1989 c 386 § 6.]

**70.42.060 Quality control, quality assurance, recordkeeping, and personnel standards.** The department shall adopt standards established in rule governing test sites for quality control, quality assurance, recordkeeping, and personnel consistent with federal laws and regulations. "Recordkeeping" for purposes of this chapter means books, files, or records necessary to show compliance with the quality control and quality assurance requirements adopted by the department. [1989 c 386 § 7.]

**70.42.070 Proficiency testing program.** (1) Except where there is no reasonable proficiency test, each licensed test site must participate in a department-approved proficiency testing program appropriate to the test or tests which it performs. The department may approve proficiency testing programs offered by private or public organizations when the program meets the standards set by the department. Testing shall be conducted quarterly except as otherwise provided for in rule.

(2) The department shall establish proficiency testing standards by rule which include a measure of acceptable performance for tests, and a system for grading proficiency testing performance for tests. The standards may include an evaluation of the personnel performing tests. [1989 c 386 § 8.]

**70.42.080 Test site supervisor.** A test site shall have a designated test site supervisor who shall meet the qualifications determined by the department in rule. The designated test site supervisor shall be responsible for the testing functions of the test site. [1989 c 386 § 9.]

**70.42.090 Fees—Account.** (1) The department shall establish a schedule of fees for license applications, renewals, amendments, and waivers. In fixing said fees, the department shall set the fees at a sufficient level to defray the cost of administering the licensure program. All such fees shall be fixed by rule adopted in accordance with the provisions of the administrative procedure act, chapter 34.05 RCW. In determining the fee schedule, the department shall consider the following: (a) Complexity of the license required; (b) num-

ber and type of tests performed at the test site; (c) degree of supervision required from the department staff; (d) whether the license is granted under RCW 70.42.040; and (e) general administrative costs of the test site licensing program established under this chapter. For each category of license, fees charged shall be related to program costs.

(2) The medical test site licensure account is created in the state treasury. The state treasurer shall transfer into the medical test site licensure account all revenue received from medical test site license fees. Funds for this account may only be appropriated for the support of the activities defined under this chapter.

(3) The department may establish separate fees for repeat inspections and repeat audits it performs under RCW 70.42.170. [1989 c 386 § 10.]

**70.42.100 Applicants—Requirements.** An applicant for issuance or renewal of a medical test site license shall:

(1) File a written application on a form provided by the department;

(2) Demonstrate ability to comply with this chapter and the rules adopted under this chapter;

(3) Cooperate with any on-site review which may be conducted by the department prior to licensure or renewal. [1989 c 386 § 11.]

**70.42.110 Issuance of license—Renewal.** Upon receipt of an application for a license and the license fee, the department shall issue a license if the applicant meets the requirements established under this chapter. All persons operating test sites before July 1, 1990, shall submit applications by July 1, 1990. A license issued under this chapter shall not be transferred or assigned without thirty days' prior notice to the department and the department's timely approval. A license, unless suspended or revoked, shall be effective for a period of two years. The department may establish penalty fees or take other appropriate action pursuant to this chapter for failure to apply for licensure or renewal as required by this chapter. [1989 c 386 § 12.]

**70.42.120 Denial of license.** Under this chapter, and chapter 34.05 RCW, the department may deny a license to any applicant who:

(1) Refuses to comply with the requirements of this chapter or the standards or rules adopted under this chapter;

(2) Was the holder of a license under this chapter which was revoked for cause and never reissued by the department;

(3) Has knowingly or with reason to know made a false statement of a material fact in the application for a license or in any data attached thereto or in any record required by the department;

(4) Refuses to allow representatives of the department to examine any book, record, or file required by this chapter to be maintained;

(5) Willfully prevented, interfered with, or attempted to impede in any way the work of a representative of the department; or

(6) Misrepresented, or was fraudulent in, any aspect of the applicant's business. [1989 c 386 § 13.]

**70.42.130 Conditions upon license.** Under this chapter, and chapter 34.05 RCW, the department may place conditions on a license which limit or cancel a test site's authority to conduct any of the tests or groups of tests of any licensee who:

(1) Fails or refuses to comply with the requirements of this chapter or the rules adopted under this chapter;

(2) Has knowingly or with reason to know made a false statement of a material fact in the application for a license or in any data attached thereto or in any record required by the department;

(3) Refuses to allow representatives of the department to examine any book, record, or file required by this chapter to be maintained;

(4) Willfully prevented, interfered with, or attempted to impede in any way the work of a representative of the department;

(5) Willfully prevented or interfered with preservation of evidence of a known violation of this chapter or the rules adopted under this chapter; or

(6) Misrepresented, or was fraudulent in, any aspect of the licensee's business. [1989 c 386 § 14.]

**70.42.140 Suspension of license.** Under this chapter, and chapter 34.05 RCW, the department may suspend the license of any licensee who:

(1) Fails or refuses to comply with the requirements of this chapter or the rules adopted under this chapter;

(2) Has knowingly or with reason to know made a false statement of a material fact in the application for a license or in any data attached thereto or in any record required by the department;

(3) Refuses to allow representatives of the department to examine any book, record, or file required by this chapter to be maintained;

(4) Willfully prevented, interfered with, or attempted to impede in any way the work of a representative of the department;

(5) Willfully prevented or interfered with preservation of evidence of a known violation of this chapter or the rules adopted under this chapter;

(6) Misrepresented, or was fraudulent in, any aspect of the licensee's business;

(7) Used false or fraudulent advertising; or

(8) Failed to pay any civil monetary penalty assessed by the department under this chapter within twenty-eight days after the assessment becomes final. [1989 c 386 § 15.]

**70.42.150 Revocation of license.** Under this chapter, and chapter 34.05 RCW, the department may revoke the license of any licensee who:

(1) Fails or refuses to comply with the requirements of this chapter or the rules adopted under this chapter;

(2) Has knowingly or with reason to know made a false statement of a material fact in the application for a license or in any data attached thereto or in any record required by the department;

(3) Refuses to allow representatives of the department to examine any book, record, or file required by this chapter to be maintained;

(4) Willfully prevented, interfered with, or attempted to impede in any way the work of a representative of the department;

(5) Willfully prevented or interfered with preservation of evidence of a known violation of this chapter or the rules adopted under this chapter;

(6) Misrepresented, or was fraudulent in, any aspect of the licensee's business;

(7) Used false or fraudulent advertising; or

(8) Failed to pay any civil monetary penalty assessed by the department pursuant to this chapter within twenty-eight days after the assessment becomes final.

The department may summarily revoke a license when it finds continued licensure of a test site immediately jeopardizes the public health, safety, or welfare. [1989 c 386 § 16.]

#### **70.42.160 Penalties—Acts constituting violations.**

Under this chapter, and chapter 34.05 RCW, the department may assess monetary penalties of up to ten thousand dollars per violation in addition to or in lieu of conditioning, suspending, or revoking a license. A violation occurs when a licensee:

(1) Fails or refuses to comply with the requirements of this chapter or the standards or rules adopted under this chapter;

(2) Has knowingly or with reason to know made a false statement of a material fact in the application for a license or in any data attached thereto or in any record required by the department;

(3) Refuses to allow representatives of the department to examine any book, record, or file required by this chapter to be maintained;

(4) Willfully prevents, interferes with, or attempts to impede in any way the work of any representative of the department;

(5) Willfully prevents or interferes with preservation of evidence of any known violation of this chapter or the rules adopted under this chapter;

(6) Misrepresents or was fraudulent in any aspect of the applicant's business; or

(7) Uses advertising which is false or fraudulent.

Each day of a continuing violation is a separate violation. [1989 c 386 § 17.]

**70.42.170 On-site reviews.** The department may at any time conduct an on-site review of a licensee or applicant in order to determine compliance with this chapter. When the department has reason to believe a waived site is conducting tests requiring a license, the department may conduct an on-site review of the waived site in order to determine compliance. The department may also examine and audit records necessary to determine compliance with this chapter. The right to conduct an on-site review and audit and examination of records shall extend to any premises and records of persons whom the department has reason to believe are opening, owning, conducting, maintaining, managing, or otherwise operating a test site without a license.

Following an on-site review, the department shall give written notice of any violation of this chapter or the rules adopted under this chapter. The notice shall describe the rea-

sons for noncompliance and inform the licensee or applicant or test site operator that it shall comply within a specified reasonable time. If the licensee or applicant or test site operator fails to comply, the department may take disciplinary action under RCW 70.42.120 through 70.42.150, or further action as authorized by this chapter. [1989 c 386 § 18.]

**70.42.180 Operating without a license—Injunctions or other remedies—Penalty.** Notwithstanding the existence or use of any other remedy, the department may, in the manner provided by law and upon the advice of the attorney general, who shall represent the department in the proceedings, maintain an action in the name of the state for an injunction or other process against any person to restrain or prevent the advertising, operating, maintaining, managing, or opening of a test site without a license under this chapter. It is a misdemeanor to own, operate, or maintain a test site without a license. [1989 c 386 § 19.]

**70.42.190 Petition of superior court for review of disciplinary action.** Any test site which has had a denial, condition, suspension, or revocation of its license, or a civil monetary penalty upheld after administrative review under chapter 34.05 RCW, may, within sixty days of the administrative determination, petition the superior court for review of the decision. [1989 c 386 § 20.]

**70.42.200 Persons who may not own or operate test site.** No person who has owned or operated a test site that has had its license revoked may own or operate a test site within two years of the final adjudication of a license revocation. [1989 c 386 § 21.]

**70.42.210 Confidentiality of certain information.** All information received by the department through filed reports, audits, or on-site reviews, as authorized under this chapter shall not be disclosed publicly in any manner that would identify persons who have specimens of material from their bodies at a test site, absent a written release from the person, or a court order. [1989 c 386 § 22.]

**70.42.220 Rules.** The department shall adopt rules under chapter 34.05 RCW necessary to implement the purposes of this chapter. [1989 c 386 § 23.]

**70.42.900 Effective dates—1989 c 386.** (1) RCW 70.42.005 through 70.42.210 shall take effect July 1, 1990.

(2) RCW 70.42.220 is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect July 1, 1989. [1989 c 386 § 25.]

## **Chapter 70.43 RCW**

### **HOSPITAL STAFF MEMBERSHIP OR PRIVILEGES**

#### Sections

70.43.010	Applications for membership or privileges—Standards and procedures.
70.43.020	Applications for membership or privileges—Discrimination based on type of license prohibited—Exception.
70.43.030	Violations of RCW 70.43.010 or 70.43.020—Injunctive relief.

**70.43.010 Applications for membership or privileges—Standards and procedures.** Within one hundred eighty days of June 11, 1986, the governing body of every hospital licensed under chapter 70.41 RCW shall set standards and procedures to be applied by the hospital and its medical staff in considering and acting upon applications for staff membership or professional privileges. [1986 c 205 § 1.]

**70.43.020 Applications for membership or privileges—Discrimination based on type of license prohibited—Exception.** The governing body of any hospital, except any hospital which employs its medical staff, in considering and acting upon applications for staff membership or professional privileges within the scope of the applicants' respective licenses, shall not discriminate against a qualified person solely on the basis of whether such person is licensed under chapters 18.71, 18.57, or 18.22 RCW. [1986 c 205 § 2.]

**70.43.030 Violations of RCW 70.43.010 or 70.43.020—Injunctive relief.** Any person may apply to superior court for a preliminary or permanent injunction restraining a violation of RCW 70.43.010 or 70.43.020. This action is an additional remedy not dependent on the adequacy of the remedy at law. Nothing in this chapter shall require a hospital to grant staff membership or professional privileges until a final determination is made upon the merits by the hospital governing body. [1986 c 205 § 3.]

### Chapter 70.44 RCW PUBLIC HOSPITAL DISTRICTS

#### Sections

70.44.003	Purpose.
70.44.007	Definitions.
70.44.010	Districts authorized.
70.44.015	Validation of existing districts.
70.44.016	Validation of districts.
70.44.020	Resolution—Petition for countywide district—Conduct of elections.
70.44.028	Limitation on legal challenges.
70.44.030	Petition for lesser district—Procedure.
70.44.035	Petition for district lying in more than one county—Procedure.
70.44.040	Elections—Commissioners, terms, districts.
70.44.041	Validity of appointment or election of commissioners—Compliance with 1994 c 223.
70.44.042	Commissioner districts—Resolution to abolish—Proposition to reestablish.
70.44.045	Commissioners—Vacancies.
70.44.047	Redrawn boundaries—Assignment of commissioners to districts.
70.44.050	Commissioners—Compensation and expenses—Insurance—Resolutions by majority vote—Officers—Rules.
70.44.053	Increase in number of commissioners—Proposition to voters.
70.44.054	Increase in number of commissioners—Commissioner districts.
70.44.056	Increase in number of commissioners—Appointments—Election—Terms.
70.44.059	Chaplains—Authority to employ.
70.44.060	Powers and duties.
70.44.062	Commissioners' meetings, proceedings, and deliberations concerning health care providers' clinical or staff privileges to be confidential—Final action in public session.
70.44.065	Levy for emergency medical care and services.
70.44.067	Community revitalization financing—Public improvements.
70.44.070	Superintendent—Appointment—Removal—Compensation.
70.44.080	Superintendent—Powers.
70.44.090	Superintendent—Duties.
70.44.110	Plan to construct or improve—General obligation bonds.

70.44.130	Bonds—Payment—Security for deposits.
70.44.140	Contracts for material and work—Call for bids—Alternative procedures—Exemptions.
70.44.171	Treasurer—Duties—Funds—Depositaries—Surety bonds, cost.
70.44.185	Change of district boundary lines to allow farm units to be wholly within one hospital district—Notice.
70.44.190	Consolidation of districts.
70.44.200	Annexation of territory.
70.44.210	Alternate method of annexation—Contents of resolution calling for election.
70.44.220	Alternate method of annexation—Publication and contents of notice of hearing—Hearing—Resolution—Special election.
70.44.230	Alternate method of annexation—Conduct and canvass of election—Notice—Ballot.
70.44.235	Withdrawal or reannexation of areas.
70.44.240	Contracting or joining with other districts, hospitals, corporations, or individuals to provide services or facilities.
70.44.260	Contracts for purchase of real or personal property.
70.44.300	Sale of surplus real property.
70.44.310	Lease of surplus real property.
70.44.315	Evaluation criteria and requirements for acquisition of district hospitals.
70.44.320	Disposal of surplus personal property.
70.44.350	Dividing a district.
70.44.360	Dividing a district—Plan.
70.44.370	Dividing a district—Petition to court, hearing, order.
70.44.380	Dividing a district—Election—Creation of new districts—Challenges.
70.44.400	Withdrawal of territory from public hospital district.
70.44.450	Rural public hospital districts—Cooperative agreements and contracts.
70.44.460	Rural public hospital district defined.
70.44.470	Chapter not applicable to certain transfers of property.
70.44.900	Severability—Construction—1945 c 264.
70.44.901	Severability—Construction—1974 ex.s. c 165.
70.44.902	Severability—1982 c 84.
70.44.903	Savings—1982 c 84.
70.44.910	Construction—1945 c 264.

*County hospitals: Chapter 36.62 RCW.*

*Limitation of indebtedness prescribed: RCW 39.36.020.*

*Tortious conduct of political subdivisions, municipal corporations and quasi municipal corporations, liability for damages: Chapter 4.96 RCW.*

**70.44.003 Purpose.** The purpose of chapter 70.44 RCW is to authorize the establishment of public hospital districts to own and operate hospitals and other health care facilities and to provide hospital services and other health care services for the residents of such districts and other persons. [1982 c 84 § 1.]

**70.44.007 Definitions.** As used in this chapter, the following words have the meanings indicated:

(1) "Other health care facilities" means nursing home, extended care, long-term care, outpatient and rehabilitative facilities, ambulances, and such other facilities as are appropriate to the health needs of the population served.

(2) "Other health care services" means nursing home, extended care, long-term care, outpatient, rehabilitative, health maintenance, and ambulance services and such other services as are appropriate to the health needs of the population served.

(3) "Public hospital district" or "district" means public health care service district. [1997 c 332 § 15; 1982 c 84 § 12; 1974 ex.s. c 165 § 5.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**70.44.010 Districts authorized.** Municipal corporations, to be known as public hospital districts, are hereby authorized and may be established within the several counties of the state as hereinafter provided. [1947 c 225 § 1; 1945 c

264 § 2; Rem. Supp. 1947 § 6090-31. FORMER PART OF SECTION: 1945 c 264 § 1 now codified as RCW 70.44.005.]

**70.44.015 Validation of existing districts.** Each and all of the respective areas of land heretofore attempted to be organized into public hospital districts under the provisions of this chapter are validated and declared to be duly existing hospital districts having the respective boundaries set forth in their organization proceedings as shown by the files in the office of the board of county commissioners of the county in question, and by the files of such districts. [1955 c 135 § 2.]

**70.44.016 Validation of districts.** Each and all of the respective areas of land attempted to be organized into public hospital districts prior to June 10, 1982, under the provisions of chapter 70.44 RCW where the canvass of the election on the proposition of creating a public hospital district shows the passage of the proposition are validated and declared to be duly existing public hospital districts having the respective boundaries set forth in their organization proceedings as shown by the files in the office of the legislative authority of the county in question, and by the files of such districts. [1982 c 84 § 10.]

**70.44.020 Resolution—Petition for countywide district—Conduct of elections.** At any general election or at any special election which may be called for that purpose the county legislative authority of a county may, or on petition of ten percent of the registered voters of the county based on the total vote cast in the last general county election, shall, by resolution, submit to the voters of the county the proposition of creating a public hospital district coextensive with the limits of the county. The petition shall be filed with the county auditor, who shall within fifteen days examine the signatures thereon and certify to the sufficiency thereof, and for that purpose the auditor shall have access to all registration books in the possession of election officers in the county. If the petition is found to be insufficient, it shall be returned to the persons filing it, who may amend or add names thereto for ten days, when it shall be returned to the auditor, who shall have an additional fifteen days to examine it and attach the certificate thereto. No person signing the petition may withdraw his or her name therefrom after filing. When the petition is certified as sufficient, the auditor shall forthwith transmit it, together with the certificate of sufficiency attached thereto, to the county legislative authority, who shall immediately transmit the proposition to the supervisor of elections or other election officer of the county, and he shall submit the proposition to the voters at the next general election or if such petition so requests, shall call a special election on such proposition in accordance with \*RCW 29.13.010 and 29.13.020. The notice of the election shall state the boundaries of the proposed district and the object of the election, and shall in other respects conform to the requirements of law governing the time and manner of holding elections. In submitting the question to the voters, the proposition shall be expressed on the ballot substantially in the following terms:

For public hospital district No. . . . .

Against public hospital district No. . . . .

(2010 Ed.)

[1990 c 259 § 38; 1955 c 135 § 1; 1945 c 264 § 3; Rem. Supp. 1945 § 6090-32.]

**\*Reviser's note:** RCW 29.13.010 and 29.13.020 were recodified as RCW 29A.04.320 and 29A.04.330, respectively, pursuant to 2003 c 111 § 2401, effective July 1, 2004. RCW 29A.04.320 was subsequently repealed by 2004 c 271 § 193. Later enactment of RCW 29A.04.320, see RCW 29A.04.321.

**70.44.028 Limitation on legal challenges.** Unless commenced within thirty days after the date of the filing of the certificate of the canvass of an election on the proposition of creating a new public hospital district pursuant to chapter 70.44 RCW, no lawsuit whatever may be maintained challenging in any way the legal existence of such district or the validity of the proceedings had for the organization and creation thereof. If the creation of a district is not challenged within the period specified in this section, the district conclusively shall be deemed duly and regularly organized under the laws of this state. [1982 c 84 § 9.]

**70.44.030 Petition for lesser district—Procedure.** Any petition for the formation of a public hospital district may describe a less area than the entire county in which the petition is filed, the boundaries of which shall follow the then existing precinct boundaries and not divide any voting precinct; and in the event that such a petition is filed containing not less than ten percent of the voters of the proposed district who voted at the last general election, certified by the auditor in like manner as for a countywide district, the board of county commissioners shall fix a date for a hearing on such petition, and shall publish the petition, without the signatures thereto appended, for two weeks prior to the date of the hearing, together with a notice stating the time of the meeting when such petition will be heard. Such publications required by this chapter shall be in a newspaper published in the proposed or established public hospital district, or, if there be no such newspaper, then in a newspaper published in the county in which such district is situated, and of general circulation in such county. The hearing on such petition may be adjourned from time to time, not exceeding four weeks in all. If upon the final hearing the board of county commissioners shall find that any lands have been unjustly or improperly included within the proposed public hospital district the said board shall change and fix the boundary lines in such manner as it shall deem reasonable and just and conducive to the welfare and convenience, and make and enter an order establishing and defining the boundary lines of the proposed public hospital district: PROVIDED, That no lands shall be included within the boundaries so fixed lying outside the boundaries described in the petition, except upon the written request of the owners of such lands. Thereafter the same procedure shall be followed as prescribed in this chapter for the formation of a public hospital district including an entire county, except that the petition and election shall be confined solely to the lesser public hospital district. [1945 c 264 § 4; Rem. Supp. 1945 § 6090-33.]

**70.44.035 Petition for district lying in more than one county—Procedure.** Any petition for the formation of a public hospital district may describe an area lying in more than one county, the boundaries of which shall follow the

then existing precinct boundaries and not divide a voting precinct; and if a petition is filed with the county auditor of the respective counties in which a portion of the proposed district is located, containing not less than ten percent of the voters of that area of each county of the proposed district who voted at the last general election, certified by the said respective auditors in like manner as for a countywide district, the board of county commissioners of each of the counties in which a portion of the proposed district is located shall fix a date for a hearing on the petition, and shall publish the petition, without the signatures thereto appended, for two weeks prior to the hearing, together with a notice stating the time of the meeting when the petition will be heard. The publication required by this chapter shall be in a newspaper published in the portion of each county lying within the proposed district, or if there be no such newspaper published in any such portion of a county, then in one published in the county wherein such portion of said district is situated, and of general circulation in the county. The hearing before the respective county commissioners may be adjourned from time to time not exceeding four weeks in all. If upon the final hearing the respective boards of county commissioners find that any land has been unjustly or improperly included within the proposed district they may change and fix the boundary lines of the portion of said district located within their respective counties in such manner as they deem reasonable and just and conducive to the welfare and convenience, and enter an order establishing and defining the boundary lines of the proposed district located within their respective counties: PROVIDED, That no lands shall be included within the boundaries so fixed lying outside the boundaries described in the petition, except upon the written request of the owners of the land to be so included. Thereafter the same procedure shall be followed as prescribed for the formation of a district including an entire county, except that the petition and election shall be confined solely to the portions of each county lying within the proposed district. [1953 c 267 § 1.]

**70.44.040 Elections—Commissioners, terms, districts.** (1) The provisions of Title 29A RCW relating to elections shall govern public hospital districts, except as provided in this chapter.

A public hospital district shall be created when the ballot proposition authorizing the creation of the district is approved by a simple majority vote of the voters of the proposed district voting on the proposition and the total vote cast upon the proposition exceeds forty percent of the total number of votes cast in the proposed district at the preceding state general election.

A public hospital district initially may be created with three, five, or seven commissioner districts. At the election at which the proposition is submitted to the voters as to whether a district shall be formed, three, five, or seven commissioners shall be elected from either three, five, or seven commissioner districts, or at-large positions, or both, as determined by resolution of the county commissioners of the county or counties in which the proposed public hospital district is located, all in accordance with RCW 70.44.054. The election of the initial commissioners shall be null and void if the district is not authorized to be created.

No primary shall be held. A special filing period shall be opened as provided in RCW 29A.24.171 and 29A.24.181. The person receiving the greatest number of votes for the commissioner of each commissioner district or at-large position shall be elected as the commissioner of that district. The terms of office of the initial public hospital district commissioners shall be staggered, with the length of the terms assigned so that the person or persons who are elected receiving the greater number of votes being assigned a longer term or terms of office and each term of an initial commissioner running until a successor assumes office who is elected at one of the next three following district general elections the first of which occurs at least one hundred twenty days after the date of the election where voters approved the ballot proposition creating the district, as follows:

(a) If the public hospital district will have three commissioners, the successor to one initial commissioner shall be elected at such first following district general election, the successor to one initial commissioner shall be elected at the second following district general election, and the successor to one initial commissioner shall be elected at the third following district general election;

(b) If the public hospital district will have five commissioners, the successor to one initial commissioner shall be elected at such first following district general election, the successors to two initial commissioners shall be elected at the second following district general election, and the successors to two initial commissioners shall be elected at the third following district general election;

(c) If the public hospital district will have seven commissioners, the successors to two initial commissioners shall be elected at such first following district general election, the successors to two initial commissioners shall be elected at the second following district general election, and the successors to three initial commissioners shall be elected at the third following district general election.

The initial commissioners shall take office immediately when they are elected and qualified. The term of office of each successor shall be six years. Each commissioner shall serve until a successor is elected and qualified and assumes office in accordance with RCW 29A.20.040.

(2) Only a registered voter who resides in a commissioner district may be a candidate for, or hold office as, a commissioner of the commissioner district. Voters of the entire public hospital district may vote at a primary or general election to elect a person as a commissioner of the commissioner district.

If the proposed public hospital district initially will have three commissioner districts and the public hospital district is countywide, and if the county has three county legislative authority districts, the county legislative authority districts shall be used as public hospital district commissioner districts. In all other instances the county auditor of the county in which all or the largest portion of the proposed public hospital district is located shall draw the initial public hospital district commissioner districts and designate at-large positions, if appropriate, as provided in RCW 70.44.054. Each of the commissioner positions shall be numbered consecutively and associated with the commissioner district or at-large position of the same number.

The commissioners of a public hospital district that is not coterminous with the boundaries of a county that has three county legislative authority districts shall at the times required in chapter 29A.76 RCW and may from time to time redraw commissioner district boundaries in a manner consistent with chapter 29A.76 RCW.

(3) No person may hold office as a commissioner while serving as an employee of the public hospital district. [2006 c 322 § 1; 1997 c 99 § 1; 1994 c 223 § 78; 1990 c 259 § 39; 1979 ex.s. c 126 § 41; 1957 c 11 § 1; 1955 c 82 § 1; 1953 c 267 § 2; 1947 c 229 § 1; 1945 c 264 § 5; Rem. Supp. 1947 § 6090-34.]

**Purpose—1979 ex.s. c 126:** See RCW 29A.20.040(1).

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**70.44.041 Validity of appointment or election of commissioners—Compliance with 1994 c 223.** No appointment to fill a vacant position on or election to the board of commissioners of any public hospital district made after June 9, 1994, and before April 21, 1997, is deemed to be invalid solely due to the public hospital district's failure to redraw its commissioner district boundaries if necessary to comply with chapter 223, Laws of 1994. [1997 c 99 § 7.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**70.44.042 Commissioner districts—Resolution to abolish—Proposition to reestablish.** Notwithstanding any provision in RCW 70.44.040 to the contrary, any board of public hospital district commissioners may, by resolution, abolish commissioner districts and permit candidates for any position on the board to reside anywhere in the public hospital district.

At any general or special election which may be called for that purpose, the board of public hospital district commissioners may, on petition of ten percent of the voters based on the total vote cast in the last district general election in the public hospital district shall, by resolution, submit to the voters of the district the proposition to reestablish commissioner districts. [1997 c 99 § 2; 1967 c 227 § 2.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**70.44.045 Commissioners—Vacancies.** A vacancy in the office of commissioner shall occur as provided in chapter 42.12 RCW or by nonattendance at meetings of the commission for sixty days, unless excused by the commission. A vacancy shall be filled as provided in chapter 42.12 RCW. [1994 c 223 § 79; 1982 c 84 § 13; 1955 c 82 § 2.]

**70.44.047 Redrawn boundaries—Assignment of commissioners to districts.** If, as the result of redrawing the boundaries of commissioner districts as permitted or required under the provisions of this chapter, \*chapter 29.70 RCW, or any other statute, more than the correct number of commissioners who are associated with commissioner districts reside in the same commissioner district, a commissioner or commissioners residing in that redrawn commissioner district equal in number to the number of commissioners in excess of the correct number shall be assigned to the drawn commissioner district or districts in which less than the correct number of commissioners associated with commissioner districts

(2010 Ed.)

reside. The commissioner or commissioners who are so assigned shall be those with the shortest unexpired term or terms of office, but if the number of such commissioners with the same terms of office exceeds the number that are to be assigned, the board of commissioners shall select by lot from those commissioners which one or ones are assigned. A commissioner who is so assigned shall be deemed to be a resident of the commissioner district to which he or she is assigned for purposes of determining whether a position is vacant. [1997 c 99 § 6.]

**\*Reviser's note:** Chapter 29.70 RCW was recodified as chapter 29A.76 RCW pursuant to 2003 c 111 § 2401, effective July 1, 2004.

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**70.44.050 Commissioners—Compensation and expenses—Insurance—Resolutions by majority vote—Officers—Rules.** Each commissioner shall receive ninety dollars for each day or portion thereof spent in actual attendance at official meetings of the district commission, or in performance of other official services or duties on behalf of the district, to include meetings of the commission of his or her own district, or meetings attended by one or more commissioners of two or more districts called to consider business common to them, except that the total compensation paid to such commissioner during any one year shall not exceed eight thousand six hundred forty dollars. The commissioners may not be compensated for services performed of a ministerial or professional nature.

Any commissioner may waive all or any portion of his or her compensation payable under this section as to any month or months during his or her term of office, by a written waiver filed with the district as provided in this section. The waiver, to be effective, must be filed any time after the commissioner's election and prior to the date on which the compensation would otherwise be paid. The waiver shall specify the month or period of months for which it is made.

Any district providing group insurance for its employees, covering them, their immediate family, and dependents, may provide insurance for its commissioners with the same coverage. Each commissioner shall be reimbursed for reasonable expenses actually incurred in connection with such business and meetings, including his or her subsistence and lodging and travel while away from his or her place of residence. No resolution shall be adopted without a majority vote of the whole commission. The commission shall organize by election of its own members of a president and secretary, shall by resolution adopt rules governing the transaction of its business and shall adopt an official seal. All proceedings of the commission shall be by motion or resolution recorded in a book or books kept for such purpose, which shall be public records.

The dollar thresholds established in this section must be adjusted for inflation by the office of financial management every five years, beginning July 1, 2008, based upon changes in the consumer price index during that time period. "Consumer price index" means, for any calendar year, that year's annual average consumer price index, for Washington state, for wage earners and clerical workers, all items, compiled by the bureau of labor and statistics, United States department of labor. If the bureau of labor and statistics develops more than one consumer price index for areas within the state, the index

covering the greatest number of people, covering areas exclusively within the boundaries of the state, and including all items shall be used for the adjustments for inflation in this section. The office of financial management must calculate the new dollar threshold and transmit it to the office of the code reviser for publication in the Washington State Register at least one month before the new dollar threshold is to take effect.

A person holding office as commissioner for two or more special purpose districts shall receive only that per diem compensation authorized for one of his or her commissioner positions as compensation for attending an official meeting or conducting official services or duties while representing more than one of his or her districts. However, such commissioner may receive additional per diem compensation if approved by resolution of all boards of the affected commissions. [2008 c 31 § 2; 2007 c 469 § 7; 1998 c 121 § 7; 1985 c 330 § 7; 1982 c 84 § 14; 1975 c 42 § 1; 1965 c 157 § 1; 1945 c 264 § 15; Rem. Supp. 1945 § 6090-44.]

**70.44.053 Increase in number of commissioners— Proposition to voters.** At any general or special election which may be called for that purpose the board of public hospital district commissioners may, or on petition of ten percent of the voters based on the total vote cast in the last district general election in the public hospital district shall, by resolution, submit to the voters of the district the proposition increasing the number of commissioners to either five or seven members. The petition or resolution shall specify whether it is proposed to increase the number of commissioners to either five or seven members. [1997 c 99 § 3; 1994 c 223 § 80; 1967 c 77 § 2.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**70.44.054 Increase in number of commissioners— Commissioner districts.** If the voters of the district approve the ballot proposition authorizing the increase in the number of commissioners to either five or seven members, the additional commissioners shall be elected at large from the entire district; provided that, the board of commissioners of the district may by resolution redistrict the public hospital district into five commissioner districts if the district has five commissioners or seven commissioner districts if the district has seven commissioners. The board of commissioners shall draw the boundaries of each commissioner district to include as nearly as possible equal portions of the total population of the public hospital district.

If the board of commissioners increases the number of commissioner districts as provided in this section, one commissioner shall be elected from each commissioner district, and no commissioner may be elected from a commissioner district in which another commissioner resides. [1997 c 99 § 4.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**70.44.056 Increase in number of commissioners— Appointments—Election—Terms.** In all existing public hospital districts in which an increase in the number of district commissioners is proposed, the additional commissioner positions shall be deemed to be vacant and the board of com-

missioners of the public hospital district shall appoint qualified persons to fill those vacancies in accordance with RCW 42.12.070.

Each person who is appointed shall serve until a qualified person is elected at the next general election of the district occurring one hundred twenty days or more after the date of the election at which the voters of the district approved the ballot proposition authorizing the increase in the number of commissioners. If needed, special filing periods shall be authorized as provided in \*RCW 29.15.170 and 29.15.180 for qualified persons to file for the vacant office. A primary shall be held to nominate candidates if sufficient time exists to hold a primary and more than two candidates file for the vacant office. Otherwise, no primary shall be held and the candidate receiving the greatest number of votes for each position shall be elected. Except for the initial terms of office, persons elected to each of these additional commissioner positions shall be elected to a six-year term. The newly elected commissioners shall assume office as provided in \*RCW 29.04.170.

The initial terms of the new commissioners shall be staggered as follows: (1) When the number of commissioners is increased from three to five, the person elected receiving the greatest number of votes shall be elected to a six-year term of office, and the other person shall be elected to a four-year term; (2) when the number of commissioners is increased from three or five to seven, the terms of the new commissioners shall be staggered over the next three district general elections so that two commissioners will be elected at the first district general election following the election where the additional commissioners are elected, two commissioners will be at the second district general election after the election of the additional commissioners, and three commissioners will be elected at the third district general election following the election of the additional commissioners, with the persons elected receiving the greatest number of votes elected to serve the longest terms. [1997 c 99 § 5.]

**\*Reviser's note:** RCW 29.15.170, 29.15.180, and 29.04.170 were recodified as RCW 29A.24.170, 29A.24.180, and 29A.20.040, respectively, pursuant to 2003 c 111 § 2401, effective July 1, 2004. RCW 29A.24.170 and 29A.24.180 were subsequently repealed by 2004 c 271 § 193. Later enactment of RCW 29A.24.170 and 29A.24.180, see RCW 29A.24.171 and 29A.24.181.

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**70.44.059 Chaplains—Authority to employ.** Public hospital districts may employ chaplains for their hospitals, health care facilities, and hospice programs. [1993 c 234 § 1.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**70.44.060 Powers and duties.** All public hospital districts organized under the provisions of this chapter shall have power:

(1) To make a survey of existing hospital and other health care facilities within and without such district.

(2) To construct, condemn and purchase, purchase, acquire, lease, add to, maintain, operate, develop and regulate, sell and convey all lands, property, property rights, equipment, hospital and other health care facilities and systems for the maintenance of hospitals, buildings, structures,

and any and all other facilities, and to exercise the right of eminent domain to effectuate the foregoing purposes or for the acquisition and damaging of the same or property of any kind appurtenant thereto, and such right of eminent domain shall be exercised and instituted pursuant to a resolution of the commission and conducted in the same manner and by the same procedure as in or may be provided by law for the exercise of the power of eminent domain by incorporated cities and towns of the state of Washington in the acquisition of property rights: PROVIDED, That no public hospital district shall have the right of eminent domain and the power of condemnation against any health care facility.

(3) To lease existing hospital and other health care facilities and equipment and/or other property used in connection therewith, including ambulances, and to pay such rental therefor as the commissioners shall deem proper; to provide hospital and other health care services for residents of said district by facilities located outside the boundaries of said district, by contract or in any other manner said commissioners may deem expedient or necessary under the existing conditions; and said hospital district shall have the power to contract with other communities, corporations, or individuals for the services provided by said hospital district; and they may further receive in said hospitals and other health care facilities and furnish proper and adequate services to all persons not residents of said district at such reasonable and fair compensation as may be considered proper: PROVIDED, That it must at all times make adequate provision for the needs of the district and residents of said district shall have prior rights to the available hospital and other health care facilities of said district, at rates set by the district commissioners.

(4) For the purpose aforesaid, it shall be lawful for any district so organized to take, condemn and purchase, lease, or acquire, any and all property, and property rights, including state and county lands, for any of the purposes aforesaid, and any and all other facilities necessary or convenient, and in connection with the construction, maintenance, and operation of any such hospitals and other health care facilities, subject, however, to the applicable limitations provided in subsection (2) of this section.

(5) To contract indebtedness or borrow money for corporate purposes on the credit of the corporation or the revenues of the hospitals thereof, and the revenues of any other facilities or services that the district is or hereafter may be authorized by law to provide, and to issue and sell: (a) Revenue bonds, revenue warrants, or other revenue obligations therefor payable solely out of a special fund or funds into which the district may pledge such amount of the revenues of the hospitals thereof, and the revenues of any other facilities or services that the district is or hereafter may be authorized by law to provide, to pay the same as the commissioners of the district may determine, such revenue bonds, warrants, or other obligations to be issued and sold in the same manner and subject to the same provisions as provided for the issuance of revenue bonds, warrants, or other obligations by cities or towns under the municipal revenue bond act, chapter 35.41 RCW, as may hereafter be amended; (b) general obligation bonds therefor in the manner and form as provided in RCW 70.44.110 and 70.44.130, as may hereafter be amended; or (c) interest-bearing warrants to be drawn on a fund pending deposit in such fund of money sufficient to

redeem such warrants and to be issued and paid in such manner and upon such terms and conditions as the board of commissioners may deem to be in the best interest of the district; and to assign or sell hospital accounts receivable, and accounts receivable for the use of other facilities or services that the district is or hereafter may be authorized by law to provide, for collection with or without recourse. General obligation bonds shall be issued and sold in accordance with chapter 39.46 RCW. Revenue bonds, revenue warrants, or other revenue obligations may be issued and sold in accordance with chapter 39.46 RCW. In connection with the issuance of bonds, a public hospital district is, in addition to its other powers, authorized to grant a lien on any or all of its property, whether then owned or thereafter acquired, including the revenues and receipts from the property, pursuant to a mortgage, deed of trust, security agreement, or any other security instrument now or hereafter authorized by applicable law: PROVIDED, That such bonds are issued in connection with a federal program providing mortgage insurance, including but not limited to the mortgage insurance programs administered by the United States department of housing and urban development pursuant to sections 232, 241, and 242 of Title II of the national housing act, as amended.

(6) To raise revenue by the levy of an annual tax on all taxable property within such public hospital district not to exceed fifty cents per thousand dollars of assessed value, and an additional annual tax on all taxable property within such public hospital district not to exceed twenty-five cents per thousand dollars of assessed value, or such further amount as has been or shall be authorized by a vote of the people. Although public hospital districts are authorized to impose two separate regular property tax levies, the levies shall be considered to be a single levy for purposes of the limitation provided for in chapter 84.55 RCW. Public hospital districts are authorized to levy such a general tax in excess of their regular property taxes when authorized so to do at a special election conducted in accordance with and subject to all of the requirements of the Constitution and the laws of the state of Washington now in force or hereafter enacted governing the limitation of tax levies. The said board of district commissioners is authorized and empowered to call a special election for the purpose of submitting to the qualified voters of the hospital district a proposition or propositions to levy taxes in excess of its regular property taxes. The superintendent shall prepare a proposed budget of the contemplated financial transactions for the ensuing year and file the same in the records of the commission on or before the first day of November. Notice of the filing of said proposed budget and the date and place of hearing on the same shall be published for at least two consecutive weeks, at least one time each week, in a newspaper printed and of general circulation in said county. On or before the fifteenth day of November the commission shall hold a public hearing on said proposed budget at which any taxpayer may appear and be heard against the whole or any part of the proposed budget. Upon the conclusion of said hearing, the commission shall, by resolution, adopt the budget as finally determined and fix the final amount of expenditures for the ensuing year. Taxes levied by the commission shall be certified to and collected by the proper county officer of the county in which such public hospital district is located in the same manner as is or may be

provided by law for the certification and collection of port district taxes. The commission is authorized, prior to the receipt of taxes raised by levy, to borrow money or issue warrants of the district in anticipation of the revenue to be derived by such district from the levy of taxes for the purpose of such district, and such warrants shall be redeemed from the first money available from such taxes when collected, and such warrants shall not exceed the anticipated revenues of one year, and shall bear interest at a rate or rates as authorized by the commission.

(7) To enter into any contract with the United States government or any state, municipality, or other hospital district, or any department of those governing bodies, for carrying out any of the powers authorized by this chapter.

(8) To sue and be sued in any court of competent jurisdiction: PROVIDED, That all suits against the public hospital district shall be brought in the county in which the public hospital district is located.

(9) To pay actual necessary travel expenses and living expenses incurred while in travel status for (a) qualified physicians or other health care practitioners who are candidates for medical staff positions, and (b) other qualified persons who are candidates for superintendent or other managerial and technical positions, which expenses may include expenses incurred by family members accompanying the candidate, when the district finds that hospitals or other health care facilities owned and operated by it are not adequately staffed and determines that personal interviews with said candidates to be held in the district are necessary or desirable for the adequate staffing of said facilities.

(10) To employ superintendents, attorneys, and other technical or professional assistants and all other employees; to make all contracts useful or necessary to carry out the provisions of this chapter, including, but not limited to, (a) contracts with private or public institutions for employee retirement programs, and (b) contracts with current or prospective employees, physicians, or other health care practitioners providing for the payment or reimbursement by the public hospital district of health care training or education expenses, including but not limited to debt obligations, incurred by current or prospective employees, physicians, or other health care practitioners in return for their agreement to provide services beneficial to the public hospital district; to print and publish information or literature; and to do all other things necessary to carry out the provisions of this chapter. [2010 c 95 § 1; 2003 c 125 § 1; 2001 c 76 § 1; 1997 c 3 § 206 (Referendum Bill No. 47, approved November 4, 1997); 1990 c 234 § 2; 1984 c 186 § 59; 1983 c 167 § 172; 1982 c 84 § 15; 1979 ex.s. c 155 § 1; 1979 ex.s. c 143 § 4; 1977 ex.s. c 211 § 1; 1974 ex.s. c 165 § 2; 1973 1st ex.s. c 195 § 83; 1971 ex.s. c 218 § 2; 1970 ex.s. c 56 § 85; 1969 ex.s. c 65 § 1; 1967 c 164 § 7; 1965 c 157 § 2; 1949 c 197 § 18; 1945 c 264 § 6; Rem. Supp. 1949 § 6090-35.]

**Intent—1997 c 3 §§ 201-207:** See note following RCW 84.55.010.

**Purpose—1984 c 186:** See note following RCW 39.46.110.

**Purpose—1970 ex.s. c 56:** See note following RCW 39.52.020.

**Purpose—Severability—1967 c 164:** See notes following RCW 4.96.010.

*Eminent domain*

*by cities:* Chapter 8.12 RCW.

*generally:* State Constitution Art. 1 § 16.

[Title 70 RCW—page 80]

*Limitation on levies:* State Constitution Art. 7 § 2; RCW 84.52.050.

*Port districts, collection of taxes:* RCW 53.36.020.

*Tortious conduct of political subdivisions, municipal corporations and quasi-municipal corporations, liability for damages:* Chapter 4.96 RCW.

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**70.44.062 Commissioners' meetings, proceedings, and deliberations concerning health care providers' clinical or staff privileges to be confidential—Final action in public session.**

(1) All meetings, proceedings, and deliberations of the board of commissioners, its staff or agents, concerning the granting, denial, revocation, restriction, or other consideration of the status of the clinical or staff privileges of a physician or other health care provider as that term is defined in RCW 7.70.020, if such other providers at the discretion of the district's commissioners are considered for such privileges, shall be confidential and may be conducted in executive session: PROVIDED, That the final action of the board as to the denial, revocation, or restriction of clinical or staff privileges of a physician or other health care provider as defined in RCW 7.70.020 shall be done in public session.

(2) All meetings, proceedings, and deliberations of a quality improvement committee established under RCW 4.24.250, 43.70.510, or 70.41.200 and all meetings, proceedings, and deliberations of the board of commissioners, its staff or agents, to review the report or the activities of a quality improvement committee established under RCW 4.24.250, 43.70.510, or 70.41.200 may, at the discretion of the quality improvement committee or the board of commissioners, be confidential and may be conducted in executive session. Any review conducted by the board of commissioners or quality improvement committee, or their staffs or agents, shall be subject to the same protections, limitations, and exemptions that apply to quality improvement committee activities under RCW 4.24.240, 4.24.250, 43.70.510, and 70.41.200. However, any final action of the board of commissioners on the report of the quality improvement committee shall be done in public session. [2005 c 169 § 1; 1985 c 166 § 1.]

**70.44.065 Levy for emergency medical care and services.** See RCW 84.52.069.

**70.44.067 Community revitalization financing—Public improvements.** In addition to other authority that a public hospital district possesses, a public hospital district may provide any public improvement as defined under RCW 39.89.020, but this additional authority is limited to participating in the financing of the public improvements as provided under RCW 39.89.050.

This section does not limit the authority of a public hospital district to otherwise participate in the public improvements if that authority exists elsewhere. [2001 c 212 § 22.]

**Severability—2001 c 212:** See RCW 39.89.902.

**70.44.070 Superintendent—Appointment—Removal—Compensation.** (1) The public hospital district commission shall appoint a superintendent, who shall be appointed for an indefinite time and be removable at the will of the commission. Appointments and removals shall be by

(2010 Ed.)

resolution, introduced at a regular meeting and adopted at a subsequent regular meeting by a majority vote. The superintendent shall receive such compensation as the commission shall fix by resolution.

(2) Where a public hospital district operates more than one hospital, the commission may in its discretion appoint up to one superintendent per hospital and assign among the superintendents the powers and duties set forth in RCW 70.44.080 and 70.44.090 as deemed appropriate by the commission. [1987 c 58 § 1; 1982 c 84 § 16; 1945 c 264 § 7; Rem. Supp. 1945 § 6090-36.]

**70.44.080 Superintendent—Powers.** (1) The superintendent shall be the chief administrative officer of the public hospital district and shall have control of administrative functions of the district. The superintendent shall be responsible to the commission for the efficient administration of all affairs of the district. In case of the absence or temporary disability of the superintendent a competent person shall be appointed by the commission. The superintendent shall be entitled to attend all meetings of the commission and its committees and to take part in the discussion of any matters pertaining to the district, but shall have no vote.

(2) Where the commission has appointed more than one superintendent as provided in RCW 70.44.070, the commission shall assign among the superintendents the powers set forth in this section as deemed appropriate by the commission. [1987 c 58 § 2; 1982 c 84 § 17; 1945 c 264 § 9; Rem. Supp. 1945 § 6090-38.]

**70.44.090 Superintendent—Duties.** (1) The public hospital district superintendent shall have the power, and duty:

(a) To carry out the orders of the commission, and to see that all the laws of the state pertaining to matters within the functions of the district are duly enforced.

(b) To keep the commission fully advised as to the financial condition and needs of the district. To prepare, each year, an estimate for the ensuing fiscal year of the probable expenses of the district, and to recommend to the commission what development work should be undertaken, and what extensions and additions, if any, should be made, during the ensuing fiscal year, with an estimate of the costs of such development work, extensions and additions. To certify to the commission all the bills, allowances and payrolls, including claims due contractors of public works. To recommend to the commission a range of salaries to be paid to district employees.

(2) Where the commission has appointed more than one superintendent as provided in RCW 70.44.070, the commission shall assign among the superintendents the duties set forth in this section as deemed appropriate by the commission. [1987 c 58 § 3; 1982 c 84 § 18; 1945 c 264 § 11; Rem. Supp. 1945 § 6090-40.]

**70.44.110 Plan to construct or improve—General obligation bonds.** Whenever the commission deems it advisable that the district acquire or construct a public hospital, or other health care facilities, or make additions or betterments thereto, or extensions thereof, it shall provide therefor

by resolution, which shall specify and adopt the plan proposed, declare the estimated cost thereof, and specify the amount of indebtedness to be incurred therefor. General indebtedness may be incurred by the issuance of general obligation bonds or short-term obligations in anticipation of such bonds. General obligation bonds shall mature in not to exceed thirty years. The incurring of such indebtedness shall be subject to the applicable limitations and requirements provided in section 1, chapter 143, Laws of 1917, as last amended by section 4, chapter 107, Laws of 1967, and RCW 39.36.020, as now or hereafter amended. Such general obligation bonds shall be issued and sold in accordance with chapter 39.46 RCW. [1984 c 186 § 60; 1974 ex.s. c 165 § 3; 1969 ex.s. c 65 § 2; 1955 c 56 § 1; 1945 c 264 § 12; Rem. Supp. 1945 § 6090-41.]

**Purpose—1984 c 186:** See note following RCW 39.46.110.

**70.44.130 Bonds—Payment—Security for deposits.** The principal and interest of such general bonds shall be paid by levying each year a tax upon the taxable property within the district sufficient, together with other revenues of the district available for such purpose, to pay said interest and principal of said bonds, which tax shall be due and collectible as any other tax. All bonds and warrants issued under the authority of this chapter shall be legal securities, which may be used by any bank or trust company for deposit with the state treasurer, or any county or city treasurer, as security for deposits, in lieu of a surety bond, under any law relating to deposits of public moneys. [1984 c 186 § 61; 1971 ex.s. c 218 § 3; 1945 c 264 § 14; Rem. Supp. 1945 § 6090-43.]

**Purpose—1984 c 186:** See note following RCW 39.46.110.

**70.44.140 Contracts for material and work—Call for bids—Alternative procedures—Exemptions.** (1) All materials purchased and work ordered, the estimated cost of which is in excess of seventy-five thousand dollars, shall be by contract. Before awarding any such contract, the commission shall publish a notice at least thirteen days before the last date upon which bids will be received, inviting sealed proposals for such work. The plans and specifications must at the time of the publication of such notice be on file at the office of the public hospital district, subject to public inspection: PROVIDED, HOWEVER, That the commission may at the same time, and as part of the same notice, invite tenders for the work or materials upon plans and specifications to be submitted by bidders. The notice shall state generally the work to be done, and shall call for proposals for doing the same, to be sealed and filed with the commission on or before the day and hour named therein. Each bid shall be accompanied by bid proposal security in the form of a certified check, cashier's check, postal money order, or surety bond made payable to the order of the commission, for a sum not less than five percent of the amount of the bid, and no bid shall be considered unless accompanied by such bid proposal security. At the time and place named, such bids shall be publicly opened and read, and the commission shall proceed to canvass the bids, and may let such contract to the lowest responsible bidder upon plans and specifications on file, or to the best bidder submitting his or her own plans and specifications: PROVIDED, HOWEVER, That no contract shall be

let in excess of the estimated cost of the materials or work, or if, in the opinion of the commission, all bids are unsatisfactory, they may reject all of them and readvertise, and in such case all bid proposal security shall be returned to the bidders. If the contract is let, then all bid proposal security shall be returned to the bidders, except that of the successful bidder, which is retained until a contract shall be entered into for the purchase of such materials for doing such work, and a bond to perform such work furnished, with sureties satisfactory to the commission, in an amount to be fixed by the commission, not less than twenty-five percent of contract price in any case, between the bidder and commission, in accordance with the bid. If such bidder fails to enter into the contract in accordance with the bid and furnish such bond within ten days from the date at which the bidder is notified that he or she is the successful bidder, the bid proposal security and the amount thereof shall be forfeited to the public hospital district. A low bidder who claims error and fails to enter into a contract is prohibited from bidding on the same project if a second or subsequent call for bids is made for the project.

(2) As an alternative to the requirements of subsection (1) of this section, a public hospital district may let contracts using the small works roster process under RCW 39.04.155.

(3) Any purchases with an estimated cost of up to fifteen thousand dollars may be made using the process provided in RCW 39.04.190.

(4) The commission may waive the competitive bidding requirements of this section pursuant to RCW 39.04.280 if an exemption contained within that section applies to the purchase or public work. [2009 c 229 § 12; 2002 c 106 § 1; 2000 c 138 § 213; 1999 c 99 § 1; 1998 c 278 § 9; 1996 c 18 § 15; 1993 c 198 § 22; 1965 c 83 § 1; 1945 c 264 § 17; Rem. Supp. 1945 § 6090-46.]

**Purpose—Part headings not law—2000 c 138:** See notes following RCW 39.04.155.

*Contractor's bond: Chapter 39.08 RCW.*

*Lien on public works, retained percentage of contractor's earnings: Chapter 60.28 RCW.*

**70.44.171 Treasurer—Duties—Funds—Depositaries—Surety bonds, cost.** The treasurer of the county in which a public hospital district is located shall be treasurer of the district, except that the commission by resolution may designate some other person having experience in financial or fiscal matters as treasurer of the district. If the treasurer is not the county treasurer, the commission shall require a bond, with a surety company authorized to do business in the state of Washington, in an amount and under the terms and conditions which the commission by resolution from time to time finds will protect the district against loss. The premium on any such bond shall be paid by the district.

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

If the treasurer of the district is the treasurer of the county all district funds shall be deposited with the county

depositaries under the same restrictions, contracts, and security as provided for county depositaries. If the treasurer of the district is some other person, all funds shall be deposited in such bank or banks authorized to do business in this state as the commission by resolution shall designate, and with surety bond to the district or securities in lieu thereof of the kind, no less in amount, as provided in \*RCW 36.48.020 for deposit of county funds. Such surety bond or securities in lieu thereof shall be filed or deposited with the treasurer of the district, and approved by resolution of the commission.

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

A district may provide and require a reasonable bond of any other person handling moneys or securities of the district. The district may pay the premium on such bond. [1967 c 227 § 1.]

\*Reviser's note: RCW 36.48.020 was repealed by 1984 c 177 § 21.

**70.44.185 Change of district boundary lines to allow farm units to be wholly within one hospital district—Notice.** Notwithstanding any other provision of law, including RCW 70.44.040, whenever the boundary line between contiguous hospital districts bisects an irrigation block unit placing part of the unit in one hospital district and the balance thereof in another such district, the county auditor, upon his approval of a request therefor after public hearing thereon, shall change the hospital district boundary lines so that the entire farm unit of the person so requesting shall be wholly in one of such hospital districts and give notice thereof to those hospital district and county officials as he shall deem appropriate therefor. [1971 ex.s. c 218 § 4.]

**70.44.190 Consolidation of districts.** Two or more contiguous hospital districts, whether the territory therein lies in one or more counties, may consolidate by following the procedure outlined in chapter 35.10 RCW with reference to consolidation of cities and towns. [1953 c 267 § 3.]

**70.44.200 Annexation of territory.** (1) A public hospital district may annex territory outside the existing boundaries of such district and contiguous thereto, whether the territory lies in one or more counties, in accordance with this section.

(2) A petition for annexation of territory contiguous to a public hospital district may be filed with the commission of the district to which annexation is proposed. The petition must be signed by the owners, as prescribed by \*RCW 35A.01.040(9) (a) through (e), of not less than sixty percent of the area of land within the territory proposed to be annexed. Such petition shall describe the boundaries of the territory proposed to be annexed and shall be accompanied by a map which outlines the boundaries of such territory.

(3) Whenever such a petition for annexation is filed with the commission of a public hospital district, the commission may entertain the same, fix a date for public hearing thereon, and cause notice of the hearing to be published once a week for at least two consecutive weeks in a newspaper of general circulation within the territory proposed to be annexed. The notice shall also be posted in three public places within the

territory proposed to be annexed, shall contain a description of the boundaries of such territory, and shall specify the time and place of hearing and invite interested persons to appear and voice approval or disapproval of the annexation.

(4) Following the hearing, if the commission of the district determines to accomplish the annexation, it shall do so by resolution. The resolution may annex all or any portion of the proposed territory but may not include in the annexation any property not described in the petition. Upon passage of the annexation resolution, the territory annexed shall become part of the district and a certified copy of such resolution shall be filed with the legislative authority of the county or counties in which the annexed property is located.

(5) If the petition for annexation and the annexation resolution so provide, as the commission may require, and such petition has been signed by the owners of all the land within the boundaries of the territory being annexed, the annexed property shall assume and be assessed and taxed to pay for all or any portion of the outstanding indebtedness of the district to which it is annexed at the same rates as other property within such district. Unless so provided in the petition and resolution, property within the boundaries of the territory annexed shall not be assessed or taxed to pay for all or any portion of the indebtedness of the district to which it is annexed that was contracted prior to or which existed at the date of annexation. In no event shall any such annexed property be released from any assessments or taxes previously levied against it or from its existing liability for the payment of outstanding bonds or warrants issued prior to such annexation.

(6) The annexation procedure provided for in this section shall be an alternative method of annexation applicable only if at the time the annexation petition is filed either there are no registered voters residing in the territory proposed to be annexed or the petition is also signed by all of the registered voters residing in the territory proposed to be annexed. [1993 c 489 § 1; 1979 ex.s. c 143 § 1; 1953 c 267 § 4.]

\*Reviser's note: RCW 35A.01.040 was amended by 2008 c 196 § 2, changing subsection (9)(e) to subsection (9)(f).

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**70.44.210 Alternate method of annexation—Conduct of resolution calling for election.** As an alternate method of annexation to public hospital districts, any territory adjacent to a public hospital district may be annexed thereto by vote of the qualified electors residing in the territory to be annexed, in the manner provided in RCW 70.44.210 through 70.44.230. An election to annex such territory may be called pursuant to a resolution calling for such an election adopted by the district commissioners.

Any resolution calling for such an election shall describe the boundaries of the territory to be annexed, state that the annexation of such territory to the public hospital district will be conducive to the welfare and benefit of the persons or property within the district and within the territory proposed to be annexed, and fix the date, time and place for a public hearing thereon which date shall be not more than sixty nor less than forty days following the adoption of such resolution. [1967 c 227 § 6.]

(2010 Ed.)

**70.44.220 Alternate method of annexation—Publication and contents of notice of hearing—Hearing—Resolution—Special election.** Notice of such hearing shall be published once a week for at least two consecutive weeks in one or more newspapers of general circulation within the territory proposed to be annexed. The notice shall contain a description of the boundaries of the territory proposed to be annexed and shall state the time and place of the hearing thereon and the fact that any changes in the boundaries of such territory will be considered at such time and place. At such hearing or any continuation thereof, any interested person may appear and be heard on all matters relating to the proposed annexation. The district commissioners may make such changes in the boundaries of the territory proposed to be annexed as it shall deem reasonable and proper, but may not delete any portion of the proposed area which will create an island of included or excluded lands. If the district commissioners shall determine that any additional territory should be included in the territory to be annexed, a second hearing shall be held and notice given in the same manner as for the original hearing. The district commissioners may adjourn the hearing on the proposed annexation from time to time not exceeding thirty days in all. At the next regular meeting following the conclusion of such hearing, the district commissioners shall, if it finds that the annexation of such territory will be conducive to the welfare and benefit of the persons and property therein and the welfare and benefit of the persons and property within the public hospital district, adopt a resolution fixing the boundaries of the territory to be annexed and causing to be called a special election on such annexation to be held not more than one hundred twenty days nor less than sixty days following the adoption of such resolution. [1967 c 227 § 7.]

**70.44.230 Alternate method of annexation—Conduct and canvass of election—Notice—Ballot.** An election on the annexation of territory to a public hospital district shall be conducted and canvassed in the same manner as provided for the conduct of an election on the formation of a public hospital district except that notice of such election shall be published in one or more newspapers of general circulation in the territory proposed to be annexed and the ballot proposition shall be in substantially the following form:

ANNEXATION TO (herein insert name of public hospital district)

"Shall the territory described in a resolution of the public hospital district commissioners of (here insert name of public hospital district) adopted on . . . . ., 19. . . ., be annexed to such district?"

YES . . . . .   
NO . . . . .

If a majority of those voting on such proposition vote in favor thereof, the territory shall thereupon be annexed to the public hospital district. [1967 c 227 § 8.]

**70.44.235 Withdrawal or reannexation of areas.** (1) As provided in this section, a public hospital district may withdraw areas from its boundaries, or reannex areas into the

public hospital district that previously had been withdrawn from the public hospital district under this section.

(2) The withdrawal of an area shall be authorized upon:

(a) Adoption of a resolution by the hospital district commissioners requesting the withdrawal and finding that, in the opinion of the commissioners, inclusion of this area within the public hospital district will result in a reduction of the district's tax levy rate under the provisions of RCW 84.52.010; and (b) adoption of a resolution by the city or town council approving the withdrawal, if the area is located within the city or town, or adoption of a resolution by the county legislative authority of the county within which the area is located approving the withdrawal, if the area is located outside of a city or town. A withdrawal shall be effective at the end of the day on the thirty-first day of December in the year in which the resolutions are adopted, but for purposes of establishing boundaries for property tax purposes, the boundaries shall be established immediately upon the adoption of the second resolution.

The withdrawal of an area from the boundaries of a public hospital district shall not exempt any property therein from taxation for the purpose of paying the costs of redeeming any indebtedness of the public hospital district existing at the time of the withdrawal.

(3) An area that has been withdrawn from the boundaries of a public hospital district under this section may be reannexed into the public hospital district upon: (a) Adoption of a resolution by the hospital district commissioners proposing the reannexation; and (b) adoption of a resolution by the city or town council approving the reannexation, if the area is located within the city or town, or adoption of a resolution by the county legislative authority of the county within which the area is located approving the reannexation, if the area is located outside of a city or town. The reannexation shall be effective at the end of the day on the thirty-first day of December in the year in which the adoption of the second resolution occurs, but for purposes of establishing boundaries for property tax purposes, the boundaries shall be established immediately upon the adoption of the second resolution. Referendum action on the proposed reannexation may be taken by the voters of the area proposed to be reannexed if a petition calling for a referendum is filed with the city or town council, or county legislative authority, within a thirty-day period after the adoption of the second resolution, which petition has been signed by registered voters of the area proposed to be reannexed equal in number to ten percent of the total number of the registered voters residing in that area.

If a valid petition signed by the requisite number of registered voters has been so filed, the effect of the resolutions shall be held in abeyance and a ballot proposition to authorize the reannexation shall be submitted to the voters of the area at the next special election date according to RCW 29A.04.330. Approval of the ballot proposition authorizing the reannexation by a simple majority vote shall authorize the reannexation. [2006 c 344 § 39; 1987 c 138 § 4.]

**Effective date—2006 c 344 §§ 1-16 and 18-40:** See note following RCW 29A.04.311.

**70.44.240 Contracting or joining with other districts, hospitals, corporations, or individuals to provide services or facilities.** Any public hospital district may contract or join

with any other public hospital district, publicly owned hospital, nonprofit hospital, legal entity, or individual to acquire, own, operate, manage, or provide any hospital or other health care facilities or hospital services or other health care services to be used by individuals, districts, hospitals, or others, including providing health maintenance services. If a public hospital district chooses to contract or join with another party or parties pursuant to the provisions of this chapter, it may do so through establishing a nonprofit corporation, partnership, limited liability company, or other legal entity of its choosing in which the public hospital district and the other party or parties participate. The governing body of such legal entity shall include representatives of the public hospital district, which representatives may include members of the public hospital district's board of commissioners. A public hospital district contracting or joining with another party pursuant to the provisions of this chapter may appropriate funds and may sell, lease, or otherwise provide property, personnel, and services to the legal entity established to carry out the contract or joint activity. [2004 c 261 § 7; 1997 c 332 § 16; 1982 c 84 § 19; 1974 ex.s. c 165 § 4; 1967 c 227 § 3.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**70.44.260 Contracts for purchase of real or personal property.** Any public hospital district may execute an executory conditional sales contract with any other municipal corporation, the state, or any of its political subdivisions, the government of the United States, or any private party for the purchase of any real or personal property, or property rights, in connection with the exercise of any powers or duties which such districts now or hereafter are authorized to exercise, if the entire amount of the purchase price specified in such contract does not result in a total indebtedness in excess of the limitation imposed by RCW 39.36.020, as now or hereafter amended, to be incurred without the assent of the voters of the district: PROVIDED, That if such a proposed contract would result in a total indebtedness in excess of three-fourths of one percent of the value of taxable property in such public hospital district, a proposition in regard to whether or not such a contract may be executed shall be submitted to the voters for approval or rejection in the same manner that bond issues for capital purposes are submitted to the voters. The term "value of taxable property" shall have the meaning set forth in RCW 39.36.015. [1975-'76 2nd ex.s. c 78 § 1.]

**70.44.300 Sale of surplus real property.** (1) The board of commissioners of any public hospital district may sell and convey at public or private sale real property of the district if the board determines by resolution that the property is no longer required for public hospital district purposes or determines by resolution that the sale of the property will further the purposes of the public hospital district.

(2) Any sale of district real property authorized pursuant to this section shall be preceded, not more than one year prior to the date of sale, by market value appraisals by three licensed real estate brokers or professionally designated real estate appraisers as defined in \*RCW 74.46.020 or three independent experts in valuing health care property, selected by the board of commissioners, and no sale shall take place if

the sale price would be less than ninety percent of the average of such appraisals.

(3) When the board of commissioners of any public hospital district proposes a sale of district real property pursuant to this section and the value of the property exceeds one hundred thousand dollars, the board shall publish a notice of its intention to sell the property. The notice shall be published at least once each week during two consecutive weeks in a legal newspaper of general circulation within the public hospital district. The notice shall describe the property to be sold and designate the place where and the day and hour when a hearing will be held. The board shall hold a public hearing upon the proposal to dispose of the public hospital district property at the place and the day and hour fixed in the notice and consider evidence offered for and against the propriety and advisability of the proposed sale.

(4) If in the judgment of the board of commissioners of any district the sale of any district real property not needed for public hospital district purposes would be facilitated and greater value realized through use of the services of licensed real estate brokers, a contract for such services may be negotiated and concluded. The fee or commissions charged for any broker service shall not exceed seven percent of the resulting sale price for a single parcel. No licensed real estate broker or professionally designated real estate appraisers as defined in \*RCW 74.46.020 or independent expert in valuing health care property selected by the board to appraise the market value of a parcel of property to be sold may be a party to any contract with the public hospital district to sell such property for a period of three years after the appraisal. [1997 c 332 § 17; 1984 c 103 § 4; 1982 c 84 § 2.]

\*Reviser's note: RCW 74.46.020 was amended by 2010 1st sp.s. c 34 § 2, deleting the definition of "professionally designated real estate appraiser."

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**70.44.310 Lease of surplus real property.** The board of commissioners of any public hospital district may lease or rent out real property of the district which the board has determined by resolution presently is not required for public hospital district purposes in such manner and upon such terms and conditions as the board in its discretion finds to be in the best interest of the district. [1982 c 84 § 3.]

**70.44.315 Evaluation criteria and requirements for acquisition of district hospitals.** (1) When evaluating a potential acquisition, the commissioners shall determine their compliance with the following requirements:

(a) That the acquisition is authorized under chapter 70.44 RCW and other laws governing public hospital districts;

(b) That the procedures used in the decision-making process allowed district officials to thoroughly fulfill their due diligence responsibilities as municipal officers, including those covered under chapter 42.23 RCW governing conflicts of interest and chapter 42.20 RCW prohibiting malfeasance of public officials;

(c) That the acquisition will not result in the revocation of hospital privileges;

(d) That sufficient safeguards are included to maintain appropriate capacity for health science research and health care provider education;

(e) That the acquisition is allowed under Article VIII, section 7 of the state Constitution, which prohibits gifts of public funds or lending of credit and Article XI, section 14, prohibiting private use of public funds;

(f) That the public hospital district will retain control over district functions as required under chapter 70.44 RCW and other laws governing hospital districts;

(g) That the activities related to the acquisition process complied with chapters 42.56 and 42.32 RCW, governing disclosure of public records, and chapter 42.30 RCW, governing public meetings;

(h) That the acquisition complies with the requirements of RCW 70.44.300 relating to fair market value; and

(i) Other state laws affecting the proposed acquisition.

(2) The commissioners shall also determine whether the public hospital district should retain a right of first refusal to repurchase the assets by the public hospital district if the hospital is subsequently sold to, acquired by, or merged with another entity.

(3)(a) Prior to approving the acquisition of a district hospital, the board of commissioners of the hospital district shall obtain a written opinion from a qualified independent expert or the Washington state department of health as to whether or not the acquisition meets the standards set forth in RCW 70.45.080.

(b) Upon request, the hospital district and the person seeking to acquire its hospital shall provide the department or independent expert with any needed information and documents. The department shall charge the hospital district for any costs the department incurs in preparing an opinion under this section. The hospital district may recover from the acquiring person any costs it incurs in obtaining the opinion from either the department or the independent expert. The opinion shall be delivered to the board of commissioners no later than ninety days after it is requested.

(c) Within ten working days after it receives the opinion, the board of commissioners shall publish notice of the opinion in at least one newspaper of general circulation within the hospital district, stating how a person may obtain a copy, and giving the time and location of the hearing required under (d) of this subsection. It shall make a copy of the report and the opinion available to anyone upon request.

(d) Within thirty days after it received the opinion, the board of commissioners shall hold a public hearing regarding the proposed acquisition. The board of commissioners may vote to approve the acquisition no sooner than thirty days following the public hearing.

(4)(a) For purposes of this section, "acquisition" means an acquisition by a person of any interest in a hospital owned by a public hospital district, whether by purchase, merger, lease, or otherwise, that results in a change of ownership or control of twenty percent or more of the assets of a hospital currently licensed and operating under RCW 70.41.090. Acquisition does not include an acquisition where the other party or parties to the acquisition are nonprofit corporations having a substantially similar charitable health care purpose, organizations exempt from federal income tax under section 501(c)(3) of the internal revenue code, or governmental entities. Acquisition does not include an acquisition where the other party is an organization that is a limited liability corporation, a partnership, or any other legal entity and the mem-

bers, partners, or otherwise designated controlling parties of the organization are all nonprofit corporations having a charitable health care purpose, organizations exempt from federal income tax under section 501(c)(3) of the internal revenue code, or governmental entities. Acquisition does not include activities between two or more governmental organizations, including organizations acting pursuant to chapter 39.34 RCW, regardless of the type of organizational structure used by the governmental entities.

(b) For purposes of this subsection (4), "person" means an individual, a trust or estate, a partnership, a corporation including associations, a limited liability company, a joint stock company, or an insurance company. [2005 c 274 § 334; 1997 c 332 § 18.]

**Part headings not law—Effective date—2005 c 274:** See RCW 42.56.901 and 42.56.902.

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**70.44.320 Disposal of surplus personal property.** The board of commissioners of any public hospital district may sell or otherwise dispose of surplus personal property of the district which the board has determined by resolution is no longer required for public hospital district purposes in such manner and upon such terms and conditions as the board in its discretion finds to be in the best interest of the district. [1982 c 84 § 4.]

**70.44.350 Dividing a district.** An existing public hospital district upon resolution of its board of commissioners may be divided into two new public hospital districts, in the manner provided in RCW 70.44.350 through 70.44.380, subject to the approval of the plan therefor by the superior court in the county where such district is located and by a majority of the voters voting on the proposition for such approval at a special election to be held in each of the proposed new districts. The board of commissioners of an existing district shall by resolution or resolutions find that such division is in the public interest; adopt and approve a plan of division; authorize the filing of a petition in the superior court in the county in which the district is located to obtain court approval of the plan of division; request the calling of a special election to be held, following such court approval, for the purpose of submitting to the voters in each of the proposed new districts the proposition of whether the plan of division should be approved and carried out; and direct all officers and employees of the existing district to take whatever actions are reasonable and necessary in order to carry out the division, subject to the approval of the plan therefor by the court and the voters. [1982 c 84 § 5.]

**70.44.360 Dividing a district—Plan.** The plan of division authorized by RCW 70.44.350 shall include: Proposed names for the new districts; a description of the boundaries of the new districts, which boundaries shall follow insofar as reasonably possible the then-existing precinct boundaries and include all of the territory encompassed by the existing district; a division of all the assets of the existing district between the resulting new districts, including funds, rights, and property, both real and personal; the assumption of all the outstanding obligations of the existing district by the result-

ing new districts, including general obligation and revenue bonds, contracts, and any other liabilities or indebtedness; the establishing and constituting of new boards of three commissioners for each of the new districts, including fixing the boundaries of commissioner districts within such new districts following insofar as reasonably possible the then-existing precinct boundaries; and such other matters as the board of commissioners of the existing district may deem appropriate. Unless the plan of division provides otherwise, all the area and property of the existing district shall remain subject to the outstanding obligations of that district, and the boards of commissioners of the new districts shall make such levies or charges for services as may be necessary to pay such outstanding obligations in accordance with their terms from the sources originally pledged or otherwise liable for that purpose. [1982 c 84 § 6.]

**70.44.370 Dividing a district—Petition to court, hearing, order.** After adoption of a resolution approving the plan of division by the board of commissioners of an existing district pursuant to RCW 70.44.350 through 70.44.380, the district shall petition the superior court in the county where such district is located requesting court approval of the plan. The court shall conduct a hearing on the plan of division, after reasonable and proper notice of such hearing (including notice to bondholders) is given in the manner fixed and directed by such court. At the conclusion of the hearing, the court may enter its order approving the division of the existing district and of its assets and outstanding obligations in the manner provided by the plan after finding such division to be fair and equitable and in the public interest. [1982 c 84 § 7.]

**70.44.380 Dividing a district—Election—Creation of new districts—Challenges.** Following the entry of the court order pursuant to RCW 70.44.370, the county officer authorized to call and conduct elections in the county in which the existing district is located shall call a special election as provided by the resolution of the board of commissioners of such district for the purpose of submitting to the voters in each of the proposed new districts the proposition of whether the plan of division should be approved and carried out. Notice of the election describing the boundaries of the proposed new districts and stating the objects of the election shall be given and the election conducted in accordance with the general election laws. The proposition expressed on the ballots at such election shall be substantially as follows:

"Shall the plan of division of public hospital district No. . . . , approved by the Superior Court on . . . . (insert date), be approved and carried out?"

Yes

No

At such election three commissioners for each of the proposed new districts nominated by petition pursuant to RCW 54.12.010 shall be elected to hold office pursuant to RCW 70.44.040. If at such election a majority of the voters voting on the proposition in each of the proposed new districts shall vote in favor of the plan of division, the county canvassing board shall so declare in its canvass of the returns of such election and upon the filing of the certificate of such canvass: The division of the existing district shall be effective; such

original district shall cease to exist; the creation of the two new public hospital districts shall be complete; all assets of the original district shall vest in and become the property of the new districts, respectively, pursuant to the plan of division; all the outstanding obligations of the original district shall be assumed by the new districts, respectively, pursuant to such plan; the commissioners of the original district shall cease to hold office; and the affairs of the new districts shall be governed by the newly elected commissioners of such respective new districts. Unless commenced within thirty days after the date of the filing of the certificate of the canvass of such election, no lawsuit whatever may be maintained challenging in any way the legal existence of the resulting new districts, the validity of the proceedings had for the organization and creation thereof, or the lawfulness of the plan of division. Upon the petition of either or both new districts, the superior court in the county where they are located may take whatever actions are reasonable and necessary to complete or confirm the carrying out of such plan. [1982 c 84 § 8.]

**70.44.400 Withdrawal of territory from public hospital district.** Territory within a public hospital district may be withdrawn therefrom in the same manner provided by law for withdrawal of territory from water-sewer districts, as provided by chapter 57.28 RCW. For purposes of conforming with such procedure, the public hospital district shall be deemed to be the water-sewer district and the public hospital board of commissioners shall be deemed to be the water-sewer district board of commissioners. [1999 c 153 § 65; 1984 c 100 § 1.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**70.44.450 Rural public hospital districts—Cooperative agreements and contracts.** In addition to other powers granted to public hospital districts by chapter 39.34 RCW, rural public hospital districts may enter into cooperative agreements and contracts with other rural public hospital districts in order to provide for the health care needs of the people served by the hospital districts. These agreements and contracts are specifically authorized to include:

- (1) Allocation of health care services among the different facilities owned and operated by the districts;
- (2) Combined purchases and allocations of medical equipment and technologies;
- (3) Joint agreements and contracts for health care service delivery and payment with public and private entities; and
- (4) Other cooperative arrangements consistent with the intent of chapter 161, Laws of 1992. The provisions of chapter 39.34 RCW shall apply to the development and implementation of the cooperative contracts and agreements. [1992 c 161 § 3.]

**Intent—1992 c 161:** "The legislature finds that maintaining the viability of health care service delivery in rural areas of Washington is a primary goal of state health policy. The legislature also finds that most hospitals located in rural Washington are operated by public hospital districts authorized under chapter 70.44 RCW and declares that it is not cost-effective, practical, or desirable to provide quality health and hospital care services in rural areas on a competitive basis because of limited patient volume and geographic isolation. It is the intent of this act to foster the development of cooperative and collaborative arrangements among rural public hospital districts by specifically authorizing cooperative agreements and contracts for these entities under the interlocal cooperation act." [1992 c 161 § 1.]

(2010 Ed.)

**70.44.460 Rural public hospital district defined.** Unless the context clearly requires otherwise, the definition in this section applies throughout RCW 70.44.450.

"Rural public hospital district" means a public hospital district authorized under chapter 70.44 RCW whose geographic boundaries do not include a city with a population greater than thirty thousand. [1992 c 161 § 2.]

**Intent—1992 c 161:** See note following RCW 70.44.450.

**70.44.470 Chapter not applicable to certain transfers of property.** This chapter does not apply to transfers of property under \*sections 1 and 2 of this act. [2006 c 35 § 9.]

**\*Reviser's note:** The reference to "sections 1 and 2 of this act" appears to be erroneous. Reference to "sections 2 and 3 of this act" codified as RCW 43.99C.070 and 43.83D.120 was apparently intended.

**Findings—2006 c 35:** See note following RCW 43.99C.070.

**70.44.900 Severability—Construction—1945 c 264.** Adjudication of invalidity of any section, clause or part of a section of this act [1945 c 264] shall not impair or otherwise affect the validity of the act as a whole or any other part thereof. The rule of strict construction shall have no application to this act, but the same shall be liberally construed, in order to carry out the purposes and objects for which this act is intended. When this act comes in conflict with any provisions, limitation or restriction in any other law, this act shall govern and control. [1945 c 264 § 21; no RRS.]

**70.44.901 Severability—Construction—1974 ex.s. c 165.** If any section, clause, or other provision of this 1974 amendatory act, or its application to any person or circumstance, is held invalid, the remainder of such 1974 amendatory act, or the application of such section, clause, or provision to other persons or circumstances, shall not be affected. The rule of strict construction shall have no application to this 1974 amendatory act, but the same shall be liberally construed, in order to carry out the purposes and objects for which this 1974 amendatory act is intended. When this 1974 amendatory act comes in conflict with any provision, limitation, or restriction in any other law, this 1974 amendatory act shall govern and control. [1974 ex.s. c 165 § 6.]

**70.44.902 Severability—1982 c 84.** If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1982 c 84 § 21.]

**70.44.903 Savings—1982 c 84.** All debts, contracts, and obligations made or incurred prior to June 10, 1982, by or in favor of any public hospital district, and all bonds, warrants, or other obligations issued by such district, and all other actions and proceedings relating thereto done or taken by such public hospital districts or by their respective officers within their authority are hereby declared to be legal and valid and of full force and effect from the date thereof. [1982 c 84 § 11.]

**70.44.910 Construction—1945 c 264.** This act [1945 c 264 § 22] shall not be deemed or construed to repeal or affect

any existing act, or any part thereof, relating to the construction, operation and maintenance of public hospitals, but shall be supplemental thereto and concurrent therewith. [1945 c 264 § 22; no RRS.]

### Chapter 70.45 RCW

#### ACQUISITION OF NONPROFIT HOSPITALS

##### Sections

70.45.010	Legislative findings.
70.45.020	Definitions.
70.45.030	Department approval required—Application—Fees.
70.45.040	Applications—Deficiencies—Public notice.
70.45.050	Public hearings.
70.45.060	Attorney general review and opinion—Department review and decision—Adjudicative proceedings.
70.45.070	Department review—Criteria to safeguard charitable assets.
70.45.080	Department review—Criteria for continued existence of accessible, affordable health care.
70.45.090	Approval of acquisition required—Injunctions.
70.45.100	Compliance—Department authority—Hearings—Revocation or suspension of hospital license—Referral to attorney general for action.
70.45.110	Authority of attorney general to ensure compliance.
70.45.120	Acquisitions completed before July 27, 1997, not subject to this chapter.
70.45.130	Common law and statutory authority of attorney general.
70.45.140	Rule-making and contracting authority.
70.45.900	Severability—1997 c 332.

**70.45.010 Legislative findings.** The health of the people of our state is a most important public concern. The state has an interest in assuring the continued existence of accessible, affordable health care facilities that are responsive to the needs of the communities in which they exist. The state also has a responsibility to protect the public interest in nonprofit hospitals and to clarify the responsibilities of local public hospital district boards with respect to public hospital district assets by making certain that the charitable and public assets of those hospitals are managed prudently and safeguarded consistent with their mission under the laws governing nonprofit and municipal corporations. [1997 c 332 § 1.]

**70.45.020 Definitions.** The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Department" means the Washington state department of health.

(2) "Hospital" means any entity that is: (a) Defined as a hospital in RCW 70.41.020 and is required to obtain a license under RCW 70.41.090; or (b) a psychiatric hospital required to obtain a license under chapter 71.12 RCW.

(3) "Acquisition" means an acquisition by a person of an interest in a nonprofit hospital, whether by purchase, merger, lease, gift, joint venture, or otherwise, that results in a change of ownership or control of twenty percent or more of the assets of the hospital, or that results in the acquiring person holding or controlling fifty percent or more of the assets of the hospital, but acquisition does not include an acquisition if the acquiring person: (a) Is a nonprofit corporation having a substantially similar charitable health care purpose as the nonprofit corporation from whom the hospital is being acquired, or is a government entity; (b) is exempt from federal income tax under section 501(c)(3) of the internal revenue code or as a government entity; and (c) will maintain rep-

resentation from the affected community on the local board of the hospital.

(4) "Nonprofit hospital" means a hospital owned by a nonprofit corporation organized under Title 24 RCW.

(5) "Person" means an individual, a trust or estate, a partnership, a corporation including associations, limited liability companies, joint stock companies, and insurance companies. [1997 c 332 § 2.]

**70.45.030 Department approval required—Application—Fees.** (1) A person may not engage in the acquisition of a nonprofit hospital without first having applied for and received the approval of the department under this chapter.

(2) An application must be submitted to the department on forms provided by the department, and at a minimum must include: The name of the hospital being acquired, the name of the acquiring person or other parties to the acquisition, the acquisition price, a copy of the acquisition agreement, a financial and economic analysis and report from an independent expert or consultant of the effect of the acquisition under the criteria in RCW 70.45.070, and all other related documents. The applications and all related documents are considered public records for purposes of chapter 42.56 RCW.

(3) The department shall charge an applicant fees sufficient to cover the costs of implementing this chapter. The fees must include the cost of the attorney general's opinion under RCW 70.45.060. The department shall transfer this portion of the fee, upon receipt, to the attorney general. [2005 c 274 § 335; 1997 c 332 § 3.]

**Part headings not law—Effective date—2005 c 274:** See RCW 42.56.901 and 42.56.902.

**70.45.040 Applications—Deficiencies—Public notice.** (1) The department, in consultation with the attorney general, shall determine if the application is complete for the purposes of review. The department may find that an application is incomplete if a question on the application form has not been answered in whole or in part, or has been answered in a manner that does not fairly meet the question addressed, or if the application does not include attachments of supporting documents as required by RCW 70.45.030. If the department determines that an application is incomplete, it shall notify the applicant within fifteen working days after the date the application was received stating the reasons for its determination of incompleteness, with reference to the particular questions for which a deficiency is noted.

(2) Within five working days after receipt of a completed application, the department shall publish notice of the application in a newspaper of general circulation in the county or counties where the hospital is located and shall notify by first-class United States mail, electronic mail, or facsimile transmission, any person who has requested notice of the filing of such applications. The notice must state that an application has been received, state the names of the parties to the agreement, describe the contents of the application, and state the date by which a person may submit written comments about the application to the department. [1997 c 332 § 4.]

**70.45.050 Public hearings.** During the course of review under this chapter, the department shall conduct one

or more public hearings, at least one of which must be in the county where the hospital to be acquired is located. At the hearings, anyone may file written comments and exhibits or appear and make a statement. The department may subpoena additional information or witnesses, require and administer oaths, require sworn statements, take depositions, and use related discovery procedures for purposes of the hearing and at any time prior to making a decision on the application.

A hearing must be held not later than forty-five days after receipt of a completed application. At least ten days' public notice must be given before the holding of a hearing. [1997 c 332 § 5.]

**70.45.060 Attorney general review and opinion—Department review and decision—Adjudicative proceedings.** (1) The department shall provide the attorney general with a copy of a completed application upon receiving it. The attorney general shall review the completed application, and within forty-five days of the first public hearing held under RCW 70.45.050 shall provide a written opinion to the department as to whether or not the acquisition meets the requirements for approval in RCW 70.45.070.

(2) The department shall review the completed application to determine whether or not the acquisition meets the requirements for approval in RCW 70.45.070 and 70.45.080. Within thirty days after receiving the written opinion of the attorney general under subsection (1) of this section, the department shall:

(a) Approve the acquisition, with or without any specific modifications or conditions; or

(b) Disapprove the acquisition.

(3) The department may not make its decision subject to any condition not directly related to requirements in RCW 70.45.070 or 70.45.080, and any condition or modification must bear a direct and rational relationship to the application under review.

(4) A person engaged in an acquisition and affected by a final decision of the department has the right to an adjudicative proceeding under chapter 34.05 RCW. The opinion of the attorney general provided under subsection (1) of this section may not constitute a final decision for purposes of review.

(5) The department or the attorney general may extend, by not more than thirty days, any deadline established under this chapter one time during consideration of any application, for good cause. [1997 c 332 § 6.]

**70.45.070 Department review—Criteria to safeguard charitable assets.** The department shall only approve an application if the parties to the acquisition have taken the proper steps to safeguard the value of charitable assets and ensure that any proceeds from the acquisition are used for appropriate charitable health purposes. To this end, the department may not approve an application unless, at a minimum, it determines that:

(1) The acquisition is permitted under chapter 24.03 RCW, the Washington nonprofit corporation act, and other laws governing nonprofit entities, trusts, or charities;

(2) The nonprofit corporation that owns the hospital being acquired has exercised due diligence in authorizing the

acquisition, selecting the acquiring person, and negotiating the terms and conditions of the acquisition;

(3) The procedures used by the nonprofit corporation's board of trustees and officers in making its decision fulfilled their fiduciary duties, that the board and officers were sufficiently informed about the proposed acquisition and possible alternatives, and that they used appropriate expert assistance;

(4) No conflict of interest exists related to the acquisition, including, but not limited to, conflicts of interest related to board members of, executives of, and experts retained by the nonprofit corporation, acquiring person, or other parties to the acquisition;

(5) The nonprofit corporation will receive fair market value for its assets. The attorney general or the department may employ, at the expense of the acquiring person, reasonably necessary expert assistance in making this determination. This expense must be in addition to the fees charged under RCW 70.45.030;

(6) Charitable funds will not be placed at unreasonable risk, if the acquisition is financed in part by the nonprofit corporation;

(7) Any management contract under the acquisition will be for fair market value;

(8) The proceeds from the acquisition will be controlled as charitable funds independently of the acquiring person or parties to the acquisition, and will be used for charitable health purposes consistent with the nonprofit corporation's original purpose, including providing health care to the disadvantaged, the uninsured, and the underinsured and providing benefits to promote improved health in the affected community;

(9) Any charitable entity established to hold the proceeds of the acquisition will be broadly based in and representative of the community where the hospital to be acquired is located, taking into consideration the structure and governance of such entity; and

(10) A right of first refusal to repurchase the assets by a successor nonprofit corporation or foundation has been retained if the hospital is subsequently sold to, acquired by, or merged with another entity. [1997 c 332 § 7.]

**70.45.080 Department review—Criteria for continued existence of accessible, affordable health care.** The department shall only approve an application if the acquisition in question will not detrimentally affect the continued existence of accessible, affordable health care that is responsive to the needs of the community in which the hospital to be acquired is located. To this end, the department shall not approve an application unless, at a minimum, it determines that:

(1) Sufficient safeguards are included to assure the affected community continued access to affordable care, and that alternative sources of care are available in the community should the acquisition result in a reduction or elimination of particular health services;

(2) The acquisition will not result in the revocation of hospital privileges;

(3) Sufficient safeguards are included to maintain appropriate capacity for health science research and health care provider education;

(4) The acquiring person and parties to the acquisition are committed to providing health care to the disadvantaged, the uninsured, and the underinsured and to providing benefits to promote improved health in the affected community. Activities and funding provided under RCW 70.45.070(8) may be considered in evaluating compliance with this commitment; and

(5) Sufficient safeguards are included to avoid conflict of interest in patient referral. [1997 c 332 § 8.]

**70.45.090 Approval of acquisition required—Injunctions.** (1) The secretary of state may not accept any forms or documents in connection with any acquisition of a nonprofit hospital until the acquisition has been approved by the department under this chapter.

(2) The attorney general may seek an injunction to prevent any acquisition not approved by the department under this chapter. [1997 c 332 § 9.]

**70.45.100 Compliance—Department authority—Hearings—Revocation or suspension of hospital license—Referral to attorney general for action.** The department shall require periodic reports from the nonprofit corporation or its successor nonprofit corporation or foundation and from the acquiring person or other parties to the acquisition to ensure compliance with commitments made. The department may subpoena information and documents and may conduct on-site compliance audits at the acquiring person's expense.

If the department receives information indicating that the acquiring person is not fulfilling commitments to the affected community under RCW 70.45.080, the department shall hold a hearing upon ten days' notice to the affected parties. If after the hearing the department determines that the information is true, it may revoke or suspend the hospital license issued to the acquiring person pursuant to the procedure established under RCW 70.41.130, refer the matter to the attorney general for appropriate action, or both. The attorney general may seek a court order compelling the acquiring person to fulfill its commitments under RCW 70.45.080. [1997 c 332 § 10.]

**70.45.110 Authority of attorney general to ensure compliance.** The attorney general has the authority to ensure compliance with commitments that inure to the public interest. [1997 c 332 § 11.]

**70.45.120 Acquisitions completed before July 27, 1997, not subject to this chapter.** An acquisition of a hospital completed before July 27, 1997, and an acquisition in which an application for a certificate of need under chapter 70.38 RCW has been granted by the department before July 27, 1997, is not subject to this chapter. [1997 c 332 § 12.]

**70.45.130 Common law and statutory authority of attorney general.** No provision of this chapter derogates from the common law or statutory authority of the attorney general. [1997 c 332 § 13.]

**70.45.140 Rule-making and contracting authority.** The department may adopt rules necessary to implement this chapter and may contract with and provide reasonable reim-

bursement to qualified persons to assist in determining whether the requirements of RCW 70.45.070 and 70.45.080 have been met. [1997 c 332 § 14.]

**70.45.900 Severability—1997 c 332.** If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1997 c 332 § 19.]

## Chapter 70.46 RCW HEALTH DISTRICTS

### Sections

70.46.020	Districts of two or more counties—Health board—Membership—Chair.
70.46.031	Districts of one county—Health board—Membership.
70.46.060	District health board—Powers and duties.
70.46.080	District health funds.
70.46.085	County to bear expense of providing public health services.
70.46.090	Withdrawal of county.
70.46.100	Power to acquire, maintain, or dispose of property—Contracts.
70.46.110	Disincorporation of district located in county with a population of two hundred ten thousand or more and inactive for five years.
70.46.120	License or permit fees.
70.46.130	Contracts for sale or purchase of health services authorized.

*Local health departments, provisions relating to health districts: Chapter 70.05 RCW.*

**70.46.020 Districts of two or more counties—Health board—Membership—Chair.** Health districts consisting of two or more counties may be created whenever two or more boards of county commissioners shall by resolution establish a district for such purpose. Such a district shall consist of all the area of the combined counties. The district board of health of such a district shall consist of not less than five members for districts of two counties and seven members for districts of more than two counties, including two representatives from each county who are members of the board of county commissioners and who are appointed by the board of county commissioners of each county within the district, and shall have a jurisdiction coextensive with the combined boundaries. The boards of county commissioners may by resolution or ordinance provide for elected officials from cities and towns and persons other than elected officials as members of the district board of health so long as persons other than elected officials do not constitute a majority. A resolution or ordinance adopted under this section must specify the provisions for the appointment, term, and compensation, or reimbursement of expenses. Any multicounty health district existing on \*the effective date of this act shall continue in existence unless and until changed by affirmative action of all boards of county commissioners or one or more counties withdraws [withdraw] pursuant to RCW 70.46.090.

At the first meeting of a district board of health the members shall elect a chair to serve for a period of one year. [1995 c 43 § 10; 1993 c 492 § 247; 1967 ex.s. c 51 § 6; 1945 c 183 § 2; Rem. Supp. 1945 § 6099-11.]

\*Reviser's note: For "the effective date of this act" see note following RCW 70.05.030.

**Findings—Intent—1993 c 492:** See notes following RCW 43.20.050. Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**70.46.031 Districts of one county—Health board—Membership.** A health district to consist of one county may be created whenever the county legislative authority of the county shall pass a resolution or ordinance to organize such a health district under chapter 70.05 RCW and this chapter.

The resolution or ordinance may specify the membership, representation on the district health board, or other matters relative to the formation or operation of the health district. The county legislative authority may appoint elected officials from cities and towns and persons other than elected officials as members of the health district board so long as persons other than elected officials do not constitute a majority.

Any single county health district existing on \*the effective date of this act shall continue in existence unless and until changed by affirmative action of the county legislative authority. [1995 c 43 § 11.]

**\*Reviser's note:** For "the effective date of this act" see note following RCW 70.05.030.

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**70.46.060 District health board—Powers and duties.** The district board of health shall constitute the local board of health for all the territory included in the health district, and shall supersede and exercise all the powers and perform all the duties by law vested in the county board of health of any county included in the health district. [1993 c 492 § 248; 1967 ex.s. c 51 § 11; 1945 c 183 § 6; Rem. Supp. 1945 § 6099-15.]

**Findings—Intent—1993 c 492:** See notes following RCW 43.20.050.

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**70.46.080 District health funds.** Each health district shall establish a fund to be designated as the "district health fund", in which shall be placed all sums received by the district from any source, and out of which shall be expended all sums disbursed by the district. In a district composed of more than one county the county treasurer of the county having the largest population shall be the custodian of the fund, and the county auditor of said county shall keep the record of the receipts and disbursements, and shall draw and the county treasurer shall honor and pay all warrants, which shall be approved before issuance and payment as directed by the board.

Each county which is included in the district shall contribute such sums towards the expense for maintaining and operating the district as shall be agreed upon between it and the local board of health in accordance with guidelines established by the state board of health. [1993 c 492 § 249; 1971 ex.s. c 85 § 10; 1967 ex.s. c 51 § 19; 1945 c 183 § 8; Rem. Supp. 1945 § 6099-17.]

**Findings—Intent—1993 c 492:** See notes following RCW 43.20.050.

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**70.46.085 County to bear expense of providing public health services.** The expense of providing public health services shall be borne by each county within the health district. [1993 c 492 § 250; 1967 ex.s. c 51 § 20.]

**Findings—Intent—1993 c 492:** See notes following RCW 43.20.050.

*Expenses of enforcing health laws: RCW 70.05.130.*

(2010 Ed.)

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**70.46.090 Withdrawal of county.** Any county may withdraw from membership in said health district any time after it has been within the district for a period of two years, but no withdrawal shall be effective except at the end of the calendar year in which the county gives at least six months' notice of its intention to withdraw at the end of the calendar year. No withdrawal shall entitle any member to a refund of any moneys paid to the district nor relieve it of any obligations to pay to the district all sums for which it obligated itself due and owing by it to the district for the year at the end of which the withdrawal is to be effective. Any county which withdraws from membership in said health district shall immediately establish a health department or provide health services which shall meet the standards for health services promulgated by the state board of health. No local health department may be deemed to provide adequate public health services unless there is at least one full time professionally trained and qualified physician as set forth in RCW 70.05.050. [1993 c 492 § 251; 1967 ex.s. c 51 § 21; 1945 c 183 § 9; Rem. Supp. 1945 § 6099-18.]

**Findings—Intent—1993 c 492:** See notes following RCW 43.20.050.

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**70.46.100 Power to acquire, maintain, or dispose of property—Contracts.** In addition to all other powers and duties, a health district shall have the power to own, construct, purchase, lease, add to, and maintain any real and personal property or property rights necessary for the conduct of the affairs of the district. A health district may sell, lease, convey or otherwise dispose of any district real or personal property no longer necessary for the conduct of the affairs of the district. A health district may enter into contracts to carry out the provisions of this section. [1957 c 100 § 2.]

**70.46.110 Disincorporation of district located in county with a population of two hundred ten thousand or more and inactive for five years.** See chapter 57.90 RCW.

**70.46.120 License or permit fees.** In addition to all other powers and duties, health districts shall have the power to charge fees in connection with the issuance or renewal of a license or permit required by law: PROVIDED, That the fees charged shall not exceed the actual cost involved in issuing or renewing the license or permit. [1993 c 492 § 252; 1963 c 121 § 1.]

**Findings—Intent—1993 c 492:** See notes following RCW 43.20.050.

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**70.46.130 Contracts for sale or purchase of health services authorized.** See RCW 70.05.150.

## Chapter 70.47 RCW BASIC HEALTH PLAN— HEALTH CARE ACCESS ACT

Sections

70.47.002 Intent—2002 c 2 (Initiative Measure No. 773).

[Title 70 RCW—page 91]

70.47.005	Transfer power, duties, and functions to Washington state health care authority.
70.47.010	Legislative findings—Purpose—Administrator and department of social and health services to coordinate eligibility.
70.47.015	Enrollment—Findings—Intent—Enrollee premium share—Expedited application and enrollment process—Commission for insurance producers.
70.47.020	Definitions.
70.47.030	Basic health plan trust account—Basic health plan subscription account.
70.47.040	Basic health plan—Health care authority head to be administrator—Joint operations.
70.47.050	Rules.
70.47.060	Powers and duties of administrator—Schedule of services—Premiums, copayments, subsidies—Enrollment.
70.47.070	Benefits from other coverages not reduced.
70.47.080	Enrollment of applicants—Participation limitations.
70.47.090	Removal of enrollees.
70.47.100	Participation by a managed health care system.
70.47.110	Enrollment of medical assistance recipients.
70.47.115	Enrollment of persons in timber impact areas.
70.47.120	Administrator—Contracts for services.
70.47.130	Exemption from insurance code.
70.47.140	Reservation of legislative power.
70.47.150	Confidentiality.
70.47.160	Right of individuals to receive services—Right of providers, carriers, and facilities to refuse to participate in or pay for services for reason of conscience or religion—Requirements.
70.47.170	Annual reporting requirement.
70.47.200	Mental health services—Definition—Coverage required, when.
70.47.201	Mental health services—Rules.
70.47.210	Prostate cancer screening.
70.47.220	Increase in reimbursement rates not applicable.
70.47.900	Short title.
70.47.901	Severability—1987 1st ex.s. c 5.
70.47.902	Construction—Chapter applicable to state registered domestic partnerships—2009 c 521.

**70.47.002 Intent—2002 c 2 (Initiative Measure No. 773).** It is the intent of the people to improve the health of low-income children and adults by expanding access to basic health care and by reducing tobacco-related and other diseases and illnesses that disproportionately affect low-income persons. [2002 c 2 § 1 (Initiative Measure No. 773, approved November 6, 2001).]

**70.47.005 Transfer power, duties, and functions to Washington state health care authority.** The powers, duties, and functions of the Washington basic health plan are hereby transferred to the Washington state health care authority. All references to the administrator of the Washington basic health plan in the Revised Code of Washington shall be construed to mean the administrator of the Washington state health care authority. [1993 c 492 § 201.]

**Findings—Intent—1993 c 492:** See notes following RCW 43.20.050. Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**70.47.010 Legislative findings—Purpose—Administrator and department of social and health services to coordinate eligibility.** (1)(a) The legislature finds that limitations on access to health care services for enrollees in the state, such as in rural and underserved areas, are particularly challenging for the basic health plan. Statutory restrictions have reduced the options available to the administrator to address the access needs of basic health plan enrollees. It is the intent of the legislature to authorize the administrator to develop alternative purchasing strategies to ensure access to basic health plan enrollees in all areas of the state, including: (i) The use of differential rating for managed health care systems

based on geographic differences in costs; and (ii) limited use of self-insurance in areas where adequate access cannot be assured through other options.

(b) In developing alternative purchasing strategies to address health care access needs, the administrator shall consult with interested persons including health carriers, health care providers, and health facilities, and with other appropriate state agencies including the office of the insurance commissioner and the office of community and rural health. In pursuing such alternatives, the administrator shall continue to give priority to prepaid managed care as the preferred method of assuring access to basic health plan enrollees followed, in priority order, by preferred providers, fee for service, and self-funding.

(2) The legislature further finds that:

(a) A significant percentage of the population of this state does not have reasonably available insurance or other coverage of the costs of necessary basic health care services;

(b) This lack of basic health care coverage is detrimental to the health of the individuals lacking coverage and to the public welfare, and results in substantial expenditures for emergency and remedial health care, often at the expense of health care providers, health care facilities, and all purchasers of health care, including the state; and

(c) The use of managed health care systems has significant potential to reduce the growth of health care costs incurred by the people of this state generally, and by low-income pregnant women, and at-risk children and adolescents who need greater access to managed health care.

(3) The purpose of this chapter is to provide or make more readily available necessary basic health care services in an appropriate setting to working persons and others who lack coverage, at a cost to these persons that does not create barriers to the utilization of necessary health care services. To that end, this chapter establishes a program to be made available to those residents not eligible for medicare who share in a portion of the cost or who pay the full cost of receiving basic health care services from a managed health care system.

(4) It is not the intent of this chapter to provide health care services for those persons who are presently covered through private employer-based health plans, nor to replace employer-based health plans. However, the legislature recognizes that cost-effective and affordable health plans may not always be available to small business employers. Further, it is the intent of the legislature to expand, wherever possible, the availability of private health care coverage and to discourage the decline of employer-based coverage.

(5)(a) It is the purpose of this chapter to acknowledge the initial success of this program that has (i) assisted thousands of families in their search for affordable health care; (ii) demonstrated that low-income, uninsured families are willing to pay for their own health care coverage to the extent of their ability to pay; and (iii) proved that local health care providers are willing to enter into a public-private partnership as a managed care system.

(b) As a consequence, the legislature intends to extend an option to enroll to certain citizens above two hundred percent of the federal poverty guidelines within the state who reside in communities where the plan is operational and who collectively or individually wish to exercise the opportunity to purchase

chase health care coverage through the basic health plan if the purchase is done at no cost to the state. It is also the intent of the legislature to allow employers and other financial sponsors to financially assist such individuals to purchase health care through the program so long as such purchase does not result in a lower standard of coverage for employees.

(c) The legislature intends that, to the extent of available funds, the program be available throughout Washington state to subsidized and unsubsidized enrollees. It is also the intent of the legislature to enroll subsidized enrollees first, to the maximum extent feasible.

(d) The legislature directs that the basic health plan administrator identify enrollees who are likely to be eligible for medical assistance and assist these individuals in applying for and receiving medical assistance. The administrator and the department of social and health services shall implement a seamless system to coordinate eligibility determinations and benefit coverage for enrollees of the basic health plan and medical assistance recipients. Enrollees receiving medical assistance are not eligible for the Washington basic health plan. [2009 c 568 § 1; 2000 c 79 § 42; 1993 c 492 § 208; 1987 1st ex.s. c 5 § 3.]

**Effective date—Severability—2000 c 79:** See notes following RCW 48.04.010.

**Findings—Intent—1993 c 492:** See notes following RCW 43.20.050.

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**70.47.015 Enrollment—Findings—Intent—Enrollee premium share—Expedited application and enrollment process—Commission for insurance producers.** (1) The legislature finds that the basic health plan has been an effective program in providing health coverage for uninsured residents. Further, since 1993, substantial amounts of public funds have been allocated for subsidized basic health plan enrollment.

(2) Effective January 1, 1996, basic health plan enrollees whose income is less than one hundred twenty-five percent of the federal poverty level shall pay at least a ten-dollar premium share.

(3) No later than July 1, 1996, the administrator shall implement procedures whereby hospitals licensed under chapters 70.41 and 71.12 RCW, health carrier, rural health care facilities regulated under chapter 70.175 RCW, and community and migrant health centers funded under RCW 41.05.220, may expeditiously assist patients and their families in applying for basic health plan or medical assistance coverage, and in submitting such applications directly to the health care authority or the department of social and health services. The health care authority and the department of social and health services shall make every effort to simplify and expedite the application and enrollment process.

(4) No later than July 1, 1996, the administrator shall implement procedures whereby disability insurance producers, licensed under chapter 48.17 RCW, may expeditiously assist patients and their families in applying for basic health plan or medical assistance coverage, and in submitting such applications directly to the health care authority or the department of social and health services. Insurance producers may receive a commission for each individual sale of the basic health plan to anyone not signed up within the previous five years and a commission for each group sale of the basic

health plan, if funding for this purpose is provided in a specific appropriation to the health care authority. No commission shall be provided upon a renewal. Commissions shall be determined based on the estimated annual cost of the basic health plan, however, commissions shall not result in a reduction in the premium amount paid to health carriers. For purposes of this section "health carrier" is as defined in RCW 48.43.005. The administrator may establish: (a) Minimum educational requirements that must be completed by the insurance producers; (b) an appointment process for insurance producers marketing the basic health plan; or (c) standards for revocation of the appointment of an insurance producer to submit applications for cause, including untrustworthy or incompetent conduct or harm to the public. The health care authority and the department of social and health services shall make every effort to simplify and expedite the application and enrollment process. [2009 c 479 § 49; 2008 c 217 § 99; 1997 c 337 § 1; 1995 c 265 § 1.]

**Effective date—2009 c 479:** See note following RCW 2.56.030.

**Severability—Effective date—2008 c 217:** See notes following RCW 48.03.020.

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

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

(1) "Administrator" means the Washington basic health plan administrator, who also holds the position of administrator of the Washington state health care authority.

(2) "Health coverage tax credit eligible enrollee" means individual workers and their qualified family members who lose their jobs due to the effects of international trade and are eligible for certain trade adjustment assistance benefits; or are eligible for benefits under the alternative trade adjustment assistance program; or are people who receive benefits from the pension benefit guaranty corporation and are at least fifty-five years old.

(3) "Health coverage tax credit program" means the program created by the Trade Act of 2002 (P.L. 107-210) that provides a federal tax credit that subsidizes private health insurance coverage for displaced workers certified to receive certain trade adjustment assistance benefits and for individuals receiving benefits from the pension benefit guaranty corporation.

(4) "Managed health care system" means: (a) Any health care organization, including health care providers, insurers, health care service contractors, health maintenance organizations, or any combination thereof, that provides directly or by contract basic health care services, as defined by the administrator and rendered by duly licensed providers, to a defined patient population enrolled in the plan and in the managed health care system; or (b) a self-funded or self-insured method of providing insurance coverage to subsidized enrollees provided under RCW 41.05.140 and subject to the limitations under RCW 70.47.100(7).

(5) "Unsubsidized enrollee" means an individual, or an individual plus the individual's spouse or dependent children: (a) Who is not eligible for medicare; (b) who is not confined or residing in a government-operated institution, unless he or she meets eligibility criteria adopted by the administrator; (c) who is accepted for enrollment by the administrator as provided in RCW 48.43.018, either because the potential enrollee cannot be required to complete the standard health

questionnaire under RCW 48.43.018, or, based upon the results of the standard health questionnaire, the potential enrollee would not qualify for coverage under the Washington state health insurance pool; (d) who resides in an area of the state served by a managed health care system participating in the plan; (e) who chooses to obtain basic health care coverage from a particular managed health care system; and (f) who pays or on whose behalf is paid the full costs for participation in the plan, without any subsidy from the plan.

(6) "Premium" means a periodic payment, which an individual, their employer or another financial sponsor makes to the plan as consideration for enrollment in the plan as a subsidized enrollee, a nonsubsidized enrollee, or a health coverage tax credit eligible enrollee.

(7) "Rate" means the amount, negotiated by the administrator with and paid to a participating managed health care system, that is based upon the enrollment of subsidized, non-subsidized, and health coverage tax credit eligible enrollees in the plan and in that system.

(8) "Subsidy" means the difference between the amount of periodic payment the administrator makes to a managed health care system on behalf of a subsidized enrollee plus the administrative cost to the plan of providing the plan to that subsidized enrollee, and the amount determined to be the subsidized enrollee's responsibility under RCW 70.47.060(2).

(9) "Subsidized enrollee" means:

(a) An individual, or an individual plus the individual's spouse or dependent children:

(i) Who is not eligible for medicare;

(ii) Who is not confined or residing in a government-operated institution, unless he or she meets eligibility criteria adopted by the administrator;

(iii) Who is not a full-time student who has received a temporary visa to study in the United States;

(iv) Who resides in an area of the state served by a managed health care system participating in the plan;

(v) Whose gross family income at the time of enrollment does not exceed two hundred percent of the federal poverty level as adjusted for family size and determined annually by the federal department of health and human services;

(vi) Who chooses to obtain basic health care coverage from a particular managed health care system in return for periodic payments to the plan; and

(vii) Who is not receiving medical assistance administered by the department of social and health services;

(b) An individual who meets the requirements in (a)(i) through (iv), (vi), and (vii) of this subsection and who is a foster parent licensed under chapter 74.15 RCW and whose gross family income at the time of enrollment does not exceed three hundred percent of the federal poverty level as adjusted for family size and determined annually by the federal department of health and human services; and

(c) To the extent that state funds are specifically appropriated for this purpose, with a corresponding federal match, an individual, or an individual's spouse or dependent children, who meets the requirements in (a)(i) through (iv), (vi), and (vii) of this subsection and whose gross family income at the time of enrollment is more than two hundred percent, but less than two hundred fifty-one percent, of the federal poverty level as adjusted for family size and determined annually by the federal department of health and human services.

(10) "Washington basic health plan" or "plan" means the system of enrollment and payment for basic health care services, administered by the plan administrator through participating managed health care systems, created by this chapter. [2009 c 568 § 2; 2007 c 259 § 35; 2005 c 188 § 2; 2004 c 192 § 1; 2000 c 79 § 43; 1997 c 335 § 1; 1997 c 245 § 5. Prior: 1995 c 266 § 2; 1995 c 2 § 3; 1994 c 309 § 4; 1993 c 492 § 209; 1987 1st ex.s. c 5 § 4.]

**Reviser's note:** The definitions in this section have been alphabetized pursuant to RCW 1.08.015(2)(k).

**Severability—Subheadings not law—2007 c 259:** See notes following RCW 41.05.033.

**Findings—2005 c 188:** "The legislature finds that the basic health plan is a valuable means of providing access to affordable health insurance coverage for low-income families and individuals in Washington state. The legislature further finds that persons studying in the United States as full-time students under temporary visas must show, as a condition of receiving their temporary visa, that they have sufficient funds available for self-support during their entire proposed course of study. For this reason, the legislature finds that it is not appropriate to provide subsidized basic health plan coverage to this group of students." [2005 c 188 § 1.]

**Effective date—2004 c 192:** "This act takes effect January 1, 2005." [2004 c 192 § 6.]

**Effective date—Severability—2000 c 79:** See notes following RCW 48.04.010.

**Findings—Intent—1993 c 492:** See notes following RCW 43.20.050. Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**70.47.030 Basic health plan trust account—Basic health plan subscription account.** (1) The basic health plan trust account is hereby established in the state treasury. Any nongeneral fund-state funds collected for this program shall be deposited in the basic health plan trust account and may be expended without further appropriation. Moneys in the account shall be used exclusively for the purposes of this chapter, including payments to participating managed health care systems on behalf of enrollees in the plan and payment of costs of administering the plan.

During the 1995-97 fiscal biennium, the legislature may transfer funds from the basic health plan trust account to the state general fund.

(2) The basic health plan subscription account is created in the custody of the state treasurer. All receipts from amounts due from or on behalf of nonsubsidized enrollees and health coverage tax credit eligible enrollees shall be deposited into the account. Funds in the account shall be used exclusively for the purposes of this chapter, including payments to participating managed health care systems on behalf of nonsubsidized enrollees and health coverage tax credit eligible enrollees in the plan and payment of costs of administering the plan. The account is subject to allotment procedures under chapter 43.88 RCW, but no appropriation is required for expenditures.

(3) The administrator shall take every precaution to see that none of the funds in the separate accounts created in this section or that any premiums paid either by subsidized or nonsubsidized enrollees are commingled in any way, except that the administrator may combine funds designated for administration of the plan into a single administrative account. [2004 c 192 § 2; 1995 2nd sp.s. c 18 § 913; 1993 c 492 § 210; 1992 c 232 § 907. Prior: 1991 sp.s. c 13 § 68; 1991 sp.s. c 4 § 1; 1987 1st ex.s. c 5 § 5.]

**Effective date—2004 c 192:** See note following RCW 70.47.020.

**Findings—Intent—1993 c 492:** See notes following RCW 43.20.050.

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**70.47.040 Basic health plan—Health care authority head to be administrator—Joint operations.** (1) The Washington basic health plan is created as a program within the Washington state health care authority. The administrative head and appointing authority of the plan shall be the administrator of the Washington state health care authority. The administrator shall appoint a medical director. The medical director and up to five other employees of the plan shall be exempt from the civil service law, chapter 41.06 RCW.

(2) The administrator shall employ such other staff as are necessary to fulfill the responsibilities and duties of the administrator, such staff to be subject to the civil service law, chapter 41.06 RCW. In addition, the administrator may contract with third parties for services necessary to carry out its activities where this will promote economy, avoid duplication of effort, and make best use of available expertise. Any such contractor or consultant shall be prohibited from releasing, publishing, or otherwise using any information made available to it under its contractual responsibility without specific permission of the plan. The administrator may call upon other agencies of the state to provide available information as necessary to assist the administrator in meeting its responsibilities under this chapter, which information shall be supplied as promptly as circumstances permit.

(3) The administrator may appoint such technical or advisory committees as he or she deems necessary.

(4) The administrator may apply for, receive, and accept grants, gifts, and other payments, including property and service, from any governmental or other public or private entity or person, and may make arrangements as to the use of these receipts, including the undertaking of special studies and other projects relating to health care costs and access to health care.

(5) Whenever feasible, the administrator shall reduce the administrative cost of operating the program by adopting joint policies or procedures applicable to both the basic health plan and employee health plans. [2010 1st sp.s. c 7 § 7; 1993 c 492 § 211; 1987 1st ex.s. c 5 § 6.]

**Effective date—2010 1st sp.s. c 26; 2010 1st sp.s. c 7:** See note following RCW 43.03.027.

**Findings—Intent—1993 c 492:** See notes following RCW 43.20.050.

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**70.47.050 Rules.** The administrator may promulgate and adopt rules consistent with this chapter to carry out the purposes of this chapter. All rules shall be adopted in accordance with chapter 34.05 RCW. [1987 1st ex.s. c 5 § 7.]

**70.47.060 Powers and duties of administrator—Schedule of services—Premiums, copayments, subsidies—Enrollment.** The administrator has the following powers and duties:

(1) To design and from time to time revise a schedule of covered basic health care services, including physician services, inpatient and outpatient hospital services, prescription drugs and medications, and other services that may be neces-

sary for basic health care. In addition, the administrator may, to the extent that funds are available, offer as basic health plan services chemical dependency services, mental health services, and organ transplant services. All subsidized and nonsubsidized enrollees in any participating managed health care system under the Washington basic health plan shall be entitled to receive covered basic health care services in return for premium payments to the plan. The schedule of services shall emphasize proven preventive and primary health care and shall include all services necessary for prenatal, postnatal, and well-child care. However, with respect to coverage for subsidized enrollees who are eligible to receive prenatal and postnatal services through the medical assistance program under chapter 74.09 RCW, the administrator shall not contract for such services except to the extent that such services are necessary over not more than a one-month period in order to maintain continuity of care after diagnosis of pregnancy by the managed care provider. The schedule of services shall also include a separate schedule of basic health care services for children, eighteen years of age and younger, for those subsidized or nonsubsidized enrollees who choose to secure basic coverage through the plan only for their dependent children. In designing and revising the schedule of services, the administrator shall consider the guidelines for assessing health services under the mandated benefits act of 1984, RCW 48.47.030, and such other factors as the administrator deems appropriate. The administrator shall encourage enrollees who have been continually enrolled on basic health for a period of one year or more to complete a health risk assessment and participate in programs approved by the administrator that may include wellness, smoking cessation, and chronic disease management programs. In approving programs, the administrator shall consider evidence that any such programs are proven to improve enrollee health status.

(2)(a) To design and implement a structure of periodic premiums due the administrator from subsidized enrollees that is based upon gross family income, giving appropriate consideration to family size and the ages of all family members. The enrollment of children shall not require the enrollment of their parent or parents who are eligible for the plan. The structure of periodic premiums shall be applied to subsidized enrollees entering the plan as individuals pursuant to subsection (11) of this section and to the share of the cost of the plan due from subsidized enrollees entering the plan as employees pursuant to subsection (12) of this section.

(b) To determine the periodic premiums due the administrator from subsidized enrollees under \*RCW 70.47.020(6)(b). Premiums due for foster parents with gross family income up to two hundred percent of the federal poverty level shall be set at the minimum premium amount charged to enrollees with income below sixty-five percent of the federal poverty level. Premiums due for foster parents with gross family income between two hundred percent and three hundred percent of the federal poverty level shall not exceed one hundred dollars per month.

(c) To determine the periodic premiums due the administrator from nonsubsidized enrollees. Premiums due from nonsubsidized enrollees shall be in an amount equal to the cost charged by the managed health care system provider to the state for the plan plus the administrative cost of providing

the plan to those enrollees and the premium tax under RCW 48.14.0201.

(d) To determine the periodic premiums due the administrator from health coverage tax credit eligible enrollees. Premiums due from health coverage tax credit eligible enrollees must be in an amount equal to the cost charged by the managed health care system provider to the state for the plan, plus the administrative cost of providing the plan to those enrollees and the premium tax under RCW 48.14.0201. The administrator will consider the impact of eligibility determination by the appropriate federal agency designated by the Trade Act of 2002 (P.L. 107-210) as well as the premium collection and remittance activities by the United States internal revenue service when determining the administrative cost charged for health coverage tax credit eligible enrollees.

(e) An employer or other financial sponsor may, with the prior approval of the administrator, pay the premium, rate, or any other amount on behalf of a subsidized or nonsubsidized enrollee, by arrangement with the enrollee and through a mechanism acceptable to the administrator. The administrator shall establish a mechanism for receiving premium payments from the United States internal revenue service for health coverage tax credit eligible enrollees.

(f) To develop, as an offering by every health carrier providing coverage identical to the basic health plan, as configured on January 1, 2001, a basic health plan model plan with uniformity in enrollee cost-sharing requirements.

(g) To collect from all public employees a voluntary opt-in donation of varying amounts through a monthly or one-time payroll deduction as provided for in RCW 41.04.230. The donation must be deposited in the health services account established in \*\*RCW 43.72.900 to be used for the sole purpose of maintaining enrollment capacity in the basic health plan.

The administrator shall send an annual notice to state employees extending the opportunity to participate in the opt-in donation program for the purpose of saving enrollment slots for the basic health plan. The first such notice shall be sent to public employees no later than June 1, 2009.

The notice shall include monthly sponsorship levels of fifteen dollars per month, thirty dollars per month, fifty dollars per month, and any other amounts deemed reasonable by the administrator. The sponsorship levels shall be named "safety net contributor," "safety net hero," and "safety net champion" respectively. The donation amounts provided shall be tied to the level of coverage the employee will be purchasing for a working poor individual without access to health care coverage.

The administrator shall ensure that employees are given an opportunity to establish a monthly standard deduction or a one-time deduction towards the basic health plan donation program. The basic health plan donation program shall be known as the "save the safety net program."

The donation permitted under this subsection may not be collected from any public employee who does not actively opt in to the donation program. Written notification of intent to discontinue participation in the donation program must be provided by the public employee at least fourteen days prior to the next standard deduction.

(3) To evaluate, with the cooperation of participating managed health care system providers, the impact on the

basic health plan of enrolling health coverage tax credit eligible enrollees. The administrator shall issue to the appropriate committees of the legislature preliminary evaluations on June 1, 2005, and January 1, 2006, and a final evaluation by June 1, 2006. The evaluation shall address the number of persons enrolled, the duration of their enrollment, their utilization of covered services relative to other basic health plan enrollees, and the extent to which their enrollment contributed to any change in the cost of the basic health plan.

(4) To end the participation of health coverage tax credit eligible enrollees in the basic health plan if the federal government reduces or terminates premium payments on their behalf through the United States internal revenue service.

(5) To design and implement a structure of enrollee cost-sharing due a managed health care system from subsidized, nonsubsidized, and health coverage tax credit eligible enrollees. The structure shall discourage inappropriate enrollee utilization of health care services, and may utilize copayments, deductibles, and other cost-sharing mechanisms, but shall not be so costly to enrollees as to constitute a barrier to appropriate utilization of necessary health care services.

(6) To limit enrollment of persons who qualify for subsidies so as to prevent an overexpenditure of appropriations for such purposes. Whenever the administrator finds that there is danger of such an overexpenditure, the administrator shall close enrollment until the administrator finds the danger no longer exists. Such a closure does not apply to health coverage tax credit eligible enrollees who receive a premium subsidy from the United States internal revenue service as long as the enrollees qualify for the health coverage tax credit program. To prevent the risk of overexpenditure, the administrator may disenroll persons receiving subsidies from the program based on criteria adopted by the administrator. The criteria may include: Length of continual enrollment on the program, income level, or eligibility for other coverage. The administrator shall first attempt to identify enrollees who are eligible for other coverage, and, working with the department of social and health service as provided in RCW 70.47.010(5)(d), transition enrollees eligible for medical assistance to that coverage. The administrator shall develop criteria for persons disenrolled under this subsection to reapply for the program.

(7) To limit the payment of subsidies to subsidized enrollees, as defined in RCW 70.47.020. The level of subsidy provided to persons who qualify may be based on the lowest cost plans, as defined by the administrator.

(8) To adopt a schedule for the orderly development of the delivery of services and availability of the plan to residents of the state, subject to the limitations contained in RCW 70.47.080 or any act appropriating funds for the plan.

(9) To solicit and accept applications from managed health care systems, as defined in this chapter, for inclusion as eligible basic health care providers under the plan for subsidized enrollees, nonsubsidized enrollees, or health coverage tax credit eligible enrollees. The administrator shall endeavor to assure that covered basic health care services are available to any enrollee of the plan from among a selection of two or more participating managed health care systems. In adopting any rules or procedures applicable to managed health care systems and in its dealings with such systems, the administrator shall consider and make suitable allowance for

the need for health care services and the differences in local availability of health care resources, along with other resources, within and among the several areas of the state. Contracts with participating managed health care systems shall ensure that basic health plan enrollees who become eligible for medical assistance may, at their option, continue to receive services from their existing providers within the managed health care system if such providers have entered into provider agreements with the department of social and health services.

(10) To receive periodic premiums from or on behalf of subsidized, nonsubsidized, and health coverage tax credit eligible enrollees, deposit them in the basic health plan operating account, keep records of enrollee status, and authorize periodic payments to managed health care systems on the basis of the number of enrollees participating in the respective managed health care systems.

(11) To accept applications from individuals residing in areas served by the plan, on behalf of themselves and their spouses and dependent children, for enrollment in the Washington basic health plan as subsidized, nonsubsidized, or health coverage tax credit eligible enrollees, to give priority to members of the Washington national guard and reserves who served in Operation Enduring Freedom, Operation Iraqi Freedom, or Operation Noble Eagle, and their spouses and dependents, for enrollment in the Washington basic health plan, to establish appropriate minimum-enrollment periods for enrollees as may be necessary, and to determine, upon application and on a reasonable schedule defined by the authority, or at the request of any enrollee, eligibility due to current gross family income for sliding scale premiums. Funds received by a family as part of participation in the adoption support program authorized under RCW 26.33.320 and \*\*\*74.13.100 through 74.13.145 shall not be counted toward a family's current gross family income for the purposes of this chapter. When an enrollee fails to report income or income changes accurately, the administrator shall have the authority either to bill the enrollee for the amounts overpaid by the state or to impose civil penalties of up to two hundred percent of the amount of subsidy overpaid due to the enrollee incorrectly reporting income. The administrator shall adopt rules to define the appropriate application of these sanctions and the processes to implement the sanctions provided in this subsection, within available resources. No subsidy may be paid with respect to any enrollee whose current gross family income exceeds twice the federal poverty level or, subject to RCW 70.47.110, who is a recipient of medical assistance or medical care services under chapter 74.09 RCW. If a number of enrollees drop their enrollment for no apparent good cause, the administrator may establish appropriate rules or requirements that are applicable to such individuals before they will be allowed to reenroll in the plan.

(12) To accept applications from business owners on behalf of themselves and their employees, spouses, and dependent children, as subsidized or nonsubsidized enrollees, who reside in an area served by the plan. The administrator may require all or the substantial majority of the eligible employees of such businesses to enroll in the plan and establish those procedures necessary to facilitate the orderly enrollment of groups in the plan and into a managed health care system. The administrator may require that a business

(2010 Ed.)

owner pay at least an amount equal to what the employee pays after the state pays its portion of the subsidized premium cost of the plan on behalf of each employee enrolled in the plan. Enrollment is limited to those not eligible for medicare who wish to enroll in the plan and choose to obtain the basic health care coverage and services from a managed care system participating in the plan. The administrator shall adjust the amount determined to be due on behalf of or from all such enrollees whenever the amount negotiated by the administrator with the participating managed health care system or systems is modified or the administrative cost of providing the plan to such enrollees changes.

(13) To determine the rate to be paid to each participating managed health care system in return for the provision of covered basic health care services to enrollees in the system. Although the schedule of covered basic health care services will be the same or actuarially equivalent for similar enrollees, the rates negotiated with participating managed health care systems may vary among the systems. In negotiating rates with participating systems, the administrator shall consider the characteristics of the populations served by the respective systems, economic circumstances of the local area, the need to conserve the resources of the basic health plan trust account, and other factors the administrator finds relevant.

(14) To monitor the provision of covered services to enrollees by participating managed health care systems in order to assure enrollee access to good quality basic health care, to require periodic data reports concerning the utilization of health care services rendered to enrollees in order to provide adequate information for evaluation, and to inspect the books and records of participating managed health care systems to assure compliance with the purposes of this chapter. In requiring reports from participating managed health care systems, including data on services rendered enrollees, the administrator shall endeavor to minimize costs, both to the managed health care systems and to the plan. The administrator shall coordinate any such reporting requirements with other state agencies, such as the insurance commissioner and the department of health, to minimize duplication of effort.

(15) To evaluate the effects this chapter has on private employer-based health care coverage and to take appropriate measures consistent with state and federal statutes that will discourage the reduction of such coverage in the state.

(16) To develop a program of proven preventive health measures and to integrate it into the plan wherever possible and consistent with this chapter.

(17) To provide, consistent with available funding, assistance for rural residents, underserved populations, and persons of color.

(18) In consultation with appropriate state and local government agencies, to establish criteria defining eligibility for persons confined or residing in government-operated institutions.

(19) To administer the premium discounts provided under RCW 48.41.200(3)(a) (i) and (ii) pursuant to a contract with the Washington state health insurance pool.

(20) To give priority in enrollment to persons who disenrolled from the program in order to enroll in medicaid, and subsequently became ineligible for medicaid coverage. [2009 c 568 § 3; 2007 c 259 § 36; 2006 c 343 § 9; 2004 c 192

§ 3; 2001 c 196 § 13; 2000 c 79 § 34. Prior: 1998 c 314 § 17; 1998 c 148 § 1; prior: 1997 c 337 § 2; 1997 c 335 § 2; 1997 c 245 § 6; 1997 c 231 § 206; prior: 1995 c 266 § 1; 1995 c 2 § 4; 1994 c 309 § 5; 1993 c 492 § 212; 1992 c 232 § 908; prior: 1991 sp.s. c 4 § 2; 1991 c 3 § 339; 1987 1st ex.s. c 5 § 8.]

**Reviser's note:** \*(1) RCW 70.47.020 was alphabetized pursuant to RCW 1.08.015(2)(k), changing subsection (6) to subsection (9).

\*\* (2) RCW 43.72.900 was repealed by 2009 c 479 § 29.

\*\*\* (3) RCW 74.13.100 through 74.13.145 were recodified as RCW 74.13A.005 through 74.13A.080 pursuant to 2009 c 520 § 95.

**Effective date—2009 c 568 § 3:** "Section 3 of this act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [May 19, 2009]." [2009 c 568 § 8.]

**Severability—Subheadings not law—2007 c 259:** See notes following RCW 41.05.033.

**Findings—2006 c 343:** See note following RCW 43.60A.160.

**Effective date—2004 c 192:** See note following RCW 70.47.020.

**Effective date—2001 c 196:** See note following RCW 48.20.025.

**Effective date—Severability—2000 c 79:** See notes following RCW 48.04.010.

**Findings—Intent—1993 c 492:** See notes following RCW 43.20.050.

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

#### **70.47.070 Benefits from other coverages not reduced.**

The benefits available under the basic health plan shall be excess to the benefits payable under the terms of any insurance policy issued to or on the behalf of an enrollee that provides payments toward medical expenses without a determination of liability for the injury. Except where in conflict with federal or state law, the benefits of any other health plan or insurance which covers an enrollee shall be determined before the benefits of the basic health plan. The administrator shall require that managed health care systems conduct and report on coordination of benefits activities as provided under this section. [2009 c 568 § 4; 1987 1st ex.s. c 5 § 9.]

**70.47.080 Enrollment of applicants—Participation limitations.** On and after July 1, 1988, the administrator shall accept for enrollment applicants eligible to receive covered basic health care services from the respective managed health care systems which are then participating in the plan.

Thereafter, total subsidized enrollment shall not result in expenditures that exceed the total amount that has been made available by the legislature in any act appropriating funds to the plan. To the extent that new funding is appropriated for expansion, the administrator shall endeavor to secure participation contracts from managed health care systems in geographic areas of the state that are unserved by the plan at the time at which the new funding is appropriated. In the selection of any such areas the administrator shall take into account the levels and rates of unemployment in different areas of the state, the need to provide basic health care coverage to a population reasonably representative of the portion of the state's population that lacks such coverage, and the need for geographic, demographic, and economic diversity.

The administrator shall at all times closely monitor growth patterns of enrollment so as not to exceed that consistent with the orderly development of the plan as a whole, in any area of the state or in any participating managed health care system. The annual or biennial enrollment limitations

derived from operation of the plan under this section do not apply to nonsubsidized enrollees as defined in RCW 70.47.020(5). [1993 c 492 § 213; 1987 1st ex.s. c 5 § 10.]

**Findings—Intent—1993 c 492:** See notes following RCW 43.20.050.

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**70.47.090 Removal of enrollees.** Any enrollee whose premium payments to the plan are delinquent or who moves his or her residence out of an area served by the plan may be dropped from enrollment status. An enrollee whose premium is the responsibility of the department of social and health services under RCW 70.47.110 may not be dropped solely because of nonpayment by the department. The administrator shall provide delinquent enrollees with advance written notice of their removal from the plan and shall provide for a hearing under chapters 34.05 and 34.12 RCW for any enrollee who contests the decision to drop the enrollee from the plan. Upon removal of an enrollee from the plan, the administrator shall promptly notify the managed health care system in which the enrollee has been enrolled, and shall not be responsible for payment for health care services provided to the enrollee (including, if applicable, members of the enrollee's family) after the date of notification. A managed health care system may contest the denial of payment for coverage of an enrollee through a hearing under chapters 34.05 and 34.12 RCW. [1987 1st ex.s. c 5 § 11.]

**70.47.100 Participation by a managed health care system.** (1) A managed health care system participating in the plan shall do so by contract with the administrator and shall provide, directly or by contract with other health care providers, covered basic health care services to each enrollee covered by its contract with the administrator as long as payments from the administrator on behalf of the enrollee are current. A participating managed health care system may offer, without additional cost, health care benefits or services not included in the schedule of covered services under the plan. A participating managed health care system shall not give preference in enrollment to enrollees who accept such additional health care benefits or services. Managed health care systems participating in the plan shall not discriminate against any potential or current enrollee based upon health status, sex, race, ethnicity, or religion. The administrator may receive and act upon complaints from enrollees regarding failure to provide covered services or efforts to obtain payment, other than authorized copayments, for covered services directly from enrollees, but nothing in this chapter empowers the administrator to impose any sanctions under Title 18 RCW or any other professional or facility licensing statute.

(2) The plan shall allow, at least annually, an opportunity for enrollees to transfer their enrollments among participating managed health care systems serving their respective areas. The administrator shall establish a period of at least twenty days in a given year when this opportunity is afforded enrollees, and in those areas served by more than one participating managed health care system the administrator shall endeavor to establish a uniform period for such opportunity. The plan shall allow enrollees to transfer their enrollment to another

participating managed health care system at any time upon a showing of good cause for the transfer.

(3) Prior to negotiating with any managed health care system, the administrator shall determine, on an actuarially sound basis, the reasonable cost of providing the schedule of basic health care services, expressed in terms of upper and lower limits, and recognizing variations in the cost of providing the services through the various systems and in different areas of the state.

(4) In negotiating with managed health care systems for participation in the plan, the administrator shall adopt a uniform procedure that includes at least the following:

(a) The administrator shall issue a request for proposals, including standards regarding the quality of services to be provided; financial integrity of the responding systems; and responsiveness to the unmet health care needs of the local communities or populations that may be served;

(b) The administrator shall then review responsive proposals and may negotiate with respondents to the extent necessary to refine any proposals;

(c) The administrator may then select one or more systems to provide the covered services within a local area; and

(d) The administrator may adopt a policy that gives preference to respondents, such as nonprofit community health clinics, that have a history of providing quality health care services to low-income persons.

(5) The administrator may contract with a managed health care system to provide covered basic health care services to subsidized enrollees, nonsubsidized enrollees, health coverage tax credit eligible enrollees, or any combination thereof.

(6) The administrator may establish procedures and policies to further negotiate and contract with managed health care systems following completion of the request for proposal process in subsection (4) of this section, upon a determination by the administrator that it is necessary to provide access, as defined in the request for proposal documents, to covered basic health care services for enrollees.

(7) The administrator may implement a self-funded or self-insured method of providing insurance coverage to subsidized enrollees, as provided under RCW 41.05.140. Prior to implementing a self-funded or self-insured method, the administrator shall ensure that funding available in the basic health plan self-insurance reserve account is sufficient for the self-funded or self-insured risk assumed, or expected to be assumed, by the administrator. If implementing a self-funded or self-insured method, the administrator may request funds to be moved from the basic health plan trust account or the basic health plan subscription account to the basic health plan self-insurance reserve account established in RCW 41.05.140. [2009 c 568 § 5; 2004 c 192 § 4; 2000 c 79 § 35; 1987 1st ex.s. c 5 § 12.]

**Effective date—2004 c 192:** See note following RCW 70.47.020.

**Effective date—Severability—2000 c 79:** See notes following RCW 48.04.010.

**70.47.110 Enrollment of medical assistance recipients.** The department of social and health services may make payments to the administrator or to participating managed health care systems on behalf of any enrollee who is a recipient of medical care under chapter 74.09 RCW, at the maxi-

imum rate allowable for federal matching purposes under Title XIX of the social security act. Any enrollee on whose behalf the department of social and health services makes such payments may continue as an enrollee, making premium payments based on the enrollee's own income as determined under the sliding scale, after eligibility for coverage under chapter 74.09 RCW has ended, as long as the enrollee remains eligible under this chapter. Nothing in this section affects the right of any person eligible for coverage under chapter 74.09 RCW to receive the services offered to other persons under that chapter but not included in the schedule of basic health care services covered by the plan. The administrator shall seek to determine which enrollees or prospective enrollees may be eligible for medical care under chapter 74.09 RCW and may require these individuals to complete the eligibility determination process under chapter 74.09 RCW prior to enrollment or continued participation in the plan. The administrator and the department of social and health services shall cooperatively adopt procedures to facilitate the transition of plan enrollees and payments on their behalf between the plan and the programs established under chapter 74.09 RCW. [1991 sp.s. c 4 § 3; 1987 1st ex.s. c 5 § 13.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**70.47.115 Enrollment of persons in timber impact**

**areas.** (1) The administrator, when specific funding is provided and where feasible, shall make the basic health plan available in timber impact areas. The administrator shall prioritize making the plan available under this section to the timber impact areas meeting the following criteria, as determined by the employment security department: (a) A lumber and wood products employment location quotient at or above the state average; (b) a direct lumber and wood products job loss of one hundred positions or more; and (c) an annual unemployment rate twenty percent above the state average.

(2) Persons assisted under this section shall meet the requirements of enrollee as defined in \*RCW 70.47.020(4).

(3) For purposes of this section, "timber impact area" means:

(a) A county having a population of less than five hundred thousand, or a city or town located within a county having a population of less than five hundred thousand, and meeting two of the following three criteria, as determined by the employment security department, for the most recent year such data is available: (i) A lumber and wood products employment location quotient at or above the state average; (ii) projected or actual direct lumber and wood products job losses of one hundred positions or more, except counties having a population greater than two hundred thousand but less than five hundred thousand must have direct lumber and wood products job losses of one thousand positions or more; or (iii) an annual unemployment rate twenty percent or more above the state average; or

(b) Additional communities as the economic recovery coordinating board, established in \*\*RCW 43.31.631, designates based on a finding by the board that each designated community is socially and economically integrated with areas that meet the definition of a timber impact area under (a) of this subsection. [1992 c 21 § 7; 1991 c 315 § 22.]

**Reviser's note:** \*(1) RCW 70.47.020 was amended by 2004 c 192 § 1, changing subsection (4) to subsection (6), effective January 1, 2005. RCW 70.47.020 was alphabetized pursuant to RCW 1.08.015(2)(k), changing subsection (6) to subsection (9).

\*\* (2) RCW 43.31.631 was repealed by 1995 c 226 § 33 and 1995 c 269 § 1902, effective July 1, 1995.

**Intent—1991 c 315:** See note following RCW 28B.50.030.

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**70.47.120 Administrator—Contracts for services.** In addition to the powers and duties specified in RCW 70.47.040 and 70.47.060, the administrator has the power to enter into contracts for the following functions and services:

(1) With public or private agencies, to assist the administrator in her or his duties to design or revise the schedule of covered basic health care services, and/or to monitor or evaluate the performance of participating managed health care systems.

(2) With public or private agencies, to provide technical or professional assistance to health care providers, particularly public or private nonprofit organizations and providers serving rural areas, who show serious intent and apparent capability to participate in the plan as managed health care systems.

(3) With public or private agencies, including health care service contractors registered under RCW 48.44.015, and doing business in the state, for marketing and administrative services in connection with participation of managed health care systems, enrollment of enrollees, billing and collection services to the administrator, and other administrative functions ordinarily performed by health care service contractors, other than insurance. Any activities of a health care service contractor pursuant to a contract with the administrator under this section shall be exempt from the provisions and requirements of Title 48 RCW except that persons appointed or authorized to solicit applications for enrollment in the basic health plan shall comply with chapter 48.17 RCW. [1997 c 337 § 7; 1987 1st ex.s. c 5 § 14.]

**70.47.130 Exemption from insurance code.** (1) The activities and operations of the Washington basic health plan under this chapter, including those of managed health care systems to the extent of their participation in the plan, are exempt from the provisions and requirements of Title 48 RCW except:

(a) Benefits as provided in RCW 70.47.070;

(b) Managed health care systems are subject to the provisions of RCW 48.43.022, 48.43.500, 70.02.045, 48.43.505 through 48.43.535, 43.70.235, 48.43.545, 48.43.550, 70.02.110, and 70.02.900;

(c) Persons appointed or authorized to solicit applications for enrollment in the basic health plan, including employees of the health care authority, must comply with chapter 48.17 RCW. For purposes of this subsection (1)(c), "solicit" does not include distributing information and applications for the basic health plan and responding to questions;

(d) Amounts paid to a managed health care system by the basic health plan for participating in the basic health plan and providing health care services for nonsubsidized enrollees in the basic health plan must comply with RCW 48.14.0201; and

(e) Administrative simplification requirements as provided in chapter 298, Laws of 2009.

(2) The purpose of the 1994 amendatory language to this section in chapter 309, Laws of 1994 is to clarify the intent of the legislature that premiums paid on behalf of nonsubsidized enrollees in the basic health plan are subject to the premium and prepayment tax. The legislature does not consider this clarifying language to either raise existing taxes nor to impose a tax that did not exist previously. [2009 c 298 § 4; 2004 c 115 § 2; 2000 c 5 § 21; 1997 c 337 § 8; 1994 c 309 § 6; 1987 1st ex.s. c 5 § 15.]

**Intent—Purpose—2000 c 5:** See RCW 48.43.500.

**Application—Short title—Captions not law—Construction—Severability—Application to contracts—Effective dates—2000 c 5:** See notes following RCW 48.43.500.

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**70.47.140 Reservation of legislative power.** The legislature reserves the right to amend or repeal all or any part of this chapter at any time and there shall be no vested private right of any kind against such amendment or repeal. All the rights, privileges, or immunities conferred by this chapter or any acts done pursuant thereto shall exist subject to the power of the legislature to amend or repeal this chapter at any time. [1987 1st ex.s. c 5 § 2.]

**70.47.150 Confidentiality.** Notwithstanding the provisions of chapter 42.56 RCW, (1) records obtained, reviewed by, or on file with the plan containing information concerning medical treatment of individuals shall be exempt from public inspection and copying; and (2) actuarial formulas, statistics, and assumptions submitted in support of a rate filing by a managed health care system or submitted to the administrator upon his or her request shall be exempt from public inspection and copying in order to preserve trade secrets or prevent unfair competition. [2005 c 274 § 336; 1990 c 54 § 1.]

**Part headings not law—Effective date—2005 c 274:** See RCW 42.56.901 and 42.56.902.

**70.47.160 Right of individuals to receive services—Right of providers, carriers, and facilities to refuse to participate in or pay for services for reason of conscience or religion—Requirements.** (1) The legislature recognizes that every individual possesses a fundamental right to exercise their religious beliefs and conscience. The legislature further recognizes that in developing public policy, conflicting religious and moral beliefs must be respected. Therefore, while recognizing the right of conscientious objection to participating in specific health services, the state shall also recognize the right of individuals enrolled with the basic health plan to receive the full range of services covered under the basic health plan.

(2)(a) No individual health care provider, religiously sponsored health carrier, or health care facility may be required by law or contract in any circumstances to participate in the provision of or payment for a specific service if they object to so doing for reason of conscience or religion. No person may be discriminated against in employment or professional privileges because of such objection.

(b) The provisions of this section are not intended to result in an enrollee being denied timely access to any service included in the basic health plan. Each health carrier shall:

(i) Provide written notice to enrollees, upon enrollment with the plan, listing services that the carrier refuses to cover for reason of conscience or religion;

(ii) Provide written information describing how an enrollee may directly access services in an expeditious manner; and

(iii) Ensure that enrollees refused services under this section have prompt access to the information developed pursuant to (b)(ii) of this subsection.

(c) The administrator shall establish a mechanism or mechanisms to recognize the right to exercise conscience while ensuring enrollees timely access to services and to assure prompt payment to service providers.

(3)(a) No individual or organization with a religious or moral tenet opposed to a specific service may be required to purchase coverage for that service or services if they object to doing so for reason of conscience or religion.

(b) The provisions of this section shall not result in an enrollee being denied coverage of, and timely access to, any service or services excluded from their benefits package as a result of their employer's or another individual's exercise of the conscience clause in (a) of this subsection.

(c) The administrator shall define the process through which health carriers may offer the basic health plan to individuals and organizations identified in (a) and (b) of this subsection in accordance with the provisions of subsection (2)(c) of this section.

(4) Nothing in this section requires the health care authority, health carriers, health care facilities, or health care providers to provide any basic health plan service without payment of appropriate premium share or enrollee cost sharing. [1995 c 266 § 3.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**70.47.170 Annual reporting requirement.** (1) Beginning in November 2012, the health care authority, in coordination with the department of social and health services, shall by November 15th of each year report to the legislature:

(a) The number of basic health plan enrollees who: (i) Upon enrollment or recertification had reported being employed, and beginning with the 2008 report, the month and year they reported being hired; or (ii) upon enrollment or recertification had reported being the dependent of someone who was employed, and beginning with the 2008 report, the month and year they reported the employed person was hired; and (iii) the total cost to the state for these enrollees. The information shall be reported by employer size for employers having more than fifty employees as enrollees or with dependents as enrollees. This information shall be provided for the preceding January and June of that year.

(b) The following aggregated information: (i) The number of employees who are enrollees or with dependents as enrollees by private and governmental employers; (ii) the number of employees who are enrollees or with dependents as enrollees by employer size for employers with fifty or fewer employees, fifty-one to one hundred employees, one hundred one to one thousand employees, one thousand one to

five thousand employees and more than five thousand employees; and (iii) the number of employees who are enrollees or with dependents as enrollees by industry type.

(2) For each aggregated classification, the report will include the number of hours worked and total cost to the state for these enrollees. This information shall be for each quarter of the preceding year. [2009 c 568 § 7; 2006 c 264 § 1.]

**70.47.200 Mental health services—Definition—Coverage required, when.** (1) For the purposes of this section, "mental health services" means medically necessary outpatient and inpatient services provided to treat mental disorders covered by the diagnostic categories listed in the most current version of the diagnostic and statistical manual of mental disorders, published by the American psychiatric association, on July 24, 2005, or such subsequent date as may be determined by the administrator, by rule, consistent with the purposes of chapter 6, Laws of 2005, with the exception of the following categories, codes, and services: (a) Substance related disorders; (b) life transition problems, currently referred to as "V" codes, and diagnostic codes 302 through 302.9 as found in the diagnostic and statistical manual of mental disorders, 4th edition, published by the American psychiatric association; (c) skilled nursing facility services, home health care, residential treatment, and custodial care; and (d) court ordered treatment, unless the Washington basic health plan's or contracted managed health care system's medical director or designee determines the treatment to be medically necessary.

(2)(a) Any schedule of benefits established or renewed by the Washington basic health plan on or after January 1, 2006, shall provide coverage for:

(i) Mental health services. The copayment or coinsurance for mental health services may be no more than the copayment or coinsurance for medical and surgical services otherwise provided under the schedule of benefits. Wellness and preventive services that are provided or reimbursed at a lesser copayment, coinsurance, or other cost sharing than other medical and surgical services are excluded from this comparison; and

(ii) Prescription drugs intended to treat any of the disorders covered in subsection (1) of this section to the same extent, and under the same terms and conditions, as other prescription drugs covered under the schedule of benefits.

(b) Any schedule of benefits established or renewed by the Washington basic health plan on or after January 1, 2008, shall provide coverage for:

(i) Mental health services. The copayment or coinsurance for mental health services may be no more than the copayment or coinsurance for medical and surgical services otherwise provided under the schedule of benefits. Wellness and preventive services that are provided or reimbursed at a lesser copayment, coinsurance, or other cost sharing than other medical and surgical services are excluded from this comparison. If the schedule of benefits imposes a maximum out-of-pocket limit or stop loss, it shall be a single limit or stop loss for medical, surgical, and mental health services; and

(ii) Prescription drugs intended to treat any of the disorders covered in subsection (1) of this section to the same extent, and under the same terms and conditions, as other prescription drugs covered under the schedule of benefits.

(c) Any schedule of benefits established or renewed by the Washington basic health plan on or after July 1, 2010, shall include coverage for:

(i) Mental health services. The copayment or coinsurance for mental health services may be no more than the copayment or coinsurance for medical and surgical services otherwise provided under the schedule of benefits. Wellness and preventive services that are provided or reimbursed at a lesser copayment, coinsurance, or other cost sharing than other medical and surgical services are excluded from this comparison. If the schedule of benefits imposes a maximum out-of-pocket limit or stop loss, it shall be a single limit or stop loss for medical, surgical, and mental health services. If the schedule of benefits imposes any deductible, mental health services shall be included with medical and surgical services for the purpose of meeting the deductible requirement. Treatment limitations or any other financial requirements on coverage for mental health services are only allowed if the same limitations or requirements are imposed on coverage for medical and surgical services; and

(ii) Prescription drugs intended to treat any of the disorders covered in subsection (1) of this section to the same extent, and under the same terms and conditions, as other prescription drugs covered under the schedule of benefits.

(3) In meeting the requirements of subsection (2)(a) and (b) of this section, the Washington basic health plan may not reduce the number of mental health outpatient visits or mental health inpatient days below the level in effect on July 1, 2002.

(4) This section does not prohibit a requirement that mental health services be medically necessary as determined by the medical director or designee, if a comparable requirement is applicable to medical and surgical services.

(5) Nothing in this section shall be construed to prevent the management of mental health services. [2005 c 6 § 6.]

**Findings—Intent—Severability—2005 c 6:** See notes following RCW 41.05.600.

**70.47.201 Mental health services—Rules.** The administrator may adopt rules to implement RCW 70.47.200. [2005 c 6 § 11.]

**Findings—Intent—Severability—2005 c 6:** See notes following RCW 41.05.600.

**70.47.210 Prostate cancer screening.** (1) Any schedule of benefits established or renewed by the Washington basic health plan after December 31, 2006, shall provide coverage for prostate cancer screening, provided that the screening is delivered upon the recommendation of the patient's physician, advanced registered nurse practitioner, or physician assistant.

(2) This section shall not be construed to prevent the application of standard policy provisions applicable to other benefits, such as deductible or copayment provisions. This section does not limit the authority of the health care authority to negotiate rates and contract with specific providers for the delivery of prostate cancer screening services. [2006 c 367 § 7.]

**70.47.220 Increase in reimbursement rates not applicable.** The increases in inpatient and outpatient reimburse-

[Title 70 RCW—page 102]

ment rates included in chapter 74.60 RCW shall not be reflected in hospital payment rates for services provided to basic health enrollees under this chapter. [2010 1st sp.s. c 30 § 15.]

**Effective date—2010 1st sp.s. c 30:** See RCW 74.60.903.

**70.47.900 Short title.** This chapter shall be known and may be cited as the health care access act of 1987. [1987 1st ex.s. c 5 § 1.]

**70.47.901 Severability—1987 1st ex.s. c 5.** If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1987 1st ex.s. c 5 § 26.]

**70.47.902 Construction—Chapter applicable to state registered domestic partnerships—2009 c 521. (Effective January 1, 2014.)** For the purposes of this chapter, the terms spouse, marriage, marital, husband, wife, widow, widower, next of kin, and family shall be interpreted as applying equally to state registered domestic partnerships or individuals in state registered domestic partnerships as well as to marital relationships and married persons, and references to dissolution of marriage shall apply equally to state registered domestic partnerships that have been terminated, dissolved, or invalidated, to the extent that such interpretation does not conflict with federal law. Where necessary to implement chapter 521, Laws of 2009, gender-specific terms such as husband and wife used in any statute, rule, or other law shall be construed to be gender neutral, and applicable to individuals in state registered domestic partnerships. [2009 c 521 § 151.]

**Effective dates—2009 c 521 §§ 5-8, 79, 87-103, 107, 151, 165, 166, 173-175, and 190-192:** See note following RCW 2.10.900.

## Chapter 70.47A RCW

### SMALL EMPLOYER HEALTH INSURANCE PARTNERSHIP PROGRAM

#### Sections

70.47A.010	Finding—Intent.
70.47A.020	Definitions.
70.47A.030	Health insurance partnership established—Administrator duties.
70.47A.040	Applications for premium subsidies.
70.47A.050	Enrollment to remain within appropriation.
70.47A.060	Rules.
70.47A.070	Reports.
70.47A.080	Health insurance partnership account.
70.47A.090	State children's health insurance program—Federal waiver request.
70.47A.100	Health insurance partnership board.
70.47A.110	Health insurance partnership board—Duties.
70.47A.900	Captions not law—2006 c 255.
70.47A.901	Construction—Chapter applicable to state registered domestic partnerships—2009 c 521.

**70.47A.010 Finding—Intent.** (1) The legislature finds that many small employers struggle with the cost of providing employer-sponsored health insurance coverage to their employees, while others are unable to offer employer-sponsored health insurance due to its high cost. Low-wage workers also struggle with the burden of paying their share of the

costs of employer-sponsored health insurance, while others turn down their employer's offer of coverage due to its costs.

(2) The legislature intends, through establishment of a health insurance partnership program, to remove economic barriers to health insurance coverage for low-wage employees of small employers by building on the private sector health benefit plan system and encouraging employer and employee participation in employer-sponsored health benefit plan coverage. [2007 c 260 § 1; 2006 c 255 § 1.]

**70.47A.020 Definitions.** The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Administrator" means the administrator of the Washington state health care authority, established under chapter 41.05 RCW.

(2) "Board" means the health insurance partnership board established in RCW 70.47A.100.

(3) "Eligible partnership participant" means a partnership participant who:

(a) Is a resident of the state of Washington; and

(b) Has family income that does not exceed two hundred percent of the federal poverty level, as determined annually by the federal department of health and human services.

(4) "Health benefit plan" has the same meaning as defined in RCW 48.43.005.

(5) "Participating small employer" means a small employer that has entered into an agreement with the partnership to purchase health benefits through the partnership. To participate in the partnership, an employer must attest to the fact that (a) the employer does not currently offer health insurance to its employees, and (b) at least fifty percent of the employer's employees are low-wage workers.

(6) "Partnership" means the health insurance partnership established in RCW 70.47A.030.

(7) "Partnership participant" means a participating small employer and employees of a participating small employer, and, except to the extent provided otherwise in RCW 70.47A.110(1)(e), a former employee of a participating small employer who chooses to continue receiving coverage through the partnership following separation from employment.

(8) "Small employer" has the same meaning as defined in RCW 48.43.005.

(9) "Subsidy" or "premium subsidy" means payment or reimbursement to an eligible partnership participant toward the purchase of a health benefit plan, and may include a net billing arrangement with insurance carriers or a prospective or retrospective payment for health benefit plan premiums. [2008 c 143 § 1; 2007 c 260 § 2; 2006 c 255 § 2.]

**70.47A.030 Health insurance partnership established—Administrator duties.** (1) To the extent funding is appropriated in the operating budget for this purpose, the health insurance partnership is established. The administrator shall be responsible for the implementation and operation of the health insurance partnership, directly or by contract. The administrator shall offer premium subsidies to eligible partnership participants under RCW 70.47A.040.

(2) Consistent with policies adopted by the board under RCW 70.47A.110, the administrator shall, directly or by contract:

(a) Establish and administer procedures for enrolling small employers in the partnership, including publicizing the existence of the partnership and disseminating information on enrollment, and establishing rules related to minimum participation of employees in small groups purchasing health insurance through the partnership. Opportunities to publicize the program for outreach and education of small employers on the value of insurance shall explore the use of online employer guides. As a condition of participating in the partnership, a small employer must agree to establish a cafeteria plan under section 125 of the federal internal revenue code that will enable employees to use pretax dollars to pay their share of their health benefit plan premium. The partnership shall provide technical assistance to small employers for this purpose;

(b) Establish and administer procedures for health benefit plan enrollment by employees of small employers during open enrollment periods and outside of open enrollment periods upon the occurrence of any qualifying event specified in the federal health insurance portability and accountability act of 1996 or applicable state law. Except to the extent authorized in RCW 70.47A.110(1)(e), neither the employer nor the partnership shall limit an employee's choice of coverage from among the health benefit plans offered through the partnership;

(c) Establish and manage a system of collecting and transmitting to the applicable carriers all premium payments or contributions made by or on behalf of partnership participants, including employer contributions, automatic payroll deductions for partnership participants, premium subsidy payments, and contributions from philanthropies;

(d) Establish and manage a system for determining eligibility for and making premium subsidy payments under chapter 259, Laws of 2007;

(e) Establish a mechanism to apply a surcharge to each health benefit plan purchased through the partnership, which shall be used only to pay for administrative and operational expenses of the partnership. The surcharge must be applied uniformly to all health benefit plans purchased through the partnership. Any surcharge amount may be added to the premium, but shall not be considered part of the small group community rate, and shall be applied only to the coverage purchased through the partnership. Surcharges may not be used to pay any premium assistance payments under this chapter. The surcharge shall reflect administrative and operational expenses remaining after any appropriation provided by the legislature to support administrative or operational expenses of the partnership during the year the surcharge is assessed;

(f) Design a schedule of premium subsidies that is based upon gross family income, giving appropriate consideration to family size and the ages of all family members based on a benchmark health benefit plan designated by the board. The amount of an eligible partnership participant's premium subsidy shall be determined by applying a sliding scale subsidy schedule with the percentage of premium similar to that developed for subsidized basic health plan enrollees under RCW 70.47.060. The subsidy shall be applied to the

employee's premium obligation for his or her health benefit plan, so that employees benefit financially from any employer contribution to the cost of their coverage through the partnership.

(3) The administrator may enter into interdepartmental agreements with the office of the insurance commissioner, the department of social and health services, and any other state agencies necessary to implement this chapter. [2009 c 257 § 1; 2008 c 143 § 2; 2007 c 259 § 58; 2006 c 255 § 3.]

**Severability—Subheadings not law—2007 c 259:** See notes following RCW 41.05.033.

#### **70.47A.040 Applications for premium subsidies.**

Beginning January 1, 2011, subject to sufficient state or federal funding being provided specifically for this purpose, the administrator shall accept applications from eligible partnership participants, on behalf of themselves, their spouses, and their dependent children, to receive premium subsidies through the health insurance partnership. Every effort shall be made to coordinate premium subsidies for dependent children with federal funding available under Title XIX and Title XXI of the federal social security act, consistent with the requirements established in RCW 74.09.470(4) for the employer-sponsored insurance program at the department of social and health services. [2009 c 257 § 2; 2008 c 143 § 3; 2007 c 260 § 6; 2006 c 255 § 4.]

**70.47A.050 Enrollment to remain within appropriation.** Enrollment in the health insurance partnership is not an entitlement and shall not result in expenditures that exceed the amount that has been appropriated for the program in the operating budget. If it appears that continued enrollment will result in expenditures exceeding the appropriated level for a particular fiscal year, the administrator may freeze new enrollment in the program and establish a waiting list of eligible employees who shall receive subsidies only when sufficient funds are available. [2007 c 260 § 12; 2006 c 255 § 5.]

**70.47A.060 Rules.** The administrator shall adopt all rules necessary for the implementation and operation of the health insurance partnership. As part of the rule development process, the administrator shall consult with small employers, carriers, employee organizations, and the office of the insurance commissioner under Title 48 RCW to determine an effective and efficient method for the payment of subsidies under this chapter. All rules shall be adopted in accordance with chapter 34.05 RCW. [2007 c 260 § 13; 2006 c 255 § 6.]

**70.47A.070 Reports.** Upon implementation of the health insurance partnership program, the administrator shall report biennially to the relevant policy and fiscal committees of the legislature on the effectiveness and efficiency of the health insurance partnership program, including enrollment trends, the services and benefits covered under the purchased health benefit plans, consumer satisfaction, and other program operational issues. [2009 c 257 § 3; 2008 c 143 § 4; 2006 c 255 § 7.]

**70.47A.080 Health insurance partnership account.** The health insurance partnership account is hereby estab-

lished in the custody of the state treasurer. Any nongeneral fund—state funds collected for the health insurance partnership shall be deposited in the health insurance partnership account. Moneys in the account shall be used exclusively for the purposes of administering the health insurance partnership, including payments to insurance carriers on behalf of health insurance partnership enrollees. Only the administrator of the health care authority or his or her designee may authorize expenditures from the account. The account is subject to allotment procedures under chapter 43.88 RCW, but an appropriation is not required for expenditures. [2007 c 260 § 14; 2006 c 255 § 8.]

#### **70.47A.090 State children's health insurance program—Federal waiver request.**

The department of social and health services shall submit a request to the federal department of health and human services by October 1, 2006, for a state children's health insurance program section 1115 demonstration waiver. The waiver request shall seek authorization from the federal government to draw down Washington state's unspent state children's health insurance program allotment to finance basic health plan coverage, as provided in chapter 70.47 RCW, for parents of children enrolled in medical assistance or the state children's health insurance program. The waiver also shall seek authorization from the federal government to utilize the resulting state savings to finance expanded basic health plan enrollment, or subsidies provided to low-wage workers through the small employer health insurance partnership program established in this chapter. [2006 c 255 § 9.]

#### **70.47A.100 Health insurance partnership board.**

(1) The health insurance partnership board is hereby established. The governor shall appoint a seven-member health insurance partnership board by June 30, 2007. The board shall be composed of persons with expertise in the health insurance market and benefit design, and be chaired by the administrator.

(2) The governor shall appoint the initial members of the board to staggered terms not to exceed four years. Initial appointments shall be made on or before June 1, 2007. Members appointed thereafter shall serve two-year terms. Members of the board shall be compensated in accordance with RCW 43.03.250 and shall be reimbursed for their travel expenses while on official business in accordance with RCW 43.03.050 and 43.03.060. The board shall prescribe rules for the conduct of its business. Meetings of the board shall be at the call of the chair.

(3) The board may establish technical advisory committees or seek the advice of technical experts when necessary to execute the powers and duties included in this section.

(4) The board and employees of the board shall not be civilly or criminally liable and shall not have any penalty or cause of action of any nature arise against them for any action taken or not taken, including any discretionary decision or failure to make a discretionary decision, when the action or inaction is done in good faith and in the performance of the powers and duties under this chapter. Nothing in this section prohibits legal actions against the board to enforce the board's statutory or contractual duties or obligations. [2007 c 260 § 4.]

**70.47A.110 Health insurance partnership board—Duties.** (1) The health insurance partnership board shall:

(a) Develop policies for enrollment of small employers in the partnership, including minimum participation rules for small employer groups. The small employer shall determine the criteria for eligibility and enrollment in his or her plan and the terms and amounts of the employer's contributions to that plan, consistent with any minimum employer premium contribution level established by the board under (d) of this subsection;

(b) Designate health benefit plans that are currently offered in the small group market that will be offered to participating small employers through the health insurance partnership and those plans that will qualify for premium subsidy payments. Up to five health benefit plans shall be chosen, with multiple deductible and point-of-service cost-sharing options. The health benefit plans shall range from catastrophic to comprehensive coverage, and one health benefit plan shall be a high deductible health plan accompanied by a health savings account. Every effort shall be made to include health benefit plans that include components to maximize the quality of care provided and result in improved health outcomes, such as preventive care, wellness incentives, chronic care management services, and provider network development and payment policies related to quality of care;

(c) Approve a mid-range benefit plan from those selected to be used as a benchmark plan for calculating premium subsidies;

(d) Determine whether there should be a minimum employer premium contribution on behalf of employees, and if so, how much;

(e) Develop policies related to partnership participant enrollment in health benefit plans. The board may focus its initial efforts on access to coverage and affordability of coverage for participating small employers and their employees. To the extent necessary for successful implementation of the partnership, during a start-up phase of partnership operation, the board may:

(i) Limit partnership participant health benefit plan choice; and

(ii) Offer former employees of participating small employers the opportunity to continue coverage after separation from employment to the extent that a former employee is eligible for continuation coverage under 29 U.S.C. Sec. 1161 et seq.

The start-up phase may not exceed two years from the date the partnership begins to offer coverage;

(f) Determine appropriate health benefit plan rating methodologies. The methodologies shall be based on the small group adjusted community rate as defined in Title 48 RCW. The board shall evaluate the impact of applying the small group adjusted community rating methodology to health benefit plans purchased through the partnership on the principle of allowing each partnership participant to choose his or her health benefit plan, and may implement one or more risk adjustment or reinsurance mechanisms to reduce uncertainty for carriers and provide for efficient risk management of high-cost enrollees;

(g) Determine whether the partnership should be designated as the administrator of a participating small employer health benefit plan and undertake the obligations required of

a plan administrator under federal law in order to minimize administrative burdens on participating small employers;

(h) Conduct analyses and provide recommendations as requested by the legislature and the governor, with the assistance of staff from the health care authority and the office of the insurance commissioner.

(2) The board may authorize one or more limited health care service plans for dental care services to be offered by limited health care service contractors under RCW 48.44.035. However, such plan shall not qualify for subsidy payments.

(3) In fulfilling the requirements of this section, the board shall consult with small employers, the office of the insurance commissioner, members in good standing of the American academy of actuaries, health carriers, agents and brokers, and employees of small business. [2008 c 143 § 5; 2007 c 260 § 5.]

**70.47A.900 Captions not law—2006 c 255.** Captions used in this act are not part of the law. [2006 c 255 § 11.]

**70.47A.901 Construction—Chapter applicable to state registered domestic partnerships—2009 c 521.** For the purposes of this chapter, the terms spouse, marriage, marital, husband, wife, widow, widower, next of kin, and family shall be interpreted as applying equally to state registered domestic partnerships or individuals in state registered domestic partnerships as well as to marital relationships and married persons, and references to dissolution of marriage shall apply equally to state registered domestic partnerships that have been terminated, dissolved, or invalidated, to the extent that such interpretation does not conflict with federal law. Where necessary to implement chapter 521, Laws of 2009, gender-specific terms such as husband and wife used in any statute, rule, or other law shall be construed to be gender neutral, and applicable to individuals in state registered domestic partnerships. [2009 c 521 § 152.]

## Chapter 70.48 RCW

### CITY AND COUNTY JAILS ACT

Sections	
70.48.020	Definitions.
70.48.071	Standards for operation—Adoption by units of local government.
70.48.090	Interlocal contracts for jail services—Neighboring states—Responsibility for operation of jail—City or county departments of corrections authorized.
70.48.095	Regional jails.
70.48.100	Jail register, open to the public—Records confidential—Exception.
70.48.130	Emergency or necessary medical and health care for confined persons—Reimbursement procedures—Conditions—Limitations.
70.48.140	Confinement pursuant to authority of the United States.
70.48.160	Post-approval limitation on funding.
70.48.170	Short title.
70.48.180	Authority to locate and operate jail facilities—Counties.
70.48.190	Authority to locate and operate jail facilities—Cities and towns.
70.48.210	Farms, camps, work release programs, and special detention facilities.
70.48.220	Confinement may be wherever jail services are contracted—Defendant contact with defense counsel.
70.48.230	Transportation and temporary confinement of prisoners.
70.48.240	Transfer of felons from jail to state institution—Time limit.
70.48.270	Disposition of proceeds from sale of bonds.

70.48.280	Proceeds of bond sale—Deposits—Administration.
70.48.310	Jail renovation bond retirement fund—Debt-limit general fund bond retirement account.
70.48.320	Bonds legal investments for public funds.
70.48.380	Special detention facilities—Fees for cost of housing.
70.48.390	Fee payable by person being booked.
70.48.400	Sentences to be served in state institutions—When—Sentences that may be served in jail—Financial responsibility of city or county.
70.48.410	Financial responsibility for convicted felons.
70.48.420	Financial responsibility for persons detained on parole hold.
70.48.430	Financial responsibility for work release inmates detained in jail.
70.48.440	Office of financial management to establish reimbursement rate for cities and counties—Rate until June 30, 1985—Re-establishment of rates.
70.48.450	Local jail reporting form—Information to be provided by city or county requesting payment for prisoners from state.
70.48.460	Contracts for incarceration services for prisoners not covered by RCW 70.48.400 through 70.48.450.
70.48.470	Sex, kidnapping offenders—Notices to offenders, law enforcement officials.
70.48.475	Release of offender or defendant subject to a discharge review—Required notifications.
70.48.480	Communicable disease prevention guidelines.
70.48.490	Delivery and administration of medications and medication assistance by nonpractitioner jail personnel—Conditions.
70.48.500	Use of restraints on pregnant women or youth in custody—Allowed in extraordinary circumstances.
70.48.501	Use of restraints on pregnant women or youth in custody—Provision of information to staff, women, or youth of child-bearing age in custody.
70.48.502	Use of restraints on pregnant women or youth in custody—Limited immunity from liability.
70.48.800	Use of restraints on pregnant women or youth in custody—Informational packet.

**70.48.020 Definitions.** As used in this chapter the words and phrases in this section shall have the meanings indicated unless the context clearly requires otherwise.

(1) "Administration" means the direct application of a drug whether by ingestion or inhalation, to the body of an inmate by a practitioner or nonpractitioner jail personnel.

(2) "Correctional facility" means a facility operated by a governing unit primarily designed, staffed, and used for the housing of adult persons serving terms not exceeding one year for the purposes of punishment, correction, and rehabilitation following conviction of a criminal offense.

(3) "Deliver" or "delivery" means the actual, constructive, or attempted transfer from one person to another of medication whether or not there is an agency relationship.

(4) "Detention facility" means a facility operated by a governing unit primarily designed, staffed, and used for the temporary housing of adult persons charged with a criminal offense prior to trial or sentencing and for the housing of adult persons for purposes of punishment and correction after sentencing or persons serving terms not to exceed ninety days.

(5) "Drug" and "legend drug" have the same meanings as provided in RCW 69.41.010.

(6) "Governing unit" means the city and/or county or any combinations of cities and/or counties responsible for the operation, supervision, and maintenance of a jail.

(7) "Health care" means preventive, diagnostic, and rehabilitative services provided by licensed health care professionals and/or facilities; such care to include providing prescription drugs where indicated.

(8) "Holding facility" means a facility operated by a governing unit primarily designed, staffed, and used for the temporary housing of adult persons charged with a criminal offense prior to trial or sentencing and for the temporary

housing of such persons during or after trial and/or sentencing, but in no instance shall the housing exceed thirty days.

(9) "Jail" means any holding, detention, special detention, or correctional facility as defined in this section.

(10) "Labor" means the period of time before a birth during which contractions are of sufficient frequency, intensity, and duration to bring about effacement and progressive dilation of the cervix.

(11) "Major urban" means a county or combination of counties which has a city having a population greater than twenty-six thousand based on the 1978 projections of the office of financial management.

(12) "Medication" means a drug, legend drug, or controlled substance requiring a prescription or an over-the-counter or nonprescription drug.

(13) "Medication assistance" means assistance rendered by nonpractitioner jail personnel to an inmate residing in a jail to facilitate the individual's self-administration of a legend drug or controlled substance or nonprescription medication. "Medication assistance" includes reminding or coaching the individual, handing the medication container to the individual, opening the individual's medication container, using an enabler, or placing the medication in the individual's hand.

(14) "Medium urban" means a county or combination of counties which has a city having a population equal to or greater than ten thousand but less than twenty-six thousand based on the 1978 projections of the office of financial management.

(15) "Nonpractitioner jail personnel" means appropriately trained staff who are authorized to manage, deliver, or administer prescription and nonprescription medication under RCW 70.48.490.

(16) "Office" means the office of financial management.

(17) "Physical restraint" means the use of any bodily force or physical intervention to control an offender or limit an offender's freedom of movement in a way that does not involve a mechanical restraint. Physical restraint does not include momentary periods of minimal physical restriction by direct person-to-person contact, without the aid of mechanical restraint, accomplished with limited force and designed to:

(a) Prevent an offender from completing an act that would result in potential bodily harm to self or others or damage property;

(b) Remove a disruptive offender who is unwilling to leave the area voluntarily; or

(c) Guide an offender from one location to another.

(18) "Postpartum recovery" means (a) the entire period a woman or youth is in the hospital, birthing center, or clinic after giving birth and (b) an additional time period, if any, a treating physician determines is necessary for healing after the woman or youth leaves the hospital, birthing center, or clinic.

(19) "Practitioner" has the same meaning as provided in RCW 69.41.010.

(20) "Restraints" means anything used to control the movement of a person's body or limbs and includes:

(a) Physical restraint; or

(b) Mechanical device including but not limited to: Metal handcuffs, plastic ties, ankle restraints, leather cuffs, other hospital-type restraints, tasers, or batons.

(21) "Rural" means a county or combination of counties which has a city having a population less than ten thousand based on the 1978 projections of the office of financial management.

(22) "Special detention facility" means a minimum security facility operated by a governing unit primarily designed, staffed, and used for the housing of special populations of sentenced persons who do not require the level of security normally provided in detention and correctional facilities including, but not necessarily limited to, persons convicted of offenses under RCW 46.61.502 or 46.61.504.

(23) "Transportation" means the conveying, by any means, of an incarcerated pregnant woman or youth from the correctional facility or any facility covered by this chapter to another location from the moment she leaves the correctional facility or any facility covered by this chapter to the time of arrival at the other location, and includes the escorting of the pregnant incarcerated woman or youth from the correctional facility or facility covered by this chapter to a transport vehicle and from the vehicle to the other location. [2010 c 181 § 4; 2009 c 411 § 3; 1987 c 462 § 6; 1986 c 118 § 1; 1983 c 165 § 34; 1981 c 136 § 25; 1979 ex.s. c 232 § 11; 1977 ex.s. c 316 § 2.]

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

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**70.48.071 Standards for operation—Adoption by units of local government.** All units of local government that own or operate adult correctional facilities shall, individually or collectively, adopt standards for the operation of those facilities no later than January 1, 1988. Cities and towns shall adopt the standards after considering guidelines established collectively by the cities and towns of the state; counties shall adopt the standards after considering guidelines established collectively by the counties of the state. These standards shall be the minimums necessary to meet federal and state constitutional requirements relating to health, safety, and welfare of inmates and staff, and specific state and federal statutory requirements, and to provide for the public's health, safety, and welfare. Local correctional facilities shall be operated in accordance with these standards. [1987 c 462 § 17.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**70.48.090 Interlocal contracts for jail services—Neighboring states—Responsibility for operation of jail—City or county departments of corrections authorized.** (1) Contracts for jail services may be made between a county and a city, and among counties and cities. The contracts shall: Be in writing, give one governing unit the responsibility for the operation of the jails, specify the responsibilities of each governing unit involved, and include the applicable charges for custody of the prisoners as well as the basis for adjustments in the charges. The contracts may be terminated only by ninety days written notice to the governing units involved and to the office. The notice shall state

(2010 Ed.)

the grounds for termination and the specific plans for accommodating the affected jail population.

(2) A city or county may contract for jail services with an adjacent county, or city in an adjacent county, in a neighboring state. A person convicted in the courts of this state and sentenced to a term of confinement in a city or county jail may be transported to a jail in the adjacent county to be confined until: (a) The term of confinement is completed; or (b) that person is returned to be confined in a city or county jail in this state.

(3) The contract authorized in subsection (1) of this section shall be for a minimum term of ten years when state funds are provided to construct or remodel a jail in one governing unit that will be used to house prisoners of other governing units. The contract may not be terminated prior to the end of the term without the office's approval. If the contract is terminated, or upon the expiration and nonrenewal of the contract, the governing unit whose jail facility was built or remodeled to hold the prisoners of other governing units shall pay to the state treasurer the amount set by the \*corrections standards board or office when it authorized disbursement of state funds for the remodeling or construction under \*\*RCW 70.48.120. This amount shall be deposited in the local jail improvement and construction account and shall fairly represent the construction costs incurred in order to house prisoners from other governing units. The office may pay the funds to the governing units which had previously contracted for jail services under rules which the office may adopt. The acceptance of state funds for constructing or remodeling consolidated jail facilities constitutes agreement to the proportionate amounts set by the office. Notice of the proportionate amounts shall be given to all governing units involved.

(4) A city or county primarily responsible for the operation of a jail or jails may create a department of corrections to be in charge of such jail and of all persons confined therein by law, subject to the authority of the governing unit. If such department is created, it shall have charge of jails and persons confined therein. If no such department of corrections is created, the chief law enforcement officer of the city or county primarily responsible for the operation of said jail shall have charge of the jail and of all persons confined therein. [2007 c 13 § 1; 2002 c 125 § 1; 1987 c 462 § 7; 1986 c 118 § 6; 1979 ex.s. c 232 § 15; 1977 ex.s. c 316 § 9.]

**Reviser's note:** \*(1) The corrections standards board no longer exists. See 1987 c 462 § 21.

\*\* (2) RCW 70.48.120 was repealed by 1991 sp.s. c 13 § 122, effective July 1, 1991.

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**70.48.095 Regional jails.** (1) Regional jails may be created and operated between two or more local governments, or one or more local governments and the state, and may be governed by representatives from multiple jurisdictions.

(2) A jurisdiction that confines persons prior to conviction in a regional jail in another county is responsible for providing private telephone, video-conferencing, or in-person contact between the defendant and his or her public defense counsel.

(3) The creation and operation of any regional jail must comply with the interlocal cooperation act described in chapter 39.34 RCW.

(4) Nothing in this section prevents counties and cities from contracting for jail services as described in RCW 70.48.090. [2002 c 124 § 1.]

**70.48.100 Jail register, open to the public—Records confidential—Exception.** (1) A department of corrections or chief law enforcement officer responsible for the operation of a jail shall maintain a jail register, open to the public, into which shall be entered in a timely basis:

(a) The name of each person confined in the jail with the hour, date and cause of the confinement; and

(b) The hour, date and manner of each person's discharge.

(2) Except as provided in subsection (3) of this section the records of a person confined in jail shall be held in confidence and shall be made available only to criminal justice agencies as defined in RCW 43.43.705; or

(a) For use in inspections made pursuant to \*RCW 70.48.070;

(b) In jail certification proceedings;

(c) For use in court proceedings upon the written order of the court in which the proceedings are conducted; or

(d) Upon the written permission of the person.

(3)(a) Law enforcement may use booking photographs of a person arrested or confined in a local or state penal institution to assist them in conducting investigations of crimes.

(b) Photographs and information concerning a person convicted of a sex offense as defined in RCW 9.94A.030 may be disseminated as provided in RCW 4.24.550, 9A.44.130, 9A.44.140, 10.01.200, 43.43.540, 43.43.745, 46.20.187, 70.48.470, 72.09.330, and \*\*section 401, chapter 3, Laws of 1990. [1990 c 3 § 130; 1977 ex.s. c 316 § 10.]

**Reviser's note:** \*(1) RCW 70.48.070 was repealed by 1987 c 462 § 23, effective January 1, 1988.

\*\* (2) 1990 c 3 § 401 appears as a note following RCW 9A.44.130.

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**70.48.130 Emergency or necessary medical and health care for confined persons—Reimbursement procedures—Conditions—Limitations.** It is the intent of the legislature that all jail inmates receive appropriate and cost-effective emergency and necessary medical care. Governing units, the department of social and health services, and medical care providers shall cooperate to achieve the best rates consistent with adequate care.

Payment for emergency or necessary health care shall be by the governing unit, except that the department of social and health services shall directly reimburse the provider pursuant to chapter 74.09 RCW, in accordance with the rates and benefits established by the department, if the confined person is eligible under the department's medical care programs as authorized under chapter 74.09 RCW. After payment by the department, the financial responsibility for any remaining balance, including unpaid client liabilities that are a condition of eligibility or participation under chapter 74.09 RCW, shall be borne by the medical care provider and the governing unit as may be mutually agreed upon between the medical care provider and the governing unit. In the absence of mutual agreement between the medical care provider and the governing unit, the financial responsibility for any remaining balance shall be borne equally between the medical care pro-

vider and the governing unit. Total payments from all sources to providers for care rendered to confined persons eligible under chapter 74.09 RCW shall not exceed the amounts that would be paid by the department for similar services provided under Title XIX medicaid, unless additional resources are obtained from the confined person.

As part of the screening process upon booking or preparation of an inmate into jail, general information concerning the inmate's ability to pay for medical care shall be identified, including insurance or other medical benefits or resources to which an inmate is entitled. This information shall be made available to the department, the governing unit, and any provider of health care services.

The governing unit or provider may obtain reimbursement from the confined person for the cost of health care services not provided under chapter 74.09 RCW, including reimbursement from any insurance program or from other medical benefit programs available to the confined person. Nothing in this chapter precludes civil or criminal remedies to recover the costs of medical care provided jail inmates or paid for on behalf of inmates by the governing unit. As part of a judgment and sentence, the courts are authorized to order defendants to repay all or part of the medical costs incurred by the governing unit or provider during confinement.

To the extent that a confined person is unable to be financially responsible for medical care and is ineligible for the department's medical care programs under chapter 74.09 RCW, or for coverage from private sources, and in the absence of an interlocal agreement or other contracts to the contrary, the governing unit may obtain reimbursement for the cost of such medical services from the unit of government whose law enforcement officers initiated the charges on which the person is being held in the jail: PROVIDED, That reimbursement for the cost of such services shall be by the state for state prisoners being held in a jail who are accused of either escaping from a state facility or of committing an offense in a state facility.

There shall be no right of reimbursement to the governing unit from units of government whose law enforcement officers initiated the charges for which a person is being held in the jail for care provided after the charges are disposed of by sentencing or otherwise, unless by intergovernmental agreement pursuant to chapter 39.34 RCW.

Under no circumstance shall necessary medical services be denied or delayed because of disputes over the cost of medical care or a determination of financial responsibility for payment of the costs of medical care provided to confined persons.

Nothing in this section shall limit any existing right of any party, governing unit, or unit of government against the person receiving the care for the cost of the care provided. [1993 c 409 § 1; (2007 c 259 § 66 expired June 30, 2009); 1986 c 118 § 9; 1977 ex.s. c 316 § 13.]

**Expiration date—2007 c 259 § 66:** "Section 66 of this act expires June 30, 2009." [2007 c 259 § 76.]

**Severability—Subheadings not law—2007 c 259:** See notes following RCW 41.05.033.

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**70.48.140 Confinement pursuant to authority of the United States.** A person having charge of a jail shall receive

and keep in such jail, when room is available, all persons confined or committed thereto by process or order issued under authority of the United States until discharged according to law, the same as if such persons had been committed under process issued under authority of the state, if provision is made by the United States for the support of such persons confined, and for any additional personnel required. [1977 ex.s. c 316 § 14.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**70.48.160 Post-approval limitation on funding.** Having received approval pursuant to \*RCW 70.48.060, a governing unit shall not be eligible for further funding for physical plant standards for a period of ten years from the date of the completion of the approved project. A jail shall not be closed for noncompliance to physical plant standards within this same ten year period. This section does not apply if:

(1) The state elects to fund phased components of a jail project for which a governing unit has applied. In that instance, initially funded components do not constitute full funding within the meaning of \*RCW 70.48.060(1) and \*\*70.48.070(2) and the state may fund subsequent phases of the jail project;

(2) There is destruction of the facility because of an act of God or the result of a negligent and/or criminal act. [1987 c 462 § 9; 1986 c 118 § 10; 1981 c 276 § 3; 1977 ex.s. c 316 § 16.]

**Reviser's note:** \*(1) RCW 70.48.060 was repealed by 1987 c 462 § 23, effective January 1, 1988.

\*\*\*(2) RCW 70.48.070 was repealed by 1987 c 462 § 23, effective January 1, 1988.

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**70.48.170 Short title.** This chapter shall be known and may be cited as the City and County Jails Act. [1977 ex.s. c 316 § 17.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**70.48.180 Authority to locate and operate jail facilities—Counties.** Counties may acquire, build, operate, and maintain holding, detention, special detention, and correctional facilities as defined in RCW 70.48.020 at any place designated by the county legislative authority within the territorial limits of the county. The facilities shall comply with chapter 70.48 RCW and the rules adopted thereunder. [1983 c 165 § 37; 1979 ex.s. c 232 § 16.]

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

**70.48.190 Authority to locate and operate jail facilities—Cities and towns.** Cities and towns may acquire, build, operate, and maintain holding, detention, special detention, and correctional facilities as defined in RCW 70.48.020 at any place within the territorial limits of the county in which the city or town is situated, as may be selected by the legislative authority of the municipality. The facilities comply with the provisions of chapter 70.48 RCW and rules adopted thereunder. [1983 c 165 § 38; 1977 ex.s. c 316 § 19; 1965 c 7 § 35.21.330. Prior: 1917 c 103 § 1; RRS § 10204. Formerly RCW 35.21.330.]

(2010 Ed.)

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

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**70.48.210 Farms, camps, work release programs, and special detention facilities.** (1) All cities and counties are authorized to establish and maintain farms, camps, and work release programs and facilities, as well as special detention facilities. The facilities shall meet the requirements of chapter 70.48 RCW and any rules adopted thereunder.

(2) Farms and camps may be established either inside or outside the territorial limits of a city or county. A sentence of confinement in a city or county jail may include placement in a farm or camp. Unless directed otherwise by court order, the chief law enforcement officer or department of corrections, may transfer the prisoner to a farm or camp. The sentencing court, chief law enforcement officer, or department of corrections may not transfer to a farm or camp a greater number of prisoners than can be furnished with constructive employment and can be reasonably accommodated.

(3) The city or county may establish a city or county work release program and housing facilities for the prisoners in the program. In such regard, factors such as employment conditions and the condition of jail facilities should be considered. When a work release program is established the following provisions apply:

(a) A person convicted of a felony and placed in a city or county jail is eligible for the work release program. A person sentenced to a city or county jail is eligible for the work release program. The program may be used as a condition of probation for a criminal offense. Good conduct is a condition of participation in the program.

(b) The court may permit a person who is currently, regularly employed to continue his or her employment. The chief law enforcement officer or department of corrections shall make all necessary arrangements if possible. The court may authorize the person to seek suitable employment and may authorize the chief law enforcement officer or department of corrections to make reasonable efforts to find suitable employment for the person. A person participating in the work release program may not work in an establishment where there is a labor dispute.

(c) The work release prisoner shall be confined in a work release facility or jail unless authorized to be absent from the facility for program-related purposes, unless the court directs otherwise.

(d) Each work release prisoner's earnings may be collected by the chief law enforcement officer or a designee. The chief law enforcement officer or a designee may deduct from the earnings moneys for the payments for the prisoner's board, personal expenses inside and outside the jail, a share of the administrative expenses of this section, court-ordered victim compensation, and court-ordered restitution. Support payments for the prisoner's dependents, if any, shall be made as directed by the court. With the prisoner's consent, the remaining funds may be used to pay the prisoner's preexisting debts. Any remaining balance shall be returned to the prisoner.

(e) The prisoner's sentence may be reduced by earned early release time in accordance with procedures that shall be developed and promulgated by the work release facility. The

earned early release time shall be for good behavior and good performance as determined by the facility. The facility shall not credit the offender with earned early release credits in advance of the offender actually earning the credits. In the case of an offender convicted of a serious violent offense or a sex offense that is a class A felony committed on or after July 1, 1990, the aggregate earned early release time may not exceed fifteen percent of the sentence. In no other case may the aggregate earned early release time exceed one-third of the total sentence.

(f) If the work release prisoner violates the conditions of custody or employment, the prisoner shall be returned to the sentencing court. The sentencing court may require the prisoner to spend the remainder of the sentence in actual confinement and may cancel any earned reduction of the sentence.

(4) A special detention facility may be operated by a noncorrectional agency or by noncorrectional personnel by contract with the governing unit. The employees shall meet the standards of training and education established by the criminal justice training commission as authorized by RCW 43.101.080. The special detention facility may use combinations of features including, but not limited to, low-security or honor prisoner status, work farm, work release, community review, prisoner facility maintenance and food preparation, training programs, or alcohol or drug rehabilitation programs. Special detention facilities may establish a reasonable fee schedule to cover the cost of facility housing and programs. The schedule shall be on a sliding basis that reflects the person's ability to pay. [1990 c 3 § 203; 1989 c 248 § 3; 1985 c 298 § 1; 1983 c 165 § 39; 1979 ex.s. c 232 § 17.]

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

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**70.48.220 Confinement may be wherever jail services are contracted—Defendant contact with defense counsel.** A person confined for an offense punishable by imprisonment in a city or county jail may be confined in the jail of any city or county contracting with the prosecuting city or county for jail services.

A jurisdiction that confines persons prior to conviction in a jail in another county is responsible for providing private telephone, video-conferencing, or in-person contact between the defendant and his or her public defense counsel. [2002 c 125 § 2; 1979 ex.s. c 232 § 19.]

**70.48.230 Transportation and temporary confinement of prisoners.** The jurisdiction having immediate authority over a prisoner is responsible for the transportation expenses. The transporting officer shall have custody of the prisoner within any Washington county while being transported. Any jail within the state may be used for the temporary confinement of the prisoner with the only charge being for the reasonable cost of board. [1979 ex.s. c 232 § 18.]

**70.48.240 Transfer of felons from jail to state institution—Time limit.** A person imprisoned in a jail and sentenced to a state institution for a felony conviction shall be transferred to a state institution before the forty-first day from the date of sentencing.

[Title 70 RCW—page 110]

This section does not apply to persons sentenced for a felony who are held in the facility as a condition of probation or who are specifically sentenced to confinement in the facility.

Payment for persons sentenced to state institutions and remaining in a jail from the eighth through the fortieth days following sentencing shall be in accordance with the procedure prescribed under this chapter. [1984 c 235 § 8; 1979 ex.s. c 232 § 20.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**70.48.270 Disposition of proceeds from sale of bonds.** The proceeds from the sale of bonds authorized by this chapter shall be deposited in the local jail improvement and construction account hereby created in the general fund and shall be used exclusively for the purpose specified in this chapter and for payment of the expenses incurred in the issuance and sale of the bonds. [1979 ex.s. c 232 § 3.]

**70.48.280 Proceeds of bond sale—Deposits—Administration.** The proceeds from the sale of the bonds deposited in the local jail improvement and construction account of the general fund under the terms of this chapter shall be administered by the office subject to legislative appropriation. [1987 c 462 § 10; 1986 c 118 § 13; 1979 ex.s. c 232 § 4.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**70.48.310 Jail renovation bond retirement fund—Debt-limit general fund bond retirement account.** The jail renovation bond retirement fund is hereby created in the state treasury. This fund shall be used for the payment of interest on and retirement of the bonds and notes authorized by this chapter. The state finance committee shall, on or before June 30th of each year, certify to the state treasurer the amount required in the next succeeding twelve months for the payment of the principal of and the interest coming due on the bonds. Not less than thirty days prior to the date on which any interest or principal and interest payment is due, the state treasurer shall withdraw from any general state revenues received in the state treasury and deposit in the jail renovation bond retirement fund an amount equal to the amount certified by the state finance committee to be due on the payment date. The owner and holder of each of the bonds or the trustee for any of the bonds may by mandamus or other appropriate proceeding require the transfer and payment of funds as directed in this section.

If a debt-limit general fund bond retirement account is created in the state treasury by chapter 456, Laws of 1997 and becomes effective prior to the issuance of any of the bonds authorized by this chapter, the debt-limit general fund bond retirement account shall be used for the purposes of this chapter in lieu of the jail renovation bond retirement fund. [1997 c 456 § 26; 1979 ex.s. c 232 § 7.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**70.48.320 Bonds legal investments for public funds.** The bonds authorized in this chapter shall be a legal investment for all state funds or for funds under state control and for all funds of any other public body. [1979 ex.s. c 232 § 8.]

(2010 Ed.)

**70.48.380 Special detention facilities—Fees for cost of housing.** The legislative authority of a county or city that establishes a special detention facility as defined in RCW 70.48.020 for persons convicted of violating RCW 46.61.502 or 46.61.504 may establish a reasonable fee schedule to cover the cost of housing in the facility. The schedule shall be on a sliding basis that reflects the person's ability to pay. [1983 c 165 § 36.]

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

**70.48.390 Fee payable by person being booked.** A governing unit may require that each person who is booked at a city, county, or regional jail pay a fee based on the jail's actual booking costs or one hundred dollars, whichever is less, to the sheriff's department of the county or police chief of the city in which the jail is located. The fee is payable immediately from any money then possessed by the person being booked, or any money deposited with the sheriff's department or city jail administration on the person's behalf. If the person has no funds at the time of booking or during the period of incarceration, the sheriff or police chief may notify the court in the county or city where the charges related to the booking are pending, and may request the assessment of the fee. Unless the person is held on other criminal matters, if the person is not charged, is acquitted, or if all charges are dismissed, the sheriff or police chief shall return the fee to the person at the last known address listed in the booking records. [2003 c 99 § 1; 1999 c 325 § 3.]

**70.48.400 Sentences to be served in state institutions—When—Sentences that may be served in jail—Financial responsibility of city or county.** Persons sentenced to felony terms or a combination of terms of more than three hundred sixty-five days of incarceration shall be committed to state institutions under the authority of the department of corrections. Persons serving sentences of three hundred sixty-five consecutive days or less may be sentenced to a jail as defined in RCW 70.48.020. All persons convicted of felonies or misdemeanors and sentenced to jail shall be the financial responsibility of the city or county. [1987 c 462 § 11; 1984 c 235 § 1.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**70.48.410 Financial responsibility for convicted felons.** Persons convicted of a felony as defined by chapter 9A.20 RCW and committed to the care and custody of the department of corrections shall be the financial responsibility of the department of corrections not later than the eighth day, excluding weekends and holidays, following sentencing for the felony and notification that the prisoner is available for movement to a state correctional institution. However, if good cause is shown, a superior court judge may order the prisoner detained in the jail beyond the eight-day period for an additional period not to exceed ten days. If a superior court orders a convicted felon to be detained beyond the eighth day following sentencing, the county or city shall retain financial responsibility for that ten-day period or portion thereof ordered by the court. [1984 c 235 § 2.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**70.48.420 Financial responsibility for persons detained on parole hold.** A person detained in jail solely by reason of a parole hold is the financial responsibility of the city or the county detaining the person until the sixteenth day, at which time the person shall become the financial responsibility of the department of corrections. Persons who are detained in a jail on a parole hold and for whom the prosecutor has filed a felony charge remain the responsibility of the city or county. [1984 c 235 § 3.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**70.48.430 Financial responsibility for work release inmates detained in jail.** Inmates, as defined by \*RCW 72.09.020, who reside in a work release facility and who are detained in a city or county jail are the financial responsibility of the department of corrections. [1984 c 235 § 4.]

**\*Reviser's note:** RCW 72.09.020 was repealed by 1995 1st sp.s. c 19 § 36.

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**70.48.440 Office of financial management to establish reimbursement rate for cities and counties—Rate until June 30, 1985—Re-establishment of rates.** The office of financial management shall establish a uniform equitable rate for reimbursing cities and counties for the care of sentenced felons who are the financial responsibility of the department of corrections and are detained or incarcerated in a city or county jail.

Until June 30, 1985, the rate for the care of sentenced felons who are the financial responsibility of the department of corrections shall be ten dollars per day. Cost of extraordinary emergency medical care incurred by prisoners who are the financial responsibility of the department of corrections under this chapter shall be reimbursed. The department of corrections shall be advised as far in advance as practicable by competent medical authority of the nature and course of treatment required to ensure the most efficient use of state resources to address the medical needs of the offender. In the event emergency medical care is needed, the department of corrections shall be advised as soon as practicable after the offender is treated.

Prior to June 30, 1985, the office of financial management shall meet with the \*corrections standards board to establish criteria to determine equitable rates regarding variable costs for sentenced felons who are the financial responsibility of the department of corrections after June 30, 1985. The office of financial management shall re-establish these rates each even-numbered year beginning in 1986. [1984 c 235 § 5.]

**\*Reviser's note:** The corrections standards board no longer exists. See 1987 c 462 § 21.

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**70.48.450 Local jail reporting form—Information to be provided by city or county requesting payment for prisoners from state.** The department of corrections is responsible for developing a reporting form for the local jails. The form shall require sufficient information to identify the person, type of state responsibility, method of notification for availability for movement, and the number of days for which the state is financially responsible. The information shall be

provided by the city or county requesting payment for prisoners who are the financial responsibility of the department of corrections. [1984 c 235 § 6.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**70.48.460 Contracts for incarceration services for prisoners not covered by RCW 70.48.400 through 70.48.450.** Nothing in RCW 70.48.400 through 70.48.450 precludes the establishment of mutually agreeable contracts between the department of corrections and counties for incarceration services of prisoners not covered by RCW 70.48.400 through 70.48.450. [1984 c 235 § 7.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**70.48.470 Sex, kidnapping offenders—Notices to offenders, law enforcement officials.** (1) A person having charge of a jail shall notify in writing any confined person who is in the custody of the jail for a conviction of a sex offense or a kidnapping offense as defined in RCW 9A.44.128 of the registration requirements of RCW 9A.44.130 at the time of the inmate's release from confinement, and shall obtain written acknowledgment of such notification. The person shall also obtain from the inmate the county of the inmate's residence upon release from jail and, where applicable, the city.

(2) When a sex offender or kidnapping offender under local government jurisdiction will reside in a county other than the county of conviction upon discharge or release, the chief law enforcement officer of the jail or his or her designee shall give notice of the inmate's discharge or release to the sheriff of the county and, where applicable, to the police chief of the city where the offender will reside. [2010 c 267 § 14; 2000 c 91 § 4. Prior: 1997 c 364 § 3; 1997 c 113 § 7; 1996 c 215 § 2; 1990 c 3 § 406.]

**Reviser's note:** The definitions in RCW 9A.44.128 apply to this section.

**Application—2010 c 267:** See note following RCW 9A.44.128.

**Findings—1997 c 113:** See note following RCW 4.24.550.

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**70.48.475 Release of offender or defendant subject to a discharge review—Required notifications.** (1) A person having charge of a jail, or that person's designee, shall notify the \*county designated mental health professional or the designated chemical dependency specialist seventy-two hours prior to the release to the community of an offender or defendant who was subject to a discharge review under RCW 71.05.232. If the person having charge of the jail does not receive seventy-two hours notice of the release, the notification to the \*county designated mental health professional or the designated chemical dependency specialist shall be made as soon as reasonably possible, but not later than the actual release to the community of the defendant or offender.

(2) When a person having charge of a jail, or that person's designee, releases an offender or defendant who was the subject of a discharge review under RCW 71.05.232, the person having charge of a jail, or that person's designee, shall notify the state hospital from which the offender or defendant was released. [2004 c 166 § 14.]

**\*Reviser's note:** The term "county designated mental health professional" as defined in RCW 71.05.020 was changed to "designated mental health professional" by 2005 c 504 § 104.

**Severability—Effective dates—2004 c 166:** See notes following RCW 71.05.040.

**70.48.480 Communicable disease prevention guidelines.** (1) Local jail administrators shall develop and implement policies and procedures for the uniform distribution of communicable disease prevention guidelines to all jail staff who, in the course of their regularly assigned job responsibilities, may come within close physical proximity to offenders or detainees with communicable diseases.

(2) The guidelines shall identify special precautions necessary to reduce the risk of transmission of communicable diseases.

(3) For the purposes of this section, "communicable disease" means a sexually transmitted disease, as defined in RCW 70.24.017, diseases caused by bloodborne pathogens, or any other illness caused by an infectious agent that can be transmitted from one person, animal, or object to another person by direct or indirect means including transmission via an intermediate host or vector, food, water, or air. [1997 c 345 § 5.]

**Findings—Intent—1997 c 345:** See note following RCW 70.24.105.

**70.48.490 Delivery and administration of medications and medication assistance by nonpractitioner jail personnel—Conditions.** Jails may provide for the delivery and administration of medications and medication assistance for inmates in their custody by nonpractitioner jail personnel, subject to the following conditions:

(1) The jail administrator or his or her designee, or chief law enforcement executive or his or her designee, shall enter into an agreement between the jail and a licensed pharmacist, pharmacy, or other licensed practitioner or health care facility to ensure access to pharmaceutical services on a twenty-four hour a day basis, including consultation and dispensing services.

(2) The jail administrator or chief law enforcement executive shall adopt policies which address the designation and training of nonpractitioner jail personnel who may deliver and administer medications or provide medication assistance to inmates as provided in this chapter. The policies must address the administration of prescriptions from licensed practitioners prescribing within the scope of their prescriptive authority, the identification of medication to be delivered and administered or administered through medication assistance, the means of securing medication with attention to the safeguarding of legend drugs, and the means of maintaining a record of the delivery, administration, self-administration, or medication assistance of all medication. The jail administrator or chief law enforcement executive shall designate a physician licensed under chapter 18.71 RCW, or a registered nurse or advanced registered nurse practitioner licensed under chapter 18.79 RCW, to train the designated nonpractitioner jail personnel in proper medication procedures and monitor their compliance with the procedures.

(3) The jail administrator or chief law enforcement executive shall consult with one or more pharmacists, and one or more licensed physicians or nurses, in the course of develop-

ing the policies described in subsections (1) and (2) of this section. A jail shall provide the Washington association of sheriffs and police chiefs with a copy of the jail's current policies regarding medication management.

(4) The practitioner or nonpractitioner jail personnel delivering, administering, or providing medication assistance is in receipt of (a) for prescription drugs, a written, current, and unexpired prescription, and instructions for administration from a licensed practitioner prescribing within the scope of his or her prescriptive authority for administration of the prescription drug; (b) for nonprescription drugs, a written, current, and unexpired instruction from a licensed practitioner regarding the administration of the nonprescription drug; and (c) for minors under the age of eighteen, a written, current consent from the minor's parent, legal guardian, or custodian consenting to the administration of the medication.

(5) Nonpractitioner jail personnel may help in the preparation of legend drugs or controlled substances for self-administration where a practitioner has determined and communicated orally or by written direction that the medication preparation assistance is necessary and appropriate. Medication assistance shall not include assistance with intravenous medications or injectable medications.

(6) Nonpractitioner jail personnel shall not include inmates.

(7) All medication is delivered and administered and all medication assistance is provided by a practitioner or nonpractitioner jail personnel pursuant to the policies adopted in this section, and in compliance with the prescription of a practitioner prescribing within the scope of his or her prescriptive authority, or the written instructions as provided in this section.

(8) The jail administrator or the chief law enforcement executive shall ensure that all nonpractitioner jail personnel authorized to deliver, administer, and provide medication assistance are trained pursuant to the policies adopted in this section prior to being permitted to deliver, administer, or provide medication assistance to an inmate. [2009 c 411 § 4.]

**70.48.500 Use of restraints on pregnant women or youth in custody—Allowed in extraordinary circumstances.** (1) Except in extraordinary circumstances no restraints of any kind may be used on any pregnant woman or youth incarcerated in a correctional facility or any facility covered by this chapter during transportation to and from visits to medical providers and court proceedings during the third trimester of her pregnancy, or during postpartum recovery. For purposes of this section, "extraordinary circumstances" exist where a corrections officer or employee of the correctional facility or any facility covered by this chapter makes an individualized determination that restraints are necessary to prevent an incarcerated pregnant woman or youth from escaping, or from injuring herself, medical or correctional personnel, or others. In the event the corrections officer or employee of the correctional facility or any facility covered by this chapter determines that extraordinary circumstances exist and restraints are used, the corrections officer or employee must fully document in writing the reasons that he or she determined such extraordinary circumstances existed such that restraints were used. As part of this documentation, the corrections officer or employee must also include the

kind of restraints used and the reasons those restraints were considered the least restrictive available and the most reasonable under the circumstances.

(2) While the pregnant woman or youth is in labor or in childbirth no restraints of any kind may be used. Nothing in this section affects the use of hospital restraints requested for the medical safety of a patient by treating physicians licensed under Title 18 RCW.

(3) Anytime restraints are permitted to be used on a pregnant woman or youth, the restraints must be the least restrictive available and the most reasonable under the circumstances, but in no case shall leg irons or waist chains be used on any woman or youth known to be pregnant.

(4) No correctional personnel or employee of the correctional facility or any facility covered by this chapter shall be present in the room during the pregnant woman's or youth's labor or childbirth, unless specifically requested by medical personnel. If the employee's presence is requested by medical personnel, the employee should be female, if practicable.

(5) If the doctor, nurse, or other health professional treating the pregnant woman or youth requests that restraints not be used, the corrections officer or employee accompanying the pregnant woman or youth shall immediately remove all restraints. [2010 c 181 § 5.]

**70.48.501 Use of restraints on pregnant women or youth in custody—Provision of information to staff, women, or youth of childbearing age in custody.** (1) The jail administrator or his or her designee or chief law enforcement executive or his or her designee shall provide notice of the requirements of chapter 181, Laws of 2010 to the appropriate staff at a correctional facility or a facility covered by this chapter. Appropriate staff shall include all medical staff and staff who are involved in the transportation of pregnant women and youth as well as such other staff deemed appropriate.

(2) The jail administrator or his or her designee or chief law enforcement executive or his or her designee shall cause the requirements of chapter 181, Laws of 2010 to be provided to all women and youth of childbearing age at intake. In addition, the jail administrator or his or her designee or chief law enforcement executive or his or her designee shall cause a notice containing the requirements of chapter 181, Laws of 2010 to be posted in locations in which medical care is provided within the facilities. [2010 c 181 § 6.]

**70.48.502 Use of restraints on pregnant women or youth in custody—Limited immunity from liability.** No civil liability may be imposed by any court on the county or its jail officers or employees under RCW 70.48.500 and 70.48.501 except upon proof of gross negligence. [2010 c 181 § 14.]

**70.48.800 Use of restraints on pregnant women or youth in custody—Informational packet.** The Washington association of sheriffs and police chiefs, the department of corrections, the department of social and health services, juvenile rehabilitation administration, and the criminal justice training commission shall jointly develop an informational packet on the requirements of chapter 181, Laws of

2010. The packet shall be ready for distribution no later than September 1, 2010. [2010 c 181 § 13.]

### Chapter 70.48A RCW

#### JAIL IMPROVEMENT AND CONSTRUCTION— BOND ISSUE

##### Sections

70.48A.010	Legislative declaration.
70.48A.020	Bond issue authorized—Appropriations.
70.48A.030	Proceeds from bond sale—Deposit, use.
70.48A.040	Proceeds from bond sale—Administration.
70.48A.050	Bonds—Minimum sale price.
70.48A.060	Bonds—State's full faith and credit pledged.
70.48A.070	Bonds—Payment of interest, retirement.
70.48A.080	Bonds legal investment for public funds.
70.48A.090	Legislative intent.
70.48A.900	Severability—1981 c 131.

**70.48A.010 Legislative declaration.** In order for the state to provide safe and humane detention and correctional facilities, its long range development goals must include the renovation of jail buildings and facilities. [1981 c 131 § 1.]

**70.48A.020 Bond issue authorized—Appropriations.** For the purpose of providing funds for the planning, acquisition, construction, and improvement of jail buildings and necessary supporting facilities within the state, and the office of financial management's operational costs related to the review of physical plant funding applications, award of grants, and construction monitoring, the state finance committee is authorized to issue general obligation bonds of the state of Washington in the sum of one hundred forty-four million three hundred thousand dollars, or so much thereof as may be required, to finance the improvements defined in RCW 70.48A.010 through 70.48A.080 and all costs incidental thereto, including administration, but not including acquisition or preparation of sites. Appropriations for administration shall be determined by the legislature. No bonds authorized by this section may be offered for sale without prior legislative appropriation of the proceeds of the bonds to be sold: PROVIDED, That the reappropriation of previously authorized bond moneys and this new appropriation shall constitute full funding of each approved project within the meaning of \*RCW 70.48.070 and 70.48.110. [1987 c 462 § 13; 1986 c 118 § 16; 1983 1st ex.s. c 63 § 1; 1981 c 131 § 2.]

\*Reviser's note: RCW 70.48.070 and 70.48.110 were repealed by 1987 c 462 § 23, effective January 1, 1988.

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**70.48A.030 Proceeds from bond sale—Deposit, use.** The proceeds from the sale of bonds authorized by RCW 70.48A.010 through 70.48A.080 shall be deposited in the local jail improvement and construction account in the general fund and shall be used exclusively for the purpose specified in RCW 70.48A.010 through 70.48A.080 and for payment of the expenses incurred in the issuance and sale of the bonds. [1981 c 131 § 3.]

**70.48A.040 Proceeds from bond sale—Administration.** The proceeds from the sale of the bonds deposited in the local jail improvement and construction account in the general fund under the terms of RCW 70.48A.010 through

70.48A.080 shall be administered by the office of financial management subject to legislative appropriation. [1987 c 462 § 14; 1986 c 118 § 17; 1981 c 131 § 4.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**70.48A.050 Bonds—Minimum sale price.** None of the bonds authorized in RCW 70.48A.010 through 70.48A.080 may be sold for less than their par value. [1981 c 131 § 5.]

**70.48A.060 Bonds—State's full faith and credit pledged.** The bonds shall pledge the full faith and credit of the state of Washington and shall contain an unconditional promise to pay the principal and interest when due. [1981 c 131 § 6.]

**70.48A.070 Bonds—Payment of interest, retirement.** The debt-limit general fund bond retirement account shall be used for the payment of principal and interest on and retirement of the bonds authorized by RCW 70.48A.010 through 70.48A.080.

The state finance committee shall, on or before June 30th of each year, certify to the state treasurer the amount required in the next succeeding twelve months for the payment of the principal of and the interest coming due on the bonds. Not less than thirty days prior to the date on which any interest or principal and interest payment is due, the state treasurer shall withdraw from any general state revenues received in the state treasury and deposit in the debt-limit general fund bond retirement account an amount equal to the amount certified by the state finance committee to be due on the payment date.

The owner and holder of each of the bonds or the trustee for any of the bonds may by mandamus or other appropriate proceeding require the transfer and payment of funds as directed in this section. [1997 c 456 § 27; 1981 c 131 § 7.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**70.48A.080 Bonds legal investment for public funds.** The bonds authorized in RCW 70.48A.010 through 70.48A.080 shall be a legal investment for all state funds or for funds under state control and for all funds of any other public body. [1981 c 131 § 8.]

**70.48A.090 Legislative intent.** It is the intent of the legislature that the construction and remodeling of jails proceed without further delay, and the jail commission's review and funding procedures are to reflect this intent. Neither the jail commission nor local governments should order or authorize capital expenditures to improve jails now in use which are scheduled for replacement. Capital expenditures which relate directly to life safety of inmates or jail personnel may be ordered. [1981 c 131 § 9.]

**70.48A.900 Severability—1981 c 131.** If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1981 c 131 § 11.]

## Chapter 70.50 RCW STATE OTOLOGIST

### Sections

- 70.50.010 Appointment—Salary.  
70.50.020 Duties.

**Reviser's note:** Powers and duties of the department of social and health services and the secretary of social and health services transferred to the department of health and the secretary of health. See RCW 43.70.060.

*Hearing tests for public school children: RCW 28A.210.020.*

**70.50.010 Appointment—Salary.** The secretary of health shall appoint and employ an otologist skilled in diagnosis of diseases of the ear and defects in hearing, especially for school children with an impaired sense of hearing, and shall fix the salary of such otologist in a sum not exceeding the salary of the secretary. [1991 c 3 § 340; 1979 c 141 § 108; 1945 c 23 § 1; Rem. Supp. 1945 § 6010-10.]

**70.50.020 Duties.** The otologist shall cooperate with the state department of public instruction, and with the state, county and city health officers, seeking for the children in the schools who are hard of hearing, or have an impaired sense of hearing, and making otological inspections and examinations of children referred to him by such departments and officers. Where necessary or proper he shall make recommendations to parents or guardians of such children, and urge them to submit such recommendations to physicians to be selected by such parents or guardians. [1945 c 23 § 2; Rem. Supp. 1945 § 6010-11.]

## Chapter 70.54 RCW MISCELLANEOUS HEALTH AND SAFETY PROVISIONS

### Sections

- 70.54.005 Transfer of duties to the department of health.  
70.54.010 Polluting water supply—Penalty.  
70.54.020 Furnishing impure water—Penalty.  
70.54.030 Pollution of watershed of city in adjoining state—Penalty.  
70.54.040 Secretary to advise local authorities on sanitation.  
70.54.050 Exposing contagious disease—Penalty.  
70.54.060 Ambulances and drivers.  
70.54.065 Ambulances and drivers—Penalty.  
70.54.070 Door of public buildings to swing outward—Penalty.  
70.54.080 Liability of person handling steamboat or steam boiler.  
70.54.090 Attachment of objects to utility poles—Penalty.  
70.54.120 Immunity from implied warranties and civil liability relating to blood, blood products, tissues, organs, or bones—Scope—Effective date.  
70.54.130 Laetrile—Legislative declaration.  
70.54.140 Laetrile—Interference with physician/patient relationship by health facility—Board of pharmacy, duties.  
70.54.150 Physicians not subject to disciplinary action for prescribing or administering laetrile—Conditions.  
70.54.160 Public restrooms—Pay facilities—Penalty.  
70.54.180 Deaf persons access to emergency services—Telecommunication devices.  
70.54.190 DMSO (dimethyl sulfoxide)—Use—Liability.  
70.54.200 Fees for repository of vaccines, biologics.  
70.54.220 Practitioners to provide information on prenatal testing and cord blood banking.  
70.54.222 Cord blood banks—Regulation—Application of consumer protection act—Definitions.  
70.54.230 Cancer registry program.  
70.54.240 Cancer registry program—Reporting requirements.  
70.54.250 Cancer registry program—Confidentiality.  
70.54.260 Liability.  
70.54.270 Rule making.  
70.54.280 Bone marrow donor recruitment and education program—Generally—Target minority populations.

- 70.54.290 Bone marrow donor recruitment and education program—State employees to be recruited.  
70.54.300 Bone marrow donor recruitment and education program—Private sector and community involvement.  
70.54.305 Bone marrow donation—Status as minor not a disqualifying factor.  
70.54.310 Semiautomatic external defibrillator—Duty of acquirer—Immunity from civil liability.  
70.54.320 Electrology and tattooing—Findings.  
70.54.330 Electrology and tattooing—Definitions.  
70.54.340 Electrology, body art, body piercing, and tattooing—Rules, sterilization requirements.  
70.54.350 Electrology and tattooing—Practitioners to comply with rules—Penalty.  
70.54.370 Meningococcal disease—Students to receive informational materials.  
70.54.380 Primary care medical home reimbursement pilot projects.  
70.54.390 Selection of a pilot site—Reimbursement method.  
70.54.400 Retail restroom access—Customers with medical conditions—Penalty.  
70.54.410 Unintended pregnancies—Sexual health education funding.  
70.54.420 Accountable care organization pilot projects—Report to the legislature.

*Control of cities and towns over water pollution: Chapter 35.88 RCW.*

*Council for children and families: Chapter 43.121 RCW.*

*Nuisances, generally: Chapters 7.48 and 9.66 RCW.*

*Water pollution control: Chapter 90.48 RCW.*

**70.54.005 Transfer of duties to the department of health.** The powers and duties of the secretary of social and health services under this chapter shall be performed by the secretary of health. [1989 1st ex.s. c 9 § 250.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**70.54.010 Polluting water supply—Penalty.** Every person who shall deposit or suffer to be deposited in any spring, well, stream, river or lake, the water of which is or may be used for drinking purposes, or on any property owned, leased or otherwise controlled by any municipal corporation, corporation or person as a watershed or drainage basin for a public or private water system, any matter or thing whatever, dangerous or deleterious to health, or any matter or thing which may or could pollute the waters of such spring, well, stream, river, lake or water system, shall be guilty of a gross misdemeanor. [1909 c 249 § 290; RRS § 2542.]

**70.54.020 Furnishing impure water—Penalty.** Every owner, agent, manager, operator or other person having charge of any waterworks furnishing water for public or private use, who shall knowingly permit any act or omit any duty or precaution by reason whereof the purity or healthfulness of the water supplied shall become impaired, shall be guilty of a gross misdemeanor. [1909 c 249 § 291; RRS § 2543.]

**70.54.030 Pollution of watershed of city in adjoining state—Penalty.** Any person who shall place or cause to be placed within any watershed from which any city or municipal corporation of any adjoining state obtains its water supply, any substance which either by itself or in connection with other matter will corrupt, pollute or impair the quality of said water supply, or the owner of any dead animal who shall knowingly leave or cause to be left the carcass or any portion thereof within any such watershed in such condition as to in any way corrupt or pollute such water supply shall be deemed guilty of a misdemeanor and upon conviction shall be pun-

ished by fine in any sum not exceeding five hundred dollars. [1909 c 16 § 2; RRS § 9281.]

**70.54.040 Secretary to advise local authorities on sanitation.** The commissioners of any county or the mayor of any city may call upon the secretary of health for advice relative to improving sanitary conditions or disposing of garbage and sewage or obtaining a pure water supply, and when so called upon the secretary shall either personally or by an assistant make a careful examination into the conditions existing and shall make a full report containing his or her advice to the county or city making such request. [1991 c 3 § 341; 1979 c 141 § 109; 1909 c 208 § 3; RRS § 6006.]

**70.54.050 Exposing contagious disease—Penalty.** Every person who shall wilfully expose himself to another, or any animal affected with any contagious or infectious disease, in any public place or thoroughfare, except upon his or its necessary removal in a manner not dangerous to the public health; and every person so affected who shall expose any other person thereto without his knowledge, shall be guilty of a misdemeanor. [1909 c 249 § 287; RRS § 2539.]

**70.54.060 Ambulances and drivers.** (1) The drivers of all ambulances shall be required to take the advanced first aid course as prescribed by the American Red Cross.

(2) All ambulances must be at all times equipped with first aid equipment consisting of leg and arm splints and standard twenty-four unit first aid kit as prescribed by the American Red Cross. [1945 c 65 § 1; Rem. Supp. 1945 § 6131-1. FORMER PART OF SECTION: 1945 c 65 § 2 now codified as RCW 70.54.060, part.]

**70.54.065 Ambulances and drivers—Penalty.** Any person violating any of the provisions herein shall be guilty of a misdemeanor. [1945 c 65 § 2; Rem. Supp. 1945 § 6131-2. Formerly RCW 70.54.060, part.]

**70.54.070 Door of public buildings to swing outward—Penalty.** The doors of all theatres, opera houses, school buildings, churches, public halls, or places used for public entertainments, exhibitions or meetings, which are used exclusively or in part for admission to or egress from the same, or any part thereof, shall be so hung and arranged as to open outwardly, and during any exhibition, entertainment or meeting, shall be kept unlocked and unfastened, and in such condition that in case of danger or necessity, immediate escape from such building shall not be prevented or delayed; and every agent or lessee of any such building who shall rent the same or allow it to be used for any of the aforesaid public purposes without having the doors thereof hung and arranged as hereinbefore provided, shall, for each violation of any provision of this section, be guilty of a misdemeanor. [1909 c 249 § 273; RRS § 2525.]

**70.54.080 Liability of person handling steamboat or steam boiler.** Every person who shall apply, or cause to be applied to a steam boiler a higher pressure of steam than is allowed by law, or by any inspector, officer or person authorized to limit the same; every captain or other person having

charge of the machinery or boiler in a steamboat used for the conveyance of passengers on the waters of this state, who, from ignorance or gross neglect, or for the purpose of increasing the speed of such boat, shall create or cause to be created an undue or unsafe pressure of steam; and every engineer or other person having charge of a steam boiler, steam engine or other apparatus for generating or employing steam, who shall wilfully or from ignorance or gross neglect, create or allow to be created such an undue quantity of steam as to burst the boiler, engine or apparatus, or cause any other accident, whereby human life is endangered, shall be guilty of a gross misdemeanor. [1909 c 249 § 280; RRS § 2532.]

*Boilers and unfired pressure vessels: Chapter 70.79 RCW.*

*Industrial safety and health: Chapter 43.22 RCW.*

**70.54.090 Attachment of objects to utility poles—Penalty.** (1) It shall be unlawful to attach to utility poles any of the following: Advertising signs, posters, vending machines, or any similar object which presents a hazard to, or endangers the lives of, electrical workers. Any attachment to utility poles shall only be made with the permission of the utility involved, and shall be placed not less than twelve feet above the surface of the ground.

(2) A person violating this section is guilty of a misdemeanor. [2003 c 53 § 351; 1953 c 185 § 1.]

**Intent—Effective date—2003 c 53:** See notes following RCW 2.48.180.

**70.54.120 Immunity from implied warranties and civil liability relating to blood, blood products, tissues, organs, or bones—Scope—Effective date.** The procurement, processing, storage, distribution, administration, or use of whole blood, plasma, blood products and blood derivatives for the purpose of injecting or transfusing the same, or any of them, or of tissues, organs, or bones for the purpose of transplanting them, or any of them, into the human body is declared to be, for all purposes whatsoever, the rendition of a service by each and every person, firm, or corporation participating therein, and is declared not to be covered by any implied warranty under the Uniform Commercial Code, Title 62A RCW, or otherwise, and no civil liability shall be incurred as a result of any of such acts, except in the case of wilful or negligent conduct: PROVIDED, HOWEVER, That this section shall apply only to liability alleged in the contraction of hepatitis, malaria, and acquired immune deficiency disease and shall not apply to any transaction in which the donor receives compensation: PROVIDED FURTHER, That this section shall only apply where the person, firm or corporation rendering the above service shall have maintained records of donor suitability and donor identification: PROVIDED FURTHER, That nothing in this section shall be considered by the courts in determining or applying the law to any blood transfusion occurring before June 10, 1971 and the court shall decide such case as though this section had not been passed. [1987 c 84 § 1; 1985 c 321 § 1; 1971 c 56 § 1.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**70.54.130 Laetrile—Legislative declaration.** It is the intent of the legislature that passage of RCW 70.54.130 through 70.54.150 shall not constitute any endorsement

whatever of the efficacy of amygdalin (Laetrile) in the treatment of cancer, but represents only the legislature's endorsement of a patient's freedom of choice, so long as the patient has been given sufficient information in writing to make an informed decision regarding his/her treatment and the substance is not proven to be directly detrimental to health. [1977 ex.s. c 122 § 1.]

**70.54.140 Laetrile—Interference with physician/patient relationship by health facility—Board of pharmacy, duties.** No hospital or health facility may interfere with the physician/patient relationship by restricting or forbidding the use of amygdalin (Laetrile) when prescribed or administered by a physician licensed pursuant to chapter 18.57 or 18.71 RCW and requested by a patient under his/her care who has requested the substance after having been given sufficient information in writing to make an informed decision.

For the purposes of RCW 70.54.130 through 70.54.150, the state board of pharmacy shall provide for the certification as to the identity of amygdalin (Laetrile) by random sample testing or other testing procedures, and shall promulgate rules and regulations necessary to implement and enforce its authority under this section. [1977 ex.s. c 122 § 2.]

**70.54.150 Physicians not subject to disciplinary action for prescribing or administering laetrile—Conditions.** No physician may be subject to disciplinary action by any entity of either the state of Washington or a professional association for prescribing or administering amygdalin (Laetrile) to a patient under his/her care who has requested the substance after having been given sufficient information in writing to make an informed decision.

It is not the intent of this section to shield a physician from acts or omissions which otherwise would constitute unprofessional conduct. [1986 c 259 § 150; 1977 ex.s. c 122 § 3.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**70.54.160 Public restrooms—Pay facilities—Penalty.** (1) Every establishment which maintains restrooms for use by the public shall not discriminate in charges required between facilities used by men and facilities used by women.

(2) When coin lock controls are used, the controls shall be so allocated as to allow for a proportionate equality of free toilet units available to women as compared with those units available to men, and at least one-half of the units in any restroom shall be free of charge. As used in this section, toilet units are defined as constituting commodes and urinals.

(3) In situations involving coin locks placed on restroom entry doors, admission keys shall be readily provided without charge when requested, and notice as to the availability of the keys shall be posted on the restroom entry door.

(4) Any owner, agent, manager, or other person charged with the responsibility of the operation of an establishment who operates such establishment in violation of this section is guilty of a misdemeanor. [2003 c 53 § 352; 1977 ex.s. c 97 § 1.]

**Intent—Effective date—2003 c 53:** See notes following RCW 2.48.180.

(2010 Ed.)

**70.54.180 Deaf persons access to emergency services—Telecommunication devices.** (1) For the purpose of this section "telecommunication device" means an instrument for telecommunication in which speaking or hearing is not required for communicators.

(2) The county legislative authority of each county with a population of eighteen thousand or more and the governing body of each city with a population in excess of ten thousand shall provide by July 1, 1980, for a telecommunication device in their jurisdiction or through a central dispatch office that will assure access to police, fire, or other emergency services.

(3) The county legislative authority of each county with a population of eighteen thousand or less shall by July 1, 1980, make a determination of whether sufficient need exists with their respective counties to require installation of a telecommunication device. Reconsideration of such determination will be made at any future date when a deaf individual indicates a need for such an instrument. [1991 c 363 § 142; 1979 ex.s. c 63 § 2.]

**Purpose—Captions not law—1991 c 363:** See notes following RCW 2.32.180.

**Purpose—1979 ex.s. c 63:** "The legislature finds that many citizens of this state who are unable to utilize telephone services in a regular manner due to hearing defects are able to communicate by teletypewriters where hearing is not required for communication. Hence, it is the purpose of section 2 of this act [RCW 70.54.180] to require that telecommunication devices for the deaf be installed." [1979 ex.s. c 63 § 1.]

**70.54.190 DMSO (dimethyl sulfoxide)—Use—Liability.** No hospital or health facility may interfere with the physician/patient relationship by restricting or forbidding the use of DMSO (dimethyl sulfoxide) when prescribed or administered by a physician licensed pursuant to chapter 18.57 or 18.71 RCW and requested by a patient under his/her care who has requested the substance after having been given sufficient information in writing to make an informed decision.

No physician may be subject to disciplinary action by any entity of either the state of Washington or a professional association for prescribing or administering DMSO (dimethyl sulfoxide) to a patient under his/her care who has requested the substance after having been given sufficient information in writing to make an informed decision.

It is not the intent of this section to shield a physician from acts or omissions which otherwise would constitute unprofessional conduct. [1986 c 259 § 151; 1981 c 50 § 2.]

*DMSO authorized: RCW 69.04.565.*

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**70.54.200 Fees for repository of vaccines, biologics.** The department shall prescribe by rule a schedule of fees predicated on the cost of providing a repository of emergency vaccines and other biologics. [1981 c 284 § 2.]

**Reviser's note:** Although 1981 c 284 directs this section be added to chapter 74.04 RCW, codification here is considered more appropriate. The "department" referred to is apparently the department of social and health services.

**70.54.220 Practitioners to provide information on prenatal testing and cord blood banking.** All persons licensed or certified by the state of Washington to provide prenatal care or to practice medicine shall provide information to all pregnant women in their care regarding:

(1) The use and availability of prenatal tests; and

(2) Using objective and standardized information: (a) The differences between and potential benefits and risks involved in public and private cord blood banking that is sufficient to allow a pregnant woman to make an informed decision before her third trimester of pregnancy on whether to participate in a private or public cord blood banking program; and (b) the opportunity to donate, to a public cord blood bank, blood and tissue extracted from the placenta and umbilical cord following delivery of a newborn child. [2009 c 495 § 9; (2009 c 495 § 8 expired July 1, 2010); 2008 c 56 § 2; 1988 c 276 § 5.]

**Effective date—2009 c 495 § 9:** "Section 9 of this act takes effect July 1, 2010." [2009 c 495 § 16.]

**Expiration date—2009 c 495 § 8:** "Section 8 of this act expires July 1, 2010." [2009 c 495 § 15.]

**Purpose—Effective date—2008 c 56:** See note following RCW 70.54.222.

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**70.54.222 Cord blood banks—Regulation—Application of consumer protection act—Definitions.** (1) A cord blood bank advertising, offering to provide, or providing private cord blood banking services to residents in this state must:

(a) Have all applicable licenses, accreditations, and other authorizations required under federal and Washington state law to engage in cord blood banking;

(b) Include, in any advertising or educational materials made available to the general public or provided to health services providers or potential cord blood donors: (i) A statement identifying the cord blood bank's licenses, accreditations, and other authorizations required in (a) of this subsection; and (ii) information about the cord blood bank's rate of success in collecting, processing, and storing sterile cord blood units that have adequate, viable yields of targeted cells; and

(c)(i) Provide to the cord blood donor the results of appropriate quality control tests performed on the donor's collected cord blood; and

(ii) If the test results provided under (c)(i) of this subsection demonstrate that the collected cord blood may not be recommended for long-term storage and potential future medical uses because of low cell yield, foreign contamination, or other reasons determined by the cord blood bank's medical director, provide the cord blood donor with the option not to be charged fees for processing or storage services, including a refund of any fees paid. The cord blood bank must provide the cord blood donor with sufficient information to make an informed decision regarding this option.

(2) The legislature finds that the practices covered by this section are matters vitally affecting the public interest for the purpose of applying the consumer protection act, chapter 19.86 RCW. A violation of this section is not reasonable in relation to the development and preservation of business and is an unfair or deceptive act in trade or commerce and an unfair method of competition for the purpose of applying the consumer protection act, chapter 19.86 RCW.

(3) The definitions in this subsection apply throughout this section unless the context clearly requires otherwise.

(a) "Autologous use" means the transplantation, including implanting, transplanting, infusion, or transfer, of cord blood into the individual from whom the cord blood was collected.

(b) "Cord blood bank" means an operation engaged in collecting, processing, storing, distributing, or transplanting hematopoietic progenitor cells present in placental or umbilical cord blood.

(c) "Hematopoietic progenitor cells" means pluripotent cells that may be capable of self-renewal and differentiation into any mature blood cell.

(d) "Private cord blood banking" means a cord blood bank that provides, for a fee, cord blood banking services for the autologous use of the cord blood. [2008 c 56 § 3.]

**Purpose—2008 c 56:** "The purpose of this act is to promote public awareness and education of the general public and potential cord blood donors on the benefits of public or private cord blood banking, and to establish safeguards related to effective private banking of cord blood." [2008 c 56 § 1.]

**Effective date—2008 c 56:** "This act takes effect July 1, 2010." [2008 c 56 § 4.]

**70.54.230 Cancer registry program.** The secretary of health may contract with either a recognized regional cancer research institution or regional tumor registry, or both, which shall hereinafter be called the contractor, to establish a statewide cancer registry program and to obtain cancer reports from all or a portion of the state as required in RCW 70.54.240 and to make available data for use in cancer research and for purposes of improving the public health. [1990 c 280 § 2.]

**Intent—1990 c 280:** "It is the intent of the legislature to establish a system to accurately monitor the incidence of cancer in the state of Washington for the purposes of understanding, controlling, and reducing the occurrence of cancer in this state. In order to accomplish this, the legislature has determined that cancer cases shall be reported to the department of health, and that there shall be established a statewide population-based cancer registry." [1990 c 280 § 1.]

**70.54.240 Cancer registry program—Reporting requirements.** (1) The department of health shall adopt rules as to which types of cancer shall be reported, who shall report, and the form and timing of the reports.

(2) Every health care facility and independent clinical laboratory, and those physicians or others providing health care who diagnose or treat any patient with cancer who is not hospitalized within one month of diagnosis, will provide the contractor with the information required under subsection (1) of this section. The required information may be collected on a regional basis where such a system exists and forwarded to the contractor in a form suitable for the purposes of RCW 70.54.230 through 70.54.270. Such reporting arrangements shall be reduced to a written agreement between the contractor and any regional reporting agency which shall detail the manner, form, and timeliness of the reporting. [1990 c 280 § 3.]

**Intent—1990 c 280:** See note following RCW 70.54.230.

**70.54.250 Cancer registry program—Confidentiality.** (1) Data obtained under RCW 70.54.240 shall be used for statistical, scientific, medical research, and public health purposes only.

(2) The department and its contractor shall ensure that access to data contained in the registry is consistent with federal law for the protection of human subjects and consistent with chapter 42.48 RCW. [1990 c 280 § 4.]

**Intent—1990 c 280:** See note following RCW 70.54.230.

**70.54.260 Liability.** Providing information required under RCW 70.54.240 or 70.54.250 shall not create any liability on the part of the provider nor shall it constitute a breach of confidentiality. The contractor shall, at the request of the provider, but not more frequently than once a year, sign an oath of confidentiality, which reads substantially as follows:

"As a condition of conducting research concerning persons who have received services from (name of the health care provider or facility), I . . . . ., agree not to divulge, publish, or otherwise make known to unauthorized persons or the public any information obtained in the course of such research that could lead to identification of such persons receiving services, or to the identification of their health care providers. I recognize that unauthorized release of confidential information may subject me to civil liability under the provisions of state law."

[1990 c 280 § 5.]

**Intent—1990 c 280:** See note following RCW 70.54.230.

**70.54.270 Rule making.** The department shall adopt rules to implement RCW 70.54.230 through 70.54.260, including but not limited to a definition of cancer. [1990 c 280 § 6.]

**Intent—1990 c 280:** See note following RCW 70.54.230.

**70.54.280 Bone marrow donor recruitment and education program—Generally—Target minority populations.** The department of health shall establish a bone marrow donor recruitment and education program to educate residents of the state about:

- (1) The need for bone marrow donors;
- (2) The procedures required to become registered as a potential bone marrow donor, including procedures for determining a person's tissue type; and
- (3) The procedures a donor must undergo to donate bone marrow or other sources of blood stem cells.

The department of health shall make special efforts to educate and recruit citizens from minority populations to volunteer as potential bone marrow donors. Means of communication may include use of press, radio, and television, and placement of educational materials in appropriate health care facilities, blood banks, and state and local agencies. The department of health in conjunction with the department of licensing shall make educational materials available at all places where driver licenses are issued or renewed. [1992 c 109 § 2.]

**Findings—1992 c 109:** "The legislature finds that an estimated sixteen thousand American children and adults are stricken each year with leukemia, aplastic anemia, or other fatal blood diseases. For many of these individuals, bone marrow transplantation is the only chance for survival. Nearly seventy percent cannot find a suitable bone marrow match within their own families. The chance that a patient will find a matching, unrelated donor in the general population is between one in a hundred and one in a million.

(2010 Ed.)

The legislature further finds that because tissue types are inherited, and different tissue types are found in different ethnic groups, the chances of finding an unrelated donor vary according to the patient's ethnic and racial background. Patients from minority groups are therefore less likely to find matching, unrelated donors.

It is the intent of the legislature to establish a statewide bone marrow donor education and recruitment program in order to increase the number of Washington residents who become bone marrow donors, and to increase the chance that patients in need of bone marrow transplants will find a suitable bone marrow match." [1992 c 109 § 1.]

**70.54.290 Bone marrow donor recruitment and education program—State employees to be recruited.** The department of health shall make special efforts to educate and recruit state employees to volunteer as potential bone marrow donors. Such efforts shall include, but not be limited to, conducting a bone marrow donor drive to encourage state employees to volunteer as potential bone marrow donors. The drive shall include educational materials furnished by the national bone marrow donor program and presentations that explain the need for bone marrow donors, and the procedures for becoming registered as potential bone marrow donors. The cost of educational materials and presentations to state employees shall be borne by the national marrow donor program. [1992 c 109 § 3.]

**Findings—1992 c 109:** See note following RCW 70.54.280.

**70.54.300 Bone marrow donor recruitment and education program—Private sector and community involvement.** In addition to educating and recruiting state employees, the department of health shall make special efforts to encourage community and private sector businesses and associations to initiate independent efforts to achieve the goals of chapter 109, Laws of 1992. [1992 c 109 § 4.]

**Findings—1992 c 109:** See note following RCW 70.54.280.

**70.54.305 Bone marrow donation—Status as minor not a disqualifying factor.** A person's status as a minor may not disqualify him or her from bone marrow donation. [2000 c 116 § 1.]

**70.54.310 Semiautomatic external defibrillator—Duty of acquirer—Immunity from civil liability.** (1) As used in this section, "defibrillator" means a semiautomatic external defibrillator as prescribed by a physician licensed under chapter 18.71 RCW or an osteopath licensed under chapter 18.57 RCW.

(2) A person or entity who acquires a defibrillator shall ensure that:

(a) Expected defibrillator users receive reasonable instruction in defibrillator use and cardiopulmonary resuscitation by a course approved by the department of health;

(b) The defibrillator is maintained and tested by the acquirer according to the manufacturer's operational guidelines;

(c) Upon acquiring a defibrillator, medical direction is enlisted by the acquirer from a licensed physician in the use of the defibrillator and cardiopulmonary resuscitation;

(d) The person or entity who acquires a defibrillator shall notify the local emergency medical services organization about the existence and the location of the defibrillator; and

(e) The defibrillator user shall call 911 or its local equivalent as soon as possible after the emergency use of the defibrillator and shall assure that appropriate follow-up data is made available as requested by emergency medical service or other health care providers.

(3) A person who uses a defibrillator at the scene of an emergency and all other persons and entities providing services under this section are immune from civil liability for any personal injury that results from any act or omission in the use of the defibrillator in an emergency setting.

(4) The immunity from civil liability does not apply if the acts or omissions amount to gross negligence or willful or wanton misconduct.

(5) The requirements of subsection (2) of this section shall not apply to any individual using a defibrillator in an emergency setting if that individual is acting as a good samaritan under RCW 4.24.300. [1998 c 150 § 1.]

**70.54.320 Electrology and tattooing—Findings.** The legislature finds and declares that the practices of electrology and tattooing involve an invasive procedure with the use of needles and instruments which may be dangerous when improperly sterilized presenting a risk of infecting the client with bloodborne pathogens such as HIV and Hepatitis B. It is in the interests of the public health, safety, and welfare to establish requirements for the sterilization procedures in the commercial practices of electrology and tattooing in this state. [2001 c 194 § 1.]

**70.54.330 Electrology and tattooing—Definitions.** The definitions in this section apply throughout RCW 70.54.320, 70.54.340, and 70.54.350 unless the context clearly requires otherwise.

(1) "Electrologist" means a person who practices the business of electrology for a fee.

(2) "Electrology" means the process by which hair is permanently removed through the utilization of solid needle/probe electrode epilation, including thermolysis, being of shortwave, high frequency type, and including electrolysis, being of galvanic type, or a combination of both which is accomplished by a superimposed or sequential blend.

(3) "Tattoo artist" means a person who practices the business of tattooing for a fee.

(4) "Tattooing" means the indelible mark, figure, or decorative design introduced by insertion of nontoxic dyes or pigments into or under the subcutaneous portion of the skin upon the body of a live human being for cosmetic or figurative purposes. [2001 c 194 § 2.]

**70.54.340 Electrology, body art, body piercing, and tattooing—Rules, sterilization requirements.** The secretary of health shall adopt by rule requirements, in accordance with nationally recognized professional standards, for precautions against the spread of disease, including the sterilization of needles and other instruments, including sharps and jewelry, employed by electrologists, persons engaged in the practice of body art, body piercing, and tattoo artists. The secretary shall consider the standard precautions for infection control, as recommended by the United States centers for disease control, and guidelines for infection control, as recom-

mended by national industry standards in the adoption of these sterilization requirements. [2009 c 412 § 19; 2001 c 194 § 3.]

**Effective date—2009 c 412 §§ 1-21:** See RCW 18.300.901.

**Short title—Implementation—2009 c 412:** See RCW 18.300.900 and 18.300.902.

**70.54.350 Electrology and tattooing—Practitioners to comply with rules—Penalty.** (1) Any person who practices electrology or tattooing shall comply with the rules adopted by the department of health under \*RCW 70.54.340.

(2) A violation of this section is a misdemeanor. [2001 c 194 § 4.]

**\*Reviser's note:** RCW 70.54.340 was amended by 2009 c 412 § 19, adding body art and body piercing to its application.

**70.54.370 Meningococcal disease—Students to receive informational materials.** (1) Except for community and technical colleges, each degree-granting public or private postsecondary residential campus that provides on-campus or group housing shall provide information on meningococcal disease to each enrolled matriculated first-time student. Community and technical colleges must provide the information only to those students who are offered on-campus or group housing. The information about meningococcal disease shall include:

(a) Symptoms, risks, especially as the risks relate to circumstances of group living arrangements, and treatment; and

(b) Current recommendations from the United States centers for disease control and prevention regarding the receipt of vaccines for meningococcal disease and where the vaccination can be received.

(2) This section shall not be construed to require the department of health or the postsecondary educational institution to provide the vaccination to students.

(3) The department of health shall be consulted regarding the preparation of the information materials provided to the first-time students.

(4) If institutions provide electronic enrollment or registration to first-time students, the information required by this section shall be provided electronically and acknowledged by the student before completion of electronic enrollment or registration.

(5) This section does not create a private right of action. [2003 c 398 § 1.]

**Reviser's note:** Substitute House Bill No. 1059, Substitute House Bill No. 1173, and Engrossed Substitute House Bill No. 1827 were enacted during the 2003 regular session of the legislature, but were vetoed in part by the governor. A stipulated judgment, No. 03-2-01988-4 filed in the Superior Court of Thurston County, between the governor and the legislature, settled litigation over the governor's use of veto powers and declared the vetoes of SHB 1059, SHB 1173, and ESHB 1827 null and void. Consequently, the text of this section has been returned to the version passed by the legislature prior to the vetoes. For vetoed text and message, see chapter 398, Laws of 2003.

**Effective date—2003 c 398:** "This act takes effect July 1, 2004." [2003 c 398 § 2.]

**70.54.380 Primary care medical home reimbursement pilot projects. (Expires July 1, 2013.)** The health care authority and the department of social and health services shall design, oversee implementation, and evaluate one or

more primary care medical home reimbursement pilot projects in the state to include as participants public payors, private health carriers, third-party purchasers, and health care providers. Based on input from participants, the agencies shall:

- (1) Determine the number and location of primary care medical home reimbursement pilots;
- (2) Determine criteria to select primary care clinics to serve as pilot sites to facilitate testing of medical home reimbursement methods in a variety of primary care settings;
- (3) Select pilot sites from those primary care provider clinics that currently employ a number of activities and functions typically associated with medical homes, or from sites that have been selected by the department of health to participate in a medical home collaborative under section 2, chapter 295, Laws of 2008;
- (4) Determine one or more reimbursement methods to be tested by the pilots;
- (5) Identify pilot performance measures for clinical quality, chronic care management, cost, and patient experience through patient self-reporting; and
- (6) Appropriately coordinate during planning and operation of the pilots with the department of health medical home collaboratives and with other private and public efforts to promote adoption of medical homes within the state. [2009 c 305 § 2.]

**Intent—2009 c 305:** "The legislature declares that collaboration among public payors, private health carriers, third-party purchasers, and providers to identify appropriate reimbursement methods to align incentives in support of primary care medical homes is in the best interest of the public. The legislature therefore intends to exempt from state antitrust laws, and to provide immunity from federal antitrust laws through the state action doctrine, for activities undertaken pursuant to pilots designed and implemented under section 2 of this act that might otherwise be constrained by such laws. The legislature does not intend and does not authorize any person or entity to engage in activities or to conspire to engage in activities that would constitute per se violations of state and federal antitrust laws including, but not limited to, agreements among competing health care providers or health carriers as to the price or specific level of reimbursement for health care services." [2009 c 305 § 1.]

**Expiration date—2009 c 305:** "This act expires July 1, 2013." [2009 c 305 § 4.]

**70.54.390 Selection of a pilot site—Reimbursement method. (Expires July 1, 2013.)** The health care authority and the department of social and health services may select a pilot site that currently employs the following activities and functions associated with medical homes: Provision of preventive care, wellness counseling, primary care, coordination of primary care with specialty and hospital care, and urgent care services; availability of office appointments seven days per week and e-mail and telephone consultation; availability of telephone access for urgent care consultation on a seven-day per week, twenty-four hours per day basis; and use of a primary care provider panel size that promotes the ability of participating providers to appropriately provide the scope of services described in this section. The reimbursement method chosen for this pilot site must include a fixed monthly payment per person participating in the pilot site for the services described in this section. These services would be provided without the submission of claims for payment from any health carrier by the medical home provider. Agreements for payment made directly by a consumer or other entity paying

(2010 Ed.)

on the consumer's behalf must comply with the provisions applicable to direct patient-provider primary care practices under chapter 48.150 RCW. In addition, the agencies may determine that the pilot should include a high deductible health plan or other health benefit plan designed to wrap around the primary care services offered under this section. [2009 c 305 § 3.]

**Intent—Expiration date—2009 c 305:** See notes following RCW 70.54.380.

**70.54.400 Retail restroom access—Customers with medical conditions—Penalty.** (1) For purposes of this section:

- (a) "Customer" means an individual who is lawfully on the premises of a retail establishment.
- (b) "Eligible medical condition" means:
  - (i) Crohn's disease, ulcerative colitis, or any other inflammatory bowel disease;
  - (ii) Irritable bowel syndrome;
  - (iii) Any condition requiring use of an ostomy device; or
  - (iv) Any permanent or temporary medical condition that requires immediate access to a restroom.
- (c) "Employee restroom" means a restroom intended for employees only in a retail facility and not intended for customers.
- (d) "Health care provider" means an advanced registered nurse practitioner licensed under chapter 18.79 RCW, an osteopathic physician or surgeon licensed under chapter 18.57 RCW, an osteopathic physicians assistant licensed under chapter 18.57A RCW, a physician or surgeon licensed under chapter 18.71 RCW, or a physician assistant licensed under chapter 18.71A RCW.
- (e) "Retail establishment" means a place of business open to the general public for the sale of goods or services. Retail establishment does not include any structure such as a filling station, service station, or restaurant of eight hundred square feet or less that has an employee restroom located within that structure.

(2) A retail establishment that has an employee restroom must allow a customer with an eligible medical condition to use that employee restroom during normal business hours if:

- (a) The customer requesting the use of the employee restroom provides in writing either:
  - (i) A signed statement by the customer's health care provider on a form that has been prepared by the department of health under subsection (4) of this section; or
  - (ii) An identification card that is issued by a nonprofit organization whose purpose includes serving individuals who suffer from an eligible medical condition; and
- (b) One of the following conditions are met:
  - (i) The employee restroom is reasonably safe and is not located in an area where providing access would create an obvious health or safety risk to the customer; or
  - (ii) Allowing the customer to access the restroom facility does not pose a security risk to the retail establishment or its employees.

(3) A retail establishment that has an employee restroom must allow a customer to use that employee restroom during normal business hours if:

(a)(i) Three or more employees of the retail establishment are working at the time the customer requests use of the employee restroom; and

(ii) The retail establishment does not normally make a restroom available to the public; and

(b)(i) The employee restroom is reasonably safe and is not located in an area where providing access would create an obvious health or safety risk to the customer; or

(ii) Allowing the customer to access the employee restroom does not pose a security risk to the retail establishment or its employees.

(4) The department of health shall develop a standard electronic form that may be signed by a health care provider as evidence of the existence of an eligible medical condition as required by subsection (2) of this section. The form shall include a brief description of a customer's rights under this section and shall be made available for a customer or his or her health care provider to access by computer. Nothing in this section requires the department to distribute printed versions of the form.

(5) Fraudulent use of a form as evidence of the existence of an eligible medical condition is a misdemeanor punishable under RCW 9A.20.010.

(6) For a first violation of this section, the city or county attorney shall issue a warning letter to the owner or operator of the retail establishment, and to any employee of a retail establishment who denies access to an employee restroom in violation of this section, informing the owner or operator of the establishment and employee of the requirements of this section. A retail establishment or an employee of a retail establishment that violates this section after receiving a warning letter is guilty of a class 2 civil infraction under chapter 7.80 RCW.

(7) A retail establishment is not required to make any physical changes to an employee restroom under this section and may require that an employee accompany a customer or a customer with an eligible medical condition to the employee restroom.

(8) A retail establishment or an employee of a retail establishment is not civilly liable for any act or omission in allowing a customer or a customer with an eligible medical condition to use an employee restroom if the act or omission meets all of the following:

(a) It is not willful or grossly negligent;

(b) It occurs in an area of the retail establishment that is not accessible to the public; and

(c) It results in an injury to or death of the customer or the customer with an eligible medical condition or any individual other than an employee accompanying the customer or the customer with an eligible medical condition. [2009 c 438 § 1.]

**70.54.410 Unintended pregnancies—Sexual health education funding.** (1) To reduce unintended pregnancies, state agencies may apply for sexual health education funding for programs that are medically and scientifically accurate, including, but not limited to, programs on abstinence, the prevention of sexually transmitted diseases, and the prevention of unintended pregnancies. The state shall ensure that such programs:

(a) Are evidence-based;

(b) Use state funds cost-effectively;

(c) Maximize the use of federal matching funds; and

(d) Are consistent with RCW 28A.300.475, the state's healthy youth act, as existing on July 26, 2009.

(2) As used in this section:

(a) "Medically and scientifically accurate" has the same meaning as in RCW 28A.300.475, as existing on July 26, 2009; and

(b) "Evidence-based" means a program that uses practices proven to the greatest extent possible through research in compliance with scientific methods to be effective and beneficial for the target population. [2009 c 303 § 1.]

**70.54.420 Accountable care organization pilot projects—Report to the legislature.**

(1) The administrator shall within available resources appoint a lead organization by January 1, 2011, to support at least one integrated health care delivery system and one network of nonintegrated community health care providers in establishing two distinct accountable care organization pilot projects. The intent is that at least two accountable care organization pilot projects be in the process of implementation no later than January 1, 2012. In order to obtain expert guidance and consultation in design and implementation of the pilots, the lead organization shall contract with a recognized national learning collaborative with a reputable research organization having expertise in the development and implementation of accountable care organizations and payment systems.

(2) The lead organization designated by the administrator under this section shall:

(a) Be representative of health care providers and payors across the state;

(b) Have expertise and knowledge in medical payment and practice reform;

(c) Be able to support the costs of its work without recourse to state funding. The administrator and the lead organization are authorized and encouraged to seek federal funds, as well as solicit, receive, contract for, collect, and hold grants, donations, and gifts to support the implementation of this section and may scale back implementation to fall within resulting resource parameters;

(d) In collaboration with the health care authority, identify and convene work groups, as needed, to accomplish the goals of chapter 220, Laws of 2010; and

(e) Submit regular reports to the administrator on the progress of implementing the requirements of chapter 220, Laws of 2010.

(3) As used in this section, an "accountable care organization" is an entity that enables networks consisting of health care providers or a health care delivery system to become accountable for the overall costs and quality of care for the population they jointly serve and to share in the savings created by improving quality and slowing spending growth while relying on the following principles:

(a) Local accountability:

(i) Accountable care organizations must be composed of local delivery systems; and

(ii) Accountable care organizations spending benchmarks must make the local system accountable for cost, quality, and capacity;

(b) Appropriate payment and delivery models:

(i) Accountable care organizations with expenditures below benchmarks are recognized and rewarded with appropriate financial incentives;

(ii) Payment models have financial incentives that allow stakeholders to make investments that improve care and slow cost growth such as health information technology; and

(iii) Patient-centered medical homes are an integral component to an accountable care organization with a focus on improving patient outcomes, optimizing the use of health care information technology, patient registries, and chronic disease management, thereby improving the primary care team, and achieving cost savings through lowering health care utilization;

(c) Performance measurement:

(i) Measurement is essential to ensure that appropriate care is being delivered and that cost savings are not the result of limiting necessary care; and

(ii) Accountable care organizations must report patient experience data in addition to clinical process and outcome measures.

(4) The lead organization, subject to available resources, shall research other opportunities to establish accountable care organization pilot projects, which may become available through participation in a demonstration project in medicaid, payment reform in medicare, national health care reform, or other federal changes that support the development of accountable care organizations.

(5) The lead organization, subject to available resources, shall coordinate the accountable care organization selection process with the primary care medical home reimbursement pilot projects established in RCW 70.54.380 and the ongoing joint project of the department of health and the Washington academy of family physicians patient-centered medical home collaborative being put into practice under section 2, chapter 295, Laws of 2008, as well as other private and public efforts to promote adoption of medical homes within the state.

(6) The lead organization shall make a report to the health care committees of the legislature, by January 1, 2013, on the progress of the accountable care organization pilot projects, recommendations about further expansion, and needed changes to the statute to more broadly implement and oversee accountable care organizations in the state.

(7) As used in this section, "administrator," "health care provider," "lead organization," and "payor" have the same meaning as provided in RCW 41.05.036. [2010 c 220 § 2.]

**Findings—Intent—2010 c 220:** "(1)(a) The legislature finds that a necessary component of bending the health care cost curve is innovative payment and practice reforms that capitalize on current incentives and create new incentives in the delivery system to further the goals of increased quality, accessibility, and affordability.

(b) The legislature further finds that accountable care organizations have received significant attention in the recent health care reform debate and have been found by the congressional budget office to be one of the few comprehensive reform models that can be relied on to reduce costs.

(c) The legislature further finds that accountable care organizations present an intriguing path forward on reform that builds on current provider referral patterns and offers shared savings payments to providers willing to be held accountable for quality and costs.

(d) The legislature further finds that the accountable care organization framework offers a basic method of decoupling volume and intensity from revenue and profit and is thus a crucial step toward achieving a truly sustainable health care delivery system.

(2) The legislature declares that collaboration among public payors, private health carriers, third-party purchasers, health care delivery systems,

(2010 Ed.)

and providers to identify appropriate reimbursement methods to align incentives in support of accountable care organizations is in the best interest of the public. The legislature therefore intends to exempt from state antitrust laws, and to provide immunity from federal antitrust laws through the state action doctrine, for activities undertaken pursuant to pilots designed and implemented under RCW 70.54.420 that might otherwise be constrained by such laws. The legislature does not intend and does not authorize any person or entity to engage in activities or to conspire to engage in activities that would constitute per se violations of state and federal antitrust laws including, but not limited to, agreements among competing health care providers or health carriers as to the price or specific level of reimbursement for health care services.

(3) The legislature further finds that public-private partnerships and joint projects, such as the Washington patient-centered medical home collaborative administered and funded jointly between the department of health and the Washington academy of family physicians, are research-supported, evidence-based primary care delivery projects that should be encouraged to the fullest extent possible because they improve health outcomes for patients and increase primary care clinical effectiveness, thereby reducing the overall costs in our health care system." [2010 c 220 § 1.]

## Chapter 70.56 RCW

### ADVERSE HEALTH EVENTS AND INCIDENT REPORTING SYSTEM

#### Sections

70.56.010	Definitions.
70.56.020	Notification of adverse health events—Notification and report required—Rules.
70.56.030	Department of health—Duties—Rules.
70.56.040	Contract with independent entity—Duties of independent entity—Establishment of notification and reporting system—Annual reports to governor, legislature.
70.56.050	Confidentiality of notifications and reports.
70.56.900	Findings—Intent—Part headings and subheadings not law—Severability—2006 c 8.

**70.56.010 Definitions.** The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Adverse health event" or "adverse event" means the list of serious reportable events adopted by the national quality forum in 2002, in its consensus report on serious reportable events in health care. The department shall update the list, through adoption of rules, as subsequent changes are made by the national quality forum. The term does not include an incident.

(2) "Ambulatory surgical facility" means a facility licensed under chapter 70.230 RCW.

(3) "Childbirth center" means a facility licensed under chapter 18.46 RCW.

(4) "Correctional medical facility" means a part or unit of a correctional facility operated by the department of corrections under chapter 72.10 RCW that provides medical services for lengths of stay in excess of twenty-four hours to offenders.

(5) "Department" means the department of health.

(6) "Health care worker" means an employee, independent contractor, licensee, or other individual who is directly involved in the delivery of health services in a medical facility.

(7) "Hospital" means a facility licensed under chapter 70.41 RCW.

(8) "Incident" means an event, occurrence, or situation involving the clinical care of a patient in a medical facility that:

(a) Results in unanticipated injury to a patient that is not related to the natural course of the patient's illness or underlying condition and does not constitute an adverse event; or

(b) Could have injured the patient but did not either cause an unanticipated injury or require the delivery of additional health care services to the patient.

"Incident" does not include an adverse event.

(9) "Independent entity" means that entity that the department of health contracts with under RCW 70.56.040 to receive notifications and reports of adverse events and incidents, and carry out the activities specified in RCW 70.56.040.

(10) "Medical facility" means a childbirth center, hospital, psychiatric hospital, or correctional medical facility. An ambulatory surgical facility shall be considered a medical facility for purposes of this chapter upon the effective date of any requirement for state registration or licensure of ambulatory surgical facilities.

(11) "Psychiatric hospital" means a hospital facility licensed as a psychiatric hospital under chapter 71.12 RCW. [2007 c 273 § 20; 2006 c 8 § 105.]

**Effective date—Implementation—2007 c 273:** See RCW 70.230.900 and 70.230.901.

**70.56.020 Notification of adverse health events—Notification and report required—Rules.** (1) The legislature intends to establish an adverse health events and incident notification and reporting system that is designed to facilitate quality improvement in the health care system, improve patient safety, assist the public in making informed health care choices, and decrease medical errors in a nonpunitive manner. The notification and reporting system shall not be designed to punish errors by health care practitioners or health care facility employees.

(2) When a medical facility confirms that an adverse event has occurred, it shall submit to the department of health:

(a) Notification of the event, with the date, type of adverse event, and any additional contextual information the facility chooses to provide, within forty-eight hours; and

(b) A report regarding the event within forty-five days.

The notification and report shall be submitted to the department using the internet-based system established under RCW 70.56.040(2) if the system is operational.

(c) A medical facility may amend the notification or report within sixty days of the submission.

(3) The notification and report shall be filed in a format specified by the department after consultation with medical facilities and the independent entity if an independent entity has been contracted for under RCW 70.56.040(1). The format shall identify the facility, but shall not include any identifying information for any of the health care professionals, facility employees, or patients involved. This provision does not modify the duty of a hospital to make a report to the department of health or a disciplinary authority if a licensed practitioner has committed unprofessional conduct as defined in RCW 18.130.180.

(4) As part of the report filed under subsection (2)(b) of this section, the medical facility must conduct a root cause analysis of the event, describe the corrective action plan that will be implemented consistent with the findings of the anal-

ysis, or provide an explanation of any reasons for not taking corrective action. The department shall adopt rules, in consultation with medical facilities and the independent entity if an independent entity has been contracted for under RCW 70.56.040(1), related to the form and content of the root cause analysis and corrective action plan. In developing the rules, consideration shall be given to existing standards for root cause analysis or corrective action plans adopted by the joint commission on accreditation of health facilities and other national or governmental entities.

(5) If, in the course of investigating a complaint received from an employee of a medical facility, the department determines that the facility has not provided notification of an adverse event or undertaken efforts to investigate the occurrence of an adverse event, the department shall direct the facility to provide notification or to undertake an investigation of the event.

(6) The protections of RCW 43.70.075 apply to notifications of adverse events that are submitted in good faith by employees of medical facilities. [2009 c 495 § 12; 2008 c 136 § 1; 2006 c 8 § 106.]

**Effective date—2009 c 495:** See note following RCW 43.20.050.

**70.56.030 Department of health—Duties—Rules.** (1) The department shall:

(a) Receive and investigate, where necessary, notifications and reports of adverse events, including root cause analyses and corrective action plans submitted as part of reports, and communicate to individual facilities the department's conclusions, if any, regarding an adverse event reported by a facility; and

(b) Adopt rules as necessary to implement this chapter.

(2) The department may enforce the reporting requirements of RCW 70.56.020 using its existing enforcement authority provided in chapter 18.46 RCW for childbirth centers, chapter 70.41 RCW for hospitals, and chapter 71.12 RCW for psychiatric hospitals. [2009 c 495 § 13; 2009 c 488 § 1; 2007 c 259 § 13; 2006 c 8 § 107.]

**Reviser's note:** This section was amended by 2009 c 488 § 1 and by 2009 c 495 § 13, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

**Effective date—2009 c 495:** See note following RCW 43.20.050.

**Severability—Subheadings not law—2007 c 259:** See notes following RCW 41.05.033.

**70.56.040 Contract with independent entity—Duties of independent entity—Establishment of notification and reporting system—Annual reports to governor, legislature.** (1) To the extent funds are appropriated specifically for this purpose, the department shall contract with a qualified, independent entity to receive notifications and reports of adverse events and incidents, and carry out the activities specified in this section. In establishing qualifications for, and choosing the independent entity, the department shall strongly consider the patient safety organization criteria included in the federal patient safety and quality improvement act of 2005, P.L. 109-41, and any regulations adopted to implement this chapter.

(2) If an independent entity is contracted for under subsection (1) of this section, the independent entity shall:

(a) In collaboration with the department of health, establish an internet-based system for medical facilities and the health care workers of a medical facility to submit notifications and reports of adverse events and incidents, which shall be accessible twenty-four hours a day, seven days a week. The system shall be a portal to report both adverse events and incidents, and notifications and reports of adverse events shall be immediately transmitted to the department. The system shall be a secure system that protects the confidentiality of personal health information and provider and facility specific information submitted in notifications and reports, including appropriate encryption and an accurate means of authenticating the identity of users of the system. When the system becomes operational, medical facilities shall submit all notifications and reports by means of the system;

(b) Collect, analyze, and evaluate data regarding notifications and reports of adverse events and incidents, including the identification of performance indicators and patterns in frequency or severity at certain medical facilities or in certain regions of the state;

(c) Develop recommendations for changes in health care practices and procedures, which may be instituted for the purpose of reducing the number or severity of adverse events and incidents;

(d) Directly advise reporting medical facilities of immediate changes that can be instituted to reduce adverse events or incidents;

(e) Issue recommendations to medical facilities on a facility-specific or on a statewide basis regarding changes, trends, and improvements in health care practices and procedures for the purpose of reducing the number and severity of adverse events or incidents. Prior to issuing recommendations, consideration shall be given to the following factors: Expectation of improved quality of care, implementation feasibility, other relevant implementation practices, and the cost impact to patients, payers, and medical facilities. Statewide recommendations shall be issued to medical facilities on a continuing basis and shall be published and posted on a publicly accessible web site. The recommendations made to medical facilities under this section shall not be considered mandatory for licensure purposes unless they are adopted by the department as rules pursuant to chapter 34.05 RCW; and

(f) Monitor implementation of reporting systems addressing adverse events or their equivalent in other states and make recommendations to the governor and the legislature as necessary for modifications to this chapter to keep the system as nearly consistent as possible with similar systems in other states.

(3)(a) The independent entity shall report no later than January 1, 2008, and annually thereafter in any year that an independent entity is contracted for under subsection (1) of this section to the governor and the legislature on the activities under this chapter in the preceding year. The report shall include:

(i) The number of adverse events and incidents reported by medical facilities, in the aggregate, on a geographical basis, and a summary of actions taken by facilities in response to the adverse events or incidents;

(ii) In the aggregate, the information derived from the data collected, including any recognized trends concerning patient safety;

(iii) Recommendations for statutory or regulatory changes that may help improve patient safety in the state; and

(iv) Information, presented in the aggregate, to inform and educate consumers and providers, on best practices and prevention tools that medical facilities are implementing to prevent adverse events as well as other patient safety initiatives medical facilities are undertaking to promote patient safety.

(b) The annual report shall be made available for public inspection and shall be posted on the department's and the independent entity's web site.

(4) The independent entity shall conduct all activities under this section in a manner that preserves the confidentiality of facilities, documents, materials, or information made confidential by RCW 70.56.050.

(5) Medical facilities and health care workers may provide notification of incidents to the independent entity. The notification shall be filed in a format specified by the independent entity, after consultation with the department and medical facilities, and shall identify the facility but shall not include any identifying information for any of the health care professionals, facility employees, or patients involved. This provision does not modify the duty of a hospital to make a report to the department or a disciplinary authority if a licensed practitioner has committed unprofessional conduct as defined in RCW 18.130.180. The protections of RCW 43.70.075 apply to notifications of incidents that are submitted in good faith by employees of medical facilities. [2009 c 495 § 14; 2008 c 136 § 2; 2006 c 8 § 108.]

**Effective date—2009 c 495:** See note following RCW 43.20.050.

**70.56.050 Confidentiality of notifications and reports.** (1)(a) When notification of an adverse event under RCW 70.56.020(2)(a) or of an incident under RCW 70.56.040(5), or a report regarding an adverse event under RCW 70.56.020(2)(b) is made by or through a coordinated quality improvement program under RCW 43.70.510 or 70.41.200, or by a peer review committee under RCW 4.24.250, information and documents, including complaints and incident reports, created specifically for and collected and maintained by a quality improvement committee for the purpose of preparing a notification of an adverse event or incident or a report regarding an adverse event, the report itself, and the notification of an incident, shall be subject to the confidentiality protections of those laws and RCW 42.56.360(1)(c).

(b) The notification of an adverse event under RCW 70.56.020(2)(a), shall be subject to public disclosure and not exempt from disclosure under chapter 42.56 RCW. Any public disclosure of an adverse event notification must include any contextual information the medical facility chose to provide under RCW 70.56.020(2)(a).

(2)(a) When notification of an adverse event under RCW 70.56.020(2)(a) or of an incident under RCW 70.56.040(5), or a report regarding an adverse event under RCW 70.56.020(2)(b), made by a health care worker uses information and documents, including complaints and incident reports, created specifically for and collected and maintained by a quality improvement committee under RCW 43.70.510 or 70.41.200 or a peer review committee under RCW

4.24.250, a notification of an incident, the report itself, and the information or documents used for the purpose of preparing notifications or the report, shall be subject to the confidentiality protections of those laws and RCW 42.56.360(1)(c).

(b) The notification of an adverse event under RCW 70.56.020(2)(a) shall be subject to public disclosure and not exempt from disclosure under chapter 42.56 RCW. Any public disclosure of an adverse event notification must include any contextual information the medical facility chose to provide under RCW 70.56.020(2)(a). [2008 c 136 § 3; 2006 c 8 § 110.]

**70.56.900 Findings--Intent--Part headings and sub-headings not law--Severability--2006 c 8.** See notes following RCW 5.64.010.

### Chapter 70.58 RCW VITAL STATISTICS

#### Sections

70.58.005	Definitions.
70.58.010	Registration districts.
70.58.020	Local registrars—Deputies.
70.58.030	Duties of local registrars.
70.58.040	Compensation of local registrars.
70.58.050	Duty to enforce law.
70.58.055	Certificates generally.
70.58.061	Electronic and hard copy transmission.
70.58.065	Local registrar use of electronic databases.
70.58.070	Registration of births required.
70.58.080	Birth certificates—Filing—Establishing paternity—Surname of child.
70.58.082	Vital records—Rules—Release of copies.
70.58.085	Birth certificates suitable for display—Issuance—Fee—Disposition of funds.
70.58.095	New certificate of birth—Legitimation, paternity—Substitution for original—Inspection of original, when—When delayed registration required.
70.58.100	Supplemental report on name of child.
70.58.104	Reproductions of vital records—Disclosure of information for research purposes—Furnishing of birth and death records by local registrars.
70.58.107	Fees charged by department and local registrars.
70.58.110	Delayed registration of births—Authorized.
70.58.120	Delayed registration of births—Application—Evidence required.
70.58.130	Delayed registration of births—Where registered—Copy as evidence.
70.58.145	Order establishing record of birth when delayed registration not available—Procedure.
70.58.150	"Fetal death," "evidence of life," defined.
70.58.160	Certificate of death or fetal death required.
70.58.170	Certificate of death or fetal death—By whom filed.
70.58.175	Certificate of death—Domestic partnership information.
70.58.180	Certificate when no physician, physician's assistant, or advanced registered nurse practitioner in attendance—Legally accepted cause of death.
70.58.190	Permit to dispose of human remains when cause of death undetermined.
70.58.210	Birth certificate upon adoption.
70.58.230	Permits for burial, removal, etc., required—Removal to another district without permit, notice to registrar, fee.
70.58.240	Duties of funeral directors.
70.58.250	Burial-transit permit—Requisites.
70.58.260	Burial grounds—Duties of individual in charge of the premises.
70.58.270	Data on inmates of hospitals, etc.
70.58.280	Penalty.
70.58.380	Certificates for out-of-state marriage license requirements.
70.58.390	Certificates of presumed death.
70.58.400	Certificate of death—Presence of methicillin-resistant staphylococcus aureus (MRSA).
70.58.900	Construction—Chapter applicable to state registered domestic partnerships—2009 c 521.

#### Vital statistics

*duties of state registrar: RCW 43.70.160.*

*registration of: RCW 43.70.150.*

**70.58.005 Definitions.** The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Business days" means Monday through Friday except official state holidays.

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

(3) "Electronic approval" or "electronically approve" means approving the content of an electronically filed vital record through the processes provided by the department. Electronic approval processes shall be consistent with policies, standards, and procedures developed by the information services board under RCW 43.105.041.

(4) "Embalmer" means a person licensed as required in chapter 18.39 RCW and defined in RCW 18.39.010.

(5) "Funeral director" means a person licensed as required in chapter 18.39 RCW and defined in RCW 18.39.010.

(6) "Vital records" means records of birth, death, fetal death, marriage, dissolution, annulment, and legal separation, as maintained under the supervision of the state registrar of vital statistics. [2009 c 231 § 1; 2005 c 365 § 151; 1991 c 3 § 342; 1987 c 223 § 1.]

**70.58.010 Registration districts.** Each city of the first class shall constitute a primary registration district and each county and the territory of counties jointly comprising a health district, exclusive of the portion included within cities of the first class, shall constitute a primary registration area. All other counties and municipal areas not included in the foregoing shall be divided into registration areas by the state registrar as he may deem essential to obtain the most efficient registration of vital events as provided by law. [1979 ex.s. c 52 § 2; 1951 c 106 § 4; 1915 c 180 § 1; 1907 c 83 § 2; RRS § 6019.]

**70.58.020 Local registrars—Deputies.** Under the direction and control of the state registrar, the health officer of each city of the first class shall be the local registrar in and for the primary registration district under his supervision as health officer and the health officer of each county and district health department shall be the local registrar in and for the registration area which he supervises as health officer and shall serve as such as long as he performs the registration duties as prescribed by law. He may be removed as local registrar of the registration area which he serves by the state board of health upon its finding of evidence of neglect in the performance of his duties as such registrar. The state registrar shall appoint local registrars for those registration areas not included in the foregoing and also in areas where the state board of health has removed the health officer from this position as registrar.

Each local registrar, subject to the approval of the state registrar, shall appoint in writing a sufficient number of deputy registrars to administer the laws relating to vital statistics, and shall certify the appointment of such deputies to the state registrar. Deputy registrars shall act in the case of absence, death, illness or disability of the local registrar, or such other

conditions as may be deemed sufficient cause to require their services. [1979 ex.s. c 52 § 3; 1961 ex.s. c 5 § 5; 1951 c 106 § 5; 1915 c 180 § 2; 1907 c 83 § 3; RRS § 6020.]

*Director of combined city-county health department as registrar: RCW 70.08.060.*

**70.58.030 Duties of local registrars.** The local registrar shall supply blank forms of certificates to such persons as require them. He or she shall carefully examine each certificate of birth, death, and fetal death when presented for record, and see that it has been made out in accordance with the provisions of law and the instructions of the state registrar. If any certificate of death is incomplete or unsatisfactory, the local registrar shall call attention to the defects in the return, and withhold issuing the burial-transit permit until it is corrected. If the certificate of death is properly executed and complete, he or she shall issue a burial-transit permit to the funeral director or person acting as such. If a certificate of a birth is incomplete, he or she shall immediately notify the informant, and require that the missing items be supplied if they can be obtained. He or she shall sign as local registrar to each certificate filed in attest of the date of filing in the office. He or she shall make a record of each birth, death, and fetal death certificate registered in such manner as directed by the state registrar. The local registrar shall transmit to the state registrar each original death or fetal death certificate no less than thirty days after the certificate was registered nor more than sixty days after the certificate was registered. On or before the fifteenth day and the last day of each month, each local registrar shall transmit to the state registrar all original birth certificates that were registered prior to that day and which had not been transmitted previously. A local registrar shall transmit an original certificate to the state registrar whenever the state registrar requests the transfer of the certificate from the local registrar. If no births or no deaths occurred in any month, he or she shall, on the tenth day of the following month, report that fact to the state registrar, on a card provided for this purpose. Local registrars in counties in which a first-class city or a city of twenty-seven thousand or more population is located may retain an exact copy of the original and make certified copies of the exact copy. [1990 c 99 § 1; 1961 ex.s. c 5 § 6; 1907 c 83 § 18; RRS § 6035.]

**70.58.040 Compensation of local registrars.** A local registrar shall be paid the sum of one dollar for each birth, death, or fetal death certificate registered for his district which sum shall cover making out the burial-transit permit and record of the certificate to be filed and preserved in his office. If no births or deaths were registered during any month, the local registrar shall be paid the sum of one dollar for each report to that effect: PROVIDED, That all local health officers who are by statute required to serve as local registrars shall not be entitled to the fee of one dollar. Neither shall any members of their staffs be entitled to the above fee of one dollar when such persons serve as deputy registrars. All fees payable to local registrars shall be paid by the treasurer of the county or city, properly chargeable therewith, out of the funds of the county or city, upon warrants drawn by the auditor, or other proper officer of the county or city. No warrant shall be issued to a local registrar except upon a statement, signed by the state registrar, stating the names and

(2010 Ed.)

addresses respectively of the local registrars entitled to fees from the county or city, and the number of certificates and reports of births, deaths, and fetal deaths, properly returned to the state registrar, by each local registrar, during three preceding calendar months prior to the date of the statement, and the amount of fees to which each local registrar is entitled, which statement the state registrar shall file with the proper officers during the months of January, April, July, and October of each year. Upon filing of the statement the auditor or other proper officer of the county or city shall issue warrants for the amount due each local registrar. [1961 ex.s. c 5 § 7; 1951 c 106 § 8; 1915 c 180 § 10; 1907 c 83 § 19; RRS § 6036.]

**70.58.050 Duty to enforce law.** The local registrars are hereby charged with the strict and thorough enforcement of the provisions of \*this act in their districts, under the supervision and direction of the state registrar. And they shall make an immediate report to the state registrar of any violations of this law coming to their notice by observation or upon the complaint of any person, or otherwise. The state registrar is hereby charged with the thorough and efficient execution of the provisions of \*this act in every part of the state, and with supervisory power over local registrars, to the end that all of the requirements shall be uniformly complied with. He shall have authority to investigate cases of irregularity or violation of law, personally or by accredited representative, and all local registrars shall aid him, upon request, in such investigation. When he shall deem it necessary he shall report cases of violation of any of the provisions of \*this act to the prosecuting attorney of the proper county with a statement of the fact and circumstances; and when any such case is reported to them by the state registrar, all prosecuting attorneys or officials acting in such capacity shall forthwith initiate and promptly follow up the necessary court proceedings against the parties responsible for the alleged violations of law. And upon request of the state registrar the attorney general shall likewise assist in the enforcement of the provisions of \*this act. [1907 c 83 § 22; RRS § 6039.]

*\*Reviser's note:* "this act" appears in 1907 c 83 codified as RCW 70.58.010 through 70.58.100, 70.58.230 through 70.58.280, and 43.20A.620 through 43.20A.630.

**70.58.055 Certificates generally.** (1) To promote and maintain nationwide uniformity in the system of vital statistics, the certificates required by this chapter or by the rules adopted under this chapter shall include, as a minimum, the items recommended by the federal agency responsible for national vital statistics including social security numbers.

(2)(a) The state board of health by rule may require additional pertinent information relative to the birth and manner of delivery as it may deem necessary for statistical study. This information shall be placed in a confidential section of the birth certificate form and shall not be used for certification, nor shall it be subject to the view of the public except as provided in (b) of this subsection. The state board of health may eliminate from the forms items that it determines are not necessary for statistical study.

(b) Information contained in the confidential section of the birth certificate form may only be available for review by:

(i) A member of the public upon order of the court; or

(ii) The individual who is the subject of the birth certificate upon confirmation of the identity of the requestor in a manner approved by the state board of health. Confidential information provided to the individual who is the subject of the birth certificate shall be limited to information on the child and shall not include information on the mother or father.

(3) Each certificate or other document required by this chapter shall be on a form or in a format prescribed by the state registrar.

(4) All vital records shall contain the data required for registration. No certificate may be held to be complete and correct that does not supply all items of information called for or that does not satisfactorily account for the omission of required items.

(5) Information required in certificates or documents authorized by this chapter may be filed and registered by photographic, electronic, or other means as prescribed by the state registrar. [2009 c 44 § 1; 1997 c 58 § 948; 1991 c 96 § 1.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**70.58.061 Electronic and hard copy transmission.**

The department is authorized to prescribe by rule the schedule and system for electronic and hard copy transmission of certificates and documents required by this chapter. [1991 c 96 § 2.]

**70.58.065 Local registrar use of electronic databases.**

The department, in mutual agreement with a local health officer as defined in RCW 70.05.010, may authorize a local registrar to access the statewide birth database or death database and to issue a certified copy of birth or death certificates from the respective statewide electronic databases. In such cases, the department may bill local registrars for only direct line charges associated with accessing birth and death databases. [1991 c 96 § 3.]

**70.58.070 Registration of births required.** All births that occur in the state shall be immediately registered in the districts in which they occur, as hereinafter provided. [1907 c 83 § 11; RRS § 6028.]

**70.58.080 Birth certificates—Filing—Establishing paternity—Surname of child.** (1) Within ten days after the birth of any child, the attending physician, midwife, or his or her agent shall:

(a) Fill out a certificate of birth, giving all of the particulars required, including: (i) The mother's name and date of birth, and (ii) if the mother and father are married at the time of birth or an acknowledgment of paternity has been signed or one has been filed with the state registrar of vital statistics naming the man as the father, the father's name and date of birth; and

(b) File the certificate of birth together with the mother's and father's social security numbers with the state registrar of vital statistics.

(2) The local registrar shall forward the birth certificate, any signed acknowledgment of paternity that has not been filed with the state registrar of vital statistics, and the

mother's and father's social security numbers to the state office of vital statistics pursuant to RCW 70.58.030.

(3) The state registrar of vital statistics shall make available to the division of child support the birth certificates, the mother's and father's social security numbers and acknowledgments of paternity.

(4) Upon the birth of a child to an unmarried woman, the attending physician, midwife, or his or her agent shall:

(a) Provide an opportunity for the child's mother and natural father to complete an acknowledgment of paternity. The completed acknowledgment shall be filed with the state registrar of vital statistics. The acknowledgment shall be prepared as required by RCW 26.26.305.

(b) Provide written information and oral information, furnished by the department of social and health services, to the mother and the father regarding the benefits of having the child's paternity established and of the availability of paternity establishment services, including a request for support enforcement services. The oral and written information shall also include information regarding the alternatives to, the legal consequences of, and the rights, including, if one parent is a minor any rights afforded due to minority status, and responsibilities that arise from, signing the acknowledgment of paternity.

(5) The physician or midwife or his or her agent is entitled to reimbursement for reasonable costs, which the department shall establish by rule, when an acknowledgment of paternity is filed with the state registrar of vital statistics.

(6) If there is no attending physician or midwife, the father or mother of the child, householder or owner of the premises, manager or superintendent of the public or private institution in which the birth occurred, shall notify the local registrar, within ten days after the birth, of the fact of the birth, and the local registrar shall secure the necessary information and signature to make a proper certificate of birth.

(7) When an infant is found for whom no certificate of birth is known to be on file, a birth certificate shall be filed within the time and in the form prescribed by the state board of health.

(8) When no alleged father is named on a birth certificate of a child born to an unwed mother the mother may give any surname she so desires to her child but shall designate in space provided for father's name on the birth certificate "None Named". [2002 c 302 § 708; 1997 c 58 § 937; 1989 c 55 § 2; 1961 ex.s. c 5 § 8; 1951 c 106 § 6; 1907 c 83 § 12; RRS § 6029.]

**Application—Construction—Short title—Severability—2002 c 302:** See RCW 26.26.903, 26.26.911, and 26.26.912.

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**70.58.082 Vital records—Rules—Release of copies.**

No person may prepare or issue any vital record that purports to be an original, certified copy, or copy of a vital record except as authorized in this chapter.

The department shall adopt rules providing for the release of paper or electronic copies of vital records that include adequate standards for security and confidentiality, ensure the proper record is identified, and prevent fraudulent use of records. All certified copies of vital records in the state must be on paper and in a format provided and approved by the department and must include security features to deter the

alteration, counterfeiting, duplication, or simulation without ready detection.

Federal, state, and local governmental agencies may, upon request and with submission of the appropriate fee, be furnished copies of vital records if the vital record will be used for the agencies' official duties. The department may enter into agreements with offices of vital statistics outside the state for the transmission of copies of vital records to those offices when the vital records relate to residents of those jurisdictions and receipt of copies of vital records from those offices. The agreement must specify the statistical and administrative purposes for which the vital records may be used and must provide instructions for the proper retention and disposition of the copies. Copies of vital records that are received by the department from other offices of vital statistics outside the state must be handled as provided under the agreements.

The department may disclose information that may identify any person named in any birth certificate [vital] record for research purposes as provided under chapter 42.48 RCW. [2005 c 365 § 152; 1997 c 108 § 1.]

**70.58.085 Birth certificates suitable for display—Issuance—Fee—Disposition of funds.** (1) In addition to the original birth certificate, the state registrar shall issue upon request and upon payment of the fee established pursuant to subsection (3) of this section a birth certificate representing that the birth of the person named thereon is recorded in the office of the registrar. The certificate issued under this section shall be in a form consistent with the need to protect the integrity of vital records but shall be suitable for display. It may bear the seal of the state printed thereon and may be signed by the governor. It shall have the same status as evidence as the original birth certificate.

(2) Of the funds received under subsection (1) of this section, the amount needed to reimburse the registrar for expenses incurred in administering this section shall be credited to the state registrar account. The remainder shall be credited to the children's trust fund established under RCW 43.121.100.

(3) The fee shall be set by the council established pursuant to RCW 43.121.020, at a level likely to maximize revenues for the children's trust fund. [2004 c 53 § 1; 1987 c 351 § 6.]

**Legislative findings—1987 c 351:** "The legislature finds that children are society's most valuable resource and that child abuse and neglect is a threat to the physical, mental, and emotional health of children. The legislature further finds that assisting community-based private nonprofit and public organizations, agencies, or school districts in identifying and establishing needed primary prevention programs will reduce the incidence of child abuse and neglect, and the necessity for costly subsequent intervention in family life by the state. Child abuse and neglect prevention programs can be most effectively and economically administered through the use of trained volunteers and the cooperative efforts of the communities, citizens, and the state. The legislature finds that the Washington council for prevention of child abuse is an effective counsel for reducing child abuse but limited resources have prevented the council from funding promising prevention concepts statewide.

It is the intent of the legislature to establish a cost-neutral revenue system for the children's trust fund which is designed to fund primary prevention programs and innovative prevention related activities such as research or public awareness campaigns. The fund shall be supported through revenue created by the sale of heirloom birth certificates. This concept has proven to be a cost-effective approach to funding child abuse prevention in

(2010 Ed.)

the state of Oregon. The legislature believes that this is an innovative way of using private dollars to supplement our public dollars to reduce child abuse and neglect." [1987 c 351 § 1.]

**70.58.095 New certificate of birth—Legitimation, paternity—Substitution for original—Inspection of original, when—When delayed registration required.** The state registrar of vital statistics shall establish a new certificate of birth for a person born in this state when he receives a request that a new certificate be established and such evidence as required by regulation of the state board of health proving that such person has been acknowledged, or that a court of competent jurisdiction has determined the paternity of such person. When a new certificate of birth is established, the actual place and date of birth shall be shown. It shall be substituted for the original certificate of birth. Thereafter, the original certificate and the evidence of paternity, or acknowledgment shall not be subject to inspection except upon order of a court of competent jurisdiction, or upon written request of the department of social and health services, the attorney general, or a prosecuting attorney, stating that the documents are being sought in furtherance of an action to enforce a duty of support. If no certificate of birth is on file for the person for whom a new certificate is to be established under this section, a delayed registration of birth shall be filed with the state registrar of vital statistics as provided in RCW 70.58.120. [1983 1st ex.s. c 41 § 14; 1975-'76 2nd ex.s. c 42 § 38; 1961 ex.s. c 5 § 21.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**70.58.100 Supplemental report on name of child.** It shall be the duty of every local registrar when any certificate of birth of a living child is presented without statement of the given name, to make out and deliver to the parents of such child a special blank for the supplemental report of the given name of the child, which shall be filled out as directed and returned to the registrar as soon as the child has been named. [1915 c 180 § 8; 1907 c 83 § 14; RRS § 6031.]

**70.58.104 Reproductions of vital records—Disclosure of information for research purposes—Furnishing of birth and death records by local registrars.** (1) The state registrar may prepare typewritten, photographic, electronic, or other reproductions of records of birth, death, fetal death, marriage, or decrees of divorce, annulment, or legal separation registered under law or that portion of the record of any birth which shows the child's full name, sex, date of birth, and date of filing of the certificate. Such reproductions, when certified by the state registrar, shall be considered for all purposes the same as the original and shall be prima facie evidence of the facts stated therein.

(2) The department may authorize by regulation the disclosure of information contained in vital records for research purposes. All research proposals must be submitted to the department and must be reviewed and approved as to scientific merit and to ensure that confidentiality safeguards are provided in accordance with department policy.

(3) Local registrars may, upon request, furnish certified copies of the records of birth, death, and fetal death, subject to all provisions of state law applicable to the state registrar. [1991 c 96 § 4; 1987 c 223 § 2.]

**70.58.107 Fees charged by department and local registrars.** The department of health shall charge a fee of twenty dollars for certified copies of records and for copies or information provided for research, statistical, or administrative purposes, and eight dollars for a search of the files or records when no copy is made. The department shall prescribe by regulation fees to be paid for preparing sealed files and for opening sealed files.

No fee may be demanded or required for furnishing certified copies of a birth, death, fetal death, marriage, divorce, annulment, or legal separation record for use in connection with a claim for compensation or pension pending before the veterans administration. No fee may be demanded or required for furnishing certified copies of a death certificate of a sex offender for use by a law enforcement agency in maintaining a registered sex offender database, or that of any offender requested by a county clerk or court in the state of Washington for purposes of extinguishing the offender's legal financial obligation.

The department shall keep a true and correct account of all fees received and transmit the fees to the state treasurer on a weekly basis.

Local registrars shall charge the same fees as the state as hereinabove provided and as prescribed by department regulation except in cases where payment is made by credit card, charge card, debit card, smart card, stored value card, federal wire, automatic clearinghouse system, or other electronic communication. Payment by these electronic methods may be subject to an additional fee consistent with the requirements established by RCW 36.29.190. All such fees collected, except for seven dollars of each fee collected for the issuance of birth certificates and first copies of death certificates and fourteen dollars of each fee collected for additional copies of the same death certificate ordered at the same time as the first copy, shall be paid to the jurisdictional health department.

All local registrars in cities and counties shall keep a true and correct account of all fees received under this section for the issuance of certified copies and shall transmit seven dollars of the fees collected for birth certificates and first copies of death certificates and fourteen dollars of the fee collected for additional copies of death certificates to the state treasurer on or before the first day of January, April, July, and October. All but five dollars of the fees turned over to the state treasurer by local registrars shall be paid to the department of health for the purpose of developing and maintaining the state vital records systems, including a web-based electronic death registration system.

Eight dollars of each fee imposed for the issuance of certified copies, except for copies suitable for display issued under RCW 70.58.085, at both the state and local levels shall be held by the state treasurer in the death investigations' account established by RCW 43.79.445. [2007 c 200 § 2; 2007 c 91 § 2. Prior: 2003 c 272 § 1; 2003 c 241 § 1; 1997 c 223 § 1; 1991 c 3 § 343; 1988 c 40 § 1; 1987 c 223 § 3.]

**Reviser's note:** This section was amended by 2007 c 91 § 2 and by 2007 c 200 § 2, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

**70.58.110 Delayed registration of births—Authorized.** Whenever a birth which occurred in this state on or after July 1, 1907, is not on record in the office of the state registrar or in the office of the auditor of the county in which the birth occurred if the birth was prior to July 1, 1907, application for the registration of the birth may be made by the interested person to the state registrar: PROVIDED, That if the person whose birth is to be recorded be a child under four years of age the attending physician, if available, shall make the registration. [1953 c 90 § 2; 1943 c 176 § 1; 1941 c 167 § 1; Rem. Supp. 1943 § 6011-1.]

**70.58.120 Delayed registration of births—Application—Evidence required.** The delayed registration of birth form shall be provided by the state registrar and shall be signed by the registrant if of legal age, or by the attendant at birth, parent, or guardian if the registrant is not of legal age. In instances of delayed registration of birth where the person whose birth is to be recorded is four years of age or over but under twelve years of age and in instances where the person whose birth is to be recorded is less than four years of age and the attending physician is not available to make the registration, the facts concerning date of birth, place of birth, and parentage shall be established by at least one piece of documentary evidence. In instances of delayed registration of birth where the person whose birth is to be recorded is twelve years of age or over, the facts concerning date of birth and place of birth shall be established by at least three documents of which only one may be an affidavit. The facts concerning parentage shall be established by at least one document. Documents, other than affidavits, or documents established prior to the fourth birthday of the registrant, shall be at least five years old or shall have been made from records established at least five years prior to the date of application. [1961 ex.s. c 5 § 9; 1953 c 90 § 3; 1943 c 176 § 2; 1941 c 167 § 2; Rem. Supp. 1943 § 6011-2.]

**70.58.130 Delayed registration of births—Where registered—Copy as evidence.** The birth shall be registered in the records of the state registrar. A certified copy of the record shall be prima facie evidence of the facts stated therein. [1961 ex.s. c 5 § 10; 1953 c 90 § 4; 1951 c 106 § 2; 1943 c 176 § 4; 1941 c 167 § 4; Rem. Supp. 1943 § 6011-4.]

**70.58.145 Order establishing record of birth when delayed registration not available—Procedure.** When a person alleged to be born in this state is unable to meet the requirements for a delayed registration of birth in accordance with RCW 70.58.120, he may petition the superior court of the county of residence or of the county of birth for an order establishing a record of the date and place of his birth, and his parentage. The court shall fix a time for hearing the petition, and the state registrar shall be given notice at least twenty days prior to the date set for hearing in order that he may present at the hearing any information he believes will be useful to the court. If the court from the evidence presented to it finds that the petitioner was born in this state, the court shall issue an order to establish a record of birth. This order shall include the birth data to be registered. If the court orders the birth of a person born in this state registered, it shall be

registered in the records of the state registrar. [1961 ex.s. c 5 § 20.]

**70.58.150 "Fetal death," "evidence of life," defined.**

A fetal death means any product of conception that shows no evidence of life after complete expulsion or extraction from its mother. The words "evidence of life" include breathing, beating of the heart, pulsation of the umbilical cord, or definite movement of voluntary muscles. [1961 ex.s. c 5 § 11; 1945 c 159 § 5; Rem. Supp. 1945 § 6024-5.]

**70.58.160 Certificate of death or fetal death required.** A certificate of every death or fetal death shall be filed with the local registrar of the district in which the death or fetal death occurred within three business days after the occurrence is known, or if the place of death or fetal death is not known, then with the local registrar of the district in which the human remains are found within one business day thereafter. In every instance a certificate shall be filed prior to the interment or other disposition of the human remains. However, a certificate of fetal death shall not be required if the period of gestation is less than twenty weeks. [2005 c 365 § 153; 1961 ex.s. c 5 § 12; 1945 c 159 § 1; Rem. Supp. 1945 § 6024-1. Prior: 1915 c 180 § 4; 1907 c 83 § 5.]

**70.58.170 Certificate of death or fetal death—By whom filed.** The funeral director or person having the right to control the disposition of the human remains under RCW 68.50.160 shall file the certificate of death or fetal death. In preparing such certificate, the funeral director or person having the right to control the disposition of the human remains under RCW 68.50.160 shall obtain and enter on the certificate such personal data as the certificate requires from the person or persons best qualified to supply them. He or she shall present the certificate of death to the physician, physician's assistant, or advanced registered nurse practitioner last in attendance upon the deceased, or, if the deceased died without medical attendance, to the health officer, medical examiner, coroner, or prosecuting attorney having jurisdiction, who shall certify the cause of death according to his or her best knowledge and belief and shall sign or electronically approve the certificate of death or fetal death within two business days after being presented with the certificate unless good cause for not signing or electronically approving the certificate within the two business days can be established. He or she shall present the certificate of fetal death to the physician, physician's assistant, advanced registered nurse practitioner, midwife, or other person in attendance at the fetal death, who shall certify the fetal death and such medical data pertaining thereto as he or she can furnish. [2009 c 231 § 2; 2005 c 365 § 154; 2000 c 133 § 1; 1979 ex.s. c 162 § 1; 1961 ex.s. c 5 § 13; 1945 c 159 § 2; Rem. Supp. 1945 § 6024-2.]

**70.58.175 Certificate of death—Domestic partnership information.** Information recorded on death certificates shall include domestic partnership status and the surviving partner's information to the same extent such information is recorded for marital status and the surviving spouse's information. [2007 c 156 § 32.]

**70.58.180 Certificate when no physician, physician's assistant, or advanced registered nurse practitioner in attendance—Legally accepted cause of death.** If the death occurred without medical attendance, the funeral director or person having the right to control the disposition of the human remains under RCW 68.50.160 shall notify the coroner, medical examiner, or prosecuting attorney if there is no coroner or medical examiner in the county. If the circumstances suggest that the death or fetal death was caused by unlawful or unnatural causes or if there is no local health officer with jurisdiction, the coroner or medical examiner, or the prosecuting attorney shall complete and sign or electronically approve the certification, noting upon the certificate that no physician, physician's assistant, or advanced registered nurse practitioner was in attendance at the time of death. In case of any death without medical attendance in which there is no suspicion of death from unlawful or unnatural causes, the local health officer or his or her deputy, the coroner or medical examiner, and if none, the prosecuting attorney, shall complete and sign or electronically approve the certification, noting upon the certificate that no physician, physician's assistant, or advanced registered nurse practitioner was in attendance at the time of death, and noting the cause of death without the holding of an inquest or performing of an autopsy or post mortem, but from statements of relatives, persons in attendance during the last sickness, persons present at the time of death or other persons having adequate knowledge of the facts.

The cause of death, the manner and mode in which death occurred, as noted by the coroner or medical examiner, or if none, the prosecuting attorney or the health officer and incorporated in the death certificate filed with the department shall be the legally accepted manner and mode by which the deceased came to his or her death and shall be the legally accepted cause of death. [2009 c 231 § 3; 2005 c 365 § 155; 2000 c 133 § 2; 1961 ex.s. c 5 § 14; 1953 c 188 § 5; 1945 c 159 § 3; Rem. Supp. 1945 § 6024-3. Prior: 1915 c 180 § 5; 1907 c 83 § 7.]

**70.58.190 Permit to dispose of human remains when cause of death undetermined.** If the cause of death cannot be determined within three business days, the certification of its cause may be filed after the prescribed period, but the attending physician, coroner, or prosecuting attorney shall give the local registrar of the district in which the death occurred written notice of the reason for the delay, in order that a permit for the disposition of the human remains may be issued if required. [2005 c 365 § 156; 1945 c 159 § 4; Rem. Supp. 1945 § 6024-4.]

**70.58.210 Birth certificate upon adoption.** (1) Whenever a decree of adoption has been entered declaring a child, born in the state of Washington, adopted in any court of competent jurisdiction in the state of Washington or any other state or any territory of the United States, a certified copy of the decree of adoption shall be recorded with the proper department of registration of births in the state of Washington and a certificate of birth shall issue upon request, bearing the new name of the child as shown in the decree of adoption, the names of the adoptive parents of the child and the age, sex, and date of birth of the child, but no reference in any birth

certificate shall have reference to the adoption of the child. However, original registration of births shall remain a part of the record of the board of health.

(2) Whenever a decree of adoption has been entered declaring a child, born outside of the United States and its territories, adopted in any court of competent jurisdiction in the state of Washington, a certified copy of the decree of adoption together with evidence as to the child's birth date and birth place provided by the original birth certificate, or by a certified copy, extract, or translation thereof or by a certified copy of some other document essentially equivalent thereto, shall be recorded with the proper department of registration of births in the state of Washington. The records of the United States immigration and naturalization service or of the United States department of state are essentially equivalent to the birth certificate. A certificate of birth shall issue upon request, bearing the new name of the child as shown in the decree of adoption, the names of the adoptive parents of the child and the age, sex, and date of birth of the child, but no reference in any birth certificate shall have reference to the adoption of the child. Unless the court orders otherwise, the certificate of birth shall have the same overall appearance as the certificate which would have been issued if the adopted child had been born in the state of Washington.

A person born outside of the United States and its territories for whom a decree of adoption has been entered in a court of this state before September 1, 1979, may apply for a certificate of birth under this subsection by furnishing the proper department of registration of births with a certified copy of the decree of adoption together with the other evidence required by this subsection as to the date and place of birth. Upon receipt of the decree and evidence, a certificate of birth shall be issued in accordance with this subsection. [1979 ex.s. c 101 § 2; 1975-'76 2nd ex.s. c 42 § 40; 1943 c 12 § 1; 1939 c 133 § 1; Rem. Supp. 1943 § 6013-1.]

*Adoption: Chapter 26.33 RCW.*

*Decree of adoption—Duties of state registrar of vital statistics: RCW 26.33.290.*

*Uniform parentage act: Chapter 26.26 RCW.*

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**70.58.230 Permits for burial, removal, etc., required—Removal to another district without permit, notice to registrar, fee.** It shall be unlawful for any person to inter, deposit in a vault, grave, or tomb, cremate, or otherwise dispose of, or disinter or remove from one registration district to another, or hold for more than three business days after death, the human remains of any person whose death occurred in this state or any human remains which shall be found in this state, without obtaining, from the local registrar of the district in which the death occurred or in which the human remains were found, a permit for the burial, disinterment, or removal of the human remains. However, a licensed funeral director or embalmer of this state or a funeral establishment licensed in another state contiguous to Washington, with a current certificate of removal registration issued by the director of the department of licensing, may remove human remains from the district where the death occurred to another registration district or Oregon or Idaho without having obtained a permit but in such cases the funeral director or

embalmer shall at the time of removing human remains file with or mail to the local registrar of the district where the death occurred a notice of removal upon a blank to be furnished by the state registrar. The notice of removal shall be signed or electronically approved by the funeral director or embalmer and shall contain the name and address of the local registrar with whom the certificate of death will be filed and the burial-transit permit secured. Every local registrar, accepting a death certificate and issuing a burial-transit permit for a death that occurred outside his or her district, shall be entitled to a fee of one dollar to be paid by the funeral director or embalmer at the time the death certificate is accepted and the permit is secured. It shall be unlawful for any person to bring into or transport within the state or inter, deposit in a vault, grave, or tomb, or cremate or otherwise dispose of human remains of any person whose death occurred outside this state unless the human remains are accompanied by a removal or transit permit issued in accordance with the law and health regulations in force where the death occurred, or unless a special permit for bringing the human remains into this state shall be obtained from the state registrar. [2009 c 231 § 4; 2005 c 365 § 157; 1961 ex.s. c 5 § 16; 1915 c 180 § 3; 1907 c 83 § 4; RRS § 6021.]

*Cemeteries and human remains: Title 68 RCW.*

**70.58.240 Duties of funeral directors.** Each funeral director or person having the right to control the disposition of the human remains under RCW 68.50.160 shall obtain a certificate of death, sign or electronically approve and file the certificate with the local registrar, and secure a burial-transit permit, prior to any permanent disposition of the human remains. He or she shall obtain the personal and statistical particulars required, from the person best qualified to supply them. He or she shall present the certificate to the attending physician or in case the death occurred without any medical attendance, to the proper official for certification for the medical certificate of the cause of death and other particulars necessary to complete the record. He or she shall supply the information required relative to the date and place of disposition and he or she shall sign or electronically approve and present the completed certificate to the local registrar, for the issuance of a burial-transit permit. He or she shall deliver the burial permit to the sexton, or person in charge of the place of burial, before interring the human remains; or shall attach the transit permit to the box containing the corpse, when shipped by any transportation company, and the permit shall accompany the corpse to its destination. [2009 c 231 § 5; 2005 c 365 § 158; 1961 ex.s. c 5 § 17; 1915 c 180 § 6; 1907 c 83 § 8; RRS § 6025.]

**70.58.250 Burial-transit permit—Requisites.** The burial-transit permit shall contain a statement by the local registrar and over his or her signature or electronic approval, that a satisfactory certificate of death having been filed with him or her, as required by law, permission is granted to inter, remove, or otherwise dispose of the body; stating the name of the deceased and other necessary details upon the form prescribed by the state registrar. [2009 c 231 § 6; 1961 ex.s. c 5 § 18; 1907 c 83 § 9; RRS § 6026.]

**70.58.260 Burial grounds—Duties of individual in charge of the premises.** It shall be unlawful for any person in charge of any premises in which bodies of deceased persons are interred, cremated, or otherwise permanently disposed of, to permit the interment, cremation, or other disposition of any body upon such premises unless it is accompanied by a burial, removal, or transit permit as provided in this chapter. It shall be the duty of the person in charge of any such premises to, in case of the interment, cremation, or other disposition of human remains therein, endorse upon the permit the date and character of such disposition, over his or her signature or electronic approval, to return all permits so endorsed to the local registrar of the district in which the death occurred within ten days from the date of such disposition, and to keep a record of all human remains disposed of on the premises under his or her charge, stating, in each case, the name of the deceased person, if known, the place of death, the date of burial or other disposition, and the name and address of the undertaker, which record shall at all times be open to public inspection, and it shall be the duty of every undertaker, or person acting as such, when burying human remains in a cemetery or burial grounds having no person in charge, to sign or electronically approve the burial, removal, or transit permit, giving the date of burial, write across the face of the permit the words "no person in charge", and file the burial, removal, or transit permit within ten days with the registrar of the district in which the death occurred. [2009 c 231 § 7; 2005 c 365 § 159; 1915 c 180 § 7; 1907 c 83 § 10; RRS § 6027.]

**70.58.270 Data on inmates of hospitals, etc.** All superintendents or managers, or other persons in charge of hospitals, almshouses, lying-in or other institutions, public or private, to which persons resort for treatment of disease, confinement, or are committed by process of law, are hereby required to make a record of all the personal and statistical particulars relative to the inmates in their institutions, at the date of approval of \*this act, that are required in the form of the certificate provided for by this act, as directed by the state registrar; and thereafter such record shall be by them made for all future inmates at the time of their admission. And in case of persons admitted or committed for medical treatment of contagious disease, the physician in charge shall specify, for entry in the record, the nature of the disease, and where, in his opinion, it was contracted. The personal particulars and information required by this section shall be obtained from the individual himself, if it is practicable to do so; and when they cannot be so obtained, they shall be secured in as complete a manner as possible from the relatives, friends, or other persons acquainted with the facts. [1907 c 83 § 16; RRS § 6033.]

**\*Reviser's note:** For "this act," see note following RCW 70.58.050.

**70.58.280 Penalty.** (1) Every person who violates or willfully fails, neglects, or refuses to comply with any provisions of \*this act is guilty of a misdemeanor and for a second offense shall be punished by a fine of not less than twenty-five dollars, and for a third and each subsequent offense shall be punished by a fine of not less than fifty dollars or more than two hundred and fifty dollars or by imprisonment for not more than ninety days, or by both fine and imprisonment.

(2010 Ed.)

(2) Every person who willfully furnishes any false information for any certificate required by \*this act or who makes any false statement in any such certificate is guilty of a gross misdemeanor. [2003 c 53 § 353; 1915 c 180 § 12; 1907 c 83 § 21; RRS § 6038.]

**\*Reviser's note:** For "this act," see note following RCW 70.58.050.

**Intent—Effective date—2003 c 53:** See notes following RCW 2.48.180.

**70.58.380 Certificates for out-of-state marriage license requirements.** The department shall prescribe by rule a schedule of fees for providing certificates necessary to meet marriage license requirements of other states. The fees shall be predicated on the costs of conducting premarital blood screening tests and issuing certificates. [1981 c 284 § 1.]

**Reviser's note:** Although 1981 c 284 directs this section be added to chapter 74.04 RCW, codification here is considered more appropriate. The department of social and health services is apparently the department referred to.

**70.58.390 Certificates of presumed death.** A county coroner, medical examiner, or the prosecuting attorney having jurisdiction may file a certificate of presumed death when the official filing the certificate determines to the best of the official's knowledge and belief that there is sufficient circumstantial evidence to indicate that a person has in fact died in the county or in waters contiguous to the county and that it is unlikely that the body will be recovered. The certificate shall recite, to the extent possible, the date, circumstances, and place of the death, and shall be the legally accepted fact of death.

In the event that the county in which the death occurred cannot be determined with certainty, the county coroner, medical examiner, or prosecuting attorney in the county in which the events occurred and in which the decedent was last known to be alive may file a certificate of presumed death under this section.

The official filing the certificate of presumed death shall file the certificate with the local registrar of the county where the death was presumed to have occurred, and thereafter all persons and parties acting in good faith may rely thereon with acquittance. [2005 c 365 § 160; 1981 c 176 § 1.]

**70.58.400 Certificate of death—Presence of methicillin-resistant staphylococcus aureus (MRSA).** In completing a certificate of death in compliance with this chapter, a physician, physician assistant, or advanced registered nurse practitioner must note the presence of methicillin-resistant staphylococcus aureus, if it is a cause or contributing factor in the patient's death. [2009 c 244 § 3.]

**70.58.900 Construction—Chapter applicable to state registered domestic partnerships—2009 c 521.** For the purposes of this chapter, the terms spouse, marriage, marital, husband, wife, widow, widower, next of kin, and family shall be interpreted as applying equally to state registered domestic partnerships or individuals in state registered domestic partnerships as well as to marital relationships and married persons, and references to dissolution of marriage shall apply equally to state registered domestic partnerships that have

been terminated, dissolved, or invalidated, to the extent that such interpretation does not conflict with federal law. Where necessary to implement chapter 521, Laws of 2009, gender-specific terms such as husband and wife used in any statute, rule, or other law shall be construed to be gender neutral, and applicable to individuals in state registered domestic partnerships. [2009 c 521 § 153.]

**Chapter 70.62 RCW**  
**TRANSIENT ACCOMMODATIONS—**  
**LICENSING—INSPECTIONS**

## Sections

70.62.200	Purpose.
70.62.210	Definitions.
70.62.220	License required—Fee—Display.
70.62.240	Rules.
70.62.250	Powers and duties of department.
70.62.260	Licenses—Applications—Expiration—Renewal.
70.62.270	Suspension or revocation of licenses—Civil fine.
70.62.280	Violations—Penalty.
70.62.290	Adoption of fire and safety rules.
70.62.900	Severability—1971 ex.s. c 239.

**Reviser's note:** Throughout this chapter, the terms "this 1971 amendatory act" or "this act" have been changed to "this chapter." "This 1971 amendatory act" and "this act" consist of this chapter, the amendment of RCW 43.22.050 and the repeal of RCW 70.62.010 through 70.62.130 and 43.22.060 through 43.22.110 by 1971 ex.s. c 239.

*Hotels: Chapter 19.48 RCW.*

*Lien of hotels, lodging and boarding houses: Chapter 60.64 RCW.*

**70.62.200 Purpose.** The purpose of this chapter is to provide for the development, establishment, and enforcement of standards for the maintenance and operation of transient accommodations through a licensing program to promote the protection of the health and safety of individuals using such accommodations in this state. [1994 c 250 § 1; 1971 ex.s. c 239 § 1.]

**70.62.210 Definitions.** The following terms whenever used or referred to in this chapter shall have the following respective meanings for the purposes of this chapter, except in those instances where the context clearly indicates otherwise:

(1) The term "transient accommodation" shall mean any facility such as a hotel, motel, condominium, resort, or any other facility or place offering three or more lodging units to travelers and transient guests.

(2) The term "person" shall mean any individual, firm, partnership, corporation, company, association or joint stock association, and the legal successor thereof.

(3) The term "secretary" shall mean the secretary of the Washington state department of health and any duly authorized representative thereof.

(4) The term "board" shall mean the Washington state board of health.

(5) The term "department" shall mean the Washington state department of health.

(6) The term "lodging unit" shall mean one self-contained unit designated by number, letter or some other method of identification. [1991 c 3 § 347; 1971 ex.s. c 239 § 2.]

**70.62.220 License required—Fee—Display.** The person operating a transient accommodation as defined in this chapter shall secure each year an annual operating license and shall pay a fee to cover the cost of licensure and enforcement activities as established by the department under RCW 43.70.110 and 43.70.250. The initial licensure period shall run for one year from the date of issuance, and the license shall be renewed annually on that date. The license fee shall be paid to the department. The license shall be conspicuously displayed in the lobby or office of the facility for which it is issued. [1994 c 250 § 2; 1987 c 75 § 9; 1982 c 201 § 10; 1971 ex.s. c 239 § 3.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**70.62.240 Rules.** The board shall adopt such rules as may be necessary to assure that each transient accommodation will be operated and maintained in a manner consistent with the health and safety of the members of the public using such facilities. Such rules shall provide for adequate light, heat, ventilation, cleanliness, and sanitation and shall include provisions to assure adequate maintenance. All rules and amendments thereto shall be adopted in conformance with the provisions of chapter 34.05 RCW. [1994 c 250 § 3; 1971 ex.s. c 239 § 5.]

**70.62.250 Powers and duties of department.** The department is hereby granted and shall have and exercise, in addition to the powers herein granted, all the powers necessary and appropriate to carry out and execute the purposes of this chapter, including but not limited to the power:

(1) To develop such rules and regulations for proposed adoption by the board as may be necessary to implement the purposes of this chapter;

(2) To enter and inspect at any reasonable time any transient accommodation and to make such investigations as are reasonably necessary to carry out the provisions of this chapter and any rules and regulations promulgated thereunder: PROVIDED, That no room or suite shall be entered for inspection unless said room or suite is not occupied by any patron or guest of the transient accommodation at the time of entry;

(3) To perform such other duties and employ such personnel as may be necessary to carry out the provisions of this chapter; and

(4) To administer and enforce the provisions of this chapter and the rules and regulations promulgated thereunder by the board. [1971 ex.s. c 239 § 6; (1994 c 250 § 4 expired June 30, 1997).]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**70.62.260 Licenses—Applications—Expiration—Renewal.** (1) No person shall operate a transient accommodation as defined in this chapter without having a valid license issued by the department. Applications for a transient accommodation license shall be filed with the department sixty days or more before initiating business as a transient accommodation. All licenses issued under the provisions of this chapter shall expire one year from the effective date.

(2) All applications for renewal of licenses shall be either: (a) Postmarked no later than midnight on the date the

license expires; or (b) if personally presented to the department or sent by electronic means, received by the department by 5:00 p.m. on the date the license expires.

(3) A licensee that submits a license renewal application in accordance with this section and the rules and fee schedule adopted under this chapter shall be deemed to possess a valid license for the year following the expiration date of the expiring license, or until the department suspends or revokes the license pursuant to RCW 70.62.270.

(4) The license of a licensee that fails to submit a license renewal application in accordance with this section, and the rules and fee schedule adopted under this chapter, shall become invalid on the thirty-fifth day after the expiration date, unless the licensee shall have corrected any and all deficiencies in the renewal application and paid a penalty fee as established by rule by the department before the thirty-fifth day following the expiration date. An invalid license may be reinstated upon reapplication as an applicant for a new license under subsection (1) of this section.

(5) Each license shall be issued only for the premises and persons named in the application. [2004 c 162 § 1; 1994 c 250 § 6; 1971 ex.s. c 239 § 7.]

**70.62.270 Suspension or revocation of licenses—Civil fine.** (1) Licenses issued under this chapter may be suspended or revoked upon the failure or refusal of the person operating a transient accommodation to comply with the provisions of this chapter, or of any rules adopted under this chapter by the board. All such proceedings shall be governed by the provisions of chapter 34.05 RCW.

(2) In lieu of or in addition to license suspension or revocation, the department may assess a civil fine in accordance with RCW 43.70.095. [1994 c 250 § 7; 1971 ex.s. c 239 § 8.]

**70.62.280 Violations—Penalty.** Any violation of this chapter or the rules and regulations promulgated hereunder by any person operating a transient accommodation shall be a misdemeanor and shall be punished as such. Each day of operation of a transient accommodation in violation of this chapter shall constitute a separate offense. [1971 ex.s. c 239 § 10.]

**70.62.290 Adoption of fire and safety rules.** Rules establishing fire and life safety requirements, not inconsistent with the provisions of this chapter, shall continue to be adopted by the \*director of community, trade, and economic development, through the director of fire protection. [1994 c 250 § 8; 1986 c 266 § 95; 1971 ex.s. c 239 § 11.]

**\*Reviser's note:** The "director of community, trade, and economic development" was changed to the "director of commerce" by 2009 c 565.

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**70.62.900 Severability—1971 ex.s. c 239.** If any section or any portion of any section of this 1971 amendatory act is found to be unconstitutional, the finding shall be to the individual section or portion of section specifically found to be unconstitutional and the balance of the act shall remain in full force and effect. [1971 ex.s. c 239 § 12.]

(2010 Ed.)

## Chapter 70.74 RCW

### WASHINGTON STATE EXPLOSIVES ACT

Sections	
70.74.010	Definitions.
70.74.013	Funds collected by department.
70.74.020	Restrictions on manufacture, sale, or storage—Users—Reports on storage—Waiver.
70.74.022	License required to manufacture, purchase, sell, use, possess, transport, or store explosives—Penalty—Surrender of explosives by unlicensed person—Other relief.
70.74.025	Magazines—Classification, location and construction—Standards—Use.
70.74.030	Quantity and distance tables for storage—Adoption by rule.
70.74.040	Limit on storage quantity.
70.74.050	Quantity and distance table for explosives manufacturing buildings.
70.74.061	Quantity and distance tables for separation between magazines—Adoption by rule.
70.74.100	Storage of caps with explosives prohibited.
70.74.110	Manufacturer's report—Inspection—License.
70.74.120	Storage report—Inspection—License—Cancellation.
70.74.130	Dealer in explosives—Application—License.
70.74.135	Purchaser of explosives—Application—License.
70.74.137	Purchaser's license fee.
70.74.140	Storage license fee.
70.74.142	User's license or renewal—Fee.
70.74.144	Manufacturer's license fee—Manufacturers to comply with dealer requirements when selling.
70.74.146	Seller's license fee—Sellers to comply with dealer requirements.
70.74.150	Annual inspection.
70.74.160	Unlawful access to explosives.
70.74.170	Discharge of firearms or igniting flame near explosives.
70.74.180	Explosive devices prohibited—Penalty.
70.74.191	Exemptions.
70.74.201	Municipal or county ordinances unaffected—State preemption.
70.74.210	Coal mining code unaffected.
70.74.230	Shipments out of state—Dealer's records.
70.74.240	Sale to unlicensed person prohibited.
70.74.250	Blasting near fur farms and hatcheries.
70.74.270	Malicious placement of an explosive—Penalties.
70.74.272	Malicious placement of an imitation device—Penalties.
70.74.275	Intimidation or harassment with an explosive—Class C felony.
70.74.280	Malicious explosion of a substance—Penalties.
70.74.285	"Terrorist act" defined.
70.74.295	Abandonment of explosives.
70.74.297	Separate storage of components capable of detonation when mixed.
70.74.300	Explosive containers to be marked—Penalty.
70.74.310	Gas bombs, explosives, stink bombs, etc.
70.74.320	Small arms ammunition, primers and propellants—Transportation regulations.
70.74.330	Small arms ammunition, primers and propellants—Separation from flammable materials.
70.74.340	Small arms ammunition, primers and propellants—Transportation, storage and display requirements.
70.74.350	Small arms ammunition, primers and propellants—Primers, transportation and storage requirements.
70.74.360	Licenses—Fingerprint and criminal record checks—Fee—Licenses prohibited for certain persons—License fees.
70.74.370	License revocation, nonrenewal, or suspension.
70.74.380	Licenses—Expiration—Extension of storage licenses.
70.74.390	Implementation of chapter and rules pursuant to chapter 49.17 RCW.
70.74.400	Seizure and forfeiture.
70.74.410	Reporting theft or loss of explosives.

**70.74.010 Definitions.** As used in this chapter, unless a different meaning is plainly required by the context:

(1) The terms "authorized", "approved" or "approval" shall be held to mean authorized, approved, or approval by the department of labor and industries.

(2) The term "blasting agent" shall be held to mean and include any material or mixture consisting of a fuel and oxidizer, that is intended for blasting and not otherwise defined as an explosive; if the finished product, as mixed for use or

shipment, cannot be detonated by means of a number 8 test blasting cap when unconfined. A number 8 test blasting cap is one containing two grams of a mixture of eighty percent mercury fulminate and twenty percent potassium chlorate, or a blasting cap of equivalent strength. An equivalent strength cap comprises 0.40-0.45 grams of PETN base charge pressed in an aluminum shell with bottom thickness not to exceed 0.03 of an inch, to a specific gravity of not less than 1.4 g/cc., and primed with standard weights of primer depending on the manufacturer.

(3) The term "explosive" or "explosives" whenever used in this chapter, shall be held to mean and include any chemical compound or mechanical mixture that is commonly used or intended for the purpose of producing an explosion, that contains any oxidizing and combustible units, or other ingredients, in such proportions, quantities or packing, that an ignition by fire, by friction, by concussion, by percussion, or by detonation of any part of the compound or mixture may cause such a sudden generation of highly heated gases that the resultant gaseous pressures are capable of producing destructive effects on contiguous objects or of destroying life or limb. In addition, the term "explosives" shall include all material which is classified as division 1.1, 1.2, 1.3, 1.4, 1.5, or 1.6 explosives by the United States department of transportation. For the purposes of this chapter small arms ammunition, small arms ammunition primers, smokeless powder not exceeding fifty pounds, and black powder not exceeding five pounds shall not be defined as explosives, unless possessed or used for a purpose inconsistent with small arms use or other lawful purpose.

(4) Classification of explosives shall include but not be limited to the following:

(a) DIVISION 1.1 and 1.2 EXPLOSIVES: Possess mass explosion or detonating hazard and include dynamite, nitroglycerin, picric acid, lead azide, fulminate of mercury, black powder exceeding five pounds, blasting caps in quantities of 1001 or more, and detonating primers.

(b) DIVISION 1.3 EXPLOSIVES: Possess a minor blast hazard, a minor projection hazard, or a flammable hazard and include propellant explosives, including smokeless powder exceeding fifty pounds.

(c) DIVISION 1.4, 1.5, and 1.6 EXPLOSIVES: Include certain types of manufactured articles which contain division 1.1, 1.2, or 1.3 explosives, or all, as components, but in restricted quantities, and also include blasting caps in quantities of 1000 or less.

(5) The term "explosive-actuated power devices" shall be held to mean any tool or special mechanized device which is actuated by explosives, but not to include propellant-actuated power devices.

(6) The term "magazine", shall be held to mean and include any building or other structure, other than an explosives manufacturing building, used for the storage of explosives.

(7) The term "improvised device" means a device which is fabricated with explosives or destructive, lethal, noxious, pyrotechnic, or incendiary chemicals and which is designed, or has the capacity, to disfigure, destroy, distract, or harass.

(8) The term "inhabited building", shall be held to mean and include only a building regularly occupied in whole or in part as a habitation for human beings, or any church, school-

house, railroad station, store, or other building where people are accustomed to assemble, other than any building or structure occupied in connection with the manufacture, transportation, storage, or use of explosives.

(9) The term "explosives manufacturing plant" shall be held to mean and include all lands, with the buildings situated thereon, used in connection with the manufacturing or processing of explosives or in which any process involving explosives is carried on, or the storage of explosives thereat, as well as any premises where explosives are used as a component part or ingredient in the manufacture of any article or device.

(10) The term "explosives manufacturing building", shall be held to mean and include any building or other structure (excepting magazines) containing explosives, in which the manufacture of explosives, or any processing involving explosives, is carried on, and any building where explosives are used as a component part or ingredient in the manufacture of any article or device.

(11) The term "railroad" shall be held to mean and include any steam, electric, or other railroad which carries passengers for hire.

(12) The term "highway" shall be held to mean and include any public street, public alley, or public road, including a privately financed, constructed, or maintained road that is regularly and openly traveled by the general public.

(13) The term "efficient artificial barricade" shall be held to mean an artificial mound or properly revetted wall of earth of a minimum thickness of not less than three feet or such other artificial barricade as approved by the department of labor and industries.

(14) The term "person" shall be held to mean and include any individual, firm, partnership, corporation, company, association, society, joint stock company, joint stock association, and including any trustee, receiver, assignee, or personal representative thereof.

(15) The term "dealer" shall be held to mean and include any person who purchases explosives or blasting agents for the sole purpose of resale, and not for use or consumption.

(16) The term "forbidden or not acceptable explosives" shall be held to mean and include explosives which are forbidden or not acceptable for transportation by common carriers by rail freight, rail express, highway, or water in accordance with the regulations of the federal department of transportation.

(17) The term "handloader" shall be held to mean and include any person who engages in the noncommercial assembling of small arms ammunition for his own use, specifically the operation of installing new primers, powder, and projectiles into cartridge cases.

(18) The term "handloader components" means small arms ammunition, small arms ammunition primers, smokeless powder not exceeding fifty pounds, and black powder as used in muzzle loading firearms not exceeding five pounds.

(19) The term "fuel" shall be held to mean and include a substance which may react with the oxygen in the air or with the oxygen yielded by an oxidizer to produce combustion.

(20) The term "motor vehicle" shall be held to mean and include any self-propelled automobile, truck, tractor, semi-trailer or full trailer, or other conveyance used for the transportation of freight.

(21) The term "natural barricade" shall be held to mean and include any natural hill, mound, wall, or barrier composed of earth or rock or other solid material of a minimum thickness of not less than three feet.

(22) The term "oxidizer" shall be held to mean a substance that yields oxygen readily to stimulate the combustion of organic matter or other fuel.

(23) The term "propellant-actuated power device" shall be held to mean and include any tool or special mechanized device or gas generator system which is actuated by a propellant or which releases and directs work through a propellant charge.

(24) The term "public conveyance" shall be held to mean and include any railroad car, streetcar, ferry, cab, bus, airplane, or other vehicle which is carrying passengers for hire.

(25) The term "public utility transmission system" shall mean power transmission lines over 10 KV, telephone cables, or microwave transmission systems, or buried or exposed pipelines carrying water, natural gas, petroleum, or crude oil, or refined products and chemicals, whose services are regulated by the utilities and transportation commission, municipal, or other publicly owned systems.

(26) The term "purchaser" shall be held to mean any person who buys, accepts, or receives any explosives or blasting agents.

(27) The term "pyrotechnic" shall be held to mean and include any combustible or explosive compositions or manufactured articles designed and prepared for the purpose of producing audible or visible effects which are commonly referred to as fireworks as defined in chapter 70.77 RCW.

(28) The term "small arms ammunition" shall be held to mean and include any shotgun, rifle, pistol, or revolver cartridge, and cartridges for propellant-actuated power devices and industrial guns. Military-type ammunition containing explosive bursting charges, incendiary, tracer, spotting, or pyrotechnic projectiles is excluded from this definition.

(29) The term "small arms ammunition primers" shall be held to mean small percussion-sensitive explosive charges encased in a cup, used to ignite propellant powder and shall include percussion caps as used in muzzle loaders.

(30) The term "smokeless powder" shall be held to mean and include solid chemicals or solid chemical mixtures in excess of fifty pounds which function by rapid combustion.

(31) The term "user" shall be held to mean and include any natural person, manufacturer, or blaster who acquires, purchases, or uses explosives as an ultimate consumer or who supervises such use.

Words used in the singular number shall include the plural, and the plural the singular. [2002 c 370 § 1; 1993 c 293 § 1; 1972 ex.s. c 88 § 5; 1970 ex.s. c 72 § 1; 1969 ex.s. c 137 § 3; 1931 c 111 § 1; RRS § 5440-1.]

**Severability—2002 c 370:** See note following RCW 70.77.126.

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**70.74.013 Funds collected by department.** All funds collected by the department under RCW 70.74.137 through 70.74.146 and 70.74.360 shall be transferred to the state treasurer for deposit into the accident and medical aid funds under RCW 51.44.010 and 51.44.020. [2008 c 285 § 11.]

**Intent—Captions not law—Effective date—2008 c 285:** See notes following RCW 43.22.434.

(2010 Ed.)

**70.74.020 Restrictions on manufacture, sale, or storage—Users—Reports on storage—Waiver.** (1) No person shall manufacture, possess, store, sell, purchase, transport, or use explosives or blasting agents except in compliance with this chapter.

(2) The director of the department of labor and industries shall make and promulgate rules and regulations concerning qualifications of users of explosives and shall have the authority to issue licenses for users of explosives to effectuate the purpose of this chapter: PROVIDED, That where there is a finding by the director that the use or disposition of explosives in any class of industry presents no unusual hazard to the safety of life or limb of persons employed therewith, and where the users are supervised by a superior in an employment relationship who is sufficiently experienced in the use of explosives, and who possesses a license for such use under this chapter, the director in his discretion may exclude said users in those classes of industry from individual licensing.

(3) The director of the department of labor and industries shall make and promulgate rules and regulations concerning the manufacture, sale, purchase, use, transportation, storage, and disposal of explosives, and shall have the authority to issue licenses for the manufacture, purchase, sale, use, transportation, and storage of explosives to effectuate the purpose of this chapter. The director of the department of labor and industries is hereby delegated the authority to grant written waiver of this chapter whenever it can be shown that the manufacturing, handling, or storing of explosives are in compliance with applicable national or federal explosive safety standards: PROVIDED, That any resident of this state who is qualified to purchase explosives in this state and who has complied with the provisions of this chapter applicable to him may purchase explosives from an authorized dealer of a bordering state and may transport said explosives into this state for use herein: PROVIDED FURTHER, That residents of this state shall, within ten days of the date of purchase, present to the department of labor and industries a report signed by both vendor and vendee of every purchase from an out of state dealer, said report indicating the date of purchase, name of vendor, vendor's license number, vendor's business address, amount and kind of explosives purchased, the name of the purchaser, the purchaser's license number, and the name of receiver if different than purchaser.

(4) It shall be unlawful to sell, give away or otherwise dispose of, or deliver to any person under twenty-one years of age any explosives including black powder, and blasting caps or other explosive igniters, whether said person is acting for himself or for any other person: PROVIDED, That small arms ammunition and handloader components shall not be considered explosives for the purposes of this section: PROVIDED FURTHER, That if there is a finding by the director that said use or disposition of explosives poses no unusual hazard to the safety of life or limb in any class of industry, where persons eighteen years of age or older are employed as users, and where said persons are adequately trained and adequately supervised by a superior in an employment relationship who is sufficiently experienced in the use of explosives, and who possesses a valid license for such use under this chapter, the director in his discretion may exclude said per-

sons in that class of industry from said minimum age requirement.

(5) All persons engaged in keeping, using, or storing any compound, mixture, or material, in wet condition, or otherwise, which upon drying out or undergoing other physical changes, may become an explosive within the definition of RCW 70.74.010, shall report in writing subscribed to by such person or his agent, to the department of labor and industries, report blanks to be furnished by such department, and such reports to require:

- (a) The kind of compound, mixture, or material kept or stored, and maximum quantity thereof;
- (b) Condition or state of compound, mixture, or material;
- (c) Place where kept or stored.

The department of labor and industries may at any time cause an inspection to be made to determine whether the condition of the compound, mixture, or material is as reported. [1982 c 111 § 1; 1972 ex.s. c 88 § 6; 1969 ex.s. c 137 § 4; 1967 c 99 § 1; 1931 c 111 § 2; RRS § 5440-2.]

**70.74.022 License required to manufacture, purchase, sell, use, possess, transport, or store explosives—Penalty—Surrender of explosives by unlicensed person—Other relief.** (1) It is unlawful for any person to manufacture, purchase, sell, offer for sale, use, possess, transport, or store any explosive, improvised device, or components that are intended to be assembled into an explosive or improvised device without having a validly issued license from the department of labor and industries, which license has not been revoked or suspended. Violation of this section is a class C felony.

(2) Upon notice from the department of labor and industries or any law enforcement agency having jurisdiction, a person manufacturing, purchasing, selling, offering for sale, using, possessing, transporting, or storing any explosive, improvised device, or components of explosives or improvised devices without a license shall immediately surrender those explosives, improvised devices, or components to the department or to the respective law enforcement agency.

(3) At any time that the director of labor and industries requests the surrender of explosives, improvised devices, or components of explosives or improvised devices, from any person pursuant to subsection (2) of this section, the director may in addition request the attorney general to make application to the superior court of the county in which the unlawful practice exists for a temporary restraining order or such other relief as appears to be appropriate under the circumstances. [1993 c 293 § 2; 1988 c 198 § 10.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**70.74.025 Magazines—Classification, location and construction—Standards—Use.** The director of the department of labor and industries shall establish by rule or regulation requirements for classification, location and construction of magazines for storage of explosives in compliance with accepted applicable explosive safety standards. All explosives shall be kept in magazines which meet the requirements of this chapter. [1969 ex.s. c 137 § 9.]

**70.74.030 Quantity and distance tables for storage—Adoption by rule.** All explosive manufacturing buildings and magazines in which explosives or blasting agents except small arms ammunition and smokeless powder are had, kept, or stored, must be located at distances from inhabited buildings, railroads, highways, and public utility transmission systems in conformity with the quantity and distance tables adopted by the department of labor and industries by rule. The department of labor and industries shall adopt the quantity and distance tables promulgated by the federal bureau of alcohol, tobacco, and firearms unless the department determines the tables to be inappropriate. The tables shall be the basis on which applications for storage license[s] are made and storage licenses issued as provided in RCW 70.74.110 and 70.74.120. [1988 c 198 § 1; 1972 ex.s. c 88 § 7; 1969 ex.s. c 137 § 10; 1931 c 111 § 5; RRS § 5440-5.]

**70.74.040 Limit on storage quantity.** No quantity in excess of three hundred thousand pounds, or the equivalent in blasting caps shall be had, kept or stored in any factory building or magazine in this state. [1970 ex.s. c 72 § 2; 1931 c 111 § 4; RRS § 5440-4.]

**70.74.050 Quantity and distance table for explosives manufacturing buildings.** All explosives manufacturing buildings shall be located one from the other and from other buildings on explosives manufacturing plants in which persons are regularly employed, and all magazines shall be located from factory buildings and buildings on explosives plants in which persons are regularly employed, in conformity with the intraexplosives plant quantity and distance table below set forth:

EXPLOSIVES		
Pounds Over	Pounds Not Over	Distance Feet
		Separate Building or Within Substantial Dividing Walls
. . . .	10	
10	25	40
25	50	60
50	100	80
100	200	100
200	300	120
300	400	130
400	500	140
500	750	160
750	1,000	180
1,000	1,500	210
1,500	2,000	230
2,000	3,000	260
3,000	4,000	280
4,000	5,000	300
5,000	6,000	320
6,000	7,000	340

7,000	8,000	360
8,000	9,000	380
9,000	10,000	400
10,000	12,500	420
12,500	15,000	450
15,000	17,500	470
17,500	20,000	490
20,000	25,000	530
25,000	30,000	560
30,000	35,000	590
35,000	40,000	620
40,000	45,000	640
45,000	50,000	660
50,000	55,000	680
55,000	60,000	700
60,000	65,000	720
65,000	70,000	740
70,000	75,000	770
75,000	80,000	780
80,000	85,000	790
85,000	90,000	800
90,000	95,000	820
95,000	100,000	830
100,000	125,000	900
125,000	150,000	950
150,000	175,000	1,000
175,000	200,000	1,050
200,000	225,000	1,100
225,000	250,000	1,150

[1972 ex.s. c 88 § 8; 1931 c 111 § 5; RRS § 5440-5.]

**70.74.061 Quantity and distance tables for separation between magazines—Adoption by rule.** Magazines containing blasting caps and electric blasting caps shall be separated from other magazines containing like contents, or from magazines containing explosives by distances set in the quantity and distance tables adopted by the department of labor and industries by rule. The department of labor and industries shall adopt the quantity and distance tables promulgated by the federal bureau of alcohol, tobacco, and firearms unless the department determines the tables to be inappropriate. The tables shall be the basis on which applications for storage license[s] are made and storage licenses issued as provided in RCW 70.74.110 and 70.74.120. [1988 c 198 § 2; 1969 ex.s. c 137 § 11.]

**70.74.100 Storage of caps with explosives prohibited.** No blasting caps, or other detonating or fulminating caps, or detonators, or flame-producing devices shall be kept or stored in any magazine in which other explosives are kept or stored. [1969 ex.s. c 137 § 12; 1931 c 111 § 10; RRS § 5440-10.]

**70.74.110 Manufacturer’s report—Inspection—License.** All persons engaged in the manufacture of explosives, or any process involving explosives, or where explosives are used as a component part in the manufacture of any article or device, on August 11, 1969, shall within sixty days thereafter, and all persons engaging in the manufacture of explosives, or any process involving explosives, or where explosives are used as a component part in the manufacture

(2010 Ed.)

of any article or device after August 11, 1969, shall, before so engaging, make an application in writing, subscribed to by such person or his agent, to the department of labor and industries, the application stating:

- (1) Location of place of manufacture or processing;
- (2) Kind of explosives manufactured, processed or used;
- (3) The distance that such explosives manufacturing building is located or intended to be located from the other factory buildings, magazines, inhabited buildings, railroads and highways and public utility transmission systems;
- (4) The name and address of the applicant;
- (5) The reason for desiring to manufacture explosives;
- (6) The applicant’s citizenship, if the applicant is an individual;
- (7) If the applicant is a partnership, the names and addresses of the partners, and their citizenship;
- (8) If the applicant is an association or corporation, the names and addresses of the officers and directors thereof, and their citizenship; and
- (9) Such other pertinent information as the director of labor and industries shall require to effectuate the purpose of this chapter.

There shall be kept in the main office on the premises of each explosives manufacturing plant a plan of said plant showing the location of all explosives manufacturing buildings and the distance they are located from other factory buildings where persons are employed and from magazines, and these plans shall at all times be open to inspection by duly authorized inspectors of the department of labor and industries. The superintendent of each plant shall upon demand of said inspector furnish the following information:

- (a) The maximum amount and kind of explosive material which is or will be present in each building at one time.
- (b) The nature and kind of work carried on in each building and whether or not said buildings are surrounded by natural or artificial barricades.

Except as provided in RCW 70.74.370, the department of labor and industries shall as soon as possible after receiving such application cause an inspection to be made of the explosives manufacturing plant, and if found to be in accordance with RCW 70.74.030 and 70.74.050 and 70.74.061, such department shall issue a license to the person applying therefor showing compliance with the provisions of this chapter if the applicant demonstrates that either the applicant or the officers, agents or employees of the applicant are sufficiently experienced in the manufacture of explosives and the applicant meets the qualifications for a license under RCW 70.74.360. Such license shall continue in full force and effect until expired, suspended, or revoked by the department pursuant to this chapter. [1997 c 58 § 870; 1988 c 198 § 5; 1969 ex.s. c 137 § 13; 1941 c 101 § 1; 1931 c 111 § 11; Rem. Supp. 1941 § 5440-1.]

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

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**70.74.120 Storage report—Inspection—License—Cancellation.** All persons engaged in keeping or storing and all persons having in their possession explosives on August 11, 1969, shall within sixty days thereafter, and all persons engaging in keeping or storing explosives or coming into

possession thereof after August 11, 1969, shall before engaging in the keeping or storing of explosives or taking possession thereof, make an application in writing subscribed to by such person or his agent, to the department of labor and industries stating:

(1) The location of the magazine, if any, if then existing, or in case of a new magazine, the proposed location of such magazine;

(2) The kind of explosives that are kept or stored or possessed or intended to be kept or stored or possessed and the maximum quantity that is intended to be kept or stored or possessed thereat;

(3) The distance that such magazine is located or intended to be located from other magazines, inhabited buildings, explosives manufacturing buildings, railroads, highways and public utility transmission systems;

(4) The name and address of the applicant;

(5) The reason for desiring to store or possess explosives;

(6) The citizenship of the applicant if the applicant is an individual;

(7) If the applicant is a partnership, the names and addresses of the partners and their citizenship;

(8) If the applicant is an association or corporation, the names and addresses of the officers and directors thereof and their citizenship;

(9) And such other pertinent information as the director of the department of labor and industries shall require to effectuate the purpose of this chapter.

The department of labor and industries shall, as soon as may be after receiving such application, cause an inspection to be made of the magazine, if then constructed, and, in the case of a new magazine, as soon as may be after same is found to be constructed in accordance with the specification provided in RCW 70.74.025, such department shall determine the amount of explosives that may be kept and stored in such magazine by reference to the quantity and distance tables specified in or adopted under this chapter and shall issue a license to the person applying therefor if the applicant demonstrates that either the applicant or the officers, agents, or employees of the applicant are sufficiently experienced in the handling of explosives and possess suitable storage facilities therefor, and that the applicant meets the qualifications for a license under RCW 70.74.360. Said license shall set forth the maximum quantity of explosives that may be had, kept or stored by said person. Such license shall be valid until canceled for one or more of the causes hereinafter provided. Whenever by reason of change in the physical conditions surrounding said magazine at the time of the issuance of the license therefor, such as:

(a) The erection of buildings nearer said magazine;

(b) The construction of railroads nearer said magazine;

(c) The opening for public travel of highways nearer said magazine; or

(d) The construction of public utilities transmission systems near said magazine; then the amounts of explosives which may be lawfully had, kept or stored in said magazine must be reduced to conform to such changed conditions in accordance with the quantity and distance table notwithstanding the license, and the department of labor and industries shall modify or cancel such license in accordance with the

changed conditions. Whenever any person to whom a license has been issued, keeps or stores in the magazine or has in his possession, any quantity of explosives in excess of the maximum amount set forth in said license, or whenever any person fails for thirty days to pay the annual license fee hereinafter provided after the same becomes due, the department is authorized to cancel such license. Whenever a license is canceled by the department for any cause herein specified, the department shall notify the person to whom such license is issued of the fact of such cancellation and shall in said notice direct the removal of all explosives stored in said magazine within ten days from the giving of said notice, or, if the cause of cancellation be the failure to pay the annual license fee, or the fact that explosives are kept for an unlawful purpose, the department of labor and industries shall order such person to dispossess himself of said explosives within ten days from the giving of said notice. Failure to remove the explosives stored in said magazine or to dispossess oneself of the explosives as herein provided within the time specified in said notice shall constitute a violation of this chapter. [1988 c 198 § 6; 1969 ex.s. c 137 § 14; 1941 c 101 § 2; 1931 c 111 § 12; Rem. Supp. 1941 § 5440-12.]

**70.74.130 Dealer in explosives—Application—License.** Every person desiring to engage in the business of dealing in explosives shall apply to the department of labor and industries for a license therefor. Said application shall state, among other things:

(1) The name and address of applicant;

(2) The reason for desiring to engage in the business of dealing in explosives;

(3) Citizenship, if an individual applicant;

(4) If a partnership, the names and addresses of the partners and their citizenship;

(5) If an association or corporation, the names and addresses of the officers and directors thereof and their citizenship; and

(6) Such other pertinent information as the director of labor and industries shall require to effectuate the purpose of this chapter.

Except as provided in RCW 70.74.370, the department of labor and industries shall issue the license if the applicant demonstrates that either the applicant or the principal officers, agents, or employees of the applicant are experienced in the business of dealing in explosives, possess suitable facilities therefor, have not been convicted of any crime that would warrant revocation or nonrenewal of a license under this chapter, and have never had an explosives-related license revoked under this chapter or under similar provisions of any other state. [1997 c 58 § 871; 1988 c 198 § 7; 1969 ex.s. c 137 § 16; 1941 c 101 § 3; Rem. Supp. 1941 § 5440-12a.]

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

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**70.74.135 Purchaser of explosives—Application—License.** All persons desiring to purchase explosives except handloader components shall apply to the department of labor and industries for a license. Said application shall state, among other things:

(1) The location where explosives are to be used;

- (2) The kind and amount of explosives to be used;
- (3) The name and address of the applicant;
- (4) The reason for desiring to use explosives;
- (5) The citizenship of the applicant if the applicant is an individual;
- (6) If the applicant is a partnership, the names and addresses of the partners and their citizenship;
- (7) If the applicant is an association or corporation, the names and addresses of the officers and directors thereof and their citizenship; and
- (8) Such other pertinent information as the director of the department of labor and industries shall require to effectuate the purpose of this chapter.

The department of labor and industries shall issue the license if the applicant demonstrates that either the applicant or the officers, agents or employees of the applicant are sufficiently experienced in the use of explosives to authorize a purchase license. However, no purchaser's license may be issued to any person who cannot document proof of possession or right to use approved and licensed storage facilities unless the person signs a statement certifying that explosives will not be stored. [1988 c 198 § 8; 1971 ex.s. c 302 § 7; 1970 ex.s. c 72 § 3; 1969 ex.s. c 137 § 18.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**70.74.137 Purchaser's license fee.** Every person applying for a purchaser's license, or renewal thereof, shall pay an annual license fee of twenty-five dollars. The director of labor and industries may adjust the amount of the license fee to reflect the administrative costs of the department. The fee shall not exceed one hundred dollars.

Said license fee shall accompany the application and shall be transmitted by the department to the state treasurer: PROVIDED, That if the applicant is denied a purchaser's license the license fee shall be returned to said applicant by registered mail. [2008 c 285 § 5; 1988 c 198 § 12; 1972 ex.s. c 88 § 2.]

**Intent—Captions not law—Effective date—2008 c 285:** See notes following RCW 43.22.434.

**70.74.140 Storage license fee.** Every person engaging in the business of keeping or storing of explosives shall pay an annual license fee for each magazine maintained, to be graduated by the department of labor and industries according to the quantity kept or stored therein, of fifty dollars. The director of labor and industries may adjust the amount of the license fee to reflect the administrative costs of the department. The fee shall not exceed four hundred dollars.

Said license fee shall accompany the application and shall be transmitted by the department to the state treasurer. [2008 c 285 § 6; 1988 c 198 § 13; 1969 ex.s. c 137 § 15; 1931 c 111 § 13; RRS § 5440-13.]

**Intent—Captions not law—Effective date—2008 c 285:** See notes following RCW 43.22.434.

**70.74.142 User's license or renewal—Fee.** Every person applying for a user's license, or renewal thereof, under this chapter shall pay an annual license fee of fifty dollars. The director of labor and industries may adjust the amount of the license fee to reflect the administrative costs of the department. The fee shall not exceed two hundred dollars.

(2010 Ed.)

Said license fee shall accompany the application, and be transmitted by the department to the state treasurer: PROVIDED, That if the applicant is denied a user's license the license fee shall be returned to said applicant by registered mail. [2008 c 285 § 7; 1988 c 198 § 14; 1972 ex.s. c 88 § 1.]

**Intent—Captions not law—Effective date—2008 c 285:** See notes following RCW 43.22.434.

**70.74.144 Manufacturer's license fee—Manufacturers to comply with dealer requirements when selling.** Every person engaged in the business of manufacturing explosives shall pay an annual license fee of fifty dollars. The director of labor and industries may adjust the amount of the license fee to reflect the administrative costs of the department. The fee shall not exceed two hundred dollars.

Businesses licensed to manufacture explosives are not required to have a dealer's license, but must comply with all of the dealer requirements of this chapter when they sell explosives.

The license fee shall accompany the application and shall be transmitted by the department to the state treasurer. [2008 c 285 § 8; 1988 c 198 § 15.]

**Intent—Captions not law—Effective date—2008 c 285:** See notes following RCW 43.22.434.

**70.74.146 Seller's license fee—Sellers to comply with dealer requirements.** Every person engaged in the business of selling explosives shall pay an annual license fee of fifty dollars. The director of labor and industries may adjust the amount of the license fee to reflect the administrative costs of the department. The fee shall not exceed two hundred dollars.

Businesses licensed to sell explosives must comply with all of the dealer requirements of this chapter.

The license fee shall accompany the application and shall be transmitted by the department to the state treasurer. [2008 c 285 § 9; 1988 c 198 § 16.]

**Intent—Captions not law—Effective date—2008 c 285:** See notes following RCW 43.22.434.

**70.74.150 Annual inspection.** The department of labor and industries shall make, or cause to be made, at least one inspection during every year, of each licensed explosives plant or magazine. [1931 c 111 § 14; RRS § 5440-14.]

**70.74.160 Unlawful access to explosives.** No person, except the director of labor and industries or the director's authorized agent, the owner, the owner's agent, or a person authorized to enter by the owner or owner's agent, or a law enforcement officer acting within his or her official capacity, may enter any explosives manufacturing building, magazine or car, vehicle or other common carrier containing explosives in this state. Violation of this section is a gross misdemeanor punishable under chapter 9A.20 RCW. [1993 c 293 § 3; 1969 ex.s. c 137 § 19; 1931 c 111 § 15; RRS § 5440-15.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**70.74.170 Discharge of firearms or igniting flame near explosives.** No person shall discharge any firearms at or against any magazine or explosives manufacturing build-

ings or ignite any flame or flame-producing device nearer than two hundred feet from said magazine or explosives manufacturing building. [1969 ex.s. c 137 § 20; 1931 c 111 § 16; RRS § 5440-16.]

**70.74.180 Explosive devices prohibited—Penalty.**

Any person who has in his or her possession or control any shell, bomb, or similar device, charged or filled with one or more explosives, intending to use it or cause it to be used for an unlawful purpose, is guilty of a class A felony, and upon conviction shall be punished by imprisonment in a state prison for a term of not more than twenty years. [2003 c 53 § 354; 1984 c 55 § 1; 1969 ex.s. c 137 § 21; 1931 c 111 § 18; RRS § 5440-18.]

**Intent—Effective date—2003 c 53:** See notes following RCW 2.48.180.

**70.74.191 Exemptions.** The laws contained in this chapter and regulations prescribed by the department of labor and industries pursuant to this chapter shall not apply to:

(1) Explosives or blasting agents in the course of transportation by way of railroad, water, highway, or air under the jurisdiction of, and in conformity with, regulations adopted by the federal department of transportation, the Washington state utilities and transportation commission, and the Washington state patrol;

(2) The laboratories of schools, colleges, and similar institutions if confined to the purpose of instruction or research and if not exceeding the quantity of one pound;

(3) Explosives in the forms prescribed by the official United States Pharmacopoeia;

(4) The transportation, storage, and use of explosives or blasting agents in the normal and emergency operations of United States agencies and departments including the regular United States military departments on military reservations; arsenals, navy yards, depots, or other establishments owned by, operated by, or on behalf of, the United States; or the duly authorized militia of any state; or to emergency operations of any state department or agency, any police, or any municipality or county;

(5) A hazardous devices technician when carrying out normal and emergency operations, handling evidence, and operating and maintaining a specially designed emergency response vehicle that carries no more than ten pounds of explosive material or when conducting training and whose employer possesses the minimum safety equipment prescribed by the federal bureau of investigation for hazardous devices work. For purposes of this section, a hazardous devices technician is a person who is a graduate of the federal bureau of investigation hazardous devices school and who is employed by a state, county, or municipality;

(6) The importation, sale, possession, and use of fireworks as defined in chapter 70.77 RCW, signaling devices, flares, fuses, and torpedoes;

(7) The transportation, storage, and use of explosives or blasting agents in the normal and emergency avalanche control procedures as conducted by trained and licensed ski area operator personnel. However, the storage, transportation, and use of explosives and blasting agents for such use shall meet the requirements of regulations adopted by the director of labor and industries;

(8) The storage of consumer fireworks as defined in chapter 70.77 RCW pursuant to a forfeiture or seizure under chapter 70.77 RCW by the chief of the Washington state patrol, through the director of fire protection, or his or her deputy, or by state agencies or local governments having general law enforcement authority; and

(9) Any violation under this chapter if any existing ordinance of any city, municipality, or county is more stringent than this chapter. [2002 c 370 § 2; 1998 c 40 § 1; 1993 c 293 § 5; 1985 c 191 § 2; 1969 ex.s. c 137 § 5.]

**Severability—2002 c 370:** See note following RCW 70.77.126.

**Purpose—1985 c 191:** "It is the purpose of this 1985 act to protect the public by enabling ski area operators to exercise appropriate avalanche control measures. The legislature finds that avalanche control is of vital importance to safety in ski areas and that the provisions of the Washington state explosives act contain restrictions which do not reflect special needs for the use of explosives as a means of clearing an area of serious avalanche risks. This 1985 act recognizes these needs while providing for a system of regulations designed to ensure that the use of explosives for avalanche control conforms to fundamental safety requirements." [1985 c 191 § 1.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**70.74.201 Municipal or county ordinances unaffected—State preemption.** This chapter shall not affect, modify or limit the power of a city, municipality or county in this state to make an ordinance that is more stringent than this chapter which is applicable within their respective corporate limits or boundaries: PROVIDED, That the state shall be deemed to have preempted the field of regulation of small arms ammunition and handloader components. [1970 ex.s. c 72 § 5; 1969 ex.s. c 137 § 6.]

**70.74.210 Coal mining code unaffected.** All acts and parts of acts inconsistent with this act are hereby repealed: PROVIDED, HOWEVER, That nothing in this act shall be construed as amending, limiting, or repealing any provision of chapter 36, session laws of 1917, known as the coal mining code. [1931 c 111 § 22; RRS § 5440-22.]

**70.74.230 Shipments out of state—Dealer's records.** If any manufacturer of explosives or dealer therein shall have shipped any explosives into another state, and the laws of such other state shall designate an officer or agency to regulate the possession, receipt or storage of explosives, and such officer or agency shall so require, such manufacturer shall, at least once each calendar month, file with such officer or agency of such other state a report giving the names of all purchasers and the amount and description of all explosives sold or delivered in such other state. Dealers in explosives shall keep a record of all explosives purchased or sold by them, which record shall include the name and address of each vendor and vendee, the date of each sale or purchase, and the amount and kind of explosives sold or purchased. Such records shall be open for inspection by the duly authorized agents of the department of labor and industries and by all federal, state and local law enforcement officers at all times, and a copy of such record shall be furnished once each calendar month to the department of labor and industries in such form as said department shall prescribe. [1941 c 101 § 4; Rem. Supp. 1941 § 5440-23.]

**70.74.240 Sale to unlicensed person prohibited.** No dealer shall sell, barter, give or dispose of explosives to any person who does not hold a license to purchase explosives issued under the provisions of this chapter. [1970 ex.s. c 72 § 4; 1969 ex.s. c 137 § 17; 1941 c 101 § 5; Rem. Supp. 1941 § 5440-24.]

**70.74.250 Blasting near fur farms and hatcheries.** Between the dates of January 15th and June 15th of each year it shall be unlawful for any person to do, or cause to be done, any blasting within fifteen hundred feet from any fur farm or commercial hatchery except in case of emergency without first giving to the person in charge of such farm or hatchery twenty-four hours notice: PROVIDED, HOWEVER, That in the case of an established quarry and sand and gravel operations, and where it is necessary for blasting to be done continually, the notice required in this section may be made at the beginning of the period each year when blasting is to be done. [1941 c 107 § 1; Rem. Supp. 1941 § 5440-25.]

**70.74.270 Malicious placement of an explosive—Penalties.** A person who maliciously places any explosive or improvised device in, upon, under, against, or near any building, car, vessel, railroad track, airplane, public utility transmission system, or structure, in such manner or under such circumstances as to destroy or injure it if exploded is guilty of:

(1) Malicious placement of an explosive in the first degree if the offense is committed with intent to commit a terrorist act. Malicious placement of an explosive in the first degree is a class A felony;

(2) Malicious placement of an explosive in the second degree if the offense is committed under circumstances not amounting to malicious placement of an explosive in the first degree and if the circumstances and surroundings are such that the safety of any person might be endangered by the explosion. Malicious placement of an explosive in the second degree is a class B felony;

(3) Malicious placement of an explosive in the third degree if the offense is committed under circumstances not amounting to malicious placement of an explosive in the first or second degree. Malicious placement of an explosive in the third degree is a class B felony. [1997 c 120 § 1; 1993 c 293 § 6; 1992 c 7 § 49; 1984 c 55 § 2; 1971 ex.s. c 302 § 8; 1969 ex.s. c 137 § 23; 1909 c 249 § 400; RRS § 2652.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**70.74.272 Malicious placement of an imitation device—Penalties.** (1) A person who maliciously places any imitation device in, upon, under, against, or near any building, car, vessel, railroad track, airplane, public utility transmission system, or structure, with the intent to give the appearance or impression that the imitation device is an explosive or improvised device, is guilty of:

(a) Malicious placement of an imitation device in the first degree if the offense is committed with intent to commit a terrorist act. Malicious placement of an imitation device in the first degree is a class B felony;

(b) Malicious placement of an imitation device in the second degree if the offense is committed under circum-

stances not amounting to malicious placement of an imitation device in the first degree. Malicious placement of an imitation device in the second degree is a class C felony.

(2) For purposes of this section, "imitation device" means a device or substance that is not an explosive or improvised device, but which by appearance or representation would lead a reasonable person to believe that the device or substance is an explosive or improvised device. [1997 c 120 § 2.]

**70.74.275 Intimidation or harassment with an explosive—Class C felony.** Unless otherwise allowed to do so under this chapter, a person who exhibits a device designed, assembled, fabricated, or manufactured, to convey the appearance of an explosive or improvised device, and who intends to, and does, intimidate or harass a person, is guilty of a class C felony. [1993 c 293 § 4.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**70.74.280 Malicious explosion of a substance—Penalties.** A person who maliciously, by the explosion of gunpowder or any other explosive substance or material, destroy or damage any building, car, airplane, vessel, common carrier, railroad track, or public utility transmission system or structure is guilty of:

(1) Malicious explosion of a substance in the first degree if the offense is committed with intent to commit a terrorist act. Malicious explosion of a substance in the first degree is a class A felony;

(2) Malicious explosion of a substance in the second degree if the offense is committed under circumstances not amounting to malicious explosion of a substance in the first degree and if thereby the life or safety of a human being is endangered. Malicious explosion of a substance in the second degree is a class A felony;

(3) Malicious explosion of a substance in the third degree if the offense is committed under circumstances not amounting to malicious explosion of a substance in the first or second degree. Malicious explosion of a substance in the third degree is a class B felony. [1997 c 120 § 3; 1992 c 7 § 50; 1971 ex.s. c 302 § 9; 1969 ex.s. c 137 § 24; 1909 c 249 § 401; RRS § 2653.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**70.74.285 "Terrorist act" defined.** For the purposes of RCW 70.74.270, 70.74.272, and 70.74.280 "terrorist act" means an act that is intended to: (1) Intimidate or coerce a civilian population; (2) influence the policy of a branch or level of government by intimidation or coercion; (3) affect the conduct of a branch or level of government by intimidation or coercion; or (4) retaliate against a branch or level of government for a policy or conduct of the government. [1997 c 120 § 4.]

**70.74.295 Abandonment of explosives.** It shall be unlawful for any person to abandon explosives or improvised devices. Violation of this section is a gross misdemeanor punishable under chapter 9A.20 RCW. [1993 c 293 § 7; 1972 ex.s. c 88 § 3.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**70.74.297 Separate storage of components capable of detonation when mixed.** Any two components which, when mixed, become capable of detonation by a No. 6 cap must be stored in separate locked containers or in a licensed, approved magazine. [1972 ex.s. c 88 § 4.]

**70.74.300 Explosive containers to be marked—Penalty.** Every person who shall put up for sale, or who shall deliver to any warehouseman, dock, depot, or common carrier any package, cask or can containing any explosive, nitroglycerin, dynamite, or powder, without having been properly labeled thereon to indicate its explosive classification, shall be guilty of a gross misdemeanor. [1969 ex.s. c 137 § 26; 1909 c 249 § 254; RRS § 2506.]

**Reviser's note:** Caption for 1909 c 249 § 254 reads as follows: "Sec. 254. TRANSPORTING EXPLOSIVES."

**70.74.310 Gas bombs, explosives, stink bombs, etc.** Any person other than a lawfully constituted peace officer of this state who shall deposit, leave, place, spray, scatter, spread or throw in any building, or any place, or who shall counsel, aid, assist, encourage, incite or direct any other person or persons to deposit, leave, place, spray, scatter, spread or throw, in any building or place, or who shall have in his possession for the purpose of, and with the intent of depositing, leaving, placing, spraying, scattering, spreading or throwing, in any building or place, or of counseling, aiding, assisting, encouraging, inciting or directing any other person or persons to deposit, leave, place, spray, scatter, spread or throw, any stink bomb, stink paint, tear bomb, tear shell, explosive or flame-producing device, or any other device, material, chemical or substance, which, when exploded or opened, or without such exploding or opening, by reason of its offensive and pungent odor, does or will annoy, injure, endanger or inconvenience any person or persons, shall be guilty of a gross misdemeanor: PROVIDED, That this section shall not apply to persons in the military service, actually engaged in the performance of military duties, pursuant to orders from competent authority nor to any property owner or person acting under his authority in providing protection against the commission of a felony. [1969 ex.s. c 137 § 27; 1927 c 245 § 1; RRS § 2504-1.]

**70.74.320 Small arms ammunition, primers and propellants—Transportation regulations.** The federal regulations of the United States department of transportation on the transportation of small arms ammunition, of small arms ammunition primers, and of small arms smokeless propellants are hereby adopted in this chapter by reference.

The director of the department of labor and industries has the authority to issue future regulations in accordance with amendments and additions to the federal regulations of the United States department of transportation on the transportation of small arms ammunition, of small arms ammunition primers, and of small arms smokeless propellants. [1969 ex.s. c 137 § 28.]

**70.74.330 Small arms ammunition, primers and propellants—Separation from flammable materials.** Small arms ammunition shall be separated from flammable liquids, flammable solids and oxidizing materials by a fire-resistant

wall of one-hour rating or by a distance of twenty-five feet. [1969 ex.s. c 137 § 29.]

**70.74.340 Small arms ammunition, primers and propellants—Transportation, storage and display requirements.** Quantities of small arms smokeless propellant (class B) in shipping containers approved by the federal department of transportation not in excess of fifty pounds may be transported in a private vehicle.

Quantities in excess of twenty-five pounds but not to exceed fifty pounds in a private passenger vehicle shall be transported in an approved magazine as specified by the department of labor and industries rules and regulations.

Transportation of quantities in excess of fifty pounds is prohibited in passenger vehicles: PROVIDED, That this requirement shall not apply to duly licensed dealers.

Transportation of quantities in excess of fifty pounds shall be in accordance with federal department of transportation regulations.

Small arms smokeless propellant intended for personal use in quantities not to exceed twenty-five pounds may be stored without restriction in residences; quantities over twenty-five pounds but not to exceed fifty pounds shall be stored in a strong box or cabinet constructed with three-fourths inch plywood (minimum), or equivalent, on all sides, top, and bottom.

Black powder as used in muzzle loading firearms may be transported in a private vehicle or stored without restriction in private residences in quantities not to exceed five pounds.

Not more than seventy-five pounds of small arms smokeless propellant, in containers of one pound maximum capacity may be displayed in commercial establishments.

Not more than twenty-five pounds of black powder as used in muzzle loading firearms may be stored in commercial establishments of which not more than four pounds in containers of one pound maximum capacity may be displayed.

Quantities in excess of one hundred fifty pounds of smokeless propellant or twenty-five pounds of black powder as used in muzzle loading firearms shall be stored in magazines constructed as specified in the rules and regulations for construction of magazines, and located in compliance with this chapter.

All small arms smokeless propellant when stored shall be packed in federal department of transportation approved containers. [1970 ex.s. c 72 § 6; 1969 ex.s. c 137 § 30.]

**70.74.350 Small arms ammunition, primers and propellants—Primers, transportation and storage requirements.** Small arms ammunition primers shall not be transported or stored except in the original shipping container approved by the federal department of transportation.

Truck or rail transportation of small arms ammunition primers shall be in accordance with the federal regulation of the United States department of transportation.

No more than twenty-five thousand small arms ammunition primers shall be transported in a private passenger vehicle: PROVIDED, That this requirement shall not apply to duly licensed dealers.

Quantities not to exceed ten thousand small arms ammunition primers may be stored in a residence.

Small arms ammunition primers shall be separate from flammable liquids, flammable solids, and oxidizing materials by a fire-resistant wall of one-hour rating or by a distance of twenty-five feet.

Not more than seven hundred fifty thousand small arms ammunition primers shall be stored in any one building except as next provided; no more than one hundred thousand shall be stored in any one pile, and piles shall be separated by at least fifteen feet.

Quantities of small arms ammunition primers in excess of seven hundred fifty thousand shall be stored in magazines in accordance with RCW 70.74.025. [1969 ex.s. c 137 § 31.]

**70.74.360 Licenses—Fingerprint and criminal record checks—Fee—Licenses prohibited for certain persons—License fees.** (1) The director of labor and industries shall require, as a condition precedent to the original issuance and upon renewal every three years thereafter of any explosive license, fingerprinting and criminal history record information checks of every applicant. In the case of a corporation, fingerprinting and criminal history record information checks shall be required for the management officials directly responsible for the operations where explosives are used if such persons have not previously had their fingerprints recorded with the department of labor and industries. In the case of a partnership, fingerprinting and criminal history record information checks shall be required of all general partners. Such fingerprints as are required by the department of labor and industries shall be submitted on forms provided by the department to the identification section of the Washington state patrol and to the identification division of the federal bureau of investigation in order that these agencies may search their records for prior convictions of the individuals fingerprinted. The Washington state patrol shall provide to the director of labor and industries such criminal record information as the director may request. The applicant shall give full cooperation to the department of labor and industries and shall assist the department of labor and industries in all aspects of the fingerprinting and criminal history record information check. The applicant shall be required to pay the current federal and state fee for fingerprint-based criminal history background checks.

(2) The director of labor and industries shall not issue a license to manufacture, purchase, store, use, or deal with explosives to:

(a) Any person under twenty-one years of age;  
 (b) Any person whose license is suspended or whose license has been revoked, except as provided in RCW 70.74.370;

(c) Any person who has been convicted in this state or elsewhere of a violent offense as defined in RCW 9.94A.030, perjury, false swearing, or bomb threats or a crime involving a schedule I or II controlled substance, or any other drug or alcohol related offense, unless such other drug or alcohol related offense does not reflect a drug or alcohol dependency. However, the director of labor and industries may issue a license if the person suffering a drug or alcohol related dependency is participating in or has completed an alcohol or drug recovery program acceptable to the department of labor and industries and has established control of their alcohol or drug dependency. The director of labor and industries shall

(2010 Ed.)

require the applicant to provide proof of such participation and control; or

(d) Any person who has previously been adjudged to be mentally ill or insane, or to be incompetent due to any mental disability or disease and who has not at the time of application been restored to competency.

(3) The director of labor and industries may establish reasonable licensing fees for the manufacture, dealing, purchase, use, and storage of explosives. [2009 c 39 § 1; 2008 c 285 § 10; 1988 c 198 § 3.]

**Intent—Captions not law—Effective date—2008 c 285:** See notes following RCW 43.22.434.

**70.74.370 License revocation, nonrenewal, or suspension.** (1) The department of labor and industries shall revoke and not renew the license of any person holding a manufacturer, dealer, purchaser, user, or storage license upon conviction of any of the following offenses, which conviction has become final:

(a) A violent offense as defined in RCW 9.94A.030;

(b) A crime involving perjury or false swearing, including the making of a false affidavit or statement under oath to the department of labor and industries in an application or report made pursuant to this title;

(c) A crime involving bomb threats;

(d) A crime involving a schedule I or II controlled substance, or any other drug or alcohol related offense, unless such other drug or alcohol related offense does not reflect a drug or alcohol dependency. However, the department of labor and industries may condition renewal of the license to any convicted person suffering a drug or alcohol dependency who is participating in an alcoholism or drug recovery program acceptable to the department of labor and industries and has established control of their alcohol or drug dependency. The department of labor and industries shall require the licensee to provide proof of such participation and control;

(e) A crime relating to possession, use, transfer, or sale of explosives under this chapter or any other chapter of the Revised Code of Washington.

(2) The department of labor and industries shall revoke the license of any person adjudged to be mentally ill or insane, or to be incompetent due to any mental disability or disease. The director shall not renew the license until the person has been restored to competency.

(3) The department of labor and industries is authorized to suspend, for a period of time not to exceed six months, the license of any person who has violated this chapter or the rules promulgated pursuant to this chapter.

(4) The department of labor and industries may revoke the license of any person who has repeatedly violated this chapter or the rules promulgated pursuant to this chapter, or who has twice had his or her license suspended under this chapter.

(5) The department of labor and industries shall immediately suspend the license or certificate of a person who has been certified pursuant to RCW 74.20A.320 by the department of social and health services as a person who is not in compliance with a support order or a \*residential or visitation order. If the person has continued to meet all other requirements for reinstatement during the suspension, reissuance of the license or certificate shall be automatic upon the depart-

ment of labor and industries' receipt of a release issued by the department of social and health services stating that the licensee is in compliance with the order.

(6) Upon receipt of notification by the department of labor and industries of revocation or suspension, a licensee must surrender immediately to the department any or all such licenses revoked or suspended. [1997 c 58 § 872; 1988 c 198 § 4.]

**\*Reviser's note:** 1997 c 58 § 886 requiring a court to order certification of noncompliance with residential provisions of a court-ordered parenting plan was vetoed. Provisions ordering the department of social and health services to certify a responsible parent based on a court order to certify for non-compliance with residential provisions of a parenting plan were vetoed. See RCW 74.20A.320.

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

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**70.74.380 Licenses—Expiration—Extension of storage licenses.** With the exception of storage licenses for permanent facilities, every license issued under the authority of this chapter shall expire after one year from the date issued unless suspended or revoked. The director of labor and industries may extend the duration of storage licenses for permanent facilities to two years provided the location, distances, and use of the facilities remain unchanged. The fee for the two-year storage license shall be twice the annual fee. [1988 c 198 § 9.]

**70.74.390 Implementation of chapter and rules pursuant to chapter 49.17 RCW.** Unless specifically provided otherwise by statute, this chapter and the rules adopted thereunder shall be implemented and enforced, including penalties, violations, citations, appeals, and other administrative procedures, pursuant to the Washington industrial safety and health act, chapter 49.17 RCW. [1988 c 198 § 11.]

**70.74.400 Seizure and forfeiture.** (1) Explosives, improvised devices, and components of explosives and improvised devices that are possessed, manufactured, delivered, imported, exported, stored, sold, purchased, transported, abandoned, detonated, or used, or intended to be used, in violation of a provision of this chapter are subject to seizure and forfeiture by a law enforcement agency and no property right exists in them.

(2) The law enforcement agency making the seizure shall notify the Washington state department of labor and industries of the seizure.

(3) Seizure of explosives, improvised devices, and components of explosives and improvised devices under subsection (1) of this section may be made if:

(a) The seizure is incident to arrest or a search under a search warrant;

(b) The explosives, improvised devices, or components have been the subject of a prior judgment in favor of the state in an injunction or forfeiture proceeding based upon this chapter;

(c) A law enforcement officer has probable cause to believe that the explosives, improvised devices, or components are directly or indirectly dangerous to health or safety; or

(d) The law enforcement officer has probable cause to believe that the explosives, improvised devices, or components were used or were intended to be used in violation of this chapter.

(4) A law enforcement agency shall destroy explosives seized under this chapter when it is necessary to protect the public safety and welfare. When destruction is not necessary to protect the public safety and welfare, and the explosives are not being held for evidence, a seizure pursuant to this section commences proceedings for forfeiture.

(5) The law enforcement agency under whose authority the seizure was made shall issue a written notice of the seizure and commencement of the forfeiture proceedings to the person from whom the explosives were seized, to any known owner of the explosives, and to any person who has a known interest in the explosives. The notice shall be issued within fifteen days of the seizure. The notice of seizure and commencement of the forfeiture proceedings shall be served in the same manner as provided in RCW 4.28.080 for service of a summons. The law enforcement agency shall provide a form by which the person or persons may request a hearing before the law enforcement agency to contest the seizure.

(6) If no person notifies the seizing law enforcement agency in writing of the person's claim of ownership or right to possession of the explosives, improvised devices, or components within thirty days of the date the notice was issued, the seized explosives, devices, or components shall be deemed forfeited.

(7) If, within thirty days of the issuance of the notice, any person notifies the seizing law enforcement agency in writing of the person's claim of ownership or right to possession of items seized, the person or persons shall be afforded a reasonable opportunity to be heard as to the claim or right. The hearing shall be before the chief law enforcement or the officer's designee of the seizing agency, except that the person asserting the claim or right may remove the matter to a court of competent jurisdiction if the aggregate value of the items seized is more than five hundred dollars. The hearing and any appeal shall be conducted according to chapter 34.05 RCW. The seizing law enforcement agency shall bear the burden of proving that the person (a) has no lawful right of ownership or possession and (b) that the items seized were possessed, manufactured, stored, sold, purchased, transported, abandoned, detonated, or used in violation of a provision of this chapter with the person's knowledge or consent.

(8) The seizing law enforcement agency shall promptly return the items seized to the claimant upon a determination that the claimant is entitled to possession of the items seized.

(9) If the items seized are forfeited under this statute, the seizing agency shall dispose of the explosives by summary destruction. However, when explosives are destroyed either to protect public safety or because the explosives were forfeited, the person from whom the explosives were seized loses all rights of action against the law enforcement agency or its employees acting within the scope of their employment, or other governmental entity or employee involved with the seizure and destruction of explosives.

(10) This section is not intended to change the seizure and forfeiture powers, enforcement, and penalties available to the department of labor and industries pursuant to chapter

49.17 RCW as provided in RCW 70.74.390. [2002 c 370 § 3; 1993 c 293 § 8.]

**Severability—2002 c 370:** See note following RCW 70.77.126.  
Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**70.74.410 Reporting theft or loss of explosives.** A person who knows of a theft or loss of explosives for which that person is responsible under this chapter shall report the theft or loss to the local law enforcement agency within twenty-four hours of discovery of the theft or loss. The local law enforcement agency shall immediately report the theft or loss to the department of labor and industries. [1993 c 293 § 9.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**Chapter 70.75 RCW  
FIREFIGHTING EQUIPMENT—  
STANDARDIZATION**

Sections

- 70.75.010 Standard thread specified—Exceptions.
- 70.75.020 Duties of chief of the Washington state patrol.
- 70.75.030 Duties of chief of the Washington state patrol—Notification of industrial establishments and property owners having equipment.
- 70.75.040 Sale of nonstandard equipment as misdemeanor—Exceptions.
- 70.75.900 Severability—1967 c 152.

**70.75.010 Standard thread specified—Exceptions.** All equipment for fire protection purposes, other than for forest firefighting, purchased by state and municipal authorities, or any other authorities having charge of public property, shall be equipped with the standard threads designated as the national standard thread as adopted by the American Insurance Association and defined in its pamphlet No. 194, dated 1963: PROVIDED, That this section shall not apply to steamer connections on fire hydrants. [1967 c 152 § 1.]

**70.75.020 Duties of chief of the Washington state patrol.** The standardization of existing fire protection equipment in this state shall be arranged for and carried out by or under the direction of the chief of the Washington state patrol, through the director of fire protection. He or she shall provide the appliances necessary for carrying on this work, shall proceed with such standardization as rapidly as possible, and shall require the completion of such work within a period of five years from June 8, 1967: PROVIDED, That the chief of the Washington state patrol, through the director of fire protection, may exempt special purpose fire equipment and existing fire protection equipment from standardization when it is established that such equipment is not essential to the coordination of public fire protection operations. [1995 c 369 § 41; 1986 c 266 § 96; 1967 c 152 § 2.]

*State fire protection: Chapter 43.44 RCW.*

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**70.75.030 Duties of chief of the Washington state patrol—Notification of industrial establishments and property owners having equipment.** The chief of the Washington state patrol, through the director of fire protection, shall notify industrial establishments and property owners having equipment, which may be necessary for fire

(2010 Ed.)

department use in protecting the property or putting out fire, of any changes necessary to bring their equipment up to the requirements of the standard established by RCW 70.75.020, and shall render such assistance as may be available for converting substandard equipment to meet standard specifications and requirements. [1995 c 369 § 42; 1986 c 266 § 97; 1967 c 152 § 3.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**70.75.040 Sale of nonstandard equipment as misdemeanor—Exceptions.** Any person who, without approval of the chief of the Washington state patrol, through the director of fire protection, sells or offers for sale in Washington any fire hose, fire engine or other equipment for fire protection purposes which is fitted or equipped with other than the standard thread is guilty of a misdemeanor: PROVIDED, That fire equipment for special purposes, research, programs, forest firefighting, or special features of fire protection equipment found appropriate for uniformity within a particular protection area may be specifically exempted from this requirement by order of the chief of the Washington state patrol, through the director of fire protection. [1995 c 369 § 43; 1986 c 266 § 98; 1967 c 152 § 4.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**70.75.900 Severability—1967 c 152.** If any provision of this act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected. [1967 c 152 § 5.]

**Chapter 70.76 RCW  
POLYBROMINATED DIPHENYL ETHERS—  
FLAME RETARDANTS**

Sections

- 70.76.005 Findings.
- 70.76.010 Definitions.
- 70.76.020 Manufacture, sale, or distribution of noncombustible products containing PBDEs—Exemptions.
- 70.76.030 Manufacture, sale, or distribution of products containing commercial deca-bde—Departments review of commercial deca-bde alternatives—Effective date of prohibitions.
- 70.76.040 Fire safety committee.
- 70.76.050 Departments review of commercial deca-bde alternatives and effects of PBDEs in waste stream—Publication.
- 70.76.060 Exclusions from chapter—Transportation and storage.
- 70.76.070 Notification to sellers.
- 70.76.080 Assistance to state agencies.
- 70.76.090 Retailers—Liability—Existing stock.
- 70.76.100 Enforcement—Achieving compliance with chapter—Enforcement sequence—Recall—Penalties.
- 70.76.110 Rules.

**70.76.005 Findings.** Polybrominated diphenyl ethers (PBDEs) have been used extensively as flame retardants in a large number of common household products for the past thirty years. Studies on animals show that PBDEs can impact the developing brain, affecting behavior and learning after birth and into adulthood, making exposure to fetuses and children a particular concern. Levels of PBDEs are increasing in people, and in the environment, particularly in North America. Because people can be exposed to these chemicals through house dust and indoor air as well as through food, it

is important to phase out their use in common household products, provided that effective flame retardants that are safer and technically feasible are available at a reasonable cost. [2007 c 65 § 1.]

**70.76.010 Definitions.** The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Comestible" means edible.

(2) "Commercial decabromo diphenyl ether" or "commercial deca-bde" means the chemical mixture of decabromo diphenyl ether, including associated polybrominated diphenyl ether impurities not intentionally added.

(3) "Department" means the department of ecology.

(4) "Electronic enclosure" means the plastic housing that encloses the components of electronic products, including but not limited to televisions and computers.

(5) "Manufacturer" means any person, firm, association, partnership, corporation, governmental entity, organization, or joint venture that produces a product containing polybrominated diphenyl ethers or an importer or domestic distributor of a noncomestible product containing polybrominated diphenyl ethers. A manufacturer does not include a retailer who:

(a) Adds a private label brand or cobrands a product for sale; or

(b) Assembles components to create a single noncomestible product based on an individual consumer preference.

(6) "Mattress" has the same meaning as defined by the United States consumer product safety commission in 16 C.F.R. Part 1633 (2007) as it existed on July 22, 2007, and includes mattress sets, box springs, futons, crib mattresses, and youth mattresses. "Mattress" includes mattress pads.

(7) "Medical device" means an instrument, machine, implant, or diagnostic test used to help diagnose a disease or other condition or to cure, treat, or prevent disease.

(8) "Polybrominated diphenyl ethers" or "PBDEs" means chemical forms that consist of diphenyl ethers bound with bromine atoms. Polybrominated diphenyl ethers include, but are not limited to, the three primary forms of the commercial mixtures known as pentabromo diphenyl ether (penta-bde), octabromo diphenyl ether (octa-bde), and decabromo diphenyl ether (deca-bde).

(9) "Residential upholstered furniture" means residential seating products intended for indoor use in a home or other dwelling intended for residential occupancy that consists in whole or in part of resilient cushioning materials enclosed within a covering consisting of fabric or related materials, if the resilient cushioning materials are sold with the item of upholstered furniture and the upholstered furniture is constructed with a contiguous upholstered seat and back that may include arms.

(10) "Retailer" means a person who offers a product for sale at retail through any means including, but not limited to, remote offerings such as sales outlets, catalogs, or the internet, but does not include a sale that is a wholesale transaction with a distributor or a retailer. A retailer does not include a person, firm, association, partnership, corporation, governmental entity, organization, or joint venture that both manufactures and sells a product at retail.

(11) "Technically feasible" means an alternative that is available at a cost and in sufficient quantity to permit the manufacturer to produce an economically viable product.

(12) "Transportation vehicle" means a mechanized vehicle that is used to transport goods or people including, but not limited to, airplanes, automobiles, motorcycles, trucks, buses, trains, boats, ships, streetcars, or monorail cars. [2007 c 65 § 2.]

**70.76.020 Manufacture, sale, or distribution of non-comestible products containing PBDEs—Exemptions.**

After January 1, 2008, no person may manufacture, knowingly sell, offer for sale, distribute for sale, or distribute for use in this state noncomestible products containing PBDEs. Exemptions from the prohibition in this section are limited to the following:

(1) Products containing deca-bde, except as provided in RCW 70.76.030;

(2) The sale or distribution of any used transportation vehicle manufactured before January 1, 2008, with component parts containing PBDEs;

(3) The sale or distribution of any used transportation vehicle parts or new transportation vehicle parts manufactured before January 1, 2008, that contain PBDEs;

(4) The manufacture, sale, repair, distribution, maintenance, refurbishment, or modification of equipment containing PBDEs and used primarily for military or federally funded space program applications. The exemption in this subsection (4) does not cover consumer-based goods with broad applicability;

(5) Federal aviation administration fire worthiness requirements and recommendations;

(6) The manufacture, sale, repair, distribution, maintenance, refurbishment, or modification of any new raw material or component part used in a transportation vehicle with component parts, including original spare parts, containing deca-bde;

(7) The use of commercial deca-bde in the maintenance, refurbishment, or modification of transportation equipment;

(8) The sale or distribution of any product containing PBDEs that has been previously owned, purchased, or sold in commerce, provided it was manufactured before the effective date of the prohibition;

(9) The manufacture, sale, or distribution of any new product or product component consisting of recycled or used materials containing deca-bde;

(10) The sale or purchase of any previously owned product containing PBDEs made in casual or isolated sales as defined in RCW 82.04.040 and to sales by nonprofit organizations;

(11) The manufacture, sale, or distribution of new carpet cushion made from recycled foam containing less than one-tenth of one percent penta-bde; and

(12) Medical devices. [2007 c 65 § 3.]

**70.76.030 Manufacture, sale, or distribution of products containing commercial deca-bde—Departments review of commercial deca-bde alternatives—Effective date of prohibitions.** (1) Except as provided in RCW 70.76.090, no person may manufacture, knowingly sell, offer

for sale, distribute for sale, or distribute for use in this state mattresses containing commercial deca-bde after January 1, 2008.

(2) Except as provided in RCW 70.76.090, no person may manufacture, knowingly sell, offer for sale, distribute for sale, or distribute for use in this state residential upholstered furniture that contains commercial deca-bde, or any television or computer that has an electronic enclosure that contains commercial deca-bde after the effective date established in subsection (3) of this section. This prohibition may not take effect until the department and the department of health identify that a safer and technically feasible alternative is available, and the fire safety committee, created in RCW 70.76.040, determines that the identified alternative meets applicable fire safety standards. The effective date of the prohibition must be established according to the following process:

(a) The department and the department of health shall review risk assessments, scientific studies, and other relevant findings regarding alternatives to the use of commercial deca-bde in residential upholstered furniture, televisions, and computers.

(b) If the department and the department of health jointly find that safer and technically feasible alternatives are available for any of these uses, the department shall convene the fire safety committee created in RCW 70.76.040 to determine whether the identified alternatives meet applicable fire safety standards.

(c) By majority vote, the fire safety committee created in RCW 70.76.040 shall make a finding whether an alternative identified under (b) of this subsection meets applicable fire safety standards. The fire safety committee shall report their finding to the state fire marshal. After reviewing the finding of the fire safety committee, the state fire marshal shall determine whether an alternative identified under (b) of this subsection meets applicable fire safety standards. The determination of the fire marshal must be based upon the finding of the fire safety committee. The state fire marshal shall report the determination to the department.

(d) The department shall seek public input on their findings, the findings of the fire safety committee, and the determination by the state fire marshal. The department shall publish these findings in the Washington State Register, and submit them in a report to the appropriate committees of the legislature. The department shall initially report these findings by December 31, 2008.

(3) The effective date of the prohibition is as follows:

(a) If the December 31, 2008, report required in subsection (2)(d) of this section finds that a safer and technically feasible alternative that meets applicable fire safety standards is available, the prohibition takes effect January 1, 2011;

(b) If the December 31, 2008, report required in subsection (2)(d) of this section does not find that a safer and technically feasible alternative that meets applicable fire safety standards is available, the prohibition does not take effect January 1, 2011. Beginning in 2009, by December 31st of each year, the department shall review and report on alternatives as described in subsection (2) of this section. The prohibition in subsection (2) of this section takes effect two years after a report submitted to the legislature required under subsection (2)(d) of this section finds that a safer and technically

feasible alternative that meets applicable fire safety standards is available. [2007 c 65 § 4.]

**70.76.040 Fire safety committee.** (1) The fire safety committee is created for the exclusive purpose of finding whether an alternative identified under RCW 70.76.030(2)(b) meets applicable fire safety standards.

(2) A majority vote of the members of the fire safety committee constitutes a finding that an alternative meets applicable fire safety standards.

(3) The fire safety committee consists of the following members:

(a) A representative from the department, who shall chair the fire safety committee, and serve as an ex officio nonvoting member.

(b) Five voting members, appointed by the governor, as follows:

(i) A representative of the office of the state fire marshal;

(ii) A representative of a statewide association representing the interests of fire chiefs;

(iii) A representative of a statewide association representing the interests of fire commissioners;

(iv) A representative of a recognized statewide council, affiliated with an international association representing the interests of firefighters; and

(v) A representative of a statewide association representing the interests of volunteer firefighters. [2007 c 65 § 5.]

**70.76.050 Departments review of commercial deca-bde alternatives and effects of PBDEs in waste stream—Publication.**

The department and the department of health shall review risk assessments, scientific studies, and other relevant findings regarding alternatives to the use of commercial deca-bde in products not directly addressed in this chapter. If a flame retardant that is safer and technically feasible becomes available, the department shall convene the fire safety committee created in RCW 70.76.040. The fire safety committee and the state fire marshal shall proceed as required in RCW 70.76.030(2)(c) to determine if the identified alternative meets applicable fire safety standards. The department and the department of health shall also review risk assessments, scientific studies, and other findings regarding the potential effect of PBDEs in the waste stream. By December 31st of the year in which the finding is made, the department must publish the information required by this subsection in the Washington State Register and present it in a report to the appropriate committees of the legislature. [2007 c 65 § 6.]

**70.76.060 Exclusions from chapter—Transportation and storage.**

Nothing in this chapter restricts the ability of a manufacturer, importer, or distributor from transporting products containing PBDEs through the state or storing the products in the state for later distribution outside the state. [2007 c 65 § 7.]

**70.76.070 Notification to sellers.** A manufacturer of products containing PBDEs that are restricted under this chapter must notify persons that sell the manufacturer's products in this state about the provisions of this chapter no less

than ninety days prior to the effective date of the restrictions. [2007 c 65 § 8.]

**70.76.080 Assistance to state agencies.** The department shall assist state agencies to give priority and preference to the purchase of equipment, supplies, and other products that do not contain PBDEs. [2007 c 65 § 9.]

**70.76.090 Retailers—Liability—Existing stock.** (1) Retailers who unknowingly sell products prohibited under RCW 70.76.020 or 70.76.030 are not liable under this chapter.

(2) In-state retailers in possession of products on the date that restrictions on the sale of the products become effective under RCW 70.76.020 or 70.76.030 may exhaust their existing stock through sales to the public.

(3) The department must assist in-state retailers in identifying potential products containing PBDEs.

(4) If a retailer unknowingly possesses products that are prohibited for sale under RCW 70.76.020 or 70.76.030 and the manufacturer does not recall the products as required under RCW 70.76.100(2), the retailer may exhaust its existing stock through sales to the public. However, no additional prohibited stock may be sold or offered for sale. [2007 c 65 § 10.]

**70.76.100 Enforcement—Achieving compliance with chapter—Enforcement sequence—Recall—Penalties.** (1) Enforcement of this chapter must rely on notification and information exchange between the department and manufacturers. The department shall achieve compliance with this chapter using the following enforcement sequence:

(a) Before the effective date of the product prohibition in RCW 70.76.020 or 70.76.030, the department shall prepare and distribute information to in-state manufacturers and out-of-state manufacturers, to the maximum extent practicable, to assist them in identifying products prohibited for manufacture, sale, or distribution under this chapter.

(b) The department may request a certificate of compliance from a manufacturer. A certificate of compliance attests that a manufacturer's product or products meets the requirements of this chapter.

(c) The department may issue a warning letter to a manufacturer that produces, sells, or distributes prohibited products in violation of this chapter. The department shall offer information or other appropriate assistance to the manufacturer in complying with this chapter. If, after one year, compliance is not achieved, penalties may be assessed under subsection (3) of this section.

(2) A manufacturer that knowingly produces, sells, or distributes a product prohibited from manufacture, sale, or distribution in this state under this chapter shall recall the product and reimburse the retailer or any other purchaser for the product and any applicable shipping and handling for returning the products.

(3) A manufacturer of products containing PBDEs in violation of this chapter is subject to a civil penalty not to exceed one thousand dollars for each violation in the case of a first offense. Manufacturers who are repeat violators are subject to a civil penalty not to exceed five thousand dollars

for each repeat offense. Penalties collected under this section must be deposited in the state toxics control account created in RCW 70.105D.070. [2007 c 65 § 11.]

**70.76.110 Rules.** The department may adopt rules to fully implement this chapter. [2007 c 65 § 12.]

## Chapter 70.77 RCW STATE FIREWORKS LAW

### Sections

70.77.111	Intent.
70.77.120	Definitions—To govern chapter.
70.77.124	Definitions—"City."
70.77.126	Definitions—"Fireworks."
70.77.131	Definitions—"Display fireworks."
70.77.136	Definitions—"Consumer fireworks."
70.77.138	Definitions—"Articles pyrotechnic."
70.77.141	Definitions—"Agricultural and wildlife fireworks."
70.77.146	Definitions—"Special effects."
70.77.160	Definitions—"Public display of fireworks."
70.77.165	Definitions—"Fire nuisance."
70.77.170	Definitions—"License."
70.77.175	Definitions—"Licensee."
70.77.177	Definitions—"Local fire official."
70.77.180	Definitions—"Permit."
70.77.182	Definitions—"Permittee."
70.77.190	Definitions—"Person."
70.77.200	Definitions—"Importer."
70.77.205	Definitions—"Manufacturer."
70.77.210	Definitions—"Wholesaler."
70.77.215	Definitions—"Retailer."
70.77.230	Definitions—"Pyrotechnic operator."
70.77.236	Definitions—"New fireworks item."
70.77.241	Definitions—"Permanent storage"—"Temporary storage."
70.77.250	Chief of the Washington state patrol to enforce and administer—Powers and duties.
70.77.252	Civil penalty—Notice—Remission, mitigation, review.
70.77.255	Acts prohibited without appropriate licenses and permits—Minimum age for license or permit—Activities permitted without license or permit.
70.77.260	Application for permit.
70.77.265	Investigation, report on permit application.
70.77.270	Governing body to grant permits—Statewide standards—Liability insurance.
70.77.280	Public display permit—Investigation—Governing body to grant—Conditions.
70.77.285	Public display permit—Bond or insurance for liability.
70.77.290	Public display permit—Granted for exclusive purpose.
70.77.295	Public display permit—Amount of bond or insurance.
70.77.305	Chief of the Washington state patrol to issue licenses—Registration of in-state agents.
70.77.311	Exemptions from licensing—Purchase of certain agricultural and wildlife fireworks by government agencies—Purchase of consumer fireworks by religious or private organizations.
70.77.315	Application for license.
70.77.320	Application for license to be signed.
70.77.325	Annual application for a license—Dates.
70.77.330	License to engage in particular act to be issued if not contrary to public safety or welfare—Transportation of fireworks authorized.
70.77.335	License authorizes activities of sellers, authorized representatives, employees.
70.77.340	Annual license fees.
70.77.343	License fees—Additional.
70.77.345	Duration of licenses and retail fireworks sales permits.
70.77.355	General license for public display—Surety bond or insurance—Filing of license certificate with local permit application.
70.77.360	Denial of license for material misrepresentation or if contrary to public safety or welfare.
70.77.365	Denial of license for failure to meet qualifications or conditions.
70.77.370	Hearing on denial of license.
70.77.375	Revocation of license.
70.77.381	Wholesalers and retailers—Liability insurance requirements.
70.77.386	Retailers—Purchase from licensed wholesalers.

- 70.77.395 Dates and times consumer fireworks may be sold or discharged—Local governments may limit, prohibit sale or discharge of fireworks.
- 70.77.401 Sale of certain fireworks prohibited.
- 70.77.405 Authorized sales of toy caps, tricks, and novelties.
- 70.77.410 Public displays not to be hazardous.
- 70.77.415 Supervision of public displays.
- 70.77.420 Permanent storage permit required—Application—Investigation—Grant or denial—Conditions.
- 70.77.425 Approved permanent storage facilities required.
- 70.77.430 Sale of stock after revocation or expiration of license.
- 70.77.435 Seizure of fireworks.
- 70.77.440 Seizure of fireworks—Proceedings for forfeiture—Disposal of confiscated fireworks.
- 70.77.450 Examination, inspection of books and premises.
- 70.77.455 Licensees to maintain and make available complete records—Exemption from public records act.
- 70.77.460 Reports, payments deemed made when filed or paid or date mailed.
- 70.77.480 Prohibited transfers of fireworks.
- 70.77.485 Unlawful possession of fireworks—Penalties.
- 70.77.488 Unlawful discharge or use of fireworks—Penalty.
- 70.77.495 Forestry permit to set off fireworks in forest, brush, fallow, etc.
- 70.77.510 Unlawful sales or transfers of display fireworks—Penalty.
- 70.77.515 Unlawful sales or transfers of consumer fireworks—Penalty.
- 70.77.517 Unlawful transportation of fireworks—Penalty.
- 70.77.520 Unlawful to permit fire nuisance where fireworks kept—Penalty.
- 70.77.525 Manufacture or sale of fireworks for out-of-state shipment.
- 70.77.530 Nonprohibited acts—Signal purposes, forest protection.
- 70.77.535 Articles pyrotechnic, special effects for entertainment media. Penalty.
- 70.77.540 Violation a separate, continuing offense.
- 70.77.547 Civil enforcement not precluded.
- 70.77.548 Attorney general may institute civil proceedings—Venue.
- 70.77.549 Civil penalty—Costs.
- 70.77.550 Short title.
- 70.77.555 Local permit and license fees—Limits.
- 70.77.575 Chief of the Washington state patrol to provide list of consumer fireworks that may be sold to the public.
- 70.77.580 Retailers to post list of consumer fireworks.
- 70.77.900 Effective date—1961 c 228.
- 70.77.910 Severability—1961 c 228.
- 70.77.911 Severability—1982 c 230.
- 70.77.912 Severability—1984 c 249.

State building code: Chapter 19.27 RCW.

**70.77.111 Intent.** The legislature declares that fireworks, when purchased and used in compliance with the laws of the state of Washington, are legal. The legislature intends that this chapter is regulatory only, and not prohibitory. [1995 c 61 § 1.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**70.77.120 Definitions—To govern chapter.** The definitions set forth in this chapter shall govern the construction of this chapter, unless the context otherwise requires. [1961 c 228 § 1.]

**70.77.124 Definitions—"City."** "City" means any incorporated city or town. [1995 c 61 § 2; 1994 c 133 § 2.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**70.77.126 Definitions—"Fireworks."** "Fireworks" means any composition or device designed to produce a visible or audible effect by combustion, deflagration, or detonation, and which meets the definition of articles pyrotechnic or consumer fireworks or display fireworks. [2002 c 370 § 4; 1995 c 61 § 3; 1984 c 249 § 1; 1982 c 230 § 1.]

**Severability—2002 c 370:** "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [2002 c 370 § 50.]

(2010 Ed.)

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**70.77.131 Definitions—"Display fireworks."** "Display fireworks" means large fireworks designed primarily to produce visible or audible effects by combustion, deflagration, or detonation and includes, but is not limited to, salutes containing more than 2 grains (130 mg) of explosive materials, aerial shells containing more than 40 grams of pyrotechnic compositions, and other display pieces which exceed the limits of explosive materials for classification as "consumer fireworks" and are classified as fireworks UN0333, UN0334, or UN0335 by the United States department of transportation at 49 C.F.R. Sec. 172.101 as of June 13, 2002, and including fused setpieces containing components which exceed 50 mg of salute powder. [2002 c 370 § 5; 1995 c 61 § 4; 1984 c 249 § 2; 1982 c 230 § 2.]

**Severability—2002 c 370:** See note following RCW 70.77.126.

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**70.77.136 Definitions—"Consumer fireworks."** "Consumer fireworks" means any small firework device designed to produce visible effects by combustion and which must comply with the construction, chemical composition, and labeling regulations of the United States consumer product safety commission, as set forth in 16 C.F.R. Parts 1500 and 1507 and including some small devices designed to produce audible effects, such as whistling devices, ground devices containing 50 mg or less of explosive materials, and aerial devices containing 130 mg or less of explosive materials and classified as fireworks UN0336 by the United States department of transportation at 49 C.F.R. Sec. 172.101 as of June 13, 2002, and not including fused setpieces containing components which together exceed 50 mg of salute powder. [2002 c 370 § 6; 1995 c 61 § 5; 1984 c 249 § 3; 1982 c 230 § 3.]

**Severability—2002 c 370:** See note following RCW 70.77.126.

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**70.77.138 Definitions—"Articles pyrotechnic."** "Articles pyrotechnic" means pyrotechnic devices for professional use similar to consumer fireworks in chemical composition and construction but not intended for consumer use which meet the weight limits for consumer fireworks but which are not labeled as such and which are classified as UN0431 or UN0432 by the United States department of transportation at 49 C.F.R. Sec. 172.101 as of June 13, 2002. [2002 c 370 § 7.]

**Severability—2002 c 370:** See note following RCW 70.77.126.

**70.77.141 Definitions—"Agricultural and wildlife fireworks."** "Agricultural and wildlife fireworks" includes fireworks devices distributed to farmers, ranchers, and growers through a wildlife management program administered by the United States department of the interior or an equivalent state or local governmental agency. [2002 c 370 § 8; 1982 c 230 § 4.]

**Severability—2002 c 370:** See note following RCW 70.77.126.

**70.77.146 Definitions—"Special effects."** "Special effects" means any combination of chemical elements or

chemical compounds capable of burning independently of the oxygen of the atmosphere, and designed and intended to produce an audible, visual, mechanical, or thermal effect as an integral part of a motion picture, radio, television, theatrical, or opera production, or live entertainment. [1995 c 61 § 8; 1994 c 133 § 1; 1984 c 249 § 4; 1982 c 230 § 5.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**70.77.160 Definitions—"Public display of fireworks."** "Public display of fireworks" means an entertainment feature where the public is or could be admitted or allowed to view the display or discharge of display fireworks. [2002 c 370 § 9; 1997 c 182 § 1; 1982 c 230 § 6; 1961 c 228 § 9.]

**Severability—2002 c 370:** See note following RCW 70.77.126.

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**70.77.165 Definitions—"Fire nuisance."** "Fire nuisance" means anything or any act which increases, or may cause an increase of, the hazard or menace of fire to a greater degree than customarily recognized as normal by persons in the public service of preventing, suppressing, or extinguishing fire; or which may obstruct, delay, or hinder, or may become the cause of any obstruction, delay, or a hindrance to the prevention or extinguishment of fire. [1961 c 228 § 10.]

**70.77.170 Definitions—"License."** "License" means a nontransferable formal authorization which the chief of the Washington state patrol, through the director of fire protection, is authorized to issue under this chapter to allow a person to engage in the act specifically designated therein. [2002 c 370 § 10; 1995 c 369 § 44; 1986 c 266 § 99; 1982 c 230 § 7; 1961 c 228 § 11.]

**Severability—2002 c 370:** See note following RCW 70.77.126.

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**70.77.175 Definitions—"Licensee."** "Licensee" means any person issued a fireworks license in conformance with this chapter. [2002 c 370 § 11; 1961 c 228 § 12.]

**Severability—2002 c 370:** See note following RCW 70.77.126.

**70.77.177 Definitions—"Local fire official."** "Local fire official" means the chief of a local fire department or a chief fire protection officer or such other person as may be designated by the governing body of a city or county to act as a local fire official under this chapter. [1994 c 133 § 3; 1984 c 249 § 6.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**70.77.180 Definitions—"Permit."** "Permit" means the official authorization granted by a city or county for the purpose of establishing and maintaining a place within the jurisdiction of the city or county where fireworks are manufactured, constructed, produced, packaged, stored, sold, or exchanged and the official authorization granted by a city or county for a public display of fireworks. [2002 c 370 § 12; 1995 c 61 § 9; 1984 c 249 § 5; 1982 c 230 § 8; 1961 c 228 § 13.]

**Severability—2002 c 370:** See note following RCW 70.77.126.

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**70.77.182 Definitions—"Permittee."** "Permittee" means any person issued a fireworks permit in conformance with this chapter. [2002 c 370 § 13.]

**Severability—2002 c 370:** See note following RCW 70.77.126.

**70.77.190 Definitions—"Person."** "Person" includes any individual, firm, partnership, joint venture, association, concern, corporation, estate, trust, business trust, receiver, syndicate, or any other group or combination acting as a unit. [1961 c 228 § 15.]

**70.77.200 Definitions—"Importer."** "Importer" includes any person who for any purpose other than personal use:

- (1) Brings fireworks into this state or causes fireworks to be brought into this state;
- (2) Procures the delivery or receives shipments of any fireworks into this state; or
- (3) Buys or contracts to buy fireworks for shipment into this state. [1995 c 61 § 10; 1961 c 228 § 17.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**70.77.205 Definitions—"Manufacturer."** "Manufacturer" includes any person who manufactures, makes, constructs, fabricates, or produces any fireworks article or device but does not include persons who assemble or fabricate sets or mechanical pieces in public displays of fireworks or persons who assemble consumer fireworks items or sets or packages containing consumer fireworks items. [2002 c 370 § 14; 1995 c 61 § 11; 1961 c 228 § 18.]

**Severability—2002 c 370:** See note following RCW 70.77.126.

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**70.77.210 Definitions—"Wholesaler."** "Wholesaler" includes any person who sells fireworks to a retailer or any other person for resale and any person who sells display fireworks to public display licensees. [2002 c 370 § 15; 1982 c 230 § 9; 1961 c 228 § 19.]

**Severability—2002 c 370:** See note following RCW 70.77.126.

**70.77.215 Definitions—"Retailer."** "Retailer" includes any person who, at a fixed location or place of business, offers for sale, sells, or exchanges for consideration consumer fireworks to a consumer or user. [2002 c 370 § 16; 1982 c 230 § 10; 1961 c 228 § 20.]

**Severability—2002 c 370:** See note following RCW 70.77.126.

**70.77.230 Definitions—"Pyrotechnic operator."** "Pyrotechnic operator" includes any individual who by experience and training has demonstrated the required skill and ability for safely setting up and discharging display fireworks. [2002 c 370 § 17; 1982 c 230 § 11; 1961 c 228 § 23.]

**Severability—2002 c 370:** See note following RCW 70.77.126.

**70.77.236 Definitions—"New fireworks item."** (1) "New fireworks item" means any fireworks initially classified or reclassified as articles pyrotechnic, display fireworks, or consumer fireworks by the United States department of

transportation after June 13, 2002, and which comply with the construction, chemical composition, and labeling regulations of the United States consumer products safety commission, 16 C.F.R., Parts 1500 and 1507.

(2) The chief of the Washington state patrol, through the director of fire protection, shall classify any new fireworks item in the same manner as the item is classified by the United States department of transportation and the United States consumer product safety commission. The chief of the Washington state patrol, through the director of fire protection, may determine, stating reasonable grounds, that the item should not be so classified. [2002 c 370 § 18; 1997 c 182 § 4; 1995 c 61 § 6.]

**Severability—2002 c 370:** See note following RCW 70.77.126.

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**70.77.241 Definitions—"Permanent storage"—"Temporary storage."** (1) "Permanent storage" means storage of display fireworks at any time and/or storage of consumer fireworks at any time other than the periods allowed under RCW 70.77.420(2) and 70.77.425 and which shall be in compliance with the requirements of chapter 70.74 RCW.

(2) "Temporary storage" means the storage of consumer fireworks during the periods allowed under RCW 70.77.420(2) and 70.77.425. [2002 c 370 § 34.]

**Severability—2002 c 370:** See note following RCW 70.77.126.

**70.77.250 Chief of the Washington state patrol to enforce and administer—Powers and duties.** (1) The chief of the Washington state patrol, through the director of fire protection, shall enforce and administer this chapter.

(2) The chief of the Washington state patrol, through the director of fire protection, shall appoint such deputies and employees as may be necessary and required to carry out the provisions of this chapter.

(3) The chief of the Washington state patrol, through the director of fire protection, shall adopt those rules relating to fireworks as are necessary for the implementation of this chapter.

(4) The chief of the Washington state patrol, through the director of fire protection, shall adopt those rules as are necessary to ensure statewide minimum standards for the enforcement of this chapter. Counties and cities shall comply with these state rules. Any ordinances adopted by a county or city that are more restrictive than state law shall have an effective date no sooner than one year after their adoption.

(5) The chief of the Washington state patrol, through the director of fire protection, may exercise the necessary police powers to enforce the criminal provisions of this chapter. This grant of police powers does not prevent any other state agency and city, county, or local government agency having general law enforcement powers from enforcing this chapter within the jurisdiction of the agency and city, county, or local government.

(6) The chief of the Washington state patrol, through the director of fire protection, shall adopt rules necessary to enforce the civil penalty provisions for the violations of this chapter. A civil penalty under this subsection may not exceed one thousand dollars per day for each violation and is subject to the procedural requirements under RCW 70.77.252.

(7) The chief of the Washington state patrol, through the director of fire protection, may investigate or cause to be investigated all fires resulting, or suspected of resulting, from the use of fireworks. [2002 c 370 § 19; 1997 c 182 § 5. Prior: 1995 c 369 § 45; 1995 c 61 § 12; 1986 c 266 § 100; 1984 c 249 § 7; 1982 c 230 § 12; 1961 c 228 § 27.]

**Severability—2002 c 370:** See note following RCW 70.77.126.

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**70.77.252 Civil penalty—Notice—Remission, mitigation, review.** (1) The penalty provided for in RCW 70.77.250(6) shall be imposed by a notice in writing to the person against whom the civil fine is assessed and shall describe the violation with reasonable particularity. The notice shall be personally served in the manner of service of a summons in a civil action or in a manner which shows proof of receipt. Any penalty imposed by RCW 70.77.250(6) shall become due and payable twenty-eight days after receipt of notice unless application for remission or mitigation is made as provided in subsection (2) of this section or unless application for an adjudicative proceeding is filed as provided in subsection (3) of this section.

(2) Within fourteen days after the notice is received, the person incurring the penalty may apply in writing to the chief of the Washington state patrol, through the director of fire protection, for the remission or mitigation of the penalty. Upon receipt of the application, the chief of the Washington state patrol, through the director of fire protection, may remit or mitigate the penalty upon whatever terms the chief of the Washington state patrol, through the director of fire protection, deems proper, giving consideration to the degree of hazard associated with the violation. The chief of the Washington state patrol, through the director of fire protection, may only grant a remission or mitigation that it deems to be in the best interests of carrying out the purposes of this chapter. The chief of the Washington state patrol, through the director of fire protection, may ascertain the facts regarding all such applications in a manner it deems proper. When an application for remission or mitigation is made, any penalty incurred under RCW 70.77.250(6) becomes due and payable twenty-eight days after receipt of the notice setting forth the disposition of the application, unless an application for an adjudicative proceeding to contest the disposition is filed as provided in subsection (3) of this section.

(3) Within twenty-eight days after notice is received, the person incurring the penalty may file an application for an adjudicative proceeding and may pursue subsequent review as provided in chapter 34.05 RCW and applicable rules of the chief of the Washington state patrol, through the director of fire protection.

(4) Any penalty imposed by final order following an adjudicative proceeding becomes due and payable upon service of the final order.

(5) The attorney general may bring an action in the name of the chief of the Washington state patrol, through the director of fire protection, in the superior court of Thurston county or of any county in which the violator may do business to collect any penalty imposed under this chapter.

(6) All penalties imposed under this section shall be paid to the state treasury and credited to the fire services trust fund

and used as follows: At least fifty percent is for a statewide public education campaign developed by the chief of the Washington state patrol, through the director of fire protection, and the licensed fireworks industry emphasizing the safe and responsible use of legal fireworks; and the remainder is for statewide efforts to enforce this chapter. [2002 c 370 § 20.]

**Severability—2002 c 370:** See note following RCW 70.77.126.

**70.77.255 Acts prohibited without appropriate licenses and permits—Minimum age for license or permit—Activities permitted without license or permit.** (1) Except as otherwise provided in this chapter, no person, without appropriate state licenses and city or county permits as required by this chapter may:

(a) Manufacture, import, possess, or sell any fireworks at wholesale or retail for any use;

(b) Make a public display of fireworks;

(c) Transport fireworks, except as a licensee or as a public carrier delivering to a licensee; or

(d) Knowingly manufacture, import, transport, store, sell, or possess with intent to sell, as fireworks, explosives, as defined under RCW 70.74.010, that are not fireworks, as defined under this chapter.

(2) Except as authorized by a license and permit under subsection (1)(b) of this section or as provided in RCW 70.77.311, no person may discharge display fireworks at any place.

(3) No person less than eighteen years of age may apply for or receive a license or permit under this chapter.

(4) No license or permit is required for the possession or use of consumer fireworks lawfully purchased at retail. [2002 c 370 § 21; 1997 c 182 § 6; 1995 c 61 § 13; 1994 c 133 § 4; 1984 c 249 § 10; 1982 c 230 § 14; 1961 c 228 § 28.]

**Severability—2002 c 370:** See note following RCW 70.77.126.

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**70.77.260 Application for permit.** (1) Any person desiring to do any act mentioned in RCW 70.77.255(1) (a) or (c) shall apply in writing to a local fire official for a permit.

(2) Any person desiring to put on a public display of fireworks under RCW 70.77.255(1)(b) shall apply in writing to a local fire official for a permit. Application shall be made at least ten days in advance of the proposed display. [1984 c 249 § 11; 1982 c 230 § 15; 1961 c 228 § 29.]

*General license holders to file license certificate with application for permit for public display of fireworks: RCW 70.77.355.*

**70.77.265 Investigation, report on permit application.** The local fire official receiving an application for a permit under RCW 70.77.260(1) shall investigate the application and submit a report of findings and a recommendation for or against the issuance of the permit, together with reasons, to the governing body of the city or county. [1994 c 133 § 5; 1984 c 249 § 12; 1961 c 228 § 30.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**70.77.270 Governing body to grant permits—Statewide standards—Liability insurance.** (1) The governing body of a city or county, or a designee, shall grant an applica-

tion for a permit under RCW 70.77.260(1) if the application meets the standards under this chapter, and the applicable ordinances of the city or county. The permit shall be granted by June 10, or no less than thirty days after receipt of an application whichever date occurs first, for sales commencing on June 28 and on December 27; or by December 10, or no less than thirty days after receipt of an application whichever date occurs first, for sales commencing only on December 27.

(2) The chief of the Washington state patrol, through the director of fire protection, shall prescribe uniform, statewide standards for retail fireworks stands including, but not limited to, the location of the stands, setback requirements and siting of the stands, types of buildings and construction material that may be used for the stands, use of the stands and areas around the stands, cleanup of the area around the stands, transportation of fireworks to and from the stands, and temporary storage of fireworks associated with the retail fireworks stands. All cities and counties which allow retail fireworks sales shall comply with these standards.

(3) No retail fireworks permit may be issued to any applicant unless the retail fireworks stand is covered by a liability insurance policy with coverage of not less than fifty thousand dollars and five hundred thousand dollars for bodily injury liability for each person and occurrence, respectively, and not less than fifty thousand dollars for property damage liability for each occurrence, unless such insurance is not readily available from at least three approved insurance companies. If insurance in this amount is not offered, each fireworks permit shall be covered by a liability insurance policy in the maximum amount offered by at least three different approved insurance companies.

No wholesaler may knowingly sell or supply fireworks to any retail fireworks licensee unless the wholesaler determines that the retail fireworks licensee is covered by liability insurance in the same, or greater, amount as provided in this subsection. [2002 c 370 § 22; 1997 c 182 § 8; 1995 c 61 § 14; 1994 c 133 § 6; 1984 c 249 § 13; 1961 c 228 § 31.]

**Severability—2002 c 370:** See note following RCW 70.77.126.

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**70.77.280 Public display permit—Investigation—Governing body to grant—Conditions.** The local fire official receiving an application for a permit under RCW 70.77.260(2) for a public display of fireworks shall investigate whether the character and location of the display as proposed would be hazardous to property or dangerous to any person. Based on the investigation, the official shall submit a report of findings and a recommendation for or against the issuance of the permit, together with reasons, to the governing body of the city or county. The governing body shall grant the application if it meets the requirements of this chapter and the ordinance of the city or county. [1995 c 61 § 15; 1994 c 133 § 7; 1984 c 249 § 14; 1961 c 228 § 33.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**70.77.285 Public display permit—Bond or insurance for liability.** Except as provided in RCW 70.77.355, the applicant for a permit under RCW 70.77.260(2) for a public display of fireworks shall include with the application evi-

dence of a bond issued by an authorized surety company. The bond shall be in the amount required by RCW 70.77.295 and shall be conditioned upon the applicant's payment of all damages to persons or property resulting from or caused by such public display of fireworks, or any negligence on the part of the applicant or its agents, servants, employees, or subcontractors in the presentation of the display. Instead of a bond, the applicant may include a certificate of insurance evidencing the carrying of appropriate liability insurance in the amount required by RCW 70.77.295 for the benefit of the person named therein as assured, as evidence of ability to respond in damages. The local fire official receiving the application shall approve the bond or insurance if it meets the requirements of this section. [1995 c 61 § 16; 1984 c 249 § 15; 1982 c 230 § 16; 1961 c 228 § 34.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**70.77.290 Public display permit—Granted for exclusive purpose.** If a permit under RCW 70.77.260(2) for the public display of fireworks is granted, the sale, possession and use of fireworks for the public display is lawful for that purpose only. [1997 c 182 § 9; 1984 c 249 § 16; 1961 c 228 § 35.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**70.77.295 Public display permit—Amount of bond or insurance.** In the case of an application for a permit under RCW 70.77.260(2) for the public display of fireworks, the amount of the surety bond or certificate of insurance required under RCW 70.77.285 shall be not less than fifty thousand dollars and one million dollars for bodily injury liability for each person and event, respectively, and not less than twenty-five thousand dollars for property damage liability for each event. [1984 c 249 § 17; 1982 c 230 § 17; 1961 c 228 § 36.]

**70.77.305 Chief of the Washington state patrol to issue licenses—Registration of in-state agents.** The chief of the Washington state patrol, through the director of fire protection, has the power to issue licenses for the manufacture, importation, sale, and use of all fireworks in this state, except as provided in RCW 70.77.311 and 70.77.395. A person may be licensed as a manufacturer, importer, or wholesaler under this chapter only if the person has a designated agent in this state who is registered with the chief of the Washington state patrol, through the director of fire protection. [2002 c 370 § 23; 1995 c 369 § 46; 1986 c 266 § 101; 1984 c 249 § 18; 1982 c 230 § 18; 1961 c 228 § 38.]

**Severability—2002 c 370:** See note following RCW 70.77.126.

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**70.77.311 Exemptions from licensing—Purchase of certain agricultural and wildlife fireworks by government agencies—Purchase of consumer fireworks by religious or private organizations.** (1) No license is required for the purchase of agricultural and wildlife fireworks by government agencies if:

(a) The agricultural and wildlife fireworks are used for wildlife control or are distributed to farmers, ranchers, or growers through a wildlife management program adminis-

(2010 Ed.)

tered by the United States department of the interior or an equivalent state or local governmental agency;

(b) The distribution is in response to a written application describing the wildlife management problem that requires use of the devices;

(c) It is of no greater quantity than necessary to control the described problem; and

(d) It is limited to situations where other means of control are unavailable or inadequate.

(2) No license is required for religious organizations or private organizations or persons to purchase or use consumer fireworks and such audible ground devices as firecrackers, salutes, and chasers if:

(a) Purchased from a licensed manufacturer, importer, or wholesaler;

(b) For use on prescribed dates and locations;

(c) For religious or specific purposes; and

(d) A permit is obtained from the local fire official. No fee may be charged for this permit. [2002 c 370 § 24; 1995 c 61 § 17; 1984 c 249 § 19; 1982 c 230 § 19.]

**Severability—2002 c 370:** See note following RCW 70.77.126.

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**70.77.315 Application for license.** Any person who desires to engage in the manufacture, importation, sale, or use of fireworks, except use as provided in RCW 70.77.255(4), 70.77.311, and 70.77.395, shall make a written application to the chief of the Washington state patrol, through the director of fire protection, on forms provided by him or her. Such application shall be accompanied by the annual license fee as prescribed in this chapter. [2002 c 370 § 25; 1997 c 182 § 10. Prior: 1995 c 369 § 47; 1995 c 61 § 18; 1986 c 266 § 102; 1982 c 230 § 20; 1961 c 228 § 40.]

**Severability—2002 c 370:** See note following RCW 70.77.126.

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**70.77.320 Application for license to be signed.** The application for a license shall be signed by the applicant. If application is made by a partnership, it shall be signed by each partner of the partnership, and if application is made by a corporation, it shall be signed by an officer of the corporation and bear the seal of the corporation. [1961 c 228 § 41.]

**70.77.325 Annual application for a license—Dates.** (1) An application for a license shall be made annually by every person holding an existing license who wishes to continue the activity requiring the license during an additional year. The application shall be accompanied by the annual license fees as prescribed in RCW 70.77.343 and 70.77.340.

(2) A person applying for an annual license as a retailer under this chapter shall file an application no later than May 1 for annual sales commencing on June 28 and on December 27, or no later than November 1 for sales commencing only on December 27. The chief of the Washington state patrol, through the director of fire protection, shall grant or deny the license within fifteen days of receipt of the application.

(3) A person applying for an annual license as a manufacturer, importer, or wholesaler under this chapter shall file an application by January 31 of the current year. The chief of the Washington state patrol, through the director of fire pro-

tection, shall grant or deny the license within ninety days of receipt of the application. [1997 c 182 § 11; 1994 c 133 § 8; 1991 c 135 § 4; 1986 c 266 § 103; 1984 c 249 § 20; 1982 c 230 § 21; 1961 c 228 § 42.]

**Intent—Effective date—Severability—1991 c 135:** See notes following RCW 43.43.946.

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**70.77.330 License to engage in particular act to be issued if not contrary to public safety or welfare—Transportation of fireworks authorized.** If the chief of the Washington state patrol, through the director of fire protection, finds that the granting of such license is not contrary to public safety or welfare, he or she shall issue a license authorizing the applicant to engage in the particular act or acts upon the payment of the license fee specified in this chapter. Licensees may transport the class of fireworks for which they hold a valid license. [2002 c 370 § 26; 1995 c 369 § 48; 1986 c 266 § 104; 1982 c 230 § 22; 1961 c 228 § 43.]

**Severability—2002 c 370:** See note following RCW 70.77.126.

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**70.77.335 License authorizes activities of sellers, authorized representatives, employees.** The authorization to engage in the particular act or acts conferred by a license to a person shall extend to sellers, authorized representatives, and other employees of such person. [2002 c 370 § 27; 1982 c 230 § 23; 1961 c 228 § 44.]

**Severability—2002 c 370:** See note following RCW 70.77.126.

**70.77.340 Annual license fees.** The original and annual license fee shall be as follows:

Manufacturer .....	\$	500.00
Importer .....		100.00
Wholesaler .....		1,000.00
Retailer (for each separate retail outlet) .....		10.00
Public display for display fireworks ...		10.00
Pyrotechnic operator for display fireworks .....		5.00

[2002 c 370 § 28; 1982 c 230 § 24; 1961 c 228 § 45.]

**Severability—2002 c 370:** See note following RCW 70.77.126.

**70.77.343 License fees—Additional.** (1) License fees, in addition to the fees in RCW 70.77.340, shall be charged as follows:

Manufacturer .....	\$	1,500.00
Importer .....		900.00
Wholesaler .....		1,000.00
Retailer (for each separate outlet) .....		30.00
Public display for display fireworks ...		40.00
Pyrotechnic operator for display fireworks .....		5.00

(2) All receipts from the license fees in this section shall be placed in the fire services trust fund and at least seventy-

five percent of these receipts shall be used to fund a statewide public education campaign developed by the chief of the Washington state patrol and the licensed fireworks industry emphasizing the safe and responsible use of legal fireworks and the remaining receipts shall be used to fund statewide enforcement efforts against the sale and use of fireworks that are illegal under this chapter. [2002 c 370 § 29; 1997 c 182 § 12; 1995 c 61 § 19; 1991 c 135 § 6.]

**Severability—2002 c 370:** See note following RCW 70.77.126.

**Intent—Effective date—Severability—1991 c 135:** See notes following RCW 43.43.946.

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**70.77.345 Duration of licenses and retail fireworks sales permits.** Every license and every retail fireworks sales permit issued shall be for the period from January 1st of the year for which the application is made through January 31st of the subsequent year, or the remaining portion thereof. [1997 c 182 § 13; 1995 c 61 § 20; 1991 c 135 § 5; 1982 c 230 § 25; 1961 c 228 § 46.]

**Intent—Effective date—Severability—1991 c 135:** See notes following RCW 43.43.946.

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**70.77.355 General license for public display—Surety bond or insurance—Filing of license certificate with local permit application.** (1) Any adult person may secure a general license from the chief of the Washington state patrol, through the director of fire protection, for the public display of fireworks within the state of Washington. A general license is subject to the provisions of this chapter relative to the securing of local permits for the public display of fireworks in any city or county, except that in lieu of filing the bond or certificate of public liability insurance with the appropriate local official under RCW 70.77.260 as required in RCW 70.77.285, the same bond or certificate shall be filed with the chief of the Washington state patrol, through the director of fire protection. The bond or certificate of insurance for a general license in addition shall provide that: (a) The insurer will not cancel the insured's coverage without fifteen days prior written notice to the chief of the Washington state patrol, through the director of fire protection; (b) the duly licensed pyrotechnic operator required by law to supervise and discharge the public display, acting either as an employee of the insured or as an independent contractor and the state of Washington, its officers, agents, employees, and servants are included as additional insureds, but only insofar as any operations under contract are concerned; and (c) the state is not responsible for any premium or assessments on the policy.

(2) The chief of the Washington state patrol, through the director of fire protection, may issue such general licenses. The holder of a general license shall file a certificate from the chief of the Washington state patrol, through the director of fire protection, evidencing the license with any application for a local permit for the public display of fireworks under RCW 70.77.260. [1997 c 182 § 14; 1994 c 133 § 9; 1986 c 266 § 105; 1984 c 249 § 21; 1982 c 230 § 26; 1961 c 228 § 48.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**70.77.360 Denial of license for material misrepresentation or if contrary to public safety or welfare.** If the chief of the Washington state patrol, through the director of fire protection, finds that an application for any license under this chapter contains a material misrepresentation or that the granting of any license would be contrary to the public safety or welfare, the chief of the Washington state patrol, through the director of fire protection, may deny the application for the license. [1995 c 369 § 49; 1986 c 266 § 106; 1984 c 249 § 22; 1982 c 230 § 27; 1961 c 228 § 49.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**70.77.365 Denial of license for failure to meet qualifications or conditions.** A written report by the chief of the Washington state patrol, through the director of fire protection, or a local fire official, or any of their authorized representatives, disclosing that the applicant for a license, or the premises for which a license is to apply, do not meet the qualifications or conditions for a license constitutes grounds for the denial by the chief of the Washington state patrol, through the director of fire protection, of any application for a license. [1995 c 369 § 50; 1986 c 266 § 107; 1984 c 249 § 23; 1982 c 230 § 28; 1961 c 228 § 50.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**70.77.370 Hearing on denial of license.** Any applicant who has been denied a license for reasons other than making application after the date set forth in RCW 70.77.325 is entitled to a hearing in accordance with the provisions of chapter 34.05 RCW, the Administrative Procedure Act. [1994 c 133 § 10; 1989 c 175 § 129; 1982 c 230 § 29; 1961 c 228 § 51.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**70.77.375 Revocation of license.** The chief of the Washington state patrol, through the director of fire protection, upon reasonable opportunity to be heard, may revoke any license issued pursuant to this chapter, if he or she finds that:

(1) The licensee has violated any provisions of this chapter or any rule made by the chief of the Washington state patrol, through the director of fire protection, under and with the authority of this chapter;

(2) The licensee has created or caused a fire nuisance;

(3) Any licensee has failed or refused to file any required reports; or

(4) Any fact or condition exists which, if it had existed at the time of the original application for such license, reasonably would have warranted the chief of the Washington state patrol, through the director of fire protection, in refusing originally to issue such license. [1997 c 182 § 16; 1995 c 369 § 51; 1995 c 61 § 21; 1986 c 266 § 108; 1982 c 230 § 30; 1961 c 228 § 52.]

**Reviser's note:** RCW 70.77.375 was amended twice during the 1995 legislative session, each without reference to the other. This section was subsequently amended by 1997 c 182 § 16, combining the text of the 1995 amendments, but not reenacting those sections. Any subsequent amendments to this section should include the 1997 and both 1995 histories in a reenactment.

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

(2010 Ed.)

**70.77.381 Wholesalers and retailers—Liability insurance requirements.** (1) Every wholesaler shall carry liability insurance for each wholesale and retail fireworks outlet it operates in the amount of not less than fifty thousand dollars and five hundred thousand dollars for bodily injury liability for each person and occurrence, respectively, and not less than fifty thousand dollars for property damage liability for each occurrence, unless such insurance is not available from at least three approved insurance companies. If insurance in this amount is not offered, each wholesale and retail outlet shall be covered by a liability insurance policy in the maximum amount offered by at least three different approved insurance companies.

(2) No wholesaler may knowingly sell or supply fireworks to any retail licensee unless the wholesaler determines that the retail licensee carries liability insurance in the same, or greater, amount as provided in subsection (1) of this section. [2002 c 370 § 30; 1995 c 61 § 27.]

**Severability—2002 c 370:** See note following RCW 70.77.126.

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**70.77.386 Retailers—Purchase from licensed wholesalers.** Retail fireworks licensees shall purchase all fireworks from wholesalers possessing a valid wholesale license issued by the state of Washington. [1995 c 61 § 28.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**70.77.395 Dates and times consumer fireworks may be sold or discharged—Local governments may limit, prohibit sale or discharge of fireworks.** (1) It is legal to sell and purchase consumer fireworks within this state from twelve o'clock noon to eleven o'clock p.m. on the twenty-eighth of June, from nine o'clock a.m. to eleven o'clock p.m. on each day from the twenty-ninth of June through the fourth of July, from nine o'clock a.m. to nine o'clock p.m. on the fifth of July, from twelve o'clock noon to eleven o'clock p.m. on each day from the twenty-seventh of December through the thirty-first of December of each year, and as provided in RCW 70.77.311.

(2) Consumer fireworks may be used or discharged each day between the hours of twelve o'clock noon and eleven o'clock p.m. on the twenty-eighth of June and between the hours of nine o'clock a.m. and eleven o'clock p.m. on the twenty-ninth of June to the third of July, and on July 4th between the hours of nine o'clock a.m. and twelve o'clock midnight, and between the hours of nine o'clock a.m. and eleven o'clock p.m. on July 5th, and from six o'clock p.m. on December 31st until one o'clock a.m. on January 1st of the subsequent year, and as provided in RCW 70.77.311.

(3) A city or county may enact an ordinance within sixty days of June 13, 2002, to limit or prohibit the sale, purchase, possession, or use of consumer fireworks on December 27, 2002, through December 31, 2002, and thereafter as provided in RCW 70.77.250(4). [2002 c 370 § 31; 1995 c 61 § 22; 1984 c 249 § 24; 1982 c 230 § 31; 1961 c 228 § 56.]

**Severability—2002 c 370:** See note following RCW 70.77.126.

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**70.77.401 Sale of certain fireworks prohibited.** No fireworks may be sold or offered for sale to the public as con-

sumer fireworks which are classified as sky rockets, or missile-type rockets, firecrackers, salutes, or chasers as defined by the United States department of transportation and the federal consumer products safety commission except as provided in RCW 70.77.311. [2002 c 370 § 32; 1995 c 61 § 7.]

**Severability—2002 c 370:** See note following RCW 70.77.126.

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**70.77.405 Authorized sales of toy caps, tricks, and novelties.** Toy paper caps containing not more than twenty-five hundredths grain of explosive compound for each cap and trick or novelty devices not classified as consumer fireworks may be sold at all times unless prohibited by local ordinance. [2002 c 370 § 33; 1982 c 230 § 32; 1961 c 228 § 58.]

**Severability—2002 c 370:** See note following RCW 70.77.126.

**70.77.410 Public displays not to be hazardous.** All public displays of fireworks shall be of such a character and so located, discharged, or fired as not to be hazardous or dangerous to persons or property. [1961 c 228 § 59.]

**70.77.415 Supervision of public displays.** Every public display of fireworks shall be handled or supervised by a pyrotechnic operator licensed by the chief of the Washington state patrol, through the director of fire protection, under RCW 70.77.255. [1995 c 369 § 52; 1986 c 266 § 109; 1984 c 249 § 25; 1982 c 230 § 33; 1961 c 228 § 60.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**70.77.420 Permanent storage permit required—Application—Investigation—Grant or denial—Conditions.** (1) It is unlawful for any person to store permanently fireworks of any class without a permit for such permanent storage from the city or county in which the storage is to be made. A person proposing to store permanently fireworks shall apply in writing to a city or county at least ten days prior to the date of the proposed permanent storage. The city or county receiving the application for a permanent storage permit shall investigate whether the character and location of the permanent storage as proposed meets the requirements of the zoning, building, and fire codes or constitutes a hazard to property or is dangerous to any person. Based on the investigation, the city or county may grant or deny the application. The city or county may place reasonable conditions on any permit granted.

(2) For the purposes of this section the temporary storing or keeping of consumer fireworks when in conjunction with a valid retail sales license and permit shall comply with RCW 70.77.425 and the standards adopted under RCW 70.77.270(2) and not this section. [2002 c 370 § 35; 1997 c 182 § 18; 1984 c 249 § 26; 1982 c 230 § 34; 1961 c 228 § 61.]

**Severability—2002 c 370:** See note following RCW 70.77.126.

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**70.77.425 Approved permanent storage facilities required.** It is unlawful for any person to store permanently stocks of fireworks remaining unsold after the lawful period of sale as provided in the person's permit except in such places of permanent storage as the city or county issuing the

permit approves. Unsold stocks of consumer fireworks remaining after the authorized retail sales period from nine o'clock a.m. on June 28th to twelve o'clock noon on July 5th shall be returned on or before July 31st of the same year, or remaining after the authorized retail sales period from twelve o'clock noon on December 27th to eleven o'clock p.m. on December 31st shall be returned on or before January 10th of the subsequent year, to the approved permanent storage facilities of a licensed fireworks wholesaler or to a magazine or permanent storage place approved by a local fire official. [2002 c 370 § 36; 1984 c 249 § 27; 1982 c 230 § 35; 1961 c 228 § 62.]

**Severability—2002 c 370:** See note following RCW 70.77.126.

**70.77.430 Sale of stock after revocation or expiration of license.** Notwithstanding RCW 70.77.255, following the revocation or expiration of a license, a licensee in lawful possession of a lawfully acquired stock of fireworks may sell such fireworks, but only under supervision of the chief of the Washington state patrol, through the director of fire protection. Any sale under this section shall be solely to persons who are authorized to buy, possess, sell, or use such fireworks. [1995 c 369 § 53; 1986 c 266 § 110; 1984 c 249 § 28; 1982 c 230 § 36; 1961 c 228 § 63.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**70.77.435 Seizure of fireworks.** Any fireworks which are illegally sold, offered for sale, used, discharged, possessed, or transported in violation of the provisions of this chapter or the rules or regulations of the chief of the Washington state patrol, through the director of fire protection, are subject to seizure by the chief of the Washington state patrol, through the director of fire protection, or his or her deputy, or by state agencies or local governments having general law enforcement authority. [2002 c 370 § 37; 1997 c 182 § 20; 1995 c 61 § 23; 1994 c 133 § 11; 1986 c 266 § 111; 1982 c 230 § 37; 1961 c 228 § 64.]

**Severability—2002 c 370:** See note following RCW 70.77.126.

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**70.77.440 Seizure of fireworks—Proceedings for forfeiture—Disposal of confiscated fireworks.** (1) In the event of seizure under RCW 70.77.435, proceedings for forfeiture shall be deemed commenced by the seizure. The chief of the Washington state patrol or a designee, through the director of fire protection or the agency conducting the seizure, under whose authority the seizure was made shall cause notice to be served within fifteen days following the seizure on the owner of the fireworks seized and the person in charge thereof and any person having any known right or interest therein, of the seizure and intended forfeiture of the seized property. The notice may be served by any method authorized by law or court rule including but not limited to service by certified mail with return receipt requested. Service by mail shall be deemed complete upon mailing within the fifteen-day period following the seizure.

(2) If no person notifies the chief of the Washington state patrol, through the director of fire protection or the agency conducting the seizure, in writing of the person's claim of lawful ownership or right to lawful possession of seized fire-

works within thirty days of the seizure, the seized fireworks shall be deemed forfeited.

(3) If any person notifies the chief of the Washington state patrol, through the director of fire protection or the agency conducting the seizure, in writing of the person's claim of lawful ownership or possession of the fireworks within thirty days of the seizure, the person or persons shall be afforded a reasonable opportunity to be heard as to the claim or right. The hearing shall be before an administrative law judge appointed under chapter 34.12 RCW, except that any person asserting a claim or right may remove the matter to a court of competent jurisdiction if the aggregate value of the seized fireworks is more than five hundred dollars. The hearing before an administrative law judge and any appeal therefrom shall be under Title 34 RCW. In a court hearing between two or more claimants to the article or articles involved, the prevailing party shall be entitled to a judgment for costs and reasonable attorneys' fees. The burden of producing evidence shall be upon the person claiming to have the lawful right to possession of the seized fireworks. The chief of the Washington state patrol, through the director of fire protection or the agency conducting the seizure, shall promptly return the fireworks to the claimant upon a determination by the administrative law judge or court that the claimant is lawfully entitled to possession of the fireworks.

(4) When fireworks are forfeited under this chapter the chief of the Washington state patrol, through the director of fire protection or the agency conducting the seizure, may:

(a) Dispose of the fireworks by summary destruction at any time subsequent to thirty days from such seizure or ten days from the final termination of proceedings under this section, whichever is later; or

(b) Sell the forfeited fireworks and chemicals used to make fireworks, that are legal for use and possession under this chapter, to wholesalers or manufacturers, authorized to possess and use such fireworks or chemicals under a license issued by the chief of the Washington state patrol, through the director of fire protection. Sale shall be by public auction after publishing a notice of the date, place, and time of the auction in a newspaper of general circulation in the county in which the auction is to be held, at least three days before the date of the auction. The proceeds of the sale of the seized fireworks under this section may be retained by the agency conducting the seizure and used to offset the costs of seizure and/or storage costs of the seized fireworks. The remaining proceeds, if any, shall be deposited in the fire services trust fund and shall be used as follows: At least fifty percent is for a statewide public education campaign developed by the chief of the Washington state patrol, through the director of fire protection, and the licensed fireworks industry emphasizing the safe and responsible use of legal fireworks; and the remainder is for statewide efforts to enforce this chapter. [2002 c 370 § 38; 1997 c 182 § 21; 1995 c 61 § 24; 1994 c 133 § 12; 1986 c 266 § 112; 1984 c 249 § 29; 1961 c 228 § 65.]

**Severability—2002 c 370:** See note following RCW 70.77.126.

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**70.77.450 Examination, inspection of books and premises.** The chief of the Washington state patrol, through the director of fire protection, may make an examination of the

books and records of any licensee, or other person relative to fireworks, and may visit and inspect the premises of any licensee he may deem at any time necessary for the purpose of enforcing the provisions of this chapter. The licensee, owner, lessee, manager, or operator of any such building or premises shall permit the chief of the Washington state patrol, through the director of fire protection, his or her deputies or salaried assistants, the local fire official, and their authorized representatives to enter and inspect the premises at the time and for the purpose stated in this section. [1997 c 182 § 22; 1994 c 133 § 13; 1986 c 266 § 113; 1961 c 228 § 67.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**70.77.455 Licensees to maintain and make available complete records—Exemption from public records act.**

(1) All licensees shall maintain and make available to the chief of the Washington state patrol, through the director of fire protection, full and complete records showing all production, imports, exports, purchases, and sales of fireworks items by class.

(2) All records obtained and all reports produced, as required by this chapter, are not subject to disclosure through the public records act under chapter 42.56 RCW. [2005 c 274 § 337; 1997 c 182 § 23. Prior: 1995 c 369 § 54; 1995 c 61 § 25; 1986 c 266 § 114; 1982 c 230 § 38; 1961 c 228 § 68.]

**Part headings not law—Effective date—2005 c 274:** See RCW 42.56.901 and 42.56.902.

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**70.77.460 Reports, payments deemed made when filed or paid or date mailed.**

When reports on fireworks transactions or the payments of license fees or penalties are required to be made on or by specified dates, they shall be deemed to have been made at the time they are filed with or paid to the chief of the Washington state patrol, through the director of fire protection, or, if sent by mail, on the date shown by the United States postmark on the envelope containing the report or payment. [1995 c 369 § 55; 1986 c 266 § 115; 1961 c 228 § 69.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**70.77.480 Prohibited transfers of fireworks.**

The transfer of fireworks ownership whether by sale at wholesale or retail, by gift or other means of conveyance of title, or by delivery of any fireworks to any person in the state who does not possess and present to the carrier for inspection at the time of delivery a valid license, where such license is required to purchase, possess, transport, or use fireworks, is prohibited. [1982 c 230 § 39; 1961 c 228 § 73.]

**70.77.485 Unlawful possession of fireworks—Penalties.** It is unlawful to possess any class or kind of fireworks in violation of this chapter. A violation of this section is:

(1) A misdemeanor if involving less than one pound of fireworks, exclusive of external packaging; or

(2) A gross misdemeanor if involving one pound or more of fireworks, exclusive of external packaging.

For the purposes of this section, "external packaging" means any materials that are not an integral part of the operative unit of fireworks. [1984 c 249 § 30; 1961 c 228 § 74.]

**70.77.488 Unlawful discharge or use of fireworks—Penalty.** It is unlawful for any person to discharge or use fireworks in a reckless manner which creates a substantial risk of death or serious physical injury to another person or damage to the property of another. A violation of this section is a gross misdemeanor. [1984 c 249 § 37.]

**70.77.495 Forestry permit to set off fireworks in forest, brush, fallow, etc.** It is unlawful for any person to set off fireworks of any kind in forest, fallows, grass or brush covered land, either on his own land or the property of another, between April 15th and December 1st of any year, unless it is done under a written permit from the Washington state department of natural resources or its duly authorized agent, and in strict accordance with the terms of the permit and any other applicable law. [2002 c 370 § 39; 1988 c 128 § 11; 1961 c 228 § 76.]

**Severability—2002 c 370:** See note following RCW 70.77.126.

**70.77.510 Unlawful sales or transfers of display fireworks—Penalty.** It is unlawful for any person knowingly to sell, transfer, or agree to sell or transfer any display fireworks to any person who is not a fireworks licensee as provided for by this chapter. A violation of this section is a gross misdemeanor. [2002 c 370 § 40; 1984 c 249 § 31; 1982 c 230 § 40; 1961 c 228 § 79.]

**Severability—2002 c 370:** See note following RCW 70.77.126.

**70.77.515 Unlawful sales or transfers of consumer fireworks—Penalty.** (1) It is unlawful for any person to offer for sale, sell, or exchange for consideration, any consumer fireworks to a consumer or user other than at a fixed place of business of a retailer for which a license and permit have been issued.

(2) No licensee may sell any fireworks to any person under the age of sixteen.

(3) A violation of this section is a gross misdemeanor. [2002 c 370 § 41; 1984 c 249 § 32; 1982 c 230 § 41; 1961 c 228 § 80.]

**Severability—2002 c 370:** See note following RCW 70.77.126.

**70.77.517 Unlawful transportation of fireworks—Penalty.** It is unlawful for any person, except in the course of continuous interstate transportation through any state, to transport fireworks from this state into any other state, or deliver them for transportation into any other state, or attempt so to do, knowing that such fireworks are to be delivered, possessed, stored, transshipped, distributed, sold, or otherwise dealt with in a manner or for a use prohibited by the laws of such other state specifically prohibiting or regulating the use of fireworks. A violation of this section is a gross misdemeanor.

This section does not apply to a common or contract carrier or to international or domestic water carriers engaged in interstate commerce or to the transportation of fireworks into a state for the use of United States agencies in the carrying out or the furtherance of their operations.

In the enforcement of this section, the definitions of fireworks contained in the laws of the respective states shall be applied.

As used in this section, the term "state" includes the several states, territories, and possessions of the United States, and the District of Columbia. [2002 c 370 § 42; 1984 c 249 § 34.]

**Severability—2002 c 370:** See note following RCW 70.77.126.

**70.77.520 Unlawful to permit fire nuisance where fireworks kept—Penalty.** It is unlawful for any person to allow any combustibles to accumulate in any premises in which fireworks are stored or sold or to permit a fire nuisance to exist in such a premises. A violation of this section is a misdemeanor. [2002 c 370 § 43; 1984 c 249 § 33; 1961 c 228 § 81.]

**Severability—2002 c 370:** See note following RCW 70.77.126.

**70.77.525 Manufacture or sale of fireworks for out-of-state shipment.** This chapter does not prohibit any manufacturer, wholesaler, dealer, or jobber, having a license and a permit secured under the provisions of this chapter, from manufacturing or selling any kind of fireworks for direct shipment out of this state. [1982 c 230 § 42; 1961 c 228 § 82.]

**70.77.530 Nonprohibited acts—Signal purposes, forest protection.** This chapter does not prohibit the use of torpedoes, flares, or fuses by motor vehicles, railroads, or other transportation agencies for signal purposes or illumination or for use in forest protection activities. [1961 c 228 § 83.]

**70.77.535 Articles pyrotechnic, special effects for entertainment media.** The assembling, compounding, use, and display of articles pyrotechnic or special effects in the production of motion pictures, radio or television productions, or live entertainment shall be under the direction and control of a pyrotechnic operator licensed by the state of Washington and who possesses a valid permit from the city or county. [2002 c 370 § 44; 1994 c 133 § 14; 1984 c 249 § 35; 1982 c 230 § 43; 1961 c 228 § 84.]

**Severability—2002 c 370:** See note following RCW 70.77.126.

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**70.77.540 Penalty.** Except as otherwise provided in this chapter, any person violating any of the provisions of this chapter or any rules issued thereunder is guilty of a misdemeanor. [1984 c 249 § 36; 1961 c 228 § 85.]

**70.77.545 Violation a separate, continuing offense.** A person is guilty of a separate offense for each day during which he commits, continues, or permits a violation of any provision of, or any order, rule, or regulation made pursuant to this chapter. [1961 c 228 § 86.]

**70.77.547 Civil enforcement not precluded.** The inclusion in this chapter of criminal penalties does not preclude enforcement of this chapter through civil means. [1994 c 133 § 15.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**70.77.548 Attorney general may institute civil proceedings—Venue.** Civil proceedings to enforce this chapter may be brought in the superior court of Thurston county or the county in which the violation occurred by the attorney general or the attorney of the city or county in which the violation occurred on his or her own motion or at the request of the chief of the Washington state patrol, through the director of fire protection. [2002 c 370 § 48.]

**Severability—2002 c 370:** See note following RCW 70.77.126.

**70.77.549 Civil penalty—Costs.** In addition to criminal penalties, a person who violates this chapter is also liable for a civil penalty and for the costs incurred with enforcing this chapter and bringing the civil action, including court costs and reasonable investigative and attorneys' fees. [2002 c 370 § 49.]

**Severability—2002 c 370:** See note following RCW 70.77.126.

**70.77.550 Short title.** This chapter shall be known and may be cited as the state fireworks law. [1961 c 228 § 87.]

**70.77.555 Local permit and license fees—Limits.** (1) A city or county may provide by ordinance for a fee in an amount sufficient to cover all legitimate costs for all needed permits, licenses, and authorizations from application to and through processing, issuance, and inspection, but in no case to exceed a total of one hundred dollars for any one retail sales permit for any one selling season in a year, whether June 28th through July 5th or December 27th through December 31st, or a total of two hundred dollars for both selling seasons.

(2) A city or county may provide by ordinance for a fee in an amount sufficient to cover all legitimate costs for all display permits, licenses, and authorizations from application to and through processing, issuance, and inspection, not to exceed actual costs and in no case more than a total of five thousand dollars for any one display permit. [2002 c 370 § 45; 1995 c 61 § 26; 1982 c 230 § 44; 1961 c 228 § 88.]

**Severability—2002 c 370:** See note following RCW 70.77.126.

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**70.77.575 Chief of the Washington state patrol to provide list of consumer fireworks that may be sold to the public.** (1) The chief of the Washington state patrol, through the director of fire protection, shall adopt by rule a list of the consumer fireworks that may be sold to the public in this state pursuant to this chapter. The chief of the Washington state patrol, through the director of fire protection, shall file the list by October 1st of each year with the code reviser for publication, unless the previously published list has remained current.

(2) The chief of the Washington state patrol, through the director of fire protection, shall provide the list adopted under subsection (1) of this section by November 1st of each year to all manufacturers, wholesalers, and importers licensed under this chapter, unless the previously distributed list has remained current. [2002 c 370 § 46; 1995 c 369 § 57; 1986 c 266 § 117; 1984 c 249 § 8.]

**Severability—2002 c 370:** See note following RCW 70.77.126.

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**70.77.580 Retailers to post list of consumer fireworks.** Retailers required to be licensed under this chapter shall post prominently at each retail location a list of the consumer fireworks that may be sold to the public in this state pursuant to this chapter. The posted list shall be in a form approved by the chief of the Washington state patrol, through the director of fire protection. The chief of the Washington state patrol, through the director of fire protection, shall make the list available. [2002 c 370 § 47; 1995 c 369 § 58; 1986 c 266 § 118; 1984 c 249 § 9.]

**Severability—2002 c 370:** See note following RCW 70.77.126.

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**70.77.900 Effective date—1961 c 228.** This act shall take effect on January 1, 1962. [1961 c 228 § 90.]

**70.77.910 Severability—1961 c 228.** If any provision of this act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected. [1961 c 228 § 91.]

**70.77.911 Severability—1982 c 230.** If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1982 c 230 § 45.]

**70.77.912 Severability—1984 c 249.** If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1984 c 249 § 41.]

## Chapter 70.79 RCW

### BOILERS AND UNFIRED PRESSURE VESSELS

#### Sections

70.79.010	Board of boiler rules—Members—Terms—Meetings.
70.79.020	Compensation and travel expenses.
70.79.030	Duties of board.
70.79.040	Rules and regulations—Scope.
70.79.050	Rules and regulations—Effect.
70.79.060	Construction, installation must conform to rules—Inspection certificate.
70.79.070	Existing installations—Conformance required—Miniature hobby boilers.
70.79.080	Exemptions from chapter.
70.79.090	Exemptions from certain provisions.
70.79.095	Espresso machines—Local regulation prohibited.
70.79.100	Chief inspector—Qualifications—Appointment, removal.
70.79.110	Chief inspector—Duties in general.
70.79.120	Deputy inspectors—Qualifications—Employment.
70.79.130	Special inspectors—Qualifications—Commission.
70.79.140	Special inspectors—Compensation—Continuance of commission.
70.79.150	Special inspectors—Inspections—Exempts from inspection fees.
70.79.160	Report of inspection by special inspector—Filing.
70.79.170	Examinations for inspector's appointment or commission—Reexamination.
70.79.180	Suspension, revocation of inspector's commission—Grounds—Reinstatement.
70.79.190	Suspension, revocation of commission—Appeal.
70.79.200	Lost or destroyed certificate or commission.
70.79.220	Inspections—Who shall make.
70.79.230	Access to premises by inspectors.

70.79.240	Inspection of boilers, unfired pressure vessels—Scope—Frequency.
70.79.250	Inspection—Frequency—Grace period.
70.79.260	Inspection—Frequency—Modification by rules.
70.79.270	Hydrostatic test.
70.79.280	Inspection during construction.
70.79.290	Inspection certificate—Contents—Posting—Fee.
70.79.300	Inspection certificate invalid on termination of insurance.
70.79.310	Inspection certificate—Suspension—Reinstatement.
70.79.320	Operating without inspection certificate prohibited—Penalty.
70.79.330	Inspection fees—Expenses—Schedules—Waiver of provisions during state of emergency.
70.79.350	Inspection fees—Receipts for—Pressure systems safety fund.
70.79.361	Board determinations—Appeals.
70.79.900	Severability—1951 c 32.

*Excessive steam in boilers, penalty: RCW 70.54.080.*

*State building code: Chapter 19.27 RCW.*

**70.79.010 Board of boiler rules—Members—Terms—Meetings.** There is hereby created within this state a board of boiler rules, which shall hereafter be referred to as the board, consisting of five members who shall be appointed to the board by the governor, one for a term of one year, one for a term of two years, one for a term of three years, and two for a term of four years. At the expiration of their respective terms of office, they, or their successors identifiable with the same interests respectively as hereinafter provided, shall be appointed for terms of four years each. The governor may at any time remove any member of the board for inefficiency or neglect of duty in office. Upon the death or incapacity of any member the governor shall fill the vacancy for the remainder of the vacated term with a representative of the same interests with which his or her predecessor was identified. Of these five appointed members, one shall be representative of owners and users of boilers and unfired pressure vessels within the state, one shall be representative of the boiler or unfired pressure vessel manufacturers within the state, one shall be a representative of a boiler insurance company licensed to do business within the state, one shall be a mechanical engineer on the faculty of a recognized engineering college or a graduate mechanical engineer having equivalent experience, and one shall be representative of the boilermakers, stationary operating engineers, or pressure vessel operators. The board shall elect one of its members to serve as chair and, at the call of the chair, the board shall meet at least four times each year at the state capitol or other place designated by the board. [1999 c 183 § 1; 1951 c 32 § 1.]

**70.79.020 Compensation and travel expenses.** The members of the board shall be compensated in accordance with RCW 43.03.240 and shall receive travel expenses incurred while in the performance of their duties as members of the board, in accordance with RCW 43.03.050 and 43.03.060. [1984 c 287 § 105; 1975-'76 2nd ex.s. c 34 § 159; 1951 c 32 § 2.]

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

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**70.79.030 Duties of board.** The board shall formulate definitions and rules for the safe and proper construction, installation, repair, use, and operation of boilers and for the safe and proper construction, installation, and repair of unfired pressure vessels in this state. The definitions and

rules so formulated shall be based upon, and, at all times, follow the nationally or internationally accepted engineering standards, formulae, and practices established and pertaining to boiler and unfired pressure vessel construction and safety, and the board may by resolution adopt existing published codifications thereof, and when so adopted the same shall be deemed incorporated into, and to constitute a part or the whole of the definitions and rules of the board. Amendments and interpretations to the code shall be enforceable immediately upon being adopted, to the end that the definitions and rules shall at all times follow nationally or internationally accepted engineering standards. However, all rules adopted by the board shall be adopted in compliance with the Administrative Procedure Act, chapter 34.05 RCW, as now or hereafter amended. [1999 c 183 § 2; 1972 ex.s. c 86 § 1; 1951 c 32 § 3.]

**70.79.040 Rules and regulations—Scope.** The board shall promulgate rules and regulations for the safe and proper installation, repair, use and operation of boilers, and for the safe and proper installation and repair of unfired pressure vessels which were in use or installed ready for use in this state prior to the date upon which the first rules and regulations under this chapter pertaining to existing installations became effective, or during the twelve months period immediately thereafter. [1951 c 32 § 4.]

**70.79.050 Rules and regulations—Effect.** (1) The rules and regulations formulated by the board shall have the force and effect of law, except that the rules applying to the construction of new boilers and unfired pressure vessels shall not be construed to prevent the installation thereof until twelve months after their approval by the director of the department of labor and industries.

(2) Subsequent amendments to the rules and regulations adopted by the board shall be permissive immediately and shall become mandatory twelve months after such approval. [1951 c 32 § 5.]

**70.79.060 Construction, installation must conform to rules—Inspection certificate.** (1) Except as provided in subsection (2) of this section, no power boiler, low pressure boiler, or unfired pressure vessel which does not conform to the rules and regulations formulated by the board governing new construction and installation shall be installed and operated in this state after twelve months from the date upon which the first rules and regulations under this chapter pertaining to new construction and installation shall have become effective, unless the boiler or unfired pressure vessel is of special design or construction, and is not covered by the rules and regulations, nor is in any way inconsistent with such rules and regulations, in which case an inspection certificate may at its discretion be granted by the board.

(2) An inspection certificate may also be granted for boilers and pressure vessels manufactured before 1951 which do not comply with the code requirements of the American Society of Mechanical Engineers adopted under this chapter, if the boiler or pressure vessel is operated exclusively for the purposes of public exhibition, and the board finds, upon inspection, that operation of the boiler or pressure vessel for

such purposes is not unsafe. [2009 c 90 § 1; 1984 c 93 § 1; 1951 c 32 § 6.]

**70.79.070 Existing installations—Conformance required—Miniature hobby boilers.** (1) All boilers and unfired pressure vessels which were in use, or installed ready for use in this state prior to the date upon which the first rules and regulations under this chapter pertaining to existing installations became effective, or during the twelve months period immediately thereafter, shall be made to conform to the rules and regulations of the board governing existing installations, and the formulae prescribed therein shall be used in determining the maximum allowable working pressure for such boilers and unfired pressure vessels.

(2) This chapter shall not be construed as in any way preventing the use or sale of boilers or unfired vessels as referred to in subsection (1) of this section, provided they have been made to conform to the rules and regulations of the board governing existing installations, and provided, further, they have not been found upon inspection to be in an unsafe condition.

(3) An inspection certificate may also be granted for miniature hobby boilers that do not comply with the code requirements of the American society of mechanical engineers adopted under this chapter and do not exceed any of the following limits:

- (a) Sixteen inches inside diameter of the shell;
- (b) Twenty square feet of total heating surface;
- (c) Five cubic feet of gross volume of vessel; and
- (d) One hundred fifty p.s.i.g. maximum allowable working pressure, and if the boiler is to be operated exclusively not for commercial or industrial use and the department of labor and industries finds, upon inspection, that operation of the boiler for such purposes is not unsafe. [2009 c 90 § 2; 1995 c 41 § 1; 1993 c 193 § 1; 1951 c 32 § 7.]

**70.79.080 Exemptions from chapter.** This chapter shall not apply to the following boilers, unfired pressure vessels and domestic hot water tanks:

- (1) Boilers and unfired pressure vessels under federal regulation or operated by any railroad subject to the provisions of the interstate commerce act;
- (2) Unfired pressure vessels meeting the requirements of the interstate commerce commission for shipment of liquids or gases under pressure;
- (3) Air tanks located on vehicles operating under the rules of other state authorities and used for carrying passengers, or freight;
- (4) Air tanks installed on the right-of-way of railroads and used directly in the operation of trains;
- (5) Unfired pressure vessels having a volume of five cubic feet or less when not located in places of public assembly;
- (6) Unfired pressure vessels designed for a pressure not exceeding fifteen pounds per square inch gauge;
- (7) Tanks used in connection with heating water for domestic and/or residential purposes;
- (8) Boilers and unfired pressure vessels in cities having ordinances which are enforced and which have requirements equal to or higher than those provided for under this chapter,

(2010 Ed.)

covering the installation, operation, maintenance and inspection of boilers and unfired pressure vessels;

(9) Tanks containing water with no air cushion and no direct source of energy that operate at ambient temperature;

(10) Electric boilers:

(a) Having a tank volume of not more than one and one-half cubic feet;

(b) Having a maximum allowable working pressure of one hundred pounds per square inch or less, with a pressure relief system to prevent excess pressure; and

(c) If constructed after June 10, 1994, constructed to American society of mechanical engineers code, or approved or otherwise certified by a nationally recognized or recognized foreign testing laboratory or construction code, including but not limited to Underwriters Laboratories, Edison Testing Laboratory, or Instituto Superiore Per La Prevenzione E La Sicurezza Del Lavoro;

(11) Electrical switchgear and control apparatus that have no external source of energy to maintain pressure and are located in restricted access areas under the control of an electric utility;

(12) Regardless of location, unfired pressure vessels less than one and one-half cubic feet (11.25 gallons) in volume or less than six inches in diameter with no limitation on the length of the vessel or pressure;

(13) Domestic hot water heaters less than one and one-half cubic feet (11.25 gallons) in volume with a safety valve setting of one hundred fifty pounds per square inch gauge or less. [2009 c 90 § 3; 2005 c 22 § 1; 1999 c 183 § 3; 1996 c 72 § 1; 1994 c 64 § 2; 1986 c 97 § 1; 1951 c 32 § 8.]

**Finding—Intent—1994 c 64:** See note following RCW 70.79.095.

**70.79.090 Exemptions from certain provisions.** The following boilers and unfired pressure vessels shall be exempt from the requirements of RCW 70.79.220 and 70.79.240 through 70.79.330:

- (1) Boilers or unfired pressure vessels located on farms and used solely for agricultural purposes;
- (2) Unfired pressure vessels that are part of fertilizer applicator rigs designed and used exclusively for fertilization in the conduct of agricultural operations;
- (3) Steam boilers used exclusively for heating purposes carrying a pressure of not more than fifteen pounds per square inch gauge and which are located in private residences or in apartment houses of less than six families;
- (4) Hot water heating boilers carrying a pressure of not more than thirty pounds per square inch and which are located in private residences or in apartment houses of less than six families;
- (5) Approved pressure vessels (hot water heaters, hot water storage tanks, hot water supply boilers, and hot water heating boilers listed by a nationally recognized testing agency), with approved safety devices including a pressure relief valve, with a nominal water containing capacity of one hundred twenty gallons or less having a heat input of two hundred thousand b.t.u.'s per hour or less, at pressure of one hundred sixty pounds per square inch or less, and at temperatures of two hundred ten degrees Fahrenheit or less: PROHIBITED, HOWEVER, That such pressure vessels are not installed in schools, child care centers, public and private

hospitals, nursing and boarding homes, churches, public buildings owned or leased and maintained by the state or any political subdivision thereof, and assembly halls;

(6) Unfired pressure vessels containing only water under pressure for domestic supply purposes, including those containing air, the compression of which serves only as a cushion or airlift pumping systems, when located in private residences or in apartment houses of less than six families, or in public water systems as defined in RCW 70.119.020;

(7) Unfired pressure vessels containing liquified petroleum gases. [2009 c 90 § 4; 2005 c 22 § 2; 1999 c 183 § 4; 1988 c 254 § 20; 1983 c 3 § 174; 1972 ex.s. c 86 § 2; 1951 c 32 § 9.]

**70.79.095 Espresso machines—Local regulation prohibited.** A county, city, or other political subdivision of the state may not enforce any law specifically regulating the manufacture, installation, operation, maintenance, or inspection of any electric boiler exempt from this chapter by RCW 70.79.080(10). [1994 c 64 § 3.]

**Finding—Intent—1994 c 64:** "The legislature finds that small low-pressure boilers are found in devices such as espresso coffee machines and cleaning equipment common throughout Washington state. Such systems present little threat to public health and safety. Government regulation of such systems could impose a substantial burden on many small businesses and provide minimal public benefit. It is therefore the intent of the legislature to exempt these boilers from regulation under chapter 70.79 RCW and similar laws adopted by local governments." [1994 c 64 § 1.]

**70.79.100 Chief inspector—Qualifications—Appointment, removal.** (1) Within sixty days after the effective date of this chapter, and at any time thereafter that the office of the chief inspector may become vacant, the director of the department of labor and industries shall appoint a chief inspector who shall have had at the time of such appointment not less than ten years practical experience in the construction, maintenance, repair, or operation of high pressure boilers and unfired pressure vessels, as a mechanical engineer, steam engineer, boilermaker, or boiler inspector, and who shall have passed the same kind of examination as that prescribed for deputy or special inspectors in RCW 70.79.170 to be chief inspector until his successor shall have been appointed and qualified. Such chief inspector may be removed for cause after due investigation by the board and its recommendation to the director of the department of labor and industries. [1951 c 32 § 10.]

**70.79.110 Chief inspector—Duties in general.** The chief inspector, if authorized by the director of the department of labor and industries is hereby charged, directed and empowered:

(1) To cause the prosecution of all violators of the provisions of this chapter;

(2) To issue, or to suspend, or revoke for cause, inspection certificates as provided for in RCW 70.79.290;

(3) To take action necessary for the enforcement of the laws of the state governing the use of boilers and unfired pressure vessels and of the rules and regulations of the board;

(4) To keep a complete record of the type, dimensions, maximum allowable working pressure, age, condition, location, and date of the last recorded internal inspection of all

boilers and unfired pressure vessels to which this chapter applies;

(5) To publish and distribute, among manufacturers and others requesting them, copies of the rules and regulations adopted by the board. [1951 c 32 § 11.]

**70.79.120 Deputy inspectors—Qualifications—Employment.** The director shall employ deputy inspectors who shall have had at time of appointment not less than five years practical experience in the construction, maintenance, repair, or operation of high pressure boilers and unfired pressure vessels as a mechanical engineer, steam engineer, boilermaker, or boiler inspector, and who shall have passed the examination provided for in RCW 70.79.170. [1994 c 164 § 27; 1951 c 32 § 12.]

**70.79.130 Special inspectors—Qualifications—Commission.** In addition to the deputy boiler inspectors authorized by RCW 70.79.120, the chief inspector shall, upon the request of any company authorized to insure against loss from explosion of boilers and unfired pressure vessels in this state, or upon the request of any company operating boilers or unfired pressure vessels in this state, issue to any inspectors of said company commissions as special inspectors, provided that each such inspector before receiving his or her commission shall satisfactorily pass the examination provided for in RCW 70.79.170, or, in lieu of such examination, shall hold a certificate of competency as an inspector of boilers and unfired pressure vessels for a state that has a standard of examination substantially equal to that of this state or a certificate as an inspector of boilers and unfired pressure vessels from the national board of boiler and pressure vessel inspectors. A commission as a special inspector for a company operating boilers or unfired pressure vessels in this state shall be issued only if, in addition to meeting the requirements stated herein, the inspector is continuously employed by the company for the purpose of making inspections of boilers or unfired pressure vessels used, or to be used, by such company. [1999 c 183 § 5; 1951 c 32 § 13.]

**70.79.140 Special inspectors—Compensation—Continuance of commission.** Special inspectors shall receive no salary from, nor shall any of their expenses be paid by the state, and the continuance of a special inspector's commission shall be conditioned upon his or her continuing in the employ of a boiler insurance company duly authorized as aforesaid or upon continuing in the employ of a company operating boilers or unfired pressure vessels in this state and upon his or her maintenance of the standards imposed by this chapter. [1999 c 183 § 6; 1951 c 32 § 14.]

**70.79.150 Special inspectors—Inspections—Exempts from inspection fees.** Special inspectors shall inspect all boilers and unfired pressure vessels insured or operated by their respective companies and, when so inspected, the owners and users of such insured boilers and unfired pressure vessels shall be exempt from the payment to the state of the inspection fees as provided for in RCW 70.79.330. [1999 c 183 § 7; 1951 c 32 § 15.]

**70.79.160 Report of inspection by special inspector—Filing.** Each company employing special inspectors shall, within thirty days following each internal or external boiler or unfired pressure vessel inspection made by such inspectors, file a report of such inspection with the chief inspector upon appropriate forms. [2005 c 22 § 3; 1999 c 183 § 8; 1951 c 32 § 16.]

**70.79.170 Examinations for inspector's appointment or commission—Reexamination.** Examinations for deputy or special inspectors shall be in writing and shall be held by the chief and a member of the board, or by at least two national board commissioned inspectors. Such examinations shall be confined to questions the answers to which will aid in determining the fitness and competency of the applicant for the intended service. In case an applicant for an inspector's appointment or commission fails to pass the examination, he may appeal to the board for another examination which shall be given by the chief within ninety days. The record of an applicant's examination shall be accessible to said applicant and his employer. [2005 c 22 § 7; 1951 c 32 § 18.]

**70.79.180 Suspension, revocation of inspector's commission—Grounds—Reinstatement.** A commission may be suspended or revoked after due investigation and recommendation by the board to the director of the department of labor and industries for the incompetence or untrustworthiness of the holder thereof, or for wilful falsification of any matter or statement contained in his application or in a report of any inspection. A person whose commission has been suspended or revoked, except for untrustworthiness, shall be entitled to apply to the board for reinstatement or, in the case of a revocation, for a new examination and commission after ninety days from such revocation. [1951 c 32 § 19.]

**70.79.190 Suspension, revocation of commission—Appeal.** A person whose commission has been suspended or revoked shall be entitled to an appeal as provided in RCW 70.79.361 and to be present in person and/or represented by counsel on the hearing of the appeal. [2005 c 22 § 5; 1951 c 32 § 20.]

**70.79.200 Lost or destroyed certificate or commission.** If a certificate or commission is lost or destroyed, a new certificate or commission shall be issued in its place without another examination. [1951 c 32 § 21.]

**70.79.220 Inspections—Who shall make.** The inspections herein required shall be made by the chief inspector, by a deputy inspector, or by a special inspector provided for in this chapter. [1951 c 32 § 25.]

**70.79.230 Access to premises by inspectors.** The chief inspector, or any deputy or special inspector, shall have free access, during reasonable hours, to any premises in the state where a boiler or unfired pressure vessel is being constructed, or is being installed or operated, for the purpose of ascertaining whether such boiler or unfired pressure vessel is constructed, installed and operated in accordance with the provisions of this chapter. [1951 c 32 § 17.]

**70.79.240 Inspection of boilers, unfired pressure vessels—Scope—Frequency.** Each boiler and unfired pressure vessel used or proposed to be used within this state, except boilers or unfired pressure vessels exempt in RCW 70.79.080 and 70.79.090, shall be thoroughly inspected as to their construction, installation, condition and operation, as follows:

(1) Power boilers shall be inspected annually both internally and externally while not under pressure, except that the board may provide for longer periods between inspections where the contents, history, or operation of the power boiler or the material of which it is constructed warrant special consideration. Power boilers shall also be inspected annually externally while under pressure if possible;

(2) Low pressure heating boilers shall be inspected both internally and externally biennially where construction will permit, except that the board may, in its discretion, provide for longer periods between internal inspections;

(3) Unfired pressure vessels subject to internal corrosion shall be inspected both internally and externally biennially where construction will permit, except that the board may, in its discretion, provide for longer periods between internal inspections;

(4) Unfired pressure vessels not subject to internal corrosion shall be inspected externally at intervals set by the board, but internal inspections shall not be required of unfired pressure vessels, the contents of which are known to be noncorrosive to the material of which the shell, head, or fittings are constructed, either from the chemical composition of the contents or from evidence that the contents are adequately treated with a corrosion inhibitor, provided that such vessels are constructed in accordance with the rules and regulations of the board or in accordance with standards substantially equivalent to the rules and regulations of the board, in effect at the time of manufacture. [2009 c 90 § 5; 1993 c 391 § 1; 1951 c 32 § 22.]

**70.79.250 Inspection—Frequency—Grace period.** In the case of power boilers a grace period of not more than two months longer than the period established by the board under RCW 70.79.240(1) may elapse between internal inspections of a boiler while not under pressure or between external inspections of a boiler while under pressure; in the case of low pressure heating boilers not more than twenty-six months shall elapse between inspections, and in the case of unfired pressure vessels not more than two months longer than the period between inspections prescribed by the board shall elapse between internal inspections. [1993 c 391 § 2; 1951 c 32 § 23.]

**70.79.260 Inspection—Frequency—Modification by rules.** The rules and regulations formulated by the board applying to the inspection of unfired pressure vessels may be modified by the board to reduce or extend the interval between required inspections where the contents of the vessel or the material of which it is constructed warrant special consideration. [1951 c 32 § 24.]

**70.79.270 Hydrostatic test.** If at any time a hydrostatic test shall be deemed necessary to determine the safety of a boiler or unfired pressure vessel, [the] same shall be made, at

the discretion of the inspector, by the owner or user thereof. [1951 c 32 § 26.]

**70.79.280 Inspection during construction.** All boilers and all unfired pressure vessels to be installed in this state after the twelve-month period from the date upon which the rules of the board shall become effective shall be inspected during construction as required by the applicable rules of the board by an inspector authorized to inspect boilers and unfired pressure vessels in this state, or, if constructed outside of the state, by an inspector holding a certificate from the national board of boiler and pressure vessel inspectors, or a certificate of competency as an inspector of boilers and unfired pressure vessels for a state that has a standard of examination substantially equal to that of this state as provided in RCW 70.79.170. [1999 c 183 § 9; 1951 c 32 § 27.]

**70.79.290 Inspection certificate—Contents—Posting—Fee.** If, upon inspection, a boiler or pressure vessel is found to comply with the rules and regulations of the board, and upon the appropriate fee payment made directly to the chief inspector, as required by RCW 70.79.160 or 70.79.330, the chief inspector shall issue to the owner or user of such a boiler or pressure vessel an inspection certificate bearing the date of inspection and specifying the maximum pressure under which the boiler or pressure vessel may be operated. Such inspection certificate shall be valid for not more than fourteen months from its date in the case of power boilers and twenty-six months in the case of low pressure heating boilers, and for not more than two months longer than the authorized inspection period in the case of pressure vessels. Certificates shall be posted under glass in the room containing the boiler or pressure vessel inspected. If the boiler or pressure vessel is not located within a building, the certificate shall be posted in a location convenient to the boiler or pressure vessel inspected or, in the case of a portable boiler or pressure vessel, the certificate shall be kept in a protective container to be fastened to the boiler or pressure vessel or in a tool box accompanying the boiler or pressure vessel. [1977 ex.s. c 175 § 1; 1970 ex.s. c 21 § 1; 1951 c 32 § 28.]

**70.79.300 Inspection certificate invalid on termination of insurance.** No inspection certificate issued for an insured boiler or unfired pressure vessel inspected by a special inspector shall be valid after the boiler or unfired pressure vessel, for which it was issued, shall cease to be insured by a company duly authorized by this state to carry such insurance. [1951 c 32 § 29.]

**70.79.310 Inspection certificate—Suspension—Reinstatement.** The chief inspector, or his or her authorized representative, may at any time suspend an inspection certificate when, in his or her opinion, the boiler or unfired pressure vessel for which it was issued cannot be operated without menace to the public safety, or when the boiler or unfired pressure vessel is found not to comply with the rules herein provided. A special inspector shall have corresponding powers with respect to inspection certificates for boilers or unfired pressure vessels insured or operated by the company employing him or her. Such suspension of an inspection certificate shall

continue in effect until such boiler or unfired pressure vessel shall have been made to conform to the rules of the board, and until said inspection certificate shall have been reinstated. [1999 c 183 § 10; 1951 c 32 § 30.]

**70.79.320 Operating without inspection certificate prohibited—Penalty.** (1) It shall be unlawful for any person, firm, partnership, or corporation to operate under pressure in this state a boiler or unfired pressure vessel, to which this chapter applies, without a valid inspection certificate as provided for in this chapter.

(2) The department may assess a penalty against a person violating a provision of this chapter. The penalty shall be not more than five hundred dollars. Each day that the violation continues is a separate violation and is subject to a separate penalty.

(3) The department may not assess a penalty until it adopts rules describing the method it will use to calculate penalties for various violations.

(4) The department shall notify the violator of its action, and the reasons for its action, in writing. The department shall send the notice by certified mail to the violator that a hearing may be requested under RCW 70.79.361. The hearing shall not stay the effect of the penalty. [2005 c 22 § 6; 1986 c 97 § 2; 1951 c 32 § 31.]

**70.79.330 Inspection fees—Expenses—Schedules—Waiver of provisions during state of emergency.** The owner or user of a boiler or pressure vessel required by this chapter to be inspected by the chief inspector, or his deputy inspector, shall pay directly to the chief inspector, upon completion of inspection, fees and expenses in accordance with a schedule adopted by the board and approved by the director of the department of labor and industries in accordance with the requirements of the administrative procedure act, chapter 34.05 RCW.

During a state of emergency declared under RCW 43.06.010(12), the governor may waive or suspend the collection of fees under this section or any portion of this section or under any administrative rule, and issue any orders to facilitate the operation of state or local government or to promote and secure the safety and protection of the civilian population. [2008 c 181 § 205; 1977 ex.s. c 175 § 2; 1970 ex.s. c 21 § 2; 1963 c 217 § 1; 1951 c 32 § 32.]

**Part headings not law—2008 c 181:** See note following RCW 43.06.220.

**70.79.350 Inspection fees—Receipts for—Pressure systems safety fund.** The chief inspector shall give an official receipt for all fees required by chapter 70.79 RCW and shall transfer all sums so received to the treasurer of the state of Washington as ex officio custodian thereof and the treasurer shall place all sums in a special fund hereby created and designated as the "pressure systems safety fund". Funds shall be paid out upon vouchers duly and regularly issued therefor and approved by the director of the department of labor and industries. The treasurer, as ex officio custodian of the fund, shall keep an accurate record of any payments into the fund, and of all disbursements therefrom. The fund shall be used exclusively to defray only the expenses of administering

chapter 70.79 RCW by the chief inspector as authorized by law and the expenses incident to the maintenance of the office. The fund shall be charged with its pro rata share of the cost of administering the fund which is to be determined by the director of financial management and by the director of the department of labor and industries.

During the 2003-2005 fiscal biennium, the legislature may transfer from the pressure systems safety fund to the state general fund such amounts as reflect the excess fund balance of the fund. [2003 1st sp.s. c 25 § 931; 1979 c 151 § 171; 1977 ex.s. c 175 § 3; 1951 c 32 § 34.]

**Severability—Effective date—2003 1st sp.s. c 25:** See notes following RCW 19.28.351.

**70.79.361 Board determinations—Appeals.** (1) No person, firm, partnership, corporation, or other entity may install or maintain any standards that violate this chapter. In cases where the interpretation and application of the installation or maintenance standards prescribed in this chapter is in dispute, the board shall determine the methods of installation or maintenance to be used in the particular case submitted for its decision. To appeal the board's decision, a person, firm, partnership, corporation, or other entity shall, in writing, notify the chief boiler inspector. The notice shall specify the ruling or interpretation desired and the contention of the person, firm, partnership, corporation, or other entity as to the proper interpretation or application on the question on which a decision is desired.

(2) Any person, firm, partnership, corporation, or other entity wishing to appeal a penalty issued under this chapter may appeal to the board. The appeal shall be filed within twenty days after service of the notice of the penalty to the assessed party by filing a written notice of appeal with the chief boiler inspector. The hearing and review procedures shall be conducted by the board in accordance with chapter 34.05 RCW. [2005 c 22 § 4.]

**70.79.900 Severability—1951 c 32.** The fact that any section, subsection, sentence, clause, or phrase of this chapter is declared unconstitutional or invalid for any reason shall not affect the remaining portions of this chapter. [1951 c 32 § 37.]

## Chapter 70.82 RCW CEREBRAL PALSY PROGRAM

### Sections

70.82.010	Purpose and aim of program.
70.82.021	Cerebral palsy fund—Moneys transferred to general fund.
70.82.022	Cerebral palsy fund—Appropriations to be paid from general fund.
70.82.023	Cerebral palsy fund—Abolished.
70.82.024	Cerebral palsy fund—Warrants to be paid from general fund.
70.82.030	Eligibility.
70.82.040	Diagnosis.
70.82.050	Powers, duties, functions, unallocated funds, transferred.

**70.82.010 Purpose and aim of program.** It is hereby declared to be of vital concern to the state of Washington that all persons who are bona fide residents of the state of Washington and who are afflicted with cerebral palsy in any degree be provided with facilities and a program of service for med-

ical care, education, treatment and training to enable them to become normal individuals. In order to effectively accomplish such purpose the department of social and health services, hereinafter called the department, is authorized and instructed and it shall be its duty to establish and administer facilities and a program of service for the discovery, care, education, hospitalization, treatment and training of educable persons afflicted with cerebral palsy, and to provide in connection therewith nursing, medical, surgical and corrective care, together with academic, occupational and related training. Such program shall extend to developing, extending and improving service for the discovery of such persons and for diagnostication and hospitalization and shall include cooperation with other agencies of the state charged with the administration of laws providing for any type of service or aid to handicapped persons, and with the United States government through any appropriate agency or instrumentality in developing, extending and improving such service, program and facilities. Such facilities shall include field clinics, diagnosis and observation centers, boarding schools, special classes in day schools, research facilities and such other facilities as shall be required to render appropriate aid to such persons. Existing facilities, buildings, hospitals and equipment belonging to or operated by the state of Washington shall be made available for these purposes when use therefor does not conflict with the primary use of such existing facilities. Existing buildings, facilities and equipment belonging to private persons, firms or corporations or to the United States government may be acquired or leased. [1974 ex.s. c 91 § 2; 1947 c 240 § 1; Rem. Supp. 1947 § 5547-1.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**70.82.021 Cerebral palsy fund—Moneys transferred to general fund.** All moneys in the state treasury to the credit of the state cerebral palsy fund on the first day of May, 1955, and all moneys thereafter paid into the state treasury for or to the credit of the state cerebral palsy fund, shall be and are hereby transferred to and placed in the general fund. [1955 c 326 § 1.]

**70.82.022 Cerebral palsy fund—Appropriations to be paid from general fund.** From and after the first day of April, 1955, all appropriations made by the thirty-fourth legislature from the state cerebral palsy fund shall be paid out of moneys in the general fund. [1955 c 326 § 2.]

**70.82.023 Cerebral palsy fund—Abolished.** From and after the first day of May, 1955, the state cerebral palsy fund is abolished. [1955 c 326 § 3.]

**70.82.024 Cerebral palsy fund—Warrants to be paid from general fund.** From and after the first day of May, 1955, all warrants drawn on the state cerebral palsy fund and not presented for payment shall be paid from the general fund, and it shall be the duty of the state treasurer and he is hereby directed to pay such warrants when presented from the general fund. [1955 c 326 § 4.]

**70.82.030 Eligibility.** Any resident of this state who is educable but so severely handicapped as the result of cerebral

palsy that he is unable to take advantage of the regular system of free education of this state may be admitted to or be eligible for any service and facilities provided hereunder, provided such resident has lived in this state continuously for more than one year before his application for such admission or eligibility. [1947 c 240 § 3; Rem. Supp. 1947 § 5547-2.]

**70.82.040 Diagnosis.** Persons shall be admitted to or be eligible for the services and facilities provided herein only after diagnosis according to procedures and regulations established and approved for this purpose by the department of social and health services. [1974 ex.s. c 91 § 3; 1947 c 240 § 4; Rem. Supp. 1947 § 5547-3.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**70.82.050 Powers, duties, functions, unallocated funds, transferred.** All powers, duties and functions of the superintendent of public instruction or the state board of education relating to the Cerebral Palsy Center as referred to in chapter 39, Laws of 1973 2nd ex. sess. shall be transferred to the department of social and health services as created in chapter 43.20A RCW, and all unallocated funds within any account to the credit of the superintendent of public instruction or the state board of education for purposes of such Cerebral Palsy Center shall be transferred effective July 1, 1974 to the credit of the department of social and health services, which department shall hereafter expend such funds for such Cerebral Palsy Center purposes as contemplated in the appropriations therefor. All employees of the Cerebral Palsy Center on July 1, 1974 who are classified employees under chapter 41.06 RCW, the state civil service law, shall be assigned and transferred to the department of social and health services to perform their usual duties upon the same terms as formerly, without any loss of rights, subject to any action that may be appropriate thereafter in accordance with the laws and rules governing the state civil service law. [1974 ex.s. c 91 § 4.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

## Chapter 70.83 RCW

### PHENYLKETONURIA AND OTHER PREVENTABLE HERITABLE DISORDERS

#### Sections

70.83.010	Declaration of policy and purpose.
70.83.020	Screening tests of newborn infants.
70.83.023	Specialty clinics—Defined disorders—Fee for infant screening and sickle cell disease.
70.83.030	Report of positive test to department of health.
70.83.040	Services and facilities of state agencies made available to families and physicians.
70.83.050	Rules and regulations to be adopted by state board of health.

**Reviser's note:** Powers and duties of the department of social and health services and the secretary of social and health services transferred to the department of health and the secretary of health. See RCW 43.70.060.

**70.83.010 Declaration of policy and purpose.** It is hereby declared to be the policy of the state of Washington to make every effort to detect as early as feasible and to prevent where possible phenylketonuria and other preventable heritable disorders leading to developmental disabilities or physical defects. [1977 ex.s. c 80 § 40; 1967 c 82 § 1.]

[Title 70 RCW—page 168]

**Purpose—Intent—Severability—1977 ex.s. c 80:** See notes following RCW 4.16.190.

**70.83.020 Screening tests of newborn infants.** It shall be the duty of the department of health to require screening tests of all newborn infants before they are discharged from the hospital for the detection of phenylketonuria and other heritable or metabolic disorders leading to intellectual disabilities or physical defects as defined by the state board of health: PROVIDED, That no such tests shall be given to any newborn infant whose parents or guardian object thereto on the grounds that such tests conflict with their religious tenets and practices. [2010 c 94 § 18; 1991 c 3 § 348; 1975-'76 2nd ex.s. c 27 § 1; 1967 c 82 § 2.]

**Purpose—2010 c 94:** See note following RCW 44.04.280.

**70.83.023 Specialty clinics—Defined disorders—Fee for infant screening and sickle cell disease.** The department has the authority to collect a fee of eight dollars and forty cents from the parents or other responsible party of each infant screened for congenital disorders as defined by the state board of health under RCW 70.83.020 to fund specialty clinics that provide treatment services for those with the defined disorders. The fee may also be used to support organizations conducting community outreach, education, and adult support related to sickle cell disease. The fee may be collected through the facility where a screening specimen is obtained. [2010 1st sp.s. c 17 § 1; 2007 c 259 § 8.]

**Severability—Subheadings not law—2007 c 259:** See notes following RCW 41.05.033.

**70.83.030 Report of positive test to department of health.** Laboratories, attending physicians, hospital administrators, or other persons performing or requesting the performance of tests for phenylketonuria shall report to the department of health all positive tests. The state board of health by rule shall, when it deems appropriate, require that positive tests for other heritable and metabolic disorders covered by this chapter be reported to the state department of health by such persons or agencies requesting or performing such tests. [1991 c 3 § 349; 1979 c 141 § 113; 1967 c 82 § 3.]

**70.83.040 Services and facilities of state agencies made available to families and physicians.** When notified of positive screening tests, the state department of health shall offer the use of its services and facilities, designed to prevent intellectual disabilities or physical defects in such children, to the attending physician, or the parents of the newborn child if no attending physician can be identified.

The services and facilities of the department, and other state and local agencies cooperating with the department in carrying out programs of detection and prevention of intellectual disabilities and physical defects shall be made available to the family and physician to the extent required in order to carry out the intent of this chapter and within the availability of funds. [2010 c 94 § 19; 2007 c 259 § 7; 2005 c 518 § 938; 1999 c 76 § 1; 1991 c 3 § 350; 1979 c 141 § 114; 1967 c 82 § 4.]

**Purpose—2010 c 94:** See note following RCW 44.04.280.

**Severability—Subheadings not law—2007 c 259:** See notes following RCW 41.05.033.

(2010 Ed.)

**Severability—Effective date—2005 c 518:** See notes following RCW 28A.500.030.

**70.83.050 Rules and regulations to be adopted by state board of health.** The state board of health shall adopt rules and regulations necessary to carry out the intent of this chapter. [1967 c 82 § 5.]

**Chapter 70.83C RCW**  
**ALCOHOL AND DRUG USE TREATMENT**  
**ASSOCIATED WITH PREGNANCY—**  
**FETAL ALCOHOL SYNDROME**

Sections

- 70.83C.005 Intent.
- 70.83C.010 Definitions.
- 70.83C.020 Prevention strategies.

**70.83C.005 Intent.** The legislature recognizes that the use of alcohol and other drugs during pregnancy can cause medical, psychological, and social problems for women and infants. The legislature further recognizes that communities are increasingly concerned about this problem and the associated costs to the mothers, infants, and society as a whole. The legislature recognizes that the department of health and other agencies are focusing on primary prevention activities to reduce the use of alcohol or drugs during pregnancy but few efforts have focused on secondary prevention efforts aimed at intervening in the lives of women already involved in the use of alcohol or other drugs during pregnancy. The legislature recognizes that the best way to prevent problems for chemically dependent pregnant women and their resulting children is to engage the women in alcohol or drug treatment. The legislature acknowledges that treatment professionals find pretreatment services to clients to be important in engaging women in alcohol or drug treatment. The legislature further recognizes that pretreatment services should be provided at locations where chemically dependent women are likely to be found, including public health clinics and domestic violence or homeless shelters. Therefore the legislature intends to prevent the detrimental effects of alcohol or other drug use to women and their resulting infants by promoting the establishment of local programs to help facilitate a woman's entry into alcohol or other drug treatment. These programs shall provide secondary prevention services and provision of opportunities for immediate treatment so that women who seek help are welcomed rather than ostracized. [1993 c 422 § 3.]

**Finding—1993 c 422:** See note following RCW 66.16.110.

**70.83C.010 Definitions.** Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Alcoholism" means a disease, characterized by a dependency on alcoholic beverages, loss of control over the amount and circumstances of alcohol use, symptoms of tolerance, physiological or psychological withdrawal, or both, if use is reduced or discontinued, and impairment of health or disruption of social or economic functioning.

(2) "Approved treatment program" means a discrete program of chemical dependency treatment provided by a treat-

ment program certified by the department of social and health services as meeting standards adopted under this chapter.

(3) "Assessment" means an interview with an individual to determine if he or she is chemically dependent and in need of referral to an approved treatment program.

(4) "Chemically dependent individual" means someone suffering from alcoholism or drug addiction, or dependence on alcohol or one or more other psychoactive chemicals.

(5) "Department" means the department of social and health services.

(6) "Domestic violence" is a categorization of offenses, as defined in RCW 10.99.020, committed by one family or household member against another.

(7) "Domestic violence program" means a shelter or other program which provides services to victims of domestic violence.

(8) "Drug addiction" means a disease characterized by a dependency on psychoactive chemicals, loss of control over the amount and circumstances of use, symptoms of tolerance, physiological or psychological withdrawal, or both, if use is reduced or discontinued, and impairment of health or disruptions of social or economic functioning.

(9) "Family or household members" means a family or household member as defined in RCW 10.99.020.

(10) "Pretreatment" means the period of time prior to an individual's enrollment in alcohol or drug treatment.

(11) "Pretreatment services" means activities taking place prior to treatment that include identification of individuals using alcohol or drugs, education, assessment of their use, evaluation of need for treatment, referral to an approved treatment program, and advocacy on a client's behalf with social service agencies or others to ensure and coordinate a client's entry into treatment.

(12) "Primary prevention" means providing information about the effects of alcohol or drug use to individuals so they will avoid using these substances.

(13) "Secondary prevention" means identifying and obtaining an assessment on individuals using alcohol or other drugs for referral to treatment when indicated.

(14) "Secretary" means the secretary of the department of social and health services.

(15) "Treatment" means the broad range of emergency detoxification, residential, and outpatient services and care, including diagnostic evaluation, chemical dependency education and counseling, medical, psychiatric, psychological, and social service care, vocational rehabilitation, and career counseling, that may be extended to chemically dependent individuals and their families.

(16) "Treatment program" means an organization, institution, or corporation, public or private, engaged in the care, treatment, or rehabilitation of chemically dependent individuals. [1993 c 422 § 4.]

**Finding—1993 c 422:** See note following RCW 66.16.110.

**70.83C.020 Prevention strategies.** The secretary shall develop and promote statewide secondary prevention strategies designed to increase the use of alcohol and drug treatment services by women of childbearing age, before, during, and immediately after pregnancy. These efforts are con-

ducted through the division of alcohol and substance abuse. The secretary shall:

(1) Promote development of three pilot demonstration projects in the state to be called pretreatment projects for women of childbearing age.

(2) Ensure that two of the projects are located in public health department clinics that provide maternity services and one is located with a domestic violence program.

(3) Hire three certified chemical dependency counselors to work as substance abuse educators in each of the three demonstration projects. The counselors may rotate between more than one clinic or domestic violence program. The chemical dependency counselor for the domestic violence program shall also be trained in domestic violence issues.

(4) Ensure that the duties and activities of the certified chemical dependency counselors include, at a minimum, the following:

(a) Identifying substance-using pregnant women in the health clinics and domestic violence programs;

(b) Educating the women and agency staff on the effects of alcohol or drugs on health, pregnancy, and unborn children;

(c) Determining the extent of the women's substance use;

(d) Evaluating the women's need for treatment;

(e) Making referrals for chemical dependency treatment if indicated;

(f) Facilitating the women's entry into treatment; and

(g) Advocating on the client's behalf with other social service agencies or others to ensure and coordinate clients into treatment.

(5) Ensure that administrative costs of the department are limited to ten percent of the funds appropriated for the project. [1993 c 422 § 5.]

**Finding—1993 c 422:** See note following RCW 66.16.110.

### Chapter 70.83E RCW

#### PRENATAL NEWBORN SCREENING FOR EXPOSURE TO HARMFUL DRUGS

##### Sections

70.83E.010	Declaration—Policy.
70.83E.020	Screening criteria, training protocols—Development of.
70.83E.030	Department of health—Duties.

**70.83E.010 Declaration—Policy.** The policy of the state of Washington is to make every effort to detect as early as feasible and to prevent where possible preventable disorders resulting from parental use of alcohol and drugs. [1998 c 93 § 1.]

**70.83E.020 Screening criteria, training protocols—Development of.** The department of health, in consultation with appropriate medical professionals, shall develop screening criteria for use in identifying pregnant or lactating women addicted to drugs or alcohol who are at risk of producing a drug-affected baby. The department shall also develop training protocols for medical professionals related to the identification and screening of women at risk of producing a drug-affected baby. [1998 c 93 § 2.]

**70.83E.030 Department of health—Duties.** The department of health shall investigate the feasibility of medical protocols for laboratory testing or other screening of newborn infants for exposure to alcohol or drugs. The department of health shall consider how to improve the current system with respect to testing, considering such variables as whether such testing is available, its cost, which entity is currently responsible for ordering testing, and whether testing should be mandatory or targeted. [1998 c 93 § 3.]

### Chapter 70.84 RCW

#### BLIND, HANDICAPPED, AND DISABLED PERSONS—"WHITE CANE LAW"

##### Sections

70.84.010	Declaration—Policy.
70.84.020	"Dog guide" defined.
70.84.021	"Service animal" defined.
70.84.040	Precautions for drivers of motor vehicles approaching a wheelchair user or pedestrian who is using a white cane, dog guide, or service animal.
70.84.050	Handicapped pedestrians not carrying white cane or using dog guide—Rights and privileges.
70.84.060	Unauthorized use of white cane, dog guide, or service animal.
70.84.070	Penalty for violations.
70.84.080	Employment of blind or other handicapped persons in public service.
70.84.900	Short title.

*Dog guide or service animal, interfering with:* RCW 9.91.170.

**70.84.010 Declaration—Policy.** The legislature declares:

(1) It is the policy of this state to encourage and enable the blind, the visually handicapped, the hearing impaired, and the otherwise physically disabled to participate fully in the social and economic life of the state, and to engage in remunerative employment.

(2) As citizens, the blind, the visually handicapped, the hearing impaired, and the otherwise physically disabled have the same rights as the able-bodied to the full and free use of the streets, highways, walkways, public buildings, public facilities, and other public places.

(3) The blind, the visually handicapped, the hearing impaired, and the otherwise physically disabled are entitled to full and equal accommodations, advantages, facilities, and privileges on common carriers, airplanes, motor vehicles, railroad trains, motor buses, streetcars, boats, and all other public conveyances, as well as in hotels, lodging places, places of public resort, accommodation, assemblage or amusement, and all other places to which the general public is invited, subject only to the conditions and limitations established by law and applicable alike to all persons. [1980 c 109 § 1; 1969 c 141 § 1.]

**70.84.020 "Dog guide" defined.** For the purpose of this chapter, the term "dog guide" means a dog that is trained for the purpose of guiding blind persons or a dog trained for the purpose of assisting hearing impaired persons. [1997 c 271 § 18; 1980 c 109 § 2; 1969 c 141 § 2.]

**70.84.021 "Service animal" defined.** For the purpose of this chapter, "service animal" means an animal that is trained for the purposes of assisting or accommodating a dis-

abled person's sensory, mental, or physical disability. [1997 c 271 § 19; 1985 c 90 § 1.]

**70.84.040 Precautions for drivers of motor vehicles approaching a wheelchair user or pedestrian who is using a white cane, dog guide, or service animal.** The driver of a vehicle approaching a totally or partially blind pedestrian who is carrying a cane predominantly white in color (with or without a red tip), a totally or partially blind or hearing impaired pedestrian using a dog guide, a person with physical disabilities using a service animal, or a person with a disability using a wheelchair or a power wheelchair as defined in RCW 46.04.415 shall take all necessary precautions to avoid injury to such pedestrian or wheelchair user. Any driver who fails to take such precaution shall be liable in damages for any injury caused such pedestrian or wheelchair user. It shall be unlawful for the operator of any vehicle to drive into or upon any crosswalk while there is on such crosswalk such pedestrian or wheelchair user crossing or attempting to cross the roadway, if such pedestrian or wheelchair user is using a white cane, using a dog guide, using a service animal, or using a wheelchair or a power wheelchair as defined in RCW 46.04.415. The failure of any such pedestrian or wheelchair user so to signal shall not deprive him or her of the right-of-way accorded him or her by other laws. [2010 c 184 § 1; 1997 c 271 § 20; 1985 c 90 § 3; 1980 c 109 § 4; 1971 ex.s. c 77 § 1; 1969 c 141 § 4.]

**Effective date—2010 c 184:** "This act takes effect August 1, 2010." [2010 c 184 § 2.]

**70.84.050 Handicapped pedestrians not carrying white cane or using dog guide—Rights and privileges.** A totally or partially blind pedestrian not carrying a white cane or a totally or partially blind or hearing impaired pedestrian not using a dog guide in any of the places, accommodations, or conveyances listed in RCW 70.84.010, shall have all of the rights and privileges conferred by law on other persons. [1997 c 271 § 21; 1980 c 109 § 5; 1969 c 141 § 5.]

**70.84.060 Unauthorized use of white cane, dog guide, or service animal.** It shall be unlawful for any pedestrian who is not totally or partially blind to use a white cane or any pedestrian who is not totally or partially blind or is not hearing impaired to use a dog guide or any pedestrian who is not otherwise physically disabled to use a service animal in any of the places, accommodations, or conveyances listed in RCW 70.84.010 for the purpose of securing the rights and privileges accorded by the chapter to totally or partially blind, hearing impaired, or otherwise physically disabled people. [1997 c 271 § 22; 1985 c 90 § 4; 1980 c 109 § 6; 1969 c 141 § 6.]

**70.84.070 Penalty for violations.** Any person or persons, firm or corporation, or the agent of any person or persons, firm or corporation, who denies or interferes with admittance to or enjoyment of the public facilities enumerated in RCW 70.84.010, or otherwise interferes with the rights of a totally or partially blind, hearing impaired, or otherwise physically disabled person as set forth in RCW

(2010 Ed.)

70.84.010 shall be guilty of a misdemeanor. [1985 c 90 § 5; 1980 c 109 § 7; 1969 c 141 § 7.]

**70.84.080 Employment of blind or other handicapped persons in public service.** In accordance with the policy set forth in RCW 70.84.010, the blind, the visually handicapped, the hearing impaired, and the otherwise physically disabled shall be employed in the state service, in the service of the political subdivisions of the state, in the public schools, and in all other employment supported in whole or in part by public funds on the same terms and conditions as the able-bodied, unless it is shown that the particular disability prevents the performance of the work involved. [1980 c 109 § 8; 1969 c 141 § 9.]

**70.84.900 Short title.** This chapter shall be known and may be cited as the "White Cane Law." [1969 c 141 § 11.]

### Chapter 70.85 RCW

## EMERGENCY PARTY LINE TELEPHONE CALLS— LIMITING TELEPHONE COMMUNICATION IN HOSTAGE SITUATIONS

### Sections

70.85.010	Definitions.
70.85.020	Refusal to yield line—Penalty.
70.85.030	Request for line on pretext of emergency—Penalty.
70.85.040	Telephone directories—Notice.
70.85.100	Authority to isolate telephones in barricade or hostage situation—Definitions.
70.85.110	Telephone companies to provide contacting information.
70.85.120	Liability of telephone company.
70.85.130	Applicability.

*Call to operator without charge or coin insertion be provided:* RCW 80.36.225.

*Fraud in operating coin-box telephone:* RCW 9.26A.120.

*Telecommunications companies:* Chapter 80.36 RCW.

**70.85.010 Definitions.** "Party line" means a subscribers' line telephone circuit, consisting of two or more main telephone stations connected therewith, each station with a distinctive ring or telephone number.

"Emergency" means a situation in which property or human life are in jeopardy and the prompt summoning of aid is essential. [1953 c 25 § 1.]

**70.85.020 Refusal to yield line—Penalty.** Any person who shall wilfully refuse to yield or surrender the use of a party line to another person for the purpose of permitting such other person to report a fire or summon police, medical or other aid in case of emergency, shall be deemed guilty of a misdemeanor. [1953 c 25 § 2.]

**70.85.030 Request for line on pretext of emergency—Penalty.** Any person who shall ask for or request the use of a party line on pretext that an emergency exists, knowing that no emergency in fact exists, shall be deemed guilty of a misdemeanor. [1953 c 25 § 3.]

**70.85.040 Telephone directories—Notice.** After September 9, 1953, every telephone directory thereafter distributed to the members of the general public shall contain a

notice which explains this chapter, such notice to be printed in type which is no smaller than any other type on the same page and to be preceded by the word "warning": PROVIDED, That the provisions of this section shall not apply to those directories distributed solely for business advertising purposes, commonly known as classified directories. [1953 c 25 § 4.]

**70.85.100 Authority to isolate telephones in barricade or hostage situation—Definitions.** (1) The supervising law enforcement official having jurisdiction in a geographical area who reasonably believes that a person is barricaded, or one or more persons are holding another person or persons hostage within that area may order a telephone company employee designated pursuant to RCW 70.85.110 to arrange to cut, reroute, or divert telephone lines for the purpose of preventing telephone communications between the barricaded person or hostage holder and any person other than a peace officer or a person authorized by the peace officer.

(2) As used in this section:

(a) A "hostage holder" is one who commits or attempts to commit any of the offenses described in RCW 9A.40.020, 9A.40.030, or 9A.40.040; and

(b) A "barricaded person" is one who establishes a perimeter around an area from which others are excluded and either:

(i) Is committing or is immediately fleeing from the commission of a violent felony; or

(ii) Is threatening or has immediately prior threatened a violent felony or suicide; or

(iii) Is creating or has created the likelihood of serious harm within the meaning of chapter 71.05 RCW relating to mental illness. [1985 c 260 § 1; 1979 c 28 § 1.]

**70.85.110 Telephone companies to provide contact information.** The telephone company providing service within the geographical jurisdiction of a law enforcement unit shall inform law enforcement agencies of the address and telephone number of its security office or other designated office to provide all required assistance to law enforcement officials to carry out the purpose of RCW 70.85.100 through 70.85.130. The designation shall be in writing and shall provide the telephone number or numbers through which the security representative or other telephone company official can be reached at any time. This information shall be served upon all law enforcement units having jurisdiction in a geographical area. Any change in address or telephone number or identity of the telephone company office to be contacted to provide required assistance shall be served upon all law enforcement units in the affected geographical area. [1979 c 28 § 2.]

**70.85.120 Liability of telephone company.** Good faith reliance on an order given under RCW 70.85.100 through 70.85.130 by a supervising law enforcement official shall constitute a complete defense to any civil or criminal action arising out of such ordered cutting, rerouting or diverting of telephone lines. [1979 c 28 § 3.]

**70.85.130 Applicability.** RCW 70.85.100 through 70.85.120 will govern notwithstanding the provisions of any other section of this chapter and notwithstanding the provisions of chapter 9.73 RCW. [1979 c 28 § 4.]

### Chapter 70.86 RCW

## EARTHQUAKE STANDARDS FOR CONSTRUCTION

(Formerly: Earthquake resistance standards)

### Sections

70.86.010	Definitions.
70.86.020	Buildings to resist earthquake intensities.
70.86.030	Standards for design and construction.
70.86.040	Penalty.

**70.86.010 Definitions.** The word "person" includes any individual, corporation, or group of two or more individuals acting together for a common purpose, whether acting in an individual, representative, or official capacity. [1955 c 278 § 1.]

**70.86.020 Buildings to resist earthquake intensities.** Hospitals, schools, except one story, portable, frame school buildings, buildings designed or constructed as places of assembly accommodating more than three hundred persons; and all structures owned by the state, county, special districts, or any municipal corporation within the state of Washington shall hereafter be designed and constructed to resist probable earthquake intensities at the location thereof in accordance with RCW 70.86.030, unless other standards of design and construction for earthquake resistance are prescribed by enactments of the legislative authority of counties, special districts, and/or municipal corporations in which the structure is constructed. [1955 c 278 § 2.]

**70.86.030 Standards for design and construction.** Structural frames, exterior walls, and all appendages of the buildings described in RCW 70.86.020, whose collapse will endanger life and property shall be designed and constructed to withstand horizontal forces from any direction of not less than the following fractions of the weight of the structure and its parts acting at the centers of gravity:

Western Washington 0.05. [1955 c 278 § 3.]

**70.86.040 Penalty.** Any person violating any provision of this chapter shall be guilty of a misdemeanor: PROVIDED, That any person causing such a building to be built shall be entitled to rely on the certificate of a licensed professional engineer and/or registered architect that the standards of design set forth above have been met. [1955 c 278 § 4.]

### Chapter 70.87 RCW

## ELEVATORS, LIFTING DEVICES, AND MOVING WALKS

### Sections

70.87.010	Definitions.
70.87.020	Conveyances to be safe and in conformity with law.
70.87.030	Rules—Waivers during state of emergency.
70.87.034	Additional powers of department.
70.87.036	Powers of attorney general.
70.87.040	Privately and publicly owned conveyances are subject to chapter.

70.87.050	Conveyances in buildings occupied by state, county, or political subdivision.
70.87.060	Responsibility for operation and maintenance of equipment and for periodic tests.
70.87.070	Serial numbers.
70.87.080	Permits—When required—Application for—Posting.
70.87.090	Operating permits—Limited permits—Duration—Posting.
70.87.100	Conveyance work to be performed by elevator contractors—Acceptance tests—Inspections.
70.87.110	Exceptions authorized.
70.87.120	Inspectors—Inspections and reinspections—Suspension or revocation of permit—Order to discontinue use—Penalties—Investigation by department—Waiver of provisions during state of emergency.
70.87.125	Suspension or revocation of license or permit—Grounds—Notice—Stay of suspension or revocation—Removal of suspension or reinstatement of license or permit.
70.87.140	Operation without permit enjoined.
70.87.145	Order to discontinue operation—Notice—Conditions—Contents of order—Recision of order—Violation—Penalty—Random inspections.
70.87.170	Review of department action in accordance with administrative procedure act.
70.87.180	Violations.
70.87.185	Penalty for violation of chapter—Rules—Notice.
70.87.190	Accidents—Report and investigation—Cessation of use—Removal of damaged parts.
70.87.200	Exemptions.
70.87.205	Resolution of disputes by arbitration—Appointment of arbitrators—Procedure—Decision—Enforcement.
70.87.210	Disposition of revenue.
70.87.220	Elevator safety advisory committee.
70.87.230	Conveyance work—Who may perform—Possession of license and identification.
70.87.240	Elevator contractor license, elevator mechanic license—Qualifications—Reciprocity.
70.87.245	Material lift mechanic license.
70.87.250	Licenses—Renewals—Fees—Temporary licenses—Continuing education—Records.
70.87.260	Liability not limited or assumed by state.
70.87.270	Exemptions from licensure.
70.87.280	License categories—Rules.
70.87.290	Rules—Effective date.
70.87.305	Private residence conveyances—Licensing requirements—Rules.
70.87.900	Severability.

State building code: Chapter 19.27 RCW.

**70.87.010 Definitions.** The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Advisory committee" means the elevator advisory committee as described in this chapter.

(2) "Alteration" means any change to equipment, including its parts, components, and/or subsystems, other than maintenance, repair, or replacement.

(3) "Automobile parking elevator" means an elevator: (a) Located in either a stationary or horizontally moving hoistway; (b) used exclusively for parking automobiles where, during the parking process, each automobile is moved either under its own power or by means of a power-driven transfer device onto and off the elevator directly into parking spaces or cubicles in line with the elevator; and (c) in which persons are not normally stationed on any level except the receiving level.

(4) "Belt manlift" means a power driven endless belt provided with steps or platforms and a hand hold for the transportation of personnel from floor to floor.

(5) "Casket lift" means a lift that (a) is installed at a mortuary, (b) is designed exclusively for carrying of caskets, (c) moves in guides in a basically vertical direction, and (d) serves two or more floors or landings.

(2010 Ed.)

(6) "Conveyance" means an elevator, escalator, dumbwaiter, belt manlift, automobile parking elevator, moving walk, and other elevating devices, as defined in this section.

(7) "Conveyance work" means the alteration, construction, dismantling, erection, installation, maintenance, relocation, and wiring of a conveyance.

(8) "Department" means the department of labor and industries.

(9) "Director" means the director of the department or his or her representative.

(10) "Dumbwaiter" means a hoisting and lowering mechanism equipped with a car (a) that moves in guides in a substantially vertical direction, (b) the floor area of which does not exceed nine square feet, (c) the inside height of which does not exceed four feet, (d) the capacity of which does not exceed five hundred pounds, and (e) that is used exclusively for carrying materials.

(11) "Elevator" means a hoisting or lowering machine equipped with a car or platform that moves in guides and serves two or more floors or landings of a building or structure;

(a) "Passenger elevator" means an elevator (i) on which passengers are permitted to ride and (ii) that may be used to carry freight or materials when the load carried does not exceed the capacity of the elevator;

(b) "Freight elevator" means an elevator (i) used primarily for carrying freight and (ii) on which only the operator, the persons necessary for loading and unloading, and other employees approved by the department are permitted to ride;

(c) "Sidewalk elevator" means a freight elevator that: (i) Operates between a sidewalk or other area outside the building and floor levels inside the building below the outside area, (ii) does not have a landing opening into the building at its upper limit of travel, and (iii) is not used to carry automobiles;

(d) "Hand elevator" means an elevator utilizing manual energy to move the car;

(e) "Inclined elevator" means an elevator that travels at an angle of inclination of seventy degrees or less from the horizontal;

(f) "Multideck elevator" means an elevator having two or more compartments located one immediately above the other;

(g) "Observation elevator" means an elevator designed to permit exterior viewing by passengers while the car is traveling;

(h) "Power elevator" means an elevator utilizing energy other than gravitational or manual to move the car;

(i) "Electric elevator" means an elevator where the energy is applied by means of an electric driving machine;

(j) "Hydraulic elevator" means an elevator where the energy is applied by means of a liquid under pressure in a cylinder equipped with a plunger or piston;

(k) "Direct-plunger hydraulic elevator" means a hydraulic elevator having a plunger or cylinder directly attached to the car frame or platform;

(l) "Electro-hydraulic elevator" means a direct-plunger elevator where liquid is pumped under pressure directly into the cylinder by a pump driven by an electric motor;

(m) "Maintained-pressure hydraulic elevator" means a direct-plunger elevator where liquid under pressure is available at all times for transfer into the cylinder;

(n) "Roped hydraulic elevator" means a hydraulic elevator having its plunger or piston connected to the car with wire ropes or indirectly coupled to the car by means of wire ropes and sheaves;

(o) "Rack and pinion elevator" means a power elevator, with or without a counterweight, that is supported, raised, and lowered by a motor or motors that drive a pinion or pinions on a stationary rack mounted in the hoistway;

(p) "Screw column elevator" means a power elevator having an uncounterweighted car that is supported, raised, and lowered by means of a screw thread;

(q) "Rooftop elevator" means a power passenger or freight elevator that operates between a landing at roof level and one landing below and opens onto the exterior roof level of a building through a horizontal opening;

(r) "Special purpose personnel elevator" means an elevator that is limited in size, capacity, and speed, and permanently installed in structures such as grain elevators, radio antenna, bridge towers, underground facilities, dams, power plants, and similar structures to provide vertical transportation of authorized personnel and their tools and equipment only;

(s) "Workmen's construction elevator" means an elevator that is not part of the permanent structure of a building and is used to raise and lower workers and other persons connected with, or related to, the building project;

(t) "Boat launching elevator" means a conveyance that serves a boat launching structure and a beach or water surface and is used for the carrying or handling of boats in which people ride;

(u) "Limited-use/limited-application elevator" means a power passenger elevator where the use and application is limited by size, capacity, speed, and rise, intended principally to provide vertical transportation for people with physical disabilities.

(12) "Elevator contractor" means any person, firm, or company that possesses an elevator contractor license in accordance with this chapter and who is engaged in the business of performing conveyance work covered by this chapter.

(13) "Elevator contractor license" means a license that is issued to an elevator contractor who has met the qualification requirements established in RCW 70.87.240.

(14) "Elevator helper/apprentice" means a person who works under the general direction of a licensed elevator mechanic. A license is not required to be an elevator helper/apprentice.

(15) "Elevator mechanic" means any person who possesses an elevator mechanic license in accordance with this chapter and who is engaged in performing conveyance work covered by this chapter.

(16) "Elevator mechanic license" means a license that is issued to a person who has met the qualification requirements established in RCW 70.87.240.

(17) "Escalator" means a power-driven, inclined, continuous stairway used for raising and lowering passengers.

(18) "Existing installations" means an installation defined as an "installation, existing" in this chapter or in rules adopted under this chapter.

(19) "Inspector" means an elevator inspector of the department or an elevator inspector of a municipality having in effect an elevator ordinance pursuant to RCW 70.87.200.

(20) "License" means a written license, duly issued by the department, authorizing a person, firm, or company to carry on the business of performing conveyance work or to perform conveyance work covered by this chapter.

(21) "Licensee" means the elevator mechanic or elevator contractor.

(22) "Maintenance" means a process of routine examination, lubrication, cleaning, servicing, and adjustment of parts, components, and/or subsystems for the purpose of ensuring performance in accordance with this chapter. "Maintenance" includes repair and replacement, but not alteration.

(23) "Material hoist" means a hoist that is not a part of a permanent structure used to raise or lower materials during construction, alteration, or demolition. It is not applicable to the temporary use of permanently installed personnel elevators as material hoists.

(24) "Material lift" means a lift that (a) is permanently installed, (b) is comprised of a car or platform that moves in guides, (c) serves two or more floors or landings, (d) travels in a vertical or inclined position, (e) is an isolated, self-contained lift, (f) is not part of a conveying system, and (g) is installed in a commercial or industrial area not accessible to the general public or intended to be operated by the general public.

(25) "Moving walk" means a passenger carrying device (a) on which passengers stand or walk and (b) on which the passenger carrying surface remains parallel to its direction of motion.

(26) "One-man capacity manlift" means a single passenger, hand-powered counterweighted device, or electric-powered device, that travels vertically in guides and serves two or more landings.

(27) "Owner" means any person having title to or control of a conveyance, as guardian, trustee, lessee, or otherwise.

(28) "Permit" means a permit issued by the department: (a) To perform conveyance work, other than maintenance; or (b) to operate a conveyance.

(29) "Person" means this state, a political subdivision, any public or private corporation, any firm, or any other entity as well as an individual.

(30) "Personnel hoist" means a hoist that is not a part of a permanent structure, is installed inside or outside buildings during construction, alteration, or demolition, and used to raise or lower workers and other persons connected with, or related to, the building project. The hoist may also be used for transportation of materials.

(31) "Platform" means a rigid surface that is maintained in a horizontal position at all times when in use, and upon which passengers stand or a load is carried.

(32) "Private residence conveyance" means a conveyance installed in or on the premises of a single-family dwelling and operated for transporting persons or property from one elevation to another.

(33) "Public agency" means a county, incorporated city or town, municipal corporation, state agency, institution of higher education, political subdivision, or other public agency and includes any department, bureau, office, board, commission or institution of such public entities.

(34) "Repair" means the reconditioning or renewal of parts, components, and/or subsystems necessary to keep equipment in compliance with this chapter.

(35) "Replacement" means the substitution of a device, component, and/or subsystem in its entirety with a unit that is basically the same as the original for the purpose of ensuring performance in accordance with this chapter.

(36) "Single-occupancy farm conveyance" means a hand-powered counterweighted single-occupancy conveyance that travels vertically in a grain elevator and is located on a farm that does not accept commercial grain.

(37) "Stairway chair lift" means a lift that travels in a basically inclined direction and is designed for use by individuals with disabilities.

(38) "Wheelchair lift" means a lift that travels in a vertical or inclined direction and is designed for use by individuals with disabilities. [2009 c 128 § 1; 2003 c 143 § 9; 2002 c 98 § 1; 1998 c 137 § 1; 1997 c 216 § 1; 1983 c 123 § 1; 1973 1st ex.s. c 52 § 9; 1969 ex.s. c 108 § 1; 1963 c 26 § 1.]

**Reviser's note:** The definitions in this section have been alphabetized pursuant to RCW 1.08.015(2)(k).

**Part headings and captions not law—Effective date—2003 c 143:** See notes following RCW 70.87.020.

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**70.87.020 Conveyances to be safe and in conformity with law.** (1) The purpose of this chapter is to provide for safety of life and limb, to promote safety awareness, and to ensure the safe design, mechanical and electrical operation, and inspection of conveyances, and performance of conveyance work, and all such operation, inspection, and conveyance work subject to the provisions of this chapter shall be reasonably safe to persons and property and in conformity with the provisions of this chapter and the applicable statutes of the state of Washington, and all orders, and rules of the department. The use of unsafe and defective conveyances imposes a substantial probability of serious and preventable injury to employees and the public exposed to unsafe conditions. The prevention of these injuries and protection of employees and the public from unsafe conditions is in the best interest of the people of this state. Personnel performing work covered by this chapter must, by documented training or experience or both, be familiar with the operation and safety functions of the components and equipment. Training and experience must include, but not be limited to, recognizing the safety hazards and performing the procedures to which the personnel performing conveyance work covered by this chapter are assigned in conformance with the requirements of this chapter. This chapter establishes the minimum standards for personnel performing conveyance work.

(2) This chapter is not intended to prevent the use of systems, methods, or devices of equivalent or superior quality, strength, fire resistance, code effectiveness, durability, and safety to those required by this chapter, provided that there is technical documentation to demonstrate the equivalency of the system, method, or device, as prescribed in this chapter and the rules adopted under this chapter.

(3) In any suit for damages allegedly caused by a failure or malfunction of the conveyance, conformity with the rules of the department is prima facie evidence that the conveyance work, operation, and inspection is reasonably safe to persons

(2010 Ed.)

and property. [2003 c 143 § 10; 2002 c 98 § 2; 1983 c 123 § 2; 1963 c 26 § 2.]

**Part headings and captions not law—2003 c 143:** "Part headings and captions used in this act are not any part of the law." [2003 c 143 § 23.]

**Effective date—2003 c 143:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [May 7, 2003]." [2003 c 143 § 24.]

**70.87.030 Rules—Waivers during state of emergency.** The department shall adopt rules governing the mechanical and electrical operation, acceptance tests, conveyance work, operation, and inspection that are necessary and appropriate and shall also adopt minimum standards governing existing installations. In the execution of this rule-making power and before the adoption of rules, the department shall consider the rules for safe conveyance work, operation, and inspection, including the American National Standards Institute Safety Code for Personnel and Material Hoists, the American Society of Mechanical Engineers Safety Code for Elevators, Dumbwaiters, and Escalators, and any amendatory or supplemental provisions thereto. The department by rule shall establish a schedule of fees to pay the costs incurred by the department for the work related to administration and enforcement of this chapter. Nothing in this chapter limits the authority of the department to prescribe or enforce general or special safety orders as provided by law.

The department may consult with: Engineering authorities and organizations concerned with standard safety codes; rules and regulations governing conveyance work, operation, and inspection; and the qualifications that are adequate, reasonable, and necessary for the elevator mechanic, contractor, and inspector.

During a state of emergency declared under RCW 43.06.010(12), the governor may waive or suspend the collection of fees under this section or any portion of this section or under any administrative rule, and issue any orders to facilitate the operation of state or local government or to promote and secure the safety and protection of the civilian population. [2008 c 181 § 206; 2003 c 143 § 11; 2002 c 98 § 3; 1998 c 137 § 2; 1994 c 164 § 28; 1983 c 123 § 3; 1973 1st ex.s. c 52 § 10; 1971 c 66 § 1; 1970 ex.s. c 22 § 1; 1963 c 26 § 3.]

**Part headings not law—2008 c 181:** See note following RCW 43.06.220.

**Part headings and captions not law—Effective date—2003 c 143:** See notes following RCW 70.87.020.

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**70.87.034 Additional powers of department.** The department also has the following powers:

(1) The department may adopt any rules necessary or helpful for the department to implement and enforce this chapter.

(2) The director may issue subpoenas for the production of persons, papers, or information in all proceedings and investigations within the scope of this chapter. If a person refuses to obey a subpoena, the director, through the attorney general, may ask the superior court to order the person to obey the subpoena.

(3) The director may take the oral or written testimony of any person. The director has the power to administer oaths.

(4) The director may make specific decisions, cease and desist orders, other orders, and rulings, including demands and findings. [1983 c 123 § 19.]

**70.87.036 Powers of attorney general.** On request of the department, the attorney general may:

(1) File suit to collect a penalty assessed by the department;

(2) Seek a civil injunction, show cause order, or contempt order against the person who repeatedly violates a provision of this chapter;

(3) Seek an ex parte inspection warrant if the person refuses to allow the department to inspect a conveyance;

(4) File suit asking the court to enforce a cease and desist order or a subpoena issued by the director under this chapter; and

(5) Take any other legal action appropriate and necessary for the enforcement of the provisions of this chapter.

All suits shall be brought in the district or superior court of the district or county in which the defendant resides or transacts business. In any suit or other legal action, the department may ask the court to award costs and attorney's fees. If the department prevails, the court shall award the appropriate costs and attorney's fees. [1983 c 123 § 20.]

**70.87.040 Privately and publicly owned conveyances are subject to chapter.** All privately owned and publicly owned conveyances are subject to the provisions of this chapter except as specifically excluded by this chapter. [1983 c 123 § 4; 1963 c 26 § 4.]

**70.87.050 Conveyances in buildings occupied by state, county, or political subdivision.** The conveyance work on, and the operation and inspection of any conveyance located in, or used in connection with, any building owned by the state, a county, or a political subdivision, other than those located within and owned by a city having an elevator code, shall be under the jurisdiction of the department. [2003 c 143 § 12; 2002 c 98 § 4; 1983 c 123 § 5; 1969 ex.s. c 108 § 2; 1963 c 26 § 5.]

**Part headings and captions not law—Effective date—2003 c 143:** See notes following RCW 70.87.020.

**70.87.060 Responsibility for operation and maintenance of equipment and for periodic tests.** (1) The person, elevator contractor, or public agency performing conveyance work is responsible for operation and maintenance of the conveyance until the department has issued an operating permit for the conveyance, except during the period when a limited operating permit in accordance with RCW 70.87.090(2) is in effect, and is also responsible for all tests of a new, relocated, or altered conveyance until the department has issued an operating permit for the conveyance.

(2) The owner or his or her duly appointed agent shall be responsible for the safe operation and proper maintenance of the conveyance after the department has issued the operating permit and also during the period of effectiveness of any limited operating permit in accordance with RCW 70.87.090(2).

The owner shall be responsible for all periodic tests required by the department. [2003 c 143 § 13; 1983 c 123 § 6; 1963 c 26 § 6.]

**Part headings and captions not law—Effective date—2003 c 143:** See notes following RCW 70.87.020.

**70.87.070 Serial numbers.** All new and existing conveyances shall have a serial number painted on or attached as directed by the department. This serial number shall be assigned by the department and shown on all required permits. [1983 c 123 § 7; 1963 c 26 § 7.]

**70.87.080 Permits—When required—Application for—Posting.** (1) A permit shall be obtained from the department before performing work, other than maintenance, on a conveyance under the jurisdiction of the department.

(2) The installer of the conveyance shall submit an application for the permit in duplicate, in a form that the department may prescribe.

(3) The permit issued by the department shall be kept posted conspicuously at the site of installation.

(4) A permit is not required for maintenance.

(5) After the effective date of rules adopted under this chapter establishing licensing requirements, the department may issue a permit for conveyance work only to an elevator contractor unless the permit is for conveyance work on private residence conveyances. After July 1, 2004, the department may not issue a permit for conveyance work on private residence conveyances to a person other than an elevator contractor. [2003 c 143 § 14; 1983 c 123 § 8; 1963 c 26 § 8.]

**Part headings and captions not law—Effective date—2003 c 143:** See notes following RCW 70.87.020.

**70.87.090 Operating permits—Limited permits—Duration—Posting.** (1) An operating permit is required for each conveyance operated in the state of Washington except during its erection by the person or firm responsible for its installation. A permit issued by the department shall be kept conspicuously posted near the conveyance.

(2) The department may permit the temporary use of a conveyance during its installation or alteration, under the authority of a limited permit issued by the department for each class of service. Limited permits shall be issued for a period not to exceed thirty days and may be renewed at the discretion of the department. This limited-use permit is to provide transportation for construction personnel, tools, and materials only. Where a limited permit is issued, a notice bearing the information that the equipment has not been finally approved shall be conspicuously posted. [1998 c 137 § 3; 1983 c 123 § 9; 1963 c 26 § 9.]

**70.87.100 Conveyance work to be performed by elevator contractors—Acceptance tests—Inspections.** (1) All conveyance installations, relocations, or alterations must be performed by an elevator contractor employing an elevator mechanic.

(2) The elevator contractor employing an elevator mechanic performing such conveyance work shall notify the department before completion of the work, and shall subject the new, moved, or altered portions of the conveyance to the acceptance tests.

(3) All new, altered, or relocated conveyances for which a permit has been issued, shall be inspected for compliance with the requirements of this chapter by an authorized representative of the department. The authorized representative shall also witness the test specified. [2003 c 143 § 15; 2002 c 98 § 5; 1983 c 123 § 11; 1963 c 26 § 10.]

**Part headings and captions not law—Effective date—2003 c 143:** See notes following RCW 70.87.020.

**70.87.110 Exceptions authorized.** The requirements of this chapter are intended to apply to all conveyances except as modified or waived by the department. They are intended to be modified or waived whenever any requirements are shown to be impracticable, such as involving expense not justified by the protection secured. However, the department shall not allow the modification or waiver unless equivalent or safer construction is secured in other ways. An exception applies only to the installation covered by the application for waiver. [1983 c 123 § 12; 1963 c 26 § 11.]

**70.87.120 Inspectors—Inspections and reinspections—Suspension or revocation of permit—Order to discontinue use—Penalties—Investigation by department—Waiver of provisions during state of emergency.** (1) The department shall appoint and employ inspectors, as may be necessary to carry out the provisions of this chapter, under the provisions of the rules adopted by the Washington personnel resources board in accordance with chapter 41.06 RCW.

(2)(a) Except as provided in (b) of this subsection, the department shall cause all conveyances to be inspected and tested at least once each year. Inspectors have the right during reasonable hours to enter into and upon any building or premises in the discharge of their official duties, for the purpose of making any inspection or testing any conveyance contained thereon or therein. Inspections and tests shall conform with the rules adopted by the department. The department shall inspect all installations before it issues any initial permit for operation. Permits shall not be issued until the fees required by this chapter have been paid.

(b)(i) Private residence conveyances operated exclusively for single-family use shall be inspected and tested only when required under RCW 70.87.100 or as necessary for the purposes of subsection (4) of this section and shall be exempt from RCW 70.87.090 unless an annual inspection and operating permit are requested by the owner.

(ii) The department may perform additional inspections of a private residence conveyance at the request of the owner of the conveyance. Fees for these inspections shall be in accordance with the schedule of fees adopted for operating permits pursuant to RCW 70.87.030. An inspection requested under this subsection (2)(b)(ii) shall not be performed until the required fees have been paid.

(3) If inspection shows a conveyance to be in an unsafe condition, the department shall issue an inspection report in writing requiring the repairs or alterations to be made to the conveyance that are necessary to render it safe and may also suspend or revoke a permit pursuant to RCW 70.87.125 or order the operation of a conveyance discontinued pursuant to RCW 70.87.145.

(a) A penalty may be assessed under RCW 70.87.185 for failure to correct a violation within ninety days after the owner is notified in writing of inspection results.

(b) The owner may be assessed a penalty under RCW 70.87.185 for failure to submit official notification in writing to the department that all corrections have been completed.

(4) The department may investigate accidents and alleged or apparent violations of this chapter.

(5) During a state of emergency declared under RCW 43.06.010(12), the governor may waive or suspend the collection of fees under this section or any portion of this section or under any administrative rule, and issue any orders to facilitate the operation of state or local government or to promote and secure the safety and protection of the civilian population. [2008 c 181 § 207; 1998 c 137 § 4; 1997 c 216 § 2; 1993 c 281 § 61; 1983 c 123 § 13; 1970 ex.s. c 22 § 2; 1963 c 26 § 12.]

**Part headings not law—2008 c 181:** See note following RCW 43.06.220.

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**70.87.125 Suspension or revocation of license or permit—Grounds—Notice—Stay of suspension or revocation—Removal of suspension or reinstatement of license or permit.** (1) A license issued under this chapter may be suspended, revoked, or subject to civil penalty by the department upon verification that any one or more of the following reasons exist:

(a) Any false statement as to a material matter in the application;

(b) Fraud, misrepresentation, or bribery in securing a license;

(c) Failure to notify the department and the owner or lessee of a conveyance or related mechanisms of any condition not in compliance with this chapter;

(d) A violation of any provisions of this chapter; and

(e) If the elevator contractor does not employ an individual designated as the primary point of contact with the department and who has successfully completed the elevator contractor examination. In the case of a separation of employment, termination of this relationship or designation, or death of the designated individual, the elevator contractor must, within ninety days, designate a new individual who has successfully completed the elevator contractor examination.

(2) The department may suspend or revoke a permit if:

(a) The permit was obtained through fraud or by error if, in the absence of error, the department would not have issued the permit;

(b) The conveyance for which the permit was issued has not been worked on in accordance with this chapter; or

(c) The conveyance has become unsafe.

(3) The department shall suspend any license issued under this chapter promptly after receiving notice from the department of social and health services that the holder of the license has been certified pursuant to RCW 74.20A.320 as a person who is not in compliance with a support order. If the person has continued to meet all other license requirements during the suspension, reissuance of the license shall be automatic upon the department's receipt of a release issued by the department of social and health services stating that the person is in compliance with the order.

(4) The department shall notify in writing the owner, licensee, or person performing conveyance work, of its action and the reason for the action. The department shall send the notice by certified mail to the last known address of the owner or person. The notice shall inform the owner or person that a hearing may be requested pursuant to RCW 70.87.170.

(5)(a) If the department has suspended or revoked a permit or license because of fraud or error, and a hearing is requested, the suspension or revocation shall be stayed until the hearing is concluded and a decision is issued.

(b) If the department has revoked or suspended a license because the licensee performing the work covered by this chapter is working in a manner that does not effectively prevent injuries or deaths or protect employees and the public from unsafe conditions as is required by this chapter, the suspension or revocation is effective immediately and shall not be stayed by a request for a hearing.

(c) If the department has revoked or suspended a permit because the conveyance is unsafe or the conveyance work is not permitted and performed in accordance with this chapter, the suspension or revocation is effective immediately and shall not be stayed by a request for a hearing.

(6) The department must remove a suspension or reinstate a revoked license if the licensee pays all the assessed civil penalties and is able to demonstrate to the department that the licensee has met all the qualifications established by this chapter.

(7) The department shall remove a suspension or reinstate a revoked permit if a conveyance is repaired or modified to bring it into compliance with this chapter. [2003 c 143 § 16; 2002 c 98 § 6; 1983 c 123 § 10.]

**Part headings and captions not law—Effective date—2003 c 143:**  
See notes following RCW 70.87.020.

#### **70.87.140 Operation without permit enjoinable.**

Whenever any conveyance is being operated without a permit required by this chapter, the attorney general or the prosecuting attorney of the county may apply to the superior court of the county in which the conveyance is located for a temporary restraining order or a temporary or permanent injunction restraining the operation of the conveyance until the department issues a permit for the conveyance. No bond may be required from the department in such proceedings. [1983 c 123 § 14; 1963 c 26 § 14.]

**70.87.145 Order to discontinue operation—Notice—Conditions—Contents of order—Recision of order—Violation—Penalty—Random inspections.** (1) An authorized representative of the department may order the owner or person operating a conveyance to discontinue the operation of a conveyance, and may place a notice that states that the conveyance may not be operated on a conspicuous place in the conveyance, if:

(a) The conveyance work has not been permitted and performed in accordance with this chapter; or

(b) The conveyance has otherwise become unsafe. The order is effective immediately, and shall not be stayed by a request for a hearing.

(2) The department shall prescribe a form for the order to discontinue operation. The order shall specify why the conveyance violates this chapter or is otherwise unsafe, and shall

inform the owner or operator that he or she may request a hearing pursuant to RCW 70.87.170. A request for a hearing does not stay the effect of the order.

(3) The department shall rescind the order to discontinue operation if the conveyance is fixed or modified to bring it into compliance with this chapter.

(4) An owner or a person that knowingly operates or allows the operation of a conveyance in contravention of an order to discontinue operation, or removes a notice not to operate, is:

(a) Guilty of a misdemeanor; and

(b) Subject to a civil penalty under RCW 70.87.185.

(5) The department may conduct random on-site inspections and tests on existing installations, witnessing periodic inspections and testing in order to ensure satisfactory conveyance work by persons, firms, or companies performing conveyance work, and assist in development of public awareness programs. [2003 c 143 § 17; 2002 c 98 § 7; 1983 c 123 § 15.]

**Part headings and captions not law—Effective date—2003 c 143:**  
See notes following RCW 70.87.020.

**70.87.170 Review of department action in accordance with administrative procedure act.** (1) Any person aggrieved by an order or action of the department denying, suspending, revoking, or refusing to renew a permit or license; assessing a penalty for a violation of this chapter; or ordering the operation of a conveyance to be discontinued, may request a hearing within fifteen days after notice of the department's order or action is received. The date the hearing was requested shall be the date the request for hearing was postmarked. The party requesting the hearing must accompany the request with a certified or cashier's check for two hundred dollars payable to the department. The department shall refund the two hundred dollars if the party requesting the hearing prevails at the hearing; otherwise, the department shall retain the two hundred dollars.

If the department does not receive a timely request for hearing, the department's order or action is final and may not be appealed.

(2) If the aggrieved party requests a hearing, the department shall ask an administrative law judge to preside over the hearing. The hearing shall be conducted in accordance with chapter 34.05 RCW. [2003 c 143 § 18; 2002 c 98 § 8; 1983 c 123 § 16; 1963 c 26 § 17.]

**Part headings and captions not law—Effective date—2003 c 143:**  
See notes following RCW 70.87.020.

**70.87.180 Violations.** (1) The performance of conveyance work, other than maintenance, or the operation of a conveyance without a permit by any person owning or having the custody, management, or operation thereof, except as provided in RCW 70.87.080 and 70.87.090, is a misdemeanor. Each day of violation is a separate offense. A prosecution may not be maintained if a person has requested the issuance or renewal of a permit but the department has not acted.

(2) The performance of conveyance work, other than the maintenance of conveyances as specified in RCW 70.87.270, without a license by any person is a misdemeanor. Each day of violation is a separate offense. A prosecution may not be maintained if a person has requested the issuance or renewal

of a license but the department has not acted. [2003 c 143 § 19; 2002 c 98 § 9; 1983 c 123 § 17; 1963 c 26 § 18.]

**Part headings and captions not law—Effective date—2003 c 143:** See notes following RCW 70.87.020.

**70.87.185 Penalty for violation of chapter—Rules—**

**Notice.** (1) The department may assess a penalty against a person violating a provision of this chapter. The penalty shall be not more than five hundred dollars. Each day that the violation continues is a separate violation and is subject to a separate penalty.

(2) The department may not assess a penalty until it adopts rules describing the method it will use to calculate penalties for various violations.

(3) The department shall notify the violator of its action, and the reasons for its action, in writing. The department shall send the notice by certified mail to the violator's last known address. The notice shall inform the violator that a hearing may be requested under RCW 70.87.170. The hearing shall not stay the effect of the penalty. [1983 c 123 § 18.]

**70.87.190 Accidents—Report and investigation—Cessation of use—Removal of damaged parts.** The owner or the owner's duly authorized agent shall promptly notify the department of each accident to a person requiring the service of a physician or resulting in a disability exceeding one day, and shall afford the department every facility for investigating and inspecting the accident. The department shall without delay, after being notified, make an inspection and shall place on file a full and complete report of the accident. The report shall give in detail all material facts and information available and the cause or causes, so far as they can be determined. The report shall be open to public inspection at all reasonable hours. When an accident involves the failure or destruction of any part of the construction or the operating mechanism of a conveyance, the use of the conveyance is forbidden until it has been made safe; it has been reinspected and any repairs, changes, or alterations have been approved by the department; and a permit has been issued by the department. The removal of any part of the damaged construction or operating mechanism from the premises is forbidden until the department grants permission to do so. [1983 c 123 § 21; 1963 c 26 § 19.]

**70.87.200 Exemptions.** (1) The provisions of this chapter do not apply where:

(a) A conveyance is permanently removed from service or made effectively inoperative;

(b) Lifts, hoists for persons, or material hoists are erected temporarily for use during construction work only and are of such a design that they must be operated by a worker stationed at the hoisting machine; or

(c) A single-occupancy farm conveyance is used exclusively by a farm operator and the farm operator's family members.

(2) Except as limited by RCW 70.87.050, municipalities having in effect an elevator code prior to June 13, 1963, may continue to assume jurisdiction over conveyance work and may inspect, issue permits, collect fees, and prescribe minimum requirements for conveyance work and operation if the

(2010 Ed.)

requirements are equal to the requirements of this chapter and to all rules pertaining to conveyances adopted and administered by the department. Upon the failure of a municipality having jurisdiction over conveyances to carry out the provisions of this chapter with regard to a conveyance, the department may assume jurisdiction over the conveyance. If a municipality elects not to maintain jurisdiction over certain conveyances located therein, it may enter into a written agreement with the department transferring exclusive jurisdiction of the conveyances to the department. The city may not reassume jurisdiction after it enters into such an agreement with the department. [2009 c 549 § 1025; 2009 c 128 § 2; 2003 c 143 § 20; 1983 c 123 § 22; 1969 ex.s. c 108 § 4; 1963 c 26 § 20.]

**Reviser's note:** This section was amended by 2009 c 128 § 2 and by 2009 c 549 § 1025, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

**Part headings and captions not law—Effective date—2003 c 143:** See notes following RCW 70.87.020.

**70.87.205 Resolution of disputes by arbitration—Appointment of arbitrators—Procedure—Decision—Enforcement.** (1) Disputes arising under RCW 70.87.200(2) shall be resolved by arbitration. The request shall be sent by certified mail.

(2) The department shall appoint one arbitrator; the municipality shall appoint one arbitrator; and the arbitrators chosen by the department and the municipality shall appoint the third arbitrator. If the two arbitrators cannot agree on the third arbitrator, the presiding judge of the Thurston county superior court, or his or her designee, shall appoint the third arbitrator.

(3) The arbitration shall be held pursuant to the procedures in chapter 7.04A RCW, except that RCW 7.04A.280(1)(f) shall not apply. The decision of the arbitrators is final and binding on the parties. Neither party may appeal a decision to any court.

(4) A party may petition the Thurston county superior court to enforce a decision of the arbitrators. [2005 c 433 § 49; 1983 c 123 § 23.]

**Application—Captions not law—Savings—Effective date—2005 c 433:** See RCW 7.04A.290 through 7.04A.310 and 7.04A.900.

**70.87.210 Disposition of revenue.** All moneys received or collected under the terms of this chapter shall be deposited in the general fund. [1963 c 26 § 21.]

**70.87.220 Elevator safety advisory committee.** (1) The department may adopt the rules necessary to establish and administer the elevator safety advisory committee. The purpose of the advisory committee is to advise the department on the adoption of rules that apply to conveyances; methods of enforcing and administering this chapter; and matters of concern to the conveyance industry and to the individual installers, owners, and users of conveyances.

(2) The advisory committee shall consist of seven persons. The director of the department or his or her designee with the advice of the chief elevator inspector shall appoint the committee members as follows:

(a) One representative of licensed elevator contractors;

(b) One representative of elevator mechanics licensed to perform all types of conveyance work;

(c) One representative of owner-employed mechanics exempt from licensing requirements under RCW 70.87.270;

(d) One registered architect or professional engineer representative;

(e) One building owner or manager representative;

(f) One registered general commercial contractor representative; and

(g) One ad hoc member representing a municipality maintaining jurisdiction of conveyances in accordance with RCW 70.87.210 [70.87.200].

(3) The committee members shall serve terms of four years.

(4) The committee shall meet on the third Tuesday of February, May, August, and November of each year, and at other times at the discretion of the chief elevator inspector. The committee members shall serve without per diem or travel expenses.

(5) The chief elevator inspector shall be the secretary for the advisory committee. [2003 c 143 § 7; 2002 c 98 § 11.]

**Part headings and captions not law—Effective date—2003 c 143:** See notes following RCW 70.87.020.

**70.87.230 Conveyance work—Who may perform—Possession of license and identification.** (1) Except as provided in RCW 70.87.270, a person may not perform conveyance work within the state unless he or she is an elevator mechanic who is regularly employed by and is working: (a) For an owner exempt from licensing requirements under RCW 70.87.270 and performing maintenance; (b) for a public agency performing maintenance; or (c) under the direct supervision of an elevator contractor. A person, firm, public agency, or company is not required to be an elevator contractor for removing or dismantling conveyances that are destroyed as a result of a complete demolition of a secured building or structure or where the building is demolished back to the basic support structure whereby no access is permitted therein to endanger the safety and welfare of a person.

(2) When performing conveyance work, an elevator mechanic must have his or her license and photo identification in his or her possession. The elevator mechanic must produce his or her license and identification upon request of an authorized representative of the department. The department may establish by rule a requirement that the mechanic also wear and visibly display his or her license. [2009 c 36 § 10; 2003 c 143 § 1; 2002 c 98 § 10.]

**Finding—Intent—2009 c 36:** See note following RCW 18.106.020.

**Part headings and captions not law—Effective date—2003 c 143:** See notes following RCW 70.87.020.

**70.87.240 Elevator contractor license, elevator mechanic license—Qualifications—Reciprocity.** (1) Any person, firm, public agency, or company wishing to engage in the business of performing conveyance work within the state must apply for an elevator contractor license with the department on a form provided by the department and be a registered general or specialty contractor under chapter 18.27 RCW.

(2) Except as provided by RCW 70.87.270, any person wishing to perform conveyance work within the state must

apply for an elevator mechanic license with the department on a form provided by the department.

(3) An elevator contractor license may not be granted to any person or firm who does not possess the following qualifications:

(a) Five years' experience performing conveyance work, as verified by current and previous elevator contractors licensed to do business; or

(b) Satisfactory completion of a written examination administered by the department on this chapter and the rules adopted under this chapter.

(4) Except as provided in subsection (5) of this section, RCW 70.87.305, and 70.87.245, an elevator mechanic license may not be granted to any person who does not possess the following qualifications:

(a) An acceptable combination of documented experience and education credits: Not less than three years' experience performing conveyance work, as verified by current and previous employers licensed to do business in this state or public agency employers; and

(b) Satisfactory completion of a written examination administered by the department on this chapter and the rules adopted under this chapter.

(5) Any person who furnishes the department with acceptable proof that he or she has performed conveyance work in the category for which a license is sought shall upon making application for a license and paying the license fee receive a license without an examination. The person must have:

(a) Worked without direct and immediate supervision for a general or specialty contractor registered under chapter 18.27 RCW and engaged in the business of performing conveyance work in this state. This employment may not be less than each and all of the three years immediately before March 1, 2004. The person must apply within ninety days after the effective date of rules adopted under this chapter establishing licensing requirements;

(b) Worked without direct and immediate supervision for an owner exempt from licensing requirements under RCW 70.87.270 or a public agency as an individual responsible for maintenance of conveyances owned by the owner exempt from licensing requirements under RCW 70.87.270 or the public agency. This employment may not be less than each and all of the three years immediately before March 1, 2004. The person must apply within ninety days after the effective date of rules adopted under this chapter establishing licensing requirements;

(c) Obtained a certificate of completion and successfully passed the mechanic examination of a nationally recognized training program for the elevator industry such as the national elevator industry educational program or its equivalent; or

(d) Obtained a certificate of completion of an apprenticeship program for an elevator mechanic, having standards substantially equal to those of this chapter, and registered with the Washington state apprenticeship and training council.

(6) A license must be issued to an individual holding a valid license from a state having entered into a reciprocal agreement with the department and having standards substantially equal to those of this chapter, upon application and without examination. [2004 c 66 § 2; 2003 c 143 § 2; 2002 c 98 § 12.]

**Findings—2004 c 66:** See note following RCW 70.87.305.

**Part headings and captions not law—Effective date—2003 c 143:** See notes following RCW 70.87.020.

**70.87.245 Material lift mechanic license.** A material lift mechanic license to perform conveyance work on material lifts subject to WAC 296-96-05010 may be granted to any person who possesses the following qualifications:

(1) The person: (a) Must be employed by an elevator contractor that complies with subsections (2) and (3) of this section; (b) must have successfully completed the training described in subsection (2) of this section; and (c) after successfully completing such training, must have passed a written examination administered by the department that is designed to demonstrate competency with regard to conveyance work on material lifts;

(2) The employer must provide the persons specified in subsection (1) of this section adequate training, including any training provided by the manufacturer, ensuring worker safety and adherence to the published operating specifications of the conveyance manufacturer; and

(3) The employer must maintain: (a) A conveyance work log identifying the equipment, describing the conveyance work performed, and identifying the person who performed the conveyance work; (b) a training log describing the course of study applicable to each conveyance and identifying each employee who has successfully completed the training described in subsection (2) of this section and when such training was completed; and (c) a record evidencing that the employer has notified the conveyance owner in writing that the conveyance is not designed to, is not intended to, and should not be used to convey workers. [2003 c 143 § 3.]

**Part headings and captions not law—Effective date—2003 c 143:** See notes following RCW 70.87.020.

**70.87.250 Licenses—Renewals—Fees—Temporary licenses—Continuing education—Records.** (1) Upon approval of an application, the department may issue a license that is biennially renewable. Each license may include a photograph of the licensee. The fee for the license and for any renewal shall be set by the department in rule.

(2) The department may issue temporary elevator mechanic licenses. These temporary elevator mechanic licenses will be issued to those certified as qualified and competent by licensed elevator contractors. The company shall furnish proof of competency as the department may require. Each license may include a photograph of the licensee. Each license must recite that it is valid for a period of thirty days from the date of issuance and for such particular conveyance or geographical areas as the department may designate, and otherwise entitles the licensee to the rights and privileges of an elevator mechanic license issued in this chapter. A temporary elevator mechanic license may be renewed by the department and a fee as established in rule must be charged for any temporary elevator mechanic license or renewal.

(3) The renewal of all licenses granted under this section is conditioned upon the submission of a certificate of completion of a course designed to ensure the continuing education of licensees on new and existing rules of the department. The course must consist of not less than eight hours of instruction

that must be attended and completed within one year immediately preceding any license renewal.

(4) The courses must be taught by instructors through continuing education providers that may include, but are not limited to, association seminars and labor training programs. The department must approve the continuing education providers. All instructors must be approved by the department and are exempt from the requirements of subsection (3) of this section with regard to his or her application for license renewal, provided that such applicant was qualified as an instructor at any time during the one year immediately preceding the scheduled date for such renewal.

(5) A licensee who is unable to complete the continuing education course required under this section before the expiration of his or her license due to a temporary disability may apply for a waiver from the department. This will be on a form provided by the department and signed under the pains and penalties of perjury and accompanied by a certified statement from a competent physician attesting to the temporary disability. Upon the termination of the temporary disability, the licensee must submit to the department a certified statement from the same physician, if practicable, attesting to the termination of the temporary disability. At which time a waiver sticker, valid for ninety days, must be issued to the licensee and affixed to his or her license.

(6) Approved training providers must keep uniform records, for a period of ten years, of attendance of licensees and these records must be available for inspection by the department at its request. Approved training providers are responsible for the security of all attendance records and certificates of completion. However, falsifying or knowingly allowing another to falsify attendance records or certificates of completion constitutes grounds for suspension or revocation of the approval required under this section. [2009 c 36 § 11; 2003 c 143 § 21; 2002 c 98 § 13.]

**Finding—Intent—2009 c 36:** See note following RCW 18.106.020.

**Part headings and captions not law—Effective date—2003 c 143:** See notes following RCW 70.87.020.

**70.87.260 Liability not limited or assumed by state.** This chapter cannot be construed to relieve or lessen the responsibility or liability of any person, firm, or corporation owning, operating, controlling, testing, inspecting, or performing conveyance work on any conveyance or other related mechanisms covered by this chapter for damages to person or property caused by any defect therein, nor does the state assume any such liability or responsibility therefore or any liability to any person for whatever reason whatsoever by the adoption of this chapter or any acts or omissions arising hereunder. [2003 c 143 § 22; 2002 c 98 § 14.]

**Part headings and captions not law—Effective date—2003 c 143:** See notes following RCW 70.87.020.

**70.87.270 Exemptions from licensure.** (1) The licensing requirements of this chapter do not apply to the maintenance of conveyances specified in (a) of this subsection if a person specified in (b) of this subsection performs the maintenance and the owner complies with the requirements specified in (c) and (d) of this subsection.

(a) The conveyance: (i) Must be a conveyance other than a passenger elevator to which the general public has access;

and (ii) must be located in a facility in which agricultural products are stored, food products are processed, goods are manufactured, energy is generated, or similar industrial or agricultural processes are performed.

(b) The person performing the maintenance: (i) Must be regularly employed by the owner; (ii) must have completed the training described in (c) of this subsection; and (iii) must have attained journey level status in an electrical or mechanical trade, but only if the employer has or uses an established journey level program to train its electrical or mechanical trade employees and the employees perform maintenance in the course of their regular employment.

(c) The owner must provide the persons specified in (b) of this subsection adequate training to ensure worker safety and adherence to the published operating specifications of the conveyance manufacturer, the applicable provisions of this chapter, and any rules adopted under this chapter.

(d) The owner also must maintain both a maintenance log and a training log. The maintenance log must describe maintenance work performed on the conveyance and identify the person who performed the work. The training log must describe the course of study provided to the persons specified in (b) of this subsection, including whether it is general or conveyance specific, and when the persons completed the course of study.

(2) It is a violation of chapter 49.17 RCW for an owner or an employer: (a) To allow a conveyance exempt from the licensing requirements of this chapter under subsection (1) of this section to be maintained by a person other than a person specified in subsection (1)(b) of this section or a licensee; or (b) to fail to maintain the logs required under subsection (1)(d) of this section. [2003 c 143 § 4.]

**Part headings and captions not law—Effective date—2003 c 143:** See notes following RCW 70.87.020.

**70.87.280 License categories—Rules.** In order to effectively administer and implement the elevator mechanic licensing of this chapter, the department may establish elevator mechanic license categories in rule. [2003 c 143 § 5.]

**Part headings and captions not law—Effective date—2003 c 143:** See notes following RCW 70.87.020.

**70.87.290 Rules—Effective date.** The department of labor and industries may not adopt rules to implement chapter 98, Laws of 2002, and to implement chapter 143, Laws of 2003 that take effect before March 1, 2004. [2003 c 143 § 6.]

**Part headings and captions not law—Effective date—2003 c 143:** See notes following RCW 70.87.020.

**70.87.305 Private residence conveyances—Licensing requirements—Rules.** (1) The department shall, by rule, establish licensing requirements for conveyance work performed on private residence conveyances. These rules shall include an exemption from licensing for maintenance work on private residence conveyances performed by an owner or at the direction of the owner, provided the owner resides in the residence at which the conveyance is located and the conveyance is not accessible to the general public. However, maintenance work performed on private residence conveyances located in or at adult family homes licensed under chapter 70.128 RCW, boarding homes licensed under chapter

18.20 RCW, or similarly licensed caregiving facilities must comply with the licensing requirements of this chapter.

(2) The rules adopted under this section take effect July 1, 2004. [2004 c 66 § 3.]

**Findings—2004 c 66:** "The legislature finds that individuals performing conveyance work on private residence conveyances must be licensed by the department of labor and industries. However, the licensing requirements for this type of work need not be to the same level as those established for conveyance work in circumstances where the general public has access to the conveyances. The legislature further finds that the department of labor and industries should be given the authority to develop the licensing requirements for this type of work using the normal rule-making process established under chapter 34.05 RCW. Lastly, the legislature finds that private residence conveyance maintenance work that is performed by an owner or at the direction of the owner is exempt from licensing if the owner resides in the residence at which the conveyance is located and the conveyance is not accessible to the general public." [2004 c 66 § 1.]

**70.87.900 Severability.** If any provision of this chapter or its application to any person or circumstance is held invalid, the remainder of the chapter, or the application of the provision to other persons or circumstances, is not affected. [1983 c 123 § 24; 1963 c 26 § 22.]

## Chapter 70.90 RCW

### WATER RECREATION FACILITIES

(Formerly: Swimming pools)

#### Sections

70.90.101	Legislative findings.
70.90.110	Definitions.
70.90.120	Adoption of rules governing safety, sanitation, and water quality—Exceptions.
70.90.125	Regulation by local boards of health.
70.90.140	Enforcement.
70.90.150	Fees.
70.90.160	Modification or construction of facility—Permit required—Submission of plans.
70.90.170	Operating permit—Renewal.
70.90.180	State and local health jurisdictions—Chapter not basis for liability.
70.90.190	Reporting of injury, disease, or death.
70.90.200	Civil penalties.
70.90.205	Criminal penalties.
70.90.210	Adjudicative proceeding—Notice.
70.90.230	Insurance required.
70.90.240	Sale of spas, pools, and tubs—Operating instructions and health caution required.
70.90.250	Application of chapter.
70.90.910	Severability—1986 c 236.
70.90.911	Severability—1987 c 222.

**70.90.101 Legislative findings.** The legislature finds that water recreation facilities are an important source of recreation for the citizens of this state. To promote the public health, safety, and welfare, the legislature finds it necessary to continue to regulate these facilities. [1987 c 222 § 1.]

**70.90.110 Definitions.** Unless the context clearly requires otherwise the definitions in this section apply throughout this chapter.

(1) "Water recreation facility" means any artificial basin or other structure containing water used or intended to be used for recreation, bathing, relaxation, or swimming, where body contact with the water occurs or is intended to occur and includes auxiliary buildings and appurtenances. The term includes, but is not limited to:

(a) Conventional swimming pools, wading pools, and spray pools;

(b) Recreational water contact facilities as defined in this chapter;

(c) Spa pools and tubs using hot water, cold water, mineral water, air induction, or hydrojets; and

(d) Any area designated for swimming in natural waters with artificial boundaries within the waters.

(2) "Recreational water contact facility" means an artificial water associated facility with design and operational features that provide patron recreational activity which is different from that associated with a conventional swimming pool and purposefully involves immersion of the body partially or totally in the water, and that includes but is not limited to, water slides, wave pools, and water lagoons.

(3) "Local health officer" means the health officer of the city, county, or city-county department or district or a representative authorized by the local health officer.

(4) "Secretary" means the secretary of health.

(5) "Person" means an individual, firm, partnership, co-partnership, corporation, company, association, club, government entity, or organization of any kind.

(6) "Department" means the department of health.

(7) "Board" means the state board of health. [1991 c 3 § 352; 1987 c 222 § 2; 1986 c 236 § 2.]

**70.90.120 Adoption of rules governing safety, sanitation, and water quality—Exceptions.** (1) The board shall adopt rules under the administrative procedure act, chapter 34.05 RCW, governing safety, sanitation, and water quality for water recreation facilities. The rules shall include but not be limited to requirements for design; operation; injury and illness reporting; biological and chemical contamination standards; water quality monitoring; inspection; permit application and issuance; and enforcement procedures. However, a water recreation facility intended for the exclusive use of residents of any apartment house complex or of a group of rental housing units of less than fifteen living units, or of a mobile home park, or of a condominium complex or any group or association of less than fifteen home owners shall not be subject to preconstruction design review, routine inspection, or permit or fee requirements; and water treatment of hydroelectric reservoirs or natural streams, creeks, lakes, or irrigation canals shall not be required.

(2) In adopting rules under subsection (1) of this section regarding the operation or design of a recreational water contact facility, the board shall review and consider any recommendations made by the recreational water contact facility advisory committee. [1987 c 222 § 5; 1986 c 236 § 3.]

**70.90.125 Regulation by local boards of health.** Nothing in this chapter shall prohibit any local board of health from establishing and enforcing any provisions governing safety, sanitation, and water quality for any water recreation facility, regardless of ownership or use, in addition to those rules established by the state board of health under this chapter. [1987 c 222 § 6.]

**70.90.140 Enforcement.** The secretary shall enforce the rules adopted under this chapter. The secretary may

develop joint plans of responsibility with any local health jurisdiction to administer this chapter. [1986 c 236 § 5.]

**70.90.150 Fees.** (1) Local health officers may establish and collect fees sufficient to cover their costs incurred in carrying out their duties under this chapter and the rules adopted under this chapter.

(2) The department may establish and collect fees sufficient to cover its costs incurred in carrying out its duties under this chapter. The fees shall be deposited in the state general fund.

(3) A person shall not be required to submit fees at both the state and local levels. [1986 c 236 § 6.]

**70.90.160 Modification or construction of facility—Permit required—Submission of plans.** A permit is required for any modification to or construction of any recreational water contact facility after June 11, 1986, and for any other water recreation facility after July 26, 1987. Water recreation facilities existing on July 26, 1987, which do not comply with the design and construction requirements established by the state board of health under this chapter may continue to operate without modification to or replacement of the existing physical plant, provided the water quality, sanitation, and life saving equipment are in compliance with the requirements established under this chapter. However, if any modifications are made to the physical plant of an existing water recreation facility the modifications shall comply with the requirements established under this chapter. The plans and specifications for the modification or construction shall be submitted to the applicable local authority or the department as applicable, but a person shall not be required to submit plans at both the state and local levels or apply for both a state and local permit. The plans shall be reviewed and may be approved or rejected or modifications or conditions imposed consistent with this chapter as the public health or safety may require, and a permit shall be issued or denied within thirty days of submittal. [1987 c 222 § 7; 1986 c 236 § 7.]

**70.90.170 Operating permit—Renewal.** An operating permit from the department or local health officer, as applicable, is required for each water recreation facility operated in this state. The permit shall be renewed annually. The permit shall be conspicuously displayed at the water recreation facility. [1987 c 222 § 8; 1986 c 236 § 8.]

**70.90.180 State and local health jurisdictions—Chapter not basis for liability.** Nothing in this chapter or the rules adopted under this chapter creates or forms the basis for any liability: (1) On the part of the state and local health jurisdictions, or their officers, employees, or agents, for any injury or damage resulting from the failure of the owner or operator of water recreation facilities to comply with this chapter or the rules adopted under this chapter; or (2) by reason or in consequence of any act or omission in connection with the implementation or enforcement of this chapter or the rules adopted under this chapter on the part of the state and local health jurisdictions, or by their officers, employees, or agents.

All actions of local health officers and the secretary shall be deemed an exercise of the state's police power. [1987 c 222 § 9; 1986 c 236 § 9.]

**70.90.190 Reporting of injury, disease, or death.** Any person operating a water recreation facility shall report to the local health officer or the department any serious injury, communicable disease, or death occurring at or caused by the water recreation facility. [1987 c 222 § 10; 1986 c 236 § 10.]

**70.90.200 Civil penalties.** County, city, or town legislative authorities and the secretary, as applicable, may establish civil penalties for a violation of this chapter or the rules adopted under this chapter not to exceed five hundred dollars. Each day upon which a violation occurs constitutes a separate violation. A person violating this chapter may be enjoined from continuing the violation. [1986 c 236 § 11.]

**70.90.205 Criminal penalties.** The violation of any provisions of this chapter and any rules adopted under this chapter shall be a misdemeanor punishable by a fine of not more than five hundred dollars. [1987 c 222 § 11.]

**70.90.210 Adjudicative proceeding—Notice.** (1) Any person aggrieved by an order of the department or by the imposition of a civil fine by the department has the right to an adjudicative proceeding. RCW 43.70.095 governs department notice of a civil fine and a person's right to an adjudicative proceeding.

(2) Any person aggrieved by an order of a local health officer or by the imposition of a civil fine by the officer has the right to appeal. The hearing is governed by the local health jurisdiction's administrative appeals process. Notice shall be provided by the local health jurisdiction consistent with its due process requirements. [1991 c 3 § 354; 1989 c 175 § 130; 1986 c 236 § 12.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**70.90.230 Insurance required.** (1) A recreational water contact facility shall not be operated within the state unless the owner or operator has purchased insurance in an amount not less than one hundred thousand dollars against liability for bodily injury to or death of one or more persons in any one accident arising out of the use of the recreational water contact facility.

(2) The board may require a recreational water contact facility to purchase insurance in addition to the amount required in subsection (1) of this section. [1986 c 236 § 14.]

**70.90.240 Sale of spas, pools, and tubs—Operating instructions and health caution required.** Every seller of spas, pools and tubs under RCW 70.90.110(1) (a) and (c) shall furnish to the purchaser a complete set of operating instructions which shall include detailed instructions on the safe use of the spa, pool, or tub and for the proper treatment of water to reduce health risks to the purchaser. Included in the instructions shall be information about the health effects of hot water and a specific caution and explanation of the health effects of hot water on pregnant women. [1987 c 222 § 4.]

**70.90.250 Application of chapter.** This chapter applies to all water recreation facilities regardless of whether ownership is public or private and regardless of whether the intended use is commercial or private, except that this chapter shall not apply to:

- (1) Any water recreation facility for the sole use of residents and invited guests at a single family dwelling;
- (2) Therapeutic water facilities operated exclusively for physical therapy; and
- (3) Steam baths and saunas. [1987 c 222 § 3.]

**70.90.910 Severability—1986 c 236.** If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1986 c 236 § 17.]

**70.90.911 Severability—1987 c 222.** If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1987 c 222 § 13.]

## Chapter 70.92 RCW

### PROVISIONS IN BUILDINGS FOR AGED AND HANDICAPPED PERSONS

#### Sections

70.92.100	Legislative intent.
70.92.110	Buildings and structures to which standards and specifications apply—Exemptions.
70.92.120	Handicap symbol—Display—Signs showing location of entrance for handicapped.
70.92.130	Definitions.
70.92.140	Minimum standards for facilities—Adoption—Facilities to be included.
70.92.150	Standards adopted by other states to be considered—Majority vote.
70.92.160	Waiver from compliance with standards.
70.92.170	Personal wireless service facilities—Rules.

*Making buildings and facilities accessible to and usable by individuals with disabilities: RCW 19.27.031(5).*

**70.92.100 Legislative intent.** It is the intent of the legislature that, notwithstanding any law to the contrary, plans and specifications for the erection of buildings through the use of public or private funds shall make special provisions for elderly or physically disabled persons. [1975 1st ex.s. c 110 § 1.]

**70.92.110 Buildings and structures to which standards and specifications apply—Exemptions.** The standards and specifications adopted under this chapter shall, as provided in this section, apply to buildings, structures, or portions thereof used primarily for group A-1 through group U-1 occupancies, except for group R-3 occupancies, as defined in the Uniform Building Code, 1994 edition, published by the International Conference of Building Officials. All such buildings, structures, or portions thereof, which are constructed, substantially remodeled, or substantially rehabilitated after July 1, 1976, shall conform to the standards and specifications adopted under this chapter: PROVIDED, That

the following buildings, structures, or portions thereof shall be exempt from this chapter:

(1) Buildings, structures, or portions thereof for which construction contracts have been awarded prior to July 1, 1976;

(2) Any building, structure, or portion thereof in respect to which the administrative authority deems, after considering all circumstances applying thereto, that full compliance is impracticable: PROVIDED, That, such a determination shall be made no later than at the time of issuance of the building permit for the construction, remodeling, or rehabilitation: PROVIDED FURTHER, That the board of appeals provided for in chapter 1 of the Uniform Building Code shall have jurisdiction to hear and decide appeals from any decision by the administrative authority regarding a waiver or failure to grant a waiver from compliance with the standards adopted pursuant to RCW 70.92.100 through 70.92.160. The provisions of the Uniform Building Code regarding the appeals process shall govern the appeals herein;

(3) Any building or structure used solely for dwelling purposes and which contains not more than two dwelling units;

(4) Any building or structure not used primarily for group A-1 through group U-1 occupancies, except for group R-3 occupancies, as set forth in the Uniform Building Code, 1994 edition, published by the International Conference of Building Officials; or

(5) Apartment houses with ten or fewer units. [1995 c 343 § 3; 1989 c 14 § 9; 1975 1st ex.s. c 110 § 2.]

**70.92.120 Handicap symbol—Display—Signs showing location of entrance for handicapped.** All buildings built in accordance with the standards and specifications provided for in this chapter, and containing facilities that are in compliance therewith, shall display the following symbol which is known as the International Symbol of Access.



Such symbol shall be white on a blue background and shall indicate the location of facilities designed for the physically disabled or elderly. When a building contains an entrance other than the main entrance which is ramped or level for use by physically disabled or elderly persons, a sign with the symbol showing its location shall be posted at or near the main entrance which shall be visible from the adja-

(2010 Ed.)

cent public sidewalk or way. [1995 c 343 § 4; 1975 1st ex.s. c 110 § 3.]

**70.92.130 Definitions.** As used in this chapter the following words and phrases shall have the following meanings unless the context clearly requires otherwise:

(1) "Administrative authority" means the building department of each county, city, or town of this state;

(2) "Substantially remodeled or substantially rehabilitated" means any alteration or restoration of a building or structure within any twelve-month period, the cost of which exceeds sixty percent of the value of the particular building or structure;

(3) "Council" means the state building code council. [1995 c 343 § 5; 1975 1st ex.s. c 110 § 4.]

**70.92.140 Minimum standards for facilities—Adoption—Facilities to be included.** The \*state building code advisory council shall adopt minimum standards by rule and regulation for the provision of facilities in buildings and structures to accommodate the elderly, as well as physically disabled persons, which shall include but not be limited to standards for:

- (1) Ramps;
- (2) Doors and doorways;
- (3) Stairs;
- (4) Floors;
- (5) Entrances;
- (6) Toilet rooms and paraphernalia therein;
- (7) Water fountains;
- (8) Public telephones;
- (9) Elevators;
- (10) Switches and levers for the control of light, ventilation, windows, mirrors, etc.;
- (11) Plaques identifying such facilities;
- (12) Turnstiles and revolving doors;
- (13) Kitchen facilities, where appropriate;
- (14) Grading of approaches to entrances;
- (15) Parking facilities;
- (16) Seating facilities, where appropriate, in buildings where people normally assemble. [1975 1st ex.s. c 110 § 5.]

\*Reviser's note: The "state building code advisory council" was redesignated the "state building code council" by 1985 c 360 § 11. See RCW 19.27.070.

**70.92.150 Standards adopted by other states to be considered—Majority vote.** The council in adopting these minimum standards shall consider minimum standards adopted by both law and rule and regulation in other states and the government of the United States: PROVIDED, That no standards adopted by the council pursuant to RCW 70.92.100 through 70.92.160 shall take effect until July 1, 1976. The council shall adopt such standards by majority vote pursuant to the provisions of chapter 34.05 RCW. [1995 c 343 § 6; 1975 1st ex.s. c 110 § 6.]

**70.92.160 Waiver from compliance with standards.** The administrative authority of any jurisdiction may grant a waiver from compliance with any standard adopted hereunder for a particular building or structure if it determines that compliance with the particular standard is impractical: PRO-

VIDED, That such a determination shall be made no later than at the time of issuance of the building permit for the construction, remodeling, or rehabilitation: PROVIDED FURTHER, That the board of appeals provided for in chapter 1 of the Uniform Building Code shall have jurisdiction to hear and decide appeals from any decision by the administrative authority regarding a waiver or failure to grant a waiver from compliance with the standards adopted pursuant to RCW 70.92.100 through 70.92.160. The provisions of the Uniform Building Code regarding the appeals process shall govern the appeals herein. [1995 c 343 § 7; 1975 1st ex.s. c 110 § 7.]

#### 70.92.170 Personal wireless service facilities—Rules.

(1) The state building code council shall amend its rules under chapter 70.92 RCW, to the extent practicable while still maintaining the certification of those regulations under the federal Americans with disabilities act, to exempt personal wireless services equipment shelters, or the room or enclosure housing equipment for personal wireless service facilities, that meet the following conditions: (a) The shelter is not staffed; and (b) to conduct maintenance activities, employees who visit the shelter must be able to climb.

(2) For the purposes of this section, "personal wireless service facilities" means facilities for the provision of personal wireless services. [1996 c 323 § 5.]

**Findings—1996 c 323:** See note following RCW 43.70.600.

### Chapter 70.93 RCW

#### WASTE REDUCTION, RECYCLING, AND MODEL LITTER CONTROL ACT

(Formerly: Model litter control and recycling act)

##### Sections

70.93.010	Legislative findings.
70.93.020	Declaration of purpose.
70.93.030	Definitions.
70.93.040	Administrative procedure act—Application to chapter.
70.93.050	Enforcement of chapter.
70.93.060	Littering prohibited—Penalties—Litter cleanup restitution payment.
70.93.070	Collection of fines and forfeitures.
70.93.080	Notice to public—Contents of chapter—Required.
70.93.090	Litter receptacles—Use of anti-litter symbol—Distribution—Placement—Violations—Penalties.
70.93.093	Official gatherings and sports facilities—Recycling.
70.93.095	Marinas and airports—Recycling.
70.93.097	Transported waste must be covered or secured.
70.93.110	Removal of litter—Responsibility.
70.93.180	Waste reduction, recycling, and litter control account—Distribution.
70.93.200	Department of ecology—Administration of anti-litter and recycling programs—Guidelines—Report to legislature.
70.93.210	Waste reduction, anti-litter, and recycling campaign—Industrial cooperation requested.
70.93.220	Litter collection programs—Department of ecology—Coordinating agency—Use of funds—Reporting.
70.93.230	Violations of chapter—Penalties.
70.93.250	Funding to local governments—Reports.
70.93.900	Severability—1971 ex.s. c 307.
70.93.910	Alternative to Initiative 40—Placement on ballot—Force and effect of chapter.
70.93.920	Severability—1979 c 94.

**Reviser's note:** Throughout chapter 70.93 RCW, the term "this 1971 amendatory act" has been changed to "this chapter"; "this 1971 amendatory act" [1971 ex.s. c 307] consists of this chapter, the 1971 amendment to RCW 46.61.655 and the repeal of RCW 9.61.120, 9.66.060, 9.66.070, and 46.61.650.

*Local adopt-a-highway programs:* RCW 47.40.105.

*Solid waste management, recovery and recycling:* Chapter 70.95 RCW.

*State parks:* RCW 79A.05.045.

**70.93.010 Legislative findings.** (1) The legislature finds:

(a) Washington state is experiencing rapid population growth and its citizens are increasingly mobile;

(b) There is a fundamental need for a healthful, clean, and beautiful environment;

(c) The proliferation and accumulation of litter discarded throughout this state impairs this need and constitutes a public health hazard;

(d) There is a need to conserve energy and natural resources, and the effective litter control and recovery and recycling of litter materials will serve to accomplish such conservation;

(e) In addition to effective litter control, there must be effective programs to accomplish waste reduction, the state's highest waste management priority; and

(f) There must also be effective systems to accomplish all components of recycling, including collection and processing.

(2) Recognizing the multifaceted nature of the state's solid waste management problems, the legislation enacted in 1971 and entitled the "Model Litter Control and Recycling Act" is hereby renamed the "waste reduction, recycling, and model litter control act." [1998 c 257 § 1; 1992 c 175 § 1; 1979 c 94 § 1; 1971 ex.s. c 307 § 1.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**70.93.020 Declaration of purpose.** The purpose of this chapter is to accomplish litter control, increase waste reduction, and stimulate all components of recycling throughout this state by delegating to the department of ecology the authority to:

(1) Conduct a permanent and continuous program to control and remove litter from this state to the maximum practical extent possible;

(2) Recover and recycle waste materials related to litter and littering;

(3) Foster public and private recycling of recyclable materials;

(4) Increase public awareness of the need for waste reduction, recycling, and litter control; and

(5) Coordinate the litter collection efforts and expenditure of funds for litter collection by other agencies identified in this chapter.

It is further the intent and purpose of this chapter to create jobs for employment of youth in litter cleanup and related activities and to stimulate and encourage small, private recycling centers. This program shall include the compatible goal of recovery of recyclable materials to conserve energy and natural resources wherever practicable. Every other department of state government and all local governmental units and agencies of this state shall cooperate with the department of ecology in the administration and enforcement of this chapter. The intent of this chapter is to add to and to coordinate existing recycling and litter control and removal efforts and not terminate or supplant such efforts. [1998 c 257 § 2; 1992 c 175 § 2; 1991 c 319 § 101; 1979 c 94 § 2; 1975-'76 2nd ex.s. c 41 § 7; 1971 ex.s. c 307 § 2.]

*Solid waste disposal, recovery and recycling:* Chapter 70.95 RCW.

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**70.93.030 Definitions.** The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

- (1) "Conveyance" means a boat, airplane, or vehicle.
- (2) "Department" means the department of ecology.
- (3) "Director" means the director of the department of ecology.
- (4) "Disposable package or container" means all packages or containers defined as such by rules adopted by the department of ecology.
- (5) "Junk vehicle" has the same meaning as defined in RCW 46.55.010.
- (6) "Litter" means all waste material including but not limited to disposable packages or containers thrown or deposited as herein prohibited and solid waste that is illegally dumped, but not including the wastes of the primary processes of mining, logging, sawmilling, farming, or manufacturing. "Litter" includes the material described in subsection (11) of this section as "potentially dangerous litter."
- (7) "Litter bag" means a bag, sack, or other container made of any material which is large enough to serve as a receptacle for litter inside the vehicle or watercraft of any person. It is not necessarily limited to the state approved litter bag but must be similar in size and capacity.
- (8) "Litter receptacle" means those containers adopted by the department of ecology and which may be standardized as to size, shape, capacity, and color and which shall bear the state anti-litter symbol, as well as any other receptacles suitable for the depositing of litter.
- (9) "Official gathering" means an event where authorization to hold the event is approved, recognized, or issued by a government, public body, or authority, including but not limited to fairs, musical concerts, athletic games, festivals, tournaments, or any other formal or ceremonial event, during which beverages are sold by a vendor or vendors in single-use aluminum, glass, or plastic bottles or cans.
- (10) "Person" means any political subdivision, government agency, municipality, industry, public or private corporation, copartnership, association, firm, individual, or other entity whatsoever.
- (11) "Potentially dangerous litter" means litter that is likely to injure a person or cause damage to a vehicle or other property. "Potentially dangerous litter" means:
  - (a) Cigarettes, cigars, or other tobacco products that are capable of starting a fire;
  - (b) Glass;
  - (c) A container or other product made predominantly or entirely of glass;
  - (d) A hypodermic needle or other medical instrument designed to cut or pierce;
  - (e) Raw human waste, including soiled baby diapers, regardless of whether or not the waste is in a container of any sort; and
  - (f) Nails or tacks.
- (12) "Public place" means any area that is used or held out for use by the public whether owned or operated by public or private interests.

(2010 Ed.)

(13) "Recycling" means transforming or remanufacturing waste materials into a finished product for use other than landfill disposal or incineration.

(14) "Recycling center" means a central collection point for recyclable materials.

(15) "Sports facility" means an outdoor recreational sports facility, including but not limited to athletic fields and ballparks, at which beverages are sold by a vendor or vendors in single-use aluminum, glass, or plastic bottles or cans.

(16) "To litter" means a single or cumulative act of disposing of litter.

(17) "Vehicle" includes every device capable of being moved upon a public highway and in, upon, or by which any persons or property is or may be transported or drawn upon a public highway, excepting devices moved by human or animal power or used exclusively upon stationary rails or tracks.

(18) "Waste reduction" means reducing the amount or toxicity of waste generated or reusing materials.

(19) "Watercraft" means any boat, ship, vessel, barge, or other floating craft. [2007 c 244 § 1; 2003 c 337 § 2; 2000 c 154 § 1; 1998 c 257 § 3; 1991 c 319 § 102; 1979 c 94 § 3; 1971 ex.s. c 307 § 3.]

**Findings—2003 c 337:** See note following RCW 70.93.060.

**Severability—2000 c 154:** "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [2000 c 154 § 5.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**70.93.040 Administrative procedure act—Application to chapter.** In addition to his other powers and duties, the director shall have the power to propose and to adopt pursuant to chapter 34.05 RCW rules and regulations necessary to carry out the provisions, purposes, and intent of this chapter. [1971 ex.s. c 307 § 4.]

**70.93.050 Enforcement of chapter.** The director shall designate trained employees of the department to be vested with police powers to enforce and administer the provisions of this chapter and all rules adopted thereunder. The director shall also have authority to contract with other state and local governmental agencies having law enforcement capabilities for services and personnel reasonably necessary to carry out the enforcement provisions of this chapter. In addition, state patrol officers, fish and wildlife officers, fire wardens, deputy fire wardens and forest rangers, sheriffs and marshals and their deputies, and police officers, and those employees of the department of ecology and the parks and recreation commission vested with police powers all shall enforce the provisions of this chapter and all rules adopted thereunder and are hereby empowered to issue citations to and/or arrest without warrant, persons violating any provision of this chapter or any of the rules adopted hereunder. All of the foregoing enforcement officers may serve and execute all warrants, citations, and other process issued by the courts in enforcing the provisions of this chapter and rules adopted hereunder. In addition, mailing by registered mail of such warrant, citation, or other process to his or her last known place of residence shall be deemed as personal service upon the person charged. [2001 c 253 § 8; 1980 c 78 § 132; 1979 c 94 § 4; 1971 ex.s. c 307 § 5.]

**Effective date—Intent, construction—Savings—Severability—1980 c 78:** See notes following RCW 77.04.010.

**70.93.060 Littering prohibited—Penalties—Litter cleanup restitution payment.** (1) It is a violation of this section to abandon a junk vehicle upon any property. In addition, no person shall throw, drop, deposit, discard, or otherwise dispose of litter upon any public property in the state or upon private property in this state not owned by him or her or in the waters of this state whether from a vehicle or otherwise including but not limited to any public highway, public park, beach, campground, forest land, recreational area, trailer park, highway, road, street, or alley except:

(a) When the property is designated by the state or its agencies or political subdivisions for the disposal of garbage and refuse, and the person is authorized to use such property for that purpose;

(b) Into a litter receptacle in a manner that will prevent litter from being carried away or deposited by the elements upon any part of the private or public property or waters.

(2)(a) Except as provided in subsection (4) of this section, it is a class 3 civil infraction as provided in RCW 7.80.120 for a person to litter in an amount less than or equal to one cubic foot.

(b) It is a misdemeanor for a person to litter in an amount greater than one cubic foot but less than one cubic yard. The person shall also pay a litter cleanup restitution payment equal to twice the actual cost of cleanup, or fifty dollars per cubic foot of litter, whichever is greater. The court shall distribute one-half of the restitution payment to the landowner and one-half of the restitution payment to the law enforcement agency investigating the incident. The court may, in addition to or in lieu of part or all of the cleanup restitution payment, order the person to pick up and remove litter from the property, with prior permission of the legal owner or, in the case of public property, of the agency managing the property. The court may suspend or modify the litter cleanup restitution payment for a first-time offender under this section, if the person cleans up and properly disposes of the litter.

(c) It is a gross misdemeanor for a person to litter in an amount of one cubic yard or more. The person shall also pay a litter cleanup restitution payment equal to twice the actual cost of cleanup, or one hundred dollars per cubic foot of litter, whichever is greater. The court shall distribute one-half of the restitution payment to the landowner and one-half of the restitution payment to the law enforcement agency investigating the incident. The court may, in addition to or in lieu of part or all of the cleanup restitution payment, order the person to pick up and remove litter from the property, with prior permission of the legal owner or, in the case of public property, of the agency managing the property. The court may suspend or modify the litter cleanup restitution payment for a first-time offender under this section, if the person cleans up and properly disposes of the litter.

(d) If a junk vehicle is abandoned in violation of this section, RCW 46.55.230 governs the vehicle's removal, disposal, and sale, and the penalties that may be imposed against the person who abandoned the vehicle.

(3) If the violation occurs in a state park, the court shall, in addition to any other penalties assessed, order the person to perform twenty-four hours of community restitution in the

state park where the violation occurred if the state park has stated an intent to participate as provided in RCW 79A.05.050.

(4) It is a class 1 civil infraction as provided in RCW 7.80.120 for a person to discard, in violation of this section, potentially dangerous litter in any amount. [2003 c 337 § 3; 2002 c 175 § 45; 2001 c 139 § 1; 2000 c 154 § 2; 1997 c 159 § 1; 1996 c 263 § 1; 1993 c 292 § 1; 1983 c 277 § 1; 1979 ex.s. c 39 § 1; 1971 ex.s. c 307 § 6.]

**Findings—2003 c 337:** "(1) The legislature finds that the littering of potentially dangerous products poses a greater danger to the public safety than other classes of litter. Broken glass, human waste, and other dangerous materials along roadways, within parking lots, and on pedestrian, bicycle, and recreation trails elevates the risk to public safety, such as vehicle tire punctures, and the risk to the community volunteers who spend their time gathering and properly disposing of the litter left behind by others. As such, the legislature finds that a higher penalty should be imposed on those who improperly dispose of potentially dangerous products, such as is imposed on those who improperly dispose of tobacco products.

(2) The legislature further finds that litter is a nuisance, and, in order to alleviate such a nuisance, counties must be provided statutory authority to declare what shall be a nuisance, to abate a nuisance, and to impose and collect fines upon parties who may create, cause, or commit a nuisance." [2003 c 337 § 1.]

**Effective date—2002 c 175:** See note following RCW 7.80.130.

**Severability—2000 c 154:** See note following RCW 70.93.030.

*Lighted material, etc.—Receptacles in conveyances:* RCW 76.04.455.

*Throwing materials on highway prohibited—Removal:* RCW 46.61.645.

**70.93.070 Collection of fines and forfeitures.** The director may prescribe the procedures for the collection of penalties, costs, and other charges allowed by chapter 7.80 RCW for violations of this chapter. [1996 c 263 § 2; 1993 c 292 § 2; 1983 c 277 § 2; 1971 ex.s. c 307 § 7.]

**70.93.080 Notice to public—Contents of chapter—Required.** Pertinent portions of this chapter shall be posted along the public highways of this state and in all campgrounds and trailer parks, at all entrances to state parks, forest lands, and recreational areas, at all public beaches, and at other public places in this state where persons are likely to be informed of the existence and content of this chapter and the penalties for violating its provisions. [1971 ex.s. c 307 § 8.]

**70.93.090 Litter receptacles—Use of anti-litter symbol—Distribution—Placement—Violations—Penalties.** The department shall design and the director shall adopt by rule or regulation one or more types of litter receptacles which are reasonably uniform as to size, shape, capacity and color, for wide and extensive distribution throughout the public places of this state. Each such litter receptacle shall bear an anti-litter symbol as designed and adopted by the department. In addition, all litter receptacles shall be designed to attract attention and to encourage the depositing of litter.

Litter receptacles of the uniform design shall be placed along the public highways of this state and at all parks, campgrounds, trailer parks, drive-in restaurants, gasoline service stations, tavern parking lots, shopping centers, grocery store parking lots, parking lots of major industrial firms, marinas, boat launching areas, boat moorage and fueling stations, public and private piers, beaches and bathing areas, and such other public places within this state as specified by rule or regulation of the director adopted pursuant to chapter 34.05

RCW. The number of such receptacles required to be placed as specified herein shall be determined by a formula related to the need for such receptacles.

It shall be the responsibility of any person owning or operating any establishment or public place in which litter receptacles of the uniform design are required by this section to procure and place such receptacles at their own expense on the premises in accord with rules and regulations adopted by the department.

Any person, other than a political subdivision, government agency, or municipality, who fails to place such litter receptacles on the premises in the numbers required by rule or regulation of the department, violating the provisions of this section or rules or regulations adopted thereunder shall be subject to a fine of ten dollars for each day of violation. [1998 c 257 § 4; 1979 c 94 § 5; 1971 ex.s. c 307 § 9.]

**70.93.093 Official gatherings and sports facilities—Recycling.** In communities where there is an established curbside service and where recycling service is available to businesses, a recycling program must be provided at every official gathering and at every sports facility by the vendors who sell beverages in single-use aluminum, glass, or plastic bottles or cans. A recycling program includes provision of receptacles or reverse vending machines, and provisions to transport and recycle the collected materials. Facility managers or event coordinators may choose to work with vendors to coordinate the recycling program. The recycling receptacles or reverse vending machines must be clearly marked, and must be provided for the aluminum, glass, or plastic bottles or cans that contain the beverages sold by the vendor. [2007 c 244 § 2.]

**70.93.095 Marinas and airports—Recycling.** (1) Each marina with thirty or more slips and each airport providing regularly scheduled commercial passenger service shall provide adequate recycling receptacles on, or adjacent to, its facility. The receptacles shall be clearly marked for the disposal of at least two of the following recyclable materials: Aluminum, glass, newspaper, plastic, and tin.

(2) Marinas and airports subject to this section shall not be required to provide recycling receptacles until the city or county in which it is located adopts a waste reduction and recycling element of a solid waste management plan pursuant to RCW 70.95.090. [1991 c 11 § 2.]

**70.93.097 Transported waste must be covered or secured.** (1) By January 1, 1994, each county or city with a staffed transfer station or landfill in its jurisdiction shall adopt an ordinance to reduce litter from vehicles. The ordinance shall require the operator of a vehicle transporting solid waste to a staffed transfer station or landfill to secure or cover the vehicle's waste in a manner that will prevent spillage. The ordinance may provide exemptions for vehicle operators transporting waste that is unlikely to spill from a vehicle.

The ordinance shall, in the absence of an exemption, require a fee, in addition to other landfill charges, for a person arriving at a staffed landfill or transfer station without a cover on the vehicle's waste or without the waste secured.

(2010 Ed.)

(2) The fee collected under subsection (1) of this section shall be deposited, no less often than quarterly, with the city or county in which the landfill or transfer station is located.

(3) A vehicle transporting sand, dirt, or gravel in compliance with the provisions of RCW 46.61.655 shall not be required to secure or cover a load pursuant to ordinances adopted under this section. [1993 c 399 § 1.]

**70.93.110 Removal of litter—Responsibility.** Responsibility for the removal of litter from receptacles placed at parks, beaches, campgrounds, trailer parks, and other public places shall remain upon those state and local agencies performing litter removal. Removal of litter from litter receptacles placed on private property which is used by the public shall remain the responsibility of the owner of such private property. [1971 ex.s. c 307 § 11.]

**70.93.180 Waste reduction, recycling, and litter control account—Distribution.** (1) There is hereby created an account within the state treasury to be known as the "waste reduction, recycling, and litter control account". Moneys in the account may be spent only after appropriation. Expenditures from the waste reduction, recycling, and litter control account shall be used as follows:

(a) Fifty percent to the department of ecology, for use by the departments of ecology, natural resources, revenue, transportation, and corrections, and the parks and recreation commission, for use in litter collection programs, to be distributed under RCW 70.93.220. The amount to the department of ecology shall also be used for a central coordination function for litter control efforts statewide, for the biennial litter survey under RCW 70.93.200(8), and for statewide public awareness programs under RCW 70.93.200(7). The amount to the department shall also be used to defray the costs of administering the funding, coordination, and oversight of local government programs for waste reduction, litter control, and recycling, so that local governments can apply one hundred percent of their funding to achieving program goals. The amount to the department of revenue shall be used to enforce compliance with the litter tax imposed in chapter 82.19 RCW;

(b) Twenty percent to the department for local government funding programs for waste reduction, litter control, and recycling activities by cities and counties under RCW 70.93.250, to be administered by the department of ecology; and

(c) Thirty percent to the department of ecology for waste reduction and recycling efforts.

(2) All taxes imposed in RCW 82.19.010 and fines and bail forfeitures collected or received pursuant to this chapter shall be deposited in the waste reduction, recycling, and litter control account and used for the programs under subsection (1) of this section.

(3) Not less than five percent and no more than ten percent of the amount appropriated into the waste reduction, recycling, and litter control account every biennium shall be reserved for capital needs, including the purchase of vehicles for transporting crews and for collecting litter and solid waste. Capital funds shall be distributed among state agencies and local governments according to the same criteria

provided in RCW 70.93.220 for the remainder of the funds, so that the most effective waste reduction, litter control, and recycling programs receive the most funding. The intent of this subsection is to provide funds for the purchase of equipment that will enable the department to account for the greatest return on investment in terms of reaching a zero litter goal.

(4) During the 2009-2011 fiscal biennium, the legislature may transfer from the waste reduction, recycling, and litter control account to the state general fund such amounts as reflect the excess fund balance of the account. Additionally, during the 2009-2011 fiscal biennium, subsection (1)(a), (b), and (c) of this section is suspended. [2010 1st sp.s. c 37 § 945; 2009 c 564 § 950; 2005 c 518 § 939; 1998 c 257 § 5; 1992 c 175 § 8; 1991 sp.s. c 13 § 40; 1985 c 57 § 68; 1983 c 277 § 3; 1971 ex.s. c 307 § 18.]

**Effective date—2010 1st sp.s. c 37:** See note following RCW 13.06.050.

**Effective date—2009 c 564:** See note following RCW 2.68.020.

**Severability—Effective date—2005 c 518:** See notes following RCW 28A.500.030.

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**70.93.200 Department of ecology—Administration of anti-litter and recycling programs—Guidelines—Report to legislature.** In addition to the foregoing, the department of ecology shall:

(1) Serve as the coordinating agency between the various industry organizations seeking to aid in the waste reduction, anti-litter, and recycling efforts;

(2) Serve as the coordinating and administrating agency for all state agencies and local governments receiving funds for waste reduction, litter control, and recycling under this chapter;

(3) Recommend to the governing bodies of all local governments that they adopt ordinances similar to the provisions of this chapter;

(4) Cooperate with all local governments to accomplish coordination of local waste reduction, anti-litter, and recycling efforts;

(5) Encourage, organize, and coordinate all voluntary local waste reduction, anti-litter, and recycling campaigns seeking to focus the attention of the public on the programs of this state to reduce waste, control and remove litter, and foster recycling;

(6) Investigate the availability of, and apply for funds available from any private or public source to be used in the program outlined in this chapter;

(7) Develop statewide programs by working with local governments, payers of the waste reduction, recycling, and litter control tax, and industry organizations that are active in waste reduction, anti-litter, and recycling efforts to increase public awareness of and participation in recycling and to stimulate and encourage local private recycling centers, public participation in recycling and research and development in the field of litter control, and recycling, removal, and disposal of litter-related recycling materials;

(8) Conduct a biennial statewide litter survey targeted at litter composition, sources, demographics, and geographic trends; and

(9) Provide a biennial summary of all waste reduction, litter control, and recycling efforts statewide including those of the department of ecology, and other state agencies and local governments funded for such programs under this chapter. This report is due to the legislature in March of even-numbered years. [1998 c 257 § 8; 1979 c 94 § 7; 1971 ex.s. c 307 § 20.]

**70.93.210 Waste reduction, anti-litter, and recycling campaign—Industrial cooperation requested.** To aid in the statewide waste reduction, anti-litter, and recycling campaign, the state legislature requests that the payers of the waste reduction, recycling, and litter control tax and the various industry organizations which are active in waste reduction, anti-litter, and recycling efforts provide active cooperation with the department of ecology so that additional effect may be given to the waste reduction, anti-litter, and recycling campaign of the state of Washington. [1998 c 257 § 9; 1979 c 94 § 8; 1971 ex.s. c 307 § 21.]

**70.93.220 Litter collection programs—Department of ecology—Coordinating agency—Use of funds—Reporting.** (1) The department of ecology is the coordinating and administrative agency working with the departments of natural resources, revenue, transportation, and corrections, and the parks and recreation commission in developing a biennial budget request for funds for the various agencies' litter collection programs.

(2) Funds may be used to meet the needs of efficient and effective litter collection and illegal dumping programs identified by the various agencies. The department shall develop criteria for evaluating the effectiveness and efficiency of the waste reduction, litter control, and recycling programs being administered by the various agencies listed in RCW 70.93.180, and shall distribute funds according to the effectiveness and efficiency of those programs. In addition, the department shall approve funding requests for efficient and effective waste reduction, litter control, and recycling programs, provide funds, and monitor the results of all agency programs.

(3) All agencies are responsible for reporting information on their litter collection programs, as requested by the department of ecology. Beginning in the year 2000, this information shall be provided to the department by March of even-numbered years. In 1998, this information shall be provided by July 1st.

(4) By December 1998, and in every even-numbered year thereafter, the department shall provide a report to the legislature summarizing biennial waste reduction, litter control, and recycling activities by state agencies and submitting the coordinated litter budget request of all agencies. [1998 c 257 § 6.]

**70.93.230 Violations of chapter—Penalties.** Every person convicted of a violation of this chapter for which no penalty is specially provided for shall be punished by a fine of not more than fifty dollars for each such violation. [1983 c 277 § 4; 1971 ex.s. c 307 § 23.]

**70.93.250 Funding to local governments—Reports.**

(1) The department shall provide funding to local units of government to establish, conduct, and evaluate community restitution and other programs for waste reduction, litter and illegal dump cleanup, and recycling. Programs eligible for funding under this section shall include, but not be limited to, programs established pursuant to RCW 72.09.260.

(2) Funds may be offered for costs associated with community waste reduction, litter cleanup and prevention, and recycling activities. The funding program must be flexible, allowing local governments to use funds broadly to meet their needs to reduce waste, control litter and illegal dumping, and promote recycling. Local governments are required to contribute resources or in-kind services. The department shall evaluate funding requests from local government according to the same criteria as those developed in RCW 70.93.220, provide funds according to the effectiveness and efficiency of local government litter control programs, and monitor the results of all local government programs under this section.

(3) Local governments shall report information as requested by the department in funding agreements entered into by the department and a local government. The department shall report to the appropriate standing committees of the legislature by December of even-numbered years on the effectiveness of local government waste reduction, litter, and recycling programs funded under this section. [2002 c 175 § 46. Prior: 1998 c 257 § 10; 1998 c 245 § 128; 1990 c 66 § 3.]

**Effective date—2002 c 175:** See note following RCW 7.80.130.

**Findings—Intent—1990 c 66:** See note following RCW 72.09.260.

**70.93.900 Severability—1971 ex.s. c 307.** If any provision of this 1971 amendatory act or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provisions to other persons or circumstances is not affected. [1971 ex.s. c 307 § 25.]

**70.93.910 Alternative to Initiative 40—Placement on ballot—Force and effect of chapter.** This 1971 amendatory act constitutes an alternative to Initiative 40. The secretary of state is directed to place this 1971 amendatory act on the ballot in conjunction with Initiative 40 at the next general election.

This 1971 amendatory act shall continue in force and effect until the secretary of state certifies the election results on this 1971 amendatory act. If affirmatively approved at the general election, this 1971 amendatory act shall continue in effect thereafter. [1971 ex.s. c 307 § 27.]

**Reviser's note:** Chapter 70.93 RCW [1971 ex.s. c 307] was approved and validated at the November 7, 1972, general election as Alternative Initiative Measure 40B.

**70.93.920 Severability—1979 c 94.** If any provision of this 1979 act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1979 c 94 § 11.]

(2010 Ed.)

**Chapter 70.94 RCW****WASHINGTON CLEAN AIR ACT**

## Sections

70.94.011	Declaration of public policies and purpose.
70.94.015	Air pollution control account—Air operating permit account.
70.94.017	Air pollution control account—Subaccount distribution.
70.94.025	Pollution control hearings board of the state of Washington as affecting chapter 70.94 RCW.
70.94.030	Definitions.
70.94.033	Environmental excellence program agreements—Effect on chapter.
70.94.035	Technical assistance program for regulated community.
70.94.037	Transportation activities—"Conformity" determination requirements.
70.94.040	Causing or permitting air pollution unlawful—Exception.
70.94.041	Exception—Burning wood at historic structure.
70.94.053	Air pollution control authorities created—Activated authorities, composition, meetings—Delineation of air pollution regions, considerations.
70.94.055	Air pollution control authority may be activated by counties, when.
70.94.057	Multicounty authority may be formed by contiguous counties—Name.
70.94.068	Merger of active and inactive authorities to form multicounty or regional authority—Procedure.
70.94.069	Merger of active and inactive authorities to form multicounty or regional authority—Reorganization of board of directors—Rules and regulations.
70.94.070	Resolutions activating authorities—Contents—Filings—Effective date of operation.
70.94.081	Powers and duties of authorities.
70.94.085	Cost-reimbursement agreements.
70.94.091	Excess tax levy authorized—Election, procedure, expense.
70.94.092	Air pollution control authority—Fiscal year—Adoption of budget—Contents.
70.94.093	Methods for determining proportion of supplemental income to be paid by component cities, towns and counties—Payment.
70.94.094	Designation of authority treasurer and auditor—Duties.
70.94.095	Assessed valuation of taxable property, certification by county assessors.
70.94.096	Authorization to borrow money.
70.94.097	Special air pollution studies—Contracts for conduct of.
70.94.100	Air pollution control authority—Board of directors—Composition—Term.
70.94.110	City selection committees.
70.94.120	City selection committees—Meetings, notice, recording officer—Alternative mail balloting—Notice.
70.94.130	Air pollution control authority—Board of directors—Powers, quorum, officers, compensation.
70.94.141	Air pollution control authority—Powers and duties of activated authority.
70.94.142	Subpoena powers—Witnesses, expenses and mileage—Rules and regulations.
70.94.143	Federal aid.
70.94.151	Classification of air contaminant sources—Registration—Fee—Registration program defined—Adoption of rules requiring persons to report emissions of greenhouse gases.
70.94.152	Notice may be required of construction of proposed new contaminant source—Submission of plans—Approval, disapproval—Emission control—"De minimis new sources" defined.
70.94.153	Existing stationary source—Replacement or substantial alteration of emission control technology.
70.94.154	RACT requirements.
70.94.155	Control of emissions—Bubble concept—Schedules of compliance.
70.94.157	Preemption of uniform building and fire codes.
70.94.161	Operating permits for air contaminant sources—Generally—Fees, report to legislature.
70.94.162	Annual fees from operating permit program source to cover cost of program.
70.94.163	Source categories not required to have a permit—Recommendations.
70.94.165	Gasoline recovery devices—Limitation on requiring.
70.94.170	Air pollution control authority control officer.
70.94.181	Variations—Application for—Considerations—Limitations—Renewals—Review.
70.94.200	Investigation of conditions by control officer or department—Entering private, public property.
70.94.205	Confidentiality of records and information.
70.94.211	Enforcement actions by air authority—Notice to violators.

70.94.221	Order final unless appealed to pollution control hearings board.	70.94.600	Reports of authorities to department of ecology—Contents.
70.94.230	Rules of authority supersede local rules, regulations, etc.—Exceptions.	70.94.610	Burning used oil fuel in land-based facilities.
70.94.231	Air pollution control authority—Dissolution of prior districts—Continuation of rules and regulations until superseded.	70.94.620	Metals mining and milling operations permits—Inspections by department of ecology.
70.94.240	Air pollution control advisory council.	70.94.630	Sulfur dioxide abatement account—Coal-fired thermal electric generation facilities—Application—Determination and assessment of progress—Certification of pollution level—Reimbursement—Time limit for and extension of account.
70.94.260	Dissolution of authority—Deactivation of authority.	70.94.640	Odors or fugitive dust caused by agricultural activities consistent with good agricultural practices exempt from chapter.
70.94.262	Withdrawal from multicounty authority.	70.94.645	Ammonia emissions from use as agricultural or silvicultural fertilizer—Regulation prohibited.
70.94.331	Powers and duties of department.		
70.94.332	Enforcement actions by department—Notice to violators.		
70.94.335	Hazardous substance remedial actions—Procedural requirements not applicable.		
70.94.350	Contracts, agreements for use of personnel by department—Reimbursement—Merit system regulations waived.		
70.94.370	Powers and rights of governmental units and persons are not limited by act or recommendations.	70.94.6511	Definition of "outdoor burning."
70.94.380	Emission control requirements.	70.94.6512	Outdoor burning—Fires prohibited—Exceptions.
70.94.385	State financial aid—Application for—Requirements.	70.94.6514	Outdoor burning—Areas where prohibited—Exceptions—Use for management of storm or flood-related debris—Silvicultural burning.
70.94.390	Hearing upon activation of authority—Finding—Assumption of jurisdiction by department—Expenses.	70.94.6516	Outdoor burning—Permits issued by political subdivisions.
70.94.395	Air contaminant sources—Regulation by department; authorities may be more stringent—Hearing—Standards.	70.94.6518	Limited outdoor burning—Establishment of program.
70.94.400	Order activating authority—Filing—Hearing—Amendment of order.	70.94.6520	Limited outdoor burning—Construction.
70.94.405	Air pollution control authority—Review by department of program.	70.94.6522	Limited outdoor burning—Authority of local air pollution control authority or department of ecology to allow outdoor fires not restricted.
70.94.410	Air pollution control authority—Assumption of control by department.	70.94.6524	Limited outdoor burning—Program—Exceptions.
70.94.420	State departments and agencies to cooperate with department and authorities.	70.94.6526	Limited outdoor burning—Permits issued by political subdivisions—Types of fires permitted.
70.94.422	Department of health powers regarding radionuclides—Energy facility site evaluation council authority over permit program sources.	70.94.6528	Permits—Issuance—Conditioning of permits—Fees—Agricultural burning practices and research task force—Development of public education materials—Agricultural activities.
70.94.425	Restraining orders—Injunctions.	70.94.6530	Delegation of permit issuance and enforcement to political subdivisions.
70.94.430	Penalties.	70.94.6532	Open burning of grasses grown for seed—Alternatives—Studies—Deposit of permit fees in special grass seed burning account—Procedures—Limitations—Report.
70.94.431	Civil penalties—Excusable excess emissions.	70.94.6534	Burning permits for abating or prevention of forest fire hazards, management of ecosystems, instruction or silvicultural operations—Issuance.
70.94.435	Additional means for enforcement of chapter.	70.94.6536	Silvicultural forest burning—Reduce statewide emissions—Exemption—Monitoring program.
70.94.440	Short title.	70.94.6538	Burning permits for abating or prevention of forest fire hazards, management of ecosystems, instruction or silvicultural operations—Conditions for issuance and use of permits—Air quality standards to be met—Alternate methods to lessen forest debris.
70.94.445	Air pollution control facilities—Tax exemptions and credits.	70.94.6540	Cooperation between department of natural resources and state, local, or regional air pollution authorities—Withholding of permits.
70.94.450	Wood stoves—Policy.	70.94.6542	Adoption of rules.
70.94.453	Wood stoves—Definitions.	70.94.6544	Burning permits for regeneration of rare and endangered plants.
70.94.455	Residential and commercial construction—Burning and heating device standards.	70.94.6546	Aircraft crash rescue fire training—Training to fight structural fires—Training to fight forest fires—Other firefighter instruction.
70.94.457	Solid fuel burning devices—Emission performance standards.	70.94.6548	Outdoor burning allowed for managing storm or flood-related debris.
70.94.460	Sale of unapproved wood stoves—Prohibited.	70.94.6550	Fires necessary for Indian ceremonies or smoke signals.
70.94.463	Sale of unapproved wood stoves—Penalty.	70.94.6552	Permit to set fires for weed abatement.
70.94.467	Sale of unapproved wood stoves—Application of law to advertising media.	70.94.6554	Disposal of tumbleweeds.
70.94.470	Residential solid fuel burning devices—Opacity levels—Enforcement and public education.	70.94.710	Air pollution episodes—Legislative finding—Declaration of policy.
70.94.473	Limitations on burning wood for heat—First and second stage burn bans—Report on second stage burn ban—Report to the legislature.	70.94.715	Air pollution episodes—Episode avoidance plan—Contents—Source emission reduction plans—Authority—Considered orders.
70.94.475	Liability of condominium owners' association or resident association.	70.94.720	Air pollution episodes—Declaration of air pollution emergency by governor.
70.94.477	Limitations on use of solid fuel burning devices.	70.94.725	Air pollution episodes—Restraining orders, temporary injunctions to enforce orders—Procedure.
70.94.480	Wood stove education program.	70.94.730	Air pollution episodes—Orders to be effective immediately.
70.94.483	Wood stove education and enforcement account created—Fee imposed on solid fuel burning device sales.	70.94.785	Plans approved pursuant to federal clean air act—Enforcement authority.
70.94.488	Woodsmoke emissions—Findings.	70.94.800	Legislative declaration—Intent.
70.94.505	Woodsmoke emissions—Work group.	70.94.805	Definitions.
70.94.510	Policy to cooperate with federal government.	70.94.820	Monitoring by department of ecology.
70.94.521	Transportation demand management—Findings.	70.94.850	Emission credits banking program—Amount of credit.
70.94.524	Transportation demand management—Definitions.	70.94.860	Department of ecology may accept delegation of programs.
70.94.527	Transportation demand management—Requirements for counties and cities.	70.94.875	Evaluation of information on acid deposition in Pacific Northwest—Establishment of critical levels—Notification of legislature.
70.94.528	Transportation demand management—Growth and transportation efficiency centers.	70.94.880	Establishment of critical deposition and acidification levels—Considerations.
70.94.531	Transportation demand management—Requirements for employers.	70.94.892	Carbon dioxide mitigation—Fees.
70.94.534	Transportation demand management—Jurisdictions' review and penalties.	70.94.901	Construction—1967 c 238.
70.94.537	Transportation demand management—Commute trip reduction board.		
70.94.541	Transportation demand management—Technical assistance.		
70.94.544	Transportation demand management—Use of funds.		
70.94.547	Transportation demand management—Intent—State leadership.		
70.94.551	Transportation demand management—State agencies—Joint comprehensive commute trip reduction plan—Reports.		
70.94.555	Transportation demand management—Collective bargaining powers unaffected.		

- 70.94.902 Construction, repeal of RCW 70.94.061 through 70.94.066—Saving.
- 70.94.904 Effective dates—1991 c 199.
- 70.94.905 Severability—1991 c 199.
- 70.94.906 Captions not law.
- 70.94.911 Severability—1967 c 238.
- 70.94.950 Disincorporation of district located in county with a population of two hundred ten thousand or more and inactive for five years.
- 70.94.960 Clean fuel matching grants for public transit, vehicle mechanics, and refueling infrastructure.
- 70.94.970 Chlorofluorocarbons—Ozone—Refrigerants regulated.
- 70.94.980 Refrigerants—Unlawful acts.
- 70.94.990 Refrigerants—Rules—Enforcement provisions, limitations.
- 70.94.996 Grant program for ride sharing.

*Environmental certification programs—Fees—Rules—Liability: RCW 43.21A.175.*

*Pollution Disclosure Act of 1971: Chapter 90.52 RCW.*

*Tax exemptions and credits for air pollution control facilities: Chapter 82.34 RCW.*

*Washington clean indoor air act: Chapter 70.160 RCW.*

### **70.94.011 Declaration of public policies and purpose.**

It is declared to be the public policy to preserve, protect, and enhance the air quality for current and future generations. Air is an essential resource that must be protected from harmful levels of pollution. Improving air quality is a matter of statewide concern and is in the public interest. It is the intent of this chapter to secure and maintain levels of air quality that protect human health and safety, including the most sensitive members of the population, to comply with the requirements of the federal clean air act, to prevent injury to plant, animal life, and property, to foster the comfort and convenience of Washington's inhabitants, to promote the economic and social development of the state, and to facilitate the enjoyment of the natural attractions of the state.

It is further the intent of this chapter to protect the public welfare, to preserve visibility, to protect scenic, aesthetic, historic, and cultural values, and to prevent air pollution problems that interfere with the enjoyment of life, property, or natural attractions.

Because of the extent of the air pollution problem the legislature finds it necessary to return areas with poor air quality to levels adequate to protect health and the environment as expeditiously as possible but no later than December 31, 1995. Further, it is the intent of this chapter to prevent any areas of the state with acceptable air quality from reaching air contaminant levels that are not protective of human health and the environment.

The legislature recognizes that air pollution control projects may affect other environmental media. In selecting air pollution control strategies state and local agencies shall support those strategies that lessen the negative environmental impact of the project on all environmental media, including air, water, and land.

The legislature further recognizes that energy efficiency and energy conservation can help to reduce air pollution and shall therefore be considered when making decisions on air pollution control strategies and projects.

It is the policy of the state that the costs of protecting the air resource and operating state and local air pollution control programs shall be shared as equitably as possible among all sources whose emissions cause air pollution.

It is also declared as public policy that regional air pollution control programs are to be encouraged and supported to

the extent practicable as essential instruments for the securing and maintenance of appropriate levels of air quality.

To these ends it is the purpose of this chapter to safeguard the public interest through an intensive, progressive, and coordinated statewide program of air pollution prevention and control, to provide for an appropriate distribution of responsibilities, and to encourage coordination and cooperation between the state, regional, and local units of government, to improve cooperation between state and federal government, public and private organizations, and the concerned individual, as well as to provide for the use of all known, available, and reasonable methods to reduce, prevent, and control air pollution.

The legislature recognizes that the problems and effects of air pollution cross political boundaries, are frequently regional or interjurisdictional in nature, and are dependent upon the existence of human activity in areas having common topography and weather conditions conducive to the buildup of air contaminants. In addition, the legislature recognizes that air pollution levels are aggravated and compounded by increased population, and its consequences. These changes often result in increasingly serious problems for the public and the environment.

The legislature further recognizes that air emissions from thousands of small individual sources are major contributors to air pollution in many regions of the state. As the population of a region grows, small sources may contribute an increasing proportion of that region's total air emissions. It is declared to be the policy of the state to achieve significant reductions in emissions from those small sources whose aggregate emissions constitute a significant contribution to air pollution in a particular region.

It is the intent of the legislature that air pollution goals be incorporated in the missions and actions of state agencies. [1991 c 199 § 102; 1973 1st ex.s. c 193 § 1; 1969 ex.s. c 168 § 1; 1967 c 238 § 1.]

**Finding—1991 c 199:** "The legislature finds that ambient air pollution is the most serious environmental threat in Washington state. Air pollution causes significant harm to human health; damages the environment, including trees, crops, and animals; causes deterioration of equipment and materials; contributes to water pollution; and degrades the quality of life.

Over three million residents of Washington state live where air pollution levels are considered unhealthy. Of all toxic chemicals released into the environment more than half enter our breathing air. Citizens of Washington state spend hundreds of millions of dollars annually to offset health, environmental, and material damage caused by air pollution. The legislature considers such air pollution levels, costs, and damages to be unacceptable.

It is the intent of this act that the implementation of programs and regulations to control air pollution shall be the primary responsibility of the department of ecology and local air pollution control authorities." [1991 c 199 § 101.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**70.94.015 Air pollution control account—Air operating permit account.** (1) The air pollution control account is established in the state treasury. All receipts collected by or on behalf of the department from RCW 70.94.151(2), and receipts from nonpermit program sources under RCW 70.94.152(1) and 70.94.154(7), and all receipts from RCW \*70.94.650, \*70.94.660, \*\*82.44.020(2), and \*\*82.50.405 shall be deposited into the account. Moneys in the account may be spent only after appropriation. Expenditures from the

account may be used only to develop and implement the provisions of chapters 70.94 and 70.120 RCW.

(2) The amounts collected and allocated in accordance with this section shall be expended upon appropriation except as otherwise provided in this section and in accordance with the following limitations:

Portions of moneys received by the department of ecology from the air pollution control account shall be distributed by the department to local authorities based on:

(a) The level and extent of air quality problems within such authority's jurisdiction;

(b) The costs associated with implementing air pollution regulatory programs by such authority; and

(c) The amount of funding available to such authority from other sources, whether state, federal, or local, that could be used to implement such programs.

(3) The air operating permit account is created in the custody of the state treasurer. All receipts collected by or on behalf of the department from permit program sources under RCW 70.94.152(1), 70.94.161, 70.94.162, and 70.94.154(7) shall be deposited into the account. Expenditures from the account may be used only for the activities described in RCW 70.94.152(1), 70.94.161, 70.94.162, and 70.94.154(7). Moneys in the account may be spent only after appropriation. [1998 c 321 § 33 (Referendum Bill No. 49, approved November 3, 1998); 1993 c 252 § 1; 1991 c 199 § 228.]

**Reviser's note:** \*(1) RCW 70.94.650 and 70.94.660 were recodified as RCW 70.94.6528 and 70.94.6534 respectively pursuant to 2009 c 118 § 802.

\*\* (2) RCW 82.44.020 and 82.50.405 were repealed by 2000 1st sp. s. c 1 § 2.

**Purpose—Severability—1998 c 321:** See notes following RCW 82.14.045.

**Finding—1991 c 199:** See note following RCW 70.94.011.

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**70.94.017 Air pollution control account—Subaccount distribution. (Expires July 1, 2020.)** (1) Money deposited in the segregated subaccount of the air pollution control account under \*RCW 46.68.020(2) shall be distributed as follows:

(a) Eighty-five percent shall be distributed to air pollution control authorities created under this chapter. The money must be distributed in direct proportion with the amount of fees imposed under RCW \*\*46.12.080, \*\*\*46.12.170, and \*\*\*\*46.12.181 that are collected within the boundaries of each authority. However, an amount in direct proportion with those fees collected in counties for which no air pollution control authority exists must be distributed to the department.

(b) The remaining fifteen percent shall be distributed to the department.

(2) Money distributed to air pollution control authorities and the department under subsection (1) of this section must be used as follows:

(a) Eighty-five percent of the money received by an air pollution control authority or the department is available on a priority basis to retrofit school buses with exhaust emission control devices or to provide funding for fueling infrastructure necessary to allow school bus fleets to use alternative, cleaner fuels. In addition, the director of ecology or the air pollution control officer may direct funding under this sec-

tion for other publicly or privately owned diesel equipment if the director of ecology or the air pollution control officer finds that funding for other publicly or privately owned diesel equipment will provide public health benefits and further the purposes of this chapter.

(b) The remaining fifteen percent may be used by the air pollution control authority or department to reduce transportation-related air contaminant emissions and clean up air pollution, or reduce and monitor toxic air contaminants.

(3) Money in the air pollution control account may be spent by the department only after appropriation.

(4) This section expires July 1, 2020. [2007 c 348 § 102; 2005 c 295 § 5; 2003 c 264 § 1.]

**Reviser's note:** \*(1) The deposit of moneys into the segregated subaccount of the air pollution control account as referenced here in RCW 46.68.020(2) appears to have expired on July 1, 2008.

\*\* (2) RCW 46.12.080 was recodified as RCW 46.12.590 pursuant to 2010 c 161 § 1210, effective July 1, 2011.

\*\*\* (3) RCW 46.12.170 was recodified as RCW 46.12.975 pursuant to 2010 c 161 § 1211, effective July 1, 2011.

\*\*\*\* (4) RCW 46.12.181 was recodified as RCW 46.12.580 pursuant to 2010 c 161 § 1210, effective July 1, 2011.

**Findings—Part headings not law—2007 c 348:** See RCW 43.325.005 and 43.325.903.

**Effective date—2005 c 295 §§ 5, 6, and 10:** "Sections 5, 6, and 10 of this act are necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and take effect July 1, 2005." [2005 c 295 § 14.]

**Findings—2005 c 295:** See note following RCW 70.120A.010.

**70.94.025 Pollution control hearings board of the state of Washington as affecting chapter 70.94 RCW.** See chapter 43.21B RCW.

**70.94.030 Definitions.** The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Air contaminant" means dust, fumes, mist, smoke, other particulate matter, vapor, gas, odorous substance, or any combination thereof.

(2) "Air pollution" is presence in the outdoor atmosphere of one or more air contaminants in sufficient quantities and of such characteristics and duration as is, or is likely to be, injurious to human health, plant or animal life, or property, or which unreasonably interfere with enjoyment of life and property. For the purpose of this chapter, air pollution shall not include air contaminants emitted in compliance with chapter 17.21 RCW.

(3) "Air quality standard" means an established concentration, exposure time, and frequency of occurrence of an air contaminant or multiple contaminants in the ambient air which shall not be exceeded.

(4) "Ambient air" means the surrounding outside air.

(5) "Authority" means any air pollution control agency whose jurisdictional boundaries are coextensive with the boundaries of one or more counties.

(6) "Best available control technology" (BACT) means an emission limitation based on the maximum degree of reduction for each air pollutant subject to regulation under this chapter emitted from or that results from any new or modified stationary source, that the permitting authority, on a case-by-case basis, taking into account energy, environmental, and economic impacts and other costs, determines is

achievable for such a source or modification through application of production processes and available methods, systems, and techniques, including fuel cleaning, clean fuels, or treatment or innovative fuel combustion techniques for control of each such a pollutant. In no event shall application of "best available control technology" result in emissions of any pollutants that will exceed the emissions allowed by any applicable standard under 40 C.F.R. Part 60 and Part 61, as they exist on July 25, 1993, or their later enactments as adopted by reference by the director by rule. Emissions from any source utilizing clean fuels, or any other means, to comply with this subsection shall not be allowed to increase above levels that would have been required under the definition of BACT as it existed prior to enactment of the federal clean air act amendments of 1990.

(7) "Best available retrofit technology" (BART) means an emission limitation based on the degree of reduction achievable through the application of the best system of continuous emission reduction for each pollutant that is emitted by an existing stationary facility. The emission limitation must be established, on a case-by-case basis, taking into consideration the technology available, the costs of compliance, the energy and nonair quality environmental impacts of compliance, any pollution control equipment in use or in existence at the source, the remaining useful life of the source, and the degree of improvement in visibility that might reasonably be anticipated to result from the use of the technology.

(8) "Board" means the board of directors of an authority.

(9) "Control officer" means the air pollution control officer of any authority.

(10) "Department" or "ecology" means the department of ecology.

(11) "Emission" means a release of air contaminants into the ambient air.

(12) "Emission standard" and "emission limitation" mean a requirement established under the federal clean air act or this chapter that limits the quantity, rate, or concentration of emissions of air contaminants on a continuous basis, including any requirement relating to the operation or maintenance of a source to assure continuous emission reduction, and any design, equipment, work practice, or operational standard adopted under the federal clean air act or this chapter.

(13) "Fine particulate" means particulates with a diameter of two and one-half microns and smaller.

(14) "Lowest achievable emission rate" (LAER) means for any source that rate of emissions that reflects:

(a) The most stringent emission limitation that is contained in the implementation plan of any state for such class or category of source, unless the owner or operator of the proposed source demonstrates that such limitations are not achievable; or

(b) The most stringent emission limitation that is achieved in practice by such class or category of source, whichever is more stringent.

In no event shall the application of this term permit a proposed new or modified source to emit any pollutant in excess of the amount allowable under applicable new source performance standards.

(15) "Modification" means any physical change in, or change in the method of operation of, a stationary source that

increases the amount of any air contaminant emitted by such source or that results in the emission of any air contaminant not previously emitted. The term modification shall be construed consistent with the definition of modification in Section 7411, Title 42, United States Code, and with rules implementing that section.

(16) "Multicounty authority" means an authority which consists of two or more counties.

(17) "New source" means (a) the construction or modification of a stationary source that increases the amount of any air contaminant emitted by such source or that results in the emission of any air contaminant not previously emitted, and (b) any other project that constitutes a new source under the federal clean air act.

(18) "Permit program source" means a source required to apply for or to maintain an operating permit under RCW 70.94.161.

(19) "Person" means an individual, firm, public or private corporation, association, partnership, political subdivision of the state, municipality, or governmental agency.

(20) "Reasonably available control technology" (RACT) means the lowest emission limit that a particular source or source category is capable of meeting by the application of control technology that is reasonably available considering technological and economic feasibility. RACT is determined on a case-by-case basis for an individual source or source category taking into account the impact of the source upon air quality, the availability of additional controls, the emission reduction to be achieved by additional controls, the impact of additional controls on air quality, and the capital and operating costs of the additional controls. RACT requirements for a source or source category shall be adopted only after notice and opportunity for comment are afforded.

(21) "Silvicultural burning" means burning of wood fiber on forest land consistent with the provisions of \*RCW 70.94.660.

(22) "Source" means all of the emissions units including quantifiable fugitive emissions, that are located on one or more contiguous or adjacent properties, and are under the control of the same person, or persons under common control, whose activities are ancillary to the production of a single product or functionally related group of products.

(23) "Stationary source" means any building, structure, facility, or installation that emits or may emit any air contaminant.

(24) "Trigger level" means the ambient level of fine particulates, measured in micrograms per cubic meter, that must be detected prior to initiating a first or second stage of impaired air quality under RCW 70.94.473. [2005 c 197 § 2; 1993 c 252 § 2; 1991 c 199 § 103; 1987 c 109 § 33; 1979 c 141 § 119; 1969 ex.s. c 168 § 2; 1967 ex.s. c 61 § 1; 1967 c 238 § 2; 1957 c 232 § 3.]

\*Reviser's note: RCW 70.94.660 was recodified as RCW 70.94.6534 pursuant to 2009 c 118 § 802.

**Finding—1991 c 199:** See note following RCW 70.94.011.

**Purpose—Short title—Construction—Rules—Severability—Captions—1987 c 109:** See notes following RCW 43.21B.001.

**70.94.033 Environmental excellence program agreements—Effect on chapter.** Notwithstanding any other provision of law, any legal requirement under this chapter,

including any standard, limitation, rule, or order is superseded and replaced in accordance with the terms and provisions of an environmental excellence program agreement, entered into under chapter 43.21K RCW. [1997 c 381 § 21.]

**Purpose—1997 c 381:** See RCW 43.21K.005.

**70.94.035 Technical assistance program for regulated community.** The department shall establish a technical assistance unit within its air quality program, consistent with the federal clean air act, to provide the regulated community, especially small businesses with:

(1) Information on air pollution laws, rules, compliance methods, and technologies;

(2) Information on air pollution prevention methods and technologies, and prevention of accidental releases;

(3) Assistance in obtaining permits and developing emission reduction plans;

(4) Information on the health and environmental effects of air pollution.

No representatives of the department designated as part of the technical assistance unit created in this section may have any enforcement authority. Staff of the technical assistance unit who provide on-site consultation at an industrial or commercial facility and who observe violations of air quality rules shall immediately inform the owner or operator of the facility of such violations. On-site consultation visits shall not be regarded as an inspection or investigation and no notices or citations may be issued or civil penalties assessed during such a visit. However, violations shall be reported to the appropriate enforcement agency and the facility owner or operator shall be notified that the violations will be reported. No enforcement action shall be taken by the enforcement agency for violations reported by technical assistance unit staff unless and until the facility owner or operator has been provided reasonable time to correct the violation. Violations that place any person in imminent danger of death or substantial bodily harm or cause physical damage to the property of another in an amount exceeding one thousand dollars may result in immediate enforcement action by the appropriate enforcement agency. [1991 c 199 § 308.]

**Finding—1991 c 199:** See note following RCW 70.94.011.

**70.94.037 Transportation activities—"Conformity" determination requirements.** In areas subject to a state implementation plan, no state agency, metropolitan planning organization, or local government shall approve or fund a transportation plan, program, or project within or that affects a nonattainment area unless a determination has been made that the plan, program, or project conforms with the state implementation plan for air quality as required by the federal clean air act.

Conformity determination shall be made by the state or local government or metropolitan planning organization administering or developing the plan, program, or project.

No later than eighteen months after May 15, 1991, the director of the department of ecology and the secretary of transportation, in consultation with other state, regional, and local agencies as appropriate, shall adopt by rule criteria and guidance for demonstrating and assuring conformity of plans,

programs, and projects that are wholly or partially federally funded.

A project with a scope that is limited to preservation or maintenance, or both, shall be exempted from a conformity determination requirement. [1991 c 199 § 219.]

**Finding—1991 c 199:** See note following RCW 70.94.011.

**70.94.040 Causing or permitting air pollution unlawful—Exception.** Except where specified in a variance permit, as provided in RCW 70.94.181, it shall be unlawful for any person to cause air pollution or permit it to be caused in violation of this chapter, or of any ordinance, resolution, rule or regulation validly promulgated hereunder. [1980 c 175 § 2; 1967 c 238 § 3; 1957 c 232 § 4.]

**70.94.041 Exception—Burning wood at historic structure.** Except as otherwise provided in this section, any building or structure listed on the national register of historic sites, structures, or buildings established pursuant to 80 Stat. 915, 16 U.S.C. Sec. 470a, or on the state register established pursuant to RCW 27.34.220, shall be permitted to burn wood as it would have when it was a functioning facility as an authorized exception to the provisions of this chapter. Such burning of wood shall not be exempted from the provisions of RCW 70.94.710 through 70.94.730. [1991 c 199 § 506; 1983 c 3 § 175; 1977 ex.s. c 38 § 1.]

**Finding—1991 c 199:** See note following RCW 70.94.011.

**70.94.053 Air pollution control authorities created—Activated authorities, composition, meetings—Delineation of air pollution regions, considerations.** (1) In each county of the state there is hereby created an air pollution control authority, which shall bear the name of the county within which it is located. The boundaries of each authority shall be coextensive with the boundaries of the county within which it is located. An authority shall include all incorporated and unincorporated areas of the county within which it is located.

(2) Except as provided in RCW 70.94.262, all authorities which are presently activated authorities shall carry out the duties and exercise the powers provided in this chapter. Those activated authorities which encompass contiguous counties are declared to be and directed to function as a multicounty authority.

(3) All other air pollution control authorities are hereby designated as inactive authorities.

(4) The boards of those authorities designated as activated authorities by this chapter shall be comprised of such individuals as is provided in RCW 70.94.100. [1995 c 135 § 5. Prior: 1991 c 363 § 143; 1991 c 199 § 701; 1991 c 125 § 1; prior: 1987 c 505 § 60; 1987 c 109 § 34; 1979 c 141 § 120; 1967 c 238 § 4.]

**Intent—1995 c 135:** See note following RCW 29A.08.760.

**Purpose—Captions not law—1991 c 363:** See notes following RCW 2.32.180.

**Finding—1991 c 199:** See note following RCW 70.94.011.

**Purpose—Short title—Construction—Rules—Severability—Captions—1987 c 109:** See notes following RCW 43.21B.001.

**70.94.055 Air pollution control authority may be activated by counties, when.** The legislative authority of any county may activate an air pollution control authority following a public hearing on its own motion, or upon a filing of a petition signed by one hundred property owners within the county. If the county legislative authority determines as a result of the public hearing that:

(1) Air pollution exists or is likely to occur; and

(2) The city or town ordinances, or county resolutions, or their enforcement, are inadequate to prevent or control air pollution,

it may by resolution activate an air pollution control authority or combine with a contiguous county or counties to form a multicounty air pollution control authority. [1995 c 135 § 6. Prior: 1991 c 363 § 144; 1991 c 199 § 702; 1967 c 238 § 5.]

**Intent—1995 c 135:** See note following RCW 29A.08.760.

**Purpose—Captions not law—1991 c 363:** See notes following RCW 2.32.180.

**Finding—1991 c 199:** See note following RCW 70.94.011.

**70.94.057 Multicounty authority may be formed by contiguous counties—Name.** The boards of county commissioners of two or more contiguous counties may, by joint resolution, combine to form a multicounty air pollution control authority. Boundaries of such authority shall be coextensive with the boundaries of the counties forming the authority.

The name of the multicounty authority shall bear the names of the counties making up such multicounty authority or a name adopted by the board of such multicounty authority. [1967 c 238 § 6.]

**70.94.068 Merger of active and inactive authorities to form multicounty or regional authority—Procedure.** The respective boards of county commissioners of two or more contiguous counties may merge any combination of their several inactive or activated authorities to form one activated multicounty authority. Upon a determination that the purposes of this chapter will be served by such merger, each board of county commissioners may adopt the resolution providing for such merger. Such resolution shall become effective only when a similar resolution is adopted by the other contiguous county or counties comprising the proposed authority. The boundaries of such authority shall be coextensive with the boundaries of the counties within which it is located. [1969 ex.s. c 168 § 3; 1967 c 238 § 11.]

**70.94.069 Merger of active and inactive authorities to form multicounty or regional authority—Reorganization of board of directors—Rules and regulations.** Whenever there occurs a merger of an inactive authority with an activated authority or authorities, or of two activated authorities to form a multicounty authority, the board of directors shall be reorganized as provided in RCW 70.94.100, 70.94.110, and 70.94.120.

In the case of the merger of two or more activated authorities the rules and regulations of each authority shall continue in effect and shall be enforced within the jurisdiction of each until such time as the board of directors adopts rules and regulations applicable to the newly formed multicounty authority.

In the case of the merger of an inactive authority with an activated authority or authorities, upon approval of such merger by the board or boards of county commissioners of the county or counties comprising the existing activated authority or authorities, the rules and regulations of the activated authority or authorities shall remain in effect until superseded by the rules and regulations of the multicounty authority as provided in RCW 70.94.230. [1969 ex.s. c 168 § 4; 1967 c 238 § 12.]

**70.94.070 Resolutions activating authorities—Contents—Filings—Effective date of operation.** The resolution or resolutions activating an air pollution authority shall specify the name of the authority and participating political bodies; the authority's principal place of business; the territory included within it; and the effective date upon which such authority shall begin to transact business and exercise its powers. In addition, such resolution or resolutions may specify the amount of money to be contributed annually by each political subdivision, or a method of dividing expenses of the air pollution control program. Upon the adoption of a resolution or resolutions calling for the activation of an authority or the merger of an inactive or activated authority or several activated authorities to form a multicounty authority, the governing body of each shall cause a certified copy of each such ordinance or resolution to be filed in the office of the secretary of state of the state of Washington. From and after the date of filing with the secretary of state a certified copy of each such resolution, or resolutions, or the date specified in such resolution or resolutions, whichever is later, the authority may begin to function and may exercise its powers.

Any authority activated by the provisions of this chapter shall cause a certified copy of all information required by this section to be filed in the office of the secretary of state of the state of Washington. [1969 ex.s. c 168 § 5; 1967 c 238 § 13; 1957 c 232 § 7.]

**70.94.081 Powers and duties of authorities.** An activated authority shall be deemed a municipal corporation; have right to perpetual succession; adopt and use a seal; may sue and be sued in the name of the authority in all courts and in all proceedings; and, may receive, account for, and disburse funds, employ personnel, and acquire or dispose of any interest in real or personal property within or without the authority in the furtherance of its purposes. [1969 ex.s. c 168 § 6; 1967 c 238 § 14.]

**70.94.085 Cost-reimbursement agreements.** (1) An authority may enter into a written cost-reimbursement agreement with a permit applicant or project proponent to recover from the applicant or proponent the reasonable costs incurred by the authority in carrying out the requirements of this chapter, as well as the requirements of other relevant laws, as they relate to permit coordination, environmental review, application review, technical studies, and permit processing.

(2) The cost-reimbursement agreement shall identify the tasks and costs for work to be conducted under the agreement. The agreement must include a schedule that states:

(a) The estimated number of weeks for initial review of the permit application;

- (b) The estimated number of revision cycles;
- (c) The estimated number of weeks for review of subsequent revision submittals;
- (d) The estimated number of billable hours of employee time;
- (e) The rate per hour; and
- (f) A date for revision of the agreement if necessary.

(3) The written cost-reimbursement agreement shall be negotiated with the permit applicant or project proponent. Under the provisions of a cost-reimbursement agreement, funds from the applicant or proponent shall be used by the air pollution control authority to contract with an independent consultant to carry out the work covered by the cost-reimbursement agreement. The air pollution control authority may also use funds provided under a cost-reimbursement agreement to hire temporary employees, to assign current staff to review the work of the consultant, to provide necessary technical assistance when an independent consultant with comparable technical skills is unavailable, and to recover reasonable and necessary direct and indirect costs that arise from processing the permit. The air pollution control authority shall, in developing the agreement, ensure that final decisions that involve policy matters are made by the agency and not by the consultant. The air pollution control authority shall make an estimate of the number of permanent staff hours to process the permits, and shall contract with consultants or hire temporary employees to replace the time and functions committed by these permanent staff to the project. The billing process shall provide for accurate time and cost accounting and may include a billing cycle that provides for progress payments.

(4) The cost-reimbursement agreement must not negatively impact the processing of other permit applications. In order to maintain permit processing capacity, the agency may hire outside consultants, temporary employees, or make internal administrative changes. Consultants or temporary employees hired as part of a cost-reimbursement agreement or to maintain agency capacity are hired as agents of the state not of the permit applicant. The provisions of chapter 42.52 RCW apply to any cost-reimbursement agreement, and to any person hired as a result of a cost-reimbursement agreement. Members of the air pollution control authority's board of directors shall be considered as state officers, and employees of the air pollution control authority shall be considered as state employees, for the sole purpose of applying the restrictions of chapter 42.52 RCW to this section. [2009 c 97 § 12; 2007 c 94 § 14; 2003 c 70 § 5; 2000 c 251 § 6.]

**Intent—Captions not law—Effective date—2000 c 251:** See notes following RCW 43.21A.690.

**70.94.091 Excess tax levy authorized—Election, procedure, expense.** An activated authority shall have the power to levy additional taxes in excess of the constitutional and/or statutory tax limitations for any of the authorized purposes of such activated authority, not in excess of twenty-five cents per thousand dollars of assessed value a year when authorized so to do by the electors of such authority by a three-fifths majority of those voting on the proposition at a special election, to be held in the year in which the levy is made, in the manner set forth in Article VII, section 2 (a) of the Constitution of this state, as amended by Amendment 59

and as thereafter amended. Nothing herein shall be construed to prevent holding the foregoing special election at the same time as that fixed for a general election. The expense of all special elections held pursuant to this section shall be paid by the authority. [1973 1st ex.s. c 195 § 84; 1969 ex.s. c 168 § 7; 1967 c 238 § 15.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**70.94.092 Air pollution control authority—Fiscal year—Adoption of budget—Contents.** Notwithstanding the provisions of RCW 1.16.030, the budget year of each activated authority shall be the fiscal year beginning July 1st and ending on the following June 30th. On or before the fourth Monday in June of each year, each activated authority shall adopt a budget for the following fiscal year. The activated authority budget shall contain adequate funding and provide for staff sufficient to carry out the provisions of all applicable ordinances, resolutions, and local regulations related to the reduction, prevention, and control of air pollution. The legislature acknowledges the need for the state to provide reasonable funding to local authorities to carry out the requirements of this chapter. The budget shall contain an estimate of all revenues to be collected during the following budget year, including any surplus funds remaining unexpended from the preceding year. The remaining funds required to meet budget expenditures, if any, shall be designated as "supplemental income" and shall be obtained from the component cities, towns, and counties in the manner provided in this chapter. The affirmative vote of three-fourths of all members of the board shall be required to authorize emergency expenditures. [1991 c 199 § 703; 1975 1st ex.s. c 106 § 1; 1969 ex.s. c 168 § 8; 1967 c 238 § 16.]

**Finding—1991 c 199:** See note following RCW 70.94.011.

**70.94.093 Methods for determining proportion of supplemental income to be paid by component cities, towns and counties—Payment.** (1) Each component city or town shall pay such proportion of the supplemental income to the authority as determined by either one of the following prescribed methods or by a combination of fifty percent of one and fifty percent of the other as provided in subsection (1)(c) of this section:

(a) Each component city or town shall pay such proportion of the supplemental income as the assessed valuation of property within its limits bears to the total assessed valuation of taxable property within the activated authority.

(b) Each component city or town shall pay such proportion of the supplemental income as the total population of such city or town bears to the total population of the activated authority. The population of the city or town shall be determined by the most recent census, estimate or survey by the federal bureau of census or any state board or commission authorized to make such a census, estimate or survey.

(c) A combination of the methods prescribed in (a) and (b) of this subsection: PROVIDED, That such combination shall be of fifty percent of the method prescribed in (a) of this subsection and fifty percent of the method prescribed in (b) of this subsection.

(2) Each component county shall pay such proportion of such supplemental income to the authority as determined by

either one of the following prescribed methods or by a combination of fifty percent of one and fifty percent of the other as prescribed in subsection (2)(c) of this section:

(a) Each component county shall pay such proportion of such supplemental income as the assessed valuation of the property within the unincorporated area of such county lying within the activated authority bears to the total assessed valuation of taxable property within the activated authority.

(b) Each component county shall pay such proportion of the supplemental income as the total population of the unincorporated area of such county bears to the total population of the activated authority. The population of the county shall be determined by the most recent census, estimate or survey by the federal bureau of census or any state board or commission authorized to make such a census, estimate or survey.

(c) A combination of the methods prescribed in (a) and (b) of this subsection: PROVIDED, That such combination shall be of fifty percent of the method prescribed in (a) of this subsection and fifty percent of the method prescribed in (b) of this subsection.

(3) In making such determination of the assessed valuation of property in the component cities, towns and counties, the board shall use the last available assessed valuations. The board shall certify to each component city, town and county, prior to the fourth Monday in June of each year, the share of the supplemental income to be paid by such component city, town or county for the next calendar year. The latter shall then include such amount in its budget for the ensuing calendar year, and during such year shall pay to the activated authority, in equal quarterly installments, the amount of its supplemental share. [1969 ex.s. c 168 § 9; 1967 c 238 § 17.]

**70.94.094 Designation of authority treasurer and auditor—Duties.** The treasurer of each component city, town, or county shall create a separate fund into which shall be paid all money collected from taxes or from any other available sources, levied by or obtained for the activated authority on property or on any other available sources in such city, town, or county. The collected money shall be forwarded quarterly by the treasurer of each such city, town, or county to the treasurer of the county designated by the board as the treasurer for the authority. The treasurer of the county designated to serve as treasurer of the authority shall establish and maintain funds as authorized by the board.

Money shall be disbursed from funds collected under this section upon warrants drawn by either the authority or the auditor of the county designated by the board as the auditor for the authority, as authorized by the board.

If an authority chooses to use a county auditor for the disbursement of funds, the respective county shall be reimbursed by the board for services rendered by the auditor of the respective county in connection with the disbursement of funds under this section. [2007 c 164 § 1; 1969 ex.s. c 168 § 10; 1967 c 238 § 18.]

**70.94.095 Assessed valuation of taxable property, certification by county assessors.** It shall be the duty of the assessor of each component county to certify annually to the board the aggregate assessed valuation of all taxable property in all incorporated and unincorporated areas situated in any

activated authority as the same appears from the last assessment roll of his county. [1969 ex.s. c 168 § 11; 1967 c 238 § 19.]

**70.94.096 Authorization to borrow money.** An activated authority shall have the power when authorized by a majority of all members of the board to borrow money from any component city, town or county and such cities, towns and counties are hereby authorized to make such loans or advances on such terms as may be mutually agreed upon by the board and the legislative bodies of any such component city, town or county to provide funds to carry out the purposes of the activated authority. [1969 ex.s. c 168 § 12; 1967 c 238 § 20.]

**70.94.097 Special air pollution studies—Contracts for conduct of.** In addition to paying its share of the supplemental income of the activated authority, each component city, town, or county shall have the power to contract with such authority and expend funds for the conduct of special studies, investigations, plans, research, advice, or consultation relating to air pollution and its causes, effects, prevention, abatement, and control as such may affect any area within the boundaries of the component city, town, or county, and which could not be performed by the authority with funds otherwise available to it. Any component city, town or county which contracts for the conduct of such special air pollution studies, investigations, plans, research, advice or consultation with any entity other than the activated authority shall require that such an entity consult with the activated authority. [1975 1st ex.s. c 106 § 2.]

**70.94.100 Air pollution control authority—Board of directors—Composition—Term.** (1) The governing body of each authority shall be known as the board of directors.

(2)(a) In the case of an authority comprised of one county, with a population of less than four hundred thousand people, the board shall be comprised of two appointees of the city selection committee, at least one of whom shall represent the city having the most population in the county, and two representatives to be designated by the board of county commissioners.

(b) In the case of an authority comprised of one county, with a population of equal to or greater than four hundred thousand people, the board shall be comprised of three appointees of cities, one each from the two cities with the most population in the county and one appointee of the city selection committee representing the other cities, and one representative to be designated by the board of county commissioners.

(c) In the case of an authority comprised of two, three, four, or five counties, the board shall be comprised of one appointee from each county, who shall represent the city having the most population in such county, to be designated by the mayor and city council of such city, and one representative from each county to be designated by the board of county commissioners of each county making up the authority.

(d) In the case of an authority comprised of six or more counties, the board shall be comprised of one representative from each county to be designated by the board of county

commissioners of each county making up the authority, and three appointees, one each from the three largest cities within the local authority's jurisdiction to be appointed by the mayor and city council of such city.

(3) If the board of an authority otherwise would consist of an even number, the members selected as above provided shall agree upon and elect an additional member who shall be:

(a) In the case of an authority comprised of one county with a population of equal to or greater than four hundred thousand people, a citizen residing in the county who demonstrates significant professional experience in the field of public health, air quality protection, or meteorology; or

(b) In the case of an authority comprised of one county, with a population less than four hundred thousand people, or of more than one county, either a member of the governing body of one of the towns, cities or counties comprising the authority, or a private citizen residing in the authority.

(4) The terms of office of board members shall be four years.

(5) If an appointee is unable to complete his or her term as a board member, the vacancy for that office must be filled by the same method as the original appointment, except for the appointment by the city selection committee, which must use the method in RCW 70.94.120(1) for replacements. The person appointed as a replacement will serve the remainder of the term for that office.

(6) Wherever a member of a board has a potential conflict of interest in an action before the board, the member shall declare to the board the nature of the potential conflict prior to participating in the action review. The board shall, if the potential conflict of interest, in the judgment of a majority of the board, may prevent the member from a fair and objective review of the case, remove the member from participation in the action. [2009 c 254 § 1; 2006 c 227 § 1; 1991 c 199 § 704; 1989 c 150 § 1; 1969 ex.s. c 168 § 13; 1967 c 238 § 21; 1957 c 232 § 10.]

**Finding—1991 c 199:** See note following RCW 70.94.011.

**70.94.110 City selection committees.** There shall be a separate and distinct city selection committee for each county making up an authority. The membership of such committee shall consist of the mayor of each incorporated city and town within such county, except that the mayors of the cities, with the most population in a county, having already designated appointees to the board of an air pollution control authority comprised of a single county shall not be members of the committee. A majority of the members of each city selection committee shall constitute a quorum. [2006 c 227 § 2; 1967 c 238 § 22; 1963 c 27 § 1; 1957 c 232 § 11.]

**70.94.120 City selection committees—Meetings, notice, recording officer—Alternative mail balloting—Notice.** (1) The city selection committee of each county which is included within an authority shall meet within one month after the activation of such authority for the purpose of making its initial appointments to the board of such authority and thereafter whenever necessary for the purpose of making succeeding appointments. All meetings shall be held upon at least two weeks written notice given by the county auditor to

each member of the city selection committee of each county and he shall give such notice upon request of any member of such committee. A similar notice shall be given to the general public by a publication of such notice in a newspaper of general circulation in such authority. The county auditor shall act as recording officer, maintain its records and give appropriate notice of its proceedings and actions.

(2) As an alternative to meeting in accordance with subsection (1) of this section, the county auditor may administer the appointment process through the mail.

(a) At least four months prior to the expiration of the term of office, the county auditor must mail a request to each member of the city selection committee seeking nominations to the office. The members of the selection committee have until the last day of the fourth month to return the nomination to the auditor or the auditor's designee.

(b) Within five business days of the close of the nomination period, the county auditor will mail ballots by certified mail to the members of the city selection committee, specifying the date by which to return the completed ballot which is the last day of the third month prior to the expiration of the term of office. Each mayor who chooses to participate in the balloting shall mark the choice for appointment, sign the ballot, and return the ballot to the county auditor. Each completed ballot shall be date-stamped upon receipt by the mayor or staff of the mayor of the city or town. The timely return of completed ballots by a majority of the members of each city selection committee constitutes a quorum and the common choice by a majority of the quorum constitutes a valid appointment.

(3) At least two weeks' written notice must be given by the county auditor to each member of the city selection committee prior to the nomination process. A similar notice shall be given to the general public by publication in a newspaper of general circulation in the authority. A single notice is sufficient for both the nomination process and the balloting process. [2009 c 254 § 2; 1995 c 261 § 2; 1969 ex.s. c 168 § 14; 1967 c 238 § 23; 1957 c 232 § 12.]

**70.94.130 Air pollution control authority—Board of directors—Powers, quorum, officers, compensation.** The board shall exercise all powers of the authority except as otherwise provided. The board shall conduct its first meeting within thirty days after all of its members have been appointed or designated as provided in RCW 70.94.100. The board shall meet at least ten times per year. All meetings shall be publicly announced prior to their occurrence. All meetings shall be open to the public. A majority of the board shall constitute a quorum for the transaction of business and shall be necessary for any action taken by the board. The board shall elect from its members a chair and such other officers as may be necessary. Any member of the board may designate a regular alternate to serve on the board in his or her place with the same authority as the member when he or she is unable to attend. In no event may a regular alternate serve as the permanent chair. Each member of the board, or his or her representative, shall receive from the authority compensation consistent with such authority's rates (but not to exceed one thousand dollars per year) for time spent in the performance of duties under this chapter, plus the actual and necessary expenses incurred by the member in such performance. The

board may appoint a control officer, and any other personnel, and shall determine their salaries, and pay same, together with any other proper indebtedness, from authority funds. [1998 c 342 § 1; 1991 c 199 § 705; 1969 ex.s. c 168 § 15; 1967 c 238 § 24; 1957 c 232 § 13.]

**Finding—1991 c 199:** See note following RCW 70.94.011.

**70.94.141 Air pollution control authority—Powers and duties of activated authority.** The board of any activated authority in addition to any other powers vested in them by law, shall have power to:

(1) Adopt, amend and repeal its own rules and regulations, implementing this chapter and consistent with it, after consideration at a public hearing held in accordance with chapter 42.30 RCW. Rules and regulations shall also be adopted in accordance with the notice and adoption procedures set forth in RCW 34.05.320, those provisions of RCW 34.05.325 that are not in conflict with chapter 42.30 RCW, and with the procedures of RCW 34.05.340, \*34.05.355 through 34.05.380, and with chapter 34.08 RCW, except that rules shall not be published in the Washington Administrative Code. Judicial review of rules adopted by an authority shall be in accordance with Part V of chapter 34.05 RCW. An air pollution control authority shall not be deemed to be a state agency.

(2) Hold hearings relating to any aspect of or matter in the administration of this chapter not prohibited by the provisions of chapter 62, Laws of 1970 ex. sess. and in connection therewith issue subpoenas to compel the attendance of witnesses and the production of evidence, administer oaths and take the testimony of any person under oath.

(3) Issue such orders as may be necessary to effectuate the purposes of this chapter and enforce the same by all appropriate administrative and judicial proceedings subject to the rights of appeal as provided in chapter 62, Laws of 1970 ex. sess.

(4) Require access to records, books, files and other information specific to the control, recovery or release of air contaminants into the atmosphere.

(5) Secure necessary scientific, technical, administrative and operational services, including laboratory facilities, by contract or otherwise.

(6) Prepare and develop a comprehensive plan or plans for the prevention, abatement and control of air pollution within its jurisdiction.

(7) Encourage voluntary cooperation by persons or affected groups to achieve the purposes of this chapter.

(8) Encourage and conduct studies, investigation and research relating to air pollution and its causes, effects, prevention, abatement and control.

(9) Collect and disseminate information and conduct educational and training programs relating to air pollution.

(10) Advise, consult, cooperate and contract with agencies and departments and the educational institutions of the state, other political subdivisions, industries, other states, interstate or interlocal agencies, and the United States government, and with interested persons or groups.

(11) Consult, upon request, with any person proposing to construct, install, or otherwise acquire an air contaminant source or device or system for the control thereof, concerning

the efficacy of such device or system, or the air pollution problems which may be related to the source, device or system. Nothing in any such consultation shall be construed to relieve any person from compliance with this chapter, ordinances, resolutions, rules and regulations in force pursuant thereto, or any other provision of law.

(12) Accept, receive, disburse and administer grants or other funds or gifts from any source, including public and private agencies and the United States government for the purpose of carrying out any of the functions of this chapter. [1991 c 199 § 706; 1970 ex.s. c 62 § 56; 1969 ex.s. c 168 § 16; 1967 c 238 § 25.]

\***Reviser's note:** RCW 34.05.355 was repealed by 1995 c 403 § 305.

**Finding—1991 c 199:** See note following RCW 70.94.011.

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**70.94.142 Subpoena powers—Witnesses, expenses and mileage—Rules and regulations.** In connection with the subpoena powers given in RCW 70.94.141(2):

(1) In any hearing held under RCW 70.94.181 and 70.94.221, the board or the department, and their authorized agents:

(a) Shall issue a subpoena upon the request of any party and, to the extent required by rule or regulation, upon a statement or showing of general relevance and reasonable scope of the evidence sought;

(b) May issue a subpoena upon their own motion.

(2) The subpoena powers given in RCW 70.94.141(2) shall be statewide in effect.

(3) Witnesses appearing under the compulsion of a subpoena in a hearing before the board or the department shall be paid the same fees and mileage that are provided for witnesses in the courts of this state. Such fees and mileage, and the cost of duplicating records required to be produced by subpoena issued upon the motion of the board or department, shall be paid by the board or department. Such fees and mileage, and the cost of producing records required to be produced by subpoena issued upon the request of a party, shall be paid by that party.

(4) If an individual fails to obey the subpoena, or obeys the subpoena but refuses to testify when required concerning any matter under examination or investigation or the subject of the hearing, the board or department shall file its written report thereof and proof of service of its subpoena, in any court of competent jurisdiction in the county where the examination, hearing or investigation is being conducted. Thereupon, the court shall forthwith cause the individual to be brought before it and, upon being satisfied that the subpoena is within the jurisdiction of the board or department and otherwise in accordance with law, shall punish him as if the failure or refusal related to a subpoena from or testimony in that court.

(5) The department may make such rules and regulations as to the issuance of its own subpoenas as are not inconsistent with the provisions of this chapter. [1987 c 109 § 35; 1969 ex.s. c 168 § 17; 1967 c 238 § 26.]

**Purpose—Short title—Construction—Rules—Severability—Captions—1987 c 109:** See notes following RCW 43.21B.001.

**70.94.143 Federal aid.** Any authority exercising the powers and duties prescribed in this chapter may make application for, receive, administer, and expend any federal aid, under federal legislation from any agency of the federal government, for the prevention and control of air pollution or the development and administration of programs related to air pollution control and prevention, as permitted by RCW 70.94.141(12): PROVIDED, That any such application shall be submitted to and approved by the department. The department shall adopt rules and regulations establishing standards for such approval and shall approve any such application, if it is consistent with this chapter, and any other applicable requirements of law. [1987 c 109 § 36; 1969 ex.s. c 168 § 18; 1967 c 238 § 27.]

**Purpose—Short title—Construction—Rules—Severability—Captions—1987 c 109:** See notes following RCW 43.21B.001.

**70.94.151 Classification of air contaminant sources—Registration—Fee—Registration program defined—Adoption of rules requiring persons to report emissions of greenhouse gases.** (1) The board of any activated authority or the department, may classify air contaminant sources, by ordinance, resolution, rule or regulation, which in its judgment may cause or contribute to air pollution, according to levels and types of emissions and other characteristics which cause or contribute to air pollution, and may require registration or reporting or both for any such class or classes. Classifications made pursuant to this section may be for application to the area of jurisdiction of such authority, or the state as a whole or to any designated area within the jurisdiction, and shall be made with special reference to effects on health, economic and social factors, and physical effects on property.

(2) Except as provided in subsection (3) of this section, any person operating or responsible for the operation of air contaminant sources of any class for which the ordinances, resolutions, rules or regulations of the department or board of the authority, require registration or reporting shall register therewith and make reports containing information as may be required by such department or board concerning location, size and height of contaminant outlets, processes employed, nature of the contaminant emission and such other information as is relevant to air pollution and available or reasonably capable of being assembled. In the case of emissions of greenhouse gases as defined in RCW 70.235.010 the department shall adopt rules requiring reporting of those emissions. The department or board may require that such registration or reporting be accompanied by a fee, and may determine the amount of such fee for such class or classes: PROVIDED, That the amount of the fee shall only be to compensate for the costs of administering such registration or reporting program which shall be defined as initial registration and annual or other periodic reports from the source owner providing information directly related to air pollution registration, on-site inspections necessary to verify compliance with registration requirements, data storage and retrieval systems necessary for support of the registration program, emission inventory reports and emission reduction credits computed from information provided by sources pursuant to registration program requirements, staff review, including engineering or other reliable analysis for accuracy and currentness, of information

provided by sources pursuant to registration program requirements, clerical and other office support provided in direct furtherance of the registration program, and administrative support provided in directly carrying out the registration program: PROVIDED FURTHER, That any such registration made with either the board or the department shall preclude a further registration and reporting with any other board or the department, except that emissions of greenhouse gases as defined in RCW 70.235.010 must be reported as required under subsection (5) of this section.

All registration program and reporting fees collected by the department shall be deposited in the air pollution control account. All registration program fees collected by the local air authorities shall be deposited in their respective treasuries.

(3) If a registration or report has been filed for a grain warehouse or grain elevator as required under this section, registration, reporting, or a registration program fee shall not, after January 1, 1997, again be required under this section for the warehouse or elevator unless the capacity of the warehouse or elevator as listed as part of the license issued for the facility has been increased since the date the registration or reporting was last made. If the capacity of the warehouse or elevator listed as part of the license is increased, any registration or reporting required for the warehouse or elevator under this section must be made by the date the warehouse or elevator receives grain from the first harvest season that occurs after the increase in its capacity is listed in the license.

This subsection does not apply to a grain warehouse or grain elevator if the warehouse or elevator handles more than ten million bushels of grain annually.

(4) For the purposes of subsection (3) of this section:

(a) A "grain warehouse" or "grain elevator" is an establishment classified in standard industrial classification (SIC) code 5153 for wholesale trade for which a license is required and includes, but is not limited to, such a licensed facility that also conducts cleaning operations for grain;

(b) A "license" is a license issued by the department of agriculture licensing a facility as a grain warehouse or grain elevator under chapter 22.09 RCW or a license issued by the federal government licensing a facility as a grain warehouse or grain elevator for purposes similar to those of licensure for the facility under chapter 22.09 RCW; and

(c) "Grain" means a grain or a pulse.

(5)(a) The department shall adopt rules requiring persons to report emissions of greenhouse gases as defined in RCW 70.235.010 where those emissions from a single facility, source, or site, or from fossil fuels sold in Washington by a single supplier meet or exceed ten thousand metric tons of carbon dioxide equivalent annually. The department may phase in the requirement to report greenhouse gas emissions until the reporting threshold in this subsection is met, which must occur by January 1, 2012. In addition, the rules must require that:

(i) Emissions of greenhouse gases resulting from the combustion of fossil fuels be reported separately from emissions of greenhouse gases resulting from the combustion of biomass;

(ii) Reporting will start in 2010 for 2009 emissions. Each annual report must include emissions data for the preceding calendar year and must be submitted to the department by October 31st of the year in which the report is due.

However, starting in 2011, a person who is required to report greenhouse gas emissions to the United States environmental protection agency under 40 C.F.R. Part 98, as adopted on September 22, 2009, must submit the report required under this section to the department concurrent with the submission to the United States environmental protection agency. Except as otherwise provided in this section, the data for emissions in Washington and any corrections thereto that are reported to the United States environmental protection agency must be the emissions data reported to the department; and

(iii) Emissions of carbon dioxide associated with the complete combustion or oxidation of liquid motor vehicle fuel, special fuel, or aircraft fuel that is sold in Washington where the annual emissions associated with that combustion or oxidation equal or exceed ten thousand metric tons be reported to the department. Each person who is required to file periodic tax reports of motor vehicle fuel sales under RCW 82.36.031 or special fuel sales under RCW 82.38.150, or each distributor of aircraft fuel required to file periodic tax reports under RCW 82.42.040 must report to the department the annual emissions of carbon dioxide from the complete combustion or oxidation of the fuels listed in those reports as sold in the state of Washington. The department shall not require suppliers to use additional data to calculate greenhouse gas emissions other than the data the suppliers report to the department of licensing. The rules may allow this information to be aggregated when reported to the department. The department and the department of licensing shall enter into an interagency agreement to ensure proprietary and confidential information is protected if the departments share reported information. Any proprietary or confidential information exempt from disclosure when reported to the department of licensing is exempt from disclosure when shared by the department of licensing with the department under this provision.

(b)(i) Except as otherwise provided in this subsection, the rules adopted by the department under (a) of this subsection must be consistent with the regulations adopted by the United States environmental protection agency in 40 C.F.R. Part 98 on September 22, 2009.

(ii) The department may by rule include additional gases to the definition of "greenhouse gas" in RCW 70.235.010 only if the gas has been designated as a greenhouse gas by the United States congress or by the United States environmental protection agency. Prior to including additional gases to the definition of "greenhouse gas" in RCW 70.235.010, the department shall notify the appropriate committees of the legislature. Decisions to amend the rule to include additional gases must be made prior to December 1st of any year and the amended rule may not take effect before the end of the regular legislative session in the next year.

(iii) The department may by rule exempt persons who are required to report greenhouse gas emissions to the United States environmental protection agency and who emit less than ten thousand metric tons carbon dioxide equivalent annually.

(iv) The department must establish a methodology for persons who are not required to report under this section to voluntarily report their greenhouse gas emissions.

(c) The department shall review and if necessary update its rules whenever the United States environmental protection agency adopts final amendments to 40 C.F.R. Part 98 to ensure consistency with federal reporting requirements for emissions of greenhouse gases. However, the department shall not amend its rules in a manner that conflicts with (a) of this subsection.

(d) The department shall share any reporting information reported to it with the local air authority in which the person reporting under the rules adopted by the department operates.

(e) The fee provisions in subsection (2) of this section apply to reporting of emissions of greenhouse gases. Persons required to report under (a) of this subsection who fail to report or pay the fee required in subsection (2) of this section are subject to enforcement penalties under this chapter. The department shall enforce the reporting rule requirements unless it approves a local air authority's request to enforce the requirements for persons operating within the authority's jurisdiction. However, neither the department nor a local air authority approved under this section are authorized to assess enforcement penalties on persons required to report under (a) of this subsection until six months after the department adopts its reporting rule in 2010.

(f) The energy facility site evaluation council shall, simultaneously with the department, adopt rules that impose greenhouse gas reporting requirements in site certifications on owners or operators of a facility permitted by the energy facility site evaluation council. The greenhouse gas reporting requirements imposed by the energy facility site evaluation council must be the same as the greenhouse gas reporting requirements imposed by the department. The department shall share any information reported to it from facilities permitted by the energy facility site evaluation council with the council, including notice of a facility that has failed to report as required. The energy facility site evaluation council shall contract with the department to monitor the reporting requirements adopted under this section.

(g) The inclusion or failure to include any person, source, classes of persons or sources, or types of emissions of greenhouse gases into the department's rules for reporting under this section does not indicate whether such a person, source, or category is appropriate for inclusion in state, regional, or national greenhouse gas reduction programs or strategies. Furthermore, aircraft fuel purchased in the state may not be considered equivalent to aircraft fuel combusted in the state.

(h)(i) The definitions in RCW 70.235.010 apply throughout this subsection (5) unless the context clearly requires otherwise.

(ii) For the purpose of this subsection (5), the term "supplier" includes: (A) A motor vehicle fuel supplier or a motor vehicle fuel importer, as those terms are defined in RCW 82.36.010; (B) a special fuel supplier or a special fuel importer, as those terms are defined in RCW 82.38.020; and (C) a distributor of aircraft fuel, as those terms are defined in RCW 82.42.010.

(iii) For the purpose of this subsection (5), the term "person" includes: (A) An owner or operator, as those terms are defined by the United States environmental protection agency in its mandatory greenhouse gas reporting regulation in 40 C.F.R. Part 98, as adopted on September 22, 2009; and

(B) a supplier. [2010 c 146 § 2; 2008 c 14 § 5; 2005 c 138 § 1; 1997 c 410 § 1; 1993 c 252 § 3; 1987 c 109 § 37; 1984 c 88 § 2; 1969 ex.s. c 168 § 19; 1967 c 238 § 28.]

**Findings—Intent—Scope of chapter 14, Laws of 2008—Severability—2008 c 14:** See RCW 70.235.005, 70.235.900, and 70.235.901.

**Purpose—Short title—Construction—Rules—Severability—Captions—1987 c 109:** See notes following RCW 43.21B.001.

**70.94.152 Notice may be required of construction of proposed new contaminant source—Submission of plans—Approval, disapproval—Emission control—"De minimis new sources" defined.** (1) The department of ecology or board of any authority may require notice of the establishment of any proposed new sources except single family and duplex dwellings or de minimis new sources as defined in rules adopted under subsection (11) of this section. The department of ecology or board may require such notice to be accompanied by a fee and determine the amount of such fee: PROVIDED, That the amount of the fee may not exceed the cost of reviewing the plans, specifications, and other information and administering such notice: PROVIDED FURTHER, That any such notice given or notice of construction application submitted to either the board or to the department of ecology shall preclude a further submittal of a duplicate application to any board or to the department of ecology.

(2) The department shall, after opportunity for public review and comment, adopt rules that establish a workload-driven process for determination and review of the fee covering the direct and indirect costs of processing a notice of construction application and a methodology for tracking revenues and expenditures. All new source fees collected by the delegated local air authorities from sources shall be deposited in the dedicated accounts of their respective treasuries. All new source fees collected by the department from sources shall be deposited in the air pollution control account.

(3) Within thirty days of receipt of a notice of construction application, the department of ecology or board may require, as a condition precedent to the establishment of the new source or sources covered thereby, the submission of plans, specifications, and such other information as it deems necessary to determine whether the proposed new source will be in accord with applicable rules and regulations in force under this chapter. If on the basis of plans, specifications, or other information required under this section the department of ecology or board determines that the proposed new source will not be in accord with this chapter or the applicable ordinances, resolutions, rules, and regulations adopted under this chapter, it shall issue an order denying permission to establish the new source. If on the basis of plans, specifications, or other information required under this section, the department of ecology or board determines that the proposed new source will be in accord with this chapter, and the applicable rules and regulations adopted under this chapter, it shall issue an order of approval for the establishment of the new source or sources, which order may provide such conditions as are reasonably necessary to assure the maintenance of compliance with this chapter and the applicable rules and regulations adopted under this chapter. Every order of approval under this chapter must be reviewed prior to issuance by a professional engineer or staff under the supervision of a profes-

sional engineer in the employ of the department of ecology or board.

(4) The determination required under subsection (3) of this section shall include a determination of whether the operation of the new air contaminant source at the location proposed will cause any ambient air quality standard to be exceeded.

(5) New source review of a modification shall be limited to the emission unit or units proposed to be modified and the air contaminants whose emissions would increase as a result of the modification.

(6) Nothing in this section shall be construed to authorize the department of ecology or board to require the use of emission control equipment or other equipment, machinery, or devices of any particular type, from any particular supplier, or produced by any particular manufacturer.

(7) Any features, machines, and devices constituting parts of or called for by plans, specifications, or other information submitted pursuant to subsection (1) or (3) of this section shall be maintained and operate in good working order.

(8) The absence of an ordinance, resolution, rule, or regulation, or the failure to issue an order pursuant to this section shall not relieve any person from his or her obligation to comply with applicable emission control requirements or with any other provision of law.

(9) Within thirty days of receipt of a notice of construction application the department of ecology or board shall either notify the applicant in writing that the application is complete or notify the applicant in writing of all additional information necessary to complete the application. Within sixty days of receipt of a complete application the department or board shall either (a) issue a final decision on the application, or (b) for those projects subject to public notice, initiate notice and comment on a proposed decision, followed as promptly as possible by a final decision. A person seeking approval to construct or modify a source that requires an operating permit may elect to integrate review of the operating permit application or amendment required by RCW 70.94.161 and the notice of construction application required by this section. A notice of construction application designated for integrated review shall be processed in accordance with operating permit program procedures and deadlines.

(10) A notice of construction approval required under subsection (3) of this section shall include a determination that the new source will achieve best available control technology. If more stringent controls are required under federal law, the notice of construction shall include a determination that the new source will achieve the more stringent federal requirements. Nothing in this subsection is intended to diminish other state authorities under this chapter.

(11) No person is required to submit a notice of construction or receive approval for a new source that is deemed by the department of ecology or board to have de minimis impact on air quality. The department of ecology shall adopt and periodically update rules identifying categories of de minimis new sources. The department of ecology may identify de minimis new sources by category, size, or emission thresholds.

(12) For purposes of this section, "de minimis new sources" means new sources with trivial levels of emissions that do not pose a threat to human health or the environment.

[1996 c 67 § 1; 1996 c 29 § 1; 1993 c 252 § 4; 1991 c 199 § 302; 1973 1st ex.s. c 193 § 2; 1969 ex.s. c 168 § 20; 1967 c 238 § 29.]

**Reviser's note:** This section was amended by 1996 c 29 § 1 and by 1996 c 67 § 1, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

**Finding—1991 c 199:** See note following RCW 70.94.011.

*Use of emission credits to be consistent with new source review program:*  
RCW 70.94.850.

**70.94.153 Existing stationary source—Replacement or substantial alteration of emission control technology.** Any person proposing to replace or substantially alter the emission control technology installed on an existing stationary source emission unit shall file a notice of construction application with the jurisdictional permitting authority. For projects not otherwise reviewable under RCW 70.94.152, the permitting authority may (1) require that the owner or operator employ reasonably available control technology for the affected emission unit and (2) may prescribe reasonable operation and maintenance conditions for the control equipment. Within thirty days of receipt of an application for notice of construction under this section the permitting authority shall either notify the applicant in writing that the application is complete or notify the applicant in writing of all additional information necessary to complete the application. Within thirty days of receipt of a complete application the permitting authority shall either issue an order of approval or a proposed RACT determination for the proposed project. Construction shall not commence on a project subject to review under this section until the permitting authority issues a final order of approval. However, any notice of construction application filed under this section shall be deemed to be approved without conditions if the permitting authority takes no action within thirty days of receipt of a complete application for a notice of construction. [1991 c 199 § 303.]

**Finding—1991 c 199:** See note following RCW 70.94.011.

**70.94.154 RACT requirements.** (1) RACT as defined in RCW 70.94.030 is required for existing sources except as otherwise provided in RCW 70.94.331(9).

(2) RACT for each source category containing three or more sources shall be determined by rule except as provided in subsection (3) of this section.

(3) Source-specific RACT determinations may be performed under any of the following circumstances:

(a) As authorized by RCW 70.94.153;

(b) When required by the federal clean air act;

(c) For sources in source categories containing fewer than three sources;

(d) When an air quality problem, for which the source is a contributor, justifies a source-specific RACT determination prior to development of a categorical RACT rule; or

(e) When a source-specific RACT determination is needed to address either specific air quality problems for which the source is a significant contributor or source-specific economic concerns.

(4) By January 1, 1994, ecology shall develop a list of sources and source categories requiring RACT review and a schedule for conducting that review. Ecology shall review the

list and schedule within six months of receiving the initial operating permit applications and at least once every five years thereafter. In developing the list to determine the schedule of RACT review, ecology shall consider emission reductions achievable through the use of new available technologies and the impacts of those incremental reductions on air quality, the remaining useful life of previously installed control equipment, the impact of the source or source category on air quality, the number of years since the last BACT, RACT, or LAER determination for that source and other relevant factors. Prior to finalizing the list and schedule, ecology shall consult with local air authorities, the regulated community, environmental groups, and other interested individuals and organizations. The department and local authorities shall revise RACT requirements, as needed, based on the review conducted under this subsection.

(5) In determining RACT, ecology and local authorities shall utilize the factors set forth in RCW 70.94.030 and shall consider RACT determinations and guidance made by the federal environmental protection agency, other states and local authorities for similar sources, and other relevant factors. In establishing or revising RACT requirements, ecology and local authorities shall address, where practicable, all air contaminants deemed to be of concern for that source or source category.

(6) Emission standards and other requirements contained in rules or regulatory orders in effect at the time of operating permit issuance or renewal shall be considered RACT for purposes of permit issuance or renewal. RACT determinations under subsections (2) and (3) of this section shall be incorporated into operating permits as provided in RCW 70.94.161 and rules implementing that section.

(7) The department and local air authorities are authorized to assess and collect a fee to cover the costs of developing, establishing, or reviewing categorical or case-by-case RACT requirements. The fee shall apply to determinations of RACT requirements as defined under this section and RCW 70.94.331(9). The amount of the fee may not exceed the direct and indirect costs of establishing the requirement for the particular source or the pro rata portion of the direct and indirect costs of establishing the requirement for the relevant source category. The department shall, after opportunity for public review and comment, adopt rules that establish a workload-driven process for determination and review of the fee covering the direct and indirect costs of its RACT determinations and a methodology for tracking revenues and expenditures. All such RACT determination fees collected by the delegated local air authorities from sources shall be deposited in the dedicated accounts of their respective treasuries. All such RACT fees collected by the department from sources shall be deposited in the air pollution control account. [1996 c 29 § 2; 1993 c 252 § 8.]

**70.94.155 Control of emissions—Bubble concept—Schedules of compliance.** (1) As used in subsection (3) of this section, the term "bubble" means an air pollution control system which permits aggregate measurements of allowable emissions, for a single category of pollutant, for emissions points from a specified emissions-generating facility or facilities. Individual point source emissions levels from such

specified facility or facilities may be modified provided that the aggregate limit for the specified sources is not exceeded.

(2) Whenever any regulation relating to emission standards or other requirements for the control of emissions is adopted which provides for compliance with such standards or requirements no later than a specified time after the date of adoption of the regulation, the appropriate activated air pollution control authority or, if there be none, the department of ecology shall, by permit or regulatory order, issue to air contaminant sources subject to the standards or requirements, schedules of compliance setting forth timetables for the achievement of compliance as expeditiously as practicable, but in no case later than the time specified in the regulation. Interim dates in such schedules for the completion of steps of progress toward compliance shall be as enforceable as the final date for full compliance therein.

(3) Wherever requirements necessary for the attainment of air quality standards or, where such standards are not exceeded, for the maintenance of air quality can be achieved through the use of a control program involving the bubble concept, such program may be authorized by a regulatory order or orders or permit issued to the air contaminant source or sources involved. Such order or permit shall only be authorized after the control program involving the bubble concept is accepted by [the] United States environmental protection agency as part of an approved state implementation plan. Any such order or permit provision shall restrict total emissions within the bubble to no more than would otherwise be allowed in the aggregate for all emitting processes covered. The orders or permits provided for by this subsection shall be issued by the department or the authority with jurisdiction. If the bubble involves interjurisdictional approval, concurrence in the total program must be secured from each regulatory entity concerned. [1991 c 199 § 305; 1981 c 224 § 1; 1973 1st ex.s. c 193 § 3.]

**Finding—1991 c 199:** See note following RCW 70.94.011.

*Use of emission credits to be consistent with bubble program:* RCW 70.94.850.

**70.94.157 Preemption of uniform building and fire codes.** The department and local air pollution control authorities shall preempt the application of chapter 9 of the uniform building code and article 80 of the uniform fire code by other state agencies and local governments for the purposes of controlling outdoor air pollution from industrial and commercial sources, except where authorized by chapter 199, Laws of 1991. Actions by other state agencies and local governments under article 80 of the uniform fire code to take immediate action in response to an emission that presents a physical hazard or imminent health hazard are not preempted. [1991 c 199 § 315.]

**Finding—1991 c 199:** See note following RCW 70.94.011.

**70.94.161 Operating permits for air contaminant sources—Generally—Fees, report to legislature.** The department of ecology, or board of an authority, shall require renewable permits for the operation of air contaminant sources subject to the following conditions and limitations:

(1) Permits shall be issued for a term of five years. A permit may be modified or amended during its term at the

request of the permittee, or for any reason allowed by the federal clean air act. The rules adopted pursuant to subsection (2) of this section shall include rules for permit amendments and modifications. The terms and conditions of a permit shall remain in effect after the permit itself expires if the permittee submits a timely and complete application for permit renewal.

(2)(a) Rules establishing the elements for a statewide operating permit program and the process for permit application and renewal consistent with federal requirements shall be established by the department by January 1, 1993. The rules shall provide that every proposed permit must be reviewed prior to issuance by a professional engineer or staff under the direct supervision of a professional engineer in the employ of the permitting authority. The permit program established by these rules shall be administered by the department and delegated local air authorities. Rules developed under this subsection shall not preclude a delegated local air authority from including in a permit its own more stringent emission standards and operating restrictions.

(b) The board of any local air pollution control authority may apply to the department of ecology for a delegation order authorizing the local authority to administer the operating permit program for sources under that authority's jurisdiction. The department shall, by order, approve such delegation, if the department finds that the local authority has the technical and financial resources, to discharge the responsibilities of a permitting authority under the federal clean air act. A delegation request shall include adequate information about the local authority's resources to enable the department to make the findings required by this subsection. However, any delegation order issued under this subsection shall take effect ninety days after the environmental protection agency authorizes the local authority to issue operating permits under the federal clean air act.

(c) Except for the authority granted the energy facility site evaluation council to issue permits for the new construction, reconstruction, or enlargement or operation of new energy facilities under chapter 80.50 RCW, the department may exercise the authority, as delegated by the environmental protection agency, to administer Title IV of the federal clean air act as amended and to delegate such administration to local authorities as applicable pursuant to (b) of this subsection.

(3) In establishing technical standards, defined in RCW 70.94.030, the permitting authority shall consider and, if found to be appropriate, give credit for waste reduction within the process.

(4) Operating permits shall apply to all sources (a) where required by the federal clean air act, and (b) for any source that may cause or contribute to air pollution in such quantity as to create a threat to the public health or welfare. Subsection (b) of this subsection is not intended to apply to small businesses except when both of the following limitations are satisfied: (i) The source is in an area exceeding or threatening to exceed federal or state air quality standards; and (ii) the department provides a reasonable justification that requiring a source to have a permit is necessary to meet a federal or state air quality standard, or to prevent exceeding a standard in an area threatening to exceed the standard. For purposes of this subsection "areas threatening to exceed air quality stan-

dards" shall mean areas projected by the department to exceed such standards within five years. Prior to identifying threatened areas the department shall hold a public hearing or hearings within the proposed areas.

(5) Sources operated by government agencies are not exempt under this section.

(6) Within one hundred eighty days after the United States environmental protection agency approves the state operating permit program, a person required to have a permit shall submit to the permitting authority a compliance plan and permit application, signed by a responsible official, certifying the accuracy of the information submitted. Until permits are issued, existing sources shall be allowed to operate under presently applicable standards and conditions provided that such sources submit complete and timely permit applications.

(7) All draft permits shall be subject to public notice and comment. The rules adopted pursuant to subsection (2) of this section shall specify procedures for public notice and comment. Such procedures shall provide the permitting agency with an opportunity to respond to comments received from interested parties prior to the time that the proposed permit is submitted to the environmental protection agency for review pursuant to section 505(a) of the federal clean air act. In the event that the environmental protection agency objects to a proposed permit pursuant to section 505(b) of the federal clean air act, the permitting authority shall not issue the permit, unless the permittee consents to the changes required by the environmental protection agency.

(8) The procedures contained in chapter 43.21B RCW shall apply to permit appeals. The pollution control hearings board may stay the effectiveness of any permit issued under this section during the pendency of an appeal filed by the permittee, if the permittee demonstrates that compliance with the permit during the pendency of the appeal would require significant expenditures that would not be necessary in the event that the permittee prevailed on the merits of the appeal.

(9) After the effective date of any permit program promulgated under this section, it shall be unlawful for any person to: (a) Operate a permitted source in violation of any requirement of a permit issued under this section; or (b) fail to submit a permit application at the time required by rules adopted under subsection (2) of this section.

(10) Each air operating permit shall state the origin of and specific legal authority for each requirement included therein. Every requirement in an operating permit shall be based upon the most stringent of the following requirements:

(a) The federal clean air act and rules implementing that act, including provision of the approved state implementation plan;

(b) This chapter and rules adopted thereunder;

(c) In permits issued by a local air pollution control authority, the requirements of any order or regulation adopted by that authority;

(d) Chapter 70.98 RCW and rules adopted thereunder; and

(e) Chapter 80.50 RCW and rules adopted thereunder.

(11) Consistent with the provisions of the federal clean air act, the permitting authority may issue general permits covering categories of permitted sources, and temporary per-

mits authorizing emissions from similar operations at multiple temporary locations.

(12) Permit program sources within the territorial jurisdiction of an authority delegated the operating permit program shall file their permit applications with that authority, except that permit applications for sources regulated on a statewide basis pursuant to RCW 70.94.395 shall be filed with the department. Permit program sources outside the territorial jurisdiction of a delegated authority shall file their applications with the department. Permit program sources subject to chapter 80.50 RCW shall, irrespective of their location, file their applications with the energy facility site evaluation council.

(13) When issuing operating permits to coal fired electric generating plants, the permitting authority shall establish requirements consistent with Title IV of the federal clean air act.

(14)(a) The department and the local air authorities are authorized to assess and to collect, and each source emitting one hundred tons or more per year of a regulated pollutant shall pay an interim assessment to fund the development of the operating permit program during fiscal year 1994.

(b) The department shall conduct a workload analysis and prepare an operating permit program development budget for fiscal year 1994. The department shall allocate among all sources emitting one hundred tons or more per year of a regulated pollutant during calendar year 1992 the costs identified in its program development budget according to a three-tiered model, with each of the three tiers being equally weighted, based upon:

(i) The number of sources;

(ii) The complexity of sources; and

(iii) The size of sources, as measured by the quantity of each regulated pollutant emitted by the source.

(c) Each local authority and the department shall collect from sources under their respective jurisdictions the interim fee determined by the department and shall remit the fee to the department.

(d) Each local authority may, in addition, allocate its fiscal year 1994 operating permit program development costs among the sources under its jurisdiction emitting one hundred tons or more per year of a regulated pollutant during calendar year 1992 and may collect an interim fee from these sources. A fee assessed pursuant to this subsection (14)(d) shall be collected at the same time as the fee assessed pursuant to (c) of this subsection.

(e) The fees assessed to a source under this subsection shall be limited to the first seven thousand five hundred tons for each regulated pollutant per year.

(15)(a) The department shall determine the persons liable for the fee imposed by subsection (14) of this section, compute the fee, and provide by November 1, 1993, the identity of the fee payer with the computation of the fee to each local authority and to the department of revenue for collection. The department of revenue shall collect the fee computed by the department from the fee payers under the jurisdiction of the department. The administrative, collection, and penalty provisions of chapter 82.32 RCW shall apply to the collection of the fee by the department of revenue. The department shall provide technical assistance to the department of revenue for decisions made by the department of rev-

enue pursuant to RCW 82.32.160 and 82.32.170. All interim fees collected by the department of revenue on behalf of the department and all interim fees collected by local authorities on behalf of the department shall be deposited in the air operating permit account. The interim fees collected by the local air authorities to cover their permit program development costs under subsection (14)(d) of this section shall be deposited in the dedicated accounts of their respective treasuries.

(b) All fees identified in this section shall be due and payable on March 1, 1994, except that the local air pollution control authorities may adopt by rule an earlier date on which fees are to be due and payable. The section 5, chapter 252, Laws of 1993 amendments to RCW 70.94.161 do not have the effect of terminating, or in any way modifying, any liability, civil or criminal, incurred pursuant to the provisions of RCW 70.94.161 (15) and (17) as they existed prior to July 25, 1993.

(16) For sources or source categories not required to obtain permits under subsection (4) of this section, the department or local authority may establish by rule control technology requirements. If control technology rule revisions are made by the department or local authority under this subsection, the department or local authority shall consider the remaining useful life of control equipment previously installed on existing sources before requiring technology changes. The department or any local air authority may issue a general permit, as authorized under the federal clean air act, for such sources.

(17) Emissions of greenhouse gases as defined in RCW 70.235.010 must be reported as required by RCW 70.94.151. The reporting provisions of RCW 70.94.151 shall not apply to any other emissions from any permit program source after the effective date of United States environmental protection agency approval of the state operating permit program. [2008 c 14 § 6; 1993 c 252 § 5; 1991 c 199 § 301.]

**Findings—Intent—Scope of chapter 14, Laws of 2008—Severability—2008 c 14:** See RCW 70.235.005, 70.235.900, and 70.235.901.

**Finding—1991 c 199:** See note following RCW 70.94.011.

*Air operating permit account: RCW 70.94.015.*

**70.94.162 Annual fees from operating permit program source to cover cost of program.** (1) The department and delegated local air authorities are authorized to determine, assess, and collect, and each permit program source shall pay, annual fees sufficient to cover the direct and indirect costs of implementing a state operating permit program approved by the United States environmental protection agency under the federal clean air act. However, a source that receives its operating permit from the United States environmental protection agency shall not be considered a permit program source so long as the environmental protection agency continues to act as the permitting authority for that source. Each permitting authority shall develop by rule a fee schedule allocating among its permit program sources the costs of the operating permit program, and may, by rule, establish a payment schedule whereby periodic installments of the annual fee are due and payable more frequently. All operating permit program fees collected by the department shall be deposited in the air operating permit account. All operating permit program fees collected by the delegated local air authorities shall be deposited in their respective air

operating permit accounts or other accounts dedicated exclusively to support of the operating permit program. The fees assessed under this subsection shall first be due not less than forty-five days after the United States environmental protection agency delegates to the department the authority to administer the operating permit program and then annually thereafter.

The department shall establish, by rule, procedures for administrative appeals to the department regarding the fee assessed pursuant to this subsection.

(2) The fee schedule developed by each permitting authority shall fully cover and not exceed both its permit administration costs and the permitting authority's share of statewide program development and oversight costs.

(a) Permit administration costs are those incurred by each permitting authority, including the department, in administering and enforcing the operating permit program with respect to sources under its jurisdiction. Costs associated with the following activities are fee eligible as these activities relate to the operating permit program and to the sources permitted by a permitting authority, including, where applicable, sources subject to a general permit:

(i) Preapplication assistance and review of an application and proposed compliance plan for a permit, permit revision, or renewal;

(ii) Source inspections, testing, and other data-gathering activities necessary for the development of a permit, permit revision, or renewal;

(iii) Acting on an application for a permit, permit revision, or renewal, including the costs of developing an applicable requirement as part of the processing of a permit, permit revision, or renewal, preparing a draft permit and fact sheet, and preparing a final permit, but excluding the costs of developing BACT, LAER, BART, or RACT requirements for criteria and toxic air pollutants;

(iv) Notifying and soliciting, reviewing and responding to comment from the public and contiguous states and tribes, conducting public hearings regarding the issuance of a draft permit and other costs of providing information to the public regarding operating permits and the permit issuance process;

(v) Modeling necessary to establish permit limits or to determine compliance with permit limits;

(vi) Reviewing compliance certifications and emissions reports and conducting related compilation and reporting activities;

(vii) Conducting compliance inspections, complaint investigations, and other activities necessary to ensure that a source is complying with permit conditions;

(viii) Administrative enforcement activities and penalty assessment, excluding the costs of proceedings before the pollution control hearings board and all costs of judicial enforcement;

(ix) The share attributable to permitted sources of the development and maintenance of emissions inventories;

(x) The share attributable to permitted sources of ambient air quality monitoring and associated recording and reporting activities;

(xi) Training for permit administration and enforcement;

(xii) Fee determination, assessment, and collection, including the costs of necessary administrative dispute resolution and penalty collection;

(xiii) Required fiscal audits, periodic performance audits, and reporting activities;

(xiv) Tracking of time, revenues and expenditures, and accounting activities;

(xv) Administering the permit program including the costs of clerical support, supervision, and management;

(xvi) Provision of assistance to small businesses under the jurisdiction of the permitting authority as required under section 507 of the federal clean air act; and

(xvii) Other activities required by operating permit regulations issued by the United States environmental protection agency under the federal clean air act.

(b) Development and oversight costs are those incurred by the department in developing and administering the state operating permit program, and in overseeing the administration of the program by the delegated local permitting authorities. Costs associated with the following activities are fee eligible as these activities relate to the operating permit program:

(i) Review and determinations necessary for delegation of authority to administer and enforce a permit program to a local air authority under RCW 70.94.161(2) and 70.94.860;

(ii) Conducting fiscal audits and periodic performance audits of delegated local authorities, and other oversight functions required by the operating permit program;

(iii) Administrative enforcement actions taken by the department on behalf of a permitting authority, including those actions taken by the department under RCW 70.94.785, but excluding the costs of proceedings before the pollution control hearings board and all costs of judicial enforcement;

(iv) Determination and assessment with respect to each permitting authority of the fees covering its share of the costs of development and oversight;

(v) Training and assistance for permit program administration and oversight, including training and assistance regarding technical, administrative, and data management issues;

(vi) Development of generally applicable regulations or guidance regarding the permit program or its implementation or enforcement;

(vii) State codification of federal rules or standards for inclusion in operating permits;

(viii) Preparation of delegation package and other activities associated with submittal of the state permit program to the United States environmental protection agency for approval, including ongoing coordination activities;

(ix) General administration and coordination of the state permit program, related support activities, and other agency indirect costs, including necessary data management and quality assurance;

(x) Required fiscal audits and periodic performance audits of the department, and reporting activities;

(xi) Tracking of time, revenues and expenditures, and accounting activities;

(xii) Public education and outreach related to the operating permit program, including the maintenance of a permit register;

(xiii) The share attributable to permitted sources of compiling and maintaining emissions inventories;

(xiv) The share attributable to permitted sources of ambient air quality monitoring, related technical support, and associated recording activities;

(xv) The share attributable to permitted sources of modeling activities;

(xvi) Provision of assistance to small business as required under section 507 of the federal clean air act as it exists on July 25, 1993, or its later enactment as adopted by reference by the director by rule;

(xvii) Provision of services by the department of revenue and the office of the state attorney general and other state agencies in support of permit program administration;

(xviii) A one-time revision to the state implementation plan to make those administrative changes necessary to ensure coordination of the state implementation plan and the operating permit program; and

(xix) Other activities required by operating permit regulations issued by the United States environmental protection agency under the federal clean air act.

(3) The responsibility for operating permit fee determination, assessment, and collection is to be shared by the department and delegated local air authorities as follows:

(a) Each permitting authority, including the department, acting in its capacity as a permitting authority, shall develop a fee schedule and mechanism for collecting fees from the permit program sources under its jurisdiction; the fees collected by each authority shall be sufficient to cover its costs of permit administration and its share of the department's costs of development and oversight. Each delegated local authority shall remit to the department its share of the department's development and oversight costs.

(b) Only those local air authorities to whom the department has delegated the authority to administer the program pursuant to RCW 70.94.161(2) (b) and (c) and 70.94.860 shall have the authority to administer and collect operating permit fees. The department shall retain the authority to administer and collect such fees with respect to the sources within the jurisdiction of a local air authority until the effective date of program delegation to that air authority.

(c) The department shall allocate its development and oversight costs among all permitting authorities, including the department, in proportion to the number of permit program sources under the jurisdiction of each authority, except that extraordinary costs or other costs readily attributable to a specific permitting authority may be assessed that authority. For purposes of this subsection, all sources covered by a single general permit shall be treated as one source.

(4) The department and each delegated local air authority shall adopt by rule a general permit fee schedule for sources under their respective jurisdictions after such time as the department adopts provisions for general permit issuance. Within ninety days of the time that the department adopts a general permit fee schedule, the department shall report to the relevant standing committees of the legislature regarding the general permit fee schedules adopted by the department and by the delegated local air authorities. The permit administration costs of each general permit shall be allocated equitably among only those sources subject to that general permit. The share of development and oversight costs attributable to each general permit shall be determined pursuant to subsection (3)(c) of this section.

(5) The fee schedule developed by the department shall allocate among the sources for whom the department acts as a permitting authority, other than sources subject to a general permit, those portions of the department's permit administration costs and the department's share of the development and oversight costs which the department does not plan to recover under its general permit fee schedule or schedules as follows:

(a) The department shall allocate its permit administration costs and its share of the development and oversight costs not recovered through general permit fees according to a three-tiered model based upon:

(i) The number of permit program sources under its jurisdiction;

(ii) The complexity of permit program sources under its jurisdiction; and

(iii) The size of permit program sources under its jurisdiction, as measured by the quantity of each regulated pollutant emitted by the source.

(b) Each of the three tiers shall be equally weighted.

(c) The department may, in addition, allocate activities-based costs readily attributable to a specific source to that source under RCW 70.94.152(1) and 70.94.154(7).

The quantity of each regulated pollutant emitted by a source shall be determined based on the annual emissions during the most recent calendar year for which data is available.

(6) The department shall, after opportunity for public review and comment, adopt rules that establish a process for development and review of its operating permit program fee schedule, a methodology for tracking program revenues and expenditures and, for both the department and the delegated local air authorities, a system of fiscal audits, reports, and periodic performance audits.

(a) The fee schedule development and review process shall include the following:

(i) The department shall conduct a biennial workload analysis. The department shall provide the opportunity for public review of and comment on the workload analysis. The department shall review and update its workload analysis during each biennial budget cycle, taking into account information gathered by tracking previous revenues, time, and expenditures and other information obtained through fiscal audits and performance audits.

(ii) The department shall prepare a biennial budget based upon the resource requirements identified in the workload analysis for that biennium. In preparing the budget, the department shall take into account the projected operating permit account balance at the start of the biennium. The department shall provide the opportunity for public review of and comment on the proposed budget. The department shall review and update its budget each biennium.

(iii) The department shall develop a fee schedule allocating the department's permit administration costs and its share of the development and oversight costs among the department's permit program sources using the methodology described in subsection (5) of this section. The department shall provide the opportunity for public review of and comment on the allocation methodology and fee schedule. The department shall provide procedures for administrative resolution of disputes regarding the source data on which allocation determinations are based; these procedures shall be

designed such that resolution occurs prior to the completion of the allocation process. The department shall review and update its fee schedule annually.

(b) The methodology for tracking revenues and expenditures shall include the following:

(i) The department shall develop a system for tracking revenues and expenditures that provides the maximum practicable information. At a minimum, revenues from fees collected under the operating permit program shall be tracked on a source-specific basis and time and expenditures required to administer the program shall be tracked on the basis of source categories and functional categories. Each general permit will be treated as a separate source category for tracking and accounting purposes.

(ii) The department shall use the information obtained from tracking revenues, time, and expenditures to modify the workload analysis required in subsection (6)(a) of this section.

(iii) The information obtained from tracking revenues, time, and expenditures shall not provide a basis for challenge to the amount of an individual source's fee.

(c) The system of fiscal audits, reports, and periodic performance audits shall include the following:

(i) The department and the delegated local air authorities shall prepare annual reports and shall submit the reports to, respectively, the appropriate standing committees of the legislature and the board of directors of the local air authority.

(ii) The department shall arrange for fiscal audits and routine performance audits and for periodic intensive performance audits of each permitting authority and of the department.

(7) Each local air authority requesting delegation shall, after opportunity for public review and comment, publish regulations which establish a process for development and review of its operating permit program fee schedule, and a methodology for tracking its revenues and expenditures. These regulations shall be submitted to the department for review and approval as part of the local authority's delegation request.

(8) As used in this section and in RCW 70.94.161(14), "regulated pollutant" shall have the same meaning as defined in section 502(b) of the federal clean air act as it exists on July 25, 1993, or its later enactment as adopted by reference by the director by rule.

(9) Fee structures as authorized under this section shall remain in effect until such time as the legislature authorizes an alternative structure following receipt of the report required by this subsection. [1998 c 245 § 129; 1993 c 252 § 6.]

**70.94.163 Source categories not required to have a permit—Recommendations.** The department shall prepare recommendations to reduce air emissions for source categories not generally required to have a permit under RCW 70.94.161. Such recommendations shall not require any action by the owner or operator of a source and shall be consistent with rules adopted under chapter 70.95C RCW. The recommendations shall include but not be limited to: Process changes, product substitution, equipment modifications, hazardous substance use reduction, recycling, and energy efficiency. [1991 c 199 § 304.]

**Finding—1991 c 199:** See note following RCW 70.94.011.

**70.94.165 Gasoline recovery devices—Limitation on requiring.** (1) A gasoline vapor recovery device that captures vapors during vehicle fueling may only be required at a service station, or any other gasoline dispensing facility supplying fuel to the general public, in any of the following circumstances:

(a) The facility sells in excess of six hundred thousand gallons of gasoline per year and is located in a county, any part of which is designated as nonattainment for ozone under the federal clean air act, 42 U.S.C. Sec. 7407; or

(b) The facility sells in excess of six hundred thousand gallons of gasoline per year and is located in a county where a maintenance plan has been adopted by a local air pollution control authority or the department of ecology that includes gasoline vapor recovery devices as a control strategy; or

(c) From March 30, 1996, until December 31, 1998, in any facility that sells in excess of one million two hundred thousand gallons of gasoline per year and is located in an ozone-contributing county. For purposes of this section, an ozone-contributing county means a county in which the emissions have contributed to the formation of ozone in any county where violations of federal ozone standards have been measured, and includes: Cowlitz, Island, Kitsap, Lewis, Skagit, Thurston, Wahkiakum, and Whatcom counties; or

(d) After December 31, 1998, in any facility that sells in excess of eight hundred forty thousand gallons of gasoline per year and is located in any county, no part of which is designated as nonattainment for ozone under the federal clean air act, 42 U.S.C. Sec. 7407, provided that the department of ecology determines by December 31, 1997, that the use of gasoline vapor control devices in the county is important to achieving or maintaining attainment status in any other county.

(2) This section does not preclude the department of ecology or any local air pollution authority from requiring a gasoline vapor recovery device that captures vapors during vehicle refueling as part of the regulation of sources as provided in RCW 70.94.152, 70.94.331, or 70.94.141 or where required under 42 U.S.C. Sec. 7412. [1996 c 294 § 1.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**70.94.170 Air pollution control authority control officer.** Any activated authority which has adopted an ordinance, resolution, or valid rules and regulations as provided herein for the control and prevention of air pollution shall appoint a full time control officer, whose sole responsibility shall be to observe and enforce the provisions of this chapter and all orders, ordinances, resolutions, or rules and regulations of such activated authority pertaining to the control and prevention of air pollution. [1991 c 199 § 707; 1969 ex.s. c 168 § 21; 1967 c 238 § 30; 1957 c 232 § 17.]

**Finding—1991 c 199:** See note following RCW 70.94.011.

**70.94.181 Variances—Application for—Considerations—Limitations—Renewals—Review.** (1) Any person who owns or is in control of any plant, building, structure, establishment, process or equipment may apply to the department of ecology or appropriate local authority board for a

variance from rules or regulations governing the quality, nature, duration or extent of discharges of air contaminants. The application shall be accompanied by such information and data as the department of ecology or board may require. The department of ecology or board may grant such variance, provided that variances to state rules shall require the department's approval prior to being issued by a local authority board. The total time period for a variance and renewal of such variance shall not exceed one year. Variances may be issued by either the department or a local board but only after public hearing or due notice, if the department or board finds that:

(a) The emissions occurring or proposed to occur do not endanger public health or safety or the environment; and

(b) Compliance with the rules or regulations from which variance is sought would produce serious hardship without equal or greater benefits to the public.

(2) No variance shall be granted pursuant to this section until the department of ecology or board has considered the relative interests of the applicant, other owners of property likely to be affected by the discharges, and the general public.

(3) Any variance or renewal thereof shall be granted within the requirements of subsection (1) of this section and under conditions consistent with the reasons therefor, and within the following limitations:

(a) If the variance is granted on the ground that there is no practicable means known or available for the adequate prevention, abatement or control of the pollution involved, it shall be only until the necessary means for prevention, abatement or control become known and available, and subject to the taking of any substitute or alternate measures that the department of ecology or board may prescribe.

(b) If the variance is granted on the ground that compliance with the particular requirement or requirements from which variance is sought will require the taking of measures which, because of their extent or cost, must be spread over a considerable period of time, it shall be for a period not to exceed such reasonable time as, in the view of the department of ecology or board is requisite for the taking of the necessary measures. A variance granted on the ground specified herein shall contain a timetable for the taking of action in an expeditious manner and shall be conditioned on adherence to such timetable.

(c) If the variance is granted on the ground that it is justified to relieve or prevent hardship of a kind other than that provided for in (a) and (b) of this subsection, it shall be for not more than one year.

(4) Any variance granted pursuant to this section may be renewed on terms and conditions and for periods which would be appropriate on initial granting of a variance. If complaint is made to the department of ecology or board on account of the variance, no renewal thereof shall be granted unless following a public hearing on the complaint on due notice the department or board finds that renewal is justified. No renewal shall be granted except on application therefor. Any such application shall be made at least sixty days prior to the expiration of the variance. Immediately upon receipt of an application for renewal, the department of ecology or board shall give public notice of such application in accordance with rules of the department of ecology or board.

(5) A variance or renewal shall not be a right of the applicant or holder thereof but shall be granted at the discretion of the department of ecology or board. However, any applicant adversely affected by the denial or the terms and conditions of the granting of an application for a variance or renewal of a variance by the department of ecology or board may obtain judicial review thereof under the provisions of chapter 34.05 RCW as now or hereafter amended.

(6) Nothing in this section and no variance or renewal granted pursuant hereto shall be construed to prevent or limit the application of the emergency provisions and procedures of RCW 70.94.710 through 70.94.730 to any person or his or her property.

(7) An application for a variance, or for the renewal thereof, submitted to the department of ecology or board pursuant to this section shall be approved or disapproved by the department or board within sixty-five days of receipt unless the applicant and the department of ecology or board agree to a continuance.

(8) Variances approved under this section shall not be included in orders or permits provided for in RCW 70.94.161 or 70.94.152 until such time as the variance has been accepted by the United States environmental protection agency as part of an approved state implementation plan. [1991 c 199 § 306; 1983 c 3 § 176; 1974 ex.s. c 59 § 1; 1969 ex.s. c 168 § 22; 1967 c 238 § 31.]

**Finding—1991 c 199:** See note following RCW 70.94.011.

**70.94.200 Investigation of conditions by control officer or department—Entering private, public property.** For the purpose of investigating conditions specific to the control, recovery or release of air contaminants into the atmosphere, a control officer, the department, or their duly authorized representatives, shall have the power to enter at reasonable times upon any private or public property, excepting nonmultiple unit private dwellings housing two families or less. No person shall refuse entry or access to any control officer, the department, or their duly authorized representatives, who requests entry for the purpose of inspection, and who presents appropriate credentials; nor shall any person obstruct, hamper or interfere with any such inspection. [1987 c 109 § 38; 1979 c 141 § 121; 1967 c 238 § 32; 1957 c 232 § 20.]

**Purpose—Short title—Construction—Rules—Severability—Captions—1987 c 109:** See notes following RCW 43.21B.001.

**70.94.205 Confidentiality of records and information.** Whenever any records or other information, other than ambient air quality data or emission data, furnished to or obtained by the department of ecology or the board of any authority under this chapter, relate to processes or production unique to the owner or operator, or is likely to affect adversely the competitive position of such owner or operator if released to the public or to a competitor, and the owner or operator of such processes or production so certifies, such records or information shall be only for the confidential use of the department of ecology or board. Nothing herein shall be construed to prevent the use of records or information by the department of ecology or board in compiling or publishing analyses or summaries relating to the general condition of the outdoor atmosphere: PROVIDED, That such analyses or

summaries do not reveal any information otherwise confidential under the provisions of this section: PROVIDED FURTHER, That emission data furnished to or obtained by the department of ecology or board shall be correlated with applicable emission limitations and other control measures and shall be available for public inspection during normal business hours at offices of the department of ecology or board. [1991 c 199 § 307; 1973 1st ex.s. c 193 § 4; 1969 ex.s. c 168 § 23; 1967 c 238 § 33.]

**Finding—1991 c 199:** See note following RCW 70.94.011.

**70.94.211 Enforcement actions by air authority—Notice to violators.** At least thirty days prior to the commencement of any formal enforcement action under RCW 70.94.430 or 70.94.431 a local air authority shall cause written notice to be served upon the alleged violator or violators. The notice shall specify the provision of this chapter or the rule or regulation alleged to be violated, and the facts alleged to constitute a violation thereof, and may include an order directing that necessary corrective action be taken within a reasonable time. In lieu of an order, the board or the control officer may require that the alleged violator or violators appear before the board for a hearing. Every notice of violation shall offer to the alleged violator an opportunity to meet with the local air authority prior to the commencement of enforcement action. [1991 c 199 § 309; 1974 ex.s. c 69 § 4; 1970 ex.s. c 62 § 57; 1969 ex.s. c 168 § 24; 1967 c 238 § 34.]

**Finding—1991 c 199:** See note following RCW 70.94.011.

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**70.94.221 Order final unless appealed to pollution control hearings board.** Any order issued by the board or by the control officer, shall become final unless such order is appealed to the hearings board as provided in chapter 43.21B RCW. [1970 ex.s. c 62 § 58; 1969 ex.s. c 168 § 25; 1967 c 238 § 35.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**70.94.230 Rules of authority supersede local rules, regulations, etc.—Exceptions.** The rules and regulations hereafter adopted by an authority under the provisions of this chapter shall supersede the existing rules, regulations, resolutions and ordinances of any of the component bodies included within said authority in all matters relating to the control and enforcement of air pollution as contemplated by this chapter: PROVIDED, HOWEVER, That existing rules, regulations, resolutions and ordinances shall remain in effect until such rules, regulations, resolutions and ordinances are superseded as provided in this section: PROVIDED FURTHER, That nothing herein shall be construed to supersede any local county, or city ordinance or resolution, or any provision of the statutory or common law pertaining to nuisance; nor to affect any aspect of employer-employee relationship relating to conditions in a place of work, including without limitation, statutes, rules or regulations governing industrial health and safety standards or performance standards incorporated in zoning ordinances or resolutions of the component bodies where such standards relating to air pollution control or air quality containing requirements not less stringent than

those of the authority. [1969 ex.s. c 168 § 28; 1967 c 238 § 38; 1957 c 232 § 23.]

**70.94.231 Air pollution control authority—Dissolution of prior districts—Continuation of rules and regulations until superseded.** Upon the date that an authority begins to exercise its powers and functions, all rules and regulations in force on such date shall remain in effect until superseded by the rules and regulations of the authority as provided in RCW 70.94.230. [1991 c 199 § 708; 1969 ex.s. c 168 § 29; 1967 c 238 § 39.]

**Finding—1991 c 199:** See note following RCW 70.94.011.

**70.94.240 Air pollution control advisory council.** The board of any authority may appoint an air pollution control advisory council to advise and consult with such board, and the control officer in effectuating the purposes of this chapter. The council shall consist of at least five appointed members who are residents of the authority and who are preferably skilled and experienced in the field of air pollution control, chemistry, meteorology, public health, or a related field, at least one of whom shall serve as a representative of industry and one of whom shall serve as a representative of the environmental community. The chair of the board of any such authority shall serve as ex officio member of the council and be its chair. Each member of the council shall receive from the authority per diem and travel expenses in an amount not to exceed that provided for the state board in this chapter (but not to exceed one thousand dollars per year) for each full day spent in the performance of his or her duties under this chapter. [1991 c 199 § 709; 1969 ex.s. c 168 § 30; 1967 c 238 § 41; 1957 c 232 § 24.]

**Finding—1991 c 199:** See note following RCW 70.94.011.

**70.94.260 Dissolution of authority—Deactivation of authority.** An air pollution control authority may be deactivated prior to the term provided in the original or subsequent agreement by the county or counties comprising such authority upon the adoption by the board, following a hearing held upon ten days notice, to said counties, of a resolution for dissolution or deactivation and upon the approval by the legislative authority of each county comprising the authority. In such event, the board shall proceed to wind up the affairs of the authority and pay all indebtedness thereof. Any surplus of funds shall be paid over to the counties comprising the authority in proportion to their last contribution. Upon the completion of the process of closing the affairs of the authority, the board shall by resolution entered in its minutes declare the authority deactivated and a certified copy of such resolution shall be filed with the secretary of state and the authority shall be deemed inactive. [1979 ex.s. c 30 § 12; 1969 ex.s. c 168 § 31; 1967 c 238 § 43; 1957 c 232 § 26.]

**70.94.262 Withdrawal from multicounty authority.**

(1) Any county that is part of a multicounty authority, pursuant to RCW 70.94.053, may withdraw from the multicounty authority after January 1, 1992, if the county wishes to provide for air quality protection and regulation by an alternate air quality authority. A withdrawing county shall:

(a) Create its own single county authority;

(b) Join another existing multicounty authority with which its boundaries are contiguous;

(c) Join with one or more contiguous inactive authorities to operate as a new multicounty authority; or

(d) Become an inactive authority and subject to regulation by the department of ecology.

(2) In order to withdraw from an existing multicounty authority, a county shall make arrangements, by interlocal agreement, for division of assets and liabilities and the appropriate release of any and all interest in assets of the multicounty authority.

(3) In order to effectuate any of the alternate arrangements in subsection (1) of this section, the procedures of this chapter to create an air pollution control authority shall be met and the actions must be taken at least six months prior to the effective date of withdrawal. The rules of the original multicounty authority shall continue in force for the withdrawing county until such time as all conditions to create an air pollution control authority have been met.

(4) At the effective date of a county's withdrawal, the remaining counties shall reorganize and reconstitute the legislative authority pursuant to this chapter. The air pollution control regulations of the existing multicounty authority shall remain in force and effect after the reorganization.

(5) If a county elects to withdraw from an existing multicounty authority, the air pollution control regulations shall remain in effect for the withdrawing county until suspended by the adoption of rules, regulations, or ordinances adopted under one of the alternatives of subsection (1) of this section. A county shall initiate proceedings to adopt such rules, regulations, or ordinances on or before the effective date of the county's withdrawal. [1991 c 125 § 2.]

**70.94.331 Powers and duties of department.** (1) The department shall have all the powers as provided in RCW 70.94.141.

(2) The department, in addition to any other powers vested in it by law after consideration at a public hearing held in accordance with chapters 42.30 and 34.05 RCW shall:

(a) Adopt rules establishing air quality objectives and air quality standards;

(b) Adopt emission standards which shall constitute minimum emission standards throughout the state. An authority may enact more stringent emission standards, except for emission performance standards for new wood stoves and opacity levels for residential solid fuel burning devices which shall be statewide, but in no event may less stringent standards be enacted by an authority without the prior approval of the department after public hearing and due notice to interested parties;

(c) Adopt by rule air quality standards and emission standards for the control or prohibition of emissions to the outdoor atmosphere of radionuclides, dust, fumes, mist, smoke, other particulate matter, vapor, gas, odorous substances, or any combination thereof. Such requirements may be based upon a system of classification by types of emissions or types of sources of emissions, or combinations thereof, which it determines most feasible for the purposes of this chapter. However, an industry, or the air pollution control authority having jurisdiction, can choose, subject to the submittal of appropriate data that the industry has quantified, to have any

limit on the opacity of emissions from a source whose emission standard is stated in terms of a weight of particulate per unit volume of air (e.g., grains per dry standard cubic foot) be based on the applicable particulate emission standard for that source, such that any violation of the opacity limit accurately indicates a violation of the applicable particulate emission standard. Any alternative opacity limit provided by this section that would result in increasing air contaminants emissions in any nonattainment area shall only be granted if equal or greater emission reductions are provided for by the same source obtaining the revised opacity limit. A reasonable fee may be assessed to the industry to which the alternate opacity standard would apply. The fee shall cover only those costs to the air pollution control authority which are directly related to the determination on the acceptability of the alternate opacity standard, including testing, oversight and review of data.

(3) The air quality standards and emission standards may be for the state as a whole or may vary from area to area or source to source, except that emission performance standards for new wood stoves and opacity levels for residential solid fuel burning devices shall be statewide, as may be appropriate to facilitate the accomplishment of the objectives of this chapter and to take necessary or desirable account of varying local conditions of population concentration, the existence of actual or reasonably foreseeable air pollution, topographic and meteorologic conditions and other pertinent variables.

(4) The department is directed to cooperate with the appropriate agencies of the United States or other states or any interstate agencies or international agencies with respect to the control of air pollution and air contamination, or for the formulation for the submission to the legislature of interstate air pollution control compacts or agreements.

(5) The department is directed to conduct or cause to be conducted a continuous surveillance program to monitor the quality of the ambient atmosphere as to concentrations and movements of air contaminants and conduct or cause to be conducted a program to determine the quantity of emissions to the atmosphere.

(6) The department shall enforce the air quality standards and emission standards throughout the state except where a local authority is enforcing the state regulations or its own regulations which are more stringent than those of the state.

(7) The department shall encourage local units of government to handle air pollution problems within their respective jurisdictions; and, on a cooperative basis provide technical and consultative assistance therefor.

(8) The department shall have the power to require the addition to or deletion of a county or counties from an existing authority in order to carry out the purposes of this chapter. No such addition or deletion shall be made without the concurrence of any existing authority involved. Such action shall only be taken after a public hearing held pursuant to the provisions of chapter 34.05 RCW.

(9) The department shall establish rules requiring sources or source categories to apply reasonable and available control methods. Such rules shall apply to those sources or source categories that individually or collectively contribute the majority of statewide air emissions of each regulated pollutant. The department shall review, and if necessary, update its rules every five years to ensure consistency with

current reasonable and available control methods. The department shall have adopted rules required under this subsection for all sources by July 1, 1996.

For the purposes of this section, "reasonable and available control methods" shall include but not be limited to, changes in technology, processes, or other control strategies. [1991 c 199 § 710; 1988 c 106 § 1. Prior: 1987 c 405 § 13; 1987 c 109 § 39; 1985 c 372 § 4; 1969 ex.s. c 168 § 34; 1967 c 238 § 46.]

**Finding—1991 c 199:** See note following RCW 70.94.011.

**Purpose—Short title—Construction—Rules—Severability—Captions—1987 c 109:** See notes following RCW 43.21B.001.

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**70.94.332 Enforcement actions by department—Notice to violators.** At least thirty days prior to the commencement of any formal enforcement action under RCW 70.94.430 and 70.94.431, the department of ecology shall cause written notice to be served upon the alleged violator or violators. The notice shall specify the provision of this chapter or the rule or regulation alleged to be violated, and the facts alleged to constitute a violation thereof, and may include an order that necessary corrective action be taken within a reasonable time. In lieu of an order, the department may require that the alleged violator or violators appear before it for the purpose of providing the department information pertaining to the violation or the charges complained of. Every notice of violation shall offer to the alleged violator an opportunity to meet with the department prior to the commencement of enforcement action. [1991 c 199 § 711; 1987 c 109 § 18; 1967 c 238 § 47.]

**Finding—1991 c 199:** See note following RCW 70.94.011.

**Purpose—Short title—Construction—Rules—Severability—Captions—1987 c 109:** See notes following RCW 43.21B.001.

**70.94.335 Hazardous substance remedial actions—Procedural requirements not applicable.** The procedural requirements of this chapter shall not apply to any person conducting a remedial action at a facility pursuant to a consent decree, order, or agreed order issued pursuant to chapter 70.105D RCW, or to the department of ecology when it conducts a remedial action under chapter 70.105D RCW. The department of ecology shall ensure compliance with the substantive requirements of this chapter through the consent decree, order, or agreed order issued pursuant to chapter 70.105D RCW, or during the department-conducted remedial action, through the procedures developed by the department pursuant to RCW 70.105D.090. [1994 c 257 § 15.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**70.94.350 Contracts, agreements for use of personnel by department—Reimbursement—Merit system regulations waived.** The department is authorized to contract for or otherwise agree to the use of personnel of municipal corporations or other agencies or private persons; and the department is further authorized to reimburse such municipal corporations or agencies for the employment of such personnel. Merit system regulations or standards for the employment of personnel may be waived for personnel hired under contract as provided for in this section. The department shall provide,

within available appropriations, for the scientific, technical, legal, administrative, and other necessary services and facilities for performing the functions under this chapter. [1987 c 109 § 40; 1979 c 141 § 122; 1967 c 238 § 45; 1961 c 188 § 6.]

**Purpose—Short title—Construction—Rules—Severability—Captions—1987 c 109:** See notes following RCW 43.21B.001.

**70.94.370 Powers and rights of governmental units and persons are not limited by act or recommendations.**

No provision of this chapter or any recommendation of the state board or of any local or regional air pollution program is a limitation:

(1) On the power of any city, town or county to declare, prohibit and abate nuisances.

(2) On the power of the secretary of social and health services to provide for the protection of the public health under any authority presently vested in that office or which may be hereafter prescribed by law.

(3) On the power of a state agency in the enforcement, or administration of any provision of law which it is specifically permitted or required to enforce or administer.

(4) On the right of any person to maintain at any time any appropriate action for relief against any air pollution. [1979 c 141 § 123; 1967 c 238 § 59; 1961 c 188 § 8.]

**70.94.380 Emission control requirements.** (1) Every activated authority operating an air pollution control program shall have requirements for the control of emissions which are no less stringent than those adopted by the department of ecology for the geographic area in which such air pollution control program is located. Less stringent requirements than compelled by this section may be included in a local or regional air pollution control program only after approval by the department of ecology following demonstration to the satisfaction of the department of ecology that the proposed requirements are consistent with the purposes of this chapter: PROVIDED, That such approval shall be preceded by public hearing, of which notice has been given in accordance with chapter 42.30 RCW. The department of ecology, upon receiving evidence that conditions have changed or that additional information is relevant to a decision with respect to the requirements for emission control, may, after public hearing on due notice, withdraw any approval previously given to a less stringent local or regional requirement.

[(2)] Nothing in this chapter shall be construed to prevent a local or regional air pollution control authority from adopting and enforcing more stringent emission control requirements than those adopted by the department of ecology and applicable within the jurisdiction of the local or regional air pollution control authority, except that the emission performance standards for new wood stoves and the opacity levels for residential solid fuel burning devices shall be statewide. [1987 c 405 § 14; 1979 ex.s. c 30 § 13; 1969 ex.s. c 168 § 36; 1967 c 238 § 50.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**70.94.385 State financial aid—Application for—Requirements.** (1) Any authority may apply to the department for state financial aid. The department shall annually establish the amount of state funds available for the local

authorities taking into consideration available federal and state funds. The establishment of funding amounts shall be consistent with federal requirements and local maintenance of effort necessary to carry out the provisions of this chapter. Any such aid shall be expended from the general fund or from other appropriations as the legislature may provide for this purpose: PROVIDED, That federal funds shall be utilized to the maximum unless otherwise approved by the department: PROVIDED FURTHER, That the amount of state funds provided to local authorities during the previous year shall not be reduced without a public notice or public hearing held by the department if requested by the affected local authority, unless such changes are the direct result of a reduction in the available federal funds for air pollution control programs.

(2) Before any such application is approved and financial aid is given or approved by the department, the authority shall demonstrate to the satisfaction of the department that it is fulfilling the requirements of this chapter. If the department has not adopted ambient air quality standards and objectives as permitted by RCW 70.94.331, the authority shall demonstrate to the satisfaction of the department that it is acting in good faith and doing all that is possible and reasonable to control and prevent air pollution within its jurisdictional boundaries and to carry out the purposes of this chapter.

(3) The department shall adopt rules requiring the submission of such information by each authority including the submission of its proposed budget and a description of its program in support of the application for state financial aid as necessary to enable the department to determine the need for state aid. [1991 c 199 § 712; 1987 c 109 § 41; 1969 ex.s. c 168 § 37; 1967 c 238 § 51.]

**Finding—1991 c 199:** See note following RCW 70.94.011.

**Purpose—Short title—Construction—Rules—Severability—Captions—1987 c 109:** See notes following RCW 43.21B.001.

**70.94.390 Hearing upon activation of authority—Finding—Assumption of jurisdiction by department—Expenses.** The department may, at any time and on its own motion, hold a hearing to determine if the activation of an authority is necessary for the prevention, abatement and control of air pollution which exists or is likely to exist in any area of the state. Notice of such hearing shall be conducted in accordance with chapter 42.30 RCW and chapter 34.05 RCW. If at such hearing the department finds that air pollution exists or is likely to occur in a particular area, and that the purposes of this chapter and the public interest will be best served by the activation of an authority it shall designate the boundaries of such area and set forth in a report to the appropriate county or counties recommendations for the activation of an authority: PROVIDED, That if at such hearing the department determines that the activation of an authority is not practical or feasible for the reason that a local or regional air pollution control program cannot be successfully established or operated due to unusual circumstances and conditions, but that the control and/or prevention of air pollution is necessary for the purposes of this chapter and the public interest, it may assume jurisdiction and so declare by order. Such order shall designate the geographic area in which, and the effective date upon which, the department will exercise jurisdiction for the control and/or prevention of air pollution.

The department shall exercise its powers and duties in the same manner as if it had assumed authority under RCW 70.94.410.

All expenses incurred by the department in the control and prevention of air pollution in any county pursuant to the provisions of RCW 70.94.390 and 70.94.410 shall constitute a claim against such county. The department shall certify the expenses to the auditor of the county, who promptly shall issue his warrant on the county treasurer payable out of the current expense fund of the county. In the event that the amount in the current expense fund of the county is not adequate to meet the expenses incurred by the department, the department shall certify to the state treasurer that they have a prior claim on any money in the "liquor excise tax fund" that is to be apportioned to that county by the state treasurer as provided in RCW 82.08.170. In the event that the amount in the "liquor excise tax fund" that is to be apportioned to that county by the state treasurer is not adequate to meet the expenses incurred by the department, the department shall certify to the state treasurer that they have a prior claim on any excess funds from the liquor revolving fund that are to be distributed to that county as provided in RCW 66.08.190 through 66.08.220. All moneys that are collected as provided in this section shall be placed in the general fund in the account of the office of air programs of the department. [1987 c 109 § 42; 1969 ex.s. c 168 § 38; 1967 c 238 § 52.]

**Purpose—Short title—Construction—Rules—Severability—Captions—1987 c 109:** See notes following RCW 43.21B.001.

**70.94.395 Air contaminant sources—Regulation by department; authorities may be more stringent—Hearing—Standards.** If the department finds, after public hearing upon due notice to all interested parties, that the emissions from a particular type or class of air contaminant source should be regulated on a statewide basis in the public interest and for the protection of the welfare of the citizens of the state, it may adopt and enforce rules to control and/or prevent the emission of air contaminants from such source. An authority may, after public hearing and a finding by the board of a need for more stringent rules than those adopted by the department under this section, propose the adoption of such rules by the department for the control of emissions from the particular type or class of air contaminant source within the geographical area of the authority. The department shall hold a public hearing and shall adopt the proposed rules within the area of the requesting authority, unless it finds that the proposed rules are inconsistent with the rules adopted by the department under this section. When such standards are adopted by the department it shall delegate solely to the requesting authority all powers necessary for their enforcement at the request of the authority. If after public hearing the department finds that the regulation on a statewide basis of a particular type or class of air contaminant source is no longer required for the public interest and the protection of the welfare of the citizens of the state, the department may relinquish exclusive jurisdiction over such source. [1991 c 199 § 713; 1987 c 109 § 43; 1969 ex.s. c 168 § 39; 1967 c 238 § 53.]

**Finding—1991 c 199:** See note following RCW 70.94.011.

**Purpose—Short title—Construction—Rules—Severability—Captions—1987 c 109:** See notes following RCW 43.21B.001.

[Title 70 RCW—page 216]

**70.94.400 Order activating authority—Filing—Hearing—Amendment of order.** If, at the end of ninety days after the department issues a report as provided for in RCW 70.94.390, to appropriate county or counties recommending the activation of an authority such county or counties have not performed those actions recommended by the department, and the department is still of the opinion that the activation of an authority is necessary for the prevention, abatement and control of air pollution which exists or is likely to exist, then the department may, at its discretion, issue an order activating an authority. Such order, a certified copy of which shall be filed with the secretary of state, shall specify the participating county or counties and the effective date by which the authority shall begin to function and exercise its powers. Any authority activated by order of the department shall choose the members of its board as provided in RCW 70.94.100 and begin to function in the same manner as if it had been activated by resolutions of the county or counties included within its boundaries. The department may, upon due notice to all interested parties, conduct a hearing in accordance with chapter 42.30 RCW and chapter 34.05 RCW within six months after the order was issued to review such order and to ascertain if such order is being carried out in good faith. At such time the department may amend any such order issued if it is determined by the department that such order is being carried out in bad faith or the department may take the appropriate action as is provided in RCW 70.94.410. [1987 c 109 § 44; 1969 ex.s. c 168 § 40; 1967 c 238 § 54.]

**Purpose—Short title—Construction—Rules—Severability—Captions—1987 c 109:** See notes following RCW 43.21B.001.

**70.94.405 Air pollution control authority—Review by department of program.** At any time after an authority has been activated for no less than one year, the department may, on its own motion, conduct a hearing held in accordance with chapters 42.30 and 34.05 RCW, to determine whether or not the air pollution prevention and control program of such authority is being carried out in good faith and is as effective as possible. If at such hearing the department finds that such authority is not carrying out its air pollution control or prevention program in good faith, is not doing all that is possible and reasonable to control and/or prevent air pollution within the geographical area over which it has jurisdiction, or is not carrying out the provisions of this chapter, it shall set forth in a report or order to the appropriate authority: (1) Its recommendations as to how air pollution prevention and/or control might be more effectively accomplished; and (2) guidelines which will assist the authority in carrying out the recommendations of the department. [1991 c 199 § 714; 1987 c 109 § 45; 1969 ex.s. c 168 § 41; 1967 c 238 § 55.]

**Finding—1991 c 199:** See note following RCW 70.94.011.

**Purpose—Short title—Construction—Rules—Severability—Captions—1987 c 109:** See notes following RCW 43.21B.001.

**70.94.410 Air pollution control authority—Assumption of control by department.** (1) If, after thirty days from the time that the department issues a report or order to an authority under RCW 70.94.400 and 70.94.405, such authority has not taken action which indicates that it is attempting in good faith to implement the recommendations or actions of the department as set forth in the report or order, the depart-

(2010 Ed.)

ment may, by order, declare as null and void any or all ordinances, resolutions, rules or regulations of such authority relating to the control and/or prevention of air pollution, and at such time the department shall become the sole body with authority to make and enforce rules and regulations for the control and/or prevention of air pollution within the geographical area of such authority. If this occurs, the department may assume all those powers which are given to it by law to effectuate the purposes of this chapter. The department may, by order, continue in effect and enforce provisions of the ordinances, resolutions, or rules of such authority which are not less stringent than those requirements which the department may have found applicable to the area under RCW 70.94.331, until such time as the department adopts its own rules. Any rules promulgated by the department shall be subject to the provisions of chapter 34.05 RCW. Any enforcement actions shall be subject to RCW 43.21B.300 or 43.21B.310.

(2) No provision of this chapter is intended to prohibit any authority from reestablishing its air pollution control program which meets with the approval of the department and which complies with the purposes of this chapter and with applicable rules and orders of the department.

(3) Nothing in this chapter shall prevent the department from withdrawing the exercise of its jurisdiction over an authority upon its own motion if the department has found at a hearing held in accordance with chapters 42.30 and 34.05 RCW, that the air pollution prevention and control program of such authority will be carried out in good faith, that such program will do all that is possible and reasonable to control and/or prevent air pollution within the geographical area over which it has jurisdiction, and that the program complies with the provisions of this chapter. Upon the withdrawal of the department, the department shall prescribe certain recommendations as to how air pollution prevention and/or control is to be effectively accomplished and guidelines which will assist the authority in carrying out the recommendations of the department. [1991 c 199 § 715; 1987 c 109 § 46; 1969 ex.s. c 168 § 42; 1967 c 238 § 56.]

**Finding—1991 c 199:** See note following RCW 70.94.011.

**Purpose—Short title—Construction—Rules—Severability—Captions—1987 c 109:** See notes following RCW 43.21B.001.

**70.94.420 State departments and agencies to cooperate with department and authorities.** It is declared to be the intent of the legislature of the state of Washington that any state department or agency having jurisdiction over any building, installation, other property, or other activity creating or likely to create significant air pollution shall cooperate with the department and with air pollution control agencies in preventing and/or controlling the pollution of the air in any area insofar as the discharge of air contaminants from or by such building, installation, other property, or activity may cause or contribute to pollution of the air in such area. Such state department or agency shall comply with the provisions of this chapter and with any ordinance, resolution, rule or regulation issued hereunder in the same manner as any other person subject to such laws or rules. [1991 c 199 § 716; 1987 c 109 § 47; 1969 ex.s. c 168 § 44; 1967 c 238 § 58.]

**Finding—1991 c 199:** See note following RCW 70.94.011.

**Purpose—Short title—Construction—Rules—Severability—Captions—1987 c 109:** See notes following RCW 43.21B.001.

**70.94.422 Department of health powers regarding radionuclides—Energy facility site evaluation council authority over permit program sources.** (1) The department of health shall have all the enforcement powers as provided in RCW 70.94.332, 70.94.425, 70.94.430, 70.94.431 (1) through (7), and 70.94.435 with respect to emissions of radionuclides. This section does not preclude the department of ecology from exercising its authority under this chapter.

(2) Permits for energy facilities subject to chapter 80.50 RCW shall be issued by the energy facility site evaluation council. However, the permits become effective only if the governor approves an application for certification and executes a certification agreement under chapter 80.50 RCW. The council shall have all powers necessary to administer an operating permits program pertaining to such facilities, consistent with applicable air quality standards established by the department or local air pollution control authorities, or both, and to obtain the approval of the United States environmental protection agency. The council's powers include, but are not limited to, all of the enforcement powers provided in RCW 70.94.332, 70.94.425, 70.94.430, 70.94.431 (1) through (7), and 70.94.435 with respect to permit program sources required to obtain certification from the council under chapter 80.50 RCW. To the extent not covered under RCW 80.50.071, the council may collect fees as granted to delegated local air authorities under RCW 70.94.152, 70.94.161 (14) and (15), 70.94.162, and 70.94.154(7) with respect to permit program sources required to obtain certification from the council under chapter 80.50 RCW. The council and the department shall each establish procedures that provide maximum coordination and avoid duplication between the two agencies in carrying out the requirements of this chapter. [1993 c 252 § 7.]

**70.94.425 Restraining orders—Injunctions.** Notwithstanding the existence or use of any other remedy, whenever any person has engaged in, or is about to engage in, any acts or practices which constitute or will constitute a violation of any provision of this chapter, or any rule, regulation or order issued thereunder, the governing body or board or the department, after notice to such person and an opportunity to comply, may petition the superior court of the county wherein the violation is alleged to be occurring or to have occurred for a restraining order or a temporary or permanent injunction or another appropriate order. [1987 c 109 § 48; 1967 c 238 § 60.]

**Purpose—Short title—Construction—Rules—Severability—Captions—1987 c 109:** See notes following RCW 43.21B.001.

**70.94.430 Penalties.** (1) Any person who knowingly violates any of the provisions of chapter 70.94 or 70.120 RCW, or any ordinance, resolution, or regulation in force pursuant thereto is guilty of a gross misdemeanor and upon conviction thereof shall be punished by a fine of not more than ten thousand dollars, or by imprisonment in the county jail for not more than one year, or by both for each separate violation.

(2) Any person who negligently releases into the ambient air any substance listed by the department of ecology as a hazardous air pollutant, other than in compliance with the terms of an applicable permit or emission limit, and who at the time negligently places another person in imminent danger of death or substantial bodily harm is guilty of a gross misdemeanor and shall, upon conviction, be punished by a fine of not more than ten thousand dollars, or by imprisonment for not more than one year, or both.

(3) Any person who knowingly releases into the ambient air any substance listed by the department of ecology as a hazardous air pollutant, other than in compliance with the terms of an applicable permit or emission limit, and who knows at the time that he or she thereby places another person in imminent danger of death or substantial bodily harm, is guilty of a class C felony and shall, upon conviction, be punished by a fine of not less than fifty thousand dollars, or by imprisonment for not more than five years, or both.

(4) Any person who knowingly fails to disclose a potential conflict of interest under RCW 70.94.100 is guilty of a gross misdemeanor, and upon conviction thereof shall be punished by a fine of not more than five thousand dollars. [2003 c 53 § 355; 1991 c 199 § 310; 1984 c 255 § 1; 1973 1st ex.s. c 176 § 1; 1967 c 238 § 61.]

**Intent—Effective date—2003 c 53:** See notes following RCW 2.48.180.

**Finding—1991 c 199:** See note following RCW 70.94.011.

**70.94.431 Civil penalties—Excusable excess emissions.** (1) Except as provided in RCW 43.05.060 through 43.05.080 and 43.05.150, and in addition to or as an alternate to any other penalty provided by law, any person who violates any of the provisions of chapter 70.94 RCW, chapter 70.120 RCW, or any of the rules in force under such chapters may incur a civil penalty in an amount not to exceed ten thousand dollars per day for each violation. Each such violation shall be a separate and distinct offense, and in case of a continuing violation, each day's continuance shall be a separate and distinct violation.

Any person who fails to take action as specified by an order issued pursuant to this chapter shall be liable for a civil penalty of not more than ten thousand dollars for each day of continued noncompliance.

(2) Penalties incurred but not paid shall accrue interest, beginning on the ninety-first day following the date that the penalty becomes due and payable, at the highest rate allowed by RCW 19.52.020 on the date that the penalty becomes due and payable. If violations or penalties are appealed, interest shall not begin to accrue until the thirty-first day following final resolution of the appeal.

The maximum penalty amounts established in this section may be increased annually to account for inflation as determined by the state office of the economic and revenue forecast council.

(3) Each act of commission or omission which procures, aids or abets in the violation shall be considered a violation under the provisions of this section and subject to the same penalty. The penalties provided in this section shall be imposed pursuant to RCW 43.21B.300.

(4) All penalties recovered under this section by the department shall be paid into the state treasury and credited to

the air pollution control account established in RCW 70.94.015 or, if recovered by the authority, shall be paid into the treasury of the authority and credited to its funds. If a prior penalty for the same violation has been paid to a local authority, the penalty imposed by the department under subsection (1) of this section shall be reduced by the amount of the payment.

(5) To secure the penalty incurred under this section, the state or the authority shall have a lien on any vessel used or operated in violation of this chapter which shall be enforced as provided in RCW 60.36.050.

(6) Public or private entities that are recipients or potential recipients of department grants, whether for air quality related activities or not, may have such grants rescinded or withheld by the department for failure to comply with provisions of this chapter.

(7) In addition to other penalties provided by this chapter, persons knowingly under-reporting emissions or other information used to set fees, or persons required to pay emission or permit fees who are more than ninety days late with such payments may be subject to a penalty equal to three times the amount of the original fee owed.

(8) By January 1, 1992, the department shall develop rules for excusing excess emissions from enforcement action if such excess emissions are unavoidable. The rules shall specify the criteria and procedures for the department and local air authorities to determine whether a period of excess emissions is excusable in accordance with the state implementation plan. [1995 c 403 § 630; 1991 c 199 § 311; 1990 c 157 § 1; 1987 c 109 § 19; 1984 c 255 § 2; 1973 1st ex.s. c 176 § 2; 1969 ex.s. c 168 § 53.]

**Findings—Short title—Intent—1995 c 403:** See note following RCW 34.05.328.

**Finding—1991 c 199:** See note following RCW 70.94.011.

**Purpose—Short title—Construction—Rules—Severability—Captions—1987 c 109:** See notes following RCW 43.21B.001.

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**70.94.435 Additional means for enforcement of chapter.** As an additional means of enforcing this chapter, the governing body or board may accept an assurance of discontinuance of any act or practice deemed in violation of this chapter or of any ordinance, resolution, rule or regulation adopted pursuant hereto, from any person engaging in, or who has engaged in, such act or practice. Any such assurance shall specify a time limit during which such discontinuance is to be accomplished. Failure to perform the terms of any such assurance shall constitute prima facie proof of a violation of this chapter or the ordinances, resolutions, rules or regulations, or order issued pursuant thereto, which make the alleged act or practice unlawful for the purpose of securing any injunction or other relief from the superior court as provided in RCW 70.94.425. [1967 c 238 § 62.]

**70.94.440 Short title.** This chapter may be known and cited as the "Washington Clean Air Act". [1967 c 238 § 63.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**70.94.445 Air pollution control facilities—Tax exemptions and credits.** See chapter 82.34 RCW.

**70.94.450 Wood stoves—Policy.** In the interest of the public health and welfare and in keeping with the objectives of RCW 70.94.011, the legislature declares it to be the public policy of the state to control, reduce, and prevent air pollution caused by wood stove emissions. It is the state's policy to reduce wood stove emissions by encouraging the department of ecology to continue efforts to educate the public about the effects of wood stove emissions, other heating alternatives, and the desirability of achieving better emission performance and heating efficiency from wood stoves. The legislature further declares that: (1) The purchase of certified wood stoves will not solve the problem of pollution caused by wood stove emissions; and (2) the reduction of air pollution caused by wood stove emissions will only occur when wood stove users adopt proper methods of wood burning. [1987 c 405 § 1.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**70.94.453 Wood stoves—Definitions.** Unless the context clearly requires otherwise, the definitions in this section apply throughout RCW 70.94.453 through \*70.94.487:

(1) "Department" means the department of ecology.

(2) "Wood stove" means a solid fuel burning device other than a fireplace not meeting the requirements of RCW 70.94.457, including any fireplace insert, wood stove, wood burning heater, wood stick boiler, coal-fired furnace, coal stove, or similar device burning any solid fuel used for aesthetic or space-heating purposes in a private residence or commercial establishment, which has a heat input less than one million British thermal units per hour. The term "wood stove" does not include wood cook stoves.

(3) "Fireplace" means: (a) Any permanently installed masonry fireplace; or (b) any factory-built metal solid fuel burning device designed to be used with an open combustion chamber and without features to control the air to fuel ratio.

(4) "New wood stove" means: (a) A wood stove that is sold at retail, bargained, exchanged, or given away for the first time by the manufacturer, the manufacturer's dealer or agency, or a retailer; and (b) has not been so used to have become what is commonly known as "secondhand" within the ordinary meaning of that term.

(5) "Solid fuel burning device" means any device for burning wood, coal, or any other nongaseous and nonliquid fuel, including a wood stove and fireplace.

(6) "Authority" means any air pollution control agency whose jurisdictional boundaries are coextensive with the boundaries of one or more counties.

(7) "Opacity" means the degree to which an object seen through a plume is obscured, stated as a percentage. The methods approved by the department in accordance with RCW 70.94.331 shall be used to establish opacity for the purposes of this chapter. [1987 c 405 § 2.]

\*Reviser's note: RCW 70.94.487 was repealed by 1988 c 186 § 16, effective June 30, 1988.

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**70.94.455 Residential and commercial construction—Burning and heating device standards.** After January 1, 1992, no used solid fuel burning device shall be installed in new or existing buildings unless such device is either Oregon department of environmental quality phase II or United States environmental protection agency certified or

a pellet stove either certified or exempt from certification by the United States environmental protection agency.

(1) By July 1, 1992, the state building code council shall adopt rules requiring an adequate source of heat other than wood stoves in all new and substantially remodeled residential and commercial construction. This rule shall apply (a) to areas designated by a county to be an urban growth area under chapter 36.70A RCW; and (b) to areas designated by the environmental protection agency as being in nonattainment for particulate matter.

(2) For purposes of this section, "substantially remodeled" means any alteration or restoration of a building exceeding sixty percent of the appraised value of such building within a twelve-month period. [1991 c 199 § 503.]

**Finding—1991 c 199:** See note following RCW 70.94.011.

**70.94.457 Solid fuel burning devices—Emission performance standards.** The department of ecology shall establish by rule under chapter 34.05 RCW:

(1) Statewide emission performance standards for new solid fuel burning devices. Notwithstanding any other provision of this chapter which allows an authority to adopt more stringent emission standards, no authority shall adopt any emission standard for new solid fuel burning devices other than the statewide standard adopted by the department under this section.

(a) After January 1, 1995, no solid fuel burning device shall be offered for sale in this state to residents of this state that does not meet the following particulate air contaminant emission standards under the test methodology of the United States environmental protection agency in effect on January 1, 1991, or an equivalent standard under any test methodology adopted by the United States environmental protection agency subsequent to such date: (i) Two and one-half grams per hour for catalytic wood stoves; and (ii) four and one-half grams per hour for all other solid fuel burning devices. For purposes of this subsection, "equivalent" shall mean the emissions limits specified in this subsection multiplied by a statistically reliable conversion factor determined by the department that compares the difference between the emission test methodology established by the United States environmental protection agency prior to May 15, 1991, with the test methodology adopted subsequently by the agency. Subsection (a) of this subsection does not apply to fireplaces.

(b) After January 1, 1997, no fireplace, except masonry fireplaces, shall be offered for sale unless such fireplace meets the 1990 United States environmental protection agency standards for wood stoves or equivalent standard that may be established by the state building code council by rule. Prior to January 1, 1997, the state building code council shall establish by rule a methodology for the testing of factory-built fireplaces. The methodology shall be designed to achieve a particulate air emission standard equivalent to the 1990 United States environmental protection agency standard for wood stoves. In developing the rules, the council shall include on the technical advisory committee at least one representative from the masonry fireplace builders and at least one representative of the factory-built fireplace manufacturers.

(c) Prior to January 1, 1997, the state building code council shall establish by rule design standards for the construction of new masonry fireplaces in Washington state. In developing the rules, the council shall include on the technical advisory committee at least one representative from the masonry fireplace builders and at least one representative of the factory-built fireplace manufacturers. It shall be the goal of the council to develop design standards that generally achieve reductions in particulate air contaminant emissions commensurate with the reductions being achieved by factory-built fireplaces at the time the standard is established.

(d) Actions of the department and local air pollution control authorities under this section shall preempt actions of other state agencies and local governments for the purposes of controlling air pollution from solid fuel burning devices, except where authorized by chapter 199, Laws of 1991.

(e) Subsection (1)(a) of this section shall not apply to fireplaces.

(f) Notwithstanding (a) of this subsection, the department is authorized to adopt, by rule, emission standards adopted by the United States environmental protection agency for new wood stoves sold at retail. For solid fuel burning devices for which the United States environmental protection agency has not established emission standards, the department may exempt or establish, by rule, statewide standards including emission levels and test procedures for such devices and such emission levels and test procedures shall be equivalent to emission levels per pound per hour burned for other new wood stoves and fireplaces regulated under this subsection.

(2) A program to:

(a) Determine whether a new solid fuel burning device complies with the statewide emission performance standards established in subsection (1) of this section; and

(b) Approve the sale of devices that comply with the statewide emission performance standards. [1995 c 205 § 3; 1991 c 199 § 501; 1987 c 405 § 4.]

**Finding—1991 c 199:** See note following RCW 70.94.011.

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**70.94.460 Sale of unapproved wood stoves—Prohibited.** After July 1, 1988, no person shall sell, offer to sell, or knowingly advertise to sell a new wood stove in this state to a resident of this state unless the wood stove has been approved by the department under the program established under RCW 70.94.457. [1995 c 205 § 4; 1987 c 405 § 7.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**70.94.463 Sale of unapproved wood stoves—Penalty.** After July 1, 1988, any person who sells, offers to sell, or knowingly advertises to sell a new wood stove in this state in violation of RCW 70.94.460 shall be subject to the penalties and enforcement actions under this chapter. [1987 c 405 § 8.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**70.94.467 Sale of unapproved wood stoves—Application of law to advertising media.** Nothing in RCW 70.94.460 or 70.94.463 shall apply to a radio station, television station, publisher, printer, or distributor of a newspaper, magazine, billboard, or other advertising medium that

accepts advertising in good faith and without knowledge of its violation of RCW 70.94.453 through \*70.94.487. [1987 c 405 § 12.]

\***Reviser's note:** RCW 70.94.487 was repealed by 1988 c 186 § 16, effective June 30, 1988.

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**70.94.470 Residential solid fuel burning devices—Opacity levels—Enforcement and public education.** (1) The department shall establish, by rule under chapter 34.05 RCW, (a) a statewide opacity level of twenty percent for residential solid fuel burning devices for the purpose of enforcement on a complaint basis and (b) a statewide opacity of ten percent for purposes of public education.

(2) Notwithstanding any other provision of this chapter which may allow an authority to adopt a more stringent opacity level, no authority shall adopt or enforce an opacity level for solid fuel burning devices other than established in this section.

(3) Actions of the department and local air pollution control authorities under this section shall preempt actions of other state agencies and local governments for the purposes of controlling air pollution from solid fuel burning devices, except where authorized by chapter 199, Laws of 1991. [1991 c 199 § 502; 1987 c 405 § 5.]

**Finding—1991 c 199:** See note following RCW 70.94.011.

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**70.94.473 Limitations on burning wood for heat—First and second stage burn bans—Report on second stage burn ban—Report to the legislature.** (1) Any person in a residence or commercial establishment which has an adequate source of heat without burning wood shall:

(a) Not burn wood in any solid fuel burning device whenever the department has determined under RCW 70.94.715 that any air pollution episode exists in that area;

(b) Not burn wood in any solid fuel burning device except those which are either Oregon department of environmental quality phase II or United States environmental protection agency certified or certified by the department under RCW 70.94.457(1) or a pellet stove either certified or issued an exemption by the United States environmental protection agency in accordance with Title 40, Part 60 of the code of federal regulations, in the geographical area and for the period of time that a first stage of impaired air quality has been determined, by the department or any authority, for that area. A first stage of impaired air quality is reached when forecasted meteorological conditions are predicted to cause fine particulate levels to exceed thirty-five micrograms per cubic meter, measured on a twenty-four hour average, within forty-eight hours; and

(c)(i) Not burn wood in any solid fuel burning device in a geographical area and for the period of time that a second stage of impaired air quality has been determined by the department or any authority, for that area. A second stage of impaired air quality is reached when a first stage of impaired air quality has been in force and has not been sufficient to reduce the increasing fine particulate pollution trend, fine particulates are at an ambient level of twenty-five micrograms per cubic meter measured on a twenty-four hour aver-

age, and forecasted meteorological conditions are not expected to allow levels of fine particulates to decline below twenty-five micrograms per cubic meter for a period of twenty-four hours or more from the time that the fine particulates are measured at the trigger level.

(ii) A second stage burn ban may be called without calling a first stage burn ban only when all of the following occur and shall require the department or the local air pollution control authority calling a second stage burn ban under this subsection to comply with the requirements of subsection (4) of this section:

(A) Fine particulate levels have reached or exceeded twenty-five micrograms per cubic meter, measured on a twenty-four hour average;

(B) Meteorological conditions have caused fine particulate levels to rise rapidly;

(C) Meteorological conditions are predicted to cause fine particulate levels to exceed the thirty-five micrograms per cubic meter, measured on a twenty-four hour average, within twenty-four hours; and

(D) Meteorological conditions are highly likely to prevent sufficient dispersion of fine particulate.

(2) Actions of the department and local air pollution control authorities under this section shall preempt actions of other state agencies and local governments for the purposes of controlling air pollution from solid fuel burning devices, except where authorized by chapter 199, Laws of 1991.

(3) The department or any local air pollution control authority that has called a second stage burn ban under the authority of subsection (1)(c)(ii) of this section shall, within ninety days, prepare a written report describing:

(a) The meteorological conditions that resulted in their calling the second stage burn ban;

(b) Whether the agency could have taken actions to avoid calling a second stage burn ban without calling a first stage burn ban; and

(c) Any changes the department or authority is making to its procedures of calling first stage and second stage burn bans to avoid calling a second stage burn ban without first calling a first stage burn ban.

After consulting with affected parties, the department shall prescribe the format of such a report and may also require additional information be included in the report. All reports shall be sent to the department and the department shall keep the reports on file for not less than five years and available for public inspection and copying in accordance with RCW 42.56.090.

(4) The department and local air pollution control authorities shall evaluate the effectiveness of the burn ban programs contained in this section in avoiding fine particulate levels to exceed thirty-five micrograms per cubic meter, measured on a twenty-four hour average, and provide a joint report of the results to the legislature by September 1, 2011. [2008 c 40 § 1; 2007 c 339 § 1; 2005 c 197 § 1; 1998 c 342 § 8; 1995 c 205 § 1; 1991 c 199 § 504; 1990 c 128 § 2; 1987 c 405 § 6.]

**Finding—1991 c 199:** See note following RCW 70.94.011.

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**70.94.475 Liability of condominium owners' association or resident association.** A condominium owners' association or an association formed by residents of a multiple-family dwelling are not liable for violations of RCW 70.94.473 by a resident of a condominium or multiple-family dwelling. The associations shall cooperate with local air pollution control authorities to acquaint residents with the provisions of this section. [1990 c 157 § 2.]

**70.94.477 Limitations on use of solid fuel burning devices.** (1) Unless allowed by rule under chapter 34.05 RCW, a person shall not cause or allow any of the following materials to be burned in any residential solid fuel burning device:

(a) Garbage;

(b) Treated wood;

(c) Plastics;

(d) Rubber products;

(e) Animals;

(f) Asphaltic products;

(g) Waste petroleum products;

(h) Paints; or

(i) Any substance, other than properly seasoned fuel wood, which normally emits dense smoke or obnoxious odors.

(2) To achieve and maintain attainment in areas of non-attainment for fine particulates in accordance with section 172 of the federal clean air act, a local air pollution control authority or the department may, after meeting requirements in subsection (3) of this section, prohibit the use of solid fuel burning devices, except:

(a) Fireplaces as defined in RCW 70.94.453(3);

(b) Wood stoves meeting the standards set forth in RCW 70.94.473(1)(b); or

(c) Pellet stoves.

(3) Prior to prohibiting the use of solid fuel burning devices under subsection (2) of this section, the department or the local air pollution control authority must:

(a) Seek input from any city, county, or jurisdictional health department affected by the proposal to prohibit the use of solid fuel burning devices; and

(b) Make written findings that:

(i) The area is designated as an area of nonattainment for fine particulate matter by the United States environmental protection agency, or is in maintenance status under that designation;

(ii) Emissions from solid fuel burning devices in the area are a major contributing factor for violating the national ambient air quality standard for fine particulates; and

(iii) The area has an adequately funded program to assist low-income households to secure an adequate source of heat, which may include wood stoves meeting the requirements of RCW 70.94.453(2).

(4) If and only if the nonattainment area is within the jurisdiction of the department and the legislative authority of a city or county within the area of nonattainment formally expresses concerns with the department's written findings, then the department must publish on the department's web site the reasons for prohibiting the use of solid fuel burning devices under subsection (2) of this section that includes a

response to the concerns expressed by the city or county legislative authority.

(5) When a local air pollution control authority or the department prohibits the use of solid fuel burning devices as authorized by this section, the cities, counties, and jurisdictional health departments serving the area shall cooperate with the department or local air pollution control authority as the department or the local air pollution control authority implements the prohibition. However, cooperation shall not include enforcement of this prohibition. The responsibility for actual enforcement of the prohibition shall reside solely with the department or the local air pollution control authority.

(6) A prohibition issued by a local air pollution control authority or the department under this section shall not apply to a person in a residence or commercial establishment that does not have an adequate source of heat without burning wood.

(7) As used in this section, "jurisdictional health department" means a city, county, city-county, or district public health department. [2009 c 282 § 1; 1995 c 205 § 2; 1990 c 128 § 3; 1987 c 405 § 9.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**70.94.480 Wood stove education program.** (1) The department of ecology shall establish a program to educate wood stove dealers and the public about:

(a) The effects of wood stove emissions on health and air quality;

(b) Methods of achieving better efficiency and emission performance from wood stoves;

(c) Wood stoves that have been approved by the department;

(d) The benefits of replacing inefficient wood stoves with stoves approved under RCW 70.94.457.

(2) Persons selling new wood stoves shall distribute and verbally explain educational materials describing when a stove can and cannot be legally used to customers purchasing new wood stoves. [1990 c 128 § 6; 1987 c 405 § 3.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**70.94.483 Wood stove education and enforcement account created—Fee imposed on solid fuel burning device sales.** (1) The wood stove education and enforcement account is hereby created in the state treasury. Money placed in the account shall include all money received under subsection (2) of this section and any other money appropriated by the legislature. Money in the account shall be spent for the purposes of the wood stove education program established under RCW 70.94.480 and for enforcement of the wood stove program, and shall be subject to legislative appropriation. However, during the 2003-05 fiscal biennium, the legislature may transfer from the wood stove education and enforcement account to the air pollution control account such amounts as specified in the omnibus operating budget bill.

(2) The department of ecology, with the advice of the advisory committee, shall set a flat fee of thirty dollars, on the retail sale, as defined in RCW 82.04.050, of each solid fuel burning device after January 1, 1992. The fee shall be imposed upon the consumer and shall not be subject to the

retail sales tax provisions of chapters 82.08 and 82.12 RCW. The fee may be adjusted annually above thirty dollars to account for inflation as determined by the state office of the economic and revenue forecast council. The fee shall be collected by the department of revenue in conjunction with the retail sales tax under chapter 82.08 RCW. If the seller fails to collect the fee herein imposed or fails to remit the fee to the department of revenue in the manner prescribed in chapter 82.08 RCW, the seller shall be personally liable to the state for the amount of the fee. The collection provisions of chapter 82.32 RCW shall apply. The department of revenue shall deposit fees collected under this section in the wood stove education and enforcement account. [2003 1st sp.s. c 25 § 932; 1991 sp.s. c 13 §§ 64, 65; 1991 c 199 § 505; 1990 c 128 § 5; 1987 c 405 § 10.]

**Severability—Effective date—2003 1st sp.s. c 25:** See notes following RCW 19.28.351.

**Finding—1991 c 199:** See note following RCW 70.94.011.

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**70.94.488 Woodsmoke emissions—Findings.** The legislature finds that there are some communities in the state in which the national ambient air quality standards for PM 2.5 are exceeded, primarily due to woodsmoke emissions, and that current strategies are not sufficient to reduce woodsmoke emissions to levels that comply with the federal standards or adequately protect public health. The legislature finds that it is in the state's interest and to the benefit of the people of the state to evaluate additional measures to reduce woodsmoke emissions and update the state woodsmoke control program. [2007 c 339 § 2.]

**70.94.505 Woodsmoke emissions—Work group.** (1) The department shall convene and chair a work group to study the impacts of woodsmoke from solid fuel burning devices on communities in Washington and make recommendations to the legislature on practical and cost-effective opportunities to reduce exposure to woodsmoke from solid fuel burning devices and meet the new national air quality standards for fine particulates in Washington state. The work group shall be established by the director and include representatives from the department, the state department of health, regional air quality agencies, local health departments, related industry representatives, and nongovernmental health organizations. Recommendations may include statutory or regulatory changes, incentives, and other strategies that will reduce ambient PM 2.5 pollution. Recommendations should be presented to the governor and to the legislature by December 1, 2007.

(2) In carrying out its assignment the work group shall include, but not be limited to, the following considerations:

(a) Communities in the state that have elevated levels of PM 2.5 pollution;

(b) The contribution of pollution from solid fuel burning devices to potential violations of federal air quality standards;

(c) Strategies used in other states, regions, or cities to reduce woodsmoke pollution levels and effectiveness of these strategies;

(d) State laws, rules, fees, utility regulations, and other policies that may affect the ability to reduce emissions from

solid fuel burning devices or encourage the use of cleaner burning devices; and

(e) Potential financial incentives and sources of funding to change out older solid fuel burning devices to cleaner burning devices. [2007 c 339 § 3.]

**70.94.510 Policy to cooperate with federal government.** It is declared to be the policy of the state of Washington through the department of ecology to cooperate with the federal government in order to insure the coordination of the provisions of the federal and state clean air acts, and the department is authorized and directed to implement and enforce the provisions of this chapter in carrying out this policy as follows:

(1) To accept and administer grants from the federal government for carrying out the provisions of this chapter.

(2) To take all action necessary to secure to the state the benefits of the federal clean air act. [1987 c 109 § 49; 1969 ex.s. c 168 § 45.]

**Purpose—Short title—Construction—Rules—Severability—Capitions—1987 c 109:** See notes following RCW 43.21B.001.

**70.94.521 Transportation demand management—Findings.** The legislature finds that automotive traffic in Washington's metropolitan areas is the major source of emissions of air contaminants. This air pollution causes significant harm to public health, causes damage to trees, plants, structures, and materials and degrades the quality of the environment.

Increasing automotive traffic is also aggravating traffic congestion in Washington's metropolitan areas. This traffic congestion imposes significant costs on Washington's businesses, governmental agencies, and individuals in terms of lost working hours and delays in the delivery of goods and services. Traffic congestion worsens automobile-related air pollution, increases the consumption of fuel, and degrades the habitability of many of Washington's cities and suburban areas. The capital and environmental costs of fully accommodating the existing and projected automobile traffic on roads and highways are prohibitive. Decreasing the demand for vehicle trips is significantly less costly and at least as effective in reducing traffic congestion and its impacts as constructing new transportation facilities such as roads and bridges, to accommodate increased traffic volumes.

The legislature also finds that increasing automotive transportation is a major factor in increasing consumption of gasoline and, thereby, increasing reliance on imported sources of petroleum. Moderating the growth in automotive travel is essential to stabilizing and reducing dependence on imported petroleum and improving the nation's energy security.

The legislature further finds that reducing the number of commute trips to work made via single-occupant cars and light trucks is an effective way of reducing automobile-related air pollution, traffic congestion, and energy use. Major employers have significant opportunities to encourage and facilitate reducing single-occupant vehicle commuting by employees. In addition, the legislature also recognizes the importance of increasing individual citizens' awareness of air quality, energy consumption, and traffic congestion, and the

(2010 Ed.)

contribution individual actions can make towards addressing these issues.

The intent of this chapter is to require local governments in those counties experiencing the greatest automobile-related air pollution and traffic congestion to develop and implement plans to reduce single-occupant vehicle commute trips. Such plans shall require major employers and employers at major worksites to implement programs to reduce single-occupant vehicle commuting by employees at major worksites. Local governments in counties experiencing significant but less severe automobile-related air pollution and traffic congestion may implement such plans. State agencies shall implement programs to reduce single-occupant vehicle commuting at all major worksites throughout the state. [1997 c 250 § 1; 1991 c 202 § 10.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**70.94.524 Transportation demand management—Definitions.** Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "A major employer" means a private or public employer, including state agencies, that employs one hundred or more full-time employees at a single worksite who begin their regular workday between 6:00 a.m. and 9:00 a.m. on weekdays for at least twelve continuous months during the year.

(2) "Major worksite" means a building or group of buildings that are on physically contiguous parcels of land or on parcels separated solely by private or public roadways or rights-of-way, and at which there are one hundred or more full-time employees, who begin their regular workday between 6:00 a.m. and 9:00 a.m. on weekdays, for at least twelve continuous months.

(3) "Major employment installation" means a military base or federal reservation, excluding tribal reservations, at which there are one hundred or more full-time employees, who begin their regular workday between 6:00 a.m. and 9:00 a.m. on weekdays, for at least twelve continuous months during the year.

(4) "Person hours of delay" means the daily person hours of delay per mile in the peak period of 6:00 a.m. to 9:00 a.m., as calculated using the best available methodology by the department of transportation.

(5) "Commute trip" means trips made from a worker's home to a worksite during the peak period of 6:00 a.m. to 9:00 a.m. on weekdays.

(6) "Proportion of single-occupant vehicle commute trips" means the number of commute trips made by single-occupant automobiles divided by the number of full-time employees.

(7) "Commute trip vehicle miles traveled per employee" means the sum of the individual vehicle commute trip lengths in miles over a set period divided by the number of full-time employees during that period.

(8) "Base year" means the twelve-month period commencing when a major employer is determined to be participating by the local jurisdiction, on which commute trip reduction goals shall be based.

(9) "Growth and transportation efficiency center" means a defined, compact, mixed-use urban area that contains jobs

or housing and supports multiple modes of transportation. For the purpose of funding, a growth and transportation efficiency center must meet minimum criteria established by the commute trip reduction board under RCW 70.94.537, and must be certified by a regional transportation planning organization as established in RCW 47.80.020.

(10)(a) "Affected urban growth area" means:

(i) An urban growth area, designated pursuant to RCW 36.70A.110, whose boundaries contain a state highway segment exceeding the one hundred person hours of delay threshold calculated by the department of transportation, and any contiguous urban growth areas; and

(ii) An urban growth area, designated pursuant to RCW 36.70A.110, containing a jurisdiction with a population over seventy thousand that adopted a commute trip reduction ordinance before the year 2000, and any contiguous urban growth areas.

(b) Affected urban growth areas will be listed by the department of transportation in the rules for chapter 329, Laws of 2006 using the criteria identified in (a) of this subsection.

(11) "Certification" means a determination by a regional transportation planning organization that a locally designated growth and transportation efficiency center program meets the minimum criteria developed in a collaborative regional process and the rules established by the department of transportation. [2006 c 329 § 1; 1991 c 202 § 11.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**70.94.527 Transportation demand management—Requirements for counties and cities.** (1) Each county containing an urban growth area, designated pursuant to RCW 36.70A.110, and each city within an urban growth area with a state highway segment exceeding the one hundred person hours of delay threshold calculated by the department of transportation, as well as those counties and cities located in any contiguous urban growth areas, shall adopt a commute trip reduction plan and ordinance for major employers in the affected urban growth area by a date specified by the commute trip reduction board. Jurisdictions located within an urban growth area with a population greater than seventy thousand that adopted a commute trip reduction ordinance before the year 2000, as well as any jurisdiction within contiguous urban growth areas, shall also adopt a commute trip reduction plan and ordinance for major employers in the affected urban growth area by a date specified by the commute trip reduction board. Jurisdictions containing a major employment installation in a county with an affected growth area, designated pursuant to RCW 36.70A.110, shall adopt a commute trip reduction plan and ordinance for major employers in the major employment installation by a date specified by the commute trip reduction board. The ordinance shall establish the requirements for major employers and provide an appeals process by which major employers, who as a result of special characteristics of their business or its locations would be unable to meet the requirements of the ordinance, may obtain waiver or modification of those requirements. The plan shall be designed to achieve reductions in the proportion of single-occupant vehicle commute trips and be consistent with the rules established by the

department of transportation. The county, city, or town shall submit its adopted plan to the regional transportation planning organization. The county, city, or town plan shall be included in the regional commute trip reduction plan for regional transportation planning purposes, consistent with the rules established by the department of transportation in RCW 70.94.537.

(2) All other counties, cities, and towns may adopt and implement a commute trip reduction plan consistent with department of transportation rules established under RCW 70.94.537. Tribal governments are encouraged to adopt a commute trip reduction plan for their lands. State investment in voluntary commute trip reduction plans shall be limited to those areas that meet criteria developed by the commute trip reduction board.

(3) The department of ecology may, after consultation with the department of transportation, as part of the state implementation plan for areas that do not attain the national ambient air quality standards for carbon monoxide or ozone, require municipalities other than those identified in subsection (1) of this section to adopt and implement commute trip reduction plans if the department determines that such plans are necessary for attainment of said standards.

(4) A commute trip reduction plan shall be consistent with the rules established under RCW 70.94.537 and shall include but is not limited to (a) goals for reductions in the proportion of single-occupant vehicle commute trips consistent with the state goals established by the commute trip reduction board under RCW 70.94.537 and the regional commute trip reduction plan goals established in the regional commute trip reduction plan; (b) a description of the requirements for major public and private sector employers to implement commute trip reduction programs; (c) a commute trip reduction program for employees of the county, city, or town; and (d) means, consistent with rules established by the department of transportation, for determining base year values and progress toward meeting commute trip reduction plan goals. The plan shall be developed in consultation with local transit agencies, the applicable regional transportation planning organization, major employers, and other interested parties.

(5) The commute trip reduction plans adopted by counties, cities, and towns under this chapter shall be consistent with and may be incorporated in applicable state or regional transportation plans and local comprehensive plans and shall be coordinated, and consistent with, the commute trip reduction plans of counties, cities, or towns with which the county, city, or town has, in part, common borders or related regional issues. Such regional issues shall include assuring consistency in the treatment of employers who have worksites subject to the requirements of this chapter in more than one jurisdiction. Counties, cities, and towns adopting commute trip reduction plans may enter into agreements through the inter-local cooperation act or by resolution or ordinance as appropriate with other jurisdictions, local transit agencies, transportation management associations or other private or non-profit providers of transportation services, or regional transportation planning organizations to coordinate the development and implementation of such plans. Transit agencies shall work with counties, cities, and towns as a part of their six-year transit development plan established in

RCW 35.58.2795 to take into account the location of major employer worksites when planning and prioritizing transit service changes or the expansion of public transportation services, including rideshare services. Counties, cities, or towns adopting a commute trip reduction plan shall review it annually and revise it as necessary to be consistent with applicable plans developed under RCW 36.70A.070. Regional transportation planning organizations shall review the local commute trip reduction plans during the development and update of the regional commute trip reduction plan.

(6) Each affected regional transportation planning organization shall adopt a commute trip reduction plan for its region consistent with the rules and deadline established by the department of transportation under RCW 70.94.537. The plan shall include, but is not limited to: (a) Regional program goals for commute trip reduction in urban growth areas and all designated growth and transportation efficiency centers; (b) a description of strategies for achieving the goals; (c) a sustainable financial plan describing projected revenues and expenditures to meet the goals; (d) a description of the way in which progress toward meeting the goals will be measured; and (e) minimum criteria for growth and transportation efficiency centers. (i) Regional transportation planning organizations shall review proposals from local jurisdictions to designate growth and transportation efficiency centers and shall determine whether the proposed growth and transportation efficiency center is consistent with the criteria defined in the regional commute trip reduction plan. (ii) Growth and transportation efficiency centers certified as consistent with the minimum requirements by the regional transportation planning organization shall be identified in subsequent updates of the regional commute trip reduction plan. These plans shall be developed in collaboration with all affected local jurisdictions, transit agencies, and other interested parties within the region. The plan will be reviewed and approved by [the] commute trip reduction board as established under RCW 70.94.537. Regions without an approved regional commute trip reduction plan shall not be eligible for state commute trip reduction program funds.

The regional commute trip reduction plan shall be consistent with and incorporated into transportation demand management components in the regional transportation plan as required by RCW 47.80.030.

(7) Each regional transportation planning organization implementing a regional commute trip reduction program shall, consistent with the rules and deadline established by the department of transportation, submit its plan as well as any related local commute trip reduction plans and certified growth and transportation efficiency center programs, to the commute trip reduction board established under RCW 70.94.537. The commute trip reduction board shall review the regional commute trip reduction plan and the local commute trip reduction plans. The regional transportation planning organization shall collaborate with the commute trip reduction board to evaluate the consistency of local commute trip reduction plans with the regional commute trip reduction plan. Local and regional plans must be approved by the commute trip reduction board in order to be eligible for state funding provided for the purposes of this chapter.

(8) Each regional transportation planning organization implementing a regional commute trip reduction program

shall submit an annual progress report to the commute trip reduction board established under RCW 70.94.537. The report shall be due at the end of each state fiscal year for which the program has been implemented. The report shall describe progress in attaining the applicable commute trip reduction goals and shall highlight any problems being encountered in achieving the goals. The information shall be reported in a form established by the commute trip reduction board.

(9) Any waivers or modifications of the requirements of a commute trip reduction plan granted by a jurisdiction shall be submitted for review to the commute trip reduction board established under RCW 70.94.537. The commute trip reduction board may not deny the granting of a waiver or modification of the requirements of a commute trip reduction plan by a jurisdiction but they may notify the jurisdiction of any comments or objections.

(10) Plans implemented under this section shall not apply to commute trips for seasonal agricultural employees.

(11) Plans implemented under this section shall not apply to construction worksites when the expected duration of the construction project is less than two years.

(12) If an affected urban growth area has not previously implemented a commute trip reduction program and the state has funded solutions to state highway deficiencies to address the area's exceeding the person hours of delay threshold, the affected urban growth area shall be exempt from the duties of this section for a period not exceeding two years. [2006 c 329 § 2; 1997 c 250 § 2; 1996 c 186 § 513; 1991 c 202 § 12.]

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

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**70.94.528 Transportation demand management—Growth and transportation efficiency centers.** (1) A county, city, or town may, as part of its commute trip reduction plan, designate existing activity centers listed in its comprehensive plan or new activity centers as growth and transportation efficiency centers and establish a transportation demand management program in the designated area.

(a) The transportation demand management program for the growth and transportation efficiency center shall be developed in consultation with local transit agencies, the applicable regional transportation planning organization, major employers, and other interested parties.

(b) In order to be eligible for state funding provided for the purposes of this section, designated growth and transportation efficiency centers shall be certified by the applicable regional transportation organization to: (i) Meet the minimum land use and transportation criteria established in collaboration among local jurisdictions, transit agencies, the regional transportation planning organization, and other interested parties as part of the regional commute trip reduction plan; and (ii) have established a transportation demand management program that includes the elements identified in (c) of this subsection and is consistent with the rules established by the department of transportation in RCW 70.94.537(2). If a designated growth and transportation efficiency center is denied certification, the local jurisdiction may appeal the decision to the commute trip reduction board.

(c) Transportation demand management programs for growth and transportation efficiency centers shall include, but are not limited to: (i) Goals for reductions in the proportion of single-occupant vehicle trips that are more aggressive than the state program goal established by the commute trip reduction board; (ii) a sustainable financial plan demonstrating how the program can be implemented to meet state and regional trip reduction goals, indicating resources from public and private sources that are reasonably expected to be made available to carry out the plan, and recommending any innovative financing techniques consistent with chapter 47.29 RCW, including public/private partnerships, to finance needed facilities, services, and programs; (iii) a proposed organizational structure for implementing the program; (iv) a proposal to measure performance toward the goal and implementation progress; and (v) an evaluation to which local land use and transportation policies apply, including parking policies and ordinances, to determine the extent that they complement and support the trip reduction investments of major employers. Each of these program elements shall be consistent with the rules established under RCW 70.94.537.

(d) A designated growth and transportation efficiency center shall be consistent with the land use and transportation elements of the local comprehensive plan.

(e) Transit agencies, local governments, and regional transportation planning organizations shall identify certified growth and transportation efficiency centers as priority areas for new service and facility investments in their respective investment plans.

(2) A county, city, or town that has established a growth and transportation efficiency center program shall support vehicle trip reduction activities in the designated area. The implementing jurisdiction shall adopt policies, ordinances, and funding strategies that will lead to attainment of program goals in those areas. [2006 c 329 § 4.]

**70.94.531 Transportation demand management—Requirements for employers.** (1) State agency worksites are subject to the same requirements under this section and RCW 70.94.534 as private employers.

(2) Not more than ninety days after the adoption of a jurisdiction's commute trip reduction plan, each major employer in that jurisdiction shall perform a baseline measurement consistent with the rules established by the department of transportation under RCW 70.94.537. Not more than ninety days after receiving the results of the baseline measurement, each major employer shall develop a commute trip reduction program and shall submit a description of that program to the jurisdiction for review. The program shall be implemented not more than ninety days after approval by the jurisdiction.

(3) A commute trip reduction program of a major employer shall consist of, at a minimum (a) designation of a transportation coordinator and the display of the name, location, and telephone number of the coordinator in a prominent manner at each affected worksite; (b) regular distribution of information to employees regarding alternatives to single-occupant vehicle commuting; (c) a regular review of employee commuting and reporting of progress toward meeting the single-occupant vehicle reduction goals to the county, city, or town consistent with the method established in the

commute trip reduction plan and the rules established by the department of transportation under RCW 70.94.537; and (d) implementation of a set of measures designed to achieve the applicable commute trip reduction goals adopted by the jurisdiction. Such measures may include but are not limited to:

(i) Provision of preferential parking or reduced parking charges, or both, for high occupancy vehicles;

(ii) Instituting or increasing parking charges for single-occupant vehicles;

(iii) Provision of commuter ride matching services to facilitate employee ridesharing for commute trips;

(iv) Provision of subsidies for transit fares;

(v) Provision of vans for van pools;

(vi) Provision of subsidies for car pooling or van pooling;

(vii) Permitting the use of the employer's vehicles for car pooling or van pooling;

(viii) Permitting flexible work schedules to facilitate employees' use of transit, car pools, or van pools;

(ix) Cooperation with transportation providers to provide additional regular or express service to the worksite;

(x) Construction of special loading and unloading facilities for transit, car pool, and van pool users;

(xi) Provision of bicycle parking facilities, lockers, changing areas, and showers for employees who bicycle or walk to work;

(xii) Provision of a program of parking incentives such as a rebate for employees who do not use the parking facility;

(xiii) Establishment of a program to permit employees to work part or full time at home or at an alternative worksite closer to their homes;

(xiv) Establishment of a program of alternative work schedules such as compressed work week schedules which reduce commuting; and

(xv) Implementation of other measures designed to facilitate the use of high occupancy vehicles such as on-site day care facilities and emergency taxi services.

(4) Employers or owners of worksites may form or utilize existing transportation management associations or other transportation-related associations authorized by RCW 35.87A.010 to assist members in developing and implementing commute trip reduction programs.

(5) Employers shall make a good faith effort towards achievement of the goals identified in RCW 70.94.527(4)(d). [2006 c 329 § 5; 1997 c 250 § 3; (1995 2nd sp.s. c 14 § 530 expired June 30, 1997); 1991 c 202 § 13.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**70.94.534 Transportation demand management—Jurisdictions' review and penalties.** (1) Each jurisdiction implementing a commute trip reduction plan under this chapter or as part of a plan or ordinance developed under RCW 36.70A.070 shall review each employer's initial commute trip reduction program to determine if the program is likely to meet the applicable commute trip reduction goals. The employer shall be notified by the jurisdiction of its findings. If the jurisdiction finds that the program is not likely to meet the applicable commute trip reduction goals, the jurisdiction will work with the employer to modify the program as necessary. The jurisdiction shall complete review of each

employer's initial commute trip reduction program within ninety days of receipt.

(2) Employers implementing commute trip reduction programs are expected to undertake good faith efforts to achieve the goals outlined in RCW 70.94.527(4). Employers are considered to be making a good faith effort if the following conditions have been met:

(a) The employer has met the minimum requirements identified in RCW 70.94.531;

(b) The employer has notified the jurisdiction of its intent to substantially change or modify its program and has either received the approval of the jurisdiction to do so or has acknowledged that its program may not be approved without additional modifications;

(c) The employer has provided adequate information and documentation of implementation when requested by the jurisdiction; and

(d) The employer is working collaboratively with its jurisdiction to continue its existing program or is developing and implementing program modifications likely to result in improvements to the program over an agreed upon length of time.

(3) Each jurisdiction shall review at least once every two years each employer's progress and good faith efforts toward meeting the applicable commute trip reduction goals. If an employer makes a good faith effort, as defined in this section, but is not likely to meet the applicable commute trip reduction goals, the jurisdiction shall work collaboratively with the employer to make modifications to the commute trip reduction program. Failure of an employer to reach the applicable commute trip reduction goals is not a violation of this chapter.

(4) If an employer fails to make a good faith effort and fails to meet the applicable commute trip reduction goals, the jurisdiction shall work collaboratively with the employer to propose modifications to the program and shall direct the employer to revise its program within thirty days to incorporate those modifications or modifications which the jurisdiction determines to be equivalent.

(5) Each jurisdiction implementing a commute trip reduction plan pursuant to this chapter may impose civil penalties, in the manner provided in chapter 7.80 RCW, for failure by an employer to implement a commute trip reduction program or to modify its commute trip reduction program as required in subsection (4) of this section. No major employer may be held liable for civil penalties for failure to reach the applicable commute trip reduction goals. No major employer shall be liable for civil penalties under this chapter if failure to achieve a commute trip reduction program goal was the result of an inability to reach agreement with a certified collective bargaining agent under applicable laws where the issue was raised by the employer and pursued in good faith.

(6) Jurisdictions shall notify major employers of the procedures for applying for goal modification or exemption from the commute trip reduction requirements based on the guidelines established by the commute trip reduction board authorized under RCW 70.94.537. [2006 c 329 § 6; 1997 c 250 § 4; 1991 c 202 § 14.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**70.94.537 Transportation demand management—Commute trip reduction board.** (1) A sixteen member state commute trip reduction board is established as follows:

(a) The secretary of the department of transportation or the secretary's designee who shall serve as chair;

(b) One representative from the office of the governor or the governor's designee;

(c) The director or the director's designee of one of the following agencies, to be determined by the governor:

(i) Department of general administration;

(ii) Department of ecology;

(iii) \*Department of community, trade, and economic development;

(d) Three representatives from cities and towns or counties appointed by the governor for staggered four-year terms from a list recommended by the association of Washington cities or the Washington state association of counties;

(e) Two representatives from transit agencies appointed by the governor for staggered four-year terms from a list recommended by the Washington state transit association;

(f) Two representatives from participating regional transportation planning organizations appointed by the governor for staggered four-year terms;

(g) Four representatives of employers at or owners of major worksites in Washington, or transportation management associations, business improvement areas, or other transportation organizations representing employers, appointed by the governor for staggered four-year terms; and

(h) Two citizens appointed by the governor for staggered four-year terms.

Members of the commute trip reduction board shall serve without compensation but shall be reimbursed for travel expenses as provided in RCW 43.03.050 and 43.03.060. Members appointed by the governor shall be compensated in accordance with RCW 43.03.220. The board has all powers necessary to carry out its duties as prescribed by this chapter.

(2) By March 1, 2007, the department of transportation shall establish rules for commute trip reduction plans and implementation procedures. The commute trip reduction board shall advise the department on the content of the rules. The rules are intended to ensure consistency in commute trip reduction plans and goals among jurisdictions while fairly taking into account differences in employment and housing density, employer size, existing and anticipated levels of transit service, special employer circumstances, and other factors the board determines to be relevant. The rules shall include:

(a) Guidance criteria for growth and transportation efficiency centers;

(b) Data measurement methods and procedures for determining the efficacy of commute trip reduction activities and progress toward meeting commute trip reduction plan goals;

(c) Model commute trip reduction ordinances;

(d) Methods for assuring consistency in the treatment of employers who have worksites subject to the requirements of this chapter in more than one jurisdiction;

(e) An appeals process by which major employers, who as a result of special characteristics of their business or its locations would be unable to meet the requirements of a commute trip reduction plan, may obtain a waiver or modification

of those requirements and criteria for determining eligibility for waiver or modification;

(f) Establishment of a process for determining the state's affected areas, including criteria and procedures for regional transportation planning organizations in consultation with local jurisdictions to propose to add or exempt urban growth areas;

(g) Listing of the affected areas of the program to be done every four years as identified in subsection (5) of this section;

(h) Establishment of a criteria and application process to determine whether jurisdictions that voluntarily implement commute trip reduction are eligible for state funding;

(i) Guidelines and deadlines for creating and updating local commute trip reduction plans, including guidance to ensure consistency between the local commute trip reduction plan and the transportation demand management strategies identified in the transportation element in the local comprehensive plan, as required by RCW 36.70A.070;

(j) Guidelines for creating and updating regional commute trip reduction plans, including guidance to ensure the regional commute trip reduction plan is consistent with and incorporated into transportation demand management components in the regional transportation plan;

(k) Methods for regional transportation planning organizations to evaluate and certify that designated growth and transportation efficiency center programs meet the minimum requirements and are eligible for funding;

(l) Guidelines for creating and updating growth and transportation efficiency center programs; and

(m) Establishment of statewide program goals. The goals shall be designed to achieve substantial reductions in the proportion of single-occupant vehicle commute trips and the commute trip vehicle miles traveled per employee, at a level that is projected to improve the mobility of people and goods by increasing the efficiency of the state highway system.

(3) The board shall create a state commute trip reduction plan that shall be updated every four years as discussed in subsection (5) of this section. The state commute trip reduction plan shall include, but is not limited to: (a) Statewide commute trip reduction program goals that are designed to substantially improve the mobility of people and goods; (b) identification of strategies at the state and regional levels to achieve the goals and recommendations for how transportation demand management strategies can be targeted most effectively to support commute trip reduction program goals; (c) performance measures for assessing the cost-effectiveness of commute trip reduction strategies and the benefits for the state transportation system; and (d) a sustainable financial plan. The board shall review and approve regional commute trip reduction plans, and work collaboratively with regional transportation planning organizations in the establishment of the state commute trip reduction plan.

(4) The board shall work with affected jurisdictions, major employers, and other parties to develop and implement a public awareness campaign designed to increase the effectiveness of local commute trip reduction programs and support achievement of the objectives identified in this chapter.

(5) The board shall evaluate and update the commute trip reduction program plan and recommend changes to the rules

every four years, with the first assessment report due July 1, 2011, to ensure that the latest data methodology used by the department of transportation is incorporated into the program and to determine which areas of the state should be affected by the program. The board shall review the definition of a major employer no later than December 1, 2009. The board shall regularly identify urban growth areas that are projected to be affected by chapter 329, Laws of 2006 in the next four-year period and may provide advance planning support to the potentially affected jurisdictions.

(6) The board shall review progress toward implementing commute trip reduction plans and programs and the costs and benefits of commute trip reduction plans and programs and shall make recommendations to the legislature and the governor by December 1, 2009, and every two years thereafter. In assessing the costs and benefits, the board shall consider the costs of not having implemented commute trip reduction plans and programs with the assistance of the transportation performance audit board authorized under **chapter 44.75 RCW**. The board shall examine other transportation demand management programs nationally and incorporate its findings into its recommendations to the legislature. The recommendations shall address the need for continuation, modification, or termination or any or all requirements of this chapter.

(7) The board shall invite personnel with appropriate expertise from state, regional, and local government, private, public, and nonprofit providers of transportation services, and employers or owners of major worksites in Washington to act as a technical advisory group. The technical advisory group shall advise the board on the implementation of local and regional commute trip reduction plans and programs, program evaluation, program funding allocations, and state rules and guidelines. [2006 c 329 § 7; 1997 c 250 § 5; 1996 c 186 § 514; 1995 c 399 § 188; 1991 c 202 § 15.]

**Reviser's note:** \*(1) The "department of community, trade, and economic development" was renamed the "department of commerce" by 2009 c 565.

\*\* (2) Chapter 44.75 RCW was repealed by 2006 c 334 § 51.

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

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**70.94.541 Transportation demand management—Technical assistance.** (1) The department of transportation shall provide staff support to the commute trip reduction board in carrying out the requirements of RCW 70.94.537.

(2) The department of transportation shall provide technical assistance to regional transportation planning organizations, counties, cities, towns, state agencies, as defined in RCW 40.06.010, and other employers in developing and implementing commute trip reduction plans and programs. The technical assistance shall include: (a) Guidance in single measurement methodology and practice to be used in determining progress in attaining plan goals; (b) developing model plans and programs appropriate to different situations; and (c) providing consistent training and informational materials for the implementation of commute trip reduction programs. Model plans and programs, training, and informational materials shall be developed in cooperation with representatives

of regional transportation planning organizations, local governments, transit agencies, and employers.

(3) In carrying out this section the department of transportation may contract with statewide associations representing cities, towns, and counties to assist cities, towns, and counties in implementing commute trip reduction plans and programs. [2009 c 427 § 1; 2006 c 329 § 8; 1996 c 186 § 515; 1991 c 202 § 16.]

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

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

#### **70.94.544 Transportation demand management—**

**Use of funds.** A portion of the funds made available for the purposes of this chapter shall be used to fund the commute trip reduction board in carrying out the responsibilities of RCW 70.94.537, and the department of transportation, including the activities authorized under RCW 70.94.541(2), and to assist regional transportation planning organizations, counties, cities, and towns implementing commute trip reduction plans. The commute trip reduction board shall determine the allocation of program funds made available for the purposes of this chapter to regional transportation planning organizations, counties, cities, and towns implementing commute trip reduction plans. If state funds for the purposes of this chapter are provided to those jurisdictions implementing voluntary commute trip reduction plans, the funds shall be disbursed based on criteria established by the commute trip reduction board under RCW 70.94.537. [2006 c 329 § 9; 2001 c 74 § 1; 1991 c 202 § 17.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

#### **70.94.547 Transportation demand management—**

**Intent—State leadership.** The legislature hereby recognizes the state's crucial leadership role in establishing and implementing effective commute trip reduction programs. Therefore, it is the policy of the state that the department of transportation and other state agencies, including institutions of higher education, shall aggressively develop substantive programs to reduce commute trips by state employees. Implementation of these programs will reduce energy consumption, congestion in urban areas, and air and water pollution associated with automobile travel. [2009 c 427 § 2; 2006 c 329 § 10; 1991 c 202 § 18.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

#### **70.94.551 Transportation demand management— State agencies—Joint comprehensive commute trip reduction plan—Reports.**

(1) The secretary of the department of transportation may coordinate an interagency board or other interested parties for the purpose of developing policies or guidelines that promote consistency among state agency commute trip reduction programs required by RCW 70.94.527 and 70.94.531 or developed under the joint comprehensive commute trip reduction plan described in this section. The board shall include representatives of the departments of transportation, general administration, ecology, and \*community, trade, and economic development and such other departments and interested groups as the secretary of the department of transportation determines to be necessary.

(2010 Ed.)

Policies and guidelines shall be applicable to all state agencies including but not limited to policies and guidelines regarding parking and parking charges, employee incentives for commuting by other than single-occupant automobiles, flexible and alternative work schedules, alternative work-sites, and the use of state-owned vehicles for car and van pools and guaranteed rides home. The policies and guidelines shall also consider the costs and benefits to state agencies of achieving commute trip reductions and consider mechanisms for funding state agency commute trip reduction programs.

(2) State agencies sharing a common location in affected urban growth areas where the total number of state employees is one hundred or more shall, with assistance from the department of transportation, develop and implement a joint commute trip reduction program. The worksite must be treated as specified in RCW 70.94.531 and 70.94.534.

(3) The department of transportation shall develop a joint comprehensive commute trip reduction plan for all state agencies, including institutions of higher education, located in the Olympia, Lacey, and Tumwater urban growth areas.

(a) In developing the joint comprehensive commute trip reduction plan, the department of transportation shall work with applicable state agencies, including institutions of higher education, and shall collaborate with the following entities: Local jurisdictions; regional transportation planning organizations as described in chapter 47.80 RCW; transit agencies, including regional transit authorities as described in chapter 81.112 RCW and transit agencies that serve areas within twenty- five miles of the Olympia, Lacey, or Tumwater urban growth areas; and the capitol campus design advisory committee established in RCW 43.34.080.

(b) The joint comprehensive commute trip reduction plan must build on existing commute trip reduction programs and policies. At a minimum, the joint comprehensive commute trip reduction plan must include strategies for telework and flexible work schedules, parking management, and consideration of the impacts of worksite location and design on multimodal transportation options.

(c) The joint comprehensive commute trip reduction plan must include performance measures and reporting methods and requirements.

(d) The joint comprehensive commute trip reduction plan may include strategies to accommodate differences in worksite size and location.

(e) The joint comprehensive commute trip reduction plan must be consistent with jurisdictional and regional transportation, land use, and commute trip reduction plans, the state six-year facilities plan, and the master plan for the capitol of the state of Washington.

(f) Not more than ninety days after the adoption of the joint comprehensive commute trip reduction plan, state agencies within the three urban growth areas must implement a commute trip reduction program consistent with the objectives and strategies of the joint comprehensive commute trip reduction plan.

(4) The department of transportation shall review the initial commute trip reduction program of each state agency subject to the commute trip reduction plan for state agencies to determine if the program is likely to meet the applicable commute trip reduction goals and notify the agency of any

deficiencies. If it is found that the program is not likely to meet the applicable commute trip reduction goals, the department of transportation will work with the agency to modify the program as necessary.

(5) Each state agency implementing a commute trip reduction plan shall report at least once per year to its agency director on the performance of the agency's commute trip reduction program as part of the agency's quality management, accountability, and performance system as defined by RCW 43.17.385. The reports shall assess the performance of the program, progress toward state goals established under RCW 70.94.537, and recommendations for improving the program.

(6) The department of transportation shall review the agency performance reports defined in subsection (5) of this section and submit a biennial report for state agencies subject to this chapter to the governor and incorporate the report in the commute trip reduction board report to the legislature as directed in RCW 70.94.537(6). The report shall include, but is not limited to, an evaluation of the most recent measurement results, progress toward state goals established under RCW 70.94.537, and recommendations for improving the performance of state agency commute trip reduction programs. The information shall be reported in a form established by the commute trip reduction board. [2009 c 427 § 3; 2006 c 329 § 11; 1997 c 250 § 6; 1996 c 186 § 516; 1991 c 202 § 19.]

**\*Reviser's note:** The "department of community, trade, and economic development" was renamed the "department of commerce" by 2009 c 565.

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

*State vehicle parking account:* RCW 43.01.225.

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**70.94.555 Transportation demand management—Collective bargaining powers unaffected.** Nothing in chapter 329, Laws of 2006 preempts the ability of state employees to collectively bargain over commute trip reduction issues, including parking fees under chapter 41.80 RCW, or the ability of private sector employees to collectively bargain over commute trip reduction issues if previously such issues were mandatory subjects of collective bargaining. [2006 c 329 § 3.]

**70.94.600 Reports of authorities to department of ecology—Contents.** All authorities in the state shall submit quarterly reports to the department of ecology detailing the current status of air pollution control regulations in the authority and, by county, the progress made toward bringing all sources in the authority into compliance with authority standards. [1979 ex.s. c 30 § 14; 1969 ex.s. c 168 § 52.]

**70.94.610 Burning used oil fuel in land-based facilities.** (1) Except as provided in subsection (2) of this section, a person may not burn used oil as fuel in a land-based facility or in state waters unless the used oil meets the following standards:

- (a) Cadmium: 2 ppm maximum
- (b) Chromium: 10 ppm maximum
- (c) Lead: 100 ppm maximum

- (d) Arsenic: 5 ppm maximum
- (e) Total halogens: 1000 ppm maximum
- (f) Polychlorinated biphenyls: 2 ppm maximum
- (g) Ash: .1 percent maximum
- (h) Sulfur: 1.0 percent maximum
- (i) Flash point: 100 degrees Fahrenheit minimum.

(2) This section shall not apply to: (a) Used oil burned in space heaters if the space heater has a maximum heat output of not greater than 0.5 million btu's per hour or used oil burned in facilities permitted by the department or a local air pollution control authority; or (b) ocean-going vessels.

(3) This section shall not apply to persons in the business of collecting used oil from residences when under authorization by a city, county, or the utilities and transportation commission. [1991 c 319 § 311.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**70.94.620 Metals mining and milling operations permits—Inspections by department of ecology.** If a metals mining and milling operation is issued a permit pursuant to this chapter, then it will be subject to special inspection requirements. The department of ecology shall inspect these mining operations at least quarterly in order to ensure that the operation is in compliance with the conditions of any permit issued to it pursuant to this chapter. The department shall conduct additional inspections during the construction phase of the mining and milling operation in order to ensure compliance with this chapter. [1994 c 232 § 18.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**70.94.630 Sulfur dioxide abatement account—Coal-fired thermal electric generation facilities—Application—Determination and assessment of progress—Certification of pollution level—Reimbursement—Time limit for and extension of account.** (1) The sulfur dioxide abatement account is created. All receipts from subsection (2) of this section must be deposited in the account. Expenditures in the account may be used only for the purposes of subsection (3) of this section. Only the director of revenue or the director's designee may authorize expenditures from the account. The account is subject to allotment procedures under chapter 43.88 RCW, but an appropriation is not required for expenditures.

(2) Upon application by the owners of a generation facility, the department of ecology shall make a determination of whether the owners are making initial progress in the construction of air pollution control facilities. Evidence of initial progress may include, but is not limited to, engineering work, agreements to proceed with construction, contracts to purchase, or contracts for construction of air pollution control facilities. However, if the owners' progress is impeded due to actions caused by regulatory delays or by defensive litigation, certification of initial progress may not be withheld.

Upon certification of initial progress by the department of ecology and after January 1, 1999, an amount equal to all sales and use taxes paid under chapters 82.08, 82.12, and 82.14 RCW, that were obtained from the sales of coal to, or use of coal by, a business for use at a generation facility shall be deposited in the account under RCW 82.32.392.

By June 1st of each year during construction of the air pollution control facilities and during the verification period required in RCW 82.08.811(2)(d) and 82.12.811(2)(d), the department of ecology shall make an assessment regarding the continued progress of the pollution control facilities. Evidence of continued progress may include, but is not limited to, acquisition of construction material, visible progress on construction, or other actions that have occurred that would verify progress under general construction time tables. The treasurer shall continue to deposit an amount equal to the tax revenues to the sulfur dioxide abatement account unless the department of ecology fails to certify that reasonable progress has been made during the previous year. The operator of a generation facility shall file documentation accompanying its combined monthly excise tax return that identifies all sales and use tax payments made by the owners for coal used at the generation facility during the reporting period.

(3) When a generation facility emits no more than ten thousand tons of sulfur dioxide during a consecutive twelve-month period, the department of ecology shall certify this to the department of revenue and the state treasurer by the end of the following month. Within thirty days of receipt of certification under this subsection, the department of revenue shall approve the tax exemption application and the director or the director's designee shall authorize the release of any moneys in the sulfur dioxide abatement account to the operator of the generation facility. The operator shall disburse the payment among the owners of record according to the terms of their contractual agreement.

(4)(a) If the department of revenue has not approved a tax exemption under RCW 82.08.811 and 82.12.811 by March 1, 2005, any moneys in the sulfur dioxide abatement account shall be transferred to the general fund and the appropriate local governments in accordance with chapter 82.14 RCW, and the sulfur dioxide abatement account shall cease to exist after March 1, 2005.

(b) The dates in (a) of this subsection must be extended if the owners of a generation facility have experienced difficulties in complying with this section, or RCW 82.08.811, \*82.08.812, 82.12.811, \*82.12.812, and 82.32.392, due to actions caused by regulatory delays or by defensive litigation.

(5) For the purposes of this section:

(a) "Air pollution control facilities" means any treatment works, control devices and disposal systems, machinery, equipment, structure, property, property improvements and accessories, that are installed or acquired for the primary purpose of reducing, controlling, or disposing of industrial waste that, if released to the outdoor atmosphere, could cause air pollution, or that are required to meet regulatory requirements applicable to their construction, installation, or operation; and

(b) "Generation facility" means a coal-fired thermal electric generation facility placed in operation after December 3, 1969, and before July 1, 1975. [1997 c 368 § 10.]

\*Reviser's note: RCW 82.08.812 and 82.12.812 were repealed by 2000 c 4 § 1.

**Findings—Intent—Rules adoption—Severability—Effective date—1997 c 368:** See notes following RCW 82.08.810.

### **70.94.640 Odors or fugitive dust caused by agricultural activities consistent with good agricultural practices**

(2010 Ed.)

**exempt from chapter.** (1) Odors or fugitive dust caused by agricultural activity consistent with good agricultural practices on agricultural land are exempt from the requirements of this chapter unless they have a substantial adverse effect on public health. In determining whether agricultural activity is consistent with good agricultural practices, the department of ecology or board of any authority shall consult with a recognized third-party expert in the activity prior to issuing any notice of violation.

(2) Any notice of violation issued under this chapter pertaining to odors or fugitive dust caused by agricultural activity shall include a statement as to why the activity is inconsistent with good agricultural practices, or a statement that the odors or fugitive dust have substantial adverse effect on public health.

(3) In any appeal to the pollution control hearings board or any judicial appeal, the agency issuing a final order pertaining to odors or fugitive dust caused by agricultural activity shall prove the activity is inconsistent with good agricultural practices or that the odors or fugitive dust have a substantial adverse impact on public health.

(4) If a person engaged in agricultural activity on a contiguous piece of agricultural land sells or has sold a portion of that land for residential purposes, the exemption of this section shall not apply.

(5) As used in this section:

(a) "Agricultural activity" means the growing, raising, or production of horticultural or viticultural crops, berries, poultry, livestock, shellfish, grain, mint, hay, and dairy products.

(b) "Good agricultural practices" means economically feasible practices which are customary among or appropriate to farms and ranches of a similar nature in the local area.

(c) "Agricultural land" means at least five acres of land devoted primarily to the commercial production of livestock, agricultural commodities, or cultured aquatic products.

(d) "Fugitive dust" means a particulate emission made airborne by human activity, forces of wind, or both, and which do not pass through a stack, chimney, vent, or other functionally equivalent opening.

(6) The exemption for fugitive dust provided in subsection (1) of this section does not apply to facilities subject to RCW 70.94.151 as specified in WAC 173-400-100 as of July 24, 2005, 70.94.152, or 70.94.161. [2005 c 511 § 4; 1981 c 297 § 30.]

**Legislative finding, intent—1981 c 297:** "The legislature finds that agricultural land is essential to providing citizens with food and fiber and to insuring aesthetic values through the preservation of open spaces in our state. The legislature further finds that government regulations can cause agricultural land to be converted to nonagricultural uses. The legislature intends that agricultural activity consistent with good practices be protected from government over-regulation." [1981 c 297 § 29.]

**Reviser's note:** The above legislative finding and intent section apparently applies to sections 30 and 31 of chapter 297, Laws of 1981, which sections have been codified pursuant to legislative direction as RCW 70.94.640 and 90.48.450, respectively.

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**70.94.645 Ammonia emissions from use as agricultural or silvicultural fertilizer—Regulation prohibited.** The department shall not regulate ammonia emissions resulting from the storage, distribution, transport, or application of

ammonia for use as an agricultural or silvicultural fertilizer. [1996 c 204 § 2.]

### OUTDOOR BURNING

**70.94.6511 Definition of "outdoor burning."** As used in this subchapter, "outdoor burning" means the combustion of material of any type in an open fire or in an outdoor container without providing for the control of combustion or the control of emissions from the combustion. [2009 c 118 § 101.]

**Purpose—2009 c 118:** "The purpose of this act is to make technical, nonsubstantive changes to outdoor burning provisions of the Washington clean air act, chapter 70.94 RCW, to improve clarity. No provision of this act may be construed as a substantive change to the Washington clean air act." [2009 c 118 § 1.]

**70.94.6512 Outdoor burning—Fires prohibited—Exceptions.** Except as provided in RCW 70.94.6546, no person shall cause or allow any outdoor fire:

(1) Containing garbage, dead animals, asphalt, petroleum products, paints, rubber products, plastics, or any substance other than natural vegetation that normally emits dense smoke or obnoxious odors. Agricultural heating devices that otherwise meet the requirements of this chapter shall not be considered outdoor fires under this section;

(2) During a forecast, alert, warning or emergency condition as defined in RCW 70.94.715 or impaired air quality condition as defined in RCW 70.94.473. [2009 c 118 § 102; 1995 c 362 § 2; 1991 c 199 § 410; 1974 ex.s. c 164 § 1; 1973 2nd ex.s. c 11 § 1; 1973 1st ex.s. c 193 § 9. Formerly RCW 70.94.775.]

**Purpose—2009 c 118:** See note following RCW 70.94.6511.

**Finding—1991 c 199:** See note following RCW 70.94.011.

**70.94.6514 Outdoor burning—Areas where prohibited—Exceptions—Use for management of storm or flood-related debris—Silvicultural burning.** (1) Consistent with the policy of the state to reduce outdoor burning to the greatest extent practical, outdoor burning shall not be allowed in:

(a) Any area of the state where federal or state ambient air quality standards are exceeded for pollutants emitted by outdoor burning; or

(b) Any urban growth area as defined by RCW 36.70A.030, or any city of the state having a population greater than ten thousand people if such cities are threatened to exceed state or federal air quality standards, and alternative disposal practices consistent with good solid waste management are reasonably available or practices eliminating production of organic refuse are reasonably available.

(2) Notwithstanding any other provision of this section, outdoor burning may be allowed for the exclusive purpose of managing storm or flood-related debris. The decision to allow burning shall be made by the entity with permitting jurisdiction as determined under RCW 70.94.6534 or 70.94.6518. If outdoor burning is allowed in areas subject to subsection (1)(a) or (b) of this section, a permit shall be required, and a fee may be collected to cover the expenses of administering and enforcing the permit. All conditions and

restrictions pursuant to RCW 70.94.6526(1) and 70.94.6512 apply to outdoor burning allowed under this section.

(3)(a) Outdoor burning that is normal, necessary, and customary to ongoing agricultural activities, that is consistent with agricultural burning authorized under RCW 70.94.6528 and 70.94.6532, is allowed within the urban growth area in accordance with RCW 70.94.6528(8)(a).

(b) Outdoor burning of cultivated orchard trees shall be allowed as an ongoing agricultural activity under this section in accordance with RCW 70.94.6528(8)(b).

(4) This section shall not apply to silvicultural burning used to improve or maintain fire dependent ecosystems for rare plants or animals within state, federal, and private natural area preserves, natural resource conservation areas, parks, and other wildlife areas. [2009 c 118 § 103; 2004 c 213 § 1; 2001 1st sp.s. c 12 § 1; 1998 c 68 § 1; 1997 c 225 § 1; 1991 c 199 § 402. Formerly RCW 70.94.743.]

**Purpose—2009 c 118:** See note following RCW 70.94.6511.

**Finding—1991 c 199:** See note following RCW 70.94.011.

**70.94.6516 Outdoor burning—Permits issued by political subdivisions.** In addition to any other powers granted to them by law, the fire protection agency, county, or conservation district issuing burning permits shall regulate or prohibit outdoor burning as necessary to prevent or abate the nuisances caused by such burning. No fire protection agency, county, or conservation district may issue a burning permit in an area where the department or local board has declared any stage of impaired air quality per RCW 70.94.473 or any stage of an air pollution episode. All burning permits issued shall be subject to all applicable fee, permitting, penalty, and enforcement provisions of this chapter. The permitted burning shall not cause damage to public health or the environment.

Any entity issuing a permit under this section may charge a fee at the level necessary to recover the costs of administering and enforcing the permit program. [1991 c 199 § 411; 1973 1st ex.s. c 193 § 10. Formerly RCW 70.94.780.]

**Finding—1991 c 199:** See note following RCW 70.94.011.

**70.94.6518 Limited outdoor burning—Establishment of program.** Each activated air pollution control authority, and the department of ecology in those areas outside the jurisdictional boundaries of an activated air pollution control authority, shall establish, through regulations, ordinances, or policy, a program implementing the limited burning policy authorized by RCW 70.94.6514, 70.94.6518, 70.94.6520, 70.94.6522, 70.94.6524, and 70.94.6526. [2009 c 118 § 201; 1997 c 225 § 2; 1972 ex.s. c 136 § 4. Formerly RCW 70.94.755.]

**Purpose—2009 c 118:** See note following RCW 70.94.6511.

**70.94.6520 Limited outdoor burning—Construction.** Nothing contained in RCW 70.94.6514, 70.94.6518, 70.94.6520, 70.94.6522, 70.94.6524, and 70.94.6526 is intended to alter or change the provisions of RCW 70.94.6534, 70.94.710 through 70.94.730, and 76.04.205. [2009 c 118 § 202; 1986 c 100 § 55; 1972 ex.s. c 136 § 5. Formerly RCW 70.94.760.]

**Purpose—2009 c 118:** See note following RCW 70.94.6511.

**70.94.6522 Limited outdoor burning—Authority of local air pollution control authority or department of ecology to allow outdoor fires not restricted.** Nothing in RCW 70.94.6514, 70.94.6518, 70.94.6520, 70.94.6522, 70.94.6524, and 70.94.6526 shall be construed as prohibiting a local air pollution control authority or the department of ecology in those areas outside the jurisdictional boundaries of an activated pollution control authority from allowing the burning of outdoor fires. [2009 c 118 § 203; 1972 ex.s. c 136 § 6. Formerly RCW 70.94.765.]

**Purpose—2009 c 118:** See note following RCW 70.94.6511.

**70.94.6524 Limited outdoor burning—Program—Exceptions.** (1) It shall be the responsibility and duty of the department of natural resources, department of ecology, department of agriculture, fire districts, and local air pollution control authorities to establish, through regulations, ordinances, or policy, a limited burning permit program.

(2) The permit program shall apply to residential and land clearing burning in the following areas:

(a) In the nonurban areas of any county with an unincorporated population of greater than fifty thousand; and

(b) In any city and urban growth area that is not otherwise prohibited from burning pursuant to RCW 70.94.6514.

(3) The permit program shall apply only to land clearing burning in the nonurban areas of any county with an unincorporated population of less than fifty thousand.

(4) The permit program may be limited to a general permit by rule, or by verbal, written, or electronic approval by the permitting entity.

(5) Notwithstanding any other provision of this section, neither a permit nor the payment of a fee shall be required for outdoor burning for the purpose of disposal of tumbleweeds blown by wind. Such burning shall not be conducted during an air pollution episode or any stage of impaired air quality declared under RCW 70.94.715. This subsection (5) shall only apply within counties with a population less than two hundred fifty thousand.

(6) Burning shall be prohibited in an area when an alternate technology or method of disposing of the organic refuse is available, reasonably economical, and less harmful to the environment. It is the policy of this state to foster and encourage development of alternate methods or technology for disposing of or reducing the amount of organic refuse.

(7) Incidental agricultural burning must be allowed without applying for any permit and without the payment of any fee if:

(a) The burning is incidental to commercial agricultural activities;

(b) The operator notifies the local fire department within the area where the burning is to be conducted;

(c) The burning does not occur during an air pollution episode or any stage of impaired air quality declared under RCW 70.94.715; and

(d) Only the following items are burned:

(i) Orchard prunings;

(ii) Organic debris along fence lines or irrigation or drainage ditches; or

(iii) Organic debris blown by wind.

(8) As used in this section, "nonurban areas" are unincorporated areas within a county that are not designated as urban growth areas under chapter 36.70A RCW.

(9) Nothing in this section shall require fire districts to enforce air quality requirements related to outdoor burning, unless the fire district enters into an agreement with the department of ecology, department of natural resources, a local air pollution control authority, or other appropriate entity to provide such enforcement. [2009 c 118 § 301; 1995 c 206 § 1; 1991 c 199 § 401; 1972 ex.s. c 136 § 2. Formerly RCW 70.94.745.]

**Purpose—2009 c 118:** See note following RCW 70.94.6511.

**Finding—1991 c 199:** See note following RCW 70.94.011.

**70.94.6526 Limited outdoor burning—Permits issued by political subdivisions—Types of fires permitted.**

The following outdoor fires described in this section may be burned subject to the provisions of this chapter and also subject to city ordinances, county resolutions, rules of fire districts and laws, and rules enforced by the department of natural resources if a permit has been issued by a fire protection agency, county, or conservation district:

(1) Fires consisting of leaves, clippings, prunings and other yard and gardening refuse originating on lands immediately adjacent and in close proximity to a human dwelling and burned on such lands by the property owner or his or her designee.

(2) Fires consisting of residue of a natural character such as trees, stumps, shrubbery or other natural vegetation arising from land clearing projects or agricultural pursuits for pest or disease control; except that the fires described in this subsection may be prohibited in those areas having a general population density of one thousand or more persons per square mile. [2009 c 118 § 302; 1991 c 199 § 412; 1972 ex.s. c 136 § 3. Formerly RCW 70.94.750.]

**Purpose—2009 c 118:** See note following RCW 70.94.6511.

**Finding—1991 c 199:** See note following RCW 70.94.011.

**70.94.6528 Permits—Issuance—Conditioning of permits—Fees—Agricultural burning practices and research task force—Development of public education materials—Agricultural activities.**

(1) Any person who proposes to set fires in the course of agricultural activities shall obtain a permit from an air pollution control authority, the department of ecology, or a local entity delegated permitting authority under RCW 70.94.6530. General permit criteria of statewide applicability shall be established by the department, by rule, after consultation with the various air pollution control authorities.

(a) Permits shall be issued under this section based on seasonal operations or by individual operations, or both.

(b) Incidental agricultural burning consistent with provisions established in RCW 70.94.6524 is allowed without applying for any permit and without the payment of any fee.

(2) The department of ecology, local air authorities, or a local entity with delegated permit authority shall:

(a) Condition all permits to ensure that the public interest in air, water, and land pollution and safety to life and property is fully considered;

(b) Condition all burning permits to minimize air pollution insofar as practical;

(c) Act upon, within seven days from the date an application is filed under this section, an application for a permit to set fires in the course of agricultural burning for controlling diseases, insects, weed abatement, or development of physiological conditions conducive to increased crop yield;

(d) Provide convenient methods for issuance and oversight of agricultural burning permits; and

(e) Work, through agreement, with counties and cities to provide convenient methods for granting permission for agricultural burning, including telephone, facsimile transmission, issuance from local city or county offices, or other methods.

(3) A local air authority administering the permit program under subsection (2) of this section shall not limit the number of days of allowable agricultural burning, but may consider the time of year, meteorological conditions, and other criteria specified in rules adopted by the department to implement subsection (2) of this section.

(4) In addition to following any other requirements established by the department to protect air quality pursuant to other laws, applicants for permits must show that the setting of fires as requested is the most reasonable procedure to follow in safeguarding life or property under all circumstances or is otherwise reasonably necessary to successfully carry out the enterprise in which the applicant is engaged, or both. Nothing in this section relieves the applicant from obtaining permits, licenses, or other approvals required by any other law.

(5) The department of ecology, the appropriate local air authority, or a local entity with delegated permitting authority pursuant to RCW 70.94.6530 at the time the permit is issued shall assess and collect permit fees for burning under this section. All fees collected shall be deposited in the air pollution control account created in RCW 70.94.015, except for that portion of the fee necessary to cover local costs of administering a permit issued under this section. Fees shall be set by rule by the permitting agency at the level determined by the task force created by subsection (6) of this section, but fees for field burning shall not exceed three dollars and seventy-five cents per acre to be burned, or in the case of pile burning shall not exceed one dollar per ton of material burned.

(6) An agricultural burning practices and research task force shall be established under the direction of the department. The task force shall be composed of a representative from the department who shall serve as chair; one representative of eastern Washington local air authorities; three representatives of the agricultural community from different agricultural pursuits; one representative of the department of agriculture; two representatives from universities or colleges knowledgeable in agricultural issues; one representative of the public health or medical community; and one representative of the conservation districts. The task force shall:

(a) Identify best management practices for reducing air contaminant emissions from agricultural activities and provide such information to the department and local air authorities;

(b) Determine the level of fees to be assessed by the permitting agency pursuant to subsection (5) of this section, based upon the level necessary to cover the costs of administering and enforcing the permit programs, to provide funds

for research into alternative methods to reduce emissions from such burning, and to the extent possible be consistent with fees charged for such burning permits in neighboring states. The fee level shall provide, to the extent possible, for lesser fees for permittees who use best management practices to minimize air contaminant emissions;

(c) Identify research needs related to minimizing emissions from agricultural burning and alternatives to such burning; and

(d) Make recommendations to the department on priorities for spending funds provided through this chapter for research into alternative methods to reduce emissions from agricultural burning.

(7) Conservation districts and the Washington State University agricultural extension program in conjunction with the department shall develop public education material for the agricultural community identifying the health and environmental effects of agricultural outdoor burning and providing technical assistance in alternatives to agricultural outdoor burning.

(8)(a) Outdoor burning that is normal, necessary, and customary to ongoing agricultural activities, that is consistent with agricultural burning authorized under this section and RCW 70.94.6532, is allowed within the urban growth area as described in RCW 70.94.6514 if the burning is not conducted during air quality episodes, or where a determination of impaired air quality has been made as provided in RCW 70.94.473, and the agricultural activities preceded the designation as an urban growth area.

(b) Outdoor burning of cultivated orchard trees, whether or not agricultural crops will be replanted on the land, shall be allowed as an ongoing agricultural activity under this section if a local horticultural pest and disease board formed under chapter 15.09 RCW, an extension office agent with Washington State University that has horticultural experience, or an entomologist employed by the department of agriculture, has determined in writing that burning is an appropriate method to prevent or control the spread of horticultural pests or diseases. [2010 c 70 § 1; 2009 c 118 § 401; 1998 c 43 § 1. Prior: 1995 c 362 § 1; 1995 c 58 § 1; 1994 c 28 § 2; 1993 c 353 § 1; 1991 c 199 § 408; 1971 ex.s. c 232 § 1. Formerly RCW 70.94.650.]

**Purpose—2009 c 118:** See note following RCW 70.94.6511.

**Finding—1991 c 199:** See note following RCW 70.94.011.

**70.94.6530 Delegation of permit issuance and enforcement to political subdivisions.** Whenever an air pollution control authority, or the department of ecology for areas outside the jurisdictional boundaries of an activated air pollution control authority, shall find that any fire protection agency, county, or conservation district is capable of effectively administering the issuance and enforcement of permits for any or all of the kinds of burning identified in RCW 70.94.6528, 70.94.6546, and 70.94.6552 and desirous of doing so, the authority or the department of ecology, as appropriate, may delegate powers necessary for the issuance or enforcement, or both, of permits for any or all of the kinds of burning to the fire protection agency, county, or conservation district. Such delegation may be withdrawn by the authority or the department of ecology upon finding that the

fire protection agency, county, or conservation district is not effectively administering the permit program. [2009 c 118 § 402; 1993 c 353 § 2; 1991 c 199 § 409; 1973 1st ex.s. c 193 § 6. Formerly RCW 70.94.654.]

**Purpose—2009 c 118:** See note following RCW 70.94.6511.

**Finding—1991 c 199:** See note following RCW 70.94.011.

**70.94.6532 Open burning of grasses grown for seed—Alternatives—Studies—Deposit of permit fees in special grass seed burning account—Procedures—Limitations—Report.** It is hereby declared to be the policy of this state that strong efforts should be made to minimize adverse effects on air quality from the open burning of field and turf grasses grown for seed. To such end this section is intended to promote the development of economical and practical alternate agricultural practices to such burning, and to provide for interim regulation of such burning until practical alternates are found.

(1) The department shall approve of a study or studies for the exploration and identification of economical and practical alternate agricultural practices to the open burning of field and turf grasses grown for seed. Any study conducted pursuant to this section shall be conducted by Washington State University. The university may not charge more than eight percent for administrative overhead. Prior to the issuance of any permit for such burning under RCW 70.94.6528, there shall be collected a fee not to exceed one dollar per acre of crop to be burned. Any such fees received by any authority shall be transferred to the department of ecology. The department of ecology shall deposit all such acreage fees in a special grass seed burning research account, hereby created, in the state treasury.

(2) The department shall allocate moneys annually from this account for the support of any approved study or studies as provided for in subsection (1) of this section. Whenever the department of ecology shall conclude that sufficient reasonably available alternates to open burning have been developed, and at such time as all costs of any studies have been paid, the grass seed burning research account shall be dissolved, and any money remaining therein shall revert to the general fund. The fee collected under subsection (1) of this section shall constitute the research portion of fees required under RCW 70.94.6528 for open burning of grass grown for seed.

(3) Whenever on the basis of information available to it, the department after public hearings have been conducted wherein testimony will be received and considered from interested parties wishing to testify shall conclude that any procedure, program, technique, or device constitutes a practical alternate agricultural practice to the open burning of field or turf grasses grown for seed, the department shall, by order, certify approval of such alternate. Thereafter, in any case which any such approved alternate is reasonably available, the open burning of field and turf grasses grown for seed shall be disallowed and no permit shall issue therefor.

(4) Until approved alternates become available, the department or the authority may limit the number of acres on a pro rata basis among those affected for which permits to burn will be issued in order to effectively control emissions from this source.

(2010 Ed.)

(5) Permits issued for burning of field and turf grasses may be conditioned to minimize emissions insofar as practical, including denial of permission to burn during periods of adverse meteorological conditions.

(6) Every two years until grass seed burning is prohibited, Washington State University may prepare a brief report assessing the potential of the university's research to result in economical and practical alternatives to grass seed burning. [2009 c 118 § 403; 1998 c 245 § 130; 1995 c 261 § 1; 1991 sp.s. c 13 § 28; 1991 c 199 § 413; 1990 c 113 § 1; 1985 c 57 § 69; 1973 1st ex.s. c 193 § 7. Formerly RCW 70.94.656.]

**Purpose—2009 c 118:** See note following RCW 70.94.6511.

**Finding—1991 c 199:** See note following RCW 70.94.011.

*Grass burning research advisory committee: Chapter 43.21E RCW.*

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**70.94.6534 Burning permits for abating or prevention of forest fire hazards, management of ecosystems, instruction or silvicultural operations—Issuance.** (1) The department of natural resources shall have the responsibility for issuing and regulating burning permits required by it relating to the following activities for the protection of life or property and/or for the public health, safety, and welfare:

- (a) Abating a forest fire hazard;
- (b) Prevention of a fire hazard;
- (c) Instruction of public officials in methods of forest firefighting;
- (d) Any silvicultural operation to improve the forest lands of the state; and
- (e) Silvicultural burning used to improve or maintain fire dependent ecosystems for rare plants or animals within state, federal, and private natural area preserves, natural resource conservation areas, parks, and other wildlife areas.

(2) The department of natural resources shall not retain such authority, but it shall be the responsibility of the appropriate fire protection agency for permitting and regulating outdoor burning on lands where the department of natural resources does not have fire protection responsibility.

(3) Permit fees shall be assessed for silvicultural burning under the jurisdiction of the department of natural resources and collected by the department of natural resources as provided for in this section. All fees shall be deposited in the air pollution control account, created in RCW 70.94.015. The legislature shall appropriate to the department of natural resources funds from the air pollution control account to enforce and administer the program under this section and RCW 70.94.6536, 70.94.6538, and 70.94.6540. Fees shall be set by rule by the department of natural resources at the level necessary to cover the costs of the program after receiving recommendations on such fees from the public. [2010 1st sp.s. c 7 § 128; 2009 c 118 § 501; 1991 c 199 § 404; 1971 ex.s. c 232 § 2. Formerly RCW 70.94.660.]

**Effective date—2010 1st sp.s. c 26; 2010 1st sp.s. c 7:** See note following RCW 43.03.027.

**Purpose—2009 c 118:** See note following RCW 70.94.6511.

**Finding—1991 c 199:** See note following RCW 70.94.011.

*Burning permits, issuance, air pollution a factor: RCW 76.04.205.*

*Disposal of forest debris: RCW 76.04.650.*

**70.94.6536 Silvicultural forest burning—Reduce statewide emissions—Exemption—Monitoring program.** (1) The department of natural resources shall administer a program to reduce statewide emissions from silvicultural forest burning so as to achieve the following minimum objectives:

(a) Twenty percent reduction by December 31, 1994 providing a ceiling for emissions until December 31, 2000; and

(b) Fifty percent reduction by December 31, 2000 providing a ceiling for emissions thereafter.

Reductions shall be calculated from the average annual emissions level from calendar years 1985 to 1989, using the same methodology for both reduction and base year calculations.

(2) The department of natural resources, within twelve months after May 15, 1991, shall develop a plan, based upon the existing smoke management agreement to carry out the programs as described in this section in the most efficient, cost-effective manner possible. The plan shall be developed in consultation with the department of ecology, public and private landowners engaged in silvicultural forest burning, and representatives of the public.

The plan shall recognize the variations in silvicultural forest burning including, but not limited to, a landowner's responsibility to abate an extreme fire hazard under chapter 76.04 RCW and other objectives of burning, including abating and preventing a fire hazard, geographic region, climate, elevation and slope, proximity to populated areas, and diversity of land ownership. The plan shall establish priorities that the department of natural resources shall use to allocate allowable emissions, including but not limited to, silvicultural burning used to improve or maintain fire dependent ecosystems for rare plants or animals within state, federal, and private natural area preserves, natural resource conservation areas, parks, and other wildlife areas. The plan shall also recognize the real costs of the emissions program and recommend equitable fees to cover the costs of the program.

The emission reductions in this section are to apply to all forest lands including those owned and managed by the United States. If the United States does not participate in implementing the plan, the departments of natural resources and ecology shall use all appropriate and available methods or enforcement powers to ensure participation.

The plan shall include a tracking system designed to measure the degree of progress toward the emission reductions goals set in this section. The department of natural resources shall report annually to the department of ecology and the legislature on the status of the plan, emission reductions and progress toward meeting the objectives specified in this section, and the goals of this chapter and chapter 76.04 RCW.

(3) If the December 31, 1994, emission reductions targets in this section are not met, the department of natural resources, in consultation with the department of ecology, shall use its authority granted in this chapter and chapter 76.04 RCW to immediately limit emissions from such burning to the 1994 target levels and limit silvicultural forest burning in subsequent years to achieve equal annual incremental reductions so as to achieve the December 31, 2000, target level. If, as a result of the program established in this section, the emission reductions are met in 1994, but are not

met by December 31, 2000, the department of natural resources in consultation with the department of ecology shall immediately limit silvicultural forest burning to reduce emissions from such burning to the December 31, 2000, target level in all subsequent years.

(4) Emissions from silvicultural burning in eastern Washington that is conducted for the purpose of restoring forest health or preventing the additional deterioration of forest health are exempt from the reduction targets and calculations in this section if the following conditions are met:

(a) The landowner submits a written request to the department identifying the location of the proposed burning and the nature of the forest health problem to be corrected. The request shall include a brief description of alternatives to silvicultural burning and reasons why the landowner believes the alternatives not to be appropriate.

(b) The department determines that the proposed silvicultural burning operation is being conducted to restore forest health or prevent additional deterioration to forest health; meets the requirements of the state smoke management plan to protect public health, visibility, and the environment; and will not be conducted during an air pollution episode or during periods of impaired air quality in the vicinity of the proposed burn.

(c) Upon approval of the request by the department and before burning, the landowner is encouraged to notify the public in the vicinity of the burn of the general location and approximate time of ignition.

(5) The department of ecology may conduct a limited, seasonal ambient air quality monitoring program to measure the effects of forest health burning conducted under subsection (4) of this section. The monitoring program may be developed in consultation with the department of natural resources, private and public forest landowners, academic experts in forest health issues, and the general public. [1995 c 143 § 1; 1991 c 199 § 403. Formerly RCW 70.94.665.]

**Finding—1991 c 199:** See note following RCW 70.94.011.

**70.94.6538 Burning permits for abating or prevention of forest fire hazards, management of ecosystems, instruction or silvicultural operations—Conditions for issuance and use of permits—Air quality standards to be met—Alternate methods to lessen forest debris.** The department of natural resources in granting burning permits for fires for the purposes set forth in RCW 70.94.6534 shall condition the issuance and use of such permits to comply with air quality standards established by the department of ecology after full consultation with the department of natural resources. Such burning shall not cause the state air quality standards to be exceeded in the ambient air up to two thousand feet above ground level over critical areas designated by the department of ecology, otherwise subject to air pollution from other sources. Air quality standards shall be established and published by the department of ecology which shall also establish a procedure for advising the department of natural resources when and where air contaminant levels exceed or threaten to exceed the ambient air standards over such critical areas. The air quality shall be quantitatively measured by the department of ecology or the appropriate local air pollution control authority at established monitoring stations over such

designated areas. Further, such permitted burning shall not cause damage to public health or the environment. All permits issued under this section shall be subject to all applicable fees, permitting, penalty, and enforcement provisions of this chapter. The department of natural resources shall set forth smoke dispersal objectives designed consistent with this section to minimize any air pollution from such burning and the procedures necessary to meet those objectives.

The department of natural resources shall encourage more intense utilization in logging and alternative silviculture practices to reduce the need for burning. The department of natural resources shall, whenever practical, encourage landowners to develop and use alternative acceptable disposal methods subject to the following priorities: (1) Slash production minimization, (2) slash utilization, (3) nonburning disposal, (4) silvicultural burning. Such alternative methods shall be evaluated as to the relative impact on air, water, and land pollution, public health, and their financial feasibility.

The department of natural resources shall not issue burning permits and shall revoke previously issued permits at any time in any area where the department of ecology or local board has declared a stage of impaired air quality as defined in RCW 70.94.473. [2009 c 118 § 502; 1991 c 199 § 405; 1971 ex.s. c 232 § 3. Formerly RCW 70.94.670.]

**Purpose—2009 c 118:** See note following RCW 70.94.6511.

**Finding—1991 c 199:** See note following RCW 70.94.011.

**70.94.6540 Cooperation between department of natural resources and state, local, or regional air pollution authorities—Withholding of permits.** In the regulation of outdoor burning not included in RCW 70.94.6534 requiring permits from the department of natural resources, said department and the state, local, or regional air pollution control authorities will cooperate in regulating such burning so as to minimize insofar as possible duplicate inspections and separate permits while still accomplishing the objectives and responsibilities of the respective agencies. The department of natural resources shall include any local authority's burning regulations with permits issued where applicable pursuant to RCW 70.94.6512, 70.94.6514, 70.94.6518, 70.94.6520, 70.94.6522, 70.94.6524, and 70.94.6526. The department shall develop agreements with all local authorities to coordinate regulations.

Permits shall be withheld by the department of natural resources when so requested by the department of ecology if a forecast, alert, warning, or emergency condition exists as defined in the episode criteria of the department of ecology. [2009 c 118 § 503; 1991 c 199 § 406; 1971 ex.s. c 232 § 5. Formerly RCW 70.94.690.]

**Purpose—2009 c 118:** See note following RCW 70.94.6511.

**Finding—1991 c 199:** See note following RCW 70.94.011.

**70.94.6542 Adoption of rules.** The department of natural resources and the department of ecology may adopt rules necessary to implement their respective responsibilities under the provisions of RCW 70.94.6528, 70.94.6530, 70.94.6532, 70.94.6534, 70.94.6536, 70.94.6538, 70.94.6540, 70.94.6542, and 70.94.6544. [2009 c 118 § 504; 1971 ex.s. c 232 § 6. Formerly RCW 70.94.700.]

**Purpose—2009 c 118:** See note following RCW 70.94.6511.

**70.94.6544 Burning permits for regeneration of rare and endangered plants.** Nothing in this chapter prohibits fires necessary to promote the regeneration of rare and endangered plants found within natural area preserves as identified under chapter 79.70 RCW. Permits issued for burning under this section shall be drafted to minimize emissions including denial of permission to burn during periods of adverse meteorological conditions. [2009 c 118 § 703; 1991 c 199 § 407. Formerly RCW 70.94.651.]

**Purpose—2009 c 118:** See note following RCW 70.94.6511.

**Finding—1991 c 199:** See note following RCW 70.94.011.

**70.94.6546 Aircraft crash rescue fire training—Training to fight structural fires—Training to fight forest fires—Other firefighter instruction.** (1) Aircraft crash rescue fire training activities meeting the following conditions do not require a permit under this section, or under RCW 70.94.6512, 70.94.6514, 70.94.6516, 70.94.6518, 70.94.6520, 70.94.6522, 70.94.6524, and 70.94.6526, from an air pollution control authority, the department, or any local entity with delegated permit authority:

(a) Firefighters participating in the training fires must be limited to those who provide firefighting support to an airport that is either certified by the federal aviation administration or operated in support of military or governmental activities;

(b) The fire training may not be conducted during an air pollution episode or any stage of impaired air quality declared under RCW 70.94.715 for the area where training is to be conducted;

(c) The number of training fires allowed per year without a permit shall be the minimum number necessary to meet federal aviation administration or other federal safety requirements;

(d) The facility shall use current technology and be operated in a manner that will minimize, to the extent possible, the air contaminants generated during operation; and

(e) The organization conducting training shall notify both the: (i) Local fire district or fire department; and (ii) air pollution control authority, department of ecology, or local entity delegated permitting authority under RCW 70.94.6530, having jurisdiction within the area where training is to be conducted before the commencement of aircraft fire training. Written approval from the department or a local air pollution control authority shall be obtained prior to the initial operation of aircraft crash rescue fire training. Such approval will be granted to fire training activities meeting the conditions in this subsection.

(2) Aircraft crash rescue fire training activities conducted in compliance with subsection (1) of this section are not subject to the prohibition, in RCW 70.94.6512(1), of outdoor fires containing petroleum products and are not considered outdoor burning under RCW 70.94.6512, 70.94.6514, 70.94.6516, 70.94.6518, 70.94.6520, 70.94.6522, 70.94.6524, and 70.94.6526.

(3) Training to fight structural fires located outside urban growth areas in counties that plan under the requirements of RCW 36.70A.040 and outside of any city with a population of ten thousand or more in all other counties does not need a permit under this section from an air pollution control authority or the department of ecology, but must be conducted in accordance with RCW 52.12.150.

(4) Training to fight forest fires does not require a permit from an air pollution control authority or the department of ecology.

(5) To provide for firefighting instruction in instances not governed by subsections (1) through (3) of this section, or other actions to protect public health and safety, the department or a local air pollution control authority may issue permits that allow limited burning of prohibited materials listed in RCW 70.94.6512(1). [2009 c 118 § 601.]

**Purpose—2009 c 118:** See note following RCW 70.94.6511.

**70.94.6548 Outdoor burning allowed for managing storm or flood-related debris.** Consistent with RCW 70.94.6514, outdoor burning may be allowed anywhere in the state for the exclusive purpose of managing storm or flood-related debris. [2009 c 118 § 701.]

**Purpose—2009 c 118:** See note following RCW 70.94.6511.

**70.94.6550 Fires necessary for Indian ceremonies or smoke signals.** Nothing in this chapter prohibits fires necessary for Indian ceremonies or for the sending of smoke signals if part of a religious ritual. Permits issued for burning under this section shall be drafted to minimize emissions including denial of permission to burn during periods of adverse meteorological conditions. [2009 c 118 § 702.]

**Purpose—2009 c 118:** See note following RCW 70.94.6511.

**70.94.6552 Permit to set fires for weed abatement.** Any person who proposes to set fires in the course of weed abatement shall obtain a permit from an air pollution control authority, the department of ecology, or a local entity delegated permitting authority under RCW 70.94.6530. General permit criteria of statewide applicability shall be established by the department, by rule, after consultation with the various air pollution control authorities. Permits shall be issued under this section based on seasonal operations or by individual operations, or both. All permits shall be conditioned to insure that the public interest in air, water, and land pollution and safety to life and property is fully considered. In addition to any other requirements established by the department to protect air quality pursuant to other laws, applicants for permits must show that the setting of fires as requested is the most reasonable procedure to follow in safeguarding life or property under all circumstances or is otherwise reasonably necessary to successfully carry out the enterprise in which the applicant is engaged, or both. All burning permits will be designed to minimize air pollution insofar as practical. Nothing in this section relieves the applicant from obtaining permits, licenses, or other approvals required by any other law. An application for a permit to set fires in the course of weed abatement shall be acted upon within seven days from the date such application is filed. [2009 c 118 § 704.]

**Purpose—2009 c 118:** See note following RCW 70.94.6511.

**70.94.6554 Disposal of tumbleweeds.** Consistent with RCW 70.94.6524, neither a permit nor the payment of a fee shall be required for outdoor burning for the purpose of disposal of tumbleweeds blown by wind. Such burning shall not be conducted during an air pollution episode or any stage of impaired air quality declared under RCW 70.94.715. This

section shall only apply within counties with a population less than two hundred fifty thousand. [2009 c 118 § 705.]

**Purpose—2009 c 118:** See note following RCW 70.94.6511.

**70.94.710 Air pollution episodes—Legislative finding—Declaration of policy.** The legislature finds that whenever meteorological conditions occur which reduce the effective volume of air into which air contaminants are introduced, there is a high danger that normal operations at air contaminant sources in the area affected will be detrimental to public health or safety. Whenever such conditions, herein denominated as air pollution episodes, are forecast, there is a need for rapid short-term emission reduction in order to avoid adverse health or safety consequences.

Therefore, it is declared to be the policy of this state that an episode avoidance plan should be developed and implemented for the temporary reduction of emissions during air pollution episodes.

It is further declared that power should be vested in the governor to issue emergency orders for the reduction or discontinuance of emissions when such emissions and weather combine to create conditions imminently dangerous to public health and safety. [1971 ex.s. c 194 § 1.]

**70.94.715 Air pollution episodes—Episode avoidance plan—Contents—Source emission reduction plans—Authority—Considered orders.** The department of ecology is hereby authorized to develop an episode avoidance plan providing for the phased reduction of emissions whenever and whenever an air pollution episode is forecast. Such an episode avoidance plan shall conform with any applicable federal standards and shall be effective statewide. The episode avoidance plan may be implemented on an area basis in accordance with the occurrence of air pollution episodes in any given area.

The department of ecology may delegate authority to adopt source emission reduction plans and authority to implement all stages of occurrence up to and including the warning stage, and all intermediate stages up to the warning stage, in any area of the state, to the air pollution control authority with jurisdiction therein.

The episode avoidance plan, which shall be established by regulation in accordance with chapter 34.05 RCW, shall include, but not be limited to the following:

(1) The designation of episode criteria and stages, the occurrence of which will require the carrying out of pre-planned episode avoidance procedures. The stages of occurrence shall be (a) forecast, (b) alert, (c) warning, (d) emergency, and such intermediate stages as the department shall designate. "Forecast" means the presence of meteorological conditions that are conducive to accumulation of air contaminants and is the first stage of an episode. The department shall not call a forecast episode prior to the department or an authority calling a first stage impaired air quality condition as provided by RCW 70.94.473(1)(b) or calling a single-stage impaired air quality condition as provided by \*RCW 70.94.473(2). "Alert" means concentration of air contaminants at levels at which short-term health effects may occur, and is the second stage of an episode. "Warning" means concentrations are continuing to degrade, contaminant concen-

trations have reached a level which, if maintained, can result in damage to health, and additional control actions are needed and is the third level of an episode. "Emergency" means the air quality is posing an imminent and substantial endangerment to public health and is the fourth level of an episode;

(2) The requirement that persons responsible for the operation of air contaminant sources prepare and obtain approval from the director of source emission reduction plans, consistent with good operating practice and safe operating procedures, for reducing emissions during designated episode stages;

(3) Provision for the director of the department of ecology or his authorized representative, or the air pollution control officer if implementation has been delegated, on the satisfaction of applicable criteria, to declare and terminate the forecast, alert, warning and all intermediate stages, up to the warning episode stage, such declarations constituting orders for action in accordance with applicable source emission reduction plans;

(4) Provision for the governor to declare and terminate the emergency stage and all intermediate stages above the warning episode stage, such declarations constituting orders in accordance with applicable source emission reduction plans;

(5) Provisions for enforcement by state and local police, personnel of the departments of ecology and social and health services, and personnel of local air pollution control agencies; and

(6) Provisions for reduction or discontinuance of emissions immediately, consistent with good operating practice and safe operating procedures, under an air pollution emergency as provided in RCW 70.94.720.

Source emission reduction plans shall be considered orders of the department and shall be subject to appeal to the pollution control hearings board according to the procedure in chapter 43.21B RCW. [1990 c 128 § 4; 1971 ex.s. c 194 § 2.]

**\*Reviser's note:** RCW 70.94.473 was amended by 1995 c 205 § 1, which deleted subsection (2).

**70.94.720 Air pollution episodes—Declaration of air pollution emergency by governor.** Whenever the governor finds that emissions from the operation of one or more air contaminant sources is causing imminent danger to public health or safety, he may declare an air pollution emergency and may order the person or persons responsible for the operation of such air contaminant source or sources to reduce or discontinue emissions consistent with good operating practice, safe operating procedures and source emission reduction plans, if any, adopted by the department of ecology or any local air pollution control authority to which the department of ecology has delegated authority to adopt emission reduction plans. Orders authorized by this section shall be in writing and may be issued without prior notice or hearing. In the absence of the governor, any findings, declarations and orders authorized by this section may be made and issued by his authorized representative. [1971 ex.s. c 194 § 3.]

**70.94.725 Air pollution episodes—Restraining orders, temporary injunctions to enforce orders—Procedure.** Whenever any order has been issued pursuant to RCW

70.94.710 through 70.94.730, the attorney general, upon request from the governor, the director of the department of ecology, an authorized representative of either, or the attorney for a local air pollution control authority upon request of the control officer, shall petition the superior court of the county in which is located the air contaminant source for which such order was issued for a temporary restraining order requiring the immediate reduction or discontinuance of emissions from such source.

Upon request of the party to whom a temporary restraining order is directed, the court shall schedule a hearing thereon at its earliest convenience, at which time the court may withdraw the restraining order or grant such temporary injunction as is reasonably necessary to prevent injury to the public health or safety. [1971 ex.s. c 194 § 4.]

**70.94.730 Air pollution episodes—Orders to be effective immediately.** Orders issued to declare any stage of an air pollution episode avoidance plan under RCW 70.94.715, and to declare an air pollution emergency, under RCW 70.94.720, and orders to persons responsible for the operation of an air contaminant source to reduce or discontinue emissions, according to RCW 70.94.715 and 70.94.720 shall be effective immediately and shall not be stayed pending completion of review. [1971 ex.s. c 194 § 5.]

**70.94.785 Plans approved pursuant to federal clean air act—Enforcement authority.** Notwithstanding any provision of the law to the contrary, except \*RCW 70.94.660 through 70.94.690, the department of ecology, upon its approval of any plan (or part thereof) required or permitted under the federal clean air act, shall have the authority to enforce all regulatory provisions within such plan (or part thereof): PROVIDED, That departmental enforcement of any such provision which is within the power of an activated authority to enforce shall be initiated only, when with respect to any source, the authority is not enforcing the provisions and then only after written notice is given the authority. [1973 1st ex.s. c 193 § 11.]

**\*Reviser's note:** RCW 70.94.660 through 70.94.690 were recodified as RCW 70.94.6534 through 70.94.6540 respectively pursuant to 2009 c 118 § 802.

**70.94.800 Legislative declaration—Intent.** The legislature recognizes that:

(1) Acid deposition resulting from commercial, industrial or other emissions of sulphur dioxide and nitrogen oxides pose a threat to the delicate balance of the state's ecological systems, particularly in alpine lakes that are known to be highly sensitive to acidification;

(2) Failure to act promptly and decisively to mitigate or eliminate this danger may soon result in untold and irreparable damage to the fish, forest, wildlife, agricultural, water, and recreational resources of this state;

(3) There is a direct correlation between emissions of sulphur dioxides and nitrogen oxides and increases in acid deposition;

(4) Acidification is cumulative; and

(5) Once an environment is acidified, it is difficult, if not impossible, to restore the natural balance.

It is therefore the intent of the legislature to provide for early detection of acidification and the resulting environmental degradation through continued monitoring of acid deposition levels and trends, and major source changes, so that the legislature can take any necessary action to prevent environmental degradation resulting from acid deposition. [1985 c 456 § 1; 1984 c 277 § 1.]

**70.94.805 Definitions.** As used in RCW 70.94.800 through \*70.94.825, the following terms have the following meanings.

(1) "Acid deposition" means wet or dry deposition from the atmosphere of chemical compounds with a pH of less than 5.6.

(2) "Critical level of acid deposition and lake, stream, and soil acidification" means the level at which irreparable damage may occur unless corrective action is taken. [1985 c 456 § 2; 1984 c 277 § 2.]

\*Reviser's note: RCW 70.94.810, 70.94.815, and 70.94.825 were repealed by 1991 c 199 § 718.

**70.94.820 Monitoring by department of ecology.** The department of ecology shall maintain a program of periodic monitoring of acid rain deposition and lake, stream, and soil acidification to ensure early detection of acidification and environmental degradation. [1987 c 505 § 61; 1985 c 456 § 5; 1984 c 277 § 6.]

**70.94.850 Emission credits banking program—Amount of credit.** The department of ecology and the local boards may implement an emission credits banking program. For the purposes of this section, an emission credits banking program means a program whereby an air contaminant source which reduces emissions of a given air contaminant by an amount greater than that required by applicable law, regulation, or order is granted credit for a given amount, which credit shall be administered by a credit bank operated by the appropriate agency. The amount of the credit shall be determined by the department or local board with jurisdiction, but it shall be less than the amount of the emissions reduction. The credit may be used, traded, sold, or otherwise expended for purposes established by regulation of state or local agencies consistent with the provisions of the prevention of significant deterioration program under RCW 70.94.860, the bubble program under RCW 70.94.155, and the new source review program under RCW 70.94.152, if there will be no net adverse impact on air quality. [1984 c 164 § 1.]

**70.94.860 Department of ecology may accept delegation of programs.** The department of ecology may accept delegation of programs as provided for in the federal clean air act. Subject to federal approval, the department may, in turn, delegate such programs to the local authority with jurisdiction in a given area. [1991 c 199 § 312; 1984 c 164 § 2.]

Finding—1991 c 199: See note following RCW 70.94.011.

**70.94.875 Evaluation of information on acid deposition in Pacific Northwest—Establishment of critical levels—Notification of legislature.** The department of ecol-

ogy, in consultation with the appropriate committees of the house of representatives and of the senate, shall:

(1) Continue evaluation of information and research on acid deposition in the Pacific Northwest region;

(2) Establish critical levels of acid deposition and lake, stream, and soil acidification; and

(3) Notify the legislature if acid deposition or lake, stream, and soil acidification reaches the levels established under subsection (2) of this section. [1991 c 199 § 313; 1985 c 456 § 3.]

Finding—1991 c 199: See note following RCW 70.94.011.

**70.94.880 Establishment of critical deposition and acidification levels—Considerations.** In establishing critical levels of acid deposition and lake, stream, and soil acidification, the department of ecology shall consider:

(1) Current acid deposition and lake, stream, and soil acidification levels;

(2) Changes in acid deposition and lake, stream, and soil acidification levels;

(3) Effects of acid deposition and lake, stream, and soil acidification on the environment; and

(4) The need to prevent environmental degradation. [1985 c 456 § 4.]

**70.94.892 Carbon dioxide mitigation—Fees.** (1) For fossil-fueled electric generation facilities having more than twenty-five thousand kilowatts station generating capability but less than three hundred fifty thousand kilowatts station generation capability, except for fossil-fueled floating thermal electric generation facilities under the jurisdiction of the energy facility site evaluation council pursuant to RCW 80.50.010, the department or authority shall implement a carbon dioxide mitigation program consistent with the requirements of chapter 80.70 RCW.

(2) For mitigation projects conducted directly by or under the control of the applicant, the department or local air authority shall approve or deny the mitigation plans, as part of its action to approve or deny an application submitted under RCW 70.94.152 based upon whether or not the mitigation plan is consistent with the requirements of chapter 80.70 RCW.

(3) The department or authority may determine, assess, and collect fees sufficient to cover the costs to review and approve or deny the carbon dioxide mitigation plan components of an order of approval issued under RCW 70.94.152. The department or authority may also collect fees sufficient to cover its additional costs to monitor conformance with the carbon dioxide mitigation plan components of the registration and air operating permit programs authorized in RCW 70.94.151 and 70.94.161. The department or authority shall track its costs related to review, approval, and monitoring conformance with carbon dioxide mitigation plans. [2004 c 224 § 8.]

**70.94.901 Construction—1967 c 238.** This 1967 amendatory act shall not be construed to create in any way nor to enlarge, diminish or otherwise affect in any way any private rights in any civil action for damages. Any determination that there has been a violation of the provisions of this

1967 amendatory act or of any ordinance, rule, regulation or order issued pursuant thereto, shall not create by reason thereof any presumption or finding of fact or of law for use in any lawsuit brought by a private citizen. [1967 c 238 § 65.]

**70.94.902 Construction, repeal of RCW 70.94.061 through 70.94.066—Saving.** The following acts or parts of acts are each repealed:

(1) Section 7, chapter 238, Laws of 1967, and RCW 70.94.061;

(2) Section 8, chapter 238, Laws of 1967, and RCW 70.94.062;

(3) Section 9, chapter 238, Laws of 1967, and RCW 70.94.064; and

(4) Section 10, chapter 238, Laws of 1967, and RCW 70.94.066.

Such repeals shall not be construed as affecting any authority in existence on April 24, 1969, nor as affecting any action, activities or proceedings initiated by such authority prior hereto, nor as affecting any civil or criminal proceedings instituted by such authority, nor any rule, regulation, resolution, ordinance, or order promulgated by such authority, nor any administrative action taken by such authority, nor the term of office, or appointment or employment of any person appointed or employed by such authority. [1969 ex.s. c 168 § 46.]

**70.94.904 Effective dates—1991 c 199.** Sections 602 and 603 of this act shall take effect July 1, 1992. Sections 202 through 209 of this act shall take effect January 1, 1993. Sections 210 and 505 of this act shall take effect January 1, 1992.

The remainder of this act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately. [1991 c 199 § 717.]

**70.94.905 Severability—1991 c 199.** If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1991 c 199 § 719.]

**70.94.906 Captions not law.** Captions and headings as used in this act constitute no part of the law. [1991 c 199 § 720.]

**70.94.911 Severability—1967 c 238.** If any phrase, clause, subsection or section of this 1967 amendatory act shall be declared unconstitutional or invalid by any court of competent jurisdiction, it shall be conclusively presumed that the legislature would have enacted this act without the phrase, clause, subsection or section so held unconstitutional or invalid and the remainder of the act shall not be affected as a result of said part being held unconstitutional or invalid. [1967 c 238 § 64.]

**70.94.950 Disincorporation of district located in county with a population of two hundred ten thousand or more and inactive for five years.** See chapter 57.90 RCW.

(2010 Ed.)

**70.94.960 Clean fuel matching grants for public transit, vehicle mechanics, and refueling infrastructure.** The department may disburse matching grants from funds provided by the legislature from the air pollution control account, created in RCW 70.94.015, to units of local government to partially offset the additional cost of purchasing "clean fuel" and/or operating "clean-fuel vehicles" provided that such vehicles are used for public transit. Publicly owned school buses are considered public transit for the purposes of this section. The department may also disburse grants to vocational-technical institutes for the purpose of establishing programs to certify clean-fuel vehicle mechanics. The department may also distribute grants to Washington State University for the purpose of furthering the establishment of clean fuel refueling infrastructure. [1996 c 186 § 517; 1991 c 199 § 218.]

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

**Finding—1991 c 199:** See note following RCW 70.94.011.

*Clean fuel:* RCW 70.120.210.

*Refueling:* RCW 80.28.280.

*State vehicles:* RCW 43.19.637.

**70.94.970 Chlorofluorocarbons—Ozone—Refrigerants regulated.** (1) Regulated refrigerant means a class I or class II substance as listed in Title VI of section 602 of the federal clean air act amendments of November 15, 1990.

(2) A person who services or repairs or disposes of a motor vehicle air conditioning system; commercial or industrial air conditioning, heating, or refrigeration system; or consumer appliance shall use refrigerant extraction equipment to recover regulated refrigerant that would otherwise be released into the atmosphere. This subsection does not apply to off-road commercial equipment.

(3) Upon request, the department shall provide information and assistance to persons interested in collecting, transporting, or recycling regulated refrigerants.

(4) The willful release of regulated refrigerant from a source listed in subsection (2) of this section is prohibited. [1991 c 199 § 602.]

**Finding—1991 c 199:** "The legislature finds that:

(1) The release of chlorofluorocarbons and other ozone-depleting chemicals into the atmosphere contributes to the destruction of stratospheric ozone and threatens plant and animal life with harmful overexposure to ultraviolet radiation;

(2) The technology and equipment to extract and recover chlorofluorocarbons and other ozone-depleting chemicals from air conditioners, refrigerators, and other appliances are available;

(3) A number of nonessential consumer products contain ozone-depleting chemicals; and

(4) Unnecessary releases of chlorofluorocarbons and other ozone-depleting chemicals from these sources should be eliminated." [1991 c 199 § 601.]

**Finding—1991 c 199:** See note following RCW 70.94.011.

**70.94.980 Refrigerants—Unlawful acts.** No person may sell, offer for sale, or purchase any of the following:

(1) A regulated refrigerant in a container designed for consumer recharge of a motor vehicle air conditioning system or consumer appliance during repair or service. This subsection does not apply to a regulated refrigerant purchased for the recharge of the air conditioning system of off-road commercial or agricultural equipment and sold or offered for sale

at an establishment which specializes in the sale of off-road commercial or agricultural equipment or parts or service for such equipment;

(2) Nonessential consumer products that contain chlorofluorocarbons or other ozone-depleting chemicals, and for which substitutes are readily available. Products affected under this subsection shall include, but are not limited to, party streamers, tire inflators, air horns, noise makers, and chlorofluorocarbon-containing cleaning sprays designed for noncommercial or nonindustrial cleaning of electronic or photographic equipment. [1991 c 199 § 603.]

**Finding—1991 c 199:** See note following RCW 70.94.011.

**70.94.990 Refrigerants—Rules—Enforcement provisions, limitations.** The department shall adopt rules to implement RCW 70.94.970 and 70.94.980. Rules shall include but not be limited to minimum performance specifications for refrigerant extraction equipment, as well as procedures for enforcing RCW 70.94.970 and 70.94.980.

Enforcement provisions adopted by the department shall not include penalties or fines in areas where equipment to collect or recycle regulated refrigerants is not readily available. [1991 c 199 § 604.]

**Finding—1991 c 199:** See note following RCW 70.94.011.

**70.94.996 Grant program for ride sharing. (Expires January 1, 2014.)** (1) To the extent that funds are appropriated, the department of transportation shall administer a performance-based grant program for private employers, public agencies, nonprofit organizations, developers, and property managers who provide financial incentives for ride sharing in vehicles carrying two or more persons, for using public transportation, for using car sharing, or for using nonmotorized commuting, including telework, before July 1, 2013, to their own or other employees.

(2) The amount of the grant will be determined based on the value to the transportation system of the vehicle trips reduced. The \*commute trip reduction task force shall develop an award rate giving priority to applications achieving the greatest reduction in trips and commute miles per public dollar requested and considering the following criteria: The local cost of providing new highway capacity, congestion levels, and geographic distribution.

(3) No private employer, public agency, nonprofit organization, developer, or property manager is eligible for grants under this section in excess of one hundred thousand dollars in any fiscal year.

(4) The total of grants provided under this section may not exceed seven hundred fifty thousand dollars in any fiscal year. However, this subsection does not apply during the 2003-2005 fiscal biennium.

(5) The department of transportation shall report to the department of revenue by the 15th day of each month the aggregate monetary amount of grants provided under this section in the prior month and the identity of the recipients of those grants.

(6) The source of funds for this grant program is the multimodal transportation account.

(7) This section expires January 1, 2014. [2004 c 229 § 501; 2003 c 364 § 9.]

[Title 70 RCW—page 242]

**\*Reviser's note:** The "commute trip reduction task force" was renamed the "commute trip reduction board" by 2006 c 329 § 7.

**Severability—2004 c 229:** "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [2004 c 229 § 507.]

**Effective date—2004 c 229:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [March 31, 2004]." [2004 c 229 § 508.]

**Effective date—Contingency—Captions not law—2003 c 364:** See notes following RCW 82.70.020.

## Chapter 70.95 RCW

### SOLID WASTE MANAGEMENT— REDUCTION AND RECYCLING

#### Sections

70.95.010	Legislative finding—Priorities—Goals.
70.95.020	Purpose.
70.95.030	Definitions.
70.95.055	Environmental excellence program agreements—Effect on chapter.
70.95.060	Standards for solid waste handling—Areas—Landfill location.
70.95.065	Inert waste landfills.
70.95.075	Implementation of standards—Assessment—Analyses—Proposals.
70.95.080	County comprehensive solid waste management plan—Joint plans—Requirements when updating—Duties of cities.
70.95.090	County and city comprehensive solid waste management plans—Contents.
70.95.092	County and city comprehensive solid waste management plans—Levels of service, reduction and recycling.
70.95.094	County and city comprehensive solid waste management plans—Review and approval process.
70.95.096	Utilities and transportation commission to review local plan's assessment of cost impacts on rates.
70.95.100	Technical assistance for plan preparation—Guidelines—Informational materials and programs.
70.95.110	Maintenance of plans—Review, revisions—Implementation of source separation programs.
70.95.130	Financial aid to counties and cities.
70.95.140	Matching requirements.
70.95.150	Contracts with counties to assure proper expenditures.
70.95.160	Local board of health regulations to implement the comprehensive plan—Section not to be construed to authorize counties to operate system.
70.95.163	Local health departments may contract with the department of ecology.
70.95.165	Solid waste disposal facility siting—Site review—Local solid waste advisory committees—Membership.
70.95.167	Private businesses involvement in source separated materials—Local solid waste advisory committee to examine.
70.95.170	Permit for solid waste handling facility—Required.
70.95.180	Permit for solid waste handling facility—Applications, fee.
70.95.185	Permit for solid waste disposal site or facilities—Review by department—Appeal of issuance—Validity of permits issued after June 7, 1984.
70.95.190	Permit for solid waste handling facility—Renewal—Appeal—Validity of renewal—Review fees.
70.95.200	Permit for solid waste disposal site or facilities—Suspension.
70.95.205	Exemption from solid waste permit requirements—Waste-derived soil amendments—Application—Revocation of exemption—Appeal.
70.95.210	Hearing—Appeal—Denial, suspension—When effective.
70.95.212	Solid waste collection companies—Notice of changes in tipping fees and disposal rate schedules.
70.95.215	Landfill disposal facilities—Reserve accounts required by July 1, 1987—Exception—Rules.
70.95.217	Waste generated outside the state—Findings.
70.95.218	Waste generated outside the state—Solid waste disposal site facility reporting requirements—Fees.
70.95.220	Financial aid to jurisdictional health departments—Applications—Allocations.
70.95.230	Financial aid to jurisdictional health departments—Matching funds requirements.
70.95.235	Diversion of recyclable material—Penalty.

(2010 Ed.)

- 70.95.240 Unlawful to dump or deposit solid waste without permit—Penalties—Litter cleanup restitution payment.
- 70.95.250 Name appearing on waste material—Presumption.
- 70.95.255 Disposal of sewage sludge or septic tank sludge prohibited—Exemptions—Uses of sludge material permitted.
- 70.95.260 Duties of department—State solid waste management plan—Assistance—Coordination—Tire recycling.
- 70.95.263 Additional powers and duties of department.
- 70.95.265 Department to cooperate with public and private departments, agencies and associations.
- 70.95.267 Department authorized to disburse referendum 26 (chapter 43.83A RCW) fund for local government solid waste projects.
- 70.95.268 Department authorized to disburse funds under chapter 43.99F RCW for local government solid waste projects.
- 70.95.270 Hazardous substance remedial actions—Procedural requirements not applicable.
- 70.95.280 Determination of best solid waste management practices—Department to develop method to monitor waste stream—Collectors to report quantity and quality of waste—Confidentiality of proprietary information.
- 70.95.285 Solid waste stream analysis.
- 70.95.290 Solid waste stream evaluation.
- 70.95.295 Analysis and evaluation to be incorporated in state solid waste management plan.
- 70.95.300 Solid waste—Beneficial uses—Permitting requirement exemptions.
- 70.95.305 Solid waste handling permit—Exemption from requirements—Application of section—Rules.
- 70.95.306 Composting of bovine and equine carcasses—Guidelines—Exemption from solid waste handling rules.
- 70.95.310 Rules—Department "deferring" to other permits—Application of section.
- 70.95.315 Penalty.
- 70.95.320 Construction.
- 70.95.330 Qualified anaerobic digesters exempt from permitting requirements of chapter—Definitions.
- 70.95.400 Transporters—Definition—Registration required—Penalties.
- 70.95.410 Transporters—Delivery of recyclable materials to transfer station or landfill prohibited—Records—Penalty.
- 70.95.420 Damages.
- 70.95.430 Solid waste recyclers—Notice—Report—Penalty.
- 70.95.440 Financial assurance requirements.
- 70.95.500 Disposal of vehicle tires outside designated area prohibited—Penalty—Exemption.
- 70.95.510 Fee on the retail sale of new replacement vehicle tires.
- 70.95.515 Fee on the retail sale of new replacement vehicle tires—Failure to collect, pay to department—Penalties.
- 70.95.521 Waste tire removal account.
- 70.95.530 Waste tire removal account—Use—Report to the legislature.
- 70.95.532 Waste tire removal account—Use of moneys—Transfer of any balance in excess of one million dollars to the motor vehicle account.
- 70.95.535 Disposition of fee.
- 70.95.540 Cooperation with department to aid tire recycling.
- 70.95.545 Tire recycling—Report.
- 70.95.550 Waste tires—Definitions.
- 70.95.555 Waste tires—License for transport or storage business—Requirements.
- 70.95.560 Waste tires—Violation of RCW 70.95.555—Penalty.
- 70.95.565 Waste tires—Contracts with unlicensed persons prohibited.
- 70.95.570 Limitations on liability.
- 70.95.600 Educational material promoting household waste reduction and recycling.
- 70.95.610 Battery disposal—Restrictions—Violators subject to fine—"Vehicle battery" defined.
- 70.95.620 Identification procedure for persons accepting used vehicle batteries.
- 70.95.630 Requirements for accepting used batteries by retailers of vehicle batteries—Notice.
- 70.95.640 Retail core charge.
- 70.95.650 Vehicle battery wholesalers—Obligations regarding used batteries—Noncompliance procedure.
- 70.95.660 Department to distribute printed notice—Issuance of warnings and citations—Fines.
- 70.95.670 Rules.
- 70.95.700 Solid waste incineration or energy recovery facility—Environmental impact statement requirements.
- 70.95.710 Incineration of medical waste.
- 70.95.715 Sharps waste—Drop-off sites—Pharmacy return program.
- 70.95.720 Closure of energy recovery and incineration facilities—Recordkeeping requirements.
- 70.95.725 Paper conservation program—Paper recycling program.
- 70.95.810 Composting food and yard wastes—Grants and study.
- 70.95.900 Authority and responsibility of utilities and transportation commission not changed.
- 70.95.901 Severability—1989 c 431.
- 70.95.902 Section captions not law—1989 c 431.
- 70.95.903 Application of chapter—Collection and transportation of recyclable materials by recycling companies or nonprofit entities—Reuse or reclamation.
- 70.95.910 Severability—1969 ex.s. c 134.
- 70.95.911 Severability—1975-76 2nd ex.s. c 41.
- Airports: RCW 70.93.095.*
- Commercial fertilizer: Chapter 15.54 RCW.*
- Environmental certification programs—Fees—Rules—Liability: RCW 43.21A.175.*
- Marinas: RCW 70.93.095.*
- Solid waste collection tax: Chapter 82.18 RCW.*
- State parks: RCW 79A.05.045.*
- Waste reduction, recycling, litter control: Chapter 70.93 RCW.*

### 70.95.010 Legislative finding—Priorities—Goals.

The legislature finds:

(1) Continuing technological changes in methods of manufacture, packaging, and marketing of consumer products, together with the economic and population growth of this state, the rising affluence of its citizens, and its expanding industrial activity have created new and ever-mounting problems involving disposal of garbage, refuse, and solid waste materials resulting from domestic, agricultural, and industrial activities.

(2) Traditional methods of disposing of solid wastes in this state are no longer adequate to meet the ever-increasing problem. Improper methods and practices of handling and disposal of solid wastes pollute our land, air and water resources, blight our countryside, adversely affect land values, and damage the overall quality of our environment.

(3) Considerations of natural resource limitations, energy shortages, economics and the environment make necessary the development and implementation of solid waste recovery and/or recycling plans and programs.

(4) Waste reduction must become a fundamental strategy of solid waste management. It is therefore necessary to change manufacturing and purchasing practices and waste generation behaviors to reduce the amount of waste that becomes a governmental responsibility.

(5) Source separation of waste must become a fundamental strategy of solid waste management. Collection and handling strategies should have, as an ultimate goal, the source separation of all materials with resource value or environmental hazard.

(6)(a) It should be the goal of every person and business to minimize their production of wastes and to separate recyclable or hazardous materials from mixed waste.

(b) It is the responsibility of state, county, and city governments to provide for a waste management infrastructure to fully implement waste reduction and source separation strategies and to process and dispose of remaining wastes in a manner that is environmentally safe and economically sound. It is further the responsibility of state, county, and city governments to monitor the cost-effectiveness and environmental safety of combusting separated waste, processing mixed municipal solid waste, and recycling programs.

(c) It is the responsibility of county and city governments to assume primary responsibility for solid waste management

and to develop and implement aggressive and effective waste reduction and source separation strategies.

(d) It is the responsibility of state government to ensure that local governments are providing adequate source reduction and separation opportunities and incentives to all, including persons in both rural and urban areas, and nonresidential waste generators such as commercial, industrial, and institutional entities, recognizing the need to provide flexibility to accommodate differing population densities, distances to and availability of recycling markets, and collection and disposal costs in each community; and to provide county and city governments with adequate technical resources to accomplish this responsibility.

(7) Environmental and economic considerations in solving the state's solid waste management problems requires strong consideration by local governments of regional solutions and intergovernmental cooperation.

(8) The following priorities for the collection, handling, and management of solid waste are necessary and should be followed in descending order as applicable:

- (a) Waste reduction;
- (b) Recycling, with source separation of recyclable materials as the preferred method;
- (c) Energy recovery, incineration, or landfill of separated waste;
- (d) Energy recovery, incineration, or landfill of mixed municipal solid wastes.

(9) It is the state's goal to achieve a fifty percent recycling rate by 2007.

(10) It is the state's goal that programs be established to eliminate residential or commercial yard debris in landfills by 2012 in those areas where alternatives to disposal are readily available and effective.

(11) Steps should be taken to make recycling at least as affordable and convenient to the ratepayer as mixed waste disposal.

(12) It is necessary to compile and maintain adequate data on the types and quantities of solid waste that are being generated and to monitor how the various types of solid waste are being managed.

(13) Vehicle batteries should be recycled and the disposal of vehicle batteries into landfills or incinerators should be discontinued.

(14) Excessive and nonrecyclable packaging of products should be avoided.

(15) Comprehensive education should be conducted throughout the state so that people are informed of the need to reduce, source separate, and recycle solid waste.

(16) All governmental entities in the state should set an example by implementing aggressive waste reduction and recycling programs at their workplaces and by purchasing products that are made from recycled materials and are recyclable.

(17) To ensure the safe and efficient operations of solid waste disposal facilities, it is necessary for operators and regulators of landfills and incinerators to receive training and certification.

(18) It is necessary to provide adequate funding to all levels of government so that successful waste reduction and recycling programs can be implemented.

(19) The development of stable and expanding markets for recyclable materials is critical to the long-term success of the state's recycling goals. Market development must be encouraged on a state, regional, and national basis to maximize its effectiveness. The state shall assume primary responsibility for the development of a multifaceted market development program to carry out the purposes of this act.

(20) There is an imperative need to anticipate, plan for, and accomplish effective storage, control, recovery, and recycling of discarded tires and other problem wastes with the subsequent conservation of resources and energy. [2002 c 299 § 3; 1989 c 431 § 1; 1985 c 345 § 1; 1984 c 123 § 1; 1975-'76 2nd ex.s. c 41 § 1; 1969 ex.s. c 134 § 1.]

**70.95.020 Purpose.** The purpose of this chapter is to establish a comprehensive statewide program for solid waste handling, and solid waste recovery and/or recycling which will prevent land, air, and water pollution and conserve the natural, economic, and energy resources of this state. To this end it is the purpose of this chapter:

(1) To assign primary responsibility for adequate solid waste handling to local government, reserving to the state, however, those functions necessary to assure effective programs throughout the state;

(2) To provide for adequate planning for solid waste handling by local government;

(3) To provide for the adoption and enforcement of basic minimum performance standards for solid waste handling, including that all sites where recyclable materials are generated and transported from shall provide a separate container for solid waste;

(4) To encourage the development and operation of waste recycling facilities needed to accomplish the management priority of waste recycling, to promote consistency in the requirements for such facilities throughout the state, and to ensure that recyclable materials diverted from the waste stream for recycling are routed to facilities in which recycling occurs;

(5) To provide technical and financial assistance to local governments in the planning, development, and conduct of solid waste handling programs;

(6) To encourage storage, proper disposal, and recycling of discarded vehicle tires and to stimulate private recycling programs throughout the state; and

(7) To encourage the development and operation of waste recycling facilities and activities needed to accomplish the management priority of waste recycling and to promote consistency in the permitting requirements for such facilities and activities throughout the state.

It is the intent of the legislature that local governments be encouraged to use the expertise of private industry and to contract with private industry to the fullest extent possible to carry out solid waste recovery and/or recycling programs. [2005 c 394 § 2. Prior: 1998 c 156 § 1; 1998 c 90 § 1; 1985 c 345 § 2; 1975-'76 2nd ex.s. c 41 § 2; 1969 ex.s. c 134 § 2.]

**Intent—Severability—2005 c 394:** See notes following RCW 70.95.400.

**70.95.030 Definitions.** As used in this chapter, unless the context indicates otherwise:

- (1) "City" means every incorporated city and town.

(2) "Commission" means the utilities and transportation commission.

(3) "Composted material" means organic solid waste that has been subjected to controlled aerobic degradation at a solid waste facility in compliance with the requirements of this chapter. Natural decay of organic solid waste under uncontrolled conditions does not result in composted material.

(4) "Department" means the department of ecology.

(5) "Director" means the director of the department of ecology.

(6) "Disposal site" means the location where any final treatment, utilization, processing, or deposit of solid waste occurs.

(7) "Energy recovery" means a process operating under federal and state environmental laws and regulations for converting solid waste into usable energy and for reducing the volume of solid waste.

(8) "Functional standards" means criteria for solid waste handling expressed in terms of expected performance or solid waste handling functions.

(9) "Incineration" means a process of reducing the volume of solid waste operating under federal and state environmental laws and regulations by use of an enclosed device using controlled flame combustion.

(10) "Inert waste landfill" means a landfill that receives only inert waste, as determined under RCW 70.95.065, and includes facilities that use inert wastes as a component of fill.

(11) "Jurisdictional health department" means city, county, city-county, or district public health department.

(12) "Landfill" means a disposal facility or part of a facility at which solid waste is placed in or on land and which is not a land treatment facility.

(13) "Local government" means a city, town, or county.

(14) "Modify" means to substantially change the design or operational plans including, but not limited to, removal of a design element previously set forth in a permit application or the addition of a disposal or processing activity that is not approved in the permit.

(15) "Multiple family residence" means any structure housing two or more dwelling units.

(16) "Person" means individual, firm, association, copartnership, political subdivision, government agency, municipality, industry, public or private corporation, or any other entity whatsoever.

(17) "Recyclable materials" means those solid wastes that are separated for recycling or reuse, such as papers, metals, and glass, that are identified as recyclable material pursuant to a local comprehensive solid waste plan. Prior to the adoption of the local comprehensive solid waste plan, adopted pursuant to RCW 70.95.110(2), local governments may identify recyclable materials by ordinance from July 23, 1989.

(18) "Recycling" means transforming or remanufacturing waste materials into usable or marketable materials for use other than landfill disposal or incineration.

(19) "Residence" means the regular dwelling place of an individual or individuals.

(20) "Sewage sludge" means a semisolid substance consisting of settled sewage solids combined with varying amounts of water and dissolved materials, generated from a

wastewater treatment system, that does not meet the requirements of chapter 70.95J RCW.

(21) "Soil amendment" means any substance that is intended to improve the physical characteristics of the soil, except composted material, commercial fertilizers, agricultural liming agents, unmanipulated animal manures, unmanipulated vegetable manures, food wastes, food processing wastes, and materials exempted by rule of the department, such as biosolids as defined in chapter 70.95J RCW and wastewater as regulated in chapter 90.48 RCW.

(22) "Solid waste" or "wastes" means all putrescible and nonputrescible solid and semisolid wastes including, but not limited to, garbage, rubbish, ashes, industrial wastes, swill, sewage sludge, demolition and construction wastes, abandoned vehicles or parts thereof, and recyclable materials.

(23) "Solid waste handling" means the management, storage, collection, transportation, treatment, utilization, processing, and final disposal of solid wastes, including the recovery and recycling of materials from solid wastes, the recovery of energy resources from solid wastes or the conversion of the energy in solid wastes to more useful forms or combinations thereof.

(24) "Source separation" means the separation of different kinds of solid waste at the place where the waste originates.

(25) "Vehicle" includes every device physically capable of being moved upon a public or private highway, road, street, or watercourse and in, upon, or by which any person or property is or may be transported or drawn upon a public or private highway, road, street, or watercourse, except devices moved by human or animal power or used exclusively upon stationary rails or tracks.

(26) "Waste-derived soil amendment" means any soil amendment as defined in this chapter that is derived from solid waste as defined in this section, but does not include biosolids or biosolids products regulated under chapter 70.95J RCW or wastewaters regulated under chapter 90.48 RCW.

(27) "Waste reduction" means reducing the amount or toxicity of waste generated or reusing materials.

(28) "Yard debris" means plant material commonly created in the course of maintaining yards and gardens, and through horticulture, gardening, landscaping, or similar activities. Yard debris includes but is not limited to grass clippings, leaves, branches, brush, weeds, flowers, roots, windfall fruit, vegetable garden debris, holiday trees, and tree prunings four inches or less in diameter. [2010 1st sp.s. c 7 § 86; 2004 c 101 § 1; 2002 c 299 § 4; 1998 c 36 § 17; 1997 c 213 § 1; 1992 c 174 § 16; 1991 c 298 § 2; 1989 c 431 § 2; 1985 c 345 § 3; 1984 c 123 § 2; 1975-'76 2nd ex.s. c 41 § 3; 1970 ex.s. c 62 § 60; 1969 ex.s. c 134 § 3.]

**Effective date—2010 1st sp.s. c 26; 2010 1st sp.s. c 7:** See note following RCW 43.03.027.

**Intent—1998 c 36:** See RCW 15.54.265.

**Finding—1991 c 298:** "The legislature finds that curbside recycling services should be provided in multiple family residences. The county and city comprehensive solid waste management plans should include provisions for such service." [1991 c 298 § 1.]

*Solid waste disposal—Powers and duties of state board of health as to environmental contaminants: RCW 43.20.050.*

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**70.95.055 Environmental excellence program agreements—Effect on chapter.** Notwithstanding any other provision of law, any legal requirement under this chapter, including any standard, limitation, rule, or order is superseded and replaced in accordance with the terms and provisions of an environmental excellence program agreement, entered into under chapter 43.21K RCW. [1997 c 381 § 22.]

**Purpose—1997 c 381:** See RCW 43.21K.005.

**70.95.060 Standards for solid waste handling—Areas—Landfill location.** (1) The department shall adopt rules establishing minimum functional standards for solid waste handling, consistent with the standards specified in this section. The department may classify areas of the state with respect to population density, climate, geology, and other relevant factors bearing on solid waste disposal standards.

(2) In addition to the minimum functional standards adopted by the department under subsection (1) of this section, each landfill facility whose area at its design capacity will exceed one hundred acres and whose horizontal height at design capacity will average one hundred feet or more above existing site elevations shall comply with the standards of this subsection. This subsection applies only to wholly new solid waste landfill facilities, no part or unit of which has had construction commence before April 27, 1999.

(a) No landfill specified in this subsection may be located:

(i) So that the active area is closer than five miles to any national park or a public or private nonprofit zoological park displaying native animals in their native habitats; or

(ii) Over a sole source aquifer designated under the federal safe drinking water act, if such designation was effective before January 1, 1999.

(b) Each landfill specified in this subsection (2) shall be constructed with an impermeable berm around the entire perimeter of the active area of the landfill of such height, thickness, and design as will be sufficient to contain all material disposed in the event of a complete failure of the structural integrity of the landfill. [1999 c 116 § 1; 1969 ex.s. c 134 § 6.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**70.95.065 Inert waste landfills.** (1) The department shall, as part of the minimum functional standards for solid waste handling required under RCW 70.95.060, develop specific criteria for the types of solid wastes that are allowed to be received by inert waste landfills that seek to continue operation after February 10, 2003.

(2) The criteria for inert waste developed under this section must, at a minimum, contain a list of substances that an inert waste landfill located in a county with fewer than forty-five thousand residents is permitted to receive if it was operational before February 10, 2003, and is located at a site with a five-year annual rainfall of twenty-five inches or less. The substances permitted for the inert waste landfills satisfying the criteria listed in this subsection must include the following types of solid waste if the waste has not been tainted, through exposure from chemical, physical, biological, or radiological substances, such that it presents a threat to

human health or the environment greater than that inherent to the material:

(a) Cured concrete, including any embedded steel reinforcing and wood;

(b) Asphaltic materials, including road construction asphalt;

(c) Brick and masonry;

(d) Ceramic materials produced from fired clay or porcelain;

(e) Glass;

(f) Stainless steel and aluminum; and

(g) Other materials as defined in chapter 173-350 WAC.

(3) The department shall work with the owner or operators of landfills that do not meet the minimum functional standards for inert waste landfills to explore and implement appropriate means of transition into a limited purpose landfill that is able to accept additional materials as specified in WAC 173-350-400. [2004 c 101 § 2.]

**70.95.075 Implementation of standards—Assessment—Analyses—Proposals.** In order to implement the minimum functional standards for solid waste handling, evaluate the effectiveness of the minimum functional standards, evaluate the cost of implementation, and develop a mechanism to finance the implementation, the department shall prepare:

(1) An assessment of local health agencies' information on all existing permitted landfill sites, including (a) measures taken and facilities installed at each landfill to mitigate surface water and groundwater contamination, (b) proposed measures taken and facilities to be constructed at each landfill to mitigate surface water and groundwater contamination, and (c) the costs of such measures and facilities;

(2) An analysis of the effectiveness of the minimum functional standards for new landfills in lessening surface water and groundwater contamination, and a comparison with the effectiveness of the prior standards;

(3) An analysis of the costs of conforming with the new functional standards for new landfills compared with the costs of conforming to the prior standards; and

(4) Proposals for methods of financing the costs of conforming with the new functional standards. [1986 c 81 § 1.]

**70.95.080 County comprehensive solid waste management plan—Joint plans—Requirements when updating—Duties of cities.** (1) Each county within the state, in cooperation with the various cities located within such county, shall prepare a coordinated, comprehensive solid waste management plan. Such plan may cover two or more counties. The purpose is to plan for solid waste and materials reduction, collection, and handling and management services and programs throughout the state, as designed to meet the unique needs of each county and city in the state. When updating a solid waste management plan developed under this chapter, after June 10, 2010, local comprehensive plans must consider and plan for the following handling methods or services:

(a) Source separation of recyclable materials and products, organic materials, and wastes by generators;

(b) Collection of source separated materials;

(c) Handling and proper preparation of materials for reuse or recycling;

(d) Handling and proper preparation of organic materials for composting or anaerobic digestion; and

(e) Handling and proper disposal of nonrecyclable wastes.

(2) When updating a solid waste management plan developed under this chapter, after June 10, 2010, each local comprehensive plan must, at a minimum, consider methods that will be used to address the following:

(a) Construction and demolition waste for recycling or reuse;

(b) Organic material including yard debris, food waste, and food contaminated paper products for composting or anaerobic digestion;

(c) Recoverable paper products for recycling;

(d) Metals, glass, and plastics for recycling; and

(e) Waste reduction strategies.

(3) Each city shall:

(a) Prepare and deliver to the county auditor of the county in which it is located its plan for its own solid waste management for integration into the comprehensive county plan;

(b) Enter into an agreement with the county pursuant to which the city shall participate in preparing a joint city-county plan for solid waste management; or

(c) Authorize the county to prepare a plan for the city's solid waste management for inclusion in the comprehensive county plan.

(4) Two or more cities may prepare a plan for inclusion in the county plan. With prior notification of its home county of its intent, a city in one county may enter into an agreement with a city in an adjoining county, or with an adjoining county, or both, to prepare a joint plan for solid waste management to become part of the comprehensive plan of both counties.

(5) After consultation with representatives of the cities and counties, the department shall establish a schedule for the development of the comprehensive plans for solid waste management. In preparing such a schedule, the department shall take into account the probable cost of such plans to the cities and counties.

(6) Local governments shall not be required to include a hazardous waste element in their solid waste management plans. [2010 c 154 § 2; 1985 c 448 § 17; 1969 ex.s. c 134 § 8.]

**Intent—2010 c 154:** "Increasing available residential curbside service for solid waste, recyclable, and compostable materials provides enumerable public benefits for all of Washington. Not only will increased service provide better system-wide efficiency, but it will also result in job creation, pollution reduction, and energy conservation, all of which serve to improve the quality of life in Washington communities.

It is therefore the intent of the legislature that Washington strive[s] to significantly increase current residential recycling rates by 2020." [2010 c 154 § 1.]

**Scope of authority—2010 c 154:** "Nothing in this act changes or limits the authority of the Washington utilities and transportation commission to regulate collection of solid waste, including curbside collection of residential recyclable materials, nor does this act change or limit the authority of a city or town to provide such service itself or by contract under RCW 81.77.020." [2010 c 154 § 5.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

(2010 Ed.)

**70.95.090 County and city comprehensive solid waste management plans—Contents.** Each county and city comprehensive solid waste management plan shall include the following:

(1) A detailed inventory and description of all existing solid waste handling facilities including an inventory of any deficiencies in meeting current solid waste handling needs.

(2) The estimated long-range needs for solid waste handling facilities projected twenty years into the future.

(3) A program for the orderly development of solid waste handling facilities in a manner consistent with the plans for the entire county which shall:

(a) Meet the minimum functional standards for solid waste handling adopted by the department and all laws and regulations relating to air and water pollution, fire prevention, flood control, and protection of public health;

(b) Take into account the comprehensive land use plan of each jurisdiction;

(c) Contain a six year construction and capital acquisition program for solid waste handling facilities; and

(d) Contain a plan for financing both capital costs and operational expenditures of the proposed solid waste management system.

(4) A program for surveillance and control.

(5) A current inventory and description of solid waste collection needs and operations within each respective jurisdiction which shall include:

(a) Any franchise for solid waste collection granted by the utilities and transportation commission in the respective jurisdictions including the name of the holder of the franchise and the address of his or her place of business and the area covered by the franchise;

(b) Any city solid waste operation within the county and the boundaries of such operation;

(c) The population density of each area serviced by a city operation or by a franchised operation within the respective jurisdictions;

(d) The projected solid waste collection needs for the respective jurisdictions for the next six years.

(6) A comprehensive waste reduction and recycling element that, in accordance with the priorities established in RCW 70.95.010, provides programs that (a) reduce the amount of waste generated, (b) provide incentives and mechanisms for source separation, and (c) establish recycling opportunities for the source separated waste.

(7) The waste reduction and recycling element shall include the following:

(a) Waste reduction strategies;

(b) Source separation strategies, including:

(i) Programs for the collection of source separated materials from residences in urban and rural areas. In urban areas, these programs shall include collection of source separated recyclable materials from single and multiple family residences, unless the department approves an alternative program, according to the criteria in the planning guidelines. Such criteria shall include: Anticipated recovery rates and levels of public participation, availability of environmentally sound disposal capacity, access to markets for recyclable materials, unreasonable cost impacts on the ratepayer over the six-year planning period, utilization of environmentally sound waste reduction and recycling technologies, and other

[Title 70 RCW—page 247]

factors as appropriate. In rural areas, these programs shall include but not be limited to drop-off boxes, buy-back centers, or a combination of both, at each solid waste transfer, processing, or disposal site, or at locations convenient to the residents of the county. The drop-off boxes and buy-back centers may be owned or operated by public, nonprofit, or private persons;

(ii) Programs to monitor the collection of source separated waste at nonresidential sites where there is sufficient density to sustain a program;

(iii) Programs to collect yard waste, if the county or city submitting the plan finds that there are adequate markets or capacity for composted yard waste within or near the service area to consume the majority of the material collected; and

(iv) Programs to educate and promote the concepts of waste reduction and recycling;

(c) Recycling strategies, including a description of markets for recyclables, a review of waste generation trends, a description of waste composition, a discussion and description of existing programs and any additional programs needed to assist public and private sector recycling, and an implementation schedule for the designation of specific materials to be collected for recycling, and for the provision of recycling collection services;

(d) Other information the county or city submitting the plan determines is necessary.

(8) An assessment of the plan's impact on the costs of solid waste collection. The assessment shall be prepared in conformance with guidelines established by the utilities and transportation commission. The commission shall cooperate with the Washington state association of counties and the association of Washington cities in establishing such guidelines.

(9) A review of potential areas that meet the criteria as outlined in RCW 70.95.165. [1991 c 298 § 3; 1989 c 431 § 3; 1984 c 123 § 5; 1971 ex.s. c 293 § 1; 1969 ex.s. c 134 § 9.]

**Finding—1991 c 298:** See note following RCW 70.95.030.

*Certain provisions not to detract from utilities and transportation commission powers, duties, and functions: RCW 80.01.300.*

**70.95.092 County and city comprehensive solid waste management plans—Levels of service, reduction and recycling.** Levels of service shall be defined in the waste reduction and recycling element of each local comprehensive solid waste management plan and shall include the services set forth in RCW 70.95.090. In determining which service level is provided to residential and nonresidential waste generators in each community, counties and cities shall develop clear criteria for designating areas as urban or rural. In designating urban areas, local governments shall consider the planning guidelines adopted by the department, total population, population density, and any applicable land use or utility service plans. [1989 c 431 § 4.]

**70.95.094 County and city comprehensive solid waste management plans—Review and approval process.** (1) The department and local governments preparing plans are encouraged to work cooperatively during plan development. Each county and city preparing a comprehensive solid waste management plan shall submit a preliminary draft plan to the department for technical review. The department shall

review and comment on the draft plan within one hundred twenty days of receipt. The department's comments shall state specific actions or revisions that must be completed for plan approval.

(2) Each final draft solid waste management plan shall be submitted to the department for approval. The department will limit its comments on the final draft plans to those issues identified during its review of the draft plan and any other changes made between submittal of the preliminary draft and final draft plans. Disapproval of the local comprehensive solid waste management plan shall be supported by specific findings. A final draft plan shall be deemed approved if the department does not disapprove it within forty-five days of receipt.

(3) If the department disapproves a plan or any plan amendments, the submitting entity may appeal the decision to the pollution control hearings board as provided in RCW 43.21B.230. The appeal shall be limited to review of the specific findings which supported the disapproval under subsection (2) of this section. [2010 c 210 § 17; 1989 c 431 § 8.]

**Intent—Effective dates—Application—Pending cases and rules—2010 c 210:** See notes following RCW 43.21B.001.

**70.95.096 Utilities and transportation commission to review local plan's assessment of cost impacts on rates.**

Upon receipt, the department shall immediately provide the utilities and transportation commission with a copy of each preliminary draft local comprehensive solid waste management plan. Within forty-five days after receiving a plan, the commission shall have reviewed the plan's assessment of solid waste collection cost impacts on rates charged by solid waste collection companies regulated under chapter 81.77 RCW and shall advise the county or city submitting the plan and the department of the probable effect of the plan's recommendations on those rates. [1989 c 431 § 12.]

**70.95.100 Technical assistance for plan preparation—Guidelines—Informational materials and programs.**

(1) The department or the commission, as appropriate, shall provide to counties and cities technical assistance including, but not limited to, planning guidelines, in the preparation, review, and revision of solid waste management plans required by this chapter. Guidelines prepared under this section shall be consistent with the provisions of this chapter. Guidelines for the preparation of the waste reduction and recycling element of the comprehensive solid waste management plan shall be completed by the department by March 15, 1990. These guidelines shall provide recommendations to local government on materials to be considered for designation as recyclable materials. The state solid waste management plan prepared pursuant to RCW 70.95.260 shall be consistent with these guidelines.

(2) The department shall be responsible for development and implementation of a comprehensive statewide public information program designed to encourage waste reduction, source separation, and recycling by the public. The department shall operate a toll free hot line to provide the public information on waste reduction and recycling.

(3) The department shall provide technical assistance to local governments in the development and dissemination of informational materials and related activities to assure recog-

inition of unique local waste reduction and recycling programs.

(4) Local governments shall make all materials and information developed with the assistance grants provided under RCW 70.95.130 available to the department for potential use in other areas of the state. [1989 c 431 § 6; 1984 c 123 § 6; 1969 ex.s. c 134 § 10.]

**70.95.110 Maintenance of plans—Review, revisions—Implementation of source separation programs.**

(1) The comprehensive county solid waste management plans and any comprehensive city solid waste management plans prepared in accordance with RCW 70.95.080 shall be maintained in a current condition and reviewed and revised periodically by counties and cities as may be required by the department. Upon each review such plans shall be extended to show long-range needs for solid waste handling facilities for twenty years in the future, and a revised construction and capital acquisition program for six years in the future. Each revised solid waste management plan shall be submitted to the department.

Each plan shall be reviewed and revised within five years of July 1, 1984, and thereafter shall be reviewed, and revised if necessary according to the schedule provided in subsection (2) of this section.

(2) Cities and counties preparing solid waste management plans shall submit the waste reduction and recycling element required in RCW 70.95.090 and any revisions to other elements of its comprehensive solid waste management plan to the department no later than:

(a) July 1, 1991, for class one areas: PROVIDED, That portions relating to multiple family residences shall be submitted no later than July 1, 1992;

(b) July 1, 1992, for class two areas; and

(c) July 1, 1994, for class three areas.

Thereafter, each plan shall be reviewed and revised, if necessary, at least every five years. Nothing in chapter 431, Laws of 1989 shall prohibit local governments from submitting a plan prior to the dates listed in this subsection.

(3) The classes of areas are defined as follows:

(a) Class one areas are the counties of Spokane, Snohomish, King, Pierce, and Kitsap and all the cities therein.

(b) Class two areas are all other counties located west of the crest of the Cascade mountains and all the cities therein.

(c) Class three areas are the counties east of the crest of the Cascade mountains and all the cities therein, except for Spokane county.

(4) Cities and counties shall begin implementing the programs to collect source separated materials no later than one year following the adoption and approval of the waste reduction and recycling element and these programs shall be fully implemented within two years of approval. [1991 c 298 § 4; 1989 c 431 § 5; 1984 c 123 § 7; 1969 ex.s. c 134 § 11.]

**Finding—1991 c 298:** See note following RCW 70.95.030.

**70.95.130 Financial aid to counties and cities.** Any county may apply to the department on a form prescribed thereby for financial aid for the preparation of the comprehensive county plan for solid waste management required by RCW 70.95.080. Any city electing to prepare an independent

city plan, a joint city plan, or a joint county-city plan for solid waste management for inclusion in the county comprehensive plan may apply for financial aid for such purpose through the county. Every city application for financial aid for planning shall be filed with the county auditor and shall be included as a part of the county's application for financial aid. Any city preparing an independent plan shall provide for disposal sites wholly within its jurisdiction.

The department shall allocate to the counties and cities applying for financial aid for planning, such funds as may be available pursuant to legislative appropriations or from any federal grants for such purpose.

The department shall determine priorities and allocate available funds among the counties and cities applying for aid according to criteria established by regulations of the department considering population, urban development, environmental effects of waste disposal, existing waste handling practices, and the local justification of their proposed expenditures. [1969 ex.s. c 134 § 13.]

**70.95.140 Matching requirements.** Counties and cities shall match their planning aid allocated by the director by an amount not less than twenty-five percent of the estimated cost of such planning. Any federal planning aid made directly to a county or city shall not be considered either a state or local contribution in determining local matching requirements. Counties and cities may meet their share of planning costs by cash and contributed services. [1969 ex.s. c 134 § 14.]

**70.95.150 Contracts with counties to assure proper expenditures.** Upon the allocation of planning funds as provided in RCW 70.95.130, the department shall enter into a contract with each county receiving a planning grant. The contract shall include such provisions as the director may deem necessary to assure the proper expenditure of such funds including allocations made to cities. The sum allocated to a county shall be paid to the treasurer of such county. [1969 ex.s. c 134 § 15.]

**70.95.160 Local board of health regulations to implement the comprehensive plan—Section not to be construed to authorize counties to operate system.** Each county, or any city, or jurisdictional board of health shall adopt regulations or ordinances governing solid waste handling implementing the comprehensive solid waste management plan covering storage, collection, transportation, treatment, utilization, processing and final disposal including but not limited to the issuance of permits and the establishment of minimum levels and types of service for any aspect of solid waste handling. County regulations or ordinances adopted regarding levels and types of service shall not apply within the limits of any city where the city has by local ordinance determined that the county shall not exercise such powers within the corporate limits of the city. Such regulations or ordinances shall assure that solid waste storage and disposal facilities are located, maintained, and operated in a manner so as properly to protect the public health, prevent air and water pollution, are consistent with the priorities established in RCW 70.95.010, and avoid the creation of nuisances. Such

regulations or ordinances may be more stringent than the minimum functional standards adopted by the department. Regulations or ordinances adopted by counties, cities, or jurisdictional boards of health shall be filed with the department.

Nothing in this section shall be construed to authorize the operation of a solid waste collection system by counties. [1989 c 431 § 10; 1988 c 127 § 29; 1969 ex.s. c 134 § 16.]

**70.95.163 Local health departments may contract with the department of ecology.** Any jurisdictional health department and the department of ecology may enter into an agreement providing for the exercise by the department of ecology of any power that is specified in the contract and that is granted to the jurisdictional health department under this chapter. However, the jurisdictional health department shall have the approval of the legislative authority or authorities it serves before entering into any such agreement with the department of ecology. [1989 c 431 § 16.]

**70.95.165 Solid waste disposal facility siting—Site review—Local solid waste advisory committees—Membership.** (1) Each county or city siting a solid waste disposal facility shall review each potential site for conformance with the standards as set by the department for:

- (a) Geology;
- (b) Groundwater;
- (c) Soil;
- (d) Flooding;
- (e) Surface water;
- (f) Slope;
- (g) Cover material;
- (h) Capacity;
- (i) Climatic factors;
- (j) Land use;
- (k) Toxic air emissions; and
- (l) Other factors as determined by the department.

(2) The standards in subsection (1) of this section shall be designed to use the best available technology to protect the environment and human health, and shall be revised periodically to reflect new technology and information.

(3) Each county shall establish a local solid waste advisory committee to assist in the development of programs and policies concerning solid waste handling and disposal and to review and comment upon proposed rules, policies, or ordinances prior to their adoption. Such committees shall consist of a minimum of nine members and shall represent a balance of interests including, but not limited to, citizens, public interest groups, business, the waste management industry, and local elected public officials. The members shall be appointed by the county legislative authority. A county or city shall not apply for funds from the state and local improvements revolving account, Waste Disposal Facilities, 1980, under chapter 43.99F RCW, for the preparation, update, or major amendment of a comprehensive solid waste management plan unless the plan or revision has been prepared with the active assistance and participation of a local solid waste advisory committee. [1989 c 431 § 11; 1984 c 123 § 4.]

**70.95.167 Private businesses involvement in source separated materials—Local solid waste advisory committee to examine.** (1) Each local solid waste advisory committee shall conduct one or more meetings for the purpose of determining how local private recycling and solid waste collection businesses may participate in the development and implementation of programs to collect source separated materials from residences, and to process and market materials collected for recycling. The meetings shall include local private recycling businesses, private solid waste collection companies operating within the jurisdiction, and the local solid waste planning agencies. The meetings shall be held during the development of the waste reduction and recycling element or no later than one year prior to the date that a jurisdiction is required [to] submit the element under RCW 70.95.110(2).

(2) The meeting requirement under subsection (1) of this section shall apply whenever a city or county develops or amends the waste reduction and recycling element required under this chapter. Jurisdictions having approved waste reduction and recycling elements or having initiated a process for the selection of a service provider as of May 21, 1991, do not have to comply with the requirements of subsection (1) of this section until the next revisions to the waste reduction and recycling element are made or required.

(3) After the waste reduction and recycling element is approved by the local legislative authority but before it is submitted to the department for approval, the local solid waste advisory committee shall hold at least one additional meeting to review the element.

(4) For the purpose of this section, "private recycling business" means any private for-profit or private not-for-profit business that engages in the processing and marketing of recyclable materials. [1991 c 319 § 402.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**70.95.170 Permit for solid waste handling facility—Required.** Except as provided otherwise in RCW 70.95.300, 70.95.305, 70.95.306, 70.95.310, or 70.95.330, after approval of the comprehensive solid waste plan by the department no solid waste handling facility or facilities shall be maintained, established, or modified until the county, city, or other person operating such site has obtained a permit pursuant to RCW 70.95.180 or 70.95.190. [2009 c 178 § 4; 1998 c 156 § 3; 1997 c 213 § 2; 1969 ex.s. c 134 § 17.]

**70.95.180 Permit for solid waste handling facility—Applications, fee.** (1) Applications for permits to operate a new or modified solid waste handling facility shall be on forms prescribed by the department and shall contain a description of the proposed facilities and operations at the site, plans and specifications for any new or additional facilities to be constructed, and such other information as the jurisdictional health department may deem necessary in order to determine whether the site and solid waste disposal facilities located thereon will comply with local and state regulations.

(2) Upon receipt of an application for a permit to establish or modify a solid waste handling facility, the jurisdictional health department shall refer one copy of the application to the department which shall report its findings to the jurisdictional health department.

(3) The jurisdictional health department shall investigate every application as may be necessary to determine whether a proposed or modified site and facilities meet all solid waste, air, and other applicable laws and regulations, and conforms with the approved comprehensive solid waste handling plan, and complies with all zoning requirements.

(4) When the jurisdictional health department finds that the permit should be issued, it shall issue such permit. Every application shall be approved or disapproved within ninety days after its receipt by the jurisdictional health department.

(5) The jurisdictional board of health may establish reasonable fees for permits and renewal of permits. All permit fees collected by the health department shall be deposited in the treasury and to the account from which the health department's operating expenses are paid. [1997 c 213 § 3; 1988 c 127 § 30; 1969 ex.s. c 134 § 18.]

**70.95.185 Permit for solid waste disposal site or facilities—Review by department—Appeal of issuance—Validity of permits issued after June 7, 1984.** Every permit issued by a jurisdictional health department under RCW 70.95.180 shall be reviewed by the department to ensure that the proposed site or facility conforms with:

(1) All applicable laws and regulations including the minimal functional standards for solid waste handling; and

(2) The approved comprehensive solid waste management plan.

The department shall review the permit within thirty days after the issuance of the permit by the jurisdictional health department. The department may appeal the issuance of the permit by the jurisdictional health department to the pollution control hearings board, as described in chapter 43.21B RCW, for noncompliance with subsection (1) or (2) of this section.

No permit issued pursuant to RCW 70.95.180 after June 7, 1984, shall be considered valid unless it has been reviewed by the department. [1984 c 123 § 8.]

**70.95.190 Permit for solid waste handling facility—Renewal—Appeal—Validity of renewal—Review fees.**

(1) Every permit for an existing solid waste handling facility issued pursuant to RCW 70.95.180 shall be renewed at least every five years on a date established by the jurisdictional health department having jurisdiction of the site and as specified in the permit. If a permit is to be renewed for longer than one year, the local jurisdictional health department may hold a public hearing before making such a decision. Prior to renewing a permit, the health department shall conduct a review as it deems necessary to assure that the solid waste handling facility or facilities located on the site continues to meet minimum functional standards of the department, applicable local regulations, and are not in conflict with the approved solid waste management plan. A jurisdictional health department shall approve or disapprove a permit renewal within forty-five days of conducting its review. The department shall review and may appeal the renewal as set forth for the approval of permits in RCW 70.95.185.

(2) The jurisdictional board of health may establish reasonable fees for permits reviewed under this section. All permit fees collected by the health department shall be deposited

in the treasury and to the account from which the health department's operating expenses are paid. [1998 c 156 § 4; 1997 c 213 § 4; 1984 c 123 § 9; 1969 ex.s. c 134 § 19.]

**70.95.200 Permit for solid waste disposal site or facilities—Suspension.** Any permit for a solid waste disposal site issued as provided herein shall be subject to suspension at any time the jurisdictional health department determines that the site or the solid waste disposal facilities located on the site are being operated in violation of this chapter, or the regulations of the department or local laws and regulations. [1969 ex.s. c 134 § 20.]

**70.95.205 Exemption from solid waste permit requirements—Waste-derived soil amendments—Application—Revocation of exemption—Appeal.** (1) Waste-derived soil amendments that meet the standards and criteria in this section may apply for exemption from solid waste permitting as required under RCW 70.95.170. The application shall be submitted to the department in a format determined by the department or an equivalent format. The application shall include:

(a) Analytical data showing that the waste-derived soil amendments meet standards established under RCW 15.54.800; and

(b) Other information deemed appropriate by the department to protect human health and the environment.

(2) After receipt of an application, the department shall review it to determine whether the application is complete, and forward a copy of the complete application to all interested jurisdictional health departments for review and comment. Within forty-five days, the jurisdictional health departments shall forward their comments and any other information they deem relevant to the department, which shall then give final approval or disapproval of the application. Every complete application shall be approved or disapproved by the department within ninety days after receipt.

(3) The department, after providing opportunity for comments from the jurisdictional health departments, may at any time revoke an exemption granted under this section if the quality or use of the waste-derived soil amendment changes or the management, storage, or end use of the waste-derived soil amendment constitutes a threat to human health or the environment.

(4) Any aggrieved party may appeal the determination by the department in subsection (2) or (3) of this section to the pollution control hearings board. [1998 c 36 § 18.]

**Intent—1998 c 36:** See RCW 15.54.265.

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**70.95.210 Hearing—Appeal—Denial, suspension—When effective.** Whenever the jurisdictional health department denies a permit or suspends a permit for a solid waste disposal site, it shall, upon request of the applicant or holder of the permit, grant a hearing on such denial or suspension within thirty days after the request therefor is made. Notice of the hearing shall be given [to] all interested parties including the county or city having jurisdiction over the site and the department. Within thirty days after the hearing, the health officer shall notify the applicant or the holder of the permit in

writing of his determination and the reasons therefor. Any party aggrieved by such determination may appeal to the pollution control hearings board by filing with the hearings board a notice of appeal within thirty days after receipt of notice of the determination of the health officer. The hearings board shall hold a hearing in accordance with the provisions of the Administrative Procedure Act, chapter 34.05 RCW. If the jurisdictional health department denies a permit renewal or suspends a permit for an operating waste recycling facility that receives waste from more than one city or county, and the applicant or holder of the permit requests a hearing or files an appeal under this section, the permit denial or suspension shall not be effective until the completion of the appeal process under this section, unless the jurisdictional health department declares that continued operation of the waste recycling facility poses a very probable threat to human health and the environment. [1998 c 90 § 3; 1987 c 109 § 21; 1969 ex.s. c 134 § 21.]

**Purpose—Short title—Construction—Rules—Severability—Captions—1987 c 109:** See notes following RCW 43.21B.001.

**70.95.212 Solid waste collection companies—Notice of changes in tipping fees and disposal rate schedules.** To provide solid waste collection companies with sufficient time to prepare and submit tariffs and rate filings for public comment and commission approval, the owner or operator of a transfer station, landfill, or facility used to burn solid waste shall provide seventy-five days' notice to solid waste collection companies of any change in tipping fees and disposal rate schedules. The notice period shall begin on the date individual notice to a collection company is delivered to the company or is postmarked.

A collection company may agree to a shorter notice period: PROVIDED, That such agreement by a company shall not affect the notice requirements for rate filings under RCW 81.28.050.

The owner of a transfer station, landfill or facility used to burn solid waste may agree to provide companies with a longer notice period.

"Solid waste collection companies" as used in this section means the companies regulated by the commission pursuant to chapter 81.77 RCW. [1993 c 300 § 3.]

**70.95.215 Landfill disposal facilities—Reserve accounts required by July 1, 1987—Exception—Rules.**

(1) By July 1, 1987, each holder or applicant of a permit for a landfill disposal facility issued under this chapter shall establish a reserve account to cover the costs of closing the facility in accordance with state and federal regulations. The account shall be designed to ensure that there will be adequate revenue available by the projected date of closure. A landfill disposal facility maintained on private property for the sole use of the entity owning the site and a landfill disposal facility operated and maintained by a government shall not be required to establish a reserve account if, to the satisfaction of the department, the entity or government provides another form of financial assurance adequate to comply with the requirements of this section.

(2) By July 1, 1986, the department shall adopt rules under chapter 34.05 RCW to implement subsection (1) of this section. The department is not required to adopt rules pertain-

ing to other approved forms of financial assurance to cover the costs of closing a landfill disposal facility. The rules shall include but not be limited to:

(a) Methods to estimate closure costs, including postclosure monitoring, pollution prevention measures, and any other procedures required under state and federal regulations;

(b) Methods to ensure that reserve accounts receive adequate funds, including:

(i) Requirements that the reserve account be generated by user fees. However, the department may waive this requirement for existing landfills if user fees would be prohibitively high;

(ii) Requirements that moneys be placed in the reserve account on a regular basis and that the reserve account be kept separate from all other accounts; and

(iii) Procedures for the department to verify that adequate sums are deposited in the reserve account; and

(c) Methods to ensure that other types of financial assurance provided in accordance with subsection (1) of this section are adequate to cover the costs of closing the facility. [2000 c 114 § 1; 1985 c 436 § 1.]

**70.95.217 Waste generated outside the state—Findings.** The legislature finds that:

(1) The state of Washington has responded to the increasing challenges of safe, affordable disposal of solid waste by an ambitious program of waste reduction, recycling and reuse, as well as strict standards to ensure the safe handling, transportation, and disposal of solid waste;

(2) All communities in Washington participate in these programs through locally available recycling services, increased source separation and material recovery requirements, programs for waste reduction and product reuse, and performance standards that apply to all solid waste disposal facilities in the state;

(3) New requirements for the siting and performance of disposal facilities have greatly decreased the number of such facilities in Washington, and the state has a significant interest in ensuring adequate disposal capacity within the state;

(4) The landfilling, incineration, and other disposal of solid waste may adversely impact public health and environmental quality, and the state has a significant interest in decreasing volumes of the waste stream destined for disposal;

(5) Because of the decreasing number of disposal facilities and other reasons, solid waste is being transported greater distances, often beyond the community where generated and is increasingly being transported between states;

(6) Washington's waste management priorities and programs are a balanced approach of increased reuse, recycling and waste reduction, the strengthening of markets for recycled content products, and the safe disposal of the remaining waste stream, with the costs of these programs shared equitably by all persons generating waste in the state;

(7) Those residing in other states who generate waste destined for disposal within Washington should also share the costs of waste diversion and management of Washington's disposal facilities, so that the risks of waste disposal and the costs of mitigating those risks are shared equitably by all waste generators, regardless of their location;

(8) Because Washington state may not directly regulate waste handling, reduction, and recycling activities beyond its

state boundaries, the only reasonable alternative to ensure this equitable treatment of waste being disposed within Washington is to implement a program of reviewing such activities as to waste originating outside of Washington, and to assign the additional costs, when necessary, to ensure that the waste meets standards substantially equivalent to those applicable to waste generated within the state, and, in some cases, to prohibit disposal of waste where its generation and management is not subject to standards substantially equivalent to those applicable to waste generated within the state. [1993 c 286 § 1.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**70.95.218 Waste generated outside the state—Solid waste disposal site facility reporting requirements—Fees.**

(1) At least sixty days prior to receiving solid waste generated from outside of the state, the operator of a solid waste disposal site facility shall report to the department the types and quantities of waste to be received from an out-of-state source. The department shall develop guidelines for reporting this information. The guidelines shall provide for less than sixty days notice for shipments of waste made on a short-term or emergency basis. The requirements of this subsection shall take effect upon completion of the guidelines.

(2) Upon notice under subsection (1) of this section, the department shall identify all activities and costs necessary to ensure that solid waste generated out-of-state meets standards relating to solid waste reduction, recycling, and management substantially equivalent to those required of solid waste generated within the state. The department may assess a fee on the out-of-state waste sufficient to recover the actual costs incurred in ensuring that the out-of-state waste meets equivalent state standards. The department may delegate, to a local health department, authority to implement the activities identified by the department under this subsection. All money received from fees imposed under this subsection shall be deposited into the solid waste management account created by \*RCW 70.95.800, and shall be used solely for the activities required by this section.

(3) The department may prohibit in-state disposal of solid waste generated from outside of the state, unless the generators of the waste meet: (a) Waste reduction and recycling requirements substantially equivalent to those applicable in Washington state; and (b) solid waste handling standards substantially equivalent to those applicable in Washington state.

(4) The department may adopt rules to implement this section. [1993 c 286 § 2.]

\*Reviser's note: RCW 70.95.800 was repealed by 2000 c 150 § 2, effective July 1, 2001.

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**70.95.220 Financial aid to jurisdictional health departments—Applications—Allocations.** Any jurisdictional health department may apply to the department for financial aid for the enforcement of rules and regulations promulgated under this chapter. Such application shall contain such information, including budget and program description, as may be prescribed by regulations of the department.

After receipt of such applications the department may allocate available funds according to criteria established by regulations of the department considering population, urban development, the number of the disposal sites, and geographical area.

The sum allocated to a jurisdictional health department shall be paid to the treasury from which the operating expenses of the health department are paid, and shall be used exclusively for inspections and administrative expenses necessary to enforce applicable regulations. [1969 ex.s. c 134 § 22.]

**70.95.230 Financial aid to jurisdictional health departments—Matching funds requirements.**

The jurisdictional health department applying for state assistance for the enforcement of this chapter shall match such aid allocated for the department in an amount not less than twenty-five percent of the total amount spent for such enforcement activity during the year. The local share of enforcement costs may be met by cash and contributed services. [1969 ex.s. c 134 § 23.]

**70.95.235 Diversion of recyclable material—Penalty.**

(1) No person may divert to personal use any recyclable material placed in a container as part of a recycling program, without the consent of the generator of such recyclable material or the solid waste collection company operating under the authority of a town, city, county, or the utilities and transportation commission, and no person may divert to commercial use any recyclable material placed in a container as part of a recycling program, without the consent of the person owning or operating such container.

(2) A violation of subsection (1) of this section is a class 1 civil infraction under chapter 7.80 RCW. Each violation of this section shall be a separate infraction. [1991 c 319 § 407.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**70.95.240 Unlawful to dump or deposit solid waste without permit—Penalties—Litter cleanup restitution payment.**

(1) After the adoption of regulations or ordinances by any county, city, or jurisdictional board of health providing for the issuance of permits as provided in RCW 70.95.160, it shall be unlawful for any person to dump or deposit or permit the dumping or depositing of any solid waste onto or under the surface of the ground or into the waters of this state except at a solid waste disposal site for which there is a valid permit. This section does not:

(a) Prohibit a person from dumping or depositing solid waste resulting from his or her own activities onto or under the surface of ground owned or leased by him or her when such action does not violate statutes or ordinances, or create a nuisance;

(b) Apply to a person using a waste-derived soil amendment that has been approved by the department under RCW 70.95.205; or

(c) Apply to the application of commercial fertilizer that has been registered with the department of agriculture as provided in RCW 15.54.325, and that is applied in accordance with the standards established in RCW 15.54.800(3).

(2)(a) It is a class 3 civil infraction as defined in RCW 7.80.120 for a person to litter in an amount less than or equal to one cubic foot.

(b) It is a misdemeanor for a person to litter in an amount greater than one cubic foot but less than one cubic yard. The person shall also pay a litter cleanup restitution payment equal to twice the actual cost of cleanup, or fifty dollars per cubic foot of litter, whichever is greater. The court shall distribute one-half of the restitution payment to the landowner and one-half of the restitution payment to the jurisdictional health department investigating the incident. The court may, in addition to or in lieu of part or all of the cleanup restitution payment, order the person to pick up and remove litter from the property, with prior permission of the legal owner or, in the case of public property, of the agency managing the property. The court may suspend or modify the litter cleanup restitution payment for a first-time offender under this section, if the person cleans up and properly disposes of the litter.

(c) It is a gross misdemeanor for a person to litter in an amount of one cubic yard or more. The person shall also pay a litter cleanup restitution payment equal to twice the actual cost of cleanup, or one hundred dollars per cubic foot of litter, whichever is greater. The court shall distribute one-half of the restitution payment to the landowner and one-half of the restitution payment to the jurisdictional health department investigating the incident. The court may, in addition to or in lieu of part or all of the cleanup restitution payment, order the person to pick up and remove litter from the property, with prior permission of the legal owner or, in the case of public property, of the agency managing the property. The court may suspend or modify the litter cleanup restitution payment for a first-time offender under this section, if the person cleans up and properly disposes of the litter.

(d) If a junk vehicle is abandoned in violation of this chapter, RCW 46.55.230 governs the vehicle's removal, disposal, and sale, and the penalties that may be imposed against the person who abandoned the vehicle. [2001 c 139 § 2; 2000 c 154 § 3; 1998 c 36 § 19; 1997 c 427 § 4; 1993 c 292 § 3; 1969 ex.s. c 134 § 24.]

**Severability—2000 c 154:** See note following RCW 70.93.030.

**Intent—1998 c 36:** See RCW 15.54.265.

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**70.95.250 Name appearing on waste material—Presumption.** Whenever solid wastes dumped in violation of RCW 70.95.240 contain three or more items bearing the name of one individual, there shall be a rebuttable presumption that the individual whose name appears on such items committed the unlawful act of dumping. [1969 ex.s. c 134 § 25.]

**70.95.255 Disposal of sewage sludge or septic tank sludge prohibited—Exemptions—Uses of sludge material permitted.** After January 1, 1988, the department of ecology may prohibit disposal of sewage sludge or septic tank sludge (septage) in landfills for final disposal, except on a temporary, emergency basis, if the jurisdictional health department determines that a potentially unhealthful circumstance exists. Beneficial uses of sludge in landfill reclamation is acceptable utilization and not considered disposal.

The department of ecology shall adopt rules that provide exemptions from this section on a case-by-case basis. Exemptions shall be based on the economic infeasibility of using or disposing of the sludge material other than in a landfill.

The department of ecology, in conjunction with the department of health and the department of agriculture, shall adopt rules establishing labeling and notification requirements for sludge material sold commercially or given away to the public. The department shall specify mandatory wording for labels and notification to warn the public against improper use of the material. [1992 c 174 § 15; 1986 c 297 § 1.]

**70.95.260 Duties of department—State solid waste management plan—Assistance—Coordination—Tire recycling.** The department shall in addition to its other powers and duties:

(1) Cooperate with the appropriate federal, state, interstate and local units of government and with appropriate private organizations in carrying out the provisions of this chapter.

(2) Coordinate the development of a solid waste management plan for all areas of the state in cooperation with local government, the \*department of community, trade, and economic development, and other appropriate state and regional agencies. The plan shall relate to solid waste management for twenty years in the future and shall be reviewed biennially, revised as necessary, and extended so that perpetually the plan shall look to the future for twenty years as a guide in carrying out a state coordinated solid waste management program. The plan shall be developed into a single integrated document and shall be adopted no later than October 1990. The plan shall be revised regularly after its initial completion so that local governments revising local comprehensive solid waste management plans can take advantage of the data and analysis in the state plan.

(3) Provide technical assistance to any person as well as to cities, counties, and industries.

(4) Initiate, conduct, and support research, demonstration projects, and investigations, and coordinate research programs pertaining to solid waste management systems.

(5) Develop statewide programs to increase public awareness of and participation in tire recycling, and to stimulate and encourage local private tire recycling centers and public participation in tire recycling.

(6) May, under the provisions of the Administrative Procedure Act, chapter 34.05 RCW, as now or hereafter amended, from time to time promulgate such rules and regulations as are necessary to carry out the purposes of this chapter. [1995 c 399 § 189; 1989 c 431 § 9. Prior: 1985 c 345 § 8; 1985 c 6 § 23; 1969 ex.s. c 134 § 26.]

**\*Reviser's note:** The "department of community, trade, and economic development" was renamed the "department of commerce" by 2009 c 565.

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**70.95.263 Additional powers and duties of department.** The department shall in addition to its other duties and powers under this chapter:

(1) Prepare the following:

(a) A management system for recycling waste paper generated by state offices and institutions in cooperation with such offices and institutions;

(b) An evaluation of existing and potential systems for recovery of energy and materials from solid waste with recommendations to affected governmental agencies as to those systems which would be the most appropriate for implementation;

(c) A data management system to evaluate and assist the progress of state and local jurisdictions and private industry in resource recovery;

(d) Identification of potential markets, in cooperation with private industry, for recovered resources and the impact of the distribution of such resources on existing markets;

(e) Studies on methods of transportation, collection, reduction, separation, and packaging which will encourage more efficient utilization of existing waste recovery facilities;

(f) Recommendations on incentives, including state grants, loans, and other assistance, to local governments which will encourage the recovery and recycling of solid wastes.

(2) Provide technical information and assistance to state and local jurisdictions, the public, and private industry on solid waste recovery and/or recycling.

(3) Procure and expend funds available from federal agencies and other sources to assist the implementation by local governments of solid waste recovery and/or recycling programs, and projects.

(4) Conduct necessary research and studies to carry out the purposes of this chapter.

(5) Encourage and assist local governments and private industry to develop pilot solid waste recovery and/or recycling projects.

(6) Monitor, assist with research, and collect data for use in assessing feasibility for others to develop solid waste recovery and/or recycling projects. [1998 c 245 § 131; 1975-'76 2nd ex.s. c 41 § 5.]

**70.95.265 Department to cooperate with public and private departments, agencies and associations.** The department shall work closely with the \*department of community, trade, and economic development, the department of general administration, and with other state departments and agencies, the Washington state association of counties, the association of Washington cities, and business associations, to carry out the objectives and purposes of chapter 41, Laws of 1975-'76 2nd ex. sess. [1995 c 399 § 190; 1985 c 466 § 69; 1975-'76 2nd ex.s. c 41 § 6.]

\*Reviser's note: The "department of community, trade, and economic development" was renamed the "department of commerce" by 2009 c 565.

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**70.95.267 Department authorized to disburse referendum 26 (chapter 43.83A RCW) fund for local government solid waste projects.** The department is authorized to use referendum 26 (chapter 43.83A RCW) funds of the Washington futures account to disburse to local governments in developing solid waste recovery and/or recycling projects. [1975-'76 2nd ex.s. c 41 § 10.]

(2010 Ed.)

**70.95.268 Department authorized to disburse funds under chapter 43.99F RCW for local government solid waste projects.** The department is authorized to use funds under chapter 43.99F RCW to disburse to local governments in developing solid waste recovery or recycling projects. Priority shall be given to those projects that use incineration of solid waste to produce energy and to recycling projects. [1984 c 123 § 10.]

**70.95.270 Hazardous substance remedial actions—Procedural requirements not applicable.** The procedural requirements of this chapter shall not apply to any person conducting a remedial action at a facility pursuant to a consent decree, order, or agreed order issued pursuant to chapter 70.105D RCW, or to the department of ecology when it conducts a remedial action under chapter 70.105D RCW. The department of ecology shall ensure compliance with the substantive requirements of this chapter through the consent decree, order, or agreed order issued pursuant to chapter 70.105D RCW, or during the department-conducted remedial action, through the procedures developed by the department pursuant to RCW 70.105D.090. [1994 c 257 § 16.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**70.95.280 Determination of best solid waste management practices—Department to develop method to monitor waste stream—Collectors to report quantity and quality of waste—Confidentiality of proprietary information.** The department of ecology shall determine the best management practices for categories of solid waste in accordance with the priority solid waste management methods established in RCW 70.95.010. In order to make this determination, the department shall conduct a comprehensive solid waste stream analysis and evaluation. Following establishment of baseline data resulting from an initial in-depth analysis of the waste stream, the department shall develop a less intensive method of monitoring the disposed waste stream including, but not limited to, changes in the amount of waste generated and waste type. The department shall monitor curbside collection programs and other waste segregation and disposal technologies to determine, to the extent possible, the effectiveness of these programs in terms of cost and participation, their applicability to other locations, and their implications regarding rules adopted under this chapter. Persons who collect solid waste shall annually report to the department the types and quantities of solid waste that are collected and where it is delivered. The department shall adopt guidelines for reporting and for keeping proprietary information confidential. [1989 c 431 § 13; 1988 c 184 § 1.]

**70.95.285 Solid waste stream analysis.** The comprehensive, statewide solid waste stream analysis under RCW 70.95.280 shall be based on representative solid waste generation areas and solid waste generation sources within the state. The following information and evaluations shall be included:

- (1) Solid waste generation rates for each category;
- (2) The rate of recycling being achieved within the state for each category of solid waste;

(3) The current and potential rates of solid waste reduction within the state;

(4) A technological assessment of current solid waste reduction and recycling methods and systems, including cost/benefit analyses;

(5) An assessment of the feasibility of segregating solid waste at: (a) The original source, (b) transfer stations, and (c) the point of final disposal;

(6) A review of methods that will increase the rate of solid waste reduction; and

(7) An assessment of new and existing technologies that are available for solid waste management including an analysis of the associated environmental risks and costs.

The data required by the analysis under this section shall be kept current and shall be available to local governments and the waste management industry. [1988 c 184 § 2.]

**70.95.290 Solid waste stream evaluation.** (1) The evaluation of the solid waste stream required in RCW 70.95.280 shall include the following elements:

(a) The department shall determine which management method for each category of solid waste will have the least environmental impact; and

(b) The department shall evaluate the costs of various management options for each category of solid waste, including a review of market availability, and shall take into consideration the economic impact on affected parties;

(c) Based on the results of (a) and (b) of this subsection, the department shall determine the best management for each category of solid waste. Different management methods for the same categories of waste may be developed for different parts of the state.

(2) The department shall give priority to evaluating categories of solid waste that, in relation to other categories of solid waste, comprise a large volume of the solid waste stream or present a high potential of harm to human health. At a minimum the following categories of waste shall be evaluated:

(a) By January 1, 1989, yard waste and other biodegradable materials, paper products, disposable diapers, and batteries; and

(b) By January 1, 1990, metals, glass, plastics, styrofoam or rigid lightweight cellular polystyrene, and tires. [1988 c 184 § 3.]

**70.95.295 Analysis and evaluation to be incorporated in state solid waste management plan.** The department shall incorporate the information from the analysis and evaluation conducted under RCW 70.95.280 through 70.95.290 to the state solid waste management plan under RCW 70.95.260. The plan shall be revised periodically as the evaluation and analysis is updated. [1988 c 184 § 4.]

**70.95.300 Solid waste—Beneficial uses—Permitting requirement exemptions.** (1) The department may by rule exempt a solid waste from the permitting requirements of this chapter for one or more beneficial uses. In adopting such rules, the department shall specify both the solid waste that is exempted from the permitting requirements and the beneficial use or uses for which the solid waste is so exempted. The

department shall consider: (a) Whether the material will be beneficially used or reused; and (b) whether the beneficial use or reuse of the material will present threats to human health or the environment.

(2) The department may also exempt a solid waste from the permitting requirements of this chapter for one or more beneficial uses by approving an application for such an exemption. The department shall establish by rule procedures under which a person may apply to the department for such an exemption. The rules shall establish criteria for providing such an exemption, which shall include, but not be limited to: (a) The material will be beneficially used or reused; and (b) the beneficial use or reuse of the material will not present threats to human health or the environment. Rules adopted under this subsection shall identify the information that an application shall contain. Persons seeking such an exemption shall apply to the department under the procedures established by the rules adopted under this subsection.

(3) After receipt of an application filed under rules adopted under subsection (2) of this section, the department shall review the application to determine whether it is complete, and forward a copy of the completed application to all jurisdictional health departments for review and comment. Within forty-five days, the jurisdictional health departments shall forward to the department their comments and any other information they deem relevant to the department's decision to approve or disapprove the application. Every complete application shall be approved or disapproved by the department within ninety days of receipt. If the application is approved by the department, the solid waste is exempt from the permitting requirements of this chapter when used anywhere in the state in the manner approved by the department. If the composition, use, or reuse of the solid waste is not consistent with the terms and conditions of the department's approval of the application, the use of the solid waste remains subject to the permitting requirements of this chapter.

(4) The department shall establish procedures by rule for providing to the public and the solid waste industry notice of and an opportunity to comment on each application for an exemption under subsection (2) of this section.

(5) Any jurisdictional health department or applicant may appeal the decision of the department to approve or disapprove an application under subsection (3) of this section. The appeal shall be made to the pollution control hearings board by filing with the hearings board a notice of appeal within thirty days of the decision of the department. The hearings board's review of the decision shall be made in accordance with chapter 43.21B RCW and any subsequent appeal of a decision of the board shall be made in accordance with RCW 43.21B.180.

(6) This section shall not be deemed to invalidate the exemptions or determinations of nonapplicability in the department's solid waste rules as they exist on June 11, 1998, which exemptions and determinations are recognized and confirmed subject to the department's continuing authority to modify or revoke those exemptions or determinations by rule. [1998 c 156 § 2.]

**70.95.305 Solid waste handling permit—Exemption from requirements—Application of section—Rules.** (1) Notwithstanding any other provision of this chapter, the

department may by rule exempt from the requirements to obtain a solid waste handling permit any category of solid waste handling facility that it determines to:

- (a) Present little or no environmental risk; and
- (b) Meet the environmental protection and performance requirements required for other similar solid waste facilities.

(2) This section does not apply to any facility or category of facilities that:

(a) Receives municipal solid waste destined for final disposal, including but not limited to transfer stations, landfills, and incinerators;

(b) Applies putrescible solid waste on land for final disposal purposes;

(c) Handles mixed solid wastes that have not been processed to segregate solid waste materials destined for disposal from other solid waste materials destined for a beneficial use or recycling;

(d) Receives or processes organic waste materials into compost in volumes that generally far exceed those handled by municipal park departments, master gardening programs, and households; or

(e) Receives solid waste destined for recycling or reuse, the operation of which is determined by the department to present risks to human health and the environment.

(3) Rules adopted under this section shall contain such terms and conditions as the department deems necessary to ensure compliance with applicable statutes and rules. If a facility does not operate in compliance with the terms and conditions established for an exemption under subsection (1) of this section, the facility is subject to the permitting requirements for solid waste handling under this chapter.

(4) This section shall not be deemed to invalidate the exemptions or determinations of nonapplicability in the department's solid waste rules as they exist on June 11, 1998, which exemptions and determinations are recognized and confirmed subject to the department's continuing authority to modify or revoke those exemptions or determinations by rule. [2005 c 394 § 3; 1998 c 156 § 5.]

**Intent—Severability—2005 c 394:** See notes following RCW 70.95.400.

**70.95.306 Composting of bovine and equine carcasses—Guidelines—Exemption from solid waste handling rules.** (1) By July 1, 2005, the department of ecology and the department of agriculture, in consultation with the department of health, shall make available to livestock producers clearly written guidelines for the composting of bovine and equine carcasses for routine animal disposal.

(2) Composters of bovine and equine carcasses are exempt from the metals testing and permit requirements under the solid waste handling rules for compost that is distributed off-site if the following conditions are met:

(a) The carcasses to be composted are not known or suspected to be affected with a prion-protein disease such as bovine spongiform encephalopathy, a spore-forming disease such as anthrax or other diseases designated by the state veterinarian;

(b) The composter follows the written guidelines provided for in subsection (1) of this section;

(c) The composter does not accept for composting animal mortalities from other sources not directly affiliated with the composter's operation;

(d) The composter provides information to the end-user that includes the source of the material; the quality of the compost as to its nutrient content, pathogens, and stability; and the restrictions on use of the compost as stated in (f) of this subsection;

(e) The composter reports annually to the department the number of bovines and equines and the amounts of other material composted, including the composter's best estimate of the tonnage or yardage involved; and

(f) The end-user applies the compost only to agricultural lands that are not used for the production of root crops except as prescribed in the guidelines and ensures no compost comes into contact with the crops harvested from the lands where the compost is applied.

(3) If a compost production facility does not operate in compliance with the terms and conditions established for an exemption in this section, the facility shall be subject to the permitting requirements for solid waste handling under this chapter. [2005 c 510 § 6.]

**70.95.310 Rules—Department "deferring" to other permits—Application of section.** (1) Notwithstanding any other provisions of this chapter, the department shall adopt rules:

(a) Describing when a jurisdictional health department may, at its discretion, waive the requirement that a permit be issued for a facility under this chapter if other air, water, or environmental permits are issued for the same facility. As used in this section, a jurisdictional health department's waiving the requirement that a permit be issued for a facility under this chapter based on the issuance of such other permits for the facility is the health department's "deferring" to the other permits; and

(b) Allowing deferral only if the applicant and the jurisdictional health department demonstrate that other permits for the facility will provide a comparable level of protection for human health and the environment that would be provided by a solid waste handling permit.

(2) This section does not apply to any transfer station, landfill, or incinerator that receives municipal solid waste destined for final disposal.

(3) If, before June 11, 1998, either the department or a jurisdictional health department has deferred solid waste permitting or regulation of a solid waste facility to permitting or regulation under other environmental permits for the same facility, such deferral is valid and shall not be affected by the rules developed under subsection (1) of this section.

(4) Rules adopted under this section shall contain such terms and conditions as the department deems necessary to ensure compliance with applicable statutes and rules. [1998 c 156 § 6.]

**70.95.315 Penalty.** (1) The department may assess a civil penalty in an amount not to exceed one thousand dollars per day per violation to any person exempt from solid waste permitting in accordance with RCW 70.95.300, 70.95.305, 70.95.306, or 70.95.330 who fails to comply with the terms

and conditions of the exemption. Each such violation shall be a separate and distinct offense, and in the case of a continuing violation, each day's continuance shall be a separate and distinct violation. The penalty provided in this section shall be imposed pursuant to RCW 43.21B.300.

(2) If a person violates a provision of any of the sections referenced in subsection (1) of this section, the department may issue an appropriate order to ensure compliance with the conditions of the exemption. The order may be appealed pursuant to RCW 43.21B.310. [2009 c 178 § 5; 2005 c 510 § 7; 1998 c 156 § 7.]

**70.95.320 Construction.** Nothing in chapter 156, Laws of 1998 may be construed to affect chapter 81.77 RCW and the authority of the utilities and transportation commission. [1998 c 156 § 9.]

**70.95.330 Qualified anaerobic digesters exempt from permitting requirements of chapter—Definitions.** (1) An anaerobic digester that complies with the conditions specified in this section is exempt from the permitting requirements of this chapter. To qualify for the exemption, an anaerobic digester must meet the following conditions:

(a) The owner or operator must provide the department or the jurisdictional health department with at least thirty days' notice of intent to operate under the conditions specified in this section and comply with any guidelines issued under subsection (2) of this section;

(b) The anaerobic digester must process at least fifty percent livestock manure by volume;

(c) The anaerobic digester may process no more than thirty percent imported organic waste-derived material by volume, and must comply with subsection (3) of this section;

(d) The anaerobic digester must comply with design and operating standards in the natural resources conservation service's conservation practice standard code 366 in effect as of July 26, 2009;

(e) Digestate must:

(i) Be managed in accordance with a dairy nutrient management plan under chapter 90.64 RCW that includes elements addressing management and use of digestate;

(ii) Meet compost quality standards concerning pathogens, stability, nutrient testing, and metals before it is distributed for off-site use, or be sent to an off-site permitted compost facility for further treatment to meet compost quality standards; or

(iii) Be processed or managed in an alternate manner approved by the department;

(f) The owner or operator must allow inspection by the department or jurisdictional health department at reasonable times to verify compliance with the conditions specified in this section; and

(g) The owner or operator must submit an annual report to the department or the jurisdictional health department concerning use of nonmanure material in the anaerobic digester and any required compliance testing.

(2) By August 1, 2009, the department and the department of agriculture, in consultation with the department of health, shall make available to anaerobic digester owners and operators clearly written guidelines for the anaerobic codi-

gestion of livestock manure and organic waste-derived material. The guidelines must explain the steps necessary for an owner or operator to meet the conditions specified in this section for an exemption from the permitting requirements of this chapter.

(3) Any imported organic waste-derived material must:

(a) Be preconsumer in nature;

(b) Be fed into the anaerobic digester within thirty-six hours of receipt at the anaerobic digester;

(c) If it is likely to contain animal by-products, be previously source-separated at a facility licensed to process food by the United States department of agriculture, the United States food and drug administration, the Washington state department of agriculture, or other applicable regulatory agency;

(d) If it contains bovine processing waste, be derived from animals approved by the United States department of agriculture food safety and inspection service and not contain any specified risk material;

(e) If it contains sheep carcasses or sheep processing waste, not be fed into the anaerobic digester;

(f) Be stored and handled in a manner that protects surface water and groundwater and complies with best management practices;

(g) Be received or stored in structures that:

(i) Comply with the natural resources conservation service's conservation practice standard code 313 in effect as of July 26, 2009;

(ii) Are certified to be effective by a representative of the natural resources conservation service; or

(iii) Meet applicable construction industry standards adopted by the American concrete institute or the American institute of steel construction and in effect as of July 26, 2009; and

(h) Be managed to prevent migration of nuisance odors beyond property boundaries and minimize attraction of flies, rodents, and other vectors.

(4) Digestate that is managed in accordance with a dairy nutrient management plan under chapter 90.64 RCW that includes elements addressing management and use of digestate shall no longer be considered a solid waste. Use of digestate from an anaerobic digester that complies with the conditions specified in this section is exempt from the permitting requirements of this chapter.

(5) An anaerobic digester that does not comply with the conditions specified in this section may be subject to the permitting requirements of this chapter. In addition, violations of the conditions specified in this section are subject to provisions in RCW 70.95.315.

(6) The definitions in this subsection apply throughout this section unless the context clearly requires otherwise:

(a) "Anaerobic digester" means a vessel that processes organic material into biogas and digestate using microorganisms in a decomposition process within a closed, oxygen-free container.

(b) "Best management practices" means managerial practices that prevent or reduce water pollution.

(c) "Digestate" means both solid and liquid substances that remain following anaerobic digestion of organic material in an anaerobic digester.

(d) "Imported" means originating off of the farm or other site where the anaerobic digester is being operated.

(e) "Organic waste-derived material" has the same meaning as defined in RCW 15.54.270 and any other organic wastes approved by the department, except for organic waste-derived material collected through municipal commercial and residential solid waste collection programs. [2009 c 178 § 1.]

**70.95.400 Transporters—Definition—Registration required—Penalties.** (1) For the purposes of this section and RCW 70.95.410, "transporter" means any person or entity that transports recyclable materials from commercial or industrial generators over the public highways of the state of Washington for compensation, and who are required to possess a permit to operate from the Washington utilities and transportation commission under chapter 81.80 RCW. "Transporter" includes commercial recycling operations of certificated solid waste collection companies as provided in chapter 81.77 RCW. "Transporter" does not include:

(a) Carriers of commercial recyclable materials, when such materials are owned or being bought or sold by the entity or person, and being carried in their own vehicle, when such activity is incidental to the conduct of an entity or person's primary business;

(b) Entities or persons hauling their own recyclables or hauling recyclables they generated or purchased and transported in their own vehicles;

(c) Nonprofit or charitable organizations collecting and transporting recyclable materials from a buyback center, drop box, or from a commercial or industrial generator of recyclable materials;

(d) City municipal solid waste departments or city solid waste contractors; or

(e) Common carriers under chapter 81.80 RCW whose primary business is not the transportation of recyclable materials.

(2) All transporters shall register with the department prior to the transportation of recyclable materials. The department shall supply forms for registration.

(3) A transporter who transports recyclable materials within the state without a transporter registration required by this section is subject to a civil penalty in an amount up to one thousand dollars per violation. [2005 c 394 § 4.]

**Intent—2005 c 394:** "It is the intent of the legislature to improve recycling, eliminate illegal disposal of recyclable materials, protect consumers from sham recycling, and to further the purposes of RCW 70.95.020 and the goal of consistency in jurisdictional treatment of the statewide solid waste management plan adopted by the department of ecology." [2005 c 394 § 1.]

**Severability—2005 c 394:** "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [2005 c 394 § 9.]

**70.95.410 Transporters—Delivery of recyclable materials to transfer station or landfill prohibited—Records—Penalty.** (1) A transporter may not deliver any recyclable materials for disposal to a transfer station or landfill.

(2) A transporter shall keep records of locations and quantities specifically identified in relation to a generator's name, service date, address, and invoice, documenting where

(2010 Ed.)

recyclables have been sold, delivered for processing, or otherwise marketed. These records must be retained for two years from the date of collection, and must be made accessible for inspection by the department and the local health department.

(3) A transporter who violates the provisions of this section is subject to a civil penalty of up to one thousand dollars per violation. [2005 c 394 § 5.]

**Intent—Severability—2005 c 394:** See notes following RCW 70.95.400.

**70.95.420 Damages.** Any person damaged by a violation of RCW 70.95.400 through 70.95.440 may bring a civil action for such a violation by seeking either injunctive relief or damages, or both, in the superior court of the county in which the violation took place or in Thurston county. The prevailing party in such an action is entitled to reasonable costs and attorneys' fees, including those on appeal. [2005 c 394 § 6.]

**Intent—Severability—2005 c 394:** See notes following RCW 70.95.400.

**70.95.430 Solid waste recyclers—Notice—Report—Penalty.** (1) All facilities that recycle solid waste, except for those facilities with a current solid waste handling permit issued under RCW 70.95.170, must notify the department in writing within thirty days prior to operation, or ninety days from July 24, 2005, for existing recycling operations, of the intent to conduct recycling in accordance with this section. Notification must be in writing, and include:

(a) Contact information for the person conducting the recycling activity;

(b) A general description of the recycling activity;

(c) A description of the types of solid waste being recycled; and

(d) A general explanation of the recycling processes and methods.

(2) Each facility that recycles solid waste, except those facilities with a current solid waste handling permit issued under RCW 70.95.170, shall prepare and submit an annual report to the department by April 1st on forms supplied by the department. The annual report must detail recycling activities during the previous calendar year and include the following information:

(a) The name and address of the recycling operation;

(b) The calendar year covered by the report;

(c) The annual quantities and types of waste received, recycled, and disposed, in tons, for purposes of determining progress towards achieving the goals of waste reduction, waste recycling, and treatment in accordance with RCW 70.95.010(4); and

(d) Any additional information required by written notification of the department that is needed to determine progress towards achieving the goals of waste reduction, waste recycling, and treatment in accordance with RCW 70.95.010(4).

(3) Any facility, except for product take-back centers, that recycles solid waste materials within the state without first obtaining a solid waste handling permit under RCW 70.95.170 or completing a notification under this section is

subject to a civil penalty of up to one thousand dollars per violation. [2005 c 394 § 7.]

**Intent—Severability—2005 c 394:** See notes following RCW 70.95.400.

**70.95.440 Financial assurance requirements.** (1) The department may adopt rules that establish financial assurance requirements for recycling facilities that do not already have financial assurance requirements under this chapter, or are not already specifically exempted from financial assurance requirements under this chapter. The financial assurance requirements must take into consideration the amounts and types of recyclable materials recycled at the facility, and the potential closure and postclosure costs associated with the recycling facility; which assurance may consist of posting of a surety bond in an amount sufficient to meet these requirements or other financial instrument, but in no case less than ten thousand dollars.

(2) A recycling facility is required to meet financial assurance requirements adopted by the department by rule, unless the facility is already required to provide financial assurance under other provisions of this chapter.

(3) Facilities that collect, recover, process, or otherwise recycle scrap metal, processed scrap metal, unprocessed home scrap metal, and unprocessed prompt scrap metal are exempt from the requirements of this section. [2005 c 394 § 8.]

**Intent—Severability—2005 c 394:** See notes following RCW 70.95.400.

**70.95.500 Disposal of vehicle tires outside designated area prohibited—Penalty—Exemption.** (1) No person may drop, deposit, discard, or otherwise dispose of vehicle tires on any public property or private property in this state or in the waters of this state whether from a vehicle or otherwise, including, but not limited to, any public highway, public park, beach, campground, forest land, recreational area, trailer park, highway, road, street, or alley unless:

(a) The property is designated by the state, or by any of its agencies or political subdivisions, for the disposal of discarded vehicle tires; and

(b) The person is authorized to use the property for such purpose.

(2) A violation of this section is punishable by a civil penalty, which shall not be less than two hundred dollars nor more than two thousand dollars for each offense.

(3) This section does not apply to the storage or deposit of vehicle tires in quantities deemed exempt under rules adopted by the department of ecology under its functional standards for solid waste. [1985 c 345 § 4.]

**70.95.510 Fee on the retail sale of new replacement vehicle tires.** (1) There is levied a one dollar per tire fee on the retail sale of new replacement vehicle tires. The fee imposed in this section must be paid by the buyer to the seller, and each seller shall collect from the buyer the full amount of the fee. The fee collected from the buyer by the seller less the ten percent amount retained by the seller as provided in RCW 70.95.535(1) must be paid to the department of revenue in accordance with RCW 82.32.045.

(2) The department of revenue shall incorporate into the agency's regular audit cycle a reconciliation of the number of tires sold and the amount of revenue collected by the businesses selling new replacement vehicle tires at retail. The department of revenue shall collect on the business excise tax return from the businesses selling new replacement vehicle tires at retail:

(a) The number of tires sold; and

(b) The fee levied in this section.

(3) All other applicable provisions of chapter 82.32 RCW have full force and application with respect to the fee imposed under this section. The department of revenue shall administer this section.

(4) For the purposes of this section, "new replacement vehicle tires" means tires that are newly manufactured for vehicle purposes and does not include retreaded vehicle tires. [2009 c 261 § 2; 2005 c 354 § 2; 1989 c 431 § 92; 1985 c 345 § 5.]

**Intent—2009 c 261:** "The legislature restates its goal to fully clean up unauthorized waste tire piles in Washington state in an expeditious fashion. In partnership with local governments and the private sector, the legislature encourages ongoing efforts to prevent the creation of future unauthorized waste tire piles. The legislature notes a positive trend in tire recycling in recent years and encourages all parties to continue these strong recycling efforts." [2009 c 261 § 1.]

**Finding—Intent—2005 c 354:** "The legislature finds that discarded tires in unauthorized dump sites pose a health and safety risk to the public. Many of these tire piles have been in existence for a significant amount of time and are a continuing challenge to state and local officials responsible for cleaning up unauthorized dump sites and preventing further accumulation of waste tires. Therefore it is the intent of the legislature to document the extent of the problem, create and fund an effective program to eliminate unauthorized tire piles, and minimize potential future problems and costs." [2005 c 354 § 1.]

**Severability—2005 c 354:** "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [2005 c 354 § 11.]

**Effective date—2005 c 354:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 2005." [2005 c 354 § 12.]

**70.95.515 Fee on the retail sale of new replacement vehicle tires—Failure to collect, pay to department—Penalties.** (1) The fee required by this chapter, to be collected by the seller, shall be deemed to be held in trust by the seller until paid to the department of revenue, and any seller who appropriates or converts the fee collected to his or her own use or to any use other than the payment of the fee to the extent that the money required to be collected is not available for payment on the due date as prescribed in this chapter is guilty of a gross misdemeanor.

(2) In case any seller fails to collect the fee imposed in this chapter or, having collected the fee, fails to pay it to the department of revenue in the manner prescribed by this chapter, whether such failure is the result of his or her own acts or the result of acts or conditions beyond his or her control, he or she shall, nevertheless, be personally liable to the state for the amount of the fee.

(3) The amount of the fee, until paid by the buyer to the seller or to the department of revenue, shall constitute a debt from the buyer to the seller and any seller who fails or refuses to collect the fee as required with intent to violate the provi-

sions of this chapter or to gain some advantage or benefit, either direct or indirect, and any buyer who refuses to pay any fee due under this chapter is guilty of a misdemeanor. [2005 c 354 § 4.]

**Finding—Intent—Severability—Effective date—2005 c 354:** See notes following RCW 70.95.510.

**70.95.521 Waste tire removal account.** The waste tire removal account is created in the state treasury. Expenditures from the account may be used for the cleanup of unauthorized waste tire piles, measures that prevent future accumulation of unauthorized waste tire piles, and road wear related maintenance on state and local public highways. During the 2007-2009 fiscal biennium, the legislature may transfer from the waste tire removal account to the motor vehicle fund such amounts as reflect the excess fund balance of the waste tire removal account. [2009 c 261 § 3; 2007 c 518 § 708; 2005 c 354 § 3.]

**Intent—2009 c 261:** See note following RCW 70.95.510.

**Severability—Effective date—2007 c 518:** See notes following RCW 46.68.170.

**Finding—Intent—Severability—Effective date—2005 c 354:** See notes following RCW 70.95.510.

**70.95.530 Waste tire removal account—Use—Report to the legislature.** (1) Moneys in the waste tire removal account may be appropriated to the department of ecology:

(a) To provide for funding to state and local governments for the removal of discarded vehicle tires from unauthorized tire dump sites; and

(b) To accomplish the other purposes of RCW 70.95.020 as they relate to waste tire cleanup under this chapter.

(2) In spending funds in the account under this section, the department of ecology shall identify communities with the most severe problems with waste tires and provide funds first to those communities to remove accumulations of waste tires.

(3) On September 1st of even-numbered years, the department of ecology shall provide a report to the house [of representatives] and senate transportation committees on the progress being made on the cleanup of unauthorized waste tire piles in the state and efforts underway to prevent the formation of future unauthorized waste tire piles. The report must detail any additional unauthorized waste tire piles discovered since the last report and present a plan to clean up these new unauthorized waste tire piles if they have not already done so, as well as include a listing of authorized waste tire piles and transporters. The report must also include the status of funds available to the program and a needs assessment of the program. On September 1, 2010, the department shall also make recommendations to the committees for an ongoing program to prevent the formation of future unauthorized waste tire piles. Such a program, if required, must include joint efforts with local governments and the tire industry. [2009 c 261 § 5; 2005 c 354 § 5; 1988 c 250 § 1; 1985 c 345 § 7.]

**Intent—2009 c 261:** See note following RCW 70.95.510.

**Finding—Intent—Severability—Effective date—2005 c 354:** See notes following RCW 70.95.510.

(2010 Ed.)

**70.95.532 Waste tire removal account—Use of moneys—Transfer of any balance in excess of one million dollars to the motor vehicle account.** (1) All receipts from tire fees imposed under RCW 70.95.510, except as provided in subsection (2) of this section, must be deposited in the waste tire removal account created under RCW 70.95.521. Moneys in the account may be spent only after appropriation. Expenditures from the account may be used for the cleanup of unauthorized waste tire piles and measures that prevent future accumulation of unauthorized waste tire piles.

(2) On September 1st of odd-numbered years, the state treasurer must transfer any cash balance in excess of one million dollars from the waste tire removal account created under RCW 70.95.521 to the motor vehicle account for the purpose of road wear related maintenance on state and local public highways.

(3) During the 2009-2011 fiscal biennium, the legislature may transfer any cash balance in excess of one million dollars from the waste tire removal account to the motor vehicle account for the purpose of road wear-related maintenance on state and local public highways. [2010 c 247 § 704; 2009 c 261 § 4.]

**Effective date—2010 c 247:** See note following RCW 43.19.642.

**Intent—2009 c 261:** See note following RCW 70.95.510.

**70.95.535 Disposition of fee.** (1) Every person engaged in making retail sales of new replacement vehicle tires in this state shall retain ten percent of the collected one dollar fee. The moneys retained may be used for costs associated with the proper management of the waste vehicle tires by the retailer.

(2) The department of ecology will administer the funds for the purposes specified in \*RCW 70.95.020(5) including, but not limited to:

(a) Making grants to local governments for pilot demonstration projects for on-site shredding and recycling of tires from unauthorized dump sites;

(b) Grants to local government for enforcement programs;

(c) Implementation of a public information and education program to include posters, signs, and informational materials to be distributed to retail tire sales and tire service outlets;

(d) Product marketing studies for recycled tires and alternatives to land disposal. [1989 c 431 § 93.]

\*Reviser's note: RCW 70.95.020 was amended by 1998 c 90 § 1, changing subsection (5) to subsection (6).

**70.95.540 Cooperation with department to aid tire recycling.** To aid in the statewide tire recycling campaign, the legislature strongly encourages various industry organizations which are active in resource recycling efforts to provide active cooperation with the department of ecology so that additional technology can be developed for the tire recycling campaign. [1985 c 345 § 9.]

**70.95.545 Tire recycling—Report.** The department of ecology, in conjunction with the appropriate private sector stakeholders, shall track and report annually to the legislature the total increase or reduction of tire recycling or reuse rates

in the state for each calendar year and for the cumulative calendar years from June 13, 2002. [2002 c 299 § 9.]

**70.95.550 Waste tires—Definitions.** Unless the context clearly requires otherwise, the definitions in this section apply throughout RCW 70.95.555 through 70.95.565.

(1) "Storage" or "storing" means the placing of more than eight hundred waste tires in a manner that does not constitute final disposal of the waste tires.

(2) "Transportation" or "transporting" means picking up or transporting waste tires for the purpose of storage or final disposal.

(3) "Waste tires" means tires that are no longer suitable for their original intended purpose because of wear, damage, or defect. [1988 c 250 § 3.]

**70.95.555 Waste tires—License for transport or storage business—Requirements.** Any person engaged in the business of transporting or storing waste tires shall be licensed by the department. To obtain a license, each applicant must:

(1) Provide assurances that the applicant is in compliance with this chapter and the rules regarding waste tire storage and transportation;

(2) Accept liability for and authorize the department to recover any costs incurred in any cleanup of waste tires transported or newly stored by the applicant in violation of this section, or RCW 70.95.560, 70.95.515, or 70.95.570, or rules adopted thereunder, after July 1, 2005;

(3) After January 1, 2006, for waste tires transported or stored before July 1, 2005, or for waste tires transported or stored after July 1, 2005, post a bond in an amount to be determined by the department sufficient to cover the liability for the cost of cleanup of the transported or stored waste tires, in favor of the state of Washington. In lieu of the bond, the applicant may submit financial assurances acceptable to the department;

(4) Be registered in the state of Washington as a business and be in compliance with all state laws, rules, and local ordinances;

(5) Have a federal tax identification number and be in compliance with all applicable federal codes and regulations; and

(6) Report annually to the department the amount of tires transported and their disposition. Failure to report shall result in revocation of the license. [2009 c 261 § 6; 2005 c 354 § 6; 1988 c 250 § 4.]

**Intent—2009 c 261:** See note following RCW 70.95.510.

**Finding—Intent—Severability—Effective date—2005 c 354:** See notes following RCW 70.95.510.

**70.95.560 Waste tires—Violation of RCW 70.95.555—Penalty.** (1) Any person who transports or stores waste tires without a license in violation of RCW 70.95.555 shall be guilty of a gross misdemeanor and upon conviction shall be punished under RCW 9A.20.021(2).

(2) Any person who transports or stores waste tires without a license in violation of RCW 70.95.555 is liable for the costs of cleanup of any and all waste tires transported or stored. This subsection does not apply to the storage of waste

tires when the storage of the tires occurred before July 1, 2005, and the storage was licensed in accordance with RCW 70.95.555 at the time the tires were stored. [2005 c 354 § 7; 1989 c 431 § 95; 1988 c 250 § 5.]

**Finding—Intent—Severability—Effective date—2005 c 354:** See notes following RCW 70.95.510.

**70.95.565 Waste tires—Contracts with unlicensed persons prohibited.** No business may enter into a contract for:

(1) Transportation of waste tires with an unlicensed waste tire transporter; or

(2) Waste tire storage with an unlicensed owner or operator of a waste tire storage site. [1988 c 250 § 6.]

**70.95.570 Limitations on liability.** No person or business, having documented proof that it legally transferred possession of waste tires to a validly licensed transporter or storer of waste tires or to a validly permitted recycler, has any further liability related to the waste tires legally transferred. [2005 c 354 § 8.]

**Finding—Intent—Severability—Effective date—2005 c 354:** See notes following RCW 70.95.510.

**70.95.600 Educational material promoting household waste reduction and recycling.** The department of ecology, at the request of a local government jurisdiction, may periodically provide educational material promoting household waste reduction and recycling to public and private refuse haulers. The educational material shall be distributed to households receiving refuse collection service by local governments or the refuse hauler providing service. The refuse hauler may distribute the educational material by any means that assures timely delivery.

Reasonable expenses incurred in the distribution of this material shall be considered, for rate-making purposes, as legitimate operating expenses of garbage and refuse haulers regulated under chapter 81.77 RCW. [1988 c 175 § 3.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**70.95.610 Battery disposal—Restrictions—Violators subject to fine—"Vehicle battery" defined.** (1) No person may knowingly dispose of a vehicle battery except by delivery to: A person or entity selling lead acid batteries, a person or entity authorized by the department to accept the battery, or to a secondary lead smelter.

(2) No owner or operator of a solid waste disposal site shall knowingly accept for disposal used vehicle batteries except when authorized to do so by the department or by the federal government.

(3) Any person who violates this section shall be subject to a fine of up to one thousand dollars. Each battery will constitute a separate violation. Nothing in this section and RCW 70.95.620 through 70.95.660 shall supersede the provisions under chapter 70.105 RCW.

(4) For purposes of this section and RCW 70.95.620 through 70.95.660, "vehicle battery" means batteries capable for use in any vehicle, having a core consisting of elemental lead, and a capacity of six or more volts. [1989 c 431 § 37.]

**70.95.620 Identification procedure for persons accepting used vehicle batteries.** The department shall establish a procedure to identify, on an annual basis, those persons accepting used vehicle batteries from retail establishments. [1989 c 431 § 38.]

**70.95.630 Requirements for accepting used batteries by retailers of vehicle batteries—Notice.** A person selling vehicle batteries at retail in the state shall:

(1) Accept, at the time of purchase of a replacement battery, in the place where the new batteries are physically transferred to the purchasers, and in a quantity at least equal to the number of new batteries purchased, used vehicle batteries from the purchasers, if offered by the purchasers. When a purchaser fails to provide an equivalent used battery or batteries, the purchaser may reclaim the core charge paid under RCW 70.95.640 by returning, to the point of purchase within thirty days, a used battery or batteries and a receipt showing proof of purchase from the establishment where the replacement battery or batteries were purchased; and

(2) Post written notice which must be at least eight and one-half inches by eleven inches in size and must contain the universal recycling symbol and the following language:

(a) "It is illegal to put a motor vehicle battery or other vehicle battery in your garbage."

(b) "State law requires us to accept used motor vehicle batteries or other vehicle batteries for recycling, in exchange for new batteries purchased."

(c) "When you buy a battery, state law also requires us to include a core charge of five dollars or more if you do not return your old battery for exchange." [1989 c 431 § 39.]

**70.95.640 Retail core charge.** Each retail sale of a vehicle battery shall include, in the price of the battery for sale, a core charge of not less than five dollars. When a purchaser offers the seller a used battery of equivalent size, the seller shall omit the core charge from the price of the battery. [1989 c 431 § 40.]

**70.95.650 Vehicle battery wholesalers—Obligations regarding used batteries—Noncompliance procedure.** (1) A person selling vehicle batteries at wholesale to a retail establishment in this state shall accept, at the time and place of transfer, used vehicle batteries in a quantity at least equal to the number of new batteries purchased, if offered by the purchaser.

(2) When a battery wholesaler, or agent of the wholesaler, fails to accept used vehicle batteries as provided in this section, a retailer may file a complaint with the department and the department shall investigate any such complaint.

(3)(a) The department shall issue an order suspending any of the provisions of RCW 70.95.630 through 70.95.660 whenever it finds that the market price of lead has fallen to the extent that new battery wholesalers' estimated statewide average cost of transporting used batteries to a smelter or other person or entity in the business of purchasing used batteries is clearly greater than the market price paid for used lead batteries by such smelter or person or entity.

(b) The order of suspension shall only apply to batteries that are sold at retail during the period in which the suspension order is effective.

(c) The department shall limit its suspension order to a definite period not exceeding six months, but shall revoke the order prior to its expiration date should it find that the reasons for its issuance are no longer valid. [1989 c 431 § 41.]

**70.95.660 Department to distribute printed notice—Issuance of warnings and citations—Fines.** The department shall produce, print, and distribute the notices required by RCW 70.95.630 to all places where vehicle batteries are offered for sale at retail and in performing its duties under this section the department may inspect any place, building, or premise governed by RCW 70.95.640. Authorized employees of the agency may issue warnings and citations to persons who fail to comply with the requirements of RCW 70.95.610 through 70.95.670. Failure to conform to the notice requirements of RCW 70.95.630 shall subject the violator to a fine imposed by the department not to exceed one thousand dollars. However, no such fine shall be imposed unless the department has issued a warning of infraction for the first offense. Each day that a violator does not comply with the requirements of chapter 431, Laws of 1989 following the issuance of an initial warning of infraction shall constitute a separate offense. [1989 c 431 § 42.]

**70.95.670 Rules.** The department shall adopt rules providing for the implementation and enforcement of RCW 70.95.610 through 70.95.660. [1989 c 431 § 43.]

**70.95.700 Solid waste incineration or energy recovery facility—Environmental impact statement requirements.** No solid waste incineration or energy recovery facility shall be operated prior to the completion of an environmental impact statement containing the considerations required under RCW 43.21C.030(2)(c) and prepared pursuant to the procedures of chapter 43.21C RCW. This section does not apply to a facility operated prior to January 1, 1989, as a solid waste incineration facility or energy recovery facility burning solid waste. [1989 c 431 § 55.]

**70.95.710 Incineration of medical waste.** Incineration of medical waste shall be conducted under sufficient burning conditions to reduce all combustible material to a form such that no portion of the combustible material is visible in its uncombusted state. [1989 c 431 § 77.]

**70.95.715 Sharps waste—Drop-off sites—Pharmacy return program.** (1) A solid waste planning jurisdiction may designate sharps waste container drop-off sites.

(2) A pharmacy return program shall not be considered a solid waste handling facility and shall not be required to obtain a solid waste permit. A pharmacy return program is required to register, at no cost, with the department. To facilitate designation of sharps waste drop-off sites, the department shall share the name and location of registered pharmacy return programs with jurisdictional health departments and local solid waste management officials.

(3) A public or private provider of solid waste collection service may provide a program to collect source separated residential sharps waste containers as provided in chapter 70.95K RCW.

(4) For the purpose of this section, "sharps waste," "sharps waste container," and "pharmacy return program" shall have the same meanings as provided in RCW 70.95K.010. [1994 c 165 § 5.]

**Findings—Purposes—Intent—1994 c 165:** See note following RCW 70.95K.010.

**70.95.720 Closure of energy recovery and incineration facilities—Recordkeeping requirements.** The department shall require energy recovery and incineration facilities to retain records of monitoring and operation data for a minimum of ten years after permanent closure of the facility. [1990 c 114 § 4.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**70.95.725 Paper conservation program—Paper recycling program.** By July 1, 2010, each state agency shall develop and implement:

(1) A paper conservation program. Each state agency shall endeavor to conserve paper by at least thirty percent of their current paper use.

(2) A paper recycling program to encourage recycling of all paper products with the goal of recycling one hundred percent of all copy and printing paper in all buildings with twenty-five employees or more.

(3) For the purposes of this section, "state agencies" include, but are not limited to, colleges, universities, offices of elected and appointed officers, the supreme court, court of appeals, and administrative departments of state government. [2009 c 356 § 1.]

**70.95.810 Composting food and yard wastes—Grants and study.** (1) In order to establish the feasibility of composting food and yard wastes, the department shall provide funds, as available, to local governments submitting a proposal to compost such wastes.

(2) The department, in cooperation with the \*department of community, trade, and economic development, may approve an application if the project can demonstrate the essential parameters for successful composting, including, but not limited to, cost-effectiveness, handling and safety requirements, and current and potential markets. [1998 c 245 § 132; 1995 c 399 § 191; 1989 c 431 § 97.]

**\*Reviser's note:** The "department of community, trade, and economic development" was renamed the "department of commerce" by 2009 c 565.

**70.95.900 Authority and responsibility of utilities and transportation commission not changed.** Nothing in this act shall be deemed to change the authority or responsibility of the Washington utilities and transportation commission to regulate all intrastate carriers. [1969 ex.s. c 134 § 27.]

**70.95.901 Severability—1989 c 431.** If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1989 c 431 § 107.]

[Title 70 RCW—page 264]

**70.95.902 Section captions not law—1989 c 431.** Captions and headings used in this act do not constitute any part of the law. [1989 c 431 § 108.]

**70.95.903 Application of chapter—Collection and transportation of recyclable materials by recycling companies or nonprofit entities—Reuse or reclamation.** Nothing in this chapter shall prevent a recycling company or nonprofit entity from collecting and transporting recyclable materials from a buy-back center, drop-box, or from a commercial or industrial generator of recyclable materials, or upon agreement with a solid waste collection company.

Nothing in this chapter shall be construed as prohibiting a commercial or industrial generator of commercial recyclable materials from selling, conveying, or arranging for transportation of such material to a recycler for reuse or reclamation. [1989 c 431 § 32.]

**70.95.910 Severability—1969 ex.s. c 134.** If any provision of this act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provisions to other persons or circumstances is not affected. [1969 ex.s. c 134 § 28.]

**70.95.911 Severability—1975-'76 2nd ex.s. c 41.** If any provision of this 1976 amendatory act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected. [1975-'76 2nd ex.s. c 41 § 11.]

## Chapter 70.95A RCW

### POLLUTION CONTROL— MUNICIPAL BONDING AUTHORITY

#### Sections

- 70.95A.010 Legislative declaration—Liberal construction.
- 70.95A.020 Definitions.
- 70.95A.030 Municipalities—Powers.
- 70.95A.035 Actions by municipalities validated.
- 70.95A.040 Municipalities—Revenue bonds for pollution control facilities—Authorized—Construction—Sale, conditions—Form, terms.
- 70.95A.045 Proceeds of bonds are separate trust funds—Municipal treasurer, compensation.
- 70.95A.050 Revenue bonds—Security—Scope—Default—Authorization proceedings.
- 70.95A.060 Facilities—Leases authorized.
- 70.95A.070 Facilities—Revenue bonds—Refunding provisions.
- 70.95A.080 Revenue bonds—Disposition of proceeds.
- 70.95A.090 Facilities—Sale or lease—Certain restrictions on municipalities not applicable.
- 70.95A.100 Facilities—Department of ecology certification.
- 70.95A.910 Construction—1973 c 132.
- 70.95A.912 Construction—1975 c 6.
- 70.95A.920 Severability—1973 c 132.
- 70.95A.930 Acquisitions by port districts under RCW 53.08.040—Prior rights or obligations.
- 70.95A.940 Severability—1975 c 6.

**70.95A.010 Legislative declaration—Liberal construction.** The legislature finds:

(1) That environmental damage seriously endangers the public health and welfare;

(2010 Ed.)

(2) That such environmental damage results from air, water, and other resources pollution and from solid waste disposal, noise and other environmental problems;

(3) That to abate or control such environmental damage antipollution devices, equipment, and facilities must be acquired, constructed and installed;

(4) That the tax exempt financing permitted by Section 103 of the Internal Revenue Code of 1954, as amended, and authorized by this chapter results in lower costs of installation of pollution control facilities;

(5) That such lower costs benefit the public with no measurable cost impact;

(6) That the method of financing provided in this chapter is in the public interest and its use serves a public purpose in (a) protecting and promoting the health and welfare of the citizens of the cities, towns, counties, and port districts and of this state by encouraging and accelerating the installation of facilities for abating or controlling and preventing environmental damage and (b) in attracting and retaining environmentally sound industry in this state which reduces unemployment and provides a more diversified tax base.

(7) For the reasons set forth in subsection (6) of this section, the provisions of this chapter relating to port districts and all proceedings heretofore or hereafter taken by port districts pursuant thereto are, and shall be deemed to be, for industrial development as authorized by Article 8, section 8 of the Washington state Constitution.

This chapter shall be liberally construed to accomplish the intentions expressed in this section. [1975 c 6 § 1; 1973 c 132 § 2.]

**70.95A.020 Definitions.** As used in this chapter, unless the context otherwise requires:

(1) "Municipality" shall mean any city, town, county, or port district in the state;

(2) "Facility" or "facilities" shall mean any land, building, structure, machinery, system, fixture, appurtenance, equipment or any combination thereof, or any interest therein, and all real and personal properties deemed necessary in connection therewith whether or not now in existence, which is used or to be used by any person, corporation or municipality in furtherance of the purpose of abating, controlling or preventing pollution;

(3) "Pollution" shall mean any form of environmental pollution, including but not limited to water pollution, air pollution, land pollution, solid waste disposal, thermal pollution, radiation contamination, or noise pollution;

(4) "Governing body" shall mean the body or bodies in which the legislative powers of the municipality are vested;

(5) "Mortgage" shall mean a mortgage or a mortgage and deed of trust or other security device; and

(6) "Department" shall mean the state department of ecology. [1973 c 132 § 3.]

**70.95A.030 Municipalities—Powers.** In addition to any other powers which it may now have, each municipality shall have the following powers:

(1) To acquire, whether by construction, purchase, devise, gift or lease, or any one or more of such methods, one

(2010 Ed.)

or more facilities which shall be located within, or partially within the municipality;

(2) To lease, lease with option to purchase, sell or sell by installment sale, any or all of the facilities upon such terms and conditions as the governing body may deem advisable but which shall at least fully reimburse the municipality for all debt service on any bonds issued to finance the facilities and for all costs incurred by the municipality in financing and operating the facilities and as shall not conflict with the provisions of this chapter;

(3) To issue revenue bonds for the purpose of defraying the cost of acquiring or improving any facility or facilities or refunding any bonds issued for such purpose and to secure the payment of such bonds as provided in this chapter. Revenue bonds may be issued in one or more series or issues where deemed advisable, and each such series or issue may have the same or different maturity dates, interest rates, priorities on revenues available for payment of such bonds and priorities on security available for assuring payment thereof, and such other differing terms and conditions as are deemed necessary and are not in conflict with the provisions of this chapter. [1973 c 132 § 4.]

**70.95A.035 Actions by municipalities validated.** All actions heretofore taken by any municipality in conformity with the provisions of this chapter and the provisions of chapter 6, Laws of 1975 hereby made applicable thereto relating to pollution control facilities, including but not limited to all bonds issued for such purposes, are hereby declared to be valid, legal and binding in all respects. [1975 c 6 § 4.]

*Port districts—Pollution control facilities or other industrial development—Validation: RCW 53.08.041.*

**70.95A.040 Municipalities—Revenue bonds for pollution control facilities—Authorized—Construction—Sale, conditions—Form, terms.** (1) All bonds issued by a municipality under the authority of this chapter shall be secured solely by revenues derived from the lease or sale of the facility. Bonds and any interest coupons issued under the authority of this chapter shall not constitute nor give rise to a pecuniary liability of the municipality or a charge against its general credit or taxing powers. Such limitation shall be plainly stated upon the face of each of such bonds. The use of the municipality's name on revenue bonds authorized hereunder shall not be construed to be the giving or lending of the municipality's financial guarantee or pledge, i.e. credit to any private person, firm, or corporation as the term credit is used in Article 8, section 7 of the Washington state Constitution.

(2) The bonds referred to in subsection (1) of this section, may (a) be executed and delivered at any time and from time to time, (b) be in such form and denominations, (c) be of such tenor, (d) be in bearer or registered form either as to principal or interest or both, as provided in RCW 39.46.030, and may provide for conversion between registered and coupon bonds of varying denominations, (e) be payable in such installments and at such time or times not exceeding forty years from their date, (f) be payable at such place or places, (g) bear interest at such rate or rates as may be determined by the governing body, payable at such place or places within or without this state and evidenced in such manner, (h) be redeemable prior to maturity, with or without premium, and

(i) contain such provisions not inconsistent herewith, as shall be deemed for the best interest of the municipality and provided for in the proceedings of the governing body whereunder the bonds shall be authorized to be issued.

(3) Any bonds issued under the authority of this chapter, may be sold at public or private sale in such manner and at such time or times as may be determined by the governing body to be most advantageous. The municipality may pay all expenses, premiums and commissions which the governing body may deem necessary or advantageous in connection with the authorization, sale and issuance thereof from the proceeds of the sale of said bonds or from the revenues of the facilities.

(4) All bonds issued under the authority of this chapter, and any interest coupons applicable thereto shall be investment securities within the meaning of the uniform commercial code and shall be deemed to be issued by a political subdivision of the state.

(5) The proceeds from any bonds issued under this chapter shall be used only for purposes qualifying under Section 103(c)(4)(f) of the Internal Revenue Code of 1954, as amended.

(6) Notwithstanding subsections (2) and (3) of this section, such bonds may be issued and sold in accordance with chapter 39.46 RCW. [1983 c 167 § 174; 1975 c 6 § 3; 1973 c 132 § 5.]

*Port districts—Pollution control facilities or other industrial development—Validation: RCW 53.08.041.*

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**70.95A.045 Proceeds of bonds are separate trust funds—Municipal treasurer, compensation.** The proceeds of any bonds heretofore or hereafter issued in conformity with the authority of this chapter, together with interest and premiums thereon, and any revenues used to pay or redeem any of such bonds, together with interest and any premiums thereon, shall be separate trust funds and used only for the purposes permitted herein and shall not be considered to be money of the municipality. The services of the treasurer of a municipality, if such treasurer is or has been used, were and are intended to be for the administrative convenience of receipt and payment of nonpublic moneys only for which reasonable compensation may be charged by such treasurer or municipality. [1975 c 6 § 2.]

*Port districts—Pollution control facilities or other industrial development—Validation: RCW 53.08.041.*

**70.95A.050 Revenue bonds—Security—Scope—Default—Authorization proceedings.** (1) The principal of and interest on any bonds issued under the authority of this chapter (a) shall be secured by a pledge of the revenues derived from the sale or lease of the facilities out of which such bonds shall be made payable, (b) may be secured by a mortgage covering all or any part of the facilities, (c) may be secured by a pledge or assignment of the lease of such facilities, or (d) may be secured by a trust agreement or such other security device as may be deemed most advantageous by the governing body.

(2) The proceedings under which the bonds are authorized to be issued under the provisions of this chapter, and any mortgage given to secure the same may contain any

agreements and provisions customarily contained in instruments securing bonds, including, without limiting the generality of the foregoing, provisions respecting (a) the fixing and collection of rents for any facilities covered by such proceedings or mortgage, (b) the terms to be incorporated in the lease of such facilities, (c) the maintenance and insurance of such facilities, (d) the creation and maintenance of special funds from the revenues of such facilities, and (e) the rights and remedies available in the event of a default to the bond owners or to the trustee under a mortgage or trust agreement, all as the governing body shall deem advisable and as shall not be in conflict with the provisions of this chapter: PROVIDED, That in making any such agreements or provisions a municipality shall not have the power to obligate itself except with respect to the facilities and the application of the revenues therefrom, and shall not have the power to incur a pecuniary liability or a charge upon its general credit or against its taxing powers.

(3) The proceedings authorizing any bonds under the provisions of this chapter and any mortgage securing such bonds may provide that, in the event of a default in the payment of the principal of or the interest on such bonds or in the performance of any agreement contained in such proceedings or mortgage, such payment and performance may be enforced by mandamus or by the appointment of a receiver in equity with power to charge and collect rents and to apply the revenues from the facilities in accordance with such proceedings or the provisions of such mortgage.

(4) Any mortgage made under the provisions of this chapter, to secure bonds issued thereunder, may also provide that, in the event of a default in the payment thereof or the violation of any agreement contained in the mortgage, the mortgage may be foreclosed and the mortgaged property sold under proceedings in equity or in any other manner now or hereafter permitted by law. Such mortgage may also provide that any trustee under such mortgage or the owner of any of the bonds secured thereby may become the purchaser at any foreclosure sale if the highest bidder therefor. No breach of any such agreement shall impose any pecuniary liability upon a municipality or any charge upon their general credit or against their taxing powers.

(5) The proceedings authorizing the issuance of bonds hereunder may provide for the appointment of a trustee or trustees for the protection of the owners of the bonds, whether or not a mortgage is entered into as security for such bonds. Any such trustee may be a bank with trust powers or a trust company and shall be located in the United States, within or without the state of Washington, shall have the immunities, powers and duties provided in said proceedings, and may, to the extent permitted by such proceedings, hold and invest funds deposited with it in direct obligations of the United States, obligations guaranteed by the United States or certificates of deposit of a bank (including the trustee) which are continuously secured by such obligations of or guaranteed by the United States. Any bank acting as such trustee may, to the extent permitted by such proceedings, buy bonds issued hereunder to the same extent as if it were not such trustee. Said proceedings may provide for one or more co-trustees, and any co-trustee may be any competent individual over the age of twenty-one years or a bank having trust powers or trust company within or without the state. The proceed-

ings authorizing the bonds may provide that some or all of the proceeds of the sale of the bonds, the revenues of any facilities, the proceeds of the sale of any part of a facility, of any insurance policy or of any condemnation award be deposited with the trustee or a co-trustee and applied as provided in said proceedings. [1983 c 167 § 175; 1973 c 132 § 6.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**70.95A.060 Facilities—Leases authorized.** Prior to the issuance of the bonds authorized by this chapter, the municipality may lease the facilities to a lessee or lessees under an agreement providing for payment to the municipality of such rentals as will be sufficient (a) to pay the principal of and interest on the bonds issued to finance the facilities, (b) to pay the taxes on the facilities, (c) to build up and maintain any reserves deemed by the governing body to be advisable in connection therewith, and (d) unless the agreement of lease obligates the lessees to pay for the maintenance and insurance of the facilities, to pay the costs of maintaining the facilities in good repair and keeping the same properly insured. Subject to the limitations of this chapter, the lease or extensions or modifications thereof may contain such other terms and conditions as may be mutually acceptable to the parties, and notwithstanding any other provisions of law relating to the sale of property owned by municipalities, such lease may contain an option for the lessees to purchase the facilities on such terms and conditions with or without consideration as may be mutually acceptable to the parties. [1973 c 132 § 7.]

**70.95A.070 Facilities—Revenue bonds—Refunding provisions.** Any bonds issued under the provisions of this chapter and at any time outstanding may at any time and from time to time be refunded by a municipality by the issuance of its refunding bonds in such amount as the governing body may deem necessary but not exceeding an amount sufficient to refund the principal of the bonds to be so refunded, together with any unpaid interest thereon and any premiums and commissions necessary to be paid in connection therewith: PROVIDED, That an issue of refunding bonds may be combined with an issue of additional revenue bonds on any facilities. Any such refunding may be effected whether the bonds to be refunded shall have then matured or shall thereafter mature, either by sale of the refunding bonds and the application of the proceeds thereof for the payment of the bonds to be refunded thereby, or by exchange of the refunding bonds for the bonds to be refunded thereby: PROVIDED FURTHER, That the owners of any bonds to be so refunded shall not be compelled without their consent to surrender their bonds for payment or exchange except on the terms expressed on the face thereof. Any refunding bonds issued under the authority of this chapter shall be subject to the provisions contained in RCW 70.95A.040 and may be secured in accordance with the provisions of RCW 70.95A.050. [1983 c 167 § 176; 1973 c 132 § 8.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**70.95A.080 Revenue bonds—Disposition of proceeds.** The proceeds from the sale of any bonds issued under authority of this chapter shall be applied only for the purpose for which the bonds were issued: PROVIDED, That any

(2010 Ed.)

accrued interest and premium received in any such sale shall be applied to the payment of the principal of or the interest on the bonds sold: AND PROVIDED FURTHER, That if for any reason any portion of such proceeds shall not be needed for the purpose for which the bonds were issued, then such unneeded portion of said proceeds shall be applied to the payment of the principal of or the interest on said bonds. The cost of acquiring or improving any facilities shall be deemed to include the following: The actual cost of acquiring or improving real estate for any facilities; the actual cost of construction of all or any part of the facilities which may be constructed, including architects' and engineers' fees, all expenses in connection with the authorization, sale and issuance of the bonds to finance such acquisition or improvements; and the interest on such bonds for a reasonable time prior to construction, during construction, and for a time not exceeding six months after completion of construction. [1973 c 132 § 9.]

**70.95A.090 Facilities—Sale or lease—Certain restrictions on municipalities not applicable.** The facilities shall be constructed, reconstructed, and improved and shall be leased, sold or otherwise disposed of in the manner determined by the governing body in its sole discretion and any requirement of competitive bidding, lease performance bonds or other restriction imposed on the procedure for award of contracts for such purpose or the lease, sale or other disposition of property of a municipality is not applicable to any action taken under authority of this chapter. [1973 c 132 § 10.]

**70.95A.100 Facilities—Department of ecology certification.** Upon request by a municipality or by a user of the facilities the department of ecology may in relation to chapter 54, Laws of 1972 ex. sess. and this chapter issue its certificate stating that the facilities (1) as designed are in furtherance of the purpose of abating, controlling or preventing pollution, and/or (2) as designed or as operated meet state and local requirements for the control of pollution. This section shall not be construed as modifying the provisions of RCW 82.34.030; chapter 70.94 RCW; or chapter 90.48 RCW. [1973 c 132 § 11.]

**70.95A.910 Construction—1973 c 132.** Nothing in this chapter shall be construed as a restriction or limitation upon any powers which a municipality might otherwise have under any laws of this state, but shall be construed as cumulative. [1973 c 132 § 12.]

**70.95A.912 Construction—1975 c 6.** This 1975 amendatory act shall be liberally construed to accomplish the intention expressed herein. [1975 c 6 § 6.]

*Port districts—Pollution control facilities or other industrial development—Validation: RCW 53.08.041.*

**70.95A.920 Severability—1973 c 132.** If any provision of this 1973 act or the application thereof to any person or circumstance, is held invalid, such invalidity shall not affect other provisions or applications of this 1973 act which can be given effect without the invalid provision or application, and

to this end the provisions of this act are declared to be severable. [1973 c 132 § 13.]

**70.95A.930 Acquisitions by port districts under RCW 53.08.040—Prior rights or obligations.** All acquisitions by port districts pursuant to RCW 53.08.040 may, at the option of a port commission, be deemed to be made under this chapter, or under both: PROVIDED, That nothing contained in this chapter shall impair rights or obligations under contracts entered into before March 19, 1973. [1973 c 132 § 14.]

**70.95A.940 Severability—1975 c 6.** If any provision of this 1975 amendatory act or the application thereof to any person or circumstance, is held invalid, such invalidity shall not affect other provisions or applications of this 1975 amendatory act which can be given effect without the invalid provision or application, and to this end the provisions of this act are declared to be severable. [1975 c 6 § 7.]

### Chapter 70.95B RCW DOMESTIC WASTE TREATMENT PLANTS—OPERATORS

#### Sections

70.95B.010	Legislative declaration.
70.95B.020	Definitions.
70.95B.030	Wastewater treatment plant operators—Certification required.
70.95B.040	Administration of chapter—Rules and regulations—Director's duties.
70.95B.050	Wastewater treatment plants—Classification.
70.95B.060	Criteria and guidelines.
70.95B.071	Ad hoc advisory committees.
70.95B.080	Certificates—When examination not required.
70.95B.090	Certificates—Issuance and renewal conditions.
70.95B.095	Certificates—Fees.
70.95B.100	Certificates—Revocation procedures.
70.95B.110	Administration of chapter—Powers and duties of director.
70.95B.115	Licenses or certificates—Suspension for noncompliance with support order—Reissuance.
70.95B.120	Violations.
70.95B.130	Certificates—Reciprocity with other states.
70.95B.140	Penalties for violations—Injunctions.
70.95B.150	Administration of chapter—Receipts—Payment to general fund.
70.95B.900	Effective date—1973 c 139.

**Reviser's note:** Chapter 139, Laws of 1973 has been codified as chapter 70.95B RCW to conform with code organization. Section 16 of chapter 139 had directed that the chapter be added to Title 43 RCW.

*Public water supply systems—Certification and regulation of operators: Chapter 70.119 RCW.*

**70.95B.010 Legislative declaration.** The legislature declares that competent operation of waste treatment plants plays an important part in the protection of the environment of the state and therefore it is of vital interest to the public. In order to protect the public health and to conserve and protect the water resources of the state, it is necessary to provide for the classifying of all domestic wastewater treatment plants; to require the examination and certification of the persons responsible for the supervision and operation of such systems; and to provide for the promulgation of rules and regulations to carry out this chapter. [1973 c 139 § 1.]

**70.95B.020 Definitions.** As used in this chapter unless context requires another meaning:

(1) "Director" means the director of the department of ecology.

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

(3) "Certificate" means a certificate of competency issued by the director stating that the operator has met the requirements for the specified operator classification of the certification program.

(4) "Wastewater treatment plant" means a facility used to treat any liquid or waterborne waste of domestic origin or a combination of domestic, commercial or industrial origin, and which by its design requires the presence of an operator for its operation. It shall not include any facility used exclusively by a single family residence, septic tanks with subsoil absorption, industrial wastewater treatment plants, or wastewater collection systems.

(5) "Operator in responsible charge" means an individual who is designated by the owner as the person on-site in responsible charge of the routine operation of a wastewater treatment plant.

(6) "Nationally recognized association of certification authorities" shall mean that organization which serves as an information center for certification activities, recommends minimum standards and guidelines for classification of potable water treatment plants, water distribution systems and wastewater facilities and certification of operators, facilitates reciprocity between state programs and assists authorities in establishing new certification programs and updating existing ones.

(7) "Wastewater collection system" means any system of lines, pipes, manholes, pumps, liftstations, or other facilities used for the purpose of collecting and transporting wastewater.

(8) "Operating experience" means routine performance of duties, on-site in a wastewater treatment plant, that affects plant performance or effluent quality.

(9) "Owner" means in the case of a town or city, the city or town acting through its chief executive officer or the lessee if operated pursuant to a lease or contract; in the case of a county, the chairman of the county legislative authority or the chairman's designee; in the case of a water-sewer district, board of public utilities, association, municipality or other public body, the president or chairman of the body or the president's or chairman's designee; in the case of a privately owned wastewater treatment plant, the legal owner.

(10) "Wastewater certification program coordinator" means an employee of the department who administers the wastewater treatment plant operators' certification program. [1999 c 153 § 66; 1995 c 269 § 2901; 1987 c 357 § 1; 1973 c 139 § 2.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**70.95B.030 Wastewater treatment plant operators—Certification required.** As provided for in this chapter, the individual on-site at a wastewater treatment plant who is designated by the owner as the operator in responsible charge of the operation and maintenance of the plant on a routine basis shall be certified at a level equal to or higher than the classification rating of the plant being operated.

If a wastewater treatment plant is operated on more than one daily shift, the operator in charge of each shift shall be

certified at a level no lower than one level lower than the classification rating of the plant being operated and shall be subordinate to the operator in responsible charge who is certified at a level equal to or higher than the plant. This requirement for shift operator certification shall be met by January 1, 1989.

Operators not required to be certified by this chapter are encouraged to become certified on a voluntary basis. [1987 c 357 § 2; 1973 c 139 § 3.]

**70.95B.040 Administration of chapter—Rules and regulations—Director’s duties.** The director shall adopt and enforce such rules and regulations as may be necessary for the administration of this chapter. The rules and regulations shall include, but not be limited to, provisions for the qualification and certification of operators for different classifications of wastewater treatment plants. [1995 c 269 § 2902; 1987 c 357 § 3; 1973 c 139 § 4.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**70.95B.050 Wastewater treatment plants—Classification.** The director shall classify all wastewater treatment plants with regard to the size, type, and other conditions affecting the complexity of such treatment plants and the skill, knowledge, and experience required of an operator to operate such facilities to protect the public health and the state’s water resources. [1987 c 357 § 4; 1973 c 139 § 5.]

**70.95B.060 Criteria and guidelines.** The director is authorized when taking action pursuant to RCW 70.95B.040 and 70.95B.050 to consider generally applicable criteria and guidelines developed by a nationally recognized association of certification authorities. [1973 c 139 § 6.]

**70.95B.071 Ad hoc advisory committees.** The director, in cooperation with the secretary of health, may establish ad hoc advisory committees, as necessary, to obtain advice and technical assistance regarding the examination and certification of operators of wastewater treatment plants. [1995 c 269 § 2908.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**70.95B.080 Certificates—When examination not required.** Certificates shall be issued without examination under the following conditions:

(1) Certificates, in appropriate classifications, shall be issued without application fee to operators who, on July 1, 1973, hold certificates of competency attained by examination under the voluntary certification program sponsored jointly by the state department of social and health services, health services division, and the Pacific Northwest pollution control association.

(2) Certificates, in appropriate classifications, shall be issued to persons certified by a governing body or owner to have been the operator in responsible charge of a waste treatment plant on July 1, 1973. A certificate so issued will be valid only for the existing plant.

(3) A nonrenewable certificate, temporary in nature, may be issued for a period not to exceed twelve months, to an operator who fills a vacated position required to be filled by a

(2010 Ed.)

certified operator. Only one such certificate may be issued subsequent to each instance of vacation of any such position. [1987 c 357 § 5; 1973 c 139 § 8.]

**70.95B.090 Certificates—Issuance and renewal conditions.** The issuance and renewal of a certificate shall be subject to the following conditions:

(1) A certificate shall be issued if the operator has satisfactorily passed a written examination, or has met the requirements of RCW 70.95B.080, and has met the requirements specified in the rules and regulations as authorized by this chapter, and has paid the department an application fee. Such application fee shall not exceed fifty dollars.

(2) The term for all certificates shall be from the first of January of the year of issuance until the thirty-first of December of the renewal year. The renewal period, not to exceed three years, shall be set by agency rule. Every certificate shall be renewed upon the payment of a renewal fee and satisfactory evidence presented to the director that the operator demonstrates continued professional growth in the field. Such renewal fee shall not exceed thirty dollars.

(3) Individuals who fail to renew their certificates before December 31 of the renewal year, upon notice by the director shall have their certificates suspended for sixty days. If, during the suspension period, the renewal is not completed, the director shall give notice of revocation to the employer and to the operator and the certificate will be revoked ten days after such notice is given. An operator whose certificate has been revoked must reapply for certification and will be requested to meet the requirements of a new applicant. [1987 c 357 § 6; 1973 c 139 § 9.]

**70.95B.095 Certificates—Fees.** Effective January 1, 1988, the department shall establish rules for the collection of fees for the issuance and renewal of certificates as provided for in RCW 70.95B.090. Beginning January 1, 1992, these fees shall be sufficient to recover the costs of the certification program. [1987 c 357 § 9.]

**70.95B.100 Certificates—Revocation procedures.** The director may, after conducting a hearing, revoke a certificate found to have been obtained by fraud or deceit, or for gross negligence in the operation of a waste treatment plant, or for violating the requirements of this chapter or any lawful rule, order or regulation of the department. No person whose certificate is revoked under this section shall be eligible to apply for a certificate for one year from the effective date of this final order or revocation. [1995 c 269 § 2903; 1973 c 139 § 10.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**70.95B.110 Administration of chapter—Powers and duties of director.** To carry out the provisions and purposes of this chapter, the director is authorized and empowered to:

(1) Enter into agreements, contracts, or cooperative arrangements, under such terms and conditions as the director deems appropriate with other state, federal, or interstate agencies, municipalities, education institutions, or other organizations or individuals.

(2) Receive financial and technical assistance from the federal government and other public or private agencies.

(3) Participate in related programs of the federal government, other states, interstate agencies, or other public or private agencies or organizations.

(4) Upon request, furnish reports, information, and materials relating to the certification program authorized by this chapter to federal, state, or interstate agencies, municipalities, education institutions, and other organizations and individuals.

(5) Establish adequate fiscal controls and accounting procedures to assure proper disbursement of and accounting for funds appropriated or otherwise provided for the purpose of carrying out the provisions of this chapter. [1987 c 357 § 7; 1973 c 139 § 11.]

**70.95B.115 Licenses or certificates—Suspension for noncompliance with support order—Reissuance.** The director shall immediately suspend the license or certificate of a person who has been certified pursuant to RCW 74.20A.320 by the department of social and health services as a person who is not in compliance with a support order or a \*residential or visitation order. If the person has continued to meet all other requirements for reinstatement during the suspension, reissuance of the license or certificate shall be automatic upon the director's receipt of a release issued by the department of social and health services stating that the licensee is in compliance with the order. [1997 c 58 § 876.]

**\*Reviser's note:** 1997 c 58 § 886 requiring a court to order certification of noncompliance with residential provisions of a court-ordered parenting plan was vetoed. Provisions ordering the department of social and health services to certify a responsible parent based on a court order to certify for non-compliance with residential provisions of a parenting plan were vetoed. See RCW 74.20A.320.

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

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**70.95B.120 Violations.** On and after one year following July 1, 1973, it shall be unlawful for any person, firm, corporation, municipal corporation, or other governmental subdivision or agency to operate a wastewater treatment plant unless the individuals identified in RCW 70.95B.030 are duly certified by the director under the provisions of this chapter or any lawful rule, order, or regulation of the department. It shall also be unlawful for any person to perform the duties of an operator as defined in this chapter, or in any lawful rule, order, or regulation of the department, without being duly certified under the provisions of this chapter. [1987 c 357 § 8; 1973 c 139 § 12.]

**70.95B.130 Certificates—Reciprocity with other states.** On or after July 1, 1973, certification of operators by any state which, as determined by the director, accepts certifications made or certification requirements deemed satisfied pursuant to the provisions of this chapter, shall be accorded reciprocal treatment and shall be recognized as valid and sufficient within the purview of this chapter, if in the judgment of the director the certification requirements of such state are substantially equivalent to the requirements of this chapter or any rules or regulations promulgated hereunder.

[Title 70 RCW—page 270]

In making determinations pursuant to this section, the director shall consult with the \*board and may consider any generally applicable criteria and guidelines developed by the nationally recognized association of certification authorities. [1973 c 139 § 13.]

**\*Reviser's note:** RCW 70.95B.070, which created the water and wastewater operator certification board of examiners, was repealed by 1995 c 269 § 2907, effective July 1, 1995.

#### **70.95B.140 Penalties for violations—Injunctions.**

Any person, including any firm, corporation, municipal corporation, or other governmental subdivision or agency violating any provisions of this chapter or the rules and regulations adopted hereunder, is guilty of a misdemeanor. Each day of operation in such violation of this chapter or any rules or regulations adopted hereunder shall constitute a separate offense. Upon conviction, violators shall be fined an amount not exceeding one hundred dollars for each offense. It shall be the duty of the prosecuting attorney or the attorney general, as appropriate, to secure injunctions of continuing violations of any provisions of this chapter or the rules and regulations adopted hereunder. [1973 c 139 § 14.]

**70.95B.150 Administration of chapter—Receipts—Payment to general fund.** All receipts realized in the administration of this chapter shall be paid into the general fund. [1973 c 139 § 15.]

**70.95B.900 Effective date—1973 c 139.** This 1973 act is necessary for the immediate preservation of the public peace, health and safety, the support of the state government and its existing public institutions, and shall take effect on July 1, 1973. [1973 c 139 § 17.]

## **Chapter 70.95C RCW WASTE REDUCTION**

### Sections

70.95C.010	Legislative findings.
70.95C.020	Definitions.
70.95C.030	Office of waste reduction—Duties.
70.95C.040	Waste reduction and hazardous substance use reduction consultation program.
70.95C.050	Waste reduction techniques—Workshops and seminars.
70.95C.060	Waste reduction hot line—Database system.
70.95C.070	Waste reduction research and development program—Contracts.
70.95C.080	Director's authority.
70.95C.110	Waste reduction and recycling program to promote activities by state agencies—Recycled paper goal.
70.95C.120	Waste reduction and recycling awards program in K-12 public schools—Encouraging waste reduction and recycling in private schools.
70.95C.200	Hazardous waste generators and users—Voluntary reduction plan.
70.95C.210	Voluntary reduction plan—Exemption.
70.95C.220	Voluntary reduction plan, executive summary, or progress report—Department review.
70.95C.230	Appeal of department order or surcharge.
70.95C.240	Public inspection of plans, summaries, progress reports.
70.95C.250	Multimedia permit pilot program—Air, water, hazardous waste management.

**70.95C.010 Legislative findings.** The legislature finds that land disposal and incineration of solid and hazardous waste can be both harmful to the environment and costly to those who must dispose of the waste. In order to address this

problem in the most cost-effective and environmentally sound manner, and to implement the highest waste management priority as articulated in RCW 70.95.010 and 70.105.150, public and private efforts should focus on reducing the generation of waste. Waste reduction can be achieved by encouraging voluntary efforts to redesign industrial, commercial, production, and other processes to result in the reduction or elimination of waste by-products and to maximize the in-process reuse or reclamation of valuable spent material.

In the interest of protecting the public health, safety, and the environment, the legislature declares that it is the policy of the state of Washington to encourage reduction in the use of hazardous substances and reduction in the generation of hazardous waste whenever economically and technically practicable.

The legislature finds that hazardous wastes are generated by numerous different sources including, but not limited to, large and small business, households, and state and local government. The legislature further finds that a goal against which efforts at waste reduction may be measured is essential for an effective hazardous waste reduction program. The Pacific Northwest hazardous waste advisory council has endorsed a goal of reducing, through hazardous substance use reduction and waste reduction techniques, the generation of hazardous waste by fifty percent by 1995. The legislature adopts this as a policy goal for the state of Washington. The legislature recognizes that many individual businesses have already reduced the generation of hazardous waste through appropriate hazardous waste reduction techniques. The legislature also recognizes that there are some basic industrial processes which by their nature have limited potential for significantly reducing the use of certain raw materials or substantially reducing the generation of hazardous wastes. Therefore, the goal of reducing hazardous waste generation by fifty percent cannot be applied as a regulatory requirement. [1990 c 114 § 1; 1988 c 177 § 1.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**70.95C.020 Definitions.** As used in this chapter, the following terms have the meanings indicated unless the context clearly requires otherwise.

- (1) "Department" means the department of ecology.
- (2) "Director" means the director of the department of ecology or the director's designee.
- (3) "Dangerous waste" shall have the same definition as set forth in \*RCW 70.105.010(5) and shall specifically include those wastes designated as dangerous by rules adopted pursuant to chapter 70.105 RCW.
- (4) "EPA/state identification number" means the number assigned by the EPA (environmental protection agency) or by the department of ecology to each generator and/or transporter and treatment, storage, and/or disposal facility.
- (5) "Extremely hazardous waste" shall have the same definition as set forth in \*RCW 70.105.010(6) and shall specifically include those wastes designated as extremely hazardous by rules adopted pursuant to chapter 70.105 RCW.
- (6) "Fee" means the annual hazardous waste fees imposed under RCW 70.95E.020 and 70.95E.030.

(7) "Generate" means any act or process which produces hazardous waste or first causes a hazardous waste to become subject to regulation.

(8) "Hazardous substance" means any hazardous substance listed as a hazardous substance as of March 21, 1990, pursuant to section 313 of Title III of the Superfund Amendments and Reauthorization Act, any other substance determined by the director by rule to present a threat to human health or the environment, and all ozone depleting compounds as defined by the Montreal Protocol of October 1987.

(9)(a) "Hazardous substance use reduction" means the reduction, avoidance, or elimination of the use or production of hazardous substances without creating substantial new risks to human health or the environment.

(b) "Hazardous substance use reduction" includes proportionate changes in the usage of hazardous substances as the usage of a hazardous substance or hazardous substances changes as a result of production changes or other business changes.

(10) "Hazardous substance user" means any facility required to report under section 313 of Title III of the Superfund Amendments and Reauthorization Act, except for those facilities which only distribute or use fertilizers or pesticides intended for commercial agricultural applications.

(11) "Hazardous waste" means and includes all dangerous and extremely hazardous wastes, but does not include radioactive wastes or a substance composed of both radioactive and hazardous components and does not include any hazardous waste generated as a result of a remedial action under state or federal law.

(12) "Hazardous waste generator" means any person generating hazardous waste regulated by the department.

(13) "Office" means the office of waste reduction.

(14) "Plan" means the plan provided for in RCW 70.95C.200.

(15) "Person" means an individual, trust, firm, joint stock company, partnership, association, state, public or private or municipal corporation, commission, political subdivision of a state, interstate body, the federal government, including any agency or officer thereof, and any Indian tribe or authorized tribal organization.

(16) "Process" means all industrial, commercial, production, and other processes that result in the generation of waste.

(17) "Recycled for beneficial use" means the use of hazardous waste, either before or after reclamation, as a substitute for a commercial product or raw material, but does not include: (a) Use constituting disposal; (b) incineration; or (c) use as a fuel.

(18) "Recycling" means reusing waste materials and extracting valuable materials from a waste stream. Recycling does not include burning for energy recovery.

(19) "Treatment" means the physical, chemical, or biological processing of waste to render it completely innocuous, produce a recyclable by-product, reduce toxicity, or substantially reduce the volume of material requiring disposal as described in the priorities established in RCW 70.105.150. Treatment does not include incineration.

(20) "Used oil" means (a) lubricating fluids that have been removed from an engine crankcase, transmission, gearbox, hydraulic device, or differential of an automobile, bus,

truck, vessel, plane, heavy equipment, or machinery powered by an internal combustion engine; (b) any oil that has been refined from crude oil, used, and as a result of use, has been contaminated with physical or chemical impurities; and (c) any oil that has been refined from crude oil and, as a consequence of extended storage, spillage, or contamination, is no longer useful to the original purchaser. "Used oil" does not include used oil to which hazardous wastes have been added.

(21) "Waste" means any solid waste as defined under RCW 70.95.030, any hazardous waste, any air contaminant as defined under RCW 70.94.030, and any organic or inorganic matter that shall cause or tend to cause water pollution as defined under RCW 90.48.020.

(22) "Waste generator" means any individual, business, government agency, or any other organization that generates waste.

(23) "Waste reduction" means all in-plant practices that reduce, avoid, or eliminate the generation of wastes or the toxicity of wastes, prior to generation, without creating substantial new risks to human health or the environment. As used in RCW 70.95C.200 through 70.95C.240, "waste reduction" refers to hazardous waste only. [1991 c 319 § 313; 1990 c 114 § 2; 1988 c 177 § 2.]

**\*Reviser's note:** Due to the alphabetization of RCW 70.105.010 pursuant to RCW 1.08.015(2)(k), subsections (5) and (6) were changed to subsections (1) and (7) respectively.

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**70.95C.030 Office of waste reduction—Duties.** (1) There is established in the department an office of waste reduction. The office shall use its authorities to encourage the voluntary reduction of hazardous substance usage and waste generation by waste generators and hazardous substance users. The office shall prepare and submit a quarterly progress report to the director.

(2) The office shall be the coordinating center for all state agency programs that provide technical assistance to waste generators and hazardous substance users and shall serve as the state's lead agency and promoter for such programs. In addition to this coordinating function, the office shall encourage hazardous substance use reduction and waste reduction by:

(a) Providing for the rendering of advice and consultation to waste generators and hazardous substance users on hazardous substance use reduction and waste reduction techniques, including assistance in preparation of plans provided for in RCW 70.95C.200;

(b) Sponsoring or co-sponsoring with public or private organizations technical workshops and seminars on waste reduction and hazardous substance use reduction;

(c) Administering a waste reduction and hazardous substance use reduction database and hot line providing comprehensive referral services to waste generators and hazardous substance users;

(d) Administering a waste reduction and hazardous substance use reduction research and development program;

(e) Coordinating a waste reduction and hazardous substance use reduction public education program that includes the utilization of existing publications from public and private sources, as well as publishing necessary new materials on waste reduction;

(f) Recommending to institutions of higher education in the state courses and curricula in areas related to waste reduction and hazardous substance use reduction; and

(g) Operating an intern program in cooperation with institutions of higher education and other outside resources to provide technical assistance on hazardous substance use reduction and waste reduction techniques and to carry out research projects as needed within the office. [1998 c 245 § 133; 1990 c 114 § 3; 1988 c 177 § 3.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**70.95C.040 Waste reduction and hazardous substance use reduction consultation program.** (1) The office shall establish a waste reduction and hazardous substance use reduction consultation program to be coordinated with other state waste reduction and hazardous substance use reduction consultation programs.

(2) The director may grant a request by any waste generator or hazardous substance user for advice and consultation on waste reduction and hazardous substance use reduction techniques and assistance in preparation or modification of a plan, executive summary, or annual progress report, or assistance in the implementation of a plan required by RCW 70.95C.200. Pursuant to a request from a facility such as a business, governmental entity, or other process site in the state, the director may visit the facility making the request for the purposes of observing hazardous substance use and the waste-generating process, obtaining information relevant to waste reduction and hazardous substance use reduction, rendering advice, and making recommendations. No such visit may be regarded as an inspection or investigation, and no notices or citations may be issued, or civil penalty be assessed, upon such a visit. A representative of the director providing advisory or consultative services under this section may not have any enforcement authority.

(3) Consultation and advice given under this section shall be limited to the matters specified in the request and shall include specific techniques of waste reduction and hazardous substance use reduction tailored to the relevant process. In granting any request for advisory or consultative services, the director may provide for an alternative means of affording consultation and advice other than on-site consultation.

(4) Any proprietary information obtained by the director while carrying out the duties required under this section shall remain confidential and shall not be publicized or become part of the database established under RCW 70.95C.060 without written permission of the requesting party. [1990 c 114 § 5; 1988 c 177 § 4.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**70.95C.050 Waste reduction techniques—Workshops and seminars.** The office, in coordination with all other state waste reduction technical assistance programs, shall sponsor technical workshops and seminars on waste reduction techniques that have been successfully used to eliminate or reduce substantially the amount of waste or toxicity of hazardous waste generated, or that use in-process recclamation or reuse of spent material. [1988 c 177 § 5.]

**70.95C.060 Waste reduction hot line—Database system.** (1) The office shall establish a statewide waste reduction hot line with the capacity to refer waste generators and the public to sources of information on specific waste reduction techniques and procedures. The hot line shall coordinate with all other state waste hot lines.

(2) The director shall work with the state library to establish a database system that shall include proven waste reduction techniques and case studies of effective waste reduction. The database system shall be: (a) Coordinated with all other state agency databases on waste reduction; (b) administered in conjunction with the statewide waste reduction hot line; and (c) readily accessible to the public. [1988 c 177 § 6.]

**70.95C.070 Waste reduction research and development program—Contracts.** (1) The office may administer a waste reduction research and development program. The director may contract with any public or private organization for the purpose of developing methods and technologies that achieve waste reduction. All research performed and all methods or technologies developed as a result of a contract entered into under this section shall become the property of the state and shall be incorporated into the database system established under RCW 70.95C.060.

(2) Any contract entered into under this section shall be awarded only after requests for proposals have been circulated to persons, firms, or organizations who have requested that their names be placed on a proposal list. The director shall establish a proposal list and shall review and evaluate all proposals received. [1988 c 177 § 7.]

**70.95C.080 Director's authority.** (1) The director may solicit and accept gifts, grants, conveyances, bequests, and devises, in trust or otherwise, to be directed to the office of waste reduction.

(2) The director may enter into contracts with any public or private organization to carry out the purposes of this chapter. [1988 c 177 § 8.]

**70.95C.110 Waste reduction and recycling program to promote activities by state agencies—Recycled paper goal.** The legislature finds and declares that the buildings and facilities owned and leased by state government produce significant amounts of solid and hazardous wastes, and actions must be taken to reduce and recycle these wastes and thus reduce the costs associated with their disposal. In order for the operations of state government to provide the citizens of the state an example of positive waste management, the legislature further finds and declares that state government should undertake an aggressive program designed to reduce and recycle solid and hazardous wastes produced in the operations of state buildings and facilities to the maximum extent possible.

The office of waste reduction, in cooperation with the department of general administration, shall establish an intensive waste reduction and recycling program to promote the reduction of waste produced by state agencies and to promote the source separation and recovery of recyclable and reusable materials.

All state agencies, including but not limited to, colleges, community colleges, universities, offices of elected and

(2010 Ed.)

appointed officers, the supreme court, court of appeals, and administrative departments of state government shall fully cooperate with the office of waste reduction and recycling in all phases of implementing the provisions of this section. The office shall establish a coordinated state plan identifying each agency's participation in waste reduction and recycling. The office shall develop the plan in cooperation with a multi-agency committee on waste reduction and recycling. Appointments to the committee shall be made by the director of the department of general administration. The director shall notify each agency of the committee, which shall implement the applicable waste reduction and recycling plan elements. All state agencies are to use maximum efforts to achieve a goal of increasing the use of recycled paper by fifty percent by July 1, 1993. [1989 c 431 § 53.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**70.95C.120 Waste reduction and recycling awards program in K-12 public schools—Encouraging waste reduction and recycling in private schools.** The office of waste reduction shall develop, in consultation with the superintendent of public instruction, an awards program to achieve waste reduction and recycling in public schools, and to encourage waste reduction and recycling in private schools, grades kindergarten through high school. The office shall develop guidelines for program development and implementation. Each public school shall, and each private school may, implement a waste reduction and recycling program conforming to guidelines developed by the office.

For the purpose of granting awards, the office may group all participating schools into not more than three classes, based upon student population, distance to markets for recyclable materials, and other criteria, as deemed appropriate by the office. Except as otherwise provided, five or more awards may be granted to each of the three classes. Each award shall be no more than five thousand dollars. Awards shall be granted each year to the schools that achieve the greatest levels of waste reduction and recycling. A single award of not less than five thousand dollars may be presented to the school having the best recycling program as measured by the total amount of materials recycled, including materials generated outside of the school. A single award of not less than five thousand dollars may be presented to the school having the best waste reduction program as determined by the office.

The superintendent of public instruction shall distribute guidelines and other materials developed by the office to implement programs to reduce and recycle waste generated in administrative offices, classrooms, laboratories, cafeterias, and maintenance operations. [2008 c 178 § 1; 1991 c 319 § 114; 1989 c 431 § 54.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**70.95C.200 Hazardous waste generators and users—Voluntary reduction plan.** (1) Each hazardous waste generator who generates more than two thousand six hundred forty pounds of hazardous waste per year and each hazardous substance user, except for those facilities that are primarily permitted treatment, storage, and disposal facilities or recycling facilities, shall prepare a plan for the voluntary reduction of

the use of hazardous substances and the generation of hazardous wastes. Hazardous waste generated and recycled for beneficial use, including initial amount of hazardous substances introduced into a process and subsequently recycled for beneficial use, shall not be used in the calculation of hazardous waste generated for purposes of this section. The department may develop reporting requirements, consistent with existing reporting, to establish recycling for beneficial use under this section. Used oil to be rerefined or burned for energy or heat recovery shall not be used in the calculation of hazardous wastes generated for purposes of this section, and is not required to be addressed by plans prepared under this section. A person with multiple interrelated facilities where the processes in the facilities are substantially similar, may prepare a single plan covering one or more of those facilities.

(2) Each user or generator required to write a plan is encouraged to advise its employees of the planning process and solicit comments or suggestions from its employees on hazardous substance use and waste reduction options.

(3) The department shall adopt by April 1, 1991, rules for preparation of plans. The rules shall require the plan to address the following options, according to the following order of priorities: Hazardous substance use reduction, waste reduction, recycling, and treatment. In the planning process, first consideration shall be given to hazardous substance use reduction and waste reduction options. Consideration shall be given next to recycling options. Recycling options may be considered only after hazardous substance use reduction options and waste reduction options have been thoroughly researched and shown to be inappropriate. Treatment options may be considered only after hazardous substance use reduction, waste reduction, and recycling options have been thoroughly researched and shown to be inappropriate. Documentation of the research shall be available to the department upon request. The rules shall also require the plans to discuss the hazardous substance use reduction, waste reduction, and closed loop recycling options separately from other recycling and treatment options. All plans shall be written in conformance with the format prescribed in the rules adopted under this section. The rules shall require the plans to include, but not be limited to:

(a) A written policy articulating management and corporate support for the plan and a commitment to implementing planned activities and achieving established goals;

(b) The plan scope and objectives;

(c) Analysis of current hazardous substance use and hazardous waste generation, and a description of current hazardous substance use reduction, waste reduction, recycling, and treatment activities;

(d) An identification of further hazardous substance use reduction, waste reduction, recycling, and treatment opportunities, and an analysis of the amount of hazardous substance use reduction and waste reduction that would be achieved, and the costs. The analysis of options shall demonstrate that the priorities provided for in this section have been followed;

(e) A selection of options to be implemented in accordance with the priorities established in this section;

(f) An analysis of impediments to implementing the options. Impediments that shall be considered acceptable include, but are not limited to: Adverse impacts on product

quality, legal or contractual obligations, economic practicality, and technical feasibility;

(g) A written policy stating that in implementing the selected options, whenever technically and economically practicable, risks will not be shifted from one part of a process, environmental media, or product to another;

(h) Specific performance goals in each of the following categories, expressed in numeric terms:

(i) Hazardous substances to be reduced or eliminated from use;

(ii) Wastes to be reduced or eliminated through waste reduction techniques;

(iii) Materials or wastes to be recycled; and

(iv) Wastes to be treated;

If the establishment of numeric performance goals is not practicable, the performance goals shall include a clearly stated list of objectives designed to lead to the establishment of numeric goals as soon as is practicable. Goals shall be set for a five-year period from the first reporting date;

(i) A description of how the wastes that are not recycled or treated and the residues from recycling and treatment processes are managed may be included in the plan;

(j) Hazardous substance use and hazardous waste accounting systems that identify hazardous substance use and waste management costs and factor in liability, compliance, and oversight costs;

(k) A financial description of the plan;

(l) Personnel training and employee involvement programs;

(m) A five-year plan implementation schedule;

(n) Documentation of hazardous substance use reduction and waste reduction efforts completed before or in progress at the time of the first reporting date; and

(o) An executive summary of the plan, which shall include, but not be limited to:

(i) The information required by (c), (e), (h), and (n) of this subsection; and

(ii) A summary of the information required by (d) and (f) of this subsection.

(4) Upon completion of a plan, the owner, chief executive officer, or other person with the authority to commit management to the plan shall sign and submit an executive summary of the plan to the department.

(5) Plans shall be completed and executive summaries submitted in accordance with the following schedule:

(a) Hazardous waste generators who generated more than fifty thousand pounds of hazardous waste in calendar year 1991 and hazardous substance users who were required to report in 1991, by September 1, 1992;

(b) Hazardous waste generators who generated between seven thousand and fifty thousand pounds of hazardous waste in calendar year 1992 and hazardous substance users who were required to report for the first time in 1992, by September 1, 1993;

(c) Hazardous waste generators who generated between two thousand six hundred forty and seven thousand pounds of hazardous waste in 1993 and hazardous substance users who were required to report for the first time in 1993, by September 1, 1994;

(d) Hazardous waste generators who have not been required to complete a plan on or prior to September 1, 1994,

must complete a plan by September 1 of the year following the first year that they generate more than two thousand six hundred forty pounds of hazardous waste; and

(e) Hazardous substance users who have not been required to complete a plan on or prior to September 1, 1994, must complete a plan by September 1 of the year following the first year that they are required to report under section 313 of Title III of the Superfund Amendments and Reauthorization Act.

(6) Annual progress reports, including a description of the progress made toward achieving the specific performance goals established in the plan, shall be prepared and submitted to the department in accordance with rules developed under this section. Upon the request of two or more users or generators belonging to similar industrial classifications, the department may aggregate data contained in their annual progress reports for the purpose of developing a public record.

(7) Every five years, each plan shall be updated, and a new executive summary shall be submitted to the department. [1991 c 319 § 314; 1990 c 114 § 6.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

#### **70.95C.210 Voluntary reduction plan—Exemption.**

A person required to prepare a plan under RCW 70.95C.200 because of the quantity of hazardous waste generated may petition the director to be excused from this requirement. The person must demonstrate to the satisfaction of the director that the quantity of hazardous waste generated was due to unique circumstances not likely to be repeated and that the person is unlikely to generate sufficient hazardous waste to require a plan in the next five years. [1990 c 114 § 7.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**70.95C.220 Voluntary reduction plan, executive summary, or progress report—Department review.** (1) The department may review a plan, executive summary, or an annual progress report to determine whether the plan, executive summary, or annual progress report is adequate pursuant to the rules developed under this section and with the provisions of RCW 70.95C.200. In determining the adequacy of any plan, executive summary, or annual progress report, the department shall base its determination solely on whether the plan, executive summary, or annual progress report is complete and prepared in accordance with the provisions of RCW 70.95C.200.

(2) Plans developed under RCW 70.95C.200 shall be retained at the facility of the hazardous substance user or hazardous waste generator preparing a plan. The plan is not a public record under the public records act, chapter 42.56 RCW. A user or generator required to prepare a plan shall permit the director or a representative of the director to review the plan to determine its adequacy. No visit made by the director or a representative of the director to a facility for the purposes of this subsection may be regarded as an inspection or investigation, and no notices or citations may be issued, nor any civil penalty assessed, upon such a visit.

(3) If a hazardous substance user or hazardous waste generator fails to complete an adequate plan, executive summary, or annual progress report, the department shall notify

(2010 Ed.)

the user or generator of the inadequacy, identifying specific deficiencies. For the purposes of this section, a deficiency may include failure to develop a plan, failure to submit an executive summary pursuant to the schedule provided in RCW 70.95C.200(5), and failure to submit an annual progress report pursuant to the rules developed under RCW 70.95C.200(6). The department shall specify a reasonable time frame, of not less than ninety days, within which the user or generator shall complete a modified plan, executive summary, or annual progress report addressing the specified deficiencies.

(4) If the department determines that a modified plan, executive summary, or annual progress report is inadequate, the department may, within its discretion, either require further modification or enter an order pursuant to subsection (5)(a) of this section.

(5)(a) If, after having received a list of specified deficiencies from the department, a hazardous substance user or hazardous waste generator required to prepare a plan fails to complete modification of a plan, executive summary, or annual progress report within the time period specified by the department, the department may enter an order pursuant to chapter 34.05 RCW finding the user or generator not in compliance with the requirements of RCW 70.95C.200. When the order is final, the department shall notify the department of revenue to charge a penalty fee. The penalty fee shall be the greater of one thousand dollars or three times the amount of the user's or generator's previous year's fee, in addition to the current year's fee. If no fee was assessed the previous year, the penalty shall be the greater of one thousand dollars or three times the amount of the current year's fee. The penalty assessed under this subsection shall be collected each year after the year for which the penalty was assessed until an adequate plan or executive summary is completed.

(b) If a hazardous substance user or hazardous waste generator required to prepare a plan fails to complete an adequate plan, executive summary, or annual progress report after the department has levied against the user or generator the penalty provided in (a) of this subsection, the user or generator shall be required to pay a surcharge to the department whenever the user or generator disposes of a hazardous waste at any hazardous waste incinerator or hazardous waste landfill facility located in Washington state, until a plan, executive summary, or annual progress report is completed and determined to be adequate by the department. The surcharge shall be equal to three times the fee charged for disposal. The department shall furnish the incinerator and landfill facilities in this state with a list of environmental protection agency/state identification numbers of the hazardous waste generators that are not in compliance with the requirements of RCW 70.95C.200. [2005 c 274 § 338; 1990 c 114 § 8.]

**Part headings not law—Effective date—2005 c 274:** See RCW 42.56.901 and 42.56.902.

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**70.95C.230 Appeal of department order or surcharge.** A user or generator may appeal from a department order or a surcharge under RCW 70.95C.220 to the pollution control hearings board pursuant to chapter 43.21B RCW. [1990 c 114 § 9.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**70.95C.240 Public inspection of plans, summaries, progress reports.** (1) The department shall make available for public inspection any executive summary or annual progress report submitted to the department. Any hazardous substance user or hazardous waste generator required to prepare an executive summary or annual progress report who believes that disclosure of any information contained in the executive summary or annual progress report may adversely affect the competitive position of the user or generator may request the department pursuant to RCW 43.21A.160 to delete from the public record those portions of the executive summary or annual progress report that may affect the user's or generator's competitive position. The department shall not disclose any information contained in an executive summary or annual progress report pending a determination of whether the department will delete any information contained in the report from the public record.

(2) Any ten persons residing within ten miles of a hazardous substance user or hazardous waste generator required to prepare a plan may file with the department a petition requesting the department to examine a plan to determine its adequacy. The department shall report its determination of adequacy to the petitioners and to the user or generator within a reasonable time. The department may deny a petition if the department has within the previous year determined the plan of the user or generator named in the petition to be adequate.

(3) The department shall maintain a record of each plan, executive summary, or annual progress report it reviews, and a list of all plans, executive summaries, or annual progress reports the department has determined to be inadequate, including descriptions of corrective actions taken. This information shall be made available to the public. [1990 c 114 § 10.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**70.95C.250 Multimedia permit pilot program—Air, water, hazardous waste management.** (1) Not later than January 1, 1995, the department shall designate an industry type and up to ten individual facilities within that industry type to be the focus of a pilot multimedia program. The program shall be designed to coordinate department actions related to environmental permits, plans, approvals, certificates, registrations, technical assistance, and inspections. The program shall also investigate the feasibility of issuing facility-wide permits. The director shall determine the industry type and facilities based on:

- (a) A review of at least three industry types; and
- (b) Criteria which shall include at least the following factors:
  - (i) The potential for the industry to serve as a statewide model for multimedia environmental programs including pollution prevention;
  - (ii) Whether the industry type is subject to regulatory requirements relating to at least two of the following subject areas: Air quality, water quality, or hazardous waste management;
  - (iii) The existence within the industry type of a range of business sizes; and
  - (iv) Voluntary participation in the program.

(2) In developing the program, the department shall consult with and seek the cooperation of the environmental protection agency.

(3) For purposes of this section, "facility-wide permit" means a single multimedia permit issued by the department to the owner or operator of a facility incorporating the permits and any other relevant department approvals previously issued to the owner or operator or currently required by the department. [1998 c 245 § 134; 1994 c 248 § 1.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

## Chapter 70.95D RCW SOLID WASTE INCINERATOR AND LANDFILL OPERATORS

### Sections

70.95D.010	Definitions.
70.95D.020	Incineration facilities—Owner and operator certification requirements.
70.95D.030	Landfills—Owner and operator certification requirements.
70.95D.040	Certification process—Suspension of license or certificate for noncompliance with support order.
70.95D.051	Ad hoc advisory committees.
70.95D.060	Revocation of certification.
70.95D.070	Certification of inspectors.
70.95D.080	Authority of director.
70.95D.090	Unlawful acts—Variance from requirements.
70.95D.100	Penalties.
70.95D.110	Deposit of receipts.
70.95D.900	Severability—1989 c 431.
70.95D.901	Section captions not law—1989 c 431.

**70.95D.010 Definitions.** Unless the context clearly requires otherwise the definitions in this section apply throughout this chapter.

(1) "Certificate" means a certificate of competency issued by the director stating that the operator has met the requirements for the specified operator classification of the certification program.

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

(3) "Director" means the director of ecology.

(4) "Incinerator" means a facility which has the primary purpose of burning or which is designed with the primary purpose of burning solid waste or solid waste derived fuel, but excludes facilities that have the primary purpose of burning hog fuel.

(5) "Landfill" means a landfill as defined under RCW 70.95.030.

(6) "Owner" means, in the case of a town or city, the city or town acting through its chief executive officer or the lessee if operated pursuant to a lease or contract; in the case of a county, the chief elected official of the county legislative authority or the chief elected official's designee; in the case of a board of public utilities, association, municipality, or other public body, the president or chief elected official of the body or the president's or chief elected official's designee; in the case of a privately owned landfill or incinerator, the legal owner.

(7) "Solid waste" means solid waste as defined under RCW 70.95.030. [1995 c 269 § 2801; 1989 c 431 § 65.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**70.95D.020 Incineration facilities—Owner and operator certification requirements.** (1) By January 1, 1992,

the owner or operator of a solid waste incineration facility shall employ a certified operator. At a minimum, the individual on-site at a solid waste incineration facility who is designated by the owner as the operator in responsible charge of the operation and maintenance of the facility on a routine basis shall be certified by the department.

(2) If a solid waste incinerator is operated on more than one daily shift, the operator in charge of each shift shall be certified.

(3) Operators not required to be certified are encouraged to become certified on a voluntary basis.

(4) The department shall adopt and enforce such rules as may be necessary for the administration of this section. [1989 c 431 § 66.]

**70.95D.030 Landfills—Owner and operator certification requirements.** (1) By January 1, 1992, the owner or operator of a landfill shall employ a certified landfill operator.

(2) For each of the following types of landfills defined in existing regulations: Inert, demolition waste, problem waste, and municipal solid waste, the department shall adopt rules classifying all landfills in each class. The factors to be considered in the classification shall include, but not be limited to, the type and amount of waste in place and projected to be disposed of at the site, whether the landfill currently meets state and federal operating criteria, the location of the landfill, and such other factors as may be determined to affect the skill, knowledge, and experience required of an operator to operate the landfill in a manner protective of human health and the environment.

(3) The rules shall identify the landfills in each class in which the owner or operator will be required to employ a certified landfill operator who is on-site at all times the landfill is operating. At a minimum, the rule shall require that owners and operators of landfills are required to employ a certified landfill operator who is on call at all times the landfill is operating. [1989 c 431 § 67.]

**70.95D.040 Certification process—Suspension of license or certificate for noncompliance with support order.** (1) The department shall establish a process to certify incinerator and landfill operators. To the greatest extent possible, the department shall rely on the certification standards and procedures developed by national organizations and the federal government.

(2) Operators shall be certified if they:

- (a) Attend the required training sessions;
- (b) Successfully complete required examinations; and
- (c) Pay the prescribed fee.

(3) By January 1, 1991, the department shall adopt rules to require incinerator and appropriate landfill operators to:

- (a) Attend a training session concerning the operation of the relevant type of landfill or incinerator;
- (b) Demonstrate sufficient skill and competency for proper operation of the incinerator or landfill by successfully completing an examination prepared by the department; and
- (c) Renew the certificate of competency at reasonable intervals established by the department.

(4) The department shall provide for the collection of fees for the issuance and renewal of certificates. These fees shall be sufficient to recover the costs of the certification program.

(5) The department shall establish an appeals process for the denial or revocation of a certificate.

(6) The department shall establish a process to automatically certify operators who have received comparable certification from another state, the federal government, a local government, or a professional association.

(7) Upon July 23, 1989, and prior to January 1, 1992, the owner or operator of an incinerator or landfill may apply to the department for interim certification. Operators shall receive interim certification if they:

(a) Have received training provided by a recognized national organization, educational institution, or the federal government that is acceptable to the department; or

(b) Have received individualized training in a manner approved by the department; and

(c) Have successfully completed any required examinations.

(8) No interim certification shall be valid after January 1, 1992, and interim certification shall not automatically qualify operators for certification pursuant to subsections (2) through (4) of this section.

(9) The department shall immediately suspend the license or certificate of a person who has been certified pursuant to RCW 74.20A.320 by the department of social and health services as a person who is not in compliance with a support order or a \*residential or visitation order. If the person has continued to meet all other requirements for reinstatement during the suspension, reissuance of the license or certificate shall be automatic upon the department's receipt of a release issued by the department of social and health services stating that the licensee is in compliance with the order. [1997 c 58 § 875; 1989 c 431 § 68.]

**\*Reviser's note:** 1997 c 58 § 886 requiring a court to order certification of noncompliance with residential provisions of a court-ordered parenting plan was vetoed. Provisions ordering the department of social and health services to certify a responsible parent based on a court order to certify for non-compliance with residential provisions of a parenting plan were vetoed. See RCW 74.20A.320.

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

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**70.95D.051 Ad hoc advisory committees.** The director may establish ad hoc advisory committees, as necessary, to obtain advice and technical assistance on the certification of solid waste incinerator and landfill operators. [1995 c 269 § 2804.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**70.95D.060 Revocation of certification.** (1) The director may revoke a certificate:

(a) If it were found to have been obtained by fraud or deceit;

(b) For gross negligence in the operation of a solid waste incinerator or landfill;

(c) For violating the requirements of this chapter or any lawful rule or order of the department; or

(d) If the facility operated by the certified employee is operated in violation of state or federal environmental laws.

(2) A person whose certificate is revoked under this section shall not be eligible to apply for a certificate for one year from the effective date of the final order of revocation. [1995 c 269 § 2802; 1989 c 431 § 70.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**70.95D.070 Certification of inspectors.** Any person who is employed by a public agency to inspect the operation of a landfill or a solid waste incinerator to determine the compliance of the facility with state or local laws or rules shall be required to be certified in the same manner as an operator under this chapter. [1989 c 431 § 71.]

**70.95D.080 Authority of director.** To carry out the provisions and purposes of this chapter, the director may:

(1) Enter into agreements, contracts, or cooperative arrangements, under such terms and conditions as the director deems appropriate, with other state, federal, or interstate agencies, municipalities, educational institutions, or other organizations or individuals.

(2) Receive financial and technical assistance from the federal government, other public agencies, and private agencies.

(3) Participate in related programs of the federal government, other states, interstate agencies, other public agencies, or private agencies or organizations.

(4) Upon request, furnish reports, information, and materials relating to the certification program authorized by this chapter to federal, state, or interstate agencies, municipalities, educational institutions, and other organizations and individuals.

(5) Establish adequate fiscal controls and accounting procedures to assure proper disbursement of and accounting for funds appropriated or otherwise provided for the purpose of carrying out this chapter.

(6) Adopt rules under chapter 34.05 RCW. [1989 c 431 § 72.]

**70.95D.090 Unlawful acts—Variance from requirements.** After January 1, 1992, it is unlawful for any person, firm, corporation, municipal corporation, or other governmental subdivision or agency to operate a solid waste incineration or landfill facility unless the operators are duly certified by the director under this chapter or any lawful rule or order of the department. It is unlawful for any person to perform the duties of an operator without being duly certified under this chapter. The department shall adopt rules that allow the owner or operator of a landfill or solid waste incineration facility to request a variance from this requirement under emergency conditions. The department may impose such conditions as may be necessary to protect human health and the environment during the term of the variance. [1989 c 431 § 73.]

**70.95D.100 Penalties.** (1) Any person, including any firm, corporation, municipal corporation, or other governmental subdivision or agency, with the exception of incinera-

tor operators, violating any provision of this chapter or the rules adopted under this chapter, is guilty of a misdemeanor.

(2) Any incinerator operator who violates any provision of this chapter is guilty of a gross misdemeanor.

(3) Each day of operation in violation of this chapter or any rules adopted under this chapter shall constitute a separate offense.

(4) The prosecuting attorney or the attorney general, as appropriate, shall secure injunctions of continuing violations of any provisions of this chapter or the rules adopted under this chapter. [2003 c 53 § 356; 1989 c 431 § 74.]

**Intent—Effective date—2003 c 53:** See notes following RCW 2.48.180.

**70.95D.110 Deposit of receipts.** All receipts realized in the administration of this chapter shall be paid into the general fund. [1989 c 431 § 75.]

**70.95D.900 Severability—1989 c 431.** See RCW 70.95.901.

**70.95D.901 Section captions not law—1989 c 431.** See RCW 70.95.902.

## Chapter 70.95E RCW HAZARDOUS WASTE FEES

### Sections

70.95E.010	Definitions.
70.95E.020	Hazardous waste generation—Fee.
70.95E.030	Voluntary reduction plan—Fees.
70.95E.040	Fees—Generally.
70.95E.050	Administration of fees.
70.95E.080	Hazardous waste assistance account.
70.95E.090	Technical assistance and compliance education—Grants.
70.95E.100	Exclusion from chapter.
70.95E.900	Severability—1990 c 114.

**70.95E.010 Definitions.** As used in this chapter, the following terms have the meanings indicated unless the context clearly requires otherwise.

(1) "Dangerous waste" shall have the same definition as set forth in \*RCW 70.105.010(5) and shall include those wastes designated as dangerous by rules adopted pursuant to chapter 70.105 RCW.

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

(3) "EPA/ state identification number" means the number assigned by the EPA (environmental protection agency) or by the department of ecology to each generator and/or transporter and treatment, storage, and/or disposal facility.

(4) "Extremely hazardous waste" shall have the same definition as set forth in \*RCW 70.105.010(6) and shall specifically include those wastes designated as extremely hazardous by rules adopted pursuant to chapter 70.105 RCW.

(5) "Fee" means the annual fees imposed under this chapter.

(6) "Generate" means any act or process which produces hazardous waste or first causes a hazardous waste to become subject to regulation.

(7) "Hazardous waste" means and includes all dangerous and extremely hazardous wastes but for the purposes of this

chapter excludes all radioactive wastes or substances composed of both radioactive and hazardous components.

(8) "Hazardous waste generator" means all persons whose primary business activities are identified by the department to generate any quantity of hazardous waste in the calendar year for which the fee is imposed.

(9) "Person" means an individual, trust, firm, joint stock company, partnership, association, state, public or private or municipal corporation, commission, political subdivision of a state, interstate body, the federal government including any agency or officer thereof, and any Indian tribe or authorized tribal organization.

(10) "Price deflator" means the United States department of commerce bureau of economic analysis, "Implicit Price Deflator for Gross National Product" for "Government Purchases of Goods and Services," for "State and Local Government."

(11) "Recycled for beneficial use" means the use of hazardous waste, either before or after reclamation, as a substitute for a commercial product or raw material, but does not include: (a) Use constituting disposal; (b) incineration; or (c) use as a fuel.

(12) "Waste generation site" means any geographical area that has been assigned an EPA/ state identification number. [1995 c 207 § 1; 1994 c 136 § 1; 1990 c 114 § 11.]

\*Reviser's note: Due to the alphabetization of RCW 70.105.010 pursuant to RCW 1.08.015(2)(k), subsections (5) and (6) were changed to subsections (1) and (7) respectively.

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**70.95E.020 Hazardous waste generation—Fee.** A fee is imposed for the privilege of generating hazardous waste in the state. The annual amount of the fee shall be thirty-five dollars upon every hazardous waste generator doing business in Washington in the current calendar year or any part thereof. This fee shall be collected by the department or its designee. A hazardous waste generator shall be exempt from the fee imposed under this section if the value of products, gross proceeds of sales, or gross income of the business, from all business activities of the hazardous waste generator, is less than twelve thousand dollars in the current calendar year. The department shall, subject to appropriation, use the funds collected from the fees assessed in this subsection to support the activities of the office of waste reduction as specified in RCW 70.95C.030. The fee imposed pursuant to this section is due annually by July 1 of the year following the calendar year for which the fee is imposed. [1995 c 207 § 2. Prior: 1994 sp.s. c 2 § 3; 1994 c 136 § 2; 1990 c 114 § 12.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**70.95E.030 Voluntary reduction plan—Fees.** Hazardous waste generators and hazardous substance users required to prepare plans under RCW 70.95C.200 shall pay an annual fee to support implementation of RCW 70.95C.200 and 70.95C.040. These fees are to be used by the department, subject to appropriation, for plan review, technical assistance to facilities that are required to prepare plans, other activities related to plan development and implementation, and associated indirect costs. The total fees collected under this subsection shall not exceed the department's costs of implementing RCW 70.95C.200 and 70.95C.040 and shall not exceed one

million dollars per year. The annual fee for a facility shall not exceed ten thousand dollars per year. Any facility that generates less than two thousand six hundred forty pounds of hazardous waste per waste generation site in the previous calendar year shall be exempt from the fee imposed by this section. The annual fee for a facility generating at least two thousand six hundred forty pounds but not more than four thousand pounds of hazardous waste per waste generation site in the previous calendar year shall not exceed fifty dollars. A person that develops a plan covering more than one interrelated facility as provided for in RCW 70.95C.200 shall be assessed fees only for the number of plans prepared. The department shall adopt a fee schedule by rule after consultation with typical affected businesses and other interested parties. Hazardous waste generated and recycled for beneficial use, including initial amount of hazardous substances introduced into a process and subsequently recycled for beneficial use, shall not be used in the calculations of hazardous waste generated for purposes of this section.

The annual fee imposed by this section shall be first due on July 1 of the year prior to the year that the facility is required to prepare a plan, and by July 1 of each year thereafter. [1994 c 136 § 3; 1990 c 114 § 13.]

**70.95E.040 Fees—Generally.** On an annual basis, the department shall adjust the fees provided for in RCW 70.95E.020 and 70.95E.030, including the maximum annual fee, and maximum total fees, by conducting the calculation in subsection (1) of this section and taking the actions set forth in subsection (2) of this section:

(1) In November of each year, the fees, annual fee, and maximum total fees imposed in RCW 70.95E.020 and 70.95E.030, or as subsequently adjusted by this section, shall be multiplied by a factor equal to the most current quarterly "price deflator" available, divided by the "price deflator" used in the numerator the previous year. However, the "price deflator" used in the denominator for the first adjustment shall be defined by the second quarter "price deflator" for 1990.

(2) Each year by March 1 the fee schedule, as adjusted in subsection (1) of this section will be published. The department will round the published fees to the nearest dollar. [1990 c 114 § 14.]

**70.95E.050 Administration of fees.** In administration of this chapter for the enforcement and collection of the fees due and owing under RCW 70.95E.020 and 70.95E.030, the department may apply RCW 43.17.240. [1995 c 207 § 3; 1994 c 136 § 4; 1990 c 114 § 15.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**70.95E.080 Hazardous waste assistance account.** The hazardous waste assistance account is hereby created in the state treasury. The following moneys shall be deposited into the hazardous waste assistance account:

(1) Those revenues which are raised by the fees imposed under RCW 70.95E.020 and 70.95E.030;

(2) Penalties and surcharges collected under chapter 70.95C RCW and this chapter; and

(3) Any other moneys appropriated or transferred to the account by the legislature. Moneys in the hazardous waste assistance account may be spent only for the purposes of this chapter following legislative appropriation. [1991 sp.s. c 13 § 75; 1990 c 114 § 18.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**70.95E.090 Technical assistance and compliance education—Grants.** The department may use funds in the hazardous waste assistance account to provide technical assistance and compliance education assistance to hazardous substance users and waste generators, to provide grants to local governments, and for administration of this chapter.

Technical assistance may include the activities authorized under chapter 70.95C RCW and RCW 70.105.170 to encourage hazardous waste reduction and hazardous use reduction and the assistance provided for by RCW 70.105.100(2).

Compliance education may include the activities authorized under RCW 70.105.100(2) to train local agency officials and to inform hazardous substance users and hazardous waste generators and owners and operators of hazardous waste management facilities of the requirements of chapter 70.105 RCW and related federal laws and regulations. To the extent practicable, the department shall contract with private businesses to provide compliance education.

Grants to local governments shall be used for small quantity generator technical assistance and compliance education components of their moderate risk waste plans as required by RCW 70.105.220. [1995 c 207 § 4; 1990 c 114 § 19.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**70.95E.100 Exclusion from chapter.** Nothing in this chapter relates to radioactive wastes or substances composed of both radioactive and hazardous components, and the department is precluded from using the funds of the hazardous waste assistance account for the regulation and control of such wastes. [1990 c 114 § 20.]

**70.95E.900 Severability—1990 c 114.** If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1990 c 114 § 23.]

## Chapter 70.95F RCW LABELING OF PLASTICS

### Sections

70.95F.010	Definitions.
70.95F.020	Labeling requirements—Plastic industry standards.
70.95F.030	Violations, penalty.
70.95F.900	Severability—1991 c 319.
70.95F.901	Part headings not law—1991 c 319.

**70.95F.010 Definitions.** Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Container," unless otherwise specified, refers to "rigid plastic container" or "plastic bottle" as those terms are defined in this section.

(2) "Distributors" means those persons engaged in the distribution of packaged goods for sale in the state of Washington, including manufacturers, wholesalers, and retailers.

(3) "Label" means a molded, imprinted, or raised symbol on or near the bottom of a plastic container or bottle.

(4) "Person" means an individual, sole proprietor, partnership, association, or other legal entity.

(5) "Plastic" means a material made of polymeric organic compounds and additives that can be shaped by flow.

(6) "Plastic bottle" means a plastic container intended for single use that has a neck that is smaller than the body of the container, accepts a screw-type, snap cap, or other closure and has a capacity of sixteen fluid ounces or more, but less than five gallons.

(7) "Rigid plastic container" means a formed or molded container, other than a bottle, intended for single use, composed predominantly of plastic resin, and having a relatively inflexible finite shape or form with a capacity of eight ounces or more but less than five gallons. [1991 c 319 § 103.]

**70.95F.020 Labeling requirements—Plastic industry standards.** (1) The provisions of this section and any rules adopted under this section shall be interpreted to conform with nationwide plastics industry standards.

(2) Except as provided in RCW 70.95F.030(2), after January 1, 1992, no person may distribute, sell, or offer for sale in this state a plastic bottle or rigid plastic container unless the container is labeled with a code identifying the appropriate resin type used to produce the structure of the container. The code shall consist of a number placed within three triangulated arrows and letters placed below the triangle of arrows. The triangulated arrows shall be equilateral, formed by three arrows with the apex of each point of the triangle at the midpoint of each arrow, rounded with a short radius. The pointer (arrowhead) of each arrow shall be at the midpoint of each side of the triangle with a short gap separating the pointer from the base of the adjacent arrow. The triangle, formed by the three arrows curved at their midpoints shall depict a clockwise path around the code number. The numbers and letters used shall be as follows:

- (a) 1.= PETE (polyethylene terephthalate)
- (b) 2.= HDPE (high density polyethylene)
- (c) 3.= V (vinyl)
- (d) 4.= LDPE (low density polyethylene)
- (e) 5.= PP (polypropylene)
- (f) 6.= PS (polystyrene)
- (g) 7.= OTHER

[1991 c 319 § 104.]

**70.95F.030 Violations, penalty.** (1) A person who, after written notice from the department, violates RCW 70.95F.020 is subject to a civil penalty of fifty dollars for each violation up to a maximum of five hundred dollars and may be enjoined from continuing violations. Each distribution constitutes a separate offense.

(2) Retailers and distributors shall have two years from May 21, 1991, to clear current inventory, delivered or received and held in their possession as of May 21, 1991. [1991 c 319 § 105.]

**70.95F.900 Severability—1991 c 319.** If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1991 c 319 § 411.]

**70.95F.901 Part headings not law—1991 c 319.** Part headings as used in this act do not constitute any part of the law. [1991 c 319 § 409.]

**Chapter 70.95G RCW**

**PACKAGES CONTAINING METALS**

Sections

- 70.95G.005 Finding.
- 70.95G.010 Definitions.
- 70.95G.020 Concentration levels.
- 70.95G.030 Exemptions.
- 70.95G.040 Certificate of compliance.
- 70.95G.050 Certificate of compliance—Public access.
- 70.95G.060 Prohibition of sale of package.
- 70.95G.900 Severability—Part headings not law—1991 c 319.

**70.95G.005 Finding.** The legislature finds and declares that:

- (1) The management of solid waste can pose a wide range of hazards to public health and safety and to the environment;
- (2) Packaging comprises a significant percentage of the overall solid waste stream;
- (3) The presence of heavy metals in packaging is a part of the total concern in light of their likely presence in emissions or ash when packaging is incinerated, or in leachate when packaging is landfilled;
- (4) Lead, mercury, cadmium, and hexavalent chromium, on the basis of available scientific and medical evidence, are of particular concern;
- (5) The intent of this chapter is to achieve a reduction in toxicity without impeding or discouraging the expanded use of postconsumer materials in the production of packaging and its components. [1991 c 319 § 106.]

**70.95G.010 Definitions.** Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

- (1) "Package" means a container providing a means of marketing, protecting, or handling a product and shall include a unit package, an intermediate package, and a shipping container. "Package" also means and includes unsealed receptacles such as carrying cases, crates, cups, pails, rigid foil and other trays, wrappers and wrapping films, bags, and tubs.
- (2) "Manufacturer" means a person, firm, or corporation that applies a package to a product for distribution or sale.
- (3) "Packaging component" means an individual assembled part of a package such as, but not limited to, any interior or exterior blocking, bracing, cushioning, weatherproofing,

(2010 Ed.)

exterior strapping, coatings, closures, inks, and labels. [1991 c 319 § 107.]

**70.95G.020 Concentration levels.** The sum of the concentration levels of lead, cadmium, mercury, and hexavalent chromium present in any package or packaging component shall not exceed the following:

- (1) Six hundred parts per million by weight effective July 1, 1993;
- (2) Two hundred fifty parts per million by weight effective July 1, 1994; and
- (3) One hundred parts per million by weight effective July 1, 1995.

This section shall apply only to lead, cadmium, mercury, and hexavalent chromium that has been intentionally introduced as an element during manufacturing or distribution. [1992 c 131 § 1; 1991 c 319 § 108.]

**70.95G.030 Exemptions.** All packages and packaging components shall be subject to this chapter except the following:

- (1) Those packages or package components with a code indicating date of manufacture that were manufactured prior to May 21, 1991;
- (2) Those packages or packaging components that have been purchased by, delivered to, or are possessed by a retailer on or before twenty-four months following May 21, 1991, to permit opportunity to clear existing inventory of the proscribed packaging material;
- (3) Those packages or packaging components to which lead, cadmium, mercury, or hexavalent chromium have been added in the manufacturing, forming, printing, or distribution process in order to comply with health or safety requirements of federal law or for which there is no feasible alternative; or
- (4) Those packages and packaging components that would not exceed the maximum contaminant levels set forth in RCW 70.95G.020(1) but for the addition of postconsumer materials; and provided that the exemption for this subsection shall expire six years after May 21, 1991. [1991 c 319 § 109.]

**70.95G.040 Certificate of compliance.** By July 1, 1993, a certificate of compliance stating that a package or packaging component is in compliance with the requirements of this chapter shall be developed by its manufacturer. If compliance is achieved under the exemption or exemptions provided in RCW 70.95G.030 (3) or (4), the certificate shall state the specific basis upon which the exemption is claimed. The certificate of compliance shall be signed by an authorized official of the manufacturing company. The certificate of compliance shall be kept on file by the manufacturer for as long as the package or packaging component is in use, and for three years from the date of the last sale or distribution by the manufacturer. Certificates of compliance, or copies thereof, shall be furnished to the department of ecology upon request within sixty days. If manufacturers are required under any other state statute to provide a certificate of compliance, one certificate may be developed containing all required information.

If the manufacturer or supplier of the package or packaging component reformulates or creates a new package or

packaging component, the manufacturer shall develop an amended or new certificate of compliance for the reformulated or new package or packaging component. [1991 c 319 § 110.]

**70.95G.050 Certificate of compliance—Public access.** Requests from a member of the public for any certificate of compliance shall be:

- (1) Made in writing to the department of ecology;
- (2) Made specific as to package or packaging component information requested; and
- (3) Responded to by the department of ecology within ninety days. [1991 c 319 § 111.]

**70.95G.060 Prohibition of sale of package.** The department of ecology may prohibit the sale of any package for which a manufacturer has failed to respond to a request by the department for a certificate of compliance within the allotted period of time pursuant to RCW 70.95G.040. [1991 c 319 § 112.]

**70.95G.900 Severability—Part headings not law—1991 c 319.** See RCW 70.95F.900 and 70.95F.901.

## Chapter 70.95H RCW

### CLEAN WASHINGTON CENTER

#### Sections

70.95H.005	Finding.
70.95H.007	Center created.
70.95H.010	Purpose—Market development defined.
70.95H.030	Duties and responsibilities.
70.95H.040	Authority.
70.95H.050	Funding.
70.95H.900	Termination.
70.95H.901	Captions not law.
70.95H.902	Severability—Part headings not law—1991 c 319.

**70.95H.005 Finding.** (1) The legislature finds that:

- (a) Recycling conserves energy and landfill space, provides jobs and valuable feedstock materials to industry, and promotes health and environmental protection;
- (b) Seventy-eight percent of the citizens of the state actively participate in recycling programs and Washington currently has the highest recycling rate in the nation;
- (c) The current supply of many recycled commodities far exceeds the demand for such commodities;
- (d) Many local governments and private entities cumulatively affect, and are affected by, the market for recycled commodities but have limited jurisdiction and cannot adequately address the problems of market development that are complex, wide-ranging, and regional in nature; and
- (e) The private sector has the greatest capacity for creating and expanding markets for recycled commodities, and the development of private markets for recycled commodities is in the public interest.

(2) It is therefore the policy of the state to create a single entity to be known as the clean Washington center to develop new, and expand existing, markets for recycled commodities. [1991 c 319 § 201.]

**70.95H.007 Center created.** There is created the clean Washington center within the \*department of community, trade, and economic development. As used in this chapter, "center" means the clean Washington center. [1995 c 399 § 192; 1991 c 319 § 202.]

\*Reviser's note: The "department of community, trade, and economic development" was renamed the "department of commerce" by 2009 c 565.

**70.95H.010 Purpose—Market development defined.** The purpose of the center is to provide or facilitate business assistance, basic and applied research and development, marketing, public education, and policy analysis in furthering the development of markets for recycled products. As used in this chapter, market development consists of public and private activities that are used to overcome impediments preventing full use of secondary materials diverted from the waste stream, and that encourage and expand use of those materials and subsequent products. In fulfilling this mission the center shall primarily direct its services to businesses that transform or remanufacture waste materials into usable or marketable materials or products for use other than landfill disposal or incineration. [1991 c 319 § 203.]

**70.95H.030 Duties and responsibilities.** The center shall:

- (1) Provide targeted business assistance to recycling businesses, including:
  - (a) Development of business plans;
  - (b) Market research and planning information;
  - (c) Access to financing programs;
  - (d) Referral and information on market conditions; and
  - (e) Information on new technology and product development;
- (2) Negotiate voluntary agreements with manufacturers to increase the use of recycled materials in product development;
- (3) Support and provide research and development to stimulate and commercialize new and existing technologies and products using recycled materials;
- (4) Undertake an integrated, comprehensive education effort directed to recycling businesses to promote processing, manufacturing, and purchase of recycled products, including:
  - (a) Provide information to recycling businesses on the availability and benefits of using recycled materials;
  - (b) Provide information and referral services on recycled material markets;
  - (c) Provide information on new research and technologies that may be used by local businesses and governments; and
  - (d) Participate in projects to demonstrate new market uses or applications for recycled products;
- (5) Assist the departments of ecology and general administration in the development of consistent definitions and standards on recycled content, product performance, and availability;
- (6) Undertake studies on the unmet capital needs of reprocessing and manufacturing firms using recycled materials;
- (7) Undertake and participate in marketing promotions for the purposes of achieving expanded market penetration for recycled content products;

(8) Coordinate with the department of ecology to ensure that the education programs of both are mutually reinforcing, with the center acting as the lead entity with respect to recycling businesses, and the department as the lead entity with respect to the general public and retailers;

(9) Develop an annual work plan. The plan shall describe actions and recommendations for developing markets for commodities comprising a significant percentage of the waste stream and having potential for use as an industrial or commercial feedstock. The initial plan shall address, but not be limited to, mixed waste paper, waste tires, yard and food waste, and plastics; and

(10) Represent the state in regional and national market development issues. [1992 c 131 § 2; 1991 c 319 § 205.]

**70.95H.040 Authority.** In order to carry out its responsibilities under this chapter, the center may:

(1) Receive such gifts, grants, funds, fees, and endowments, in trust or otherwise, for the use and benefit of the purposes of the center. The center may expend the same or any income therefrom according to the terms of the gifts, grants, or endowments;

(2) Initiate, conduct, or contract for studies and searches relating to market development for recyclable materials, including but not limited to applied research, technology transfer, and pilot demonstration projects;

(3) Obtain and disseminate information relating to market development for recyclable materials from other state and local agencies;

(4) Enter into, amend, and terminate contracts with individuals, corporations, trade associations, and research institutions for the purposes of this chapter;

(5) Provide grants to local governments or other public institutions to further the development of recycling markets;

(6) Provide business and marketing assistance to public and private sector entities within the state; and

(7) Evaluate, analyze, and make recommendations on state policies that may affect markets for recyclable materials. [1991 c 319 § 206.]

**70.95H.050 Funding.** The center shall solicit financial contributions and support from manufacturing industries and other private sector sources, foundations, and grants from governmental sources to assist in conducting its activities. It may also use separately appropriated funds of the \*department of community, trade, and economic development for the center's activities. [1995 c 399 § 194; 1991 c 319 § 207.]

\*Reviser's note: The "department of community, trade, and economic development" was renamed the "department of commerce" by 2009 c 565.

**70.95H.900 Termination.** The center shall terminate on June 30, 1997. [1991 c 319 § 209.]

**70.95H.901 Captions not law.** Section headings as used in this chapter do not constitute any part of the law. [1991 c 319 § 211.]

**70.95H.902 Severability—Part headings not law—1991 c 319.** See RCW 70.95F.900 and 70.95F.901.

(2010 Ed.)

## Chapter 70.95I RCW USED OIL RECYCLING

### Sections

70.95I.005	Finding.
70.95I.010	Definitions.
70.95I.020	Used oil recycling element.
70.95I.030	Used oil recycling element guidelines—Waiver—Statewide goals.
70.95I.040	Oil sellers—Education responsibility—Penalty.
70.95I.050	Statewide education.
70.95I.060	Disposal of used oil—Penalty.
70.95I.070	Used oil transporter and processor requirements—Civil penalties.
70.95I.080	Above-ground used oil collection tanks.
70.95I.900	Captions not law.
70.95I.901	Short title.
70.95I.902	Severability—Part headings not law—1991 c 319.

**70.95I.005 Finding.** (1) The legislature finds that:

(a) Millions of gallons of used oil are generated each year in this state, and used oil is a valuable petroleum resource that can be recycled;

(b) The improper collection, transportation, recycling, use, or disposal of used oil contributes to the pollution of air, water, and land, and endangers public health and welfare;

(c) The private sector is a vital resource in the collection and recycling of used oil and should be involved in its collection and recycling whenever practicable.

(2) In light of the harmful consequences of improper disposal and use of used oil, and its value as a resource, the legislature declares that the collection, recycling, and reuse of used oil is in the public interest.

(3) The department, when appropriate, should promote the rerefining of used oil in its grants, public education, regulatory, and other programs. [1991 c 319 § 301.]

*Hazardous waste: Chapter 70.95C RCW.*

**70.95I.010 Definitions.** Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Rerefining used oil" means the reclaiming of base lube stock from used oil for use again in the production of lube stock. Rerefining used oil does not mean combustion or landfilling.

(2) "Used oil" means (a) lubricating fluids that have been removed from an engine crankcase, transmission, gearbox, hydraulic device, or differential of an automobile, bus, truck, vessel, plane, heavy equipment, or machinery powered by an internal combustion engine; (b) any oil that has been refined from crude oil, used, and as a result of use, has been contaminated with physical or chemical impurities; and (c) any oil that has been refined from crude oil and, as a consequence of extended storage, spillage, or contamination, is no longer useful to the original purchaser. "Used oil" does not include used oil to which hazardous wastes have been added.

(3) "Public used oil collection site" means a site where a used oil collection tank has been placed for the purpose of collecting household generated used oil. "Public used oil collection site" also means a vehicle designed or operated to collect used oil from the public.

(4) "Lubricating oil" means any oil designed for use in, or maintenance of, a vehicle, including, but not limited to, motor oil, gear oil, and hydraulic oil. "Lubricating oil" does

not mean petroleum hydrocarbons with a flash point below one hundred degrees Centigrade.

(5) "Vehicle" includes every device physically capable of being moved upon a public or private highway, road, street, watercourse, or trail, and in, upon, or by which any person or property is or may be transported or drawn upon a public or private highway, road, street, watercourse, or trail, except devices moved by human or animal power.

(6) "Department" means the department of ecology.

(7) "Local government" means a city or county developing a local hazardous waste plan under RCW 70.105.220. [1991 c 319 § 302.]

**70.951.020 Used oil recycling element.** (1) Each local government and its local hazardous waste plan under RCW 70.105.220 is required to include a used oil recycling element. This element shall include:

(a) A plan to reach the local goals for household used oil recycling established by the local government and the department under RCW 70.951.030. The plan shall, to the maximum extent possible, incorporate voluntary agreements with the private sector and state agencies to provide sites for the collection of used oil. Where provided, the plan shall also incorporate residential collection of used oil;

(b) A plan for enforcing the sign and container ordinances required by RCW 70.951.040;

(c) A plan for public education on used oil recycling; and

(d) An estimate of funding needed to implement the requirements of this chapter. This estimate shall include a budget reserve for disposal of contaminated oil detected at any public used oil collection site administered by the local government.

(2) By July 1, 1993, each local government or combination of contiguous local governments shall submit its used oil recycling element to the department. The department shall approve or disapprove the used oil recycling element by January 1, 1994, or within ninety days of submission, whichever is later. The department shall approve or disapprove the used oil recycling element if it determines that the element is consistent with this chapter and the guidelines developed by the department under RCW 70.951.030.

(3) Each local government, or combination of contiguous local governments, shall submit an annual statement to the department describing the number of used oil collection sites and the quantity of household used oil recycled for the jurisdiction during the previous calendar year. The first statement shall be due April 1, 1994. Subsequent statements shall be due April 1st of each year.

Nothing in this section shall be construed to require a city or county to construct or operate a public used oil collection site. [1991 c 319 § 303.]

**70.951.030 Used oil recycling element guidelines—Waiver—Statewide goals.** (1) By July 1, 1992, the department shall, in consultation with local governments, prepare guidelines for the used oil recycling elements required by RCW 70.951.020. The guidelines shall:

(a) Require development of local collection and refining goals for household used oil for each entity preparing a used oil recycling element under RCW 70.951.020;

(b) Require local government to recommend the number of used oil collection sites needed to meet the local goals. The department shall establish criteria regarding minimum levels of used oil collection sites;

(c) Require local government to identify locations suitable as public used oil collection sites as described under RCW 70.951.020(1)(a).

(2) The department may waive all or part of the specific requirements of RCW 70.951.020 if a local government demonstrates to the satisfaction of the department that the objectives of this chapter have been met.

(3) The department may prepare and implement a used oil recycling plan for any local government failing to complete the used oil recycling element of the plan.

(4) The department shall develop statewide collection and refining goals for household used oil for each calendar year beginning with calendar year 1994. Goals shall be based on the estimated statewide collection and refining rate for calendar year 1993, and shall increase each year until calendar year 1996, when the rate shall be eighty percent.

(5) By July 1, 1993, the department shall prepare guidelines establishing statewide equipment and operating standards for public used oil collection sites. Standards shall:

(a) Allow the use of used oil collection igloos and other types of portable used oil collection tanks;

(b) Prohibit the disposal of nonhousehold-generated used oil;

(c) Limit the amount of used oil deposited to five gallons per household per day;

(d) Ensure adequate protection against leaks and spills; and

(e) Include other requirements deemed appropriate by the department. [1991 c 319 § 304.]

**70.951.040 Oil sellers—Education responsibility—Penalty.** (1) A person annually selling one thousand or more gallons of lubricating oil to ultimate consumers for use or installation off the premises, or five hundred or more vehicle oil filters to ultimate consumers for use or installation off the premises within a city or county having an approved used oil recycling element, shall:

(a) Post and maintain at or near the point of sale, durable and legible signs informing the public of the importance of used oil recycling and how and where used oil may be properly recycled; and

(b) Provide for sale at or near the display location of the lubricating oil or vehicle oil filters, household used oil recycling containers. The department shall design and print the signs required by this section, and shall make them available to local governments and retail outlets.

(2) A person, who, after notice, violates this section is guilty of a misdemeanor and on conviction is subject to a fine not to exceed one thousand dollars.

(3) The department is responsible for notifying retailers subject to this section.

(4) A city or county may adopt household used oil recycling container standards in order to ensure compatibility with local recycling programs.

(5) Each local government preparing a used oil recycling element of a local hazardous waste plan pursuant to RCW 70.951.020 shall adopt ordinances within its jurisdiction to

enforce subsections (1) and (4) of this section. [1991 c 319 § 305.]

**70.95I.050 Statewide education.** The department shall conduct a public education program to inform the public of the needs for and benefits of collecting and recycling used oil in order to conserve resources and protect the environment. As part of this program, the department shall:

(1) Establish and maintain a statewide list of public used oil collection sites, and a list of all persons coordinating local government used oil programs;

(2) Establish a statewide media campaign describing used oil recycling;

(3) Assist local governments in providing public education and awareness programs concerning used oil by providing technical assistance and education materials; and

(4) Encourage the establishment of voluntary used oil collection and recycling programs, including public-private partnerships, and provide technical assistance to persons organizing such programs. [1991 c 319 § 306.]

**70.95I.060 Disposal of used oil—Penalty.** (1) Effective January 1, 1992, the use of used oil for dust suppression or weed abatement is prohibited.

(2) Effective July 1, 1992, no person may sell or distribute absorbent-based kits, intended for home use, as a means for collecting, recycling, or disposing of used oil.

(3) Effective January 1, 1994, no person may knowingly dispose of used oil except by delivery to a person collecting used oil for recycling, treatment, or disposal, subject to the provisions of this chapter and chapter 70.105 RCW.

(4) Effective January 1, 1994, no owner or operator of a solid waste landfill may knowingly accept used oil for disposal in the landfill.

(5) A person who violates this section is guilty of a misdemeanor. [1991 c 319 § 307.]

**70.95I.070 Used oil transporter and processor requirements—Civil penalties.** (1) By January 1, 1993, the department shall adopt rules requiring any transporter of used oil to comply with minimum notification, invoicing, record-keeping, and reporting requirements. For the purpose of this section, a transporter means a person engaged in the off-site transportation of used oil in quantities greater than twenty-five gallons per day.

(2) By January 1, 1993, the department shall adopt minimum standards for used oil that is blended into fuels. Standards shall, at a minimum, establish testing and recordkeeping requirements. Unless otherwise exempted, a processor is any person involved in the marketing, blending, mixing, or processing of used oil to produce fuel to be burned for energy recovery.

(3) Any person who knowingly transports used oil without meeting the requirements of this section shall be subject to civil penalties under chapter 70.105 RCW.

(4) Rules developed under this section shall not require a manifest from individual residences served by a waste oil curbside collection program. [1991 c 319 § 308.]

(2010 Ed.)

**70.95I.080 Above-ground used oil collection tanks.** By January 1, 1987, the state fire protection board, in cooperation with the department of ecology, shall develop a statewide standard for the placement of above-ground tanks to collect used oil from private individuals for recycling purposes. [1986 c 37 § 1. Formerly RCW 19.114.040.]

**70.95I.900 Captions not law.** Section headings as used in this chapter do not constitute any part of the law. [1991 c 319 § 309.]

**70.95I.901 Short title.** This chapter shall be known and may be cited as the used oil recycling act. [1991 c 319 § 310.]

**70.95I.902 Severability—Part headings not law—1991 c 319.** See RCW 70.95F.900 and 70.95F.901.

## Chapter 70.95J RCW

### MUNICIPAL SEWAGE SLUDGE—BIOSOLIDS

#### Sections

70.95J.005	Findings—Municipal sewage sludge as a beneficial commodity.
70.95J.007	Purpose—Federal requirements.
70.95J.010	Definitions.
70.95J.020	Biosolid management program—Transportation of biosolids and sludge.
70.95J.025	Biosolids permits—Fees—Biosolids permit account—Report.
70.95J.030	Beneficial uses for biosolids and glassified sewage sludge.
70.95J.040	Violations—Orders.
70.95J.050	Enforcement of chapter.
70.95J.060	Violations—Punishment.
70.95J.070	Violations—Monetary penalty.
70.95J.080	Delegation to local health department—Generally.
70.95J.090	Delegation to local health department—Review.

**70.95J.005 Findings—Municipal sewage sludge as a beneficial commodity.** (1) The legislature finds that:

(a) Municipal sewage sludge is an unavoidable by-product of the wastewater treatment process;

(b) Population increases and technological improvements in wastewater treatment processes will double the amount of sludge generated within the next ten years;

(c) Sludge management is often a financial burden to municipalities and to ratepayers;

(d) Properly managed municipal sewage sludge is a valuable commodity and can be beneficially used in agriculture, silviculture, and in landscapes as a soil conditioner; and

(e) Municipal sewage sludge can contain metals and microorganisms that, under certain circumstances, may pose a risk to public health.

(2) The legislature declares that a program shall be established to manage municipal sewage sludge and that the program shall, to the maximum extent possible, ensure that municipal sewage sludge is reused as a beneficial commodity and is managed in a manner that minimizes risk to public health and the environment. [1992 c 174 § 1.]

**70.95J.007 Purpose—Federal requirements.** The purpose of this chapter is to provide the department of ecology and local governments with the authority and direction to meet federal regulatory requirements for municipal sewage sludge. The department of ecology may seek delegation and

administer the sludge permit program required by the federal clean water act as it existed February 4, 1987. [1992 c 174 § 2.]

**70.95J.010 Definitions.** Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Biosolids" means municipal sewage sludge that is a primarily organic, semisolid product resulting from the wastewater treatment process, that can be beneficially recycled and meets all requirements under this chapter. For the purposes of this chapter, "biosolids" includes septic tank sludge, also known as septage, that can be beneficially recycled and meets all requirements under this chapter.

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

(3) "Local health department" has the same meaning as "jurisdictional health department" in RCW 70.95.030.

(4) "Municipal sewage sludge" means a semisolid substance consisting of settled sewage solids combined with varying amounts of water and dissolved materials generated from a publicly owned wastewater treatment plant. [1992 c 174 § 3.]

**70.95J.020 Biosolid management program—Transportation of biosolids and sludge.** (1) The department shall adopt rules to implement a biosolid management program within twelve months of the adoption of federal rules, 40 C.F.R. Sec. 503, relating to technical standards for the use and disposal of sewage sludge. The biosolid management program shall, at a minimum, conform with all applicable federal rules adopted pursuant to the federal clean water act as it existed on February 4, 1987.

(2) In addition to any federal requirements, the state biosolid management program may include, but not be limited to, an education program to provide relevant legal and scientific information to local governments and citizen groups.

(3) Rules adopted by the department under this section shall provide for public input and involvement for all state and local permits.

(4) Materials that have received a permit as a biosolid shall be regulated pursuant to this chapter.

(5) The transportation of biosolids and municipal sewage sludge shall be governed by Title 81 RCW. Certificates issued by the utilities and transportation commission before June 11, 1992, that include or authorize transportation of municipal sewage sludge shall continue in force and effect and be interpreted to include biosolids. [1992 c 174 § 4.]

**70.95J.025 Biosolids permits—Fees—Biosolids permit account—Report.** (1) The department shall establish annual fees to collect expenses for issuing and administering biosolids permits under this chapter. An initial fee schedule shall be established by rule and shall be adjusted no more often than once every two years. This fee schedule applies to all permits, regardless of date of issuance, and fees shall be assessed prospectively. Fees shall be established in amounts to recover expenses incurred by the department in processing permit applications and modifications, reviewing related plans and documents, monitoring, evaluating, conducting inspections, overseeing performance of delegated program

elements, providing technical assistance and supporting overhead expenses that are directly related to these activities.

(2) The annual fee paid by a permittee for any permit issued under this chapter shall be determined by the number of residences or residential equivalents contributing to the permittee's biosolids management system. If residences or residential equivalents cannot be determined or reasonably estimated, fees shall be based on other appropriate criteria.

(3) The biosolids permit account is created in the state treasury. All receipts from fees under this section must be deposited into the account. Moneys in the account may be spent only after appropriation. Expenditures from the account may be used only for the purposes of administering permits under this chapter.

(4) The department shall present a biennial progress report on the use of moneys from the biosolids permit account to the legislature. The first report is due on or before December 31, 1998, and thereafter on or before December 31st of odd-numbered years. The report shall consist of information on fees collected, actual expenses incurred, and anticipated expenses for the current and following fiscal years.

(5) The department shall work with the regulated community and local health departments to study the feasibility of modifying the fee schedule to support delegated local health departments and reduce local health department fees paid by biosolids permittees. [1997 c 398 § 1.]

**70.95J.030 Beneficial uses for biosolids and glassified sewage sludge.** The department may work with all appropriate state agencies, local governments, and private entities to establish beneficial uses for biosolids and glassified sewage sludge. [1992 c 174 § 5.]

**70.95J.040 Violations—Orders.** If a person violates any provision of this chapter, or a permit issued or rule adopted pursuant to this chapter, the department may issue an appropriate order to assure compliance with the chapter, permit, or rule. [1992 c 174 § 6.]

**70.95J.050 Enforcement of chapter.** The department, with the assistance of the attorney general, may bring an action at law or in equity, including an action for injunctive relief, to enforce this chapter or a permit issued or rule adopted by the department pursuant to this chapter. [1992 c 174 § 7.]

**70.95J.060 Violations—Punishment.** A person who willfully violates, without sufficient cause, any of the provisions of this chapter, or a permit or order issued pursuant to this chapter, is guilty of a gross misdemeanor. Willful violation of this chapter, or a permit or order issued pursuant to this chapter is a gross misdemeanor punishable by a fine of up to ten thousand dollars and costs of prosecution, or by imprisonment for up to one year, or by both. Each day of violation may be deemed a separate violation. [1992 c 174 § 8.]

**70.95J.070 Violations—Monetary penalty.** In addition to any other penalty provided by law, a person who violates this chapter or rules or orders adopted or issued pursuant to it shall be subject to a penalty in an amount of up to five

thousand dollars a day for each violation. Each violation shall be a separate violation. In the case of a continuing violation, each day of violation is a separate violation. An act of commission or omission that procures, aids, or abets in the violation shall be considered a violation under this section. [1992 c 174 § 9.]

#### **70.95J.080 Delegation to local health department—**

**Generally.** The department may delegate to a local health department the powers necessary to issue and enforce permits to use or dispose of biosolids. A delegation may be withdrawn if the department finds that a local health department is not effectively administering the permit program. [1992 c 174 § 10.]

#### **70.95J.090 Delegation to local health department—**

**Review.** (1) Any permit issued by a local health department under RCW 70.95J.080 may be reviewed by the department to ensure that the proposed site or facility conforms with all applicable laws, rules, and standards under this chapter.

(2) If the department does not approve or disapprove a permit within sixty days, the permit shall be considered approved.

(3) A local health department may appeal the department's decision to disapprove a permit to the pollution control hearings board, as provided in chapter 43.21B RCW. [1992 c 174 § 11.]

### **Chapter 70.95K RCW BIOMEDICAL WASTE**

#### Sections

70.95K.005	Findings.
70.95K.010	Definitions.
70.95K.011	State definition preempts local definitions.
70.95K.020	Waste treatment technologies.
70.95K.030	Residential sharps—Disposal—Violation.
70.95K.040	Residential sharps waste collection.
70.95K.900	Section headings.
70.95K.910	Severability—1992 c 14.
70.95K.920	Effective dates—1992 c 14.

**70.95K.005 Findings.** The legislature finds and declares that:

(1) It is a matter of statewide concern that biomedical waste be handled in a manner that protects the health, safety, and welfare of the public, the environment, and the workers who handle the waste.

(2) Infectious disease transmission has not been identified from improperly disposed biomedical waste, but the potential for such transmission may be present.

(3) A uniform, statewide definition of biomedical waste will simplify compliance with local regulations while preserving local control of biomedical waste management. [1992 c 14 § 1.]

**70.95K.010 Definitions.** Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Biomedical waste" means, and is limited to, the following types of waste:

(a) "Animal waste" is waste animal carcasses, body parts, and bedding of animals that are known to be infected with, or that have been inoculated with, human pathogenic microorganisms infectious to humans.

(b) "Biosafety level 4 disease waste" is waste contaminated with blood, excretions, exudates, or secretions from humans or animals who are isolated to protect others from highly communicable infectious diseases that are identified as pathogenic organisms assigned to biosafety level 4 by the centers for disease control, national institute of health, biosafety in microbiological and biomedical laboratories, current edition.

(c) "Cultures and stocks" are wastes infectious to humans and includes specimen cultures, cultures and stocks of etiologic agents, wastes from production of biologicals and serums, discarded live and attenuated vaccines, and laboratory waste that has come into contact with cultures and stocks of etiologic agents or blood specimens. Such waste includes but is not limited to culture dishes, blood specimen tubes, and devices used to transfer, inoculate, and mix cultures.

(d) "Human blood and blood products" is discarded waste human blood and blood components, and materials containing free-flowing blood and blood products.

(e) "Pathological waste" is waste human source biopsy materials, tissues, and anatomical parts that emanate from surgery, obstetrical procedures, and autopsy. "Pathological waste" does not include teeth, human corpses, remains, and anatomical parts that are intended for interment or cremation.

(f) "Sharps waste" is all hypodermic needles, syringes with needles attached, IV tubing with needles attached, scalpel blades, and lancets that have been removed from the original sterile package.

(2) "Local government" means city, town, or county.

(3) "Local health department" means the city, county, city-county, or district public health department.

(4) "Person" means an individual, firm, corporation, association, partnership, consortium, joint venture, commercial entity, state government agency, or local government.

(5) "Treatment" means incineration, sterilization, or other method, technique, or process that changes the character or composition of a biomedical waste so as to minimize the risk of transmitting an infectious disease.

(6) "Residential sharps waste" has the same meaning as "sharps waste" in subsection (1) of this section except that the sharps waste is generated and prepared for disposal at a residence, apartment, dwelling, or other noncommercial habitat.

(7) "Sharps waste container" means a leak-proof, rigid, puncture-resistant red container that is taped closed or tightly lidded to prevent the loss of the residential sharps waste.

(8) "Mail programs" means those programs that provide sharps users with a multiple barrier protection kit for the placement of a sharps container and subsequent mailing of the wastes to an approved disposal facility.

(9) "Pharmacy return programs" means those programs where sharps containers are returned by the user to designated return sites located at a pharmacy to be transported by a biomedical or solid waste collection company approved by the utilities and transportation commission.

(10) "Drop-off programs" means those program sites designated by the solid waste planning jurisdiction where sharps users may dispose of their sharps containers.

(11) "Source separation" has the same meaning as in RCW 70.95.030.

(12) "Unprotected sharps" means residential sharps waste that are not disposed of in a sharps waste container. [1994 c 165 § 2; 1992 c 14 § 2.]

**Findings—Purpose—Intent—1994 c 165:** "The legislature finds that the improper disposal and labeling of sharps waste from residences poses a potential health risk and perceived threat to the waste generators, public, and workers in the waste and recycling industry. The legislature further finds that a uniform method for handling sharps waste generated at residences will reduce confusion and injuries, and enhance public and waste worker confidence.

It is the purpose and intent of this act that residential generated sharps waste be contained in easily identified containers and separated from the regular solid waste stream to ensure worker safety and promote proper disposal of these wastes in a manner that is environmentally safe and economically sound." [1994 c 165 § 1.]

**70.95K.011 State definition preempts local definitions.** The definition of biomedical waste set forth in RCW 70.95K.010 shall be the sole state definition for biomedical waste within the state, and shall preempt biomedical waste definitions established by a local health department or local government. [1992 c 14 § 3.]

**70.95K.020 Waste treatment technologies.** (1) At the request of an applicant, the department of health, in consultation with the department of ecology and local health departments, may evaluate the environmental and public health impacts of biomedical waste treatment technologies. The department shall make available the results of any evaluation to local health departments.

(2) All direct costs associated with the evaluation shall be paid by the applicant to the department of health or to a state or local entity designated by the department of health.

(3) For the purposes of this section, "applicant" means any person representing a biomedical waste treatment technology that seeks an evaluation under subsection (1) of this section.

(4) The department of health may adopt rules to implement this section. [1992 c 14 § 4.]

**70.95K.030 Residential sharps—Disposal—Violation.** (1) A person shall not intentionally place unprotected sharps or a sharps waste container into: (a) Recycling containers provided by a city, county, or solid waste collection company, or any other recycling collection site unless that site is specifically designated by a local health department as a drop-off site for sharps waste containers; or (b) cans, carts, drop boxes, or other containers in which refuse, trash, or solid waste has been placed for collection if a source separated collection service is provided for residential sharps waste.

(2) Local health departments shall enforce this section, primarily through an educational approach regarding proper disposal of residential sharps. On the first and second violation, the health department shall provide a warning to the person that includes information on proper disposal of residential sharps. A subsequent violation shall be a class 3 infraction under chapter 7.80 RCW.

(3) It is not a violation of this section to place a sharps waste container into a household refuse receptacle if the utilities and transportation commission determines that such

placement is necessary to reduce the potential for theft of the sharps waste container. [1994 c 165 § 3.]

**Findings—Purpose—Intent—1994 c 165:** See note following RCW 70.95K.010.

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**70.95K.040 Residential sharps waste collection.** (1) A public or private provider of solid waste collection service may provide a program to collect source separated residential sharps waste containers in conjunction with regular collection services.

(2) A company collecting source separated residential sharps waste containers shall notify the public, in writing, on the availability of this service. Notice shall occur at least forty-five days prior to the provision of this service and shall include the following information: (a) How to properly dispose of residential sharps waste; (b) how to obtain sharps waste containers; (c) the cost of the program; (d) options to home collection of sharps waste; and (e) the legal requirements of residential sharps waste disposal.

(3) A company under the jurisdiction of the utilities and transportation commission may provide the service authorized under subsection (1) of this section only under tariff.

The commission may require companies collecting sharps waste containers to implement practices that will protect the containers from theft. [1994 c 165 § 4.]

**Findings—Purpose—Intent—1994 c 165:** See note following RCW 70.95K.010.

**70.95K.900 Section headings.** Section headings as used in this chapter do not constitute any part of the law. [1992 c 14 § 5.]

**70.95K.910 Severability—1992 c 14.** If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1992 c 14 § 6.]

**70.95K.920 Effective dates—1992 c 14.** (1) Sections 2 and 3 of this act are necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately [March 20, 1992].

(2) Section 4 of this act shall take effect October 1, 1992. [1992 c 14 § 7.]

## Chapter 70.95L RCW

### DETERGENT PHOSPHORUS CONTENT

#### Sections

70.95L.005	Finding.
70.95L.010	Definitions.
70.95L.020	Phosphorus content regulated.
70.95L.030	Notice to distributors and wholesalers.
70.95L.040	Injunction.

**70.95L.005 Finding.** The legislature hereby finds and declares that:

(1) Phosphorus loading of surface waters can stimulate the growth of weeds and algae, and that such growth can have adverse environmental, health, and aesthetic effects;

(2) Household detergents contribute to phosphorus loading, and that a limit on detergents containing phosphorus can significantly reduce the discharge of phosphorus into the state's surface and ground waters;

(3) Household detergents containing no or very low phosphorus are readily available and that over thirty percent of the United States population lives in areas with a ban on detergents containing phosphorus;

(4) Phosphorus limits on household detergents can significantly reduce treatment costs at those sewage treatment facilities that remove phosphorus from the waste stream; and

(5) While significant reductions of phosphorus from laundry detergent have been accomplished, similar progress in reducing phosphorus contributions from dishwashing detergents has not been achieved.

It is therefore the intent of the legislature to impose a statewide limit on the phosphorus content of household detergents. [2006 c 223 § 1; 1993 c 118 § 1.]

**70.95L.010 Definitions.** Unless the context clearly requires otherwise, the definitions in this section apply throughout RCW 70.95L.005 through 70.95L.030.

(1) "Department" means the department of ecology.

(2) "Dishwashing detergent" means a cleaning agent sold, used, or manufactured for the purpose of cleaning dishes, whether by hand or by household machine.

(3) "Laundry detergent" means a cleaning agent sold, used, or manufactured for the purpose of cleaning laundry, whether by hand or by household machine.

(4) "Person" means an individual, firm, association, copartnership, political subdivision, government agency, municipality, industry, public or private corporation, or any other entity whatsoever.

(5) "Phosphorus" means elemental phosphorus. [1993 c 118 § 2.]

**70.95L.020 Phosphorus content regulated.** (1) After July 1, 1994, a person may not sell or distribute for sale a laundry detergent that contains 0.5 percent or more phosphorus by weight.

(2)(a) After July 1, 1994, and until the dates specified in this subsection, a person may not sell or distribute for sale a dishwashing detergent that contains 8.7 percent or more phosphorus by weight.

(b) Beginning July 1, 2008, in counties located east of the crest of the Cascade mountains with populations greater than four hundred thousand, as determined by office of financial management population estimates, a person may not sell or distribute for sale a dishwashing detergent that contains 0.5 percent or more phosphorus by weight.

(c) From July 1, 2008, to June 30, 2010, in counties located west of the crest of the Cascade mountains with populations greater than one hundred eighty thousand and less than two hundred twenty thousand, as determined by office of financial management population estimates, a person may not sell or distribute for sale a dishwashing detergent that contains 0.5 percent or more phosphorus by weight except in

(2010 Ed.)

a single-use package containing no more than 2.0 grams of phosphorus.

(d) Beginning July 1, 2010, a person may not sell or distribute for sale a dishwashing detergent that contains 0.5 percent or more phosphorus by weight in the state.

(e) For purposes of this section, "single-use package" means a tablet or other form of dishwashing detergent that is constituted and intended for use in a single washing.

(3) This section does not apply to the sale or distribution of detergents for commercial and industrial uses. [2008 c 193 § 1; 2006 c 223 § 2; 1993 c 118 § 3.]

**70.95L.030 Notice to distributors and wholesalers.** The department is responsible for notifying major distributors and wholesalers of the statewide limit on phosphorus in detergents. [1993 c 118 § 4.]

**70.95L.040 Injunction.** The attorney general or appropriate city or county prosecuting attorney is authorized to bring an appropriate action to enjoin any violation of the provisions of RCW 70.95L.020. [1993 c 118 § 5.]

## Chapter 70.95M RCW MERCURY

### Sections

70.95M.010	Definitions.
70.95M.020	Fluorescent lamps—Labeling requirements.
70.95M.030	Mercury disposal education plan.
70.95M.040	Schools—Purchase of mercury prohibited.
70.95M.050	Prohibited sales—Novelties, manometers, thermometers, thermostats, motor vehicles, bulk mercury.
70.95M.060	Rules—Product preference.
70.95M.070	Clearinghouse—Department participation.
70.95M.080	Penalties.
70.95M.090	Crematories—Nonapplicability of chapter.
70.95M.100	Prescription drugs, biological products, over-the-counter items—Nonapplicability of chapter.
70.95M.110	Medical equipment, research tests—Nonapplicability of chapter.
70.95M.115	Vaccines.
70.95M.120	Fiscal impact—Toxics control account.
70.95M.130	National mercury repository site.

**70.95M.010 Definitions.** The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Bulk mercury" includes any elemental, nonamalgamated mercury, regardless of volume quantity or weight and does not include products containing mercury collected for recycling or disposal at a permitted disposal facility.

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

(3) "Director" means the director of the department of ecology.

(4) "Health care facility" includes a hospital, nursing home, extended care facility, long-term care facility, clinical or medical laboratory, state or private health or mental institution, clinic, physician's office, or health maintenance organization.

(5) "Manufacturer" includes any person, firm, association, partnership, corporation, governmental entity, organization, or joint venture that produces a mercury-added product or an importer or domestic distributor of a mercury-added product produced in a foreign country. In the case of a mul-

ticomponent product containing mercury, the manufacturer is the last manufacturer to produce or assemble the product. If the multicomponent product or mercury-added product is produced in a foreign country, the manufacturer is the first importer or domestic distributor.

(6) "Mercury-added button-cell battery" means a button-cell battery to which the manufacturer intentionally introduces mercury for the operation of the battery.

(7) "Mercury-added novelty" means a mercury-added product intended mainly for personal or household enjoyment or adornment. Mercury-added novelties include, but are not limited to, items intended for use as practical jokes, figurines, adornments, toys, games, cards, ornaments, yard statues and figures, candles, jewelry, holiday decorations, items of apparel, and other similar products. Mercury-added novelty does not include games, toys, or products that require a button-cell or lithium battery, liquid crystal display screens, or a lamp that contains mercury.

(8) "Mercury-added product" means a product, commodity, or chemical, or a product with a component that contains mercury or a mercury compound intentionally added to the product, commodity, or chemical in order to provide a specific characteristic, appearance, or quality, or to perform a specific function, or for any other reason. Mercury-added products include those products listed in the interstate mercury education and reduction clearinghouse mercury-added products database, but are not limited to, mercury thermometers, mercury thermostats, mercury barometers, lamps, and mercury switches or relays.

(9) "Mercury manometer" means a mercury-added product that is used for measuring blood pressure.

(10) "Mercury thermometer" means a mercury-added product that is used for measuring temperature.

(11) "Retailer" means a retailer of a mercury-added product.

(12) "Switch" means any device, which may be referred to as a switch, sensor, valve, probe, control, transponder, or any other apparatus, that directly regulates or controls the flow of electricity, gas, or other compounds, such as relays or transponders. "Switch" includes all components of the unit necessary to perform its flow control function. "Automotive mercury switch" includes a convenience switch, such as a switch for a trunk or hood light, and a mercury switch in antilock brake systems. "Utility switch" includes, but is not limited to, all devices that open or close an electrical circuit, or a liquid or gas valve. "Utility relay" includes, but is not limited to, all products or devices that open or close electrical contacts to control the operation of other devices in the same or other electrical circuit.

(13) "Wholesaler" means a wholesaler of a mercury-added product. [2010 c 130 § 18; 2003 c 260 § 2.]

**Severability—2010 c 130:** See RCW 70.275.901.

**70.95M.020 Fluorescent lamps—Labeling requirements.** (1) Effective January 1, 2004, a manufacturer, wholesaler, or retailer may not knowingly sell at retail a fluorescent lamp if the fluorescent lamp contains mercury and was manufactured after November 30, 2003, unless the fluorescent lamp is labeled in accordance with the guidelines listed under subsection (2) of this section. Primary responsibility for

affixing labels required under this section is on the manufacturer, and not on the wholesaler or retailer.

(2) Except as provided in subsection (3) of this section, a lamp is considered labeled pursuant to subsection (1) of this section if the lamp has all of the following:

(a) A label affixed to the lamp that displays the internationally recognized symbol for the element mercury; and

(b) A label on the lamp's packaging that: (i) Clearly informs the purchaser that mercury is present in the item; (ii) explains that the fluorescent lamp should be disposed of according to applicable federal, state, and local laws; and (iii) provides a toll-free telephone number, and a uniform resource locator internet address to a web site, that contains information on applicable disposal laws.

(3) The manufacturer of a mercury-added lamp is in compliance with the requirements of this section if the manufacturer is in compliance with the labeling requirements of another state.

(4) The provisions of this section do not apply to products containing mercury-added lamps. [2003 c 260 § 3.]

**70.95M.030 Mercury disposal education plan.** The department of health must develop an educational plan for schools, local governments, businesses, and the public on the proper disposal methods for mercury and mercury-added products. [2003 c 260 § 4.]

**70.95M.040 Schools—Purchase of mercury prohibited.** A school may not purchase for use in a primary or secondary classroom bulk elemental mercury or chemical mercury compounds. By January 1, 2006, all primary and secondary schools in the state must remove and properly dispose of all bulk elemental mercury, chemical mercury, and bulk mercury compounds used as teaching aids in science classrooms, not including barometers. [2003 c 260 § 5.]

**70.95M.050 Prohibited sales—Novelties, manometers, thermometers, thermostats, motor vehicles, bulk mercury.** (1) Effective January 1, 2006, no person may sell, offer for sale, or distribute for sale or use in this state a mercury-added novelty. A manufacturer of mercury-added novelties must notify all retailers that sell the product about the provisions of this section and how to properly dispose of any remaining mercury-added novelty inventory.

(2)(a) Effective January 1, 2006, no person may sell, offer for sale, or distribute for sale or use in this state a manometer used to measure blood pressure or a thermometer that contains mercury. This subsection (2)(a) does not apply to:

(i) An electronic thermometer with a button-cell battery containing mercury;

(ii) A thermometer that contains mercury and that is used for food research and development or food processing, including meat, dairy products, and pet food processing;

(iii) A thermometer that contains mercury and that is a component of an animal agriculture climate control system or industrial measurement system or for veterinary medicine until such a time as the system is replaced or a nonmercury component for the system or application is available;

(iv) A thermometer or manometer that contains mercury that is used for calibration of other thermometers, manometers, apparatus, or equipment, unless a nonmercury calibration standard is approved for the application by the national institute of standards and technology;

(v) A thermometer that is provided by prescription. A manufacturer of a mercury thermometer shall supply clear instructions on the careful handling of the thermometer to avoid breakage and proper cleanup should a breakage occur; or

(vi) A manometer or thermometer sold or distributed to a hospital, or a health care facility controlled by a hospital, if the hospital has adopted a plan for mercury reduction consistent with the goals of the mercury chemical action plan developed by the department under section 302, chapter 371, Laws of 2002.

(b) A manufacturer of thermometers that contain mercury must notify all retailers that sell the product about the provisions of this section and how to properly dispose of any remaining thermometer inventory.

(3) Effective January 1, 2006, no person may sell, install, or reinstall a commercial or residential thermostat that contains mercury unless the manufacturer of the thermostat conducts or participates in a thermostat recovery or recycling program designed to assist contractors in the proper disposal of thermostats that contain mercury in accordance with 42 U.S.C. Sec. 6901, et seq., the federal resource conservation and recovery act.

(4) No person may sell, offer for sale, or distribute for sale or use in this state a motor vehicle manufactured after January 1, 2006, if the motor vehicle contains an automotive mercury switch.

(5) Nothing in this section restricts the ability of a manufacturer, importer, or domestic distributor from transporting products through the state, or storing products in the state for later distribution outside the state.

(6) Effective June 30, 2012, the sale or purchase and delivery of bulk mercury is prohibited, including sales through the internet or sales by private parties. However, the prohibition in this subsection does not apply to immediate dangerous waste recycling facilities or treatment, storage, and disposal facilities as approved by the department and sales to research facilities, or industrial facilities that provide products or services to entities exempted from this chapter. The facilities described in this subsection must submit an inventory of their purchase and use of bulk mercury to the department on an annual basis, as well as any mercury waste generated from such actions. [2010 c 130 § 19; 2003 c 260 § 6.]

**Severability—2010 c 130:** See RCW 70.275.901.

**70.95M.060 Rules—Product preference.** (1) The department of general administration must, by January 1, 2005, revise its rules, policies, and guidelines to implement the purpose of this chapter.

(2) The department of general administration must give priority and preference to the purchase of equipment, supplies, and other products that contain no mercury-added compounds or components, unless: (a) There is no economically feasible nonmercury-added alternative that performs a simi-

lar function; or (b) the product containing mercury is designed to reduce electricity consumption by at least forty percent and there is no nonmercury or lower mercury alternative available that saves the same or a greater amount of electricity as the exempted product. In circumstances where a nonmercury-added product is not available, preference must be given to the purchase of products that contain the least amount of mercury added to the product necessary for the required performance. [2003 c 260 § 7.]

**70.95M.070 Clearinghouse—Department participation.** The department is authorized to participate in a regional or multistate clearinghouse to assist in carrying out any of the requirements of this chapter. A clearinghouse may also be used for examining notification and label requirements, developing education and outreach activities, and maintaining a list of all mercury-added products. [2003 c 260 § 8.]

**70.95M.080 Penalties.** A violation of this chapter is punishable by a civil penalty not to exceed one thousand dollars for each violation in the case of a first violation. Repeat violators are liable for a civil penalty not to exceed five thousand dollars for each repeat violation. Penalties collected under this section must be deposited in the state toxics control account created in RCW 70.105D.070. [2003 c 260 § 9.]

**70.95M.090 Crematories—Nonapplicability of chapter.** Nothing in this chapter applies to crematories as that term is defined in RCW 68.04.070. [2003 c 260 § 10.]

**70.95M.100 Prescription drugs, biological products, over-the-counter items—Nonapplicability of chapter.** Nothing in this chapter applies to prescription drugs regulated by the food and drug administration under the federal food, drug, and cosmetic act (21 U.S.C. Sec. 301 et seq.), to biological products regulated by the food and drug administration under the public health service act (42 U.S.C. Sec. 262 et seq.), or to any substance that may be lawfully sold over-the-counter without a prescription under the federal food, drug, and cosmetic act (21 U.S.C. Sec. 301 et seq.). [2003 c 260 § 12.]

**70.95M.110 Medical equipment, research tests—Nonapplicability of chapter.** Nothing in RCW 70.95M.020, 70.95M.050 (1), (3), or (4), or 70.95M.060 applies to medical equipment or reagents used in medical or research tests regulated by the food and drug administration under the federal food, drug, and cosmetic act (21 U.S.C. Sec. 301 et seq.). [2003 c 260 § 13.]

**70.95M.115 Vaccines.** (1) Beginning July 1, 2007, a person who is known to be pregnant or who is under three years of age shall not be vaccinated with a mercury-containing vaccine or injected with a mercury-containing product that contains more than 0.5 micrograms of mercury per 0.5 milliliter dose.

(2) Notwithstanding subsection (1) of this section, an influenza vaccine may contain up to 1.0 micrograms of mercury per 0.5 milliliter dose.

(3) The secretary of the department of health may, upon the secretary's or local public health officer's declaration of an outbreak of vaccine-preventable disease or of a shortage of vaccine that complies with subsection (1) or (2) of this section, suspend the requirements of this section for the duration of the outbreak or shortage. A person who is known to be pregnant or lactating or a parent or legal guardian of a child under eighteen years of age shall be informed if the person or child is to be vaccinated or injected with any mercury-containing product that contains more than the mercury limits per dose in subsections (1) and (2) of this section.

(4) All vaccines and products referenced under this section must meet food and drug administration licensing requirements. [2007 c 268 § 1; 2006 c 231 § 2.]

**Findings—2006 c 231:** "The legislature finds that vaccinations and immunizations are among the most important public health innovations of the last one hundred years. The centers for disease control and prevention placed vaccinations at the top of its list of the ten greatest public health achievements of the twentieth century. In its efforts to improve public health in the world's poorest countries, the Bill and Melinda Gates foundation has identified childhood immunization as a cost-effective method of improving public health and saving the lives of millions of children around the world.

Fortunately, in Washington, safe and cost-effective vaccinations against childhood diseases are widely available through both public and private resources. The vaccines that the Washington state department of health provides to meet the requirements for the recommended childhood vaccination schedule through its universal childhood vaccine program are screened for thimerosal and preference is given toward the purchase of thimerosal-free products. The department of health currently provides thimerosal-free products for all routinely recommended childhood vaccines. Regardless of the absence of thimerosal in childhood vaccines in Washington, scientifically reputable organizations such as the centers for disease control and prevention, the national institute of medicine, the American academy of pediatrics, the food and drug administration, and the world health organization have all determined that there is no credible evidence that the use of thimerosal in vaccines poses a threat to the health and safety of children.

Notwithstanding these assurances of the safety of the vaccine supply, the legislature finds that where there is public concern over the safety of vaccines, vaccination rates may be reduced to the point that deadly, vaccine-preventable, childhood diseases return. This measure is being enacted to maintain public confidence in vaccine programs, so that the public will continue to seek vaccinations and their health benefits may continue to protect the people of Washington." [2006 c 231 § 1.]

#### **70.95M.120 Fiscal impact—Toxics control account.**

Any fiscal impact on the department or the department of health that results from the implementation of this chapter must be paid for out of funds that are appropriated by the legislature from the state toxics control account for the implementation of the department's persistent bioaccumulative toxic chemical strategy. [2003 c 260 § 11.]

**70.95M.130 National mercury repository site.** The department of ecology shall petition the United States environmental protection agency requesting development of a national mercury repository site. [2003 c 260 § 14.]

### **Chapter 70.95N RCW**

#### **ELECTRONIC PRODUCT RECYCLING**

##### Sections

- 70.95N.010 Findings.
- 70.95N.020 Definitions.
- 70.95N.030 Manufacturer participation.
- 70.95N.040 Manufacturer registration.
- 70.95N.050 Independent plan requirements.

- 70.95N.060 Standard, independent plan requirements—Fees to be set by the department—Acceptance or rejection by department.
- 70.95N.070 Plan updates—Revised plan.
- 70.95N.080 Independent plan participants changing to standard plan.
- 70.95N.090 Collection services.
- 70.95N.100 Successor duties.
- 70.95N.110 Covered electronic sampling.
- 70.95N.120 Promotion of covered product recycling.
- 70.95N.130 Electronic products recycling account.
- 70.95N.140 Annual reports.
- 70.95N.150 Nonprofit charitable organizations—Report.
- 70.95N.160 Electronic products for sale must include manufacturer's brand.
- 70.95N.170 Sale of covered electronic products.
- 70.95N.180 Department web site.
- 70.95N.190 Return share calculation.
- 70.95N.200 Equivalent share calculation—Notice to manufacturers—Billing parties that do not meet their plan's equivalent share—Payments to parties that exceed their plan's equivalent share—Nonprofit charitable organizations.
- 70.95N.210 Preliminary return share—Notice—Challenges—Final return share.
- 70.95N.220 Covered electronic products collected during a program year—Payment per pound under, over equivalent share.
- 70.95N.230 Rules—Fees—Reports.
- 70.95N.240 Collector, transporter, processor registration.
- 70.95N.250 Processors to comply with performance standards for environmentally sound management—Rules.
- 70.95N.260 Selling covered electronic products without participating in an approved plan prohibited—Written warning—Penalty—Failure to comply with manufacturer registration requirements.
- 70.95N.270 Reports.
- 70.95N.280 Materials management and financing authority.
- 70.95N.290 Board of directors of the authority.
- 70.95N.300 Manufacturers to pay their apportioned share of administrative and operational costs—Performance bonds—Dispute arbitration.
- 70.95N.310 Authority use of funds.
- 70.95N.320 General operating plan.
- 70.95N.330 Authority employees—Initial staff support—Authority powers.
- 70.95N.340 Federal preemption.
- 70.95N.350 Entity must be registered as a collector to act as a collector in a plan—Disposition of electronic products received by a registered collector—Recordkeeping requirements—Display of notice—Site visits.
- 70.95N.900 Construction—2006 c 183.
- 70.95N.901 Severability—2006 c 183.
- 70.95N.902 Effective date—2006 c 183.

**70.95N.010 Findings.** The legislature finds that a convenient, safe, and environmentally sound system for the collection, transportation, and recycling of covered electronic products must be established. The legislature further finds that the system must encourage the design of electronic products that are less toxic and more recyclable. The legislature further finds that the responsibility for this system must be shared among all stakeholders, with manufacturers financing the collection, transportation, and recycling system. [2006 c 183 § 1.]

**70.95N.020 Definitions.** The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Authority" means the Washington materials management and financing authority created under RCW 70.95N.280.

(2) "Authorized party" means a manufacturer who submits an individual independent plan or the entity authorized to submit an independent plan for more than one manufacturer.

(3) "Board" means the board of directors of the Washington materials management and financing authority created under RCW 70.95N.290.

(4) "Collector" means an entity licensed to do business in the state that gathers unwanted covered electronic products from households, small businesses, school districts, small governments, and charities for the purpose of recycling and meets minimum standards that may be developed by the department.

(5) "Contract for services" means an instrument executed by the authority and one or more persons or entities that delineates collection, transportation, and recycling services, in whole or in part, that will be provided to the citizens of the state within service areas as described in the approved standard plan.

(6) "Covered electronic product" includes a cathode ray tube or flat panel computer monitor having a viewable area greater than four inches when measured diagonally, a desktop computer, a laptop or a portable computer, or a cathode ray tube or flat panel television having a viewable area greater than four inches when measured diagonally that has been used in the state by any covered entity regardless of original point of purchase. "Covered electronic product" does not include: (a) A motor vehicle or replacement parts for use in motor vehicles or aircraft, or any computer, computer monitor, or television that is contained within, and is not separate from, the motor vehicle or aircraft; (b) monitoring and control instruments or systems; (c) medical devices; (d) products including materials intended for use as ingredients in those products as defined in the federal food, drug, and cosmetic act (21 U.S.C. Sec. 301 et seq.) or the virus-serum-toxin act of 1913 (21 U.S.C. Sec. 151 et seq.), and regulations issued under those acts; (e) equipment used in the delivery of patient care in a health care setting; (f) a computer, computer monitor, or television that is contained within a clothes washer, clothes dryer, refrigerator, refrigerator and freezer, microwave oven, conventional oven or range, dishwasher, room air conditioner, dehumidifier, or air purifier; or (g) hand-held portable voice or data devices used for commercial mobile services as defined in 47 U.S.C. Sec. 332 (d)(1).

(7) "Covered entity" means any household, charity, school district, small business, or small government located in Washington state.

(8) "Curbside service" means a collection service providing regularly scheduled pickup of covered electronic products from households or other covered entities in quantities generated from households.

(9) "Department" means the department of ecology.

(10) "Electronic product" includes a cathode ray tube or flat panel computer monitor having a viewable area greater than four inches when measured diagonally; a desktop computer; a laptop or a portable computer; or a cathode ray tube or flat screen television having a viewable area greater than four inches when measured diagonally.

(11) "Equivalent share" means the weight in pounds of covered electronic products identified for an individual manufacturer under this chapter as determined by the department under RCW 70.95N.200.

(12) "Household" means a single detached dwelling unit or a single unit of a multiple dwelling unit and appurtenant structures.

(13) "Independent plan" means a plan for the collection, transportation, and recycling of unwanted covered electronic products that is developed, implemented, and financed by an individual manufacturer or by an authorized party.

(14) "Manufacturer" means any person, in business or no longer in business but having a successor in interest, who, irrespective of the selling technique used, including by means of distance or remote sale:

(a) Manufactures or has manufactured a covered electronic product under its own brand names for sale in or into this state;

(b) Assembles or has assembled a covered electronic product that uses parts manufactured by others for sale in or into this state under the assembler's brand names;

(c) Resells or has resold in or into this state under its own brand names a covered electronic product produced by other suppliers, including retail establishments that sell covered electronic products under their own brand names;

(d) Manufactures or manufactured a cobranded product for sale in or into this state that carries the name of both the manufacturer and a retailer;

(e) Imports or has imported a covered electronic product into the United States that is sold in or into this state. However, if the imported covered electronic product is manufactured by any person with a presence in the United States meeting the criteria of manufacturer under (a) through (d) of this subsection, that person is the manufacturer. For purposes of this subsection, "presence" means any person that performs activities conducted under the standards established for interstate commerce under the commerce clause of the United States Constitution; or

(f) Sells at retail a covered electronic product acquired from an importer that is the manufacturer as described in (e) of this subsection, and elects to register in lieu of the importer as the manufacturer for those products.

(15) "New entrant" means: (a) A manufacturer of televisions that have been sold in the state for less than ten years; or (b) a manufacturer of desktop computers, laptop and portable computers, or computer monitors that have been sold in the state for less than five years. However, a manufacturer of both televisions and computers or a manufacturer of both televisions and computer monitors that is deemed a new entrant under either only (a) or (b) of this subsection is not considered a new entrant for purposes of this chapter.

(16) "Orphan product" means a covered electronic product that lacks a manufacturer's brand or for which the manufacturer is no longer in business and has no successor in interest.

(17) "Plan's equivalent share" means the weight in pounds of covered electronic products for which a plan is responsible. A plan's equivalent share is equal to the sum of the equivalent shares of each manufacturer participating in that plan.

(18) "Plan's return share" means the sum of the return shares of each manufacturer participating in that plan.

(19) "Premium service" means services such as at-location system upgrade services provided to covered entities and at-home pickup services offered to households. "Premium service" does not include curbside service.

(20) "Processor" means an entity engaged in disassembling, dismantling, or shredding electronic products to

recover materials contained in the electronic products and prepare those materials for reclaiming or reuse in new products in accordance with processing standards established by this chapter and by the department. A processor may also salvage parts to be used in new products.

(21) "Product type" means one of the following categories: Computer monitors; desktop computers; laptop and portable computers; and televisions.

(22) "Program" means the collection, transportation, and recycling activities conducted to implement an independent plan or the standard plan.

(23) "Program year" means each full calendar year after the program has been initiated.

(24) "Recycling" means transforming or remanufacturing unwanted electronic products, components, and by-products into usable or marketable materials for use other than landfill disposal or incineration. "Recycling" does not include energy recovery or energy generation by means of combusting unwanted electronic products, components, and by-products with or without other waste. Smelting of electronic materials to recover metals for reuse in conformance with all applicable laws and regulations is not considered disposal or energy recovery.

(25) "Retailer" means a person who offers covered electronic products for sale at retail through any means including, but not limited to, remote offerings such as sales outlets, catalogs, or the internet, but does not include a sale that is a wholesale transaction with a distributor or a retailer.

(26) "Return share" means the percentage of covered electronic products by weight identified for an individual manufacturer, as determined by the department under RCW 70.95N.190.

(27) "Reuse" means any operation by which an electronic product or a component of a covered electronic product changes ownership and is used for the same purpose for which it was originally purchased.

(28) "Small business" means a business employing less than fifty people.

(29) "Small government" means a city in the state with a population less than fifty thousand, a county in the state with a population less than one hundred twenty-five thousand, and special purpose districts in the state.

(30) "Standard plan" means the plan for the collection, transportation, and recycling of unwanted covered electronic products developed, implemented, and financed by the authority on behalf of manufacturers participating in the authority.

(31) "Transporter" means an entity that transports covered electronic products from collection sites or services to processors or other locations for the purpose of recycling, but does not include any entity or person that hauls their own unwanted electronic products.

(32) "Unwanted electronic product" means a covered electronic product that has been discarded or is intended to be discarded by its owner.

(33) "White box manufacturer" means a person who manufactured unbranded covered electronic products offered for sale in the state within ten years prior to a program year for televisions or within five years prior to a program year for desktop computers, laptop or portable computers, or computer monitors. [2006 c 183 § 2.]

**70.95N.030 Manufacturer participation.** (1) A manufacturer must participate in an independent plan or the standard plan to implement and finance the collection, transportation, and recycling of covered electronic products.

(2) An independent plan or the standard plan must be implemented and fully operational no later than January 1, 2009.

(3) The manufacturers participating in an approved plan are responsible for covering all administrative and operational costs associated with the collection, transportation, and recycling of their plan's equivalent share of covered electronic products. If costs are passed on to consumers, it must be done without any fees at the time the unwanted electronic product is delivered or collected for recycling. However, this does not prohibit collectors providing premium or curbside services from charging customers a fee for the additional collection cost of providing this service, when funding for collection provided by an independent plan or the standard plan does not fully cover the cost of that service.

(4) Nothing in this chapter changes or limits the authority of the Washington utilities and transportation commission to regulate collection of solid waste in the state of Washington, including curbside collection of residential recyclable materials, nor does this chapter change or limit the authority of a city or town to provide such service itself or by contract pursuant to RCW 81.77.020.

(5) Manufacturers are encouraged to collaborate with electronic product retailers, certificated waste haulers, processors, recyclers, charities, and local governments within the state in the development and implementation of their plans. [2006 c 183 § 3.]

**70.95N.040 Manufacturer registration.** (1) By January 1, 2007, and annually thereafter, each manufacturer must register with the department.

(2) A manufacturer must submit to the department with each registration or annual renewal a fee to cover the administrative costs of this chapter as determined by the department under RCW 70.95N.230.

(3) The department shall review the registration or renewal application and notify the manufacturer if their registration does not meet the requirements of this section. Within thirty days of receipt of such a notification from the department, the manufacturer must file with the department a revised registration addressing the requirements noted by the department.

(4) The registration must include the following information:

(a) The name and contact information of the manufacturer submitting the registration;

(b) The manufacturer's brand names of covered electronic products, including all brand names sold in the state in the past, all brand names currently being sold in the state, and all brand names for which the manufacturer has legal responsibility under RCW 70.95N.100;

(c) The method or methods of sale used in the state; and

(d) Whether the registrant will be participating in the standard plan or submitting an independent plan to the department for approval.

(5) The registrant shall submit any changes to the information provided in the registration to the department within fourteen days of such change.

(6) The department shall identify, using all reasonable means, manufacturers that are in business or that are no longer in business but that have a successor in interest by examining best available return share data and other pertinent data. The department shall notify manufacturers that have been identified and for whom an address has been found of the requirements of this chapter, including registration and plan requirements under this section and RCW 70.95N.050. [2006 c 183 § 4.]

**70.95N.050 Independent plan requirements.** (1) A manufacturer must participate in the standard plan administered by the authority, unless the manufacturer obtains department approval for an independent plan for the collection, transportation, and recycling of unwanted electronic products.

(2) An independent plan may be submitted by an individual manufacturer or by a group of manufacturers, provided that:

(a) Each independent plan represents at least a five percent return share of covered electronic products; and

(b) No manufacturer may participate in an independent plan if it is a new entrant or a white box manufacturer.

(3) An individual manufacturer submitting an independent plan to the department is responsible for collecting, transporting, and recycling its equivalent share of covered electronic products.

(4)(a) Manufacturers collectively submitting an independent plan are responsible for collecting, transporting, and recycling the sum of the equivalent shares of each participating manufacturer.

(b) Each group of manufacturers submitting an independent plan must designate a party authorized to file the plan with the department on their behalf. A letter of certification from each of the manufacturers designating the authorized party must be submitted to the department together with the plan.

(5) Each manufacturer in the standard plan or in an independent plan retains responsibility and liability under this chapter in the event that the plan fails to meet the manufacturer's obligations under this chapter. [2006 c 183 § 5.]

**70.95N.060 Standard, independent plan requirements—Fees to be set by the department—Acceptance or rejection by department.** (1) All initial independent plans and the initial standard plan required under RCW 70.95N.050 must be submitted to the department by February 1, 2008. The department shall review each independent plan and the standard plan.

(2) The authority submitting the standard plan and each authorized party submitting an independent plan to the department must pay a fee to the department to cover the costs of administering and implementing this chapter. The department shall set the fees as described under RCW 70.95N.230.

(3) The fees in subsection (2) of this section apply to the initial plan submission and plan updates and revisions required in RCW 70.95N.070.

(4) Within ninety days after receipt of a plan, the department shall determine whether the plan complies with this chapter. If the plan is approved, the department shall send a letter of approval. If a plan is rejected, the department shall provide the reasons for rejecting the plan to the authority or authorized party. The authority or authorized party must submit a new plan within sixty days after receipt of the letter of disapproval.

(5) An independent plan and the standard plan must contain the following elements:

(a) Contact information for the authority or authorized party and a comprehensive list of all manufacturers participating in the plan and their contact information;

(b) A description of the collection, transportation, and recycling systems and service providers used, including a description of how the authority or authorized party will:

(i) Seek to use businesses within the state, including retailers, charities, processors, and collection and transportation services;

(ii) Fairly compensate collectors for providing collection services; and

(iii) Fairly compensate processors for providing processing services;

(c) The method or methods for the reasonably convenient collection of all product types of covered electronic products in rural and urban areas throughout the state, including how the plan will provide for collection services in each county of the state and for a minimum of one collection site or alternate collection service for each city or town with a population greater than ten thousand. A collection site for a county may be the same as a collection site for a city or town in the county;

(d) A description of how the plan will provide service to small businesses, small governments, charities, and school districts in Washington;

(e) The processes and methods used to recycle covered electronic products including a description of the processing that will be used and the facility location;

(f) Documentation of audits of each processor used in the plan and compliance with processing standards established under RCW 70.95N.250 and \*section 26 of this act;

(g) A description of the accounting and reporting systems that will be employed to track progress toward the plan's equivalent share;

(h) A timeline describing start-up, implementation, and progress towards milestones with anticipated results;

(i) A public information campaign to inform consumers about how to recycle their covered electronic products at the end of the product's life; and

(j) A description of how manufacturers participating in the plan will communicate and work with processors utilized by that plan to promote and encourage design of electronic products and their components for recycling.

(6) The standard plan shall address how it will incorporate and fairly compensate registered collectors providing curbside or premium services such that they are not compensated at a lower rate for collection costs than the compensa-

tion offered other collectors providing drop-off collection sites in that geographic area.

(7) All transporters, collectors, and processors used to fulfill the requirements of this section must be registered as described in RCW 70.95N.240. [2006 c 183 § 6.]

\*Reviser's note: Section 26 of this act was vetoed by the governor.

**70.95N.070 Plan updates—Revised plan.** (1) An independent plan and the standard plan must be updated at least every five years and as required in (a) and (b) of this subsection.

(a) If the program fails to provide service in each county in the state or meet other plan requirements, the authority or authorized party shall submit to the department within sixty days of failing to provide service an updated plan addressing how the program will be adjusted to meet the program geographic coverage and collection service requirements established in RCW 70.95N.090.

(b) The authority or authorized party shall notify the department of any modification to the plan. If the department determines that the authority or authorized party has significantly modified the program described in the plan, the authority or authorized party shall submit a revised plan describing the changes to the department within sixty days of notification by the department.

(2) Within sixty days after receipt of a revised plan, the department shall determine whether the revised plan complies with this chapter. If the revised plan is approved, the department shall send a letter of approval. If the revised plan is rejected, the department shall provide the reasons for rejecting the plan to the authority or authorized party. The authority or authorized party must submit a new plan revision within sixty days after receipt of the letter of disapproval.

(3) The authority or authorized parties may buy and sell collected covered electronic products with other programs without submitting a plan revision for review. [2006 c 183 § 7.]

**70.95N.080 Independent plan participants changing to standard plan.** (1) A manufacturer participating in an independent plan may join the standard plan by notifying the authority and the department of its intention at least five months prior to the start of the next program year.

(2) Manufacturers may not change from one plan to another plan during a program year.

(3) A manufacturer participating in the standard plan wishing to implement or participate in an independent plan may do so by complying with rules adopted by the department under RCW 70.95N.230. [2006 c 183 § 8.]

**70.95N.090 Collection services.** (1) A program must provide collection services for covered electronic products of all product types that are reasonably convenient and available to all citizens of the state residing within its geographic boundaries, including both rural and urban areas. Each program must provide collection service in every county of the state. A program may provide collection services jointly with another plan or plans.

(a) For any city or town with a population of greater than ten thousand, each program shall provide a minimum of one

collection site or alternate collection service described in subsection (3) of this section or a combination of sites and alternate service that together provide at least one collection opportunity for all product types. A collection site for a county may be the same as a collection site for a city or town in the county.

(b) Collection sites may include electronics recyclers and repair shops, recyclers of other commodities, reuse organizations, charities, retailers, government recycling sites, or other suitable locations.

(c) Collection sites must be staffed, open to the public at a frequency adequate to meet the needs of the area being served, and on an on-going basis.

(2) A program may limit the number of covered electronic products or covered electronic products by product type accepted per customer per day or per delivery at a collection site or service. All covered entities may use a collection site as long as the covered entities adhere to any restrictions established in the plans.

(3) A program may provide collection services in forms different than collection sites, such as curbside services, if those alternate services provide equal or better convenience to citizens and equal or increased recovery of unwanted covered electronic products.

(4) For rural areas without commercial centers or areas with widely dispersed population, a program may provide collection at the nearest commercial centers or solid waste sites, collection events, mail-back systems, or a combination of these options.

(5) For small businesses, small governments, charities, and school districts that may have large quantities of covered electronic products that cannot be handled at collection sites or curbside services, a program may provide alternate services. At a minimum, a program must provide for processing of these large quantities of covered electronic products at no charge to the small businesses, small governments, charities, and school districts. [2006 c 183 § 9.]

**70.95N.100 Successor duties.** Any person acquiring a manufacturer, or who has acquired a manufacturer, shall have all responsibility for the acquired company's covered electronic products, including covered electronic products manufactured prior to July 1, 2006, unless that responsibility remains with another entity per the purchase agreement and the acquiring manufacturer provides the department with a letter from the other entity accepting responsibility for the covered electronic products. Cobranding manufacturers may negotiate with retailers for responsibility for those products and must notify the department of the results of their negotiations. [2006 c 183 § 10.]

**70.95N.110 Covered electronic sampling.** (1) An independent plan and the standard plan must implement and finance an auditable, statistically significant sampling of covered electronic products entering its program every program year. The information collected must include a list of the brand names of covered electronic products by product type, the number of covered electronic products by product type, the weight of covered electronic products that are identified for each brand name or that lack a manufacturer's brand, the

total weight of the sample by product type, and any additional information needed to assign return share.

(2) The sampling must be conducted in the presence of the department or a third-party organization approved by the department. The department may, at its discretion, audit the methodology and the results.

(3) After the fifth program year, the department may reassess the sampling required in this section. The department may adjust the frequency at which manufacturers must implement the sampling or may adjust the frequency at which manufacturers must provide certain information from the sampling. Prior to making any changes, the department shall notify the public, including all registered manufacturers, and provide a comment period. The department shall notify all registered manufacturers of any such changes. [2006 c 183 § 11.]

#### **70.95N.120 Promotion of covered product recycling.**

(1) An independent plan and the standard plan must inform covered entities about where and how to reuse and recycle their covered electronic products at the end of the product's life, including providing a web site or a toll-free telephone number that gives information about the recycling program in sufficient detail to educate covered entities regarding how to return their covered electronic products for recycling.

(2) The department shall promote covered electronic product recycling by:

(a) Posting information describing where to recycle unwanted covered electronic products on its web site;

(b) Providing information about recycling covered electronic products through a toll-free telephone service; and

(c) Developing and providing artwork for use in flyers and signage to retailers upon request.

(3) Local governments shall promote covered electronic product recycling, including listings of local collection sites and services, through existing educational methods typically used by each local government.

(4) A retailer who sells new covered electronic products shall provide information to consumers describing where and how to recycle covered electronic products and opportunities and locations for the convenient collection or return of the products. This requirement can be fulfilled by providing the department's toll-free telephone number and web site. Remote sellers may include the information in a visible location on their web site as fulfillment of this requirement.

(5) Manufacturers, state government, local governments, retailers, and collection sites and services shall collaborate in the development and implementation of the public information campaign. [2006 c 183 § 12.]

#### **70.95N.130 Electronic products recycling account.**

(1) The electronic products recycling account is created in the custody of the state treasurer. All payments resulting from plans not reaching their equivalent share, as described in RCW 70.95N.220, shall be deposited into the account. Any moneys collected for manufacturer registration fees, fees associated with reviewing and approving plans and plan revisions, and penalties levied under this chapter shall be deposited into the account.

(2) Only the director of the department or the director's designee may authorize expenditures from the account. The account is subject to allotment procedures under chapter 43.88 RCW, but an appropriation is not required for expenditures.

(3) Moneys in the account may be used solely by the department for the purposes of fulfilling department responsibilities specified in this chapter and for expenditures to the authority and authorized parties resulting from plans exceeding their equivalent share, as described in RCW 70.95N.220. Funds in the account may not be diverted for any purpose or activity other than those specified in this section. [2006 c 183 § 13.]

**70.95N.140 Annual reports.** (1) By March 1st of the second program year and each program year thereafter, the authority and each authorized party shall file with the department an annual report for the preceding program year.

(2) The annual report must include the following information:

(a) The total weight in pounds of covered electronic products collected and recycled, by county, during the preceding program year including documentation verifying collection and processing of that material. The total weight in pounds includes orphan products. The report must also indicate and document the weight in pounds received from each nonprofit charitable organization primarily engaged in the business of reuse and resale used by the plan. The report must document the weight in pounds that were received in large quantities from small businesses, small governments, charities and school districts as described in RCW 70.95N.090(5);

(b) The collection services provided in each county and for each city with a population over ten thousand including a list of all collection sites and services operating in the state in the prior program year and the parties who operated them;

(c) A list of processors used, the weight of covered electronic products processed by each direct processor, and a description of the processes and methods used to recycle the covered electronic products including a description of the processing and facility locations. The report must also include a list of subcontractors who further processed or recycled unwanted covered electronic products, electronic components, or electronic scrap described in \*section 26(1) of this act, including facility locations;

(d) Other documentation as established under \*section 26(3) of this act;

(e) Educational and promotional efforts that were undertaken;

(f) The results of sampling and sorting as required in RCW 70.95N.110, including a list of the brand names of covered electronic products by product type, the number of covered electronic products by product type, the weight of covered electronic products that are identified for each brand name or that lack a manufacturer's brand, and the total weight of the sample by product type;

(g) The list of manufacturers that are participating in the standard plan; and

(h) Any other information deemed necessary by the department.

(3) The department shall review each report within ninety days of its submission and shall notify the authority or authorized party of any need for additional information or documentation, or any deficiency in its program.

(4) All reports submitted to the department must be available to the general public through the internet. Proprietary information submitted to the department under this chapter is exempt from public disclosure under RCW 42.56.270. [2006 c 183 § 14.]

\*Reviser's note: Section 26 of this act was vetoed by the governor.

**70.95N.150 Nonprofit charitable organizations—**

**Report.** Nonprofit charitable organizations that qualify for a taxation exemption under section 501(c)(3) of the internal revenue code of 1986 (26 U.S.C. Sec. 501(c)(3)) that are primarily engaged in the business of reuse and resale and that are used by a plan to collect covered electronic products shall file a report with the department by March 1st of the second program year and each program year thereafter. The report must indicate and document the weight of covered electronic products sent for recycling during the previous program year attributed to each plan that the charitable organization is participating in. [2006 c 183 § 15.]

**70.95N.160 Electronic products for sale must include manufacturer's brand.** (1) Beginning January 1, 2007, no person may sell or offer for sale an electronic product to any person in the state unless the electronic product is labeled with the manufacturer's brand. The label must be permanently affixed and readily visible.

(2) In-state retailers in possession of unlabeled products on January 1, 2007, may exhaust their stock through sales to the public. [2006 c 183 § 16.]

**70.95N.170 Sale of covered electronic products.** No person may sell or offer for sale a covered electronic product to any person in this state unless the manufacturer of the covered electronic product has filed a registration with the department under RCW 70.95N.040 and is participating in an approved plan under RCW 70.95N.050. A person that sells or offers for sale a covered electronic product in the state shall consult the department's web site for lists of manufacturers with registrations and approved plans prior to selling a covered electronic product in the state. A person is considered to have complied with this section if on the date the product was ordered from the manufacturer or its agent, the manufacturer was listed as having registered and having an approved plan on the department's web site. [2006 c 183 § 17.]

**70.95N.180 Department web site.** (1) The department shall maintain on its web site the following information:

(a) The names of the manufacturers and the manufacturer's brands that are registered with the department under RCW 70.95N.040;

(b) The names of the manufacturers and the manufacturer's brands that are participating in an approved plan under RCW 70.95N.050;

(c) The names and addresses of the collectors and transporters that are listed in registrations filed with the department under RCW 70.95N.240;

(d) The names and addresses of the processors used to fulfill the requirements of the plans;

(e) Return and equivalent shares for all manufacturers.

(2) The department shall update this web site information promptly upon receipt of a registration or a report. [2006 c 183 § 18.]

**70.95N.190 Return share calculation.** (1) The department shall determine the return share for each manufacturer in the standard plan or an independent plan by dividing the weight of covered electronic products identified for each manufacturer by the total weight of covered electronic products identified for all manufacturers in the standard plan or an independent plan, then multiplying the quotient by one hundred.

(2) For the first program year, the department shall determine the return share for such manufacturers using all reasonable means and based on best available information regarding return share data from other states and other pertinent data.

(3) For the second and each subsequent program year, the department shall determine the return share for such manufacturers using all reasonable means and based on the most recent sampling of covered electronic products conducted in the state under RCW 70.95N.110. [2006 c 183 § 19.]

**70.95N.200 Equivalent share calculation—Notice to manufacturers—Billing parties that do not meet their plan's equivalent share—Payments to parties that exceed their plan's equivalent share—Nonprofit charitable organizations.** (1) The department shall determine the total equivalent share for each manufacturer in the standard plan or an independent plan by dividing the return share percentage for each manufacturer by one hundred, then multiplying the quotient by the total weight in pounds of covered electronic products collected for that program year, allowing as needed for the additional credit authorized in subsection (3) of this section.

(2)(a) By June 1st of each program year, the department shall notify each manufacturer of the manufacturer's equivalent share of covered electronic products to be applied to the previous program year. The department shall also notify each manufacturer of how its equivalent share was determined.

(b) By June 1st of each program year, the department shall bill any authorized party or authority that has not attained its plan's equivalent share as determined under RCW 70.95N.220. The authorized party or authority shall remit payment to the department within sixty days from the billing date.

(c) By September 1st of each program year, the department shall pay any authorized party or authority that exceeded its plan's equivalent share.

(3) Plans that utilize the collection services of nonprofit charitable organizations that qualify for a taxation exemption under section 501(c)(3) of the internal revenue code of 1986 (26 U.S.C. Sec. 501(c)(3)) that are primarily engaged in the business of reuse and resale must be given an additional five

percent credit to be applied toward a plan's equivalent share for pounds that are received for recycling from those organizations. The department may adjust the percentage of credit annually. [2006 c 183 § 20.]

**70.95N.210 Preliminary return share—Notice—Challenges—Final return share.** (1) By June 1, 2007, the department shall notify each manufacturer of its preliminary return share of covered electronic products for the first program year.

(2) Preliminary return share of covered electronic products must be announced annually by June 1st of each program year for the next program year.

(3) Manufacturers may challenge the preliminary return share by written petition to the department. The petition must be received by the department within thirty days of the date of publication of the preliminary return shares.

(4) The petition must contain a detailed explanation of the grounds for the challenge, an alternative calculation, and the basis for such a calculation, documentary evidence supporting the challenge, and complete contact information for requests for additional information or clarification.

(5) Sixty days after the publication of the preliminary return share, the department shall make a final decision on return share, having fully taken into consideration any and all challenges to its preliminary calculations.

(6) A written record of challenges received and a summary of the bases for the challenges, as well as the department's response, must be published at the same time as the publication of the final return share.

(7) By August 1, 2007, the department shall publish the final return shares for the first program year. By August 1st of each program year, the department shall publish the final return shares for use in the coming program year. [2006 c 183 § 21.]

**70.95N.220 Covered electronic products collected during a program year—Payment per pound under, over equivalent share.** (1) For an independent plan and the standard plan, if the total weight in pounds of covered electronic products collected during a program year is less than the plan's equivalent share of covered electronic products for that year, then the authority or authorized party shall submit to the department a payment equal to the weight in pounds of the deficit multiplied by the reasonable collection, transportation, and recycling cost for covered electronic products and an administrative fee. Moneys collected by the department must be deposited in the electronic products recycling account.

(2) For an independent plan and the standard plan, if the total weight in pounds of covered electronic products collected during a program year is more than the plan's equivalent share of covered electronic products for that year, then the department shall submit to the authority or authorized party, a payment equal to the weight in pounds of the surplus multiplied by the reasonable collection, transportation, and recycling cost for covered electronic products.

(3) For purposes of this section, the initial reasonable collection, transportation, and recycling cost for covered

electronic products is forty-five cents per pound and the administrative fee is five cents per pound.

(4) The department may annually adjust the reasonable collection, transportation, and recycling cost for covered electronic products and the administrative fee described in this section. Prior to making any changes in the fees described in this section, the department shall notify the public, including all registered manufacturers, and provide a comment period. The department shall notify all registered manufacturers of any changes to the reasonable collection, transportation, and recycling cost or the administrative fee by January 1st of the program year in which the change is to take place. [2006 c 183 § 22.]

**70.95N.230 Rules—Fees—Reports.** (1) The department shall adopt rules to determine the process for manufacturers to change plans under RCW 70.95N.080.

(2) The department shall establish annual registration and plan review fees for administering this chapter. An initial fee schedule must be established by rule and be adjusted no more often than once every two years. All fees charged must be based on factors relating to administering this chapter and be based on a sliding scale that is representative of annual sales of covered electronic products in the state. Fees must be established in amounts to fully recover and not to exceed expenses incurred by the department to implement this chapter.

(3) The department shall establish an annual process for local governments and local communities to report their satisfaction with the services provided by plans under this chapter. This information must be used by the department in reviewing plan updates and revisions.

(4) The department may adopt rules as necessary for the purpose of implementing, administering, and enforcing this chapter. [2006 c 183 § 23.]

**70.95N.240 Collector, transporter, processor registration.** (1) Each collector and transporter of covered electronic products in the state must register annually with the department. The registration must include all identification requirements for licensure in the state and the geographic area of the state that they serve. The department shall develop a single form for registration of both collectors and transporters.

(2) Each processor of covered electronic products utilized by an independent or standard plan must register annually with the department. The registration must include identification information and documentation of any necessary operating permits issued by state or local authorities. [2006 c 183 § 24.]

**70.95N.250 Processors to comply with performance standards for environmentally sound management—Rules.** (1) The authority and each authorized party shall ensure that each processor used directly by the authority or the authorized party to fulfill the requirements of their respective standard plan or independent plan has provided the authority or the authorized party a written statement that the processor will comply with the requirements of this section and \*section 26 of this act.

(2) The department shall establish by rule performance standards for environmentally sound management for processors directly used to fulfill the requirements of an independent plan or the standard plan. Performance standards may include financial assurance to ensure proper closure of facilities consistent with environmental standards.

(3) The department shall establish by rule guidelines regarding nonrecycled residual that may be properly disposed after covered electronic products have been processed.

(4) The department may audit processors that are utilized to fulfill the requirements of an independent plan or the standard plan.

(5) No plan or program required under this chapter may include the use of federal or state prison labor for processing. [2006 c 183 § 25.]

\*Reviser's note: Section 26 of this act was vetoed by the governor.

**70.95N.260 Selling covered electronic products without participating in an approved plan prohibited—Written warning—Penalty—Failure to comply with manufacturer registration requirements.** (1) No manufacturer may sell or offer for sale a covered electronic product in or into the state unless the manufacturer of the covered electronic product is participating in an approved plan. The department shall send a written warning to a manufacturer that does not have an approved plan or is not participating in an approved plan as required under RCW 70.95N.050. The written warning must inform the manufacturer that it must participate in an approved plan within thirty days of the notice. Any violation after the initial written warning shall be assessed a penalty of up to ten thousand dollars for each violation.

(2) If the authority or any authorized party fails to implement their approved plan, the department must assess a penalty of up to five thousand dollars for the first violation along with notification that the authority or authorized party must implement its plan within thirty days of the violation. After thirty days, the authority or any authorized party failing to implement their approved plan must be assessed a penalty of up to ten thousand dollars for the second and each subsequent violation.

(3) Any person that does not comply with manufacturer registration requirements under RCW 70.95N.040, education and outreach requirements under RCW 70.95N.120, reporting requirements under RCW 70.95N.140, labeling requirements under RCW 70.95N.160, retailer responsibility requirements under RCW 70.95N.170, collector or transporter registration requirements under RCW 70.95N.240, or requirements under RCW 70.95N.250 and \*section 26 of this act, must first receive a written warning including a copy of the requirements under this chapter and thirty days to correct the violation. After thirty days, a person must be assessed a penalty of up to one thousand dollars for the first violation and up to two thousand dollars for the second and each subsequent violation.

(4) All penalties levied under this section must be deposited into the electronic products recycling account created under RCW 70.95N.130.

(5) The department shall enforce this section. [2006 c 183 § 27.]

\*Reviser's note: Section 26 of this act was vetoed by the governor.

**70.95N.270 Reports.** (1) By December 31, 2012, the department shall provide a report to the appropriate committees of the legislature that includes the following information:

(a) For each of the preceding program years, the weight of covered electronic products recycled in the state by plan, by county, and in total;

(b) The performance of each plan in meeting its equivalent share, and payments received from and disbursed to each plan from the electronic products recycling account;

(c) A description of the various collection programs used to collect covered electronic products in the state;

(d) An evaluation of how the pounds per capita recycled of covered electronic products in the state compares to programs in other states;

(e) Comments received from local governments and local communities regarding satisfaction with the program, including accessibility and convenience of services provided by the plans;

(f) Recommendations on how to improve the statewide collection, transportation, and recycling system for convenient, safe, and environmentally sound recycling of electronic products; and

(g) An analysis of whether and in what amounts unwanted electronic products and electronic components and electronic scrap exported from Washington have been exported to countries that are not members of the organization for economic cooperation and development or the European union, and recommendations for addressing such exports.

(2) By April 1, 2010, the department shall provide a report to the appropriate committees of the legislature regarding the amount of orphan products collected as a percent of the total amount of covered electronic products collected. If the orphan products collected exceed ten percent of the total amount of covered electronic products collected, the department shall report to the appropriate committees of the legislature within ninety days describing the orphan products collected and include recommendations for decreasing the amount of orphan products or alternative methods for financing the collection, transportation, and recycling of orphan products. [2006 c 183 § 28.]

**70.95N.280 Materials management and financing authority.** (1) The Washington materials management and financing authority is established as a public body corporate and politic, constituting an instrumentality of the state of Washington exercising essential governmental functions.

(2) The authority shall plan and implement a collection, transportation, and recycling program for manufacturers that have registered with the department their intent to participate in the standard program as required under RCW 70.95N.040.

(3) Membership in the authority is comprised of registered participating manufacturers. Any registered manufacturer who does not qualify or is not approved to submit an independent plan, or whose independent plan has not been approved by the department, is a member of the authority. All new entrants and white box manufacturers are also members of the authority.

(4) The authority shall act as a business management organization on behalf of the citizens of the state to manage

financial resources and contract for services for collection, transportation, and recycling of covered electronic products.

(5) The authority's standard plan is responsible for collecting, transporting, and recycling the sum of the equivalent shares of each participating manufacturer.

(6) The authority shall accept into the standard program covered electronic products from any registered collector who meets the requirements of this chapter. The authority shall compensate registered collectors for the reasonable costs associated with collection, but is not required to compensate nor restricted from compensating the additional collection costs resulting from the additional convenience offered to customers through premium and curbside services.

(7) The authority shall accept and utilize in the standard program any registered processor meeting the requirements of this chapter and any requirements described in the authority's operating plan or through contractual arrangements. Processors utilized by the standard plan shall provide documentation to the authority at least annually regarding how they are meeting the requirements in RCW 70.95N.250 and \*section 26 of this act, including enough detail to allow the standard plan to meet its reporting requirements in RCW 70.95N.140(2) (c) and (d), and must submit to audits conducted by or for the authority. The authority shall compensate such processors for the reasonable costs, as determined by the authority, associated with processing unwanted electronic products. Such processors must demonstrate that the unwanted electronic products have been received from registered collectors or transporters, and provide other documentation as may be required by the authority.

(8) Except as specifically allowed in this chapter, the authority shall operate without using state funds or lending the credit of the state or local governments.

(9) The authority shall develop innovative approaches to improve materials management efficiency in order to ensure and increase the use of secondary material resources within the economy. [2006 c 183 § 29.]

\*Reviser's note: Section 26 of this act was vetoed by the governor.

**70.95N.290 Board of directors of the authority.** (1)(a) The authority is governed by a board of directors. The board of directors is comprised of eleven participating manufacturers, appointed by the director of the department. Five board positions are reserved for representatives of the top ten brand owners by return share of covered electronic products, and six board positions are reserved for representatives of other brands, including at least one board position reserved for a manufacturer who is also a retailer selling their own private label. The return share of covered electronic products used to determine the top ten brand owners for purposes of electing the board must be determined by the department by January 1, 2007.

(b) The board must have representation from both television and computer manufacturers.

(2) The board shall select from its membership the chair of the board and such other officers as it deems appropriate.

(3) A majority of the board constitutes a quorum.

(4) The directors of the \*department of community, trade, and economic development and the department of ecology serve as ex officio members. The state agency directors

(2010 Ed.)

servicing in ex officio capacity may each designate an employee of their respective departments to act on their behalf in all respects with regard to any matter to come before the authority. Ex officio designations must be made in writing and communicated to the authority director.

(5) The board shall create its own bylaws in accordance with the laws of the state of Washington.

(6) Any member of the board may be removed for misfeasance, malfeasance, or willful neglect of duty after notice and a public hearing, unless the notice and hearing are expressly waived in writing by the affected member.

(7) The members of the board serve without compensation but are entitled to reimbursement, solely from the funds of the authority, for expenses incurred in the discharge of their duties under this chapter. [2008 c 79 § 1; 2006 c 183 § 30.]

\*Reviser's note: The "department of community, trade, and economic development" was renamed the "department of commerce" by 2009 c 565.

**70.95N.300 Manufacturers to pay their apportioned share of administrative and operational costs—Performance bonds—Dispute arbitration.** (1) Manufacturers participating in the standard plan shall pay the authority to cover all administrative and operational costs associated with the collection, transportation, and recycling of covered electronic products within the state of Washington incurred by the standard program operated by the authority to meet the standard plan's equivalent share obligation as described in RCW 70.95N.280(5).

(2) The authority shall assess charges on each manufacturer participating in the standard plan and collect funds from each participating manufacturer for the manufacturer's portion of the costs in subsection (1) of this section. Such apportionment shall be based on return share, market share, any combination of return share and market share, or any other equitable method. The authority's apportionment of costs to manufacturers participating in the standard plan may not include nor be based on electronic products imported through the state and subsequently exported outside the state. Charges assessed under this section must not be formulated in such a way as to create incentives to divert imported electronic products to ports or distribution centers in other states. The authority shall adjust the charges to manufacturers participating in the standard plan as necessary in order to ensure that all costs associated with the identified activities are covered.

(3) The authority may require financial assurances or performance bonds for manufacturers participating in the standard plan, including but not limited to new entrants and white box manufacturers, when determining equitable methods for apportioning costs to ensure that the long-term costs for collecting, transporting, and recycling of a covered electronic product are borne by the appropriate manufacturer in the event that the manufacturer ceases to participate in the program.

(4) Nothing in this section authorizes the authority to assess fees or levy taxes directly on the sale or possession of electronic products.

(5) If a manufacturer has not met its financial obligations as determined by the authority under this section, the author-

ity shall notify the department that the manufacturer is no longer participating in the standard plan.

(6) The authority shall submit its plan for assessing charges and apportioning cost on manufacturers participating in the standard plan to the department for review and approval along with the standard plan as provided in RCW 70.95N.060.

(7)(a) Any manufacturer participating in the standard plan may appeal an assessment of charges or apportionment of costs levied by the authority under this section by written petition to the director of the department. The director of the department or the director's designee shall review all appeals within timelines established by the department and shall reverse any assessments of charges or apportionment of costs if the director finds that the authority's assessments or apportionment of costs was an arbitrary administrative decision, an abuse of administrative discretion, or is not an equitable assessment or apportionment of costs. The director shall make a fair and impartial decision based on sound data. If the director of the department reverses an assessment of charges, the authority must redetermine the assessment or apportionment of costs.

(b) Disputes regarding a final decision made by the director or director's designee may be challenged through arbitration. The director shall appoint one member to serve on the arbitration panel and the challenging party shall appoint one other. These two persons shall choose a third person to serve. If the two persons cannot agree on a third person, the presiding judge of the Thurston county superior court shall choose a third person. The decision of the arbitration panel shall be final and binding, subject to review by the superior court solely upon the question of whether the decision of the panel was arbitrary or capricious. [2006 c 183 § 31.]

**70.95N.310 Authority use of funds.** (1) The authority shall use any funds legally available to it for any purpose specifically authorized by this chapter to:

(a) Contract and pay for collecting, transporting, and recycling of covered electronic products and education and other services as identified in the standard plan;

(b) Pay for the expenses of the authority including, but not limited to, salaries, benefits, operating costs and consumable supplies, equipment, office space, and other expenses related to the costs associated with operating the authority;

(c) Pay into the electronic products recycling account amounts billed by the department to the authority for any deficit in reaching the standard plan's equivalent share as required under RCW 70.95N.220; and

(d) Pay the department for the fees for submitting the standard plan and any plan revisions.

(2) If practicable, the authority shall avoid creating new infrastructure already available through private industry in the state.

(3) The authority may not receive an appropriation of state funds, other than:

(a) Funds that may be provided as a one-time loan to cover administrative costs associated with start-up of the authority, such as electing the board of directors and conducting the public hearing for the operating plan, provided that no

appropriated funds may be used to pay for collection, transportation, or recycling services; and

(b) Funds received from the department from the electronic products recycling account for exceeding the standard plan's equivalent share.

(4) The authority may receive additional sources of funding that do not obligate the state to secure debt.

(5) All funds collected by the authority under this chapter, including interest, dividends, and other profits, are and must remain under the complete control of the authority and its board of directors, be fully available to achieve the intent of this chapter, and be used for the sole purpose of achieving the intent of this chapter. [2006 c 183 § 32.]

**70.95N.320 General operating plan.** (1) The board shall adopt a general operating plan of procedures for the authority. The board shall also adopt operating procedures for collecting funds from participating covered electronic manufacturers and for providing funding for contracted services. These operating procedures must be adopted by resolution prior to the authority operating the applicable programs.

(2) The general operating plan must include, but is not limited to: (a) Appropriate minimum reserve requirements to secure the authority's financial stability; (b) appropriate standards for contracting for services; and (c) standards for service.

(3) The board shall conduct at least one public hearing on the general operating plan prior to its adoption. The authority shall provide and make public a written response to all comments received by the public.

(4) The general operating plan must be adopted by resolution of the board. The board may periodically update the general operating plan as necessary, but must update the plan no less than once every four years. The general operating plan or updated plan must include a report on authority activities conducted since the commencement of authority operation or since the last reported general operating plan, whichever is more recent, including a statement of results achieved under the purposes of this chapter and the general operating plan. Upon adoption, the authority shall conduct its programs in observance of the objectives established in the general operating plan. [2006 c 183 § 33.]

**70.95N.330 Authority employees—Initial staff support—Authority powers.** (1) The authority shall employ a chief executive officer, appointed by the board, and a chief financial officer, as well as professional, technical, and support staff, appointed by the chief executive officer, necessary to carry out its duties.

(2) Employees of the authority are not classified employees of the state. Employees of the authority are exempt from state service rules and may receive compensation only from the authority at rates competitive with state service.

(3) The authority may retain its own legal counsel.

(4) The departments of ecology and \*community, trade, and economic development shall provide staff to assist in the creation of the authority. If requested by the authority, the departments of ecology and \*community, trade, and economic development shall also provide start-up support staff

to the authority for its first twelve months of operation, or part thereof, to assist in the quick establishment of the authority. Staff expenses must be paid through funds collected by the authority and must be reimbursed to the departments from the authority's financial resources within the first twenty-four months of operation.

(5) In addition to accomplishing the activities specifically authorized in this chapter, the authority may:

(a) Maintain an office or offices;

(b) Make and execute all manner of contracts, agreements, and instruments and financing documents with public and private parties as the authority deems necessary, useful, or convenient to accomplish its purposes;

(c) Make expenditures as appropriate for paying the administrative costs and expenses of the authority in carrying out the provisions of this chapter;

(d) Give assistance to private and public bodies contracted to provide collection, transportation, and recycling services by providing information, guidelines, forms, and procedures for implementing their programs;

(e) Delegate, through contract, any of its powers and duties if consistent with the purposes of this chapter; and

(f) Exercise any other power the authority deems necessary, useful, or convenient to accomplish its purposes and exercise the powers expressly granted in this chapter. [2006 c 183 § 34.]

**\*Reviser's note:** The "department of community, trade, and economic development" was renamed the "department of commerce" by 2009 c 565.

**70.95N.340 Federal preemption.** This chapter is void if a federal law, or a combination of federal laws, takes effect that establishes a national program for the collection and recycling of covered electronic products that substantially meets the intent of this chapter, including the creation of a financing mechanism for collection, transportation, and recycling of all covered electronic products from households, small businesses, school districts, small governments, and charities in the United States. [2006 c 183 § 35.]

**70.95N.350 Entity must be registered as a collector to act as a collector in a plan—Disposition of electronic products received by a registered collector—Recordkeeping requirements—Display of notice—Site visits.** (1) Only an entity registered as a collector with the department may act as a collector in a plan. All covered electronic products received by a registered collector must be submitted to a plan. Fully functioning computers that are received by a registered collector in working order may be sold or donated as whole products by the collector for reuse. Computers that require repair to make them a fully functioning unit may only be repaired on-site at the collector's place of business by the registered collector for reuse according to its original purpose.

(2) Registered collectors may use whole parts gleaned from collected computers or new parts for making repairs as long as there is a part-for-part exchange with nonfunctioning computers submitted to a plan.

(3) Registered collectors may not include computers that are gleaned for reuse in the weight totals for compensation by the plan.

(2010 Ed.)

(4) Registered collectors must maintain a record of computers sold or donated by the collector for a period of three years.

(5) Registered collectors must display a notice at the point of collection that computers received by the collector may be repaired and sold or donated as a fully functioning computer rather than submitted to a processor for recycling.

(6) The authority, authorized party, or the department may conduct site visits of all registered collectors that reuse or refurbish computers and who have an agreement with the authority or authorized party to provide collection services. If the authority or authorized party finds that a collector is not providing services in compliance with this chapter, the authority or authorized party shall report that finding to the department for enforcement action. [2009 c 285 § 1.]

**70.95N.900 Construction—2006 c 183.** This act must be liberally construed to carry out its purposes and objectives. [2006 c 183 § 38.]

**70.95N.901 Severability—2006 c 183.** If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [2006 c 183 § 39.]

**70.95N.902 Effective date—2006 c 183.** This act takes effect July 1, 2006. [2006 c 183 § 40.]

## Chapter 70.96 RCW ALCOHOLISM

### Sections

70.96.150 Inability to contribute to cost no bar to admission—Department may limit admissions.

*Alcoholism and drug addiction and support act: Chapter 74.50 RCW.*

*Chemical dependency benefit provisions*

*group disability contracts: RCW 48.21.160 through 48.21.190.*

*health care services contracts: RCW 48.44.240.*

**70.96.150 Inability to contribute to cost no bar to admission.** [1959 c 85 § 15.] Repealed by 1989 c 270 § 35; and subsequently recodified as RCW 70.96A.430 pursuant to 1993 c 131 § 1.

**Reviser's note:** This section was amended by 1989 c 271 § 308, without cognizance of the repeal thereof; and subsequently recodified without cognizance of the repeal thereof.

**70.96.150 Inability to contribute to cost no bar to admission—Department may limit admissions.** The department shall not refuse admission for diagnosis, evaluation, guidance or treatment to any applicant because it is determined that the applicant is financially unable to contribute fully or in part to the cost of any services or facilities available under the program on alcoholism.

The department may limit admissions of such applicants or modify its programs in order to ensure that expenditures for services or programs do not exceed amounts appropriated by the legislature and are allocated by the department for such services or programs. The department may establish admission priorities in the event that the number of eligible applicants exceeds the limits set by the department. [1989 c 271 § 308; 1959 c 85 § 15.]

**Reviser's note:** This section was also repealed by 1989 c 270 § 35, without cognizance of its amendment by 1989 c 271 § 308; and subsequently recodified pursuant to 1993 c 131 § 1. For rule of construction concerning sections amended and repealed in the same legislative session, see RCW 1.12.025.

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

### Chapter 70.96A RCW

## TREATMENT FOR ALCOHOLISM, INTOXICATION, AND DRUG ADDICTION

(Formerly: Uniform alcoholism and intoxication treatment)

### Sections

- 70.96A.010 Declaration of policy.
- 70.96A.011 Legislative finding and intent—Purpose of chapter.
- 70.96A.020 Definitions.
- 70.96A.030 Chemical dependency program.
- 70.96A.035 Integrated comprehensive screening and assessment process—Implementation.
- 70.96A.037 Chemical dependency specialist services—To be available at children and family services offices—Training in uniform screening.
- 70.96A.040 Program authority.
- 70.96A.043 Agreements authorized under the Interlocal Cooperation Act.
- 70.96A.045 Funding prerequisites, facilities, plans, or programs receiving financial assistance.
- 70.96A.047 Local funding and donative funding requirements—Facilities, plans, programs.
- 70.96A.050 Duties of department.
- 70.96A.055 Drug courts.
- 70.96A.060 Interdepartmental coordinating committee.
- 70.96A.080 Comprehensive program for treatment—Regional facilities.
- 70.96A.085 City, town, or county without facility—Contribution of liquor taxes prerequisite to use of another's facility.
- 70.96A.087 Liquor taxes and profits—City and county eligibility conditioned.
- 70.96A.090 Standards for treatment programs—Enforcement procedures—Penalties—Evaluation of treatment of children—Treatment during pregnancy.
- 70.96A.095 Age of consent—Outpatient treatment of minors for chemical dependency.
- 70.96A.096 Notice to parents, school contacts for referring students to inpatient treatment.
- 70.96A.097 Review of admission and inpatient treatment of minors—Determination of medical necessity—Department review—Minor declines necessary treatment—At-risk youth petition—Costs—Public funds.
- 70.96A.100 Acceptance for approved treatment—Rules.
- 70.96A.110 Voluntary treatment of alcoholics or other drug addicts.
- 70.96A.120 Treatment programs and facilities—Admissions—Peace officer duties—Protective custody.
- 70.96A.140 Involuntary commitment.
- 70.96A.141 Joinder of petitions for commitment.
- 70.96A.142 Evaluation by designated chemical dependency specialist—When required—Required notifications.
- 70.96A.145 Involuntary commitment proceedings—Prosecuting attorney may represent specialist or program.
- 70.96A.148 Detention, commitment duties—Designation of county designated mental health professional.
- 70.96A.150 Records of alcoholics and intoxicated persons.
- 70.96A.155 Court-ordered treatment—Required notifications.
- 70.96A.157 Persons subject to court-ordered treatment or supervision—Documentation.
- 70.96A.160 Visitation and communication with patients.
- 70.96A.170 Emergency service patrol—Establishment—Rules.
- 70.96A.180 Payment for treatment—Financial ability of patients.
- 70.96A.190 Criminal laws limitations.
- 70.96A.230 Minor—When outpatient treatment provider must give notice to parents.
- 70.96A.235 Minor—Parental consent for inpatient treatment—Exception.
- 70.96A.240 Minor—Parent not liable for payment unless consented to treatment—No right to public funds.
- 70.96A.245 Minor—Parent may request determination whether minor has chemical dependency requiring inpatient treatment—Minor consent not required—Duties and obligations of professional person and facility.
- 70.96A.250 Minor—Parent may request determination whether minor has chemical dependency requiring outpatient treatment—Consent of minor not required—Discharge of minor.
- 70.96A.255 Minor—Petition to superior court for release from facility.
- 70.96A.260 Minor—Not released by petition under RCW 70.96A.255—Release within thirty days—Professional may initiate proceedings to stop release.
- 70.96A.265 Minor—Eligibility for medical assistance under chapter 74.09 RCW—Payment by department.

- 70.96A.300 Counties may create alcoholism and other drug addiction board—Generally.
- 70.96A.310 County alcoholism and other drug addiction program—Chief executive officer of program to be program coordinator.
- 70.96A.320 Alcoholism and other drug addiction program—Generally.
- 70.96A.325 Methamphetamine addiction programs—Counties authorized to seek state funding.
- 70.96A.350 Criminal justice treatment account.
- 70.96A.400 Opiate substitution treatment—Declaration of regulation by state.
- 70.96A.410 Opiate substitution treatment—Program certification by department, department duties—Definition of opiate substitution treatment.
- 70.96A.420 Statewide treatment and operating standards for opiate substitution programs—Evaluation and report.
- 70.96A.430 Inability to contribute to cost no bar to admission—Department may limit admissions.
- 70.96A.500 Fetal alcohol screening and assessment services.
- 70.96A.510 Interagency agreement on fetal alcohol exposure programs.
- 70.96A.520 Chemical dependency treatment expenditures—Prioritization.
- 70.96A.530 Disability lifeline benefits—Access to chemical dependency treatment.
- 70.96A.800 Chemically dependent persons—Intensive case management pilot projects.
- 70.96A.905 Uniform application of chapter—Training for county-designated mental health professionals.
- 70.96A.910 Application—Construction—1972 ex.s. c 122.
- 70.96A.915 Department allocation of funds—Construction.
- 70.96A.920 Severability—1972 ex.s. c 122.
- 70.96A.930 Section, subsection headings not part of law.

**Reviser's note:** Throughout this chapter "this act" has been translated to "this chapter." This act [1972 ex.s. c 122] consists of chapter 70.96A RCW, the amendment of RCW 9.87.010, 71.24.030 and the repeal of RCW 9.68.040, 70.96.010-70.96.030, 70.96.040-70.96.080, 70.96.090, 70.96.100-70.96.140, 70.96.900, and 71.08.010-71.08.090.

*Alcoholism and drug addiction and support act: Chapter 74.50 RCW.*

*Court files and records closed—Exceptions: RCW 71.05.620.*

**70.96A.010 Declaration of policy.** It is the policy of this state that alcoholics and intoxicated persons may not be subjected to criminal prosecution solely because of their consumption of alcoholic beverages but rather should, within available funds, be afforded a continuum of treatment in order that they may lead normal lives as productive members of society. Within available funds, treatment should also be provided for drug addicts. [1989 c 271 § 304; 1972 ex.s. c 122 § 1.]

#### *Chemical dependency benefit provisions*

*group disability contracts: RCW 48.21.160-48.21.190.*

*health care services contracts: RCW 48.44.240.*

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**70.96A.011 Legislative finding and intent—Purpose of chapter.** The legislature finds that the use of alcohol and other drugs has become a serious threat to the health of the citizens of the state of Washington. The use of psychoactive chemicals has been found to be a prime factor in the current AIDS epidemic. Therefore, a comprehensive statute to deal with alcoholism and other drug addiction is necessary.

The legislature agrees with the 1987 resolution of the American Medical Association that endorses the proposition that all chemical dependencies, including alcoholism, are diseases. It is the intent of the legislature to end the sharp distinctions between alcoholism services and other drug addiction services, to recognize that chemical dependency is a disease, and to insure that prevention and treatment services are available and are of high quality. It is the purpose of this chapter to provide the financial assistance necessary to enable the department of social and health services to provide

a discrete program of alcoholism and other drug addiction services. [1989 c 270 § 1.]

**70.96A.020 Definitions.** For the purposes of this chapter the following words and phrases shall have the following meanings unless the context clearly requires otherwise:

(1) "Alcoholic" means a person who suffers from the disease of alcoholism.

(2) "Alcoholism" means a disease, characterized by a dependency on alcoholic beverages, loss of control over the amount and circumstances of use, symptoms of tolerance, physiological or psychological withdrawal, or both, if use is reduced or discontinued, and impairment of health or disruption of social or economic functioning.

(3) "Approved treatment program" means a discrete program of chemical dependency treatment provided by a treatment program certified by the department of social and health services as meeting standards adopted under this chapter.

(4) "Chemical dependency" means:

(a) Alcoholism; (b) drug addiction; or (c) dependence on alcohol and one or more other psychoactive chemicals, as the context requires.

(5) "Chemical dependency program" means expenditures and activities of the department designed and conducted to prevent or treat alcoholism and other drug addiction, including reasonable administration and overhead.

(6) "Department" means the department of social and health services.

(7) "Designated chemical dependency specialist" or "specialist" means a person designated by the county alcoholism and other drug addiction program coordinator designated under RCW 70.96A.310 to perform the commitment duties described in RCW 70.96A.140 and qualified to do so by meeting standards adopted by the department.

(8) "Director" means the person administering the chemical dependency program within the department.

(9) "Drug addict" means a person who suffers from the disease of drug addiction.

(10) "Drug addiction" means a disease characterized by a dependency on psychoactive chemicals, loss of control over the amount and circumstances of use, symptoms of tolerance, physiological or psychological withdrawal, or both, if use is reduced or discontinued, and impairment of health or disruption of social or economic functioning.

(11) "Emergency service patrol" means a patrol established under RCW 70.96A.170.

(12) "Gravely disabled by alcohol or other psychoactive chemicals" or "gravely disabled" means that a person, as a result of the use of alcohol or other psychoactive chemicals: (a) Is in danger of serious physical harm resulting from a failure to provide for his or her essential human needs of health or safety; or (b) manifests severe deterioration in routine functioning evidenced by a repeated and escalating loss of cognition or volitional control over his or her actions and is not receiving care as essential for his or her health or safety.

(13) "History of one or more violent acts" refers to the period of time ten years prior to the filing of a petition under this chapter, excluding any time spent, but not any violent acts committed, in a mental health facility, or a long-term alcoholism or drug treatment facility, or in confinement.

(14) "Incapacitated by alcohol or other psychoactive chemicals" means that a person, as a result of the use of alcohol or other psychoactive chemicals, is gravely disabled or presents a likelihood of serious harm to himself or herself, to any other person, or to property.

(15) "Incompetent person" means a person who has been adjudged incompetent by the superior court.

(16) "Intoxicated person" means a person whose mental or physical functioning is substantially impaired as a result of the use of alcohol or other psychoactive chemicals.

(17) "Licensed physician" means a person licensed to practice medicine or osteopathic medicine and surgery in the state of Washington.

(18) "Likelihood of serious harm" means:

(a) A substantial risk that: (i) Physical harm will be inflicted by an individual upon his or her own person, as evidenced by threats or attempts to commit suicide or inflict physical harm on one's self; (ii) physical harm will be inflicted by an individual upon another, as evidenced by behavior that has caused the harm or that places another person or persons in reasonable fear of sustaining the harm; or (iii) physical harm will be inflicted by an individual upon the property of others, as evidenced by behavior that has caused substantial loss or damage to the property of others; or

(b) The individual has threatened the physical safety of another and has a history of one or more violent acts.

(19) "Medical necessity" for inpatient care of a minor means a requested certified inpatient service that is reasonably calculated to: (a) Diagnose, arrest, or alleviate a chemical dependency; or (b) prevent the worsening of chemical dependency conditions that endanger life or cause suffering and pain, or result in illness or infirmity or threaten to cause or aggravate a handicap, or cause physical deformity or malfunction, and there is no adequate less restrictive alternative available.

(20) "Minor" means a person less than eighteen years of age.

(21) "Parent" means the parent or parents who have the legal right to custody of the child. Parent includes custodian or guardian.

(22) "Peace officer" means a law enforcement official of a public agency or governmental unit, and includes persons specifically given peace officer powers by any state law, local ordinance, or judicial order of appointment.

(23) "Person" means an individual, including a minor.

(24) "Professional person in charge" or "professional person" means a physician or chemical dependency counselor as defined in rule by the department, who is empowered by a certified treatment program with authority to make assessment, admission, continuing care, and discharge decisions on behalf of the certified program.

(25) "Secretary" means the secretary of the department of social and health services.

(26) "Treatment" means the broad range of emergency, detoxification, residential, and outpatient services and care, including diagnostic evaluation, chemical dependency education and counseling, medical, psychiatric, psychological, and social service care, vocational rehabilitation and career counseling, which may be extended to alcoholics and other drug addicts and their families, persons incapacitated by alcohol or other psychoactive chemicals, and intoxicated persons.

(27) "Treatment program" means an organization, institution, or corporation, public or private, engaged in the care, treatment, or rehabilitation of alcoholics or other drug addicts.

(28) "Violent act" means behavior that resulted in homicide, attempted suicide, nonfatal injuries, or substantial damage to property. [2001 c 13 § 1; 1998 c 296 § 22. Prior: 1996 c 178 § 23; 1996 c 133 § 33; 1994 c 231 § 1; 1991 c 364 § 8; 1990 c 151 § 2; prior: 1989 c 271 § 305; 1989 c 270 § 3; 1972 ex.s. c 122 § 2.]

**Severability—2001 c 13:** "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [2001 c 13 § 5.]

**Findings—Intent—Part headings not law—Short title—1998 c 296:** See notes following RCW 74.13.025.

**Findings—Short title—Intent—Construction—1996 c 133:** See notes following RCW 13.32A.197.

**Findings—1991 c 364:** "The legislature finds that the use of alcohol and illicit drugs continues to be a primarycrippler of our youth. This translates into incredible costs to individuals, families, and society in terms of traffic fatalities, suicides, criminal activity including homicides, sexual promiscuity, familial incorrigibility, and conduct disorders, and educational fallout. Among children of all socioeconomic groups lower expectations for the future, low motivation and self-esteem, alienation, and depression are associated with alcohol and drug abuse.

Studies reveal that deaths from alcohol and other drug-related injuries rise sharply through adolescence, peaking in the early twenties. But second peak occurs in later life, where it accounts for three times as many deaths from chronic diseases. A young victim's life expectancy is likely to be reduced by an average of twenty-six years.

Yet the cost of treating alcohol and drug addicts can be recouped in the first three years of abstinence in health care savings alone. Public money spent on treatment saves not only the life of the chemical abuser, it makes us safer as individuals, and in the long-run costs less.

The legislature further finds that many children who abuse alcohol and other drugs may not require involuntary treatment, but still are not adequately served. These children remain at risk for future chemical dependency, and may become mentally ill or a juvenile offender or need out-of-home placement. Children placed at risk because of chemical abuse may be better served by the creation of a comprehensive integrated system for children in crisis.

The legislature declares that an emphasis on the treatment of youth will pay the largest dividend in terms of preventable costs to individuals themselves, their families, and to society. The provision of augmented involuntary alcohol treatment services to youths, as well as involuntary treatment for youths addicted by other drugs, is in the interest of the public health and safety." [1991 c 364 § 7.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**70.96A.030 Chemical dependency program.** A discrete program of chemical dependency is established within the department of social and health services, to be administered by a qualified person who has training and experience in handling alcoholism and other drug addiction problems or the organization or administration of treatment services for persons suffering from alcoholism or other drug addiction problems. [1989 c 270 § 4; 1972 ex.s. c 122 § 3.]

**70.96A.035 Integrated comprehensive screening and assessment process—Implementation.** (1) Not later than January 1, 2007, all persons providing treatment under this chapter shall also implement the integrated comprehensive screening and assessment process for chemical dependency and mental disorders adopted pursuant to RCW 70.96C.010 and shall document the numbers of clients with co-occurring

mental and substance abuse disorders based on a quadrant system of low and high needs.

(2) Treatment providers contracted to provide treatment under this chapter who fail to implement the integrated comprehensive screening and assessment process for chemical dependency and mental disorders by July 1, 2007, are subject to contractual penalties established under RCW 70.96C.010. [2005 c 504 § 302.]

**Findings—Intent—Severability—Application—Construction—Captions, part headings, subheadings not law—Adoption of rules—Effective dates—2005 c 504:** See notes following RCW 71.05.027.

**Alphabetization—Correction of references—2005 c 504:** See note following RCW 71.05.020.

**70.96A.037 Chemical dependency specialist services—To be available at children and family services offices—Training in uniform screening.** (1) The department of social and health services shall contract for chemical dependency specialist services at division of children and family services offices to enhance the timeliness and quality of child protective services assessments and to better connect families to needed treatment services.

(2) The chemical dependency specialist's duties may include, but are not limited to: Conducting on-site chemical dependency screening and assessment, facilitating progress reports to department social workers, in-service training of department social workers and staff on substance abuse issues, referring clients from the department to treatment providers, and providing consultation on cases to department social workers.

(3) The department of social and health services shall provide training in and ensure that each case-carrying social worker is trained in uniform screening for mental health and chemical dependency. [2009 c 579 § 1; 2005 c 504 § 305.]

**Findings—Intent—Severability—Application—Construction—Captions, part headings, subheadings not law—Adoption of rules—Effective dates—2005 c 504:** See notes following RCW 71.05.027.

**Alphabetization—Correction of references—2005 c 504:** See note following RCW 71.05.020.

**70.96A.040 Program authority.** The department, in the operation of the chemical dependency program may:

(1) Plan, establish, and maintain prevention and treatment programs as necessary or desirable;

(2) Make contracts necessary or incidental to the performance of its duties and the execution of its powers, including contracts with public and private agencies, organizations, and individuals to pay them for services rendered or furnished to alcoholics or other drug addicts, persons incapacitated by alcohol or other psychoactive chemicals, or intoxicated persons;

(3) Enter into agreements for monitoring of verification of qualifications of counselors employed by approved treatment programs;

(4) Adopt rules under chapter 34.05 RCW to carry out the provisions and purposes of this chapter and contract, cooperate, and coordinate with other public or private agencies or individuals for those purposes;

(5) Solicit and accept for use any gift of money or property made by will or otherwise, and any grant of money, services, or property from the federal government, the state, or

any political subdivision thereof or any private source, and do all things necessary to cooperate with the federal government or any of its agencies in making an application for any grant;

(6) Administer or supervise the administration of the provisions relating to alcoholics, other drug addicts, and intoxicated persons of any state plan submitted for federal funding pursuant to federal health, welfare, or treatment legislation;

(7) Coordinate its activities and cooperate with chemical dependency programs in this and other states, and make contracts and other joint or cooperative arrangements with state, local, or private agencies in this and other states for the treatment of alcoholics and other drug addicts and their families, persons incapacitated by alcohol or other psychoactive chemicals, and intoxicated persons and for the common advancement of chemical dependency programs;

(8) Keep records and engage in research and the gathering of relevant statistics;

(9) Do other acts and things necessary or convenient to execute the authority expressly granted to it;

(10) Acquire, hold, or dispose of real property or any interest therein, and construct, lease, or otherwise provide treatment programs. [1989 c 270 § 5; 1988 c 193 § 2; 1972 ex.s. c 122 § 4.]

**70.96A.043 Agreements authorized under the Interlocal Cooperation Act.** Pursuant to the Interlocal Cooperation Act, chapter 39.34 RCW, the department may enter into agreements to accomplish the purposes of this chapter. [1989 c 270 § 7.]

**70.96A.045 Funding prerequisites, facilities, plans, or programs receiving financial assistance.** All facilities, plans, or programs receiving financial assistance under RCW 70.96A.040 must be approved by the department before any state funds may be used to provide the financial assistance. If the facilities, plans, or programs have not been approved as required or do not receive the required approval, the funds set aside for the facility, plan, or program shall be made available for allocation to facilities, plans, or programs that have received the required approval of the department. In addition, whenever there is an excess of funds set aside for a particular approved facility, plan, or program, the excess shall be made available for allocation to other approved facilities, plans, or programs. [1989 c 270 § 10.]

**70.96A.047 Local funding and donative funding requirements—Facilities, plans, programs.** Except as provided in this chapter, the secretary shall not approve any facility, plan, or program for financial assistance under RCW 70.96A.040 unless at least ten percent of the amount spent for the facility, plan, or program is provided from local public or private sources. When deemed necessary to maintain public standards of care in the facility, plan, or program, the secretary may require the facility, plan, or program to provide up to fifty percent of the total spent for the program through fees, gifts, contributions, or volunteer services. The secretary shall determine the value of the gifts, contributions, and volunteer services. [1989 c 270 § 11.]

(2010 Ed.)

**70.96A.050 Duties of department.** The department shall:

(1) Develop, encourage, and foster statewide, regional, and local plans and programs for the prevention of alcoholism and other drug addiction, treatment of alcoholics and other drug addicts and their families, persons incapacitated by alcohol or other psychoactive chemicals, and intoxicated persons in cooperation with public and private agencies, organizations, and individuals and provide technical assistance and consultation services for these purposes;

(2) Coordinate the efforts and enlist the assistance of all public and private agencies, organizations, and individuals interested in prevention of alcoholism and drug addiction, and treatment of alcoholics and other drug addicts and their families, persons incapacitated by alcohol or other psychoactive chemicals, and intoxicated persons;

(3) Cooperate with public and private agencies in establishing and conducting programs to provide treatment for alcoholics and other drug addicts and their families, persons incapacitated by alcohol or other psychoactive chemicals, and intoxicated persons who are clients of the correctional system;

(4) Cooperate with the superintendent of public instruction, state board of education, schools, police departments, courts, and other public and private agencies, organizations and individuals in establishing programs for the prevention of alcoholism and other drug addiction, treatment of alcoholics or other drug addicts and their families, persons incapacitated by alcohol or other psychoactive chemicals, and intoxicated persons, and preparing curriculum materials thereon for use at all levels of school education;

(5) Prepare, publish, evaluate, and disseminate educational material dealing with the nature and effects of alcohol and other psychoactive chemicals and the consequences of their use;

(6) Develop and implement, as an integral part of treatment programs, an educational program for use in the treatment of alcoholics or other drug addicts, persons incapacitated by alcohol or other psychoactive chemicals, and intoxicated persons, which program shall include the dissemination of information concerning the nature and effects of alcohol and other psychoactive chemicals, the consequences of their use, the principles of recovery, and HIV and AIDS;

(7) Organize and foster training programs for persons engaged in treatment of alcoholics or other drug addicts, persons incapacitated by alcohol or other psychoactive chemicals, and intoxicated persons;

(8) Sponsor and encourage research into the causes and nature of alcoholism and other drug addiction, treatment of alcoholics and other drug addicts, persons incapacitated by alcohol or other psychoactive chemicals, and intoxicated persons, and serve as a clearing house for information relating to alcoholism or other drug addiction;

(9) Specify uniform methods for keeping statistical information by public and private agencies, organizations, and individuals, and collect and make available relevant statistical information, including number of persons treated, frequency of admission and readmission, and frequency and duration of treatment;

(10) Advise the governor in the preparation of a comprehensive plan for treatment of alcoholics and other drug

addicts, persons incapacitated by alcohol or other psychoactive chemicals, and intoxicated persons for inclusion in the state's comprehensive health plan;

(11) Review all state health, welfare, and treatment plans to be submitted for federal funding under federal legislation, and advise the governor on provisions to be included relating to alcoholism and other drug addiction, persons incapacitated by alcohol or other psychoactive chemicals, and intoxicated persons;

(12) Assist in the development of, and cooperate with, programs for alcohol and other psychoactive chemical education and treatment for employees of state and local governments and businesses and industries in the state;

(13) Use the support and assistance of interested persons in the community to encourage alcoholics and other drug addicts voluntarily to undergo treatment;

(14) Cooperate with public and private agencies in establishing and conducting programs designed to deal with the problem of persons operating motor vehicles while intoxicated;

(15) Encourage general hospitals and other appropriate health facilities to admit without discrimination alcoholics and other drug addicts, persons incapacitated by alcohol or other psychoactive chemicals, and intoxicated persons and to provide them with adequate and appropriate treatment;

(16) Encourage all health and disability insurance programs to include alcoholism and other drug addiction as a covered illness; and

(17) Organize and sponsor a statewide program to help court personnel, including judges, better understand the disease of alcoholism and other drug addiction and the uses of chemical dependency treatment programs. [2001 c 13 § 2; 1989 c 270 § 6; 1979 ex.s. c 176 § 7; 1972 ex.s. c 122 § 5.]

**Severability—2001 c 13:** See note following RCW 70.96A.020.

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**70.96A.055 Drug courts.** The department shall contract with counties operating drug courts and counties in the process of implementing new drug courts for the provision of drug and alcohol treatment services. [1999 c 197 § 10.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**70.96A.060 Interdepartmental coordinating committee.** (1) An interdepartmental coordinating committee is established, composed of the superintendent of public instruction or his or her designee, the director of licensing or his or her designee, the executive secretary of the Washington state law enforcement training commission or his or her designee, and one or more designees (not to exceed three) of the secretary, one of whom shall be the director of the chemical dependency program. The committee shall meet at least twice annually at the call of the secretary, or his or her designee, who shall be its chair. The committee shall provide for the coordination of, and exchange of information on, all programs relating to alcoholism and other drug addiction, and shall act as a permanent liaison among the departments engaged in activities affecting alcoholics and other drug addicts, persons incapacitated by alcohol or other psychoactive chemicals, and intoxicated persons. The committee shall assist the secretary and director in formulating a comprehensive

plan for prevention of alcoholism and other drug addiction, for treatment of alcoholics and other drug addicts, persons incapacitated by alcohol or other psychoactive chemicals, and intoxicated persons.

(2) In exercising its coordinating functions, the committee shall assure that:

(a) The appropriate state agencies provide or assure all necessary medical, social, treatment, and educational services for alcoholics and other drug addicts and their families, persons incapacitated by alcohol or other psychoactive chemicals, and intoxicated persons and for the prevention of alcoholism and other chemical dependency, without unnecessary duplication of services;

(b) The several state agencies cooperate in the use of facilities and in the treatment of alcoholics and other drug addicts, persons incapacitated by alcohol or other psychoactive chemicals, and intoxicated persons; and

(c) All state agencies adopt approaches to the prevention of alcoholism and other drug addiction, the treatment of alcoholics and other drug addicts and their families, persons incapacitated by alcohol or other psychoactive chemicals, and intoxicated persons consistent with the policy of this chapter. [1989 c 270 § 8; 1979 c 158 § 220; 1972 ex.s. c 122 § 6.]

**70.96A.080 Comprehensive program for treatment—Regional facilities.** (1) The department shall establish by all appropriate means, including contracting for services, a comprehensive and coordinated discrete program for the treatment of alcoholics and other drug addicts and their families, persons incapacitated by alcohol or other psychoactive chemicals, and intoxicated persons.

(2) The program shall include, but not necessarily be limited to:

(a) Detoxification;

(b) Residential treatment; and

(c) Outpatient treatment.

(3) All appropriate public and private resources shall be coordinated with and used in the program when possible.

(4) The department may contract for the use of an approved treatment program or other individual or organization if the secretary considers this to be an effective and economical course to follow. [1989 c 270 § 18; 1972 ex.s. c 122 § 8.]

**70.96A.085 City, town, or county without facility—Contribution of liquor taxes prerequisite to use of another's facility.** A city, town, or county that does not have its own facility or program for the treatment and rehabilitation of alcoholics and other drug addicts may share in the use of a facility or program maintained by another city or county so long as it contributes no less than two percent of its share of liquor taxes and profits to the support of the facility or program. [1989 c 270 § 12.]

**70.96A.087 Liquor taxes and profits—City and county eligibility conditioned.** To be eligible to receive its share of liquor taxes and profits, each city and county shall devote no less than two percent of its share of liquor taxes and profits to the support of a program of alcoholism and other drug addiction approved by the alcoholism and other drug

addiction board authorized by RCW 70.96A.300 and the secretary. [1989 c 270 § 13.]

**70.96A.090 Standards for treatment programs—Enforcement procedures—Penalties—Evaluation of treatment of children—Treatment during pregnancy.** (1)

The department shall adopt rules establishing standards for approved treatment programs, the process for the review and inspection program applying to the department for certification as an approved treatment program, and fixing the fees to be charged by the department for the required inspections. The standards may concern the health standards to be met and standards of services and treatment to be afforded patients.

(2) The department may suspend, revoke, limit, restrict, or modify an approval, or refuse to grant approval, for failure to meet the provisions of this chapter, or the standards adopted under this chapter. RCW 43.20A.205 governs notice of a license denial, revocation, suspension, or modification and provides the right to an adjudicative proceeding.

(3) No treatment program may advertise or represent itself as an approved treatment program if approval has not been granted, has been denied, suspended, revoked, or canceled.

(4) Certification as an approved treatment program is effective for one calendar year from the date of issuance of the certificate. The certification shall specify the types of services provided by the approved treatment program that meet the standards adopted under this chapter. Renewal of certification shall be made in accordance with this section for initial approval and in accordance with the standards set forth in rules adopted by the secretary.

(5) Approved treatment programs shall not provide alcoholism or other drug addiction treatment services for which the approved treatment program has not been certified. Approved treatment programs may provide services for which approval has been sought and is pending, if approval for the services has not been previously revoked or denied.

(6) The department periodically shall inspect approved public and private treatment programs at reasonable times and in a reasonable manner.

(7) The department shall maintain and periodically publish a current list of approved treatment programs.

(8) Each approved treatment program shall file with the department on request, data, statistics, schedules, and information the department reasonably requires. An approved treatment program that without good cause fails to furnish any data, statistics, schedules, or information as requested, or files fraudulent returns thereof, may be removed from the list of approved treatment programs, and its certification revoked or suspended.

(9) The department shall use the data provided in subsection (8) of this section to evaluate each program that admits children to inpatient treatment upon application of their parents. The evaluation shall be done at least once every twelve months. In addition, the department shall randomly select and review the information on individual children who are admitted on application of the child's parent for the purpose of determining whether the child was appropriately placed into treatment based on an objective evaluation of the child's condition and the outcome of the child's treatment.

(10) Upon petition of the department and after a hearing held upon reasonable notice to the facility, the superior court may issue a warrant to an officer or employee of the department authorizing him or her to enter and inspect at reasonable times, and examine the books and accounts of, any approved public or private treatment program refusing to consent to inspection or examination by the department or which the department has reasonable cause to believe is operating in violation of this chapter.

(11)(a) All approved opiate substitution treatment programs that provide services to women who are pregnant are required to disseminate up-to-date and accurate health education information to all their pregnant clients concerning the possible addiction and health risks that their opiate substitution treatment may have on their baby. All pregnant clients must also be advised of the risks to both them and their baby associated with not remaining on the opiate substitute program. The information must be provided to these clients both verbally and in writing. The health education information provided to the pregnant clients must include referral options for the addicted baby.

(b) The department shall adopt rules that require all opiate treatment programs to educate all pregnant women in their program on the benefits and risks of methadone treatment to their fetus before they are provided these medications, as part of their addiction treatment. The department shall meet the requirements under this subsection within the appropriations provided for opiate treatment programs. The department, working with treatment providers and medical experts, shall develop and disseminate the educational materials to all certified opiate treatment programs. [2005 c 70 § 2; 1995 c 312 § 46; 1990 c 151 § 5. Prior: 1989 c 270 § 19; 1989 c 175 § 131; 1972 ex.s. c 122 § 9.]

**Findings—Intent—2005 c 70:** "The legislature finds that drug use among pregnant women is a significant and growing concern statewide. The legislature further finds that methadone, although an effective alternative to other substance use treatments, can result in babies who are exposed to methadone while in utero being born addicted and facing the painful effects of withdrawal.

It is the intent of the legislature to notify all pregnant mothers who are receiving methadone treatment of the risks and benefits methadone could have on their baby during pregnancy through birth and to inform them of the potential need for the newborn baby to be taken care of in a hospital setting or in a specialized supportive environment designed specifically to address newborn addiction problems." [2005 c 70 § 1.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**70.96A.095 Age of consent—Outpatient treatment of minors for chemical dependency.** Any person thirteen

years of age or older may give consent for himself or herself to the furnishing of outpatient treatment by a chemical dependency treatment program certified by the department. Parental authorization is required for any treatment of a minor under the age of thirteen. [1998 c 296 § 23; 1996 c 133 § 34; 1995 c 312 § 47; 1991 c 364 § 9; 1989 c 270 § 24.]

**Findings—Intent—Part headings not law—Short title—1998 c 296:** See notes following RCW 74.13.025.

**Findings—Short title—Intent—Construction—1996 c 133:** See notes following RCW 13.32A.197.

**Findings—Construction—Conflict with federal requirements—1991 c 364:** See notes following RCW 70.96A.020.

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**70.96A.096 Notice to parents, school contacts for referring students to inpatient treatment.** School district personnel who contact a chemical dependency inpatient treatment program or provider for the purpose of referring a student to inpatient treatment shall provide the parents with notice of the contact within forty-eight hours. [1996 c 133 § 5.]

**Findings—Short title—Intent—Construction—1996 c 133:** See notes following RCW 13.32A.197.

**70.96A.097 Review of admission and inpatient treatment of minors—Determination of medical necessity—Department review—Minor declines necessary treatment—At-risk youth petition—Costs—Public funds.** (1) The department shall ensure that, for any minor admitted to inpatient treatment under RCW 70.96A.245, a review is conducted by a physician or chemical dependency counselor, as defined in rule by the department, who is employed by the department or an agency under contract with the department and who neither has a financial interest in continued inpatient treatment of the minor nor is affiliated with the program providing the treatment. The physician or chemical dependency counselor shall conduct the review not less than seven nor more than fourteen days following the date the minor was brought to the facility under RCW 70.96A.245(1) to determine whether it is a medical necessity to continue the minor's treatment on an inpatient basis.

(2) In making a determination under subsection (1) of this section whether it is a medical necessity to release the minor from inpatient treatment, the department shall consider the opinion of the treatment provider, the safety of the minor, the likelihood the minor's chemical dependency recovery will deteriorate if released from inpatient treatment, and the wishes of the parent.

(3) If, after any review conducted by the department under this section, the department determines it is no longer a medical necessity for a minor to receive inpatient treatment, the department shall immediately notify the parents and the professional person in charge. The professional person in charge shall release the minor to the parents within twenty-four hours of receiving notice. If the professional person in charge and the parent believe that it is a medical necessity for the minor to remain in inpatient treatment, the minor shall be released to the parent on the second judicial day following the department's determination in order to allow the parent time to file an at-risk youth petition under chapter 13.32A RCW. If the department determines it is a medical necessity for the minor to receive outpatient treatment and the minor declines to obtain such treatment, such refusal shall be grounds for the parent to file an at-risk youth petition.

(4) The department may, subject to available funds, contract with other governmental agencies for the conduct of the reviews conducted under this section and may seek reimbursement from the parents, their insurance, or medicaid for the expense of any review conducted by an agency under contract.

(5) In addition to the review required under this section, the department may periodically determine and redetermine the medical necessity of treatment for purposes of payment with public funds. [1998 c 296 § 28; 1995 c 312 § 48.]

**Findings—Intent—Part headings not law—Short title—1998 c 296:** See notes following RCW 74.13.025.

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**70.96A.100 Acceptance for approved treatment—Rules.** The secretary shall adopt and may amend and repeal rules for acceptance of persons into the approved treatment program, considering available treatment resources and facilities, for the purpose of early and effective treatment of alcoholics and other drug addicts, persons incapacitated by alcohol or other psychoactive chemicals, and intoxicated persons. In establishing the rules, the secretary shall be guided by the following standards:

(1) If possible a patient shall be treated on a voluntary rather than an involuntary basis.

(2) A patient shall be initially assigned or transferred to outpatient treatment, unless he or she is found to require residential treatment.

(3) A person shall not be denied treatment solely because he or she has withdrawn from treatment against medical advice on a prior occasion or because he or she has relapsed after earlier treatment.

(4) An individualized treatment plan shall be prepared and maintained on a current basis for each patient.

(5) Provision shall be made for a continuum of coordinated treatment services, so that a person who leaves a facility or a form of treatment will have available and use other appropriate treatment. [1989 c 270 § 23; 1972 ex.s. c 122 § 10.]

**70.96A.110 Voluntary treatment of alcoholics or other drug addicts.** (1) An alcoholic or other drug addict may apply for voluntary treatment directly to an approved treatment program. If the proposed patient is a minor or an incompetent person, he or she, a parent, a legal guardian, or other legal representative may make the application.

(2) Subject to rules adopted by the secretary, the administrator in charge of an approved treatment program may determine who shall be admitted for treatment. If a person is refused admission to an approved treatment program, the administrator, subject to rules adopted by the secretary, shall refer the person to another approved treatment program for treatment if possible and appropriate.

(3) If a patient receiving inpatient care leaves an approved treatment program, he or she shall be encouraged to consent to appropriate outpatient treatment. If it appears to the administrator in charge of the treatment program that the patient is an alcoholic or other drug addict who requires help, the department may arrange for assistance in obtaining supportive services and residential programs.

(4) If a patient leaves an approved public treatment program, with or against the advice of the administrator in charge of the program, the department may make reasonable provisions for his or her transportation to another program or to his or her home. If the patient has no home he or she should be assisted in obtaining shelter. If the patient is less than fourteen years of age or an incompetent person the request for discharge from an inpatient program shall be made by a parent, legal guardian, or other legal representative or by the minor or incompetent if he or she was the original applicant. [1990 c 151 § 7; 1989 c 270 § 25; 1972 ex.s. c 122 § 11.]

**70.96A.120 Treatment programs and facilities—Admissions—Peace officer duties—Protective custody.**

(1) An intoxicated person may come voluntarily to an approved treatment program for treatment. A person who appears to be intoxicated in a public place and to be in need of help, if he or she consents to the proffered help, may be assisted to his or her home, an approved treatment program or other health facility.

(2) Except for a person who may be apprehended for possible violation of laws not relating to alcoholism, drug addiction, or intoxication and except for a person who may be apprehended for possible violation of laws relating to driving or being in physical control of a vehicle while under the influence of intoxicating liquor or any drug and except for a person who may wish to avail himself or herself of the provisions of RCW 46.20.308, a person who appears to be incapacitated or gravely disabled by alcohol or other drugs and who is in a public place or who has threatened, attempted, or inflicted physical harm on himself, herself, or another, shall be taken into protective custody by a peace officer or staff designated by the county and as soon as practicable, but in no event beyond eight hours brought to an approved treatment program for treatment. If no approved treatment program is readily available he or she shall be taken to an emergency medical service customarily used for incapacitated persons. The peace officer or staff designated by the county, in detaining the person and in taking him or her to an approved treatment program, is taking him or her into protective custody and shall make every reasonable effort to protect his or her health and safety. In taking the person into protective custody, the detaining peace officer or staff designated by the county may take reasonable steps including reasonable force if necessary to protect himself or herself or effect the custody. A taking into protective custody under this section is not an arrest. No entry or other record shall be made to indicate that the person has been arrested or charged with a crime.

(3) A person who comes voluntarily or is brought to an approved treatment program shall be examined by a qualified person. He or she may then be admitted as a patient or referred to another health facility, which provides emergency medical treatment, where it appears that such treatment may be necessary. The referring approved treatment program shall arrange for his or her transportation.

(4) A person who is found to be incapacitated or gravely disabled by alcohol or other drugs at the time of his or her admission or to have become incapacitated or gravely disabled at any time after his or her admission, may not be detained at the program for more than seventy-two hours after admission as a patient, unless a petition is filed under RCW 70.96A.140, as now or hereafter amended: PROVIDED, That the treatment personnel at an approved treatment program are authorized to use such reasonable physical restraint as may be necessary to retain an incapacitated or gravely disabled person for up to seventy-two hours from the time of admission. The seventy-two hour periods specified in this section shall be computed by excluding Saturdays, Sundays, and holidays. A person may consent to remain in the program as long as the physician in charge believes appropriate.

(5) A person who is not admitted to an approved treatment program, is not referred to another health facility, and

has no funds, may be taken to his or her home, if any. If he or she has no home, the approved treatment program shall provide him or her with information and assistance to access available community shelter resources.

(6) If a patient is admitted to an approved treatment program, his or her family or next of kin shall be notified as promptly as possible by the treatment program. If an adult patient who is not incapacitated requests that there be no notification, his or her request shall be respected.

(7) The peace officer, staff designated by the county, or treatment facility personnel, who act in compliance with this chapter and are performing in the course of their official duty are not criminally or civilly liable therefor.

(8) If the person in charge of the approved treatment program determines that appropriate treatment is available, the patient shall be encouraged to agree to further diagnosis and appropriate voluntary treatment. [1991 c 290 § 6; 1990 c 151 § 8; 1989 c 271 § 306; 1987 c 439 § 13; 1977 ex.s. c 62 § 1; 1974 ex.s. c 175 § 1; 1972 ex.s. c 122 § 12.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**70.96A.140 Involuntary commitment.** (1) When a designated chemical dependency specialist receives information alleging that a person presents a likelihood of serious harm or is gravely disabled as a result of chemical dependency, the designated chemical dependency specialist, after investigation and evaluation of the specific facts alleged and of the reliability and credibility of the information, may file a petition for commitment of such person with the superior court, district court, or in another court permitted by court rule.

If a petition for commitment is not filed in the case of a minor, the parent, guardian, or custodian who has custody of the minor may seek review of that decision made by the designated chemical dependency specialist in superior or district court. The parent, guardian, or custodian shall file notice with the court and provide a copy of the designated chemical dependency specialist's report.

If the designated chemical dependency specialist finds that the initial needs of such person would be better served by placement within the mental health system, the person shall be referred to either a \*county designated mental health professional or an evaluation and treatment facility as defined in RCW 71.05.020 or 71.34.020. If placement in a chemical dependency program is available and deemed appropriate, the petition shall allege that: The person is chemically dependent and presents a likelihood of serious harm or is gravely disabled by alcohol or drug addiction, or that the person has twice before in the preceding twelve months been admitted for detoxification, sobering services, or chemical dependency treatment pursuant to RCW 70.96A.110 or 70.96A.120, and is in need of a more sustained treatment program, or that the person is chemically dependent and has threatened, attempted, or inflicted physical harm on another and is likely to inflict physical harm on another unless committed. A refusal to undergo treatment, by itself, does not constitute evidence of lack of judgment as to the need for treatment. The petition shall be accompanied by a certificate of a licensed physician who has examined the person within five days before submission of the petition, unless the person whose

commitment is sought has refused to submit to a medical examination, in which case the fact of refusal shall be alleged in the petition. The certificate shall set forth the licensed physician's findings in support of the allegations of the petition. A physician employed by the petitioning program or the department is eligible to be the certifying physician.

(2) Upon filing the petition, the court shall fix a date for a hearing no less than two and no more than seven days after the date the petition was filed unless the person petitioned against is presently being detained in a program, pursuant to RCW 70.96A.120, 71.05.210, or \*\*71.34.050, in which case the hearing shall be held within seventy-two hours of the filing of the petition: PROVIDED, HOWEVER, That the above specified seventy-two hours shall be computed by excluding Saturdays, Sundays, and holidays: PROVIDED FURTHER, That, the court may, upon motion of the person whose commitment is sought, or upon motion of petitioner with written permission of the person whose commitment is sought, or his or her counsel and, upon good cause shown, extend the date for the hearing. A copy of the petition and of the notice of the hearing, including the date fixed by the court, shall be served by the designated chemical dependency specialist on the person whose commitment is sought, his or her next of kin, a parent or his or her legal guardian if he or she is a minor, and any other person the court believes advisable. A copy of the petition and certificate shall be delivered to each person notified.

(3) At the hearing the court shall hear all relevant testimony, including, if possible, the testimony, which may be telephonic, of at least one licensed physician who has examined the person whose commitment is sought. Communications otherwise deemed privileged under the laws of this state are deemed to be waived in proceedings under this chapter when a court of competent jurisdiction in its discretion determines that the waiver is necessary to protect either the detained person or the public. The waiver of a privilege under this section is limited to records or testimony relevant to evaluation of the detained person for purposes of a proceeding under this chapter. Upon motion by the detained person, or on its own motion, the court shall examine a record or testimony sought by a petitioner to determine whether it is within the scope of the waiver.

The record maker shall not be required to testify in order to introduce medical, nursing, or psychological records of detained persons so long as the requirements of RCW 5.45.020 are met, except that portions of the record that contain opinions as to whether the detained person is chemically dependent shall be deleted from the records unless the person offering the opinions is available for cross-examination. The person shall be present unless the court believes that his or her presence is likely to be injurious to him or her; in this event the court may deem it appropriate to appoint a guardian ad litem to represent him or her throughout the proceeding. If deemed advisable, the court may examine the person out of courtroom. If the person has refused to be examined by a licensed physician, he or she shall be given an opportunity to be examined by a court appointed licensed physician. If he or she refuses and there is sufficient evidence to believe that the allegations of the petition are true, or if the court believes that more medical evidence is necessary, the court may make a temporary order committing him or her to the department for

a period of not more than five days for purposes of a diagnostic examination.

(4) If after hearing all relevant evidence, including the results of any diagnostic examination, the court finds that grounds for involuntary commitment have been established by clear, cogent, and convincing proof, it shall make an order of commitment to an approved treatment program. It shall not order commitment of a person unless it determines that an approved treatment program is available and able to provide adequate and appropriate treatment for him or her.

(5) A person committed under this section shall remain in the program for treatment for a period of sixty days unless sooner discharged. At the end of the sixty-day period, he or she shall be discharged automatically unless the program, before expiration of the period, files a petition for his or her recommitment upon the grounds set forth in subsection (1) of this section for a further period of ninety days unless sooner discharged.

If a petition for recommitment is not filed in the case of a minor, the parent, guardian, or custodian who has custody of the minor may seek review of that decision made by the designated chemical dependency specialist in superior or district court. The parent, guardian, or custodian shall file notice with the court and provide a copy of the treatment progress report.

If a person has been committed because he or she is chemically dependent and likely to inflict physical harm on another, the program shall apply for recommitment if after examination it is determined that the likelihood still exists.

(6) Upon the filing of a petition for recommitment under subsection (5) of this section, the court shall fix a date for hearing no less than two and no more than seven days after the date the petition was filed: PROVIDED, That, the court may, upon motion of the person whose commitment is sought and upon good cause shown, extend the date for the hearing. A copy of the petition and of the notice of hearing, including the date fixed by the court, shall be served by the treatment program on the person whose commitment is sought, his or her next of kin, the original petitioner under subsection (1) of this section if different from the petitioner for recommitment, one of his or her parents or his or her legal guardian if he or she is a minor, and his or her attorney and any other person the court believes advisable. At the hearing the court shall proceed as provided in subsection (3) of this section.

(7) The approved treatment program shall provide for adequate and appropriate treatment of a person committed to its custody. A person committed under this section may be transferred from one approved public treatment program to another if transfer is medically advisable.

(8) A person committed to the custody of a program for treatment shall be discharged at any time before the end of the period for which he or she has been committed and he or she shall be discharged by order of the court if either of the following conditions are met:

(a) In case of a chemically dependent person committed on the grounds of likelihood of infliction of physical harm upon himself, herself, or another, the likelihood no longer exists; or further treatment will not be likely to bring about significant improvement in the person's condition, or treatment is no longer adequate or appropriate.

(b) In case of a chemically dependent person committed on the grounds of the need of treatment and incapacity, that the incapacity no longer exists.

(9) The court shall inform the person whose commitment or recommitment is sought of his or her right to contest the application, be represented by counsel at every stage of any proceedings relating to his or her commitment and recommitment, and have counsel appointed by the court or provided by the court, if he or she wants the assistance of counsel and is unable to obtain counsel. If the court believes that the person needs the assistance of counsel, the court shall require, by appointment if necessary, counsel for him or her regardless of his or her wishes. The person shall, if he or she is financially able, bear the costs of such legal service; otherwise such legal service shall be at public expense. The person whose commitment or recommitment is sought shall be informed of his or her right to be examined by a licensed physician of his or her choice. If the person is unable to obtain a licensed physician and requests examination by a physician, the court shall employ a licensed physician.

(10) A person committed under this chapter may at any time seek to be discharged from commitment by writ of habeas corpus in a court of competent jurisdiction.

(11) The venue for proceedings under this section is the county in which person to be committed resides or is present.

(12) When in the opinion of the professional person in charge of the program providing involuntary treatment under this chapter, the committed patient can be appropriately served by less restrictive treatment before expiration of the period of commitment, then the less restrictive care may be required as a condition for early release for a period which, when added to the initial treatment period, does not exceed the period of commitment. If the program designated to provide the less restrictive treatment is other than the program providing the initial involuntary treatment, the program so designated must agree in writing to assume such responsibility. A copy of the conditions for early release shall be given to the patient, the designated chemical dependency specialist of original commitment, and the court of original commitment. The program designated to provide less restrictive care may modify the conditions for continued release when the modifications are in the best interests of the patient. If the program providing less restrictive care and the designated chemical dependency specialist determine that a conditionally released patient is failing to adhere to the terms and conditions of his or her release, or that substantial deterioration in the patient's functioning has occurred, then the designated chemical dependency specialist shall notify the court of original commitment and request a hearing to be held no less than two and no more than seven days after the date of the request to determine whether or not the person should be returned to more restrictive care. The designated chemical dependency specialist shall file a petition with the court stating the facts substantiating the need for the hearing along with the treatment recommendations. The patient shall have the same rights with respect to notice, hearing, and counsel as for the original involuntary treatment proceedings. The issues to be determined at the hearing are whether the conditionally released patient did or did not adhere to the terms and conditions of his or her release to less restrictive care or that substantial deterioration of the patient's functioning has occurred

and whether the conditions of release should be modified or the person should be returned to a more restrictive program. The hearing may be waived by the patient and his or her counsel and his or her guardian or conservator, if any, but may not be waived unless all such persons agree to the waiver. Upon waiver, the person may be returned for involuntary treatment or continued on conditional release on the same or modified conditions. [2001 c 13 § 3; 1995 c 312 § 49; 1993 c 362 § 1; 1991 c 364 § 10; 1990 c 151 § 3; 1989 c 271 § 307; 1987 c 439 § 14; 1977 ex.s. c 129 § 1; 1974 ex.s. c 175 § 2; 1972 ex.s. c 122 § 14.]

**Reviser's note:** \*(1) The term "county designated mental health professional" as defined in RCW 71.05.020 was changed to "designated mental health professional" by 2005 c 504 § 104.

\*\*\*(2) RCW 71.34.050 was recodified as RCW 71.34.710 pursuant to 2005 c 371 § 6.

**Severability—2001 c 13:** See note following RCW 70.96A.020.

**Purpose—Construction—1993 c 362:** "The purpose of this act is solely to provide authority for the involuntary commitment of persons suffering from chemical dependency within available funds and current programs and facilities. Nothing in this act shall be construed to require the addition of new facilities nor affect the department of social and health services' authority for the uses of existing programs and facilities authorized by law." [1993 c 362 § 2.]

**Findings—Construction—Conflict with federal requirements—1991 c 364:** See notes following RCW 70.96A.020.

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**70.96A.141 Joinder of petitions for commitment.** A petition for commitment under this chapter may be joined with a petition for commitment under chapter 71.05 RCW. [2005 c 504 § 304.]

**Findings—Intent—Severability—Application—Construction—Captions, part headings, subheadings not law—Adoption of rules—Effective dates—2005 c 504:** See notes following RCW 71.05.027.

**Alphabetization—Correction of references—2005 c 504:** See note following RCW 71.05.020.

**70.96A.142 Evaluation by designated chemical dependency specialist—When required—Required notifications.** (1) When a designated chemical dependency specialist is notified by a jail that a defendant or offender who was subject to a discharge review under RCW 71.05.232 is to be released to the community, the designated chemical dependency specialist shall evaluate the person within seventy-two hours of release, if the person's treatment information indicates that he or she may need chemical dependency treatment.

(2) When an offender is under court-ordered treatment in the community and the supervision of the department of corrections, and the treatment provider becomes aware that the person is in violation of the terms of the court order, the treatment provider shall notify the designated chemical dependency specialist of the violation and request an evaluation for purposes of revocation of the conditional release.

(3) When a designated chemical dependency specialist becomes aware that an offender who is under court-ordered treatment in the community and the supervision of the department of corrections is in violation of a treatment order or a condition of supervision that relates to public safety, or the designated chemical dependency specialist detains a person under this chapter, the designated chemical dependency spe-

cialist shall notify the person's treatment provider and the department of corrections.

(4) When an offender who is confined in a state correctional facility or is under supervision of the department of corrections in the community is subject to a petition for involuntary treatment under this chapter, the petitioner shall notify the department of corrections and the department of corrections shall provide documentation of its risk assessment or other concerns to the petitioner and the court if the department of corrections classified the offender as a high risk or high needs offender.

(5) Nothing in this section creates a duty on any treatment provider or designated chemical dependency specialist to provide offender supervision. [2004 c 166 § 15.]

**Severability—Effective dates—2004 c 166:** See notes following RCW 71.05.040.

**70.96A.145 Involuntary commitment proceedings—Prosecuting attorney may represent specialist or program.** The prosecuting attorney of the county in which such action is taken may, at the discretion of the prosecuting attorney, represent the designated chemical dependency specialist or treatment program in judicial proceedings under RCW 70.96A.140 for the involuntary commitment or recommitment of an individual, including any judicial proceeding where the individual sought to be committed or recommitted challenges the action. [1993 c 137 § 1.]

**70.96A.148 Detention, commitment duties—Designation of county designated mental health professional.** The county alcoholism and other drug addiction program coordinator may designate the county designated mental health professional to perform the detention and commitment duties described in RCW 70.96A.120 and 70.96A.140. [2001 c 13 § 4.]

**Severability—2001 c 13:** See note following RCW 70.96A.020.

**70.96A.150 Records of alcoholics and intoxicated persons.** (1) The registration and other records of treatment programs shall remain confidential. Records may be disclosed (a) in accordance with the prior written consent of the patient with respect to whom such record is maintained, (b) if authorized by an appropriate order of a court of competent jurisdiction granted after application showing good cause, (c) to comply with state laws mandating the reporting of suspected child abuse or neglect, or (d) when a patient commits a crime on program premises or against program personnel, or threatens to do so.

(2) Notwithstanding subsection (1) of this section, the secretary may receive information from patients' records for purposes of research into the causes and treatment of alcoholism and other drug addiction, verification of eligibility and appropriateness of reimbursement, and the evaluation of alcoholism and other drug treatment programs. Information under this subsection shall not be published in a way that discloses patients' names or otherwise discloses their identities.

(3) Nothing contained in this chapter relieves a person or firm from the requirements under federal regulations for the confidentiality of alcohol and drug abuse patient records. Obligations imposed on drug and alcohol treatment programs

and protections afforded alcohol and drug abuse patients under federal regulations apply to all programs approved by the department under RCW 70.96A.090. [1990 c 151 § 1; 1989 c 162 § 1; 1972 ex.s. c 122 § 15.]

**70.96A.155 Court-ordered treatment—Required notifications.** When any court orders a person to receive treatment under this chapter, the order shall include a statement that if the person is, or becomes, subject to supervision by the department of corrections, the person must notify the treatment provider and the person's chemical dependency treatment information must be shared with the department of corrections for the duration of the offender's incarceration and supervision. Upon a petition by a person who does not have a history of one or more violent acts, as defined in RCW 71.05.020, the court may, for good cause, find that public safety would not be enhanced by the sharing of this person's information. [2004 c 166 § 13.]

**Severability—Effective dates—2004 c 166:** See notes following RCW 71.05.040.

**70.96A.157 Persons subject to court-ordered treatment or supervision—Documentation.** (1) Treatment providers shall inquire of each person seeking treatment, at intake, whether the person is subject to court-ordered mental health or chemical dependency treatment, whether civil or criminal, and document the person's response in his or her record. If the person is in treatment on July 1, 2005, and the treatment provider has not inquired whether the person is subject to court-ordered mental health or chemical dependency treatment, the treatment provider shall inquire on the person's next treatment session and document the person's response in his or her record.

(2) Treatment providers shall inquire of each person seeking treatment, at intake, whether the person is subject to supervision of any kind by the department of corrections and document the person's response in his or her record. If the person is in treatment on July 1, 2005, and the treatment provider has not inquired whether the person is subject to supervision of any kind by the department of corrections, the treatment provider shall inquire on the person's next treatment session and document the person's response in his or her record.

(3) For all persons who are subject to both court-ordered mental health or chemical dependency treatment and supervision by the department of corrections, the treatment provider shall request an authorization to release records and notify the person that, unless expressly excluded by the court order the law requires treatment providers to share information with the department of corrections and the person's mental health treatment provider.

(4) If the treatment provider has reason to believe that a person is subject to supervision by the department of corrections but the person's record does not indicate that he or she is, the treatment provider may call any department of corrections office and provide the person's name and birth date. If the person is subject to supervision, the treatment provider shall request, and the department of corrections shall provide, the name and contact information for the person's community corrections officer. [2005 c 504 § 508.]

**Findings—Intent—Severability—Application—Construction—Captions, part headings, subheadings not law—Adoption of rules—Effective dates—2005 c 504:** See notes following RCW 71.05.027.

**Alphabetization—Correction of references—2005 c 504:** See note following RCW 71.05.020.

**70.96A.160 Visitation and communication with patients.** (1) Subject to reasonable rules regarding hours of visitation which the secretary may adopt, patients in any approved treatment program shall be granted opportunities for adequate consultation with counsel, and for continuing contact with family and friends consistent with an effective treatment program.

(2) Neither mail nor other communication to or from a patient in any approved treatment program may be intercepted, read, or censored. The secretary may adopt reasonable rules regarding the use of telephone by patients in approved treatment programs. [1989 c 270 § 29; 1972 ex.s. c 122 § 16.]

**70.96A.170 Emergency service patrol—Establishment—Rules.** (1) The state and counties, cities, and other municipalities may establish or contract for emergency service patrols which are to be under the administration of the appropriate jurisdiction. A patrol consists of persons trained to give assistance in the streets and in other public places to persons who are intoxicated. Members of an emergency service patrol shall be capable of providing first aid in emergency situations and may transport intoxicated persons to their homes and to and from treatment programs.

(2) The secretary shall adopt rules pursuant to chapter 34.05 RCW for the establishment, training, and conduct of emergency service patrols. [1989 c 270 § 30; 1972 ex.s. c 122 § 17.]

**70.96A.180 Payment for treatment—Financial ability of patients.** (1) If treatment is provided by an approved treatment program and the patient has not paid or is unable to pay the charge therefor, the program is entitled to any payment (a) received by the patient or to which he may be entitled because of the services rendered, and (b) from any public or private source available to the program because of the treatment provided to the patient.

(2) A patient in a program, or the estate of the patient, or a person obligated to provide for the cost of treatment and having sufficient financial ability, is liable to the program for cost of maintenance and treatment of the patient therein in accordance with rates established.

(3) The secretary shall adopt rules governing financial ability that take into consideration the income, savings, and other personal and real property of the person required to pay, and any support being furnished by him to any person he is required by law to support. [1990 c 151 § 6; 1989 c 270 § 31; 1972 ex.s. c 122 § 18.]

**70.96A.190 Criminal laws limitations.** (1) No county, municipality, or other political subdivision may adopt or enforce a local law, ordinance, resolution, or rule having the force of law that includes drinking, being an alcoholic or drug addict, or being found in an intoxicated condition as one of

(2010 Ed.)

the elements of the offense giving rise to a criminal or civil penalty or sanction.

(2) No county, municipality, or other political subdivision may interpret or apply any law of general application to circumvent the provision of subsection (1) of this section.

(3) Nothing in this chapter affects any law, ordinance, resolution, or rule against drunken driving, driving under the influence of alcohol or other psychoactive chemicals, or other similar offense involving the operation of a vehicle, aircraft, boat, machinery, or other equipment, or regarding the sale, purchase, dispensing, possessing, or use of alcoholic beverages or other psychoactive chemicals at stated times and places or by a particular class of persons; nor shall evidence of intoxication affect, other than as a defense, the application of any law, ordinance, resolution, or rule to conduct otherwise establishing the elements of an offense. [1989 c 270 § 32; 1972 ex.s. c 122 § 19.]

**70.96A.230 Minor—When outpatient treatment provider must give notice to parents.** Any provider of outpatient treatment who provides outpatient treatment to a minor thirteen years of age or older shall provide notice of the minor's request for treatment to the minor's parents if: (1) The minor signs a written consent authorizing the disclosure; or (2) the treatment program director determines that the minor lacks capacity to make a rational choice regarding consenting to disclosure. The notice shall be made within seven days of the request for treatment, excluding Saturdays, Sundays, and holidays, and shall contain the name, location, and telephone number of the facility providing treatment, and the name of a professional person on the staff of the facility providing treatment who is designated to discuss the minor's need for treatment with the parent. [1998 c 296 § 24.]

**Findings—Intent—Part headings not law—Short title—1998 c 296:** See notes following RCW 74.13.025.

**70.96A.235 Minor—Parental consent for inpatient treatment—Exception.** Parental consent is required for inpatient chemical dependency treatment of a minor, unless the child meets the definition of a child in need of services in \*RCW 13.32A.030(4)(c) as determined by the department: PROVIDED, That parental consent is required for any treatment of a minor under the age of thirteen.

This section does not apply to petitions filed under this chapter. [1998 c 296 § 25.]

\*Reviser's note: RCW 13.32A.030 was amended by 2000 c 123 § 2, changing subsection (4)(c) to subsection (5)(c).

**Findings—Intent—Part headings not law—Short title—1998 c 296:** See notes following RCW 74.13.025.

**70.96A.240 Minor—Parent not liable for payment unless consented to treatment—No right to public funds.** (1) The parent of a minor is not liable for payment of inpatient or outpatient chemical dependency treatment unless the parent has joined in the consent to the treatment.

(2) The ability of a parent to apply to a certified treatment program for the admission of his or her minor child does not create a right to obtain or benefit from any funds or resources of the state. However, the state may provide services for indigent minors to the extent that funds are available therefor. [1998 c 296 § 26.]

**Findings—Intent—Part headings not law—Short title—1998 c 296:** See notes following RCW 74.13.025.

**70.96A.245 Minor—Parent may request determination whether minor has chemical dependency requiring inpatient treatment—Minor consent not required—Duties and obligations of professional person and facility.**

(1) A parent may bring, or authorize the bringing of, his or her minor child to a certified treatment program and request that a chemical dependency assessment be conducted by a professional person to determine whether the minor is chemically dependent and in need of inpatient treatment.

(2) The consent of the minor is not required for admission, evaluation, and treatment if the parent brings the minor to the program.

(3) An appropriately trained professional person may evaluate whether the minor is chemically dependent. The evaluation shall be completed within twenty-four hours of the time the minor was brought to the program, unless the professional person determines that the condition of the minor necessitates additional time for evaluation. In no event shall a minor be held longer than seventy-two hours for evaluation. If, in the judgment of the professional person, it is determined it is a medical necessity for the minor to receive inpatient treatment, the minor may be held for treatment. The facility shall limit treatment to that which the professional person determines is medically necessary to stabilize the minor's condition until the evaluation has been completed. Within twenty-four hours of completion of the evaluation, the professional person shall notify the department if the child is held for treatment and of the date of admission.

(4) No provider is obligated to provide treatment to a minor under the provisions of this section. No provider may admit a minor to treatment under this section unless it is medically necessary.

(5) No minor receiving inpatient treatment under this section may be discharged from the program based solely on his or her request. [1998 c 296 § 27.]

**Purpose—1998 c 296 §§ 27 and 29:** "It is the purpose of sections 27 and 29 of this act to assure the ability of parents to exercise reasonable, compassionate care and control of their minor children when there is a medical necessity for treatment and without the requirement of filing a petition under chapter 70.96A RCW." [1998 c 296 § 33.]

**Findings—Intent—Part headings not law—Short title—1998 c 296:** See notes following RCW 74.13.025.

**70.96A.250 Minor—Parent may request determination whether minor has chemical dependency requiring outpatient treatment—Consent of minor not required—Discharge of minor.**

(1) A parent may bring, or authorize the bringing of, his or her minor child to a provider of outpatient chemical dependency treatment and request that an appropriately trained professional person examine the minor to determine whether the minor has a chemical dependency and is in need of outpatient treatment.

(2) The consent of the minor is not required for evaluation if the parent brings the minor to the provider.

(3) The professional person in charge of the program may evaluate whether the minor has a chemical dependency and is in need of outpatient treatment.

(4) Any minor admitted to inpatient treatment under RCW 70.96A.245 shall be discharged immediately from

inpatient treatment upon written request of the parent. [1998 c 296 § 29.]

**Purpose—1998 c 296 §§ 27 and 29:** See note following RCW 70.96A.245.

**Findings—Intent—Part headings not law—Short title—1998 c 296:** See notes following RCW 74.13.025.

**70.96A.255 Minor—Petition to superior court for release from facility.** Following the review conducted under RCW 70.96A.097, a minor child may petition the superior court for his or her release from the facility. The petition may be filed not sooner than five days following the review. The court shall release the minor unless it finds, upon a preponderance of the evidence, that it is a medical necessity for the minor to remain at the facility. [1998 c 296 § 30.]

**Findings—Intent—Part headings not law—Short title—1998 c 296:** See notes following RCW 74.13.025.

**70.96A.260 Minor—Not released by petition under RCW 70.96A.255—Release within thirty days—Professional may initiate proceedings to stop release.** If the minor is not released as a result of the petition filed under RCW 70.96A.255, he or she shall be released not later than thirty days following the later of: (1) The date of the department's determination under RCW 70.96A.097(2); or (2) the filing of a petition for judicial review under RCW 70.96A.255, unless a professional person or the designated chemical dependency specialist initiates proceedings under this chapter. [1998 c 296 § 31.]

**Findings—Intent—Part headings not law—Short title—1998 c 296:** See notes following RCW 74.13.025.

**70.96A.265 Minor—Eligibility for medical assistance under chapter 74.09 RCW—Payment by department.**

For purposes of eligibility for medical assistance under chapter 74.09 RCW, minors in inpatient chemical dependency treatment shall be considered to be part of their parent's or legal guardian's household, unless the minor has been assessed by the department or its designee as likely to require such treatment for at least ninety consecutive days, or is in out-of-home care in accordance with chapter 13.34 RCW, or the parents are found to not be exercising responsibility for care and control of the minor. Payment for such care by the department shall be made only in accordance with rules, guidelines, and clinical criteria applicable to inpatient treatment of minors established by the department. [1998 c 296 § 32.]

**Findings—Intent—Part headings not law—Short title—1998 c 296:** See notes following RCW 74.13.025.

**70.96A.300 Counties may create alcoholism and other drug addiction board—Generally.** (1) A county or combination of counties acting jointly by agreement, referred to as "county" in this chapter, may create an alcoholism and other drug addiction board. This board may also be designated as a board for other related purposes.

(2) The board shall be composed of not less than seven nor more than fifteen members, who shall be chosen for their demonstrated concern for alcoholism and other drug addiction problems. Members of the board shall be representative of the community, shall include at least one-quarter recov-

ered alcoholics or other recovered drug addicts, and shall include minority group representation. No member may be a provider of alcoholism and other drug addiction treatment services. No more than four elected or appointed city or county officials may serve on the board at the same time. Members of the board shall serve three-year terms and hold office until their successors are appointed and qualified. They shall not be compensated for the performance of their duties as members of the board, but may be reimbursed for travel expenses.

(3) The alcoholism and other drug addiction board shall:

(a) Conduct public hearings and other investigations to determine the needs and priorities of county citizens;

(b) Prepare and recommend to the county legislative authority for approval, all plans, budgets, and applications by the county to the department and other state agencies on behalf of the county alcoholism and other drug addiction program;

(c) Monitor the implementation of the alcoholism and other drug addiction plan and evaluate the performance of the alcoholism and drug addiction program at least annually;

(d) Advise the county legislative authority and county alcoholism and other drug addiction program coordinator on matters relating to the alcoholism and other drug addiction program, including prevention and education;

(e) Nominate individuals to the county legislative authority for the position of county alcoholism and other drug addiction program coordinator. The nominees should have training and experience in the administration of alcoholism and other drug addiction services and shall meet the minimum qualifications established by rule of the department;

(f) Carry out other duties that the department may prescribe by rule. [1989 c 270 § 15.]

**70.96A.310 County alcoholism and other drug addiction program—Chief executive officer of program to be program coordinator.** (1) The chief executive officer of the county alcoholism and other drug addiction program shall be the county alcoholism and other drug addiction program coordinator. The coordinator shall:

(a) In consultation with the county alcoholism and other drug addiction board, provide general supervision over the county alcoholism and other drug addiction program;

(b) Prepare plans and applications for funds to support the alcoholism and other drug addiction program in consultation with the county alcoholism and other drug addiction board;

(c) Monitor the delivery of services to assure conformance with plans and contracts and, at the discretion of the board, but at least annually, report to the alcoholism and other drug addiction board the results of the monitoring;

(d) Provide staff support to the county alcoholism and other drug addiction board.

(2) The county alcoholism and other drug addiction program coordinator shall be appointed by the county legislative authority from nominations by the alcoholism and other drug addiction program board. The coordinator may serve on either a full-time or part-time basis. Only with the prior approval of the secretary may the coordinator be an employee of a government or private agency under contract with the

(2010 Ed.)

department to provide alcoholism or other drug addiction services. [1989 c 270 § 16.]

**70.96A.320 Alcoholism and other drug addiction program—Generally.** (1) A county legislative authority, or two or more counties acting jointly, may establish an alcoholism and other drug addiction program. If two or more counties jointly establish the program, they shall designate one county to provide administrative and financial services.

(2) To be eligible for funds from the department for the support of the county alcoholism and other drug addiction program, the county legislative authority shall establish a county alcoholism and other drug addiction board under RCW 70.96A.300 and appoint a county alcoholism and other drug addiction program coordinator under RCW 70.96A.310.

(3) The county legislative authority may apply to the department for financial support for the county program of alcoholism and other drug addiction. To receive financial support, the county legislative authority shall submit a plan that meets the following conditions:

(a) It shall describe the services and activities to be provided;

(b) It shall include anticipated expenditures and revenues;

(c) It shall be prepared by the county alcoholism and other drug addiction program board and be adopted by the county legislative authority;

(d) It shall reflect maximum effective use of existing services and programs; and

(e) It shall meet other conditions that the secretary may require.

(4) The county may accept and spend gifts, grants, and fees, from public and private sources, to implement its program of alcoholism and other drug addiction.

(5) The county may subcontract for detoxification, residential treatment, or outpatient treatment with treatment programs that are approved treatment programs. The county may subcontract for other services with individuals or organizations approved by the department.

(6) To continue to be eligible for financial support from the department for the county alcoholism and other drug addiction program, an increase in state financial support shall not be used to supplant local funds from a source that was used to support the county alcoholism and other drug addiction program before the effective date of the increase. [1990 c 151 § 9; 1989 c 270 § 17.]

**70.96A.325 Methamphetamine addiction programs—Counties authorized to seek state funding.** (1)

Any county that has imposed the sales and use tax authorized by RCW 82.14.460 may seek a state appropriation of up to one hundred thousand dollars annually beginning in fiscal year 2008 and ending in fiscal year 2010. The funds shall be used to provide additional support to counties for mental health or substance abuse treatment for persons with methamphetamine addiction. Local governments receiving funds under this section may not use the funds to supplant existing funding.

(2) Counties receiving funding shall: (a) Provide a financial plan for the expenditure of any potential funds prior

to funds being awarded; (b) report annually to the appropriate committees of the legislature regarding the number of clients served, services provided, and a statement of expenditures; and (c) expend no more than ten percent for administrative costs or for information technology. [2006 c 339 § 101.]

**Intent—2006 c 339:** "It is the intent of the legislature to provide assistance for jurisdictions enforcing illegal drug laws that have historically been underserved by federally funded state narcotics task forces and are considered to be major transport areas of narcotics traffickers." [2006 c 339 § 103.]

**Part headings not law—2006 c 339:** "Part headings used in this act are no part of the law." [2006 c 339 § 401.]

**70.96A.350 Criminal justice treatment account.** (1)

The criminal justice treatment account is created in the state treasury. Moneys in the account may be expended solely for: (a) Substance abuse treatment and treatment support services for offenders with an addiction or a substance abuse problem that, if not treated, would result in addiction, against whom charges are filed by a prosecuting attorney in Washington state; (b) the provision of drug and alcohol treatment services and treatment support services for nonviolent offenders within a drug court program; (c) the administrative and overhead costs associated with the operation of a drug court; and (d) during the 2007-2009 biennium, operation of the integrated crisis response and intensive case management pilots contracted with the department of social and health services division of alcohol and substance abuse. Moneys in the account may be spent only after appropriation.

(2) For purposes of this section:

(a) "Treatment" means services that are critical to a participant's successful completion of his or her substance abuse treatment program, but does not include the following services: Housing other than that provided as part of an inpatient substance abuse treatment program, vocational training, and mental health counseling; and

(b) "Treatment support" means transportation to or from inpatient or outpatient treatment services when no viable alternative exists, and child care services that are necessary to ensure a participant's ability to attend outpatient treatment sessions.

(3) Revenues to the criminal justice treatment account consist of: (a) Funds transferred to the account pursuant to this section; and (b) any other revenues appropriated to or deposited in the account.

(4)(a) For the fiscal biennium beginning July 1, 2003, the state treasurer shall transfer eight million nine hundred fifty thousand dollars from the general fund into the criminal justice treatment account, divided into eight equal quarterly payments. For the fiscal year beginning July 1, 2005, and each subsequent fiscal year, the state treasurer shall transfer eight million two hundred fifty thousand dollars from the general fund to the criminal justice treatment account, divided into four equal quarterly payments. For the fiscal year beginning July 1, 2006, and each subsequent fiscal year, the amount transferred shall be increased on an annual basis by the implicit price deflator as published by the federal bureau of labor statistics.

(b) In each odd-numbered year, the legislature shall appropriate the amount transferred to the criminal justice treatment account in (a) of this subsection to the division of

alcohol and substance abuse for the purposes of subsection (5) of this section.

(5) Moneys appropriated to the division of alcohol and substance abuse from the criminal justice treatment account shall be distributed as specified in this subsection. The department shall serve as the fiscal agent for purposes of distribution. Until July 1, 2004, the department may not use moneys appropriated from the criminal justice treatment account for administrative expenses and shall distribute all amounts appropriated under subsection (4)(b) of this section in accordance with this subsection. Beginning in July 1, 2004, the department may retain up to three percent of the amount appropriated under subsection (4)(b) of this section for its administrative costs.

(a) Seventy percent of amounts appropriated to the division from the account shall be distributed to counties pursuant to the distribution formula adopted under this section. The division of alcohol and substance abuse, in consultation with the department of corrections, the sentencing guidelines commission, the Washington state association of counties, the Washington state association of drug court professionals, the superior court judges' association, the Washington association of prosecuting attorneys, representatives of the criminal defense bar, representatives of substance abuse treatment providers, and any other person deemed by the division to be necessary, shall establish a fair and reasonable methodology for distribution to counties of moneys in the criminal justice treatment account. County or regional plans submitted for the expenditure of formula funds must be approved by the panel established in (b) of this subsection.

(b) Thirty percent of the amounts appropriated to the division from the account shall be distributed as grants for purposes of treating offenders against whom charges are filed by a county prosecuting attorney. The division shall appoint a panel of representatives from the Washington association of prosecuting attorneys, the Washington association of sheriffs and police chiefs, the superior court judges' association, the Washington state association of counties, the Washington defender's association or the Washington association of criminal defense lawyers, the department of corrections, the Washington state association of drug court professionals, substance abuse treatment providers, and the division. The panel shall review county or regional plans for funding under (a) of this subsection and grants approved under this subsection. The panel shall attempt to ensure that treatment as funded by the grants is available to offenders statewide.

(6) The county alcohol and drug coordinator, county prosecutor, county sheriff, county superior court, a substance abuse treatment provider appointed by the county legislative authority, a member of the criminal defense bar appointed by the county legislative authority, and, in counties with a drug court, a representative of the drug court shall jointly submit a plan, approved by the county legislative authority or authorities, to the panel established in subsection (5)(b) of this section, for disposition of all the funds provided from the criminal justice treatment account within that county. The funds shall be used solely to provide approved alcohol and substance abuse treatment pursuant to RCW 70.96A.090, treatment support services, and for the administrative and overhead costs associated with the operation of a drug court.

(a) No more than ten percent of the total moneys received under subsections (4) and (5) of this section by a county or group of counties participating in a regional agreement shall be spent on the administrative and overhead costs associated with the operation of a drug court.

(b) No more than ten percent of the total moneys received under subsections (4) and (5) of this section by a county or group of counties participating in a regional agreement shall be spent for treatment support services.

(7) Counties are encouraged to consider regional agreements and submit regional plans for the efficient delivery of treatment under this section.

(8) Moneys allocated under this section shall be used to supplement, not supplant, other federal, state, and local funds used for substance abuse treatment.

(9) Counties must meet the criteria established in RCW 2.28.170(3)(b).

(10) The authority under this section to use funds from the criminal justice treatment account for the administrative and overhead costs associated with the operation of a drug court expires June 30, 2013. [2009 c 479 § 50; 2009 c 445 § 1; 2008 c 329 § 918; 2003 c 379 § 11; 2002 c 290 § 4.]

**Reviser's note:** This section was amended by 2009 c 445 § 1 and by 2009 c 479 § 50, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

**Effective date—2009 c 479:** See note following RCW 2.56.030.

**Severability—Effective date—2008 c 329:** See notes following RCW 28B.105.110.

**Severability—Effective dates—2003 c 379:** See notes following RCW 9.94A.728.

**Effective date—2002 c 290 §§ 1, 4-6, 12, 13, 26, and 27:** "Sections 1, 4 through 6, 12, 13, 26, and 27 of this act are necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and take effect immediately [April 1, 2002]." [2002 c 290 § 32.]

**Intent—2002 c 290:** See note following RCW 9.94A.517.

**Severability—2002 c 290:** See RCW 9.94A.924.

**70.96A.400 Opiate substitution treatment—Declaration of regulation by state.** The state of Washington declares that there is no fundamental right to opiate substitution treatment. The state of Washington further declares that while opiate substitution drugs used in the treatment of opiate dependency are addictive substances, that they nevertheless have several legal, important, and justified uses and that one of their appropriate and legal uses is, in conjunction with other required therapeutic procedures, in the treatment of persons addicted to or habituated to opioids. Opiate substitution treatment should only be used for participants who are deemed appropriate to need this level of intervention and should not be the first treatment intervention for all opiate addicts.

Because opiate substitution drugs, used in the treatment of opiate dependency are addictive and are listed as a schedule II controlled substance in chapter 69.50 RCW, the state of Washington has the legal obligation and right to regulate the use of opiate substitution treatment. The state of Washington declares its authority to control and regulate carefully, in consultation with counties and cities, all clinical uses of opiate substitution drugs used in the treatment of opiate addiction.

Further, the state declares that the primary goal of opiate substitution treatment is total abstinence from chemical dependency for the individuals who participate in the treatment program. The state recognizes that a small percentage of persons who participate in opiate substitution treatment programs require treatment for an extended period of time. Opiate substitution treatment programs shall provide a comprehensive transition program to eliminate chemical dependency, including opiate and opiate substitute addiction of program participants. [2001 c 242 § 1; 1995 c 321 § 1; 1989 c 270 § 20.]

**70.96A.410 Opiate substitution treatment—Program certification by department, department duties—Definition of opiate substitution treatment.** (1) For purposes of this section, "area" means the county in which an applicant proposes to locate a certified program and counties adjacent, or near to, the county in which the program is proposed to be located.

When making a decision on an application for certification of a program, the department shall:

(a) Consult with the county legislative authorities in the area in which an applicant proposes to locate a program and the city legislative authority in any city in which an applicant proposes to locate a program;

(b) Certify only programs that will be sited in accordance with the appropriate county or city land use ordinances. Counties and cities may require conditional or special use permits with reasonable conditions for the siting of programs. Pursuant to RCW 36.70A.200, no local comprehensive plan or development regulation may preclude the siting of essential public facilities;

(c) Not discriminate in its certification decision on the basis of the corporate structure of the applicant;

(d) Consider the size of the population in need of treatment in the area in which the program would be located and certify only applicants whose programs meet the necessary treatment needs of that population;

(e) Demonstrate a need in the community for opiate substitution treatment and not certify more program slots than justified by the need in that community. No program shall exceed three hundred fifty participants unless specifically authorized by the county in which the program is certified;

(f) Consider the availability of other certified programs near the area in which the applicant proposes to locate the program;

(g) Consider the transportation systems that would provide service to the program and whether the systems will provide reasonable opportunities to access the program for persons in need of treatment;

(h) Consider whether the applicant has, or has demonstrated in the past, the capability to provide the appropriate services to assist the persons who utilize the program in meeting goals established by the legislature, including abstinence from opiates and opiate substitutes, obtaining mental health treatment, improving economic independence, and reducing adverse consequences associated with illegal use of controlled substances. The department shall prioritize certification to applicants who have demonstrated such capability;

(i) Hold at least one public hearing in the county in which the facility is proposed to be located and one hearing in

the area in which the facility is proposed to be located. The hearing shall be held at a time and location that are most likely to permit the largest number of interested persons to attend and present testimony. The department shall notify all appropriate media outlets of the time, date, and location of the hearing at least three weeks in advance of the hearing.

(2) A program applying for certification from the department and a program applying for a contract from a state agency that has been denied the certification or contract shall be provided with a written notice specifying the rationale and reasons for the denial.

(3) For the purpose of this chapter, opiate substitution treatment means:

(a) Dispensing an opiate substitution drug approved by the federal drug administration for the treatment of opiate addiction; and

(b) Providing a comprehensive range of medical and rehabilitative services. [2001 c 242 § 2; 1995 c 321 § 2; 1989 c 270 § 21.]

**70.96A.420 Statewide treatment and operating standards for opiate substitution programs—Evaluation and report.** (1) The department, in consultation with opiate substitution treatment service providers and counties and cities, shall establish statewide treatment standards for certified opiate substitution treatment programs. The department shall enforce these treatment standards. The treatment standards shall include, but not be limited to, reasonable provisions for all appropriate and necessary medical procedures, counseling requirements, urinalysis, and other suitable tests as needed to ensure compliance with this chapter.

(2) The department, in consultation with opiate substitution treatment programs and counties, shall establish statewide operating standards for certified opiate substitution treatment programs. The department shall enforce these operating standards. The operating standards shall include, but not be limited to, reasonable provisions necessary to enable the department and counties to monitor certified and licensed opiate substitution treatment programs for compliance with this chapter and the treatment standards authorized by this chapter and to minimize the impact of the opiate substitution treatment programs upon the business and residential neighborhoods in which the program is located.

(3) The department shall establish criteria for evaluating the compliance of opiate substitution treatment programs with the goals and standards established under this chapter. As a condition of certification, opiate substitution programs shall submit an annual report to the department and county legislative authority, including data as specified by the department necessary for outcome analysis. The department shall analyze and evaluate the data submitted by each treatment program and take corrective action where necessary to ensure compliance with the goals and standards enumerated under this chapter. [2003 c 207 § 6; 2001 c 242 § 3; 1998 c 245 § 135; 1995 c 321 § 3; 1989 c 270 § 22.]

**70.96A.430 Inability to contribute to cost no bar to admission—Department may limit admissions.** The department shall not refuse admission for diagnosis, evaluation, guidance or treatment to any applicant because it is

determined that the applicant is financially unable to contribute fully or in part to the cost of any services or facilities available under the program on alcoholism.

The department may limit admissions of such applicants or modify its programs in order to ensure that expenditures for services or programs do not exceed amounts appropriated by the legislature and are allocated by the department for such services or programs. The department may establish admission priorities in the event that the number of eligible applicants exceeds the limits set by the department. [1989 c 271 § 308; 1959 c 85 § 15. Formerly RCW 70.96.150.]

**Reviser's note:** This section was also repealed by 1989 c 270 § 35, without cognizance of its amendment by 1989 c 271 § 308; and subsequently recodified pursuant to 1993 c 131 § 1. For rule of construction concerning sections amended and repealed in the same legislative session, see RCW 1.12.025.

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**70.96A.500 Fetal alcohol screening and assessment services.** The department shall contract with the University of Washington fetal alcohol syndrome clinic to provide fetal alcohol exposure screening and assessment services. The University indirect charges shall not exceed ten percent of the total contract amount. The contract shall require the University of Washington fetal alcohol syndrome clinic to provide the following services:

(1) Training for health care staff in community-based fetal alcohol exposure clinics to ensure the accurate diagnosis of individuals with fetal alcohol exposure and the development and implementation of appropriate service referral plans;

(2) Development of written or visual educational materials for the individuals diagnosed with fetal alcohol exposure and their families or caregivers;

(3) Systematic information retrieval from each community clinic to (a) maintain diagnostic accuracy and reliability across all community clinics, (b) facilitate the development of effective and efficient screening tools for population-based identification of individuals with fetal alcohol exposure, (c) facilitate identification of the most clinically efficacious and cost-effective educational, social, vocational, and health service interventions for individuals with fetal alcohol exposure;

(4) Based on available funds, establishment of a network of community-based fetal alcohol exposure clinics across the state to meet the demand for fetal alcohol exposure diagnostic and referral services; and

(5) Preparation of an annual report for submission to the department of health, the department of social and health services, the department of corrections, and the office of the superintendent of public instruction which includes the information retrieved under subsection (3) of this section. [1998 c 245 § 136; 1995 c 54 § 2.]

**Findings—Purpose—1995 c 54:** "The legislature finds that fetal alcohol exposure is among the leading known causes of mental retardation in the children of our state. The legislature further finds that individuals with undiagnosed fetal alcohol exposure suffer substantially from secondary disabilities such as child abuse and neglect, separation from families, multiple foster placements, depression, aggression, school failure, juvenile detention, and job instability. These secondary disabilities come at a high cost to the individuals, their family, and society. The legislature finds that these problems can be reduced substantially by early diagnosis and receipt of appropriate, effective intervention.

The purpose of this act is to support current public and private efforts

directed at the early identification of and intervention into the problems associated with fetal alcohol exposure through the creation of a fetal alcohol exposure clinical network." [1995 c 54 § 1.]

**70.96A.510 Interagency agreement on fetal alcohol exposure programs.** The department of social and health services, the department of health, the department of corrections, and the office of the superintendent of public instruction shall execute an interagency agreement to ensure the coordination of identification, prevention, and intervention programs for children who have fetal alcohol exposure, and for women who are at high risk of having children with fetal alcohol exposure.

The interagency agreement shall provide a process for community advocacy groups to participate in the review and development of identification, prevention, and intervention programs administered or contracted for by the agencies executing this agreement. [1995 c 54 § 3.]

**Findings—Purpose—1995 c 54:** See note following RCW 70.96A.500.

**70.96A.520 Chemical dependency treatment expenditures—Prioritization.** The department shall prioritize expenditures for treatment provided under RCW 13.40.165. The department shall provide funds for inpatient and outpatient treatment providers that are the most successful, using the standards developed by the University of Washington under section 27, chapter 338, Laws of 1997. The department may consider variations between the nature of the programs provided and clients served but must provide funds first for those programs that demonstrate the greatest success in treatment within categories of treatment and the nature of the persons receiving treatment. [2003 c 207 § 7; 1997 c 338 § 28.]

**Finding—Evaluation—Report—1997 c 338:** See note following RCW 13.40.0357.

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**70.96A.530 Disability lifeline benefits—Access to chemical dependency treatment. (Expires June 30, 2013.)** If an assessment by a certified chemical dependency counselor indicates a need for drug or alcohol treatment, in order to enable a person receiving disability lifeline benefits to improve his or her health status and transition from disability lifeline benefits to employment, or transition to federal disability benefits, the person must be given high priority for enrollment in treatment, within funds appropriated for that treatment. However, first priority for receipt of treatment services must be given to pregnant women and parents of young children. This section expires June 30, 2013. Persons who are terminated from disability lifeline benefits under RCW 74.04.005(5)(h) and are actively engaged in chemical dependency treatment during the month they are terminated shall be provided the opportunity to complete their current course of treatment. [2010 1st sp.s. c 8 § 10.]

**Effective date—2010 1st sp.s. c 8 § 10:** "Section 10 of this act takes effect July 1, 2010." [2010 1st sp.s. c 8 § 35.]

**Implementation—2010 1st sp.s. c 8 §§ 1-10 and 29:** See note following RCW 74.04.225.

**Findings—Intent—Short title—2010 1st sp.s. c 8:** See notes following RCW 74.04.225.

(2010 Ed.)

**70.96A.800 Chemically dependent persons—Intensive case management pilot projects.** (1) Subject to funds appropriated for this specific purpose, the secretary shall select and contract with counties to provide intensive case management for chemically dependent persons with histories of high utilization of crisis services at two sites. In selecting the two sites, the secretary shall endeavor to site one in an urban county, and one in a rural county; and to site them in counties other than those selected pursuant to RCW 70.96B.020, to the extent necessary to facilitate evaluation of pilot project results. Subject to funds appropriated for this specific purpose, the secretary may contract with additional counties to provide intensive case management.

(2) The contracted sites shall implement the pilot programs by providing intensive case management to persons with a primary chemical dependency diagnosis or dual primary chemical dependency and mental health diagnoses, through the employment of chemical dependency case managers. The chemical dependency case managers shall:

(a) Be trained in and use the integrated, comprehensive screening and assessment process adopted under RCW 70.96C.010;

(b) Reduce the use of crisis medical, chemical dependency and mental health services, including but not limited to, emergency room admissions, hospitalizations, detoxification programs, inpatient psychiatric admissions, involuntary treatment petitions, emergency medical services, and ambulance services;

(c) Reduce the use of emergency first responder services including police, fire, emergency medical, and ambulance services;

(d) Reduce the number of criminal justice interventions including arrests, violations of conditions of supervision, bookings, jail days, prison sanction day for violations, court appearances, and prosecutor and defense costs;

(e) Where appropriate and available, work with therapeutic courts including drug courts and mental health courts to maximize the outcomes for the individual and reduce the likelihood of reoffense;

(f) Coordinate with local offices of the economic services administration to assist the person in accessing and remaining enrolled in those programs to which the person may be entitled;

(g) Where appropriate and available, coordinate with primary care and other programs operated through the federal government including federally qualified health centers, Indian health programs, and veterans' health programs for which the person is eligible to reduce duplication of services and conflicts in case approach;

(h) Where appropriate, advocate for the client's needs to assist the person in achieving and maintaining stability and progress toward recovery;

(i) Document the numbers of persons with co-occurring mental and substance abuse disorders and the point of determination of the co-occurring disorder by quadrant of intensity of need; and

(j) Where a program participant is under supervision by the department of corrections, collaborate with the department of corrections to maximize treatment outcomes and reduce the likelihood of reoffense.

(3) The pilot programs established by this section shall begin providing services by March 1, 2006. [2008 c 320 § 1; 2005 c 504 § 220.]

**Findings—Intent—Severability—Application—Construction—Captions, part headings, subheadings not law—Adoption of rules—Effective dates—2005 c 504:** See notes following RCW 71.05.027.

**Alphabetization—Correction of references—2005 c 504:** See note following RCW 71.05.020.

**70.96A.905 Uniform application of chapter—Training for county-designated mental health professionals.** The department shall ensure that the provisions of this chapter are applied by the counties in a consistent and uniform manner. The department shall also ensure that, to the extent possible within available funds, the county-designated chemical dependency specialists are specifically trained in adolescent chemical dependency issues, the chemical dependency commitment laws, and the criteria for commitment. [1992 c 205 § 306.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**70.96A.910 Application—Construction—1972 ex.s. c 122.** This act shall be so applied and construed as to effectuate its general purpose to make uniform the law with respect to the subject of this act among those states which enact it. [1972 ex.s. c 122 § 22.]

**70.96A.915 Department allocation of funds—Construction.** The department is authorized to allocate appropriated funds in the manner that it determines best meets the purposes of this chapter. Nothing in this chapter shall be construed to entitle any individual to services authorized in this chapter, or to require the department or its contractors to reallocate funds in order to ensure that services are available to any eligible person upon demand. [1989 c 271 § 309.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**70.96A.920 Severability—1972 ex.s. c 122.** If any provision of this act or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are severable. [1972 ex.s. c 122 § 20.]

**70.96A.930 Section, subsection headings not part of law.** Section or subsection headings as used in this chapter do not constitute any part of the law. [1972 ex.s. c 122 § 27.]

## Chapter 70.96B RCW

### INTEGRATED CRISIS RESPONSE AND INVOLUNTARY TREATMENT—PILOT PROGRAMS

#### Sections

70.96B.010	Definitions.
70.96B.020	Selection of areas for pilot programs—Pilot program requirements.
70.96B.030	Designated crisis responder—Qualifications.
70.96B.040	Powers of designated crisis responder.
70.96B.045	Emergency custody—Procedure.
70.96B.050	Petition for initial detention—Order to detain for evaluation and treatment period—Procedure.

70.96B.060	Exemption from liability.
70.96B.070	Detention period for evaluation and treatment.
70.96B.080	Detention for evaluation and treatment of mental disorder—Chapter 71.05 RCW applies.
70.96B.090	Procedures for additional chemical dependency treatment.
70.96B.100	Detention for involuntary chemical dependency treatment—Petition for less restrictive treatment—Appearance before court—Representation—Hearing—Less restrictive order—Failure to adhere to terms of less restrictive order.
70.96B.110	Involuntary chemical dependency treatment proceedings—Prosecuting attorney shall represent petitioner.
70.96B.120	Rights of involuntarily detained persons.
70.96B.130	Evaluation by designated crisis responder—When required—Required notifications.
70.96B.140	Secretary may adopt rules.
70.96B.150	Application of RCW 71.05.550.
70.96B.800	Evaluation of pilot programs—Reports.

*Court files and records closed—Exceptions: RCW 71.05.620.*

**70.96B.010 Definitions.** The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Admission" or "admit" means a decision by a physician that a person should be examined or treated as a patient in a hospital, an evaluation and treatment facility, or other inpatient facility, or a decision by a professional person in charge or his or her designee that a person should be detained as a patient for evaluation and treatment in a secure detoxification facility or other certified chemical dependency provider.

(2) "Antipsychotic medications" means that class of drugs primarily used to treat serious manifestations of mental illness associated with thought disorders, which includes but is not limited to atypical antipsychotic medications.

(3) "Approved treatment program" means a discrete program of chemical dependency treatment provided by a treatment program certified by the department as meeting standards adopted under chapter 70.96A RCW.

(4) "Attending staff" means any person on the staff of a public or private agency having responsibility for the care and treatment of a patient.

(5) "Chemical dependency" means:

(a) Alcoholism;

(b) Drug addiction; or

(c) Dependence on alcohol and one or more other psychoactive chemicals, as the context requires.

(6) "Chemical dependency professional" means a person certified as a chemical dependency professional by the department of health under chapter 18.205 RCW.

(7) "Commitment" means the determination by a court that a person should be detained for a period of either evaluation or treatment, or both, in an inpatient or a less restrictive setting.

(8) "Conditional release" means a revocable modification of a commitment that may be revoked upon violation of any of its terms.

(9) "Custody" means involuntary detention under either chapter 71.05 or 70.96A RCW or this chapter, uninterrupted by any period of unconditional release from commitment from a facility providing involuntary care and treatment.

(10) "Department" means the department of social and health services.

(11) "Designated chemical dependency specialist" or "specialist" means a person designated by the county alcoholism and other drug addiction program coordinator designated

under RCW 70.96A.310 to perform the commitment duties described in RCW 70.96A.140 and this chapter, and qualified to do so by meeting standards adopted by the department.

(12) "Designated crisis responder" means a person designated by the county or regional support network to perform the duties specified in this chapter.

(13) "Designated mental health professional" means a mental health professional designated by the county or other authority authorized in rule to perform the duties specified in this chapter.

(14) "Detention" or "detain" means the lawful confinement of a person under this chapter, or chapter 70.96A or 71.05 RCW.

(15) "Developmental disabilities professional" means a person who has specialized training and three years of experience in directly treating or working with individuals with developmental disabilities and is a psychiatrist, psychologist, or social worker, and such other developmental disabilities professionals as may be defined by rules adopted by the secretary.

(16) "Developmental disability" means that condition defined in RCW 71A.10.020.

(17) "Discharge" means the termination of facility authority. The commitment may remain in place, be terminated, or be amended by court order.

(18) "Evaluation and treatment facility" means any facility that can provide directly, or by direct arrangement with other public or private agencies, emergency evaluation and treatment, outpatient care, and timely and appropriate inpatient care to persons suffering from a mental disorder, and that is certified as such by the department. A physically separate and separately operated portion of a state hospital may be designated as an evaluation and treatment facility. A facility that is part of, or operated by, the department or any federal agency does not require certification. No correctional institution or facility, or jail, may be an evaluation and treatment facility within the meaning of this chapter.

(19) "Facility" means either an evaluation and treatment facility or a secure detoxification facility.

(20) "Gravely disabled" means a condition in which a person, as a result of a mental disorder, or as a result of the use of alcohol or other psychoactive chemicals:

(a) Is in danger of serious physical harm resulting from a failure to provide for his or her essential human needs of health or safety; or

(b) Manifests severe deterioration in routine functioning evidenced by repeated and escalating loss of cognitive or volitional control over his or her actions and is not receiving such care as is essential for his or her health or safety.

(21) "History of one or more violent acts" refers to the period of time ten years before the filing of a petition under this chapter, or chapter 70.96A or 71.05 RCW, excluding any time spent, but not any violent acts committed, in a mental health facility or a long-term alcoholism or drug treatment facility, or in confinement as a result of a criminal conviction.

(22) "Imminent" means the state or condition of being likely to occur at any moment or near at hand, rather than distant or remote.

(23) "Intoxicated person" means a person whose mental or physical functioning is substantially impaired as a result of the use of alcohol or other psychoactive chemicals.

(24) "Judicial commitment" means a commitment by a court under this chapter.

(25) "Licensed physician" means a person licensed to practice medicine or osteopathic medicine and surgery in the state of Washington.

(26) "Likelihood of serious harm" means:

(a) A substantial risk that:

(i) Physical harm will be inflicted by a person upon his or her own person, as evidenced by threats or attempts to commit suicide or inflict physical harm on oneself;

(ii) Physical harm will be inflicted by a person upon another, as evidenced by behavior that has caused such harm or that places another person or persons in reasonable fear of sustaining such harm; or

(iii) Physical harm will be inflicted by a person upon the property of others, as evidenced by behavior that has caused substantial loss or damage to the property of others; or

(b) The person has threatened the physical safety of another and has a history of one or more violent acts.

(27) "Mental disorder" means any organic, mental, or emotional impairment that has substantial adverse effects on a person's cognitive or volitional functions.

(28) "Mental health professional" means a psychiatrist, psychologist, psychiatric nurse, or social worker, and such other mental health professionals as may be defined by rules adopted by the secretary under the authority of chapter 71.05 RCW.

(29) "Peace officer" means a law enforcement official of a public agency or governmental unit, and includes persons specifically given peace officer powers by any state law, local ordinance, or judicial order of appointment.

(30) "Person in charge" means a physician or chemical dependency counselor as defined in rule by the department, who is empowered by a certified treatment program with authority to make assessment, admission, continuing care, and discharge decisions on behalf of the certified program.

(31) "Private agency" means any person, partnership, corporation, or association that is not a public agency, whether or not financed in whole or in part by public funds, that constitutes an evaluation and treatment facility or private institution, or hospital, or approved treatment program, that is conducted for, or includes a department or ward conducted for, the care and treatment of persons who are mentally ill and/or chemically dependent.

(32) "Professional person" means a mental health professional or chemical dependency professional and shall also mean a physician, registered nurse, and such others as may be defined by rules adopted by the secretary pursuant to the provisions of this chapter.

(33) "Psychiatrist" means a person having a license as a physician and surgeon in this state who has in addition completed three years of graduate training in psychiatry in a program approved by the American medical association or the American osteopathic association and is certified or eligible to be certified by the American board of psychiatry and neurology.

(34) "Psychologist" means a person who has been licensed as a psychologist under chapter 18.83 RCW.

(35) "Public agency" means any evaluation and treatment facility or institution, or hospital, or approved treatment program that is conducted for, or includes a department or

ward conducted for, the care and treatment of persons who are mentally ill and/or chemically dependent, if the agency is operated directly by federal, state, county, or municipal government, or a combination of such governments.

(36) "Registration records" means all the records of the department, regional support networks, treatment facilities, and other persons providing services to the department, county departments, or facilities which identify persons who are receiving or who at any time have received services for mental illness.

(37) "Release" means legal termination of the commitment under chapter 70.96A or 71.05 RCW or this chapter.

(38) "Secretary" means the secretary of the department or the secretary's designee.

(39) "Secure detoxification facility" means a facility operated by either a public or private agency or by the program of an agency that serves the purpose of providing evaluation and assessment, and acute and/or subacute detoxification services for intoxicated persons and includes security measures sufficient to protect the patients, staff, and community.

(40) "Social worker" means a person with a master's or further advanced degree from an accredited school of social work or a degree deemed equivalent under rules adopted by the secretary.

(41) "Treatment records" means registration records and all other records concerning persons who are receiving or who at any time have received services for mental illness, which are maintained by the department, by regional support networks and their staffs, and by treatment facilities. Treatment records do not include notes or records maintained for personal use by a person providing treatment services for the department, regional support networks, or a treatment facility if the notes or records are not available to others.

(42) "Violent act" means behavior that resulted in homicide, attempted suicide, nonfatal injuries, or substantial damage to property. [2008 c 320 § 3; 2005 c 504 § 202.]

**Findings—Intent—Severability—Application—Construction—Captions, part headings, subheadings not law—Adoption of rules—Effective dates—2005 c 504:** See notes following RCW 71.05.027.

**Alphabetization—Correction of references—2005 c 504:** See note following RCW 71.05.020.

**70.96B.020 Selection of areas for pilot programs—Pilot program requirements.** (1) The secretary, after consulting with the Washington state association of counties, shall select and contract with regional support networks or counties to provide two integrated crisis response and involuntary treatment pilot programs for adults and shall allocate resources for both integrated services and secure detoxification services in the pilot areas. In selecting the two regional support networks or counties, the secretary shall endeavor to site one in an urban and one in a rural regional support network or county; and to site them in counties other than those selected pursuant to RCW 70.96A.800, to the extent necessary to facilitate evaluation of pilot project results.

(2) The regional support networks or counties shall implement the pilot programs by providing integrated crisis response and involuntary treatment to persons with a chemical dependency, a mental disorder, or both, consistent with this chapter. The pilot programs shall:

(a) Combine the crisis responder functions of a designated mental health professional under chapter 71.05 RCW and a designated chemical dependency specialist under chapter 70.96A RCW by establishing a new designated crisis responder who is authorized to conduct investigations and detain persons up to seventy-two hours to the proper facility;

(b) Provide training to the crisis responders as required by the department;

(c) Provide sufficient staff and resources to ensure availability of an adequate number of crisis responders twenty-four hours a day, seven days a week;

(d) Provide the administrative and court-related staff, resources, and processes necessary to facilitate the legal requirements of the initial detention and the commitment hearings for persons with a chemical dependency;

(e) Participate in the evaluation and report to assess the outcomes of the pilot programs including providing data and information as requested;

(f) Provide the other services necessary to the implementation of the pilot programs, consistent with this chapter as determined by the secretary in contract; and

(g) Collaborate with the department of corrections where persons detained or committed are also subject to supervision by the department of corrections.

(3) The pilot programs established by this section shall begin providing services by March 1, 2006. [2005 c 504 § 203.]

**Findings—Intent—Severability—Application—Construction—Captions, part headings, subheadings not law—Adoption of rules—Effective dates—2005 c 504:** See notes following RCW 71.05.027.

**Alphabetization—Correction of references—2005 c 504:** See note following RCW 71.05.020.

**70.96B.030 Designated crisis responder—Qualifications.** To qualify as a designated crisis responder, a person must have received chemical dependency training as determined by the department and be a:

(1) Psychiatrist, psychologist, psychiatric nurse, or social worker;

(2) Person with a master's degree or further advanced degree in counseling or one of the social sciences from an accredited college or university and who have, in addition, at least two years of experience in direct treatment of persons with mental illness or emotional disturbance, such experience gained under the direction of a mental health professional;

(3) Person who meets the waiver criteria of RCW 71.24.260, which waiver was granted before 1986;

(4) Person who had an approved waiver to perform the duties of a mental health professional that was requested by the regional support network and granted by the department before July 1, 2001; or

(5) Person who has been granted a time-limited exception of the minimum requirements of a mental health professional by the department consistent with rules adopted by the secretary. [2005 c 504 § 204.]

**Findings—Intent—Severability—Application—Construction—Captions, part headings, subheadings not law—Adoption of rules—Effective dates—2005 c 504:** See notes following RCW 71.05.027.

**Alphabetization—Correction of references—2005 c 504:** See note following RCW 71.05.020.

**70.96B.040 Powers of designated crisis responder.** In addition to the provisions of this chapter, a designated crisis responder has all the powers and duties of a designated mental health professional as well as the powers and duties of a designated chemical dependency specialist under RCW 70.96A.120. [2005 c 504 § 205.]

**Findings—Intent—Severability—Application—Construction—Captions, part headings, subheadings not law—Adoption of rules—Effective dates—2005 c 504:** See notes following RCW 71.05.027.

**Alphabetization—Correction of references—2005 c 504:** See note following RCW 71.05.020.

**70.96B.045 Emergency custody—Procedure.** (1) If a designated crisis responder receives information alleging that a person, as the result of:

(a) A mental disorder, presents an imminent likelihood of serious harm, or is in imminent danger because of being gravely disabled, after investigation and evaluation of the specific facts alleged and of the reliability and credibility of the person or persons providing the information if any, the designated crisis responder may take the person, or cause by oral or written order the person to be taken into emergency custody in an evaluation and treatment facility for not more than seventy-two hours as described in this chapter; or

(b) Chemical dependency, presents an imminent likelihood of serious harm, or is in imminent danger because of being gravely disabled, after investigation and evaluation of the specific facts alleged and of the reliability and credibility of the person or persons providing the information if any, the designated crisis responder may take the person, or cause by oral or written order the person to be taken into emergency custody in a secure detoxification facility for not more than seventy-two hours as described in this chapter.

(2) The evaluation and treatment facility, the secure detoxification facility, or other certified chemical dependency provider shall then evaluate the person's condition and admit, detain, transfer, or discharge such person in accordance with this chapter. The facility shall notify in writing the court and the designated crisis responder of the date and time of the initial detention of each person involuntarily detained so that a probable cause hearing will be held no later than seventy-two hours after detention.

(3) A peace officer may take or cause the person to be taken into custody and immediately delivered to an evaluation and treatment facility, secure detoxification facility, or other certified chemical dependency treatment provider: (a) Pursuant to this section; or (b) when he or she has reasonable cause to believe that such person, as a result of a mental disorder or chemical dependency, presents an imminent likelihood of serious harm, or is in imminent danger because of being gravely disabled. An individual brought to a facility by a peace officer may be held for up to twelve hours: PROVIDED, That the individual is examined by a designated crisis responder within three hours of arrival. Within twelve hours of arrival the designated crisis responder must determine whether the individual meets detention criteria. If the individual is detained, the designated mental health professional shall file a petition for detention or supplemental petition as appropriate and commence service on the designated attorney for the detained person.

(2010 Ed.)

(4) Nothing in this chapter limits the power of a peace officer to take a person into custody and immediately deliver the person to the emergency department of a local hospital or to a detoxification facility. [2007 c 120 § 2.]

**Effective date—2007 c 120:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [April 18, 2007]." [2007 c 120 § 3.]

**70.96B.050 Petition for initial detention—Order to detain for evaluation and treatment period—Procedure.**

(1) When a designated crisis responder receives information alleging that a person, as a result of a mental disorder, chemical dependency disorder, or both, presents a likelihood of serious harm or is gravely disabled, the designated crisis responder may, after investigation and evaluation of the specific facts alleged and of the reliability and credibility of any person providing information to initiate detention, if satisfied that the allegations are true and that the person will not voluntarily seek appropriate treatment, file a petition for initial detention. Before filing the petition, the designated crisis responder must personally interview the person, unless the person refuses an interview, and determine whether the person will voluntarily receive appropriate evaluation and treatment at either an evaluation and treatment facility, a detoxification facility, or other certified chemical dependency provider.

(2)(a) An order to detain to an evaluation and treatment facility, a detoxification facility, or other certified chemical dependency provider for not more than a seventy-two hour evaluation and treatment period may be issued by a judge upon request of a designated crisis responder: (i) Whenever it appears to the satisfaction of a judge of the superior court, district court, or other court permitted by court rule, that there is probable cause to support the petition, and (ii) that the person has refused or failed to accept appropriate evaluation and treatment voluntarily.

(b) The petition for initial detention, signed under penalty of perjury or sworn telephonic testimony, may be considered by the court in determining whether there are sufficient grounds for issuing the order.

(c) The order shall designate retained counsel or, if counsel is appointed from a list provided by the court, the name, business address, and telephone number of the attorney appointed to represent the person.

(3) The designated crisis responder shall then serve or cause to be served on such person, his or her guardian, and conservator, if any, a copy of the order to appear, together with a notice of rights and a petition for initial detention. After service on the person, the designated crisis responder shall file the return of service in court and provide copies of all papers in the court file to the evaluation and treatment facility or secure detoxification facility and the designated attorney. The designated crisis responder shall notify the court and the prosecuting attorney that a probable cause hearing will be held within seventy-two hours of the date and time of outpatient evaluation or admission to the evaluation and treatment facility, secure detoxification facility, or other certified chemical dependency provider. If requested by the detained person or his or her attorney, the hearing may be postponed for a period not to exceed forty-eight hours. The

hearing may be continued subject to the petitioner's showing of good cause for a period not to exceed twenty-four hours. The person may be accompanied by one or more of his or her relatives, friends, an attorney, a personal physician, or other professional or religious advisor to the place of evaluation. An attorney accompanying the person to the place of evaluation shall be permitted to be present during the admission evaluation. Any other person accompanying the person may be present during the admission evaluation. The facility may exclude the person if his or her presence would present a safety risk, delay the proceedings, or otherwise interfere with the evaluation.

(4) The designated crisis responder may notify a peace officer to take the person or cause the person to be taken into custody and placed in an evaluation and treatment facility, a secure detoxification facility, or other certified chemical dependency provider. At the time the person is taken into custody there shall commence to be served on the person, his or her guardian, and conservator, if any, a copy of the original order together with a notice of detention, a notice of rights, and a petition for initial detention. [2008 c 320 § 5; 2007 c 120 § 1; 2005 c 504 § 206.]

**Effective date—2007 c 120:** See note following RCW 70.96B.045.

**Findings—Intent—Severability—Application—Construction—Captions, part headings, subheadings not law—Adoption of rules—Effective dates—2005 c 504:** See notes following RCW 71.05.027.

**Alphabetization—Correction of references—2005 c 504:** See note following RCW 71.05.020.

**70.96B.060 Exemption from liability.** (1) A person or public or private entity employing a person is not civilly or criminally liable for performing duties under this chapter if the duties were performed in good faith and without gross negligence.

(2) This section does not relieve a person from giving the required notices under RCW 71.05.330(2) or 71.05.340(1)(b), or the duty to warn or to take reasonable precautions to provide protection from violent behavior where the patient has communicated an actual threat of physical violence against a reasonably identifiable victim or victims. The duty to warn or to take reasonable precautions to provide protection from violent behavior is discharged if reasonable efforts are made to communicate the threat to the victim or victims and to law enforcement personnel. [2005 c 504 § 207.]

**Findings—Intent—Severability—Application—Construction—Captions, part headings, subheadings not law—Adoption of rules—Effective dates—2005 c 504:** See notes following RCW 71.05.027.

**Alphabetization—Correction of references—2005 c 504:** See note following RCW 71.05.020.

**70.96B.070 Detention period for evaluation and treatment.** If the evaluation and treatment facility, secure detoxification facility, or other certified chemical dependency provider admits the person, it may detain the person for evaluation and treatment for a period not to exceed seventy-two hours from the time of acceptance. The computation of the seventy-two hour period excludes Saturdays, Sundays, and holidays. [2005 c 504 § 208.]

**Findings—Intent—Severability—Application—Construction—Captions, part headings, subheadings not law—Adoption of rules—Effective dates—2005 c 504:** See notes following RCW 71.05.027.

**Alphabetization—Correction of references—2005 c 504:** See note following RCW 71.05.020.

**70.96B.080 Detention for evaluation and treatment of mental disorder—Chapter 71.05 RCW applies.** Whenever any person is detained for evaluation and treatment for a mental disorder under RCW 70.96B.050, chapter 71.05 RCW applies. [2005 c 504 § 209.]

**Findings—Intent—Severability—Application—Construction—Captions, part headings, subheadings not law—Adoption of rules—Effective dates—2005 c 504:** See notes following RCW 71.05.027.

**Alphabetization—Correction of references—2005 c 504:** See note following RCW 71.05.020.

**70.96B.090 Procedures for additional chemical dependency treatment.** (1) A person detained for seventy-two hour evaluation and treatment under RCW 70.96B.050 or 70.96A.120 may be detained for not more than fourteen additional days of involuntary chemical dependency treatment if there are beds available at the secure detoxification facility and the following conditions are met:

(a) The professional person in charge of the agency or facility or the person's designee providing evaluation and treatment services in a secure detoxification facility has assessed the person's condition and finds that the condition is caused by chemical dependency and either results in a likelihood of serious harm or in the detained person being gravely disabled, and the professional person or his or her designee is prepared to testify those conditions are met;

(b) The person has been advised of the need for voluntary treatment and the professional person in charge of the agency or facility or his or her designee has evidence that he or she has not in good faith volunteered for treatment; and

(c) The professional person in charge of the agency or facility or the person's designee has filed a petition for fourteen-day involuntary detention with the superior court, district court, or other court permitted by court rule. The petition must be signed by the chemical dependency professional who has examined the person.

(2) The petition under subsection (1)(c) of this section shall be accompanied by a certificate of a licensed physician who has examined the person, unless the person whose commitment is sought has refused to submit to a medical examination, in which case the fact of refusal shall be alleged in the petition. The certificate shall set forth the licensed physician's findings in support of the allegations of the petition. A physician employed by the petitioning program or the department is eligible to be the certifying physician.

(3) The petition shall state facts that support the finding that the person, as a result of chemical dependency, presents a likelihood of serious harm or is gravely disabled, and that there are no less restrictive alternatives to detention in the best interest of the person or others. The petition shall state specifically that less restrictive alternative treatment was considered and specify why treatment less restrictive than detention is not appropriate.

(4) A copy of the petition shall be served on the detained person, his or her attorney, and his or her guardian or conservator, if any, before the probable cause hearing.

(5)(a) The court shall inform the person whose commitment is sought of his or her right to contest the petition, be

represented by counsel at every stage of any proceedings relating to his or her commitment, and have counsel appointed by the court or provided by the court, if he or she wants the assistance of counsel and is unable to obtain counsel. If the court believes that the person needs the assistance of counsel, the court shall require, by appointment if necessary, counsel for him or her regardless of his or her wishes. The person shall, if he or she is financially able, bear the costs of such legal service; otherwise such legal service shall be at public expense. The person whose commitment is sought shall be informed of his or her right to be examined by a licensed physician of his or her choice. If the person is unable to obtain a licensed physician and requests examination by a physician, the court shall appoint a reasonably available licensed physician designated by the person.

(b) At the conclusion of the probable cause hearing, if the court finds by a preponderance of the evidence that the person, as the result of chemical dependency, presents a likelihood of serious harm or is gravely disabled and, after considering less restrictive alternatives to involuntary detention and treatment, finds that no such alternatives are in the best interest of such person or others, the court shall order that the person be detained for involuntary chemical dependency treatment not to exceed fourteen days in a secure detoxification facility. [2005 c 504 § 210.]

**Findings—Intent—Severability—Application—Construction—Captions, part headings, subheadings not law—Adoption of rules—Effective dates—2005 c 504:** See notes following RCW 71.05.027.

**Alphabetization—Correction of references—2005 c 504:** See note following RCW 71.05.020.

**70.96B.100 Detention for involuntary chemical dependency treatment—Petition for less restrictive treatment—Appearance before court—Representation—Hearing—Less restrictive order—Failure to adhere to terms of less restrictive order.** (1) A person detained for fourteen days of involuntary chemical dependency treatment under RCW 70.96B.090 or subsection (6) of this section shall be released from involuntary treatment at the expiration of the period of commitment unless the professional staff of the agency or facility files a petition for an additional period of involuntary treatment under RCW 70.96A.140, or files a petition for sixty days less restrictive treatment under this section naming the detained person as a respondent. Costs associated with the obtainment or revocation of an order for less restrictive treatment and subsequent involuntary commitment shall be provided for within current funding.

(2) A petition for less restrictive treatment must be filed at least three days before expiration of the fourteen-day period of intensive treatment, and comport with the rules contained in RCW 70.96B.090(2). The petition shall state facts that support the finding that the respondent, as a result of a chemical dependency, presents a likelihood of serious harm or is gravely disabled, and that continued treatment pursuant to a less restrictive order is in the best interest of the respondent or others. At the time of filing such a petition, the clerk shall set a time for the respondent to come before the court on the next judicial day after the day of filing unless such appearance is waived by the respondent's attorney.

(3) At the time set for appearance the respondent must be brought before the court, unless such appearance has been

waived and the court shall advise the respondent of his or her right to be represented by an attorney. If the respondent is not represented by an attorney, or is indigent or is unwilling to retain an attorney, the court shall immediately appoint an attorney to represent the respondent. The court shall, if requested, appoint a reasonably available licensed physician, psychologist, or psychiatrist, designated by the respondent to examine and testify on behalf of the respondent.

(4) The court shall conduct a hearing on the petition for sixty days less restrictive treatment on or before the last day of the confinement period. The burden of proof shall be by clear, cogent, and convincing evidence and shall be upon the petitioner. The respondent shall be present at such proceeding. The rules of evidence shall apply, and the respondent shall have the right to present evidence on his or her behalf, to cross-examine witnesses who testify against him or her, to remain silent, and to view and copy all petitions and reports in the court file. The physician-patient privilege or the psychologist-client privilege shall be deemed waived in accordance with the provisions under RCW 71.05.360(9). Involuntary treatment shall continue while a petition for less restrictive treatment is pending under this section.

(5) The court may impose a sixty-day less restrictive order if the evidence shows that the respondent, as a result of a chemical dependency, presents a likelihood of serious harm or is gravely disabled, and that continued treatment pursuant to a less restrictive order is in the best interest of the respondent or others. The less restrictive order may impose treatment conditions and other conditions which are in the best interest of the respondent and others. A copy of the less restrictive order shall be given to the respondent, the designated crisis responder, and any program designated to provide less restrictive treatment. A program designated to provide less restrictive treatment and willing to supervise the conditions of the less restrictive order may modify the conditions for continued release when the modification is in the best interests of the respondent, but must notify the designated crisis responder and the court of such modification.

(6) If a program approved by the court and willing to supervise the conditions of the less restrictive order or the designated crisis responder determines that the respondent is failing to adhere to the terms of the less restrictive order or that substantial deterioration in the respondent's functioning has occurred, then the designated crisis responder shall notify the court of original commitment and request a hearing to be held no less than two and no more than seven days after the date of the request to determine whether or not the respondent should be returned to more restrictive care. The designated crisis responder may cause the respondent to be immediately taken into custody of the secure detoxification facility pending the hearing if the alleged noncompliance causes the respondent to present a likelihood of serious harm. The designated crisis responder shall file a petition with the court stating the facts substantiating the need for the hearing along with the treatment recommendations. The respondent shall have the same rights with respect to notice, hearing, and counsel as for the original involuntary treatment proceedings. The issues to be determined at the hearing are whether the conditionally released respondent did or did not adhere to the terms and conditions of his or her release to less restrictive care or that substantial deterioration of the respondent's func-

tioning has occurred and whether the conditions of release should be modified or the respondent should be returned to a more restrictive setting. The hearing may be waived by the respondent and his or her counsel and his or her guardian or conservator, if any, but may not be waived unless all such persons agree to the waiver. If the court finds in favor of the petitioner, or the respondent waives a hearing, the court may order the respondent to be committed to a secure detoxification facility for fourteen days of involuntary chemical dependency treatment, or may order the respondent to be returned to less restrictive treatment on the same or modified conditions. [2008 c 320 § 6; 2005 c 504 § 211.]

**Findings—Intent—Severability—Application—Construction—Captions, part headings, subheadings not law—Adoption of rules—Effective dates—2005 c 504:** See notes following RCW 71.05.027.

**Alphabetization—Correction of references—2005 c 504:** See note following RCW 71.05.020.

**70.96B.110 Involuntary chemical dependency treatment proceedings—Prosecuting attorney shall represent petitioner.** The prosecuting attorney of the county in which an action under this chapter is taken must represent the petitioner in judicial proceedings under this chapter for the involuntary chemical dependency treatment of a person, including any judicial proceeding where the person sought to be treated for chemical dependency challenges the action. [2005 c 504 § 212.]

**Findings—Intent—Severability—Application—Construction—Captions, part headings, subheadings not law—Adoption of rules—Effective dates—2005 c 504:** See notes following RCW 71.05.027.

**Alphabetization—Correction of references—2005 c 504:** See note following RCW 71.05.020.

**70.96B.120 Rights of involuntarily detained persons.** (1) Every person involuntarily detained or committed under this chapter as a result of a mental disorder is entitled to all the rights set forth in this chapter and in chapter 71.05 RCW, and retains all rights not denied him or her under this chapter or chapter 71.05 RCW.

(2) Every person involuntarily detained or committed under this chapter as a result of a chemical dependency is entitled to all the rights set forth in this chapter and chapter 70.96A RCW, and retains all rights not denied him or her under this chapter or chapter 70.96A RCW. [2005 c 504 § 213.]

**Findings—Intent—Severability—Application—Construction—Captions, part headings, subheadings not law—Adoption of rules—Effective dates—2005 c 504:** See notes following RCW 71.05.027.

**Alphabetization—Correction of references—2005 c 504:** See note following RCW 71.05.020.

**70.96B.130 Evaluation by designated crisis responder—When required—Required notifications.** (1) When a designated crisis responder is notified by a jail that a defendant or offender who was subject to a discharge review under RCW 71.05.232 is to be released to the community, the designated crisis responder shall evaluate the person within seventy-two hours of release.

(2) When an offender is under court-ordered treatment in the community and the supervision of the department of corrections, and the treatment provider becomes aware that the person is in violation of the terms of the court order, the treat-

ment provider shall notify the designated crisis responder of the violation and request an evaluation for purposes of revocation of the less restrictive alternative.

(3) When a designated crisis responder becomes aware that an offender who is under court-ordered treatment in the community and the supervision of the department of corrections is in violation of a treatment order or a condition of supervision that relates to public safety, or the designated crisis responder detains a person under this chapter, the designated crisis responder shall notify the person's treatment provider and the department of corrections.

(4) When an offender who is confined in a state correctional facility or is under supervision of the department of corrections in the community is subject to a petition for involuntary treatment under this chapter, the petitioner shall notify the department of corrections and the department of corrections shall provide documentation of its risk assessment or other concerns to the petitioner and the court if the department of corrections classified the offender as a high risk or high needs offender.

(5) Nothing in this section creates a duty on any treatment provider or designated crisis responder to provide offender supervision. [2005 c 504 § 214.]

**Findings—Intent—Severability—Application—Construction—Captions, part headings, subheadings not law—Adoption of rules—Effective dates—2005 c 504:** See notes following RCW 71.05.027.

**Alphabetization—Correction of references—2005 c 504:** See note following RCW 71.05.020.

**70.96B.140 Secretary may adopt rules.** The secretary may adopt rules to implement this chapter. [2005 c 504 § 215.]

**Findings—Intent—Severability—Application—Construction—Captions, part headings, subheadings not law—Adoption of rules—Effective dates—2005 c 504:** See notes following RCW 71.05.027.

**Alphabetization—Correction of references—2005 c 504:** See note following RCW 71.05.020.

**70.96B.150 Application of RCW 71.05.550.** The provisions of \*RCW 71.05.550 apply to this chapter. [2005 c 504 § 216.]

**\*Reviser's note:** RCW 71.05.550 was repealed by 2006 c 333 § 401, effective July 1, 2006.

**Findings—Intent—Severability—Application—Construction—Captions, part headings, subheadings not law—Adoption of rules—Effective dates—2005 c 504:** See notes following RCW 71.05.027.

**Alphabetization—Correction of references—2005 c 504:** See note following RCW 71.05.020.

**70.96B.800 Evaluation of pilot programs—Reports.**

(1) The Washington state institute for public policy shall evaluate the pilot programs and make preliminary reports to appropriate committees of the legislature by December 1, 2007, and June 30, 2008, and a final report by June 30, 2010.

(2) The evaluation of the pilot programs shall include:

(a) Whether the designated crisis responder pilot program:

(i) Has increased efficiency of evaluation and treatment of persons involuntarily detained for seventy-two hours;

(ii) Is cost-effective;

(iii) Results in better outcomes for persons involuntarily detained;

(iv) Increased the effectiveness of the crisis response system in the pilot catchment areas;

(b) The effectiveness of providing a single chapter in the Revised Code of Washington to address initial detention of persons with mental disorders or chemical dependency, in crisis response situations and the likelihood of effectiveness of providing a single, comprehensive involuntary treatment act.

(3) The reports shall consider the impact of the pilot programs on the existing mental health system and on the persons served by the system. [2008 c 320 § 2; 2005 c 504 § 217.]

**Findings—Intent—Severability—Application—Construction—Captions, part headings, subheadings not law—Adoption of rules—Effective dates—2005 c 504:** See notes following RCW 71.05.027.

**Alphabetization—Correction of references—2005 c 504:** See note following RCW 71.05.020.

### Chapter 70.96C RCW

#### SCREENING AND ASSESSMENT OF CHEMICAL DEPENDENCY AND MENTAL DISORDERS

##### Sections

- 70.96C.010 Integrated, comprehensive screening and assessment process for chemical dependency and mental disorders.  
70.96C.020 Department of corrections—Use of screening and assessment process.

**70.96C.010 Integrated, comprehensive screening and assessment process for chemical dependency and mental disorders.** (1) The department of social and health services, in consultation with the members of the team charged with developing the state plan for co-occurring mental and substance abuse disorders, shall adopt, not later than January 1, 2006, an integrated and comprehensive screening and assessment process for chemical dependency and mental disorders and co-occurring chemical dependency and mental disorders.

(a) The process adopted shall include, at a minimum:

(i) An initial screening tool that can be used by intake personnel system-wide and which will identify the most common types of co-occurring disorders;

(ii) An assessment process for those cases in which assessment is indicated that provides an appropriate degree of assessment for most situations, which can be expanded for complex situations;

(iii) Identification of triggers in the screening that indicate the need to begin an assessment;

(iv) Identification of triggers after or outside the screening that indicate a need to begin or resume an assessment;

(v) The components of an assessment process and a protocol for determining whether part or all of the assessment is necessary, and at what point; and

(vi) Emphasis that the process adopted under this section is to replace and not to duplicate existing intake, screening, and assessment tools and processes.

(b) The department shall consider existing models, including those already adopted by other states, and to the extent possible, adopt an established, proven model.

(c) The integrated, comprehensive screening and assessment process shall be implemented statewide by all chemical dependency and mental health treatment providers as well as all designated mental health professionals, designated chem-

ical dependency specialists, and designated crisis responders not later than January 1, 2007.

(2) The department shall provide adequate training to effect statewide implementation by the dates designated in this section and shall report the rates of co-occurring disorders and the stage of screening or assessment at which the co-occurring disorder was identified to the appropriate committees of the legislature.

(3) The department shall establish contractual penalties to contracted treatment providers, the regional support networks, and their contracted providers for failure to implement the integrated screening and assessment process by July 1, 2007. [2005 c 504 § 601.]

**Findings—Intent—Severability—Application—Construction—Captions, part headings, subheadings not law—Adoption of rules—Effective dates—2005 c 504:** See notes following RCW 71.05.027.

**Alphabetization—Correction of references—2005 c 504:** See note following RCW 71.05.020.

**70.96C.020 Department of corrections—Use of screening and assessment process.** The department of corrections shall, to the extent that resources are available for this purpose, utilize the integrated, comprehensive screening and assessment process for chemical dependency and mental disorders developed under RCW 70.96C.010. [2005 c 504 § 602.]

**Findings—Intent—Severability—Application—Construction—Captions, part headings, subheadings not law—Adoption of rules—Effective dates—2005 c 504:** See notes following RCW 71.05.027.

**Alphabetization—Correction of references—2005 c 504:** See note following RCW 71.05.020.

### Chapter 70.97 RCW

#### ENHANCED SERVICES FACILITIES

##### Sections

- 70.97.010 Definitions.  
70.97.020 Advance directives.  
70.97.030 Admission criteria.  
70.97.040 Rights of residents.  
70.97.050 Right to refuse antipsychotic medication.  
70.97.060 Capacity—Security—Licensing—Application of state and local rules.  
70.97.070 Comprehensive assessments—Individualized treatment plan.  
70.97.080 Staffing levels—Staff credentials and training—Background checks.  
70.97.090 Facilities exempted.  
70.97.100 Licensing requirements—Information available to public, residents, families.  
70.97.110 Enforcement authority—Penalties, sanctions.  
70.97.120 Enforcement orders—Hearings.  
70.97.130 Unlicensed operation—Application of consumer protection act.  
70.97.140 Unlicensed operation—Criminal penalty.  
70.97.150 Unlicensed operation—Injunction or other remedies.  
70.97.160 Inspections.  
70.97.170 Persons eligible for admittance.  
70.97.180 Services of qualified professional.  
70.97.190 Notice of change of ownership or management.  
70.97.200 Recordkeeping—Compliance with state, federal regulations—Health care information releases.  
70.97.210 Standards for fire protection.  
70.97.220 Exemption from liability.  
70.97.230 Rules for implementation of chapter.

**70.97.010 Definitions.** The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Antipsychotic medications" means that class of drugs primarily used to treat serious manifestations of mental illness associated with thought disorders, which includes but is not limited to atypical antipsychotic medications.

(2) "Attending staff" means any person on the staff of a public or private agency having responsibility for the care and treatment of a patient.

(3) "Chemical dependency" means alcoholism, drug addiction, or dependence on alcohol and one or more other psychoactive chemicals, as the context requires and as those terms are defined in chapter 70.96A RCW.

(4) "Chemical dependency professional" means a person certified as a chemical dependency professional by the department of health under chapter 18.205 RCW.

(5) "Commitment" means the determination by a court that an individual should be detained for a period of either evaluation or treatment, or both, in an inpatient or a less restrictive setting.

(6) "Conditional release" means a modification of a commitment that may be revoked upon violation of any of its terms.

(7) "Custody" means involuntary detention under chapter 71.05 or 70.96A RCW, uninterrupted by any period of unconditional release from commitment from a facility providing involuntary care and treatment.

(8) "Department" means the department of social and health services.

(9) "Designated responder" means a designated mental health professional, a designated chemical dependency specialist, or a designated crisis responder as those terms are defined in chapter 70.96A, 71.05, or 70.96B RCW.

(10) "Detention" or "detain" means the lawful confinement of an individual under chapter 70.96A or 71.05 RCW.

(11) "Discharge" means the termination of facility authority. The commitment may remain in place, be terminated, or be amended by court order.

(12) "Enhanced services facility" means a facility that provides treatment and services to persons for whom acute inpatient treatment is not medically necessary and who have been determined by the department to be inappropriate for placement in other licensed facilities due to the complex needs that result in behavioral and security issues.

(13) "Expanded community services program" means a nonsecure program of enhanced behavioral and residential support provided to long-term and residential care providers serving specifically eligible clients who would otherwise be at risk for hospitalization at state hospital geriatric units.

(14) "Facility" means an enhanced services facility.

(15) "Gravely disabled" means a condition in which an individual, as a result of a mental disorder, as a result of the use of alcohol or other psychoactive chemicals, or both:

(a) Is in danger of serious physical harm resulting from a failure to provide for his or her essential human needs of health or safety; or

(b) Manifests severe deterioration in routine functioning evidenced by repeated and escalating loss of cognitive or volitional control over his or her actions and is not receiving such care as is essential for his or her health or safety.

(16) "History of one or more violent acts" refers to the period of time ten years before the filing of a petition under this chapter, or chapter 70.96A or 71.05 RCW, excluding any

time spent, but not any violent acts committed, in a mental health facility or a long-term alcoholism or drug treatment facility, or in confinement as a result of a criminal conviction.

(17) "Licensed physician" means a person licensed to practice medicine or osteopathic medicine and surgery in the state of Washington.

(18) "Likelihood of serious harm" means:

(a) A substantial risk that:

(i) Physical harm will be inflicted by an individual upon his or her own person, as evidenced by threats or attempts to commit suicide or inflict physical harm on oneself;

(ii) Physical harm will be inflicted by an individual upon another, as evidenced by behavior that has caused such harm or that places another person or persons in reasonable fear of sustaining such harm; or

(iii) Physical harm will be inflicted by an individual upon the property of others, as evidenced by behavior that has caused substantial loss or damage to the property of others; or

(b) The individual has threatened the physical safety of another and has a history of one or more violent acts.

(19) "Mental disorder" means any organic, mental, or emotional impairment that has substantial adverse effects on an individual's cognitive or volitional functions.

(20) "Mental health professional" means a psychiatrist, psychologist, psychiatric nurse, or social worker, and such other mental health professionals as may be defined by rules adopted by the secretary under the authority of chapter 71.05 RCW.

(21) "Professional person" means a mental health professional and also means a physician, registered nurse, and such others as may be defined in rules adopted by the secretary pursuant to the provisions of this chapter.

(22) "Psychiatrist" means a person having a license as a physician and surgeon in this state who has in addition completed three years of graduate training in psychiatry in a program approved by the American medical association or the American osteopathic association and is certified or eligible to be certified by the American board of psychiatry and neurology.

(23) "Psychologist" means a person who has been licensed as a psychologist under chapter 18.83 RCW.

(24) "Registration records" include all the records of the department, regional support networks, treatment facilities, and other persons providing services to the department, county departments, or facilities which identify individuals who are receiving or who at any time have received services for mental illness.

(25) "Release" means legal termination of the commitment under chapter 70.96A or 71.05 RCW.

(26) "Resident" means a person admitted to an enhanced services facility.

(27) "Secretary" means the secretary of the department or the secretary's designee.

(28) "Significant change" means:

(a) A deterioration in a resident's physical, mental, or psychosocial condition that has caused or is likely to cause clinical complications or life-threatening conditions; or

(b) An improvement in the resident's physical, mental, or psychosocial condition that may make the resident eligible

for release or for treatment in a less intensive or less secure setting.

(29) "Social worker" means a person with a master's or further advanced degree from an accredited school of social work or a degree deemed equivalent under rules adopted by the secretary.

(30) "Treatment" means the broad range of emergency, detoxification, residential, inpatient, and outpatient services and care, including diagnostic evaluation, mental health or chemical dependency education and counseling, medical, psychiatric, psychological, and social service care, vocational rehabilitation, and career counseling, which may be extended to persons with mental disorders, chemical dependency disorders, or both, and their families.

(31) "Treatment records" include registration and all other records concerning individuals who are receiving or who at any time have received services for mental illness, which are maintained by the department, by regional support networks and their staffs, and by treatment facilities. "Treatment records" do not include notes or records maintained for personal use by an individual providing treatment services for the department, regional support networks, or a treatment facility if the notes or records are not available to others.

(32) "Violent act" means behavior that resulted in homicide, attempted suicide, nonfatal injuries, or substantial damage to property. [2005 c 504 § 403.]

**Findings—Intent—Severability—Application—Construction—Captions, part headings, subheadings not law—Adoption of rules—Effective dates—2005 c 504:** See notes following RCW 71.05.027.

**Alphabetization—Correction of references—2005 c 504:** See note following RCW 71.05.020.

**70.97.020 Advance directives.** A facility shall honor an advance directive that was validly executed pursuant to chapter 70.122 RCW and a mental health advance directive that was validly executed pursuant to chapter 71.32 RCW. [2005 c 504 § 404.]

**Findings—Intent—Severability—Application—Construction—Captions, part headings, subheadings not law—Adoption of rules—Effective dates—2005 c 504:** See notes following RCW 71.05.027.

**Alphabetization—Correction of references—2005 c 504:** See note following RCW 71.05.020.

**70.97.030 Admission criteria.** A person, eighteen years old or older, may be admitted to an enhanced services facility if he or she meets the criteria in subsections (1) through (3) of this section:

(1) The person requires: (a) Daily care by or under the supervision of a mental health professional, chemical dependency professional, or nurse; or (b) assistance with three or more activities of daily living; and

(2) The person has: (a) A mental disorder, chemical dependency disorder, or both; (b) an organic or traumatic brain injury; or (c) a cognitive impairment that results in symptoms or behaviors requiring supervision and facility services; [and]

(3) The person has two or more of the following:

(a) Self-endangering behaviors that are frequent or difficult to manage;

(b) Aggressive, threatening, or assaultive behaviors that create a risk to the health or safety of other residents or staff,

(2010 Ed.)

or a significant risk to property and these behaviors are frequent or difficult to manage;

(c) Intrusive behaviors that put residents or staff at risk;

(d) Complex medication needs and those needs include psychotropic medications;

(e) A history of or likelihood of unsuccessful placements in either a licensed facility or other state facility or a history of rejected applications for admission to other licensed facilities based on the person's behaviors, history, or security needs;

(f) A history of frequent or protracted mental health hospitalizations;

(g) A history of offenses against a person or felony offenses that created substantial damage to property. [2005 c 504 § 405.]

**Findings—Intent—Severability—Application—Construction—Captions, part headings, subheadings not law—Adoption of rules—Effective dates—2005 c 504:** See notes following RCW 71.05.027.

**Alphabetization—Correction of references—2005 c 504:** See note following RCW 71.05.020.

**70.97.040 Rights of residents.** (1)(a) Every person who is a resident of an enhanced services facility shall be entitled to all the rights set forth in this chapter, and chapters 71.05 and 70.96A RCW, and shall retain all rights not denied him or her under these chapters.

(b) No person shall be presumed incompetent as a consequence of receiving an evaluation or voluntary or involuntary treatment for a mental disorder, chemical dependency disorder, or both, under this chapter, or chapter 71.05 or 70.96A RCW, or any prior laws of this state dealing with mental illness. Competency shall not be determined or withdrawn except under the provisions of chapter 10.77 or 11.88 RCW.

(c) At the time of his or her treatment planning meeting, every resident of an enhanced services facility shall be given a written statement setting forth the substance of this section. The department shall by rule develop a statement and process for informing residents of their rights in a manner that is likely to be understood by the resident.

(2) Every resident of an enhanced services facility shall have the right to adequate care and individualized treatment.

(3) The provisions of this chapter shall not be construed to deny to any person treatment by spiritual means through prayer in accordance with the tenets and practices of a church or religious denomination.

(4) Persons receiving evaluation or treatment under this chapter shall be given a reasonable choice of an available physician or other professional person qualified to provide such services.

(5) The physician-patient privilege or the psychologist-client privilege shall be deemed waived in proceedings under this chapter relating to the administration of antipsychotic medications. As to other proceedings under chapter 10.77, 70.96A, or 71.05 RCW, the privileges shall be waived when a court of competent jurisdiction in its discretion determines that such waiver is necessary to protect either the detained person or the public.

(6) Insofar as danger to the person or others is not created, each resident of an enhanced services facility shall have, in addition to other rights not specifically withheld by law, the following rights, a list of which shall be prominently

posted in all facilities, institutions, and hospitals providing such services:

(a) To wear his or her own clothes and to keep and use his or her own personal possessions, except when deprivation of same is essential to protect the safety of the resident or other persons;

(b) To keep and be allowed to spend a reasonable sum of his or her own money for canteen expenses and small purchases;

(c) To have access to individual storage space for his or her private use;

(d) To have visitors at reasonable times;

(e) To have reasonable access to a telephone, both to make and receive confidential calls, consistent with an effective treatment program;

(f) To have ready access to letter writing materials, including stamps, and to send and receive uncensored correspondence through the mails;

(g) Not to consent to the administration of antipsychotic medications beyond the hearing conducted pursuant to RCW 71.05.215 or 71.05.217, or the performance of electroconvulsant therapy, or surgery, except emergency life-saving surgery, unless ordered by a court under RCW 71.05.217;

(h) To discuss and actively participate in treatment plans and decisions with professional persons;

(i) Not to have psychosurgery performed on him or her under any circumstances;

(j) To dispose of property and sign contracts unless such person has been adjudicated an incompetent in a court proceeding directed to that particular issue; and

(k) To complain about rights violations or conditions and request the assistance of a mental health ombudsman or representative of Washington protection and advocacy. The facility may not prohibit or interfere with a resident's decision to consult with an advocate of his or her choice.

(7) Nothing contained in this chapter shall prohibit a resident from petitioning by writ of habeas corpus for release.

(8) Nothing in this section permits any person to knowingly violate a no-contact order or a condition of an active judgment and sentence or active supervision by the department of corrections.

(9) A person has a right to refuse placement, except where subject to commitment, in an enhanced services facility. No person shall be denied other department services solely on the grounds that he or she has made such a refusal.

(10) A person has a right to appeal the decision of the department that he or she is eligible for placement at an enhanced services facility, and shall be given notice of the right to appeal in a format that is accessible to the person with instructions regarding what to do if the person wants to appeal. [2005 c 504 § 406.]

**Findings—Intent—Severability—Application—Construction—Captions, part headings, subheadings not law—Adoption of rules—Effective dates—2005 c 504:** See notes following RCW 71.05.027.

**Alphabetization—Correction of references—2005 c 504:** See note following RCW 71.05.020.

#### **70.97.050 Right to refuse antipsychotic medication.**

A person who is gravely disabled or presents a likelihood of serious harm as a result of a mental or chemical dependency disorder or co-occurring mental and chemical dependency

disorders has a right to refuse antipsychotic medication. Antipsychotic medication may be administered over the person's objections only pursuant to RCW 71.05.215 or 71.05.217. [2005 c 504 § 407.]

**Findings—Intent—Severability—Application—Construction—Captions, part headings, subheadings not law—Adoption of rules—Effective dates—2005 c 504:** See notes following RCW 71.05.027.

**Alphabetization—Correction of references—2005 c 504:** See note following RCW 71.05.020.

**70.97.060 Capacity—Security—Licensing—Application of state and local rules.** (1)(a) The department shall not license an enhanced services facility that serves any residents under sixty-five years of age for a capacity to exceed sixteen residents.

(b) The department may contract for services for the operation of enhanced services facilities only to the extent that funds are specifically provided for that purpose.

(2) The facility shall provide an appropriate level of security for the characteristics, behaviors, and legal status of the residents.

(3) An enhanced services facility may hold only one license but, to the extent permitted under state and federal law and medicaid requirements, a facility may be located in the same building as another licensed facility, provided that:

(a) The enhanced services facility is in a location that is totally separate and discrete from the other licensed facility; and

(b) The two facilities maintain separate staffing, unless an exception to this is permitted by the department in rule.

(4) Nursing homes under chapter 18.51 RCW, boarding homes under chapter 18.20 RCW, or adult family homes under chapter 70.128 RCW, that become licensed as facilities under this chapter shall be deemed to meet the applicable state and local rules, regulations, permits, and code requirements. All other facilities are required to meet all applicable state and local rules, regulations, permits, and code requirements. [2005 c 504 § 408.]

**Findings—Intent—Severability—Application—Construction—Captions, part headings, subheadings not law—Adoption of rules—Effective dates—2005 c 504:** See notes following RCW 71.05.027.

**Alphabetization—Correction of references—2005 c 504:** See note following RCW 71.05.020.

**70.97.070 Comprehensive assessments—Individualized treatment plan.** (1) The enhanced services facility shall complete a comprehensive assessment for each resident within fourteen days of admission, and the assessments shall be repeated upon a significant change in the resident's condition or, at a minimum, every one hundred eighty days if there is no significant change in condition.

(2) The enhanced services facility shall develop an individualized treatment plan for each resident based on the comprehensive assessment and any other information in the person's record. The plan shall be updated as necessary, and shall include a plan for appropriate transfer or discharge and reintegration into the community. Where the person is under the supervision of the department of corrections, the facility shall collaborate with the department of corrections to maximize treatment outcomes and reduce the likelihood of reoffense.

(3) The plan shall maximize the opportunities for independence, recovery, employment, the resident's participation in treatment decisions, and collaboration with peer-supported services, and provide for care and treatment in the least restrictive manner appropriate to the individual resident, and, where relevant, to any court orders with which the resident must comply. [2005 c 504 § 409.]

**Findings—Intent—Severability—Application—Construction—Captions, part headings, subheadings not law—Adoption of rules—Effective dates—2005 c 504:** See notes following RCW 71.05.027.

**Alphabetization—Correction of references—2005 c 504:** See note following RCW 71.05.020.

**70.97.080 Staffing levels—Staff credentials and training—Background checks.** (1) An enhanced services facility must have sufficient numbers of staff with the appropriate credentials and training to provide residents with the appropriate care and treatment:

- (a) Mental health treatment;
- (b) Medication services;
- (c) Assistance with the activities of daily living;
- (d) Medical or rehabilitative treatment;
- (e) Dietary services;
- (f) Security; and
- (g) Chemical dependency treatment.

(2) Where an enhanced services facility specializes in medically fragile persons with mental disorders, the on-site staff must include at least one licensed nurse twenty-four hours per day. The nurse must be a registered nurse for at least sixteen hours per day. If the nurse is not a registered nurse, a registered nurse or a doctor must be on-call during the remaining eight hours.

(3) Any employee or other individual who will have unsupervised access to vulnerable adults must successfully pass a background inquiry check. [2005 c 504 § 410.]

**Findings—Intent—Severability—Application—Construction—Captions, part headings, subheadings not law—Adoption of rules—Effective dates—2005 c 504:** See notes following RCW 71.05.027.

**Alphabetization—Correction of references—2005 c 504:** See note following RCW 71.05.020.

**70.97.090 Facilities exempted.** This chapter does not apply to the following residential facilities:

- (1) Nursing homes licensed under chapter 18.51 RCW;
- (2) Boarding homes licensed under chapter 18.20 RCW;
- (3) Adult family homes licensed under chapter 70.128 RCW;
- (4) Facilities approved and certified under chapter 71A.22 RCW;
- (5) Residential treatment facilities licensed under chapter 71.12 RCW; and
- (6) Hospitals licensed under chapter 70.41 RCW. [2005 c 504 § 411.]

**Findings—Intent—Severability—Application—Construction—Captions, part headings, subheadings not law—Adoption of rules—Effective dates—2005 c 504:** See notes following RCW 71.05.027.

**Alphabetization—Correction of references—2005 c 504:** See note following RCW 71.05.020.

**70.97.100 Licensing requirements—Information available to public, residents, families.** (1) The department

(2010 Ed.)

shall establish licensing rules for enhanced services facilities to serve the populations defined in this chapter.

(2) No person or public or private agency may operate or maintain an enhanced services facility without a license, which must be renewed annually.

(3) A licensee shall have the following readily accessible and available for review by the department, residents, families of residents, and the public:

(a) Its license to operate and a copy of the department's most recent inspection report and any recent complaint investigation reports issued by the department;

(b) Its written policies and procedures for all treatment, care, and services provided directly or indirectly by the facility; and

(c) The department's toll-free complaint number, which shall also be posted in a clearly visible place and manner.

(4) Enhanced services facilities shall maintain a grievance procedure that meets the requirements of rules established by the department.

(5) No facility shall discriminate or retaliate in any manner against a resident or employee because the resident, employee, or any other person made a complaint or provided information to the department, the long-term care ombudsman, Washington protection and advocacy system, or a mental health ombudsperson.

(6) Each enhanced services facility will post in a prominent place in a common area a notice by the Washington protection and advocacy system providing contact information. [2005 c 504 § 412.]

**Findings—Intent—Severability—Application—Construction—Captions, part headings, subheadings not law—Adoption of rules—Effective dates—2005 c 504:** See notes following RCW 71.05.027.

**Alphabetization—Correction of references—2005 c 504:** See note following RCW 71.05.020.

**70.97.110 Enforcement authority—Penalties, sanctions.** (1) In any case in which the department finds that a licensee of a facility, or any partner, officer, director, owner of five percent or more of the assets of the facility, or managing employee failed or refused to comply with the requirements of this chapter or the rules established under them, the department may take any or all of the following actions:

- (a) Suspend, revoke, or refuse to issue or renew a license;
- (b) Order stop placement; or
- (c) Assess civil monetary penalties.

(2) The department may suspend, revoke, or refuse to renew a license, assess civil monetary penalties, or both, in any case in which it finds that the licensee of a facility, or any partner, officer, director, owner of five percent or more of the assets of the facility, or managing employee:

(a) Operated a facility without a license or under a revoked or suspended license;

(b) Knowingly or with reason to know made a false statement of a material fact in the license application or any data attached thereto, or in any matter under investigation by the department;

(c) Refused to allow representatives or agents of the department to inspect all books, records, and files required to be maintained or any portion of the premises of the facility;

(d) Willfully prevented, interfered with, or attempted to impede in any way the work of any duly authorized representative of the department and the lawful enforcement of any provision of this chapter;

(e) Willfully prevented or interfered with any representative of the department in the preservation of evidence of any violation of any of the provisions of this chapter or of the rules adopted under it; or

(f) Failed to pay any civil monetary penalty assessed by the department under this chapter within ten days after the assessment becomes final.

(3)(a) Civil penalties collected under this chapter shall be deposited into a special fund administered by the department.

(b) Civil monetary penalties, if imposed, may be assessed and collected, with interest, for each day the facility is or was out of compliance. Civil monetary penalties shall not exceed three thousand dollars per day. Each day upon which the same or a substantially similar action occurs is a separate violation subject to the assessment of a separate penalty.

(4) The department may use the civil penalty monetary fund for the protection of the health or property of residents of facilities found to be deficient including:

(a) Payment for the cost of relocation of residents to other facilities;

(b) Payment to maintain operation of a facility pending correction of deficiencies or closure; and

(c) Reimbursement of a resident for personal funds or property loss.

(5)(a) The department may issue a stop placement order on a facility, effective upon oral or written notice, when the department determines:

(i) The facility no longer substantially meets the requirements of this chapter; and

(ii) The deficiency or deficiencies in the facility:

(A) Jeopardizes the health and safety of the residents; or

(B) Seriously limits the facility's capacity to provide adequate care.

(b) When the department has ordered a stop placement, the department may approve a readmission to the facility from a hospital, residential treatment facility, or crisis intervention facility when the department determines the readmission would be in the best interest of the individual seeking readmission.

(6) If the department determines that an emergency exists and resident health and safety is immediately jeopardized as a result of a facility's failure or refusal to comply with this chapter, the department may summarily suspend the facility's license and order the immediate closure of the facility, or the immediate transfer of residents, or both.

(7) If the department determines that the health or safety of the residents is immediately jeopardized as a result of a facility's failure or refusal to comply with requirements of this chapter, the department may appoint temporary management to:

(a) Oversee the operation of the facility; and

(b) Ensure the health and safety of the facility's residents while:

(i) Orderly closure of the facility occurs; or

(ii) The deficiencies necessitating temporary management are corrected. [2005 c 504 § 413.]

**Findings—Intent—Severability—Application—Construction—Captions, part headings, subheadings not law—Adoption of rules—Effective dates—2005 c 504:** See notes following RCW 71.05.027.

**Alphabetization—Correction of references—2005 c 504:** See note following RCW 71.05.020.

**70.97.120 Enforcement orders—Hearings.** (1) All orders of the department denying, suspending, or revoking the license or assessing a monetary penalty shall become final twenty days after the same has been served upon the applicant or licensee unless a hearing is requested.

(2) All orders of the department imposing stop placement, temporary management, emergency closure, emergency transfer, or summary license suspension shall be effective immediately upon notice, pending any hearing.

(3) Subject to the requirements of subsection (2) of this section, all hearings under this chapter and judicial review of such determinations shall be in accordance with the administrative procedure act, chapter 34.05 RCW. [2005 c 504 § 414.]

**Findings—Intent—Severability—Application—Construction—Captions, part headings, subheadings not law—Adoption of rules—Effective dates—2005 c 504:** See notes following RCW 71.05.027.

**Alphabetization—Correction of references—2005 c 504:** See note following RCW 71.05.020.

**70.97.130 Unlicensed operation—Application of consumer protection act.** Operation of a facility without a license in violation of this chapter and discrimination against medicaid recipients is a matter vitally affecting the public interest for the purpose of applying the consumer protection act, chapter 19.86 RCW. Operation of an enhanced services facility without a license in violation of this chapter is not reasonable in relation to the development and preservation of business. Such a violation is an unfair or deceptive act in trade or commerce and an unfair method of competition for the purpose of applying the consumer protection act, chapter 19.86 RCW. [2005 c 504 § 415.]

**Findings—Intent—Severability—Application—Construction—Captions, part headings, subheadings not law—Adoption of rules—Effective dates—2005 c 504:** See notes following RCW 71.05.027.

**Alphabetization—Correction of references—2005 c 504:** See note following RCW 71.05.020.

**70.97.140 Unlicensed operation—Criminal penalty.** A person operating or maintaining a facility without a license under this chapter is guilty of a misdemeanor and each day of a continuing violation after conviction shall be considered a separate offense. [2005 c 504 § 416.]

**Findings—Intent—Severability—Application—Construction—Captions, part headings, subheadings not law—Adoption of rules—Effective dates—2005 c 504:** See notes following RCW 71.05.027.

**Alphabetization—Correction of references—2005 c 504:** See note following RCW 71.05.020.

**70.97.150 Unlicensed operation—Injunction or other remedies.** Notwithstanding the existence or use of any other remedy, the department may, in the manner provided by law, maintain an action in the name of the state for an injunction, civil penalty, or other process against a person to restrain or

prevent the operation or maintenance of a facility without a license issued under this chapter. [2005 c 504 § 417.]

**Findings—Intent—Severability—Application—Construction—Captions, part headings, subheadings not law—Adoption of rules—Effective dates—2005 c 504:** See notes following RCW 71.05.027.

**Alphabetization—Correction of references—2005 c 504:** See note following RCW 71.05.020.

**70.97.160 Inspections.** (1) The department shall make or cause to be made at least one inspection of each facility prior to licensure and an unannounced full inspection of facilities at least once every eighteen months. The statewide average interval between full facility inspections must be fifteen months.

(2) Any duly authorized officer, employee, or agent of the department may enter and inspect any facility at any time to determine that the facility is in compliance with this chapter and applicable rules, and to enforce any provision of this chapter. Complaint inspections shall be unannounced and conducted in such a manner as to ensure maximum effectiveness. No advance notice shall be given of any inspection unless authorized or required by federal law.

(3) During inspections, the facility must give the department access to areas, materials, and equipment used to provide care or support to residents, including resident and staff records, accounts, and the physical premises, including the buildings, grounds, and equipment. The department has the authority to privately interview the provider, staff, residents, and other individuals familiar with resident care and treatment.

(4) Any public employee giving advance notice of an inspection in violation of this section shall be suspended from all duties without pay for a period of not less than five nor more than fifteen days.

(5) The department shall prepare a written report describing the violations found during an inspection, and shall provide a copy of the inspection report to the facility.

(6) The facility shall develop a written plan of correction for any violations identified by the department and provide a plan of correction to the department within ten working days from the receipt of the inspection report. [2005 c 504 § 418.]

**Findings—Intent—Severability—Application—Construction—Captions, part headings, subheadings not law—Adoption of rules—Effective dates—2005 c 504:** See notes following RCW 71.05.027.

**Alphabetization—Correction of references—2005 c 504:** See note following RCW 71.05.020.

**70.97.170 Persons eligible for admittance.** The facility shall only admit individuals:

- (1) Who are over the age of eighteen;
- (2) Who meet the resident eligibility requirements described in RCW 70.97.030; and
- (3) Whose needs the facility can safely and appropriately meet through qualified and trained staff, services, equipment, security, and building design. [2005 c 504 § 419.]

**Findings—Intent—Severability—Application—Construction—Captions, part headings, subheadings not law—Adoption of rules—Effective dates—2005 c 504:** See notes following RCW 71.05.027.

**Alphabetization—Correction of references—2005 c 504:** See note following RCW 71.05.020.

(2010 Ed.)

**70.97.180 Services of qualified professional.** If the facility does not employ a qualified professional able to furnish needed services, the facility must have a written contract with a qualified professional or agency outside the facility to furnish the needed services. [2005 c 504 § 420.]

**Findings—Intent—Severability—Application—Construction—Captions, part headings, subheadings not law—Adoption of rules—Effective dates—2005 c 504:** See notes following RCW 71.05.027.

**Alphabetization—Correction of references—2005 c 504:** See note following RCW 71.05.020.

**70.97.190 Notice of change of ownership or management.** At least sixty days before the effective date of any change of ownership, or change of management of a facility, the current operating entity must provide written notification about the proposed change separately and in writing, to the department, each resident of the facility, or the resident's guardian or representative. [2005 c 504 § 421.]

**Findings—Intent—Severability—Application—Construction—Captions, part headings, subheadings not law—Adoption of rules—Effective dates—2005 c 504:** See notes following RCW 71.05.027.

**Alphabetization—Correction of references—2005 c 504:** See note following RCW 71.05.020.

**70.97.200 Recordkeeping—Compliance with state, federal regulations—Health care information releases.** The facility shall:

(1) Maintain adequate resident records to enable the provision of necessary treatment, care, and services and to respond appropriately in emergency situations;

(2) Comply with all state and federal requirements related to documentation, confidentiality, and information sharing, including chapters 10.77, 70.02, 70.24, 70.96A, and 71.05 RCW; and

(3) Where possible, obtain signed releases of information designating the department, the facility, and the department of corrections where the person is under its supervision, as recipients of health care information. [2005 c 504 § 422.]

**Findings—Intent—Severability—Application—Construction—Captions, part headings, subheadings not law—Adoption of rules—Effective dates—2005 c 504:** See notes following RCW 71.05.027.

**Alphabetization—Correction of references—2005 c 504:** See note following RCW 71.05.020.

**70.97.210 Standards for fire protection.** (1) Standards for fire protection and the enforcement thereof, with respect to all facilities licensed under this chapter, are the responsibility of the chief of the Washington state patrol, through the director of fire protection, who must adopt recognized standards as applicable to facilities for the protection of life against the cause and spread of fire and fire hazards. If the facility to be licensed meets with the approval of the chief of the Washington state patrol, through the director of fire protection, the director of fire protection must submit to the department a written report approving the facility with respect to fire protection before a full license can be issued. The chief of the Washington state patrol, through the director of fire protection, shall conduct an unannounced full inspection of facilities at least once every eighteen months. The statewide average interval between full facility inspections must be fifteen months.

(2) Inspections of facilities by local authorities must be consistent with the requirements adopted by the chief of the Washington state patrol, through the director of fire protection. Findings of a serious nature must be coordinated with the department and the chief of the Washington state patrol, through the director of fire protection, for determination of appropriate actions to ensure a safe environment for residents. The chief of the Washington state patrol, through the director of fire protection, has exclusive authority to determine appropriate corrective action under this section. [2005 c 504 § 423.]

**Findings—Intent—Severability—Application—Construction—Captions, part headings, subheadings not law—Adoption of rules—Effective dates—2005 c 504:** See notes following RCW 71.05.027.

**Alphabetization—Correction of references—2005 c 504:** See note following RCW 71.05.020.

**70.97.220 Exemption from liability.** No facility providing care and treatment for individuals placed in a facility, or agency licensing or placing residents in a facility, acting in the course of its duties, shall be civilly or criminally liable for performing its duties under this chapter, provided that such duties were performed in good faith and without gross negligence. [2005 c 504 § 424.]

**Findings—Intent—Severability—Application—Construction—Captions, part headings, subheadings not law—Adoption of rules—Effective dates—2005 c 504:** See notes following RCW 71.05.027.

**Alphabetization—Correction of references—2005 c 504:** See note following RCW 71.05.020.

**70.97.230 Rules for implementation of chapter.** (1) The secretary shall adopt rules to implement this chapter.

(2) Such rules shall at the minimum: (a) Promote safe treatment and necessary care of individuals residing in the facility and provide for safe and clean conditions; (b) establish licensee qualifications, licensing and enforcement, and license fees sufficient to cover the cost of licensing and enforcement. [2005 c 504 § 425.]

**Findings—Intent—Severability—Application—Construction—Captions, part headings, subheadings not law—Adoption of rules—Effective dates—2005 c 504:** See notes following RCW 71.05.027.

**Alphabetization—Correction of references—2005 c 504:** See note following RCW 71.05.020.

## Chapter 70.98 RCW

### NUCLEAR ENERGY AND RADIATION

#### Sections

70.98.010	Declaration of policy.
70.98.020	Purpose.
70.98.030	Definitions.
70.98.050	State radiation control agency.
70.98.080	Rules and regulations—Licensing requirements and procedure—Notice of license application—Objections—Notice upon granting of license—Registration of sources of ionizing radiation—Exemptions from registration or licensing.
70.98.085	Suspension and reinstatement of site use permits—Surveillance fee.
70.98.090	Inspection.
70.98.095	Financial assurance—Noncompliance.
70.98.098	Financial assurance—Generally.
70.98.100	Records.
70.98.110	Federal-state agreements—Authorized—Effect as to federal licenses.
70.98.120	Inspection agreements and training programs.

70.98.122	Department of ecology to seek federal funding for environmental radiation monitoring.
70.98.125	Federal assistance to be sought for high-level radioactive waste program.
70.98.130	Administrative procedure.
70.98.140	Injunction proceedings.
70.98.150	Prohibited uses.
70.98.160	Impounding of materials.
70.98.170	Prohibition—Fluoroscopic X-ray shoe-fitting devices.
70.98.180	Exemptions.
70.98.190	Professional uses.
70.98.200	Penalties.
70.98.900	Severability—1961 c 207.
70.98.910	Effective date—1961 c 207.
70.98.920	Section headings not part of law.

**Reviser's note:** Powers and duties of the department of social and health services and the secretary of social and health services transferred to the department of health and the secretary of health. See RCW 43.70.060.

*Nuclear, thermal power facilities, joint city, public utility district, electrical companies development: Chapter 54.44 RCW.*

*Radioactive and hazardous waste emergency response programs, state coordinator: RCW 38.52.030.*

*Radioactive waste act: Chapter 43.200 RCW.*

**70.98.010 Declaration of policy.** It is the policy of the state of Washington in furtherance of its responsibility to protect the public health and safety and to encourage, insofar as consistent with this responsibility, the industrial and economic growth of the state and to institute and maintain a regulatory and inspection program for sources and uses of ionizing radiation so as to provide for (1) compatibility with the standards and regulatory programs of the federal government, (2) a single, effective system of regulation within the state, and (3) a system consonant insofar as possible with those of other states. [1975-'76 2nd ex.s. c 108 § 12; 1961 c 207 § 1.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**70.98.020 Purpose.** It is the purpose of this chapter to effectuate the policies set forth in RCW 70.98.010 as now or hereafter amended by providing for:

(1) A program of effective regulation of sources of ionizing radiation for the protection of the occupational and public health and safety;

(2) A program to promote an orderly regulatory pattern within the state, among the states and between the federal government and the state and facilitate intergovernmental cooperation with respect to use and regulation of sources of ionizing radiation to the end that duplication of regulation may be minimized;

(3) A program to establish procedures for assumption and performance of certain regulatory responsibilities with respect to by-product, source, and special nuclear materials. [1975-'76 2nd ex.s. c 108 § 13; 1965 c 88 § 1; 1961 c 207 § 2.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**70.98.030 Definitions.** (1) "By-product material" means any radioactive material (except special nuclear material) yielded in or made radioactive by exposure to the radiation incident to the process of producing or utilizing special nuclear material.

(2) "Ionizing radiation" means gamma rays and x-rays, alpha and beta particles, high-speed electrons, neutrons, pro-

tons, and other atomic or subatomic particles; but not sound or radio waves, or visible, infrared, or ultraviolet light.

(3)(a) "General license" means a license effective pursuant to rules promulgated by the state radiation control agency, without the filing of an application, to transfer, acquire, own, possess, or use quantities of, or devices or equipment utilizing, by-product, source, special nuclear materials, or other radioactive material occurring naturally or produced artificially.

(b) "Specific license" means a license, issued after application to use, manufacture, produce, transfer, receive, acquire, own, or possess quantities of, or devices or equipment utilizing by-product, source, special nuclear materials, or other radioactive materials occurring naturally or produced artificially.

(4) "Person" means any individual, corporation, partnership, firm, association, trust, estate, public or private institution, group, agency, political subdivision of this state, any other state or political subdivision or agency thereof, and any legal successor, representative, agent, or agency of the foregoing, other than the United States Atomic Energy Commission, or any successor thereto, and other than federal government agencies licensed by the United States Atomic Energy Commission, or any successor thereto.

(5) "Source material" means (a) uranium, thorium, or any other material which is determined by the United States Nuclear Regulatory Commission or its successor pursuant to the provisions of section 61 of the United States Atomic Energy Act of 1954, as amended (42 U.S.C. Sec. 209) to be source material; or (b) ores containing one or more of the foregoing materials, in such concentration as the commission may by regulation determine from time to time.

(6) "Special nuclear material" means (a) plutonium, uranium enriched in the isotope 233 or in the isotope 235, and any other material which the United States Nuclear Regulatory Commission or its successor, pursuant to the provisions of section 51 of the United States Atomic Energy Act of 1954, as amended (42 U.S.C. Sec. 2071), determines to be special nuclear material, but does not include source material; or (b) any material artificially enriched by any of the foregoing, but does not include source material.

(7) "Registration" means registration with the state department of health by any person possessing a source of ionizing radiation in accordance with rules adopted by the department of health.

(8) "Radiation source" means any type of device or substance which is capable of producing or emitting ionizing radiation. [1991 c 3 § 355; 1983 1st ex.s. c 19 § 9; 1979 c 141 § 125; 1965 c 88 § 2; 1961 c 207 § 3.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**70.98.050 State radiation control agency.** (1) The department of health is designated as the state radiation control agency, hereinafter referred to as the agency, and shall be the state agency having sole responsibility for administration of the regulatory, licensing, and radiation control provisions of this chapter.

(2) The secretary of health shall be director of the agency, hereinafter referred to as the secretary, who shall per-

(2010 Ed.)

form the functions vested in the agency pursuant to the provisions of this chapter.

(3) The agency shall appoint a state radiological control officer, and in accordance with the laws of the state, fix his compensation and prescribe his powers and duties.

(4) The agency shall for the protection of the occupational and public health and safety:

(a) Develop programs for evaluation of hazards associated with use of ionizing radiation;

(b) Develop a statewide radiological baseline beginning with the establishment of a baseline for the Hanford reservation;

(c) Implement an independent statewide program to monitor ionizing radiation emissions from radiation sources within the state;

(d) Develop programs with due regard for compatibility with federal programs for regulation of by-product, source, and special nuclear materials;

(e) Conduct environmental radiation monitoring programs which will determine the presence and significance of radiation in the environment and which will verify the adequacy and accuracy of environmental radiation monitoring programs conducted by the federal government at its installations in Washington and by radioactive materials licensees at their installations;

(f) Formulate, adopt, promulgate, and repeal codes, rules and regulations relating to control of sources of ionizing radiation;

(g) Advise, consult, and cooperate with other agencies of the state, the federal government, other states and interstate agencies, political subdivisions, and with groups concerned with control of sources of ionizing radiation;

(h) Have the authority to accept and administer loans, grants, or other funds or gifts, conditional or otherwise, in furtherance of its functions, from the federal government and from other sources, public or private;

(i) Encourage, participate in, or conduct studies, investigations, training, research, and demonstrations relating to control of sources of ionizing radiation, including the collection of statistical data and epidemiological research, where available, on diseases that result from exposure to sources of ionizing radiation;

(j) Collect and disseminate information relating to control of sources of ionizing radiation; including:

(i) Maintenance of a file of all license applications, issuances, denials, amendments, transfers, renewals, modifications, suspensions, and revocations;

(ii) Maintenance of a file of registrants possessing sources of ionizing radiation requiring registration under the provisions of this chapter and any administrative or judicial action pertaining thereto; and

(iii) Maintenance of a file of all rules and regulations relating to regulation of sources of ionizing radiation, pending or promulgated, and proceedings thereon;

(k) Collect and disseminate information relating to non-ionizing radiation, including:

(i) Maintaining a state clearinghouse of information pertaining to sources and effects of nonionizing radiation with an emphasis on electric and magnetic fields;

(ii) Maintaining current information on the status and results of studies pertaining to health effects resulting from

exposure to nonionizing radiation with an emphasis on studies pertaining to electric and magnetic fields;

(iii) Serving as the lead state agency on matters pertaining to electric and magnetic fields and periodically informing state agencies of relevant information pertaining to nonionizing radiation;

(l) In connection with any adjudicative proceeding as defined by RCW 34.05.010 or any other administrative proceedings as provided for in this chapter, have the power to issue subpoenas in order to compel the attendance of necessary witnesses and/or the production of records or documents.

(5) In order to avoid duplication of efforts, the agency may acquire the data requested under this section from public and private entities that possess this information. [1990 c 173 § 2; 1989 c 175 § 132; 1985 c 383 § 1; 1985 c 372 § 1; 1971 ex.s. c 189 § 10; 1970 ex.s. c 18 § 16; 1965 c 88 § 3; 1961 c 207 § 5.]

**Finding—1990 c 173:** "The legislature finds that concern has been raised over possible health effects resulting from exposure to nonionizing radiation, and specifically exposure to electric and magnetic fields. The legislature further finds that there is no clear responsibility in state government for following this issue and that this responsibility is best suited for the department of health." [1990 c 173 § 1.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**70.98.080 Rules and regulations—Licensing requirements and procedure—Notice of license application—Objections—Notice upon granting of license—Registration of sources of ionizing radiation—Exemptions from registration or licensing.** (1) The agency shall provide by rule or regulation for general or specific licensing of by-product, source, special nuclear materials, or devices or equipment utilizing such materials, or other radioactive material occurring naturally or produced artificially. Such rule or regulation shall provide for amendment, suspension, or revocation of licenses. Such rule or regulation shall provide that:

(a) Each application for a specific license shall be in writing and shall state such information as the agency, by rule or regulation, may determine to be necessary to decide the technical, insurance, and financial qualifications, or any other qualification of the applicant as the agency may deem reasonable and necessary to protect the occupational and public health and safety. The agency may at any time after the filing of the application, and before the expiration of the license, require further written statements and shall make such inspections as the agency deems necessary in order to determine whether the license should be granted or denied or whether the license should be modified, suspended, or revoked. In no event shall the agency grant a specific license to any applicant who has never possessed a specific license issued by a recognized state or federal authority until the agency has conducted an inspection which insures that the applicant can meet the rules, regulations and standards adopted pursuant to this chapter. All applications and statements shall be signed by the applicant or licensee. The agency may require any applications or statements to be made under oath or affirmation;

(b) Each license shall be in such form and contain such terms and conditions as the agency may by rule or regulation prescribe;

(c) No license issued under the authority of this chapter and no right to possess or utilize sources of ionizing radiation granted by any license shall be assigned or in any manner disposed of; and

(d) The terms and conditions of all licenses shall be subject to amendment, revision, or modification by rules, regulations or orders issued in accordance with the provisions of this chapter.

(2) Before the agency issues a license to an applicant under this section, it shall give notice of such application to the chief executive officer of the incorporated city or town, if the application is for a license within an incorporated city or town, or to the county legislative authority, if the application is for a license outside the boundaries of incorporated cities or towns. The incorporated city or town, through the official or employee selected by it, or the county legislative authority or the official or employee selected by it, shall have the right to file with the agency within twenty days after date of transmittal of such notice, written objections against the applicant or against the activity for which the license is sought, and shall include with such objections a statement of all facts upon which such objections are based, and in case written objections are filed, may request and the agency may in its discretion hold a formal hearing under chapter 34.05 RCW. Upon the granting of a license under this section the agency shall send a duplicate of the license or written notification to the chief executive officer of the incorporated city or town in which the license is granted, or to the county legislative authority if the license is granted outside the boundaries of incorporated cities or towns.

This subsection shall not apply to activities conducted within the boundaries of the Hanford reservation.

(3) The agency may require registration of all sources of ionizing radiation.

(4) The agency may exempt certain sources of ionizing radiation or kinds of uses or users from the registration or licensing requirements set forth in this section when the agency makes a finding after approval of the technical advisory board that the exemption of such sources of ionizing radiation or kinds of uses or users will not constitute a significant risk to the health and safety of the public.

(5) In promulgating rules and regulations pursuant to this chapter the agency shall, insofar as practical, strive to avoid requiring dual licensing, and shall provide for such recognition of other state or federal licenses as the agency shall deem desirable, subject to such registration requirements as the agency may prescribe. [1984 c 96 § 1; 1965 c 88 § 5; 1961 c 207 § 8.]

**70.98.085 Suspension and reinstatement of site use permits—Surveillance fee.** (1) The agency is empowered to suspend and reinstate site use permits consistent with current regulatory practices and in coordination with the department of ecology, for generators, packagers, or brokers using the Hanford low-level radioactive waste disposal facility.

(2) The agency shall collect a surveillance fee as an added charge on each cubic foot of low level radioactive waste disposed of at the disposal site in this state which shall be set at a level that is sufficient to fund completely the radiation control activities of the agency directly related to the disposal site, including but not limited to the management,

licensing, monitoring, and regulation of the site. The surveillance fee shall not exceed five percent in 1990, six percent in 1991, and seven percent in 1992 of the basic minimum fee charged by an operator of a low-level radioactive waste disposal site in this state. The basic minimum fee consists of the disposal fee for the site operator, the fee for the perpetual care and maintenance fund administered by the state, the fee for the state closure fund, and the tax collected pursuant to chapter 82.04 RCW. Site use permit fees and surcharges collected under chapter 43.200 RCW are not part of the basic minimum fee. The fee shall also provide funds to the Washington state patrol for costs incurred from inspection of low-level radioactive waste shipments entering this state. Disbursements for this purpose shall be by authorization of the secretary of the department of health or the secretary's designee.

The agency may adopt such rules as are necessary to carry out its responsibilities under this section. [1990 c 21 § 7; 1989 c 106 § 1; 1986 c 2 § 2; 1985 c 383 § 3.]

*Issuance of site use permits: RCW 43.200.080.*

**70.98.090 Inspection.** The agency or its duly authorized representative shall have the power to enter at all reasonable times upon any private or public property for the purpose of determining whether or not there is compliance with or violation of the provisions of this chapter and rules and regulations issued thereunder. [1985 c 372 § 2; 1961 c 207 § 9.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**70.98.095 Financial assurance—Noncompliance.** (1) The radiation control agency may require any person who applies for, or holds, a license under this chapter to demonstrate that the person has financial assurance sufficient to assure that liability incurred as a result of licensed operations and activities can be fully satisfied. Financial assurance may be in the form of insurance, cash deposits, surety bonds, corporate guarantees, letters of credit, or other financial instruments or guarantees determined by the agency to be acceptable financial assurance. The agency may require financial assurance in an amount determined by the secretary pursuant to RCW 70.98.098.

(2) The radiation control agency shall refuse to issue a license or permit or suspend the license or permit of any person required by this section to demonstrate financial assurance who fails to demonstrate compliance with this section. The license or permit shall not be issued or reinstated until the person demonstrates compliance with this section.

(3) The radiation control agency shall require (a) that any person required to demonstrate financial assurance, maintain with the agency current copies of any insurance policies, certificates of insurance, letters of credit, surety bonds, or any other documents used to comply with this section, (b) that the agency be notified of any changes in the financial assurance or financial condition of the person, and (c) that the state be named as an insured party on any insurance policy used to comply with this section. [1992 c 61 § 3; 1990 c 82 § 4; 1986 c 191 § 3.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

(2010 Ed.)

**70.98.098 Financial assurance—Generally.** (1) In making the determination of the appropriate level of financial assurance, the secretary shall consider: (a) The report prepared by the department of ecology pursuant to RCW 43.200.200; (b) the potential cost of decontamination, treatment, disposal, decommissioning, and cleanup of facilities or equipment; (c) federal cleanup and decommissioning requirements; and (d) the legal defense cost, if any, that might be paid from the required financial assurance.

(2) The secretary may establish different levels of required financial assurance for various classes of permit or license holders.

(3) The secretary shall establish by rule the instruments or mechanisms by which a person may demonstrate financial assurance as required by RCW 70.98.095.

(4) To the extent that money in the site closure account together with the amount of money identified for repayment to the site closure account pursuant to RCW 43.200.080 equals or exceeds the cost estimate approved by the department of health for closure and decommissioning of the Hanford low-level radioactive waste disposal facility, the money in the site closure account together with the amount of money identified for repayment to the site closure account shall constitute adequate financial assurance for purposes of the department of health financial assurance requirements under RCW 70.98.095. [2003 1st sp.s. c 21 § 2; 1992 c 61 § 4; 1990 c 82 § 3.]

**70.98.100 Records.** (1) The agency shall require each person who possesses or uses a source of ionizing radiation to maintain necessary records relating to its receipt, use, storage, transfer, or disposal and such other records as the agency may require which will permit the determination of the extent of occupational and public exposure from the radiation source. Copies of these records shall be submitted to the agency on request. These requirements are subject to such exemptions as may be provided by rules.

(2) The agency may by rule and regulation establish standards requiring that personnel monitoring be provided for any employee potentially exposed to ionizing radiation and may provide for the reporting to any employee of his radiation exposure record. [1961 c 207 § 10.]

**70.98.110 Federal-state agreements—Authorized—Effect as to federal licenses.** (1) The governor, on behalf of this state, is authorized to enter into agreements with the federal government providing for discontinuance of certain of the federal government's responsibilities with respect to sources of ionizing radiation and the assumption thereof by this state pursuant to this chapter.

(2) Any person who, on the effective date of an agreement under subsection (1) above, possesses a license issued by the federal government shall be deemed to possess the same pursuant to a license issued under this chapter which shall expire either ninety days after the receipt from the state radiation control agency of a notice of expiration of such license or on the date of expiration specified in the federal license, whichever is earlier. [1965 c 88 § 6; 1961 c 207 § 11.]

**70.98.120 Inspection agreements and training programs.** (1) The agency is authorized to enter into an agreement or agreements with the federal government, other states, or interstate agencies, whereby this state will perform on a cooperative basis with the federal government, other states, or interstate agencies, inspections or other functions relating to control of sources of ionizing radiation.

(2) The agency may institute training programs for the purpose of qualifying personnel to carry out the provisions of this chapter and may make said personnel available for participation in any program or programs of the federal government, other states, or interstate agencies in furtherance of the purposes of this chapter. [1961 c 207 § 12.]

**70.98.122 Department of ecology to seek federal funding for environmental radiation monitoring.** The department of ecology shall seek federal funding, such as is available under the clean air act (42 U.S.C. Sec. 1857 et seq.) and the nuclear waste policy act (42 U.S.C. Sec. 10101 et seq.) to carry out the purposes of \*RCW 70.98.050(4)(c). [1985 c 372 § 3.]

**\*Reviser's note:** The subparagraph "(c)" in this reference has been redesignated "(c)[(e)]" in the published version of RCW 70.98.050.

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**70.98.125 Federal assistance to be sought for high-level radioactive waste program.** (1) The agency shall seek federal financial assistance as authorized by the nuclear waste policy act of 1982, P.L. 97-425 section 116(c), for activities related to the high-level radioactive waste program in the state of Washington. The activities for which federal funding is sought shall include, but are not limited to, the development of a radiological baseline for the Hanford reservation; the implementation of a program to monitor ionizing radiation emissions on the Hanford reservation; the collection of statistical data and epidemiological research, where available, on diseases that result from exposure to sources of ionizing radiation on the Hanford reservation.

(2) In the event the federal government refuses to grant financial assistance for the activities under subsection (1) of this section, the agency is directed to investigate potential legal action. [1985 c 383 § 2.]

**70.98.130 Administrative procedure.** In any proceeding under this chapter for the issuance or modification or repeal of rules relating to control of sources of ionizing radiation, the agency shall comply with the requirements of chapter 34.05 RCW, the Administrative Procedure Act.

Notwithstanding any other provision of this chapter, whenever the agency finds that an emergency exists requiring immediate action to protect the public health, safety, or general welfare, the agency may, in accordance with RCW 34.05.350 without notice or hearing, adopt a rule reciting the existence of such emergency and require that such action be taken as is necessary to meet the emergency. As specified in RCW 34.05.350, such rules are effective immediately. [1989 c 175 § 133; 1961 c 207 § 13.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**70.98.140 Injunction proceedings.** Notwithstanding the existence or use of any other remedy, whenever any person has engaged in, or is about to engage in, any acts or practices which constitute or will constitute a violation of any provision of this chapter, or any rule, regulation, or order issued thereunder, the attorney general upon the request of the agency, after notice to such person and opportunity to comply, may make application to the appropriate court for an order enjoining such acts or practices, or for an order directing compliance, and upon a showing by the agency that such person has engaged in, or is about to engage in, any such acts or practices, a permanent or temporary injunction, restraining order, or other order may be granted. [1961 c 207 § 14.]

**70.98.150 Prohibited uses.** It shall be unlawful for any person to use, manufacture, produce, transport, transfer, receive, acquire, own, or possess any source of ionizing radiation unless licensed by or registered with, or exempted by the agency in accordance with the provisions of this chapter. [1965 c 88 § 7; 1961 c 207 § 15.]

**70.98.160 Impounding of materials.** The agency shall have the authority in the event of an emergency to impound or order the impounding of sources of ionizing radiation in the possession of any person who is not equipped to observe or fails to observe the provisions of this chapter or any rules or regulations issued thereunder. [1961 c 207 § 16.]

**70.98.170 Prohibition—Fluoroscopic X-ray shoefitting devices.** The operation or maintenance of any X-ray, fluoroscopic, or other equipment or apparatus employing roentgen rays, in the fitting of shoes or other footwear or in the viewing of bones in the feet is prohibited. This prohibition does not apply to any licensed physician, surgeon, \*podiatrist, or any person practicing a licensed healing art, or any technician working under the direct and immediate supervision of such persons. [1973 c 77 § 27; 1961 c 207 § 17.]

**\*Reviser's note:** The term "podiatrist" was changed to "podiatric physician and surgeon" by 1990 c 147.

**70.98.180 Exemptions.** This chapter shall not apply to the following sources or conditions:

(1) Radiation machines during process of manufacture, or in storage or transit: PROVIDED, That this exclusion shall not apply to functional testing of such machines.

(2) Any radioactive material while being transported in conformity with regulations adopted by any federal agency having jurisdiction therein, and specifically applicable to the transportation of such radioactive materials.

(3) No exemptions under this section are granted for those quantities or types of activities which do not comply with the established rules and regulations promulgated by the Atomic Energy Commission, or any successor thereto. [1965 c 88 § 8; 1961 c 207 § 18.]

**70.98.190 Professional uses.** Nothing in this chapter shall be construed to limit the kind or amount of radiation that may be intentionally applied to a person for diagnostic or therapeutic purposes by or under the immediate direction of a

licensed practitioner of the healing arts acting within the scope of his professional license. [1961 c 207 § 19.]

**70.98.200 Penalties.** Any person who violates any of the provisions of this chapter or rules, regulations, or orders in effect pursuant thereto shall be guilty of a gross misdemeanor. [1961 c 207 § 20.]

**70.98.900 Severability—1961 c 207.** If any part, or parts, of this act shall be held unconstitutional, the remaining provisions shall be given full force and effect, as completely as if the part held unconstitutional had not been included herein, if any such remaining part or parts can then be administered for the declared purposes of this act. [1961 c 207 § 21.]

**70.98.910 Effective date—1961 c 207.** The provisions of this act relating to the control of by-product, source and special nuclear materials shall become effective on the effective date of the agreement between the federal government and this state as authorized in RCW 70.98.110. All other provisions of this act shall become effective on the 30th day of June, 1961. [1961 c 207 § 23.]

**70.98.920 Section headings not part of law.** Section headings as used in this chapter do not constitute any part of the law. [1961 c 207 § 25.]

## Chapter 70.99 RCW

### RADIOACTIVE WASTE STORAGE AND TRANSPORTATION ACT OF 1980

#### Sections

70.99.010	Finding.
70.99.020	Definitions.
70.99.030	Storage of radioactive waste from outside the state prohibited—Exceptions.
70.99.040	Transportation of radioactive waste from outside the state for storage within the state prohibited—Exception.
70.99.050	Violations—Penalties—Injunctions—Jurisdiction and venue—Fees and costs.
70.99.060	Interstate compact for regional storage.
70.99.900	Construction—1981 c 1.
70.99.905	Severability—1981 c 1.
70.99.910	Short title.

*Nuclear energy and radiation: Chapter 70.98 RCW.*

*Radioactive and hazardous waste emergency response programs, state coordinator: RCW 38.52.030.*

*Uranium and thorium mill tailings—Licensing and perpetual care: Chapter 70.121 RCW.*

**70.99.010 Finding.** The people of the state of Washington find that:

(1) Radioactive wastes are highly dangerous, in that releases of radioactive materials and emissions to the environment are inimical to the health and welfare of the people of the state of Washington, and contribute to the occurrences of harmful diseases, including excessive cancer and leukemia. The dangers posed by the transportation and presence of radioactive wastes are increased further by the long time periods that the wastes remain radioactive and highly dangerous;

(2) Transporting, handling, storing, or otherwise caring for radioactive waste presents a hazard to the health, safety,

(2010 Ed.)

and welfare of the individual citizens of the state of Washington because of the ever-present risk that an accident or incident will occur while the wastes are being cared for;

(3) The likelihood that an accident will occur in this state involving the release of radioactive wastes to the environment becomes greater as the volume of wastes transported, handled, stored, or otherwise cared for in this state increases;

(4) The effects of unplanned releases of radioactive wastes into the environment, especially into the air and water of the state, are potentially both widespread and harmful to the health, safety, and welfare of the citizens of this state.

The burdens and hazards posed by increasing the volume of radioactive wastes transported, handled, stored, or otherwise cared for in this state by the importation of such wastes from outside this state is not a hazard the state government may reasonably ask its citizens to bear. The people of the state of Washington believe that the principles of federalism do not require the sacrifice of the health, safety, and welfare of the people of one state for the convenience of other states or nations. [1981 c 1 § 1 (Initiative Measure No. 383, approved November 4, 1980).]

**70.99.020 Definitions.** The definitions set forth in this section apply throughout this chapter.

(1) "Radioactive waste" means unwanted radioactive material, including radioactive residues produced as a result of electric power generation or other reactor operation.

(2) "Medical waste" means radioactive waste from all therapy, diagnosis, or research in medical fields and radioactive waste which results from the production and manufacture of radioactive material used for therapy, diagnosis, or research in medical fields, except that "medical waste" does not include spent fuel or waste from the fuel of an isotope production reactor.

(3) "Radioactive waste generated or otherwise produced outside the geographic boundaries of the state of Washington" means radioactive waste which was located outside the state of Washington at the time of removal from a reactor vessel. [1981 c 1 § 2 (Initiative Measure No. 383, approved November 4, 1980).]

**70.99.030 Storage of radioactive waste from outside the state prohibited—Exceptions.** Notwithstanding any law, order, or regulation to the contrary, after July 1, 1981, no area within the geographic boundaries of the state of Washington may be used by any person or entity as a temporary, interim, or permanent storage site for radioactive waste, except medical waste, generated or otherwise produced outside the geographic boundaries of the state of Washington. This section does not apply to radioactive waste stored within the state of Washington prior to July 1, 1981. [1981 c 1 § 3 (Initiative Measure No. 383, approved November 4, 1980).]

**70.99.040 Transportation of radioactive waste from outside the state for storage within the state prohibited—Exception.** Notwithstanding any law, order, or regulation to the contrary, after July 1, 1981, no person or entity may transport radioactive waste, except medical waste, generated or otherwise produced outside the geographic boundaries of the state of Washington to any site within the geographic bound-

aries of the state of Washington for temporary, interim, or permanent storage. [1981 c 1 § 4 (Initiative Measure No. 383, approved November 4, 1980).]

**70.99.050 Violations—Penalties—Injunctions—Jurisdiction and venue—Fees and costs.** (1) A violation of or failure to comply with the provisions of RCW 70.99.030 or 70.99.040 is a gross misdemeanor.

(2) Any person or entity that violates or fails to comply with the provisions of RCW 70.99.030 or 70.99.040 is subject to a civil penalty of one thousand dollars for each violation or failure to comply.

(3) Each day upon which a violation occurs constitutes a separate violation for the purposes of subsections (1) and (2) of this section.

(4) Any person or entity violating this chapter may be enjoined from continuing the violation. The attorney general or any person residing in the state of Washington may bring an action to enjoin violations of this chapter, on his or her own behalf and on the behalf of all persons similarly situated. Such action may be maintained in the person's own name or in the name of the state of Washington. No bond may be required as a condition to obtaining any injunctive relief. The superior courts have jurisdiction over actions brought under this section, and venue shall lie in the county of the plaintiff's residence, in the county in which the violation is alleged to occur, or in Thurston county. In addition to other relief, the court in its discretion may award attorney's and expert witness fees and costs of the suit to a party who demonstrates that a violation of this chapter has occurred. [1981 c 1 § 5 (Initiative Measure No. 383, approved November 4, 1980).]

**70.99.060 Interstate compact for regional storage.** Notwithstanding the other provisions of this chapter, the state of Washington may enter into an interstate compact, which will become effective upon ratification by a majority of both houses of the United States Congress, to provide for the regional storage of radioactive wastes. [1981 c 1 § 6 (Initiative Measure No. 383, approved November 4, 1980).]

*Northwest Interstate Compact on Low-Level Radioactive Waste Management: Chapter 43.145 RCW.*

**70.99.900 Construction—1981 c 1.** This chapter shall be liberally construed to protect the health, safety, and welfare of the individual citizens of the state of Washington. [1981 c 1 § 7 (Initiative Measure No. 383, approved November 4, 1980).]

**70.99.905 Severability—1981 c 1.** If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1981 c 1 § 8 (Initiative Measure No. 383, approved November 4, 1980).]

**70.99.910 Short title.** This act may be known as the Radioactive Waste Storage and Transportation Act of 1980. [1981 c 1 § 9 (Initiative Measure No. 383, approved November 4, 1980).]

## Chapter 70.100 RCW

### EYE PROTECTION—PUBLIC AND PRIVATE EDUCATIONAL INSTITUTIONS

#### Sections

- 70.100.010 "Eye protection areas" defined.
- 70.100.020 Wearing of eye protection devices required—Furnishing of—Costs.
- 70.100.030 Standard requirement for eye protection devices.
- 70.100.040 Superintendent of public instruction to circulate instruction manual to public and private educational institutions.

**70.100.010 "Eye protection areas" defined.** As used in this chapter:

"Eye protection areas" means areas within vocational or industrial arts shops, science or other school laboratories, or schools within state institutional facilities as designated by the state superintendent of public instruction in which activities take place involving:

- (1) Hot molten metals or other molten materials;
- (2) Milling, sawing, turning, shaping, cutting, grinding, or stamping of any solid materials;
- (3) Heat treatment, tempering or kiln firing of any metal or other materials;
- (4) Gas or electric arc welding, or other forms of welding processes;
- (5) Corrosive, caustic, or explosive materials;
- (6) Custodial or other service activity potentially hazardous to the eye: PROVIDED, That nothing in this chapter shall supersede regulations heretofore or hereafter established by the department of labor and industries respecting such activity; or
- (7) Any other activity or operation involving mechanical or manual work in any area that is potentially hazardous to the eye. [1969 ex.s. c 179 § 1.]

**70.100.020 Wearing of eye protection devices required—Furnishing of—Costs.** Every person shall wear eye protection devices when participating in, observing, or performing any function in connection with any courses or activities taking place in eye protection areas of any private or public school, college, university, or other public or private educational institution in this state, as designated by the superintendent of public instruction. The governing board or authority of any public school shall furnish the eye protection devices prescribed in RCW 70.100.030 without cost to all teachers and students in grades K-12 engaged in activities potentially dangerous to the human eye, and the governing body of each institution of higher education and vocational technical institute shall furnish such eye protection devices free or at cost to all teachers and students similarly engaged at the institutions of higher education and vocational technical institutes. Eye protection devices shall be furnished on a loan basis to all visitors observing activities hazardous to the eye. [1969 ex.s. c 179 § 2.]

**70.100.030 Standard requirement for eye protection devices.** Eye protection devices, which shall include plano safety spectacles, plastic face shields or goggles, shall comply with the U.S.A. Standard Practice for Occupational and Educational Eye and Face Protection, Z87.1-1968 or later revisions thereof. [1969 ex.s. c 179 § 3.]

**70.100.040 Superintendent of public instruction to circulate instruction manual to public and private educational institutions.** The superintendent of public instruction, after consulting with the department of labor and industries, and the division of vocational education shall prepare and circulate to each public and private educational institution in this state within six months of the date of passage of this chapter, a manual containing instructions and recommendations for the guidance of such institutions in implementing the eye safety provisions of this chapter. [1969 ex.s. c 179 § 4.]

**Chapter 70.102 RCW**

**HAZARDOUS SUBSTANCE INFORMATION**

Sections

- 70.102.010 Definitions.
- 70.102.020 Hazardous substance information and education office—Duties.

**70.102.010 Definitions.** Unless the context clearly indicates otherwise, the definitions in this section shall apply throughout this chapter.

- (1) "Agency" means any state agency or local government entity.
- (2) "Hazardous household substances" means those substances identified by the department as hazardous household substances in the guidelines developed by the department.
- (3) "Department" means the department of ecology.
- (4) "Director" means the director of the department.
- (5) "Hazardous substances" or "hazardous materials" means those substances or materials identified as such under regulations adopted pursuant to the federal hazardous materials transportation act, the toxic substances control act, the resource recovery and conservation act, the comprehensive environmental response compensation and liability act, the federal insecticide, fungicide, and rodenticide act, the occupational safety and health act hazardous communications standards, and the state hazardous waste act.

(6) "Moderate risk waste" means any waste that exhibits any of the properties of dangerous waste but is exempt from regulation under this chapter solely because the waste is generated in quantities below the threshold for regulation and any household wastes that are generated from the disposal of substances identified by the department as hazardous household substances. [1985 c 410 § 2.]

**70.102.020 Hazardous substance information and education office—Duties.** There is hereby created the hazardous substance information and education office. Through this office the department shall:

- (1) Facilitate access to existing information on hazardous substances within a community;
- (2) Request and obtain information about hazardous substances at specified locations and facilities from agencies that regulate those locations and facilities. The department shall review, approve, and provide confidentiality as provided by statute. Upon request of the department, each agency shall provide the information within forty-five days;
- (3) At the request of citizens or public health or public safety organizations, compile existing information about haz-

(2010 Ed.)

ardous substance use at specified locations and facilities. This information shall include but not be limited to:

- (a) Point and nonpoint air and water emissions;
  - (b) Extremely hazardous, moderate risk wastes and dangerous wastes as defined in chapter 70.105 RCW produced, used, stored, transported from, or disposed of by any facility;
  - (c) A list of the hazardous substances present at a given site and data on their acute and chronic health and environmental effects;
  - (d) Data on governmental pesticide use at a given site;
  - (e) Data on commercial pesticide use at a given site if such data is only given to individuals who are chemically sensitive; and
  - (f) Compliance history of any facility.
- (4) Provide education to the public on the proper production, use, storage, and disposal of hazardous substances, including but not limited to:

- (a) A technical resource center on hazardous substance management for industry and the public;
- (b) Programs, in cooperation with local government, to educate generators of moderate risk waste, and provide information regarding the potential hazards to human health and the environment resulting from improper use and disposal of the waste and proper methods of handling, reducing, recycling, and disposing of the waste;
- (c) Public information and education relating to the safe handling and disposal of hazardous household substances; and
- (d) Guidelines to aid counties in developing and implementing a hazardous household substances program.

Requests for information from the hazardous substance information and education office may be made by letter or by a toll-free telephone line, if one is established by the department. Requests shall be responded to in accordance with chapter 42.56 RCW.

This section shall not require any agency to compile information that is not required by existing laws or rules. [2005 c 274 § 339; 1985 c 410 § 1.]

**Part headings not law—Effective date—2005 c 274:** See RCW 42.56.901 and 42.56.902.

*Worker and community right to know fund, use to provide hazardous substance information under chapter 70.102 RCW: RCW 49.70.175.*

**Chapter 70.103 RCW**

**LEAD-BASED PAINT**

Sections

- 70.103.010 Finding.
- 70.103.020 Definitions.
- 70.103.030 Certification and training—Local governments—Rules.
- 70.103.040 Certification and accreditation—Rules.
- 70.103.050 Rules—Report.
- 70.103.060 Lead paint account.
- 70.103.070 Inspections.
- 70.103.080 Certification required to perform lead-based paint activities—Certificate revocation—Penalties.
- 70.103.090 Chapter contingent on federal action.

**70.103.010 Finding.** (1) The legislature finds that lead hazards associated with lead-based paint represent a significant and preventable environmental health problem. Lead-based paint is the most widespread of the various sources of lead exposure to the public. Census data show that one mil-

lion five hundred sixty thousand homes in Washington state were built prior to 1978 when the sale of residential lead-based paint was banned. These are homes that are believed to contain some lead-based paint.

Lead negatively affects every system of the body. It is harmful to individuals of all ages and is especially harmful to children, fetuses, and adults of childbearing age. The effects of lead on a child's cognitive, behavioral, and developmental abilities may necessitate large expenditures of public funds for health care and special education. The irreversible damage to children and subsequent expenditures could be avoided if exposure to lead is reduced.

(2) The federal government regulates lead poisoning and lead hazard reduction through:

- (a)(i) The lead-based paint poisoning prevention act;
- (ii) The lead contamination control act;
- (iii) The safe drinking water act;
- (iv) The resource conservation and recovery act of 1976;

and

(v) The residential lead-based paint hazard reduction act of 1992; and

(b) Implementing regulations of:

- (i) The environmental protection agency;
- (ii) The department of housing and urban development;
- (iii) The occupational safety and health administration;

and

(iv) The centers for disease control and prevention.

(3) In 1992, congress passed the federal residential lead-based paint hazard reduction act, which allows states to provide for the accreditation of lead-based paint activities programs, the certification of persons completing such training programs, and the licensing of lead-based paint activities contractors under standards developed by the United States environmental protection agency.

(4) The legislature recognizes the state's need to protect the public from exposure to lead hazards. A qualified and properly trained workforce is needed to assist in the prevention, detection, reduction, and elimination of hazards associated with lead-based paint. The purpose of training workers, supervisors, inspectors, risk assessors, project designers, renovators, and dust sampling technicians engaged in lead-based paint activities is to protect building occupants, particularly children ages six years and younger from potential lead-based paint hazards and exposures both during and after lead-based paint activities. Qualified and properly trained individuals and firms will help to ensure lead-based paint activities are conducted in a way that protects the health of the citizens of Washington state and safeguards the environment. The state lead-based paint activities program requires that all lead-based paint activities be performed by certified personnel trained by an accredited program, and that all lead-based paint activities meet minimum work practice standards established by the department of commerce. Therefore, the lead-based paint activities accreditation, training, and certification program shall be established in accordance with this chapter. The lead-based paint activities accreditation, training, and certification program shall be administered by the department of commerce and shall be used as a means to assure the protection of the general public from exposure to lead hazards.

(5) For the welfare of the people of the state of Washington, this chapter establishes a lead-based paint activities pro-

gram within the department of commerce to protect the general public from exposure to lead hazards and to ensure the availability of a trained and qualified workforce to identify and address lead-based paint hazards. The legislature recognizes the department of commerce is not a regulatory agency and may delegate enforcement responsibilities under chapter 322, Laws of 2003 to local governments or private entities. [2010 c 158 § 1; 2003 c 322 § 1.]

**70.103.020 Definitions.** The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Abatement" means any measure or set of measures designed to permanently eliminate lead-based paint hazards.

(a) Abatement includes, but is not limited to:

(i) The removal of paint and dust, the permanent enclosure or encapsulation of lead-based paint, the replacement of painted surfaces or fixtures, or the removal or permanent covering of soil, when lead-based paint hazards are present in such paint, dust, or soil; and

(ii) All preparation, cleanup, disposal, and postabatement clearance testing activities associated with such measures.

(b) Specifically, abatement includes, but is not limited to:

(i) Projects for which there is a written contract or other documentation, which provides that an individual or firm will be conducting activities in or to a residential dwelling or child-occupied facility that:

(A) Shall result in the permanent elimination of lead-based paint hazards; or

(B) Are designed to permanently eliminate lead-based paint hazards and are described in (a)(i) and (ii) of this subsection;

(ii) Projects resulting in the permanent elimination of lead-based paint hazards, conducted by certified firms or individuals, unless such projects are covered by (c) of this subsection;

(iii) Projects resulting in the permanent elimination of lead-based paint hazards, conducted by firms or individuals who, through their company name or promotional literature, represent, advertise, or hold themselves out to be in the business of performing lead-based paint activities as identified and defined by this section, unless such projects are covered by (c) of this subsection; or

(iv) Projects resulting in the permanent elimination of lead-based paint hazards, that are conducted in response to state or local abatement orders.

(c) Abatement does not include renovation, remodeling, landscaping, or other activities, when such activities are not designed to permanently eliminate lead-based paint hazards, but, instead, are designed to repair, restore, or remodel a given structure or dwelling, even though these activities may incidentally result in a reduction or elimination of lead-based paint hazards. Furthermore, abatement does not include interim controls, operations and maintenance activities, or other measures and activities designed to temporarily, but not permanently, reduce lead-based paint hazards.

(2) "Accredited training program" means a training program that has been accredited by the department to provide

training for individuals engaged in lead-based paint activities.

(3) "Certified abatement worker" means an individual who has been trained by an accredited training program, meets all the qualifications established by the department, and is certified by the department to perform abatements.

(4) "Certified dust sampling technician" means an individual who has been trained by an accredited training program, meets all the qualifications established by the department, and is certified by the department to conduct dust sampling for renovation projects.

(5) "Certified firm" includes a company, partnership, corporation, sole proprietorship, association, agency, or other business entity that meets all the qualifications established by the department and performs lead-based paint activities to which the department has issued a certificate.

(6) "Certified inspector" means an individual who has been trained by an accredited training program, meets all the qualifications established by the department, and is certified by the department to conduct inspections.

(7) "Certified project designer" means an individual who has been trained by an accredited training program, meets all the qualifications established by the department, and is certified by the department to prepare abatement project designs, occupant protection plans, and abatement reports.

(8) "Certified renovator" means an individual who has been trained by an accredited training program, meets all the qualifications established by the department, and is certified by the department to perform renovations or direct workers in the performance of renovation work.

(9) "Certified risk assessor" means an individual who has been trained by an accredited training program, meets all the qualifications established by the department, and is certified by the department to conduct risk assessments and sample for the presence of lead in dust and soil for the purposes of abatement clearance testing.

(10) "Certified supervisor" means an individual who has been trained by an accredited training program, meets all the qualifications established by the department, and is certified by the department to supervise and conduct abatements, and to prepare occupant protection plans and abatement reports.

(11) "Department" means the Washington state department of commerce.

(12) "Director" means the director of the Washington state department of commerce.

(13) "Federal laws and rules" means:

(a) Title IV, toxic substances control act (15 U.S.C. Sec. 2681 et seq.) and the rules adopted by the United States environmental protection agency under that law for authorization of state programs;

(b) Any regulations or requirements adopted by the United States department of housing and urban development regarding eligibility for grants to states and local governments; and

(c) Any other requirements adopted by a federal agency with jurisdiction over lead-based paint hazards.

(14) "Lead-based paint" means paint or other surface coatings that contain lead equal to or in excess of 1.0 milligrams per square centimeter or more than 0.5 percent by weight.

(2010 Ed.)

(15) "Lead-based paint activity" includes inspection, testing, risk assessment, lead-based paint hazard reduction project design or planning, abatement, or renovation of lead-based paint hazards.

(16) "Lead-based paint hazard" means any condition that causes exposure to lead from lead-contaminated dust, lead-contaminated soil, or lead-contaminated paint that is deteriorated or present in accessible surfaces, friction surfaces, or impact surfaces that would result in adverse human health effects as identified by the administrator of the United States environmental protection agency under the toxic substances control act, section 403.

(17) "Person" includes an individual, corporation, firm, partnership, or association, an Indian tribe, state, or political subdivision of a state, and a state department or agency.

(18) "Renovation" means the modification of any existing structure, or portion thereof, that results in the disturbance of painted surfaces, unless that activity is performed as part of an abatement as defined in this section. The term includes but is not limited to:

(a) The removal, modification, or repair of painted surface or painted components;

(b) Modification of painted doors;

(c) Surface restoration;

(d) Window repair;

(e) Surface preparation, such as sanding, scraping, or activities that generates paint dust;

(f) Removal of building components, such as walls, windows, or other like structures;

(g) Weatherization projects, such as cutting holes in painted surfaces to install blown-in insulation;

(h) Interim controls that disturb painted surfaces; or

(i) A renovation performed for the purposes of converting a building or part of a building in target housing or a child-occupied facility.

The term renovation as defined in this subsection (18) does not include minor repair and maintenance activities.

(19) "Risk assessment" means:

(a) An on-site investigation to determine the existence, nature, severity, and location of lead-based paint hazards; and

(b) The provision of a report by the individual or the firm conducting the risk assessment, explaining the results of the investigation and options for reducing lead-based paint hazards.

(20) "State program" means a state administered lead-based paint activities certification and training program that meets the federal environmental protection agency requirements. [2010 c 158 § 2; 2009 c 565 § 49; 2003 c 322 § 2.]

**70.103.030 Certification and training—Local governments—Rules.** (1) The department shall administer and enforce a state program for worker training and certification, and training program accreditation, which shall include those program elements necessary to assume responsibility for federal requirements for a program as set forth in Title IV of the toxic substances control act (15 U.S.C. Sec. 2601 et seq.), the residential lead-based paint hazard reduction act of 1992 (42 U.S.C. Sec. 4851 et seq.), 40 C.F.R. Part 745, Subparts L and Q (1996), and Title X of the housing and community development act of 1992 (P.L. 102-550). The department may delegate or enter into a memorandum of understanding with

local governments or private entities for implementation of components of the state program.

(2) The department is authorized to adopt rules that are consistent with federal requirements to implement a state program. Rules adopted under this section shall:

(a) Establish minimum accreditation requirements for lead-based paint activities for training providers;

(b) Establish work practice standards for conduct of lead-based paint activities;

(c) Establish certification requirements for individuals and firms engaged in lead-based paint activities including provisions for recognizing certifications accomplished under existing certification programs;

(d) Require the use of certified personnel in all lead-based paint activities;

(e) Be revised as necessary to comply with federal law and rules and to maintain eligibility for federal funding;

(f) Facilitate reciprocity and communication with other states having a lead-based paint certification program;

(g) Provide for decertification, deaccreditation, and financial assurance for a person certified by or a training provider accredited by the department; and

(h) Be issued in accordance with the administrative procedure act, chapter 34.05 RCW.

(3) The department may accept federal funds for the administration of the program.

(4) This program shall equal, but not exceed, legislative authority under federal requirements as set forth in Title IV of the toxic substances control act (15 U.S.C. Sec. 2601 et seq.), the residential lead-based paint hazard reduction act of 1992 (42 U.S.C. Sec. 4851 et seq.), and Title X of the housing and community development act of 1992 (P.L. 102-550).

(5) Any rules adopted by the department shall be consistent with federal laws, regulations, and requirements relating to lead-based paint activities specified by the residential lead-based paint hazard reduction act of 1992 (42 U.S.C. Sec. 4851 et seq.) and Title X of the housing and community development act of 1992 (P.L. 102-550), and rules adopted pursuant to chapter 70.105D RCW, to ensure consistency in regulatory action. The rules may not be more restrictive than corresponding federal and state regulations unless such stringency is specifically authorized by this chapter.

(6) The department shall collect a fee in the amount of twenty-five dollars for certification and recertification of lead paint firms, inspectors, project developers, risk assessors, supervisors, abatement workers, renovators, and dust sampling technicians.

(7) The department shall collect a fee in the amount of two hundred dollars for the accreditation of lead paint training programs. [2010 c 158 § 3; 2003 c 322 § 3.]

#### **70.103.040 Certification and accreditation—Rules.**

(1) The department shall establish a program for certification of persons involved in lead-based paint activities and for accreditation of training providers in compliance with federal laws and rules.

(2) Rules adopted under this section shall:

(a) Establish minimum accreditation requirements for lead-based paint activities for training providers;

(b) Establish work practice standards for conduct of lead-based paint activities;

(c) Establish certification requirements for individuals and firms engaged in lead-based paint activities including provisions for recognizing certifications accomplished under existing certification programs;

(d) Require the use of certified personnel in any lead-based paint hazard reduction activity;

(e) Be revised as necessary to comply with federal law and rules and to maintain eligibility for federal funding;

(f) Facilitate reciprocity and communication with other states having a lead-based paint certification program;

(g) Provide for decertification, deaccreditation, and financial assurance for a person certified or accredited by the department; and

(h) Be issued in accordance with the administrative procedure act, chapter 34.05 RCW.

(3) This program shall equal, but not exceed, legislative authority under federal requirements as set forth in Title IV of the toxic substances control act (15 U.S.C. Sec. 2601 et seq.), the residential lead-based paint hazard reduction act of 1992 (42 U.S.C. Sec. 4851 et seq.), 40 C.F.R. Part 745 (1996), Subparts L and Q, and Title X of the housing and community development act of 1992 (P.L. 102-550).

(4) Any rules adopted by the department shall be consistent with federal laws, regulations, and requirements relating to lead-based paint activities specified by the residential lead-based paint hazard reduction act of 1992 (42 U.S.C. Sec. 4851 et seq.) and Title X of the housing and community development act of 1992 (P.L. 102-550), and rules adopted pursuant to chapter 70.105D RCW, to ensure consistency in regulatory action. The rules may not be more restrictive than corresponding federal and state regulations unless such stringency is specifically authorized by this chapter.

(5) The department may accept federal funds for the administration of the program.

(6) For the purposes of certification under the federal requirements as set forth in section 2682 of the toxic substances control act (15 U.S.C. Sec. 2682), the department may require renovators and dust sampling technicians to apply for a certification badge issued by the department. The department may impose a fee on the applicant for processing the application. The application shall include a photograph of the applicant and a fee in the amount imposed by the department. [2010 c 158 § 4; 2003 c 322 § 4.]

**70.103.050 Rules—Report.** The department shall adopt rules to:

(1) Establish procedures and requirements for the accreditation of lead-based paint activities training programs including, but not limited to, the following:

(a) Training curriculum;

(b) Training hours;

(c) Hands-on training;

(d) Trainee competency and proficiency;

(e) Training program quality control;

(f) Procedures for the reaccreditation of training programs;

(g) Procedures for the oversight of training programs; and

(h) Procedures for the suspension, revocation, or modification of training program accreditations, or acceptance of training offered by an accredited training provider in another

state or Indian tribe authorized by the environmental protection agency;

(2) Establish procedures for the purposes of certification, for the acceptance of training offered by an accredited training provider in a state or Indian tribe authorized by the environmental protection agency;

(3) Certify individuals involved in lead-based paint activities to ensure that certified individuals are trained by an accredited training program and possess appropriate educational or experience qualifications for certification;

(4) Establish procedures for recertification;

(5) Require the conduct of lead-based paint activities in accordance with work practice standards;

(6) Establish procedures for the suspension, revocation, or modification of certifications;

(7) Establish requirements for the administration of third-party certification exams;

(8) Use laboratories accredited under the environmental protection agency's national lead laboratory accreditation program;

(9) Establish work practice standards for the conduct of lead-based paint activities, as defined in RCW 70.103.020;

(10) Establish an enforcement response policy that shall include:

(a) Warning letters, notices of noncompliance, notices of violation, or the equivalent;

(b) Administrative or civil actions, including penalty authority, including accreditation or certification suspension, revocation, or modification; and

(c) Authority to apply criminal sanctions or other criminal authority using existing state laws as applicable.

The department shall prepare and submit a biennial report to the legislature regarding the program's status, its costs, and the number of persons certified by the program. [2010 c 158 § 5; 2003 c 322 § 5.]

**70.103.060 Lead paint account.** The lead paint account is created in the state treasury. All receipts from RCW 70.103.030 shall be deposited into the account. Monies in the account may be spent only after appropriation. Expenditures from the account may be used only for the purposes of this chapter. [2003 c 322 § 6.]

**70.103.070 Inspections.** (1)(a) The director or the director's designee is authorized to inspect at reasonable times and, when feasible, with at least twenty-four hours prior notification:

(i) Premises or facilities where those engaged in training for lead-based paint activities conduct business; and

(ii) The business records of, and take samples at, the businesses accredited or certified under this chapter to conduct lead-based paint training or activities.

(b) Any accredited training program or any firm or individual certified under this chapter that denies access to the department for the purposes of (a) of this subsection is subject to deaccreditation or decertification under RCW 70.103.040.

(2) The director or the director's designee is authorized to inspect premises or facilities, with the consent of the owner or owner's agent, where violations may occur concerning (2010 Ed.)

lead-based paint activities, as defined under RCW 70.103.020, at reasonable times and, when feasible, with at least forty-eight hours prior notification of the inspection.

(3) Prior to receipt of federal lead-based paint abatement funding, all premise or facility owners shall be notified by any entity that receives and disburses the federal funds that an inspection may be conducted. If a premise or facility owner does not wish to have an inspection conducted, that owner is not eligible to receive lead-based paint abatement funding. [2003 c 322 § 7.]

**70.103.080 Certification required to perform lead-based paint activities—Certificate revocation—Penalties.**

(1) The department is designated as the official agency of this state for purposes of cooperating with, and implementing the state lead-based paint activities program under the jurisdiction of the United States environmental protection agency.

(2) No individual or firm can perform, offer, or claim to perform lead-based paint activities without certification from the department to conduct these activities.

(3) The department may deny, suspend, or revoke a certificate for failure to comply with the requirements of this chapter or any rule adopted under this chapter. No person whose certificate is revoked under this chapter shall be eligible to apply for a certificate for one year from the effective date of the final order of revocation. A certificate may be denied, suspended, or revoked on any of the following grounds:

(a) A risk assessor, inspector, contractor, project designer, worker, dust sampling technician, or renovator violates work practice standards established by the United States environmental protection agency or the United States department of housing and urban development governing work practices and procedures; or

(b) The certificate was obtained by error, misrepresentation, or fraud.

(4) Any person convicted of violating any of the provisions of this chapter is guilty of a misdemeanor. A conviction is an unvacated forfeiture of bail or collateral deposited to secure the defendant's appearance in court, the payment of a fine, a plea of guilty, or a finding of guilt on a violation of this chapter, regardless of whether imposition of sentence is deferred or the penalty is suspended, and shall be treated as a violation conviction for purposes of certification forfeiture under this chapter. Violations of this chapter include:

(a) Failure to comply with any requirement of this chapter;

(b) Failure or refusal to establish, maintain, provide, copy, or permit access to records or reports as required;

(c) Obtaining certification through fraud or misrepresentation;

(d) Failure to obtain certification from the department and performing work requiring certification at a job site; or

(e) Fraudulently obtaining certification and engaging in any lead-based paint activities requiring certification. [2010 c 158 § 6; 2003 c 322 § 8.]

**70.103.090 Chapter contingent on federal action.** (1) The department's duties under chapter 322, Laws of 2003 are subject to authorization of the state program from the federal

government within two years of July 27, 2003. Chapter 322, Laws of 2003 expires if the federal environmental protection agency does not authorize a state program within two years of July 27, 2003.

(2) The department's duties under chapter 322, Laws of 2003, as amended, are subject to the availability of sufficient funding from the federal government for this purpose. The director or his or her designee shall seek funding of the department's efforts under this chapter from the federal government. By October 15th of each year, the director shall determine if sufficient federal funding has been provided or guaranteed by the federal government. If the director determines sufficient funding has not been provided, the department shall:

(a) Cease efforts under this chapter due to the lack of federal funding; and

(b) Inform the code reviser that it has ceased its efforts due to the lack of federal funding. [2010 c 158 § 7; 2003 c 322 § 9.]

**Reviser's note:** The federal environmental protection agency authorized Washington's program which was established June 10, 2004.

### Chapter 70.104 RCW

#### PESTICIDES—HEALTH HAZARDS

##### Sections

70.104.010	Declaration.
70.104.020	"Pesticide" defined.
70.104.030	Powers and duties of department of health.
70.104.040	Pesticide emergencies—Authority of department of agriculture not infringed upon.
70.104.050	Investigation of human exposure to pesticides.
70.104.055	Pesticide poisonings—Reports.
70.104.057	Pesticide poisonings—Medical education program.
70.104.060	Technical assistance, consultations and services to physicians and agencies authorized.
70.104.070	Pesticide incident reporting and tracking review panel—Intent.
70.104.090	Pesticide panel—Responsibilities.
70.104.100	Industrial insurance statutes not affected.

**Reviser's note:** Powers and duties of the department of social and health services and the secretary of social and health services transferred to the department of health and the secretary of health. See RCW 43.70.060.

**70.104.010 Declaration.** The department of health has responsibility to protect and enhance the public health and welfare. As a consequence, it must be concerned with both natural and artificial environmental factors which may adversely affect the public health and welfare. Dangers to the public health and welfare related to the use of pesticides require specific legislative recognition of departmental authority and responsibility in this area. [1991 c 3 § 356; 1971 ex.s. c 41 § 1.]

**70.104.020 "Pesticide" defined.** For the purposes of this chapter pesticide means, but is not limited to:

(1) Any substance or mixture of substances intended to prevent, destroy, control, repel, or mitigate any insect, rodent, nematode, snail, slug, fungus, weed and any other form of plant or animal life or virus, except virus on or in a living human being or other animal, which is normally considered to be a pest or which the director of agriculture may declare to be a pest; or

(2) Any substance or mixture of substances intended to be used as a plant regulator, defoliant or desiccant; or

(3) Any spray adjuvant, such as a wetting agent, spreading agent, deposit builder, adhesive, emulsifying agent, deflocculating agent, water modifier, or similar agent with or without toxic properties of its own intended to be used with any other pesticide as an aid to the application or effect thereof, and sold in a package or container separate from that of the pesticide with which it is to be used; or

(4) Any fungicide, rodenticide, herbicide, insecticide, and nematocide. [2009 c 549 § 1026; 1971 ex.s. c 41 § 2.]

#### **70.104.030 Powers and duties of department of health.**

(1) The department of health may investigate all suspected human cases of pesticide poisoning and such cases of suspected pesticide poisoning of animals that may relate to human illness. The department shall establish time periods by rule to determine investigation response time. Time periods shall range from immediate to forty-eight hours to initiate an investigation, depending on the severity of the case or suspected case of pesticide poisoning.

In order to adequately investigate such cases, the department shall have the power to:

(a) Take all necessary samples and human or animal tissue specimens for diagnostic purposes: PROVIDED, That tissue, if taken from a living human, shall be taken from a living human only with the consent of a person legally qualified to give such consent;

(b) Secure any and all such information as may be necessary to adequately determine the nature and causes of any case of pesticide poisoning.

(2) The department shall immediately notify the department of agriculture, the department of labor and industries, and other appropriate agencies of the results of its investigation for such action as the other departments or agencies deem appropriate. The notification of such investigations and their results may include recommendations for further action by the appropriate department or agency. [2009 c 495 § 10; 1991 c 3 § 357; 1989 c 380 § 71; 1971 ex.s. c 41 § 3.]

**Effective date—2009 c 495:** See note following RCW 43.20.050.

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

#### **70.104.040 Pesticide emergencies—Authority of department of agriculture not infringed upon.**

(1) In any case where an emergency relating to pesticides occurs that represents a hazard to the public due to toxicity of the material, the quantities involved or the environment in which the incident takes place, such emergencies including but not limited to fires, spillage, and accidental contamination, the person or agent of such person having actual or constructive control of the pesticides involved shall immediately notify the department of health by telephone or the fastest available method.

(2) Upon notification or discovery of any pesticide emergency the department of health shall:

(a) Make such orders and take such actions as are appropriate to assume control of the property and to dispose of hazardous substances, prevent further contamination, and restore any property involved to a nonhazardous condition. In the event of failure of any individual to obey and carry out orders

pursuant to this section, the department shall have all power and authority to accomplish those things necessary to carry out such order. Any expenses incurred by the department as a result of intentional failure of any individual to obey its lawful orders shall be charged as a debt against such individual.

(3) In any case where the department of health has assumed control of property pursuant to this chapter, such property shall not be reoccupied or used until such time as written notification of its release for use is received from the secretary of the department or his or her designee. Such action shall take into consideration the economic hardship, if any, caused by having the department assume control of property, and release shall be accomplished as expeditiously as possible. Nothing in this chapter shall prevent a farmer from continuing to process his or her crops and/or animals provided that the processing does not endanger the public health.

(4) The department shall recognize the pesticide industry's responsibility and active role in minimizing the effect of pesticide emergencies and shall provide for maximum utilization of these services.

(5) Nothing in this chapter shall be construed in any way to infringe upon or negate the authority and responsibility of the department of agriculture in its application and enforcement of the Washington Pesticide Control Act, chapter 15.58 RCW and the Washington Pesticide Application Act, chapter 17.21 RCW. The department of health shall work closely with the department of agriculture in the enforcement of this chapter and shall keep it appropriately advised. [1991 c 3 § 358; 1983 c 3 § 178; 1971 ex.s. c 41 § 4.]

**70.104.050 Investigation of human exposure to pesticides.** The department of health shall investigate human exposure to pesticides according to the degree of risk that the exposure presents to the individual and the greater population as well as the level of funding appropriated in the operating budget, and in order to carry out such investigations shall have authority to secure and analyze appropriate specimens of human tissue and samples representing sources of possible exposure. [2009 c 495 § 11; 1991 c 3 § 359; 1971 ex.s. c 41 § 5.]

**Effective date—2009 c 495:** See note following RCW 43.20.050.

**70.104.055 Pesticide poisonings—Reports.** (1) Any attending physician or other health care provider recognized as primarily responsible for the diagnosis and treatment of a patient or, in the absence of a primary health care provider, the health care provider initiating diagnostic testing or therapy for a patient shall report a case or suspected case of pesticide poisoning to the department of health in the manner prescribed by, and within the reasonable time periods established by, rules of the state board of health. Time periods established by the board shall range from immediate reporting to reporting within seven days depending on the severity of the case or suspected case of pesticide poisoning. The reporting requirements shall be patterned after other board rules establishing requirements for reporting of diseases or conditions. Confidentiality requirements shall be the same as the confidentiality requirements established for other reportable diseases or conditions. The information to be reported

(2010 Ed.)

may include information from relevant pesticide application records and shall include information required under board rules. Reports shall be made on forms provided to health care providers by the department of health. For purposes of any oral reporting, the department of health shall make available a toll-free telephone number.

(2) Within a reasonable time period as established by board rules, the department of health shall investigate the report of a case or suspected case of pesticide poisoning to document the incident. The department shall report the results of the investigation to the health care provider submitting the original report.

(3) Cases or suspected cases of pesticide poisoning shall be reported by the department of health to the \*pesticide reporting and tracking review panel within the time periods established by state board of health rules.

(4) Upon request of the primary health care provider, pesticide applicators or employers shall provide a copy of records of pesticide applications which may have affected the health of the provider's patient. This information is to be used only for the purposes of providing health care services to the patient.

(5) Any failure of the primary health care provider to make the reports required under this section may be cause for the department of health to submit information about such nonreporting to the applicable disciplining authority for the provider under RCW 18.130.040.

(6) No cause of action shall arise as the result of: (a) The failure to report under this section; or (b) any report submitted to the department of health under this section.

(7) For the purposes of this section, a suspected case of pesticide poisoning is a case in which the diagnosis is thought more likely than not to be pesticide poisoning. [1992 c 173 § 4; 1991 c 3 § 360; 1989 c 380 § 72.]

**\*Reviser's note:** The "pesticide incident reporting and tracking review panel" was eliminated pursuant to 2010 1st sp.s. c 7 § 132.

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**70.104.057 Pesticide poisonings—Medical education program.** The department of health, after seeking advice from the state board of health, local health officers, and state and local medical associations, shall develop a program of medical education to alert physicians and other health care providers to the symptoms, diagnosis, treatment, and reporting of pesticide poisonings. [1991 c 3 § 361; 1989 c 380 § 73.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**70.104.060 Technical assistance, consultations and services to physicians and agencies authorized.** In order effectively to prevent human illness due to pesticides and to carry out the requirements of this chapter, the department of health is authorized to provide technical assistance and consultation regarding health effects of pesticides to physicians and other agencies, and is authorized to operate an analytical chemical laboratory and may provide analytical and laboratory services to physicians and other agencies to determine pesticide levels in human and other tissues, and appropriate environmental samples. [1991 c 3 § 362; 1971 ex.s. c 41 § 6.]

**70.104.070 \*Pesticide incident reporting and tracking review panel—Intent.** The legislature finds that heightened concern regarding health and environmental impacts from pesticide use and misuse has resulted in an increased demand for full-scale health investigations, assessment of resource damages, and health effects information. Increased reporting, comprehensive unbiased investigation capability, and enhanced community education efforts are required to maintain this state's responsibilities to provide for public health and safety.

It is the intent of the legislature that the various state agencies responsible for pesticide regulation coordinate their activities in a timely manner to ensure adequate monitoring of pesticide use and protection of workers and the public from the effects of pesticide misuse. [1989 c 380 § 67.]

**\*Reviser's note:** The "pesticide incident reporting and tracking review panel" was eliminated pursuant to 2010 1st sp.s. c 7 § 132.

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**70.104.090 \*Pesticide panel—Responsibilities.** The responsibilities of the \*review panel shall include, but not be limited to:

(1) Establishing guidelines for centralizing the receipt of information relating to actual or alleged health and environmental incidents involving pesticides;

(2) Reviewing and making recommendations for procedures for investigation of pesticide incidents, which shall be implemented by the appropriate agency unless a written statement providing the reasons for not adopting the recommendations is provided to the \*review panel;

(3) Monitoring the time periods required for response to reports of pesticide incidents by the departments of agriculture, health, and labor and industries;

(4) At the request of the chair or any \*panel member, reviewing pesticide incidents of unusual complexity or those that cannot be resolved;

(5) Identifying inadequacies in state and/or federal law that result in insufficient protection of public health and safety, with specific attention to advising the appropriate agencies on the adequacy of pesticide reentry intervals established by the federal environmental protection agency and registered pesticide labels to protect the health and safety of farmworkers. The \*panel shall establish a priority list for reviewing reentry intervals, which considers the following criteria:

(a) Whether the pesticide is being widely used in labor-intensive agriculture in Washington;

(b) Whether another state has established a reentry interval for the pesticide that is longer than the existing federal reentry interval;

(c) The toxicity category of the pesticide under federal law;

(d) Whether the pesticide has been identified by a federal or state agency or through a scientific review as presenting a risk of cancer, birth defects, genetic damage, neurological effects, blood disorders, sterility, menstrual dysfunction, organ damage, or other chronic or subchronic effects; and

(e) Whether reports or complaints of ill effects from the pesticide have been filed following worker entry into fields to which the pesticide has been applied; and

(6) Reviewing and approving an annual report prepared by the department of health to the governor, agency heads, and members of the legislature, with the same available to the public. The report shall include, at a minimum:

(a) A summary of the year's activities;

(b) A synopsis of the cases reviewed;

(c) A separate descriptive listing of each case in which adverse health or environmental effects due to pesticides were found to occur;

(d) A tabulation of the data from each case;

(e) An assessment of the effects of pesticide exposure in the workplace;

(f) The identification of trends, issues, and needs; and

(g) Any recommendations for improved pesticide use practices. [1991 c 3 § 364; 1989 c 380 § 69.]

**\*Reviser's note:** The "pesticide incident reporting and tracking review panel" was eliminated pursuant to 2010 1st sp.s. c 7 § 132.

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**70.104.100 Industrial insurance statutes not affected.** Nothing in RCW 70.104.070 through 70.104.090 shall be construed to affect in any manner the administration of Title 51 RCW by the department of labor and industries. [1989 c 380 § 70.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

## Chapter 70.105 RCW

### HAZARDOUS WASTE MANAGEMENT

#### Sections

70.105.005	Legislative declaration.
70.105.007	Purpose.
70.105.010	Definitions.
70.105.020	Standards and regulations—Adoption—Notice and hearing—Consultation with other agencies.
70.105.025	Environmental excellence program agreements—Effect on chapter.
70.105.030	List and information to be furnished by depositor of hazardous waste—Rules and regulations.
70.105.035	Solid wastes—Conditionally exempt from chapter.
70.105.040	Disposal site or facility—Acquisition—Disposal fee schedule.
70.105.050	Disposal at other than approved site prohibited—Disposal of radioactive wastes.
70.105.070	Criteria for receiving waste at disposal site.
70.105.080	Violations—Civil penalties.
70.105.085	Violations—Criminal penalties.
70.105.090	Violations—Gross misdemeanor.
70.105.095	Violations—Orders—Penalty for noncompliance—Appeal.
70.105.097	Action for damages resulting from violation—Attorneys' fees.
70.105.100	Powers and duties of department.
70.105.105	Duty of department to regulate PCB waste.
70.105.109	Regulation of wastes with radioactive and hazardous components.
70.105.110	Regulation of dangerous wastes associated with energy facilities.
70.105.111	Radioactive wastes—Authority of department of social and health services.
70.105.112	Application of chapter to special incinerator ash.
70.105.116	Hazardous substance remedial actions—Procedural requirements not applicable.
70.105.120	Authority of attorney general.
70.105.130	Department's powers as designated agency under federal act.
70.105.135	Copies of notification forms or annual reports to officials responsible for fire protection.
70.105.140	Rules implemented under RCW 70.105.130—Review.
70.105.145	Department's authority to participate in and administer federal act.
70.105.150	Declaration—Management of hazardous waste—Priorities—Definitions.
70.105.160	Waste management study—Public hearings—Adoption or modification of rules.

- 70.105.165 Disposal of dangerous wastes at commercial off-site land disposal facilities—Limitations.
- 70.105.170 Waste management—Consultative services—Technical assistance—Confidentiality.
- 70.105.180 Disposition of fines and penalties—Earnings.
- 70.105.200 Hazardous waste management plan.
- 70.105.210 Hazardous waste management facilities—Department to develop criteria for siting.
- 70.105.215 Department to adopt rules for permits for hazardous substances treatment facilities.
- 70.105.217 Local government regulatory authority to prohibit or condition.
- 70.105.220 Local governments to prepare local hazardous waste plans—Basis—Elements required.
- 70.105.221 Local governments to prepare local hazardous waste plans—Used oil recycling element.
- 70.105.225 Local governments to designate zones—Departmental guidelines—Approval of local government zone designations or amendments—Exemption.
- 70.105.230 Local governments to submit letter of intent to identify or designate zones and submit management plans—Department to prepare plan in event of failure to act.
- 70.105.235 Grants to local governments for plan preparation, implementation, and designation of zones—Matching funds—Qualifications.
- 70.105.240 State preemption—Department sole authority—Local requirements superseded—State authority over designated zone facilities.
- 70.105.245 Department may require notice of intent for management facility permit.
- 70.105.250 Appeals to pollution control hearings board.
- 70.105.255 Department to provide technical assistance with local plans.
- 70.105.260 Department to assist conflict resolution activities related to siting facilities—Agreements may constitute conditions for permit.
- 70.105.270 Requirements of RCW 70.105.200 through 70.105.230 and 70.105.240(4) not mandatory without legislative appropriation.
- 70.105.280 Service charges.
- 70.105.300 Metals mining and milling operations permits—Inspections by department of ecology.
- 70.105.900 Short title—1985 c 448.

*Environmental certification programs—Fees—Rules—Liability: RCW 43.21A.175.*

*Hazardous materials incidents, handling and liability: RCW 70.136.010 through 70.136.070.*

*Radioactive and hazardous waste emergency response programs, state coordinator: RCW 38.52.030.*

*Transport of hazardous materials, state patrol authority over: Chapter 46.48 RCW.*

**70.105.005 Legislative declaration.** The legislature hereby finds and declares:

(1) The health and welfare of the people of the state depend on clean and pure environmental resources unaffected by hazardous waste contamination. At the same time, the quality of life of the people of the state is in part based upon a large variety of goods produced by the economy of the state. The complex industrial processes that produce these goods also generate waste by-products, some of which are hazardous to the public health and the environment if improperly managed.

(2) Safe and responsible management of hazardous waste is necessary to prevent adverse effects on the environment and to protect public health and safety.

(3) The availability of safe, effective, economical, and environmentally sound facilities for the management of hazardous waste is essential to protect public health and the environment and to preserve the economic strength of the state.

(4) Strong and effective enforcement of federal and state hazardous waste laws and regulations is essential to protect the public health and the environment and to meet the pub-

lic's concerns regarding the acceptance of needed new hazardous waste management facilities.

(5) Negotiation, mediation, and similar conflict resolution techniques are useful in resolving concerns over the local impacts of siting hazardous waste management facilities.

(6) Safe and responsible management of hazardous waste requires an effective planning process that involves local and state governments, the public, and industry.

(7) Public acceptance and successful siting of needed new hazardous waste management facilities depends on several factors, including:

(a) Public confidence in the safety of the facilities;

(b) Assurance that the hazardous waste management priorities established in this chapter are being carried out to the maximum degree practical;

(c) Recognition that all state citizens benefit from certain products whose manufacture results in the generation of hazardous by-products, and that all state citizens must, therefore, share in the responsibility for finding safe and effective means to manage this hazardous waste; and

(d) Provision of adequate opportunities for citizens to meet with facility operators and resolve concerns about local hazardous waste management facilities.

(8) Due to the controversial and regional nature of facilities for the disposal and incineration of hazardous waste, the facilities have had difficulty in obtaining necessary local approvals. The legislature finds that there is a statewide interest in assuring that such facilities can be sited.

It is therefore the intent of the legislature to preempt local government's authority to approve, deny, or otherwise regulate disposal and incineration facilities, and to vest in the department of ecology the sole authority among state, regional, and local agencies to approve, deny, and regulate preempted facilities, as defined in this chapter.

In addition, it is the intent of the legislature that such complete preemptive authority also be vested in the department for treatment and storage facilities, in addition to disposal and incineration facilities, if a local government fails to carry out its responsibilities established in RCW 70.105.225.

It is further the intent of the legislature that no local ordinance, permit requirement, other requirement, or decision shall prohibit on the basis of land use considerations the construction of a hazardous waste management facility within any zone designated and approved in accordance with this chapter, provided that the proposed site for the facility is consistent with applicable state siting criteria.

(9) With the exception of the disposal site authorized for acquisition under this chapter, the private sector has had the primary role in providing hazardous waste management facilities and services in the state. It is the intent of the legislature that this role be encouraged and continue into the future to the extent feasible. Whether privately or publicly owned and operated, hazardous waste management facilities and services should be subject to strict governmental regulation as provided under this chapter.

(10) Wastes that are exempt or excluded from full regulation under this chapter due to their small quantity or household origin have the potential to pose significant risk to public health and the environment if not properly managed. It is the intent of the legislature that the specific risks posed by such waste be investigated and assessed and that programs be

carried out as necessary to manage the waste appropriately. In addition, the legislature finds that, because local conditions vary substantially in regard to the quantities, risks, and management opportunities available for such wastes, local government is the appropriate level of government to plan for and carry out programs to manage moderate-risk waste, with assistance and coordination provided by the department. [1985 c 448 § 2.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**70.105.007 Purpose.** The purpose of this chapter is to establish a comprehensive statewide framework for the planning, regulation, control, and management of hazardous waste which will prevent land, air, and water pollution and conserve the natural, economic, and energy resources of the state. To this end it is the purpose of this chapter:

- (1) To provide broad powers of regulation to the department of ecology relating to management of hazardous wastes and releases of hazardous substances;
- (2) To promote waste reduction and to encourage other improvements in waste management practices;
- (3) To promote cooperation between state and local governments by assigning responsibilities for planning for hazardous wastes to the state and planning for moderate-risk waste to local government;
- (4) To provide for prevention of problems related to improper management of hazardous substances before such problems occur; and
- (5) To assure that needed hazardous waste management facilities may be sited in the state, and to ensure the safe operation of the facilities. [1985 c 448 § 3.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**70.105.010 Definitions.** The words and phrases defined in this section shall have the meanings indicated when used in this chapter unless the context clearly requires otherwise.

- (1) "Dangerous wastes" means any discarded, useless, unwanted, or abandoned substances, including but not limited to certain pesticides, or any residues or containers of such substances which are disposed of in such quantity or concentration as to pose a substantial present or potential hazard to human health, wildlife, or the environment because such wastes or constituents or combinations of such wastes:
  - (a) Have short-lived, toxic properties that may cause death, injury, or illness or have mutagenic, teratogenic, or carcinogenic properties; or
  - (b) Are corrosive, explosive, flammable, or may generate pressure through decomposition or other means.
- (2) "Department" means the department of ecology.
- (3) "Designated zone facility" means any facility that requires an interim or final status permit under rules adopted under this chapter and that is not a preempted facility as defined in this section.
- (4) "Director" means the director of the department of ecology or the director's designee.
- (5) "Disposal site" means a geographical site in or upon which hazardous wastes are disposed of in accordance with the provisions of this chapter.
- (6) "Dispose or disposal" means the discarding or abandoning of hazardous wastes or the treatment, decontamina-

tion, or recycling of such wastes once they have been discarded or abandoned.

(7) "Extremely hazardous waste" means any dangerous waste which:

- (a) Will persist in a hazardous form for several years or more at a disposal site and which in its persistent form
  - (i) Presents a significant environmental hazard and may be concentrated by living organisms through a food chain or may affect the genetic make-up of human beings or wildlife, and
  - (ii) Is highly toxic to human beings or wildlife
- (b) If disposed of at a disposal site in such quantities as would present an extreme hazard to human beings or the environment.

(8) "Facility" means all contiguous land and structures, other appurtenances, and improvements on the land used for recycling, storing, treating, incinerating, or disposing of hazardous waste.

(9) "Hazardous household substances" means those substances identified by the department as hazardous household substances in the guidelines developed under RCW 70.105.220.

(10) "Hazardous substances" means any liquid, solid, gas, or sludge, including any material, substance, product, commodity, or waste, regardless of quantity, that exhibits any of the characteristics or criteria of hazardous waste as described in rules adopted under this chapter.

(11) "Hazardous waste" means and includes all dangerous and extremely hazardous waste, including substances composed of both radioactive and hazardous components.

(12) "Local government" means a city, town, or county.

(13) "Moderate-risk waste" means (a) any waste that exhibits any of the properties of hazardous waste but is exempt from regulation under this chapter solely because the waste is generated in quantities below the threshold for regulation, and (b) any household wastes which are generated from the disposal of substances identified by the department as hazardous household substances.

(14) "Person" means any person, firm, association, county, public or municipal or private corporation, agency, or other entity whatsoever.

(15) "Pesticide" shall have the meaning of the term as defined in RCW 15.58.030 as now or hereafter amended.

(16) "Preempted facility" means any facility that includes as a significant part of its activities any of the following operations: (a) Landfill, (b) incineration, (c) land treatment, (d) surface impoundment to be closed as a landfill, or (e) waste pile to be closed as a landfill.

(17) "Service charge" means an assessment imposed under RCW 70.105.280 against those facilities that store, treat, incinerate, or dispose of dangerous or extremely hazardous waste that contains both a nonradioactive hazardous component and a radioactive component. Service charges shall also apply to facilities undergoing closure under this chapter in those instances where closure entails the physical characterization of remaining wastes which contain both a nonradioactive hazardous component and a radioactive component or the management of such wastes through treatment or removal, except any commercial low-level radioactive waste facility. [2010 1st sp.s. c 7 § 88; 2009 c 549 § 1027;

1989 c 376 § 1; 1987 c 488 § 1; 1985 c 448 § 1; 1975-'76 2nd ex.s. c 101 § 1.]

**Effective date—2010 1st sp.s. c 26; 2010 1st sp.s. c 7:** See note following RCW 43.03.027.

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**70.105.020 Standards and regulations—Adoption—Notice and hearing—Consultation with other agencies.** The department after notice and public hearing shall:

(1) Adopt regulations designating as extremely hazardous wastes subject to the provisions of this chapter those substances which exhibit characteristics consistent with the definition provided in \*RCW 70.105.010(6);

(2) Adopt and may revise when appropriate, minimum standards and regulations for disposal of extremely hazardous wastes to protect against hazards to the public, and to the environment. Before adoption of such standards and regulations, the department shall consult with appropriate agencies of interested local governments and secure technical assistance from the department of agriculture, the department of social and health services, the department of fish and wildlife, the department of natural resources, the department of labor and industries, and the \*\*department of community, trade, and economic development, through the director of fire protection. [1994 c 264 § 42; 1988 c 36 § 28; 1986 c 266 § 119; 1975-'76 2nd ex.s. c 101 § 2.]

**Reviser's note:** \*(1) Due to the alphabetization of RCW 70.105.010 pursuant to RCW 1.08.015(2)(k), subsection (6) was changed to subsection (7).

\*\* (2) The "department of community, trade, and economic development" was renamed the "department of commerce" by 2009 c 565.

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**70.105.025 Environmental excellence program agreements—Effect on chapter.** Notwithstanding any other provision of law, any legal requirement under this chapter, including any standard, limitation, rule, or order is superseded and replaced in accordance with the terms and provisions of an environmental excellence program agreement, entered into under chapter 43.21K RCW. [1997 c 381 § 23.]

**Purpose—1997 c 381:** See RCW 43.21K.005.

**70.105.030 List and information to be furnished by depositor of hazardous waste—Rules and regulations.** (1) After the effective date of the regulations adopted by the department designating extremely hazardous wastes, any person planning to dispose of extremely hazardous waste as designated by the department shall provide the operator of the disposal site with a list setting forth the extremely hazardous wastes for disposal, the amount of such wastes, the general chemical and mineral composition of such waste listed by approximate maximum and minimum percentages, and the origin of any such waste. Such list, when appropriate, shall include information on antidotes, first aid, or safety measures to be taken in case of accidental contact with the particular extremely hazardous waste being disposed.

(2) The department shall adopt and enforce all rules and regulations including the form and content of the list, necessary and appropriate to accomplish the purposes of subsection (1) of this section. [1975-'76 2nd ex.s. c 101 § 3.]

(2010 Ed.)

**70.105.035 Solid wastes—Conditionally exempt from chapter.** Solid wastes that designate as dangerous waste or extremely hazardous waste but do not designate as hazardous waste under federal law are conditionally exempt from the requirements of this chapter, if:

(1) The waste is generated pursuant to a consent decree issued under chapter 70.105D RCW;

(2) The consent decree characterizes the solid waste and specifies management practices and a department-approved treatment or disposal location;

(3) The management practices are consistent with RCW 70.105.150 and are protective of human health and the environment as determined by the department of ecology; and

(4) Waste treated or disposed of on-site will be managed in a manner determined by the department to be as protective of human health and the environment as clean-up standards pursuant to chapter 70.105D RCW.

This section shall not be interpreted to limit the ability of the department to apply any requirement of this chapter through a consent decree issued under chapter 70.105D RCW, if the department determines these requirements to be appropriate. Neither shall this section be interpreted to limit the application of this chapter to a cleanup conducted under the federal comprehensive environmental response, compensation, and liability act (42 U.S.C. Sec. 9601 et seq., as amended). [1994 c 254 § 5.]

**70.105.040 Disposal site or facility—Acquisition—Disposal fee schedule.** (1) The department through the department of general administration, is authorized to acquire interests in real property from the federal government on the Hanford Reservation by gift, purchase, lease, or other means, to be used for the purpose of developing, operating, and maintaining an extremely hazardous waste disposal site or facility by the department, either directly or by agreement with public or private persons or entities: PROVIDED, That lands acquired under this section shall not be inconsistent with a local comprehensive plan approved prior to January 1, 1976: AND PROVIDED FURTHER, That no lands acquired under this section shall be subject to land use regulation by a local government.

(2) The department may establish an appropriate fee schedule for use of such disposal facilities to offset the cost of administration of this chapter and the cost of development, operation, maintenance, and perpetual management of the disposal site. If operated by a private entity, the disposal fee may be such as to provide a reasonable profit. [1975-'76 2nd ex.s. c 101 § 4.]

**70.105.050 Disposal at other than approved site prohibited—Disposal of radioactive wastes.** (1) No person shall dispose of designated extremely hazardous wastes at any disposal site in the state other than the disposal site established and approved for such purpose under provisions of this chapter, except:

(a) When such wastes are going to a processing facility which will result in the waste being reclaimed, treated, detoxified, neutralized, or otherwise processed to remove its harmful properties or characteristics; or

(b) When such wastes are managed on-site as part of a remedial action conducted by the department or by poten-

tially liable persons under a consent decree issued by the department pursuant to chapter 70.105D RCW.

(2) Extremely hazardous wastes that contain radioactive components may be disposed at a radioactive waste disposal site that is (a) owned by the United States department of energy or a licensee of the nuclear regulatory commission and (b) permitted by the department and operated in compliance with the provisions of this chapter. However, prior to disposal, or as a part of disposal, all reasonable methods of treatment, detoxification, neutralization, or other waste management methodologies designed to mitigate hazards associated with these wastes shall be employed, as required by applicable federal and state laws and regulations. [1994 c 254 § 6; 1987 c 488 § 4; 1975-'76 2nd ex.s. c 101 § 5.]

**70.105.070 Criteria for receiving waste at disposal site.** The department may elect to receive dangerous waste at the site provided under this chapter, provided

(1) it is upon request of the owner, producer, or person having custody of the waste, and

(2) upon the payment of a fee to cover disposal

(3) it can be reasonably demonstrated that there is no other disposal sites in the state that will handle such dangerous waste, and

(4) the site is designed to handle such a request or can be modified to the extent necessary to adequately dispose of the waste, or

(5) if a demonstrable emergency and potential threat to the public health and safety exists. [1975-'76 2nd ex.s. c 101 § 7.]

**70.105.080 Violations—Civil penalties.** (1) Except as provided in RCW 43.05.060 through 43.05.080 and 43.05.150, every person who fails to comply with any provision of this chapter or of the rules adopted thereunder shall be subjected to a penalty in an amount of not more than ten thousand dollars per day for every such violation. Each and every such violation shall be a separate and distinct offense. In case of continuing violation, every day's continuance shall be a separate and distinct violation. Every person who, through an act of commission or omission, procures, aids, or abets in the violation shall be considered to have violated the provisions of this section and shall be subject to the penalty herein provided.

(2) The penalty provided for in this section shall be imposed pursuant to the procedures in RCW 43.21B.300. [1995 c 403 § 631; 1987 c 109 § 12; 1983 c 172 § 2; 1975-'76 2nd ex.s. c 101 § 8.]

**Findings—Short title—Intent—1995 c 403:** See note following RCW 34.05.328.

**Purpose—Short title—Construction—Rules—Severability—Captions—1987 c 109:** See notes following RCW 43.21B.001.

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**70.105.085 Violations—Criminal penalties.** (1) Any person who knowingly transports, treats, stores, handles, disposes of, or exports a hazardous substance in violation of this chapter is guilty of: (a) A class B felony punishable according to chapter 9A.20 RCW if the person knows at the time that the conduct constituting the violation places another person in imminent danger of death or serious bodily injury; or

(b) a class C felony punishable according to chapter 9A.20 RCW if the person knows that the conduct constituting the violation places any property of another person or any natural resources owned by the state of Washington or any of its local governments in imminent danger of harm.

(2) As used in this section: (a) "Imminent danger" means that there is a substantial likelihood that harm will be experienced within a reasonable period of time should the danger not be eliminated; and (b) "knowingly" refers to an awareness of facts, not awareness of law. [2003 c 53 § 357; 1989 c 2 § 15 (Initiative Measure No. 97, approved November 8, 1988).]

**Intent—Effective date—2003 c 53:** See notes following RCW 2.48.180.

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**70.105.090 Violations—Gross misdemeanor.** In addition to the penalties imposed pursuant to RCW 70.105.080, any person who violates any provisions of this chapter, or of the rules implementing this chapter, and any person who knowingly aids or abets another in conducting any violation of any provisions of this chapter, or of the rules implementing this chapter, shall be guilty of a gross misdemeanor and upon conviction thereof shall be punished by a fine of not less than one hundred dollars nor more than ten thousand dollars, and/or by imprisonment in the county jail for not more than one year, for each separate violation. Each and every such violation shall be a separate and distinct offense. In case of continuing violation, every day's continuance shall be a separate and distinct offense. [1984 c 237 § 1; 1983 c 172 § 3; 1975-'76 2nd ex.s. c 101 § 9.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**70.105.095 Violations—Orders—Penalty for non-compliance—Appeal.** (1) Whenever on the basis of any information the department determines that a person has violated or is about to violate any provision of this chapter, the department may issue an order requiring compliance either immediately or within a specified period of time. The order shall be delivered by registered mail or personally to the person against whom the order is directed.

(2) Any person who fails to take corrective action as specified in a compliance order shall be liable for a civil penalty of not more than ten thousand dollars for each day of continued noncompliance. In addition, the department may suspend or revoke any permits and/or certificates issued under the provisions of this chapter to a person who fails to comply with an order directed against him.

(3) Any order may be appealed pursuant to RCW 43.21B.310. [1987 c 109 § 16; 1983 c 172 § 4.]

**Purpose—Short title—Construction—Rules—Severability—Captions—1987 c 109:** See notes following RCW 43.21B.001.

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**70.105.097 Action for damages resulting from violation—Attorneys' fees.** A person injured as a result of a violation of this chapter or the rules adopted thereunder may bring an action in superior court for the recovery of the damages. A conviction or imposition of a penalty under this chapter is not a prerequisite to an action under this section.

The court may award reasonable attorneys' fees to a prevailing injured party in an action under this section. [1983 c 172 § 1.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**70.105.100 Powers and duties of department.** The department in performing its duties under this chapter may:

(1) Conduct studies and coordinate research programs pertaining to extremely hazardous waste management;

(2) Render technical assistance to generators of dangerous and extremely hazardous wastes and to state and local agencies in the planning and operation of hazardous waste programs;

(3) Encourage and provide technical assistance to waste generators to form and operate a "waste exchange" for the purpose of finding users for dangerous and extremely hazardous wastes that would otherwise be disposed of: PROVIDED, That such technical assistance shall not violate the confidentiality of manufacturing processes; and

(4) Provide for appropriate surveillance and monitoring of extremely hazardous waste disposal practices in the state. [1975-'76 2nd ex.s. c 101 § 10.]

**70.105.105 Duty of department to regulate PCB waste.** The department of ecology shall regulate under chapter 70.105 RCW, wastes generated from the salvaging, rebuilding, or discarding of transformers or capacitors that have been sold or otherwise transferred for salvage or disposal after the completion or termination of their useful lives and which contain polychlorinated biphenyls (PCB's) and whose disposal is not regulated under 40 C.F.R. part 761. Nothing in this section shall prohibit such wastes from being incinerated or disposed of at facilities permitted to manage PCB wastes under 40 C.F.R. part 761. [1985 c 65 § 1.]

**70.105.109 Regulation of wastes with radioactive and hazardous components.** The department of ecology may regulate all hazardous wastes, including those composed of both radioactive and hazardous components, to the extent it is not preempted by federal law. [1987 c 488 § 2.]

**70.105.110 Regulation of dangerous wastes associated with energy facilities.** (1) Nothing in this chapter shall alter, amend, or supersede the provisions of chapter 80.50 RCW, except that, notwithstanding any provision of chapter 80.50 RCW, regulation of dangerous wastes associated with energy facilities from generation to disposal shall be solely by the department pursuant to chapter 70.105 RCW. In the implementation of said section, the department shall consult and cooperate with the energy facility site evaluation council and, in order to reduce duplication of effort and to provide necessary coordination of monitoring and on-site inspection programs at energy facility sites, any on-site inspection by the department that may be required for the purposes of this chapter shall be performed pursuant to an interagency coordination agreement with the council.

(2) To facilitate the implementation of this chapter, the energy facility site evaluation council may require certificate holders to remove from their energy facility sites any dangerous wastes, controlled by this chapter, within ninety days of

their generation. [1987 c 488 § 3; 1984 c 237 § 3; 1975-'76 2nd ex.s. c 101 § 11.]

**70.105.111 Radioactive wastes—Authority of department of social and health services.** Nothing in this chapter diminishes the authority of the department of social and health services to regulate the radioactive portion of mixed wastes pursuant to chapter 70.98 RCW. [1987 c 488 § 5.]

**70.105.112 Application of chapter to special incinerator ash.** This chapter does not apply to special incinerator ash regulated under chapter 70.138 RCW except that, for purposes of RCW 4.22.070(3)(a), special incinerator ash shall be considered hazardous waste. [1987 c 528 § 9.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**70.105.116 Hazardous substance remedial actions—Procedural requirements not applicable.** The procedural requirements of this chapter shall not apply to any person conducting a remedial action at a facility pursuant to a consent decree, order, or agreed order issued pursuant to chapter 70.105D RCW, or to the department of ecology when it conducts a remedial action under chapter 70.105D RCW. The department of ecology shall ensure compliance with the substantive requirements of this chapter through the consent decree, order, or agreed order issued pursuant to chapter 70.105D RCW, or during the department-conducted remedial action, through the procedures developed by the department pursuant to RCW 70.105D.090. [1994 c 257 § 17.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**70.105.120 Authority of attorney general.** At the request of the department, the attorney general is authorized to bring such injunctive, declaratory, or other actions to enforce any requirement of this chapter. [1980 c 144 § 2.]

**70.105.130 Department's powers as designated agency under federal act.** (1) The department is designated as the state agency for implementing the federal resource conservation and recovery act (42 U.S.C. Sec. 6901 et seq.).

(2) The power granted to the department by this section is the authority to:

(a) Establish a permit system for owners or operators of facilities which treat, store, or dispose of dangerous wastes: PROVIDED, That spent containers of pesticides or herbicides which have been used in normal farm operations and which are not extremely hazardous wastes, shall not be subject to the permit system;

(b) Establish standards for the safe transport, treatment, storage, and disposal of dangerous wastes as may be necessary to protect human health and the environment;

(c) Establish, to implement this section:

(i) A manifest system to track dangerous wastes;

(ii) Reporting, monitoring, recordkeeping, labeling, sampling requirements; and

(iii) Owner, operator, and transporter responsibility;

(d) Enter at reasonable times establishments regulated under this section for the purposes of inspection, monitoring, and sampling; and

(e) Adopt rules necessary to implement this section. [1980 c 144 § 1.]

**70.105.135 Copies of notification forms or annual reports to officials responsible for fire protection.** Any person who generates, treats, stores, disposes, or otherwise handles dangerous or extremely hazardous wastes shall provide copies of any notification forms, or annual reports that are required pursuant to RCW 70.105.130 to the fire departments or fire districts that service the areas in which the wastes are handled upon the request of the fire departments or fire districts. In areas that are not serviced by a fire department or fire district, the forms or reports shall be provided to the sheriff or other county official designated pursuant to \*RCW 48.48.060 upon the request of the sheriff or other county official. This section shall not apply to the transportation of hazardous wastes. [1986 c 82 § 1.]

\*Reviser's note: RCW 48.48.060 was recodified as RCW 43.44.050 pursuant to 2006 c 25 § 13.

**70.105.140 Rules implemented under RCW 70.105.130—Review.** Rules implementing RCW 70.105.130 shall be submitted to the house and senate committees on ecology for review prior to being adopted in accordance with chapter 34.05 RCW. [1980 c 144 § 3.]

**70.105.145 Department's authority to participate in and administer federal act.** Notwithstanding any other provision of chapter 70.105 RCW, the department of ecology is empowered to participate fully in and is empowered to administer all aspects of the programs of the federal Resource Conservation and Recovery Act, as it exists on June 7, 1984, (42 U.S.C. Sec. 6901 et seq.), contemplated for participation and administration by a state under that act. [1984 c 237 § 2; 1983 c 270 § 2.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**70.105.150 Declaration—Management of hazardous waste—Priorities—Definitions.** The legislature hereby declares that:

(1) The health and welfare of the people of the state depend on clean and pure environmental resources unaffected by hazardous waste contamination. Management and regulation of hazardous waste disposal should encourage practices which result in the least amount of waste being produced. Towards that end, the legislature finds that the following priorities in the management of hazardous waste are necessary and should be followed in order of descending priority as applicable:

- (a) Waste reduction;
- (b) Waste recycling;
- (c) Physical, chemical, and biological treatment;
- (d) Incineration;
- (e) Solidification/stabilization treatment;
- (f) Landfill.

(2) As used in this section:

- (a) "Waste reduction" means reducing waste so that hazardous by-products are not produced;
- (b) "Waste recycling" means reusing waste materials and extracting valuable materials from a waste stream;

(c) "Physical, chemical, and biological treatment" means processing the waste to render it completely innocuous, produce a recyclable by-product, reduce toxicity, or substantially reduce the volume of material requiring disposal;

(d) "Incineration" means reducing the volume or toxicity of wastes by use of an enclosed device using controlled flame combustion;

(e) "Solidification/stabilization treatment" means the use of encapsulation techniques to solidify wastes and make them less permeable or leachable; and

(f) "Landfill" means a disposal facility, or part of a facility, at which waste is placed in or on land and which is not a land treatment facility, surface impoundment, or injection well. [1983 1st ex.s. c 70 § 1.]

**70.105.160 Waste management study—Public hearings—Adoption or modification of rules.** The department shall conduct a study to determine the best management practices for categories of waste for the priority waste management methods established in RCW 70.105.150, with due consideration in the course of the study to sound environmental management and available technology. As an element of the study, the department shall review methods that will help achieve the priority of RCW 70.105.150(1)(a), waste reduction. Before issuing any proposed rules, the department shall conduct public hearings regarding the best management practices for the various waste categories studied by the department. After conducting the study, the department shall prepare new rules or modify existing rules as appropriate to promote implementation of the priorities established in RCW 70.105.150 for management practices which assure use of sound environmental management techniques and available technology. The preliminary study shall be completed by July 1, 1986, and the rules shall be adopted by July 1, 1987.

The studies shall be updated at least once every five years. The funding for these studies shall be from the hazardous waste control and elimination account, subject to legislative appropriation. [2010 1st sp.s. c 7 § 89; 1998 c 245 § 110; 1984 c 254 § 2; 1983 1st ex.s. c 70 § 2.]

**Effective date—2010 1st sp.s. c 26; 2010 1st sp.s. c 7:** See note following RCW 43.03.027.

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**70.105.165 Disposal of dangerous wastes at commercial off-site land disposal facilities—Limitations.** (1) Independent of the processing or issuance of any or all federal, state, and local permits for disposal of dangerous wastes, no disposal of dangerous wastes at a commercial off-site land disposal facility may be undertaken prior to July 1, 1986, unless:

(a) The disposal results from actions taken under \*RCW 70.105A.060 (2) and (3), or results from other emergency situations; or

(b) Studies undertaken by the department under RCW 70.105.160 to determine the best management practices for various waste categories under the priority waste management methods established in RCW 70.105.150 are completed for the particular wastes or waste categories to be disposed of and any regulatory revisions deemed necessary by the department are proposed and do not prohibit land disposal of such wastes; or

(c) Final regulations have been adopted by the department that allow for such disposal.

(2) Construction of facilities used solely for the purpose of disposal of wastes that have not met the requirements of subsection (1) of this section shall not be undertaken by any developer of a dangerous waste disposal facility.

(3) The department shall prioritize the studies of waste categories undertaken under RCW 70.105.160 to provide initial consideration of those categories most likely to be suitable for land disposal. Any regulatory changes deemed necessary by the department shall be proposed and subjected to the rule-making process by category as the study of each waste category is completed. All of the study shall be completed, and implementing regulations proposed, by July 1, 1986.

(4) Any final permit issued by the department before the adoption of rules promulgated as a result of the study conducted under RCW 70.105.160 shall be modified as necessary to be consistent with such rules. [1984 c 254 § 1.]

\*Reviser's note: RCW 70.105A.060 was repealed by 1990 c 114 § 21.

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**70.105.170 Waste management—Consultative services—Technical assistance—Confidentiality.** Consistent with the purposes of RCW 70.105.150 and 70.105.160, the department is authorized to promote the priority waste management methods listed in RCW 70.105.150 by establishing or assisting in the establishment of: (1) Consultative services which, in conjunction with any business or industry requesting such service, study and recommend alternative waste management practices; and (2) technical assistance, such as a toll-free telephone service, to persons interested in waste management alternatives. Any person receiving such service or assistance may, in accordance with state law, request confidential treatment of information about their manufacturing or business practices. [1983 1st ex.s. c 70 § 3.]

**70.105.180 Disposition of fines and penalties—Earnings.** All fines and penalties collected under this chapter shall be deposited in the hazardous waste control and elimination account, which is hereby created in the state treasury. Moneys in the account collected from fines and penalties shall be expended exclusively by the department of ecology for the purposes of chapter 70, Laws of 1983 1st ex. sess., subject to legislative appropriation. Other sources of funds deposited in this account may also be used for the purposes of chapter 70, Laws of 1983 1st ex. sess. All earnings of investments of balances in the hazardous waste control and elimination account shall be credited to the general fund. [1985 c 57 § 70; 1983 1st ex.s. c 70 § 4.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**70.105.200 Hazardous waste management plan.** (1) The department shall develop, and shall update at least once every five years, a state hazardous waste management plan. The plan shall include, but shall not be limited to, the following elements:

(a) A state inventory and assessment of the capacity of existing facilities to treat, store, dispose, or otherwise manage hazardous waste;

(b) A forecast of future hazardous waste generation;

(c) A description of the plan or program required by RCW 70.105.160 to promote the waste management priorities established in RCW 70.105.150;

(d) Siting criteria as appropriate for hazardous waste management facilities, including such criteria as may be appropriate for the designation of eligible zones for designated zone facilities. However, these criteria shall not prevent the continued operation, at or below the present level of waste management activity, of existing facilities on the basis of their location in areas other than those designated as eligible zones pursuant to RCW 70.105.225;

(e) Siting policies as deemed appropriate by the department; and

(f) A plan or program to provide appropriate public information and education relating to hazardous waste management. The department shall ensure to the maximum degree practical that these plans or programs are coordinated with public education programs carried out by local government under RCW 70.105.220.

(2) The department shall seek, encourage, and assist participation in the development, revision, and implementation of the state hazardous waste management plan by interested citizens, local government, business and industry, environmental groups, and other entities as appropriate.

(3) Siting criteria shall be completed by December 31, 1986. Other plan components listed in subsection (1) of this section shall be completed by June 30, 1987.

(4) The department shall incorporate into the state hazardous waste management plan those elements of the local hazardous waste management plans that it deems necessary to assure effective and coordinated programs throughout the state. [1985 c 448 § 4.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**70.105.210 Hazardous waste management facilities—Department to develop criteria for siting.** By May 31, 1990, the department shall develop and adopt criteria for the siting of hazardous waste management facilities. These criteria will be part of the state hazardous waste management plan as described in RCW 70.105.200. To the extent practical, these criteria shall be designed to minimize the short-term and long-term risks and costs that may result from hazardous waste management facilities. These criteria may vary by type of facilities and may consider natural site characteristics and engineered protection. Criteria may be established for:

- (1) Geology;
- (2) Surface and groundwater hydrology;
- (3) Soils;
- (4) Flooding;
- (5) Climatic factors;
- (6) Unique or endangered flora and fauna;
- (7) Transportation routes;
- (8) Site access;
- (9) Buffer zones;
- (10) Availability of utilities and public services;
- (11) Compatibility with existing uses of land;
- (12) Shorelines and wetlands;
- (13) Sole-source aquifers;

(14) Natural hazards; and

(15) Other factors as determined by the department.

[1989 1st ex.s. c 13 § 2; 1985 c 448 § 5.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**70.105.215 Department to adopt rules for permits for hazardous substances treatment facilities.** The legislature recognizes the need for new, modified, or expanded facilities to treat, incinerate, or otherwise process or dispose of hazardous substances safely. In order to encourage the development of such facilities, the department shall adopt rules as necessary regarding the permitting of such facilities to ensure the most expeditious permit processing possible consistent with the substantive requirements of applicable law. If owners and operators are not the same entity, the operator shall be the permit applicant and responsible for the development of the permit application and all accompanying materials, as long as the owner also signs the application and certifies its ownership of the real property described in the application, and acknowledges its awareness of the contents of the application and receipt of a copy thereof. [1986 c 210 § 3.]

**70.105.217 Local government regulatory authority to prohibit or condition.** Nothing in this chapter shall alter or affect the regulatory authority of a county, city, or jurisdictional health district to condition or prohibit the acceptance of hazardous waste in a county or city landfill. [1994 c 254 § 7.]

**70.105.220 Local governments to prepare local hazardous waste plans—Basis—Elements required.** (1) Each local government, or combination of contiguous local governments, is directed to prepare a local hazardous waste plan which shall be based on state guidelines and include the following elements:

(a) A plan or program to manage moderate-risk wastes that are generated or otherwise present within the jurisdiction. This element shall include an assessment of the quantities, types, generators, and fate of moderate-risk wastes in the jurisdiction. The purpose of this element is to develop a system of managing moderate-risk waste, appropriate to each local area, to ensure protection of the environment and public health;

(b) A plan or program to provide for ongoing public involvement and public education in regard to the management of moderate-risk waste. This element shall provide information regarding:

(i) The potential hazards to human health and the environment resulting from improper use and disposal of the waste; and

(ii) Proper methods of handling, reducing, recycling, and disposing of the waste;

(c) An inventory of all existing generators of hazardous waste and facilities managing hazardous waste within the jurisdiction. This inventory shall be based on data provided by the department;

(d) A description of the public involvement process used in developing the plan;

(e) A description of the eligible zones designated in accordance with RCW 70.105.225. However, the require-

ment to designate eligible zones shall not be considered part of the local hazardous waste planning requirements; and

(f) Other elements as deemed appropriate by local government.

(2) To the maximum extent practicable, the local hazardous waste plan shall be coordinated with other hazardous materials-related plans and policies in the jurisdiction.

(3) Local governments shall coordinate with those persons involved in providing privately owned hazardous and moderate-risk waste facilities and services as follows: If a local government determines that a moderate-risk waste will be or is adequately managed by one or more privately owned facilities or services at a reasonable price, the local government shall take actions to encourage the use of that private facility or service. Actions taken by a local government under this subsection may include, but are not limited to, restricting or prohibiting the land disposal of a moderate-risk waste at any transfer station or land disposal facility within its jurisdiction.

(4)(a) The department shall prepare guidelines for the development of local hazardous waste plans. The guidelines shall be prepared in consultation with local governments and shall be completed by December 31, 1986. The guidelines shall include a list of substances identified as hazardous household substances.

(b) In preparing the guidelines under (a) of this subsection, the department shall review and assess information on pilot projects that have been conducted for moderate-risk waste management. The department shall encourage additional pilot projects as needed to provide information to improve and update the guidelines.

(5) The department shall consult with retailers, trade associations, public interest groups, and appropriate units of local government to encourage the development of voluntary public education programs on the proper handling of hazardous household substances.

(6) Local hazardous waste plans shall be completed and submitted to the department no later than June 30, 1990. Local governments may from time to time amend the local plan.

(7) Each local government, or combination of contiguous local governments, shall submit its local hazardous waste plan or amendments thereto to the department. The department shall approve or disapprove local hazardous waste plans or amendments by December 31, 1990, or within ninety days of submission, whichever is later. The department shall approve a local hazardous waste plan if it determines that the plan is consistent with this chapter and the guidelines under subsection (4) of this section. If approval is denied, the department shall submit its objections to the local government within ninety days of submission. However, for plans submitted between January 1, 1990, and June 30, 1990, the department shall have one hundred eighty days to submit its objections. No local government is eligible for grants under RCW 70.105.235 for implementing a local hazardous waste plan unless the plan for that jurisdiction has been approved by the department.

(8) Each local government, or combination of contiguous local governments, shall implement the local hazardous waste plan for its jurisdiction by December 31, 1991.

(9) The department may waive the specific requirements of this section for any local government if such local government demonstrates to the satisfaction of the department that the objectives of the planning requirements have been met. [1992 c 17 § 1; 1986 c 210 § 1; 1985 c 448 § 6.]

*Used oil recycling element: RCW 70.951.020.*

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**70.105.221 Local governments to prepare local hazardous waste plans—Used oil recycling element.** Local governments and combinations of local governments shall amend their local hazardous waste plans required under RCW 70.105.220 to comply with RCW 70.951.020. [1991 c 319 § 312.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**70.105.225 Local governments to designate zones—Departmental guidelines—Approval of local government zone designations or amendments—Exemption.** (1) Each local government, or combination of contiguous local governments, is directed to: (a) Demonstrate to the satisfaction of the department that existing zoning allows designated zone facilities as permitted uses; or (b) designate land use zones within its jurisdiction in which designated zone facilities are permitted uses. The zone designations shall be consistent with the state siting criteria adopted in accordance with RCW 70.105.210, except as may be approved by the department in accordance with subsection (6) of this section.

(2) Local governments shall not prohibit the processing or handling of hazardous waste in zones in which the processing or handling of hazardous substances is not prohibited. This subsection does not apply in residential zones.

(3) The department shall prepare guidelines, as appropriate, for the designation of zones under this section. The guidelines shall be prepared in consultation with local governments and shall be completed by December 31, 1986.

(4) The initial designation of zones shall be completed or revised, and submitted to the department within eighteen months after the enactment of siting criteria in accordance with RCW 70.105.210. Local governments that do not comply with this submittal deadline shall be subject to the preemptive provisions of RCW 70.105.240(4) until such time as zone designations are completed and approved by the department. Local governments may from time to time amend their designated zones.

(5) Local governments without land use zoning provisions shall designate eligible geographic areas within their jurisdiction, based on siting criteria adopted in accordance with RCW 70.105.210. The area designation shall be subject to the same requirements as if they were zone designations.

(6) Each local government, or combination of contiguous local governments, shall submit its designation of zones or amendments thereto to the department. The department shall approve or disapprove zone designations or amendments within ninety days of submission. The department shall approve eligible zone designations if it determines that the proposed zone designations are consistent with this chapter, the applicable siting criteria, and guidelines for developing designated zones: PROVIDED, That the department shall consider local zoning in place as of January 1, 1985, or

(2010 Ed.)

other special situations or conditions which may exist in the jurisdiction. If approval is denied, the department shall state within ninety days from the date of submission the facts upon which that decision is based and shall submit the statement to the local government together with any other comments or recommendations it deems appropriate. The local government shall have ninety days after it receives the statement from the department to make modifications designed to eliminate the inconsistencies and resubmit the designation to the department for approval. Any designations shall take effect when approved by the department.

(7) The department may exempt a local government from the requirements of this section if:

(a) Regulated quantities of hazardous waste have not been generated within the jurisdiction during the two calendar years immediately preceding the calendar year during which the exemption is requested; and

(b) The local government can demonstrate to the satisfaction of the department that no significant portion of land within the jurisdiction can meet the siting criteria adopted in accordance with RCW 70.105.210. [1989 1st ex.s. c 13 § 1; 1985 c 448 § 7.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**70.105.230 Local governments to submit letter of intent to identify or designate zones and submit management plans—Department to prepare plan in event of failure to act.** (1) Each local government is directed to submit to the director of the department by October 31, 1987, a letter of intent stating that it intends to (a) identify, or designate if necessary, eligible zones for designated zone facilities no later than June 30, 1988, and (b) submit a complete local hazardous waste management plan to the department no later than June 30, 1990. The letters shall also indicate whether these requirements will be completed in conjunction with other local governments.

(2) If any local government fails to submit a letter as provided in subsection (1)(b) of this section, or fails to adopt a local hazardous waste plan for its jurisdiction in accordance with the time schedule provided in this chapter, or fails to secure approval from the department for its local hazardous waste plan in accordance with the time schedule provided in this chapter, the department shall prepare a hazardous waste plan for the local jurisdiction. [1985 c 448 § 8.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**70.105.235 Grants to local governments for plan preparation, implementation, and designation of zones—Matching funds—Qualifications.** (1) Subject to legislative appropriations, the department may make and administer grants to local governments for (a) preparing and updating local hazardous waste plans, (b) implementing approved local hazardous waste plans, and (c) designating eligible zones for designated zone facilities as required under this chapter.

(2) Local governments shall match the funds provided by the department for planning or designating zones with an amount not less than twenty-five percent of the estimated cost of the work to be performed. Local governments may meet their share of costs with cash or contributed services.

Local governments, or combination of contiguous local governments, conducting pilot projects pursuant to RCW 70.105.220(4) may subtract the cost of those pilot projects conducted for hazardous household substances from their share of the cost. If a pilot project has been conducted for all moderate-risk wastes, only the portion of the cost that applies to hazardous household substances shall be subtracted. The matching funds requirement under this subsection shall be waived for local governments, or combination of contiguous local governments, that complete and submit their local hazardous waste plans under RCW 70.105.220(6) prior to June 30, 1988.

(3) Recipients of grants shall meet such qualifications and follow such procedures in applying for and using grants as may be established by the department. [1986 c 210 § 2; 1985 c 448 § 9.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**70.105.240 State preemption—Department sole authority—Local requirements superseded—State authority over designated zone facilities.** (1) As of July 28, 1985, the state preempts the field of state, regional, or local permitting and regulating of all preempted facilities as defined in this chapter. The department of ecology is designated the sole decision-making authority with respect to permitting and regulating such facilities and no other state agency, department, division, bureau, commission, or board, or any local or regional political subdivision of the state, shall have any permitting or regulatory authority with respect to such facilities including, but not limited to, the location, construction, and operation of such facilities. Permits issued by the department shall be in lieu of any and all permits, approvals, certifications, or conditions of any other state, regional, or local governmental authority which would otherwise apply.

(2) The department shall ensure that any permits issued under this chapter invoking the preemption authority of this section meet the substantive requirements of existing state laws and regulations to the extent such laws and regulations are not inconsistent or in conflict with any of the provisions of this chapter. In the event that any of the provisions of this chapter, or any of the regulations promulgated hereunder, are in conflict with any other state law or regulations, such other law or regulations shall be deemed superseded for purposes of this chapter.

(3) As of July 28, 1985, any ordinances, regulations, requirements, or restrictions of regional or local governmental authorities regarding the location, construction, or operation of preempted facilities shall be deemed superseded. However, in issuing permits under this section, the department shall consider local fire and building codes and condition such permits as appropriate in compliance therewith.

(4) Effective July 1, 1988, the department shall have the same preemptive authority as defined in subsections (1) through (3) of this section in regard to any designated zone facility that may be proposed in any jurisdiction where the designation of eligible zones pursuant to RCW 70.105.225 has not been completed and approved by the department. Unless otherwise preempted by this subsection, designated zone facilities shall be subject to all applicable state and local

laws, regulations, plans, and other requirements. [1985 c 448 § 10.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**70.105.245 Department may require notice of intent for management facility permit.** The department may adopt rules to require any person who intends to file an application for a permit for a hazardous waste management facility to file a notice of intent with the department prior to submitting the application. [1985 c 448 § 11.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**70.105.250 Appeals to pollution control hearings board.** Any disputes between the department and the governing bodies of local governments in regard to the local planning requirements under RCW 70.105.220 and the designation of zones under RCW 70.105.225 may be appealed by the department or the governing body of the local government to the pollution control hearings board established under chapter 43.21B RCW. [1985 c 448 § 12.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**70.105.255 Department to provide technical assistance with local plans.** The department shall provide technical assistance to local governments in the preparation, review, revision, and implementation of local hazardous waste plans. [1985 c 448 § 13.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**70.105.260 Department to assist conflict resolution activities related to siting facilities—Agreements may constitute conditions for permit.** (1) In order to promote identification, discussion, negotiation, and resolution of issues related to siting of hazardous waste management facilities, the department:

(a) Shall compile and maintain information on the use and availability of conflict resolution techniques and make this information available to industries, state and local government officials, and other citizens;

(b) Shall encourage and assist in facilitating conflict resolution activities, as appropriate, between facility proponents, host communities, and other interested persons;

(c) May adopt rules specifying procedures for facility proponents, host communities, and citizens to follow in providing opportunities for conflict resolution activities, including the use of dispute resolution centers established pursuant to chapter 7.75 RCW; and

(d) May expend funds to support such conflict resolution activities, and may adopt rules as appropriate to govern the support.

(2) Any agreements reached under the processes described in subsection (1) of this section and deemed valid by the department may be written as conditions binding on a permit issued under this chapter. [1985 c 448 § 14.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**70.105.270 Requirements of RCW 70.105.200 through 70.105.230 and 70.105.240(4) not mandatory without legislative appropriation.** The requirements of RCW 70.105.200 through 70.105.230 and 70.105.240(4)

shall not become mandatory until funding is appropriated by the legislature. [1985 c 448 § 15.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**70.105.280 Service charges.** (1) The department may assess reasonable service charges against those facilities that store, treat, incinerate, or dispose of dangerous or extremely hazardous waste that contains both a nonradioactive hazardous component and a radioactive component or which are undergoing closure under this chapter in those instances where closure entails the physical characterization of remaining wastes which contain both a nonradioactive hazardous component and a radioactive component or the management of such wastes through treatment or removal, except any commercial low-level radioactive waste facility. Service charges may not exceed the costs to the department in carrying out the duties of this section.

(2) Program elements or activities for which service charges may be assessed include:

(a) Office, staff, and staff support for the purposes of facility or unit permit development, review, and issuance; and

(b) Actions taken to determine and ensure compliance with the state's hazardous waste management act.

(3) Moneys collected through the imposition of such service charges shall be deposited in the state toxics control account.

(4) The department shall adopt rules necessary to implement this section. Facilities that store, treat, incinerate, or dispose of dangerous or extremely hazardous waste that contains both a nonradioactive hazardous component and a radioactive component shall not be subject to service charges prior to such rule making. Facilities undergoing closure under this chapter in those instances where closure entails the physical characterization of remaining wastes which contain both a nonradioactive hazardous component and a radioactive component or the management of such wastes through treatment or removal shall not be subject to service charges prior to such rule making. [1989 c 376 § 2.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**70.105.300 Metals mining and milling operations permits—Inspections by department of ecology.** If a metals mining and milling operation is issued a permit pursuant to this chapter, then it will be subject to special inspection requirements. The department of ecology shall inspect these mining operations at least quarterly in order to ensure that the operation is in compliance with the conditions of any permit issued to it pursuant to this chapter. The department shall conduct additional inspections during the construction phase of the mining operation in order to ensure compliance with this chapter. [1994 c 232 § 19.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**70.105.900 Short title—1985 c 448.** This chapter shall be known and may be cited as the hazardous waste management act. [1985 c 448 § 16.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

(2010 Ed.)

## Chapter 70.105A RCW HAZARDOUS WASTE FEES

### Sections

70.105A.035 Revision of fees to provide a waste reduction and recycling incentive.

*Hazardous waste management: Chapter 70.105 RCW.*

**70.105A.035 Revision of fees to provide a waste reduction and recycling incentive.** The legislature is encouraged to revise the hazardous waste fees prescribed in \*RCW 70.105A.030 in a manner which provides an incentive for waste reduction and recycling. If prior to March 1, 1989, \*RCW 70.105A.030 as it existed on August 1, 1987, has not been amended in a manner which specifically provides an incentive for hazardous waste reduction and recycling, then (1) the requirement to pay the fees prescribed in that section is eliminated solely for fees due and payable on June 30, 1989; and (2) the department of ecology shall prepare, and submit to the legislature by January 1, 1990, a proposed revision designed to provide an incentive for hazardous waste reduction and recycling. [1989 c 2 § 16 (Initiative Measure No. 97, approved November 8, 1988).]

\*Reviser's note: RCW 70.105A.030 was repealed by 1990 c 114 § 21.

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

## Chapter 70.105D RCW HAZARDOUS WASTE CLEANUP— MODEL TOXICS CONTROL ACT

### Sections

70.105D.010 Declaration of policy.  
70.105D.020 Definitions.  
70.105D.030 Department's powers and duties.  
70.105D.040 Standard of liability—Settlement.  
70.105D.050 Enforcement.  
70.105D.055 Lien authority.  
70.105D.060 Timing of review.  
70.105D.070 Toxics control accounts.  
70.105D.080 Private right of action—Remedial action costs.  
70.105D.090 Remedial actions—Exemption from procedural requirements.  
70.105D.100 Grants to local governments—Statement of environmental benefits—Development of outcome-focused performance measures.  
70.105D.110 Releases of hazardous substances—Notice—Exemptions.  
70.105D.120 Puget Sound partners.  
70.105D.130 Cleanup settlement account—Reporting requirements.  
70.105D.900 Short title—1989 c 2.  
70.105D.905 Captions—1989 c 2.  
70.105D.910 Construction—1989 c 2.  
70.105D.915 Existing agreements—1989 c 2.  
70.105D.920 Effective date—1989 c 2.  
70.105D.921 Severability—1989 c 2.

*Environmental certification programs—Fees—Rules—Liability: RCW 43.21A.175.*

**70.105D.010 Declaration of policy.** (1) Each person has a fundamental and inalienable right to a healthful environment, and each person has a responsibility to preserve and enhance that right. The beneficial stewardship of the land, air, and waters of the state is a solemn obligation of the present generation for the benefit of future generations.

(2) A healthful environment is now threatened by the irresponsible use and disposal of hazardous substances. There are hundreds of hazardous waste sites in this state, and more will be created if current waste practices continue. Haz-

ardous waste sites threaten the state's water resources, including those used for public drinking water. Many of our municipal landfills are current or potential hazardous waste sites and present serious threats to human health and environment. The costs of eliminating these threats in many cases are beyond the financial means of our local governments and ratepayers. The main purpose of chapter 2, Laws of 1989 is to raise sufficient funds to clean up all hazardous waste sites and to prevent the creation of future hazards due to improper disposal of toxic wastes into the state's land and waters.

(3) Many farmers and small business owners who have followed the law with respect to their uses of pesticides and other chemicals nonetheless may face devastating economic consequences because their uses have contaminated the environment or the water supplies of their neighbors. With a source of funds, the state may assist these farmers and business owners, as well as those persons who sustain damages, such as the loss of their drinking water supplies, as a result of the contamination.

(4) It is in the public's interest to efficiently use our finite land base, to integrate our land use planning policies with our clean-up policies, and to clean up and reuse contaminated industrial properties in order to minimize industrial development pressures on undeveloped land and to make clean land available for future social use.

(5) Because it is often difficult or impossible to allocate responsibility among persons liable for hazardous waste sites and because it is essential that sites be cleaned up well and expeditiously, each responsible person should be liable jointly and severally.

(6) Because releases of hazardous substances can adversely affect the health and welfare of the public, the environment, and property values, it is in the public interest that affected communities be notified of where releases of hazardous substances have occurred and what is being done to clean them up. [2002 c 288 § 1; 1994 c 254 § 1; 1989 c 2 § 1 (Initiative Measure No. 97, approved November 8, 1988).]

**Severability—2002 c 288:** "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [2002 c 288 § 5.]

**70.105D.020 Definitions.** (1) "Agreed order" means an order issued by the department under this chapter with which the potentially liable person receiving the order agrees to comply. An agreed order may be used to require or approve any cleanup or other remedial actions but it is not a settlement under RCW 70.105D.040(4) and shall not contain a covenant not to sue, or provide protection from claims for contribution, or provide eligibility for public funding of remedial actions under RCW 70.105D.070(2)(d)(xi).

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

(3) "Director" means the director of ecology or the director's designee.

(4) "Environmental covenant" has the same meaning as defined in RCW 64.70.020.

(5) "Facility" means (a) any building, structure, installation, equipment, pipe or pipeline (including any pipe into a sewer or publicly owned treatment works), well, pit, pond, lagoon, impoundment, ditch, landfill, storage container, motor vehicle, rolling stock, vessel, or aircraft, or (b) any site

or area where a hazardous substance, other than a consumer product in consumer use, has been deposited, stored, disposed of, or placed, or otherwise come to be located.

(6) "Federal cleanup law" means the federal comprehensive environmental response, compensation, and liability act of 1980, 42 U.S.C. Sec. 9601 et seq., as amended by Public Law 99-499.

(7)(a) "Fiduciary" means a person acting for the benefit of another party as a bona fide trustee; executor; administrator; custodian; guardian of estates or guardian ad litem; receiver; conservator; committee of estates of incapacitated persons; trustee in bankruptcy; trustee, under an indenture agreement, trust agreement, lease, or similar financing agreement, for debt securities, certificates of interest or certificates of participation in debt securities, or other forms of indebtedness as to which the trustee is not, in the capacity of trustee, the lender. Except as provided in subsection (17)(b)(iii) of this section, the liability of a fiduciary under this chapter shall not exceed the assets held in the fiduciary capacity.

(b) "Fiduciary" does not mean:

(i) A person acting as a fiduciary with respect to a trust or other fiduciary estate that was organized for the primary purpose of, or is engaged in, actively carrying on a trade or business for profit, unless the trust or other fiduciary estate was created as part of, or to facilitate, one or more estate plans or because of the incapacity of a natural person;

(ii) A person who acquires ownership or control of a facility with the objective purpose of avoiding liability of the person or any other person. It is prima facie evidence that the fiduciary acquired ownership or control of the facility to avoid liability if the facility is the only substantial asset in the fiduciary estate at the time the facility became subject to the fiduciary estate;

(iii) A person who acts in a capacity other than that of a fiduciary or in a beneficiary capacity and in that capacity directly or indirectly benefits from a trust or fiduciary relationship;

(iv) A person who is a beneficiary and fiduciary with respect to the same fiduciary estate, and who while acting as a fiduciary receives benefits that exceed customary or reasonable compensation, and incidental benefits permitted under applicable law;

(v) A person who is a fiduciary and receives benefits that substantially exceed customary or reasonable compensation, and incidental benefits permitted under applicable law; or

(vi) A person who acts in the capacity of trustee of state or federal lands or resources.

(8) "Fiduciary capacity" means the capacity of a person holding title to a facility, or otherwise having control of an interest in the facility pursuant to the exercise of the responsibilities of the person as a fiduciary.

(9) "Foreclosure and its equivalents" means purchase at a foreclosure sale, acquisition, or assignment of title in lieu of foreclosure, termination of a lease, or other repossession, acquisition of a right to title or possession, an agreement in satisfaction of the obligation, or any other comparable formal or informal manner, whether pursuant to law or under warranties, covenants, conditions, representations, or promises from the borrower, by which the holder acquires title to or possession of a facility securing a loan or other obligation.

(10) "Hazardous substance" means:

(a) Any dangerous or extremely hazardous waste as defined in \*RCW 70.105.010 (5) and (6), or any dangerous or extremely dangerous waste designated by rule pursuant to chapter 70.105 RCW;

(b) Any hazardous substance as defined in \*RCW 70.105.010(14) or any hazardous substance as defined by rule pursuant to chapter 70.105 RCW;

(c) Any substance that, on March 1, 1989, is a hazardous substance under section 101(14) of the federal cleanup law, 42 U.S.C. Sec. 9601(14);

(d) Petroleum or petroleum products; and

(e) Any substance or category of substances, including solid waste decomposition products, determined by the director by rule to present a threat to human health or the environment if released into the environment.

The term hazardous substance does not include any of the following when contained in an underground storage tank from which there is not a release: Crude oil or any fraction thereof or petroleum, if the tank is in compliance with all applicable federal, state, and local law.

(11) "Holder" means a person who holds indicia of ownership primarily to protect a security interest. A holder includes the initial holder such as the loan originator, any subsequent holder such as a successor-in-interest or subsequent purchaser of the security interest on the secondary market, a guarantor of an obligation, surety, or any other person who holds indicia of ownership primarily to protect a security interest, or a receiver, court-appointed trustee, or other person who acts on behalf or for the benefit of a holder. A holder can be a public or privately owned financial institution, receiver, conservator, loan guarantor, or other similar persons that loan money or guarantee repayment of a loan. Holders typically are banks or savings and loan institutions but may also include others such as insurance companies, pension funds, or private individuals that engage in loaning of money or credit.

(12) "Independent remedial actions" means remedial actions conducted without department oversight or approval, and not under an order, agreed order, or consent decree.

(13) "Indicia of ownership" means evidence of a security interest, evidence of an interest in a security interest, or evidence of an interest in a facility securing a loan or other obligation, including any legal or equitable title to a facility acquired incident to foreclosure and its equivalents. Evidence of such interests includes, mortgages, deeds of trust, sellers interest in a real estate contract, liens, surety bonds, and guarantees of obligations, title held pursuant to a lease financing transaction in which the lessor does not select initially the leased facility, or legal or equitable title obtained pursuant to foreclosure and their equivalents. Evidence of such interests also includes assignments, pledges, or other rights to or other forms of encumbrance against the facility that are held primarily to protect a security interest.

(14) "Industrial properties" means properties that are or have been characterized by, or are to be committed to, traditional industrial uses such as processing or manufacturing of materials, marine terminal and transportation areas and facilities, fabrication, assembly, treatment, or distribution of manufactured products, or storage of bulk materials, that are either:

(a) Zoned for industrial use by a city or county conducting land use planning under chapter 36.70A RCW; or

(b) For counties not planning under chapter 36.70A RCW and the cities within them, zoned for industrial use and adjacent to properties currently used or designated for industrial purposes.

(15) "Institutional controls" means measures undertaken to limit or prohibit activities that may interfere with the integrity of a remedial action or result in exposure to or migration of hazardous substances at a site. "Institutional controls" include environmental covenants.

(16) "Operating a facility primarily to protect a security interest" occurs when all of the following are met: (a) Operating the facility where the borrower has defaulted on the loan or otherwise breached the security agreement; (b) operating the facility to preserve the value of the facility as an ongoing business; (c) the operation is being done in anticipation of a sale, transfer, or assignment of the facility; and (d) the operation is being done primarily to protect a security interest. Operating a facility for longer than one year prior to foreclosure or its equivalents shall be presumed to be operating the facility for other than to protect a security interest.

(17) "Owner or operator" means:

(a) Any person with any ownership interest in the facility or who exercises any control over the facility; or

(b) In the case of an abandoned facility, any person who had owned, or operated, or exercised control over the facility any time before its abandonment;

The term does not include:

(i) An agency of the state or unit of local government which acquired ownership or control through a drug forfeiture action under RCW 69.50.505, or involuntarily through bankruptcy, tax delinquency, abandonment, or other circumstances in which the government involuntarily acquires title. This exclusion does not apply to an agency of the state or unit of local government which has caused or contributed to the release or threatened release of a hazardous substance from the facility;

(ii) A person who, without participating in the management of a facility, holds indicia of ownership primarily to protect the person's security interest in the facility. Holders after foreclosure and its equivalent and holders who engage in any of the activities identified in subsection (18)(e) through (g) of this section shall not lose this exemption provided the holder complies with all of the following:

(A) The holder properly maintains the environmental compliance measures already in place at the facility;

(B) The holder complies with the reporting requirements in the rules adopted under this chapter;

(C) The holder complies with any order issued to the holder by the department to abate an imminent or substantial endangerment;

(D) The holder allows the department or potentially liable persons under an order, agreed order, or settlement agreement under this chapter access to the facility to conduct remedial actions and does not impede the conduct of such remedial actions;

(E) Any remedial actions conducted by the holder are in compliance with any preexisting requirements identified by the department, or, if the department has not identified such requirements for the facility, the remedial actions are con-

ducted consistent with the rules adopted under this chapter; and

(F) The holder does not exacerbate an existing release. The exemption in this subsection (17)(b)(ii) does not apply to holders who cause or contribute to a new release or threatened release or who are otherwise liable under RCW 70.105D.040(1) (b), (c), (d), and (e); provided, however, that a holder shall not lose this exemption if it establishes that any such new release has been remediated according to the requirements of this chapter and that any hazardous substances remaining at the facility after remediation of the new release are divisible from such new release;

(iii) A fiduciary in his, her, or its personal or individual capacity. This exemption does not preclude a claim against the assets of the estate or trust administered by the fiduciary or against a nonemployee agent or independent contractor retained by a fiduciary. This exemption also does not apply to the extent that a person is liable under this chapter independently of the person's ownership as a fiduciary or for actions taken in a fiduciary capacity which cause or contribute to a new release or exacerbate an existing release of hazardous substances. This exemption applies provided that, to the extent of the fiduciary's powers granted by law or by the applicable governing instrument granting fiduciary powers, the fiduciary complies with all of the following:

(A) The fiduciary properly maintains the environmental compliance measures already in place at the facility;

(B) The fiduciary complies with the reporting requirements in the rules adopted under this chapter;

(C) The fiduciary complies with any order issued to the fiduciary by the department to abate an imminent or substantial endangerment;

(D) The fiduciary allows the department or potentially liable persons under an order, agreed order, or settlement agreement under this chapter access to the facility to conduct remedial actions and does not impede the conduct of such remedial actions;

(E) Any remedial actions conducted by the fiduciary are in compliance with any preexisting requirements identified by the department, or, if the department has not identified such requirements for the facility, the remedial actions are conducted consistent with the rules adopted under this chapter; and

(F) The fiduciary does not exacerbate an existing release.

The exemption in this subsection (17)(b)(iii) does not apply to fiduciaries who cause or contribute to a new release or threatened release or who are otherwise liable under RCW 70.105D.040(1) (b), (c), (d), and (e); provided however, that a fiduciary shall not lose this exemption if it establishes that any such new release has been remediated according to the requirements of this chapter and that any hazardous substances remaining at the facility after remediation of the new release are divisible from such new release. The exemption in this subsection (17)(b)(iii) also does not apply where the fiduciary's powers to comply with this subsection (17)(b)(iii) are limited by a governing instrument created with the objective purpose of avoiding liability under this chapter or of avoiding compliance with this chapter; or

(iv) Any person who has any ownership interest in, operates, or exercises control over real property where a hazardous substance has come to be located solely as a result of

migration of the hazardous substance to the real property through the groundwater from a source off the property, if:

(A) The person can demonstrate that the hazardous substance has not been used, placed, managed, or otherwise handled on the property in a manner likely to cause or contribute to a release of the hazardous substance that has migrated onto the property;

(B) The person has not caused or contributed to the release of the hazardous substance;

(C) The person does not engage in activities that damage or interfere with the operation of remedial actions installed on the person's property or engage in activities that result in exposure of humans or the environment to the contaminated groundwater that has migrated onto the property;

(D) If requested, the person allows the department, potentially liable persons who are subject to an order, agreed order, or consent decree, and the authorized employees, agents, or contractors of each, access to the property to conduct remedial actions required by the department. The person may attempt to negotiate an access agreement before allowing access; and

(E) Legal withdrawal of groundwater does not disqualify a person from the exemption in this subsection (17)(b)(iv).

(18) "Participation in management" means exercising decision-making control over the borrower's operation of the facility, environmental compliance, or assuming or manifesting responsibility for the overall management of the enterprise encompassing the day-to-day decision making of the enterprise.

The term does not include any of the following: (a) A holder with the mere capacity or ability to influence, or the unexercised right to control facility operations; (b) a holder who conducts or requires a borrower to conduct an environmental audit or an environmental site assessment at the facility for which indicia of ownership is held; (c) a holder who requires a borrower to come into compliance with any applicable laws or regulations at the facility for which indicia of ownership is held; (d) a holder who requires a borrower to conduct remedial actions including setting minimum requirements, but does not otherwise control or manage the borrower's remedial actions or the scope of the borrower's remedial actions except to prepare a facility for sale, transfer, or assignment; (e) a holder who engages in workout or policing activities primarily to protect the holder's security interest in the facility; (f) a holder who prepares a facility for sale, transfer, or assignment or requires a borrower to prepare a facility for sale, transfer, or assignment; (g) a holder who operates a facility primarily to protect a security interest, or requires a borrower to continue to operate, a facility primarily to protect a security interest; and (h) a prospective holder who, as a condition of becoming a holder, requires an owner or operator to conduct an environmental audit, conduct an environmental site assessment, come into compliance with any applicable laws or regulations, or conduct remedial actions prior to holding a security interest is not participating in the management of the facility.

(19) "Person" means an individual, firm, corporation, association, partnership, consortium, joint venture, commercial entity, state government agency, unit of local government, federal government agency, or Indian tribe.

(20) "Policing activities" means actions the holder takes to ensure that the borrower complies with the terms of the loan or security interest or actions the holder takes or requires the borrower to take to maintain the value of the security. Policing activities include: Requiring the borrower to conduct remedial actions at the facility during the term of the security interest; requiring the borrower to comply or come into compliance with applicable federal, state, and local environmental and other laws, regulations, and permits during the term of the security interest; securing or exercising authority to monitor or inspect the facility including on-site inspections, or to monitor or inspect the borrower's business or financial condition during the term of the security interest; or taking other actions necessary to adequately police the loan or security interest such as requiring a borrower to comply with any warranties, covenants, conditions, representations, or promises from the borrower.

(21) "Potentially liable person" means any person whom the department finds, based on credible evidence, to be liable under RCW 70.105D.040. The department shall give notice to any such person and allow an opportunity for comment before making the finding, unless an emergency requires otherwise.

(22) "Prepare a facility for sale, transfer, or assignment" means to secure access to the facility; perform routine maintenance on the facility; remove inventory, equipment, or structures; properly maintain environmental compliance measures already in place at the facility; conduct remedial actions to clean up releases at the facility; or to perform other similar activities intended to preserve the value of the facility where the borrower has defaulted on the loan or otherwise breached the security agreement or after foreclosure and its equivalents and in anticipation of a pending sale, transfer, or assignment, primarily to protect the holder's security interest in the facility. A holder can prepare a facility for sale, transfer, or assignment for up to one year prior to foreclosure and its equivalents and still stay within the security interest exemption in subsection (17)(b)(ii) of this section.

(23) "Primarily to protect a security interest" means the indicia of ownership is held primarily for the purpose of securing payment or performance of an obligation. The term does not include indicia of ownership held primarily for investment purposes nor indicia of ownership held primarily for purposes other than as protection for a security interest. A holder may have other, secondary reasons, for maintaining indicia of ownership, but the primary reason must be for protection of a security interest. Holding indicia of ownership after foreclosure or its equivalents for longer than five years shall be considered to be holding the indicia of ownership for purposes other than primarily to protect a security interest. For facilities that have been acquired through foreclosure or its equivalents prior to July 23, 1995, this five-year period shall begin as of July 23, 1995.

(24) "Public notice" means, at a minimum, adequate notice mailed to all persons who have made timely request of the department and to persons residing in the potentially affected vicinity of the proposed action; mailed to appropriate news media; published in the newspaper of largest circulation in the city or county of the proposed action; and opportunity for interested persons to comment.

(25) "Release" means any intentional or unintentional entry of any hazardous substance into the environment, including but not limited to the abandonment or disposal of containers of hazardous substances.

(26) "Remedy" or "remedial action" means any action or expenditure consistent with the purposes of this chapter to identify, eliminate, or minimize any threat or potential threat posed by hazardous substances to human health or the environment including any investigative and monitoring activities with respect to any release or threatened release of a hazardous substance and any health assessments or health effects studies conducted in order to determine the risk or potential risk to human health.

(27) "Security interest" means an interest in a facility created or established for the purpose of securing a loan or other obligation. Security interests include deeds of trusts, sellers interest in a real estate contract, liens, legal, or equitable title to a facility acquired incident to foreclosure and its equivalents, and title pursuant to lease financing transactions. Security interests may also arise from transactions such as sale and leasebacks, conditional sales, installment sales, trust receipt transactions, certain assignments, factoring agreements, accounts receivable financing arrangements, easements, and consignments, if the transaction creates or establishes an interest in a facility for the purpose of securing a loan or other obligation.

(28) "Workout activities" means those actions by which a holder, at any time prior to foreclosure and its equivalents, seeks to prevent, cure, or mitigate a default by the borrower or obligor; or to preserve, or prevent the diminution of, the value of the security. Workout activities include: Restructuring or renegotiating the terms of the security interest; requiring payment of additional rent or interest; exercising forbearance; requiring or exercising rights pursuant to an assignment of accounts or other amounts owed to an obligor; requiring or exercising rights pursuant to an escrow agreement pertaining to amounts owed to an obligor; providing specific or general financial or other advice, suggestions, counseling, or guidance; and exercising any right or remedy the holder is entitled to by law or under any warranties, covenants, conditions, representations, or promises from the borrower. [2007 c 104 § 18; 2005 c 191 § 1; 1998 c 6 § 1; 1997 c 406 § 2; 1995 c 70 § 1; 1994 c 254 § 2; 1989 c 2 § 2 (Initiative Measure No. 97, approved November 8, 1988).]

**\*Reviser's note:** Due to the alphabetization of RCW 70.105.010 pursuant to RCW 1.08.015(2)(k), subsections (5), (6), and (14) were changed to subsections (1), (7), and (10) respectively.

**Application—Construction—Severability—2007 c 104:** See RCW 64.70.015 and 64.70.900.

**70.105D.030 Department's powers and duties.** (1) The department may exercise the following powers in addition to any other powers granted by law:

(a) Investigate, provide for investigating, or require potentially liable persons to investigate any releases or threatened releases of hazardous substances, including but not limited to inspecting, sampling, or testing to determine the nature or extent of any release or threatened release. If there is a reasonable basis to believe that a release or threatened release of a hazardous substance may exist, the department's authorized employees, agents, or contractors may enter upon

any property and conduct investigations. The department shall give reasonable notice before entering property unless an emergency prevents such notice. The department may by subpoena require the attendance or testimony of witnesses and the production of documents or other information that the department deems necessary;

(b) Conduct, provide for conducting, or require potentially liable persons to conduct remedial actions (including investigations under (a) of this subsection) to remedy releases or threatened releases of hazardous substances. In carrying out such powers, the department's authorized employees, agents, or contractors may enter upon property. The department shall give reasonable notice before entering property unless an emergency prevents such notice. In conducting, providing for, or requiring remedial action, the department shall give preference to permanent solutions to the maximum extent practicable and shall provide for or require adequate monitoring to ensure the effectiveness of the remedial action;

(c) Indemnify contractors retained by the department for carrying out investigations and remedial actions, but not for any contractor's reckless or willful misconduct;

(d) Carry out all state programs authorized under the federal cleanup law and the federal resource, conservation, and recovery act, 42 U.S.C. Sec. 6901 et seq., as amended;

(e) Classify substances as hazardous substances for purposes of RCW 70.105D.020 and classify substances and products as hazardous substances for purposes of RCW 82.21.020(1);

(f) Issue orders or enter into consent decrees or agreed orders that include, or issue written opinions under (i) of this subsection that may be conditioned upon, environmental covenants where necessary to protect human health and the environment from a release or threatened release of a hazardous substance from a facility. Prior to establishing an environmental covenant under this subsection, the department shall consult with and seek comment from a city or county department with land use planning authority for real property subject to the environmental covenant;

(g) Enforce the application of permanent and effective institutional controls that are necessary for a remedial action to be protective of human health and the environment and the notification requirements established in RCW 70.105D.110, and impose penalties for violations of that section consistent with RCW 70.105D.050;

(h) Require holders to conduct remedial actions necessary to abate an imminent or substantial endangerment pursuant to RCW 70.105D.020(17)(b)(ii)(C);

(i) Provide informal advice and assistance to persons regarding the administrative and technical requirements of this chapter. This may include site-specific advice to persons who are conducting or otherwise interested in independent remedial actions. Any such advice or assistance shall be advisory only, and shall not be binding on the department. As a part of providing this advice and assistance for independent remedial actions, the department may prepare written opinions regarding whether the independent remedial actions or proposals for those actions meet the substantive requirements of this chapter or whether the department believes further remedial action is necessary at the facility. Nothing in this chapter may be construed to preclude the department from issuing a written opinion on whether further remedial

action is necessary at any portion of the real property located within a facility, even if further remedial action is still necessary elsewhere at the same facility. Such a written opinion on a portion of a facility must also provide an opinion on the status of the facility as a whole. The department may collect, from persons requesting advice and assistance, the costs incurred by the department in providing such advice and assistance; however, the department shall, where appropriate, waive collection of costs in order to provide an appropriate level of technical assistance in support of public participation. The state, the department, and officers and employees of the state are immune from all liability, and no cause of action of any nature may arise from any act or omission in providing, or failing to provide, informal advice and assistance; and

(j) Take any other actions necessary to carry out the provisions of this chapter, including the power to adopt rules under chapter 34.05 RCW.

(2) The department shall immediately implement all provisions of this chapter to the maximum extent practicable, including investigative and remedial actions where appropriate. The department shall adopt, and thereafter enforce, rules under chapter 34.05 RCW to:

(a) Provide for public participation, including at least (i) public notice of the development of investigative plans or remedial plans for releases or threatened releases and (ii) concurrent public notice of all compliance orders, agreed orders, enforcement orders, or notices of violation;

(b) Establish a hazard ranking system for hazardous waste sites;

(c) Provide for requiring the reporting by an owner or operator of releases of hazardous substances to the environment that may be a threat to human health or the environment within ninety days of discovery, including such exemptions from reporting as the department deems appropriate, however this requirement shall not modify any existing requirements provided for under other laws;

(d) Establish reasonable deadlines not to exceed ninety days for initiating an investigation of a hazardous waste site after the department receives notice or otherwise receives information that the site may pose a threat to human health or the environment and other reasonable deadlines for remedying releases or threatened releases at the site;

(e) Publish and periodically update minimum cleanup standards for remedial actions at least as stringent as the cleanup standards under section 121 of the federal cleanup law, 42 U.S.C. Sec. 9621, and at least as stringent as all applicable state and federal laws, including health-based standards under state and federal law; and

(f) Apply industrial clean-up standards at industrial properties. Rules adopted under this subsection shall ensure that industrial properties cleaned up to industrial standards cannot be converted to nonindustrial uses without approval from the department. The department may require that a property cleaned up to industrial standards is cleaned up to a more stringent applicable standard as a condition of conversion to a nonindustrial use. Industrial clean-up standards may not be applied to industrial properties where hazardous substances remaining at the property after remedial action pose a threat to human health or the environment in adjacent nonindustrial areas.

(3) To achieve and protect the state's long-term ecological health, the department shall prioritize sufficient funding to clean up hazardous waste sites and prevent the creation of future hazards due to improper disposal of toxic wastes, and create financing tools to clean up large-scale hazardous waste sites requiring multiyear commitments. To effectively monitor toxic accounts expenditures, the department shall develop a comprehensive ten-year financing report that identifies long-term remedial action project costs, tracks expenses, and projects future needs.

(4) Before December 20th of each even-numbered year, the department shall:

(a) Develop a comprehensive ten-year financing report in coordination with all local governments with clean-up responsibilities that identifies the projected biennial hazardous waste site remedial action needs that are eligible for funding from the local toxics control account;

(b) Work with local governments to develop working capital reserves to be incorporated in the ten-year financing report;

(c) Identify the projected remedial action needs for orphaned, abandoned, and other clean-up sites that are eligible for funding from the state toxics control account;

(d) Project the remedial action need, cost, revenue, and any recommended working capital reserve estimate to the next biennium's long-term remedial action needs from both the local toxics control account and the state toxics control account, and submit this information to the appropriate standing fiscal and environmental committees of the senate and house of representatives. This submittal must also include a ranked list of such remedial action projects for both accounts; and

(e) Provide the legislature and the public each year with an accounting of the department's activities supported by appropriations from the state and local toxics control accounts, including a list of known hazardous waste sites and their hazard rankings, actions taken and planned at each site, how the department is meeting its waste management priorities under RCW 70.105.150, and all funds expended under this chapter.

(5) The department shall establish a program to identify potential hazardous waste sites and to encourage persons to provide information about hazardous waste sites.

(6) For all facilities where an environmental covenant has been required under subsection (1)(f) of this section, including all facilities where the department has required an environmental covenant under an order, agreed order, or consent decree, or as a condition of a written opinion issued under the authority of subsection (1)(i) of this section, the department shall periodically review the environmental covenant for effectiveness. Except as otherwise provided in (c) of this subsection, the department shall conduct a review at least once every five years after an environmental covenant is recorded.

(a) The review shall consist of, at a minimum:

(i) A review of the title of the real property subject to the environmental covenant to determine whether the environmental covenant was properly recorded and, if applicable, amended or terminated;

(ii) A physical inspection of the real property subject to the environmental covenant to determine compliance with

(2010 Ed.)

the environmental covenant, including whether any development or redevelopment of the real property has violated the terms of the environmental covenant; and

(iii) A review of the effectiveness of the environmental covenant in limiting or prohibiting activities that may interfere with the integrity of the remedial action or that may result in exposure to or migration of hazardous substances. This shall include a review of available monitoring data.

(b) If an environmental covenant has been amended or terminated without proper authority, or if the terms of an environmental covenant have been violated, or if the environmental covenant is no longer effective in limiting or prohibiting activities that may interfere with the integrity of the remedial action or that may result in exposure to or migration of hazardous substances, then the department shall take any and all appropriate actions necessary to ensure compliance with the environmental covenant and the policies and requirements of this chapter.

(c) For facilities where an environmental covenant required by the department under subsection (1)(f) of this section was required before July 1, 2007, the department shall:

(i) Enter all required information about the environmental covenant into the registry established under RCW 64.70.120 by June 30, 2008;

(ii) For those facilities where more than five years has elapsed since the environmental covenant was required and the department has yet to conduct a review, conduct an initial review according to the following schedule:

(A) By December 30, 2008, fifty facilities;

(B) By June 30, 2009, fifty additional facilities; and

(C) By June 30, 2010, the remainder of the facilities;

(iii) Once this initial review has been completed, conduct subsequent reviews at least once every five years. [2009 c 560 § 10. Prior: 2007 c 446 § 1; 2007 c 225 § 1; 2007 c 104 § 19; 2002 c 288 § 3; 2001 c 291 § 401; 1997 c 406 § 3; 1995 c 70 § 2; prior: 1994 c 257 § 11; 1994 c 254 § 3; 1989 c 2 § 3 (Initiative Measure No. 97, approved November 8, 1988).]

**Intent—Effective date—Disposition of property and funds—Assignment/delegation of contractual rights or duties—2009 c 560:** See notes following RCW 18.06.080.

**Application—Construction—Severability—2007 c 104:** See RCW 64.70.015 and 64.70.900.

**Effective date—2002 c 288 §§ 2-4:** See note following RCW 70.105D.110.

**Severability—2002 c 288:** See note following RCW 70.105D.010.

**Part headings not law—Effective date—2001 c 291:** See notes following RCW 43.20A.360.

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**70.105D.040 Standard of liability—Settlement.** (1) Except as provided in subsection (3) of this section, the following persons are liable with respect to a facility:

(a) The owner or operator of the facility;

(b) Any person who owned or operated the facility at the time of disposal or release of the hazardous substances;

(c) Any person who owned or possessed a hazardous substance and who by contract, agreement, or otherwise arranged for disposal or treatment of the hazardous substance at the facility, or arranged with a transporter for transport for disposal or treatment of the hazardous substances at the facil-

ity, or otherwise generated hazardous wastes disposed of or treated at the facility;

(d) Any person (i) who accepts or accepted any hazardous substance for transport to a disposal, treatment, or other facility selected by such person from which there is a release or a threatened release for which remedial action is required, unless such facility, at the time of disposal or treatment, could legally receive such substance; or (ii) who accepts a hazardous substance for transport to such a facility and has reasonable grounds to believe that such facility is not operated in accordance with chapter 70.105 RCW; and

(e) Any person who both sells a hazardous substance and is responsible for written instructions for its use if (i) the substance is used according to the instructions and (ii) the use constitutes a release for which remedial action is required at the facility.

(2) Each person who is liable under this section is strictly liable, jointly and severally, for all remedial action costs and for all natural resource damages resulting from the releases or threatened releases of hazardous substances. The attorney general, at the request of the department, is empowered to recover all costs and damages from persons liable therefor.

(3) The following persons are not liable under this section:

(a) Any person who can establish that the release or threatened release of a hazardous substance for which the person would be otherwise responsible was caused solely by:

- (i) An act of God;
- (ii) An act of war; or

(iii) An act or omission of a third party (including but not limited to a trespasser) other than (A) an employee or agent of the person asserting the defense, or (B) any person whose act or omission occurs in connection with a contractual relationship existing, directly or indirectly, with the person asserting this defense to liability. This defense only applies where the person asserting the defense has exercised the utmost care with respect to the hazardous substance, the foreseeable acts or omissions of the third party, and the foreseeable consequences of those acts or omissions;

(b) Any person who is an owner, past owner, or purchaser of a facility and who can establish by a preponderance of the evidence that at the time the facility was acquired by the person, the person had no knowledge or reason to know that any hazardous substance, the release or threatened release of which has resulted in or contributed to the need for the remedial action, was released or disposed of on, in, or at the facility. This subsection (b) is limited as follows:

(i) To establish that a person had no reason to know, the person must have undertaken, at the time of acquisition, all appropriate inquiry into the previous ownership and uses of the property, consistent with good commercial or customary practice in an effort to minimize liability. Any court interpreting this subsection (b) shall take into account any specialized knowledge or experience on the part of the person, the relationship of the purchase price to the value of the property if uncontaminated, commonly known or reasonably ascertainable information about the property, the obviousness of the presence or likely presence of contamination at the property, and the ability to detect such contamination by appropriate inspection;

(ii) The defense contained in this subsection (b) is not available to any person who had actual knowledge of the release or threatened release of a hazardous substance when the person owned the real property and who subsequently transferred ownership of the property without first disclosing such knowledge to the transferee;

(iii) The defense contained in this subsection (b) is not available to any person who, by any act or omission, caused or contributed to the release or threatened release of a hazardous substance at the facility;

(c) Any natural person who uses a hazardous substance lawfully and without negligence for any personal or domestic purpose in or near a dwelling or accessory structure when that person is: (i) A resident of the dwelling; (ii) a person who, without compensation, assists the resident in the use of the substance; or (iii) a person who is employed by the resident, but who is not an independent contractor;

(d) Any person who, for the purpose of growing food crops, applies pesticides or fertilizers without negligence and in accordance with all applicable laws and regulations.

(4) There may be no settlement by the state with any person potentially liable under this chapter except in accordance with this section.

(a) The attorney general may agree to a settlement with any potentially liable person only if the department finds, after public notice and any required hearing, that the proposed settlement would lead to a more expeditious cleanup of hazardous substances in compliance with cleanup standards under RCW 70.105D.030(2)(e) and with any remedial orders issued by the department. Whenever practicable and in the public interest, the attorney general may expedite such a settlement with persons whose contribution is insignificant in amount and toxicity. A hearing shall be required only if at least ten persons request one or if the department determines a hearing is necessary.

(b) A settlement agreement under this section shall be entered as a consent decree issued by a court of competent jurisdiction.

(c) A settlement agreement may contain a covenant not to sue only of a scope commensurate with the settlement agreement in favor of any person with whom the attorney general has settled under this section. Any covenant not to sue shall contain a reopener clause which requires the court to amend the covenant not to sue if factors not known at the time of entry of the settlement agreement are discovered and present a previously unknown threat to human health or the environment.

(d) A party who has resolved its liability to the state under this section shall not be liable for claims for contribution regarding matters addressed in the settlement. The settlement does not discharge any of the other liable parties but it reduces the total potential liability of the others to the state by the amount of the settlement.

(e) If the state has entered into a consent decree with an owner or operator under this section, the state shall not enforce this chapter against any owner or operator who is a successor in interest to the settling party unless under the terms of the consent decree the state could enforce against the settling party, if:

(i) The successor owner or operator is liable with respect to the facility solely due to that person's ownership interest or

operator status acquired as a successor in interest to the owner or operator with whom the state has entered into a consent decree; and

(ii) The stay of enforcement under this subsection does not apply if the consent decree was based on circumstances unique to the settling party that do not exist with regard to the successor in interest, such as financial hardship. For consent decrees entered into before July 27, 1997, at the request of a settling party or a potential successor owner or operator, the attorney general shall issue a written opinion on whether a consent decree contains such unique circumstances. For all other consent decrees, such unique circumstances shall be specified in the consent decree.

(f) Any person who is not subject to enforcement by the state under (e) of this subsection is not liable for claims for contribution regarding matters addressed in the settlement.

(5)(a) In addition to the settlement authority provided under subsection (4) of this section, the attorney general may agree to a settlement with a person not currently liable for remedial action at a facility who proposes to purchase, redevelop, or reuse the facility, provided that:

(i) The settlement will yield substantial new resources to facilitate cleanup;

(ii) The settlement will expedite remedial action consistent with the rules adopted under this chapter; and

(iii) Based on available information, the department determines that the redevelopment or reuse of the facility is not likely to contribute to the existing release or threatened release, interfere with remedial actions that may be needed at the site, or increase health risks to persons at or in the vicinity of the site.

(b) The legislature recognizes that the state does not have adequate resources to participate in all property transactions involving contaminated property. The primary purpose of this subsection (5) is to promote the cleanup and reuse of vacant or abandoned commercial or industrial contaminated property. The attorney general and the department may give priority to settlements that will provide a substantial public benefit, including, but not limited to the reuse of a vacant or abandoned manufacturing or industrial facility, or the development of a facility by a governmental entity to address an important public purpose.

(6) Nothing in this chapter affects or modifies in any way any person's right to seek or obtain relief under other statutes or under common law, including but not limited to damages for injury or loss resulting from a release or threatened release of a hazardous substance. No settlement by the department or remedial action ordered by a court or the department affects any person's right to obtain a remedy under common law or other statutes. [1997 c 406 § 4; 1994 c 254 § 4; 1989 c 2 § 4 (Initiative Measure No. 97, approved November 8, 1988).]

**70.105D.050 Enforcement.** (1) With respect to any release, or threatened release, for which the department does not conduct or contract for conducting remedial action and for which the department believes remedial action is in the public interest, the director shall issue orders or agreed orders requiring potentially liable persons to provide the remedial action. Any liable person who refuses, without sufficient

cause, to comply with an order or agreed order of the director is liable in an action brought by the attorney general for:

(a) Up to three times the amount of any costs incurred by the state as a result of the party's refusal to comply; and

(b) A civil penalty of up to twenty-five thousand dollars for each day the party refuses to comply.

The treble damages and civil penalty under this subsection apply to all recovery actions filed on or after March 1, 1989.

(2) Any person who incurs costs complying with an order issued under subsection (1) of this section may petition the department for reimbursement of those costs. If the department refuses to grant reimbursement, the person may within thirty days thereafter file suit and recover costs by proving that he or she was not a liable person under RCW 70.105D.040 and that the costs incurred were reasonable.

(3) The attorney general shall seek, by filing an action if necessary, to recover the amounts spent by the department for investigative and remedial actions and orders, and agreed orders, including amounts spent prior to March 1, 1989.

(4) The attorney general may bring an action to secure such relief as is necessary to protect human health and the environment under this chapter.

(5)(a) Any person may commence a civil action to compel the department to perform any nondiscretionary duty under this chapter. At least thirty days before commencing the action, the person must give notice of intent to sue, unless a substantial endangerment exists. The court may award attorneys' fees and other costs to the prevailing party in the action.

(b) Civil actions under this section and RCW 70.105D.060 may be brought in the superior court of Thurston county or of the county in which the release or threatened release exists.

(6) Any person who fails to provide notification of releases consistent with RCW 70.105D.110 or who submits false information is liable in an action brought by the attorney general for a civil penalty of up to five thousand dollars per day for each day the party refuses to comply.

(7) Any person who owns real property or lender holding a mortgage on real property that is subject to a lien filed under RCW 70.105D.055 may petition the department to have the lien removed or the amount of the lien reduced. If, after consideration of the petition and the information supporting the petition, the department decides to deny the request, the person may, within ninety days after receipt of the department's denial, file suit for removal or reduction of the lien. The person is entitled to removal of a lien filed under RCW 70.105D.055(2)(a) if they can prove by a preponderance of the evidence that the person is not a liable party under RCW 70.105D.040. The person is entitled to a reduction of the amount of the lien if they can prove by a preponderance of the evidence:

(a) For liens filed under RCW 70.105D.055(2)(a), the amount of the lien exceeds the remedial action costs the department incurred related to cleanup of the real property; and

(b) For liens filed under RCW 70.105D.055(2)(c), the amount of the lien exceeds the remedial action costs the department incurred related to cleanup of the real property or exceeds the increase of the fair market value of the real property solely attributable to the remedial action conducted by

the department. [2005 c 211 § 2; 2002 c 288 § 4; 1994 c 257 § 12; 1989 c 2 § 5 (Initiative Measure No. 97, approved November 8, 1988).]

**Effective date—2002 c 288 §§ 2-4:** See note following RCW 70.105D.110.

**Severability—2002 c 288:** See note following RCW 70.105D.010.

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**70.105D.055 Lien authority.** (1) It is in the public interest for the department to recover remedial action costs incurred in discharging its responsibility under this chapter, as these recovered funds can then be applied to the cleanup of other facilities. Thus, in addition to other cost-recovery mechanisms provided under this chapter, this section is intended to facilitate the recovery of state funds spent on remedial actions by providing the department with lien authority. This will also prevent a facility owner or mortgagee from gaining a financial windfall from increased land value resulting from department-conducted remedial actions at the expense of the state taxpayers.

(2) If the state of Washington incurs remedial action costs relating to a remedial action of real property, and those remedial action costs are unrecovered by the state of Washington, the department may file a lien against that real property.

(a) Except as provided in (c) of this subsection, liens filed under this section shall have priority in rank over all other privileges, liens, monetary encumbrances, or other security interests affecting the real property, whenever incurred, filed, or recorded, except for the following liens:

(i) Local and special district property tax assessments; and  
(ii) Mortgage liens recorded before liens or notices of intent to conduct remedial actions are recorded under this section.

(b) Liens filed pursuant to (a) and (c) of this subsection shall not exceed the remedial action costs incurred by the state.

(c)(i) If the real property for which the department has incurred remedial action costs is abandoned, the department may choose to limit the amount of the lien to the increase in the fair market value of the real property that is attributable to a remedial action conducted by the department. The increase in fair market value shall be determined by subtracting the county assessor's value of the real property for the most recent year prior to remedial action being initiated from the value of the real property after remedial action. The value of the real property after remedial action shall be determined by the bona fide purchase price of the real property or by a real estate appraiser retained by the department. Liens limited in this way have priority in rank over all other privileges, liens, monetary encumbrances, or other security interests affecting the real property, whenever incurred, filed, or recorded.

(ii) For the purposes of this subsection, "abandoned" means there has not been significant business activity on the real property for three years or property taxes owed on the real property are three years in arrears prior to the department incurring costs attributable to this lien.

(d) The department shall, when notifying potentially liable persons of their potential liability under RCW 70.105D.040, include a notice stating that if the department

incurs remedial action costs relating to the remediation of real property and the costs are not recovered by the department, the department may file a lien against that real property under this section.

(e) Except for emergency remedial actions, the department must provide notice to the following persons before initiating remedial actions conducted by persons under contract to the department on real property on which a lien may be filed under this section:

- (i) The real property owner;
- (ii) Mortgagees;
- (iii) Lienholders of record;
- (iv) Persons known to the department to be conducting remedial actions at the facility at the time of such notice; and
- (v) Persons known to the department to be under contract to conduct remedial actions at the facility at the time of such notice.

For emergency remedial actions, this notice shall be provided within thirty days after initiation of the emergency remedial actions.

(f) The department may record a copy of the notice in (e) of this subsection, along with a legal description of the property on which the remedial action will take place, with the county auditor in the county where the real property is located. If the department subsequently files a lien, the effective date of the lien will be the date this notice was recorded.

(3) Before filing a lien under this section, the department shall give the owner of real property on which the lien is to be filed and mortgagees and lienholders of record a notice of its intent to file a lien:

(a) The notice required under this subsection (3) must be sent by certified mail to the real property owner and mortgagees of record at the addresses listed in the recorded documents. If the real property owner is unknown or if a mailed notice is returned as undeliverable, the department shall provide notice by posting a legal notice in the newspaper of largest circulation in the county [in which] the site is located. The notice shall provide:

- (i) A statement of the purpose of the lien;
- (ii) A brief description of the real property to be affected by the lien;
- (iii) A statement of the remedial action costs incurred by the state related to the real property affected by the lien;
- (iv) A brief statement of facts showing probable cause that the real property is the subject of the remedial action costs incurred by the department; and

(v) The time period following service or other notice during which any recipient of the notice whose legal rights may be affected by the lien may comment on the notice.

(b) Any comments on the notice must be received by the department on or before thirty days following service or other provision of the notice of intent to file a lien.

(c) If no comments are received by the department, the lien may be filed on the real property immediately.

(d) If the department receives any comments on the lien, the department shall determine if there is probable cause for filing the certificate of lien. If the department determines there is probable cause, the department may file the lien. Any further challenge to the lien may only occur at the times specified under RCW 70.105D.060.

(e) If the department has reason to believe that exigent circumstances require the filing of a lien prior to giving notice under this subsection (3), or prior to the expiration of the time period for comments, the department may file the lien immediately. For the purposes of this subsection (3), exigent circumstances include, but are not limited to, an imminent bankruptcy filing by the real property owner, or the imminent transfer or sale of the real property subject to lien by the real property owner, or both.

(4) A lien filed under this section is effective when a statement of lien is filed with the county auditor in the county where the real property is located. The statement of lien must include a description of the real property subject to lien and the amount of the lien.

(5) Unless the department determines it is in the public interest to remove the lien, the lien continues until the liability for the remedial action costs have been satisfied through sale of the real property, foreclosure, or other means agreed to by the department. Any action for foreclosure of the lien shall be brought by the attorney general in a civil action in the court having jurisdiction and in the manner prescribed for the judicial foreclosure of a mortgage.

(6)(a) This section does not apply to real property owned by a local government or special purpose district or real property used solely for residential purposes and consisting of four residential units or less at the time the lien is recorded. This limitation does not apply to illegal drug manufacturing and storage sites under chapter 64.44 RCW.

(b) If the real property owner has consented to the department filing a lien on the real property, then only subsection (3)(a)(i) through (iii) of this section requiring notice to mortgagees and lienholders of record apply. [2005 c 211 § 1.]

**70.105D.060 Timing of review.** The department's investigative and remedial decisions under RCW 70.105D.030 and 70.105D.050, its decisions regarding filing a lien under RCW 70.105D.055, and its decisions regarding liable persons under RCW 70.105D.020, 70.105D.040, 70.105D.050, and 70.105D.055 shall be reviewable exclusively in superior court and only at the following times: (1) In a cost recovery suit under RCW 70.105D.050(3); (2) in a suit by the department to enforce an order or an agreed order, or seek a civil penalty under this chapter; (3) in a suit for reimbursement under RCW 70.105D.050(2); (4) in a suit by the department to compel investigative or remedial action; (5) in a citizen's suit under RCW 70.105D.050(5); and (6) in a suit for removal or reduction of a lien under RCW 70.105D.050(7). Except in suits for reduction or removal of a lien under RCW 70.105D.050(7), the court shall uphold the department's actions unless they were arbitrary and capricious. In suits for reduction or removal of a lien under RCW 70.105D.050(7), the court shall review such suits pursuant to the standards set forth in RCW 70.105D.050(7). [2007 c 104 § 20; 2005 c 211 § 3; 1994 c 257 § 13; 1989 c 2 § 6 (Initiative Measure No. 97, approved November 8, 1988).]

**Application—Construction—Severability—2007 c 104:** See RCW 64.70.015 and 64.70.900.

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

(2010 Ed.)

**70.105D.070 Toxics control accounts.** (1) The state toxics control account and the local toxics control account are hereby created in the state treasury.

(2) The following moneys shall be deposited into the state toxics control account: (a) Those revenues which are raised by the tax imposed under RCW 82.21.030 and which are attributable to that portion of the rate equal to thirty-three one-hundredths of one percent; (b) the costs of remedial actions recovered under this chapter or chapter 70.105A RCW; (c) penalties collected or recovered under this chapter; and (d) any other money appropriated or transferred to the account by the legislature. Moneys in the account may be used only to carry out the purposes of this chapter, including but not limited to the following activities:

(i) The state's responsibility for hazardous waste planning, management, regulation, enforcement, technical assistance, and public education required under chapter 70.105 RCW;

(ii) The state's responsibility for solid waste planning, management, regulation, enforcement, technical assistance, and public education required under chapter 70.95 RCW;

(iii) The hazardous waste cleanup program required under this chapter;

(iv) State matching funds required under the federal cleanup law;

(v) Financial assistance for local programs in accordance with chapters 70.95, 70.95C, 70.95I, and 70.105 RCW;

(vi) State government programs for the safe reduction, recycling, or disposal of hazardous wastes from households, small businesses, and agriculture;

(vii) Hazardous materials emergency response training;

(viii) Water and environmental health protection and monitoring programs;

(ix) Programs authorized under chapter 70.146 RCW;

(x) A public participation program, including regional citizen advisory committees;

(xi) Public funding to assist potentially liable persons to pay for the costs of remedial action in compliance with cleanup standards under RCW 70.105D.030(2)(e) but only when the amount and terms of such funding are established under a settlement agreement under RCW 70.105D.040(4) and when the director has found that the funding will achieve both (A) a substantially more expeditious or enhanced cleanup than would otherwise occur, and (B) the prevention or mitigation of unfair economic hardship;

(xii) Development and demonstration of alternative management technologies designed to carry out the hazardous waste management priorities of RCW 70.105.150;

(xiii) During the 2009-2011 fiscal biennium, shoreline update technical assistance; and

(xiv) During the 2009-2011 fiscal biennium, multijurisdictional permitting teams.

(3) The following moneys shall be deposited into the local toxics control account: Those revenues which are raised by the tax imposed under RCW 82.21.030 and which are attributable to that portion of the rate equal to thirty-seven one-hundredths of one percent.

(a) Moneys deposited in the local toxics control account shall be used by the department for grants or loans to local governments for the following purposes in descending order of priority:

- (i) Remedial actions;
- (ii) Hazardous waste plans and programs under chapter 70.105 RCW;
- (iii) Solid waste plans and programs under chapters 70.95, 70.95C, 70.95I, and 70.105 RCW;
- (iv) Funds for a program to assist in the assessment and cleanup of sites of methamphetamine production, but not to be used for the initial containment of such sites, consistent with the responsibilities and intent of RCW 69.50.511; and
- (v) Cleanup and disposal of hazardous substances from abandoned or derelict vessels, defined for the purposes of this section as vessels that have little or no value and either have no identified owner or have an identified owner lacking financial resources to clean up and dispose of the vessel, that pose a threat to human health or the environment.

(b) Funds for plans and programs shall be allocated consistent with the priorities and matching requirements established in chapters 70.105, 70.95C, 70.95I, and 70.95 RCW, except that any applicant that is a Puget Sound partner, as defined in RCW 90.71.010, along with any project that is referenced in the action agenda developed by the Puget Sound partnership under RCW 90.71.310, shall, except as conditioned by RCW 70.105D.120, receive priority for any available funding for any grant or funding programs or sources that use a competitive bidding process. During the 2007-2009 fiscal biennium, moneys in the account may also be used for grants to local governments to retrofit public sector diesel equipment and for storm water planning and implementation activities.

(c) To expedite cleanups throughout the state, the department shall partner with local communities and liable parties for cleanups. The department is authorized to use the following additional strategies in order to ensure a healthful environment for future generations:

(i) The director may alter grant-matching requirements to create incentives for local governments to expedite cleanups when one of the following conditions exists:

(A) Funding would prevent or mitigate unfair economic hardship imposed by the clean-up liability;

(B) Funding would create new substantial economic development, public recreational, or habitat restoration opportunities that would not otherwise occur; or

(C) Funding would create an opportunity for acquisition and redevelopment of vacant, orphaned, or abandoned property under RCW 70.105D.040(5) that would not otherwise occur;

(ii) The use of outside contracts to conduct necessary studies;

(iii) The purchase of remedial action cost-cap insurance, when necessary to expedite multiparty clean-up efforts.

(d) To facilitate and expedite cleanups using funds from the local toxics control account, during the 2009-2011 fiscal biennium the director may establish grant-funded accounts to hold and disperse local toxics control account funds and funds from local governments to be used for remedial actions.

(4) Except for unanticipated receipts under RCW 43.79.260 through 43.79.282, moneys in the state and local toxics control accounts may be spent only after appropriation by statute.

(5) Except during the 2009-2011 fiscal biennium, one percent of the moneys deposited into the state and local toxics control accounts shall be allocated only for public participation grants to persons who may be adversely affected by a release or threatened release of a hazardous substance and to not-for-profit public interest organizations. The primary purpose of these grants is to facilitate the participation by persons and organizations in the investigation and remedying of releases or threatened releases of hazardous substances and to implement the state's solid and hazardous waste management priorities. No grant may exceed sixty thousand dollars. Grants may be renewed annually. Moneys appropriated for public participation from either account which are not expended at the close of any biennium shall revert to the state toxics control account.

(6) No moneys deposited into either the state or local toxics control account may be used for solid waste incinerator feasibility studies, construction, maintenance, or operation, or, after January 1, 2010, for projects designed to address the restoration of Puget Sound, funded in a competitive grant process, that are in conflict with the action agenda developed by the Puget Sound partnership under RCW 90.71.310.

(7) The department shall adopt rules for grant or loan issuance and performance.

(8) During the 2007-2009 and 2009-2011 fiscal biennia, the legislature may transfer from the local toxics control account to either the state general fund or the oil spill prevention account, or both such amounts as reflect excess fund balance in the account.

(9) During the 2009-2011 fiscal biennium, the local toxics control account may also be used for a standby rescue tug at Neah Bay, local government shoreline update grants, private and public sector diesel equipment retrofit, and oil spill prevention, preparedness, and response activities.

(10) During the 2009-2011 fiscal biennium, the legislature may transfer from the state toxics control account to the state general fund such amounts as reflect the excess fund balance in the account. [2010 1st sp.s. c 37 § 942; 2009 c 564 § 951; 2009 c 187 § 5. Prior: 2008 c 329 § 921; 2008 c 329 § 920; 2008 c 329 § 919; 2008 c 328 § 6009; prior: 2007 c 522 § 954; 2007 c 520 § 6033; 2007 c 446 § 2; 2007 c 341 § 30; 2005 c 488 § 926; 2003 1st sp.s. c 25 § 933; 2001 c 27 § 2; 2000 2nd sp.s. c 1 § 912; 1999 c 309 § 923; prior: 1998 c 346 § 905; 1998 c 81 § 2; 1997 c 406 § 5; 1994 c 252 § 5; 1991 sp.s. c 13 § 69; 1989 c 2 § 7 (Initiative Measure No. 97, approved November 8, 1988).]

**Reviser's note:** The 2010 1st sp.s. c 37 § 942 amendment to this section was not displayed as a reenactment. All prior amendments are included in the language amended.

**Effective date—2010 1st sp.s. c 37:** See note following RCW 13.06.050.

**Effective date—2009 c 564:** See note following RCW 2.68.020.

**Severability—Effective date—2008 c 329:** See notes following RCW 28B.105.110.

**Part headings not law—Severability—Effective date—2008 c 328:** See notes following RCW 43.155.050.

**Severability—Effective date—2007 c 522:** See notes following RCW 15.64.050.

**Part headings not law—Severability—Effective date—2007 c 520:** See notes following RCW 43.19.125.

**Severability—Effective date—2007 c 341:** See RCW 90.71.906 and 90.71.907.

**Part headings not law—Severability—Effective dates—2005 c 488:** See notes following RCW 28B.50.360.

**Severability—Effective date—2003 1st sp.s. c 25:** See notes following RCW 19.28.351.

**Finding—2001 c 27:** "The legislature finds that there is an increasing number of derelict vessels that have been abandoned in the waters along the shorelines of the state. These vessels pose hazards to navigation and threaten the environment with the potential release of hazardous materials. There is no current federal program that comprehensively addresses this problem, and the legislature recognizes that the state must assist in providing a solution to this increasing hazard." [2001 c 27 § 1.]

**Severability—Effective date—2000 2nd sp.s. c 1:** See notes following RCW 41.05.143.

**Finding—Effective date—1994 c 252:** See notes following RCW 70.119A.020.

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**70.105D.080 Private right of action—Remedial action costs.** Except as provided in RCW 70.105D.040(4) (d) and (f), a person may bring a private right of action, including a claim for contribution or for declaratory relief, against any other person liable under RCW 70.105D.040 for the recovery of remedial action costs. In the action, natural resource damages paid to the state under this chapter may also be recovered. Recovery shall be based on such equitable factors as the court determines are appropriate. Remedial action costs shall include reasonable attorneys' fees and expenses. Recovery of remedial action costs shall be limited to those remedial actions that, when evaluated as a whole, are the substantial equivalent of a department-conducted or department-supervised remedial action. Substantial equivalence shall be determined by the court with reference to the rules adopted by the department under this chapter. An action under this section may be brought after remedial action costs are incurred but must be brought within three years from the date remedial action confirms cleanup standards are met or within one year of May 12, 1993, whichever is later. The prevailing party in such an action shall recover its reasonable attorneys' fees and costs. This section applies to all causes of action regardless of when the cause of action may have arisen. To the extent a cause of action has arisen prior to May 12, 1993, this section applies retroactively, but in all other respects it applies prospectively. [1997 c 406 § 6; 1993 c 326 § 1.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**70.105D.090 Remedial actions—Exemption from procedural requirements.** (1) A person conducting a remedial action at a facility under a consent decree, order, or agreed order, and the department when it conducts a remedial action, are exempt from the procedural requirements of chapters 70.94, 70.95, 70.105, 77.55, 90.48, and 90.58 RCW, and the procedural requirements of any laws requiring or authorizing local government permits or approvals for the remedial action. The department shall ensure compliance with the substantive provisions of chapters 70.94, 70.95, 70.105, 77.55, 90.48, and 90.58 RCW, and the substantive provisions of any laws requiring or authorizing local government permits or approvals. The department shall establish procedures for ensuring that such remedial actions comply with the sub-

(2010 Ed.)

stantive requirements adopted pursuant to such laws, and shall consult with the state agencies and local governments charged with implementing these laws. The procedures shall provide an opportunity for comment by the public and by the state agencies and local governments that would otherwise implement the laws referenced in this section. Nothing in this section is intended to prohibit implementing agencies from charging a fee to the person conducting the remedial action to defray the costs of services rendered relating to the substantive requirements for the remedial action.

(2) An exemption in this section or in RCW 70.94.335, 70.95.270, 70.105.116, \*77.55.030, 90.48.039, and 90.58.355 shall not apply if the department determines that the exemption would result in loss of approval from a federal agency necessary for the state to administer any federal law, including the federal resource conservation and recovery act, the federal clean water act, the federal clean air act, and the federal coastal zone management act. Such a determination by the department shall not affect the applicability of the exemptions to other statutes specified in this section. [2003 c 39 § 30; 1994 c 257 § 14.]

\*Reviser's note: RCW 77.55.030 was recodified as RCW 77.55.061 pursuant to 2005 c 146 § 1001.

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**70.105D.100 Grants to local governments—Statement of environmental benefits—Development of outcome-focused performance measures.** In providing grants to local governments, the department shall require grant recipients to incorporate the environmental benefits of the project into their grant applications, and the department shall utilize the statement of environmental benefit[s] in its prioritization and selection process. The department shall also develop appropriate outcome-focused performance measures to be used both for management and performance assessment of the grant program. To the extent possible, the department should coordinate its performance measure system with other natural resource-related agencies as defined in RCW 43.41.270. The department shall consult with affected interest groups in implementing this section. [2001 c 227 § 5.]

**Findings—Intent—2001 c 227:** See note following RCW 43.41.270.

**70.105D.110 Releases of hazardous substances—Notice—Exemptions.** (1) Except as provided in subsection (5) of this section, any owner or operator of a facility that is actively transitioning from operating under a federal permit for treatment, storage, or disposal of hazardous waste issued under 42 U.S.C. Sec. 6925 to operating under the provisions of this chapter, who has information that a hazardous substance has been released to the environment at the owner or operator's facility that may be a threat to human health or the environment, shall issue a notice to the department within ninety days. The notice shall include a description of any remedial actions planned, completed, or underway.

(2) The notice must be posted in a visible, publicly accessible location on the facility, to remain in place until all remedial actions except confirmational monitoring are complete.

(3) After receiving the notice from the facility, the department must review the notice and mail a summary of its

contents, along with any additional information deemed appropriate by the department, to:

(a) Each residence and landowner of a residence whose property boundary is within three hundred feet of the boundary of the property where the release occurred or if the release occurred from a pipeline or other facility that does not have a property boundary, within three hundred feet of the actual release;

(b) Each business and landowner of a business whose property boundary is within three hundred feet of the boundary of the property where the release occurred;

(c) Each residence, landowner of a residence, and business with a property boundary within the area where hazardous substances have come to be located as a result of the release;

(d) Neighborhood associations and community organizations representing an area within one mile of the facility and recognized by the city or county with jurisdiction within this area;

(e) The city, county, and local health district with jurisdiction within the areas described in (a), (b), and (c) of this subsection; and

(f) The department of health.

(4) A notice produced by a facility shall provide the following information:

(a) The common name of any hazardous substances released and, if available, the chemical abstract service registry number of these substances;

(b) The address of the facility where the release occurred;

(c) The date the release was discovered;

(d) The cause and date of the release, if known;

(e) The remedial actions being taken or planned to address the release;

(f) The potential health and environmental effects of the hazardous substances released; and

(g) The name, address, and telephone number of a contact person at the facility where the release occurred.

(5) The following releases are exempt from the notification requirements in this section:

(a) Application of pesticides and fertilizers for their intended purposes and according to label instructions;

(b) The lawful and nonnegligent use of hazardous household substances by a natural person for personal or domestic purposes;

(c) The discharge of hazardous substances in compliance with permits issued under chapter 70.94, 90.48, or 90.56 RCW;

(d) De minimis amounts of any hazardous substance leaked or discharged onto the ground;

(e) The discharge of hazardous substances to a permitted waste water treatment facility or from a permitted waste water collection system or treatment facility as allowed by a facility's discharge permit;

(f) Any releases originating from a single-family or multifamily residence, including but not limited to the discharge of oil from a residential home heating oil tank with the capacity of five hundred gallons or less;

(g) Any spill on a public road, street, or highway or to surface waters of the state that has previously been reported

to the United States coast guard and the state division of emergency management under chapter 90.56 RCW;

(h) Any release of hazardous substances to the air;

(i) Any release that occurs on agricultural land, including land used to grow trees for the commercial production of wood or wood fiber, that is at least five acres in size, when the effects of the release do not come within three hundred feet of any property boundary. For the purposes of this subsection, agricultural land includes incidental uses that are compatible with agricultural or silvicultural purposes, including, but not limited to, land used for the housing of the owner, operator, or employees, structures used for the storage or repair of equipment, machinery, and chemicals, and any paths or roads on the land; and

(j) Releases that, before January 1, 2003, have been previously reported to the department, or remediated in compliance with a settlement agreement under RCW 70.105D.040(4) or enforcement order or agreed order issued under this chapter or have been the subject of an opinion from the department under RCW 70.105D.030(1)(i) that no further remedial action is required.

An exemption from the notification requirements of this section does not exempt the owner or operator of a facility from any other notification or reporting requirements, or imply a release from liability under this chapter.

(6) If a significant segment of the community to be notified speaks a language other than English, an appropriate translation of the notice must also be posted and mailed to the department in accordance with the requirements of this section.

(7) The facility where the release occurred is responsible for reimbursing the department within thirty days for the actual costs associated with the production and mailing of the notices under this section. [2002 c 288 § 2.]

**Effective date—2002 c 288 §§ 2-4:** "Sections 2 through 4 of this act take effect January 1, 2003." [2002 c 288 § 6.]

**Severability—2002 c 288:** See note following RCW 70.105D.010.

**70.105D.120 Puget Sound partners.** When administering funds under this chapter, the department shall give preference only to Puget Sound partners, as defined in RCW 90.71.010, in comparison to other entities that are eligible to be included in the definition of Puget Sound partner. Entities that are not eligible to be a Puget Sound partner due to geographic location, composition, exclusion from the scope of the Puget Sound action agenda developed by the Puget Sound partnership under RCW 90.71.310, or for any other reason, shall not be given less preferential treatment than Puget Sound partners. [2007 c 341 § 31.]

**Severability—Effective date—2007 c 341:** See RCW 90.71.906 and 90.71.907.

**70.105D.130 Cleanup settlement account—Reporting requirements.** (1) The cleanup settlement account is created in the state treasury. The account is not intended to replace the state toxics control account established under RCW 70.105D.070. All receipts from the sources identified in subsection (2) of this section must be deposited into the account. Moneys in the account may be spent only after appropriation. Expenditures from the account may be used only as identified in subsection (4) of this section.

(2) The following receipts must be deposited into the cleanup settlement account:

(a) Receipts from settlements or court orders that direct payment to the account and resolve a person's liability or potential liability under this chapter for either or both of the following:

(i) Conducting future remedial action at a specific facility, if it is not feasible to require the person to conduct the remedial action based on the person's financial insolvency, limited ability to pay, or insignificant contribution under RCW 70.105D.040(4)(a);

(ii) Assessing or addressing the injury to natural resources caused by the release of a hazardous substance from a specific facility; and

(b) Receipts from investment of the moneys in the account.

(3) If a settlement or court order does not direct payment of receipts described in subsection (2)(a) of this section into the cleanup settlement account, then the receipts from any payment to the state must be deposited into the state toxics control account.

(4) Expenditures from the cleanup settlement account may only be used to conduct remedial actions at the specific facility or to assess or address the injury to natural resources caused by the release of hazardous substances from that facility for which the moneys were deposited in the account. Conducting remedial actions or assessing or addressing injury to natural resources includes direct expenditures and indirect expenditures such as department oversight costs. During the 2009-2011 fiscal biennium, the legislature may transfer excess fund balances in the account into the state efficiency and restructuring account. Transfers of excess fund balances made under this section shall be made only to the extent amounts transferred with required repayments do not impair the ten-year spending plan administered by the department of ecology for environmental remedial actions dedicated for any designated clean-up site associated with the Everett smelter and Tacoma smelter, including plumes, or former Asarco mine sites. The cleanup settlement account must be repaid with interest under provisions of the state efficiency and restructuring account.

(5) The department shall track moneys received, interest earned, and moneys expended separately for each facility.

(6) After the department determines that all remedial actions at a specific facility, and all actions assessing or addressing injury to natural resources caused by the release of hazardous substances from that facility, are completed, including payment of all related costs, any moneys remaining for the specific facility must be transferred to the state toxics control account established under RCW 70.105D.070.

(7) The department shall provide the office of financial management and the fiscal committees of the legislature with a report by October 31st of each year regarding the activity within the cleanup settlement account during the previous fiscal year. [2010 1st sp.s. c 37 § 947; 2008 c 106 § 1.]

**Effective date—2010 1st sp.s. c 37:** See note following RCW 13.06.050.

**70.105D.900 Short title—1989 c 2.** This act shall be known as "the model toxics control act." [1989 c 2 § 22 (Initiative Measure No. 97, approved November 8, 1988).]

(2010 Ed.)

**70.105D.905 Captions—1989 c 2.** As used in this act, captions constitute no part of the law. [1989 c 2 § 21 (Initiative Measure No. 97, approved November 8, 1988).]

**70.105D.910 Construction—1989 c 2.** The provisions of this act are to be liberally construed to effectuate the policies and purposes of this act. In the event of conflict between the provisions of this act and any other act, the provisions of this act shall govern. [1989 c 2 § 19 (Initiative Measure No. 97, approved November 8, 1988).]

**70.105D.915 Existing agreements—1989 c 2.** The consent orders and decrees in effect on March 1, 1989, shall remain valid and binding. [1989 c 2 § 20 (Initiative Measure No. 97, approved November 8, 1988).]

**70.105D.920 Effective date—1989 c 2.** (1) Sections 1 through 24 of this act shall take effect March 1, 1989, except that the director of ecology and the director of revenue may take whatever actions may be necessary to ensure that sections 1 through 24 of this act are implemented on their effective date.

\*(2) This section does not apply and shall have no force or effect if (a) this act is passed by the legislature in the 1988 regular session or (b) no bill is enacted by the legislature involving hazardous substance cleanup (along with any other subject matter) between August 15, 1987, and January 1, 1988. [1989 c 2 § 26 (Initiative Measure No. 97, approved November 8, 1988).]

**\*Reviser's note:** Neither condition contained in subsection (2) was met.

**70.105D.921 Severability—1989 c 2.** If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1989 c 2 § 18 (Initiative Measure No. 97, approved November 8, 1988).]

## Chapter 70.105E RCW

### MIXED RADIOACTIVE AND HAZARDOUS WASTE

#### Sections

70.105E.010	Purpose.
70.105E.020	Policy.
70.105E.030	Definitions.
70.105E.040	Duties of the department of ecology to regulate mixed wastes.
70.105E.050	Releases of radioactive substances—Clean-up standards.
70.105E.060	Disposal of waste in unlined trenches—Investigation and cleanup of unlined trenches—Closure of mixed waste tank systems.
70.105E.080	Exemptions: Naval reactor disposal at Hanford—Low-level waste compact.
70.105E.100	Enforcement and appeals.
70.105E.900	Construction—2005 c 1 (Initiative Measure No. 297).
70.105E.901	Short title—2005 c 1 (Initiative Measure No. 297).
70.105E.902	Captions not law—2005 c 1 (Initiative Measure No. 297).

**70.105E.010 Purpose.** The purpose of chapter 1, Laws of 2005 is to prohibit sites at which mixed radioactive and hazardous wastes have contaminated or threaten to contaminate the environment, such as at the Hanford nuclear reservation, from adding more waste that is not generated from the

cleanup of the site until such waste on-site has been cleaned up and is stored, treated, or disposed of in compliance with all state and federal environment laws. [2005 c 1 § 1 (Initiative Measure No. 297, approved November 2, 2004).]

**Reviser's note:** Initiative Measure No. 297 was declared unconstitutional in its entirety in *United States of America, et al. v. Manning, et al.*, U.S.D.C. No. CV-04-5128-AAM (E.D. Wash. 2006).

**70.105E.020 Policy.** (1) The Hanford nuclear reservation, through which the Columbia river flows for fifty miles, is the most contaminated area in North America. Use of Hanford as a national waste dump for radioactive and/or hazardous or toxic wastes will increase contamination and risks.

(2) Cleanup is the state of Washington's top priority at sites with hazardous waste contamination that threatens our rivers, groundwater, environment, and health. Adding more waste to contaminated sites undermines the cleanup of those sites. Cleanup is delayed and funds and resources diverted if facilities needed to treat or clean up existing waste are used for imported waste, and if larger facilities must be built to accommodate off-site wastes.

(3) The fundamental and inalienable right of each person residing in Washington state to a healthy environment has been jeopardized by pollution of air and water spreading from Hanford.

(4) The economy of Washington state, from agriculture to tourism, to fisheries, could be irreparably harmed from any accident releasing radiation or mixed radioactive and hazardous wastes.

(5) It is Washington state policy to prohibit adding more waste to a site where mixed radioactive and hazardous wastes (a) are not stored or monitored in compliance with state and federal hazardous waste laws and (b) have been dumped in unlined soil trenches which threaten to contaminate our state's resources.

(6) It is state policy to protect Washington's current and future residents, particularly children and other sensitive individuals, from the cumulative risks of cancer caused by all cancer-causing hazardous substances, including radionuclides, by ensuring that hazardous substance release and disposal sites meet the standards established pursuant to chapter 70.105D RCW.

(7) Effective public and tribal involvement is necessary for government agencies to make sound decisions that will protect human health and the environment for thousands of years. It is Washington state policy to encourage and enhance effective public and tribal involvement in the complex decisions relating to cleanup, closure, permitting, and transportation of mixed waste; and to provide effective assistance to the public and local governments in reviewing and commenting upon complex decision documents. It is appropriate that the polluter pay for necessary public participation for decisions relating to waste releases and risks from mixed waste sites.

(8) The transport of mixed radioactive and hazardous wastes is inherently dangerous, and should be minimized. Decisions involving transportation of these wastes must be made with full involvement of the potentially affected public through whose communities these wastes will pass. [2005 c 1 § 2 (Initiative Measure No. 297, approved November 2, 2004).]

**Reviser's note:** Initiative Measure No. 297 was declared unconstitutional in its entirety in *United States of America, et al. v. Manning, et al.*, U.S.D.C. No. CV-04-5128-AAM (E.D. Wash. 2006).

**70.105E.030 Definitions.** The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Dangerous waste" has the same meaning as the term is defined in RCW 70.105.010.

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

(3) "Dispose" or "disposal" have the same meanings as the terms are defined in RCW 70.105.010.

(4) "Facility" has the same meaning as the term is defined in RCW 70.105.010.

(5) "Hanford" means the geographic area comprising the Hanford nuclear reservation, owned and operated by the United States department of energy, or any successor federal agency.

(6) "Hazardous substance" has the same meaning as the term is defined in RCW 70.105D.020.

(7) "Hazardous waste" means and includes all dangerous and extremely hazardous waste, as those terms are defined in RCW 70.105.010.

(8) "Local government" means a city, town, or county.

(9) "Mixed waste" or "mixed radioactive and hazardous waste" means any hazardous substance or dangerous or extremely hazardous waste that contains both a nonradioactive hazardous component and a radioactive component, including any such substances that have been released to the environment, or pose a threat of future release, in a manner that may expose persons or the environment to either the non-radioactive or radioactive hazardous substances.

(10) "Mixed waste surcharge" means an additional charge for the purposes of local government and public participation in decisions relating to mixed waste facilities: Added to the service charge assessed under RCW 70.105.280 against those facilities that store, treat, incinerate, or dispose of mixed wastes; or against facilities at which mixed wastes have been released, or which are undergoing closure pursuant to chapter 70.105 RCW or remedial action pursuant to chapter 70.105D RCW.

(11) "Person" has the same meaning as the term is defined in RCW 70.105D.020.

(12) "Release" has the same meaning as the term is defined in RCW 70.105D.020.

(13) "Remedy or remedial action" have the same meanings as the terms are defined in RCW 70.105D.020.

(14) "Site" means the contiguous geographic area under the same ownership, lease, or operation where a facility is located, or where there has been a release of hazardous substances. In the event of a release of hazardous substances, "site" includes any area, or body of surface or ground water, where a hazardous substance has been deposited, stored, disposed of, placed, migrated to, or otherwise come to be located.

(15) Unless otherwise defined, or the context indicates otherwise, terms not defined in this section have the same meaning as defined in chapter 70.105 RCW, when used in this chapter. [2005 c 1 § 3 (Initiative Measure No. 297, approved November 2, 2004).]

**Reviser's note:** Initiative Measure No. 297 was declared unconstitutional in its entirety in *United States of America, et al. v. Manning, et al.*, U.S.D.C. No. CV-04-5128-AAM (E.D. Wash. 2006).

**70.105E.040 Duties of the department of ecology to regulate mixed wastes.** (1) The department of ecology shall regulate mixed wastes to the fullest extent it is not preempted by federal law, pursuant to chapter 70.105 RCW and the further provisions of this chapter.

(2) Any facility owner or operator of a site storing, managing, processing, transferring, treating, or disposing of mixed wastes shall apply for and obtain a final facility permit under chapter 70.105 RCW, this chapter, and the federal resource, conservation, and recovery act (RCRA), 42 U.S.C. Sec. 6901 et seq., as amended, before transporting to, storing or disposing at, the facility any additional mixed wastes not generated at the facility. At any facility granted a sitewide permit, under which permits for individual units are appended or become individual chapters, final facility permits must be applied for and obtained, for each unit or facility within the site where mixed wastes are, or will be, stored or disposed, prior to transporting to, storing or disposing at, the facility any additional mixed wastes not generated at the facility.

(3) The department shall not issue any permit requested under subsection (2) of this section unless the facility owner or operator is in compliance with the requirements of chapter 70.105 RCW, this chapter, and RCRA, 42 U.S.C. Sec. 6901 et seq., as amended, for obtaining and maintaining a final facility permit for existing mixed wastes stored, treated, or disposed of at the facility.

(4) If any sites, units, or facilities have interim status or an interim status permit, but fail to meet requirements for maintaining interim status under chapter 70.105 RCW, this chapter, or RCRA, 42 U.S.C. Sec. 6901 et seq., as amended, including but not limited to groundwater monitoring and compliance requirements, the department shall find that the applicant for a final facility permit for mixed wastes under this section has failed to demonstrate compliance for purposes of obtaining such a permit pursuant to subsection (2) or (3) of this section.

(5) The addition of new trenches or cells, or widening or deepening of trenches, at a site with existing trenches containing mixed wastes shall be considered an expansion of the existing facilities for purposes of compliance with chapter 70.105 RCW or this chapter, and any permit or permit modification for such expansion shall be subject to the requirements of this section.

(6)(a) The department shall not issue a permit, or modify any existing permit, allowing for the treatment, storage, or disposal of any additional mixed wastes not generated at the site or facility as part of a remedial or corrective action, until:

(i) The site or facility is in full compliance with the requirements of chapter 70.105 RCW, this chapter, and RCRA, 42 U.S.C. Sec. 6901 et seq., as amended, for obtaining and maintaining a closure permit for any facility or unit from which a release of hazardous substances has occurred or is threatened to occur, after characterization and corrective action; or

(2010 Ed.)

(ii) The department has issued a formal determination that no further remedial action is necessary to remedy such a release pursuant to chapter 70.105D RCW.

(b) The prohibitions of this subsection (6) against granting or modifying a permit apply whenever a release of a hazardous substance, including but not limited to releases of radionuclides and any other carcinogenic substances, has occurred at a site or facility, and such release, or the cumulative impact of all releases at the site, are projected by the department to have the potential to exceed the following standards:

(i) Surface or ground water standards established pursuant to federal or state laws, including but not limited to maximum concentration limits, drinking water, or other standards; or

(ii) Cleanup or other standards adopted to protect human health or the environment pursuant to RCW 70.105D.030.

(7) Until all the requirements of subsection (6) [of this section] have been met, the department shall, by permit condition, limit any new construction of, expansion of, or final facility permit for, a facility for treating, storing or disposing of mixed waste to the capacity or size necessary for investigation, characterization, remediation, or corrective action of facilities or units undergoing closure, or remedial or corrective action at the site.

(8) The department may grant or modify permits pursuant to chapter 70.105 RCW solely for the purpose of remediating or closing existing facilities or units where there has been a release or threatened release of mixed wastes, if the permit expressly bars the storage or disposal of wastes that are not generated on-site pursuant to a remedial action, closure or corrective action approved by the department pursuant to this chapter or chapter 70.105D RCW.

(9) The department may permit specific treatment capacity at sites subject to the limitations of this section to be utilized for remediation or clean-up wastes from other sites, consistent with a site treatment plan approved by the department pursuant to RCRA, 42 U.S.C. [Sec.] 6901 et seq., as amended; provided that the department determines, after public notice and comment and consideration of impacts and alternatives in an environmental impact statement prepared pursuant to chapter 43.21C RCW, that use of such capacity will not: (i) Significantly increase any emissions, discharges, risks or consequences of potential accidents; (ii) result in permanent disposal of imported off-site wastes in the soil at the site; (iii) be stored in excess of any applicable time limits, or any applicable requirement; or, (iv) impact funding for cleanup and corrective actions at the site or, result in delay of treatment or remediation of wastes at the site. [2005 c 1 § 4 (Initiative Measure No. 297, approved November 2, 2004).]

**Reviser's note:** Initiative Measure No. 297 was declared unconstitutional in its entirety in *United States of America, et al. v. Manning, et al.*, U.S.D.C. No. CV-04-5128-AAM (E.D. Wash. 2006).

**70.105E.050 Releases of radioactive substances—Clean-up standards.** (1) The department shall consider releases, or potential releases, of radioactive substances or radionuclides as hazardous substances if the radioactive substance poses a risk of a carcinogenic, toxic, or any other adverse health or environmental effect. The department shall require corrective action for, or remediation of, such releases

to meet the same health risk based minimum clean-up standards as adopted for other carcinogenic, toxic, or other hazardous substances posing similar health risks pursuant to RCW 70.105D.030.

(2) The department shall include all known or suspected human carcinogens, including radionuclides and radioactive substances, in calculating the applicable clean-up standard, corrective action level, or maximum allowable projected release from a landfill or other facility or unit at which mixed wastes are stored, disposed, or are reasonably believed by the department to be present, for purposes of chapter 70.105 RCW, this chapter, or chapter 70.105D RCW. In making any permit decision pursuant to chapter 70.105 RCW or this chapter, or in reviewing the adequacy of any environmental document prepared by another state, local, or federal agency, relating to mixed waste sites or facilities, the department shall ensure that the cumulative risk from all such carcinogens does not exceed the maximum acceptable carcinogen risk established by the department for purposes of determining clean-up standards pursuant to RCW 70.105D.030, or one additional cancer caused from exposure to all potential releases of hazardous substances at the site per one hundred thousand exposed individuals, whichever is more protective. [2005 c 1 § 5 (Initiative Measure No. 297, approved November 2, 2004).]

**Reviser's note:** Initiative Measure No. 297 was declared unconstitutional in its entirety in *United States of America, et al. v. Manning, et al.*, U.S.D.C. No. CV-04-5128-AAM (E.D. Wash. 2006).

**70.105E.060 Disposal of waste in unlined trenches—Investigation and cleanup of unlined trenches—Closure of mixed waste tank systems.** (1)(a) The department, within sixty days after December 2, 2004, shall order any site owner or operator utilizing landfills or burial grounds containing unlined soil trenches in which mixed wastes are reasonably believed by the department to have been disposed to:

(i) Cease disposal of all further wastes in unlined soil trenches or facilities within thirty days of the order;

(ii) Initiate an investigation to provide the department with an inventory based on actual characterization of all hazardous substances potentially disposed in unlined trenches;

(iii) Initiate an investigation of releases or potential releases of any hazardous substances that were potentially disposed in unlined trenches;

(iv) Prepare, or pay the costs of the department to prepare, pursuant to the provisions of chapters 70.105 and 70.105D RCW, a plan for waste retrieval, treatment, closure, and monitoring for the unlined soil trenches, which may include temporary caps pending full characterization and remediation, the schedule for which shall be based upon determination of requirements to prevent migration of wastes; and

(v) Install and maintain a groundwater and soil column monitoring system, within two years, which is in compliance with all requirements of chapter 70.105 RCW, this chapter, and RCRA, 42 U.S.C. Sec. 6901 et seq., as amended.

(b) The department shall provide, by rule, for public notice, hearings, and comment on the scope of investigations and all actions necessary to fulfill the purposes of this section. Notice to the public for purposes of this section shall include a description of potential impacts to health or the

environment from the facilities, and the potential for any state resources, or land areas, to be restricted from future use due to potential releases of hazardous substances from the site or facility.

(2) At any site with one or more land disposal facilities or units containing unlined trenches or pits, at which mixed wastes are stored or were disposed, any proposed expansion of such land disposal facility or unit, or application to permit new land disposal facilities at the same site, shall be considered to be an impermissible expansion of the existing units or facilities where:

(a) There is a reasonable basis to believe mixed or hazardous wastes are buried or stored that have not been fully characterized to conclusively determine that no mixed or hazardous wastes are present;

(b) A release of a hazardous substance has occurred, including but not limited to releases of radioactive or mixed wastes; or

(c) The department has information to indicate that there is a significant potential for a release of hazardous substances.

(3) Determinations and permit actions, pursuant to chapter 70.105 RCW or this chapter, relating to the closure of tank systems consisting of one or more interconnected tanks in which mixed wastes are currently, or were, stored, shall be made by the department only after consideration of the cumulative impacts of all tank residuals and leaks from such systems at the site pursuant to chapter 43.21C RCW. Actions may not be taken to close individual tanks, or which may prevent the retrieval of residual mixed wastes remaining in a tank, in any element of the tank system, or in the soil due to leaks from the tank system, prior to compliance with this section and determination of the quantity, nature, and potential impacts from such residuals or releases. In no event may the department allow the use of a landfill closure for mixed waste tank systems prior to all potentially effective and practicable actions having been taken to characterize, and remediate, releases and potential releases. The department may require research and development of technologies for characterization or retrieval pursuant to this section. [2005 c 1 § 6 (Initiative Measure No. 297, approved November 2, 2004).]

**Reviser's note:** Initiative Measure No. 297 was declared unconstitutional in its entirety in *United States of America, et al. v. Manning, et al.*, U.S.D.C. No. CV-04-5128-AAM (E.D. Wash. 2006).

**70.105E.080 Exemptions: Naval reactor disposal at Hanford—Low-level waste compact.** (1) Intent. The state of Washington has previously permitted, and committed to assist in the national need for, disposal of sealed nuclear reactor vessels and compartments from submarines and other vessels of the United States navy; and to operate a regional disposal site for low-level waste with no hazardous waste pursuant to an interstate compact. The United States navy reactor vessels or compartments are sealed in a manner estimated to prevent release of hazardous or radioactive wastes for hundreds of years, exceeding the performance of a liner system while disposal trenches are operating. Therefore, the state of Washington accepts the burden and risks of continued disposal of retired United States navy reactor vessels and low-level waste pursuant to the compact, recognizing that this dis-

posal will cause future impacts to the soil, environment, and groundwater.

(2) Nothing in chapter 1, Laws of 2005 shall affect existing permits for, or in any manner prohibit, the storage or disposal of sealed nuclear reactor vessels or compartments from retired United States navy submarines or surface ships at the existing disposal facility at Hanford, or affect existing permits for the operation of any facility by the federal government at which United States navy reactors are decommissioned or refueled.

(3) Obligations of the state pursuant to the Northwest interstate compact on low-level radioactive waste management and agreements made by the compact shall not be interfered with or affected by any provision of chapter 1, Laws of 2005. If hazardous or mixed wastes have been disposed or released at any facility operated pursuant to the compact, the relevant provisions of this chapter apply. [2005 c 1 § 8 (Initiative Measure No. 297, approved November 2, 2004).]

**Reviser's note:** Initiative Measure No. 297 was declared unconstitutional in its entirety in *United States of America, et al. v. Manning, et al.*, U.S.D.C. No. CV-04-5128-AAM (E.D. Wash. 2006).

**70.105E.100 Enforcement and appeals.** (1) Any person may bring a civil action to compel the owner or operator of a mixed waste facility to comply with the requirements of this chapter or any permit or order issued by the department pursuant to this chapter; or to compel the department to perform any nondiscretionary duty under this chapter. At least thirty days before commencing the action, the person must give written notice to the department of intent to sue, unless a substantial endangerment exists. The court may award attorney fees and other costs to a prevailing plaintiff in the action.

(2) Orders of the department relating to mixed waste facilities under this chapter may be appealed to the pollution control hearings board, by any person whose interests in natural resources or health may be adversely affected by the action or inaction of the department.

(3) Civil actions under this section may be brought in superior court of Thurston county or of the county in which the release or threatened release of a hazardous substance occurs, or where mixed wastes that are the subject of the action may be transported, stored, treated, or disposed.

(4) Any violation of this chapter shall be considered a violation of chapter 70.105 RCW, and subject to all enforcement actions by the department or attorney general for violations of that chapter, including imposition of civil or criminal penalties. [2005 c 1 § 10 (Initiative Measure No. 297, approved November 2, 2004).]

**Reviser's note:** Initiative Measure No. 297 was declared unconstitutional in its entirety in *United States of America, et al. v. Manning, et al.*, U.S.D.C. No. CV-04-5128-AAM (E.D. Wash. 2006).

**70.105E.900 Construction—2005 c 1 (Initiative Measure No. 297).** The provisions of this act are to be liberally construed to effectuate the policies and purposes of this act. In the event of conflict between the provisions of this act and any other act, the provisions of this act shall govern. [2005 c 1 § 11 (Initiative Measure No. 297, approved November 2, 2004).]

(2010 Ed.)

**Reviser's note:** Initiative Measure No. 297 was declared unconstitutional in its entirety in *United States of America, et al. v. Manning, et al.*, U.S.D.C. No. CV-04-5128-AAM (E.D. Wash. 2006).

**70.105E.901 Short title—2005 c 1 (Initiative Measure No. 297).** This act shall be known as the Cleanup Priority Act. [2005 c 1 § 12 (Initiative Measure No. 297, approved November 2, 2004).]

**Reviser's note:** Initiative Measure No. 297 was declared unconstitutional in its entirety in *United States of America, et al. v. Manning, et al.*, U.S.D.C. No. CV-04-5128-AAM (E.D. Wash. 2006).

**70.105E.902 Captions not law—2005 c 1 (Initiative Measure No. 297).** Captions used in this act are not any part of the law. [2005 c 1 § 13 (Initiative Measure No. 297, approved November 2, 2004).]

**Reviser's note:** Initiative Measure No. 297 was declared unconstitutional in its entirety in *United States of America, et al. v. Manning, et al.*, U.S.D.C. No. CV-04-5128-AAM (E.D. Wash. 2006).

## Chapter 70.106 RCW POISON PREVENTION— LABELING AND PACKAGING

### Sections

70.106.010	Purpose.
70.106.020	Short title.
70.106.030	Definitions—Construction.
70.106.040	"Director" defined.
70.106.050	"Sale" defined.
70.106.060	"Household substance" defined.
70.106.070	"Package" defined.
70.106.080	"Special packaging" defined.
70.106.090	"Labeling" defined.
70.106.100	Standards for packaging.
70.106.110	Exceptions from packaging standards.
70.106.120	Adoption of rules and regulations under federal poison prevention packaging act.
70.106.140	Penalties.
70.106.150	Authority to adopt regulations—Delegation of authority to board of pharmacy.
70.106.900	Severability—1974 ex.s. c 49.
70.106.905	Saving—1974 ex.s. c 49.
70.106.910	Chapter cumulative and nonexclusive.

*Radioactive and hazardous waste emergency response programs, state coordinator:* RCW 38.52.030.

**70.106.010 Purpose.** The purpose of this chapter is to provide for special packaging to protect children from personal injury, serious illness or death resulting from handling, using or ingesting household substances, and to provide penalties. [1974 ex.s. c 49 § 1.]

**70.106.020 Short title.** This chapter shall be cited as the Washington Poison Prevention Act of 1974. [1974 ex.s. c 49 § 2.]

**70.106.030 Definitions—Construction.** The definitions in RCW 70.106.040 through 70.106.090 unless the context otherwise requires shall govern the construction of this chapter. [1974 ex.s. c 49 § 3.]

**70.106.040 "Director" defined.** "Director" means the director of the department of agriculture of the state of Washington, or his duly authorized representative. [1974 ex.s. c 49 § 4.]

**70.106.050 "Sale" defined.** "Sale" means to sell, offer for sale, hold for sale, handle or use as an inducement in the promotion of a household substance or the sale of another article or product. [1974 ex.s. c 49 § 5.]

**70.106.060 "Household substance" defined.** "Household substance" means any substance which is customarily produced or distributed for sale for consumption or use, or customarily stored, by individuals in or about the household and which is:

(1) A "hazardous substance", which means (a) any substance or mixture of substances or product which (i) is toxic, (ii) is corrosive, (iii) is an irritant, (iv) is a strong sensitizer, (v) is flammable or combustible, or (vi) generates pressure through decomposition, heat, or other means, if such substance or mixture of substances may cause substantial personal injury or substantial illness during or as a proximate result of any customary or reasonably foreseeable handling or use, including reasonably foreseeable ingestion by children; (b) any substances which the director by regulation finds to meet the requirements of subsection (1)(a) of this section; (c) any radioactive substance, if, with respect to such substance as used in a particular class of article or as packaged, the director determines by regulation that the substance is sufficiently hazardous to require labeling in accordance with this chapter in order to protect the public health, safety or welfare; and (d) any toy or other article intended for use by children which the director by regulation determines presents an electrical, mechanical or thermal hazard.

(2) A pesticide as defined in the Washington Pesticide Control Act, chapter 15.58 RCW as now or hereafter amended;

(3) A food, drug, or cosmetic as those terms are defined in the Uniform Washington Food, Drug and Cosmetic Act, chapter 69.04 RCW as now or hereafter amended; or

(4) A substance intended for use as fuel when stored in portable containers and used in the heating, cooking, or refrigeration system of a house; or

(5) Any other substance which the director may declare to be a household substance subsequent to a hearing as provided for under the provisions of chapter 34.05 RCW, Administrative Procedure Act, for the adoption of rules. [1974 ex.s. c 49 § 6.]

**70.106.070 "Package" defined.** "Package" means the immediate container or wrapping in which any household substance is contained for consumption, use, or storage by individuals in or about the household, and, for purposes of RCW 70.106.110(1)(b), also means any outer container or wrapping used in the retail display of any such substance to consumers. Such term does not include:

(1) Any shipping container or wrapping used solely for the transportation of any household substance in bulk or in quantity to manufacturers, packers, or processors, or to wholesale or retail distributors thereof; or

(2) Any shipping container or outer wrapping used by retailers to ship or deliver any household substance to consumers unless it is the only such container or wrapping. [1974 ex.s. c 49 § 7.]

**70.106.080 "Special packaging" defined.** "Special packaging" means packaging that is designed or constructed to be significantly difficult for children under five years of age to open or obtain a toxic or harmful amount of the substance contained therein within a reasonable time and not difficult for normal adults to use properly, but does not mean packaging which all such children cannot open or obtain a toxic or harmful amount within a reasonable time. [1974 ex.s. c 49 § 8.]

**70.106.090 "Labeling" defined.** "Labeling" means all labels and other written, printed, or graphic matter upon any household substance or its package, or accompanying such substance. [1974 ex.s. c 49 § 9.]

**70.106.100 Standards for packaging.** (1) The director may establish in accordance with the provisions of this chapter, by regulation, standards for the special packaging of any household substance if he finds that:

(a) The degree or nature of the hazard to children in the availability of such substance, by reason of its packaging is such that special packaging is required to protect children from serious personal injury or serious illness resulting from handling, using or ingesting such substance; and

(b) The special packaging to be required by such standard is technically feasible, practicable, and appropriate for such substance.

(2) In establishing a standard under this section, the director shall consider:

(a) The reasonableness of such standard;

(b) Available scientific, medical, and engineering data concerning special packaging and concerning childhood accidental ingestions, illness, and injury caused by household substances;

(c) The manufacturing practices of industries affected by this chapter; and

(d) The nature and use of the household substance.

(3) In carrying out the provisions of this chapter, the director shall publish his findings, his reasons therefor, and citation of the sections of statutes which authorize his action.

(4) Nothing in this chapter authorizes the director to prescribe specific packaging designs, product content, package quantity, or, with the exception of authority granted in RCW 70.106.110(1)(b), labeling. In the case of a household substance for which special packaging is required pursuant to a regulation under this section, the director may in such regulation prohibit the packaging of such substance in packages which he determines are unnecessarily attractive to children.

(5) The director shall cause the regulations promulgated under this chapter to conform with the requirements or exemptions of the Federal Hazardous Substances Act and with the regulations or interpretations promulgated pursuant thereto. [1974 ex.s. c 49 § 10.]

**70.106.110 Exceptions from packaging standards.**

(1) For the purpose of making any household substance which is subject to a standard established under RCW 70.106.100 readily available to elderly or handicapped persons unable to use such substance when packaged in compliance with such standard, the manufacturer or packer, as the case may be, may package any household substance, subject

to such a standard, in packaging of a single size which does not comply with such standard if:

(a) The manufacturer or packer also supplies such substance in packages which comply with such standard; and

(b) The packages of such substance which do not meet such standard bear conspicuous labeling stating: "This package for households without young children"; except that the director may by regulation prescribe a substitute statement to the same effect for packaging too small to accommodate such labeling.

(2) In the case of a household substance which is subject to such a standard and which is dispensed pursuant to an order of a physician, dentist, or other licensed medical practitioner authorized to prescribe, such substance may be dispensed in noncomplying packages only when directed in such order or when requested by the purchaser.

(3) In the case of a household substance subject to such a standard which is packaged under subsection (1) of this section in a noncomplying package, if the director determines that such substance is not also being supplied by a manufacturer or packer in popular size packages which comply with such standard, he may, after giving the manufacturer or packer an opportunity to comply with the purposes of this chapter, by order require such substance to be packaged by such manufacturer or packer exclusively in special packaging complying with such standard if he finds, after opportunity for hearing, that such exclusive use of special packaging is necessary to accomplish the purposes of this chapter. [1974 ex.s. c 49 § 11.]

**70.106.120 Adoption of rules and regulations under federal poison prevention packaging act.** One of the purposes of this chapter is to promote uniformity with the Poison Prevention Packaging Act of 1970 and rules and regulations adopted thereunder. In accordance with such declared purpose, all of the special packaging rules and regulations adopted under the Poison Prevention Packaging Act of 1970 (84 Stat. 1670; 7 U.S.C. Sec. 135; 15 U.S.C. Sec. 1261, 1471-1476; 21 U.S.C. Sec. 343, 352, 353, 362) on July 24, 1974, are hereby adopted as rules and regulations applicable to this chapter. In addition, any rule or regulation adopted hereafter under said Federal Poison Prevention Act of 1970 concerning special packaging and published in the federal register shall be deemed to have been adopted under the provisions of this chapter. The director may, however, within thirty days of the publication of the adoption of any such rule or regulation under the Federal Poison Prevention Packaging Act of 1970, give public notice that a hearing will be held to determine if such regulations shall not be applicable under the provisions of this chapter. Such hearing shall be conducted in accord with the provisions of chapter 34.05 RCW, Administrative Procedure Act, as now enacted or hereafter amended. [1974 ex.s. c 49 § 12.]

**70.106.140 Penalties.** (1) Except as provided in subsection (2) of this section, any person violating the provisions of this chapter or rules adopted under this chapter is guilty of a misdemeanor.

(2) A second or subsequent violation of the provisions of this chapter or rules adopted under this chapter is a gross mis-

(2010 Ed.)

demeanor. Any offense committed more than five years after a previous conviction shall be considered a first offense. [2003 c 53 § 358; 1974 ex.s. c 49 § 16.]

**Intent—Effective date—2003 c 53:** See notes following RCW 2.48.180.

**70.106.150 Authority to adopt regulations—Delegation of authority to board of pharmacy.** The authority to promulgate regulations for the efficient enforcement of this chapter is hereby vested in the director. However, the director shall designate the Washington state board of pharmacy to carry out all the provisions of this chapter pertaining to drugs and cosmetics, with authority to promulgate regulations for the efficient enforcement thereof. [1987 c 236 § 1.]

**70.106.900 Severability—1974 ex.s. c 49.** If any provision of this 1974 act is declared unconstitutional, or the applicability thereof to any person or circumstance is held invalid, the constitutionality of the remainder of the act and the applicability thereof to other persons and circumstances shall not be affected thereby. [1974 ex.s. c 49 § 14.]

**70.106.905 Saving—1974 ex.s. c 49.** The enactment of this 1974 act shall not have the effect of terminating, or in any way modifying any liability, civil or criminal, which shall already be in existence on July 24, 1974. [1974 ex.s. c 49 § 15.]

**70.106.910 Chapter cumulative and nonexclusive.** The provisions of this chapter shall be cumulative and nonexclusive and shall not affect any other remedy. [1974 ex.s. c 49 § 17.]

## Chapter 70.107 RCW

### NOISE CONTROL

#### Sections

70.107.010	Purpose.
70.107.020	Definitions.
70.107.030	Powers and duties of department.
70.107.040	Technical advisory committee.
70.107.050	Civil penalties.
70.107.060	Other rights, remedies, powers, duties and functions—Local regulation—Approval—Procedure.
70.107.070	Rules relating to motor vehicles—Violations—Penalty.
70.107.080	Exemptions.
70.107.900	Construction—Severability—1974 ex.s. c 183.
70.107.910	Short title.

**70.107.010 Purpose.** The legislature finds that inadequately controlled noise adversely affects the health, safety and welfare of the people, the value of property, and the quality of the environment. Antinoise measures of the past have not adequately protected against the invasion of these interests by noise. There is a need, therefore, for an expansion of efforts statewide directed toward the abatement and control of noise, considering the social and economic impact upon the community and the state. The purpose of this chapter is to provide authority for such an expansion of efforts, supplementing existing programs in the field. [1974 ex.s. c 183 § 1.]

**70.107.020 Definitions.** As used in this chapter, unless the context clearly indicates otherwise:

- (1) "Department" means the department of ecology.
- (2) "Director" means director of the department of ecology.
- (3) "Local government" means county or city government or any combination of the two.
- (4) "Noise" means the intensity, duration and character of sounds from any and all sources.
- (5) "Person" means any individual, corporation, partnership, association, governmental body, state, or other entity whatsoever. [1974 ex.s. c 183 § 2.]

**70.107.030 Powers and duties of department.** The department is empowered as follows:

(1) The department, after consultation with state agencies expressing an interest therein, shall adopt, by rule, maximum noise levels permissible in identified environments in order to protect against adverse affects of noise on the health, safety and welfare of the people, the value of property, and the quality of environment: PROVIDED, That in so doing the department shall take also into account the economic and practical benefits to be derived from the use of various products in each such environment, whether the source of the noise or the use of such products in each environment is permanent or temporary in nature, and the state of technology relative to the control of noise generated by all such sources of the noise or the products.

(2) At any time after the adoption of maximum noise levels under subsection (1) of this section the department shall, in consultation with state agencies and local governments expressing an interest therein, adopt rules, consistent with the Federal Noise Control Act of 1972 (86 Stat. 1234; 42 U.S.C. Sec. 4901-4918 and 49 U.S.C. Sec. 1431), for noise abatement and control in the state designed to achieve compliance with the noise level adopted in subsection (1) of this section, including reasonable implementation schedules where appropriate, to insure that the maximum noise levels are not exceeded and that application of the best practicable noise control technology and practice is provided. These rules may include, but shall not be limited to:

- (a) Performance standards setting allowable noise limits for the operation of products which produce noise;
- (b) Use standards regulating, as to time and place, the operation of individual products which produce noise above specified levels considering frequency spectrum and duration: PROVIDED, The rules shall provide for temporarily exceeding those standards for stated purposes; and
- (c) Public information requirements dealing with disclosure of levels and characteristics of noise produced by products.

(3) The department may, as desirable in the performance of its duties under this chapter, conduct surveys, studies and public education programs, and enter into contracts.

(4) The department is authorized to apply for and accept moneys from the federal government and other sources to assist in the implementation of this chapter.

(5) The legislature recognizes that the operation of motor vehicles on public highways as defined in \*RCW 46.09.020 contributes significantly to environmental noise levels and directs the department, in exercising the rule-making author-

ity under the provisions of this section, to give first priority to the adoption of motor vehicle noise performance standards.

(6) Noise levels and rules adopted by the department pursuant to this chapter shall not be effective prior to March 31, 1975. [1974 ex.s. c 183 § 3.]

**\*Reviser's note:** RCW 46.09.020 was recodified as RCW 46.09.310 pursuant to 2010 c 161 § 1202, effective July 1, 2011.

**70.107.040 Technical advisory committee.** The director shall name a technical advisory committee to assist the department in the implementation of this chapter. Committee members shall be entitled to reimbursement for travel expenses as provided in RCW 43.03.050 and 43.03.060, as now existing or hereafter amended. [1975-'76 2nd ex.s. c 34 § 164; 1974 ex.s. c 183 § 4.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**70.107.050 Civil penalties.** (1) Any person who violates any rule adopted by the department under this chapter shall be subject to a civil penalty not to exceed one hundred dollars imposed by local government pursuant to this section. An action under this section shall not preclude enforcement of any provisions of the local government noise ordinance.

Penalties shall become due and payable thirty days from the date of receipt of a notice of penalty unless within such time said notice is appealed in accordance with the administrative procedures of the local government, or if it has no such administrative appeal, to the pollution control hearings board pursuant to the provisions of chapter 43.21B RCW and procedural rules adopted thereunder. In cases in which appeals are timely filed, penalties sustained by the local administrative agency or the pollution control hearings board shall become due and payable on the issuance of said agency or board's final order in the appeal.

(2) Whenever penalties incurred pursuant to this section have become due and payable but remain unpaid, the attorney for the local government may bring an action in the superior court of the county in which the violation occurred for recovery of penalties incurred. In all such actions the procedures and rules of evidence shall be the same as in any other civil action. [1987 c 103 § 2; 1974 ex.s. c 183 § 5.]

**70.107.060 Other rights, remedies, powers, duties and functions—Local regulation—Approval—Procedure.** (1) Nothing in this chapter shall be construed to deny, abridge or alter alternative rights of action or remedies in equity or under common law or statutory law, criminal or civil.

(2) Nothing in this chapter shall deny, abridge or alter any powers, duties and functions relating to noise abatement and control now or hereafter vested in any state agency, nor shall this chapter be construed as granting jurisdiction over the industrial safety and health of employees in work places of the state, as now or hereafter vested in the department of labor and industries.

(3) Standards and other control measures adopted by the department under this chapter shall be exclusive except as hereinafter provided. A local government may impose limits or control sources differing from those adopted or controlled by the department upon a finding that such requirements are

necessitated by special conditions. Noise limiting requirements of local government which differ from those adopted or controlled by the department shall be invalid unless first approved by the department. If the department of ecology fails to approve or disapprove standards submitted by local governmental jurisdictions within ninety days of submittal, such standards shall be deemed approved. If disapproved, the local government may appeal the decision to the pollution control hearings board which shall decide the appeal on the basis of the provisions of this chapter, and the applicable regulations, together with such briefs, testimony, and oral argument as the hearings board in its discretion may require. The department determination of whether to grant approval shall depend on the reasonableness and practicability of compliance. Particular attention shall be given to stationary sources located near jurisdictional boundaries, and temporary noise producing operations which may operate across one or more jurisdictional boundaries.

(4) In carrying out the rule-making authority provided in this chapter, the department shall follow the procedures of the administrative procedure act, chapter 34.05 RCW, and shall take care that no rules adopted purport to exercise any powers preempted by the United States under federal law. [1987 c 103 § 1; 1974 ex.s. c 183 § 6.]

**70.107.070 Rules relating to motor vehicles—Violations—Penalty.** Any rule adopted under this chapter relating to the operation of motor vehicles on public highways shall be administered according to testing and inspection procedures adopted by rule by the state patrol. Violation of any motor vehicle performance standard adopted pursuant to this chapter shall be a misdemeanor, enforced by such authorities and in such manner as violations of chapter 46.37 RCW. Violations subject to the provisions of this section shall be exempt from the provisions of RCW 70.107.050. [1987 c 330 § 749; 1974 ex.s. c 183 § 7.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**70.107.080 Exemptions.** The department shall, in the exercise of rule-making power under this chapter, provide exemptions or specially limited regulations relating to recreational shooting and emergency or law enforcement equipment where appropriate in the interests of public safety.

The department in the development of rules under this chapter, shall consult and take into consideration the land use policies and programs of local government. [1974 ex.s. c 183 § 8.]

**70.107.900 Construction—Severability—1974 ex.s. c 183.** (1) This chapter shall be liberally construed to carry out its broad purposes.

(2) If any provision of this chapter, or its application to any person or circumstance is held invalid, the remainder of the chapter, or the application of the provision to other persons or circumstances is not affected. [1974 ex.s. c 183 § 11.]

**70.107.910 Short title.** This chapter shall be known and may be cited as the "Noise Control Act of 1974". [1974 ex.s. c 183 § 12.]

(2010 Ed.)

## Chapter 70.108 RCW OUTDOOR MUSIC FESTIVALS

### Sections

70.108.010	Legislative declaration.
70.108.020	Definitions.
70.108.030	Permits—Required—Compliance with rules and regulations.
70.108.040	Application for permit—Contents—Filing.
70.108.050	Approval or denial of permit—Corrections—Procedure—Judicial review.
70.108.060	Reimbursement of expenses incurred in reviewing request.
70.108.070	Cash deposit—Surety bond—Insurance.
70.108.080	Revocation of permits.
70.108.090	Drugs prohibited.
70.108.100	Proximity to schools, churches, homes.
70.108.110	Age of patrons.
70.108.120	Permits—Posting—Transferability.
70.108.130	Penalty.
70.108.140	Inspection of books and records.
70.108.150	Firearms—Penalty.
70.108.160	Preparations—Completion requirements.
70.108.170	Local regulations and ordinances not precluded.

**Reviser's note:** Throughout chapter 70.108 RCW the references to "this act" have been changed to "this chapter." "This act" [1971 ex.s. c 302] consists of this chapter, the 1971 amendments to RCW 9.40.110-9.40.130, 9.41.010, 9.41.070, 26.44.050, 70.74.135, 70.74.270, 70.74.280, and the enactment of RCW 9.27.015 and 9.91.110.

**70.108.010 Legislative declaration.** The legislature hereby declares it to be the public interest, and for the protection of the health, welfare and property of the residents of the state of Washington to provide for the orderly and lawful conduct of outdoor music festivals by assuring that proper sanitary, health, fire, safety, and police measures are provided and maintained. This invocation of the police power is prompted by and based upon prior experience with outdoor music festivals where the enforcement of the existing laws and regulations on dangerous and narcotic drugs, indecent exposure, intoxicating liquor, and sanitation has been rendered most difficult by the flagrant violations thereof by a large number of festival patrons. [1971 ex.s. c 302 § 19.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**70.108.020 Definitions.** For the purposes of this chapter the following words and phrases shall have the indicated meanings:

(1) "Outdoor music festival" or "music festival" or "festival" means an assembly of persons gathered primarily for outdoor, live or recorded musical entertainment, where the predicted attendance is two thousand persons or more and where the duration of the program is five hours or longer: PROVIDED, That this definition shall not be applied to any regularly established permanent place of worship, stadium, athletic field, arena, auditorium, coliseum, or other similar permanently established places of assembly for assemblies which do not exceed by more than two hundred fifty people the maximum seating capacity of the structure where the assembly is held: PROVIDED, FURTHER, That this definition shall not apply to government sponsored fairs held on regularly established fairgrounds nor to assemblies required to be licensed under other laws or regulations of the state.

(2) "Promoter" means any person or other legal entity issued a permit to conduct an outdoor music festival.

(3) "Applicant" means the promoter who has the right of control of the conduct of an outdoor music festival who

applies to the appropriate legislative authority for a license to hold an outdoor music festival.

(4) "Issuing authority" means the legislative body of the local governmental unit where the site for an outdoor music festival is located.

(5) "Participate" means to knowingly provide or deliver to the festival site supplies, materials, food, lumber, beverages, sound equipment, generators, or musical entertainment and/or to attend a music festival. A person shall be presumed to have knowingly provided as that phrase is used herein after he has been served with a court order. [1971 ex.s. c 302 § 21.]

**70.108.030 Permits—Required—Compliance with rules and regulations.** No person or other legal entity shall knowingly allow, conduct, hold, maintain, cause to be advertised or permit an outdoor music festival unless a valid permit has been obtained from the issuing authority for the operation of such music festival as provided for by this chapter. One such permit shall be required for each outdoor music festival. A permit may be granted for a period not to exceed sixteen consecutive days and a festival may be operated during any or all of the days within such period. Any person, persons, partnership, corporation, association, society, fraternal or social organization, failing to comply with the rules, regulations or conditions contained in this chapter shall be subject to the appropriate penalties as prescribed by this chapter. [1971 ex.s. c 302 § 22.]

**70.108.040 Application for permit—Contents—Filing.** Application for an outdoor music festival permit shall be in writing and filed with the clerk of the issuing authority wherein the festival is to be held. Said application shall be filed not less than ninety days prior to the first scheduled day of the festival and shall be accompanied with a permit fee in the amount of two thousand five hundred dollars. Said application shall include:

- (1) The name of the person or other legal entity on behalf of whom said application is made: PROVIDED, That a natural person applying for such permit shall be eighteen years of age or older;
- (2) A financial statement of the applicant;
- (3) The nature of the business organization of the applicant;
- (4) Names and addresses of all individuals or other entities having a ten percent or more proprietary interest in the festival;
- (5) The principal place of business of applicant;
- (6) A legal description of the land to be occupied, the name and address of the owner thereof, together with a document showing the consent of said owner to the issuance of a permit, if the land be owned by a person other than the applicant;
- (7) The scheduled performances and program;
- (8) Written confirmation from the local health officer that he or she has reviewed and approved plans for site and development in accordance with rules, regulations and standards adopted by the state board of health. Such rules and regulations shall include criteria as to the following and such

other matters as the state board of health deems necessary to protect the public's health:

- (a) Submission of plans
- (b) Site
- (c) Water supply
- (d) Sewage disposal
- (e) Food preparation facilities
- (f) Toilet facilities
- (g) Solid waste
- (h) Insect and rodent control
- (i) Shelter
- (j) Dust control
- (k) Lighting
- (l) Emergency medical facilities
- (m) Emergency air evacuation
- (n) Attendant physicians
- (o) Communication systems
- (9) A written confirmation from the appropriate law enforcement agency from the area where the outdoor music festival is to take place, showing that traffic control and crowd protection policing have been contracted for or otherwise provided by the applicant meeting the following conditions:

(a) One person for each two hundred persons reasonably expected to be in attendance at any time during the event for purposes of traffic and crowd control.

(b) The names and addresses of all traffic and crowd control personnel shall be provided to the appropriate law enforcement authority: PROVIDED, That not less than twenty percent of the traffic and crowd control personnel shall be commissioned police officers or deputy sheriffs: PROVIDED FURTHER, That on and after February 25, 1972 any commissioned police officer or deputy sheriff who is employed and compensated by the promoter of an outdoor music festival shall not be eligible and shall not receive any benefits whatsoever from any public pension or disability plan of which he or she is a member for the time he is so employed or for any injuries received during the course of such employment.

(c) During the hours that the festival site shall be open to the public there shall be at least one regularly commissioned police officer employed by the jurisdiction wherein the festival site is located for every one thousand persons in attendance and said officer shall be on duty within the confines of the actual outdoor music festival site.

(d) All law enforcement personnel shall be charged with enforcing the provisions of this chapter and all existing statutes, ordinances and regulations.

(10) A written confirmation from the appropriate law enforcement authority that sufficient access roads are available for ingress and egress to the parking areas of the outdoor music festival site and that parking areas are available on the actual site of the festival or immediately adjacent thereto which are capable of accommodating one auto for every four persons in estimated attendance at the outdoor music festival site.

(11) A written confirmation from the department of natural resources, where applicable, and the chief of the Washington state patrol, through the director of fire protection, that all fire prevention requirements have been complied with.

(12) A written statement of the applicant that all state and local law enforcement officers, fire control officers and other necessary governmental personnel shall have free access to the site of the outdoor music festival.

(13) A statement that the applicant will abide by the provisions of this chapter.

(14) The verification of the applicant warranting the truth of the matters set forth in the application to the best of the applicant's knowledge, under the penalty of perjury. [1995 c 369 § 59; 1986 c 266 § 120; 1972 ex.s. c 123 § 1; 1971 ex.s. c 302 § 23.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**70.108.050 Approval or denial of permit—Corrections—Procedure—Judicial review.** Within fifteen days after the filing of the application the issuing authority shall either approve or deny the permit to the applicant. Any denial shall set forth in detail the specific grounds therefor. The applicant shall have fifteen days after the receipt of such denial or such additional time as the issuing authority shall grant to correct the deficiencies set forth and the issuing authority shall within fifteen days after receipt of such corrections either approve or deny the permit. Any denial shall set forth in detail the specific grounds therefor.

After the applicant has filed corrections and the issuing authority has thereafter again denied the permit, the applicant may within five days after receipt of such second denial seek judicial review of such denial by filing a petition in the superior court for the county of the issuing authority. The review shall take precedence over all other civil actions and shall be conducted by the court without a jury. The court shall, upon request, hear oral argument and receive written briefs and shall either affirm the denial or order that the permit be issued. An applicant may not use any other procedure to obtain judicial review of a denial. [1972 ex.s. c 123 § 2; 1971 ex.s. c 302 § 24.]

**70.108.060 Reimbursement of expenses incurred in reviewing request.** Any local agency requested by an applicant to give written approval as required by RCW 70.108.040 may within fifteen days after the applicant has filed his application apply to the issuing authority for reimbursement of expenses reasonably incurred in reviewing such request. Upon a finding that such expenses were reasonably incurred the issuing authority shall reimburse the local agency therefor from the funds of the permit fee. The issuing authority shall prior to the first scheduled date of the festival return to the applicant that portion of the permit fee remaining after all such reimbursements have been made. [1971 ex.s. c 302 § 25.]

**70.108.070 Cash deposit—Surety bond—Insurance.** After the application has been approved the promoter shall deposit with the issuing authority, a cash deposit or surety bond. The bond or deposit shall be used to pay any costs or charges incurred to regulate health or to clean up afterwards outside the festival grounds or any extraordinary costs or charges incurred to regulate traffic or parking. The bond or other deposit shall be returned to the promoter when the issuing authority is satisfied that no claims for damage or loss

will be made against said bond or deposit, or that the loss or damage claimed is less than the amount of the deposit, in which case the uncommitted balance thereof shall be returned: PROVIDED, That the bond or cash deposit or the uncommitted portion thereof shall be returned not later than thirty days after the last day of the festival.

In addition, the promoter shall be required to furnish evidence that he has in full force and effect a liability insurance policy in an amount of not less than one hundred thousand dollars bodily injury coverage per person covering any bodily injury negligently caused by any officer or employee of the festival while acting in the performance of his or her duties. The policy shall name the issuing authority of the permit as an additional named insured.

In addition, the promoter shall be required to furnish evidence that he has in full force and effect a one hundred thousand dollar liability property damage insurance policy covering any property damaged due to negligent failure by any officer or employee of the festival to carry out duties imposed by this chapter. The policy shall have the issuing authority of the permit as an additional named insured. [1972 ex.s. c 123 § 3; 1971 ex.s. c 302 § 26.]

**70.108.080 Revocation of permits.** Revocation of any permit granted pursuant to this chapter shall not preclude the imposition of penalties as provided for in this chapter and the laws of the state of Washington. Any permit granted pursuant to the provisions of this chapter to conduct a music festival shall be summarily revoked by the issuing authority when it finds that by reason of emergency the public peace, health, safety, morals or welfare can only be preserved and protected by such revocation.

Any permit granted pursuant to the provisions of this chapter to conduct a music festival may otherwise be revoked for any material violation of this chapter or the laws of the state of Washington after a hearing held upon not less than three days notice served upon the promoter personally or by certified mail.

Every permit issued under the provisions of this chapter shall state that such permit is issued as a measure to protect and preserve the public peace, health, safety, morals and welfare, and that the right of the appropriate authority to revoke such permit is a consideration of its issuance. [1971 ex.s. c 302 § 27.]

**70.108.090 Drugs prohibited.** No person, persons, partnership, corporation, association, society, fraternal or social organization to whom a music festival permit has been granted shall, during the time an outdoor music festival is in operation, knowingly permit or allow any person to bring upon the premises of said music festival, any narcotic or dangerous drug as defined by chapters \*69.33 or 69.40 RCW, or knowingly permit or allow narcotic or dangerous drug to be consumed on the premises, and no person shall take or carry onto said premises any narcotic or dangerous drug. [1971 ex.s. c 302 § 28.]

\*Reviser's note: Chapter 69.33 RCW was repealed by 1971 ex.s. c 308 § 69.50.606.

**70.108.100 Proximity to schools, churches, homes.**

No music festival shall be operated in a location which is closer than one thousand yards from any schoolhouse or church, or five hundred yards from any house, residence or other human habitation unless waived by occupants. [1971 ex.s. c 302 § 29.]

**70.108.110 Age of patrons.** No person under the age of sixteen years shall be admitted to any outdoor music festival without the escort of his or her parents or legal guardian and proof of age shall be provided upon request. [1971 ex.s. c 302 § 30.]

**70.108.120 Permits—Posting—Transferability.** Any permit granted pursuant to this chapter shall be posted in a conspicuous place on the site of the outdoor music festival and such permit shall be not transferable or assignable without the consent of the issuing authority. [1971 ex.s. c 302 § 31.]

**70.108.130 Penalty.** (1) Except as otherwise provided in this section, any person who willfully fails to comply with the rules, regulations, and conditions set forth in this chapter or who aids or abets such a violation or failure to comply is guilty of a gross misdemeanor.

(2)(a) Except as provided in (b) of this subsection, violation of such a rule, regulation, or condition relating to traffic including parking, standing, stopping, and pedestrian offenses is a traffic infraction.

(b) Violation of such a rule, regulation, or condition equivalent to those provisions of Title 46 RCW set forth in RCW 46.63.020 is a misdemeanor. [2003 c 53 § 359; 1979 ex.s. c 136 § 104; 1971 ex.s. c 302 § 32.]

**Intent—Effective date—2003 c 53:** See notes following RCW 2.48.180.

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**70.108.140 Inspection of books and records.** The department of revenue shall be allowed to inspect the books and records of any outdoor music festival during the period of operation of the festival and after the festival has concluded for the purpose of determining whether or not the tax laws of this state are complied with. [1972 ex.s. c 123 § 4.]

**70.108.150 Firearms—Penalty.** It shall be unlawful for any person, except law enforcement officers, to carry, transport or convey, or to have in his possession or under his control any firearm while on the site of an outdoor music festival.

Any person violating the provisions of this section shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not less than one hundred dollars and not more than two hundred dollars or by imprisonment in the county jail for not less than ten days and not more than ninety days or by both such fine and imprisonment. [1972 ex.s. c 123 § 5.]

**70.108.160 Preparations—Completion requirements.** All preparations required to be made by the provisions of this chapter on the music festival site shall be com-

pleted thirty days prior to the first day scheduled for the festival. Upon such date or such earlier date when all preparations have been completed, the promoter shall notify the issuing authority thereof, and the issuing authority shall make an inspection of the festival site to determine if such preparations are in reasonably full compliance with plans submitted pursuant to RCW 70.108.040. If a material violation exists the issuing authority shall move to revoke the music festival permit in the manner provided by RCW 70.108.080. [1972 ex.s. c 123 § 6.]

**70.108.170 Local regulations and ordinances not precluded.** Nothing in this chapter shall be construed as precluding counties, cities and other political subdivisions of the state of Washington from enacting ordinances or regulations for the control and regulation of outdoor music festivals nor shall this chapter repeal any existing ordinances or regulations. [1972 ex.s. c 123 § 7.]

### Chapter 70.110 RCW

#### FLAMMABLE FABRICS— CHILDREN'S SLEEPWEAR

##### Sections

70.110.010	Short title.
70.110.020	Legislative finding.
70.110.030	Definitions.
70.110.040	Compliance required.
70.110.050	Attorney general or prosecuting attorneys authorized to bring actions to restrain or prevent violations.
70.110.070	Strict liability.
70.110.080	Personal service of process—Jurisdiction of courts.
70.110.900	Provisions additional.
70.110.910	Severability—1973 1st ex.s. c 211.

**70.110.010 Short title.** This chapter may be known and cited as the "Flammable Fabrics Act". [1973 1st ex.s. c 211 § 1.]

**70.110.020 Legislative finding.** The legislature hereby finds and declares that fabric related burns from children's sleepwear present an immediate and serious danger to the infants and children of this state. The legislature therefore declares it to be in the public interest, and for the protection of the health, property, and welfare of the residents of this state to herein provide for flammability standards for children's sleepwear. [1973 1st ex.s. c 211 § 2.]

**70.110.030 Definitions.** As used in this chapter the following words and phrases shall have the following meanings unless the context clearly requires otherwise:

(1) "Person" means an individual, partnership, corporation, association, or any other form of business enterprise, and every officer thereof.

(2) "Children's sleepwear" means any product of wearing apparel from infant size up to and including size fourteen which is sold or intended for sale for the primary use of sleeping or activities related to sleeping, such as nightgowns, pajamas, and similar or related items such as robes, but excluding diapers and underwear.

(3) "Fabric" means any material (except fiber, filament, or yarn for other than retail sale) woven, knitted, felted, or

otherwise produced from or in combination with any material or synthetic fiber, film, or substitute therefor which is intended for use, or which may reasonably be expected to be used, in children's sleepwear.

(4) The term "infant size up to and including size six-x" means the sizes defined as infant through and including six-x in Department of Commerce Voluntary Standards, Commercial Standard 151-50, "Body Measurements for the Sizing of Apparel for Infants, Babies, Toddlers, and Children", Commercial Standard 153, "Body Measurements for the Sizing of Apparel for Girls", and Commercial Standard 155, "Body Measurements for the Sizing of Boys' Apparel".

(5) "Fabric related burns" means burns that would not have been incurred but for the fact that sleepwear worn at the time of the burns did not comply with commercial standards promulgated by the secretary of commerce of the United States in March, 1971, identified as Standard for the Flammability of Children's Sleepwear (DOC FF 3-71) 36 F.R. 14062 and by the Flammable Fabrics Act 15 U.S.C. 1193. [1973 1st ex.s. c 211 § 3.]

**70.110.040 Compliance required.** (1) It shall be unlawful to manufacture for sale, sell, or offer for sale any new and unused article of children's sleepwear which does not comply with the standards established in the Standard for the Flammability of Children's Sleepwear (DOC FF 3-71), 36 F.R. 14062 and the Flammable Fabrics Act, 15 U.S.C. 1191-1204.

(2) A violation of this section is a gross misdemeanor. [2003 c 53 § 360; 1973 1st ex.s. c 211 § 4.]

**Intent—Effective date—2003 c 53:** See notes following RCW 2.48.180.

**70.110.050 Attorney general or prosecuting attorneys authorized to bring actions to restrain or prevent violations.** The attorney general or the prosecuting attorney of any county within the state may bring an action in the name of the state against any person to restrain and prevent any violation of this chapter. [1973 1st ex.s. c 211 § 5.]

**70.110.070 Strict liability.** Any person who violates RCW 70.110.040 shall be strictly liable for fabric-related burns. [1973 1st ex.s. c 211 § 7.]

**70.110.080 Personal service of process—Jurisdiction of courts.** Personal service of any process in an action under this chapter may be made upon any person outside the state if such person has violated any provision of this chapter. Such person shall be deemed to have thereby submitted himself to the jurisdiction of the courts of this state within the meaning of RCW 4.28.180 and 4.28.185, as now or hereafter amended. [1973 1st ex.s. c 211 § 8.]

**70.110.900 Provisions additional.** The provisions of this chapter shall be in addition to and not a substitution for or limitation of any other law. [1973 1st ex.s. c 211 § 9.]

**70.110.910 Severability—1973 1st ex.s. c 211.** If any provision of this chapter, or its application to any person or circumstance is held invalid the remainder of the chapter, or

the application of the provision to other persons or circumstances is not affected. [1973 1st ex.s. c 211 § 10.]

**Chapter 70.111 RCW  
INFANT CRIB SAFETY ACT**

Sections

70.111.010	Findings—Purpose—Intent.
70.111.020	Definitions.
70.111.030	Unsafe cribs—Prohibition—Definition—Penalty.
70.111.040	Exemption.
70.111.060	Civil actions.
70.111.070	Remedies.
70.111.900	Short title.
70.111.901	Severability—1996 c 158.

**70.111.010 Findings—Purpose—Intent.** (1) The legislature finds all of the following:

(a) The disability and death of infants resulting from injuries sustained in crib accidents are a serious threat to the public health, welfare, and safety of the people of this state.

(b) Infants are an especially vulnerable class of people.

(c) The design and construction of a baby crib must ensure that it is safe to leave an infant unattended for extended periods of time. A parent or caregiver has a right to believe that the crib in use is a safe place to leave an infant.

(d) Over thirteen thousand infants are injured in unsafe cribs every year.

(e) In the past decade, six hundred twenty-two infants died (a rate of sixty-two infants each year) from injuries sustained in unsafe cribs.

(f) The United States consumer product safety commission estimates that the cost to society resulting from injuries and death due to unsafe cribs is two hundred thirty-five million dollars per year.

(g) Secondhand, hand-me-down, and heirloom cribs pose a special problem. There were four million infants born in this country last year, but only one million new cribs sold. As many as three out of four infants are placed in secondhand, hand-me-down, or heirloom cribs.

(h) Most injuries and deaths occur in secondhand, hand-me-down, or heirloom cribs.

(i) Existing state and federal legislation is inadequate to deal with this hazard.

(j) Prohibiting the remanufacture, retrofit, sale, contracting to sell or resell, leasing, or subletting of unsafe cribs, particularly unsafe secondhand, hand-me-down, or heirloom cribs, will prevent injuries and deaths caused by cribs.

(2) The purpose of this chapter is to prevent the occurrence of injuries and deaths to infants as a result of unsafe cribs by making it illegal to remanufacture, retrofit, sell, contract to sell or resell, lease, sublet, or otherwise place in the stream of commerce, after June 6, 1996, any full-size or non-full-size crib that is unsafe for any infant using the crib.

(3) It is the intent of the legislature to encourage public and private collaboration in disseminating materials relative to the safety of baby cribs to parents, child care providers, and those who would be likely to place unsafe cribs in the stream of commerce. The legislature also intends that informational materials regarding baby crib safety be available to consumers through the department of health. [1996 c 158 § 1.]

**70.111.020 Definitions.** Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Infant" means any person less than thirty-five inches tall and less than three years of age.

(2) "Crib" means a bed or containment designed to accommodate an infant.

(3) "Full-size crib" means a full-size crib as defined in Section 1508.3 of Title 16 of the Code of Federal Regulations regarding the requirements for full-size cribs.

(4) "Nonfull-size crib" means a nonfull-size crib as defined in Section 1509.2(b) of Title 16 of the Code of the Federal Regulations regarding the requirements for nonfull-size cribs.

(5) "Person" means any natural person, firm, corporation, association, or agent or employee thereof.

(6) "Commercial user" means any person who deals in full-size or nonfull-size cribs of the kind governed by this chapter or who otherwise by one's occupation holds oneself out as having knowledge or skill peculiar to the full-size or nonfull-size cribs governed by this chapter, including child care facilities and family child care homes licensed by the department of social and health services under chapter 74.15 RCW, or any person who is in the business of remanufacturing, retrofitting, selling, leasing, subletting, or otherwise placing in the stream of commerce full-size or nonfull-size cribs. [1996 c 158 § 3.]

**70.111.030 Unsafe cribs—Prohibition—Definition—Penalty.** (1) No commercial user may remanufacture, retrofit, sell, contract to sell or resell, lease, sublet, or otherwise place in the stream of commerce, on or after June 6, 1996, a full-size or nonfull-size crib that is unsafe for any infant using the crib.

(2) A crib is presumed to be unsafe pursuant to this chapter if it does not conform to all of the following:

(a) Part 1508 (commencing with Section 1508.1) of Title 16 of the Code of Federal Regulations;

(b) Part 1509 (commencing with Section 1509.1) of Title 16 of the Code of Federal Regulations;

(c) Part 1303 (commencing with Section 1303.1) of Title 16 of the Code of Federal Regulations;

(d) American Society for Testing Materials Voluntary Standards F966-90;

(e) American Society for Testing Materials Voluntary Standards F1169.88;

(f) Any regulations that are adopted in order to amend or supplement the regulations described in (a) through (e) of this subsection.

(3) Cribs that are unsafe or fail to perform as expected pursuant to subsection (2) of this section include, but are not limited to, cribs that have any of the following dangerous features or characteristics:

(a) Corner posts that extend more than one-sixteenth of an inch;

(b) Spaces between side slats more than two and three-eighths inches;

(c) Mattress support than can be easily dislodged from any point of the crib. A mattress segment can be easily dislodged if it cannot withstand at least a twenty-five pound upward force from underneath the crib;

(d) Cutout designs on the end panels;

(e) Rail height dimensions that do not conform to the following:

(i) The height of the rail and end panel as measured from the top of the rail or panel in its lowest position to the top of the mattress support in its highest position is at least nine inches;

(ii) The height of the rail and end panel as measured from the top of the rail or panel in its highest position to the top of the mattress support in its lowest position is at least twenty-six inches;

(f) Any screws, bolts, or hardware that are loose and not secured;

(g) Sharp edges, points, or rough surfaces, or any wood surfaces that are not smooth and free from splinters, splits, or cracks;

(h) Nonfull-size cribs with tears in mesh or fabric sides.

(4) On or after January 1, 1997, any commercial user who willfully and knowingly violates this section is guilty of a misdemeanor, punishable by a fine not exceeding one thousand dollars. Hotels, motels, and similar transient lodging, child care facilities, and family child care homes are not subject to this section until January 1, 1999. [2003 c 53 § 361; 1996 c 158 § 4.]

**Intent—Effective date—2003 c 53:** See notes following RCW 2.48.180.

**70.111.040 Exemption.** Any crib that is clearly not intended for use by an infant is exempt from the provisions of this chapter, provided that it is accompanied at the time of remanufacturing, retrofitting, selling, leasing, subletting, or otherwise placing in the stream of commerce, by a notice to be furnished by the commercial user declaring that it is not intended to be used for an infant and is dangerous to use for an infant. The commercial user is further exempt from claims for liability resulting from use of a crib contrary to the notice required in this section. [1996 c 158 § 5.]

**70.111.060 Civil actions.** Any person may maintain an action against any commercial user who violates RCW 70.111.030 to enjoin the remanufacture, retrofit, sale, contract to sell, contract to resell, lease, or subletting of a full-size or nonfull-size crib that is unsafe for any infant using the crib, and for reasonable attorneys' fees and costs. This section does not apply to hotels, motels, and similar transient lodging, child care facilities, and family child care homes until January 1, 1999. [1996 c 158 § 7.]

**70.111.070 Remedies.** Remedies available under this chapter are in addition to any other remedies or procedures under any other provision of law that may be available to an aggrieved party. [1996 c 158 § 8.]

**70.111.900 Short title.** This chapter may be known and cited as the infant crib safety act. [1996 c 158 § 2.]

**70.111.901 Severability—1996 c 158.** If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the

provision to other persons or circumstances is not affected. [1996 c 158 § 9.]

**Chapter 70.112 RCW**  
**FAMILY MEDICINE—**  
**EDUCATION AND RESIDENCY PROGRAMS**

Sections

- 70.112.010 Definitions.  
70.112.020 Education in family medical practice—Department in school of medicine—Residency programs—Financial support.  
70.112.060 Funding of residency programs.

*Council for children and families: Chapter 43.121 RCW.*

**70.112.010 Definitions.** (1) "Affiliated" means established or developed in cooperation with the school of medicine.

(2) "Family practice unit" means the community facility or classroom used for training of ambulatory health skills within a residency training program.

(3) "Residency programs" mean[s] community based family practice residency educational programs either in existence or established under this chapter.

(4) "School of medicine" means the University of Washington school of medicine located in Seattle, Washington. [2010 1st sp.s. c 7 § 41; 1975 1st ex.s. c 108 § 1.]

**Reviser's note:** The definitions in this section have been alphabetized pursuant to RCW 1.08.015(2)(k).

**Effective date—2010 1st sp.s. c 26; 2010 1st sp.s. c 7:** See note following RCW 43.03.027.

**70.112.020 Education in family medical practice—Department in school of medicine—Residency programs—Financial support.** There is established a statewide medical education system for the purpose of training resident physicians in family practice. The dean of the school of medicine shall be responsible for implementing the development and expansion of residency programs in cooperation with the medical profession, hospitals, and clinics located throughout the state. The chairman of the department of family medicine in the school of medicine shall determine where affiliated residency programs shall exist; giving consideration to communities in the state where the population, hospital facilities, number of physicians, and interest in medical education indicate the potential success of the residency program. The medical education system shall provide financial support for residents in training for those programs which are affiliated with the school of medicine and shall establish positions for appropriate faculty to staff these programs. The number of programs shall be determined by the board and be in keeping with the needs of the state. [2010 1st sp.s. c 7 § 42; 1975 1st ex.s. c 108 § 2.]

**Effective date—2010 1st sp.s. c 26; 2010 1st sp.s. c 7:** See note following RCW 43.03.027.

**70.112.060 Funding of residency programs.** (1) The moneys appropriated for these statewide family medicine residency programs shall be in addition to all the income of the University of Washington and its school of medicine and shall not be used to supplant funds for other programs under the administration of the school of medicine.

(2010 Ed.)

(2) The allocation of state funds for the residency programs shall not exceed fifty percent of the total cost of the program.

(3) No more than twenty-five percent of the appropriation for each fiscal year for the affiliated programs shall be authorized for expenditures made in support of the faculty and staff of the school of medicine who are associated with the affiliated residency programs and are located at the school of medicine.

(4) No funds for the purposes of this chapter shall be used to subsidize the cost of care incurred by patients. [1975 1st ex.s. c 108 § 6.]

**Chapter 70.114 RCW**  
**MIGRANT LABOR HOUSING**

Sections

- 70.114.010 Legislative declaration—Fees for use of housing.  
70.114.020 Migrant labor housing facility—Employment security department authorized to contract for continued operation.

**70.114.010 Legislative declaration—Fees for use of housing.** The legislature finds that the migrant labor housing project constructed on property purchased by the state in Yakima county should be continued until June 30, 1981. The employment security department is authorized to set day use or extended period use fees, consistent with those established by the department of parks and recreation. [1979 ex.s. c 79 § 1; 1977 ex.s. c 287 § 1; 1975 1st ex.s. c 50 § 1; 1974 ex.s. c 125 § 1.]

**70.114.020 Migrant labor housing facility—Employment security department authorized to contract for continued operation.** The employment security department is authorized to enter into such agreements and contracts as may be necessary to provide for the continued operation of the facility by a state agency, an appropriate local governmental body, or by such other entity as the commissioner may deem appropriate and in the state's best interest. [1979 ex.s. c 79 § 2; 1977 ex.s. c 287 § 2; 1975 1st ex.s. c 50 § 3; 1974 ex.s. c 125 § 4.]

**Chapter 70.114A RCW**  
**TEMPORARY WORKER HOUSING—**  
**HEALTH AND SAFETY REGULATION**

Sections

- 70.114A.010 Findings—Intent.  
70.114A.020 Definitions.  
70.114A.030 Application of chapter.  
70.114A.040 Responsibilities of department.  
70.114A.045 Housing operation standards—Departments' agreement—Enforcement.  
70.114A.050 Housing on rural worksites.  
70.114A.060 Inspection of housing.  
70.114A.065 Licensing, operation, and inspection—Rules.  
70.114A.070 Technical assistance.  
70.114A.081 Temporary worker building code—Rules—Guidelines—Exceptions—Enforcement—Variations.  
70.114A.100 Rules—Compliance with federal act.  
70.114A.110 Cherry harvest temporary labor camps—Rule making—Definition—Conditions for occupation—Application.  
70.114A.900 Severability—1995 c 220.  
70.114A.901 Effective date—1995 c 220.

**70.114A.010 Findings—Intent.** The legislature finds that there is an inadequate supply of temporary and permanent housing for migrant and seasonal workers in this state. The legislature also finds that unclear, complex regulations related to the development, construction, and permitting of worker housing inhibit the development of this much needed housing. The legislature further finds that as a result, many workers are forced to obtain housing that is unsafe and unsanitary.

Therefore, it is the intent of the legislature to encourage the development of temporary and permanent housing for workers that is safe and sanitary by: Establishing a clear and concise set of regulations for temporary housing; establishing a streamlined permitting and administrative process that will be locally administered and encourage the development of such housing; and by providing technical assistance to organizations or individuals interested in the development of worker housing. [1995 c 220 § 1.]

**70.114A.020 Definitions.** The definitions in this section apply throughout this chapter.

(1) "Agricultural employee" means any person who renders personal services to, or under the direction of, an agricultural employer in connection with the employer's agricultural activity.

(2) "Agricultural employer" means any person engaged in agricultural activity, including the growing, producing, or harvesting of farm or nursery products, or engaged in the reforestation or reforestation of lands, which includes but is not limited to the planting, transplanting, tubing, precommercial thinning, and thinning of trees and seedlings, the clearing, piling, and disposal of brush and slash, the harvest of Christmas trees, and other related activities.

(3) "Department" means the department of health.

(4) "Dwelling unit" means a shelter, building, or portion of a building, that may include cooking and eating facilities, that is:

(a) Provided and designated by the operator as either a sleeping area, living area, or both, for occupants; and

(b) Physically separated from other sleeping and common-use areas.

(5) "Enforcement" and "enforcement actions" include the authority to levy and collect fines.

(6) "Facility" means a sleeping place, drinking water, toilet, sewage disposal, food handling installation, or other installations required for compliance with this chapter.

(7) "Occupant" means a temporary worker or a person who resides with a temporary worker at the housing site.

(8) "Operator" means a person holding legal title to the land on which temporary worker housing is located. However, if the legal title and the right to possession are in different persons, "operator" means a person having the lawful control or supervision over the temporary worker housing under a lease or other arrangement.

(9) "Temporary worker" means an agricultural employee employed intermittently and not residing year-round at the same site.

(10) "Temporary worker housing" means a place, area, or piece of land where sleeping places or housing sites are provided by an agricultural employer for his or her agricultural employees or by another person, including a temporary

worker housing operator, who is providing such accommodations for employees, for temporary, seasonal occupancy. [1999 c 374 § 6; 1995 c 220 § 2.]

**70.114A.030 Application of chapter.** Chapter 220, Laws of 1995, applies to temporary worker housing that consists of five or more dwelling units, or any combination of dwelling units, dormitories, or spaces that house ten or more occupants. [1995 c 220 § 3.]

**70.114A.040 Responsibilities of department.** The department is designated the single state agency responsible for encouraging the development of additional temporary worker housing, and shall be responsible for coordinating the activities of the various state and local agencies to assure a seamless, nonduplicative system for the development and operation of temporary worker housing. [1995 c 220 § 4.]

**70.114A.045 Housing operation standards—Departments' agreement—Enforcement.** By December 1, 1999, the department and the department of labor and industries shall jointly establish a formal agreement that identifies the roles of each of the two agencies with respect to the enforcement of temporary worker housing operation standards.

The agreement shall, to the extent feasible, provide for inspection and enforcement actions by a single agency, and shall include measures to avoid multiple citations for the same violation. [1999 c 374 § 3.]

**70.114A.050 Housing on rural worksites.** Temporary worker housing located on a rural worksite, and used for workers employed on the worksite, shall be considered a permitted use at the rural worksite for the purposes of zoning or other land use review processes, subject only to height, setback, and road access requirements of the underlying zone. [1995 c 220 § 5.]

**70.114A.060 Inspection of housing.** The secretary of the department or authorized representative may inspect housing covered by chapter 220, Laws of 1995, to enforce temporary worker housing rules adopted by the state board of health prior to July 25, 1999, or the department, or when the secretary or representative has reasonable cause to believe that a violation of temporary worker housing rules adopted by the state board of health prior to July 25, 1999, or the department is occurring or is being maintained. If the buildings or premises are occupied as a residence, a reasonable effort shall be made to obtain permission from the resident. If the premises or building is unoccupied, a reasonable effort shall be made to locate the owner or other person having charge or control of the building or premises and request entry. If consent for entry is not obtained, for whatever reason, the secretary or representative shall have recourse to every remedy provided by law to secure entry. [1999 c 374 § 7; 1995 c 220 § 6.]

**70.114A.065 Licensing, operation, and inspection—Rules.** The department and the department of labor and industries shall adopt joint rules for the licensing, operation, and inspection of temporary worker housing, and the enforce-

ment thereof. These rules shall establish standards that are as effective as the standards developed under the Washington industrial safety and health act, chapter 49.17 RCW. [1999 c 374 § 1.]

**70.114A.070 Technical assistance.** The \*department of community, trade, and economic development shall contract with private, nonprofit corporations to provide technical assistance to any private individual or nonprofit organization wishing to construct temporary or permanent worker housing. The assistance may include information on state and local application and approval procedures, information or assistance in applying for federal, state, or local financial assistance, including tax incentives, information on cost-effective housing designs, or any other assistance the \*department of community, trade, and economic development may deem helpful in obtaining the active participation of private individuals or groups in constructing or operating temporary or permanent worker housing. [1995 c 220 § 7.]

**\*Reviser's note:** The "department of community, trade, and economic development" was renamed the "department of commerce" by 2009 c 565.

**70.114A.081 Temporary worker building code—Rules—Guidelines—Exceptions—Enforcement—Variations.** (1) The department shall adopt by rule a temporary worker building code in conformance with the temporary worker housing standards developed under the Washington industrial safety and health act, chapter 49.17 RCW, and the following guidelines:

(a) The temporary worker building code shall provide construction standards for shelter and associated facilities that are safe, secure, and capable of withstanding the stresses and loads associated with their designated use, and to which they are likely to be subjected by the elements;

(b) The temporary worker building code shall permit and facilitate designs and formats that allow for maximum affordability, consistent with the provision of decent, safe, and sanitary housing;

(c) In developing the temporary worker building code the department of health shall consider:

(i) The need for dormitory type housing for groups of unrelated individuals; and

(ii) The need for housing to accommodate families;

(d) The temporary worker building code shall incorporate the opportunity for the use of construction alternatives and the use of new technologies that meet the performance standards required by law;

(e) The temporary worker building code shall include standards for heating and insulation appropriate to the type of structure and length and season of occupancy;

(f) The temporary worker building code shall include standards for temporary worker housing that are to be used only during periods when no auxiliary heat is required; and

(g) The temporary worker building code shall provide that persons operating temporary worker housing consisting of four or fewer dwelling units or combinations of dwelling units, dormitories, or spaces that house nine or fewer occupants may elect to comply with the provisions of the temporary worker building code, and that unless the election is made, such housing is subject to the codes adopted under RCW 19.27.031.

(2) In adopting the temporary worker building code, the department shall make exceptions to the codes listed in RCW 19.27.031 and chapter 19.27A RCW, in keeping with the guidelines set forth in this section. The initial temporary worker building code adopted by the department shall be substantially equivalent with the temporary worker building code developed by the state building code council as directed by section 8, chapter 220, Laws of 1995.

(3) The temporary worker building code authorized and required by this section shall be enforced by the department.

The department shall have the authority to allow minor variations from the temporary worker building code that do not compromise the health or safety of workers. Procedures for requesting variations and guidelines for granting such requests shall be included in the rules adopted under this section. [1999 c 374 § 8; 1998 c 37 § 2.]

**70.114A.100 Rules—Compliance with federal act.** Any rules adopted under chapter 220, Laws of 1995, pertaining to an employer who is subject to the migrant and seasonal agricultural worker protection act (96 Stat. 2583; 29 U.S.C. Sec. 1801 et seq.), must comply with the housing provisions of that federal act. [1995 c 220 § 10.]

**70.114A.110 Cherry harvest temporary labor camps—Rule making—Definition—Conditions for occupation—Application.** (1) The department and the department of labor and industries are directed to engage in joint rule making to establish standards for cherry harvest temporary labor camps. These standards may include some variation from standards that are necessary for longer occupancies, provided they are as effective as the standards adopted under the Washington industrial safety and health act, chapter 49.17 RCW. As used in this section "cherry harvest temporary labor camp" means a place where housing and related facilities are provided to agricultural employees by agricultural employers for their use while employed for the harvest of cherries. The housing and facilities may be occupied by agricultural employees for a period not to exceed one week before the commencement through one week following the conclusion of the cherry crop harvest within the state.

(2) Facilities licensed under rules adopted under this section may not be used to provide housing for agricultural employees who are nonimmigrant aliens admitted to the United States for agricultural labor or services of a temporary or seasonal nature under section 1101(a)(15)(H)(ii)(a) of the immigration and nationality act (8 U.S.C. Sec. 1101(a)(15)(H)(ii)(a)).

(3) This section has no application to temporary worker housing constructed in conformance with codes listed in RCW 19.27.031 or 70.114A.081. [2002 c 23 § 1; 1999 c 374 § 5.]

**70.114A.900 Severability—1995 c 220.** If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1995 c 220 § 13.]

**70.114A.901 Effective date—1995 c 220.** This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately [May 3, 1995]. [1995 c 220 § 14.]

### Chapter 70.115 RCW DRUG INJECTION DEVICES

#### Sections

70.115.050 Retail sale of hypodermic syringes, needles—Duty of retailer.  
70.115.060 Retailers not required to sell hypodermic syringes.

**70.115.050 Retail sale of hypodermic syringes, needles—Duty of retailer.** On the sale at retail of any hypodermic syringe, hypodermic needle, or any device adapted for the use of drugs by injection, the retailer shall satisfy himself or herself that the device will be used for the legal use intended. [1981 c 147 § 5.]

**70.115.060 Retailers not required to sell hypodermic syringes.** Nothing contained in chapter 213, Laws of 2002 shall be construed to require a retailer to sell hypodermic needles or syringes to any person. [2002 c 213 § 3.]

### Chapter 70.116 RCW PUBLIC WATER SYSTEM COORDINATION ACT OF 1977

#### Sections

70.116.010 Legislative declaration.  
70.116.020 Declaration of purpose.  
70.116.030 Definitions.  
70.116.040 Critical water supply service area—Designation—Establishment or amendment of external boundaries—Procedures.  
70.116.050 Development of water system plans for critical water supply service areas.  
70.116.060 Approval of coordinated water system plan—Limitations following approval—Dispute resolution mechanism—Update or revision of plan.  
70.116.070 Service area boundaries within critical water supply area.  
70.116.080 Performance standards relating to fire protection.  
70.116.090 Assumption of jurisdiction or control of public water system by city, town, or code city.  
70.116.100 Bottled water exempt.  
70.116.110 Rate making authority preserved.  
70.116.120 Short title.  
70.116.134 Satellite system management agencies.  
70.116.140 Review of water or sewer system plan—Time limitations—Notice of rejection of plan or extension of timeline.  
70.116.900 Severability—1977 ex.s. c 142.

*Drinking water quality consumer complaints: RCW 80.04.110.*

**70.116.010 Legislative declaration.** The legislature hereby finds that an adequate supply of potable water for domestic, commercial, and industrial use is vital to the health and well-being of the people of the state. Readily available water for use in public water systems is limited and should be developed and used efficiently with a minimum of loss or waste.

In order to maximize efficient and effective development of the state's public water supply systems, the department of health shall assist water purveyors by providing a procedure to coordinate the planning of the public water supply systems. [1991 c 3 § 365; 1977 ex.s. c 142 § 1.]

**70.116.020 Declaration of purpose.** The purposes of this chapter are:

(1) To provide for the establishment of critical water supply service areas related to water utility planning and development;

(2) To provide for the development of minimum planning and design standards for critical water supply service areas to insure that water systems developed in these areas are consistent with regional needs;

(3) To assist in the orderly and efficient administration of state financial assistance programs for public water systems; and

(4) To assist public water systems to meet reasonable standards of quality, quantity and pressure. [1977 ex.s. c 142 § 2.]

**70.116.030 Definitions.** Unless the context clearly requires otherwise, the following terms when used in this chapter shall be defined as follows:

(1) "Coordinated water system plan" means a plan for public water systems within a critical water supply service area which identifies the present and future needs of the systems and sets forth means for meeting those needs in the most efficient manner possible. Such a plan shall include provisions for subsequently updating the plan. In areas where more than one water system exists, a coordinated plan may consist of either: (a) A new plan developed for the area following its designation as a critical water supply service area; or (b) a compilation of compatible water system plans existing at the time of such designation and containing such supplementary provisions as are necessary to satisfy the requirements of this chapter. Any such coordinated plan must include provisions regarding: Future service area designations; assessment of the feasibility of shared source, transmission, and storage facilities; emergency inter-ties; design standards; and other concerns related to the construction and operation of the water system facilities.

(2) "Critical water supply service area" means a geographical area which is characterized by a proliferation of small, inadequate water systems, or by water supply problems which threaten the present or future water quality or reliability of service in such a manner that efficient and orderly development may best be achieved through coordinated planning by the water utilities in the area.

(3) "Public water system" means any system providing water intended for, or used for, human consumption or other domestic uses. It includes, but is not limited to, the source, treatment for purifying purposes only, storage, transmission, pumping, and distribution facilities where water is furnished to any community, or number of individuals, or is made available to the public for human consumption or domestic use, but excluding water systems serving one single family residence. However, systems existing on September 21, 1977 which are owner operated and serve less than ten single family residences or which serve only one industrial plant shall be excluded from this definition and the provisions of this chapter.

(4) "Purveyor" means any agency or subdivision of the state or any municipal corporation, firm, company, mutual or cooperative association, institution, partnership, or person or any other entity, that owns or operates for wholesale or retail

service a public water system. It also means the authorized agents of any such entities.

(5) "Secretary" means the secretary of the department of health or the secretary's authorized representative.

(6) "Service area" means a specific geographical area serviced or for which service is planned by a purveyor. [1991 c 3 § 366; 1977 ex.s. c 142 § 3.]

**70.116.040 Critical water supply service area—Designation—Establishment or amendment of external boundaries—Procedures.** (1) The secretary and the appropriate local planning agencies and purveyors, shall study geographical areas where water supply problems related to uncoordinated planning, inadequate water quality or unreliable service appear to exist. If the results of the study indicate that such water supply problems do exist, the secretary or the county legislative authority shall designate the area involved as being a critical water supply service area, consult with the appropriate local planning agencies and purveyors, and appoint a committee of not less than three representatives therefrom solely for the purpose of establishing the proposed external boundaries of the critical water supply service area. The committee shall include a representative from each purveyor serving more than fifty customers, the county legislative authority, county planning agency, and health agencies. Such proposed boundaries shall be established within six months of the appointment of the committee.

During the six month period following the establishment of the proposed external boundaries of the critical water supply services areas, the county legislative authority shall conduct public hearings on the proposed boundaries and shall modify or ratify the proposed boundaries in accordance with the findings of the public hearings. The boundaries shall reflect the existing land usage, and permitted densities in county plans, ordinances, and/or growth policies. If the proposed boundaries are not modified during the six month period, the proposed boundaries shall be automatically ratified and be the critical water supply service area.

After establishment of the external boundaries of the critical water supply service area, no new public water systems may be approved within the boundary area unless an existing water purveyor is unable to provide water service.

(2) At the time a critical water supply service area is established, the external boundaries for such area shall not include any fractional part of a purveyor's existing contiguous service area.

(3) The external boundaries of the critical water supply service area may be amended in accordance with procedures prescribed in subsection (1) of this section for the establishment of the critical water supply service areas when such amendment is necessary to accomplish the purposes of this chapter. [1977 ex.s. c 142 § 4.]

**70.116.050 Development of water system plans for critical water supply service areas.** (1) Each purveyor within the boundaries of a critical water supply service area shall develop a water system plan for the purveyor's future service area if such a plan has not already been developed: PROVIDED, That nonmunicipally owned public water systems are exempt from the planning requirements of this chap-

ter, except for the establishment of service area boundaries if they have no plans for water service beyond their existing service area: PROVIDED FURTHER, That if the county legislative authority permits a change in development that will increase the demand for water service of such a system beyond the existing system's ability to provide minimum water service, the purveyor shall develop a water system plan in accordance with this section. The establishment of future service area boundaries shall be in accordance with RCW 70.116.070.

(2) After the boundaries of a critical water supply service area have been established pursuant to RCW 70.116.040, the committee established in RCW 70.116.040 shall participate in the development of a coordinated water system plan for the designated area. Such a plan shall incorporate all water system plans developed pursuant to subsection (1) of this section. The plan shall provide for maximum integration and coordination of public water system facilities consistent with the protection and enhancement of the public health and well-being. Decisions of the committee shall be by majority vote of those present at meetings of the committee.

(3) Those portions of a critical water supply service area not yet served by a public water system shall have a coordinated water system plan developed by existing purveyors based upon permitted densities in county plans, ordinances, and/or growth policies for a minimum of five years beyond the date of establishment of the boundaries of the critical water supply service area.

(4) To insure that the plan incorporates the proper designs to protect public health, the secretary shall adopt regulations pursuant to chapter 34.05 RCW concerning the scope and content of coordinated water system plans, and shall ensure, as minimum requirements, that such plans:

(a) Are reviewed by the appropriate local governmental agency to insure that the plan is not inconsistent with the land use plans, shoreline master programs, and/or developmental policies of the general purpose local government or governments whose jurisdiction the water system plan affects.

(b) Recognize all water resource plans, water quality plans, and water pollution control plans which have been adopted by units of local, regional, and state government.

(c) Incorporate the fire protection standards developed pursuant to RCW 70.116.080.

(d) Identify the future service area boundaries of the public water system or systems included in the plan within the critical water supply service area.

(e) Identify feasible emergency inter-ties between adjacent purveyors.

(f) Include satellite system management requirements consistent with RCW 70.116.134.

(g) Include policies and procedures that generally address failing water systems for which counties may become responsible under RCW 43.70.195.

(5) If a "water general plan" for a critical water supply service area or portion thereof has been prepared pursuant to chapter 36.94 RCW and such a plan meets the requirements of subsections (1) and (4) of this section, such a plan shall constitute the coordinated water system plan for the applicable geographical area.

(6) The committee established in RCW 70.116.040 may develop and utilize a mechanism for addressing disputes that

arise in the development of the coordinated water system plan.

(7) Prior to the submission of a coordinated water system plan to the secretary for approval pursuant to RCW 70.116.060, the legislative authorities of the counties in which the critical water supply service area is located shall hold a public hearing thereon and shall determine the plan's consistency with subsection (4) of this section. If within sixty days of receipt of the plan, the legislative authorities find any segment of a proposed service area of a purveyor's plan or any segment of the coordinated water system plan to be inconsistent with any current land use plans, shoreline master programs, and/or developmental policies of the general purpose local government or governments whose jurisdiction the water system plan affects, the secretary shall not approve that portion of the plan until the inconsistency is resolved between the local government and the purveyor. If no comments have been received from the legislative authorities within sixty days of receipt of the plan, the secretary may consider the plan for approval.

(8) Any county legislative authority may adopt an abbreviated plan for the provision of water supplies within its boundaries that includes provisions for service area boundaries, minimum design criteria, and review process. The elements of the abbreviated plan shall conform to the criteria established by the department under subsection (4) of this section and shall otherwise be consistent with other adopted land use and resource plans. The county legislative authority may, in lieu of the committee required under RCW 70.116.040, and the procedures authorized in this section, utilize an advisory committee that is representative of the water utilities and local governments within its jurisdiction to assist in the preparation of the abbreviated plan, which may be adopted by resolution and submitted to the secretary for approval. Purveyors within the boundaries covered by the abbreviated plan need not develop a water system plan, except to the extent required by the secretary or state board of health under other authority. Any abbreviated plan adopted by a county legislative authority pursuant to this subsection shall be subject to the same provisions contained in RCW 70.116.060 for coordinated water system plans that are approved by the secretary. [1995 c 376 § 7; 1977 ex.s. c 142 § 5.]

**Findings—1995 c 376:** See note following RCW 70.116.060.

**70.116.060 Approval of coordinated water system plan—Limitations following approval—Dispute resolution mechanism—Update or revision of plan.** (1) A coordinated water system plan shall be submitted to the secretary for design approval within two years of the establishment of the boundaries of a critical water supply service area.

(2) The secretary shall review the coordinated water system plan and, to the extent the plan is consistent with the requirements of this chapter and regulations adopted hereunder, shall approve the plan, provided that the secretary shall not approve those portions of a coordinated water system plan that fail to meet the requirements for future service area boundaries until any boundary dispute is resolved as set forth in RCW 70.116.070.

(3) Following the approval of a coordinated water system plan by the secretary:

(a) All purveyors constructing or proposing to construct public water system facilities within the area covered by the plan shall comply with the plan.

(b) No other purveyor shall establish a public water system within the area covered by the plan, unless the local legislative authority determines that existing purveyors are unable to provide the service in a timely and reasonable manner, pursuant to guidelines developed by the secretary. An existing purveyor is unable to provide the service in a timely manner if the water cannot be provided to an applicant for water within one hundred twenty days unless specified otherwise by the local legislative authority. If such a determination is made, the local legislative authority shall require the new public water system to be constructed in accordance with the construction standards and specifications embodied in the coordinated water system plan approved for the area. The service area boundaries in the coordinated plan for the affected utilities shall be revised to reflect the decision of the local legislative authority.

(4) The secretary may deny proposals to establish or to expand any public water system within a critical water supply service area for which there is not an approved coordinated water system plan at any time after two years of the establishment of the critical water supply service area: PROVIDED, That service connections shall not be considered expansions.

(5) The affected legislative authorities may develop and utilize a mechanism for addressing disputes that arise in the implementation of the coordinated water system plan after the plan has been approved by the secretary.

(6) After adoption of the initial coordinated water system plan, the local legislative authority or the secretary may determine that the plan should be updated or revised. The legislative authority may initiate an update at any time, but the secretary may initiate an update no more frequently than once every five years. The update may encompass all or a portion of the plan, with the scope of the update to be determined by the secretary and the legislative authority. The process for the update shall be the one prescribed in RCW 70.116.050.

(7) The provisions of subsection (3) of this section shall not apply in any county for which a coordinated water system plan has not been approved under subsection (2) of this section.

(8) If the secretary initiates an update or revision of a coordinated water system plan, the state shall pay for the cost of updating or revising the plan. [1995 c 376 § 2; 1977 ex.s. c 142 § 6.]

**Findings—1995 c 376:** "The legislature finds that:

(1) Protection of the state's water resources, and utilization of such resources for provision of public water supplies, requires more efficient and effective management than is currently provided under state law;

(2) The provision of public water supplies to the people of the state should be undertaken in a manner that is consistent with the planning principles of the growth management act and the comprehensive plans adopted by local governments under the growth management act;

(3) Small water systems have inherent difficulties with proper planning, operation, financing, management and maintenance. The ability of such systems to provide safe and reliable supplies to their customers on a long-term basis needs to be assured through proper management and training of operators;

(4) New water quality standards and operational requirements for public water systems will soon generate higher rates for the customers of those systems, which may be difficult for customers to afford to pay. It is in the

best interest of the people of this state that small systems maintain themselves in a financially viable condition;

(5) The drinking water 2000 task force has recommended maintaining a strong and properly funded statewide drinking water program, retaining primary responsibility for administering the federal safe drinking water act in Washington. The task force has further recommended delegation of as many water system regulatory functions as possible to local governments, with provision of adequate resources and elimination of barriers to such delegation. In order to achieve these objectives, the state shall provide adequate funding from both general state funds and funding directly from the regulated water system;

(6) The public health services improvement plan recommends that the principal public health functions in Washington, including regulation of public water systems, should be fully funded by state revenues and undertaken by local jurisdictions with the capacity to perform them; and

(7) State government, local governments, water suppliers, and other interested parties should work for continuing economic growth of the state by maximizing the use of existing water supply management alternatives, including regional water systems, satellite management, and coordinated water system development." [1995 c 376 § 1.]

**70.116.070 Service area boundaries within critical water supply area.** (1) The proposed service area boundaries of public water systems within the critical water supply service area that are required to submit water system plans under this chapter shall be identified in the system's plan. The local legislative authority, or its planning department or other designee, shall review the proposed boundaries to determine whether the proposed boundaries of one or more systems overlap. The boundaries determined by the local legislative authority not to overlap shall be incorporated into the coordinated water system plan. Where any overlap exists, the local legislative authority may attempt to resolve the conflict through procedures established under RCW 70.116.060(5).

(2) Any final decision by a local legislative authority regarding overlapping service areas, or any unresolved disputes regarding service area boundaries, may be appealed or referred to the secretary in writing for resolution. After receipt of an appeal or referral, the secretary shall hold a public hearing thereon. The secretary shall provide notice of the hearing by certified mail to each purveyor involved in the dispute, to each county legislative authority having jurisdiction in the area and to the public. The secretary shall provide public notice pursuant to the provisions of chapter 65.16 RCW. Such notice shall be given at least twenty days prior to the hearing. The hearing may be continued from time to time and, at the termination thereof, the secretary may restrict the expansion of service of any purveyor within the area if the secretary finds such restriction is necessary to provide the greatest protection of the public health and well-being. [1995 c 376 § 13; 1977 ex.s. c 142 § 7.]

**Findings—1995 c 376:** See note following RCW 70.116.060.

**70.116.080 Performance standards relating to fire protection.** The secretary shall adopt performance standards relating to fire protection to be incorporated into the design and construction of public water systems. The standards shall be consistent with recognized national standards. The secretary shall adopt regulations pertaining to the application and enforcement of the standards: PROVIDED, That the regulations shall require the application of the standards for new and expanding systems only. The standards shall apply in critical water supply service areas unless the approved coor-

(2010 Ed.)

dated plan provides for nonfire flow systems. [1977 ex.s. c 142 § 8.]

**70.116.090 Assumption of jurisdiction or control of public water system by city, town, or code city.** The assumption of jurisdiction or control of any public water system or systems by a city, town, or code city, shall be subject to the provisions of chapter 35.13A RCW, and the provisions of this chapter shall be superseded by the provisions of chapter 35.13A RCW regarding such an assumption of jurisdiction. [1977 ex.s. c 142 § 9.]

**70.116.100 Bottled water exempt.** Nothing in this chapter shall apply to water which is bottled or otherwise packaged in a container for human consumption or domestic use, or to the treatment, storage and transportation facilities used in the processing of the bottled water or the distribution of the bottles or containers of water. [1977 ex.s. c 142 § 10.]

**70.116.110 Rate making authority preserved.** Nothing in this chapter shall be construed to alter in any way the existing authority of purveyors and municipal corporations to establish, administer and apply water rates and rate provisions. [1977 ex.s. c 142 § 11.]

**70.116.120 Short title.** This chapter shall be known and may be cited as the "Public Water System Coordination Act of 1977". [1977 ex.s. c 142 § 12.]

**70.116.134 Satellite system management agencies.** (1) The secretary shall adopt rules pursuant to chapter 34.05 RCW establishing criteria for designating individuals or water purveyors as qualified satellite system management agencies. The criteria shall set forth minimum standards for designation as a satellite system management agency qualified to assume ownership, operation, or both, of an existing or proposed public water system. The criteria shall include demonstration of financial integrity and operational capability, and may require demonstration of previous experience in successful operation and management of a public water system.

(2) Each county shall identify potential satellite system management agencies to the secretary for areas where: (a) No purveyor has been designated a future service area pursuant to this chapter, or (b) an existing purveyor is unable or unwilling to provide service. Preference shall be given to public utilities or utility districts or to investor-owned utilities under the jurisdiction of the utilities and transportation commission.

(3) The secretary shall approve satellite system management agencies meeting the established criteria and shall maintain and make available to counties a list of approved agencies. Prior to the construction of a new public water system, the individual(s) proposing the new system or requesting service shall first be directed by the local agency responsible for issuing the construction or building permit to one or more qualified satellite system management agencies designated for the service area where the new system is proposed for the purpose of exploring the possibility of a satellite agency either owning or operating the proposed new water system.

(4) Approved satellite system management agencies shall be reviewed periodically by the secretary for continued compliance with established criteria. The secretary may require status reports and other information necessary for such review. Satellite system management agencies shall be subject to reapproval at the discretion of the secretary but not less than once every five years.

(5) The secretary may assess reasonable fees to process applications for initial approval and for periodic review of satellite system management agencies. A satellite system management account is hereby created in the custody of the state treasurer. All receipts from satellite system management agencies or applicants under subsection (4) of this section shall be deposited into the account. Funds in this account may be used only for administration of the satellite system management program. Expenditures from the account shall be authorized by the secretary or the secretary's designee. The account is subject to allotment procedures under chapter 43.88 RCW, but no appropriation is required for expenditures.

(6) For purposes of this section, "satellite system management agency" and "satellite agency" shall mean a person or entity that is certified by the secretary to own or operate more than one public water system on a regional or county-wide basis, without the necessity for a physical connection between such systems. [1991 c 18 § 1.]

**70.116.140 Review of water or sewer system plan—Time limitations—Notice of rejection of plan or extension of timeline.** For any new or revised water or sewer system plan submitted for review under this chapter, the department of health shall review and either approve, conditionally approve, reject, or request amendments within ninety days of the receipt of the submission of the plan. The department of health may extend this ninety-day time limitation for new submittals by up to an additional ninety days if insufficient time exists to adequately review the general comprehensive plan. For rejections of plans or extensions of the timeline, the department shall provide in writing, to the person or entity submitting the plan, the reason for such action. In addition, the person or entity submitting the plan and the department of health may mutually agree to an extension of the deadlines contained in this section. [2002 c 161 § 3.]

**70.116.900 Severability—1977 ex.s. c 142.** If any provision of this chapter, or its application to any person or circumstance is held invalid, the remainder of the chapter, or the application of the provision to other persons or circumstances is not affected. [1977 ex.s. c 142 § 13.]

## Chapter 70.118 RCW

### ON-SITE SEWAGE DISPOSAL SYSTEMS

#### Sections

70.118.010	Legislative declaration.
70.118.020	Definitions.
70.118.030	Local boards of health—Administrative search warrant—Administrative plan—Corrections.
70.118.040	Local boards of health—Authority to waive sections of local plumbing and/or building codes.
70.118.050	Adoption of more restrictive standards.
70.118.060	Additive regulation.

70.118.070	Additives—Confidentiality.
70.118.080	Additives—Unfair practices.
70.118.090	Funding.
70.118.110	Alternative systems—State guidelines and standards.
70.118.120	Inspectors—Certificate of competency.
70.118.130	Civil penalties.

**Reviser's note:** Powers and duties of the department of social and health services and the secretary of social and health services transferred to the department of health and the secretary of health. See RCW 43.70.060.

*Local health officer authority to grant waiver from on-site sewage system requirements: RCW 70.05.072.*

**70.118.010 Legislative declaration.** The legislature finds that over one million, two hundred thousand persons in the state are not served by sanitary sewers and that they must rely on septic tank systems. The failure of large numbers of such systems has resulted in significant health hazards, loss of property values, and water quality degradation. The legislature further finds that failure of such systems could be reduced by utilization of nonwater-carried sewage disposal systems, or other alternative methods of effluent disposal, as a correctional measure. Waste water volume diminution and disposal of most of the high bacterial waste through composting or other alternative methods of effluent disposal would result in restorative improvement or correction of existing substandard systems. [1977 ex.s. c 133 § 1.]

**70.118.020 Definitions.** As used in this chapter, the terms defined in this section shall have the meanings indicated unless the context clearly indicates otherwise.

(1) "Nonwater-carried sewage disposal devices" means any device that stores and treats nonwater-carried human urine and feces.

(2) "Alternative methods of effluent disposal" means systems approved by the department of health, including at least, mound systems, alternating drainfields, anaerobic filters, evapotranspiration systems, and aerobic systems.

(3) "Failure" means: (a) Effluent has been discharged on the surface of the ground prior to approved treatment; or (b) effluent has percolated to the surface of the ground; or (c) effluent has contaminated or threatens to contaminate a groundwater supply.

(4) "Additive" means any commercial product intended to affect the performance or aesthetics of an on-site sewage disposal system.

(5) "Department" means the department of health.

(6) "On-site sewage disposal system" means any system of piping, treatment devices, or other facilities that convey, store, treat, or dispose of sewage on the property where it originates or on nearby property under the control of the user where the system is not connected to a public sewer system. For purposes of this chapter, an on-site sewage disposal system does not include indoor plumbing and associated fixtures.

(7) "Chemical additive" means those additives containing acids, bases, or other chemicals deemed unsafe by the department for use in an on-site sewage disposal system.

(8) "Additive manufacturer" means any person who manufactures, formulates, blends, packages, or repackages an additive product for sale, use, or distribution within the state. [1994 c 281 § 2; 1993 c 321 § 2; 1991 c 3 § 367; 1977 ex.s. c 133 § 2.]

**Finding—Purpose—1994 c 281:** "The legislature finds that chemical additives do, and that other types of additives may, contribute to septic system failure and groundwater contamination. In order to determine which ingredients of nonchemically based additive products have adverse effects on public health or the environment, it is necessary to submit such products to a review procedure.

The purpose of this act is: (1) To establish a timely and orderly procedure for review and approval of on-site sewage disposal system additives; (2) to prohibit the use, sale, or distribution of additives having an adverse effect on public health or the water quality of the state; (3) to require the disclosure of the contents of additives that are advertised, sold, or distributed in the state; and (4) to provide for consumer protection." [1994 c 281 § 1.]

**Intent—1993 c 321:** See note following RCW 70.118.060.

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**70.118.030 Local boards of health—Administrative search warrant—Administrative plan—Corrections.** (1) Local boards of health shall identify failing septic tank drain-field systems in the normal manner and will use reasonable effort to determine new failures. The local health officer, environmental health director, or equivalent officer may apply for an administrative search warrant to a court official authorized to issue a criminal search warrant. The warrant may only be applied for after the local health officer or the health officer's designee has requested inspection of the person's property under the specific administrative plan required in this section, and the person has refused the health officer or the health officer's designee access to the person's property. Timely notice must be given to any affected person that a warrant is being requested and that the person may be present at any court proceeding to consider the requested search warrant. The court official may issue the warrant upon probable cause. A request for a search warrant must show [that] the inspection, examination, test, or sampling is in response to pollution in commercial or recreational shellfish harvesting areas or pollution in fresh water. A specific administrative plan must be developed expressly in response to the pollution. The local health officer, environmental health director, or equivalent officer shall submit the plan to the court as part of the justification for the warrant, along with specific evidence showing that it is reasonable to believe pollution is coming from the septic system on the property to be accessed for inspection. The plan must include each of the following elements:

- (a) The overall goal of the inspection;
- (b) The location and identification by address of the properties being authorized for inspection;
- (c) Requirements for giving the person owning the property and the person occupying the property if it is someone other than the owner, notice of the plan, its provisions, and times of any inspections;
- (d) The survey procedures to be used in the inspection;
- (e) The criteria that would be used to define an on-site sewage system failure; and
- (f) The follow-up actions that would be pursued once an on-site sewage system failure has been identified and confirmed.

(2) Discretionary judgment will be made in implementing corrections by specifying nonwater-carried sewage disposal devices or other alternative methods of treatment and effluent disposal as a measure of ameliorating existing substandard conditions. Local regulations shall be consistent

with the intent and purposes stated in this section. [1998 c 152 § 1; 1977 ex.s. c 133 § 3.]

**70.118.040 Local boards of health—Authority to waive sections of local plumbing and/or building codes.** With the advice of the secretary of the department of health, local boards of health are hereby authorized to waive applicable sections of local plumbing and/or building codes that might prohibit the use of an alternative method for correcting a failure. [1991 c 3 § 368; 1977 ex.s. c 133 § 4.]

**70.118.050 Adoption of more restrictive standards.** If the legislative authority of a county or city finds that more restrictive standards than those contained in \*section 2 of this act or those adopted by the state board of health for systems allowed under \*section 2 of this act or limitations on expansion of a residence are necessary to ensure protection of the public health, attainment of state water quality standards, and the protection of shellfish and other public resources, the legislative authority may adopt ordinances or resolutions setting standards as they may find necessary for implementing their findings. The legislative authority may identify the geographic areas where it is necessary to implement the more restrictive standards. In addition, the legislative authority may adopt standards for the design, construction, maintenance, and monitoring of sewage disposal systems. [1989 c 349 § 3.]

**\*Reviser's note:** "Section 2 of this act" did not become law. See effective date note following.

**\*Reviser's note:** Section 2 of this act did not take effect. See chapter 248-96 WAC.

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**70.118.060 Additive regulation.** (1) After July 1, 1994, a person may not use, sell, or distribute a chemical additive to on-site sewage disposal systems.

(2) After January 1, 1996, no person shall use, sell, or distribute any on-site sewage disposal additive whose ingredients have not been approved by the department.

(3) Each manufacturer of an on-site sewage disposal system additive that is sold, advertised, or distributed in the state shall submit the following information to the department: (a) The name and address of the company; (b) the name of the product; (c) the complete product formulation; (d) the location where the product is manufactured; (e) the intended method of product application; and (f) a request that the product be reviewed.

(4) The department shall adopt rules providing the criteria, review, and decision-making procedures to be used in reviewing on-site sewage disposal additives for use, sale, or distribution in the state. The criteria shall be designed to determine whether the additive has an adverse effect on public health or water quality. The department may charge a fee sufficient to cover the costs of evaluating the additive, including the development of criteria and review procedures. The fee schedule shall be established by rule.

(5) The department shall issue a decision as to whether a product registered pursuant to subsection (3) of this section is approved or denied within forty-five days of receiving a complete evaluation as required pursuant to subsection (4) of this section.

(6) Manufacturers shall reregister their product as provided in subsection (3) of this section each time their product formulation changes. The department may require a new approval for products registered under this subsection prior to allowing the use, sale, or distribution within the state.

(7) The department may contract with private laboratories for the performance of any duties necessary to carry out the purpose of this section.

(8) The attorney general or appropriate city or county prosecuting attorney is authorized to bring an appropriate action to enjoin any violation of the prohibition on the sale or distribution of additives, or to enjoin any violation of the conditions in RCW 70.118.080.

(9) The department is responsible for providing written notification to additives manufacturers of the provisions of this section and RCW 70.118.070 and 70.118.080. The notification shall be provided no later than thirty days after April 1, 1994. Within thirty days of notification from the department, manufacturers shall provide the same notification to their distributors, wholesalers, and retail customers. [1994 c 281 § 3; 1993 c 321 § 3.]

**Finding—Purpose—Effective date—1994 c 281:** See notes following RCW 70.118.020.

**Intent—1993 c 321:** "The legislature finds that most additives do not have a positive effect on the operation of on-site systems and can contaminate groundwater aquifers, render septic drainfields dysfunctional, and result in costly repairs to homeowners. It is therefore the intent of the legislature to ban the use, sale, and distribution of additives within the state unless an additive has been specifically approved by the department of health." [1993 c 321 § 1.]

**70.118.070 Additives—Confidentiality.** The department shall hold confidential any information obtained pursuant to RCW 70.118.060 when shown by any manufacturer that such information, if made public, would divulge confidential business information, methods, or processes entitled to protection as trade secrets of the manufacturer. [1994 c 281 § 4.]

**Finding—Purpose—Effective date—1994 c 281:** See notes following RCW 70.118.020.

**70.118.080 Additives—Unfair practices.** (1) Each manufacturer of a certified and approved additive product advertised, sold, or distributed in the state shall:

(a) Make no claims relating to the elimination of the need for septic tank pumping or proper septic tank maintenance;

(b) List the components of additive products on the product label, along with information regarding instructions for use and precautions;

(c) Make no false statements, design, or graphic representation relative to an additive product that is inconsistent with RCW 70.118.060, 70.118.070, or this section; and

(d) Make no claims, either direct or implied, about the performance of the product based on state approval of its ingredients.

(2) A violation of this section is an unfair act or practice in violation of the consumer protection act, chapter 19.86 RCW. [1994 c 281 § 5.]

**Finding—Purpose—Effective date—1994 c 281:** See notes following RCW 70.118.020.

[Title 70 RCW—page 398]

**70.118.090 Funding.** The department may not use funds appropriated to implement an element of the action agenda developed by the Puget Sound partnership under RCW 90.71.310 to conduct any activity required under chapter 281, Laws of 1994. [2007 c 341 § 61; 1994 c 281 § 6.]

**Severability—Effective date—2007 c 341:** See RCW 90.71.906 and 90.71.907.

**Finding—Purpose—Effective date—1994 c 281:** See notes following RCW 70.118.020.

**70.118.110 Alternative systems—State guidelines and standards.** In order to assure that technical guidelines and standards keep pace with advancing technologies, the department of health in collaboration with local health departments and other interested parties, must review and update as appropriate, the state guidelines and standards for alternative on-site sewage disposal every three years. The first review and update must be completed by January 1, 1999. [2010 1st sp.s. c 7 § 80; 1997 c 447 § 5.]

**Effective date—2010 1st sp.s. c 26; 2010 1st sp.s. c 7:** See note following RCW 43.03.027.

**Finding—Purpose—1997 c 447:** See note following RCW 70.05.074.

**70.118.120 Inspectors—Certificate of competency.** (1) The local board of health shall ensure that individuals who conduct inspections of on-site wastewater treatment systems or who otherwise conduct reviews of such systems are qualified in the technology and application of on-site sewage treatment principles. A certificate of competency issued by the department of licensing is adequate demonstration that an individual is competent in the engineering aspects of on-site wastewater treatment system technology.

(2) A local board of health may allow noncertified individuals to review designs of, and conduct inspections of, on-site wastewater treatment systems for a maximum of two years after the date of hire, if a certified individual reviews or supervises the work during that time. [1999 c 263 § 22.]

**70.118.130 Civil penalties.** A local health officer who is responsible for administering and enforcing regulations regarding on-site sewage disposal systems is authorized to issue civil penalties for violations of those regulations under the same limitations and requirements imposed on the department under RCW 70.118B.050, except that the amount of a penalty shall not exceed one thousand dollars per day for every violation, and judgments shall be entered in the name of the local health jurisdiction and penalties shall be placed into the general fund or funds of the entity or entities operating the local health jurisdiction. [2007 c 343 § 9.]

**Captions and part headings not law—2007 c 343:** See RCW 70.118B.900.

## Chapter 70.118A RCW ON-SITE SEWAGE DISPOSAL SYSTEMS— MARINE RECOVERY AREAS

### Sections

70.118A.010	Findings—Purpose.
70.118A.020	Definitions.
70.118A.030	Local health officers to develop a written on-site program management plan.

(2010 Ed.)

- 70.118A.040 Local health officers—Determination of marine recovery areas.
- 70.118A.050 Marine recovery area on-site strategy.
- 70.118A.060 Local health officer duties—Electronic data systems.
- 70.118A.070 Department review of on-site program management plans—Assistance to local health jurisdictions.
- 70.118A.080 Department to contract with local health jurisdictions—Funding assistance—Requirements—Revised compliance dates—Work group.
- 70.118A.090 Chapter to supplement chapter 70.118 RCW.

**70.118A.010 Findings—Purpose.** The legislature finds that:

(1) Hood Canal and other marine waters in Puget Sound are at risk of severe loss of marine life from low-dissolved oxygen. The increased input of human-influenced nutrients, especially nitrogen, is a factor causing this low-dissolved oxygen condition in some of Puget Sound's waters, in addition to such natural factors as poor overall water circulation and stratification that discourages mixing of surface-to-deeper waters;

(2) A significant portion of the state's residents live in homes served by on-site sewage disposal systems, and many new residences will be served by these systems;

(3) Properly functioning on-site sewage disposal systems largely protect water quality. However, improperly functioning on-site sewage disposal systems in marine recovery areas may contaminate surface water, causing public health problems;

(4) Local programs designed to identify and correct failing on-site sewage disposal systems have proven effective in reducing and eliminating public health hazards, improving water quality, and reopening previously closed shellfish areas; and

(5) State water quality monitoring data and analysis can help to focus these enhanced local programs on specific geographic areas that are sources of pollutants degrading Puget Sound waters.

Therefore, it is the purpose of this chapter to authorize enhanced local programs in marine recovery areas to inventory existing on-site sewage disposal systems, to identify the location of all on-site sewage disposal systems in marine recovery areas, to require inspection of on-site sewage disposal systems and repairs to failing systems, to develop electronic data systems capable of sharing information regarding on-site sewage disposal systems, and to monitor these programs to ensure that they are working to protect public health and Puget Sound water quality. [2006 c 18 § 1.]

**70.118A.020 Definitions.** The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Board" means the state board of health.

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

(3) "Failing" means a condition of an existing on-site sewage disposal system or component that threatens the public health by inadequately treating sewage, or by creating a potential for direct or indirect contact between sewage and the public. Examples of a failing on-site sewage disposal system include:

(a) Sewage on the surface of the ground;

(b) Sewage backing up into a structure caused by slow soil absorption of septic tank effluent;

(c) Sewage leaking from a sewage tank or collection system;

(d) Cesspools or seepage pits where evidence of ground-water or surface water quality degradation exists;

(e) Inadequately treated effluent contaminating ground-water or surface water; or

(f) Noncompliance with standards stipulated on the permit.

(4) "Local health officer" or "local health jurisdiction" means the local health officers and local health jurisdictions in the following counties bordering Puget Sound: Clallam, Island, Kitsap, Jefferson, Mason, San Juan, Seattle-King, Skagit, Snohomish, Tacoma-Pierce, Thurston, and Whatcom.

(5) "Marine recovery area" means an area of definite boundaries where the local health officer, or the department in consultation with the health officer, determines that additional requirements for existing on-site sewage disposal systems may be necessary to reduce potential failing systems or minimize negative impacts of on-site sewage disposal systems.

(6) "Marine recovery area on-site strategy" or "on-site strategy" means a local health jurisdiction's on-site sewage disposal system strategy required under RCW 70.118A.050. This strategy is a component of the on-site program management plan required under RCW 70.118A.030.

(7) "On-site sewage disposal system" means an integrated system of components, located on or nearby the property it serves, that conveys, stores, treats, or provides subsurface soil treatment and dispersal of sewage. It consists of a collection system, a treatment component or treatment sequence, and a soil dispersal component. An on-site sewage disposal system also refers to a holding tank sewage system or other system that does not have a soil dispersal component. For purposes of this chapter, the term "on-site sewage disposal system" does not include any system regulated by a water quality discharge permit issued under chapter 90.48 RCW.

(8) "Unknown system" means an on-site sewage disposal system that was installed without the knowledge or approval of the local health jurisdiction, including those that were installed before such approval was required. [2006 c 18 § 2.]

**70.118A.030 Local health officers to develop a written on-site program management plan.** By July 1, 2007, the local health officers of health jurisdictions in the twelve counties bordering Puget Sound shall develop a written on-site program management plan to provide guidance to the local health jurisdiction. [2006 c 18 § 3.]

**70.118A.040 Local health officers—Determination of marine recovery areas.** (1) In developing on-site program management plans required under RCW 70.118A.030, the local health officer shall propose a marine recovery area for those land areas where existing on-site sewage disposal systems are a significant factor contributing to concerns associated with:

(a) Shellfish growing areas that have been threatened or downgraded by the department under chapter 69.30 RCW;

(b) Marine waters that are listed by the department of ecology under section 303(d) of the federal clean water act

(33 U.S.C. Sec. 1251 et seq.) for low-dissolved oxygen or fecal coliform; or

(c) Marine waters where nitrogen has been identified as a contaminant of concern by the local health officer.

(2) In determining the boundaries for a marine recovery area, the local health officer shall assess and include those land areas where existing on-site sewage disposal systems may affect water quality in the marine recovery area.

(3) Determinations made by the local health officer under this section, including identification of nitrogen as a contaminant of concern, will be based on published guidance developed by the department. The guidance must be designed to ensure the proper use of available scientific and technical data. The health officer shall document the basis for these determinations when plans are submitted to the department.

(4) After July 1, 2007, the local health officer may designate additional marine recovery areas meeting the criteria of this section, according to new information. Where the department recommends the designation of a marine recovery area or expansion of a designated marine recovery area, the local health officer shall notify the department of its decision concerning the recommendation within ninety days of receipt of the recommendation. [2006 c 18 § 4.]

**70.118A.050 Marine recovery area on-site strategy.**

(1) The local health officer of a local health jurisdiction where a marine recovery area has been proposed under RCW 70.118A.040 shall develop and approve a marine recovery area on-site strategy that includes designation of marine recovery areas to guide the local health jurisdiction in developing and managing all existing on-site sewage disposal systems within marine recovery areas within its jurisdiction. The on-site strategy must be a component of the program management plan required under RCW 70.118A.030. The department may grant an extension of twelve months where a local health jurisdiction has demonstrated substantial progress toward completing its on-site strategy.

(2) An on-site strategy for a marine recovery area must specify how the local health jurisdiction will by July 1, 2012, and thereafter, find:

(a) Existing failing systems and ensure that system owners make necessary repairs; and

(b) Unknown systems and ensure that they are inspected as required to ensure that they are functioning properly, and repaired, if necessary. [2006 c 18 § 5.]

**70.118A.060 Local health officer duties—Electronic data systems.** In a marine recovery area, each local health officer shall:

(1) Require that on-site sewage disposal system maintenance specialists, septic tank pumpers, or others performing on-site sewage disposal system inspections submit reports or inspection results to the local health jurisdiction regarding any failing system; and

(2) Develop and maintain an electronic data system of all on-site sewage disposal systems within a marine recovery area to enable the local health jurisdiction to actively manage on-site sewage disposal systems. In assisting development of electronic data systems, the department shall work with local

health jurisdictions with marine recovery areas and the on-site sewage disposal system industry to develop common forms and protocols to facilitate sharing of data. A marine recovery area on-site sewage disposal electronic data system must be compatible with all on-site sewage disposal electronic data systems used throughout a local health jurisdiction. [2006 c 18 § 6.]

**70.118A.070 Department review of on-site program management plans—Assistance to local health jurisdictions.**

(1) The on-site program management plans of local health jurisdictions required under RCW 70.118A.030 must be submitted to the department by July 1, 2007, and be reviewed to determine if they contain all necessary elements. The department shall provide in writing to the local board of health its review of the completeness of the plan. The board may adopt additional criteria by rule for approving plans.

(2) In reviewing the on-site strategy component of the plan, the department shall ensure that all required elements, including designation of any marine recovery area, have been addressed.

(3) Within thirty days of receiving an on-site strategy, the department shall either approve the on-site strategy or provide in writing the reasons for not approving the strategy and recommend changes. If the department does not approve the on-site strategy, the local health officer must amend and resubmit the plan to the department for approval.

(4) Upon receipt of department approval or after thirty days without notification, whichever comes first, the local health officer shall implement the on-site strategy.

(5) If the department denies approval of an on-site strategy, the local health officer may appeal the denial to the board. The board must make a final determination concerning the denial.

(6) The department shall assist local health jurisdictions in:

(a) Developing written on-site program management plans required by RCW 70.118A.030;

(b) Identifying reasonable methods for finding unknown systems; and

(c) Developing or enhancing electronic data systems that will enable each local health jurisdiction to actively manage all on-site sewage disposal systems within their jurisdictions, with priority given to those on-site sewage disposal systems that are located in or which could affect designated marine recovery areas. [2006 c 18 § 7.]

**70.118A.080 Department to contract with local health jurisdictions—Funding assistance—Requirements—Revised compliance dates—Work group.**

(1) The department shall enter into a contract with each local health jurisdiction subject to the requirements of this chapter to implement plans developed under this chapter, and to develop or enhance electronic data systems required by this chapter. The contract must include state funding assistance to the local health jurisdiction from funds appropriated to the department for this purpose.

(2) The contract must require, at a minimum, that within a marine recovery area, the local health jurisdiction:

(a) Show progressive improvement in finding failing systems;

(b) Show progressive improvement in working with on-site sewage disposal system owners to make needed system repairs;

(c) Is actively taking steps to find previously unknown systems and ensuring that they are inspected as required and repaired if necessary;

(d) Show progressive improvement in the percentage of on-site sewage disposal systems that are included in an electronic data system; and

(e) Of those on-site sewage disposal systems in the electronic data system, show progressive improvement in the percentage that have had required inspections.

(3) The contract must also include provisions for state assistance in updating the plan. Beginning July 1, 2012, the contract may adopt revised compliance dates, including those in RCW 70.118A.050, where the local health jurisdiction has demonstrated substantial progress in updating the on-site strategy.

(4) The department shall convene a work group for the purpose of making recommendations to the appropriate committees of the legislature for the development of certification or licensing of maintenance specialists. The work group shall make its recommendation with consideration given to the 1998 report to the legislature entitled "On-Site Wastewater Certification Work Group" as it pertains to maintenance specialists. The work group may give priority to appropriate levels of certification or licensure of maintenance specialists who work in the Puget Sound basin. [2006 c 18 § 8.]

**70.118A.090 Chapter to supplement chapter 70.118 RCW.** The provisions of this chapter are supplemental to all other authorities governing on-site sewage disposal systems, including chapter 70.118 RCW and rules adopted under that chapter. [2006 c 18 § 9.]

## Chapter 70.118B RCW

### LARGE ON-SITE SEWAGE DISPOSAL SYSTEMS

#### Sections

70.118B.005	Findings.
70.118B.010	Definitions.
70.118B.020	Comprehensive regulation—Department duties.
70.118B.030	Operating permits required—Application.
70.118B.040	Rules.
70.118B.050	Violations—Civil penalties.
70.118B.060	Injunctions.
70.118B.070	Authority and duties.
70.118B.900	Captions and part headings not law—2007 c 343.

**70.118B.005 Findings.** The legislature finds that:

(1) Protection of the environment and public health requires properly designed, operated, and maintained on-site sewage systems. Failure of those systems can pose certain health and environmental hazards if sewage leaks above ground or if untreated sewage reaches surface or groundwater.

(2) Chapter 70.118A RCW provides a framework for ongoing management of on-site sewage systems located in marine recovery areas and regulated by local health jurisdictions under state board of health rules. This chapter will pro-

(2010 Ed.)

vide a framework for comprehensive management of large on-site sewage systems statewide.

(3) The primary purpose of this chapter is to establish, in a single state agency, comprehensive regulation of the design, operation, and maintenance of large on-site sewage systems, and their operators, that provides both public health and environmental protection. To accomplish these purposes, this chapter provides for:

(a) The permitting and continuing oversight of large on-site sewage systems;

(b) The establishment by the department of standards and rules for the siting, design, construction, installation, operation, maintenance, and repair of large on-site sewage systems; and

(c) The enforcement by the department of the standards and rules established under this chapter. [2007 c 343 § 1.]

**70.118B.010 Definitions.** The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Department" means the state department of health.

(2) "Industrial wastewater" means the water or liquid carried waste from an industrial process. These wastes may result from any process or activity of industry, manufacture, trade, or business, from the development of any natural resource, or from animal operations such as feedlots, poultry houses, or dairies. The term includes contaminated storm water and leachate from solid waste facilities.

(3) "Large on-site sewage system" means an on-site sewage system with design flows of between three thousand five hundred gallons per day and one hundred thousand gallons per day.

(4) "On-site sewage system" means an integrated system of components, located on or nearby the property it serves, that conveys, stores, treats, and provides subsurface soil treatment and disposal of domestic sewage. It consists of a collection system, a treatment component or treatment sequence, and a subsurface soil disposal component. It may or may not include a mechanical treatment system. An on-site sewage system also refers to a holding tank sewage system or other system that does not have a soil dispersal component. A holding tank that discharges to a sewer is not included in the definition of on-site sewage system. A system into which storm water or industrial wastewater is discharged is not included in the definition of on-site sewage system.

(5) "Person" means any individual, corporation, company, association, firm, partnership, governmental agency, or any other entity whatsoever, and the authorized agents of any such entities.

(6) "Secretary" means the secretary of health.

(7) "Waters of the state" has the same meaning as defined in RCW 90.48.020. [2007 c 343 § 2.]

**70.118B.020 Comprehensive regulation—Department duties.** (1) For the protection of human health and the environment the department shall:

(a) Establish and provide for the comprehensive regulation of large on-site sewage systems including, but not limited to, system siting, design, construction, installation, operation, maintenance, and repair;

(b) Control and prevent pollution of streams, lakes, rivers, ponds, inland waters, salt waters, water courses, and other surface and underground waters of the state of Washington, except to the extent authorized by permits issued under this chapter;

(c) Issue annual operating permits for large on-site sewage systems based on the system's ability to function properly in compliance with the applicable comprehensive regulatory requirements; and

(d) Enforce the large on-site sewage system requirements.

(2) Large on-site sewage systems permitted by the department may not be used for treatment and disposal of industrial wastewater or combined sanitary sewer and storm water systems.

(3) The work group convened under RCW 70.118A.080(4) to make recommendations to the appropriate committees of the legislature for the development of certification or licensing of maintenance specialists shall include recommendations for the development of certification or licensing of large on-site [sewage] system operators. [2007 c 343 § 3.]

**70.118B.030 Operating permits required—Application.** (1) A person may not install or operate a large on-site sewage system without an operating permit as provided in this chapter after July 1, 2009. The owner of the system is responsible for obtaining a permit.

(2) The department shall issue operating permits in accordance with the rules adopted under RCW 70.118B.040.

(3) The department shall ensure the system meets all applicable siting, design, construction, and installation requirements prior to issuing an initial operating permit. Prior to renewing an operating permit, the department may review the performance of the system to determine compliance with rules and any permit conditions.

(4) At the time of initial permit application or at the time of permit renewal the department shall impose those permit conditions, requirements for system improvements, and compliance schedules as it determines are reasonable and necessary to ensure that the system will be operated and maintained properly. Each application must be accompanied by a fee as established in rules adopted by the department.

(5) Operating permits shall be issued for a term of one year, and shall be renewed annually, unless the operator fails to apply for a new permit or the department finds good cause to deny the application for renewal.

(6) Each permit may be issued only for the site and owner named in the application. Permits are not transferable or assignable except with the written approval of the department.

(7) The department may deny an application for a permit or modify, suspend, or revoke a permit in any case in which it finds that the permit was obtained by fraud or there is or has been a failure, refusal, or inability to comply with the requirements of this chapter or the standards or rules adopted under this chapter. RCW 43.70.115 governs notice of denial, revocation, suspension, or modification and provides the right to an adjudicative proceeding to the permit applicant or permittee.

(8) For systems with design flows of more than fourteen thousand five hundred gallons per day, the department shall adopt rules to ensure adequate public notice and opportunity for review and comment on initial large on-site sewage system permit applications and subsequent permit applications to increase the volume of waste disposal or change effluent characteristics. The rules must include provisions for notice of final decisions. Methods for providing notice may include electronic mail, posting on the department's internet site, publication in a local newspaper, press releases, mailings, or other means of notification the department determines appropriate.

(9) A person aggrieved by the issuance of an initial permit, or by the issuance of a subsequent permit to increase the volume of waste disposal or to change effluent characteristics, for systems with design flows of more than fourteen thousand five hundred gallons per day, has the right to an adjudicative proceeding. The application for an adjudicative proceeding must be in writing, state the basis for contesting the action, include a copy of the decision, be served on and received by the department within twenty-eight days of receipt of notice of the final decision, and be served in a manner that shows proof of receipt. An adjudicative proceeding conducted under this subsection is governed by chapter 34.05 RCW.

(10) Any permit issued by the department of ecology for a large on-site sewage system under chapter 90.48 RCW is valid until it first expires after July 22, 2007. The system owner shall apply for an operating permit at least one hundred twenty days prior to expiration of the department of ecology permit.

(11) Systems required to meet operator certification requirements under chapter 70.95B RCW must continue to meet those requirements as a condition of the department operating permit. [2007 c 343 § 4.]

**70.118B.040 Rules.** (1) For the protection of human health and the environment, the secretary shall adopt rules for the comprehensive regulation of large on-site sewage systems, which includes, but is not limited to, the siting, design, construction, installation, maintenance, repair, and permitting of the systems.

(2) In adopting the rules, the secretary shall, in consultation with the department of ecology, require that large on-site sewage systems comply with the applicable sections of chapter 90.48 RCW regarding control and prevention of pollution of waters of the state, including but not limited to:

(a) Surface and groundwater standards established under RCW 90.48.035; and

(b) Those provisions requiring all known, available, and reasonable methods of treatment.

(3) In adopting the rules, the secretary shall ensure that requirements for large on-site sewage systems are consistent with the requirements of any comprehensive plans or development regulations adopted under chapter 36.70A RCW or any other applicable comprehensive plan, land use plan, or development regulation adopted by a city, town, or county. [2007 c 343 § 5.]

**70.118B.050 Violations—Civil penalties.** (1) A person who violates a law or rule regulating large on-site sewage systems administered by the department is subject to a penalty of not more than ten thousand dollars per day for every violation. Every violation is a separate and distinct offense. In case of a continuing violation, each day's continuing violation is a separate and distinct violation. The penalty assessed must reflect the significance of the violation and the previous record of compliance on the part of the person responsible for compliance with large on-site sewage system requirements.

(2) Every person who, through an act of commission or omission, procures, aids, or abets a violation is considered to have violated the provisions of this section and is subject to the penalty provided in this section.

(3) The penalty provided for in this section must be imposed by a notice in writing to the person against whom the civil penalty is assessed and must describe the violation. The notice must be personally served in the manner of service of a summons in a civil action or in a manner that shows proof of receipt. A penalty imposed by this section is due twenty-eight days after receipt of notice unless application for an adjudicative proceeding is filed as provided in subsection (4) of this section.

(4) Within twenty-eight days after notice is received, the person incurring the penalty may file an application for an adjudicative proceeding and may pursue subsequent review as provided in chapter 34.05 RCW and applicable rules.

(5) A penalty imposed by a final administrative order is due upon service of the final administrative order. A person who fails to pay a penalty assessed by a final administrative order within thirty days of service of the final administrative order shall pay, in addition to the amount of the penalty, interest at the rate of one percent of the unpaid balance of the assessed penalty for each month or part of a month that the penalty remains unpaid, commencing with the month in which the notice of penalty was served, and reasonable attorneys' fees as are incurred if civil enforcement of the final administrative order is required to collect the penalty.

(6) A person who institutes proceedings for judicial review of a final administrative order assessing a civil penalty under this chapter shall place the full amount of the penalty in an interest-bearing account in the registry of the reviewing court. At the conclusion of the proceeding the court shall, as appropriate, enter a judgment on behalf of the department and order that the judgment be satisfied to the extent possible from moneys paid into the registry of the court or shall enter a judgment in favor of the person appealing the penalty assessment and order return of the moneys paid into the registry of the court together with accrued interest to the person appealing. The judgment may award reasonable attorneys' fees for the cost of the attorney general's office in representing the department.

(7) If no appeal is taken from a final administrative order assessing a civil penalty under this chapter, the department may file a certified copy of the final administrative order with the clerk of the superior court in which the large on-site sewage system is located or in Thurston county, and the clerk shall enter judgment in the name of the department and in the amount of the penalty assessed in the final administrative order.

(8) A judgment entered under subsection (6) or (7) of this section has the same force and effect as, and is subject to all of the provisions of law relating to, a judgment in a civil action, and may be enforced in the same manner as any other judgment of the court in which it is entered.

(9) The large on-site sewage systems account is created in the custody of the state treasurer. All receipts from penalties imposed under this section shall be deposited into the account. Expenditures from the account shall be used by the department to provide training and technical assistance to large on-site sewage system owners and operators. Only the secretary or the secretary's designee may authorize expenditures from the account. The account is subject to allotment procedures under chapter 43.88 RCW, but an appropriation is not required for expenditures. [2007 c 343 § 6.]

**70.118B.060 Injunctions.** Notwithstanding the existence or use of any other remedy, the department may bring an action to enjoin a violation or threatened violation of this chapter or rules adopted under this chapter. The department may bring the action in the superior court of the county in which the large on-site sewage system is located or in the superior court of Thurston county. [2007 c 343 § 7.]

**70.118B.070 Authority and duties.** The authority and duties created in this chapter are in addition to any authority and duties already provided in law. Nothing in this chapter limits the powers of the state or any political subdivision to exercise such authority. [2007 c 343 § 8.]

**70.118B.900 Captions and part headings not law—2007 c 343.** Captions and part headings used in this act are not any part of the law. [2007 c 343 § 16.]

## Chapter 70.119 RCW

### PUBLIC WATER SUPPLY SYSTEMS—OPERATORS

#### Sections

70.119.010	Legislative declaration.
70.119.020	Definitions.
70.119.030	Certified operators required for certain public water systems.
70.119.040	Exclusions from chapter.
70.119.050	Rules and regulations—Secretary to adopt.
70.119.060	Public water systems—Secretary to categorize.
70.119.070	Secretary—Consideration of guidelines.
70.119.081	Ad hoc advisory committees.
70.119.090	Certificates without examination—Conditions.
70.119.100	Certificates—Issuance and renewal—Conditions.
70.119.110	Certificates—Grounds for revocation.
70.119.120	Secretary—Authority.
70.119.130	Violations—Penalties.
70.119.140	Certificates—Reciprocity with other states.
70.119.150	Waterworks operator certification account.
70.119.160	Fee schedules—Certified operators—Public water systems.
70.119.170	Certification of backflow assembly testers and cross-connection control specialists.
70.119.180	Examinations.
70.119.900	Effective date—1977 ex.s. c 99.

**70.119.010 Legislative declaration.** The legislature declares that competent operation of a public water system is necessary for the protection of the consumers' health, and therefore it is of vital interest to the public. In order to protect the public health and conserve and protect the water resources of the state, it is necessary to provide for the classi-

fying of all public water systems; to require the examination and certification of the persons responsible for the technical operation of such systems; and to provide for the promulgation of rules and regulations to carry out this chapter. [1991 c 305 § 1; 1983 c 292 § 1; 1977 ex.s. c 99 § 1.]

**70.119.020 Definitions.** The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Backflow assembly tester" means a person in charge of inspecting, testing, maintaining, and repairing backflow assemblies, devices, and air gaps that protect the public water system.

(2) "Certificate" means a certificate of competency issued by the secretary stating that the operator has met the requirements for the specified operator classification of the certification program.

(3) "Certified operator" means an individual holding a valid certificate and employed or appointed by any county, water-sewer district, municipality, public or private corporation, company, institution, person, federal agency, or the state of Washington and who is designated by the employing or appointing officials as the person responsible for active daily technical operation.

(4) "Cross-connection control specialist" means a person in charge of developing and implementing cross-connection control programs.

(5) "Department" means the department of health.

(6) "Distribution system" means that portion of a public water system which stores, transmits, pumps and distributes water to consumers.

(7) "Groundwater under the direct influence of surface water" means any water beneath the surface of the ground with:

(a) Significant occurrence of insects or other macroorganisms, algae, or large diameter pathogens such as giardia lamblia; or

(b) Significant and relatively rapid shifts in water characteristics such as turbidity, temperature, conductivity, or pH which closely correlate to climatological or surface water conditions.

(8) "Group A water system" means a system with fifteen or more service connections, regardless of the number of people; or a system serving an average of twenty-five or more people per day for sixty or more days within a calendar year, regardless of the number of service connections.

(9) "Nationally recognized association of certification authorities" shall mean an organization which serves as an information center for certification activities, recommends minimum standards and guidelines for classification of potable water treatment plants, water distribution systems and waste water facilities and certification of operators, facilitates reciprocity between state programs and assists authorities in establishing new certification programs and updating existing ones.

(10) "Operator" includes backflow assembly tester, certified operator, and cross-connection control specialist as these terms are defined in this section.

(11) "Public water system" means any system, excluding a system serving only one single-family residence and a system with four or fewer connections all of which serve resi-

dences on the same farm, providing piped water for human consumption, including any collection, treatment, storage, or distribution facilities under control of the purveyor and used primarily in connection with the system; and collection or pretreatment storage facilities not under control of the purveyor but primarily used in connection with the system.

(12) "Purification plant" means that portion of a public water system which treats or improves the physical, chemical or bacteriological quality of the system's water to bring the water into compliance with state board of health standards.

(13) "Secretary" means the secretary of the department of health.

(14) "Service" means a connection to a public water system designed to serve a single-family residence, dwelling unit, or equivalent use. If the facility has group home or barracks-type accommodations, three persons will be considered equivalent to one service.

(15) "Surface water" means all water open to the atmosphere and subject to surface runoff. [2009 c 221 § 1; 1999 c 153 § 67; 1995 c 269 § 2904; 1991 c 305 § 2; 1991 c 3 § 369; 1983 c 292 § 2; 1977 ex.s. c 99 § 2.]

*Public water supply systems to comply with water quality standards: RCW 70.142.050.*

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**70.119.030 Certified operators required for certain public water systems.** (1) A public water system shall have a certified operator if:

(a) It is a group A water system; or

(b) It is a public water system using a surface water source or a groundwater source under the direct influence of surface water.

(2) The certified operators shall be in charge of the technical direction of a water system's operation, or an operating shift of such a system, or a major segment of a system necessary for monitoring or improving the quality of water. The operator shall be certified as provided in RCW 70.119.050.

(3) A certified operator may provide required services to more than one system or to a group of systems. The amount of time that a certified operator shall be required to be present at any given system shall be based upon the time required to properly operate and maintain the public water system as designed and constructed in accordance with RCW 43.20.050. The employing or appointing officials shall designate the position or positions requiring mandatory certification within their individual systems and shall assure that such certified operators are responsible for the system's technical operation.

(4) The department shall, in establishing by rule or otherwise the requirements for public water systems with fewer than one hundred connections, phase in such requirements in order to assure that (a) an adequate number of certified operators are available to serve the additional systems, (b) the systems have adequate notice and time to plan for securing the services of a certified operator, (c) the department has the additional data and other administrative capacity, (d) adequate training is available to certify additional operators as necessary, and (e) any additional requirements under federal law are satisfied. The department shall require certified operators for all group A systems as necessary to conform to federal law or implementing rules or guidelines. Unless neces-

sary to conform to federal law, rules, or guidelines, the department shall not require a certified operator for a system with fewer than one hundred connections unless that system is determined by the department to be in significant noncompliance with operational, monitoring, or water quality standards that would put the public health at risk, as defined by the department by rule, or has, or is required to have, water treatment facilities other than simple disinfection. [2009 c 221 § 2; 1997 c 218 § 2; 1995 c 376 § 6; 1991 c 305 § 3; 1983 c 292 § 3; 1977 ex.s. c 99 § 3.]

**Findings—1997 c 218:** "The legislature finds and declares that:

(1) The provision of safe and reliable water supplies to the people of the state of Washington is fundamental to ensuring public health and continuing economic vitality of this state.

(2) The department of health, pursuant to legislative directive in 1995, has provided a report that incorporates the findings and recommendations of the \*water supply advisory committee as to progress in meeting the objectives of the public health improvement plan, changes warranted by the recent congressional action reauthorizing the federal safe drinking water act, and new approaches to providing services under the general principles of regulatory reform.

(3) The environmental protection agency has recently completed a national assessment of public water system capital needs, which has identified over four billion dollars in such needs in the state of Washington.

(4) The changes to the safe drinking water act offer the opportunity for the increased ability of the state to tailor federal requirements and programs to meet the conditions and objectives within this state.

(5) The department of health and local governments should be provided with adequate authority, flexibility, and resources to be able to implement the principles and recommendations adopted by the \*water supply advisory committee.

(6) Statutory changes are necessary to eliminate ambiguity or conflicting authorities, provide additional information and tools to consumers and the public, and make necessary changes to be consistent with federal law.

(7) A basic element to the protection of the public's health from waterborne disease outbreaks is systematic and comprehensive monitoring of water supplies for all contaminants, including hazardous substances with long-term health effects, and routine field visits to water systems for technical assistance and evaluation.

(8) The water systems of this state should have prompt and full access to the newly created federal state revolving fund program to help meet their financial needs and to achieve and maintain the technical, managerial, and financial capacity necessary for long-term compliance with state and federal regulations. This requires authority for streamlined program administration and the provision of the necessary state funds required to match the available federal funds.

(9) Stable, predictable, and adequate funding is essential to a statewide drinking water program that meets state public health objectives and provides the necessary state resources to utilize the new flexibility, opportunities, and programs under the safe drinking water act." [1997 c 218 § 1.]

\*Reviser's note: The "water supply advisory committee" was eliminated pursuant to 2010 1st sp.s. c 7 § 120.

**Findings—1995 c 376:** See note following RCW 70.116.060.

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**70.119.040 Exclusions from chapter.** Nothing in this chapter shall apply to:

(1) Industrial water supply systems which do not supply water to residences for domestic use and are under the jurisdictional requirements of the Washington Industrial Safety and Health Act of 1973, chapter 49.17 RCW, as now or hereafter amended; or

(2) The preparation, distribution, or sale of bottled water or water similarly packaged. [1977 ex.s. c 99 § 4.]

**70.119.050 Rules and regulations—Secretary to adopt.** The secretary shall adopt such rules and regulations as may be necessary for the administration of this chapter and

(2010 Ed.)

shall enforce such rules and regulations. The rules and regulations shall include provisions establishing minimum qualifications and procedures for the certification of operators, criteria for determining the kind and nature of continuing educational requirements for renewal of certification under RCW 70.119.100(2), and provisions for classifying water purification plants and distribution systems.

Rules and regulations adopted under the provisions of this section shall be adopted in accordance with the provisions of chapter 34.05 RCW. [1995 c 269 § 2905; 1983 c 292 § 4; 1977 ex.s. c 99 § 5.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**70.119.060 Public water systems—Secretary to categorize.** The secretary shall further categorize all public water systems with regard to the size, type, source of water, and other relevant physical conditions affecting purification plants and distribution systems to assist in identifying the skills, knowledge and experience required for the certification of operators for each category of such systems, to assure the protection of the public health and conservation and protection of the state's water resources as required under RCW 70.119.010, and to implement the provisions of the state safe drinking water act in chapter 70.119A RCW. In categorizing all public water systems for the purpose of implementing these provisions of state law, the secretary shall take into consideration economic impacts as well as the degree and nature of any public health risk. [1991 c 305 § 4; 1977 ex.s. c 99 § 6.]

**70.119.070 Secretary—Consideration of guidelines.** The secretary is authorized, when taking action pursuant to RCW 70.119.050 and 70.119.060, to consider generally applicable criteria and guidelines developed by a nationally recognized association of certification authorities and commonly accepted national guidelines and standards. [1983 c 292 § 5; 1977 ex.s. c 99 § 7.]

**70.119.081 Ad hoc advisory committees.** The secretary, in cooperation with the director of ecology, may establish ad hoc advisory committees, as necessary, to obtain advice and technical assistance regarding the development of rules implementing this chapter and on the examination and certification of operators of water systems. [1995 c 269 § 2909.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**70.119.090 Certificates without examination—Conditions.** Certificates shall be issued without examination under the following conditions:

(1) Certificates shall be issued without application fee to operators who, on January 1, 1978, hold certificates of competency attained under the voluntary certification program sponsored jointly by the state department of social and health services, health services division, and the Pacific Northwest section of the American water works association.

(2) Certification shall be issued to persons certified by a governing body or owner of a public water system to have been the operators of a purification plant or distribution system on January 1, 1978, but only to those who are required to

be certified under RCW 70.119.030(1). A certificate so issued shall be valid for operating any plant or system of the same classification and same type of water source.

(3) A nonrenewable certificate, temporary in nature, may be issued to an operator for a period not to exceed twelve months to fill a vacated position required to have a certified operator. Only one such certificate may be issued subsequent to each instance of vacation of any such position. [1991 c 305 § 5; 1983 c 292 § 7; 1977 ex.s. c 99 § 9.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**70.119.100 Certificates—Issuance and renewal—Conditions.** The issuance and renewal of a certificate shall be subject to the following conditions:

(1) Except as provided in RCW 70.119.090, a certificate shall be issued if the operator has satisfactorily passed a written examination, has paid the department an application fee as established by the department under RCW 70.119.160, and has met the requirements specified in the rules and regulations as authorized by this chapter.

(2) Every certificate shall be renewed annually upon the payment of a fee as established by the department under RCW 70.119.160 and satisfactory evidence is presented to the secretary that the operator has fulfilled the continuing education requirements as prescribed by rule of the department.

(3) The secretary shall notify operators who fail to renew their certificates before the end of the year that their certificates are temporarily valid for two months following the end of the certificate year. Certificates not renewed during the two month period shall be invalid and the secretary shall so notify the holders of such certificates.

(4) An operator who has failed to renew a certificate pursuant to the provisions of this section, may reapply for certification and the secretary may require the operator to meet the requirements established for new applicants. [1993 c 306 § 1; 1991 c 305 § 6; 1987 c 75 § 11; 1983 c 292 § 8; 1982 c 201 § 13; 1977 ex.s. c 99 § 10.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**70.119.110 Certificates—Grounds for revocation.** The secretary may revoke or suspend a certificate: (1) Found to have been obtained by fraud or deceit; (2) for fraud, deceit, or gross negligence involving the operation or maintenance of a public water system; (3) for fraud, deceit, or gross negligence in inspecting, testing, maintenance, or repair of back-flow assemblies, devices, or air gaps intended to protect a public water system from contamination; or (4) for an intentional violation of the requirements of this chapter or any lawful rules, order, or regulation of the department. No person whose certificate is revoked under this section shall be eligible to apply for a certificate until the completion of the revocation period. [2009 c 221 § 5; 1995 c 269 § 2906; 1991 c 305 § 7; 1983 c 292 § 9; 1977 ex.s. c 99 § 11.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**70.119.120 Secretary—Authority.** To carry out the provisions and purposes of this chapter, the secretary is authorized and empowered to:

(1) Receive financial and technical assistance from the federal government and other public or private agencies.

(2) Participate in related programs of the federal government, other state, interstate agencies, or other public or private agencies or organizations.

(3) Assess fees determined pursuant to RCW 70.119.160 on public water systems to support the waterworks operator certification program. [1993 c 306 § 2; 1977 ex.s. c 99 § 12.]

**70.119.130 Violations—Penalties.** Any person, including any operator or any firm, association, corporation, municipal corporation, or other governmental subdivision or agency who, after thirty days' written notice, operates a public water system which is not in compliance with RCW 70.119.030(1), shall be guilty of a misdemeanor. Each month of such operation out of compliance with RCW 70.119.030(1) shall constitute a separate offense. Upon conviction, violators shall be fined an amount not exceeding one hundred dollars for each offense. It shall be the duty of the prosecuting attorney or the attorney general, as appropriate, to secure injunctions of continuing violations of any provisions of this chapter or the rules and regulations adopted under this chapter. [2009 c 221 § 6; 1991 c 305 § 8; 1983 c 292 § 10; 1977 ex.s. c 99 § 13.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**70.119.140 Certificates—Reciprocity with other states.** Operators certified by any state under provisions that, in the judgment of the secretary, are substantially equivalent to the requirements of this chapter and any rules and regulations promulgated hereunder, may be issued, upon application, a certificate without examination.

In making determinations pursuant to this section, the secretary shall consult with the \*board and may consider any generally applicable criteria and guidelines developed by a nationally recognized association of certification authorities. [1977 ex.s. c 99 § 14.]

\*Reviser's note: RCW 70.95B.070, which created the water and wastewater operator certification board of examiners, was repealed by 1995 c 269 § 2907, effective July 1, 1995.

**70.119.150 Waterworks operator certification account.** The waterworks operator certification account is created in the general fund of the state treasury. All fees paid pursuant to RCW 70.119.100, 70.119.120(3), and any other receipts realized in the administration of this chapter shall be deposited in the waterworks operator certification account. Moneys in the account shall be spent only after appropriation. Moneys from the account shall be used by the department of health to carry out the purposes of the waterworks operator certification program. [1993 c 306 § 3; 1977 ex.s. c 99 § 15.]

**70.119.160 Fee schedules—Certified operators—Public water systems.** The department of health certifies public water system operators and monitors public water systems to ensure that such systems comply with the requirements of this chapter and rules implementing this chapter. The secretary shall establish a schedule of fees for operator applicants and renewal licenses and a separate schedule of fees for public water systems to support the waterworks operator certification program. The fees shall be set at a level suf-

ficient for the department to recover the costs of the waterworks operator certification program and in accordance with the procedures established under RCW 43.70.250. [2009 c 221 § 7; 1993 c 306 § 4.]

**70.119.170 Certification of backflow assembly testers and cross-connection control specialists.** (1) Backflow assembly testers and cross-connection control specialists must hold a valid certificate and must be certified as provided by rule as adopted under the authority of RCW 70.119.050.

(2) Backflow assembly testers who maintain or repair backflow assemblies, devices, or air gaps inside a building are subject to certification under chapter 18.106 RCW. [2009 c 221 § 3.]

**70.119.180 Examinations.** (1) Any examination required by the department as a prerequisite for the issuance of certificate under this chapter must be offered in both eastern and western Washington.

(2) Operators not required to be certified by this chapter are encouraged to become certified on a voluntary basis. [2009 c 221 § 4.]

**70.119.900 Effective date—1977 ex.s. c 99.** This act shall take effect on January 1, 1978. [1977 ex.s. c 99 § 17.]

### Chapter 70.119A RCW PUBLIC WATER SYSTEMS— PENALTIES AND COMPLIANCE

#### Sections

70.119A.020	Definitions.
70.119A.025	Environmental excellence program agreements—Effect on chapter.
70.119A.030	Public health emergencies—Violations—Penalty.
70.119A.040	Additional or alternative penalty—Informal resolution unless a public health emergency.
70.119A.050	Enforcement of regulations by local boards of health—Civil penalties.
70.119A.060	Public water systems—Mandate—Conditions for approval or creation of new public water system—Department and local health jurisdiction duties.
70.119A.070	Department contracting authority.
70.119A.080	Drinking water program.
70.119A.100	Operating permits—Findings.
70.119A.110	Operating permits—Application process—Phase-in of implementation—Satellite systems.
70.119A.115	Organic and inorganic chemicals—Area-wide waiver program.
70.119A.120	Safe drinking water account.
70.119A.130	Local government authority.
70.119A.140	Report by bottled water plant operator or water dealer of contaminant in water source.
70.119A.150	Authority to enter premises—Search warrants—Investigations.
70.119A.170	Drinking water assistance account—Drinking water assistance administrative account—Drinking water assistance repayment account—Program to provide financial assistance to public water systems—Responsibilities.
70.119A.180	Water use efficiency requirements—Rules.
70.119A.190	Water system acquisition and rehabilitation program—Created.
70.119A.200	Measuring chlorine residuals.
70.119A.900	Short title—1989 c 422.

*Drinking water quality consumer complaints: RCW 80.04.110.*

**70.119A.020 Definitions.** Unless the context clearly requires otherwise, the following definitions apply throughout this chapter:

(1) "Area-wide waivers" means a waiver granted by the department as a result of a geographically based testing program meeting required provisions of the federal safe drinking water act.

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

(3) "Federal safe drinking water act" means the federal safe drinking water act, 42 U.S.C. Sec. 300f et seq., as now in effect or hereafter amended.

(4) "Group A public water system" means a public water system with fifteen or more service connections, regardless of the number of people; or a system serving an average of twenty-five or more people per day for sixty or more days within a calendar year, regardless of the number of service connections; or a system serving one thousand or more people for two or more consecutive days.

(5) "Group B public water system" means a public water system that does not meet the definition of a group A public water system.

(6) "Local board of health" means the city, town, county, or district board of health.

(7) "Local health jurisdiction" means an entity created under chapter 70.05, 70.08, or 70.46 RCW which provides public health services to persons within the area.

(8) "Local health officer" means the legally qualified physician who has been appointed as the health officer for the city, town, county, or district public health department.

(9) "Order" means a written direction to comply with a provision of the regulations adopted under RCW 43.20.050(2) (a) and (b) or 70.119.050 or to take an action or a series of actions to comply with the regulations.

(10) "Person" includes, but is not limited to, natural persons, municipal corporations, governmental agencies, firms, companies, mutual or cooperative associations, institutions, and partnerships. It also means the authorized agents of any such entities.

(11) "Public health emergency" means a declaration by an authorized health official of a situation in which either illness, or exposure known to cause illness, is occurring or is imminent.

(12) "Public water system" means any system, excluding a system serving only one single-family residence and a system with four or fewer connections all of which serve residences on the same farm, providing water for human consumption through pipes or other constructed conveyances, including any collection, treatment, storage, or distribution facilities under control of the purveyor and used primarily in connection with the system; and collection or pretreatment storage facilities not under control of the purveyor but primarily used in connection with the system, including:

(a) Any collection, treatment, storage, and distribution facilities under control of the purveyor and used primarily in connection with such system; and

(b) Any collection or pretreatment storage facilities not under control of the purveyor which are primarily used in connection with such system.

(13) "Purveyor" means any agency or subdivision of the state or any municipal corporation, firm, company, mutual or cooperative association, institution, partnership, or person or any other entity, that owns or operates a public water system. It also means the authorized agents of any such entities.

(14) "Regulations" means rules adopted to carry out the purposes of this chapter.

(15) "Secretary" means the secretary of the department of health.

(16) "State board of health" is the board created by RCW 43.20.030. [2009 c 495 § 3; 1999 c 118 § 2; 1994 c 252 § 2; 1991 c 304 § 2; 1991 c 3 § 370; 1989 c 422 § 2; 1986 c 271 § 2.]

**Reviser's note:** The definitions in this section have been alphabetized pursuant to RCW 1.08.015(2)(k).

**Effective date—2009 c 495:** See note following RCW 43.20.050.

**Finding—Intent—1999 c 118:** "The legislature finds and declares that the provision of safe and reliable water supplies is essential to public health and the continued economic vitality of the state of Washington. Maintaining the authority necessary to ensure safe and reliable water supplies requires that state laws conform with the provisions of the federal safe drinking water act. It is the intent of the legislature that the definition of public water system be amended to reflect recent amendments to the federal safe drinking water act." [1999 c 118 § 1.]

**Finding—1994 c 252:** "The legislature finds that:

(1) The federal safe drinking water act has imposed significant new costs on public water systems and that the state should seek maximum regulatory flexibility allowed under federal law;

(2) There is a need to comprehensively assess and characterize the groundwaters of the state to evaluate public health risks from organic and inorganic chemicals regulated under federal law;

(3) That federal law provides a mechanism to significantly reduce testing and monitoring costs to public water systems through the use of area-wide waivers.

The legislature therefore directs the department of health to conduct a voluntary program to selectively test the groundwaters of the state for organic and inorganic chemicals regulated under federal law for the purpose of granting area-wide waivers." [1994 c 252 § 1.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**70.119A.025 Environmental excellence program agreements—Effect on chapter.** Notwithstanding any other provision of law, any legal requirement under this chapter, including any standard, limitation, rule, or order is superseded and replaced in accordance with the terms and provisions of an environmental excellence program agreement, entered into under chapter 43.21K RCW. [1997 c 381 § 24.]

**Purpose—1997 c 381:** See RCW 43.21K.005.

**70.119A.030 Public health emergencies—Violations—Penalty.** (1) The secretary or his or her designee or the local health officer may declare a public health emergency. As limited by RCW 70.119A.040, the department may impose penalties for violations of laws or regulations that are determined to be a public health emergency.

(2) As limited by RCW 70.119A.040, the department may impose penalties for violation of laws or rules regulating public water systems and administered by the department of health. [1993 c 305 § 1; 1991 c 304 § 3; 1989 c 422 § 6; 1986 c 271 § 3.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**70.119A.040 Additional or alternative penalty—Informal resolution unless a public health emergency.**

(1)(a) In addition to or as an alternative to any other penalty or action allowed by law, a person who violates a law or rule regulating public water systems and administered by the department of health is subject to a penalty of not more than five thousand dollars per day for every such violation, or, in

the case of a violation that has been determined to be a public health emergency, a penalty of not more than ten thousand dollars per day for every such violation. Every such violation shall be a separate and distinct offense. The amount of fine shall reflect the health significance of the violation and the previous record of compliance on the part of the public water supplier. In case of continuing violation, every day's continuance shall be a separate and distinct violation.

(b) In addition, a person who constructs, modifies, or expands a public water system or who commences the construction, modification, or expansion of a public water system without first obtaining the required departmental approval is subject to penalties of not more than five thousand dollars per service connection, or, in the case of a system serving a transient population, a penalty of not more than four hundred dollars per person based on the highest average daily population the system serves or is anticipated to serve may be imposed. The total penalty that may be imposed pursuant to this subsection (1)(b) is five hundred thousand dollars. For the purpose of computing the penalty under this subsection, a service connection shall include any new service connection actually constructed, any anticipated service connection the system has been designed to serve, and, in the case of a system modification not involving expansions, each existing service connection that benefits or would benefit from the modification.

(c) Every person who, through an act of commission or omission, procures, aids, or abets a violation is considered to have violated the provisions of this section and is subject to the penalty provided in this section.

(2) The penalty provided for in this section shall be imposed by a notice in writing to the person against whom the civil penalty is assessed and shall describe the violation. The notice shall be personally served in the manner of service of a summons in a civil action or in a manner that shows proof of receipt. A penalty imposed by this section is due twenty-eight days after receipt of notice unless application for an adjudicative proceeding is filed as provided in subsection (3) of this section.

(3) Within twenty-eight days after notice is received, the person incurring the penalty may file an application for an adjudicative proceeding and may pursue subsequent review as provided in chapter 34.05 RCW and applicable rules of the department or board of health.

(4) A penalty imposed by a final administrative order is due upon service of the final administrative order. A person who fails to pay a penalty assessed by a final administrative order within thirty days of service of the final administrative order shall pay, in addition to the amount of the penalty, interest at the rate of one percent of the unpaid balance of the assessed penalty for each month or part of a month that the penalty remains unpaid, commencing with the month in which the notice of penalty was served and such reasonable attorney's fees as are incurred in securing the final administrative order.

(5) A person who institutes proceedings for judicial review of a final administrative order assessing a civil penalty under this chapter shall place the full amount of the penalty in an interest bearing account in the registry of the reviewing court. At the conclusion of the proceeding the court shall, as appropriate, enter a judgment on behalf of the

department and order that the judgment be satisfied to the extent possible from moneys paid into the registry of the court or shall enter a judgment in favor of the person appealing the penalty assessment and order return of the moneys paid into the registry of the court together with accrued interest to the person appealing. The judgment may award reasonable attorney's fees for the cost of the attorney general's office in representing the department.

(6) If no appeal is taken from a final administrative order assessing a civil penalty under this chapter, the department may file a certified copy of the final administrative order with the clerk of the superior court in which the public water system is located or in Thurston county, and the clerk shall enter judgment in the name of the department and in the amount of the penalty assessed in the final administrative order.

(7) A judgment entered under subsection (5) or (6) of this section shall have the same force and effect as, and is subject to all of the provisions of law relating to, a judgment in a civil action, and may be enforced in the same manner as any other judgment of the court in which it is entered.

(8) All penalties imposed under this section shall be payable to the state treasury and credited to the safe drinking water account, and shall be used by the department to provide training and technical assistance to system owners and operators.

(9) Except in cases of public health emergencies, the department may not impose monetary penalties under this section unless a prior effort has been made to resolve the violation informally. [1995 c 376 § 8; 1993 c 305 § 2; 1990 c 133 § 8; 1989 c 175 § 135; 1986 c 271 § 4.]

**Findings—1995 c 376:** See note following RCW 70.116.060.

**Findings—Severability—1990 c 133:** See notes following RCW 36.94.140.

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**70.119A.050 Enforcement of regulations by local boards of health—Civil penalties.** Each local board of health that is enforcing the regulations regarding public water systems is authorized to impose and collect civil penalties for violations within the area of its responsibility under the same limitations and requirements imposed upon the department by RCW 70.119A.030 and 70.119A.040, except that judgment shall be entered in the name of the local board and penalties shall be placed into the general fund of the county, city, or town operating the local board of health. [2009 c 495 § 4; 1993 c 305 § 3; 1989 c 422 § 8; 1986 c 271 § 5.]

**Effective date—2009 c 495:** See note following RCW 43.20.050.

**70.119A.060 Public water systems—Mandate—Conditions for approval or creation of new public water system—Department and local health jurisdiction duties.**

(1) To assure safe and reliable public drinking water and to protect the public health:

(a) Public water systems shall comply with all applicable federal, state, and local rules; and

(b) Group A public water systems shall:

(i) Protect the water sources used for drinking water;

(ii) Provide treatment adequate to assure that the public health is protected;

(2010 Ed.)

(iii) Provide and effectively operate and maintain public water system facilities;

(iv) Plan for future growth and assure the availability of safe and reliable drinking water;

(v) Provide the department with the current names, addresses, and telephone numbers of the owners, operators, and emergency contact persons for the system, including any changes to this information, and provide to users the name and twenty-four hour telephone number of an emergency contact person; and

(vi) Take whatever investigative or corrective action is necessary to assure that a safe and reliable drinking water supply is continuously available to users.

(2) No new public water system may be approved or created unless: (a) It is owned or operated by a satellite system management agency established under RCW 70.116.134 and the satellite system management system complies with financial viability requirements of the department; or (b) a satellite management system is not available and it is determined that the new system has sufficient management and financial resources to provide safe and reliable service. The approval of any new system that is not owned by a satellite system management agency shall be conditioned upon future management or ownership by a satellite system management agency, if such management or ownership can be made with reasonable economy and efficiency, or upon periodic review of the system's operational history to determine its ability to meet the department's financial viability and other operating requirements. The department and local health jurisdictions shall enforce this requirement under authority provided under this chapter, chapter 70.116, or 70.05 RCW, or other authority governing the approval of new water systems by the department or a local jurisdiction.

(3) The department and local health jurisdictions shall carry out the rules and regulations of the state board of health adopted pursuant to RCW 43.20.050(2) (a) and (b) and other rules adopted by the department relating to public water systems. [2009 c 495 § 5; 1995 c 376 § 3; 1991 c 304 § 4; 1990 c 132 § 4; 1989 c 422 § 3.]

**Effective date—2009 c 495:** See note following RCW 43.20.050.

**Findings—1995 c 376:** See note following RCW 70.116.060.

**Legislative findings—Severability—1990 c 132:** See notes following RCW 43.20.240.

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**70.119A.070 Department contracting authority.** The department may enter into contracts to carry out the purposes of this chapter. [1989 c 422 § 4.]

**70.119A.080 Drinking water program.** (1) The department shall administer a drinking water program which includes, but is not limited to, those program elements necessary to assume primary enforcement responsibility for part B, and section 1428 of part C of the federal safe drinking water act. No rule promulgated or implemented by the department of health or the state board of health for the purpose of compliance with the requirements of the federal safe drinking water act, 42 U.S.C. Sec. 300f et seq., shall be applicable to public water systems to which that federal law is not applica-

ble, unless the department or the state board determines that such rule is necessary for the protection of public health.

(2) The department shall enter into an agreement of administration with the department of ecology and any other appropriate agencies, to administer the federal safe drinking water act.

(3) The department is authorized to accept federal grants for the administration of a primary program. [1991 c 3 § 371; 1989 c 422 § 5.]

**70.119A.100 Operating permits—Findings.** The legislature finds that:

(1) The responsibility for ensuring that the citizens of this state have a safe and reliable drinking water supply is shared between local government and state government, and is the obligation of every public water system;

(2) A rapid increase in the number of public water systems supplying drinking water to the citizens of this state has significantly increased the burden on both local and state government to monitor and enforce compliance by these systems with state laws that govern planning, design, construction, operation, maintenance, financing, management, and emergency response;

(3) The federal safe drinking water act imposes on state and local governments and the public water systems of this state significant new responsibilities for monitoring, testing, and treating drinking water supplies; and

(4) Existing drinking water programs at both the state and local government level need additional authorities to enable them to more comprehensively and systematically address the needs of the public water systems of this state and assure that the public health and safety of its citizens are protected.

Therefore, annual operating permit requirements shall be established in accordance with this chapter. The operating permit requirements shall be administered by the department and shall be used as a means to assure that public water systems provide safe and reliable drinking water to the public. The department and local government shall conduct comprehensive and systematic evaluations to assess the adequacy and financial viability of public water systems. The department may impose permit conditions, requirements for system improvements, and compliance schedules in order to carry out the purpose of chapter 304, Laws of 1991. [1991 c 304 § 1.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**70.119A.110 Operating permits—Application process—Phase-in of implementation—Satellite systems.** (1) No person may operate a group A public water system unless the person first submits an application to the department and receives an operating permit as provided in this section. A new application must be submitted upon any change in ownership of the system. Any person operating a public water system on July 28, 1991, may continue to operate the system until the department takes final action, including any time necessary for a hearing under subsection (3) of this section, on a permit application submitted by the person operating the system under the rules adopted by the department to implement this section.

(2) The department may require that each application include the information that is reasonable and necessary to determine that the system complies with applicable standards and requirements of the federal safe drinking water act, state law, and rules adopted by the department or by the state board of health.

(3) Following its review of the application, its supporting material, and any information received by the department in its investigation of the application, the department shall issue or deny the operating permit. The department shall act on initial permit applications as expeditiously as possible, and shall in all cases either grant or deny the application within one hundred twenty days of receipt of the application or of any supplemental information required to complete the application. The applicant for a permit shall be entitled to file an appeal in accordance with chapter 34.05 RCW if the department denies the initial or subsequent applications or imposes conditions or requirements upon the operator. Any operator of a public water system that requests a hearing may continue to operate the system until a decision is issued after the hearing.

(4) At the time of initial permit application or at the time of permit renewal the department may impose such permit conditions, requirements for system improvements, and compliance schedules as it determines are reasonable and necessary to ensure that the system will provide a safe and reliable water supply to its users.

(5) Operating permits shall be issued for a term of one year, and shall be renewed annually, unless the operator fails to apply for a new permit or the department finds good cause to deny the application for renewal.

(6) Each application shall be accompanied by an annual fee as follows:

(a) The annual fee for public water supply systems serving fifteen to forty-nine service connections shall be twenty-five dollars.

(b) The annual fee for public water supply systems serving fifty to three thousand three hundred thirty-three service connections shall be based on a uniform per service connection fee of one dollar and fifty cents per service connection.

(c) The annual fee for public water supply systems serving three thousand three hundred thirty-four to fifty-three thousand three hundred thirty-three service connections shall be based on a uniform per service connection fee of one dollar and fifty cents per service connection plus ten cents for each service connection in excess of three thousand three hundred thirty-three service connections.

(d) The annual fee for public water supply systems serving fifty-three thousand three hundred thirty-four or more service connections shall be ten thousand dollars.

(e) In addition to the fees under (a) through (d) of this subsection, the department may charge an additional one-time fee of five dollars for each service connection in a new water system.

(f) Until June 30, 2007, in addition to the fees under (a) through (e) of this subsection, the department may charge municipal water suppliers, as defined in RCW 90.03.015, an additional annual fee equivalent to twenty-five cents for each residential service connection for the purpose of funding the water conservation activities in RCW 70.119A.180.

(7) The department may phase-in the implementation for any group of systems provided the schedule for implementation is established by rule. Prior to implementing the operating permit requirement on water systems having less than five hundred service connections, the department shall form a committee composed of persons operating these systems. The committee shall be composed of the department of health, two operators of water systems having under one hundred connections, two operators of water systems having between one hundred and two hundred service connections, two operators of water systems having between two hundred and three hundred service connections, two operators of water systems having between three hundred and four hundred service connections, two operators of water systems having between four hundred and five hundred service connections, and two county public health officials. The members shall be chosen from different geographic regions of the state. This committee shall develop draft rules to implement this section. The draft rules will then be subject to the rule-making procedures in accordance with chapter 34.05 RCW.

(8) The department shall notify existing public water systems of the requirements of RCW 70.119A.030, 70.119A.060, and this section at least one hundred twenty days prior to the date that an application for a permit is required pursuant to RCW 70.119A.030, 70.119A.060, and this section.

(9) The department shall issue one operating permit to any approved satellite system management agency. Operating permit fees for approved satellite system management agencies shall be one dollar per connection per year for the total number of connections under the management of the approved satellite agency. The department shall define by rule the meaning of the term "satellite system management agency." If a statutory definition of this term exists, then the department shall adopt by rule a definition consistent with the statutory definition.

(10) For purposes of this section, "group A public water system" and "system" mean those water systems with fifteen or more service connections, regardless of the number of people; or a system serving an average of twenty-five or more people per day for sixty or more days within a calendar year, regardless of the number of service connections. [2003 1st sp.s. c 5 § 18; 1991 c 304 § 5.]

**Severability—2003 1st sp.s. c 5:** See note following RCW 90.03.015.

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**70.119A.115 Organic and inorganic chemicals—Area-wide waiver program.** The department shall develop and implement a voluntary consolidated source monitoring program sufficient to accurately characterize the source water quality of the state's drinking water supplies and to maximize the flexibility allowed in the federal safe drinking water act to allow public water systems to be waived from full testing requirements for organic and inorganic chemicals under the federal safe drinking water act. The department shall arrange for the initial sampling and provide for testing and programmatic costs to the extent that the legislature provides funding for this purpose in water system operating permit fees or through specific appropriation of funds from other sources. The department shall assess a fee using its authority under

(2010 Ed.)

RCW 43.20B.020, sufficient to cover all testing and directly related costs to public water systems that otherwise are not funded. The department shall adjust the amount of the fee based on the size of the public drinking water system. Fees charged by the department for this purpose may not vary by more than a factor of ten. The department shall, to the extent feasible and cost-effective, use the services of local governments, local health departments, and private laboratories to implement the testing program. The department shall consult with the departments of agriculture and ecology for the purpose of exchanging water quality and other information. [1997 c 218 § 3; 1994 c 252 § 3.]

**Findings—Effective date—1997 c 218:** See notes following RCW 70.119.030.

**Finding—Effective date—1994 c 252:** See notes following RCW 70.119A.020.

**70.119A.120 Safe drinking water account.** The safe drinking water account is created in the general fund of the state treasury. All receipts from the operating permit fees required to be paid under RCW 70.119A.110 shall be deposited into the account. Moneys in the account may be spent only after appropriation. Expenditures from the account may be used by the department of health to carry out the purposes of chapter 304, Laws of 1991 and to carry out contracts with local governments in accordance with this chapter. [1991 c 304 § 6.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**70.119A.130 Local government authority.** (1) Local governments may establish separate operating permit requirements for public water systems provided the operating permit requirements have been approved by the department. The department shall not approve local operating permit requirements unless the local system will result in an increased level of service to the public water system. There shall not be duplicate operating permit requirements imposed by local governments and the department.

(2) Local governments may establish requirements for group B public water systems in addition to those established by rule by the state board of health pursuant to RCW 43.20.050(2) or other rules adopted by the department, provided that the requirements are at least as stringent as the state requirements. [2009 c 495 § 6; 1995 c 376 § 9; 1991 c 304 § 7.]

**Effective date—2009 c 495:** See note following RCW 43.20.050.

**Findings—1995 c 376:** See note following RCW 70.116.060.

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**70.119A.140 Report by bottled water plant operator or water dealer of contaminant in water source.** In such cases where a bottled water plant operator or water dealer knows or has reason to believe that a contaminant is present in the source water because of spill, release of a hazardous substance, or otherwise, and the contaminant's presence would create a potential health hazard to consumers, the plant operator or water dealer must report such an occurrence to the state's department of health. [1992 c 34 § 5.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**70.119A.150 Authority to enter premises—Search warrants—Investigations.** (1)(a) Except as otherwise provided in (b) of this subsection, the secretary or his or her designee shall have the right to enter a premises under the control of a public water system at reasonable times with prior notification in order to determine compliance with laws and rules administered by the department of health to test, inspect, or sample features of a public water system and inspect, copy, or photograph monitoring equipment or other features of a public water system, or records required to be kept under laws or rules regulating public water systems. For the purposes of this section, "premises under the control of a public water system" does not include the premises or private property of a customer of a public water system past the point on the system where the service connection is made.

(b) The secretary or his or her designee need not give prior notification to enter a premises under (a) of this subsection if the purpose of the entry is to ensure compliance by the public water system with a prior order of the department or if the secretary or the secretary's designee has reasonable cause to believe the public water system is violating the law and poses a serious threat to public health and safety.

(2) The secretary or his or her designee may apply for an administrative search warrant to a court official authorized to issue a criminal search warrant. An administrative search warrant may be issued for the purposes of inspecting or examining property, buildings, premises, place, books, records, or other physical evidence, or conducting tests or taking samples. The warrant shall be issued upon probable cause. It is sufficient probable cause to show any of the following:

(a) The inspection, examination, test, or sampling is pursuant to a general administrative plan to determine compliance with laws or rules administered by the department; or

(b) The secretary or his or her designee has reason to believe that a violation of a law or rule administered by the department has occurred, is occurring, or may occur.

(3) The local health officer or the designee of a local health officer of a local board of health that is enforcing rules regulating public water systems under an agreement with the department allocating state and local responsibility is authorized to conduct investigations and to apply for, obtain, and execute administrative search warrants necessary to perform the local board's agreed-to responsibilities under the same limitations and requirements imposed on the department under this section. [1993 c 305 § 4.]

**70.119A.170 Drinking water assistance account—Drinking water assistance administrative account—Drinking water assistance repayment account—Program to provide financial assistance to public water systems—Responsibilities.** (1) A drinking water assistance account is created in the state treasury. Such subaccounts as are necessary to carry out the purposes of this chapter are permitted to be established within the account. Therefore, the drinking water assistance administrative account and the drinking water assistance repayment account are created in the state treasury. The purpose of the account is to allow the state to use any federal funds that become available to states from congress to fund a state revolving loan fund program as part of the reauthorization of the federal safe drinking water act.

Expenditures from the account may only be made by the secretary, the public works board, or the \*department of community, trade, and economic development, after appropriation. Moneys in the account may only be used, consistent with federal law, to assist water systems to provide safe drinking water through a program administered through the department of health, the public works board, and the \*department of community, trade, and economic development and for other activities authorized under federal law. Money may be placed in the account from the proceeds of bonds when authorized by the legislature, transfers from other state funds or accounts, federal capitalization grants or other financial assistance, all repayments of moneys borrowed from the account, all interest payments made by borrowers from the account or otherwise earned on the account, or any other lawful source. All interest earned on moneys deposited in the account, including repayments, shall remain in the account and may be used for any eligible purpose. Moneys in the account may only be used to assist local governments and water systems to provide safe and reliable drinking water, for other services and assistance authorized by federal law to be funded from these federal funds, and to administer the program.

(2) The department and the public works board shall establish and maintain a program to use the moneys in the drinking water assistance account as provided by the federal government under the safe drinking water act. The department and the public works board, in consultation with purveyors, local governments, local health jurisdictions, financial institutions, commercial construction interests, other state agencies, and other affected and interested parties, shall by January 1, 1999, adopt final joint rules and requirements for the provision of financial assistance to public water systems as authorized under federal law. Prior to the effective date of the final rules, the department and the public works board may establish and utilize guidelines for the sole purpose of ensuring the timely procurement of financial assistance from the federal government under the safe drinking water act, but such guidelines shall be converted to rules by January 1, 1999. The department and the public works board shall make every reasonable effort to ensure the state's receipt and disbursement of federal funds to eligible public water systems as quickly as possible after the federal government has made them available. By December 15, 1997, the department and the public works board shall provide a report to the appropriate committees of the legislature reflecting the input from the affected interests and parties on the status of the program. The report shall include significant issues and concerns, the status of rule making and guidelines, and a plan for the adoption of final rules.

(3) If the department, public works board, or any other department, agency, board, or commission of state government participates in providing service under this section, the administering entity shall endeavor to provide cost-effective and timely services. Mechanisms to provide cost-effective and timely services include: (a) Adopting federal guidelines by reference into administrative rules; (b) using existing management mechanisms rather than creating new administrative structures; (c) investigating the use of service contracts, either with other governmental entities or with non-governmental service providers; (d) the use of joint or com-

bined financial assistance applications; and (e) any other method or practice designed to streamline and expedite the delivery of services and financial assistance.

(4) The department shall have the authority to establish assistance priorities and carry out oversight and related activities, other than financial administration, with respect to assistance provided with federal funds. The department, the public works board, and the \*department of community, trade, and economic development shall jointly develop, with the assistance of water purveyors and other affected and interested parties, a memorandum of understanding setting forth responsibilities and duties for each of the parties. The memorandum of understanding at a minimum, shall include:

(a) Responsibility for developing guidelines for providing assistance to public water systems and related oversight prioritization and oversight responsibilities including requirements for prioritization of loans or other financial assistance to public water systems;

(b) Department submittal of preapplication information to the public works board for review and comment;

(c) Department submittal of a prioritized list of projects to the public works board for determination of:

(i) Financial capability of the applicant; and

(ii) Readiness to proceed, or the ability of the applicant to promptly commence the project;

(d) A process for determining consistency with existing water resource planning and management, including coordinated water supply plans, regional water resource plans, and comprehensive plans under the growth management act, chapter 36.70A RCW;

(e) A determination of:

(i) Least-cost solutions, including consolidation and restructuring of small systems, where appropriate, into more economical units;

(ii) The provision of regional facilities;

(iii) Projects and activities that facilitate compliance with the federal safe drinking water act; and

(iv) Projects and activities that are intended to achieve the public health objectives of federal and state drinking water laws;

(f) Implementation of water conservation and other demand management measures consistent with state guidelines for water utilities;

(g) Assistance for the necessary planning and engineering to assure that consistency, coordination, and proper professional review are incorporated into projects or activities proposed for funding;

(h) Minimum standards for water system capacity, financial viability, and water system planning;

(i) Testing and evaluation of the water quality of the state's public water system to assure that priority for financial assistance is provided to systems and areas with threats to public health from contaminated supplies and reduce in appropriate cases the substantial increases in costs and rates that customers of small systems would otherwise incur under the monitoring and testing requirements of the federal safe drinking water act;

(j) Coordination, to the maximum extent possible, with other state programs that provide financial assistance to public water systems and state programs that address existing or potential water quality or drinking contamination problems;

(k) Definitions of "affordability" and "disadvantaged community" that are consistent with these and similar terms in use by other state or federal assistance programs;

(l) Criteria for the financial assistance program for public water systems, which shall include, but are not limited to:

(i) Determining projects addressing the most serious risk to human health;

(ii) Determining the capacity of the system to effectively manage its resources, including meeting state financial viability criteria; and

(iii) Determining the relative benefit to the community served; and

(m) Ensure that each agency fulfills the audit, accounting, and reporting requirements under federal law for its portion of the administration of this program.

(5) The department and the public works board shall begin the process to disburse funds no later than October 1, 1997, and shall adopt such rules as are necessary under chapter 34.05 RCW to administer the program by January 1, 1999. [2001 c 141 § 4; 1997 c 218 § 4; 1995 c 376 § 10.]

**\*Reviser's note:** The "department of community, trade, and economic development" was renamed the "department of commerce" by 2009 c 565.

**Purpose—2001 c 141:** See note following RCW 43.84.092.

**Findings—Effective date—1997 c 218:** See notes following RCW 70.119.030.

**Findings—1995 c 376:** See note following RCW 70.116.060.

**70.119A.180 Water use efficiency requirements—Rules.** (1) It is the intent of the legislature that the department establish water use efficiency requirements designed to ensure efficient use of water while maintaining water system financial viability, improving affordability of supplies, and enhancing system reliability.

(2) The requirements of this section shall apply to all municipal water suppliers and shall be tailored to be appropriate to system size, forecasted system demand, and system supply characteristics.

(3) For the purposes of this section:

(a) Water use efficiency includes conservation planning requirements, water distribution system leakage standards, and water conservation performance reporting requirements; and

(b) "Municipal water supplier" and "municipal water supply purposes" have the meanings provided by RCW 90.03.015.

(4) To accomplish the purposes of this section, the department shall adopt rules necessary to implement this section by December 31, 2005. The department shall:

(a) Develop conservation planning requirements that ensure municipal water suppliers are: (i) Implementing programs to integrate conservation with water system operation and management; and (ii) identifying how to appropriately fund and implement conservation activities. Requirements shall apply to the conservation element of water system plans and small water system management programs developed pursuant to chapter 43.20 RCW. In establishing the conservation planning requirements the department shall review the current department conservation planning guidelines and include those elements that are appropriate for rule. Conservation planning requirements shall include but not be limited to:

(A) Selection of cost-effective measures to achieve a system's water conservation objectives. Requirements shall allow the municipal water supplier to select and schedule implementation of the best methods for achieving its conservation objectives;

(B) Evaluation of the feasibility of adopting and implementing water delivery rate structures that encourage water conservation;

(C) Evaluation of each system's water distribution system leakage and, if necessary, identification of steps necessary for achieving water distribution system leakage standards developed under (b) of this subsection;

(D) Collection and reporting of water consumption and source production and/or water purchase data. Data collection and reporting requirements shall be sufficient to identify water use patterns among utility customer classes, where applicable, and evaluate the effectiveness of each system's conservation program. Requirements, including reporting frequency, shall be appropriate to system size and complexity. Reports shall be available to the public; and

(E) Establishment of minimum requirements for water demand forecast methodologies such that demand forecasts prepared by municipal water suppliers are sufficient for use in determining reasonably anticipated future water needs;

(b) Develop water distribution system leakage standards to ensure that municipal water suppliers are taking appropriate steps to reduce water system leakage rates or are maintaining their water distribution systems in a condition that results in leakage rates in compliance with the standards. Limits shall be developed in terms of percentage of total water produced and/or purchased and shall not be lower than ten percent. The department may consider alternatives to the percentage of total water supplied where alternatives provide a better evaluation of the water system's leakage performance. The department shall institute a graduated system of requirements based on levels of water system leakage. A municipal water supplier shall select one or more control methods appropriate for addressing leakage in its water system;

(c) Establish minimum requirements for water conservation performance reporting to assure that municipal water suppliers are regularly evaluating and reporting their water conservation performance. The objective of setting conservation goals is to enhance the efficient use of water by the water system customers. Performance reporting shall include:

(i) Requirements that municipal water suppliers adopt and achieve water conservation goals. The elected governing board or governing body of the water system shall set water conservation goals for the system. In setting water conservation goals the water supplier may consider historic conservation performance and conservation investment, customer base demographics, regional climate variations, forecasted demand and system supply characteristics, system financial viability, system reliability, and affordability of water rates. Conservation goals shall be established by the municipal water supplier in an open public forum;

(ii) Requirements that the municipal water supplier adopt schedules for implementing conservation program elements and achieving conservation goals to ensure that progress is being made toward adopted conservation goals;

(iii) A reporting system for regular reviews of conservation performance against adopted goals. Performance reports shall be available to customers and the public. Requirements, including reporting frequency, shall be appropriate to system size and complexity;

(iv) Requirements that any system not meeting its water conservation goals shall develop a plan for modifying its conservation program to achieve its goals along with procedures for reporting performance to the department;

(v) If a municipal water supplier determines that further reductions in consumption are not reasonably achievable, it shall identify how current consumption levels will be maintained;

(d) Adopt rules that, to the maximum extent practical, utilize existing mechanisms and simplified procedures in order to minimize the cost and complexity of implementation and to avoid placing unreasonable financial burden on smaller municipal systems.

(5) The department shall provide technical assistance upon request to municipal water suppliers and local governments regarding water conservation, which may include development of best management practices for water conservation programs, conservation landscape ordinances, conservation rate structures for public water systems, and general public education programs on water conservation.

(6) To ensure compliance with this section, the department shall establish a compliance process that incorporates a graduated approach employing the full range of compliance mechanisms available to the department.

(7) Prior to completion of rule making required in subsection (4) of this section, municipal water suppliers shall continue to meet the existing conservation requirements of the department and shall continue to implement their current water conservation programs. [2010 1st sp.s. c 7 § 121; 2003 1st sp.s. c 5 § 7.]

**Effective date—2010 1st sp.s. c 26; 2010 1st sp.s. c 7:** See note following RCW 43.03.027.

**Severability—2003 1st sp.s. c 5:** See note following RCW 90.03.015.

**70.119A.190 Water system acquisition and rehabilitation program—Created.** Subject to the availability of amounts appropriated for this specific purpose, the department shall provide financial assistance through a water system acquisition and rehabilitation program, hereby created. The program shall be jointly administered with the public works board and the \*department of community, trade, and economic development. The agencies shall adopt guidelines for the program using as a model the procedures and criteria of the drinking water revolving loan program authorized under RCW 70.119A.170. All financing provided through the program must be in the form of grants that partially cover project costs. The maximum grant to any eligible entity may not exceed twenty-five percent of the funds allocated to the appropriation in any fiscal year. [2008 c 214 § 2.]

**\*Reviser's note:** The "department of community, trade, and economic development" was renamed the "department of commerce" by 2009 c 565.

**Finding—Purpose—2008 c 214:** "The legislature finds that it is the state's policy to maintain the highest quality and reliability of drinking water supplies to all citizens of the state. Small water systems may face greater challenges in this regard because of declining quality in water sources, catastrophic events such as flooding that impair water sources, the age of the system's infrastructure, saltwater intrusion into water sources, inadequate rate

base for conducting necessary improvements, and other challenges. In response to these needs, the water system acquisition and rehabilitation program was created through biennial budget law, and through the current biennium has a total of nine million seven-hundred fifty thousand dollars toward assisting dozens of water systems to improve the quality of water supply service to thousands of customers.

It is the purpose of this act to establish an ongoing water system acquisition and rehabilitation program, to direct a review of the program to date, and to provide for recommendations for strengthening the program and increasing the financial assistance available under the program." [2008 c 214 § 1.]

**70.119A.200 Measuring chlorine residuals.** A group A water system serving fewer than one hundred connections that purchases water from a water system approved by the department shall measure chlorine residuals at the same time and location of collection for a routine and repeat coliform sample. [2009 c 367 § 8.]

**70.119A.900 Short title—1989 c 422.** This act shall be known and cited as the "Washington state safe drinking water act." [1989 c 422 § 1.]

## Chapter 70.120 RCW

### MOTOR VEHICLE EMISSION CONTROL

#### Sections

70.120.010	Definitions.
70.120.020	Programs.
70.120.070	Vehicle inspections—Failed—Certificate of acceptance.
70.120.080	Vehicle inspections—Fleets.
70.120.100	Vehicle inspections—Complaints.
70.120.120	Rules.
70.120.130	Authority.
70.120.150	Vehicle emission and equipment standards—Designation of noncompliance areas and emission contributing areas.
70.120.160	Noncompliance areas—Annual review.
70.120.170	Motor vehicle emission inspections—Fees—Certificate of compliance—State and local agency vehicles.
70.120.190	Used vehicles.
70.120.210	Clean-fuel performance and clean-fuel vehicle emissions specifications.
70.120.230	Scientific advisory board—Composition of board—Duties.
70.120.901	Captions not law—1989 c 240.
70.120.902	Effective date—1989 c 240.

*Environmental certification programs—Fees—Rules—Liability: RCW 43.21A.175.*

**70.120.010 Definitions.** Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Department" means the department of ecology.

(2) "Director" means the director of the department of ecology.

(3) "Fleet" means a group of fifteen or more motor vehicles registered in the same name and whose owner has been assigned a fleet identifier code by the department of licensing.

(4) "Motor vehicle" means any self-propelled vehicle required to be licensed pursuant to \*chapter 46.16 RCW.

(5) "Motor vehicle dealer" means a motor vehicle dealer, as defined in RCW 46.70.011, that is licensed pursuant to chapter 46.70 RCW.

(6) "Person" means an individual, firm, public or private corporation, association, partnership, political subdivision of the state, municipality, or governmental agency.

(2010 Ed.)

(7) The terms "air contaminant," "air pollution," "air quality standard," "ambient air," "emission," and "emission standard" have the meanings given them in RCW 70.94.030. [1991 c 199 § 201; 1979 ex.s. c 163 § 1.]

**\*Reviser's note:** Although directed to be recodified within chapter 46.16 RCW pursuant to chapter 161, Laws of 2010, a majority of chapter 46.16 RCW was recodified under chapter 46.16A RCW pursuant to RCW 1.08.015 (2)(k) and (3).

**Finding—1991 c 199:** See note following RCW 70.94.011.

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**70.120.020 Programs.** (1) The department shall conduct a public educational program regarding the health effects of air pollution emitted by motor vehicles; the purpose, operation, and effect of emission control devices and systems; and the effect that proper maintenance of motor vehicle engines has on fuel economy and air pollution emission and a public notification program identifying the geographic areas of the state that are designated as being non-compliance areas and emission contributing areas and describing the requirements imposed under this chapter for those areas.

(2)(a) The department shall grant certificates of instruction to persons who successfully complete a course of study, under general requirements established by the director, in the maintenance of motor vehicle engines, the use of engine and exhaust analysis equipment, and the repair and maintenance of emission control devices. The director may establish and implement procedures for granting certification to persons who successfully complete other training programs or who have received certification from public and private organizations which meet the requirements established in this subsection, including programs on clean fuel technology and maintenance.

(b) The department shall make available to the public a list of those persons who have received certificates of instruction under subsection (2)(a) of this section. [1991 c 199 § 202; 1989 c 240 § 5; 1979 ex.s. c 163 § 2.]

**Finding—1991 c 199:** See note following RCW 70.94.011.

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**70.120.070 Vehicle inspections—Failed—Certificate of acceptance.** (1) Any person:

(a) Whose motor vehicle is tested pursuant to this chapter and fails to comply with the emission standards established for the vehicle; and

(b) Who, following such a test, expends more than one hundred dollars on a 1980 or earlier model year motor vehicle or expends more than one hundred fifty dollars on a 1981 or later model year motor vehicle for repairs solely devoted to meeting the emission standards and that are performed by a certified emission specialist authorized by RCW 70.120.020(2)(a); and

(c) Whose vehicle fails a retest, may be issued a certificate of acceptance if (i) the vehicle has been in use for more than five years or fifty thousand miles, and (ii) any component of the vehicle installed by the manufacturer for the purpose of reducing emissions, or its appropriate replacement, is installed and operative.

To receive the certificate, the person must document compliance with (b) and (c) of this subsection to the satisfaction of the department.

Should any provision of (b) of this subsection be disapproved by the administrator of the United States environmental protection agency, all vehicles shall be required to expend at least four hundred fifty dollars to qualify for a certificate of acceptance.

(2) Persons who fail the initial tests shall be provided with:

(a) Information regarding the availability of federal warranties and certified emission specialists;

(b) Information on the availability and procedure for acquiring license trip-permits;

(c) Information on the availability and procedure for receiving a certificate of acceptance; and

(d) The local phone number of the department's local vehicle specialist. [1998 c 342 § 2; 1991 c 199 § 203; 1989 c 240 § 6; 1980 c 176 § 4; 1979 ex.s. c 163 § 7.]

**Finding—1991 c 199:** See note following RCW 70.94.011.

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**70.120.080 Vehicle inspections—Fleets.** The director may authorize an owner or lessee of a fleet of motor vehicles, or the owner's or lessee's agent, to inspect the vehicles in the fleet and issue certificates of compliance for the vehicles in the fleet if the director determines that: (1) The director's inspection procedures will be complied with; and (2) certificates will be issued only to vehicles in the fleet that meet emission and equipment standards adopted under RCW 70.120.150 and only when appropriate.

In addition, the director may authorize an owner or lessee of one or more diesel motor vehicles with a gross vehicle weight rating in excess of eight thousand five hundred pounds, or the owner's or lessee's agent, to inspect the vehicles and issue certificates of compliance for the vehicles. The inspections shall be conducted in compliance with inspection procedures adopted by the department and certificates of compliance shall only be issued to vehicles that meet emission and equipment standards adopted under RCW 70.120.150.

The director shall establish by rule the fee for fleet or diesel inspections provided for in this section. The fee shall be set at an amount necessary to offset the department's cost to administer the fleet and diesel inspection program authorized by this section.

Owners, leaseholders, or their agents conducting inspections under this section shall pay only the fee established in this section and not be subject to fees under RCW 70.120.170(4). [1991 c 199 § 205; 1979 ex.s. c 163 § 8.]

**Finding—1991 c 199:** See note following RCW 70.94.011.

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**70.120.100 Vehicle inspections—Complaints.** The department shall investigate complaints received regarding the operation of emission testing stations and shall require corrections or modifications in those operations when deemed necessary.

The department shall also review complaints received regarding the maintenance or repairs secured by owners of

motor vehicles for the purpose of complying with the requirements of this chapter. When possible, the department shall assist such owners in determining the merits of the complaints.

The department shall keep a copy of all complaints received, and on request, make copies available to the public. This is not intended to require disclosure of any information that is exempt from public disclosure under chapter 42.56 RCW. [2005 c 274 § 340; 1998 c 342 § 3; 1979 ex.s. c 163 § 10.]

**Part headings not law—Effective date—2005 c 274:** See RCW 42.56.901 and 42.56.902.

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**70.120.120 Rules.** The director shall adopt rules implementing and enforcing this chapter in accordance with chapter 34.05 RCW. The department shall take into account when considering proposed modifications of emission contributing boundaries, as provided for in RCW 70.120.150(6), alternative transportation control and motor vehicle emission reduction measures that are required by local municipal corporations for the purpose of satisfying federal emission guidelines. [1991 c 199 § 206; 1989 c 240 § 8; 1979 ex.s. c 163 § 13.]

**Finding—1991 c 199:** See note following RCW 70.94.011.

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**70.120.130 Authority.** The authority granted by this chapter to the director and the department for controlling vehicle emissions is supplementary to the department's authority to control air pollution pursuant to chapter 70.94 RCW. [1979 ex.s. c 163 § 14.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**70.120.150 Vehicle emission and equipment standards—Designation of noncompliance areas and emission contributing areas.** The director:

(1) Shall adopt motor vehicle emission and equipment standards to: Ensure that no less than seventy percent of the vehicles tested comply with the standards on the first inspection conducted, meet federal clean air act requirements, and protect human health and the environment.

(2) Shall adopt rules implementing the smoke opacity testing requirement for diesel vehicles that ensure that such test is objective and repeatable and that properly maintained engines that otherwise would meet the applicable federal emission standards, as measured by the new engine certification test, would not fail the smoke opacity test.

(3) Shall designate a geographic area as being a "non-compliance area" for motor vehicle emissions if (a) the department's analysis of emission and ambient air quality data, covering a period of no less than one year, indicates that the standard has or will probably be exceeded, and (b) the department determines that the primary source of the air contaminant is motor vehicle emissions.

(4) Shall reevaluate noncompliance areas if the United States environmental protection agency modifies the relevant air quality standards, and shall discontinue the program if compliance is indicated and if the department determines that the area would continue to be in compliance after the pro-

gram is discontinued. The director shall notify persons residing in noncompliance areas of the reevaluation.

(5) Shall analyze information regarding the motor vehicle traffic in a noncompliance area to determine the smallest land area within whose boundaries are present registered motor vehicles that contribute significantly to the violation of motor vehicle-related air quality standards in the noncompliance area. The director shall declare the area to be an "emission contributing area." An emission contributing area established for a carbon monoxide or oxides of nitrogen noncompliance area must contain the noncompliance area within its boundaries. An emission contributing area established for an ozone noncompliance area located in this state need not contain the ozone noncompliance area within its boundaries if it can be proven that vehicles registered in the area contribute significantly to violations of the ozone air quality standard in the noncompliance area. An emission contributing area may be established in this state for violations of federal air quality standards for ozone in an adjacent state if (a) the United States environmental protection agency designates an area to be a "nonattainment area for ozone" under the provisions of the federal Clean Air Act (42 U.S.C. 7401 et seq.), and (b) it can be proven that vehicles registered in this state contribute significantly to the violation of the federal air quality standards for ozone in the adjacent state's nonattainment area.

(6) Shall, after consultation with the appropriate local government entities, designate areas as being noncompliance areas or emission contributing areas, and shall establish the boundaries of such areas by rule. The director may also modify boundaries. In establishing the external boundaries of an emission contributing area, the director shall use the boundaries established for ZIP code service areas by the United States postal service.

(7) May make grants to units of government in support of planning efforts to reduce motor vehicle emissions. [1991 c 199 § 207; 1989 c 240 § 2.]

**Finding—1991 c 199:** See note following RCW 70.94.011.

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

#### **70.120.160 Noncompliance areas—Annual review.**

(1) The director shall review annually the air quality and forecasted air quality of each area in the state designated as a noncompliance area for motor vehicle emissions.

(2) An area shall no longer be designated as a noncompliance area if the director determines that:

(a) Air quality standards for contaminants derived from motor vehicle emissions are no longer being violated in the noncompliance area; and

(b) The standards would not be violated if the emission inspection system in the emission contributing area was discontinued and the requirements of \*RCW 46.16.015 no longer applied. [1989 c 240 § 3.]

\*Reviser's note: RCW 46.16.015 was recodified as RCW 46.16A.060 pursuant to 2010 c 161 § 1215, effective July 1, 2011.

**70.120.170 Motor vehicle emission inspections—Fees—Certificate of compliance—State and local agency vehicles. (Expires January 1, 2020.)** (1) The department shall administer a system for emission inspections of all motor vehicles, except those described in \*RCW

(2010 Ed.)

46.16.015(2), that are registered within the boundaries of each emission contributing area. Under such system a motor vehicle shall be inspected biennially except where an annual program would be required to meet federal law and prevent federal sanctions. In addition, motor vehicles shall be inspected at each change of registered owner of a licensed vehicle as provided under \*RCW 46.16.015.

(2) The director shall:

(a) Adopt procedures for conducting emission inspections of motor vehicles. The inspections may include idle and high revolution per minute emission tests. The emission test for diesel vehicles shall consist solely of a smoke opacity test.

(b) Adopt criteria for calibrating emission testing equipment. Electronic equipment used to test for emissions standards provided for in this chapter shall be properly calibrated. The department shall examine frequently the calibration of the emission testing equipment used at the stations.

(c) Authorize, through contracts, the establishment and operation of inspection stations for conducting vehicle emission inspections authorized in this chapter. No person contracted to inspect motor vehicles may perform for compensation repairs on any vehicles. No public body may establish or operate contracted inspection stations. Any contracts [must] comply with the procedures established for competitive bids in chapter 43.19 RCW.

(d) Beginning in 2012, authorize businesses other than those contracted to operate inspection stations under (c) of this subsection to conduct vehicle emission inspections. Businesses authorized under this subsection may also inspect and perform, for compensation, repairs on vehicles. The fee limitations under subsection (4) of this section do not apply to the fee charged for a vehicle emissions inspection by a business authorized to conduct vehicle emission inspections under this subsection. The director may establish by rule a fee to be paid to the department for the oversight costs for each vehicle emission inspection performed by a business authorized under this subsection (2)(d).

(3) Subsection (2)(c) of this section does not apply to volunteer motor vehicle inspections under RCW 70.120.020(1) if the inspections are conducted for the following purposes:

(a) Auditing;

(b) Contractor evaluation;

(c) Collection of data for establishing calibration and performance standards; or

(d) Public information and education.

(4)(a) The director shall establish by rule the fee to be charged for emission inspections. The inspection fee shall be a standard fee applicable statewide or throughout an emission contributing area and shall be no greater than fifteen dollars. Surplus moneys collected from fees over the amount due the contractor shall be paid to the state and deposited in the general fund. Fees shall be set at the minimum whole dollar amount required to (i) compensate the contractor or inspection facility owner, and (ii) offset the general fund appropriation to the department to cover the administrative costs of the motor vehicle emission inspection program.

(b) Before each inspection, a person whose motor vehicle is to be inspected shall pay to the inspection station the fee established under this section. The person whose motor vehi-

cle is inspected shall receive the results of the inspection. If the inspected vehicle complies with the standards established by the director, the person shall receive a dated certificate of compliance. If the inspected vehicle does not comply with those standards, one reinspection of the vehicle shall be afforded without charge.

(5) All units of local government and agencies of the state with motor vehicles garaged or regularly operated in an emissions contributing area shall test the emissions of those vehicles annually to ensure that the vehicle's emissions comply with the emission standards established by the director. All state agencies outside of emission contributing areas with more than twenty motor vehicles housed at a single facility or contiguous facilities shall test the emissions of those vehicles annually to ensure that the vehicles' emissions comply with standards established by the director. A report of the results of the tests shall be submitted to the department.

(6) This section expires January 1, 2020. [2005 c 295 § 6; 1998 c 342 § 4; 1991 c 199 § 208; 1989 c 240 § 4.]

**\*Reviser's note:** RCW 46.16.015 was recodified as RCW 46.16A.060 pursuant to 2010 c 161 § 1215, effective July 1, 2011.

**Findings—2005 c 295:** See note following RCW 70.120A.010.

**Effective date—2005 c 295 §§ 5, 6, and 10:** See note following RCW 70.94.017.

**Finding—1991 c 199:** See note following RCW 70.94.011.

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**70.120.190 Used vehicles.** (1) Motor vehicle dealers selling a used vehicle not under a new vehicle warranty shall include a notice in each vehicle purchase order form that reads as follows: "The owner of a vehicle may be required to spend up to (a dollar amount established under RCW 70.120.070) for repairs if the vehicle does not meet the vehicle emission standards under this chapter. Unless expressly warranted by the motor vehicle dealer, the dealer is not warranting that this vehicle will pass any emission tests required by federal or state law."

(2) The signature of the purchaser on the notice required under subsection (1) of this section shall constitute a valid disclaimer of any implied warranty by the dealer as to a vehicle's compliance with any emission standards.

(3) The disclosure requirement of subsection (1) of this section applies to all motor vehicle dealers located in counties where state emission inspections are required. [1991 c 199 § 210.]

**Finding—1991 c 199:** See note following RCW 70.94.011.

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**70.120.210 Clean-fuel performance and clean-fuel vehicle emissions specifications.** By July 1, 1992, the department shall develop, in cooperation with the departments of general administration and transportation, and Washington State University, aggressive clean-fuel performance and clean-fuel vehicle emissions specifications including clean-fuel vehicle conversion equipment. To the extent possible, such specifications shall be equivalent for all fuel types. In developing such specifications the department shall consider the requirements of the clean air act and the findings of the environmental protection agency, other states, the American petroleum institute, the gas research institute,

and the motor vehicles manufacturers association. [1996 c 186 § 518; 1991 c 199 § 212.]

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

**Finding—1991 c 199:** See note following RCW 70.94.011.

*Clean-fuel grants:* RCW 70.94.960.

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**70.120.230 Scientific advisory board—Composition of board—Duties.** The department shall establish a scientific advisory board to review plans to establish or expand the geographic area where an inspection and maintenance system for motor vehicle emissions is required. The board shall consist of three to five members. All members shall have at least a master's degree in physics, chemistry, or engineering, or a closely related field. No member may be a current employee of a local air pollution control authority, the department, the United States environmental protection agency, or a company that may benefit from a review by the board.

The board shall review an inspection and maintenance plan at the request of a local air pollution control authority, the department, or by a petition of at least fifty people living within the proposed boundaries of a vehicle emission inspection and maintenance system. The entity or entities requesting a scientific review may include specific issues for the board to consider in its review. The board shall limit its review to matters of science and shall not provide advice on penalties or issues that are strictly legal in nature.

The board shall provide a complete written review to the department. If the board members are not in agreement as to the scientific merit of any issue under review, the board may include a dissenting opinion in its report to the department. The department shall immediately make copies available to the local air pollution control authority and to the public.

The department shall conduct a public hearing, within the area affected by the proposed rule, if any significant aspect of the rule is in conflict with a majority opinion of the board. The department shall include in its responsiveness summary the rationale for including a rule that is not consistent with the review of the board, including a response to the issues raised at the public hearing.

Members shall be reimbursed for travel expenses as provided in RCW 43.03.050 and 43.03.060. [1998 c 342 § 5.]

**70.120.901 Captions not law—1989 c 240.** Section headings as used in this act do not constitute any part of law. [1989 c 240 § 11.]

**70.120.902 Effective date—1989 c 240.** This act shall take effect January 1, 1990. [1989 c 240 § 14.]

## Chapter 70.120A RCW

### MOTOR VEHICLE EMISSION STANDARDS

#### Sections

70.120A.010	Department of ecology to adopt rules to implement California motor vehicle emission standards—Limitations—Advisory group—Exemptions.
70.120A.020	Early credits and banking—Alternative means of compliance.
70.120A.030	Warranty repair service—Manufacturers, repair shops.
70.120A.040	Reports.

70.120A.050 New vehicle greenhouse gas emissions disclosure—Rule-making authority—Report to the legislature.

**70.120A.010 Department of ecology to adopt rules to implement California motor vehicle emission standards—Limitations—Advisory group—Exemptions.** (1)

Pursuant to the federal clean air act, the legislature adopts the California motor vehicle emission standards in Title 13 of the California Code of Regulations, effective January 1, 2005, except as provided in this chapter. The department of ecology shall adopt rules to implement the emission standards of the state of California for passenger cars, light duty trucks, and medium duty passenger vehicles, and shall amend the rules from time to time, to maintain consistency with the California motor vehicle emission standards and 42 U.S.C. Sec. 7507 (section 177 of the federal clean air act). Notwithstanding other provisions of this chapter, the department of ecology shall not adopt the zero emission vehicle program regulations contained in Title 13 section 1962 of the California Code of Regulations effective January 1, 2005. During rule development, the department of ecology shall convene an advisory group composed of industry and consumer group representatives. Any proposed rules or changes to rules shall be subject to review and comment by the advisory group, prior to rule adoption. The order of adoption for the rules required in this section shall include the signature of the governor. The rules shall be effective only for those model years for which the state of Oregon has adopted the California motor vehicle emission standards. This section does not limit the department of ecology's authority to regulate motor vehicle emissions for any other class of vehicle.

(2) Motor vehicles with a model year equal to or later than the first model year for which new vehicles sold to Washington state residents are required to comply with California motor vehicle emission standards are exempt from emission inspections under chapter 70.120 RCW.

(3) The provisions of this chapter do not apply with respect to the use by a resident of this state of a motor vehicle acquired and used while the resident is a member of the armed services and is stationed outside this state pursuant to military orders. [2010 c 76 § 1; 2005 c 295 § 2.]

**Findings—2005 c 295:** "The legislature finds that:

(1) Motor vehicles are the largest source of air pollution in the state of Washington, and motor vehicles contribute approximately fifty-seven percent of criteria air pollutant emissions, eighty percent of air toxics emissions, and fifty-five percent of greenhouse gas emissions;

(2) Air pollution levels routinely measured in the state of Washington continue to harm public health, the environment, and the economy. Air pollution causes or contributes to premature death, cancer, asthma, and heart and lung disease. Over half of the state's population suffers from one or more medical conditions that make them very vulnerable to air pollution. Air pollution increases pain and suffering for vulnerable individuals. Air pollution imposes several hundred million dollars annually in added health care costs for air pollution-associated death and illness, reducing the quality of life and economic security of the citizens of Washington;

(3) Reductions of greenhouse gas emissions from transportation sources are necessary, and it is equitable to seek such reductions because reductions in greenhouse gas emissions have already been initiated in other sectors such as power generation;

(4) Reductions in greenhouse gas emissions made under this act should be credited toward any future federal, state, or regional comprehensive regulatory structure enacted to address reducing greenhouse gas emissions;

(5) Under the federal clean air act, the state of Washington has the option to implement either federal motor vehicle emission standards or California motor vehicle emission standards for passenger cars, light duty trucks, and medium duty passenger vehicles;

(6) Opting into the California motor vehicle standards will provide significant and necessary air quality benefits to residents of the state of Washington; and

(7) Adoption of the California motor vehicle standards will increase consumer choices of cleaner vehicles, provide better warranties to consumers, and provide sufficient air quality benefit to allow additional business and economic growth in the key airsheds of the state while maintaining conformance with federal air quality standards." [2005 c 295 § 1.]

**Effective date—2005 c 295 §§ 1, 2, 7, and 11-13:** "Sections 1, 2, 7, and 11 through 13 of this act are necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and take effect immediately [May 6, 2005]." [2005 c 295 § 15.]

**70.120A.020 Early credits and banking—Alternative means of compliance.** (1)

In recognition of the provisions of the federal clean air act which require a minimum phase-in period of three model years for adoption of California motor vehicle emission standards, the implementing rules shall include a system of early credits and banking for manufacturers for zero emission vehicles produced and sold earlier than the implementation date for the standards in Washington. Beginning with the model year in which the new standards become effective, each manufacturer's fleet of passenger cars and light duty trucks delivered for sale in the state of Washington shall proportionately conform to the zero emission vehicle requirements of Title 13 of the California Code of Regulations, including early credit and banking provisions set forth in Title 13 of the Code of California Regulations using Washington specific vehicle numbers. A manufacturer shall be given early Washington zero emission vehicle credits proportionally equivalent to the zero emission vehicle credits possessed by the requesting manufacturer for use in the state of California on January 1st of the model year the California standards become effective in Washington.

(2) In addition, an alternative means of compliance with the requirements of subsection (1) of this section shall be created in the implementing rules provided for in RCW 70.120A.010. The alternative means of compliance shall allow a manufacturer to earn Washington zero emission vehicle credits beginning with the 2005 model year. The alternative means of compliance shall be developed to be consistent in concept with the alternative compliance systems developed for the states of Connecticut, New York, and Maine as they adopted the zero emission vehicle provisions of the California motor vehicle standards and shall contain a Washington multiplier consistent with the multipliers in those systems. The implementing rules shall require timely notification by the manufacturer to the department of ecology of an election to use the alternative means of compliance. [2005 c 295 § 3.]

**Findings—2005 c 295:** See note following RCW 70.120A.010.

**70.120A.030 Warranty repair service—Manufacturers, repair shops.**

Individual automobile manufacturers may certify independent automobile repair shops to perform warranty service on the manufacturers' vehicles. Upon certification of the independent automobile repair shops, the manufacturers shall compensate the repair shops at the same rate as franchised dealers for covered warranty repair services. [2005 c 295 § 4.]

**Findings—2005 c 295:** See note following RCW 70.120A.010.

**70.120A.040 Reports.** The office of financial management shall provide an annual progress report to the appropriate committees of the legislature. The office of financial management, in conjunction with the departments of licensing, revenue, and ecology, shall report on the availability of vehicles meeting the standards, the progress of automobile industries in meeting the requirements of the standards, and any other matters relevant to the success of auto-related industries in implementing these requirements. [2005 c 295 § 9.]

**Findings—2005 c 295:** See note following RCW 70.120A.010.

**70.120A.050 New vehicle greenhouse gas emissions disclosure—Rule-making authority—Report to the legislature.** (1) No model year 2010 or subsequent model year new passenger car, light duty truck, or medium duty passenger vehicle may be sold in Washington unless there is securely and conspicuously affixed in a clearly visible location a label on which the manufacturer clearly discloses comparative greenhouse gas emissions for that new vehicle.

(2) The label required by this section should include a greenhouse gas index or rating system that contains quantitative and graphical information presented in a continuous, easy-to-read scale that compares the greenhouse gas emissions from the vehicle with the average projected greenhouse gas emissions from all passenger cars, light duty trucks, and medium duty passenger vehicles of the same model year. For reference purposes, the index or rating system should also identify the greenhouse gas emissions from the vehicle model of that same model year that has the lowest greenhouse gas emissions.

(3) The index or rating system included in the label under subsection (2) of this section shall be updated as necessary to ensure that the differences in greenhouse gas emissions among vehicles are readily apparent to the consumer.

(4) An automobile manufacturer may apply to the department of ecology for approval of an alternative to the disclosure labeling requirement that is at least as effective in providing notification and disclosure of the vehicle's greenhouse gas emissions as is the labeling required by this section.

(5) A label that complies with the requirements of the California greenhouse gas vehicle labeling program shall be deemed to meet the requirements of this section and any rules adopted under this section.

(6) The department of ecology may adopt such rules as are necessary to implement this section.

(7) The department of ecology shall provide a status report to the appropriate committees of the legislature on or before December 1, 2008, (a) outlining its approach and progress toward implementing a greenhouse gas vehicle emissions disclosure labeling program for Washington, (b) providing an update on the status of California's greenhouse gas vehicle labeling program, and (c) making recommendations as necessary for legislation to meet the intent and purpose of chapter 32, Laws of 2008 by the 2010 model year. [2008 c 32 § 2.]

**Intent—2008 c 32:** "The legislature intends that new passenger cars, light duty trucks, and medium duty passenger vehicles for sale in Washington display clear and easy to understand information disclosing the new vehicle's greenhouse gas emissions. Further, the legislature intends that disclo-

sure of such emissions serves as a means of educating consumers, other motorists, and the general public about the sources of greenhouse gas, their impact, available options, and in particular the role and contribution of automobiles and other motor vehicles." [2008 c 32 § 1.]

## Chapter 70.121 RCW

### MILL TAILINGS— LICENSING AND PERPETUAL CARE

#### Sections

70.121.010	Legislative findings.
70.121.020	Definitions.
70.121.030	Licenses—Renewal—Hearings.
70.121.040	Facility operations and decommissioning—Monitoring.
70.121.050	Radiation perpetual maintenance fund—Licensee contributions—Disposition.
70.121.060	State authority to acquire property for surveillance sites.
70.121.070	Status of acquired state property for surveillance sites.
70.121.080	Payment for transferred sites for surveillance.
70.121.090	Authority for on-site inspections and monitoring.
70.121.100	Licensees' bond requirements.
70.121.110	Acceptable bonds.
70.121.120	Forfeited bonds—Use of fund.
70.121.130	Exemptions from bonding requirements.
70.121.140	Amounts owed to state—Lien created.
70.121.150	Amounts owed to the state—Collection by attorney general.
70.121.900	Construction.
70.121.905	Short title.
70.121.910	Severability—1979 ex.s. c 110.

*Nuclear energy and radiation: Chapter 70.98 RCW.*

*Radioactive waste storage and transportation act of 1980: Chapter 70.99 RCW.*

**70.121.010 Legislative findings.** The legislature finds that:

(1) The milling of uranium and thorium creates potential hazards to the health of the citizens of the state of Washington in that potentially hazardous radioactive isotopes, decay products of uranium and thorium, naturally occurring in relatively dispersed geologic formations, are brought to one location on the surface and pulverized in the process of mining and milling uranium and thorium.

(2) These radioactive isotopes, in addition to creating a field of gamma radiation in the vicinity of the tailings area, also exude potentially hazardous radioactive gas and particulates into the atmosphere from the tailings areas, and contaminate the milling facilities, thereby creating hazards which will be present for many generations.

(3) The public health and welfare of the citizens demands that the state assure that the public health be protected by requiring that: (a) Prior to the termination of any radioactive materials license, all milling facilities and associated tailings piles will be decommissioned in such a manner as to bring the potential public health hazard to a minimum; and (b) such environmental radiation monitoring as is necessary to verify the status of decommissioned facilities will be conducted. [1979 ex.s. c 110 § 1.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**70.121.020 Definitions.** Unless the context clearly requires a different meaning, the definitions in this section apply throughout this chapter.

(1) "Department" means the department of health.

(2) "Secretary" means the secretary of health.

(3) "Site" means the restricted area as defined by the United States nuclear regulatory commission.

(4) "Tailings" means the residue remaining after extraction of uranium or thorium from the ore whether or not the residue is left in piles, but shall not include ore bodies nor ore stock piles.

(5) "License" means a radioactive materials license issued under chapter 70.98 RCW and the rules adopted under chapter 70.98 RCW.

(6) "Termination of license" means the cancellation of the license after permanent cessation of operations. Temporary interruptions or suspensions of production due to economic or other conditions are not a permanent cessation of operations.

(7) "Milling" means grinding, cutting, working, or concentrating ore which has been extracted from the earth by mechanical (conventional) or chemical (in situ) processes.

(8) "Obligor-licensee" means any person who obtains a license to operate a uranium or thorium mill in the state of Washington or any person who owns the property on which the mill operates and who owes money to the state for the licensing fee, for reclamation of the site, for perpetual surveillance and maintenance of the site, or for any other obligation owed the state under this chapter.

(9) "Statement of claim" means the document recorded or filed pursuant to this chapter, which names an obligor-licensee, names the state as obligee, describes the obligation owed to the state, and describes property owned by the obligor-licensee on which a lien will attach for the benefit of the state, and which creates the lien when filed. [1991 c 3 § 372; 1987 c 184 § 1; 1982 c 78 § 1; 1979 ex.s. c 110 § 2.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**70.121.030 Licenses—Renewal—Hearings.** (1) Any person who proposes to operate a uranium or thorium mill within the state of Washington after January 1, 1980, shall obtain a license from the department to mill thorium and uranium. The period of the license shall be determined by the secretary and shall be initially valid for not more than two years and renewable thereafter for periods of not more than five years. No license may be granted unless:

(a) The owner or operator of the mill submits to the department a plan for reclamation and disposal of tailings and for decommissioning the site that conforms to the criteria and standards then in effect for the protection of the public safety and health; and

(b) The owner of the mill agrees to transfer or revert to the appropriate state or federal agency upon termination of the license all lands, buildings, and grounds, and any interests therein, necessary to fulfill the purposes of this chapter except where the lands are held in trust for or are owned by any Indian tribe.

(2) Any person operating a uranium or thorium mill on January 1, 1980, shall, at the time of application for renewal of his license to mill thorium or uranium, comply with the following conditions for continued operation of the mill:

(a) The owner or operator of the mill shall submit to the department a plan for reclamation and disposal of tailings and for decommissioning the site that conforms to the criteria and standards then in effect for the protection of the public safety and health; and

(2010 Ed.)

(b) The owner of the mill shall agree to transfer or revert to the appropriate state or federal agency upon termination of the license all lands, buildings, and grounds, and any interests therein, necessary to fulfill the purposes of this chapter except where the lands are held in trust for or are owned by any Indian tribe.

(3) The department shall, after public notice and opportunity for written comment, hold a public hearing to consider the adequacy of the proposed plan to protect the safety and health of the public required by subsections (1) and (2) of this section. The proceedings shall be recorded and transcribed. The public hearing shall provide the opportunity for cross-examination by both the department and the person proposing the plan required under this section. The department shall make a written determination as to the licensing of the mill which is based upon the findings included in the determination and upon the evidence presented during the public comment period. The determination is subject to judicial review. If a declaration of nonsignificance is issued for a license renewal application under rules adopted under chapter 43.21C RCW, the public hearing is not required.

(4) The department shall set a schedule of license and amendment fees predicated on the cost of reviewing the license application and of monitoring for compliance with the conditions of the license. A permit for construction of a uranium or thorium mill may be granted by the secretary prior to licensing. [1979 ex.s. c 110 § 3.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**70.121.040 Facility operations and decommissioning—Monitoring.** The secretary or his representative shall monitor the operations of the mill for compliance with the conditions of the license by the owner or operator. The mill owner or operator shall be responsible for compliance, both during the lifetime of the facility and at shutdown, including but not limited to such requirements as fencing and posting the site; contouring, covering, and stabilizing the pile; and for decommissioning the facility. [1979 ex.s. c 110 § 4.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**70.121.050 Radiation perpetual maintenance fund—Licensee contributions—Disposition.** On a quarterly basis on and after January 1, 1980, there shall be levied and the department shall collect a charge of five cents per pound on each pound of uranium or thorium compound milled out of the raw ore. All moneys paid to the department from these charges shall be deposited in a special security fund in the treasury of the state of Washington to be known as the "radiation perpetual maintenance fund". This security fund shall be used by the department when a licensee has ceased to operate and the site may still contain, or have associated with the site at which the licensed activity was conducted in spite of full compliance with RCW 70.121.030, radioactive material which will require further maintenance, surveillance, or other care. If, with respect to a licensee, the department determines that the estimated total of these charges will be less than or greater than that required to defray the estimated cost of administration of this responsibility, the department may prescribe such an increased or decreased charge as is considered necessary for this purpose. If, at termination of the

[Title 70 RCW—page 421]

license, the department determines that by the applicable standards and practices then in effect, the charges which have been collected from the licensee and earnings generated therefrom are in excess of the amount required to defray the cost of this responsibility, the department may refund the excess portion to the licensee. If, at termination of the license or cessation of operation, the department determines, by the applicable standards and practices then in effect, that the charges which have been collected from the licensee and earnings generated therefrom are together insufficient to defray the cost of this responsibility, the department may collect the excess portion from the licensee.

Moneys in the radiation perpetual maintenance fund shall be invested by the state investment board in the manner as other state moneys. [1987 c 184 § 2; 1979 ex.s. c 110 § 5.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**70.121.060 State authority to acquire property for surveillance sites.** In order to provide for the proper care and surveillance of sites under RCW 70.121.050, the state may acquire by gift or transfer from any government agency, corporation, partnership, or person, all lands, buildings, and grounds necessary to fulfill the purposes of this chapter. Any such gift or transfer shall be subject to approval by the department. In exercising the authority of this section, the department shall take into consideration the status of the ownership of the land and interests therein and the ability of the licensee to transfer title and custody thereof to the state. [1979 ex.s. c 110 § 6.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**70.121.070 Status of acquired state property for surveillance sites.** Recognizing the uncertainty of the existence of a person or corporation in perpetuity, and recognizing that ultimate responsibility to protect the public health and safety must be reposed in a solvent government, without regard to the existence of any particular agency or department thereof, all lands, buildings, and grounds acquired by the state under RCW 70.121.060 shall be owned in fee simple by the state and dedicated in perpetuity to the purposes stated in RCW 70.121.060. All radioactive material received at a site and located therein at the time of acquisition of ownership by the state shall become the property of the state. [1979 ex.s. c 110 § 7.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**70.121.080 Payment for transferred sites for surveillance.** If a person licensed by any governmental agency other than the state or if any other governmental agency desires to transfer a site to the state for the purpose of administering or providing perpetual care, a lump sum payment shall be made to the radiation perpetual maintenance fund. The amount of the deposit shall be determined by the department taking into consideration the factors stated in RCW 70.121.050. [1979 ex.s. c 110 § 8.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**70.121.090 Authority for on-site inspections and monitoring.** Each licensee under this chapter, as a condition of his license, shall submit to whatever reasonable on-site

inspections and on-site monitoring as required in order for the department to carry out its responsibilities and duties under this chapter. Such on-site inspections and monitoring shall be conducted without the necessity of any further approval or any permit or warrant therefor. [1979 ex.s. c 110 § 9.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**70.121.100 Licensees' bond requirements.** The secretary or the secretary's duly authorized representative shall require the posting of a bond by licensees to be used exclusively to provide funds in the event of abandonment, default, or other inability of the licensee to meet the requirements of the department. The secretary may establish bonding requirements by classes of licensees and by range of monetary amounts. In establishing these requirements, the secretary shall consider the potential for contamination, injury, cost of disposal, and reclamation of the property. The amount of the bond shall be sufficient to pay the costs of reclamation and perpetual maintenance. [1987 c 184 § 5; 1979 ex.s. c 110 § 10.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**70.121.110 Acceptable bonds.** A bond shall be accepted by the department if it is a bond issued by a fidelity or surety company admitted to do business in the state of Washington and the fidelity or surety company is found by the state finance commission to be financially secure at licensing and licensing renewals, if it is a personal bond secured by such collateral as the secretary deems satisfactory and in accordance with RCW 70.121.100, or if it is a cash bond. [1987 c 184 § 6; 1979 ex.s. c 110 § 11.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**70.121.120 Forfeited bonds—Use of fund.** All bonds forfeited shall be paid to the department for deposit in the radiation perpetual maintenance fund. All moneys in this fund may only be expended by the department as necessary for the protection of the public health and safety and shall not be used for normal operating expenses of the department. [1979 ex.s. c 110 § 12.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**70.121.130 Exemptions from bonding requirements.** All state, local, or other governmental agencies, or subdivisions thereof, are exempt from the bonding requirements of this chapter. [1987 c 184 § 7; 1979 ex.s. c 110 § 13.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**70.121.140 Amounts owed to state—Lien created.** If a licensee fails to pay the department within a reasonable time money owed to the state under this chapter, the obligation owed to the state shall constitute a lien on all property, both real and personal, owned by the obligor-licensee when the department records or files, pursuant to this section, a statement of claim against the obligor-licensee. The statement of claim against the obligor-licensee shall name the obligor-licensee, name the state as obligee, describe the obligation, and describe the property to be held in security for the obligation.

Statements of claim creating a lien on real property, fixtures, timber, agricultural products, oil, gas, or minerals shall be recorded with the county auditor in each county where the property is located. Statements of claim creating a lien in personal property, whether tangible or intangible, shall be filed with the department of licensing.

A lien recorded or filed pursuant to this section has priority over any lien, interest, or other encumbrance previously or thereafter recorded or filed concerning any property described in the statement of claim, to the extent allowed by federal law.

A lien created pursuant to this section shall continue in force until extinguished by foreclosure or bankruptcy proceedings or until a release of the lien signed by the secretary is recorded or filed in the place where the statement of claim was recorded or filed. The secretary shall sign and record or file a release only after the obligation owed to the state under this chapter, together with accrued interest and costs of collection has been paid. [1987 c 184 § 3.]

**70.121.150 Amounts owed to the state—Collection by attorney general.** The attorney general shall use all available methods of obtaining funds owed to the state under this chapter. The attorney general shall foreclose on liens made pursuant to this section, obtain judgments against obligor-licensees and pursue assets of the obligor-licensees found outside the state, consider pursuing the assets of parent corporations and shareholders where an obligor-licensee corporation is an underfinanced corporation, and pursue any other legal remedy available. [1987 c 184 § 4.]

**70.121.900 Construction.** This chapter is cumulative and not exclusive, and no part of this chapter shall be construed to repeal any existing law specifically enacted for the protection of the public health and safety. [1979 ex.s. c 110 § 14.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**70.121.905 Short title.** This chapter may be known as the "Mill Tailings Licensing and Perpetual Care Act of 1979". [1979 ex.s. c 110 § 15.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**70.121.910 Severability—1979 ex.s. c 110.** If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1979 ex.s. c 110 § 16.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**Chapter 70.122 RCW  
NATURAL DEATH ACT**

Sections

- 70.122.010 Legislative findings.
- 70.122.020 Definitions.
- 70.122.030 Directive to withhold or withdraw life-sustaining treatment.
- 70.122.040 Revocation of directive.
- 70.122.051 Liability of health care provider.
- 70.122.060 Procedures by physician—Health care facility or personnel may refuse to participate.
- 70.122.070 Effects of carrying out directive—Insurance.

(2010 Ed.)

- 70.122.080 Effects of carrying out directive on cause of death.
- 70.122.090 Criminal conduct—Penalties.
- 70.122.100 Mercy killing, lethal injection, or active euthanasia not authorized.
- 70.122.110 Discharge so that patient may die at home.
- 70.122.120 Directive’s validity assumed.
- 70.122.130 Health care declarations registry—Rules—Report.
- 70.122.140 Health care declarations registry account.
- 70.122.900 Short title—1979 c 112.
- 70.122.905 Severability—1979 c 112.
- 70.122.910 Construction.
- 70.122.915 Application—1992 c 98.
- 70.122.920 Severability—1992 c 98.
- 70.122.925 Construction—Chapter applicable to state registered domestic partnerships—2009 c 521.

*Futile treatment and emergency medical personnel: RCW 43.70.480.*

**70.122.010 Legislative findings.** The legislature finds that adult persons have the fundamental right to control the decisions relating to the rendering of their own health care, including the decision to have life-sustaining treatment withheld or withdrawn in instances of a terminal condition or permanent unconscious condition.

The legislature further finds that modern medical technology has made possible the artificial prolongation of human life beyond natural limits.

The legislature further finds that, in the interest of protecting individual autonomy, such prolongation of the process of dying for persons with a terminal condition or permanent unconscious condition may cause loss of patient dignity, and unnecessary pain and suffering, while providing nothing medically necessary or beneficial to the patient. The legislature further believes that physicians and nurses should not withhold or unreasonably diminish pain medication for patients in a terminal condition where the primary intent of providing such medication is to alleviate pain and maintain or increase the patient’s comfort.

The legislature further finds that there exists considerable uncertainty in the medical and legal professions as to the legality of terminating the use or application of life-sustaining treatment where the patient having the capacity to make health care decisions has voluntarily evidenced a desire that such treatment be withheld or withdrawn.

In recognition of the dignity and privacy which patients have a right to expect, the legislature hereby declares that the laws of the state of Washington shall recognize the right of an adult person to make a written directive instructing such person’s physician to withhold or withdraw life-sustaining treatment in the event of a terminal condition or permanent unconscious condition. The legislature also recognizes that a person’s right to control his or her health care may be exercised by an authorized representative who validly holds the person’s durable power of attorney for health care. [1992 c 98 § 1; 1979 c 112 § 2.]

**70.122.020 Definitions.** Unless the context clearly requires otherwise, the definitions contained in this section shall apply throughout this chapter.

(1) "Adult person" means a person who has attained the age of majority as defined in RCW 26.28.010 and 26.28.015, and who has the capacity to make health care decisions.

(2) "Attending physician" means the physician selected by, or assigned to, the patient who has primary responsibility for the treatment and care of the patient.

(3) "Directive" means a written document voluntarily executed by the declarer generally consistent with the guidelines of RCW 70.122.030.

(4) "Health facility" means a hospital as defined in \*RCW 70.41.020(2) or a nursing home as defined in RCW 18.51.010, a home health agency or hospice agency as defined in RCW 70.126.010, or a boarding home as defined in RCW 18.20.020.

(5) "Life-sustaining treatment" means any medical or surgical intervention that uses mechanical or other artificial means, including artificially provided nutrition and hydration, to sustain, restore, or replace a vital function, which, when applied to a qualified patient, would serve only to prolong the process of dying. "Life-sustaining treatment" shall not include the administration of medication or the performance of any medical or surgical intervention deemed necessary solely to alleviate pain.

(6) "Permanent unconscious condition" means an incurable and irreversible condition in which the patient is medically assessed within reasonable medical judgment as having no reasonable probability of recovery from an irreversible coma or a persistent vegetative state.

(7) "Physician" means a person licensed under chapters 18.71 or 18.57 RCW.

(8) "Qualified patient" means an adult person who is a patient diagnosed in writing to have a terminal condition by the patient's attending physician, who has personally examined the patient, or a patient who is diagnosed in writing to be in a permanent unconscious condition in accordance with accepted medical standards by two physicians, one of whom is the patient's attending physician, and both of whom have personally examined the patient.

(9) "Terminal condition" means an incurable and irreversible condition caused by injury, disease, or illness, that, within reasonable medical judgment, will cause death within a reasonable period of time in accordance with accepted medical standards, and where the application of life-sustaining treatment serves only to prolong the process of dying. [1992 c 98 § 2; 1979 c 112 § 3.]

\*Reviser's note: RCW 70.41.020 was amended by 2002 c 116 § 2, changing subsection (2) to subsection (4).

**70.122.030 Directive to withhold or withdraw life-sustaining treatment.** (1) Any adult person may execute a directive directing the withholding or withdrawal of life-sustaining treatment in a terminal condition or permanent unconscious condition. The directive shall be signed by the declarer in the presence of two witnesses not related to the declarer by blood or marriage and who would not be entitled to any portion of the estate of the declarer upon declarer's decease under any will of the declarer or codicil thereto then existing or, at the time of the directive, by operation of law then existing. In addition, a witness to a directive shall not be the attending physician, an employee of the attending physician or a health facility in which the declarer is a patient, or any person who has a claim against any portion of the estate of the declarer upon declarer's decease at the time of the execution of the directive. The directive, or a copy thereof, shall be made part of the patient's medical records retained by the attending physician, a copy of which shall be forwarded by the custodian of the records to the health facility when the

withholding or withdrawal of life-support treatment is contemplated. The directive may be in the following form, but in addition may include other specific directions:

#### Health Care Directive

Directive made this . . . . day of . . . . . (month, year).

I . . . . ., having the capacity to make health care decisions, willfully, and voluntarily make known my desire that my dying shall not be artificially prolonged under the circumstances set forth below, and do hereby declare that:

(a) If at any time I should be diagnosed in writing to be in a terminal condition by the attending physician, or in a permanent unconscious condition by two physicians, and where the application of life-sustaining treatment would serve only to artificially prolong the process of my dying, I direct that such treatment be withheld or withdrawn, and that I be permitted to die naturally. I understand by using this form that a terminal condition means an incurable and irreversible condition caused by injury, disease, or illness, that would within reasonable medical judgment cause death within a reasonable period of time in accordance with accepted medical standards, and where the application of life-sustaining treatment would serve only to prolong the process of dying. I further understand in using this form that a permanent unconscious condition means an incurable and irreversible condition in which I am medically assessed within reasonable medical judgment as having no reasonable probability of recovery from an irreversible coma or a persistent vegetative state.

(b) In the absence of my ability to give directions regarding the use of such life-sustaining treatment, it is my intention that this directive shall be honored by my family and physician(s) as the final expression of my legal right to refuse medical or surgical treatment and I accept the consequences of such refusal. If another person is appointed to make these decisions for me, whether through a durable power of attorney or otherwise, I request that the person be guided by this directive and any other clear expressions of my desires.

(c) If I am diagnosed to be in a terminal condition or in a permanent unconscious condition (check one):

I DO want to have artificially provided nutrition and hydration.

I DO NOT want to have artificially provided nutrition and hydration.

(d) If I have been diagnosed as pregnant and that diagnosis is known to my physician, this directive shall have no force or effect during the course of my pregnancy.

(e) I understand the full import of this directive and I am emotionally and mentally capable to make the health care decisions contained in this directive.

(f) I understand that before I sign this directive, I can add to or delete from or otherwise change the wording of this directive and that I may add to or delete from this directive at any time and that any changes shall be consistent with Washington state law or federal constitutional law to be legally valid.

(g) It is my wish that every part of this directive be fully implemented. If for any reason any part is held invalid it is my wish that the remainder of my directive be implemented.

Signed . . . . .

City, County, and State of Residence

The declarer has been personally known to me and I believe him or her to be capable of making health care decisions.

Witness . . . . .

Witness . . . . .

(2) Prior to withholding or withdrawing life-sustaining treatment, the diagnosis of a terminal condition by the attending physician or the diagnosis of a permanent unconscious state by two physicians shall be entered in writing and made a permanent part of the patient’s medical records.

(3) A directive executed in another political jurisdiction is valid to the extent permitted by Washington state law and federal constitutional law. [1992 c 98 § 3; 1979 c 112 § 4.]

**70.122.040 Revocation of directive.** (1) A directive may be revoked at any time by the declarer, without regard to the declarer’s mental state or competency, by any of the following methods:

(a) By being canceled, defaced, obliterated, burned, torn, or otherwise destroyed by the declarer or by some person in the declarer’s presence and by the declarer’s direction.

(b) By a written revocation of the declarer expressing his or her intent to revoke, signed, and dated by the declarer. Such revocation shall become effective only upon communication to the attending physician by the declarer or by a person acting on behalf of the declarer. The attending physician shall record in the patient’s medical record the time and date when the physician received notification of the written revocation.

(c) By a verbal expression by the declarer of his or her intent to revoke the directive. Such revocation shall become effective only upon communication to the attending physician by the declarer or by a person acting on behalf of the declarer. The attending physician shall record in the patient’s medical record the time, date, and place of the revocation and the time, date, and place, if different, of when the physician received notification of the revocation.

(d) In the case of a directive that is stored in the health care declarations registry under RCW 70.122.130, by an online method established by the department of health. Failure to use this method of revocation for a directive that is stored in the registry does not invalidate a revocation that is made by another method described under this section.

(2) There shall be no criminal or civil liability on the part of any person for failure to act upon a revocation made pursuant to this section unless that person has actual or constructive knowledge of the revocation except as provided in RCW 70.122.051(4).

(3) If the declarer becomes comatose or is rendered incapable of communicating with the attending physician, the directive shall remain in effect for the duration of the comatose condition or until such time as the declarer’s condition renders the declarer able to communicate with the attending physician. [2006 c 108 § 4; 1979 c 112 § 5.]

**Finding—Intent—2006 c 108:** See note following RCW 70.122.130.

**70.122.051 Liability of health care provider.** (1) For the purposes of this section, "provider" means a physician, advanced registered nurse practitioner, health care provider acting under the direction of a physician or an advanced registered nurse practitioner, or health care facility, as defined in this chapter or in chapter 71.32 RCW, and its personnel.

(2) Any provider who participates in good faith in the withholding or withdrawal of life-sustaining treatment from a qualified patient in accordance with the requirements of this chapter, shall be immune from legal liability, including civil, criminal, or professional conduct sanctions, unless otherwise negligent.

(3) The establishment of a health care declarations registry does not create any new or distinct obligation for a provider to determine whether a patient has a health care declaration.

(4) A provider is not subject to civil or criminal liability or sanctions for unprofessional conduct under the uniform disciplinary act, chapter 18.130 RCW, when in good faith and without negligence:

(a) The provider provides, does not provide, withdraws, or withholds treatment to a patient in the absence of actual knowledge of the existence of a health care declaration stored in the health care declarations registry established in RCW 70.122.130;

(b) The provider provides, does not provide, withdraws, or withholds treatment pursuant to a health care declaration stored in the health care declarations registry established in RCW 70.122.130 in the absence of actual knowledge of the revocation of the declaration;

(c) The provider provides, does not provide, withdraws, or withholds treatment according to a health care declaration stored in the health care declarations registry established in RCW 70.122.130 in good faith reliance upon the validity of the health care declaration and the declaration is subsequently found to be invalid; or

(d) The provider provides, does not provide, withdraws, or withholds treatment according to the patient’s health care declaration stored in the health care declarations registry established in RCW 70.122.130.

(5) Except for acts of gross negligence, willful misconduct, or intentional wrongdoing, the department of health is not subject to civil liability for any claims or demands arising out of the administration or operation of the health care declarations registry established in RCW 70.122.130. [2006 c 108 § 6; 1992 c 98 § 5.]

**Finding—Intent—2006 c 108:** See note following RCW 70.122.130.

**70.122.060 Procedures by physician—Health care facility or personnel may refuse to participate.** (1) Prior to the withholding or withdrawal of life-sustaining treatment from a qualified patient pursuant to the directive, the attending physician shall make a reasonable effort to determine that the directive complies with RCW 70.122.030 and, if the patient is capable of making health care decisions, that the directive and all steps proposed by the attending physician to be undertaken are currently in accord with the desires of the qualified patient.

(2) The attending physician or health facility shall inform a patient or patient’s authorized representative of the existence of any policy or practice that would preclude the

honoring of the patient's directive at the time the physician or facility becomes aware of the existence of such a directive. If the patient, after being informed of such policy or directive, chooses to retain the physician or facility, the physician or facility with the patient or the patient's representative shall prepare a written plan to be filed with the patient's directive that sets forth the physician's or facilities' intended actions should the patient's medical status change so that the directive would become operative. The physician or facility under this subsection has no obligation to honor the patient's directive if they have complied with the requirements of this subsection, including compliance with the written plan required under this subsection.

(3) The directive shall be conclusively presumed, unless revoked, to be the directions of the patient regarding the withholding or withdrawal of life-sustaining treatment. No physician, health facility, or health personnel acting in good faith with the directive or in accordance with the written plan in subsection (2) of this section shall be criminally or civilly liable for failing to effectuate the directive of the qualified patient pursuant to this subsection.

(4) No nurse, physician, or other health care practitioner may be required by law or contract in any circumstances to participate in the withholding or withdrawal of life-sustaining treatment if such person objects to so doing. No person may be discriminated against in employment or professional privileges because of the person's participation or refusal to participate in the withholding or withdrawal of life-sustaining treatment. [1992 c 98 § 6; 1979 c 112 § 7.]

**70.122.070 Effects of carrying out directive—Insurance.** (1) The withholding or withdrawal of life-sustaining treatment from a qualified patient pursuant to the patient's directive in accordance with the provisions of this chapter shall not, for any purpose, constitute a suicide or a homicide.

(2) The making of a directive pursuant to RCW 70.122.030 shall not restrict, inhibit, or impair in any manner the sale, procurement, or issuance of any policy of life insurance, nor shall it be deemed to modify the terms of an existing policy of life insurance. No policy of life insurance shall be legally impaired or invalidated in any manner by the withholding or withdrawal of life-sustaining treatment from an insured qualified patient, notwithstanding any term of the policy to the contrary.

(3) No physician, health facility, or other health provider, and no health care service plan, insurer issuing disability insurance, self-insured employee welfare benefit plan, or nonprofit hospital service plan, shall require any person to execute a directive as a condition for being insured for, or receiving, health care services. [1992 c 98 § 7; 1979 c 112 § 8.]

**70.122.080 Effects of carrying out directive on cause of death.** The act of withholding or withdrawing life-sustaining treatment, when done pursuant to a directive described in RCW 70.122.030 and which results in the death of the declarer, shall not be construed to be an intervening force or to affect the chain of proximate cause between the conduct of anyone that placed the declarer in a terminal condition or a

permanent unconscious condition and the death of the declarer. [1992 c 98 § 8; 1979 c 112 § 10.]

**70.122.090 Criminal conduct—Penalties.** (1) Any person who willfully conceals, cancels, defaces, obliterates, or damages the directive of another without such declarer's consent is guilty of a gross misdemeanor.

(2) Any person who falsifies or forges the directive of another, or willfully conceals or withholds personal knowledge of a revocation as provided in RCW 70.122.040 with the intent to cause a withholding or withdrawal of life-sustaining treatment contrary to the wishes of the declarer, and thereby, because of any such act, directly causes life-sustaining treatment to be withheld or withdrawn and death to thereby be hastened, shall be subject to prosecution for murder in the first degree as defined in RCW 9A.32.030. [2003 c 53 § 362; 1992 c 98 § 9; 1979 c 112 § 9.]

**Intent—Effective date—2003 c 53:** See notes following RCW 2.48.180.

**70.122.100 Mercy killing, lethal injection, or active euthanasia not authorized.** Nothing in this chapter shall be construed to condone, authorize, or approve mercy killing, lethal injection, or active euthanasia. [2009 c 1 § 25 (Initiative Measure No. 1000, approved November 4, 2008); 1992 c 98 § 10; 1979 c 112 § 11.]

**Short title—Severability—Effective dates—Captions, part headings, and subpart headings not law—2009 c 1 (Initiative Measure No. 1000):** See RCW 70.245.901 through 70.245.904.

**70.122.110 Discharge so that patient may die at home.** If a qualified patient capable of making health care decisions indicates that he or she wishes to die at home, the patient shall be discharged as soon as reasonably possible. The health care provider or facility has an obligation to explain the medical risks of an immediate discharge to the qualified patient. If the provider or facility complies with the obligation to explain the medical risks of an immediate discharge to a qualified patient, there shall be no civil or criminal liability for claims arising from such discharge. [1992 c 98 § 4.]

**70.122.120 Directive's validity assumed.** Any person or health facility may assume that a directive complies with this chapter and is valid. [1992 c 98 § 12.]

**70.122.130 Health care declarations registry—Rules—Report.** (1) The department of health shall establish and maintain a statewide health care declarations registry containing the health care declarations identified in subsection (2) of this section as submitted by residents of Washington. The department shall digitally reproduce and store health care declarations in the registry. The department may establish standards for individuals to submit digitally reproduced health care declarations directly to the registry, but is not required to review the health care declarations that it receives to ensure they comply with the particular statutory requirements applicable to the document. The department may contract with an organization that meets the standards identified in this section.

(2)(a) An individual may submit any of the following health care declarations to the department of health to be digitally reproduced and stored in the registry:

- (i) A directive, as defined by this chapter;
- (ii) A durable power of attorney for health care, as authorized in chapter 11.94 RCW;
- (iii) A mental health advance directive, as defined by chapter 71.32 RCW; or
- (iv) A form adopted pursuant to the department of health's authority in RCW 43.70.480.

(b) Failure to submit a health care declaration to the department of health does not affect the validity of the declaration.

(c) Failure to notify the department of health of a valid revocation of a health care declaration does not affect the validity of the revocation.

(d) The entry of a health care directive in the registry under this section does not:

- (i) Affect the validity of the document;
- (ii) Take the place of any requirements in law necessary to make the submitted document legal; or
- (iii) Create a presumption regarding the validity of the document.

(3) The department of health shall prescribe a procedure for an individual to revoke a health care declaration contained in the registry.

(4) The registry must:

- (a) Be maintained in a secure database that is accessible through a web site maintained by the department of health;
- (b) Send annual electronic messages to individuals that have submitted health care declarations to request that they review the registry materials to ensure that it is current;
- (c) Provide individuals who have submitted one or more health care declarations with access to their documents and the ability to revoke their documents at all times; and

(d) Provide the personal representatives of individuals who have submitted one or more health care declarations to the registry, attending physicians, advanced registered nurse practitioners, health care providers licensed by a disciplining authority identified in RCW 18.130.040 who is acting under the direction of a physician or an advanced registered nurse practitioner, and health care facilities, as defined in this chapter or in chapter 71.32 RCW, access to the registry at all times.

(5) In designing the registry and web site, the department of health shall ensure compliance with state and federal requirements related to patient confidentiality.

(6) The department shall provide information to health care providers and health care facilities on the registry web site regarding the different federal and Washington state requirements to ascertain and document whether a patient has an advance directive.

(7) The department of health may accept donations, grants, gifts, or other forms of voluntary contributions to support activities related to the creation and maintenance of the health care declarations registry and statewide public education campaigns related to the existence of the registry. All funds received shall be transferred to the health care declarations registry account, created in RCW 70.122.140.

(8) The department of health may adopt rules as necessary to implement chapter 108, Laws of 2006.

(9) By December 1, 2008, the department shall report to the house and senate committees on health care the following information:

- (a) Number of participants in the registry;
- (b) Number of health care declarations submitted by type of declaration as defined in this section;
- (c) Number of health care declarations revoked and the method of revocation;
- (d) Number of providers and facilities, by type, that have been provided access to the registry;
- (e) Actual costs of operation of the registry;
- (f) Donations received by the department for deposit into the health care declarations registry account, created in RCW 70.122.140 by type of donor. [2006 c 108 § 2.]

**Finding—Intent—2006 c 108:** "The legislature finds that effective communication between patients, their families, and their caregivers regarding their wishes if they become incapacitated results in health care decisions that are more respectful of patients' desires. Whether the communication is for end-of-life planning or incapacity resulting from mental illness, the state must respect those wishes and support efforts to facilitate such communications and to make that information available when it is needed.

It is the intent of the legislature to establish an electronic registry to improve access to health care decision-making documents. The registry would support, not supplant, the current systems for advance directives and mental health advance directives by improving access to these documents. It is the legislature's intent that the registry would be consulted by health care providers in every instance where there may be a question about the patient's wishes for periods of incapacity and the existence of a document that may clarify a patient's intentions unless the circumstances are such that consulting the registry would compromise the emergency care of the patient." [2006 c 108 § 1.]

**70.122.140 Health care declarations registry account.** The health care declarations registry account is created in the state treasury. All receipts from donations made under RCW 70.122.130, and other contributions and appropriations specifically made for the purposes of creating and maintaining the registry established by RCW 70.122.130 and statewide public education campaigns related to the existence of the registry, shall be deposited into the account. Moneys in the account may be spent only after appropriation. Expenditures from the account may be used only for purposes of the health care declarations registry. [2006 c 108 § 3.]

**Finding—Intent—2006 c 108:** See note following RCW 70.122.130.

**70.122.900 Short title—1979 c 112.** This act shall be known and may be cited as the "Natural Death Act". [1979 c 112 § 1.]

**70.122.905 Severability—1979 c 112.** If any provision of this act or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provisions or application, and to this end the provisions of this act are severable. [1979 c 112 § 13.]

**70.122.910 Construction.** This chapter shall not be construed as providing the exclusive means by which individuals may make decisions regarding their health treatment, including but not limited to, the withholding or withdrawal of life-sustaining treatment, nor limiting the means provided by case law more expansive than chapter 98, Laws of 1992. [1992 c 98 § 11.]

**70.122.915 Application—1992 c 98.** A directive executed anytime before June 11, 1992, which generally complies with chapter 98, Laws of 1992 is effective under chapter 98, Laws of 1992. [1992 c 98 § 13.]

**70.122.920 Severability—1992 c 98.** If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1992 c 98 § 17.]

**70.122.925 Construction—Chapter applicable to state registered domestic partnerships—2009 c 521.** For the purposes of this chapter, the terms spouse, marriage, marital, husband, wife, widow, widower, next of kin, and family shall be interpreted as applying equally to state registered domestic partnerships or individuals in state registered domestic partnerships as well as to marital relationships and married persons, and references to dissolution of marriage shall apply equally to state registered domestic partnerships that have been terminated, dissolved, or invalidated, to the extent that such interpretation does not conflict with federal law. Where necessary to implement chapter 521, Laws of 2009, gender-specific terms such as husband and wife used in any statute, rule, or other law shall be construed to be gender neutral, and applicable to individuals in state registered domestic partnerships. [2009 c 521 § 154.]

## Chapter 70.123 RCW SHELTERS FOR VICTIMS OF DOMESTIC VIOLENCE

### Sections

70.123.010	Legislative findings.
70.123.020	Definitions.
70.123.030	Departmental duties and responsibilities.
70.123.040	Minimum standards to provide basic survival needs.
70.123.050	Contracts with nonprofit organizations—Purposes.
70.123.070	Duties and responsibilities of shelters.
70.123.075	Client records.
70.123.076	Disclosure of recipient information.
70.123.080	Department to consult.
70.123.090	Contracts for shelter services.
70.123.100	Funding for shelters.
70.123.110	Assistance to families in shelters.
70.123.120	Liability for withholding services.
70.123.130	Technical assistance grant program—Local communities.
70.123.140	Technical assistance grant for county plans.
70.123.150	Domestic violence prevention account.
70.123.900	Severability—1979 ex.s. c 245.

*Domestic violence—Official response: Chapter 10.99 RCW.*

*Domestic violence prevention: Chapter 26.50 RCW.*

*Donations of surplus state property: RCW 43.19.1920.*

*Public records: Chapter 42.56 RCW.*

**70.123.010 Legislative findings.** The legislature finds that domestic violence is an issue of growing concern at all levels of government and that there is a present and growing need to develop innovative strategies and services which will ameliorate and reduce the trauma of domestic violence. Research findings show that domestic violence constitutes a significant percentage of homicides, aggravated assaults, and assaults and batteries in the United States. Domestic violence is a disruptive influence on personal and community life and

is often interrelated with a number of other family problems and stresses. Shelters for victims of domestic violence are essential to provide protection to victims from further abuse and physical harm and to help the victim find long-range alternative living situations, if requested. Shelters provide safety, refuge, advocacy, and helping resources to victims who may not have access to such things if they remain in abusive situations.

The legislature therefore recognizes the need for the statewide development and expansion of shelters for victims of domestic violence. [1979 ex.s. c 245 § 1.]

**70.123.020 Definitions.** Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Shelter" means a place of temporary refuge, offered on a twenty-four hour, seven day per week basis to victims of domestic violence and their children.

(2) "Domestic violence" is a categorization of offenses, as defined in RCW 10.99.020, committed by one cohabitant against another.

(3) "Department" means the department of social and health services.

(4) "Victim" means a cohabitant who has been subjected to domestic violence.

(5) "Cohabitant" means a person who is or was married, in a state registered domestic partnership, or cohabiting with another person in an intimate or dating relationship at the present or at sometime in the past. Any person who has one or more children in common with another person, regardless of whether they have been married, in a domestic partnership with each other, or lived together at any time, shall be treated as a cohabitant.

(6) "Community advocate" means a person employed by a local domestic violence program to provide ongoing assistance to victims of domestic violence in assessing safety needs, documenting the incidents and the extent of violence for possible use in the legal system, making appropriate social service referrals, and developing protocols and maintaining ongoing contacts necessary for local systems coordination.

(7) "Domestic violence program" means an agency that provides shelter, advocacy, and counseling for domestic violence victims in a supportive environment.

(8) "Legal advocate" means a person employed by a domestic violence program or court system to advocate for victims of domestic violence, within the criminal and civil justice systems, by attending court proceedings, assisting in document and case preparation, and ensuring linkage with the community advocate.

(9) "Secretary" means the secretary of the department of social and health services or the secretary's designee. [2008 c 6 § 303; 1991 c 301 § 9; 1979 ex.s. c 245 § 2.]

**Part headings not law—Severability—2008 c 6:** See RCW 26.60.900 and 26.60.901.

**Finding—1991 c 301:** See note following RCW 10.99.020.

**70.123.030 Departmental duties and responsibilities.** The department of social and health services, in consultation with the state department of health, and individuals or groups

having experience and knowledge of the problems of victims of domestic violence, shall:

- (1) Establish minimum standards for shelters applying for grants from the department under this chapter. Classifications may be made dependent upon size, geographic location, and population needs;
- (2) Receive grant applications for the development and establishment of shelters for victims of domestic violence;
- (3) Distribute funds, within forty-five days after approval, to those shelters meeting departmental standards;
- (4) Evaluate biennially each shelter receiving departmental funds for compliance with the established minimum standards;
- (5) Review the minimum standards each biennium to ensure applicability to community and client needs; and
- (6) Administer funds available from the domestic violence prevention account under RCW 70.123.150 and establish minimum standards for preventive, nonshelter community-based services receiving funds administered by the department. Preventive, nonshelter community-based services include services for victims of domestic violence from communities that have been traditionally underserved or unserved and services for children who have witnessed domestic violence. [2005 c 374 § 4; 1989 1st ex.s. c 9 § 235; 1979 ex.s. c 245 § 3.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**70.123.040 Minimum standards to provide basic survival needs.** (1) Minimum standards established by the department under RCW 70.123.030 shall ensure that shelters receiving grants under this chapter provide services meeting basic survival needs, where not provided by other means, such as, but not limited to, food, clothing, housing, safety, security, client advocacy, client confidentiality, and counseling. These services shall be problem-oriented and designed to provide necessary assistance to the victims of domestic violence and their children.

(2) The department shall establish minimum standards that ensure that nonshelter community-based services for victims of domestic violence funded under RCW 70.123.150 provide services designed to enhance safety and security by means such as, but not limited to, client advocacy, client confidentiality, and counseling. [2006 c 259 § 3; 1979 ex.s. c 245 § 4.]

**70.123.050 Contracts with nonprofit organizations—Purposes.** The department shall contract, where appropriate, with public or private nonprofit groups or organizations with experience and expertise in the field of domestic violence to:

(1) Develop and implement an educational program designed to promote public and professional awareness of the problems of domestic violence and of the availability of services for victims of domestic violence. Particular emphasis should be given to the education needs of law enforcement agencies, the legal system, the medical profession, and other relevant professions that are engaged in the prevention, identification, and treatment of domestic violence;

(2) Maintain a directory of temporary shelters and other direct service facilities for the victims of domestic violence which is current, complete, detailed, and available, as neces-

sary, to provide useful referral services to persons seeking help on an emergency basis;

(3) Create a statewide toll-free telephone number that would provide information and referral to victims of domestic violence;

(4) Provide opportunities to persons working in the area of domestic violence to exchange information; and

(5) Provide training opportunities for both volunteer workers and staff personnel. [1979 ex.s. c 245 § 5.]

**70.123.070 Duties and responsibilities of shelters.** Shelters receiving state funds under this chapter shall:

(1) Make available shelter services to any person who is a victim of domestic violence and to that person's children;

(2) Encourage victims, with the financial means to do so, to reimburse the shelter for the services provided;

(3) Recruit, to the extent feasible, persons who are former victims of domestic violence to work as volunteers or staff personnel. An effort shall also be made to provide bilingual services;

(4) Provide prevention and treatment programs to victims of domestic violence, their children and, where possible, the abuser;

(5) Provide a day program or drop-in center to assist victims of domestic violence who have found other shelter but who have a need for support services. [1979 ex.s. c 245 § 7.]

**70.123.075 Client records.** (1) Client records maintained by domestic violence programs shall not be subject to discovery in any judicial proceeding unless:

(a) A written pretrial motion is made to a court stating that discovery is requested of the client's domestic violence records;

(b) The written motion is accompanied by an affidavit or affidavits setting forth specifically the reasons why discovery is requested of the domestic violence program's records;

(c) The court reviews the domestic violence program's records in camera to determine whether the domestic violence program's records are relevant and whether the probative value of the records is outweighed by the victim's privacy interest in the confidentiality of such records, taking into account the further trauma that may be inflicted upon the victim by the disclosure of the records; and

(d) The court enters an order stating whether the records or any part of the records are discoverable and setting forth the basis for the court's findings.

(2) For purposes of this section "domestic violence program" means a program that provides shelter, advocacy, or counseling services for domestic violence victims. [1994 c 233 § 1; 1991 c 301 § 10.]

**Finding—1991 c 301:** See note following RCW 10.99.020.

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**70.123.076 Disclosure of recipient information.** (1) Except as authorized in subsections (2) and (3) of this section, or pursuant to court order under RCW 70.123.075, a domestic violence program, an individual who assists a domestic violence program in the delivery of services, or an agent, employee, or volunteer of a domestic violence program shall not disclose information about a recipient of shel-

ter, advocacy, or counseling services without the informed authorization of the recipient. In the case of an unemancipated minor, the minor and the parent or guardian must provide the authorization. For the purposes of this section, a "domestic violence program" means an agency that provides shelter, advocacy, or counseling for domestic violence victims in a supportive environment.

(2)(a) A recipient of shelter, advocacy, or counseling services may authorize a domestic violence program to disclose information about the recipient. The authorization must be in writing, signed by the recipient, or if an unemancipated minor is the recipient, signed by the minor and the parent or guardian, and must contain a reasonable time limit on the duration of the recipient's authorization. If the authorization does not contain a date upon which the authorization to disclose information expires, the recipient's authorization expires ninety days after the date it was signed.

(b) The domestic violence program's disclosure of information shall be only to the extent authorized by the recipient. The domestic violence program, if requested, shall provide a copy of the disclosed information to the recipient.

(c) Except as provided under this chapter, an authorization is not a waiver of the recipient's rights or privileges under other statutes, rules of evidence, or common law.

(3) If disclosure of a recipient's information is required by statute or court order, the domestic violence program shall make reasonable attempts to provide notice to the recipient affected by the disclosure of information. If personally identifying information is or will be disclosed, the domestic violence program shall take steps necessary to protect the privacy and safety of the persons affected by the disclosure of the information.

(4) To comply with tribal, federal, state, or territorial reporting, evaluation, or data collection requirements, domestic violence programs may share data in the aggregate that does not contain personally identifying information and that: (a) Pertains to services to their clients; or (b) is demographic information. [2006 c 259 § 4.]

**70.123.080 Department to consult.** The department shall consult in all phases with persons and organizations having experience and expertise in the field of domestic violence. [1979 ex.s. c 245 § 8.]

**70.123.090 Contracts for shelter services.** The department is authorized, under this chapter and the rules adopted to effectuate its purposes, to make available grants awarded on a contract basis to public or private nonprofit agencies, organizations, or individuals providing shelter services meeting minimum standards established by the department. Consideration as to need, geographic location, population ratios, and the extent of existing services shall be made in the award of grants. The department shall provide technical assistance to any nonprofit organization desiring to apply for the contracts if the organization does not possess the resources and expertise necessary to develop and transmit an application without assistance. [1979 ex.s. c 245 § 9.]

**70.123.100 Funding for shelters.** The department shall seek, receive, and make use of any funds which may be avail-

able from federal or other sources in order to augment state funds appropriated for the purpose of this chapter, and shall make every effort to qualify for federal funding. [1997 c 160 § 1; 1979 ex.s. c 245 § 10.]

**70.123.110 Assistance to families in shelters.** Disability lifeline benefits or temporary assistance for needy families payments shall be made to otherwise eligible individuals who are residing in a secure shelter, a housing network or other shelter facility which provides shelter services to persons who are victims of domestic violence. Provisions shall be made by the department for the confidentiality of the shelter addresses where victims are residing. [2010 1st sp.s. c 8 § 16; 1997 c 59 § 9; 1979 ex.s. c 245 § 11.]

**Findings—Intent—Short title—Effective date—2010 1st sp.s. c 8:** See notes following RCW 74.04.225.

**70.123.120 Liability for withholding services.** A shelter shall not be held liable in any civil action for denial or withdrawal of services provided pursuant to the provisions of this chapter. [1979 ex.s. c 245 § 12.]

**70.123.130 Technical assistance grant program—Local communities.** The department of social and health services shall establish a technical assistance grant program to assist local communities in determining how to respond to domestic violence. The goals of the program shall be to coordinate and expand existing services to:

(1) Serve any individual affected by domestic violence with the primary focus being the safety of the victim;

(2) Assure an integrated, comprehensive, accountable community response that is adequately funded and sensitive to the diverse needs of the community;

(3) Create a continuum of services that range from prevention, crisis intervention, and counseling through shelter, advocacy, legal intervention, and representation to longer term support, counseling, and training; and

(4) Coordinate the efforts of government, the legal system, the private sector, and a range of service providers, such as doctors, nurses, social workers, teachers, and child care workers. [1991 c 301 § 11.]

**Finding—1991 c 301:** See note following RCW 10.99.020.

**70.123.140 Technical assistance grant for county plans.** (1) A county or group of counties may apply to the department for a technical assistance grant to develop a comprehensive county plan for dealing with domestic violence. The county authority may contract with a local nonprofit entity to develop the plan.

(2) County comprehensive plans shall be developed in consultation with the department, domestic violence programs, schools, law enforcement, and health care, legal, and social service providers that provide services to persons affected by domestic violence.

(3) County comprehensive plans shall be based on the following principles:

(a) The safety of the victim is primary;

(b) The community needs to be well-educated about domestic violence;

(c) Those who want to and who should intervene need to know how to do so effectively;

(d) Adequate services, both crisis and long-term support, should exist throughout all parts of the county;

(e) Police and courts should hold the batterer accountable for his or her crimes;

(f) Treatment for batterers should be provided by qualified counselors; and

(g) Coordination teams are needed to ensure that the system continues to work over the coming decades.

(4) County comprehensive plans shall provide for the following:

(a) Public education about domestic violence;

(b) Training for professionals on how to recognize domestic violence and assist those affected by it;

(c) Development of protocols among agencies so that professionals respond to domestic violence in an effective, consistent manner;

(d) Development of services to victims of domestic violence and their families, including shelters, safe homes, transitional housing, community and legal advocates, and children's services; and

(e) Local and regional teams to oversee implementation of the system, ensure that efforts continue over the years, and assist with day-to-day and system-wide coordination. [1991 c 301 § 12.]

**Finding—1991 c 301:** See note following RCW 10.99.020.

#### 70.123.150 Domestic violence prevention account.

The domestic violence prevention account is created in the state treasury. All receipts from fees imposed for deposit in the domestic violence prevention account under RCW 36.18.016 must be deposited into the account. Moneys in the account may be spent only after appropriation. Expenditures from the account may be used only for funding nonshelter community-based services for victims of domestic violence. [2005 c 374 § 3.]

**70.123.900 Severability—1979 ex.s. c 245.** If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1979 ex.s. c 245 § 15.]

### Chapter 70.124 RCW ABUSE OF PATIENTS

#### Sections

70.124.010	Legislative findings.
70.124.020	Definitions.
70.124.030	Reports of abuse or neglect.
70.124.040	Reports to department or law enforcement agency—Action required.
70.124.050	Investigations required—Seeking restraining orders authorized.
70.124.060	Liability of persons making reports.
70.124.070	Failure to report is gross misdemeanor.
70.124.080	Department reports of abused or neglected patients.
70.124.090	Publicizing objectives.
70.124.100	Retaliation against whistleblowers and residents—Remedies—Rules.
70.124.900	Severability—1979 ex.s. c 228.

*Persons over sixty, abuse: Chapter 74.34 RCW.*

(2010 Ed.)

**70.124.010 Legislative findings.** (1) The Washington state legislature finds and declares that a reporting system is needed to protect state hospital patients from abuse. Instances of nonaccidental injury, neglect, death, sexual abuse, and cruelty to such patients have occurred, and in the instance where such a patient is deprived of his or her right to conditions of minimal health and safety, the state is justified in emergency intervention based upon verified information. Therefore the Washington state legislature hereby provides for the reporting of such cases to the appropriate public authorities.

(2) It is the intent of the legislature that: (a) As a result of such reports, protective services shall be made available in an effort to prevent further abuses, and to safeguard the general welfare of the patients; and (b) such reports shall be maintained and disseminated with strictest regard for the privacy of the subjects of such reports and so as to safeguard against arbitrary, malicious, or erroneous information or actions. [1999 c 176 § 20; 1981 c 174 § 1; 1979 ex.s. c 228 § 1.]

**Findings—Purpose—Severability—Conflict with federal requirements—1999 c 176:** See notes following RCW 74.34.005.

**70.124.020 Definitions.** Unless the context requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Court" means the superior court of the state of Washington.

(2) "Law enforcement agency" means the police department, the director of public safety, or the office of the sheriff.

(3) "Practitioner of the healing arts" or "practitioner" means a person licensed by this state to practice podiatric medicine and surgery, optometry, pharmacy, physical therapy, chiropractic, nursing, dentistry, osteopathic medicine and surgery, or medicine and surgery. The term "practitioner" includes a nurse's aide and a duly accredited Christian Science practitioner.

(4) "Department" means the state department of social and health services.

(5) "Social worker" means anyone engaged in a professional capacity during the regular course of employment in encouraging or promoting the health, welfare, support, or education of patients, or providing social services to patients, whether in an individual capacity or as an employee or agent of any public or private organization or institution.

(6) "Psychologist" means any person licensed to practice psychology under chapter 18.83 RCW, whether acting in an individual capacity or as an employee or agent of any public or private organization or institution.

(7) "Pharmacist" means any registered pharmacist under chapter 18.64 RCW, whether acting in an individual capacity or as an employee or agent of any public or private organization or institution.

(8) "Abuse or neglect" or "patient abuse or neglect" means the nonaccidental physical injury or condition, sexual abuse, or negligent treatment of a state hospital patient under circumstances which indicate that the patient's health, welfare, or safety is harmed thereby.

(9) "Negligent treatment" means an act or omission which evinces a serious disregard of consequences of such magnitude as to constitute a clear and present danger to the patient's health, welfare, or safety.

(10) "State hospital" means any hospital operated and maintained by the state for the care of the mentally ill under chapter 72.23 RCW. [1999 c 176 § 21; 1997 c 392 § 519; 1996 c 178 § 24; 1981 c 174 § 2; 1979 ex.s. c 228 § 2.]

**Findings—Purpose—Severability—Conflict with federal requirements—1999 c 176:** See notes following RCW 74.34.005.

**Short title—Findings—Construction—Conflict with federal requirements—Part headings and captions not law—1997 c 392:** See notes following RCW 74.39A.009.

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**70.124.030 Reports of abuse or neglect.** (1) When any practitioner, social worker, psychologist, pharmacist, employee of a state hospital, or employee of the department has reasonable cause to believe that a state hospital patient has suffered abuse or neglect, the person shall report such incident, or cause a report to be made, to either a law enforcement agency or to the department as provided in RCW 70.124.040.

(2) Any other person who has reasonable cause to believe that a state hospital patient has suffered abuse or neglect may report such incident to either a law enforcement agency or to the department as provided in RCW 70.124.040.

(3) The department or any law enforcement agency receiving a report of an incident of abuse or neglect involving a state hospital patient who has died or has had physical injury or injuries inflicted other than by accidental means or who has been subjected to sexual abuse shall report the incident to the proper county prosecutor for appropriate action. [1999 c 176 § 22; 1981 c 174 § 3; 1979 ex.s. c 228 § 3.]

**Findings—Purpose—Severability—Conflict with federal requirements—1999 c 176:** See notes following RCW 74.34.005.

**70.124.040 Reports to department or law enforcement agency—Action required.** (1) Where a report is required under RCW 70.124.030, an immediate oral report must be made by telephone or otherwise to either a law enforcement agency or to the department and, upon request, must be followed by a report in writing. The reports must contain the following information, if known:

- (a) The name and address of the person making the report;
- (b) The name and address of the state hospital patient;
- (c) The name and address of the patient's relatives having responsibility for the patient;
- (d) The nature and extent of the alleged injury or injuries;
- (e) The nature and extent of the alleged neglect;
- (f) The nature and extent of the alleged sexual abuse;
- (g) Any evidence of previous injuries, including their nature and extent; and
- (h) Any other information that may be helpful in establishing the cause of the patient's death, injury, or injuries, and the identity of the perpetrator or perpetrators.

(2) Each law enforcement agency receiving such a report shall, in addition to taking the action required by RCW 70.124.050, immediately relay the report to the department, and to other law enforcement agencies, including the medic-aid fraud control unit of the office of the attorney general, as appropriate. For any report it receives, the department shall likewise take the required action and in addition relay the

[Title 70 RCW—page 432]

report to the appropriate law enforcement agency or agencies. The appropriate law enforcement agency or agencies must receive immediate notification when the department, upon receipt of such report, has reasonable cause to believe that a criminal act has been committed. [1999 c 176 § 23. Prior: 1997 c 392 § 520; 1997 c 386 § 30; 1981 c 174 § 4; 1979 ex.s. c 228 § 4.]

**Findings—Purpose—Severability—Conflict with federal requirements—1999 c 176:** See notes following RCW 74.34.005.

**Short title—Findings—Construction—Conflict with federal requirements—Part headings and captions not law—1997 c 392:** See notes following RCW 74.39A.009.

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**70.124.050 Investigations required—Seeking restraining orders authorized.** Upon the receipt of a report concerning the possible occurrence of abuse or neglect, it is the duty of the law enforcement agency and the department to commence an investigation within twenty-four hours of such receipt and, where appropriate, submit a report to the appropriate prosecuting attorney. The local prosecutor may seek a restraining order to prohibit continued patient abuse. In all cases investigated by the department a report to the complainant shall be made by the department. [1983 1st ex.s. c 41 § 24; 1979 ex.s. c 228 § 5.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**70.124.060 Liability of persons making reports.** (1) A person other than a person alleged to have committed the abuse or neglect participating in good faith in the making of a report pursuant to this chapter, or testifying as to alleged patient abuse or neglect in a judicial proceeding, is, in so doing, immune from any liability, civil or criminal, arising out of such reporting or testifying under any law of this state or its political subdivisions, and if such person is an employee of a state hospital it is an unfair practice under chapter 49.60 RCW for the employer to discharge, expel, or otherwise discriminate against the employee for such reporting activity.

(2) Conduct conforming with the reporting requirements of this chapter is not a violation of the confidential communication privilege of RCW 5.60.060 (3) or (4) or 18.83.110. Nothing in this chapter supersedes or abridges remedies provided in chapter 4.92 RCW. [1999 c 176 § 24; 1993 c 510 § 25; 1981 c 174 § 5; 1979 ex.s. c 228 § 6.]

**Findings—Purpose—Severability—Conflict with federal requirements—1999 c 176:** See notes following RCW 74.34.005.

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**70.124.070 Failure to report is gross misdemeanor.** A person who is required to make or to cause to be made a report pursuant to RCW 70.124.030 or 70.124.040 and who knowingly fails to make such report or fails to cause such report to be made is guilty of a gross misdemeanor. [1997 c 392 § 521; 1979 ex.s. c 228 § 7.]

**Short title—Findings—Construction—Conflict with federal requirements—Part headings and captions not law—1997 c 392:** See notes following RCW 74.39A.009.

**70.124.080 Department reports of abused or neglected patients.** The department shall forward to the

appropriate state licensing authority a copy of any report received pursuant to this chapter which alleges that a person who is professionally licensed by this state has abused or neglected a patient. [1979 ex.s. c 228 § 8.]

**70.124.090 Publicizing objectives.** In the adoption of rules under the authority of this chapter, the department shall provide for the publication and dissemination to state hospitals and state hospital employees and the posting where appropriate by state hospitals of informational, educational, or training materials calculated to aid and assist in achieving the objectives of this chapter. [1999 c 176 § 25; 1981 c 174 § 6; 1979 ex.s. c 228 § 9.]

**Findings—Purpose—Severability—Conflict with federal requirements—1999 c 176:** See notes following RCW 74.34.005.

**70.124.100 Retaliation against whistleblowers and residents—Remedies—Rules.** (1) An employee who is a whistleblower and who as a result of being a whistleblower has been subjected to workplace reprisal or retaliatory action, has the remedies provided under chapter 49.60 RCW. RCW 4.24.500 through 4.24.520, providing certain protection to persons who communicate to government agencies, apply to complaints made under this section. The identity of a whistleblower who complains, in good faith, to the department about suspected abuse, neglect, financial exploitation, or abandonment by any person in a state hospital may remain confidential if requested. The identity of the whistleblower shall subsequently remain confidential unless the department determines that the complaint was not made in good faith.

(2)(a) An attempt to discharge a resident from a state hospital or any type of discriminatory treatment of a resident by whom, or upon whose behalf, a complaint substantiated by the department has been submitted to the department or any proceeding instituted under or related to this chapter within one year of the filing of the complaint or the institution of the action, raises a rebuttable presumption that the action was in retaliation for the filing of the complaint.

(b) The presumption is rebutted by credible evidence establishing the alleged retaliatory action was initiated prior to the complaint.

(c) The presumption is rebutted by a functional assessment conducted by the department that shows that the resident's needs cannot be met by the reasonable accommodations of the facility due to the increased needs of the resident.

(3) For the purposes of this section:

(a) "Whistleblower" means a resident or employee of a state hospital or any person licensed under Title 18 RCW, who in good faith reports alleged abuse, neglect, financial exploitation, or abandonment to the department or to a law enforcement agency;

(b) "Workplace reprisal or retaliatory action" means, but is not limited to: Denial of adequate staff to perform duties; frequent staff changes; frequent and undesirable office changes; refusal to assign meaningful work; unwarranted and unsubstantiated report of misconduct under Title 18 RCW; letters of reprimand or unsatisfactory performance evaluations; demotion; denial of employment; or a supervisor or superior encouraging coworkers to behave in a hostile manner toward the whistleblower; and

(c) "Reasonable accommodation" by a facility to the needs of a prospective or current resident has the meaning given to this term under the federal Americans with disabilities act of 1990, 42 U.S.C. Sec. 12101 et seq. and other applicable federal or state antidiscrimination laws and regulations.

(4) This section does not prohibit a state hospital from exercising its authority to terminate, suspend, or discipline an employee who engages in workplace reprisal or retaliatory action against a whistleblower. The protections provided to whistleblowers under this chapter shall not prevent a state hospital from: (a) Terminating, suspending, or disciplining a whistleblower for other lawful purposes; or (b) for facilities with six or fewer residents, reducing the hours of employment or terminating employment as a result of the demonstrated inability to meet payroll requirements. The department shall determine if the facility cannot meet payroll in cases where a whistleblower has been terminated or had hours of employment reduced due to the inability of a facility to meet payroll.

(5) The department shall adopt rules to implement procedures for filing, investigation, and resolution of whistleblower complaints that are integrated with complaint procedures under this chapter.

(6) No resident who relies upon and is being provided spiritual treatment in lieu of medical treatment in accordance with the tenets and practices of a well-recognized religious denomination shall for that reason alone be considered abandoned, abused, or neglected, nor shall anything in this chapter be construed to authorize, permit, or require medical treatment contrary to the stated or clearly implied objection of such a person.

(7) The department shall adopt rules designed to discourage whistleblower complaints made in bad faith or for retaliatory purposes. [1999 c 176 § 26; 1997 c 392 § 201.]

**Findings—Purpose—Severability—Conflict with federal requirements—1999 c 176:** See notes following RCW 74.34.005.

**Short title—Findings—Construction—Conflict with federal requirements—Part headings and captions not law—1997 c 392:** See notes following RCW 74.39A.009.

**70.124.900 Severability—1979 ex.s. c 228.** If any provision of this 1979 act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1979 ex.s. c 228 § 12.]

## Chapter 70.125 RCW

### VICTIMS OF SEXUAL ASSAULT ACT

#### Sections

70.125.010	Short title.
70.125.020	Legislative findings—Program objectives.
70.125.030	Definitions.
70.125.040	Coordinating office—Biennial statewide plan.
70.125.050	Statewide program services.
70.125.055	Financial assistance to rape crisis centers.
70.125.060	Personal representative may accompany victim during treatment or proceedings.
70.125.065	Records of rape crisis centers not available as part of discovery—Exceptions.
70.125.080	Community sexual assault programs—Victim advocates.

*Public records: Chapter 42.56 RCW.*

*Victims of crimes*

*compensation, assistance: Chapter 7.68 RCW.*  
*survivors, witnesses: Chapter 7.69 RCW.*

**70.125.010 Short title.** This chapter may be known and cited as the Victims of Sexual Assault Act. [1979 ex.s. c 219 § 1.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**70.125.020 Legislative findings—Program objectives.** (1) The legislature hereby finds and declares that:

(a) Sexual assault has become one of the most rapidly increasing violent crimes over the last decade;

(b) There is a lack of essential information and data concerning sexual assault;

(c) There is a lack of adequate training for law enforcement officers concerning sexual assault, the victim, the offender, and the investigation;

(d) There is a lack of community awareness and knowledge concerning sexual assault and the physical and psychological impact upon the victim;

(e) There is a lack of public information concerning sexual assault prevention and personal self-protection;

(f) Because of the lack of information, training, and services, the victims of sexual assault are not receiving the assistance they require in dealing with the physical and psychological trauma of a sexual assault;

(g) The criminal justice system and health care system should maintain close contact and cooperation with each other and with community rape crisis centers to expedite the disposition of sexual assault cases; and

(h) Persons who are victims of sexual assault will benefit directly from increased public awareness and education, increased prosecutions, and a criminal justice system which treats them in a humane manner.

(2) Therefore, a statewide sexual assault education, training, and consultation program should be developed. Such a statewide program should seek to improve treatment of victims through information-gathering, education, training, community awareness programs, and by increasing the efficiency of the criminal justice and health care systems as they relate to sexual assault. Such a program should serve a consultative and facilitative function for organizations which provide services to victims and potential victims of sexual assault. [1979 ex.s. c 219 § 2.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**70.125.030 Definitions.** As used in this chapter and unless the context indicates otherwise:

(1) "Community sexual assault program" means a community-based social service agency that is qualified to provide and provides core services to victims of sexual assault.

(2) "Core services" means treatment services for victims of sexual assault including information and referral, crisis intervention, medical advocacy, legal advocacy, support, system coordination, and prevention for potential victims of sexual assault.

(3) "Department" means the department of commerce.

(4) "Law enforcement agencies" means police and sheriff's departments of this state.

(5) "Personal representative" means a friend, relative, attorney, or employee or volunteer from a community sexual assault program or specialized treatment service provider.

(6) "Rape crisis center" means a community-based social service agency which provides services to victims of sexual assault.

(7) "Sexual assault" means one or more of the following:

(a) Rape or rape of a child;

(b) Assault with intent to commit rape or rape of a child;

(c) Incest or indecent liberties;

(d) Child molestation;

(e) Sexual misconduct with a minor;

(f) Custodial sexual misconduct;

(g) Crimes with a sexual motivation; or

(h) An attempt to commit any of the aforementioned offenses.

(8) "Specialized services" means treatment services for victims of sexual assault including support groups, therapy, and specialized sexual assault medical examination.

(9) "Victim" means any person who suffers physical and/or mental anguish as a proximate result of a sexual assault. [2009 c 565 § 50; 2000 c 54 § 1; 1999 c 45 § 6; 1996 c 123 § 6; 1988 c 145 § 19; 1979 ex.s. c 219 § 3.]

**Reviser's note:** The definitions in this section have been alphabetized pursuant to RCW 1.08.015(2)(k).

**\*Reviser's note:** The "department of community, trade, and economic development" was renamed the "department of commerce" by 2009 c 565.

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**70.125.040 Coordinating office—Biennial statewide plan.** The department shall establish a centralized office within the department to coordinate activities of programs relating to sexual assault and to facilitate coordination and dissemination of information to personnel in fields relating to sexual assault.

The department shall develop, with the cooperation of the criminal justice training commission, the medical profession, and existing rape crisis centers, a biennial statewide plan to aid organizations which provide services to victims of sexual assault. [1985 c 34 § 1; 1979 ex.s. c 219 § 4.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**70.125.050 Statewide program services.** The statewide program established under RCW 70.125.040 shall include but not be limited to provision of the following services: PROVIDED, That the department shall utilize existing rape crisis centers and contract, where appropriate, with these centers to provide the services identified in this section:

(1) Assistance to the criminal justice training commission in developing and offering training and education programs for criminal justice personnel on the scope and nature of the sexual assault problem;

(2) Assistance to health care personnel in training for the sensitive handling and correct legal procedures of sexual assault cases;

(3) Development of public education programs to increase public awareness concerning sexual assault in coordination with the activities of the attorney general's crime prevention efforts; and

(4) Technical assistance and advice to rape crisis centers, including the organization of existing community resources,

volunteer training, identification of potential funding sources, evaluation, and education. Assistance shall be given for the development of additional programs in areas of the state where such services do not exist. [1979 ex.s. c 219 § 5.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**70.125.055 Financial assistance to rape crisis centers.**

The department may distribute financial assistance to rape crisis centers to supplement crisis, advocacy, and counseling services provided directly to victims. [1985 c 34 § 2.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**70.125.060 Personal representative may accompany victim during treatment or proceedings.** If the victim of a sexual assault so desires, a personal representative of the victim's choice may accompany the victim to the hospital or other health care facility, and to proceedings concerning the alleged assault, including police and prosecution interviews and court proceedings. [1979 ex.s. c 219 § 6.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**70.125.065 Records of rape crisis centers not available as part of discovery—Exceptions.** Records maintained by rape crisis centers shall not be made available to any defense attorney as part of discovery in a sexual assault case unless:

(1) A written pretrial motion is made by the defendant to the court stating that the defendant is requesting discovery of the rape crisis center's records;

(2) The written motion is accompanied by an affidavit or affidavits setting forth specifically the reasons why the defendant is requesting discovery of the rape crisis center's records;

(3) The court reviews the rape crisis center's records in camera to determine whether the rape crisis center's records are relevant and whether the probative value of the records is outweighed by the victim's privacy interest in the confidentiality of such records taking into account the further trauma that may be inflicted upon the victim by the disclosure of the records to the defendant; and

(4) The court enters an order stating whether the records or any part of the records are discoverable and setting forth the basis for the court's findings. [1981 c 145 § 9.]

**70.125.080 Community sexual assault programs—Victim advocates.** (1) Community sexual assault programs that are eligible for funding from the department under this chapter may apply for grants for the purpose of hiring, training, and supervising victim advocates to provide core services to assist victims and their families through the investigation, prosecution, and treatment process that resulted from a sexual assault. The department shall seek, receive, and make use of any funds which may be available from federal or other sources to augment state funds appropriated for the purpose of this section, and shall make every effort to qualify for federal funding. [1996 c 123 § 7; 1991 c 267 § 3.]

**Findings—Effective date—1991 c 267:** See notes following RCW 43.101.270.

*Victims of crimes: Chapter 7.69 RCW.*

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

(2010 Ed.)

**Chapter 70.126 RCW**

**HOME HEALTH CARE AND HOSPICE CARE**

Sections

- 70.126.001 Legislative finding.
- 70.126.010 Definitions.
- 70.126.020 Home health care—Services and supplies included, not included.
- 70.126.030 Hospice care—Provider, plan, services included.
- 70.126.060 Application of chapter.

*Optional coverage required by certain insurers: RCW 48.21.220, 48.21A.090, 48.44.320.*

**70.126.001 Legislative finding.** The legislature finds that the cost of medical care in general and hospital care in particular has risen dramatically in recent years, and that in 1981, such costs rose faster than in any year since World War II. The purpose of RCW 70.126.001 through \*70.126.050 is to support the provision of less expensive and more appropriate levels of care, home health care and hospice care, in order to avoid hospitalization or shorten hospital stays. [1983 c 249 § 4.]

**\*Reviser's note:** RCW 70.126.040 and 70.126.050 were repealed by 1988 c 245 § 34, effective July 1, 1989.

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**70.126.010 Definitions.** Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Hospice" means a private or public agency or organization that administers and provides hospice care and is licensed by the department of social and health services as a hospice care agency.

(2) "Hospice care" means care prescribed and supervised by the attending physician and provided by the hospice to the terminally ill in accordance with the standards of RCW 70.126.030.

(3) "Home health agency" means a private or public agency or organization that administers and provides home health care and is licensed by the department of social and health services as a home health care agency.

(4) "Home health care" means services, supplies, and medical equipment that meet the standards of RCW 70.126.020, prescribed and supervised by the attending physician, and provided through a home health agency and rendered to members in their residences when hospitalization would otherwise be required.

(5) "Home health aide" means a person employed by a home health agency or a hospice who is providing part-time or intermittent care under the supervision of a registered nurse, a physical therapist, occupational therapist, or speech therapist. Such care includes ambulation and exercise, assistance with self-administered medications, reporting changes in patients' conditions and needs, completing appropriate records, and personal care or household services that are needed to achieve the medically desired results.

(6) "Home health care plan of treatment" means a written plan of care established and periodically reviewed by a physician that describes medically necessary home health care to be provided to a patient for treatment of illness or injury.

(7) "Hospice plan of care" means a written plan of care established and periodically reviewed by a physician that

describes hospice care to be provided to a terminally ill patient for palliation or medically necessary treatment of an illness or injury.

(8) "Physician" means a physician licensed under chapter 18.57 or 18.71 RCW. [1988 c 245 § 29; 1984 c 22 § 4; 1983 c 249 § 5.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**70.126.020 Home health care—Services and supplies included, not included.** (1) Home health care shall be provided by a home health agency and shall:

(a) Be delivered by a registered nurse, physical therapist, occupational therapist, speech therapist, or home health aide on a part-time or intermittent basis;

(b) Include, as applicable under the written plan, supplies and equipment such as:

(i) Drugs and medicines that are legally obtainable only upon a physician's written prescription, and insulin;

(ii) Rental of durable medical apparatus and medical equipment such as wheelchairs, hospital beds, respirators, splints, trusses, braces, or crutches needed for treatment;

(iii) Supplies normally used for hospital inpatients and dispensed by the home health agency such as oxygen, catheters, needles, syringes, dressings, materials used in aseptic techniques, irrigation solutions, and intravenous fluids.

(2) The following services may be included when medically necessary, ordered by the attending physician, and included in the approved plan of treatment:

(a) Licensed practical nurses;

(b) Respiratory therapists;

(c) Social workers holding a master's degree;

(d) Ambulance service that is certified by the physician as necessary in the approved plan of treatment because of the patient's physical condition or for unexpected emergency situations.

(3) Services not included in home health care include:

(a) Nonmedical, custodial, or housekeeping services except by home health aides as ordered in the approved plan of treatment;

(b) "Meals on Wheels" or similar food services;

(c) Nutritional guidance;

(d) Services performed by family members;

(e) Services not included in an approved plan of treatment;

(f) Supportive environmental materials such as handrails, ramps, telephones, air conditioners, and similar appliances and devices. [1984 c 22 § 5; 1983 c 249 § 6.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**70.126.030 Hospice care—Provider, plan, services included.** (1) Hospice care shall be provided by a hospice and shall meet the standards of RCW 70.126.020(1) (a) and (b)(ii) and (iii).

(2) A written hospice care plan shall be approved by a physician and shall be reviewed at designated intervals.

(3) The following services for necessary medical or palliative care shall be included when ordered by the attending physician and included in the approved plan of treatment:

(a) Short-term care as an inpatient;

(b) Care of the terminally ill in an individual's home on an outpatient basis as included in the approved plan of treatment;

(c) Respite care that is continuous care in the most appropriate setting for a maximum of five days per three-month period of hospice care. [1984 c 22 § 6; 1983 c 249 § 7.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**70.126.060 Application of chapter.** The provisions of this chapter apply only for the purposes of determining benefits to be included in the offering of optional coverage for home health and hospice care services, as provided in RCW 48.21.220, 48.21A.090, and 48.44.320 and do not apply for the purposes of licensure. [1988 c 245 § 30.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

## Chapter 70.127 RCW

### IN-HOME SERVICES AGENCIES

(Formerly: Home health, hospice, and home care agencies—Licensure)

#### Sections

70.127.005	Legislative intent.
70.127.010	Definitions.
70.127.020	Licenses required after July 1, 1990—Penalties.
70.127.030	Use of certain terms limited to licensees.
70.127.040	Persons, activities, or entities not subject to regulation under chapter.
70.127.041	Home care quality authority not subject to regulation.
70.127.050	Volunteer organizations—Use of phrase "volunteer hospice."
70.127.080	Licenses—Application procedure and requirements.
70.127.085	State licensure survey.
70.127.090	License or renewal—Fees—Sliding scale.
70.127.100	Licenses—Issuance—Prerequisites—Transfer or assignment—Surveys.
70.127.120	Rules for recordkeeping, services, staff and volunteer policies, complaints.
70.127.125	Interpretive guidelines for services.
70.127.130	Legend drugs and controlled substances—Rules.
70.127.140	Bill of rights—Billing statements.
70.127.150	Durable power of attorney—Prohibition for licensees, contractees, or employees.
70.127.170	Licenses—Denial, restriction, conditions, modification, suspension, revocation—Civil penalties.
70.127.180	Surveys and in-home visits—Notice of violations—Enforcement action.
70.127.190	Disclosure of compliance information.
70.127.200	Unlicensed agencies—Department may seek injunctive or other relief—Injunctive relief does not prohibit criminal or civil penalties—Fines.
70.127.213	Unlicensed operation of an in-home services agency—Cease and desist orders—Adjudicative proceedings—Fines.
70.127.216	Unlicensed operation of an in-home services agency—Consumer protection act.
70.127.280	Hospice care centers—Applicants—Rules.
70.127.902	Severability—1988 c 245.

**70.127.005 Legislative intent.** The legislature finds that the availability of home health, hospice, and home care services has improved the quality of life for Washington's citizens. However, the delivery of these services bring risks because the in-home location of services makes their actual delivery virtually invisible. Also, the complexity of products, services, and delivery systems in today's health care delivery system challenges even informed and healthy individuals. The fact that these services are delivered to the state's most vulnerable population, the ill or disabled who are frequently also elderly, adds to these risks.

It is the intent of the legislature to protect the citizens of Washington state by licensing home health, hospice, and home care agencies. This legislation is not intended to unreasonably restrict entry into the in-home service marketplace. Standards established are intended to be the minimum necessary to ensure safe and competent care, and should be demonstrably related to patient safety and welfare. [1988 c 245 § 1.]

**70.127.010 Definitions.** Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Administrator" means an individual responsible for managing the operation of an agency.

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

(3) "Director of clinical services" means an individual responsible for nursing, therapy, nutritional, social, and related services that support the plan of care provided by in-home health and hospice agencies.

(4) "Family" means individuals who are important to, and designated by, the patient or client and who need not be relatives.

(5) "Home care agency" means a person administering or providing home care services directly or through a contract arrangement to individuals in places of temporary or permanent residence. A home care agency that provides delegated tasks of nursing under RCW 18.79.260(3)(e) is not considered a home health agency for the purposes of this chapter.

(6) "Home care services" means nonmedical services and assistance provided to ill, disabled, or vulnerable individuals that enable them to remain in their residences. Home care services include, but are not limited to: Personal care such as assistance with dressing, feeding, and personal hygiene to facilitate self-care; homemaker assistance with household tasks, such as housekeeping, shopping, meal planning and preparation, and transportation; respite care assistance and support provided to the family; or other nonmedical services or delegated tasks of nursing under RCW 18.79.260(3)(e).

(7) "Home health agency" means a person administering or providing two or more home health services directly or through a contract arrangement to individuals in places of temporary or permanent residence. A person administering or providing nursing services only may elect to be designated a home health agency for purposes of licensure.

(8) "Home health services" means services provided to ill, disabled, or vulnerable individuals. These services include but are not limited to nursing services, home health aide services, physical therapy services, occupational therapy services, speech therapy services, respiratory therapy services, nutritional services, medical social services, and home medical supplies or equipment services.

(9) "Home health aide services" means services provided by a home health agency or a hospice agency under the supervision of a registered nurse, physical therapist, occupational therapist, or speech therapist who is employed by or under contract to a home health or hospice agency. Such care includes ambulation and exercise, assistance with self-administered medications, reporting changes in patients' conditions and needs, completing appropriate records, and personal care or homemaker services.

(10) "Home medical supplies" or "equipment services" means diagnostic, treatment, and monitoring equipment and supplies provided for the direct care of individuals within a plan of care.

(11) "Hospice agency" means a person administering or providing hospice services directly or through a contract arrangement to individuals in places of temporary or permanent residence under the direction of an interdisciplinary team composed of at least a nurse, social worker, physician, spiritual counselor, and a volunteer.

(12) "Hospice care center" means a homelike, noninstitutional facility where hospice services are provided, and that meets the requirements for operation under RCW 70.127.280.

(13) "Hospice services" means symptom and pain management provided to a terminally ill individual, and emotional, spiritual, and bereavement support for the individual and family in a place of temporary or permanent residence, and may include the provision of home health and home care services for the terminally ill individual.

(14) "In-home services agency" means a person licensed to administer or provide home health, home care, hospice services, or hospice care center services directly or through a contract arrangement to individuals in a place of temporary or permanent residence.

(15) "Person" means any individual, business, firm, partnership, corporation, company, association, joint stock association, public or private agency or organization, or the legal successor thereof that employs or contracts with two or more individuals.

(16) "Plan of care" means a written document based on assessment of individual needs that identifies services to meet these needs.

(17) "Quality improvement" means reviewing and evaluating appropriateness and effectiveness of services provided under this chapter.

(18) "Service area" means the geographic area in which the department has given prior approval to a licensee to provide home health, hospice, or home care services.

(19) "Survey" means an inspection conducted by the department to evaluate and monitor an agency's compliance with this chapter. [2003 c 140 § 7; 2000 c 175 § 1; 1999 c 190 § 1; 1993 c 42 § 1; 1991 c 3 § 373; 1988 c 245 § 2.]

**Effective date—2003 c 140:** See note following RCW 18.79.040.

**Effective date—2000 c 175:** "This act takes effect January 1, 2002." [2000 c 175 § 24.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**70.127.020 Licenses required after July 1, 1990—Penalties.** (1) After July 1, 1990, a license is required for a person to advertise, operate, manage, conduct, open, or maintain an in-home services agency.

(2) An in-home services agency license is required for a nursing home, hospital, or other person that functions as a home health, hospice, hospice care center, or home care agency.

(3) Any person violating this section is guilty of a misdemeanor. Each day of a continuing violation is a separate violation.

(4) If any corporation conducts any activity for which a license is required by this chapter without the required

license, it may be punished by forfeiture of its corporate charter.

(5) All fines, forfeitures, and penalties collected or assessed by a court because of a violation of this section shall be deposited in the department's local fee account. [2003 c 53 § 363; 2000 c 175 § 2; 1988 c 245 § 3.]

**Intent—Effective date—2003 c 53:** See notes following RCW 2.48.180.

**Effective date—2000 c 175:** See note following RCW 70.127.010.

#### **70.127.030 Use of certain terms limited to licensees.**

It is unlawful for any person to use the words:

(1) "Home health agency," "home health care services," "visiting nurse services," "home health," or "home health services" in its corporate or business name, or advertise using such words unless licensed to provide those services under this chapter;

(2) "Hospice agency," "hospice," "hospice services," "hospice care," or "hospice care center" in its corporate or business name, or advertise using such words unless licensed to provide those services under this chapter;

(3) "Home care agency," "home care services," or "home care" in its corporate or business name, or advertise using such words unless licensed to provide those services under this chapter; or

(4) "In-home services agency," "in-home services," or any similar term to indicate that a person is a home health, home care, hospice care center, or hospice agency in its corporate or business name, or advertise using such words unless licensed to provide those services under this chapter. [2000 c 175 § 3; 1988 c 245 § 4.]

**Effective date—2000 c 175:** See note following RCW 70.127.010.

**70.127.040 Persons, activities, or entities not subject to regulation under chapter.** The following are not subject to regulation for the purposes of this chapter:

(1) A family member providing home health, hospice, or home care services;

(2) A person who provides only meal services in an individual's permanent or temporary residence;

(3) An individual providing home care through a direct agreement with a recipient of care in an individual's permanent or temporary residence;

(4) A person furnishing or delivering home medical supplies or equipment that does not involve the provision of services beyond those necessary to deliver, set up, and monitor the proper functioning of the equipment and educate the user on its proper use;

(5) A person who provides services through a contract with a licensed agency;

(6) An employee or volunteer of a licensed agency who provides services only as an employee or volunteer;

(7) Facilities and institutions, including but not limited to nursing homes under chapter 18.51 RCW, hospitals under chapter 70.41 RCW, adult family homes under chapter 70.128 RCW, boarding homes under chapter 18.20 RCW, developmental disability residential programs under chapter 71A.12 RCW, other entities licensed under chapter 71.12 RCW, or other licensed facilities and institutions, only when

providing services to persons residing within the facility or institution;

(8) Local and combined city-county health departments providing services under chapters 70.05 and 70.08 RCW;

(9) An individual providing care to ill, disabled, or vulnerable individuals through a contract with the department of social and health services;

(10) Nursing homes, hospitals, or other institutions, agencies, organizations, or persons that contract with licensed home health, hospice, or home care agencies for the delivery of services;

(11) In-home assessments of an ill, disabled, or vulnerable individual that does not result in regular ongoing care at home;

(12) Services conducted by and for the adherents of a church or religious denomination that rely upon spiritual means alone through prayer for healing in accordance with the tenets and practices of such church or religious denomination and the bona fide religious beliefs genuinely held by such adherents;

(13) A medicare-approved dialysis center operating a medicare-approved home dialysis program;

(14) A person providing case management services. For the purposes of this subsection, "case management" means the assessment, coordination, authorization, planning, training, and monitoring of home health, hospice, and home care, and does not include the direct provision of care to an individual;

(15) Pharmacies licensed under RCW 18.64.043 that deliver prescription drugs and durable medical equipment that does not involve the use of professional services beyond those authorized to be performed by licensed pharmacists pursuant to chapter 18.64 RCW and those necessary to set up and monitor the proper functioning of the equipment and educate the person on its proper use;

(16) A volunteer hospice complying with the requirements of RCW 70.127.050; and

(17) A person who provides home care services without compensation. [2003 c 275 § 3; 2003 c 140 § 8; 2000 c 175 § 4; 1993 c 42 § 2; 1988 c 245 § 5.]

**Reviser's note:** This section was amended by 2003 c 140 § 8 and by 2003 c 275 § 3, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

**Effective date—2003 c 140:** See note following RCW 18.79.040.

**Effective date—2000 c 175:** See note following RCW 70.127.010.

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**70.127.041 Home care quality authority not subject to regulation.** The authority established by chapter 3, Laws of 2002 is not subject to regulation for purposes of this chapter. [2002 c 3 § 13 (Initiative Measure No. 775, approved November 6, 2001).]

**Findings—Captions not law—Severability—2002 c 3 (Initiative Measure No. 775):** See RCW 74.39A.220 and notes following.

**70.127.050 Volunteer organizations—Use of phrase "volunteer hospice."** (1) An entity that provides hospice care without receiving compensation for delivery of any of its services is exempt from licensure pursuant to RCW 70.127.020(1) if it notifies the department, on forms provided

by the department, of its name, address, name of owner, and a statement affirming that it provides hospice care without receiving compensation for delivery of any of its services. This form must be filed with the department within sixty days after being informed in writing by the department of this requirement for obtaining exemption from licensure under this chapter.

(2) For the purposes of this section, it is not relevant if the entity compensates its staff. For the purposes of this section, the word "compensation" does not include donations.

(3) Notwithstanding the provisions of RCW 70.127.030(2), an entity that provides hospice care without receiving compensation for delivery of any of its services is allowed to use the phrase "volunteer hospice."

(4) Nothing in this chapter precludes an entity providing hospice care without receiving compensation for delivery of any of its services from obtaining a hospice license if it so chooses, but that entity would be exempt from the requirements set forth in RCW 70.127.080(1)(d). [2000 c 175 § 5; 1993 c 42 § 3; 1988 c 245 § 6.]

**Effective date—2000 c 175:** See note following RCW 70.127.010.

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**70.127.080 Licenses—Application procedure and requirements.** (1) An applicant for an in-home services agency license shall:

(a) File a written application on a form provided by the department;

(b) Demonstrate ability to comply with this chapter and the rules adopted under this chapter;

(c) Cooperate with on-site survey conducted by the department except as provided in RCW 70.127.085;

(d) Provide evidence of and maintain professional liability, public liability, and property damage insurance in an amount established by the department, based on industry standards. This subsection shall not apply to hospice agency applicants that provide hospice care without receiving compensation for delivery of services;

(e) Provide documentation of an organizational structure, and the identity of the applicant, officers, administrator, directors of clinical services, partners, managing employees, or owners of ten percent or more of the applicant's assets;

(f) File with the department for approval a description of the service area in which the applicant will operate and a description of how the applicant intends to provide management and supervision of services throughout the service area. The department shall adopt rules necessary to establish criteria for approval that are related to appropriate management and supervision of services throughout the service area. In developing the rules, the department may not establish criteria that:

(i) Limit the number or type of agencies in any service area; or

(ii) Limit the number of persons any agency may serve within its service area unless the criteria are related to the need for trained and available staff to provide services within the service area;

(g) File with the department a list of the home health, hospice, and home care services provided directly and under contract;

(2010 Ed.)

(h) Pay to the department a license fee as provided in RCW 70.127.090;

(i) Comply with RCW 43.43.830 through 43.43.842 for criminal background checks; and

(j) Provide any other information that the department may reasonably require.

(2) A certificate of need under chapter 70.38 RCW is not required for licensure except for the operation of a hospice care center. [2000 c 175 § 6; 1999 c 190 § 2; 1993 c 42 § 4; 1988 c 245 § 9.]

**Effective date—2000 c 175:** See note following RCW 70.127.010.

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**70.127.085 State licensure survey.** (1) Notwithstanding the provisions of RCW 70.127.080(1)(c), an in-home services agency that is certified by the federal medicare program, or accredited by the community health accreditation program, or the joint commission on accreditation of health care organizations as a home health or hospice agency is not subject to a state licensure survey if:

(a) The department determines that the applicable survey standards of the certification or accreditation program are substantially equivalent to those required by this chapter;

(b) An on-site survey has been conducted for the purposes of certification or accreditation during the previous twenty-four months; and

(c) The department receives directly from the certifying or accrediting entity or from the licensee applicant copies of the initial and subsequent survey reports and other relevant reports or findings that indicate compliance with licensure requirements.

(2) Notwithstanding the provisions of RCW 70.127.080(1)(c), an in-home services agency providing services under contract with the department of social and health services or area agency on aging to provide home care services and that is monitored by the department of social and health services or area agency on aging is not subject to a state licensure survey by the department of health if:

(a) The department determines that the department of social and health services or an area agency on aging monitoring standards are substantially equivalent to those required by this chapter;

(b) An on-site monitoring has been conducted by the department of social and health services or an area agency on aging during the previous twenty-four months;

(c) The department of social and health services or an area agency on aging includes in its monitoring a sample of private pay clients, if applicable; and

(d) The department receives directly from the department of social and health services copies of monitoring reports and other relevant reports or findings that indicate compliance with licensure requirements.

(3) The department retains authority to survey those services areas not addressed by the national accrediting body, department of social and health services, or an area agency on aging.

(4) In reviewing the federal, the joint commission on accreditation of health care organizations, the community health accreditation program, or the department of social and health services survey standards for substantial equivalency

to those set forth in this chapter, the department is directed to provide the most liberal interpretation consistent with the intent of this chapter. In the event the department determines at any time that the survey standards are not substantially equivalent to those required by this chapter, the department is directed to notify the affected licensees. The notification shall contain a detailed description of the deficiencies in the alternative survey process, as well as an explanation concerning the risk to the consumer. The determination of substantial equivalency for alternative survey process and lack of substantial equivalency are agency actions and subject to RCW 34.05.210 through 34.05.395 and 34.05.510 through 34.05.675.

(5) The department is authorized to perform a validation survey on in-home services agencies who previously received a survey through accreditation or contracts with the department of social and health services or an area agency on aging under subsection (2) of this section. The department is authorized to perform a validation survey on no greater than ten percent of each type of certification or accreditation survey.

(6) This section does not affect the department's enforcement authority for licensed agencies. [2000 c 175 § 7; 1993 c 42 § 11.]

**Effective date—2000 c 175:** See note following RCW 70.127.010.

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

#### **70.127.090 License or renewal—Fees—Sliding scale.**

(1) Application and renewal fee: An application for a license or any renewal shall be accompanied by a fee as established by the department under RCW 43.70.250. The department shall adopt by rule licensure fees based on a sliding scale using such factors as the number of agency full-time equivalents, geographic area served, number of locations, or type and volume of services provided. For agencies receiving a licensure survey that requires more than two on-site surveys by the department per licensure period, an additional fee as determined by the department by rule shall be charged for each additional on-site survey. The department may set different licensure fees for each licensure category. Agencies receiving a license without necessity of an on-site survey by the department under this chapter shall pay the same licensure or transfer fee as other agencies in their licensure category.

(2) Change of ownership fee: The department shall charge a reasonable fee for processing changes in ownership. The fee for transfer of ownership may not exceed fifty percent of the base licensure fee.

(3) Late fee: The department may establish a late fee for failure to apply for licensure or renewal as required by this chapter. [2000 c 175 § 8; 1999 c 190 § 3; 1993 c 42 § 5; 1988 c 245 § 10.]

**Effective date—2000 c 175:** See note following RCW 70.127.010.

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**70.127.100 Licenses—Issuance—Prerequisites—Transfer or assignment—Surveys.** Upon receipt of an application under RCW 70.127.080 for a license and the license fee, the department shall issue a license if the applicant meets the requirements established under this chapter. A

license issued under this chapter shall not be transferred or assigned without thirty days prior notice to the department and the department's approval. A license, unless suspended or revoked, is effective for a period of two years, however an initial license is only effective for twelve months. The department shall conduct a survey within each licensure period and may conduct a licensure survey after ownership transfer. [2000 c 175 § 9; 1993 c 42 § 6; 1988 c 245 § 11.]

**Effective date—2000 c 175:** See note following RCW 70.127.010.

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**70.127.120 Rules for recordkeeping, services, staff and volunteer policies, complaints.** The department shall adopt rules consistent with RCW 70.127.005 necessary to implement this chapter under chapter 34.05 RCW. In order to ensure safe and adequate care, the rules shall address at a minimum the following:

(1) Maintenance and preservation of all records relating directly to the care and treatment of individuals by licensees;

(2) Establishment and implementation of a procedure for the receipt, investigation, and disposition of complaints regarding services provided;

(3) Establishment and implementation of a plan for ongoing care of individuals and preservation of records if the licensee ceases operations;

(4) Supervision of services;

(5) Establishment and implementation of written policies regarding response to referrals and access to services;

(6) Establishment and implementation of written personnel policies, procedures and personnel records for paid staff that provide for prehire screening, minimum qualifications, regular performance evaluations, including observation in the home, participation in orientation and in-service training, and involvement in quality improvement activities. The department may not establish experience or other qualifications for agency personnel or contractors beyond that required by state law;

(7) Establishment and implementation of written policies and procedures for volunteers who have direct patient/client contact and that provide for background and health screening, orientation, and supervision;

(8) Establishment and implementation of written policies for obtaining regular reports on patient satisfaction;

(9) Establishment and implementation of a quality improvement process;

(10) Establishment and implementation of policies related to the delivery of care including:

(a) Plan of care for each individual served;

(b) Periodic review of the plan of care;

(c) Supervision of care and clinical consultation as necessary;

(d) Care consistent with the plan;

(e) Admission, transfer, and discharge from care; and

(f) For hospice services:

(i) Availability of twenty-four hour seven days a week hospice registered nurse consultation and in-home services as appropriate;

(ii) Interdisciplinary team communication as appropriate and necessary; and

(iii) The use and availability of volunteers to provide family support and respite care; and

(11) Establishment and implementation of policies related to agency implementation and oversight of nurse delegation as defined in RCW 18.79.260(3)(e). [2003 c 140 § 9; 2000 c 175 § 10; 1993 c 42 § 8; 1988 c 245 § 13.]

**Effective date—2003 c 140:** See note following RCW 18.79.040.

**Effective date—2000 c 175:** See note following RCW 70.127.010.

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**70.127.125 Interpretive guidelines for services.** The department is directed to continue to develop, with opportunity for comment from licensees, interpretive guidelines that are specific to each type of service and consistent with legislative intent. [2000 c 175 § 11; 1993 c 42 § 7.]

**Effective date—2000 c 175:** See note following RCW 70.127.010.

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**70.127.130 Legend drugs and controlled substances—Rules.** Licensees shall conform to the standards of RCW 69.41.030 and 69.50.308. Rules adopted by the department concerning the use of legend drugs or controlled substances shall reference and be consistent with board of pharmacy rules. [1993 c 42 § 9; 1988 c 245 § 14.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**70.127.140 Bill of rights—Billing statements.** (1) An in-home services agency shall provide each individual or designated representative with a written bill of rights affirming each individual's right to:

- (a) A listing of the in-home services offered by the in-home services agency and those being provided;
- (b) The name of the individual supervising the care and the manner in which that individual may be contacted;
- (c) A description of the process for submitting and addressing complaints;
- (d) Submit complaints without retaliation and to have the complaint addressed by the agency;
- (e) Be informed of the state complaint hotline number;
- (f) A statement advising the individual or representative of the right to ongoing participation in the development of the plan of care;
- (g) A statement providing that the individual or representative is entitled to information regarding access to the department's listing of providers and to select any licensee to provide care, subject to the individual's reimbursement mechanism or other relevant contractual obligations;
- (h) Be treated with courtesy, respect, privacy, and freedom from abuse and discrimination;
- (i) Refuse treatment or services;
- (j) Have property treated with respect;
- (k) Privacy of personal information and confidentiality of health care records;
- (l) Be cared for by properly trained staff with coordination of services;
- (m) A fully itemized billing statement upon request, including the date of each service and the charge. Licensees providing services through a managed care plan shall not be required to provide itemized billing statements; and

(n) Be informed about advanced directives and the agency's responsibility to implement them.

(2) An in-home services agency shall ensure rights under this section are implemented and updated as appropriate. [2000 c 175 § 12; 1988 c 245 § 15.]

**Effective date—2000 c 175:** See note following RCW 70.127.010.

**70.127.150 Durable power of attorney—Prohibition for licensees, contractees, or employees.** No licensee, contractee, or employee may hold a durable power of attorney on behalf of any individual who is receiving care from the licensee. [2000 c 175 § 13; 1988 c 245 § 16.]

**Effective date—2000 c 175:** See note following RCW 70.127.010.

**70.127.170 Licenses—Denial, restriction, conditions, modification, suspension, revocation—Civil penalties.** Pursuant to chapter 34.05 RCW and RCW 70.127.180(3), the department may deny, restrict, condition, modify, suspend, or revoke a license under this chapter or, in lieu thereof or in addition thereto, assess monetary penalties of a civil nature not to exceed one thousand dollars per violation, or require a refund of any amounts billed to, and collected from, the consumer or third-party payor in any case in which it finds that the licensee, or any applicant, officer, director, partner, managing employee, or owner of ten percent or more of the applicant's or licensee's assets:

- (1) Failed or refused to comply with the requirements of this chapter or the standards or rules adopted under this chapter;
- (2) Was the holder of a license issued pursuant to this chapter that was revoked for cause and never reissued by the department, or that was suspended for cause and the terms of the suspension have not been fulfilled and the licensee has continued to operate;
- (3) Has knowingly or with reason to know made a misrepresentation of, false statement of, or failed to disclose, a material fact to the department in an application for the license or any data attached thereto or in any record required by this chapter or matter under investigation by the department, or during a survey, or concerning information requested by the department;
- (4) Refused to allow representatives of the department to inspect any book, record, or file required by this chapter to be maintained or any portion of the licensee's premises;
- (5) Willfully prevented, interfered with, or attempted to impede in any way the work of any representative of the department and the lawful enforcement of any provision of this chapter. This includes but is not limited to: Willful misrepresentation of facts during a survey, investigation, or administrative proceeding or any other legal action; or use of threats or harassment against any patient, client, or witness, or use of financial inducements to any patient, client, or witness to prevent or attempt to prevent him or her from providing evidence during a survey or investigation, in an administrative proceeding, or any other legal action involving the department;
- (6) Willfully prevented or interfered with any representative of the department in the preservation of evidence of any violation of this chapter or the rules adopted under this chapter;

(7) Failed to pay any civil monetary penalty assessed by the department pursuant to this chapter within ten days after the assessment becomes final;

(8) Used advertising that is false, fraudulent, or misleading;

(9) Has repeated incidents of personnel performing services beyond their authorized scope of practice;

(10) Misrepresented or was fraudulent in any aspect of the conduct of the licensee's business;

(11) Within the last five years, has been found in a civil or criminal proceeding to have committed any act that reasonably relates to the person's fitness to establish, maintain, or administer an agency or to provide care in the home of another;

(12) Was the holder of a license to provide care or treatment to ill, disabled, or vulnerable individuals that was denied, restricted, not renewed, surrendered, suspended, or revoked by a competent authority in any state, federal, or foreign jurisdiction. A certified copy of the order, stipulation, or agreement is conclusive evidence of the denial, restriction, nonrenewal, surrender, suspension, or revocation;

(13) Violated any state or federal statute, or administrative rule regulating the operation of the agency;

(14) Failed to comply with an order issued by the secretary or designee;

(15) Aided or abetted the unlicensed operation of an in-home services agency;

(16) Operated beyond the scope of the in-home services agency license;

(17) Failed to adequately supervise staff to the extent that the health or safety of a patient or client was at risk;

(18) Compromised the health or safety of a patient or client, including, but not limited to, the individual performing services beyond their authorized scope of practice;

(19) Continued to operate after license revocation, suspension, or expiration, or operating outside the parameters of a modified, conditioned, or restricted license;

(20) Failed or refused to comply with chapter 70.02 RCW;

(21) Abused, neglected, abandoned, or financially exploited a patient or client as these terms are defined in RCW 74.34.020;

(22) Misappropriated the property of an individual;

(23) Is unqualified or unable to operate or direct the operation of the agency according to this chapter and the rules adopted under this chapter;

(24) Obtained or attempted to obtain a license by fraudulent means or misrepresentation; or

(25) Failed to report abuse or neglect of a patient or client in violation of chapter 74.34 RCW. [2003 c 140 § 10; 2000 c 175 § 14; 1988 c 245 § 18.]

**Effective date—2003 c 140:** See note following RCW 18.79.040.

**Effective date—2000 c 175:** See note following RCW 70.127.010.

**70.127.180 Surveys and in-home visits—Notice of violations—Enforcement action.** (1) The department may at any time conduct a survey of all records and operations of a licensee in order to determine compliance with this chapter. The department may conduct in-home visits to observe patient/client care and services. The right to conduct a survey

shall extend to any premises and records of persons whom the department has reason to believe are providing home health, hospice, or home care services without a license.

(2) Following a survey, the department shall give written notice of any violation of this chapter or the rules adopted under this chapter. The notice shall describe the reasons for noncompliance.

(3) The licensee may be subject to formal enforcement action under RCW 70.127.170 if the department determines: (a) The licensee has previously been subject to a formal enforcement action for the same or similar type of violation of the same statute or rule, or has been given previous notice of the same or similar type of violation of the same statute or rule; (b) the licensee failed to achieve compliance with a statute, rule, or order by the date established in a previously issued notice or order; (c) the violation resulted in actual serious physical or emotional harm or immediate threat to the health, safety, welfare, or rights of one or more individuals; or (d) the violation has a potential for serious physical or emotional harm or immediate threat to the health, safety, welfare, or rights of one or more individuals. [2000 c 175 § 15; 1988 c 245 § 19.]

**Effective date—2000 c 175:** See note following RCW 70.127.010.

**70.127.190 Disclosure of compliance information.** All information received by the department through filed reports, surveys, and in-home visits conducted under this chapter shall not be disclosed publicly in any manner that would identify individuals receiving care under this chapter. [2000 c 175 § 16; 1988 c 245 § 20.]

**Effective date—2000 c 175:** See note following RCW 70.127.010.

**70.127.200 Unlicensed agencies—Department may seek injunctive or other relief—Injunctive relief does not prohibit criminal or civil penalties—Fines.** (1) Notwithstanding the existence or use of any other remedy, the department may, in the manner provided by law and upon the advice of the attorney general, who shall represent the department in the proceedings, maintain an action in the name of the state for an injunction or other process against any person to restrain or prevent the advertising, operating, maintaining, managing, or opening of a home health, hospice, hospice care center, or home care agency without an in-home services agency license under this chapter.

(2) The injunction shall not relieve the person operating an in-home services agency without a license from criminal prosecution, or the imposition of a civil fine under RCW 70.127.213(2), but the remedy by injunction shall be in addition to any criminal liability or civil fine. A person that violates an injunction issued under this chapter shall pay a civil penalty, as determined by the court, of not more than twenty-five thousand dollars, which shall be deposited in the department's local fee account. For the purpose of this section, the superior court issuing any injunction shall retain jurisdiction and the cause shall be continued, and in such cases the attorney general acting in the name of the state may petition for the recovery of civil penalties. All fines, forfeitures, and penalties collected or assessed by a court because of a violation of RCW 70.127.020 shall be deposited in the department's local fee account. [2000 c 175 § 17; 1988 c 245 § 21.]

**Effective date—2000 c 175:** See note following RCW 70.127.010.

**70.127.213 Unlicensed operation of an in-home services agency—Cease and desist orders—Adjudicative proceedings—Fines.** (1) The department may issue a notice of intention to issue a cease and desist order to any person whom the department has reason to believe is engaged in the unlicensed operation of an in-home services agency. The person to whom the notice of intent is issued may request an adjudicative proceeding to contest the charges. The request for hearing must be filed within twenty days after service of the notice of intent to issue a cease and desist order. The failure to request a hearing constitutes a default, whereupon the department may enter a permanent cease and desist order, which may include a civil fine. All proceedings shall be conducted in accordance with chapter 34.05 RCW.

(2) If the department makes a final determination that a person has engaged or is engaging in unlicensed operation of an in-home services agency, the department may issue a cease and desist order. In addition, the department may impose a civil fine in an amount not exceeding one thousand dollars for each day upon which the person engaged in unlicensed operation of an in-home services agency. The proceeds of such fines shall be deposited in the department's local fee account.

(3) If the department makes a written finding of fact that the public interest will be irreparably harmed by delay in issuing an order, the department may issue a temporary cease and desist order. The person receiving a temporary cease and desist order shall be provided an opportunity for a prompt hearing. The temporary cease and desist order shall remain in effect until further order of the department. The failure to request a prompt or regularly scheduled hearing constitutes a default, whereupon the department may enter a permanent cease and desist order, which may include a civil fine.

(4) Neither the issuance of a cease and desist order nor payment of a civil fine shall relieve the person so operating an in-home services agency without a license from criminal prosecution, but the remedy of a cease and desist order or civil fine shall be in addition to any criminal liability. The cease and desist order is conclusive proof of unlicensed operation and may be enforced under RCW 7.21.060. This method of enforcement of the cease and desist order or civil fine may be used in addition to, or as an alternative to, any provisions for enforcement of agency orders set out in chapter 34.05 RCW. [2000 c 175 § 19.]

**Effective date—2000 c 175:** See note following RCW 70.127.010.

**70.127.216 Unlicensed operation of an in-home services agency—Consumer protection act.** The legislature finds that the operation of an in-home services agency without a license in violation of this chapter is a matter vitally affecting the public interest for the purpose of applying the consumer protection act, chapter 19.86 RCW. Operation of an in-home services agency without a license in violation of this chapter is not reasonable in relation to the development and preservation of business. Such a violation is an unfair or deceptive act in trade or commerce and an unfair method of competition for the purpose of applying the consumer protection act, chapter 19.86 RCW. [2000 c 175 § 20.]

**Effective date—2000 c 175:** See note following RCW 70.127.010.

**70.127.280 Hospice care centers—Applicants—Rules.** (1) Applicants desiring to operate a hospice care center are subject to the following:

(a) The application may only be made by a licensed hospice agency. The agency shall list which of the following service categories will be provided:

- (i) General inpatient care;
- (ii) Continuous home care;
- (iii) Routine home care; or
- (iv) Inpatient respite care;

(b) A certificate of need is required under chapter 70.38 RCW;

(c) A hospice agency may operate more than one hospice care center in its service area;

(d) For hospice agencies that operate a hospice care center, no more than forty-nine percent of patient care days, in the aggregate on a biennial basis, may be provided in the hospice care center;

(e) The maximum number of beds in a hospice care center is twenty;

(f) The maximum number of individuals per room is one, unless the individual requests a roommate;

(g) A hospice care center may either be owned or leased by a hospice agency. If the agency leases space, all delivery of interdisciplinary services, to include staffing and management, shall be done by the hospice agency; and

(h) A hospice care center may either be freestanding or a separate portion of another building.

(2) The department is authorized to develop rules to implement this section. The rules shall be specific to each hospice care center service category provided. The rules shall at least specifically address the following:

(a) Adequate space for family members to visit, meet, cook, share meals, and stay overnight with patients or clients;

(b) A separate external entrance, clearly identifiable to the public when part of an existing structure;

(c) Construction, maintenance, and operation of a hospice care center;

(d) Means to inform the public which hospice care center service categories are provided; and

(e) A registered nurse present twenty-four hours a day, seven days a week for hospice care centers delivering general inpatient services.

(3) Hospice agencies which as of January 1, 2000, operate the functional equivalent of a hospice care center through licensure as a hospital, under chapter 70.41 RCW, shall be exempt from the certificate of need requirement for hospice care centers if they apply for and receive a license as an in-home services agency to operate a hospice home care center by July 1, 2002. [2000 c 175 § 21.]

**Effective date—2000 c 175:** See note following RCW 70.127.010.

**70.127.902 Severability—1988 c 245.** If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1988 c 245 § 39.]

**Chapter 70.128 RCW**  
**ADULT FAMILY HOMES**

## Sections

70.128.005	Findings—Intent.
70.128.007	Purpose.
70.128.010	Definitions.
70.128.030	Exemptions.
70.128.040	Adoption of rules and standards—Negotiated rule making—Specialty license.
70.128.043	Negotiated rule making—Statewide unit of licensees—Intent.
70.128.050	License—Required as of July 1, 1990.
70.128.055	Operating without a license—Misdemeanor.
70.128.057	Operating without a license—Injunction or civil penalty.
70.128.058	Operating without a license—Application of consumer protection act.
70.128.060	License—Generally—Fees.
70.128.064	Priority processing for license applications—Provisional license.
70.128.065	Multiple facility operators—Requirements.
70.128.070	License—Inspections—Correction of violations.
70.128.080	License and inspection report—Availability for review.
70.128.090	Inspections—Generally.
70.128.100	Immediate suspension of license when conditions warrant.
70.128.105	Injunction if conditions warrant.
70.128.110	Prohibition against recommending unlicensed home—Report and investigation of unlicensed home.
70.128.120	Adult family home provider, resident manager—Minimum qualifications.
70.128.122	Adult family homes licensed by Indian tribes.
70.128.125	Resident rights.
70.128.130	Adult family homes—Requirements.
70.128.135	Compliance with chapter 70.24 RCW.
70.128.140	Compliance with local codes and state and local fire safety regulations.
70.128.150	Adult family homes to work with local quality assurance projects—Interference with representative of ombudsman program—Penalty.
70.128.160	Department authority to take actions in response to noncompliance or violations.
70.128.163	Temporary management program—Purposes—Voluntary participation—Temporary management duties, duration—Rules.
70.128.167	Disputed violations, enforcement remedies—Informal dispute resolution process.
70.128.170	Homes relying on prayer for healing—Application of chapter.
70.128.175	Definitions.
70.128.200	Toll-free telephone number for complaints—Discrimination or retaliation prohibited.
70.128.210	Training standards review—Delivery system—Issues reviewed—Report to the legislature.
70.128.220	Elder care—Professionalization of providers.
70.128.230	Long-term caregiver training.
70.128.240	Approval system—Department-approved training—Adoption of rules.
70.128.250	Required training and continuing education—Food safety training and testing.
70.128.260	Limitation on restrictive covenants.
70.128.900	Severability—1989 c 427.
70.128.901	Construction—Chapter applicable to state registered domestic partnerships—2009 c 521.

**70.128.005 Findings—Intent.** (1) The legislature finds that:

(a) Adult family homes are an important part of the state's long-term care system. Adult family homes provide an alternative to institutional care and promote a high degree of independent living for residents.

(b) Persons with functional limitations have broadly varying service needs. Adult family homes that can meet those needs are an essential component of a long-term system. Different populations living in adult family homes, such as persons with developmental disabilities and elderly persons, often have significantly different needs and capacities from one another.

(c) There is a need to update certain restrictive covenants to take into consideration the legislative findings cited in (a)

and (b) of this subsection; the need to prevent or reduce institutionalization; and the legislative and judicial mandates to provide care and services in the least restrictive setting appropriate to the needs of the individual. Restrictive covenants which directly or indirectly restrict or prohibit the use of property for adult family homes (i) are contrary to the public interest served by establishing adult family homes and (ii) discriminate against individuals with disabilities in violation of RCW 49.60.224.

(2) It is the legislature's intent that department rules and policies relating to the licensing and operation of adult family homes recognize and accommodate the different needs and capacities of the various populations served by the homes. Furthermore, the development and operation of adult family homes that can provide quality personal care and special care services should be encouraged.

(3) The legislature finds that many residents of community-based long-term care facilities are vulnerable and their health and well-being are dependent on their caregivers. The quality, skills, and knowledge of their caregivers are the key to good care. The legislature finds that the need for well-trained caregivers is growing as the state's population ages and residents' needs increase. The legislature intends that current training standards be enhanced.

(4) The legislature finds that the state of Washington has a compelling interest in protecting and promoting the health, welfare, and safety of vulnerable adults residing in adult family homes. The health, safety, and well-being of vulnerable adults must be the paramount concern in determining whether to issue a license to an applicant, whether to suspend or revoke a license, or whether to take other licensing actions. [2009 c 530 § 2; 2001 c 319 § 1; 2000 c 121 § 4; 1995 c 260 § 1; 1989 c 427 § 14.]

**70.128.007 Purpose.** The purposes of this chapter are to:

(1) Encourage the establishment and maintenance of adult family homes that provide a humane, safe, and residential home environment for persons with functional limitations who need personal and special care;

(2) Establish standards for regulating adult family homes that adequately protect residents;

(3) Encourage consumers, families, providers, and the public to become active in assuring their full participation in development of adult family homes that provide high quality and cost-effective care;

(4) Provide for appropriate care of residents in adult family homes by requiring that each resident have a care plan that promotes the most appropriate level of physical, mental, and psychosocial well-being consistent with client choice; and

(5) Accord each resident the right to participate in the development of the care plan and in other major decisions involving the resident and their care. [2001 c 319 § 5; 1995 1st sp.s. c 18 § 19; 1989 c 427 § 15.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**70.128.010 Definitions.** Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Adult family home" means a residential home in which a person or persons provide personal care, special care, room, and board to more than one but not more than six adults who are not related by blood or marriage to the person or persons providing the services.

(2) "Provider" means any person who is licensed under this chapter to operate an adult family home. For the purposes of this section, "person" means any individual, partnership, corporation, association, or limited liability company.

(3) "Department" means the department of social and health services.

(4) "Resident" means an adult in need of personal or special care in an adult family home who is not related to the provider.

(5) "Adults" means persons who have attained the age of eighteen years.

(6) "Home" means an adult family home.

(7) "Imminent danger" means serious physical harm to or death of a resident has occurred, or there is a serious threat to resident life, health, or safety.

(8) "Special care" means care beyond personal care as defined by the department, in rule.

(9) "Capacity" means the maximum number of persons in need of personal or special care permitted in an adult family home at a given time. This number shall include related children or adults in the home and who received special care.

(10) "Resident manager" means a person employed or designated by the provider to manage the adult family home.

(11) "Adult family home licensee" means a provider as defined in this section who does not receive payments from the medicaid and state-funded long-term care programs. [2007 c 184 § 7. Prior: 2001 c 319 § 6; 2001 c 319 § 2; 1995 c 260 § 2; 1989 c 427 § 16.]

**Part headings not law—Severability—Conflict with federal requirements—2007 c 184:** See notes following RCW 41.56.029.

**70.128.030 Exemptions.** The following residential facilities shall be exempt from the operation of this chapter:

(1) Nursing homes licensed under chapter 18.51 RCW;

(2) Boarding homes licensed under chapter 18.20 RCW;

(3) Facilities approved and certified under chapter 71A.22 RCW;

(4) Residential treatment centers for the mentally ill licensed under chapter 71.24 RCW;

(5) Hospitals licensed under chapter 70.41 RCW;

(6) Homes for the developmentally disabled licensed under chapter 74.15 RCW. [1989 c 427 § 17.]

**70.128.040 Adoption of rules and standards—Negotiated rule making—Specialty license.** (1) The department shall adopt rules and standards with respect to adult family homes and the operators thereof to be licensed under this chapter to carry out the purposes and requirements of this chapter. The rules and standards relating to applicants and operators shall address the differences between individual providers and providers that are partnerships, corporations, associations, or companies. The rules and standards shall also recognize and be appropriate to the different needs and capacities of the various populations served by adult family homes such as but not limited to persons who are developmentally disabled or elderly. In developing rules and stan-

dards the department shall recognize the residential family-like nature of adult family homes and not develop rules and standards which by their complexity serve as an overly restrictive barrier to the development of the adult family homes in the state. Procedures and forms established by the department shall be developed so they are easy to understand and comply with. Paper work requirements shall be minimal. Easy to understand materials shall be developed for applicants and providers explaining licensure requirements and procedures.

(2)(a) In developing the rules and standards, the department shall consult with all divisions and administrations within the department serving the various populations living in adult family homes, including the division of developmental disabilities and the aging and adult services administration. Involvement by the divisions and administration shall be for the purposes of assisting the department to develop rules and standards appropriate to the different needs and capacities of the various populations served by adult family homes. During the initial stages of development of proposed rules, the department shall provide notice of development of the rules to organizations representing adult family homes and their residents, and other groups that the department finds appropriate. The notice shall state the subject of the rules under consideration and solicit written recommendations regarding their form and content.

(b) In addition, the department shall engage in negotiated rule making pursuant to RCW 34.05.310(2)(a) with the exclusive representative of the adult family home licensees selected in accordance with RCW 70.128.043 and with other affected interests before adopting requirements that affect adult family home licensees.

(3) Except where provided otherwise, chapter 34.05 RCW shall govern all department rule-making and adjudicative activities under this chapter.

(4) The department shall establish a specialty license to include geriatric specialty certification for providers who have successfully completed the University of Washington school of nursing certified geriatric certification program and testing. [2009 c 530 § 1; 2007 c 184 § 8; 1995 c 260 § 3; 1989 c 427 § 18.]

**Part headings not law—Severability—Conflict with federal requirements—2007 c 184:** See notes following RCW 41.56.029.

**70.128.043 Negotiated rule making—Statewide unit of licensees—Intent.** (1) Solely for the purposes of negotiated rule making pursuant to RCW 34.05.310(2)(a) and 70.128.040, a statewide unit of all adult family home licensees is appropriate. As of July 22, 2007, the exclusive representative of adult family home licensees in the statewide unit shall be the organization certified by the American arbitration association as the sole representative after the association conducts a cross-check comparing authorization cards against the department of social and health services' records and finds that majority support for the organization exists. If adult family home licensees seek to select a different representative thereafter, the adult family home licensees may request that the American arbitration association conduct an election and certify the results of the election.

(2) In enacting this section, the legislature intends to provide state action immunity under federal and state antitrust

laws for the joint activities of licensees and their exclusive representative to the extent such activities are authorized by this chapter. [2007 c 184 § 6.]

**Part headings not law—Severability—Conflict with federal requirements—2007 c 184:** See notes following RCW 41.56.029.

**70.128.050 License—Required as of July 1, 1990.** After July 1, 1990, no person shall operate or maintain an adult family home in this state without a license under this chapter. [1989 c 427 § 19.]

**70.128.055 Operating without a license—Misdemeanor.** A person operating or maintaining an adult family home without a license under this chapter is guilty of a misdemeanor. Each day of a continuing violation after conviction is considered a separate offense. [1991 c 40 § 1.]

**70.128.057 Operating without a license—Injunction or civil penalty.** Notwithstanding the existence or use of any other remedy, the department may, in the manner provided by law, upon the advice of the attorney general who shall represent the department in the proceedings, maintain an action in the name of the state for an injunction, civil penalty, or other process against a person to restrain or prevent the operation or maintenance of an adult family home without a license under this chapter. [1995 1st sp.s. c 18 § 20; 1991 c 40 § 2.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**70.128.058 Operating without a license—Application of consumer protection act.** The legislature finds that the operation of an adult family home without a license in violation of this chapter is a matter vitally affecting the public interest for the purpose of applying the consumer protection act, chapter 19.86 RCW. Operation of an adult family home without a license in violation of this chapter is not reasonable in relation to the development and preservation of business. Such a violation is an unfair or deceptive act in trade or commerce and an unfair method of competition for the purpose of applying the consumer protection act, chapter 19.86 RCW. [1995 1st sp.s. c 18 § 21.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**70.128.060 License—Generally—Fees.** (1) An application for license shall be made to the department upon forms provided by it and shall contain such information as the department reasonably requires.

(2) Subject to the provisions of this section, the department shall issue a license to an adult family home if the department finds that the applicant and the home are in compliance with this chapter and the rules adopted under this chapter, unless (a) the applicant or a person affiliated with the applicant has prior violations of this chapter relating to the adult family home subject to the application or any other adult family home, or of any other law regulating residential care facilities within the past five years that resulted in revocation, suspension, or nonrenewal of a license or contract with the department; or (b) the applicant or a person affiliated with the applicant has a history of significant noncompliance with federal, state, or local laws, rules, or regulations relating

to the provision of care or services to vulnerable adults or to children. A person is considered affiliated with an applicant if the person is listed on the license application as a partner, officer, director, resident manager, or majority owner of the applying entity, or is the spouse of the applicant.

(3) The license fee shall be submitted with the application.

(4) The department shall serve upon the applicant a copy of the decision granting or denying an application for a license. An applicant shall have the right to contest denial of his or her application for a license as provided in chapter 34.05 RCW by requesting a hearing in writing within twenty-eight days after receipt of the notice of denial.

(5) The department shall not issue a license to a provider if the department finds that the provider or spouse of the provider or any partner, officer, director, managerial employee, or majority owner has a history of significant noncompliance with federal or state regulations, rules, or laws in providing care or services to vulnerable adults or to children.

(6) The department shall license an adult family home for the maximum level of care that the adult family home may provide. The department shall define, in rule, license levels based upon the education, training, and caregiving experience of the licensed provider or staff.

(7) The department shall establish, by rule, standards used to license nonresident providers and multiple facility operators.

(8) The department shall establish, by rule, for multiple facility operators educational standards substantially equivalent to recognized national certification standards for residential care administrators.

(9) The license fee shall be set at one hundred dollars per year for each home. An eight hundred dollar processing fee shall also be charged each home when the home is initially licensed. The processing fee will be applied toward the license renewal in the subsequent three years. A five hundred dollar rebate will be returned to any home that renews after four years in operation.

(10) A provider who receives notification of the department's initiation of a denial, suspension, nonrenewal, or revocation of an adult family home license may, in lieu of appealing the department's action, surrender or relinquish the license. The department shall not issue a new license to or contract with the provider, for the purposes of providing care to vulnerable adults or children, for a period of twenty years following the surrendering or relinquishment of the former license. The licensing record shall indicate that the provider relinquished or surrendered the license, without admitting the violations, after receiving notice of the department's initiation of a denial, suspension, nonrenewal, or revocation of a license.

(11) The department shall establish, by rule, the circumstances requiring a change in the licensed provider, which include, but are not limited to, a change in ownership or control of the adult family home or provider, a change in the provider's form of legal organization, such as from sole proprietorship to partnership or corporation, and a dissolution or merger of the licensed entity with another legal organization. The new provider is subject to the provisions of this chapter, the rules adopted under this chapter, and other applicable law. In order to ensure that the safety of residents is not com-

promised by a change in provider, the new provider is responsible for correction of all violations that may exist at the time of the new license. [2009 c 530 § 5; 2004 c 140 § 3; 2001 c 193 § 9; 1995 c 260 § 4; 1989 c 427 § 20.]

**70.128.064 Priority processing for license applications—Provisional license.** In order to prevent disruption to current residents, at the request of the current licensed provider, the department shall give processing priority to the application of a person seeking to be licensed as the new provider for the adult family home. The department may issue a provisional license when a currently licensed adult family home provider has applied to be licensed as the new provider for a currently licensed adult family home, the application has been initially processed, and all that remains to complete the application process is an on-site inspection. [2001 c 319 § 10.]

**70.128.065 Multiple facility operators—Requirements.** A multiple facility operator must successfully demonstrate to the department financial solvency and management experience for the homes under its ownership and the ability to meet other relevant safety, health, and operating standards pertaining to the operation of multiple homes, including ways to mitigate the potential impact of vehicular traffic related to the operation of the homes. [1996 c 81 § 6.]

**Reviser's note:** 1996 c 81 directed that this section be added to chapter 18.48 RCW. However, it appears that placement is erroneous and the appropriate placement is in chapter 70.128 RCW.

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**70.128.070 License—Inspections—Correction of violations.** (1) A license shall remain valid unless voluntarily surrendered, suspended, or revoked in accordance with this chapter.

(2)(a) Homes applying for a license shall be inspected at the time of licensure.

(b) Homes licensed by the department shall be inspected at least every eighteen months, subject to available funds. However, an adult family home may be allowed to continue without inspection for two years if the adult family home had no inspection citations for the past three consecutive inspections and has received no written notice of violations resulting from complaint investigations during that same time period.

(c) The department may make an unannounced inspection of a licensed home at any time to assure that the home and provider are in compliance with this chapter and the rules adopted under this chapter.

(3) If the department finds that the home is not in compliance with this chapter, it shall require the home to correct any violations as provided in this chapter. [2004 c 143 § 1; 1998 c 272 § 4; 1995 1st sp.s. c 18 § 22; 1989 c 427 § 22.]

**Findings—Severability—Effective date—1998 c 272:** See notes following RCW 18.20.230.

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**70.128.080 License and inspection report—Availability for review.** An adult family home shall have readily available for review by the department, residents, and the public:

(2010 Ed.)

- (1) Its license to operate; and
- (2) A copy of each inspection report received by the home from the department for the past three years. [1995 1st sp.s. c 18 § 23; 1989 c 427 § 21.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**70.128.090 Inspections—Generally.** (1) During inspections of an adult family home, the department shall have access and authority to examine areas and articles in the home used to provide care or support to residents, including residents' records, accounts, and the physical premises, including the buildings, grounds, and equipment. The personal records of the provider are not subject to department inspection nor is the separate bedroom of the provider, not used in direct care of a client, subject to review. The department may inspect all rooms during the initial licensing of the home. However, during a complaint investigation, the department shall have access to the entire premises and all pertinent records when necessary to conduct official business. The department also shall have the authority to interview the provider and residents of an adult family home.

(2) Whenever an inspection is conducted, the department shall prepare a written report that summarizes all information obtained during the inspection, and if the home is in violation of this chapter, serve a copy of the inspection report upon the provider at the same time as a notice of violation. This notice shall be mailed to the provider within ten working days of the completion of the inspection process. If the home is not in violation of this chapter, a copy of the inspection report shall be mailed to the provider within ten calendar days of the inspection of the home. All inspection reports shall be made available to the public at the department during business hours.

(3) The provider shall develop corrective measures for any violations found by the department's inspection. The department shall upon request provide consultation and technical assistance to assist the provider in developing effective corrective measures. The department shall include a statement of the provider's corrective measures in the department's inspection report. [2001 c 319 § 7; 1995 1st sp.s. c 18 § 24; 1989 c 427 § 30.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**70.128.100 Immediate suspension of license when conditions warrant.** The department has the authority to immediately suspend a license if it finds that conditions there constitute an imminent danger to residents. [1989 c 427 § 32.]

**70.128.105 Injunction if conditions warrant.** The department may commence an action in superior court to enjoin the operation of an adult family home if it finds that conditions there constitute an imminent danger to residents. [1991 c 40 § 3.]

**70.128.110 Prohibition against recommending unlicensed home—Report and investigation of unlicensed home.** (1) No public agency contractor or employee shall place, refer, or recommend placement of a person into an adult family home that is operating without a license.

(2) Any public agency contractor or employee who knows that an adult family home is operating without a license shall report the name and address of the home to the department. The department shall investigate any report filed under this section. [1989 c 427 § 23.]

**70.128.120 Adult family home provider, resident manager—Minimum qualifications.** Each adult family home provider and each resident manager shall have the following minimum qualifications, except that only providers are required to meet the provisions of subsection (10) of this section:

- (1) Twenty-one years of age or older;
- (2) For those applying after September 1, 2001, to be licensed as providers, and for resident managers whose employment begins after September 1, 2001, a United States high school diploma or general educational development (GED) certificate or any English or translated government documentation of the following:
  - (a) Successful completion of government-approved public or private school education in a foreign country that includes an annual average of one thousand hours of instruction over twelve years or no less than twelve thousand hours of instruction;
  - (b) A foreign college, foreign university, or United States community college two-year diploma;
  - (c) Admission to, or completion of coursework at, a foreign university or college for which credit was granted;
  - (d) Admission to, or completion of coursework at, a United States college or university for which credits were awarded;
  - (e) Admission to, or completion of postgraduate coursework at, a United States college or university for which credits were awarded; or
  - (f) Successful passage of the United States board examination for registered nursing, or any professional medical occupation for which college or university education preparation was required;
- (3) Good moral and responsible character and reputation;
- (4) Literacy in the English language, however, a person not literate in the English language may meet the requirements of this subsection by assuring that there is a person on staff and available who is able to communicate or make provisions for communicating with the resident in his or her primary language and capable of understanding and speaking English well enough to be able to respond appropriately to emergency situations and be able to read and understand resident care plans;
- (5) Management and administrative ability to carry out the requirements of this chapter;
- (6) Satisfactory completion of department-approved basic training and continuing education training as specified by the department in rule, based on recommendations of the community long-term care training and education steering committee and working in collaboration with providers, consumers, caregivers, advocates, family members, educators, and other interested parties in the rule-making process;
- (7) Satisfactory completion of department-approved, or equivalent, special care training before a provider may provide special care services to a resident;

(8) Not been convicted of any crime listed in RCW 43.43.830 and 43.43.842;

(9) For those applying after September 1, 2001, to be licensed as providers, and for resident managers whose employment begins after September 1, 2001, at least three hundred twenty hours of successful, direct caregiving experience obtained after age eighteen to vulnerable adults in a licensed or contracted setting prior to operating or managing an adult family home; and

(10) Prior to being granted a license, providers applying after January 1, 2007, must complete a department-approved forty-eight hour adult family home administration and business planning class. The department shall promote and prioritize bilingual capabilities within available resources and when materials are available for this purpose. [2006 c 249 § 1; 2002 c 223 § 1; 2001 c 319 § 8; 2000 c 121 § 5; 1996 c 81 § 1; 1995 1st sp.s. c 18 § 117; 1995 c 260 § 5; 1989 c 427 § 24.]

**Effective date—2002 c 223 § 1:** "Section 1 of this act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [March 28, 2002]." [2002 c 223 § 7.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**70.128.122 Adult family homes licensed by Indian tribes.** The legislature recognizes that adult family homes located within the boundaries of a federally recognized Indian reservation may be licensed by the Indian tribe. The department may pay for care for persons residing in such homes, if there has been a tribal or state criminal background check of the provider and any staff, and the client is otherwise eligible for services administered by the department. [1995 1st sp.s. c 18 § 25.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**70.128.125 Resident rights.** RCW 70.129.005 through 70.129.030, 70.129.040(1), and 70.129.050 through 70.129.170 apply to this chapter and persons regulated under this chapter. [1994 c 214 § 24.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**70.128.130 Adult family homes—Requirements.** (1) Adult family homes shall be maintained internally and externally in good repair and condition. Such homes shall have safe and functioning systems for heating, cooling, hot and cold water, electricity, plumbing, garbage disposal, sewage, cooking, laundry, artificial and natural light, ventilation, and any other feature of the home.

(2) Adult family homes shall be maintained in a clean and sanitary manner, including proper sewage disposal, food handling, and hygiene practices.

(3) Adult family homes shall develop a fire drill plan for emergency evacuation of residents, shall have smoke detectors in each bedroom where a resident is located, shall have fire extinguishers on each floor of the home, and shall not keep nonambulatory patients above the first floor of the home.

(4) Adult family homes shall have clean, functioning, and safe household items and furnishings.

(5) Adult family homes shall provide a nutritious and balanced diet and shall recognize residents' needs for special diets.

(6) Adult family homes shall establish health care procedures for the care of residents including medication administration and emergency medical care.

(a) Adult family home residents shall be permitted to self-administer medications.

(b) Adult family home providers may administer medications and deliver special care only to the extent authorized by law.

(7) Adult family home providers shall either: (a) Reside at the adult family home; or (b) employ or otherwise contract with a qualified resident manager to reside at the adult family home. The department may exempt, for good cause, a provider from the requirements of this subsection by rule.

(8) A provider will ensure that any volunteer, student, employee, or person residing within the adult family home who will have unsupervised access to any resident shall not have been convicted of a crime listed under RCW 43.43.830 or 43.43.842. Except that a person may be conditionally employed pending the completion of a criminal conviction background inquiry.

(9) A provider shall offer activities to residents under care as defined by the department in rule.

(10) An adult family home provider must ensure that staff are competent and receive necessary training to perform assigned tasks. Staff must satisfactorily complete department-approved staff orientation, basic training, and continuing education as specified by the department by rule. [2000 c 121 § 6; 1995 c 260 § 6; 1989 c 427 § 26.]

#### **70.128.135 Compliance with chapter 70.24 RCW.**

Adult family homes shall comply with the provisions of chapter 70.24 RCW. [2001 c 319 § 9.]

**70.128.140 Compliance with local codes and state and local fire safety regulations.** Each adult family home shall meet applicable local licensing, zoning, building, and housing codes, and state and local fire safety regulations as they pertain to a single-family residence. It is the responsibility of the home to check with local authorities to ensure all local codes are met. [1995 1st sp.s. c 18 § 26; 1989 c 427 § 27.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**70.128.150 Adult family homes to work with local quality assurance projects—Interference with representative of ombudsman program—Penalty.** Whenever possible adult family homes are encouraged to contact and work with local quality assurance projects such as the volunteer ombudsman with the goal of assuring high quality care is provided in the home.

An adult family home may not willfully interfere with a representative of the long-term care ombudsman program in the performance of official duties. The department shall impose a penalty of not more than one thousand dollars for any such willful interference. [1995 1st sp.s. c 18 § 27; 1989 c 427 § 28.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

(2010 Ed.)

**70.128.160 Department authority to take actions in response to noncompliance or violations.** (1) The department is authorized to take one or more of the actions listed in subsection (2) of this section in any case in which the department finds that an adult family home provider has:

(a) Failed or refused to comply with the requirements of this chapter or the rules adopted under this chapter;

(b) Operated an adult family home without a license or under a revoked license;

(c) Knowingly or with reason to know made a false statement of material fact on his or her application for license or any data attached thereto, or in any matter under investigation by the department; or

(d) Willfully prevented or interfered with any inspection or investigation by the department.

(2) When authorized by subsection (1) of this section, the department may take one or more of the following actions:

(a) Refuse to issue a license;

(b) Impose reasonable conditions on a license, such as correction within a specified time, training, and limits on the type of clients the provider may admit or serve;

(c) Impose civil penalties of not more than one hundred dollars per day per violation;

(d) Suspend, revoke, or refuse to renew a license; or

(e) Suspend admissions to the adult family home by imposing stop placement.

(3) When the department orders stop placement, the facility shall not admit any person until the stop placement order is terminated. The department may approve readmission of a resident to the facility from a hospital or nursing home during the stop placement. The department shall terminate the stop placement when: (a) The violations necessitating the stop placement have been corrected; and (b) the provider exhibits the capacity to maintain correction of the violations previously found deficient. However, if upon the revisit the department finds new violations that the department reasonably believes will result in a new stop placement, the previous stop placement shall remain in effect until the new stop placement is imposed.

(4) After a department finding of a violation for which a stop placement has been imposed, the department shall make an on-site revisit of the provider within fifteen working days from the request for revisit, to ensure correction of the violation. For violations that are serious or recurring or uncorrected following a previous citation, and create actual or threatened harm to one or more residents' well-being, including violations of residents' rights, the department shall make an on-site revisit as soon as appropriate to ensure correction of the violation. Verification of correction of all other violations may be made by either a department on-site revisit or by written or photographic documentation found by the department to be credible. This subsection does not prevent the department from enforcing license suspensions or revocations. Nothing in this subsection shall interfere with or diminish the department's authority and duty to ensure that the provider adequately cares for residents, including to make departmental on-site revisits as needed to ensure that the provider protects residents, and to enforce compliance with this chapter.

(5) Chapter 34.05 RCW applies to department actions under this section, except that orders of the department

imposing license suspension, stop placement, or conditions for continuation of a license are effective immediately upon notice and shall continue in effect pending any hearing. [2001 c 193 § 5; 1995 1st sp.s. c 18 § 28; 1989 c 427 § 31.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**70.128.163 Temporary management program—Purposes—Voluntary participation—Temporary management duties, duration—Rules.** (1) When the department has summarily suspended a license, the licensee may, subject to the department's approval, elect to participate in a temporary management program. All provisions of this section shall apply.

The purposes of a temporary management program are as follows:

(a) To mitigate dislocation and transfer trauma of residents while the department and licensee may pursue dispute resolution or appeal of a summary suspension of license;

(b) To facilitate the continuity of safe and appropriate resident care and services;

(c) To preserve a residential option that meets a specialized service need and/or is in a geographical area that has a lack of available providers; and

(d) To provide residents with the opportunity for orderly discharge.

(2) Licensee participation in the temporary management program is voluntary. The department shall have the discretion to approve any temporary manager and the temporary management arrangements. The temporary management shall assume the total responsibility for the daily operations of the home.

(3) The temporary management shall contract with the licensee as an independent contractor and is responsible for ensuring that all minimum licensing requirements are met. The temporary management shall protect the health, safety, and well-being of the residents for the duration of the temporary management and shall perform all acts reasonably necessary to ensure that residents' needs are met. The licensee is responsible for all costs related to administering the temporary management program and contracting with the temporary management. The temporary management agreement shall at a minimum address the following:

(a) Provision of liability insurance to protect residents and their property;

(b) Preservation of resident trust funds;

(c) The timely payment of past due or current accounts, operating expenses, including but not limited to staff compensation, and all debt that comes due during the period of the temporary management;

(d) The responsibilities for addressing all other financial obligations that would interfere with the ability of the temporary manager to provide adequate care and services to residents; and

(e) The authority of the temporary manager to manage the home, including the hiring, managing, and firing of employees for good cause, and to provide adequate care and services to residents.

(4) The licensee and department shall provide written notification immediately to all residents, legal representatives, interested family members, and the state long-term care

ombudsman program, of the temporary management and the reasons for it. This notification shall include notice that residents may move from the home without notifying the licensee in advance, and without incurring any charges, fees, or costs otherwise available for insufficient advance notice, during the temporary management period.

(5) The temporary management period under this section concludes twenty-eight days after issuance of the formal notification of enforcement action or conclusion of administrative proceedings, whichever date is later. Nothing in this section precludes the department from revoking its approval of the temporary management and/or exercising its licensing enforcement authority under this chapter. The department's decision whether to approve or to revoke a temporary management arrangement is not subject to the administrative procedure act, chapter 34.05 RCW.

(6) The department is authorized to adopt rules implementing this section. In implementing this section, the department shall consult with consumers, advocates, and organizations representing adult family homes. The department may recruit and approve qualified, licensed providers interested in serving as temporary managers. [2009 c 560 § 6; 2001 c 193 § 6.]

**Intent—Effective date—Disposition of property and funds—Assignment/delegation of contractual rights or duties—2009 c 560:** See notes following RCW 18.06.080.

**70.128.167 Disputed violations, enforcement remedies—Informal dispute resolution process.** (1) The licensee or its designee has the right to an informal dispute resolution process to dispute any violation found or enforcement remedy imposed by the department during a licensing inspection or complaint investigation. The purpose of the informal dispute resolution process is to provide an opportunity for an exchange of information that may lead to the modification, deletion, or removal of a violation, or parts of a violation, or enforcement remedy imposed by the department.

(2) The informal dispute resolution process provided by the department shall include, but is not necessarily limited to, an opportunity for review by a department employee who did not participate in, or oversee, the determination of the violation or enforcement remedy under dispute. The department shall develop, or further develop, an informal dispute resolution process consistent with this section.

(3) A request for an informal dispute resolution shall be made to the department within ten working days from the receipt of a written finding of a violation or enforcement remedy. The request shall identify the violation or violations and enforcement remedy or remedies being disputed. The department shall convene a meeting, when possible, within ten working days of receipt of the request for informal dispute resolution, unless by mutual agreement a later date is agreed upon.

(4) If the department determines that a violation or enforcement remedy should not be cited or imposed, the department shall delete the violation or immediately rescind or modify the enforcement remedy. Upon request, the department shall issue a clean copy of the revised report, statement of deficiencies, or notice of enforcement action.

(5) The request for informal dispute resolution does not delay the effective date of any enforcement remedy imposed

by the department, except that civil monetary fines are not payable until the exhaustion of any formal hearing and appeal rights provided under this chapter. The licensee shall submit to the department, within the time period prescribed by the department, a plan of correction to address any undisputed violations, and including any violations that still remain following the informal dispute resolution. [2001 c 193 § 8.]

**70.128.170 Homes relying on prayer for healing—Application of chapter.** Nothing in this chapter or the rules adopted under it may be construed as authorizing the supervision, regulation, or control of the remedial care or treatment of residents in any adult family home conducted by and for the adherents of a church or religious denomination who rely upon spiritual means alone through prayer for healing in accordance with the tenets and practices of such church or religious denomination and the bona fide religious beliefs genuinely held by such adherents. [1989 c 427 § 33.]

**70.128.175 Definitions.** (1) Unless the context clearly requires otherwise, these definitions shall apply throughout this section and RCW 35.63.140, 35A.63.149, 36.70.755, 35.22.680, and 36.32.560:

(a) "Adult family home" means a regular family abode in which a person or persons provides personal care, special care, room, and board to more than one but not more than six adults who are not related by blood or marriage to the person or persons providing the services.

(b) "Residential care facility" means a facility that cares for at least five, but not more than fifteen functionally disabled persons, that is not licensed pursuant to chapter 70.128 RCW.

(c) "Department" means the department of social and health services.

(2) An adult family home shall be considered a residential use of property for zoning and public and private utility rate purposes. Adult family homes shall be a permitted use in all areas zoned for residential or commercial purposes, including areas zoned for single family dwellings. [1997 c 392 § 401; 1995 1st sp.s. c 18 § 29; 1989 1st ex.s. c 9 § 815.]

**Short title—Findings—Construction—Conflict with federal requirements—Part headings and captions not law—1997 c 392:** See notes following RCW 74.39A.009.

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**70.128.200 Toll-free telephone number for complaints—Discrimination or retaliation prohibited.** (1) The department shall maintain a toll-free telephone number for receiving complaints regarding adult family homes.

(2) An adult family home shall post in a place and manner clearly visible to residents and visitors the department's toll-free complaint telephone number.

(3) No adult family home shall discriminate or retaliate in any manner against a resident on the basis or for the reason that such resident or any other person made a complaint to the department or the long-term care ombudsman or cooperated with the investigation of such a complaint. [1995 1st sp.s. c 18 § 30.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

(2010 Ed.)

**70.128.210 Training standards review—Delivery system—Issues reviewed—Report to the legislature.** (1) The department of social and health services shall review, in coordination with the department of health, the nursing care quality assurance commission, adult family home providers, boarding home providers, in-home personal care providers, and long-term care consumers and advocates, training standards for providers, resident managers, and resident caregiving staff. The departments and the commission shall submit to the appropriate committees of the house of representatives and the senate by December 1, 1998, specific recommendations on training standards and the delivery system, including necessary statutory changes and funding requirements. Any proposed enhancements shall be consistent with this section, shall take into account and not duplicate other training requirements applicable to adult family homes and staff, and shall be developed with the input of adult family home and resident representatives, health care professionals, and other vested interest groups. Training standards and the delivery system shall be relevant to the needs of residents served by the adult family home and recipients of long-term in-home personal care services and shall be sufficient to ensure that providers, resident managers, and caregiving staff have the skills and knowledge necessary to provide high quality, appropriate care.

(2) The recommendations on training standards and the delivery system developed under subsection (1) of this section shall be based on a review and consideration of the following: Quality of care; availability of training; affordability, including the training costs incurred by the department of social and health services and private providers; portability of existing training requirements; competency testing; practical and clinical course work; methods of delivery of training; standards for management; uniform caregiving staff training; necessary enhancements for special needs populations; and resident rights training. Residents with special needs include, but are not limited to, residents with a diagnosis of mental illness, dementia, or developmental disability. Development of training recommendations for developmental disabilities services shall be coordinated with the study requirements in section 6, chapter 272, Laws of 1998.

(3) The department of social and health services shall report to the appropriate committees of the house of representatives and the senate by December 1, 1998, on the cost of implementing the proposed training standards for state-funded residents, and on the extent to which that cost is covered by existing state payment rates. [1998 c 272 § 3.]

**Findings—Severability—Effective date—1998 c 272:** See notes following RCW 18.20.230.

**70.128.220 Elder care—Professionalization of providers.** Adult family homes have developed rapidly in response to the health and social needs of the aging population in community settings, especially as the aging population has increased in proportion to the general population. The growing demand for elder care with a new focus on issues affecting senior citizens, including persons with developmental disabilities, mental illness, or dementia, has prompted a growing professionalization of adult family home providers to address quality care and quality of life issues consistent with standards of accountability and regulatory

[Title 70 RCW—page 451]

safeguards for the health and safety of the residents. The establishment of an advisory committee to the department of social and health services under \*RCW 70.128.225 formalizes a stable process for discussing and considering these issues among residents and their advocates, regulatory officials, and adult family home providers. The dialogue among all stakeholders interested in maintaining a healthy option for the aging population in community settings assures the highest regard for the well-being of these residents within a benign and functional regulatory environment. The secretary shall be advised by an advisory committee on adult family homes established under \*RCW 70.128.225. [2002 c 223 § 3; 1998 c 272 § 9.]

\*Reviser's note: RCW 70.128.225 was repealed by 2009 c 560 § 5.

Findings—Severability—Effective date—1998 c 272: See notes following RCW 18.20.230.

**70.128.230 Long-term caregiver training.** (1) The definitions in this subsection apply throughout this section unless the context clearly requires otherwise.

(a) "Caregiver" includes all adult family home resident managers and any person who provides residents with hands-on personal care on behalf of an adult family home, except volunteers who are directly supervised.

(b) "Indirect supervision" means oversight by a person who has demonstrated competency in the core areas or has been fully exempted from the training requirements pursuant to this section and is quickly and easily available to the caregiver, but not necessarily on-site.

(2) Training must have three components: Orientation, basic training, and continuing education. All adult family home providers, resident managers, and employees, or volunteers who routinely interact with residents shall complete orientation. Caregivers shall complete orientation, basic training, and continuing education.

(3) Orientation consists of introductory information on residents' rights, communication skills, fire and life safety, and universal precautions. Orientation must be provided at the facility by appropriate adult family home staff to all adult family home employees before the employees have routine interaction with residents.

(4) Basic training consists of modules on the core knowledge and skills that caregivers need to learn and understand to effectively and safely provide care to residents. Basic training must be outcome-based, and the effectiveness of the basic training must be measured by demonstrated competency in the core areas through the use of a competency test. Basic training must be completed by caregivers within one hundred twenty days of the date on which they begin to provide hands-on care or within one hundred twenty days of September 1, 2002, whichever is later. Until competency in the core areas has been demonstrated, caregivers shall not provide hands-on personal care to residents without indirect supervision.

(5) For adult family homes that serve residents with special needs such as dementia, developmental disabilities, or mental illness, specialty training is required of providers and resident managers. Specialty training consists of modules on the core knowledge and skills that providers and resident managers need to effectively and safely provide care to residents with special needs. Specialty training should be inte-

grated into basic training wherever appropriate. Specialty training must be outcome-based, and the effectiveness of the specialty training measured by demonstrated competency in the core specialty areas through the use of a competency test. Specialty training must be completed by providers and resident managers before admitting and serving residents who have been determined to have special needs related to mental illness, dementia, or a developmental disability. Should a resident develop special needs while living in a home without specialty designation, the provider and resident manager have one hundred twenty days to complete specialty training.

(6) Continuing education consists of ongoing delivery of information to caregivers on various topics relevant to the care setting and care needs of residents. Competency testing is not required for continuing education. Continuing education is not required in the same calendar year in which basic or modified basic training is successfully completed. Continuing education is required in each calendar year thereafter. If specialty training is completed, the specialty training applies toward any continuing education requirement for up to two years following the completion of the specialty training.

(7) Persons who successfully challenge the competency test for basic training are fully exempt from the basic training requirements of this section. Persons who successfully challenge the specialty training competency test are fully exempt from the specialty training requirements of this section.

(8) Licensed persons who perform the tasks for which they are licensed are fully or partially exempt from the training requirements of this section, as specified by the department in rule.

(9) In an effort to improve access to training and education and reduce costs, especially for rural communities, the coordinated system of long-term care training and education must include the use of innovative types of learning strategies such as internet resources, videotapes, and distance learning using satellite technology coordinated through community colleges, private associations, or other entities, as defined by the department.

(10) Adult family homes that desire to deliver facility-based training with facility designated trainers, or adult family homes that desire to pool their resources to create shared training systems, must be encouraged by the department in their efforts. The department shall develop criteria for reviewing and approving trainers and training materials. The department may approve a curriculum based upon attestation by an adult family home administrator that the adult family home's training curriculum addresses basic and specialty training competencies identified by the department, and shall review a curriculum to verify that it meets these requirements. The department may conduct the review as part of the next regularly scheduled inspection authorized under RCW 70.128.070. The department shall rescind approval of any curriculum if it determines that the curriculum does not meet these requirements.

(11) The department shall adopt rules by September 1, 2002, for the implementation of this section.

(12) The orientation, basic training, specialty training, and continuing education requirements of this section commence September 1, 2002, and shall be applied to (a) employees hired subsequent to September 1, 2002; or (b) existing

employees that on September 1, 2002, have not successfully completed the training requirements under RCW 70.128.120 or 70.128.130 and this section. Existing employees who have not successfully completed the training requirements under RCW 70.128.120 or 70.128.130 shall be subject to all applicable requirements of this section. However, until September 1, 2002, nothing in this section affects the current training requirements under RCW 70.128.120 and 70.128.130. [2002 c 233 § 3; 2000 c 121 § 3.]

**Effective date—2002 c 233:** See note following RCW 18.20.270.

**70.128.240 Approval system—Department-approved training—Adoption of rules.** By March 1, 2002, the department must, by rule, create an approval system for those seeking to conduct department-approved training under RCW 70.128.230, \*70.128.120 (5) and (6), and 70.128.130(10). The department shall adopt rules based on recommendations of the community long-term care training and education steering committee established in \*\*RCW 74.39A.190. [2000 c 121 § 7.]

**Reviser's note:** \*(1) RCW 70.128.120 was amended by 2001 c 319 § 8, changing subsections (5) and (6) to subsections (6) and (7).

\*\*\*(2) RCW 74.39A.190 was repealed by 2007 c 361 § 10.

**70.128.250 Required training and continuing education—Food safety training and testing.** The department shall implement, as part of the required training and continuing education, food safety training and testing integrated into the curriculum that meets the standards established by the state board of health pursuant to chapter 69.06 RCW. Individual food handler permits are not required for persons who begin working in an adult family home after June 30, 2005, and successfully complete the basic and modified-basic caregiver training, provided they receive information or training regarding safe food handling practices from the employer prior to providing food handling or service for the clients. Documentation that the information or training has been provided to the individual must be kept on file by the employer.

Licensed adult family home providers or employees who hold individual food handler permits prior to June 30, 2005, will be required to maintain continuing education of .5 hours per year in order to maintain food handling and safety training. Licensed adult family home providers or employees who hold individual food handler permits prior to June 30, 2005, will not be required to renew the permit provided the continuing education requirement as stated above is met. [2005 c 505 § 6.]

**70.128.260 Limitation on restrictive covenants.** (1) To effectuate the public policies of this chapter, restrictive covenants may not limit, directly or indirectly:

(a) Persons with disabilities from living in an adult family home licensed under this chapter; or

(b) Persons and legal entities from operating adult family homes licensed under this chapter, whether for-profit or non-profit, to provide services covered under this chapter. However, this subsection does not prohibit application of reasonable nondiscriminatory regulation, including but not limited to landscaping standards or regulation of sign location or size, that applies to all residential property subject to the restrictive covenant.

(2010 Ed.)

(2) This section applies retroactively to all restrictive covenants in effect on July 26, 2009. Any provision in a restrictive covenant in effect on or after July 26, 2009, that is inconsistent with subsection (1) of this section is unenforceable to the extent of the conflict. [2009 c 530 § 3.]

**70.128.900 Severability—1989 c 427.** See RCW 74.39.900.

**70.128.901 Construction—Chapter applicable to state registered domestic partnerships—2009 c 521.** For the purposes of this chapter, the terms spouse, marriage, marital, husband, wife, widow, widower, next of kin, and family shall be interpreted as applying equally to state registered domestic partnerships or individuals in state registered domestic partnerships as well as to marital relationships and married persons, and references to dissolution of marriage shall apply equally to state registered domestic partnerships that have been terminated, dissolved, or invalidated, to the extent that such interpretation does not conflict with federal law. Where necessary to implement chapter 521, Laws of 2009, gender-specific terms such as husband and wife used in any statute, rule, or other law shall be construed to be gender neutral, and applicable to individuals in state registered domestic partnerships. [2009 c 521 § 155.]

## Chapter 70.129 RCW

### LONG-TERM CARE RESIDENT RIGHTS

#### Sections

70.129.005	Intent—Basic rights.
70.129.007	Rights are minimal—Other rights not diminished.
70.129.010	Definitions.
70.129.020	Exercise of rights.
70.129.030	Notice of rights and services—Admission of individuals.
70.129.040	Protection of resident's funds—Financial affairs rights.
70.129.050	Privacy and confidentiality of personal and medical records.
70.129.060	Grievances.
70.129.070	Examination of survey or inspection results—Contact with client advocates.
70.129.080	Mail and telephone—Privacy in communications.
70.129.090	Advocacy, access, and visitation rights.
70.129.100	Personal property—Storage space.
70.129.105	Waiver of liability and resident rights limited.
70.129.110	Disclosure, transfer, and discharge requirements.
70.129.120	Restraints—Physical or chemical.
70.129.130	Abuse, punishment, seclusion—Background checks.
70.129.140	Quality of life—Rights.
70.129.150	Disclosure of fees and notice requirements—Deposits.
70.129.160	Ombudsman implementation duties.
70.129.170	Nonjudicial remedies through regulatory authorities encouraged—Remedies cumulative.
70.129.180	Facility's policy on accepting medicaid as a payment source—Disclosure.
70.129.900	Severability—1994 c 214.
70.129.901	Conflict with federal requirements—1994 c 214.
70.129.902	Captions not law.

**70.129.005 Intent—Basic rights.** The legislature recognizes that long-term care facilities are a critical part of the state's long-term care services system. It is the intent of the legislature that individuals who reside in long-term care facilities receive appropriate services, be treated with courtesy, and continue to enjoy their basic civil and legal rights.

It is also the intent of the legislature that long-term care facility residents have the opportunity to exercise reasonable control over life decisions. The legislature finds that choice,

participation, privacy, and the opportunity to engage in religious, political, civic, recreational, and other social activities foster a sense of self-worth and enhance the quality of life for long-term care residents.

The legislature finds that the public interest would be best served by providing the same basic resident rights in all long-term care settings. Residents in nursing facilities are guaranteed certain rights by federal law and regulation, 42 U.S.C. 1396r and 42 C.F.R. part 483. It is the intent of the legislature to extend those basic rights to residents in veterans' homes, boarding homes, and adult family homes.

The legislature intends that a facility should care for its residents in a manner and in an environment that promotes maintenance or enhancement of each resident's quality of life. A resident should have a safe, clean, comfortable, and homelike environment, allowing the resident to use his or her personal belongings to the extent possible. [1994 c 214 § 1.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**70.129.007 Rights are minimal—Other rights not diminished.** The rights set forth in this chapter are the minimal rights guaranteed to all residents of long-term care facilities, and are not intended to diminish rights set forth in other state or federal laws that may contain additional rights. [1994 c 214 § 20.]

**70.129.010 Definitions.** Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Department" means the department of state government responsible for licensing the provider in question.

(2) "Facility" means a long-term care facility.

(3) "Long-term care facility" means a facility that is licensed or required to be licensed under chapter 18.20, 72.36, or 70.128 RCW.

(4) "Resident" means the individual receiving services in a long-term care facility, that resident's attorney-in-fact, guardian, or other legal representative acting within the scope of their authority.

(5) "Physical restraint" means a manual method, obstacle, or physical or mechanical device, material, or equipment attached or adjacent to the resident's body that restricts freedom of movement or access to his or her body, is used for discipline or convenience, and not required to treat the resident's medical symptoms.

(6) "Chemical restraint" means a psychopharmacologic drug that is used for discipline or convenience and not required to treat the resident's medical symptoms.

(7) "Representative" means a person appointed under RCW 7.70.065.

(8) "Reasonable accommodation" by a facility to the needs of a prospective or current resident has the meaning given to this term under the federal Americans with disabilities act of 1990, 42 U.S.C. Sec. 12101 et seq. and other applicable federal or state antidiscrimination laws and regulations. [1997 c 392 § 203; 1994 c 214 § 2.]

**Short title—Findings—Construction—Conflict with federal requirements—Part headings and captions not law—1997 c 392:** See notes following RCW 74.39A.009.

**70.129.020 Exercise of rights.** The resident has a right to a dignified existence, self-determination, and communication with and access to persons and services inside and outside the facility. A facility must protect and promote the rights of each resident and assist the resident which include:

(1) The resident has the right to exercise his or her rights as a resident of the facility and as a citizen or resident of the United States and the state of Washington.

(2) The resident has the right to be free of interference, coercion, discrimination, and reprisal from the facility in exercising his or her rights.

(3) In the case of a resident adjudged incompetent by a court of competent jurisdiction, the rights of the resident are exercised by the person appointed to act on the resident's behalf.

(4) In the case of a resident who has not been adjudged incompetent by a court of competent jurisdiction, a representative may exercise the resident's rights to the extent provided by law. [1994 c 214 § 3.]

**70.129.030 Notice of rights and services—Admission of individuals.** (1) The facility must inform the resident both orally and in writing in a language that the resident understands of his or her rights and all rules and regulations governing resident conduct and responsibilities during the stay in the facility. The notification must be made prior to or upon admission. Receipt of the information must be acknowledged in writing.

(2) The resident or his or her legal representative has the right:

(a) Upon an oral or written request, to access all records pertaining to himself or herself including clinical records within twenty-four hours; and

(b) After receipt of his or her records for inspection, to purchase at a cost not to exceed the community standard photocopies of the records or portions of them upon request and two working days' advance notice to the facility.

(3) The facility shall only admit or retain individuals whose needs it can safely and appropriately serve in the facility with appropriate available staff and through the provision of reasonable accommodations required by state or federal law. Except in cases of genuine emergency, the facility shall not admit an individual before obtaining a thorough assessment of the resident's needs and preferences. The assessment shall contain, unless unavailable despite the best efforts of the facility, the resident applicant, and other interested parties, the following minimum information: Recent medical history; necessary and contraindicated medications; a licensed medical or other health professional's diagnosis, unless the individual objects for religious reasons; significant known behaviors or symptoms that may cause concern or require special care; mental illness, except where protected by confidentiality laws; level of personal care needs; activities and service preferences; and preferences regarding other issues important to the resident applicant, such as food and daily routine.

(4) The facility must inform each resident in writing in a language the resident or his or her representative understands before admission, and at least once every twenty-four months thereafter of: (a) Services, items, and activities customarily available in the facility or arranged for by the facility as per-

mitted by the facility's license; (b) charges for those services, items, and activities including charges for services, items, and activities not covered by the facility's per diem rate or applicable public benefit programs; and (c) the rules of facility operations required under RCW 70.129.140(2). Each resident and his or her representative must be informed in writing in advance of changes in the availability or the charges for services, items, or activities, or of changes in the facility's rules. Except in emergencies, thirty days' advance notice must be given prior to the change. However, for facilities licensed for six or fewer residents, if there has been a substantial and continuing change in the resident's condition necessitating substantially greater or lesser services, items, or activities, then the charges for those services, items, or activities may be changed upon fourteen days' advance written notice.

(5) The facility must furnish a written description of residents rights that includes:

(a) A description of the manner of protecting personal funds, under RCW 70.129.040;

(b) A posting of names, addresses, and telephone numbers of the state survey and certification agency, the state licensure office, the state ombudsmen program, and the protection and advocacy systems; and

(c) A statement that the resident may file a complaint with the appropriate state licensing agency concerning alleged resident abuse, neglect, and misappropriation of resident property in the facility.

(6) Notification of changes.

(a) A facility must immediately consult with the resident's physician, and if known, make reasonable efforts to notify the resident's legal representative or an interested family member when there is:

(i) An accident involving the resident which requires or has the potential for requiring physician intervention;

(ii) A significant change in the resident's physical, mental, or psychosocial status (i.e., a deterioration in health, mental, or psychosocial status in either life-threatening conditions or clinical complications).

(b) The facility must promptly notify the resident or the resident's representative shall make reasonable efforts to notify an interested family member, if known, when there is:

(i) A change in room or roommate assignment; or

(ii) A decision to transfer or discharge the resident from the facility.

(c) The facility must record and update the address and phone number of the resident's representative or interested family member, upon receipt of notice from them. [1998 c 272 § 5; 1997 c 386 § 31; 1994 c 214 § 4.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**70.129.040 Protection of resident's funds—Financial affairs rights.** (1) The resident has the right to manage his or her financial affairs, and the facility may not require residents to deposit their personal funds with the facility.

(2) Upon written authorization of a resident, if the facility agrees to manage the resident's personal funds, the facility must hold, safeguard, manage, and account for the personal funds of the resident deposited with the facility as specified in this section.

(2010 Ed.)

(a) The facility must deposit a resident's personal funds in excess of one hundred dollars in an interest-bearing account or accounts that is separate from any of the facility's operating accounts, and that credits all interest earned on residents' funds to that account. In pooled accounts, there must be a separate accounting for each resident's share.

(b) The facility must maintain a resident's personal funds that do not exceed one hundred dollars in a noninterest-bearing account, interest-bearing account, or petty cash fund.

(3) The facility must establish and maintain a system that assures a full and complete and separate accounting of each resident's personal funds entrusted to the facility on the resident's behalf.

(a) The system must preclude any commingling of resident funds with facility funds or with the funds of any person other than another resident.

(b) The individual financial record must be available on request to the resident or his or her legal representative.

(4) Upon the death of a resident with a personal fund deposited with the facility the facility must convey within forty-five days the resident's funds, and a final accounting of those funds, to the individual or probate jurisdiction administering the resident's estate; but in the case of a resident who received long-term care services paid for by the state, the funds and accounting shall be sent to the state of Washington, department of social and health services, office of financial recovery. The department shall establish a release procedure for use for burial expenses. [1995 1st sp.s. c 18 § 66; 1994 c 214 § 5.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**70.129.050 Privacy and confidentiality of personal and medical records.** The resident has the right to personal privacy and confidentiality of his or her personal and clinical records.

(1) Personal privacy includes accommodations, medical treatment, written and telephone communications, personal care, visits, and meetings of family and resident groups. This does not require the facility to provide a private room for each resident however, a resident cannot be prohibited by the facility from meeting with guests in his or her bedroom if no roommates object.

(2) The resident may approve or refuse the release of personal and clinical records to an individual outside the facility unless otherwise provided by law. [1994 c 214 § 6.]

**70.129.060 Grievances.** A resident has the right to:

(1) Voice grievances. Such grievances include those with respect to treatment that has been furnished as well as that which has not been furnished; and

(2) Prompt efforts by the facility to resolve grievances the resident may have, including those with respect to the behavior of other residents. [1994 c 214 § 7.]

**70.129.070 Examination of survey or inspection results—Contact with client advocates.** A resident has the right to:

(1) Examine the results of the most recent survey or inspection of the facility conducted by federal or state surveyors or inspectors and plans of correction in effect with

respect to the facility. A notice that the results are available must be publicly posted with the facility's state license, and the results must be made available for examination by the facility in a place readily accessible to residents; and

(2) Receive information from agencies acting as client advocates, and be afforded the opportunity to contact these agencies. [1994 c 214 § 8.]

**70.129.080 Mail and telephone—Privacy in communications.** The resident has the right to privacy in communications, including the right to:

- (1) Send and promptly receive mail that is unopened;
- (2) Have access to stationery, postage, and writing implements at the resident's own expense; and
- (3) Have reasonable access to the use of a telephone where calls can be made without being overheard. [1994 c 214 § 9.]

**70.129.090 Advocacy, access, and visitation rights.**

(1) The resident has the right and the facility must not interfere with access to any resident by the following:

- (a) Any representative of the state;
- (b) The resident's individual physician;
- (c) The state long-term care ombudsman as established under chapter 43.190 RCW;
- (d) The agency responsible for the protection and advocacy system for developmentally disabled individuals as established under part C of the developmental disabilities assistance and bill of rights act;
- (e) The agency responsible for the protection and advocacy system for mentally ill individuals as established under the protection and advocacy for mentally ill individuals act;
- (f) Subject to reasonable restrictions to protect the rights of others and to the resident's right to deny or withdraw consent at any time, immediate family or other relatives of the resident and others who are visiting with the consent of the resident;
- (g) The agency responsible for the protection and advocacy system for individuals with disabilities as established under section 509 of the rehabilitation act of 1973, as amended, who are not served under the mandates of existing protection and advocacy systems created under federal law.

(2) The facility must provide reasonable access to a resident by his or her representative or an entity or individual that provides health, social, legal, or other services to the resident, subject to the resident's right to deny or withdraw consent at any time.

(3) The facility must allow representatives of the state ombudsman to examine a resident's clinical records with the permission of the resident or the resident's legal representative, and consistent with state and federal law. [1994 c 214 § 10.]

**70.129.100 Personal property—Storage space.** (1) The resident has the right to retain and use personal possessions, including some furnishings, and appropriate clothing, as space permits, unless to do so would infringe upon the rights or health and safety of other residents.

(2) The facility shall, upon request, provide the resident with a lockable container or other lockable storage space for

small items of personal property, unless the resident's individual room is lockable with a key issued to the resident. [1994 c 214 § 11.]

**70.129.105 Waiver of liability and resident rights limited.** No long-term care facility or nursing facility licensed under chapter 18.51 RCW shall require or request residents to sign waivers of potential liability for losses of personal property or injury, or to sign waivers of residents' rights set forth in this chapter or in the applicable licensing or certification laws. [1997 c 392 § 211; 1994 c 214 § 17.]

**Short title—Findings—Construction—Conflict with federal requirements—Part headings and captions not law—1997 c 392:** See notes following RCW 74.39A.009.

**70.129.110 Disclosure, transfer, and discharge requirements.** (1) The facility must permit each resident to remain in the facility, and not transfer or discharge the resident from the facility unless:

- (a) The transfer or discharge is necessary for the resident's welfare and the resident's needs cannot be met in the facility;
- (b) The safety of individuals in the facility is endangered;
- (c) The health of individuals in the facility would otherwise be endangered;
- (d) The resident has failed to make the required payment for his or her stay; or
- (e) The facility ceases to operate.

(2) All long-term care facilities shall fully disclose to potential residents or their legal representative the service capabilities of the facility prior to admission to the facility. If the care needs of the applicant who is medicaid eligible are in excess of the facility's service capabilities, the department shall identify other care settings or residential care options consistent with federal law.

(3) Before a long-term care facility transfers or discharges a resident, the facility must:

- (a) First attempt through reasonable accommodations to avoid the transfer or discharge, unless agreed to by the resident;
- (b) Notify the resident and representative and make a reasonable effort to notify, if known, an interested family member of the transfer or discharge and the reasons for the move in writing and in a language and manner they understand;
- (c) Record the reasons in the resident's record; and
- (d) Include in the notice the items described in subsection (5) of this section.

(4)(a) Except when specified in this subsection, the notice of transfer or discharge required under subsection (3) of this section must be made by the facility at least thirty days before the resident is transferred or discharged.

(b) Notice may be made as soon as practicable before transfer or discharge when:

- (i) The safety of individuals in the facility would be endangered;
- (ii) The health of individuals in the facility would be endangered;
- (iii) An immediate transfer or discharge is required by the resident's urgent medical needs; or

(iv) A resident has not resided in the facility for thirty days.

(5) The written notice specified in subsection (3) of this section must include the following:

- (a) The reason for transfer or discharge;
- (b) The effective date of transfer or discharge;
- (c) The location to which the resident is transferred or discharged;
- (d) The name, address, and telephone number of the state long-term care ombudsman;

(e) For residents with developmental disabilities, the mailing address and telephone number of the agency responsible for the protection and advocacy of developmentally disabled individuals established under part C of the developmental disabilities assistance and bill of rights act; and

(f) For residents who are mentally ill, the mailing address and telephone number of the agency responsible for the protection and advocacy of mentally ill individuals established under the protection and advocacy for mentally ill individuals act.

(6) A facility must provide sufficient preparation and orientation to residents to ensure safe and orderly transfer or discharge from the facility.

(7) A resident discharged in violation of this section has the right to be readmitted immediately upon the first availability of a gender-appropriate bed in the facility. [1997 c 392 § 205; 1994 c 214 § 12.]

**Short title—Findings—Construction—Conflict with federal requirements—Part headings and captions not law—1997 c 392:** See notes following RCW 74.39A.009.

**70.129.120 Restraints—Physical or chemical.** The resident has the right to be free from physical restraint or chemical restraint. This section does not require or prohibit facility staff from reviewing the judgment of the resident’s physician in prescribing psychopharmacologic medications. [1994 c 214 § 13.]

**70.129.130 Abuse, punishment, seclusion—Background checks.** The resident has the right to be free from verbal, sexual, physical, and mental abuse, corporal punishment, and involuntary seclusion.

(1) The facility must not use verbal, mental, sexual, or physical abuse, including corporal punishment or involuntary seclusion.

(2) Subject to available resources, the department of social and health services shall provide background checks required by RCW 43.43.842 for employees of facilities licensed under chapter 18.20 RCW without charge to the facility. [1994 c 214 § 14.]

**70.129.140 Quality of life—Rights.** (1) The facility must promote care for residents in a manner and in an environment that maintains or enhances each resident’s dignity and respect in full recognition of his or her individuality.

(2) Within reasonable facility rules designed to protect the rights and quality of life of residents, the resident has the right to:

- (a) Choose activities, schedules, and health care consistent with his or her interests, assessments, and plans of care;

(2010 Ed.)

(b) Interact with members of the community both inside and outside the facility;

(c) Make choices about aspects of his or her life in the facility that are significant to the resident;

(d) Wear his or her own clothing and determine his or her own dress, hair style, or other personal effects according to individual preference;

(e) Unless adjudged incompetent or otherwise found to be legally incapacitated, participate in planning care and treatment or changes in care and treatment;

(f) Unless adjudged incompetent or otherwise found to be legally incapacitated, to direct his or her own service plan and changes in the service plan, and to refuse any particular service so long as such refusal is documented in the record of the resident.

(3)(a) A resident has the right to organize and participate in resident groups in the facility.

(b) A resident’s family has the right to meet in the facility with the families of other residents in the facility.

(c) The facility must provide a resident or family group, if one exists, with meeting space.

(d) Staff or visitors may attend meetings at the group’s invitation.

(e) When a resident or family group exists, the facility must listen to the views and act upon the grievances and recommendations of residents and families concerning proposed policy and operational decisions affecting resident care and life in the facility.

(f) The resident has the right to refuse to perform services for the facility except as voluntarily agreed by the resident and the facility in the resident’s service plan.

(4) A resident has the right to participate in social, religious, and community activities that do not interfere with the rights of other residents in the facility.

(5) A resident has the right to:

(a) Reside and receive services in the facility with reasonable accommodation of individual needs and preferences, except when the health or safety of the individual or other residents would be endangered; and

(b) Receive notice before the resident’s room or roommate in the facility is changed.

(6) A resident has the right to share a double room with his or her spouse or domestic partner when residents who are married to each other or in a domestic partnership with each other live in the same facility and both spouses or both domestic partners consent to the arrangement. [2008 c 6 § 304; 1994 c 214 § 15.]

**Part headings not law—Severability—2008 c 6:** See RCW 26.60.900 and 26.60.901.

**70.129.150 Disclosure of fees and notice requirements—Deposits.** (1) Prior to admission, all long-term care facilities or nursing facilities licensed under chapter 18.51 RCW that require payment of an admissions fee, deposit, or a minimum stay fee, by or on behalf of a person seeking admission to the long-term care facility or nursing facility, shall provide the resident, or his or her representative, full disclosure in writing in a language the resident or his or her representative understands, a statement of the amount of any admissions fees, deposits, prepaid charges, or minimum stay fees. The facility shall also disclose to the person, or his or

her representative, the facility's advance notice or transfer requirements, prior to admission. In addition, the long-term care facility or nursing facility shall also fully disclose in writing prior to admission what portion of the deposits, admissions fees, prepaid charges, or minimum stay fees will be refunded to the resident or his or her representative if the resident leaves the long-term care facility or nursing facility. Receipt of the disclosures required under this subsection must be acknowledged in writing. If the facility does not provide these disclosures, the deposits, admissions fees, prepaid charges, or minimum stay fees may not be kept by the facility. If a resident dies or is hospitalized or is transferred to another facility for more appropriate care and does not return to the original facility, the facility shall refund any deposit or charges already paid less the facility's per diem rate for the days the resident actually resided or reserved or retained a bed in the facility notwithstanding any minimum stay policy or discharge notice requirements, except that the facility may retain an additional amount to cover its reasonable, actual expenses incurred as a result of a private-pay resident's move, not to exceed five days' per diem charges, unless the resident has given advance notice in compliance with the admission agreement. All long-term care facilities or nursing facilities covered under this section are required to refund any and all refunds due the resident or his or her representative within thirty days from the resident's date of discharge from the facility. Nothing in this section applies to provisions in contracts negotiated between a nursing facility or long-term care facility and a certified health plan, health or disability insurer, health maintenance organization, managed care organization, or similar entities.

(2) Where a long-term care facility or nursing facility requires the execution of an admission contract by or on behalf of an individual seeking admission to the facility, the terms of the contract shall be consistent with the requirements of this section, and the terms of an admission contract by a long-term care facility shall be consistent with the requirements of this chapter. [1997 c 392 § 206; 1994 c 214 § 16.]

**Short title—Findings—Construction—Conflict with federal requirements—Part headings and captions not law—1997 c 392:** See notes following RCW 74.39A.009.

**70.129.160 Ombudsman implementation duties.** The long-term care ombudsman shall monitor implementation of this chapter and determine the degree to which veterans' homes, nursing facilities, adult family homes, and boarding homes ensure that residents are able to exercise their rights. The long-term care ombudsman shall consult with the departments of health and social and health services, long-term care facility organizations, resident groups, and senior and disabled citizen organizations. [1998 c 245 § 113; 1994 c 214 § 18.]

**70.129.170 Nonjudicial remedies through regulatory authorities encouraged—Remedies cumulative.** The legislature intends that long-term care facility or nursing home residents, their family members or guardians, the long-term care ombudsman, protection and advocacy personnel identified in \*RCW 70.129.110(4) (e) and (f), and others who may seek to assist long-term care facility or nursing home resi-

dents, use the least formal means available to satisfactorily resolve disputes that may arise regarding the rights conferred by the provisions of chapter 70.129 RCW and RCW 18.20.180, 18.51.009, 72.36.037, and 70.128.125. Wherever feasible, direct discussion with facility personnel or administrators should be employed. Failing that, and where feasible, recourse may be sought through state or federal long-term care or nursing home licensing or other regulatory authorities. However, the procedures suggested in this section are cumulative and shall not restrict an agency or person from seeking a remedy provided by law or from obtaining additional relief based on the same facts, including any remedy available to an individual at common law. Chapter 214, Laws of 1994 is not intended to, and shall not be construed to, create any right of action on the part of any individual beyond those in existence under any common law or statutory doctrine. Chapter 214, Laws of 1994 is not intended to, and shall not be construed to, operate in derogation of any right of action on the part of any individual in existence on June 9, 1994. [1994 c 214 § 19.]

**\*Reviser's note:** RCW 70.129.110 was amended by 1997 c 392 § 205, changing subsection (4) to subsection (5).

**70.129.180 Facility's policy on accepting medicaid as a payment source—Disclosure.** (1) A long-term care facility must fully disclose to residents the facility's policy on accepting medicaid as a payment source. The policy shall clearly state the circumstances under which the facility provides care for medicaid eligible residents and for residents who may later become eligible for medicaid.

(2) The policy under this section must be provided to residents orally and in writing prior to admission, in a language that the resident or the resident's representative understands. The written policy must be in type font no smaller than fourteen point and written on a page that is separate from other documents. The policy must be signed and dated by the resident or the resident's representative, if the resident lacks capacity. The facility must retain a copy of the disclosure. Current residents must receive a copy of the policy consistent with this section by July 26, 2009. [2009 c 489 § 1.]

**70.129.900 Severability—1994 c 214.** If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1994 c 214 § 26.]

**70.129.901 Conflict with federal requirements—1994 c 214.** If any part of this act is found to be in conflict with federal requirements that are a prescribed condition to the allocation of federal funds to the state, the conflicting part of this act is inoperative solely to the extent of the conflict and with respect to the agencies directly affected, and this finding does not affect the operation of the remainder of this act in its application to the agencies concerned. The rules under this act shall meet federal requirements that are a necessary condition to the receipt of federal funds by the state. [1994 c 214 § 27.]

**70.129.902 Captions not law.** Captions as used in this act constitute no part of the law. [1994 c 214 § 28.]

### Chapter 70.132 RCW BEVERAGE CONTAINERS

#### Sections

70.132.010	Legislative findings.
70.132.020	Definitions.
70.132.030	Sale of containers with detachable metal rings or tabs prohibited.
70.132.040	Enforcement—Rules.
70.132.050	Penalty.
70.132.900	Effective date—Implementation—1982 c 113.

**70.132.010 Legislative findings.** The legislature finds that beverage containers designed to be opened through the use of detachable metal rings or tabs are hazardous to the health and welfare of the citizens of this state and detrimental to certain wildlife. The detachable parts are susceptible to ingestion by human beings and wildlife. The legislature intends to eliminate the danger posed by these unnecessary containers by prohibiting their retail sale in this state. [1982 c 113 § 1.]

**70.132.020 Definitions.** Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter:

(1) "Beverage" means beer or other malt beverage or mineral water, soda water, or other drink in liquid form and intended for human consumption. The term does not include milk-based, soy-based, or similar products requiring heat and pressure in the canning process.

(2) "Beverage container" means a separate and sealed can containing a beverage.

(3) "Department" means the department of ecology created under chapter 43.21A RCW. [1983 c 257 § 1; 1982 c 113 § 2.]

**70.132.030 Sale of containers with detachable metal rings or tabs prohibited.** No person may sell or offer to sell at retail in this state any beverage container so designed and constructed that a metal part of the container is detachable in opening the container through use of a metal ring or tab. Nothing in this section prohibits the sale of a beverage container which container's only detachable part is a piece of pressure sensitive or metallic tape. [1982 c 113 § 3.]

**70.132.040 Enforcement—Rules.** The department shall administer and enforce this chapter. The department shall adopt rules interpreting and implementing this chapter. Any rule adopted under this section shall be adopted under the administrative procedure act, chapter 34.05 RCW. [1982 c 113 § 4.]

**70.132.050 Penalty.** Except as provided in RCW 43.05.060 through 43.05.080 and 43.05.150, any person who violates any provision of this chapter or any rule adopted under this chapter is subject to a civil penalty not exceeding five hundred dollars for each violation. Each day of a continuing violation is a separate violation. [1995 c 403 § 632; 1982 c 113 § 5.]

(2010 Ed.)

**Findings—Short title—Intent—1995 c 403:** See note following RCW 34.05.328.

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**70.132.900 Effective date—Implementation—1982 c 113.** This act shall take effect on July 1, 1983. The director of the department of ecology is authorized to take such steps prior to such date as are necessary to ensure that this act is implemented on its effective date. [1982 c 113 § 7.]

### Chapter 70.136 RCW HAZARDOUS MATERIALS INCIDENTS

#### Sections

70.136.010	Legislative intent.
70.136.020	Definitions.
70.136.030	Incident command agencies—Designation by political subdivisions.
70.136.035	Incident command agencies—Assistance from state patrol.
70.136.040	Incident command agencies—Emergency assistance agreements.
70.136.050	Persons and agencies rendering emergency aid in hazardous materials incidents—Immunity from liability—Limitations.
70.136.055	Person causing hazardous materials incident—Responsibility for incident clean-up—Liability.
70.136.060	Written emergency assistance agreements—Terms and conditions—Records.
70.136.070	Verbal emergency assistance agreements—Good Samaritan law—Notification—Form.

*Emergency management: Chapter 38.52 RCW.*

*Hazardous waste disposal: Chapter 70.105 RCW.*

*Radioactive and hazardous waste emergency response programs, state coordinator: RCW 38.52.030.*

*Transport of hazardous materials, state patrol authority over: Chapter 46.48 RCW.*

**70.136.010 Legislative intent.** It is the intent of the legislature to promote and encourage advance planning, cooperation, and mutual assistance between applicable political subdivisions of the state and persons with equipment, personnel, and expertise in the handling of hazardous materials incidents, by establishing limitations on liability for those persons responding in accordance with the provisions of RCW 70.136.020 through 70.136.070. [1982 c 172 § 1.]

**Reviser's note:** Although 1982 c 172 directed that sections 1 through 7 of that enactment be added to chapter 4.24 RCW, codification of these sections as a new chapter in Title 70 RCW appears more appropriate.

**70.136.020 Definitions.** The definitions set forth in this section apply throughout RCW 70.136.010 through 70.136.070.

(1) "Hazardous materials" means:

(a) Materials which, if not contained may cause unacceptable risks to human life within a specified area adjacent to the spill, seepage, fire, explosion, or other release, and will, consequently, require evacuation;

(b) Materials that, if spilled, could cause unusual risks to the general public and to emergency response personnel responding at the scene;

(c) Materials that, if involved in a fire will pose unusual risks to emergency response personnel;

(d) Materials requiring unusual storage or transportation conditions to assure safe containment; or

(e) Materials requiring unusual treatment, packaging, or vehicles during transportation to assure safe containment.

(2) "Applicable political subdivisions of the state" means cities, towns, counties, fire districts, and those port authorities with emergency response capabilities.

(3) "Person" means an individual, partnership, corporation, or association.

(4) "Public agency" means any agency, political subdivision, or unit of local government of this state including, but not limited to, municipal corporations, quasi-municipal corporations, special purpose districts, and local service districts; any agency of the state government; any agency of the United States; any Indian tribe recognized as such by the federal government; and any political subdivision of another state.

(5) "Hazardous materials incident" means an incident creating a danger to persons, property, or the environment as a result of spillage, seepage, fire, explosion, or release of hazardous materials, or the possibility thereof.

(6) "Governing body" means the elected legislative council, board, or commission or the chief executive of the applicable political subdivision of the state with public safety responsibility.

(7) "Incident command agency" means the pre-designated or appointed agency charged with coordinating all activities and resources at the incident scene.

(8) "Representative" means an agent from the designated hazardous materials incident command agency with the authority to secure the services of persons with hazardous materials expertise or equipment.

(9) "Profit" means compensation for rendering care, assistance, or advice in excess of expenses actually incurred. [1987 c 238 § 1; 1982 c 172 § 2.]

**70.136.030 Incident command agencies—Designation by political subdivisions.** The governing body of each applicable political subdivision of this state shall designate a hazardous materials incident command agency within its respective boundaries, and file this designation with the \*director of community, trade, and economic development. In designating an incident command agency, the political subdivision shall consider the training, manpower, expertise, and equipment of various available agencies as well as the Uniform Fire Code and other existing codes and regulations. Along state and interstate highway corridors, the Washington state patrol shall be the designated incident command agency unless by mutual agreement that role has been assumed by another designated incident command agency. If a political subdivision has not designated an incident command agency within six months after July 26, 1987, the Washington state patrol shall then assume the role of incident command agency by action of the chief until a designation has been made. [1995 c 399 § 197; 1987 c 238 § 2; 1986 c 266 § 50; 1985 c 7 § 132; 1984 c 165 § 1; 1982 c 172 § 4.]

\*Reviser's note: The "director of community, trade, and economic development" was changed to the "director of commerce" by 2009 c 565.

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**70.136.035 Incident command agencies—Assistance from state patrol.** In political subdivisions where an incident command agency has been designated, the Washington

state patrol shall continue to respond with a supervisor to provide assistance to the incident command agency. [1987 c 238 § 3.]

**70.136.040 Incident command agencies—Emergency assistance agreements.** Hazardous materials incident command agencies, so designated by all applicable political subdivisions of the state, are authorized and encouraged, prior to a hazardous materials incident, to enter individually or jointly into written hazardous materials emergency assistance agreements with any person whose knowledge or expertise is deemed potentially useful. [1982 c 172 § 3.]

**70.136.050 Persons and agencies rendering emergency aid in hazardous materials incidents—Immunity from liability—Limitations.** An incident command agency in the good faith performance of its duties, is not liable for civil damages resulting from any act or omission in the performance of its duties, other than acts or omissions constituting gross negligence or wilful or wanton misconduct.

Any person or public agency whose assistance has been requested by an incident command agency, who has entered into a written hazardous materials assistance agreement before or at the scene of the incident pursuant to RCW 70.136.060 and 70.136.070, and who, in good faith, renders emergency care, assistance, or advice with respect to a hazardous materials incident, is not liable for civil damages resulting from any act or omission in the rendering of such care, assistance, or advice, other than acts or omissions constituting gross negligence or wilful or wanton misconduct. [1987 c 238 § 4; 1984 c 165 § 2; 1982 c 172 § 5.]

**70.136.055 Person causing hazardous materials incident—Responsibility for incident clean-up—Liability.** See RCW 4.24.314.

**70.136.060 Written emergency assistance agreements—Terms and conditions—Records.** Hazardous materials emergency assistance agreements which are executed prior to a hazardous materials incident shall include the following terms and conditions:

(1) The person or public agency requested to assist shall not be obligated to assist;

(2) The person or public agency requested to assist may act only under the direction of the incident command agency or its representative;

(3) The person or public agency requested to assist may withdraw its assistance if it deems the actions or directions of the incident command agency to be contrary to accepted hazardous materials response practices;

(4) The person or public agency requested to assist shall not profit from rendering the assistance;

(5) Any person responsible for causing the hazardous materials incident shall not be covered by the liability standard defined in RCW 70.136.050.

It is the responsibility of both parties to ensure that mutually agreeable procedures are established for identifying the incident command agency when assistance is requested, for recording the name of the person or public agency whose assistance is requested, and the time and date of the request,

which records shall be retained for three years by the incident command agency. A copy of the official incident command agency designation shall be a part of the assistance agreement specified in this section. [1987 c 238 § 5; 1982 c 172 § 6.]

**70.136.070 Verbal emergency assistance agreements—Good Samaritan law—Notification—Form.** (1) Verbal hazardous materials emergency assistance agreements may be entered into at the scene of an incident where execution of a written agreement prior to the incident is not possible. A notification of the terms of this section shall be presented at the scene by the incident command agency or its representative to the person or public agency whose assistance is requested. The incident command agency and the person or public agency whose assistance is requested shall both sign the notification which appears in subsection (2) of this section, indicating the date and time of signature. If a requesting incident command agency deliberately misrepresents individual or agency status, that agency shall assume full liability for any damages resulting from the actions of the person or public agency whose assistance is requested, other than those damages resulting from gross negligence or wilful or wanton misconduct.

(2) The notification required by subsection (1) of this section shall be in substantially the following form:

**NOTIFICATION OF "GOOD SAMARITAN" LAW**

You have been requested to provide emergency assistance by a representative of a hazardous materials incident command agency. To encourage your assistance, the Washington state legislature has passed "Good Samaritan" legislation (RCW 70.136.050) to protect you from potential liability. The law reads, in part:

"Any person or public agency whose assistance has been requested by an incident command agency, who has entered into a written hazardous materials assistance agreement . . . at the scene of the incident pursuant to . . . RCW 70.136.070, and who, in good faith, renders emergency care, assistance, or advice with respect to a hazardous materials incident, is not liable for civil damages resulting from any act or omission in the rendering of such care, assistance, or advice, other than acts or omissions constituting gross negligence or wilful or wanton misconduct."

The law requires that you be advised of certain conditions to ensure your protection:

1. You are not obligated to assist and you may withdraw your assistance at any time.
2. You cannot profit from assisting.
3. You must agree to act under the direction of the incident command agency.
4. You are not covered by this law if you caused the initial accident.

I have read and understand the above.  
(Name) .....  
Date ..... Time .....

I am a representative of a designated hazardous materials incident command agency and I am authorized to make this request for assistance.

(Name) .....  
(Agency) .....  
Date ..... Time .....

[1987 c 238 § 6; 1982 c 172 § 7.]

**Chapter 70.138 RCW  
INCINERATOR ASH RESIDUE**

Sections

- 70.138.010 Legislative findings.
- 70.138.020 Definitions.
- 70.138.030 Review and approval of management plans—Disposal permits.
- 70.138.040 Civil penalties.
- 70.138.050 Violations—Orders.
- 70.138.060 Enforcement—Injunctive relief.
- 70.138.070 Criminal penalties.
- 70.138.900 Application of chapter to certain incinerators.
- 70.138.901 Short title.
- 70.138.902 Severability—1987 c 528.

*Environmental certification programs—Fees—Rules—Liability: RCW 43.21A.175.*

**70.138.010 Legislative findings.** The legislature finds:

(1) Solid wastes generated in the state are to be managed in the following order of descending priority: (a) Waste reduction; (b) recycling; (c) treatment; (d) energy recovery or incineration; (e) solidification/stabilization; and (f) landfill.

(2) Special incinerator ash residues from the incineration of municipal solid waste that would otherwise be regulated as hazardous wastes need a separate regulatory scheme in order to (a) ease the permitting and reporting requirements of chapter 70.105 RCW, the state hazardous waste management act, and (b) supplement the environmental protection provisions of chapter 70.95 RCW, the state solid waste management act.

(3) Raw garbage poses significant environmental and public health risks. Municipal solid waste incineration constitutes a higher waste management priority than the land disposal of untreated municipal solid waste due to its reduction of waste volumes and environmental health risks.

It is therefore the purpose of this chapter to establish management requirements for special incinerator ash that otherwise would be regulated as hazardous waste under chapter 70.105 RCW, the hazardous waste management act. [1987 c 528 § 1.]

**70.138.020 Definitions.** Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

- (1) "Department" means the department of ecology.
- (2) "Director" means the director of the department of ecology or the director's designee.
- (3) "Dispose" or "disposal" means the treatment, utilization, processing, or final deposit of special incineration ash.
- (4) "Generate" means any act or process which produces special incinerator ash or which first causes special incinerator ash to become subject to regulation.
- (5) "Management" means the handling, storage, collection, transportation, and disposal of special incinerator ash.
- (6) "Person" means any person, firm, association, county, public or municipal or private corporation, agency, or other entity whatsoever.

(7) "Facility" means all structures, other appurtenances, improvements, and land used for recycling, storing, treating, or disposing of special incinerator ash.

(8) "Special incinerator ash" means ash residues resulting from the operation of incinerator or energy recovery facilities managing municipal solid waste, including solid waste from residential, commercial, and industrial establishments, if the ash residues (a) would otherwise be regulated as hazardous wastes under chapter 70.105 RCW; and (b) are not regulated as a hazardous waste under the federal resource conservation and recovery act, 42 U.S.C. Sec. 6901 et seq. [1987 c 528 § 2.]

**70.138.030 Review and approval of management plans—Disposal permits.** (1) Prior to managing special incinerator ash, persons who generate special incinerator ash shall develop plans for managing the special incinerator ash. These plans shall:

(a) Identify procedures for all aspects relating to the management of the special incinerator ash that are necessary to protect employees, human health, and the environment;

(b) Identify alternatives for managing solid waste prior to incineration for the purpose of (i) reducing the toxicity of the special incinerator ash; and (ii) reducing the quantity of the special incinerator ash;

(c) Establish a process for submittal of an annual report to the department disclosing the results of a testing program to identify the toxic properties of the special incinerator ash as necessary to ensure that the procedures established in the plans submitted pursuant to this chapter are adequate to protect employees, human health, and the environment; and

(d) Comply with the rules established by the department in accordance with this section.

(2) Prior to managing any special incinerator ash, any person required to develop a plan pursuant to subsection (1) of this section shall submit the plan to the department for review and approval. Prior to approving a plan, the department shall find that the plan complies with the provisions of this chapter, including any rules adopted under this chapter. Approval may be conditioned upon additional requirements necessary to protect employees, human health, and the environment, including special management requirements, waste segregation, or treatment techniques such as neutralization, detoxification, and solidification/stabilization.

(3) The department shall give notice of receipt of a proposed plan to interested persons and the public and shall accept public comment for a minimum of thirty days. The department shall approve, approve with conditions, or reject the plan submitted pursuant to this section within ninety days of submittal.

(4) Prior to accepting any special incinerator ash for disposal, persons owning or operating facilities for the disposal of the incinerator ash shall apply to the department for a permit. The department shall issue a permit if the disposal will provide adequate protection of human health and the environment. Prior to issuance of any permit, the department shall find that the facility meets the requirements of chapter 70.95 RCW and any rules adopted under this chapter. The department may place conditions on the permit to include additional requirements necessary to protect employees, human health, and the environment, including special management

requirements, waste segregation, or treatment techniques such as neutralization, detoxification, and solidification/stabilization.

(5) The department shall give notice of its receipt of a permit application to interested persons and the public and shall accept public comment for a minimum of thirty days. The department shall issue, issue with conditions, or deny the permit within ninety days of submittal.

(6) The department shall adopt rules to implement the provisions of this chapter. The rules shall (a) establish minimum requirements for the management of special incinerator ash as necessary to protect employees, human health, and the environment, (b) clearly define the elements of the plans required by this chapter, and (c) require special incinerator ash to be disposed at facilities that are operating in compliance with this chapter. [1987 c 528 § 3.]

**70.138.040 Civil penalties.** (1) Except as provided in RCW 43.05.060 through 43.05.080 and 43.05.150, any person who violates any provision of a department regulation or regulatory order relating to the management of special incinerator ash shall incur in addition to any other penalty provided by law, a penalty in an amount up to ten thousand dollars a day for every such violation. Each and every such violation shall be a separate and distinct offense. In case of continuing violation, every day's continuance shall be a separate and distinct violation. Every person who, through an act of commission or omission, procures, aids, or abets in the violation shall be considered to have violated the provisions of this section and shall be subject to the penalty herein provided.

(2) The penalty provided for in this section shall be imposed by a notice in writing, either by certified mail with return receipt requested or by personal service, to the person incurring the same from the department, describing the violation with reasonable particularity. Within fifteen days after the notice is received, the person incurring the penalty may apply in writing to the department for the remission or mitigation of such penalty. Upon receipt of the application, the department may remit or mitigate the penalty upon whatever terms the department in its discretion deems proper, giving consideration to the degree of hazard associated with the violation, provided the department deems such remission or mitigation to be in the best interests of carrying out the purposes of this chapter. The department shall have authority to ascertain the facts regarding all such applications in such reasonable manner and under such rules as it may deem proper.

(3) Any penalty imposed by this section shall become due and payable thirty days after receipt of a notice imposing the same unless application for remission or mitigation is made or petition for review by the hearings board is filed. When such an application for remission or mitigation is made, any penalty incurred pursuant to this section shall become due and payable thirty days after receipt of notice setting forth the disposition of such application.

(4) If the amount of any penalty is not paid to the department within thirty days after it becomes due and payable, the attorney general, upon the request of the director, shall bring an action in the name of the state of Washington in the superior court of Thurston county, or any county in which such violator may do business, to recover such penalty. In all such

actions, the procedure and rules of evidence shall be the same as an ordinary civil action except as otherwise provided in this chapter. [1995 c 403 § 633; 1987 c 528 § 4.]

**Findings—Short title—Intent—1995 c 403:** See note following RCW 34.05.328.

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**70.138.050 Violations—Orders.** Whenever a person violates any provision of this chapter or any permit or regulation the department may issue an order appropriate under the circumstances to assure compliance with the chapter, permit, or regulation. Such an order must be served personally or by registered mail upon any person to whom it is directed. [1987 c 528 § 5.]

**70.138.060 Enforcement—Injunctive relief.** The department, with the assistance of the attorney general, may bring any appropriate action at law or in equity, including action for injunctive relief as may be necessary to enforce the provisions of this chapter or any permit or regulation issued thereunder. [1987 c 528 § 6.]

**70.138.070 Criminal penalties.** Any person found guilty of wilfully violating, without sufficient cause, any of the provisions of this chapter, or permit or order issued pursuant to this chapter is guilty of a gross misdemeanor and upon conviction shall be punished by a fine of up to ten thousand dollars and costs of prosecution, or by imprisonment for up to one year, or by both. Each day of violation may be deemed a separate violation. [1987 c 528 § 7.]

**70.138.900 Application of chapter to certain incinerators.** This chapter shall not apply to municipal solid waste incinerators that are in operation on May 19, 1987, until a special incinerator waste disposal permit is issued in the county where the municipal solid waste incinerator is located, or July 1, 1989, whichever is sooner. [1987 c 528 § 12.]

**70.138.901 Short title.** This chapter shall be known as the special incinerator ash disposal act. [1987 c 528 § 11.]

**70.138.902 Severability—1987 c 528.** If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1987 c 528 § 14.]

## Chapter 70.140 RCW

### AREA-WIDE SOIL CONTAMINATION

#### Sections

70.140.010	Findings.
70.140.020	Definitions.
70.140.030	Children in schools and child care facilities—Department duties—School and child care facility duties.
70.140.040	Department assistance—Best management practice guidelines—Grants—Interagency agreements authorized—Reports.
70.140.050	Department of health to provide assistance.
70.140.060	Department of social and health services to provide assistance.
70.140.070	Livestock, agricultural land exempt from chapter.
70.140.080	Existing authority of department not affected.

(2010 Ed.)

**70.140.010 Findings.** The legislature finds that state and local agencies are currently implementing actions to reduce children's exposure to soils that contain hazardous substances. The legislature further finds that it is in the public interest to enhance those efforts in western Washington in areas located within the central Puget Sound smelter plume. [2005 c 306 § 1.]

**70.140.020 Definitions.** The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Area-wide soil contamination" means low to moderate arsenic and lead soil contamination dispersed over a large geographic area.

(2) "Child care facility" means a child day-care center or a family day-care provider as those terms are defined under \*RCW 74.15.020.

(3) "Department" means the department of ecology.

(4) "Director" means the director of the department of ecology.

(5) "Low to moderate soil contamination" means low level arsenic or lead concentrations where a child's exposure to soil contamination at a school or a child care facility may be reduced through best management practices.

(6) "School" means a public or private kindergarten, elementary, or secondary school. [2005 c 306 § 2.]

**\*Reviser's note:** RCW 74.15.020 was amended by 2006 c 265 § 401, removing the definitions for "child day-care center" and "family day-care provider."

**70.140.030 Children in schools and child care facilities—Department duties—School and child care facility duties.** (1) The department, in cooperation with the department of social and health services, the department of health, the office of the superintendent of public instruction, and local health districts, shall assist schools and child care facilities west of the crest of the Cascade mountains to reduce the potential for children's exposure to area-wide soil contamination.

(2) The department shall:

(a) Identify schools and child care facilities that are located within the central Puget Sound smelter plume based on available information;

(b) Conduct qualitative evaluations to determine the potential for children's exposure to area-wide soil contamination;

(c) If the qualitative evaluation determines that children may be routinely exposed to area-wide soil contamination at a property, conduct soil samples at that property by December 31, 2009; and

(d) If soil sample results confirm the presence of area-wide soil contamination, notify schools and child care facilities regarding the test results and the steps necessary for implementing best management practices.

(3) If a school or a child care facility with area-wide soil contamination does not implement best management practices within six months of receiving written notification from the department, the superintendent or board of directors of a school or the owner or operator of a child care facility must notify parents and guardians in writing of the results of soil tests. The written notice shall be prepared by the department.

[Title 70 RCW—page 463]

(4) The department shall recognize schools and child care facilities that successfully implement best management practices with a voluntary certification letter confirming that the facility has successfully implemented best management practices.

(5) Schools and child care facilities must work with the department to provide the department with site access for soil sampling at times that are the most convenient for all parties. [2005 c 306 § 3.]

**70.140.040 Department assistance—Best management practice guidelines—Grants—Interagency agreements authorized—Reports.** (1) The department shall assist schools and owners and operators of child care facilities located within the central Puget Sound smelter plume. Such assistance may include the following:

(a) Technical assistance in conducting qualitative evaluations to determine where area-wide soil contamination exposures could occur;

(b) Technical and financial assistance in testing soils where evaluations indicate potential for contamination; and

(c) Technical and financial assistance to implement best management practices.

(2) The department shall develop best management practice guidelines for schools and day care facilities with area-wide soil contamination. The guidelines shall recommend a range of methods for reducing exposure to contaminated soil, considering the concentration, extent, and location of contamination and the nature and frequency of child use of the area.

(3) The department shall develop a grant program to assist schools and child care facilities with implementing best management practices.

(4) The department, within available funds, may provide grants to schools and child care facilities for the purpose of implementing best management practices.

(5) The department, within available funds, may provide financial assistance to the department of health and the department of social and health services to implement this chapter.

(6) The department may, through an interagency agreement, authorize a local health jurisdiction to administer any activity in this chapter that is otherwise not assigned to a local health jurisdiction by this chapter.

(7) The department shall evaluate actions to reduce child exposure to contaminated soils and submit progress reports to the governor and to the appropriate committees of the legislature by December 31, 2006, and December 31, 2008. [2005 c 306 § 4.]

**70.140.050 Department of health to provide assistance.** The department of health shall assist the department in implementing this chapter, including but not limited to developing best management practices and guidelines. [2005 c 306 § 5.]

**70.140.060 Department of social and health services to provide assistance.** The department of social and health services shall assist the department by providing information

on the location of child care facilities and contacts for these facilities. [2005 c 306 § 6.]

**70.140.070 Livestock, agricultural land exempt from chapter.** This chapter does not apply to land devoted primarily to the commercial production of livestock or agricultural commodities. [2005 c 306 § 7.]

**70.140.080 Existing authority of department not affected.** Nothing in this chapter is intended to change ongoing actions or the authority of the department or other agencies to require actions to address soil contamination under existing laws. [2005 c 306 § 8.]

## Chapter 70.142 RCW CHEMICAL CONTAMINANTS AND WATER QUALITY

### Sections

70.142.010	Establishment of standards for chemical contaminants in drinking water by state board of health.
70.142.020	Establishment of monitoring requirements for chemical contaminants in public water supplies by state board of health.
70.142.030	Monitoring requirements—Considerations.
70.142.040	Establishment of water quality standards by local health department in large counties.
70.142.050	Noncomplying public water supply systems—Submission of corrective plan—Notification to system's customers.

**Reviser's note:** Powers and duties of the department of social and health services and the secretary of social and health services transferred to the department of health and the secretary of health. See RCW 43.70.060.

### **70.142.010 Establishment of standards for chemical contaminants in drinking water by state board of health.**

(1) In order to protect public health from chemical contaminants in drinking water, the state board of health shall conduct public hearings and, where technical data allow, establish by rule standards for allowable concentrations. For purposes of this chapter, the words "chemical contaminants" are limited to synthetic organic chemical contaminants and to any other contaminants which in the opinion of the board constitute a threat to public health. If adequate data to support setting of a standard is available, the state board of health shall adopt by rule a maximum contaminant level for water provided to consumers' taps. Standards set for contaminants known to be toxic shall consider both short-term and chronic toxicity. Standards set for contaminants known to be carcinogenic shall be consistent with risk levels established by the state board of health.

(2) The board shall consider the best available scientific information in establishing the standards. The board may review and revise the standards. State and local standards for chemical contaminants may be more strict than the federal standards. [1984 c 187 § 1.]

### **70.142.020 Establishment of monitoring requirements for chemical contaminants in public water supplies by state board of health.**

The state board of health shall conduct public hearings and establish by rule monitoring requirements for chemical contaminants in public water supplies. Results of tests conducted pursuant to such requirements shall be submitted to the department of health and to the local health department. The state board of health may

review and revise monitoring requirements for chemical contaminants. [1991 c 3 § 374; 1984 c 187 § 2.]

**70.142.030 Monitoring requirements—Considerations.** The state board of health in determining monitoring requirements for public water supply systems shall take into consideration economic impacts as well as public health risks. [1984 c 187 § 5.]

**70.142.040 Establishment of water quality standards by local health department in large counties.** Each local health department serving a county with a population of one hundred twenty-five thousand or more may establish water quality standards for its jurisdiction more stringent than standards established by the state board of health. Each local health department establishing such standards shall base the standards on the best available scientific information. [1991 c 363 § 145; 1984 c 187 § 3.]

**Purpose—Captions not law—1991 c 363:** See notes following RCW 2.32.180.

**70.142.050 Noncomplying public water supply systems—Submission of corrective plan—Notification to system's customers.** Public water supply systems as defined by RCW 70.119.020 that the state board of health or local health department determines do not comply with the water quality standards applicable to the system shall immediately initiate preparation of a corrective plan designed to meet or exceed the minimum standards for submission to the department of health. The owner of such system shall within one year take any action required to bring the water into full compliance with the standards. The department of health may require compliance as promptly as necessary to abate an immediate public health threat or may extend the period of compliance if substantial new construction is required: PROVIDED FURTHER, That the extension shall be granted only upon a determination by the department, after a public hearing, that the extension will not pose an imminent threat to public health. Each such system shall include a notice identifying the water quality standards exceeded, and the amount by which the water tested exceeded the standards, in all customer bills mailed after such determination. The notification shall continue until water quality tests conducted in accordance with this chapter establish that the system meets or exceeds the minimum standards. [1991 c 3 § 375; 1984 c 187 § 4.]

## Chapter 70.146 RCW WATER POLLUTION CONTROL FACILITIES FINANCING

### Sections

70.146.010	Purpose—Legislative intent.
70.146.020	Definitions.
70.146.030	Water pollution control facilities and activities—Grants or loans.
70.146.040	Level of grant or loan not precedent.
70.146.050	Compliance schedule for secondary treatment.
70.146.060	Use of funds—Limitations.
70.146.070	Grants or loans for water pollution control facilities—Considerations.
70.146.075	Extended grant payments.

(2010 Ed.)

70.146.090	Grants and loans to local governments—Statement of environmental benefits—Development of outcome-focused performance measures.
70.146.100	Water quality capital account—Expenditures.
70.146.110	Puget Sound partners.
70.146.120	Administering funds—Preference to an evergreen community.
70.146.900	Severability—1986 c 3.

**70.146.010 Purpose—Legislative intent.** The long-range health and environmental goals for the state of Washington require the protection of the state's surface and underground waters for the health, safety, use, enjoyment, and economic benefit of its people. It is the purpose of this chapter to provide financial assistance to the state and to local governments for the planning, design, acquisition, construction, and improvement of water pollution control facilities and related activities in the achievement of state and federal water pollution control requirements for the protection of the state's waters.

It is the intent of the legislature that distribution of moneys for water pollution control facilities under this chapter be made on an equitable basis taking into consideration legal mandates, local effort, ratepayer impacts, and past distributions of state and federal moneys for water pollution control facilities.

It is the intent of this chapter that the cost of any water pollution control facility attributable to increased or additional capacity that exceeds one hundred ten percent of existing needs at the time of application for assistance under this chapter shall be entirely a local or private responsibility. It is the intent of this chapter that industrial pretreatment be paid by industries and that state funds shall not be used for such purposes. [2009 c 479 § 51; 1986 c 3 § 1.]

**Effective date—2009 c 479:** See note following RCW 2.56.030.

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**70.146.020 Definitions.** Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Department" means the department of ecology.

(2) "Eligible cost" means the cost of that portion of a water pollution control facility that can be financed under this chapter excluding any portion of a facility's cost attributable to capacity that is in excess of that reasonably required to address one hundred ten percent of the applicant's needs for water pollution control existing at the time application is submitted for assistance under this chapter.

(3) "Nonpoint source water pollution" means pollution that enters any waters of the state from any dispersed water-based or land-use activities, including, but not limited to, atmospheric deposition, surface water runoff from agricultural lands, urban areas, and forest lands, subsurface or underground sources, and discharges from boats or other marine vessels.

(4) "Public body" means the state of Washington or any agency, county, city or town, conservation district, other political subdivision, municipal corporation, quasi-municipal corporation, and those Indian tribes now or hereafter recognized as such by the federal government.

(5) "Sole source aquifer" means the sole or principal source of public drinking water for an area designated by the

administrator of the environmental protection agency pursuant to Public Law 93-523, Sec. 1424(b).

(6) "Water pollution" means such contamination, or other alteration of the physical, chemical, or biological properties of any waters of the state, including change in temperature, taste, color, turbidity, or odor of the waters, or such discharge of any liquid, gaseous, solid, radioactive, or other substance into any waters of the state as will or is likely to create a nuisance or render such waters harmful, detrimental, or injurious to the public health, safety, or welfare, or to domestic, commercial, industrial, agricultural, recreational, or other legitimate beneficial uses, or to livestock, wild animals, birds, fish, or other aquatic life.

(7) "Water pollution control activities" means actions taken by a public body for the following purposes: (a) To prevent or mitigate pollution of underground water; (b) to control nonpoint sources of water pollution; (c) to restore the water quality of fresh water lakes; and (d) to maintain or improve water quality through the use of water pollution control facilities or other means. During the 1995-1997 fiscal biennium, "water pollution control activities" includes activities by state agencies to protect public drinking water supplies and sources.

(8) "Water pollution control facility" or "facilities" means any facilities or systems for the control, collection, storage, treatment, disposal, or recycling of wastewater, including but not limited to sanitary sewage, storm water, residential, commercial, industrial, and agricultural wastes, which are causing water quality degradation due to concentrations of conventional, nonconventional, or toxic pollutants. Water pollution control facilities include all equipment, utilities, structures, real property, and interests in and improvements on real property necessary for or incidental to such purpose. Water pollution control facilities also include such facilities, equipment, and collection systems as are necessary to protect federally designated sole source aquifers. [2009 c 479 § 52; 1995 2nd sp.s. c 18 § 920; 1993 sp.s. c 24 § 923; 1987 c 436 § 5; 1986 c 3 § 2.]

**Reviser's note:** The definitions in this section have been alphabetized pursuant to RCW 1.08.015(2)(k).

**Effective date—2009 c 479:** See note following RCW 2.56.030.

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**70.146.030 Water pollution control facilities and activities—Grants or loans.** The department may make grants or loans to public bodies, including grants to public bodies as cost-sharing moneys in any case where federal, local, or other funds are made available on a cost-sharing basis, for water pollution control facilities and activities, or for purposes of assisting a public body to obtain an ownership interest in water pollution control facilities and/or to defray a part of the payments made by a public body to a service provider under a service agreement entered into pursuant to RCW 70.150.060, within the purposes of this chapter and for related administrative expenses. No more than three percent of the moneys may be used by the department to pay for the administration of the grant and loan program authorized by this chapter. [2009 c 479 § 53; 2007 c 522 § 955. Prior: 2005 c 518 § 940; 2005 c 514 § 1108; 2004 c 277 § 909; 2003 1st sp.s. c 25 § 934; 2002 c 371 § 921; 2001 2nd sp.s. c 7 §

922; 1996 c 37 § 2; 1995 2nd sp.s. c 18 § 921; 1991 sp.s. c 13 § 61; prior: 1987 c 505 § 64; 1987 c 436 § 6; 1986 c 3 § 3.]

**Effective date—2009 c 479:** See note following RCW 2.56.030.

**Severability—Effective date—2007 c 522:** See notes following RCW 15.64.050.

**Severability—Effective date—2005 c 518:** See notes following RCW 28A.500.030.

**Effective date—2005 c 514:** See note following RCW 83.100.230.

**Part headings not law—Severability—2005 c 514:** See notes following RCW 82.12.808.

**Severability—Effective dates—2004 c 277:** See notes following RCW 89.08.550.

**Severability—Effective date—2003 1st sp.s. c 25:** See notes following RCW 19.28.351.

**Severability—Effective date—2002 c 371:** See notes following RCW 9.46.100.

**Severability—Effective date—2001 2nd sp.s. c 7:** See notes following RCW 43.320.110.

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**70.146.040 Level of grant or loan not precedent.** No grant or loan made in this chapter for fiscal year 1987 shall be construed to establish a precedent for levels of grants or loans made under this chapter thereafter. [2009 c 479 § 54; 1986 c 3 § 6.]

**Effective date—2009 c 479:** See note following RCW 2.56.030.

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**70.146.050 Compliance schedule for secondary treatment.** The department of ecology may provide for a phased in compliance schedule for secondary treatment which addresses local factors that may impede compliance with secondary treatment requirements of the federal clean water act.

In determining the length of time to be granted for compliance, the department shall consider the criteria specified in the federal clean water act. [1986 c 3 § 8.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**70.146.060 Use of funds—Limitations.** Funds provided for facilities and activities under this chapter may be used for payments to a service provider under a service agreement pursuant to RCW 70.150.060. If funds are to be used for such payments, the department may make periodic disbursements to a public body or may make a single lump sum disbursement. Disbursements of funds with respect to a facility owned or operated by a service provider shall be equivalent in value to disbursements that would otherwise be made if that facility were owned or operated by a public body. Payments under this chapter for waste disposal and management facilities made to public bodies entering into service agreements pursuant to RCW 70.150.060 shall not exceed amounts paid to public bodies not entering into service agreements. [2009 c 479 § 55. Prior: 1987 c 527 § 1; 1987 c 436 § 7; 1986 c 3 § 9.]

**Effective date—2009 c 479:** See note following RCW 2.56.030.

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**70.146.070 Grants or loans for water pollution control facilities—Considerations.** (1) When making grants or loans for water pollution control facilities, the department shall consider the following:

- (a) The protection of water quality and public health;
- (b) The cost to residential ratepayers if they had to finance water pollution control facilities without state assistance;
- (c) Actions required under federal and state permits and compliance orders;
- (d) The level of local fiscal effort by residential ratepayers since 1972 in financing water pollution control facilities;
- (e) Except as otherwise conditioned by RCW 70.146.110, whether the entity receiving assistance is a Puget Sound partner, as defined in RCW 90.71.010;
- (f) Whether the project is referenced in the action agenda developed by the Puget Sound partnership under RCW 90.71.310;
- (g) Except as otherwise provided in RCW 70.146.120, and effective one calendar year following the development and statewide availability of model evergreen community management plans and ordinances under RCW 35.105.050, whether the project is sponsored by an entity that has been recognized, and what gradation of recognition was received, in the evergreen community recognition program created in RCW 35.105.030;
- (h) The extent to which the applicant county or city, or if the applicant is another public body, the extent to which the county or city in which the applicant public body is located, has established programs to mitigate nonpoint pollution of the surface or subterranean water sought to be protected by the water pollution control facility named in the application for state assistance; and
- (i) The recommendations of the Puget Sound partnership, created in RCW 90.71.210, and any other board, council, commission, or group established by the legislature or a state agency to study water pollution control issues in the state.
- (2) Except where necessary to address a public health need or substantial environmental degradation, a county, city, or town planning under RCW 36.70A.040 may not receive a grant or loan for water pollution control facilities unless it has adopted a comprehensive plan, including a capital facilities plan element, and development regulations as required by RCW 36.70A.040. This subsection does not require any county, city, or town planning under RCW 36.70A.040 to adopt a comprehensive plan or development regulations before requesting or receiving a grant or loan under this chapter if such request is made before the expiration of the time periods specified in RCW 36.70A.040. A county, city, or town planning under RCW 36.70A.040 which has not adopted a comprehensive plan and development regulations within the time periods specified in RCW 36.70A.040 is not prohibited from receiving a grant or loan under this chapter if the comprehensive plan and development regulations are adopted as required by RCW 36.70A.040 before submitting a request for a grant or loan.
- (3) Whenever the department is considering awarding grants or loans for public facilities to special districts requesting funding for a proposed facility located in a county, city, or town planning under RCW 36.70A.040, it shall consider whether the county, city, or town planning under RCW 36.70A.040 in whose planning jurisdiction the proposed facility is located has adopted a comprehensive plan and development regulations as required by RCW 36.70A.040.

(2010 Ed.)

(4) After January 1, 2010, any project designed to address the effects of water pollution on Puget Sound may be funded under this chapter only if the project is not in conflict with the action agenda developed by the Puget Sound partnership under RCW 90.71.310. [2008 c 299 § 26. Prior: 2007 c 341 § 60; 2007 c 341 § 26; 1999 c 164 § 603; 1997 c 429 § 30; 1991 sp.s. c 32 § 24; 1986 c 3 § 10.]

**Short title—2008 c 299:** See note following RCW 35.105.010.

**Severability—Effective date—2007 c 341:** See RCW 90.71.906 and 90.71.907.

**Findings—Intent—Part headings and subheadings not law—Effective date—Severability—1999 c 164:** See notes following RCW 43.160.010.

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**70.146.075 Extended grant payments.** (1) The department of ecology may enter into contracts with local jurisdictions which provide for extended grant payments under which eligible costs may be paid on an advanced or deferred basis.

(2) Extended grant payments shall be in equal annual payments, the total of which does not exceed, on a net present value basis, fifty percent of the total eligible cost of the project incurred at the time of design and construction. The duration of such extended grant payments shall be for a period not to exceed twenty years. The total of federal and state grant moneys received for the eligible costs of the project shall not exceed fifty percent of the eligible costs.

(3) Any moneys appropriated by the legislature for the purposes of this section shall be first used by the department of ecology to satisfy the conditions of the extended grant payment contracts. [2009 c 479 § 56; 1987 c 516 § 1.]

**Effective date—2009 c 479:** See note following RCW 2.56.030.

**70.146.090 Grants and loans to local governments—Statement of environmental benefits—Development of outcome-focused performance measures.** In providing grants and loans to local governments, the department shall require recipients to incorporate the environmental benefits of the project into their applications, and the department shall utilize the statement of environmental benefits in its grant and loan prioritization and selection process. The department shall also develop appropriate outcome-focused performance measures to be used both for management and performance assessment of the grant and loan program. To the extent possible, the department should coordinate its performance measure system with other natural resource-related agencies as defined in RCW 43.41.270. The department shall consult with affected interest groups in implementing this section. [2001 c 227 § 6.]

**Findings—Intent—2001 c 227:** See note following RCW 43.41.270.

**70.146.100 Water quality capital account—Expenditures.** (1) The water quality capital account is created in the state treasury. Moneys in the water quality capital account may be spent only after appropriation.

(2) Expenditures from the water quality capital account may only be used: (a) To make grants or loans to public bodies, including grants to public bodies as cost-sharing moneys in any case where federal, local, or other moneys are made available on a cost-sharing basis, for the capital component of

water pollution control facilities and activities; (b) for purposes of assisting a public body to obtain an ownership interest in water pollution control facilities; or (c) to defray any part of the capital component of the payments made by a public body to a service provider under a service agreement entered into under RCW 70.150.060. During the 2009-2011 fiscal biennium, the legislature may transfer from the water quality capital account to the state general fund such amounts as reflect the excess fund balance of the account. [2010 1st sp.s. c 37 § 948; 2007 c 233 § 1.]

**Effective date—2010 1st sp.s. c 37:** See note following RCW 13.06.050.

**Effective date—2007 c 233:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 2007." [2007 c 233 § 2.]

**70.146.110 Puget Sound partners.** When making grants or loans for water pollution control facilities under RCW 70.146.070, the department shall give preference only to Puget Sound partners, as defined in RCW 90.71.010, in comparison to other entities that are eligible to be included in the definition of Puget Sound partner. Entities that are not eligible to be a Puget Sound partner due to geographic location, composition, exclusion from the scope of the action agenda developed by the Puget Sound partnership under RCW 90.71.310, or for any other reason, shall not be given less preferential treatment than Puget Sound partners. [2007 c 341 § 27.]

**Severability—Effective date—2007 c 341:** See RCW 90.71.906 and 90.71.907.

**70.146.120 Administering funds—Preference to an evergreen community.** When administering funds under this chapter, the department shall give preference only to an evergreen community recognized under RCW 35.105.030 in comparison to other entities that are eligible to receive evergreen community designation. Entities not eligible for designation as an evergreen community shall not be given less preferential treatment than an evergreen community. [2008 c 299 § 31.]

**Short title—2008 c 299:** See note following RCW 35.105.010.

**70.146.900 Severability—1986 c 3.** If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1986 c 3 § 16.]

## Chapter 70.148 RCW

### UNDERGROUND PETROLEUM STORAGE TANKS

#### Sections

70.148.005	Finding—Intent.
70.148.010	Definitions.
70.148.020	Pollution liability insurance program trust account.
70.148.025	Reinsurance for heating oil pollution liability protection program.
70.148.030	Pollution liability insurance program—Generally—Ad hoc committees.
70.148.035	Program design—Cost coverage.
70.148.040	Rules.
70.148.050	Powers and duties of director.

70.148.060	Disclosure of reports and information—Penalty.
70.148.070	Insurer selection process and criteria.
70.148.080	Cancellation or refusal by insurer—Appeal.
70.148.090	Exemptions from Title 48 RCW—Exceptions.
70.148.110	Reservation of legislative power.
70.148.120	Financial assistance for corrective actions in small communities—Intent.
70.148.130	Financial assistance—Criteria.
70.148.140	Financial assistance—Private owner or operator.
70.148.150	Financial assistance—Public owner or operator.
70.148.160	Financial assistance—Rural hospitals.
70.148.170	Certification.
70.148.900	Expiration of chapter.
70.148.901	Severability—1989 c 383.

#### **70.148.005 Finding—Intent. (Expires June 1, 2013.)**

(1) The legislature finds that:

(a) Final regulations adopted by the United States environmental protection agency (EPA) require owners and operators of underground petroleum storage tanks to demonstrate financial responsibility for accidental releases of petroleum as a precondition to continued ownership and operation of such tanks;

(b) Financial responsibility is demonstrated through the purchase of pollution liability insurance or an acceptable alternative such as coverage under a state financial responsibility program, in the amount of at least five hundred thousand dollars per occurrence and one million dollars annual aggregate depending upon the nature, use, and number of tanks owned or operated;

(c) Many owners and operators of underground petroleum storage tanks cannot purchase pollution liability insurance either because private insurance is unavailable at any price or because owners and operators cannot meet the rigid underwriting standards of existing insurers, nor can many owners and operators meet the strict regulatory standards imposed for alternatives to the purchase of insurance; and

(d) Without a state financial responsibility program for owners and operators of underground petroleum storage tanks, many tank owners and operators will be forced to discontinue the ownership and operation of these tanks.

(2) The purpose of this chapter is to create a state financial responsibility program meeting EPA standards for owners and operators of underground petroleum storage tanks in a manner that:

(a) Minimizes state involvement in pollution liability claims management and insurance administration;

(b) Protects the state of Washington from unwanted and unanticipated liability for accidental release claims;

(c) Creates incentives for private insurers to provide needed liability insurance; and

(d) Parallels generally accepted principles of insurance and risk management.

To that end, this chapter establishes a temporary program to provide pollution liability reinsurance at a price that will encourage a private insurance company or risk retention group to sell pollution liability insurance in accordance with the requirements of this chapter to owners and operators of underground petroleum storage tanks, thereby allowing the owners and operators to comply with the financial responsibility regulations of the EPA.

(3) It is not the intent of this chapter to permit owners and operators of underground petroleum storage tanks to obtain pollution liability insurance without regard to the qual-

ity or condition of their storage tanks or without regard to the risk management practices of tank owners and operators, nor is it the intent of this chapter to provide coverage or funding for past or existing petroleum releases. Further, it is the intent of the legislature that the program follow generally accepted insurance underwriting and actuarial principles and to deviate from those principles only to the extent necessary and within the tax revenue limits provided, to make pollution liability insurance reasonably affordable and available to owners and operators who meet the requirements of this chapter, particularly to those owners and operators whose underground storage tanks meet a vital economic need within the affected community. [1990 c 64 § 1; 1989 c 383 § 1.]

**70.148.010 Definitions. (Expires June 1, 2013.)**

Unless the context requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Accidental release" means any sudden or nonsudden release of petroleum arising from operating an underground storage tank that results in a need for corrective action, bodily injury, or property damage neither expected nor intended by the owner or operator.

(2) "Director" means the Washington pollution liability insurance program director.

(3) "Bodily injury" means bodily injury, sickness, or disease sustained by any person, including death at any time resulting from the injury, sickness, or disease.

(4) "Corrective action" means those actions reasonably required to be undertaken by the insured to remove, treat, neutralize, contain, or clean up an accidental release in order to comply with any statute, ordinance, rule, regulation, directive, order, or similar legal requirement of the United States, the state of Washington, or any political subdivision of the United States or the state of Washington in effect at the time of an accidental release. "Corrective action" includes, when agreed to in writing, in advance by the insurer, action to remove, treat, neutralize, contain, or clean up an accidental release to avert, reduce, or eliminate the liability of the insured for corrective action, bodily injury, or property damage. "Corrective action" also includes actions reasonably necessary to monitor, assess, and evaluate an accidental release. "Corrective action" does not include:

(a) Replacement or repair of storage tanks or other receptacles;

(b) Replacement or repair of piping, connections, and valves of storage tanks or other receptacles;

(c) Excavation or backfilling done in conjunction with (a) or (b) of this subsection; or

(d) Testing for a suspected accidental release if the results of the testing indicate that there has been no accidental release.

(5) "Defense costs" include the costs of legal representation, expert fees, and related costs and expenses incurred in defending against claims or actions brought by or on behalf of:

(a) The United States, the state of Washington, or any political subdivision of the United States or state of Washington to require corrective action or to recover costs of corrective action; or

(b) A third party for bodily injury or property damage caused by an accidental release.

(2010 Ed.)

(6) "Washington pollution liability insurance program" or "program" means the reinsurance program created by this chapter.

(7) "Insured" means the owner or operator who is provided insurance coverage in accordance with this chapter.

(8) "Insurer" means the insurance company or risk retention group licensed or qualified to do business in Washington and authorized by the director to provide insurance coverage in accordance with this chapter.

(9) "Loss reserve" means the amount traditionally set aside by commercial liability insurers for costs and expenses related to claims that have been made. "Loss reserve" does not include losses that have been incurred but not reported to the insurer.

(10) "Occurrence" means an accident, including continuous or repeated exposure to conditions, that results in a release from an underground storage tank.

(11) "Operator" means a person in control of, or having responsibility for, the daily operation of an underground storage tank.

(12) "Owner" means a person who owns an underground storage tank.

(13) "Person" means an individual, trust, firm, joint stock company, corporation (including government corporation), partnership, association, consortium, joint venture, commercial entity, state, municipality, commission, political subdivision of a state, interstate body, the federal government, or any department or agency of the federal government.

(14) "Petroleum" means crude oil or any fraction of crude oil that is liquid at standard conditions of temperature and pressure, which means at sixty degrees Fahrenheit and 14.7 pounds per square inch absolute and includes gasoline, kerosene, heating oils, and diesel fuels.

(15) "Property damage" means:

(a) Physical injury to, destruction of, or contamination of tangible property, including the loss of use of the property resulting from the injury, destruction, or contamination; or

(b) Loss of use of tangible property that has not been physically injured, destroyed, or contaminated but has been evacuated, withdrawn from use, or rendered inaccessible because of an accidental release.

(16) "Release" means the emission, discharge, disposal, dispersal, seepage, or escape of petroleum from an underground storage tank into or upon land, groundwater, surface water, subsurface soils, or the atmosphere.

(17) "Surplus reserve" means the amount traditionally set aside by commercial property and casualty insurance companies to provide financial protection from unexpected losses and to serve, in part, as a measure of an insurance company's net worth.

(18) "Tank" means a stationary device, designed to contain an accumulation of petroleum, that is constructed primarily of nonearthen materials such as wood, concrete, steel, or plastic that provides structural support.

(19) "Underground storage tank" means any one or a combination of tanks including underground pipes connected to the tank, that is used to contain an accumulation of petroleum and the volume of which (including the volume of the underground pipes connected to the tank) is ten percent or more beneath the surface of the ground. [1990 c 64 § 2; 1989 c 383 § 2.]

**70.148.020 Pollution liability insurance program trust account. (Expires June 1, 2013.)** (1) The pollution liability insurance program trust account is established in the custody of the state treasurer. All funds appropriated for this chapter and all premiums collected for reinsurance shall be deposited in the account. Expenditures from the account shall be used exclusively for the purposes of this chapter including payment of costs of administering the pollution liability insurance and underground storage tank community assistance programs. Expenditures for payment of administrative and operating costs of the agency are subject to the allotment procedures under chapter 43.88 RCW and may be made only after appropriation by statute. No appropriation is required for other expenditures from the account.

(2) Each calendar quarter, the director shall report to the insurance commissioner the loss and surplus reserves required for the calendar quarter. The director shall notify the department of revenue of this amount by the fifteenth day of each calendar quarter.

(3) Each calendar quarter the director shall determine the amount of reserves necessary to fund commitments made to provide financial assistance under RCW 70.148.130 to the extent that the financial assistance reserves do not jeopardize the operations and liabilities of the pollution liability insurance program. The director shall notify the department of revenue of this amount by the fifteenth day of each calendar quarter. The director may immediately establish an initial financial assistance reserve of five million dollars from available revenues. The director may not expend more than fifteen million dollars for the financial assistance program.

(4) During the 2005-2007 fiscal biennium, the legislature may transfer from the pollution liability insurance program trust account to the state general fund such amounts as reflect the excess fund balance of the account.

(5) This section expires June 1, 2013. [2006 c 276 § 1; 2005 c 518 § 942; 1999 c 73 § 1; 1998 c 245 § 114; 1991 sp.s. c 13 § 90; 1991 c 4 § 7; 1990 c 64 § 3; 1989 c 383 § 3.]

**Severability—Effective date—2005 c 518:** See notes following RCW 28A.500.030.

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**70.148.025 Reinsurance for heating oil pollution liability protection program. (Expires June 1, 2013.)** The director shall provide reinsurance through the pollution liability insurance program trust account to the heating oil pollution liability protection program under chapter 70.149 RCW. [1995 c 20 § 12.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**70.148.030 Pollution liability insurance program—Generally—Ad hoc committees. (Expires June 1, 2013.)**

(1) The Washington pollution liability insurance program is created as an independent agency of the state. The administrative head and appointing authority of the program shall be the director who shall be appointed by the governor, with the consent of the senate, and shall serve at the pleasure of the governor. The salary for this office shall be set by the governor pursuant to RCW 43.03.040. The director shall appoint a deputy director. The director, deputy director, and up to three other employees are exempt from the civil service law, chapter 41.06 RCW.

(2) The director shall employ such other staff as are necessary to fulfill the responsibilities and duties of the director. The staff is subject to the civil service law, chapter 41.06 RCW. In addition, the director may contract with third parties for services necessary to carry out its activities where this will promote economy, avoid duplication of effort, and make best use of available expertise. To the extent necessary to protect the state from unintended liability and ensure quality program and contract design, the director shall contract with an organization or organizations with demonstrated experience and ability in managing and designing pollution liability insurance and with an organization or organizations with demonstrated experience and ability in managing and designing pollution liability reinsurance. The director shall enter into such contracts after competitive bid but need not select the lowest bid. Any such contractor or consultant is prohibited from releasing, publishing, or otherwise using any information made available to it under its contractual responsibility without specific permission of the program director. The director may call upon other agencies of the state to provide technical support and available information as necessary to assist the director in meeting the director's responsibilities under this chapter. Agencies shall supply this support and information as promptly as circumstances permit.

(3) The director may appoint ad hoc technical advisory committees to obtain expertise necessary to fulfill the purposes of this chapter. [1994 sp.s. c 9 § 805; 1990 c 64 § 4; 1989 c 383 § 4.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**70.148.035 Program design—Cost coverage. (Expires June 1, 2013.)** The director may design the program to cover the costs incurred in determining whether a proposed applicant for pollution insurance under the program meets the underwriting standards of the insurer. In covering such costs the director shall consider the financial resources of the applicant, shall take into consideration the economic impact of the discontinued use of the applicant's storage tank upon the affected community, shall provide coverage within the revenue limits provided under this chapter, and shall limit coverage of such costs to the extent that coverage would be detrimental to providing affordable insurance under the program. [1990 c 64 § 11.]

**70.148.040 Rules. (Expires June 1, 2013.)** The director may adopt rules consistent with this chapter to carry out the purposes of this chapter. All rules shall be adopted in accordance with chapter 34.05 RCW. [1990 c 64 § 5; 1989 c 383 § 5.]

**70.148.050 Powers and duties of director. (Expires June 1, 2013.)** The director has the following powers and duties:

(1) To design and from time to time revise a reinsurance contract providing coverage to an insurer meeting the requirements of this chapter. Before initially entering into a reinsurance contract, the director shall prepare an actuarial report describing the various reinsurance methods considered by the director and describing each method's costs. In designing the reinsurance contract the director shall consider

common insurance industry reinsurance contract provisions and shall design the contract in accordance with the following guidelines:

(a) The contract shall provide coverage to the insurer for the liability risks of owners and operators of underground storage tanks for third party bodily injury and property damage and corrective action that are underwritten by the insurer.

(b) In the event of an insolvency of the insurer, the reinsurance contract shall provide reinsurance payable directly to the insurer or to its liquidator, receiver, or successor on the basis of the liability of the insurer in accordance with the reinsurance contract. In no event may the program be liable for or provide coverage for that portion of any covered loss that is the responsibility of the insurer whether or not the insurer is able to fulfill the responsibility.

(c) The total limit of liability for reinsurance coverage shall not exceed one million dollars per occurrence and two million dollars annual aggregate for each policy underwritten by the insurer less the ultimate net loss retained by the insurer as defined and provided for in the reinsurance contract.

(d) Disputes between the insurer and the insurance program shall be settled through arbitration.

(2) To design and implement a structure of periodic premiums due the director from the insurer that takes full advantage of revenue collections and projected revenue collections to ensure affordable premiums to the insured consistent with sound actuarial principles.

(3) To periodically review premium rates for reinsurance to determine whether revenue appropriations supporting the program can be reduced without substantially increasing the insured's premium costs.

(4) To solicit bids from insurers and select an insurer to provide pollution liability insurance to owners and operators of underground storage tanks for third party bodily injury and property damage and corrective action.

(5) To monitor the activities of the insurer to ensure compliance with this chapter and protect the program from excessive loss exposure resulting from claims mismanagement by the insurer.

(6) To monitor the success of the program and periodically make such reports and recommendations to the legislature as the director deems appropriate, and to annually publish a financial report on the pollution liability insurance program trust account showing, among other things, administrative and other expenses paid from the fund.

(7) To annually report the financial and loss experience of the insurer as to policies issued under the program and the financial and loss experience of the program to the legislature.

(8) To enter into contracts with public and private agencies to assist the director in his or her duties to design, revise, monitor, and evaluate the program and to provide technical or professional assistance to the director.

(9) To examine the affairs, transactions, accounts, records, documents, and assets of insurers as the director deems advisable. [2006 c 276 § 2; 1998 c 245 § 115; 1995 c 12 § 1; 1990 c 64 § 6; 1989 c 383 § 6.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

(2010 Ed.)

**70.148.060 Disclosure of reports and information—Penalty. (Expires June 1, 2013.)** (1) All examination and proprietary reports and information obtained by the director and the director's staff in soliciting bids from insurers and in monitoring the insurer selected by the director shall not be made public or otherwise disclosed to any person, firm, corporation, agency, association, governmental body, or other entity.

(2) Subsection (1) of this section notwithstanding, the director may furnish all or part of examination reports prepared by the director or by any person, firm, corporation, association, or other entity preparing the reports on behalf of the director to:

(a) The Washington state insurance commissioner;

(b) A person or organization officially connected with the insurer as officer, director, attorney, auditor, or independent attorney or independent auditor; and

(c) The attorney general in his or her role as legal advisor to the director.

(3) Subsection (1) of this section notwithstanding, the director may furnish all or part of the examination or proprietary reports or information obtained by the director to:

(a) The Washington state insurance commissioner; and

(b) A person, firm, corporation, association, governmental body, or other entity with whom the director has contracted for services necessary to perform his or her official duties.

(4) Examination reports and proprietary information obtained by the director and the director's staff are not subject to public disclosure under chapter 42.56 RCW.

(5) A person who violates any provision of this section is guilty of a gross misdemeanor. [2005 c 274 § 341; 1990 c 64 § 7; 1989 c 383 § 7.]

**Part headings not law—Effective date—2005 c 274:** See RCW 42.56.901 and 42.56.902.

**70.148.070 Insurer selection process and criteria. (Expires June 1, 2013.)** (1) In selecting an insurer to provide pollution liability insurance coverage to owners and operators of underground storage tanks, the director shall evaluate bids based upon criteria established by the director that shall include:

(a) The insurer's ability to underwrite pollution liability insurance;

(b) The insurer's ability to settle pollution liability claims quickly and efficiently;

(c) The insurer's estimate of underwriting and claims adjustment expenses;

(d) The insurer's estimate of premium rates for providing coverage;

(e) The insurer's ability to manage and invest premiums; and

(f) The insurer's ability to provide risk management guidance to insureds.

The director shall select the bidder most qualified to provide insurance consistent with this chapter and need not select the bidder submitting the least expensive bid. The director may consider bids by groups of insurers and management companies who propose to act in concert in providing coverage and who otherwise meet the requirements of this chapter.

(2) The successful bidder shall agree to provide liability insurance coverage to owners and operators of underground storage tanks for third party bodily injury and property damage and corrective action consistent with the following minimum standards:

(a) The insurer shall provide coverage for defense costs.

(b) The insurer shall collect a deductible from the insured for corrective action in an amount approved by the director.

(c) The insurer shall provide coverage for accidental releases in the amount of five hundred thousand dollars per occurrence and one million dollars annual aggregate but no more than one million dollars per occurrence and two million dollars annual aggregate exclusive of defense costs.

(d) The insurer shall require insurance applicants to meet at least the following underwriting standards before issuing coverage to the applicant:

(i) The applicant must be in compliance with statutes, ordinances, rules, regulations, and orders governing the ownership and operation of underground storage tanks as identified by the director by rule; and

(ii) The applicant must exercise adequate underground storage tank risk management as specified by the director by rule.

(e) The insurer may exclude coverage for losses arising before the effective date of coverage, and the director may adopt rules establishing standards for determining whether a loss was incurred before the effective date of coverage.

(f) The insurer may exclude coverage for bodily injury, property damage, and corrective action as permitted by the director by rule.

(g) The insurer shall use a variable rate schedule approved by the director taking into account tank type, tank age, and other factors specified by the director.

(3) The director shall adopt all rules necessary to implement this section. In developing and adopting rules governing rates, deductibles, underwriting standards, and coverage conditions, limitations, and exclusions, the director shall balance the owner and operator's need for coverage with the need to maintain the actuarial integrity of the program, shall take into consideration the economic impact of the discontinued use of a storage tank upon the affected community, and shall consult with the \*standing technical advisory committee established under RCW 70.148.030(3). In developing and adopting rules governing coverage exclusions affecting corrective action, the director shall consult with the Washington state department of ecology.

(4) Notwithstanding the definitions contained in RCW 70.148.010, the director may permit an insurer to use different words or phrases describing the coverage provided under the program. In permitting such deviations from the definitions contained in RCW 70.148.010, the director shall consider the regulations adopted by the United States environmental protection agency requiring financial responsibility by owners and operators of underground petroleum storage tanks.

(5) Owners and operators of underground storage tanks or sites containing underground storage tanks where a preexisting release has been identified or where the owner or operator knows of a preexisting release are eligible for coverage under the program subject to the following conditions:

(a) The owner or operator must have a plan for proceeding with corrective action; and

(b) If the owner or operator files a claim with the insurer, the owner or operator has the burden of proving that the claim is not related to a preexisting release until the owner or operator demonstrates to the satisfaction of the director that corrective action has been completed.

(6) When a reinsurance contract has been entered into by the agency and insurance companies, the director shall notify the department of ecology of the letting of the contract. Within thirty days of that notification, the department of ecology shall notify all known owners and operators of petroleum underground storage tanks that appropriate levels of financial responsibility must be established by October 26, 1990, in accordance with federal environmental protection agency requirements, and that insurance under the program is available. All owners and operators of petroleum underground storage tanks must also be notified that declaration of method of financial responsibility or intent to seek to be insured under the program must be made to the state by November 1, 1990. If the declaration of method of financial responsibility is not made by November 1, 1990, the department of ecology shall, pursuant to chapter 90.76 RCW, prohibit the owner or operator of an underground storage tank from obtaining a tank tag or receiving petroleum products until such time as financial responsibility has been established. [1990 c 64 § 8; 1989 c 383 § 8.]

*\*Reviser's note:* The "standing technical advisory committee" was abolished by 1994 sp.s. c 9 § 805 and in its place the director was given authority to appoint ad hoc technical advisory committees.

**70.148.080 Cancellation or refusal by insurer—Appeal. (Expires June 1, 2013.)** If the insurer cancels or refuses to issue or renew a policy, the affected owner or operator may appeal the insurer's decision to the director. The director shall conduct a brief adjudicative proceeding under chapter 34.05 RCW. [1990 c 64 § 9; 1989 c 383 § 9.]

**70.148.090 Exemptions from Title 48 RCW—Exceptions. (Expires June 1, 2013.)** (1) The activities and operations of the program are exempt from the provisions and requirements of Title 48 RCW and to the extent of their participation in the program, the activities and operations of the insurer selected by the director to provide liability insurance coverage to owners and operators of underground storage tanks are exempt from the requirements of Title 48 RCW except for:

- (a) Chapter 48.03 RCW pertaining to examinations;
- (b) RCW 48.05.250 pertaining to annual reports;
- (c) Chapter 48.12 RCW pertaining to assets and liabilities;
- (d) Chapter 48.13 RCW pertaining to investments;
- (e) Chapter 48.30 RCW pertaining to deceptive, false, or fraudulent acts or practices; and
- (f) Chapter 48.92 RCW pertaining to liability risk retention.

(2) To the extent of their participation in the program, the insurer selected by the director to provide liability insurance coverage to owners and operators of underground storage tanks shall not participate in the Washington insurance guaranty association nor shall the association be liable for cover-

age provided to owners and operators of underground storage tanks issued in connection with the program. [1990 c 64 § 10; 1989 c 383 § 10.]

**70.148.110 Reservation of legislative power. (Expires June 1, 2013.)** The legislature reserves the right to amend or repeal all or any part of this chapter at any time, and there is no vested right of any kind against such amendment or repeal. All the rights, privileges, or immunities conferred by this chapter or any acts done under it exist subject to the power of the legislature to amend or repeal this chapter at any time. [1989 c 383 § 12.]

**70.148.120 Financial assistance for corrective actions in small communities—Intent. (Expires June 1, 2013.)** The legislature recognizes as a fundamental government purpose the need to protect the environment and human health and safety. To that end the state has enacted laws designed to limit and prevent environmental damage and risk to public health and safety caused by underground petroleum storage tank leaks. Because of the costs associated with compliance with such laws and the high costs associated with correcting past environmental damage, many owners and operators of underground petroleum storage tanks have discontinued the use of or have planned to discontinue the use of such tanks. As a consequence, isolated communities face the loss of their source of motor vehicle fuel and face the risk that the owner or operator will have insufficient funds to take corrective action for pollution caused by past leaks from the tanks. In particular, rural communities face the risk that essential emergency, medical, fire and police services may be disrupted through the diminution or elimination of local sellers of petroleum products and by the closure of underground storage tanks owned by local government entities serving these communities.

The legislature also recognizes as a fundamental government purpose the need to preserve a minimum level of economic viability in rural communities so that public revenues generated from economic activity are sufficient to sustain necessary governmental functions. The closing of local service stations adversely affects local economies by reducing or eliminating reasonable access to fuel for agricultural, commercial, recreational, and transportation needs.

The legislature intends to assist small communities within this state by authorizing:

(1) Cities, towns, and counties to certify that a local private owner or operator of an underground petroleum storage tank meets a vital local government, public health or safety need thereby qualifying the owner or operator for state financial assistance in complying with environmental regulations and assistance in taking needed corrective action for existing tank leaks; and

(2) Local government entities to obtain state financial assistance to bring local government underground petroleum storage tanks into compliance with environmental regulations and to take needed corrective action for existing tank leaks. [2005 c 428 § 1; 1991 c 4 § 1.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**70.148.130 Financial assistance—Criteria. (Expires June 1, 2013.)** (1) Subject to the conditions and limitations of RCW 70.148.120 through 70.148.170, the director shall establish and manage a program for providing financial assistance to public and private owners and operators of underground storage tanks who have been certified by the governing body of the county, city, or town in which the tanks are located as meeting a vital local government, public health or safety need. In providing such financial assistance the director shall:

(a) Require owners and operators, including local government owners and operators, to demonstrate serious financial hardship;

(b) Limit assistance to only that amount necessary to supplement applicant financial resources;

(c) Limit assistance to no more than two hundred thousand dollars in value for any one underground storage tank site of which amount no more than seventy-five thousand dollars in value may be provided for corrective action; and

(d) Whenever practicable, provide assistance through the direct payment of contractors and other professionals for labor, materials, and other services.

(2)(a) Except as otherwise provided in RCW 70.148.120 through 70.148.170, no grant of financial assistance may be used for any purpose other than for corrective action and repair, replacement, reconstruction, and improvement of underground storage tanks and tank sites. If at any time prior to providing financial assistance or in the course of providing such assistance, it appears to the director that corrective action costs may exceed seventy-five thousand dollars, the director may not provide further financial assistance until the owner or operator has developed and implemented a corrective action plan with the department of ecology.

(b) A grant of financial assistance may also be made to an owner or operator that has discontinued using underground petroleum storage tanks due to economic hardship. An owner or operator may receive a grant up to two hundred thousand dollars per retailing location if:

(i) The property is located in an underserved rural area;

(ii) The property was previously used by a private owner or operator to provide motor vehicle fuel; and

(iii) The property is at least ten miles from the nearest motor vehicle fuel service station.

(3) When requests for financial assistance exceed available funds, the director shall give preference to providing assistance first to those underground storage tank sites which constitute the sole source of petroleum products in remote rural communities.

(4) The director shall consult with the department of ecology in approving financial assistance for corrective action to ensure compliance with regulations governing underground petroleum storage tanks and corrective action.

(5) The director shall approve or disapprove applications for financial assistance within sixty days of receipt of a completed application meeting the requirements of RCW 70.148.120 through 70.148.170. The certification by local government of an owner or operator shall not preclude the director from disapproving an application for financial assistance if the director finds that such assistance would not meet the purposes of RCW 70.148.120 through 70.148.170.

(6) The director may adopt all rules necessary to implement the financial assistance program and shall consult with the technical advisory committee established under RCW 70.148.030 in developing such rules and in reviewing applications for financial assistance. [2005 c 428 § 2; 1991 c 4 § 2.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**70.148.140 Financial assistance—Private owner or operator. (Expires June 1, 2013.)** (1) To qualify for financial assistance, a private owner or operator retailing petroleum products to the public must:

(a) First apply for insurance from the pollution liability insurance program and request financial assistance in a form and manner required by the director;

(b) If the director makes a preliminary determination of possible eligibility for financial assistance, apply to the appropriate governing body of the city or town in which the tanks are located or in the case where the tanks are located outside of the jurisdiction of a city or town, then to the appropriate governing body of the county in which the tanks are located, for a determination by the governing body of the city, town, or county that the continued operation of the tanks meets a vital local government, or public health or safety need; and

(c) Qualify for insurance coverage from the pollution liability insurance program if such financial assistance were to be provided.

(2) In consideration for financial assistance and prior to receiving such assistance the owner and operator must enter into an agreement with the state whereby the owner and operator agree:

(a) To sell petroleum products to the public;

(b) To maintain the tank site for use in the retail sale of petroleum products for a period of not less than fifteen years from the date of agreement;

(c) To sell petroleum products to local government entities within the affected community on a cost-plus basis periodically negotiated between the owner and operator and the city, town, or county in which the tanks are located; and

(d) To maintain compliance with state underground storage tank financial responsibility and environmental regulations.

(3) The agreement shall be filed as a real property lien against the tank site with the county auditor [of the county] in which the tanks are located. If the owner or operator transfers his or her interest in such property, the new owner or operator must agree to abide by the agreement or any financial assistance provided under RCW 70.148.120 through 70.148.170 shall be immediately repaid to the state by the owner or operator who received such assistance.

(4) As determined by the director, if an owner or operator materially breaches the agreement, any financial assistance provided shall be immediately repaid by such owner or operator.

(5) The agreement between an owner and operator and the state required under this section shall expire fifteen years from the date of entering into the agreement. [1991 c 4 § 3.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**70.148.150 Financial assistance—Public owner or operator. (Expires June 1, 2013.)** (1) To qualify for financial assistance, a public owner or operator must:

(a) First apply for insurance from the pollution liability insurance program and request financial assistance in a form and manner required by the director;

(b) Provide to the director a copy of the resolution by the governing body of the city, town, or county having jurisdiction, finding that the continued operation of the tanks is necessary to maintain vital local public health, education, or safety needs;

(c) Qualify for insurance coverage from the pollution liability insurance program if such financial assistance were to be provided.

(2) The director shall give priority to and shall encourage local government entities to consolidate multiple operational underground storage tank sites into as few sites as possible. For this purpose, the director may provide financial assistance for the establishment of a new local government underground storage tank site contingent upon the closure of other operational sites in accordance with environmental regulations. Within the per site financial limits imposed under RCW 70.148.120 through 70.148.170, the director may authorize financial assistance for the closure of operational sites when closure is for the purpose of consolidation. [1991 c 4 § 4.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**70.148.160 Financial assistance—Rural hospitals. (Expires June 1, 2013.)** To qualify for financial assistance, a rural hospital as defined in \*RCW 18.89.020, owning or operating an underground storage tank must:

(1) First apply for insurance from the pollution liability insurance program and request financial assistance in a form and manner required by the director;

(2) Apply to the governing body of the city, town, or county in which the hospital is located for certification that the continued operation of the tank or tanks is necessary to maintain vital local public health or safety needs;

(3) Qualify for insurance coverage from the pollution liability insurance program if such financial assistance were to be provided; and

(4) Agree to provide charity care as defined in \*\*RCW 70.39.020 in an amount of equivalent value to the financial assistance provided under RCW 70.148.120 through 70.148.170. The director shall consult with the department of health to monitor and determine the time period over which such care should be expected to be provided in the local community. [1991 c 4 § 5.]

**Reviser's note:** \*(1) RCW 18.89.020 was amended by 1997 c 334 § 3, deleting the definition of "rural hospital."

\*\*\*(2) RCW 70.39.020 was repealed by 1982 c 223 § 10, effective June 30, 1990.

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**70.148.170 Certification. (Expires June 1, 2013.)** (1) The director shall develop and distribute to appropriate cities, towns, and counties a form for use by the local government in making the certification required for all private owner and operator financial assistance along with instructions on the use of such form.

(2) In certifying a private owner or operator retailing petroleum products to the public as meeting vital local government, public health or safety needs, the local government shall:

(a) Consider and find that other retail suppliers of petroleum products are located remote from the local community;

(b) Consider and find that the owner or operator requesting certification is capable of faithfully fulfilling the agreement required for financial assistance;

(c) Designate the local government official who will be responsible for negotiating the price of petroleum products to be sold on a cost-plus basis to the local government entities in the affected communities and the entities eligible to receive petroleum products at such price; and

(d) State the vital need or needs that the owner or operator meets.

(3) In certifying a hospital as meeting local public health and safety needs the local government shall:

(a) Consider and find that the continued use of the underground storage tank by the hospital is necessary; and

(b) Consider and find that the hospital provides health care services to the poor and otherwise provides charity care.

(4) The director shall notify the governing body of the city, town, or county providing certification when financial assistance for a private owner or operator has been approved. [1991 c 4 § 6.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**70.148.900 Expiration of chapter.** This chapter shall expire June 1, 2013. [2006 c 276 § 3; 2000 c 16 § 1; 1995 c 12 § 2; 1989 c 383 § 13.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**70.148.901 Severability—1989 c 383. (Expires June 1, 2013.)** If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1989 c 383 § 20.]

## Chapter 70.149 RCW

### HEATING OIL POLLUTION LIABILITY PROTECTION ACT

#### Sections

70.149.010	Intent—Findings.
70.149.020	Short title.
70.149.030	Definitions.
70.149.040	Duties of director.
70.149.050	Selection of insurer to provide pollution liability insurance—Eligibility for coverage.
70.149.060	Exemptions from Title 48 RCW—Exceptions.
70.149.070	Heating oil pollution liability trust account.
70.149.080	Pollution liability insurance fee.
70.149.090	Confidentiality.
70.149.100	Application of RCW 19.86.020 through 19.86.060.
70.149.120	Heating oil tanks—Design criteria—Reimbursement.
70.149.900	Expiration of chapter.
70.149.901	Severability—1995 c 20.

**70.149.010 Intent—Findings. (Expires June 1, 2013.)** It is the intent of the legislature to establish a temporary regulatory program to assist owners and operators of heating oil tanks. The legislature finds that it is in the best interests of all citizens for heating oil tanks to be operated safely and for

tank leaks or spills to be dealt with expeditiously. The legislature further finds that it is necessary to protect tank owners from the financial hardship related to damaged heating oil tanks. The problem is especially acute because owners and operators of heating oil tanks used for space heating have been unable to obtain pollution liability insurance or insurance has been unaffordable. [1995 c 20 § 1.]

**70.149.020 Short title. (Expires June 1, 2013.)** This chapter may be known and cited as the Washington state heating oil pollution liability protection act. [1995 c 20 § 2.]

**70.149.030 Definitions. (Expires June 1, 2013.)** Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Accidental release" means a sudden or nonsudden release of heating oil, occurring after July 23, 1995, from operating a heating oil tank that results in bodily injury, property damage, or a need for corrective action, neither expected nor intended by the owner or operator.

(2) "Bodily injury" means bodily injury, sickness, or disease sustained by a person, including death at any time, resulting from the injury, sickness, or disease.

(3)(a) "Corrective action" means those actions reasonably required to be undertaken by the insured to remove, treat, neutralize, contain, or clean up an accidental release in order to comply with a statute, ordinance, rule, regulation, directive, order, or similar legal requirement, in effect at the time of an accidental release, of the United States, the state of Washington, or a political subdivision of the United States or the state of Washington. "Corrective action" includes, where agreed to in writing, in advance by the insurer, action to remove, treat, neutralize, contain, or clean up an accidental release to avert, reduce, or eliminate the liability of the insured for corrective action, bodily injury, or property damage. "Corrective action" also includes actions reasonably necessary to monitor, assess, and evaluate an accidental release.

(b) "Corrective action" does not include:

(i) Replacement or repair of heating oil tanks or other receptacles; or

(ii) Replacement or repair of piping, connections, and valves of tanks or other receptacles.

(4) "Defense costs" include the costs of legal representation, expert fees, and related costs and expenses incurred in defending against claims or actions brought by or on behalf of:

(a) The United States, the state of Washington, or a political subdivision of the United States or state of Washington to require corrective action or to recover costs of corrective action; or

(b) A third party for bodily injury or property damage caused by an accidental release.

(5) "Director" means the director of the Washington state pollution liability insurance agency or the director's appointed representative.

(6) "Heating oil" means any petroleum product used for space heating in oil-fired furnaces, heaters, and boilers, including stove oil, diesel fuel, or kerosene. "Heating oil" does not include petroleum products used as fuels in motor vehicles, marine vessels, trains, buses, aircraft, or any off-

highway equipment not used for space heating, or for industrial processing or the generation of electrical energy.

(7) "Heating oil tank" means a tank and its connecting pipes, whether above or below ground, or in a basement, with pipes connected to the tank for space heating of human living or working space on the premises where the tank is located. "Heating oil tank" does not include a decommissioned or abandoned heating oil tank, or a tank used solely for industrial process heating purposes or generation of electrical energy.

(8) "Occurrence" means an accident, including continuous or repeated exposure to conditions, that results in a release from a heating oil tank.

(9) "Owner or operator" means a person in control of, or having responsibility for, the daily operation of a heating oil tank.

(10) "Pollution liability insurance agency" means the Washington state pollution liability insurance agency.

(11) "Property damage" means:

(a) Physical injury to, destruction of, or contamination of tangible property, including the loss of use of the property resulting from the injury, destruction, or contamination; or

(b) Loss of use of tangible property that has not been physically injured, destroyed, or contaminated but has been evacuated, withdrawn from use, or rendered inaccessible because of an accidental release.

(12) "Release" means a spill, leak, emission, escape, or leaching into the environment.

(13) "Remedial action costs" means reasonable costs that are attributable to or associated with a remedial action.

(14) "Tank" means a stationary device, designed to contain an accumulation of heating oil, that is constructed primarily of nonearthen materials such as concrete, steel, fiberglass, or plastic that provides structural support.

(15) "Third-party liability" means the liability of a heating oil tank owner to another person due to property damage or personal injury that results from a leak or spill. [1995 c 20 § 3.]

**70.149.040 Duties of director. (Expires June 1, 2013.)**

The director shall:

(1) Design a program, consistent with RCW 70.149.120, for providing pollution liability insurance for heating oil tanks that provides up to sixty thousand dollars per occurrence coverage and aggregate limits, and protects the state of Washington from unwanted or unanticipated liability for accidental release claims;

(2) Administer, implement, and enforce the provisions of this chapter. To assist in administration of the program, the director is authorized to appoint up to two employees who are exempt from the civil service law, chapter 41.06 RCW, and who shall serve at the pleasure of the director;

(3) Administer the heating oil pollution liability trust account, as established under RCW 70.149.070;

(4) Employ and discharge, at his or her discretion, agents, attorneys, consultants, companies, organizations, and employees as deemed necessary, and to prescribe their duties and powers, and fix their compensation;

(5) Adopt rules under chapter 34.05 RCW as necessary to carry out the provisions of this chapter;

(6) Design and from time to time revise a reinsurance contract providing coverage to an insurer or insurers meeting the requirements of this chapter. The director is authorized to provide reinsurance through the pollution liability insurance program trust account;

(7) Solicit bids from insurers and select an insurer to provide pollution liability insurance for third-party bodily injury and property damage, and corrective action to owners and operators of heating oil tanks;

(8) Register, and design a means of accounting for, operating heating oil tanks;

(9) Implement a program to provide advice and technical assistance to owners and operators of active and abandoned heating oil tanks if contamination from an active or abandoned heating oil tank is suspected. Advice and assistance regarding administrative and technical requirements may include observation of testing or site assessment and review of the results of reports. If the director finds that contamination is not present or that the contamination is apparently minor and not a threat to human health or the environment, the director may provide written opinions and conclusions on the results of the investigation to owners and operators of active and abandoned heating oil tanks. The agency is authorized to collect, from persons requesting advice and assistance, the costs incurred by the agency in providing such advice and assistance. The costs may include travel costs and expenses associated with review of reports and preparation of written opinions and conclusions. Funds from cost reimbursement must be deposited in the heating oil pollution liability trust account. The state of Washington, the pollution liability insurance agency, and its officers and employees are immune from all liability, and no cause of action arises from any act or omission in providing, or failing to provide, such advice, opinion, conclusion, or assistance;

(10) Establish a public information program to provide information regarding liability, technical, and environmental requirements associated with active and abandoned heating oil tanks;

(11) Monitor agency expenditures and seek to minimize costs and maximize benefits to ensure responsible financial stewardship;

(12) Study if appropriate user fees to supplement program funding are necessary and develop recommendations for legislation to authorize such fees. [2009 c 560 § 11; 2007 c 240 § 1; 2004 c 203 § 1; 1997 c 8 § 1; 1995 c 20 § 4.]

**Intent—Effective date—Disposition of property and funds—Assignment/delegation of contractual rights or duties—2009 c 560:** See notes following RCW 18.06.080.

**Application—2007 c 240:** See note following RCW 70.149.120.

**70.149.050 Selection of insurer to provide pollution liability insurance—Eligibility for coverage. (Expires June 1, 2013.)**

(1) In selecting an insurer to provide pollution liability insurance coverage to owners and operators of heating oil tanks used for space heating, the director shall evaluate bids based upon criteria established by the director that shall include:

(a) The insurer's ability to underwrite pollution liability insurance;

(b) The insurer's ability to settle pollution liability claims quickly and efficiently;

(c) The insurer's estimate of underwriting and claims adjustment expenses;

(d) The insurer's estimate of premium rates for providing coverage;

(e) The insurer's ability to manage and invest premiums; and

(f) The insurer's ability to provide risk management guidance to insureds.

(2) The director shall select the bidder most qualified to provide insurance consistent with this chapter and need not select the bidder submitting the least expensive bid. The director may consider bids by groups of insurers and management companies who propose to act in concert in providing coverage and who otherwise meet the requirements of this chapter.

(3) Owners and operators of heating oil tanks, or sites containing heating oil tanks where a preexisting release has been identified or where the owner or operator knows of a preexisting release are eligible for coverage under the program subject to the following conditions:

(a) The owner or operator must have a plan for proceeding with corrective action; and

(b) If the owner or operator files a claim with the insurer, the owner or operator has the burden of proving that the claim is not related to a preexisting release until the owner or operator demonstrates to the satisfaction of the director that corrective action has been completed. [1995 c 20 § 5.]

**70.149.060 Exemptions from Title 48 RCW—Exceptions. (Expires June 1, 2013.)** (1) The activities and operations of the program are exempt from the provisions and requirements of Title 48 RCW and to the extent of their participation in the program, the activities and operations of the insurer selected by the director to provide liability insurance coverage to owners and operators of heating oil tanks are exempt from the requirements of Title 48 RCW except for:

(a) Chapter 48.03 RCW pertaining to examinations;

(b) RCW 48.05.250 pertaining to annual reports;

(c) Chapter 48.12 RCW pertaining to assets and liabilities;

(d) Chapter 48.13 RCW pertaining to investments;

(e) Chapter 48.30 RCW pertaining to deceptive, false, or fraudulent acts or practices; and

(f) Chapter 48.92 RCW pertaining to liability risk retention.

(2) To the extent of their participation in the program, the insurer selected by the director to provide liability insurance coverage to owners and operators of heating oil tanks shall not participate in the Washington insurance guaranty association nor shall the association be liable for coverage provided to owners and operators of heating oil tanks issued in connection with the program. [1995 c 20 § 6.]

**70.149.070 Heating oil pollution liability trust account. (Expires June 1, 2013.)** (1) The heating oil pollution liability trust account is created in the custody of the state treasurer. All receipts from the pollution liability insurance fee collected under RCW 70.149.080 and reinsurance premiums shall be deposited into the account. Expenditures from the account may be used only for the purposes set out under

(2010 Ed.)

this chapter. Only the director or the director's designee may authorize expenditures from the account. The account is subject to allotment procedures under chapter 43.88 RCW, but no appropriation is required for expenditures. Any residue in the account in excess of funds needed to meet administrative costs for January of the following year shall be transferred at the end of the calendar year to the pollution liability insurance program trust account.

(2) Money in the account may be used by the director for the following purposes:

(a) Corrective action costs;

(b) Third-party liability claims;

(c) Costs associated with claims administration;

(d) Purchase of an insurance policy to cover all registered heating oil tanks, and reinsurance of the policy; and

(e) Administrative expenses of the program, including personnel, equipment, supplies, and providing advice and technical assistance. [2004 c 203 § 2; 1997 c 8 § 2; 1995 c 20 § 7.]

**70.149.080 Pollution liability insurance fee. (Expires June 1, 2013.)** (1) A pollution liability insurance fee of one and two-tenths cents per gallon of heating oil purchased within the state shall be imposed on every special fuel dealer, as the term is defined in chapter 82.38 RCW, making sales of heating oil to a user or consumer.

(2) The pollution liability insurance fee shall be remitted by the special fuel dealer to the department of licensing.

(3) The fee proceeds shall be used for the specific regulatory purposes of this chapter.

(4) The fee imposed by this section shall not apply to heating oil exported or sold for export from the state. [2004 c 203 § 3; 1995 c 20 § 8.]

**Effective date—2004 c 203 § 3:** "Section 3 of this act takes effect July 1, 2004." [2004 c 203 § 5.]

**70.149.090 Confidentiality. (Expires June 1, 2013.)** The following shall be confidential and exempt under chapter 42.56 RCW, subject to the conditions set forth in this section:

(1) All examination and proprietary reports and information obtained by the director and the director's staff in soliciting bids from insurers and in monitoring the insurer selected by the director may not be made public or otherwise disclosed to any person, firm, corporation, agency, association, governmental body, or other entity.

(2) All information obtained by the director or the director's staff related to registration of heating oil tanks to be insured may not be made public or otherwise disclosed to any person, firm, corporation, agency, association, governmental body, or other entity.

(3) The director may furnish all or part of examination reports prepared by the director or by any person, firm, corporation, association, or other entity preparing the reports on behalf of the director to:

(a) The Washington state insurance commissioner;

(b) A person or organization officially connected with the insurer as officer, director, attorney, auditor, or independent attorney or independent auditor; and

(c) The attorney general in his or her role as legal advisor to the director. [2005 c 274 § 342; 1995 c 20 § 9.]

**Part headings not law—Effective date—2005 c 274:** See RCW 42.56.901 and 42.56.902.

**70.149.100 Application of RCW 19.86.020 through 19.86.060. (Expires June 1, 2013.)** Nothing contained in this chapter shall authorize any commercial conduct which is prohibited by RCW 19.86.020 through 19.86.060, and no section of this chapter shall be deemed to be an implied repeal of any of those sections of the Revised Code of Washington. [1995 c 20 § 10.]

**70.149.120 Heating oil tanks—Design criteria—Reimbursement.** (1) The pollution liability insurance agency shall identify design criteria for heating oil tanks that provide superior protection against future leaks as compared to standard steel tank designs. Any tank designs identified under this section must either be constructed with fiberglass or offer at least an equivalent level of protection against leaks as a standard fiberglass design.

(2) The pollution liability insurance agency shall reimburse any owner or operator, who is participating in the program created in this chapter and who has experienced an occurrence or remedial action, for the difference in price between a standard steel heating tank and a new heating oil tank that satisfies the design standards identified under subsection (1) of this section, if the owner or operator chooses or is required to replace his or her tank at the time of the occurrence or remedial action.

(3) Any new heating oil tank reimbursement provided under this section must be funded within the amount of per occurrence coverage provided to the owner or operator under RCW 70.149.040. [2007 c 240 § 2.]

**Application—2007 c 240:** "This act applies prospectively and only to individuals who file a claim with the pollution liability insurance agency on or after July 22, 2007." [2007 c 240 § 3.]

**70.149.900 Expiration of chapter.** Sections 1 through 11 of this act shall expire June 1, 2013. [2006 c 276 § 4; 2000 c 16 § 2; 1995 c 20 § 14.]

**70.149.901 Severability—1995 c 20.** If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1995 c 20 § 16.]

## Chapter 70.150 RCW

### WATER QUALITY JOINT DEVELOPMENT ACT

#### Sections

70.150.010	Purpose—Legislative intent.
70.150.020	Definitions.
70.150.030	Agreements with service providers—Contents—Sources of funds for periodic payments under agreements.
70.150.040	Service agreements and related agreements—Procedural requirements.
70.150.050	Sale, lease, or assignment of public property to service provider—Use for services to public body.
70.150.060	Public body eligible for grants or loans—Use of grants or loans.
70.150.070	RCW 70.150.030 through 70.150.060 to be additional method of providing services.
70.150.080	Application of other chapters to service agreements under this chapter—Prevailing wages.

70.150.900 Short title.

70.150.905 Severability—1986 c 244.

**70.150.010 Purpose—Legislative intent.** The long-range health and economic and environmental goals for the state of Washington require the protection of the state's surface and underground waters for the health, safety, use, and enjoyment of its people. It is the purpose of this chapter to provide public bodies an additional means by which to provide for financing, development, and operation of water pollution control facilities needed for achievement of state and federal water pollution control requirements for the protection of the state's waters.

It is the intent of the legislature that public bodies be authorized to provide service from water pollution control facilities by means of service agreements with public or private parties as provided in this chapter. [1986 c 244 § 1.]

**70.150.020 Definitions.** Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Water pollution control facilities" or "facilities" means any facilities, systems, or subsystems owned or operated by a public body, or owned or operated by any person or entity for the purpose of providing service to a public body, for the control, collection, storage, treatment, disposal, or recycling of wastewater, including but not limited to sanitary sewage, storm water, residential wastes, commercial wastes, industrial wastes, and agricultural wastes, that are causing or threatening the degradation of subterranean or surface bodies of water due to concentrations of conventional, nonconventional, or toxic pollutants. Water pollution control facilities do not include dams or water supply systems.

(2) "Public body" means the state of Washington or any agency, county, city or town, political subdivision, municipal corporation, or quasi-municipal corporation.

(3) "Water pollution" means such contamination, or other alteration of the physical, chemical, or biological properties of any surface or subterranean waters of the state, including change in temperature, taste, color, turbidity, or odor of the waters, or such discharge of any liquid, gaseous, solid, radioactive, or other substance into any waters of the state as will or is likely to create a nuisance or render such waters harmful, detrimental, or injurious to the public health, safety, or welfare, or to domestic, commercial, industrial, agricultural, recreational, or other legitimate beneficial uses, or to livestock, wild animals, birds, fish, or other aquatic life.

(4) "Agreement" means any agreement to which a public body and a service provider are parties by which the service provider agrees to deliver service to such public body in connection with its design, financing, construction, ownership, operation, or maintenance of water pollution control facilities in accordance with this chapter.

(5) "Service provider" means any privately owned or publicly owned profit or nonprofit corporation, partnership, joint venture, association, or other person or entity that is legally capable of contracting for and providing service with respect to the design, financing, ownership, construction, operation, or maintenance of water pollution control facilities in accordance with this chapter. [1986 c 244 § 2.]

**70.150.030 Agreements with service providers—Contents—Sources of funds for periodic payments under agreements.** (1) Public bodies may enter into agreements with service providers for the furnishing of service in connection with water pollution control facilities pursuant to the process set forth in RCW 70.150.040. The agreements may provide that a public body pay a minimum periodic fee in consideration of the service actually available without regard to the amount of service actually used during all or any part of the contractual period. Agreements may be for a term not to exceed forty years or the life of the facility, whichever is longer, and may be renewable.

(2) The source of funds to meet periodic payment obligations assumed by a public body pursuant to an agreement permitted under this section may be paid from taxes, or solely from user fees, charges, or other revenues pledged to the payment of the periodic obligations, or any of these sources. [1986 c 244 § 3.]

**70.150.040 Service agreements and related agreements—Procedural requirements.** The legislative authority of a public body may secure services by means of an agreement with a service provider. Such an agreement may obligate a service provider to perform one or more of the following services: Design, finance, construct, own, operate, or maintain water pollution control facilities by which services are provided to the public body. Service agreements and related agreements under this chapter shall be entered into in accordance with the following procedure:

(1) The legislative authority of the public body shall publish notice that it is seeking to secure certain specified services by means of entering into an agreement with a service provider. The notice shall be published in the official newspaper of the public body, or if there is no official newspaper then in a newspaper in general circulation within the boundaries of the public body, at least once each week for two consecutive weeks. The final notice shall appear not less than thirty days before the date for submission of proposals. The notice shall state (a) the nature of the services needed, (b) the location in the public body's offices where the requirements and standards for construction, operation, or maintenance of projects needed as part of the services are available for inspection, and (c) the final date for the submission of proposals. The legislative authority may undertake a prequalification process by the same procedure set forth in this subsection.

(2) The request for proposals shall (a) indicate the time and place responses are due, (b) include evaluation criteria to be considered in selecting a service provider, (c) specify minimum requirements or other limitations applying to selection, (d) insofar as practicable, set forth terms and provisions to be included in the service agreement, and (e) require the service provider to demonstrate in its proposal to the public body's satisfaction that it is in the public interest to enter into the service agreement and that the service agreement is financially sound and advantageous to the public body from the standpoint of annual costs, quality of services, experience of the provider, reduction of risk, and other factors.

(3) The criteria set forth in the request for proposals shall be those determined to be relevant by the legislative authority of the public body, which may include but shall not be limited

to: The respondent's prior experience, including design, construction, or operation of other similar facilities; respondent's management capability, schedule availability, and financial resources; cost of the service; nature of facility design proposed by respondents; system reliability; performance standards required for the facilities; compatibility with existing service facilities operated by the public body or other providers of service to the public body; project performance warranties; penalty and other enforcement provisions; environmental protection measures to be used; and allocation of project risks. The legislative authority may designate persons or entities within or outside the public body (a) to assist it in issuing the request for proposals to ensure that proposals will be responsive to its needs, and (b) to assist it in evaluating the proposals received.

(4) After proposals under subsections (1) through (3) of this section have been received, the legislative authority or its designee shall determine, on the basis of its review of the proposals, whether one or more proposals have been received from respondents which are (a) determined to be qualified to provide the requested services, and (b) responsive to the notice and evaluation criteria, which shall include, but not be limited to, cost of services. These chosen respondents may, at the discretion of the public body, be aggregated into a short list of qualified respondents, who shall be referred to as the selected respondents in this section. The legislative authority or its designee shall conduct a bidder's conference to include all these selected respondents to assure a full understanding of the proposals. The bidder's conference shall make these selected respondents aware of any changes in the request for proposal. Any information related to revisions in the request for proposal shall be made available to all these selected respondents. Any selected respondent shall be accorded a reasonable opportunity for revision of its proposal prior to commencement of the negotiation provided in subsection (5) of this section, for the purpose of obtaining best and final proposals.

(5) After such conference is held, the legislative authority or its designee may negotiate with the selected respondent whose proposal it determines to be the most advantageous to the public body, considering the criteria set forth in the request for proposals. If negotiations are conducted by the designee, the legislative authority shall continue to oversee the negotiations and provide direction to its designee. If the negotiation is unsuccessful, the legislative authority may commence negotiations with any other selected respondent. On completion of this process, and after the department of ecology review and comments as provided for in subsection (9) of this section, and after public hearing as provided for in subsection (10) of this section, the legislative authority may approve a contract with its chosen respondent.

(6) Any person aggrieved by the legislative authority's approval of a contract may appeal the determination to an appeals board selected by the public body, which shall consist of not less than three persons determined by the legislative authority to be qualified for such purposes. Such board shall promptly hear and determine whether the public body entered into the agreement in accordance with this chapter and other applicable law. The board shall have the power only to affirm or void the agreement.

(7) Notwithstanding the foregoing, where contracting for design services by the public body is done separately from contracting for other services permitted under this chapter, the contracting for design services shall be done in accordance with chapter 39.80 RCW.

(8) If a public body elects to enter into an agreement whereby the service provider will own all or a portion of the water pollution control facilities it constructs, the service agreement shall include provision for an option by which a public body may acquire at fair market value facilities dedicated to such service.

(9) Before any service agreement is entered into by the public body, it shall be reviewed by the department of ecology to ensure consistency with the purposes of chapters 90.46 and 90.48 RCW.

The department of ecology has thirty days from receipt of the proposed service agreement to complete its review and provide the public body with comments. A review under this section is not intended to replace any additional permitting or regulatory reviews and approvals that may be required under other applicable laws.

(10) Prior to entering into any service agreement under this chapter, the public body must have made written findings, after holding a public hearing on the proposal, that it is in the public interest to enter into the service agreement and that the service agreement is financially sound and advantageous compared to other methods.

(11) Each service agreement shall include project performance bonds or other security by the service provider which in the judgment of the public body is sufficient to secure adequate performance by the service provider. [2005 c 469 § 1; 1989 c 175 § 136; 1986 c 244 § 4.]

*Competitive bids—Inapplicability to certain agreements: RCW 35.22.625 and 36.32.265.*

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**70.150.050 Sale, lease, or assignment of public property to service provider—Use for services to public body.** A public body may sell, lease, or assign public property for fair market value to any service provider as part of a service agreement entered into under the authority of this chapter. The property sold or leased shall be used by the provider, directly or indirectly, in providing services to the public body. Such use may include demolition, modification, or other use of the property as may be necessary to execute the purposes of the service agreement. [1986 c 244 § 5.]

**70.150.060 Public body eligible for grants or loans—Use of grants or loans.** A public body that enters into a service agreement pursuant to this chapter, under which a facility is owned wholly or partly by a service provider, shall be eligible for grants or loans to the extent permitted by law or regulation as if the entire portion of the facility dedicated to service to such public body were publicly owned. The grants or loans shall be made to and shall inure to the benefit of the public body and not the service provider. Such grants or loans shall be used by the public body for all or part of its ownership interest in the facility, and/or to defray a part of the payments it makes to the service provider under a service agreement if such uses are permitted under the grant or loan program. [1986 c 244 § 6.]

[Title 70 RCW—page 480]

**70.150.070 RCW 70.150.030 through 70.150.060 to be additional method of providing services.** RCW 70.150.030 through 70.150.060 shall be deemed to provide an additional method for the provision of services from and in connection with facilities and shall be regarded as supplemental and additional to powers conferred by other state laws and by federal laws. [2007 c 494 § 505; 2005 c 469 § 2; 1986 c 244 § 7.]

**Part headings and captions not law—Effective dates—Severability—2007 c 494:** See RCW 39.10.903 through 39.10.905.

**70.150.080 Application of other chapters to service agreements under this chapter—Prevailing wages.** (1) The provisions of chapters 39.12, 39.19, and \*39.25 RCW shall apply to a service agreement entered into under this chapter to the same extent as if the facilities dedicated to such service were owned by a public body.

(2) Subsection (1) of this section shall not be construed to apply to agreements or actions by persons or entities which are not undertaken pursuant to this chapter.

(3) Except for RCW 39.04.175, this chapter shall not be construed as a limitation or restriction on the application of Title 39 RCW to public bodies.

(4) Prevailing wages shall be established as the prevailing wage in the largest city of the county in which facilities are built. [1986 c 244 § 8.]

\*Reviser's note: Chapter 39.25 RCW was repealed by 1994 c 138 § 2.

**70.150.900 Short title.** This chapter may be cited as the water quality joint development act. [1986 c 244 § 9.]

**70.150.905 Severability—1986 c 244.** If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1986 c 244 § 18.]

## Chapter 70.155 RCW

### TOBACCO—ACCESS TO MINORS

#### Sections

70.155.005	Finding.
70.155.010	Definitions.
70.155.020	Cigarette wholesaler or retailer licensee duties—Prohibition sign to be posted.
70.155.030	Cigarette machine location.
70.155.040	Cigarettes must be sold in original package—Exception.
70.155.050	Sampling prohibited—Penalty.
70.155.070	Coupons.
70.155.080	Purchasing, possessing by persons under eighteen—Civil infraction—Jurisdiction.
70.155.090	Age identification requirement.
70.155.100	Penalties, sanctions, and actions against licensees.
70.155.110	Liquor control board authority.
70.155.120	Youth tobacco prevention account—Source and use of funds.
70.155.130	Preemption of political subdivisions.
70.155.140	Shipping or transporting tobacco products ordered or purchased by mail or through the internet prohibited—Penalty.
70.155.900	Severability—1993 c 507.

**70.155.005 Finding.** The legislature finds that while present state law prohibits the sale and distribution of tobacco to minors, youth obtain tobacco products with ease. Availability and lack of enforcement put tobacco products in the hands of youth.

Federal law requires states to enforce laws prohibiting sale and distribution of tobacco products to minors in a manner that can reasonably be expected to reduce the extent to which the products are available to minors. It is imperative to effectively reduce the sale, distribution, and availability of tobacco products to minors. [1993 c 507 § 1.]

*Minors and tobacco:* RCW 26.28.080.

*Taxation:* Chapters 82.24 and 82.26 RCW.

*Tobacco on school grounds:* RCW 28A.210.310.

**70.155.010 Definitions.** The definitions set forth in RCW 82.24.010 shall apply to this chapter. In addition, for the purposes of this chapter, unless otherwise required by the context:

(1) "Board" means the Washington state liquor control board.

(2) "Internet" means any computer network, telephonic network, or other electronic network.

(3) "Minor" refers to an individual who is less than eighteen years old.

(4) "Sample" means a tobacco product distributed to members of the general public at no cost or at nominal cost for product promotion purposes.

(5) "Sampling" means the distribution of samples to members of the public.

(6) "Tobacco product" means a product that contains tobacco and is intended for human use, including any product defined in RCW 82.24.010(2) or \*82.26.010(1), except that for the purposes of RCW 70.155.140 only, "tobacco product" does not include cigars defined in RCW 82.26.010 as to which one thousand units weigh more than three pounds. [2009 c 278 § 1; 2006 c 14 § 2; 2003 c 113 § 1; 1993 c 507 § 2.]

**Reviser's note:** \*(1) RCW 82.26.010 was alphabetized pursuant to RCW 1.08.015(2)(k), changing subsection (1) to subsection (21).

(2) In an order on motion for reconsideration and request for stay pending appeal dated September 25, 2006, the United States District Court for the Western District ruled that chapter 14, Laws of 2006 is preempted by the Federal Cigarette Labeling and Advertising Act, 15 U.S.C. Sec. 1334(b) only in application of the law to cigarette sampling. (Case No. C06-5223, W.D. Wash. 2006.)

**Finding—Intent—2006 c 14:** See note following RCW 70.155.050.

**70.155.020 Cigarette wholesaler or retailer licensee duties—Prohibition sign to be posted.** A person who holds a license issued under RCW 82.24.520 or 82.24.530 shall:

(1) Display the license or a copy in a prominent location at the outlet for which the license is issued; and

(2) Display a sign concerning the prohibition of tobacco sales to minors.

Such sign shall:

(a) Be posted so that it is clearly visible to anyone purchasing tobacco products from the licensee;

(b) Be designed and produced by the department of health to read: "THE SALE OF TOBACCO PRODUCTS TO PERSONS UNDER AGE 18 IS STRICTLY PROHIBITED BY STATE LAW. IF YOU ARE UNDER 18, YOU COULD BE PENALIZED FOR PURCHASING A TOBACCO PRODUCT; PHOTO ID REQUIRED"; and

(c) Be provided free of charge by the liquor control board. [1993 c 507 § 3.]

(2010 Ed.)

**70.155.030 Cigarette machine location.** No person shall sell or permit to be sold any tobacco product through any device that mechanically dispenses tobacco products unless the device is located fully within premises from which minors are prohibited or in industrial worksites where minors are not employed and not less than ten feet from all entrance or exit ways to and from each premise. The board shall adopt rules that allow an exception to the requirement that a device be located not less than ten feet from all entrance or exit ways to and from a premise if it is architecturally impractical for the device to be located not less than ten feet from all entrance and exit ways. [1994 c 202 § 1; 1993 c 507 § 4.]

**70.155.040 Cigarettes must be sold in original package—Exception.** No person shall sell or permit to be sold cigarettes not in the original unopened package or container to which the stamps required by RCW 82.24.060 have been affixed.

This section does not apply to the sale of loose leaf tobacco by a retail business that generates a minimum of sixty percent of annual gross sales from the sale of tobacco products. [1993 c 507 § 5.]

**70.155.050 Sampling prohibited—Penalty.** (1) No person may engage in the business of sampling tobacco products.

(2) A violation of this section is a misdemeanor. [2006 c 14 § 3; 1993 c 507 § 6.]

**Reviser's note:** In an order on motion for reconsideration and request for stay pending appeal dated September 25, 2006, the United States District Court for the Western District ruled that chapter 14, Laws of 2006 is preempted by the Federal Cigarette Labeling and Advertising Act, 15 U.S.C. Sec. 1334(b) only in application of the law to cigarette sampling. (Case No. C06-5223, W.D. Wash. 2006.)

**Finding—Intent—2006 c 14:** "The legislature recognizes that tobacco use among children is a serious and preventable health problem. Every day sixty-five more children in Washington state become smokers, and every year more than eight thousand two hundred state residents die from tobacco-related illnesses. The legislature further finds that tobacco samples contribute to children's access to tobacco products by providing a no-cost initiation that encourages minors to experiment with nicotine at early ages. Sampling activity often occurs in venues frequented by minors, and tobacco samples are distributed along with other promotional items that contain tobacco brand logos, thus increasing the appeal of the tobacco products as well as the chances that children will obtain them. Sampling events in this state have increased twenty-fold over the past nine years, and nationwide, tobacco industry spending on samples has increased significantly. It is therefore the intent of the legislature to protect minors from the influence of tobacco sampling by eliminating the distribution of samples in this state." [2006 c 14 § 1.]

**70.155.070 Coupons.** No person shall give or distribute cigarettes or other tobacco products to a person by a coupon if such coupon is redeemed in any manner that does not require an in-person transaction in a retail store. [1993 c 507 § 8.]

**70.155.080 Purchasing, possessing by persons under eighteen—Civil infraction—Jurisdiction.** (1) A person under the age of eighteen who purchases or attempts to purchase, possesses, or obtains or attempts to obtain cigarettes or tobacco products commits a class 3 civil infraction under chapter 7.80 RCW and is subject to a fine as set out in chapter 7.80 RCW or participation in up to four hours of community

restitution, or both. The court may also require participation in a smoking cessation program. This provision does not apply if a person under the age of eighteen, with parental authorization, is participating in a controlled purchase as part of a liquor control board, law enforcement, or local health department activity.

(2) Municipal and district courts within the state have jurisdiction for enforcement of this section. [2002 c 175 § 47; 1998 c 133 § 2; 1993 c 507 § 9.]

**Effective date—2002 c 175:** See note following RCW 7.80.130.

**Finding—Intent—1998 c 133:** "The legislature finds that the protection of adolescents' health requires a strong set of comprehensive health and law enforcement interventions. We know that youth are deterred from using alcohol in public because of existing laws making possession illegal. However, while the purchase of tobacco by youth is clearly prohibited, the possession of tobacco is not. It is the legislature's intent that youth hear consistent messages from public entities, including law enforcement, about public opposition to their illegal use of tobacco products." [1998 c 133 § 1.]

**70.155.090 Age identification requirement.** (1) Where there may be a question of a person's right to purchase or obtain tobacco products by reason of age, the retailer or agent thereof, shall require the purchaser to present any one of the following officially issued identification that shows the purchaser's age and bears his or her signature and photograph: (a) Liquor control authority card of identification of a state or province of Canada; (b) driver's license, instruction permit, or identification card of a state or province of Canada; (c) "identocard" issued by the Washington state department of licensing under chapter 46.20 RCW; (d) United States military identification; (e) passport; (f) enrollment card, issued by the governing authority of a federally recognized Indian tribe located in Washington, that incorporates security features comparable to those implemented by the department of licensing for Washington drivers' licenses. At least ninety days prior to implementation of an enrollment card under this subsection, the appropriate tribal authority shall give notice to the board. The board shall publish and communicate to licensees regarding the implementation of each new enrollment card; or (g) merchant marine identification card issued by the United States coast guard.

(2) It is a defense to a prosecution under RCW 26.28.080 that the person making a sale reasonably relied on any of the officially issued identification as defined in subsection (1) of this section. The liquor control board shall waive the suspension or revocation of a license if the licensee clearly establishes that he or she acted in good faith to prevent violations and a violation occurred despite the licensee's exercise of due diligence. [2006 c 14 § 4; 2005 c 206 § 2; 1993 c 507 § 10.]

**Reviser's note:** In an order on motion for reconsideration and request for stay pending appeal dated September 25, 2006, the United States District Court for the Western District ruled that chapter 14, Laws of 2006 is preempted by the Federal Cigarette Labeling and Advertising Act, 15 U.S.C. Sec. 1334(b) only in application of the law to cigarette sampling. (Case No. C06-5223, W.D. Wash. 2006.)

**Finding—Intent—2006 c 14:** See note following RCW 70.155.050.

**70.155.100 Penalties, sanctions, and actions against licensees.** (1) The liquor control board may suspend or revoke a retailer's license issued under RCW 82.24.510(1)(b) held by a business at any location, or may impose a monetary penalty as set forth in subsection (2) of this section, if the liquor control board finds that the licensee has violated RCW

26.28.080, 70.155.020, 70.155.030, 70.155.040, 70.155.050, 70.155.070, or 70.155.090.

(2) The sanctions that the liquor control board may impose against a person licensed under RCW 82.24.530 based upon one or more findings under subsection (1) of this section may not exceed the following:

(a) For violation of RCW 26.28.080 or 70.155.020:

(i) A monetary penalty of one hundred dollars for the first violation within any two-year period;

(ii) A monetary penalty of three hundred dollars for the second violation within any two-year period;

(iii) A monetary penalty of one thousand dollars and suspension of the license for a period of six months for the third violation within any two-year period;

(iv) A monetary penalty of one thousand five hundred dollars and suspension of the license for a period of twelve months for the fourth violation within any two-year period;

(v) Revocation of the license with no possibility of reinstatement for a period of five years for the fifth or more violation within any two-year period;

(b) For violations of RCW 70.155.030, a monetary penalty in the amount of one hundred dollars for each day upon which such violation occurred;

(c) For violations of RCW 70.155.040 occurring on the licensed premises:

(i) A monetary penalty of one hundred dollars for the first violation within any two-year period;

(ii) A monetary penalty of three hundred dollars for the second violation within any two-year period;

(iii) A monetary penalty of one thousand dollars and suspension of the license for a period of six months for the third violation within any two-year period;

(iv) A monetary penalty of one thousand five hundred dollars and suspension of the license for a period of twelve months for the fourth violation within any two-year period;

(v) Revocation of the license with no possibility of reinstatement for a period of five years for the fifth or more violation within any two-year period;

(d) For violations of RCW 70.155.050, a monetary penalty in the amount of three hundred dollars for each violation;

(e) For violations of RCW 70.155.070, a monetary penalty in the amount of one thousand dollars for each violation.

(3) The liquor control board may impose a monetary penalty upon any person other than a licensed cigarette retailer if the liquor control board finds that the person has violated RCW 26.28.080, 70.155.020, 70.155.030, 70.155.040, 70.155.050, 70.155.070, or 70.155.090.

(4) The monetary penalty that the liquor control board may impose based upon one or more findings under subsection (3) of this section may not exceed the following:

(a) For violation of RCW 26.28.080 or 70.155.020, fifty dollars for the first violation and one hundred dollars for each subsequent violation;

(b) For violations of RCW 70.155.030, one hundred dollars for each day upon which such violation occurred;

(c) For violations of RCW 70.155.040, one hundred dollars for each violation;

(d) For violations of RCW 70.155.050, three hundred dollars for each violation;

(e) For violations of RCW 70.155.070, one thousand dollars for each violation.

(5) The liquor control board may develop and offer a class for retail clerks and use this class in lieu of a monetary penalty for the clerk's first violation.

(6) The liquor control board may issue a cease and desist order to any person who is found by the liquor control board to have violated or intending to violate the provisions of this chapter, RCW 26.28.080 or 82.24.500, requiring such person to cease specified conduct that is in violation. The issuance of a cease and desist order shall not preclude the imposition of other sanctions authorized by this statute or any other provision of law.

(7) The liquor control board may seek injunctive relief to enforce the provisions of RCW 26.28.080 or 82.24.500 or this chapter. The liquor control board may initiate legal action to collect civil penalties imposed under this chapter if the same have not been paid within thirty days after imposition of such penalties. In any action filed by the liquor control board under this chapter, the court may, in addition to any other relief, award the liquor control board reasonable attorneys' fees and costs.

(8) All proceedings under subsections (1) through (6) of this section shall be conducted in accordance with chapter 34.05 RCW.

(9) The liquor control board may reduce or waive either the penalties or the suspension or revocation of a license, or both, as set forth in this chapter where the elements of proof are inadequate or where there are mitigating circumstances. Mitigating circumstances may include, but are not limited to, an exercise of due diligence by a retailer. Further, the board may exceed penalties set forth in this chapter based on aggravating circumstances. [2006 c 14 § 5; 1998 c 133 § 3; 1993 c 507 § 11.]

**Reviser's note:** In an order on motion for reconsideration and request for stay pending appeal dated September 25, 2006, the United States District Court for the Western District ruled that chapter 14, Laws of 2006 is preempted by the Federal Cigarette Labeling and Advertising Act, 15 U.S.C. Sec. 1334(b) only in application of the law to cigarette sampling. (Case No. C06-5223, W.D. Wash. 2006.)

**Finding—Intent—2006 c 14:** See note following RCW 70.155.050.

**Finding—Intent—1998 c 133:** See note following RCW 70.155.080.

**70.155.110 Liquor control board authority.** (1) The liquor control board shall, in addition to the board's other powers and authorities, have the authority to enforce the provisions of this chapter and \*RCW 26.28.080(4) and 82.24.500. The liquor control board shall have full power to revoke or suspend the license of any retailer or wholesaler in accordance with the provisions of RCW 70.155.100.

(2) The liquor control board and the board's authorized agents or employees shall have full power and authority to enter any place of business where tobacco products are sold for the purpose of enforcing the provisions of this chapter.

(3) For the purpose of enforcing the provisions of this chapter and \*RCW 26.28.080(4) and 82.24.500, a peace officer or enforcement officer of the liquor control board who has reasonable grounds to believe a person observed by the officer purchasing, attempting to purchase, or in possession of tobacco products is under the age of eighteen years of age, may detain such person for a reasonable period of time and in such a reasonable manner as is necessary to determine the person's true identity and date of birth. Further, tobacco

products possessed by persons under the age of eighteen years of age are considered contraband and may be seized by a peace officer or enforcement officer of the liquor control board.

(4) The liquor control board may work with local county health departments or districts and local law enforcement agencies to conduct random, unannounced, inspections to assure compliance. [1993 c 507 § 12.]

**\*Reviser's note:** RCW 26.28.080 was amended by 1994 sp.s. c 7 § 437, and no longer has numbered subsections.

**70.155.120 Youth tobacco prevention account—Source and use of funds.** (1) The youth tobacco prevention account is created in the state treasury. All fees collected pursuant to RCW 82.24.520 and 82.24.530 and funds collected by the liquor control board from the imposition of monetary penalties and samplers' fees shall be deposited into this account, except that ten percent of all such fees and penalties shall be deposited in the state general fund.

(2) Moneys appropriated from the youth tobacco prevention account to the department of health shall be used by the department of health for implementation of this chapter, including collection and reporting of data regarding enforcement and the extent to which access to tobacco products by youth has been reduced.

(3) The department of health shall enter into interagency agreements with the liquor control board to pay the costs incurred, up to thirty percent of available funds, in carrying out its enforcement responsibilities under this chapter. Such agreements shall set forth standards of enforcement, consistent with the funding available, so as to reduce the extent to which tobacco products are available to individuals under the age of eighteen. The agreements shall also set forth requirements for data reporting by the liquor control board regarding its enforcement activities.

(4) The department of health and the department of revenue shall enter into an interagency agreement for payment of the cost of administering the tobacco retailer licensing system and for the provision of quarterly documentation of tobacco wholesaler, retailer, and vending machine names and locations.

(5) The department of health shall, within up to seventy percent of available funds, provide grants to local health departments or other local community agencies to develop and implement coordinated tobacco intervention strategies to prevent and reduce tobacco use by youth. [1993 c 507 § 13.]

**70.155.130 Preemption of political subdivisions.** This chapter preempts political subdivisions from adopting or enforcing requirements for the licensure and regulation of tobacco product promotions and sales within retail stores, except that political subdivisions that have adopted ordinances prohibiting sampling by January 1, 1993, may continue to enforce these ordinances. No political subdivision may: (1) Impose fees or license requirements on retail businesses for possessing or selling cigarettes or tobacco products, other than general business taxes or license fees not primarily levied on tobacco products; or (2) regulate or prohibit activities covered by RCW 70.155.020 through 70.155.080. This chapter does not otherwise preempt political subdivisions from adopting ordinances regulating the sale, purchase,

use, or promotion of tobacco products not inconsistent with chapter 507, Laws of 1993. [1993 c 507 § 14.]

**70.155.140 Shipping or transporting tobacco products ordered or purchased by mail or through the internet prohibited—Penalty.** (1) A person may not:

(a) Ship or transport, or cause to be shipped or transported, any tobacco product ordered or purchased by mail or through the internet to anyone in this state other than a licensed wholesaler or retailer; or

(b) With knowledge or reason to know of the violation, provide substantial assistance to a person who is in violation of this section.

(2)(a) A person who knowingly violates subsection (1) of this section is guilty of a class C felony, except that the maximum fine that may be imposed is five thousand dollars.

(b) In addition to or in lieu of any other civil or criminal remedy provided by law, a person who has violated subsection (1) of this section is subject to a civil penalty of up to five thousand dollars for each violation. The attorney general, acting in the name of the state, may seek recovery of the penalty in a civil action in superior court. For purposes of this subsection, each shipment or transport of tobacco products constitutes a separate violation.

(3) The attorney general may seek an injunction in superior court to restrain a threatened or actual violation of subsection (1) of this section and to compel compliance with subsection (1) of this section.

(4) Any violation of subsection (1) of this section is not reasonable in relation to the development and preservation of business and is an unfair and deceptive act or practice and an unfair method of competition in the conduct of trade or commerce in violation of RCW 19.86.020. Standing to bring an action to enforce RCW 19.86.020 for violation of subsection (1) of this section lies solely with the attorney general. Remedies provided by chapter 19.86 RCW are cumulative and not exclusive.

(5)(a) In any action brought under this section, the state is entitled to recover, in addition to other relief, the costs of investigation, expert witness fees, costs of the action, and reasonable attorneys' fees.

(b) If a court determines that a person has violated subsection (1) of this section, the court shall order any profits, gain, gross receipts, or other benefit from the violation to be disgorged and paid to the state treasurer for deposit in the general fund.

(6) Unless otherwise expressly provided, the penalties or remedies, or both, under this section are in addition to any other penalties and remedies available under any other law of this state. [2009 c 278 § 2.]

**70.155.900 Severability—1993 c 507.** If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1993 c 507 § 20.]

## Chapter 70.157 RCW

### NATIONAL UNIFORM TOBACCO SETTLEMENT— NONPARTICIPATING TOBACCO PRODUCT MANUFACTURERS

#### Sections

70.157.005	Findings and purpose.
70.157.010	Definitions.
70.157.020	Requirements.
70.157.030	Contingent expiration date—Court action.

**70.157.005 Findings and purpose.** (a) Cigarette smoking presents serious public health concerns to the State and to the citizens of the State. The Surgeon General has determined that smoking causes lung cancer, heart disease and other serious diseases, and that there are hundreds of thousands of tobacco-related deaths in the United States each year. These diseases most often do not appear until many years after the person in question begins smoking.

(b) Cigarette smoking also presents serious financial concerns for the State. Under certain health-care programs, the State may have a legal obligation to provide medical assistance to eligible persons for health conditions associated with cigarette smoking, and those persons may have a legal entitlement to receive such medical assistance.

(c) Under these programs, the State pays millions of dollars each year to provide medical assistance for these persons for health conditions associated with cigarette smoking.

(d) It is the policy of the State that financial burdens imposed on the State by cigarette smoking be borne by tobacco product manufacturers rather than by the State to the extent that such manufacturers either determine to enter into a settlement with the State or are found culpable by the courts.

(e) On November 23, 1998, leading United States tobacco product manufacturers entered into a settlement agreement, entitled the "Master Settlement Agreement," with the State. The Master Settlement Agreement obligates these manufacturers, in return for a release of past, present and certain future claims against them as described therein, to pay substantial sums to the State (tied in part to their volume of sales); to fund a national foundation devoted to the interests of public health; and to make substantial changes in their advertising and marketing practices and corporate culture, with the intention of reducing underage smoking.

(f) It would be contrary to the policy of the State if tobacco product manufacturers who determine not to enter into such a settlement could use a resulting cost advantage to derive large, short-term profits in the years before liability may arise without ensuring that the State will have an eventual source of recovery from them if they are proven to have acted culpably. It is thus in the interest of the State to require that such manufacturers establish a reserve fund to guarantee a source of compensation and to prevent such manufacturers from deriving large, short-term profits and then becoming judgment-proof before liability may arise. [1999 c 393 § 1.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**70.157.010 Definitions.** (a) "Adjusted for inflation" means increased in accordance with the formula for inflation adjustment set forth in Exhibit C to the Master Settlement Agreement.

(b) "Affiliate" means a person who directly or indirectly owns or controls, is owned or controlled by, or is under common ownership or control with, another person. Solely for purposes of this definition, the terms "owns," "is owned" and "ownership" mean ownership of an equity interest, or the equivalent thereof, of ten percent or more, and the term "person" means an individual, partnership, committee, association, corporation or any other organization or group of persons.

(c) "Allocable share" means Allocable Share as that term is defined in the Master Settlement Agreement.

(d) "Cigarette" means any product that contains nicotine, is intended to be burned or heated under ordinary conditions of use, and consists of or contains (1) any roll of tobacco wrapped in paper or in any substance not containing tobacco; or (2) tobacco, in any form, that is functional in the product, which, because of its appearance, the type of tobacco used in the filler, or its packaging and labeling, is likely to be offered to, or purchased by, consumers as a cigarette; or (3) any roll of tobacco wrapped in any substance containing tobacco which, because of its appearance, the type of tobacco used in the filler, or its packaging and labeling, is likely to be offered to, or purchased by, consumers as a cigarette described in clause (1) of this definition. The term "cigarette" includes "roll-your-own" (i.e., any tobacco which, because of its appearance, type, packaging, or labeling is suitable for use and likely to be offered to, or purchased by, consumers as tobacco for making cigarettes). For purposes of this definition of "cigarette," 0.09 ounces of "roll-your-own" tobacco shall constitute one individual "cigarette".

(e) "Master Settlement Agreement" means the settlement agreement (and related documents) entered into on November 23, 1998 by the State and leading United States tobacco product manufacturers.

(f) "Qualified escrow fund" means an escrow arrangement with a federally or State chartered financial institution having no affiliation with any tobacco product manufacturer and having assets of at least \$1,000,000,000 where such arrangement requires that such financial institution hold the escrowed funds' principal for the benefit of releasing parties and prohibits the tobacco product manufacturer placing the funds into escrow from using, accessing or directing the use of the funds' principal except as consistent with RCW 70.157.020(b).

(g) "Released claims" means Released Claims as that term is defined in the Master Settlement Agreement.

(h) "Releasing parties" means Releasing Parties as that term is defined in the Master Settlement Agreement.

(i) "Tobacco Product Manufacturer" means an entity that after the date of enactment of this Act directly (and not exclusively through any affiliate):

(1) manufactures cigarettes anywhere that such manufacturer intends to be sold in the United States, including cigarettes intended to be sold in the United States through an importer (except where such importer is an original participating manufacturer (as that term is defined in the Master Settlement Agreement) that will be responsible for the payments under the Master Settlement Agreement with respect to such cigarettes as a result of the provisions of subsections II(mm) of the Master Settlement Agreement and that pays the taxes specified in subsection II(z) of the Master Settlement

Agreement, and provided that the manufacturer of such cigarettes does not market or advertise such cigarettes in the United States);

(2) is the first purchaser anywhere for resale in the United States of cigarettes manufactured anywhere that the manufacturer does not intend to be sold in the United States; or

(3) becomes a successor of an entity described in paragraph (1) or (2).

The term "Tobacco Product Manufacturer" shall not include an affiliate of a tobacco product manufacturer unless such affiliate itself falls within any of (1)-(3) above.

(j) "Units sold" means the number of individual cigarettes sold in the State by the applicable tobacco product manufacturer (whether directly or through a distributor, retailer or similar intermediary or intermediaries) during the year in question, as measured by excise taxes collected by the State on packs bearing the excise tax stamp of the State or "roll-your-own" tobacco containers. The department of revenue shall promulgate such regulations as are necessary to ascertain the amount of State excise tax paid on the cigarettes of such tobacco product manufacturer for each year. [1999 c 393 § 2.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**70.157.020 Requirements. (Contingent expiration date.)** Any tobacco product manufacturer selling cigarettes to consumers within the State (whether directly or through a distributor, retailer or similar intermediary or intermediaries) after May 18, 1999, shall do one of the following:

(a) become a participating manufacturer (as that term is defined in section II(jj) of the Master Settlement Agreement) and generally perform its financial obligations under the Master Settlement Agreement; or

(b)(1) place into a qualified escrow fund by April 15 of the year following the year in question the following amounts (as such amounts are adjusted for inflation)—

1999: \$.0094241 per unit sold after May 18, 1999;

2000: \$.0104712 per unit sold;

for each of 2001 and 2002: \$.0136125 per unit sold;

for each of 2003 through 2006: \$.0167539 per unit sold;

for each of 2007 and each year thereafter: \$.0188482 per unit sold.

(2) A tobacco product manufacturer that places funds into escrow pursuant to paragraph (1) shall receive the interest or other appreciation on such funds as earned. Such funds themselves shall be released from escrow only under the following circumstances—

(A) to pay a judgment or settlement on any released claim brought against such tobacco product manufacturer by the State or any releasing party located or residing in the State. Funds shall be released from escrow under this subparagraph (i) in the order in which they were placed into escrow and (ii) only to the extent and at the time necessary to make payments required under such judgment or settlement;

(B) to the extent that a tobacco product manufacturer establishes that the amount it was required to place into escrow on account of units sold in the state in a particular year was greater than the Master Settlement Agreement payments, as determined pursuant to section IX(i) of that Agree-

ment including after final determination of all adjustments, that such manufacturer would have been required to make on account of such units sold, had it been a Participating Manufacturer, the excess shall be released from escrow and revert back to such tobacco product manufacturer; or

(C) to the extent not released from escrow under subparagraphs (A) or (B), funds shall be released from escrow and revert back to such tobacco product manufacturer twenty-five years after the date on which they were placed into escrow.

(3) Each tobacco product manufacturer that elects to place funds into escrow pursuant to this subsection shall annually certify to the Attorney General that it is in compliance with this subsection. The Attorney General may bring a civil action on behalf of the State against any tobacco product manufacturer that fails to place into escrow the funds required under this section. Any tobacco product manufacturer that fails in any year to place into escrow the funds required under this section shall—

(A) be required within 15 days to place such funds into escrow as shall bring it into compliance with this section. The court, upon a finding of a violation of this subsection, may impose a civil penalty to be paid to the general fund of the state in an amount not to exceed 5 percent of the amount improperly withheld from escrow per day of the violation and in a total amount not to exceed 100 percent of the original amount improperly withheld from escrow;

(B) in the case of a knowing violation, be required within 15 days to place such funds into escrow as shall bring it into compliance with this section. The court, upon a finding of a knowing violation of this subsection, may impose a civil penalty to be paid to the general fund of the state in an amount not to exceed 15 percent of the amount improperly withheld from escrow per day of the violation and in a total amount not to exceed 300 percent of the original amount improperly withheld from escrow; and

(C) in the case of a second knowing violation, be prohibited from selling cigarettes to consumers within the State (whether directly or through a distributor, retailer or similar intermediary) for a period not to exceed 2 years.

Each failure to make an annual deposit required under this section shall constitute a separate violation. The violator shall also pay the State's costs and attorney's fees incurred during a successful prosecution under this paragraph (3). [2003 c 342 § 1; 1999 c 393 § 3.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**70.157.020 Requirements. (Contingent effective date.)** Any tobacco product manufacturer selling cigarettes to consumers within the State (whether directly or through a distributor, retailer or similar intermediary or intermediaries) after May 18, 1999, shall do one of the following:

(a) become a participating manufacturer (as that term is defined in section II(jj) of the Master Settlement Agreement) and generally perform its financial obligations under the Master Settlement Agreement; or

(b)(1) place into a qualified escrow fund by April 15 of the year following the year in question the following amounts (as such amounts are adjusted for inflation)—

1999: \$.0094241 per unit sold after May 18, 1999;

2000: \$.0104712 per unit sold;  
for each of 2001 and 2002: \$.0136125 per unit sold;  
for each of 2003 through 2006: \$.0167539 per unit sold;  
for each of 2007 and each year thereafter: \$.0188482 per unit sold.

(2) A tobacco product manufacturer that places funds into escrow pursuant to paragraph (1) shall receive the interest or other appreciation on such funds as earned. Such funds themselves shall be released from escrow only under the following circumstances—

(A) to pay a judgment or settlement on any released claim brought against such tobacco product manufacturer by the State or any releasing party located or residing in the State. Funds shall be released from escrow under this subparagraph (i) in the order in which they were placed into escrow and (ii) only to the extent and at the time necessary to make payments required under such judgment or settlement;

(B) to the extent that a tobacco product manufacturer establishes that the amount it was required to place into escrow in a particular year was greater than the State's allocable share of the total payments that such manufacturer would have been required to make in that year under the Master Settlement Agreement (as determined pursuant to section IX(i)(2) of the Master Settlement Agreement, and before any of the adjustments or offsets described in section IX(i)(3) of that Agreement other than the Inflation Adjustment) had it been a participating manufacturer, the excess shall be released from escrow and revert back to such tobacco product manufacturer; or

(C) to the extent not released from escrow under subparagraphs (A) or (B), funds shall be released from escrow and revert back to such tobacco product manufacturer twenty-five years after the date on which they were placed into escrow.

(3) Each tobacco product manufacturer that elects to place funds into escrow pursuant to this subsection shall annually certify to the Attorney General that it is in compliance with this subsection. The Attorney General may bring a civil action on behalf of the State against any tobacco product manufacturer that fails to place into escrow the funds required under this section. Any tobacco product manufacturer that fails in any year to place into escrow the funds required under this section shall—

(A) be required within 15 days to place such funds into escrow as shall bring it into compliance with this section. The court, upon a finding of a violation of this subsection, may impose a civil penalty to be paid to the general fund of the state in an amount not to exceed 5 percent of the amount improperly withheld from escrow per day of the violation and in a total amount not to exceed 100 percent of the original amount improperly withheld from escrow;

(B) in the case of a knowing violation, be required within 15 days to place such funds into escrow as shall bring it into compliance with this section. The court, upon a finding of a knowing violation of this subsection, may impose a civil penalty to be paid to the general fund of the state in an amount not to exceed 15 percent of the amount improperly withheld from escrow per day of the violation and in a total amount not to exceed 300 percent of the original amount improperly withheld from escrow; and

(C) in the case of a second knowing violation, be prohibited from selling cigarettes to consumers within the State (whether directly or through a distributor, retailer or similar intermediary) for a period not to exceed 2 years.

Each failure to make an annual deposit required under this section shall constitute a separate violation. The violator shall also pay the State's costs and attorney's fees incurred during a successful prosecution under this paragraph (3). [1999 c 393 § 3.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**70.157.030 Contingent expiration date—Court action.** If chapter 342, Laws of 2003 is held by a court of competent jurisdiction to be unconstitutional, then RCW 70.157.020(b)(2)(B) shall be repealed in its entirety. If RCW 70.157.020(b)(2) shall thereafter be held by a court of competent jurisdiction to be unconstitutional, then chapter 342, Laws of 2003 shall be repealed, and RCW 70.157.020(b)(2)(B) be restored as if no amendments had been made. Neither any holding of unconstitutionality nor the repeal of RCW 70.157.020(b)(2)(B) shall affect, impair, or invalidate any other portion of RCW 70.157.020 or the application of that section to any other person or circumstance, and the remaining portions of RCW 70.157.020 shall at all times continue in full force and effect. [2003 c 342 § 2.]

## Chapter 70.158 RCW

### TOBACCO PRODUCT MANUFACTURERS

#### Sections

70.158.010	Findings.
70.158.020	Definitions.
70.158.030	Tobacco product manufacturers—Certification—Attorney general to publish directory—Violations.
70.158.040	Nonresident, nonparticipating manufacturers—Agent for service of process.
70.158.050	Reports, records—Confidentiality, disclosures, voluntary waivers—Escrow payments.
70.158.060	Penalties—Application of consumer protection act.
70.158.070	Attorney general's directory decision to be final agency action—Due dates for reports, certifications, directory—Rules—Costs—Penalties.
70.158.900	Conflict of law—Severability—2003 c 25.
70.158.901	Effective date—2003 c 25.

**70.158.010 Findings.** The legislature finds that violations of RCW 70.157.020 threaten the integrity of the tobacco master settlement agreement, the fiscal soundness of the state, and the public health. The legislature finds the enacting procedural enhancements will help prevent violations and aid the enforcement of RCW 70.157.020 and thereby safeguard the master settlement agreement, the fiscal soundness of the state, and the public health. The provisions of chapter 25, Laws of 2003 are not intended to and shall not be interpreted to amend chapter 70.157 RCW. [2003 c 25 § 1.]

**70.158.020 Definitions.** The following definitions apply to this chapter unless the context clearly requires otherwise.

(1) "Brand family" means all styles of cigarettes sold under the same trademark and differentiated from one another by means of additional modifiers or descriptors, including, but not limited to, "menthol," "lights," "kings,"

(2010 Ed.)

and "100s," and includes any brand name alone or in conjunction with any other word, trademark, logo, symbol, motto, selling message, recognizable pattern of colors, or any other indicia of product identification identical or similar to, or identifiable with, a previously known brand of cigarettes.

(2) "Board" means the liquor control board.

(3) "Cigarette" has the same meaning as in RCW 70.157.010(d).

(4) "Director" means the director of the department of revenue except as otherwise noted.

(5) "Directory" means the directory to be created and published on a web site by the attorney general pursuant to RCW 70.158.030(2).

(6) "Distributor" has the same meaning as in \*RCW 82.26.010(3), except that for purposes of this chapter, no person is a distributor if that person does not deal with cigarettes as defined in this section.

(7) "Master settlement agreement" has the same meaning as in RCW 70.157.010(e).

(8) "Nonparticipating manufacturer" means any tobacco product manufacturer that is not a participating manufacturer.

(9) "Participating manufacturer" has the meaning given that term in section II(jj) of the master settlement agreement.

(10) "Qualified escrow fund" has the same meaning as in RCW 70.157.010(f).

(11) "Stamp" means "stamp" as defined in RCW 82.24.010(7) or as referred to in RCW 43.06.455(4).

(12) "Tobacco product manufacturer" has the same meaning as in RCW 70.157.010(i).

(13) "Units sold" has the same meaning as in RCW 70.157.010(j).

(14) "Wholesaler" has the same meaning as in RCW 82.24.010. [2003 c 25 § 2.]

**\*Reviser's note:** RCW 82.26.010 was alphabetized pursuant to RCW 1.08.015(2)(k), changing subsection (3) to subsection (8).

**70.158.030 Tobacco product manufacturers—Certification—Attorney general to publish directory—Violations.** (1) Every tobacco product manufacturer whose cigarettes are sold in this state, whether directly or through a wholesaler, distributor, retailer, or similar intermediary or intermediaries, shall execute and deliver on a form prescribed by the attorney general a certification to the attorney general, no later than the thirtieth day of April each year, certifying under penalty of perjury that, as of the date of such certification, the tobacco product manufacturer is either a participating manufacturer; or is in full compliance with RCW 70.157.020(b)(1), including all payments required by that section or chapter 25, Laws of 2003.

(a) A participating manufacturer shall include in its certification a list of its brand families. The participating manufacturer shall update the list thirty calendar days prior to any addition to or modification of its brand families by executing and delivering a supplemental certification to the attorney general.

(b) A nonparticipating manufacturer shall include in its certification: (i) A list of all of its brand families and the number of units sold for each brand family that were sold in the state during the preceding calendar year; (ii) a list of all of its brand families that have been sold in the state at anytime during the current calendar year; (iii) indicating, by an aster-

isk, any brand family sold in the state during the preceding calendar year that is no longer being sold in the state as of the date of such certification; and (iv) identifying by name and address any other manufacturer of brand families in the preceding or current calendar year. The nonparticipating manufacturer shall update the list thirty calendar days prior to any addition to or modification of its brand families by executing and delivering a supplemental certification to the attorney general.

(c) In the case of a nonparticipating manufacturer, the certification shall further certify:

(i) That the nonparticipating manufacturer is registered to do business in the state or has appointed a resident agent for service of process and provided notice as required by RCW 70.158.040;

(ii) That the nonparticipating manufacturer: (A) Has established and continues to maintain a qualified escrow fund; and (B) has executed a qualified escrow agreement that has been reviewed and approved by the attorney general and that governs the qualified escrow fund;

(iii) That the nonparticipating manufacturer is in full compliance with RCW 70.157.020(b)(1) and this chapter, and any rules adopted pursuant thereto; and

(iv)(A) The name, address, and telephone number of the financial institution where the nonparticipating manufacturer has established a qualified escrow fund required pursuant to RCW 70.157.020(b)(1) and all rules adopted thereunder; (B) the account number of the qualified escrow fund and any sub-account number for the state of Washington; (C) the amount the nonparticipating manufacturer placed in the fund for cigarettes sold in the state during the preceding calendar year, the date and amount of each deposit, and evidence or verification as may be deemed necessary by the attorney general to confirm the foregoing; and (D) the amount and date of any withdrawal or transfer of funds the nonparticipating manufacturer made at any time from the fund or from any other qualified escrow fund into which it ever made escrow payments pursuant to RCW 70.157.020(b)(1) and all rules adopted thereunder.

(d) A tobacco product manufacturer may not include a brand family in its certification unless: (i) In the case of a participating manufacturer, the participating manufacturer affirms that the brand family is to be deemed to be its cigarettes for purposes of calculating its payments under the master settlement agreement for the relevant year, in the volume and shares determined pursuant to the master settlement agreement; and (ii) in the case of a nonparticipating manufacturer, the nonparticipating manufacturer affirms that the brand family is to be deemed to be its cigarettes for purposes of RCW 70.157.020(b)(1). Nothing in this section limits or otherwise affects the state's right to maintain that a brand family constitutes cigarettes of a different tobacco product manufacturer for purposes of calculating payments under the master settlement agreement or for purposes of RCW 70.157.020.

(e) A tobacco product manufacturer shall maintain all invoices and documentation of sales and other information relied upon for such certification for a period of five years, unless otherwise required by law to maintain them for a greater period of time.

(2) Not later than November 1, 2003, the attorney general shall develop and publish on its web site a directory listing all tobacco product manufacturers that have provided current and accurate certifications conforming to the requirements of this section and all brand families that are listed in these certifications, except as noted below:

(a) The attorney general shall not include or retain in the directory the name or brand families of any nonparticipating manufacturer that has failed to provide the required certification or whose certification the attorney general determines is not in compliance with subsection (1)(b) and (c) of this section, unless the attorney general has determined that the violation has been cured to the satisfaction of the attorney general.

(b) Neither a tobacco product manufacturer nor brand family shall be included or retained in the directory if the attorney general concludes, in the case of a nonparticipating manufacturer, that: (i) Any escrow payment required pursuant to RCW 70.157.020(b)(1) for any period for any brand family, whether or not listed by the nonparticipating manufacturer, has not been fully paid into a qualified escrow fund governed by a qualified escrow agreement that has been approved by the attorney general; or (ii) any outstanding final judgment, including interest, for a violation of RCW 70.157.020(b)(1) that has not been fully satisfied for the brand family or manufacturer.

(c) The attorney general shall update the directory as necessary in order to correct mistakes and to add or remove a tobacco product manufacturer or brand family to keep the directory in conformity with the requirements of this chapter. The attorney general shall transmit, by e-mail or other practicable means to each wholesaler or distributor, notice of any addition to or removal from the directory of any tobacco product manufacturer or brand family. Unless otherwise provided by agreement between the wholesaler or distributor and a tobacco product manufacturer, the wholesaler or distributor shall be entitled to a refund from a tobacco product manufacturer for any money paid by the wholesaler or distributor to the tobacco product manufacturer for any cigarettes of the tobacco product manufacturer still held by the wholesaler or distributor on the date of notice by the attorney general of the removal from the directory of that tobacco product manufacturer or the brand family of the cigarettes. The attorney general shall not restore to the directory the tobacco product manufacturer or the brand family until the tobacco product manufacturer has paid the wholesaler or distributor any refund due.

(d) Every wholesaler and distributor shall provide and update as necessary an electronic mail address to the attorney general for the purpose of receiving any notifications as may be required by this chapter.

(e) A tobacco product manufacturer included in the directory may request that a new brand family be certified and added to the directory. Within forty-five business days of receiving the request, the attorney general will respond by either: (i) Certifying the new brand family; or (ii) denying the request. However, in cases where the attorney general determines that it needs clarification as to whether the requestor is actually the tobacco product manufacturer, the attorney general may take more time as needed to clarify the request, to locate and assemble information or documents

needed to process the request, and to notify persons or agencies affected by the request.

(f) The web site will state that chapter 25, Laws of 2003 applies only to cigarettes including, pursuant to the definition of "cigarettes" in chapter 25, Laws of 2003, roll-your-own tobacco.

(3) It is unlawful for any person (a) to affix a stamp to a package or other container of cigarettes of a tobacco product manufacturer or brand family not included in the directory, or to pay or cause to be paid the tobacco products tax on any package or container; or (b) to sell, offer, or possess for sale in this state or import for sale in this state, any cigarettes of a tobacco product manufacturer or brand family not included in the directory. [2003 c 25 § 3.]

**70.158.040 Nonresident, nonparticipating manufacturers—Agent for service of process.** (1) Any nonresident or foreign nonparticipating manufacturer that has not registered to do business in the state as a foreign corporation or business entity shall, as a condition precedent to having its brand families included or retained in the directory, appoint and continually engage without interruption the services of an agent in this state to act as agent for the service of process on whom all process, and any action or proceeding against it concerning or arising out of the enforcement of this chapter and RCW 70.157.020(b)(1), may be served in any manner authorized by law. The service shall constitute legal and valid service of process on the nonparticipating manufacturer. The nonparticipating manufacturer shall provide the name, address, phone number, and proof of the appointment and availability of the agent to the satisfaction of the attorney general.

(2) The nonparticipating manufacturer shall provide notice to the attorney general thirty calendar days prior to termination of the authority of an agent and shall further provide proof to the satisfaction of the attorney general of the appointment of a new agent no less than five calendar days prior to the termination of an existing agent appointment. In the event an agent terminates an agency appointment, the nonparticipating manufacturer shall notify the attorney general of the termination within five calendar days and include proof to the satisfaction of the attorney general of the appointment of a new agent.

(3) Any nonparticipating manufacturer whose cigarettes are sold in this state, who has not appointed and engaged an agent as required in this section, shall be deemed to have appointed the secretary of state as the agent and may be proceeded against in courts of this state by service of process upon the secretary of state. However, the appointment of the secretary of state as agent shall not satisfy the condition precedent for having the brand families of the nonparticipating manufacturer included or retained in the directory. [2003 c 25 § 4.]

**70.158.050 Reports, records—Confidentiality, disclosures, voluntary waivers—Escrow payments.** (1) In addition to the reporting requirements under \*RCW 70.157.010(j) and the rules adopted thereunder, not later than twenty-five calendar days after the end of each calendar month, and more frequently if directed by the director, each

wholesaler and distributor shall submit information the director requires to facilitate compliance with this chapter, including, but not limited to, a list by brand family of the total number of cigarettes, or, in the case of roll-your-own, the equivalent stick count for which the wholesaler or distributor affixed stamps during the previous calendar month or otherwise paid the tax due for the cigarettes. Each wholesaler and distributor shall maintain and make available to the director, all invoices and documentation of sales of all nonparticipating manufacturer cigarettes and any other information relied upon in reporting to the attorney general or the director for a period of five years.

(2) Information or records required to be furnished to the department, the board, or the attorney general are confidential and shall not be disclosed. However, the director and the board are authorized to disclose to the attorney general any information received under this chapter and requested by the attorney general for purposes of determining compliance with and enforcing the provisions of this chapter. The director, the board, and the attorney general may share with each other the information received under this chapter, and may share information with other federal, state, or local agencies, including without limitation the board, only for purposes of enforcement of this chapter, RCW 70.157.020, or corresponding laws of other states. If a tobacco product manufacturer that is required to establish a qualified escrow fund under RCW 70.157.020 disputes the attorney general's determination of what that manufacturer needs to place into escrow, and the attorney general determines that the dispute can likely be resolved by disclosing reports from the relevant distributors and wholesalers indicating the sales or purchases of the tobacco manufacturer's products, then the attorney general shall request voluntary waivers of confidentiality so that the reports may be disclosed to the tobacco product manufacturer to help resolve the dispute. If the waivers are provided, then the director and the attorney general are authorized to disclose the waived confidential information collected on the sales or purchases of cigarettes to the tobacco product manufacturer. However, before the attorney general or the director discloses the waived confidential information, the tobacco product manufacturer must provide to the attorney general all records relating to its sales or purchases of cigarettes in dispute. The information provided to a tobacco product manufacturer pursuant to this subsection (2) shall be limited to brands or products of that manufacturer only, may be used only for the limited purpose of determining the appropriate escrow deposit, and may not be disclosed by the tobacco product manufacturer.

(3) The attorney general may require at any time from the nonparticipating manufacturer proof, from the financial institution in which the manufacturer has established a qualified escrow fund for the purpose of compliance with RCW 70.157.020(b)(1), of the amount of money in the fund, exclusive of interest, the amount and date of each deposit to the fund, and the amount and date of each withdrawal from the fund.

(4) In addition to the information required to be submitted pursuant to RCW 70.158.030, this section, and chapters 82.24 and 82.26 RCW, the director, the board, or the attorney general may require a wholesaler, distributor, or tobacco product manufacturer to submit any additional information

including, but not limited to, samples of the packaging or labeling of each brand family, as is necessary to enable the attorney general to determine whether a tobacco product manufacturer is in compliance with this chapter. If the director, the board, or the attorney general makes a request for information pursuant to this subsection (4), the tobacco product manufacturer, distributor, or wholesaler shall comply promptly.

(5) A nonparticipating manufacturer that either: (a) Has not previously made escrow payments to the state of Washington pursuant to RCW 70.157.020; or (b) has not actually made any escrow payments for more than one year, shall make the required escrow deposits in quarterly installments during the first year in which the sales covered by the deposits are made or in the first year in which the payments are made. The director or the attorney general may require production of information sufficient to enable the attorney general to determine the adequacy of the amount of the installment deposit. [2003 c 25 § 5.]

**\*Reviser's note:** For rules and reporting requirements adopted pursuant to RCW 70.157.010, see WAC 458-20-264.

**70.158.060 Penalties—Application of consumer protection act.** (1) In addition to or in lieu of any other civil or criminal remedy provided by law, upon a determination that a wholesaler has violated RCW 70.158.030(3) or any rule adopted pursuant to this chapter, the director or the board may revoke or suspend the license of the wholesaler in the manner provided by chapter 82.24 or 82.32 RCW. Each stamp affixed and each sale or offer to sell cigarettes in violation of RCW 70.158.030(3) shall constitute a separate violation. For each violation of this chapter, the director or the board may also impose a civil penalty in an amount not to exceed the greater of five hundred percent of the retail value of the cigarettes or five thousand dollars upon a determination of violation of RCW 70.158.030(3) or any rules adopted pursuant thereto. The penalty shall be imposed in the manner provided by chapter 82.24 RCW.

(2) The attorney general may seek an injunction in superior court to restrain a threatened or actual violation of RCW 70.158.030(3) or 70.158.050 (1) or (4) by a person and to compel the person to comply with these sections. In any action brought pursuant to this section, the state shall be entitled to recover the costs of investigation, costs of the action, and reasonable attorney fees.

(3) It is unlawful for a person to: (a) Sell or distribute cigarettes or (b) acquire, hold, own, possess, transport, import, or cause to be imported cigarettes, that the person knows or should know are intended for distribution or sale in the state in violation of RCW 70.158.030(3). A violation of this subsection (3) is a gross misdemeanor.

(4) Any violation of this chapter is not reasonable in relation to the development and preservation of business and is an unfair and deceptive act or practice and an unfair method of competition in the conduct of trade or commerce in violation of RCW 19.86.020. Standing to bring an action to enforce RCW 19.86.020 for violation of this chapter shall lie solely with the attorney general. Remedies provided by chapter 19.86 RCW are cumulative and not exclusive. [2003 c 25 § 6.]

**70.158.070 Attorney general's directory decision to be final agency action—Due dates for reports, certifications, directory—Rules—Costs—Penalties.** (1) A determination of the attorney general not to include or to remove from the directory a brand family or tobacco product manufacturer shall be final agency action for purposes of review under RCW 34.05.570(4).

(2) No person shall be issued a license or granted a renewal of a license to act as a wholesaler unless the person has certified in writing under penalty of perjury, that the person will comply fully with this section.

(3) The first reports of wholesalers and distributors are due August 25, 2003. The certifications by a tobacco product manufacturer described in RCW 70.158.030(1) are due September 15, 2003. The directory described in RCW 70.158.030(2) shall be published or made available by November 1, 2003.

(4) The attorney general, the board, and the director may adopt rules as necessary to effect the administration of this chapter.

(5) In any action brought by the state to enforce this chapter, the state is entitled to recover the costs of investigation, expert witness fees, costs of the action, and reasonable attorney fees.

(6) If a court determines that a person has violated this chapter, the court shall order any profits, gain, gross receipts, or other benefit from the violation to be disgorged and paid to the general fund. Unless otherwise expressly provided, the remedies or penalties provided by this chapter are cumulative to each other and to the remedies or penalties available under all other laws of this state. [2003 c 25 § 7.]

**70.158.900 Conflict of law—Severability—2003 c 25.** If a court of competent jurisdiction finds that the provisions of chapter 25, Laws of 2003 and chapter 70.157 RCW conflict and cannot be harmonized, then the provisions of chapter 70.157 RCW shall control. If any section, subsection, subdivision, paragraph, sentence, clause, or phrase of chapter 25, Laws of 2003 causes chapter 70.157 RCW no longer to constitute a qualifying or model statute, as those terms are defined in the master settlement agreement, then that portion of chapter 25, Laws of 2003 shall not be valid. If any section, subsection, subdivision, paragraph, sentence, clause, or phrase of chapter 25, Laws of 2003 is for any reason held to be invalid, unlawful, or unconstitutional, the decision shall not affect the validity of the remaining portions of chapter 25, Laws of 2003 or any part thereof. [2003 c 25 § 8.]

**70.158.901 Effective date—2003 c 25.** This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 2003. [2003 c 25 § 13.]

## Chapter 70.160 RCW

### SMOKING IN PUBLIC PLACES

(Formerly: Washington clean indoor air act)

#### Sections

70.160.011 Findings—Intent—2006 c 2 (Initiative Measure No. 901).  
70.160.020 Definitions.

70.160.030	Smoking prohibited in public places or places of employment.
70.160.050	Owners, lessees to post signs prohibiting smoking.
70.160.060	Intent of chapter as applied to certain private workplaces.
70.160.070	Intentional violation of chapter—Removing, defacing, or destroying required sign—Fine—Notice of infraction—Exceptions—Violations of RCW 70.160.050—Fine—Enforcement.
70.160.075	Smoking prohibited within twenty-five feet of public places or places of employment—Application to modify presumptively reasonable minimum distance.
70.160.080	Local regulations authorized.
70.160.100	Penalty assessed under this chapter paid to jurisdiction bringing action.

*Smoking in municipal transit vehicle, unlawful conduct: RCW 9.91.025.*

**70.160.011 Findings—Intent—2006 c 2 (Initiative Measure No. 901).** The people of the state of Washington recognize that exposure to secondhand smoke is known to cause cancer in humans. Secondhand smoke is a known cause of other diseases including pneumonia, asthma, bronchitis, and heart disease. Citizens are often exposed to secondhand smoke in the workplace, and are likely to develop chronic, potentially fatal diseases as a result of such exposure. In order to protect the health and welfare of all citizens, including workers in their places of employment, it is necessary to prohibit smoking in public places and workplaces. [2006 c 2 § 1 (Initiative Measure No. 901, approved November 8, 2005).]

**Captions not law—2006 c 2 (Initiative Measure No. 901):** "Captions used in this act are not any part of the law." [2006 c 2 § 8 (Initiative Measure No. 901, approved November 8, 2005).]

**70.160.020 Definitions.** As used in this chapter, the following terms have the meanings indicated unless the context clearly indicates otherwise.

(1) "Smoke" or "smoking" means the carrying or smoking of any kind of lighted pipe, cigar, cigarette, or any other lighted smoking equipment.

(2) "Public place" means that portion of any building or vehicle used by and open to the public, regardless of whether the building or vehicle is owned in whole or in part by private persons or entities, the state of Washington, or other public entity, and regardless of whether a fee is charged for admission, and includes a presumptively reasonable minimum distance, as set forth in RCW 70.160.075, of twenty-five feet from entrances, exits, windows that open, and ventilation intakes that serve an enclosed area where smoking is prohibited. A public place does not include a private residence unless the private residence is used to provide licensed child care, foster care, adult care, or other similar social service care on the premises.

Public places include, but are not limited to: Schools, elevators, public conveyances or transportation facilities, museums, concert halls, theaters, auditoriums, exhibition halls, indoor sports arenas, hospitals, nursing homes, health care facilities or clinics, enclosed shopping centers, retail stores, retail service establishments, financial institutions, educational facilities, ticket areas, public hearing facilities, state legislative chambers and immediately adjacent hallways, public restrooms, libraries, restaurants, waiting areas, lobbies, bars, taverns, bowling alleys, skating rinks, casinos, reception areas, and no less than seventy-five percent of the sleeping quarters within a hotel or motel that are rented to guests. A public place does not include a private residence.

(2010 Ed.)

This chapter is not intended to restrict smoking in private facilities which are occasionally open to the public except upon the occasions when the facility is open to the public.

(3) "Place of employment" means any area under the control of a public or private employer which employees are required to pass through during the course of employment, including, but not limited to: Entrances and exits to the places of employment, and including a presumptively reasonable minimum distance, as set forth in RCW 70.160.075, of twenty-five feet from entrances, exits, windows that open, and ventilation intakes that serve an enclosed area where smoking is prohibited; work areas; restrooms; conference and classrooms; break rooms and cafeterias; and other common areas. A private residence or home-based business, unless used to provide licensed child care, foster care, adult care, or other similar social service care on the premises, is not a place of employment. [2006 c 2 § 2 (Initiative Measure No. 901, approved November 8, 2005); 1985 c 236 § 2.]

**Captions not law—2006 c 2 (Initiative Measure No. 901):** See note following RCW 70.160.011.

**70.160.030 Smoking prohibited in public places or places of employment.** No person may smoke in a public place or in any place of employment. [2006 c 2 § 3 (Initiative Measure No. 901, approved November 8, 2005); 1985 c 236 § 3.]

**Captions not law—2006 c 2 (Initiative Measure No. 901):** See note following RCW 70.160.011.

**70.160.050 Owners, lessees to post signs prohibiting smoking.** Owners, or in the case of a leased or rented space the lessee or other person in charge, of a place regulated under this chapter shall prohibit smoking in public places and places of employment and shall post signs prohibiting smoking as appropriate under this chapter. Signs shall be posted conspicuously at each building entrance. In the case of retail stores and retail service establishments, signs shall be posted conspicuously at each entrance and in prominent locations throughout the place. [2006 c 2 § 4 (Initiative Measure No. 901, approved November 8, 2005); 1985 c 236 § 5.]

**Captions not law—2006 c 2 (Initiative Measure No. 901):** See note following RCW 70.160.011.

**70.160.060 Intent of chapter as applied to certain private workplaces.** This chapter is not intended to regulate smoking in a private enclosed workplace, within a public place, even though such workplace may be visited by non-smokers, excepting places in which smoking is prohibited by the chief of the Washington state patrol, through the director of fire protection, or by other law, ordinance, or regulation. [1995 c 369 § 60; 1986 c 266 § 121; 1985 c 236 § 6.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**70.160.070 Intentional violation of chapter—Removing, defacing, or destroying required sign—Fine—Notice of infraction—Exceptions—Violations of RCW 70.160.050—Fine—Enforcement.** (1) Any person intentionally violating this chapter by smoking in a public place or place of employment, or any person removing, defacing, or destroying a sign required by this chapter, is subject to a civil fine of up to one hundred dollars. Any person passing by or

through a public place while on a public sidewalk or public right-of-way has not intentionally violated this chapter. Local law enforcement agencies shall enforce this section by issuing a notice of infraction to be assessed in the same manner as traffic infractions. The provisions contained in chapter 46.63 RCW for the disposition of traffic infractions apply to the disposition of infractions for violation of this subsection except as follows:

(a) The provisions in chapter 46.63 RCW relating to the provision of records to the department of licensing in accordance with RCW 46.20.270 are not applicable to this chapter; and

(b) The provisions in chapter 46.63 RCW relating to the imposition of sanctions against a person's driver's license or vehicle license are not applicable to this chapter.

The form for the notice of infraction for a violation of this subsection shall be prescribed by rule of the supreme court.

(2) When violations of RCW 70.160.050 occur, a warning shall first be given to the owner or other person in charge. Any subsequent violation is subject to a civil fine of up to one hundred dollars. Each day upon which a violation occurs or is permitted to continue constitutes a separate violation.

(3) Local health departments shall enforce RCW 70.160.050 regarding the duties of owners or persons in control of public places and places of employment by either of the following actions:

(a) Serving notice requiring the correction of any violation; or

(b) Calling upon the city or town attorney or county prosecutor or local health department attorney to maintain an action for an injunction to enforce RCW 70.160.050, to correct a violation, and to assess and recover a civil penalty for the violation. [2006 c 2 § 5 (Initiative Measure No. 901, approved November 8, 2005); 1985 c 236 § 7.]

**Captions not law—2006 c 2 (Initiative Measure No. 901):** See note following RCW 70.160.011.

**70.160.075 Smoking prohibited within twenty-five feet of public places or places of employment—Application to modify presumptively reasonable minimum distance.** Smoking is prohibited within a presumptively reasonable minimum distance of twenty-five feet from entrances, exits, windows that open, and ventilation intakes that serve an enclosed area where smoking is prohibited so as to ensure that tobacco smoke does not enter the area through entrances, exits, open windows, or other means. Owners, operators, managers, employers, or other persons who own or control a public place or place of employment may seek to rebut the presumption that twenty-five feet is a reasonable minimum distance by making application to the director of the local health department or district in which the public place or place of employment is located. The presumption will be rebutted if the applicant can show by clear and convincing evidence that, given the unique circumstances presented by the location of entrances, exits, windows that open, ventilation intakes, or other factors, smoke will not infiltrate or reach the entrances, exits, open windows, or ventilation intakes or enter into such public place or place of employment and, therefore, the public health and safety will be adequately

protected by a lesser distance. [2006 c 2 § 6 (Initiative Measure No. 901, approved November 8, 2005).]

**Captions not law—2006 c 2 (Initiative Measure No. 901):** See note following RCW 70.160.011.

**70.160.080 Local regulations authorized.** Local fire departments or fire districts and local health departments may adopt regulations as required to implement this chapter. [1985 c 236 § 9.]

**70.160.100 Penalty assessed under this chapter paid to jurisdiction bringing action.** Any penalty assessed and recovered in an action brought under this chapter shall be paid to the city or county bringing the action. [1985 c 236 § 8.]

## Chapter 70.162 RCW

### INDOOR AIR QUALITY IN PUBLIC BUILDINGS

#### Sections

70.162.005	Finding—Intent.
70.162.010	Definitions.
70.162.020	Department duties.
70.162.030	State building code council duties.
70.162.040	Public agencies—Directive.
70.162.050	Superintendent of public instruction—Model program.
70.162.900	Severability—1989 c 315.

**70.162.005 Finding—Intent.** The legislature finds that many Washington residents spend a significant amount of their time working indoors and that exposure to indoor air pollutants may occur in public buildings, schools, work places, and other indoor environments. Scientific studies indicate that pollutants common in the indoor air may include radon, asbestos, volatile organic chemicals including formaldehyde and benzene, combustion by-products including carbon monoxide, nitrogen oxides, and carbon dioxide, metals and gases including lead, chlorine, and ozone, respirable particles, tobacco smoke, biological contaminants, micro-organisms, and other contaminants. In some circumstances, exposure to these substances may cause adverse health effects, including respiratory illnesses, multiple chemical sensitivities, skin and eye irritations, headaches, and other related symptoms. There is inadequate information about indoor air quality within the state of Washington, including the sources and nature of indoor air pollution.

The intent of the legislature is to develop a control strategy that will improve indoor air quality, provide for the evaluation of indoor air quality in public buildings, and encourage voluntary measures to improve indoor air quality. [1989 c 315 § 1.]

**70.162.010 Definitions.** Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Department" means the department of labor and industries.

(2) "Public agency" means a state office, commission, committee, bureau, or department.

(3) "Industry standard" means the 62-1981R standard established by the American society of heating, refrigerating, and air conditioning engineers as codified in M-1602 of the

building officials and code administrators international manual as of January 1, 1990. [1989 c 315 § 2.]

**70.162.020 Department duties.** The department shall, in coordination with other appropriate state agencies:

- (1) Recommend a policy for evaluation and prioritization of state-owned or leased buildings with respect to indoor air quality;
- (2) Recommend stronger workplace regulation of indoor air quality under the Washington industrial safety and health act;
- (3) Review indoor air quality programs in public schools administered by the superintendent of public instruction and the department of social and health services;
- (4) Provide educational and informational pamphlets or brochures to state agencies on indoor air quality standards; and
- (5) Recommend to the legislature measures to implement the recommendations, if any, for the improvement of indoor air quality in public buildings within a reasonable period of time. [1989 c 315 § 3.]

**70.162.030 State building code council duties.** The state building code council is directed to:

- (1) Review the state building code to determine the adequacy of current mechanical ventilation and filtration standards prescribed by the state compared to the industry standard; and
- (2) Make appropriate changes in the building code to bring the state prescribed standards into conformity with the industry standard. [1989 c 315 § 4.]

**70.162.040 Public agencies—Directive.** Public agencies are encouraged to:

- (1) Evaluate the adequacy of mechanical ventilation and filtration systems in light of the recommendations of the American society of heating, refrigerating, and air conditioning engineers and the building officials and code administrators international; and
- (2) Maintain and operate any mechanical ventilation and filtration systems in a manner that allows for maximum operating efficiency consistent with the recommendations of the American society of heating, refrigerating, and air conditioning engineers and the building officials and code administrators international. [1989 c 315 § 5.]

**70.162.050 Superintendent of public instruction—Model program.** (1) The superintendent of public instruction may implement a model indoor air quality program in a school district selected by the superintendent.

(2) The superintendent shall ensure that the model program includes:

- (a) An initial evaluation by an indoor air quality expert of the current indoor air quality in the school district. The evaluation shall be completed within ninety days after the beginning of the school year;
- (b) Establishment of procedures to ensure the maintenance and operation of any ventilation and filtration system used. These procedures shall be implemented within thirty days of the initial evaluation;

(c) A reevaluation by an indoor air quality expert, to be conducted approximately two hundred seventy days after the initial evaluation; and

(d) The implementation of other procedures or plans that the superintendent deems necessary to implement the model program. [1998 c 245 § 116; 1989 c 315 § 6.]

**70.162.900 Severability—1989 c 315.** If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1989 c 315 § 7.]

**Chapter 70.164 RCW**

**LOW-INCOME RESIDENTIAL WEATHERIZATION PROGRAM**

Sections

- 70.164.010 Legislative findings.
- 70.164.020 Definitions.
- 70.164.030 Low-income weatherization and structural rehabilitation assistance account.
- 70.164.040 Proposals for low-income weatherization programs—Matching funds.
- 70.164.050 Program compliance with laws and rules—Energy audit required.
- 70.164.060 Weatherization of leased or rented residences—Limitations.
- 70.164.070 Payments to low-income weatherization and structural rehabilitation assistance account.
- 70.164.900 Severability—1987 c 36.

**70.164.010 Legislative findings.** (1) The legislature finds and declares that weatherization of the residences of low-income households will help conserve energy resources in this state and can reduce the need to obtain energy from more costly conventional energy resources. The legislature also finds that while many efforts have been made by the federal government and by the state, including its cities, counties, and utilities, to increase both the habitability and the energy efficiency of residential structures within the state, stronger coordination of these efforts will result in even greater energy efficiencies, increased cost savings to the state’s residents in the form of lower utility bills, improvements in health and safety, lower greenhouse gas emissions and associated climate impacts, as well as increased employment for the state’s workforce.

(2) Therefore, it is the intent of the legislature that state funds be dedicated to weatherization and energy efficiency activities as well as the moderate to significant repair and rehabilitation of residential structures that are required as a necessary antecedent to those activities. It is also the intent of the legislature that the department prioritize weatherization, energy efficiency activities, and structural repair of residential structures to facilitate the expeditious allocation of funds from federal energy efficiency programs including, but not limited to, the weatherization assistance program, the energy efficiency and conservation block grant program, residential energy efficiency components of the state energy program, and the retrofit ramp-up program for energy efficiency projects. The legislature further intends to allocate future distributions of energy-related federal jobs stimulus funding to strengthen these programs, and to coordinate energy retrofit and rehabilitation improvements as authorized by chapter

287, Laws of 2010 to increase the number of structures qualifying for assistance under these multiple state and federal energy efficiency programs.

(3) The program implementing the policy of this chapter is necessary to support the poor and infirm and also to benefit the health, safety, and general welfare of all citizens of the state. [2010 c 287 § 1; 1987 c 36 § 1.]

**70.164.020 Definitions.** The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Department" means the department of commerce.

(2) "Direct outreach" means:

(a) The use of door-to-door contact, community events, and other methods of direct interaction with customers to inform them of energy efficiency and weatherization opportunities; and

(b) The performance of energy audits.

(3) "Energy audit" means an analysis of a dwelling unit to determine the need for cost-effective energy conservation measures as determined by the department.

(4) "Household" means an individual or group of individuals living in a dwelling unit as defined by the department.

(5) "Low income" means household income as defined by the department, provided that the definition may not exceed eighty percent of median household income, adjusted for household size, for the county in which the dwelling unit to be weatherized is located.

(6) "Nonutility sponsor" means any sponsor other than a public service company, municipality, public utility district, mutual or cooperative, furnishing gas or electricity used to heat low-income residences.

(7) "Residence" means a dwelling unit as defined by the department.

(8) "Sponsor" means any entity that submits a proposal under RCW 70.164.040, including but not limited to any local community action agency, tribal nation, community service agency, or any other participating agency or any public service company, municipality, public utility district, mutual or cooperative, or any combination of such entities that jointly submits a proposal.

(9) "Sponsor match" means the share of the cost of weatherization to be paid by the sponsor.

(10) "Sustainable residential weatherization" or "weatherization" means activities that use funds administered by the department for one or more of the following: (a) Energy and resource conservation; (b) energy efficiency improvements; (c) repairs, indoor air quality improvements, and health and safety improvements; and (d) client education. Funds administered by the department for activities authorized under this subsection may only be used for the preservation of a dwelling unit occupied by a low-income household and must, to the extent feasible, be used to support and advance sustainable technologies.

(11) "Weatherizing agency" means any approved department grantee, tribal nation, or any public service company, municipality, public utility district, mutual or cooperative, or other entity that bears the responsibility for ensuring the performance of weatherization of residences under this chapter and has been approved by the department. [2010 c 287 § 2.

Prior: 2009 c 565 § 51; 2009 c 379 § 201; 1995 c 399 § 199; 1987 c 36 § 2.]

**Finding—Intent—Effective date—2009 c 379:** See notes following RCW 70.260.010.

**70.164.030 Low-income weatherization and structural rehabilitation assistance account.** (1) The low-income weatherization and structural rehabilitation assistance account is created in the state treasury. All moneys from the money distributed to the state pursuant to *Exxon v. United States*, 561 F.Supp. 816 (1983), affirmed 773 F.2d 1240 (1985), or any other oil overcharge settlements or judgments distributed by the federal government, that are allocated to the low-income weatherization and structural rehabilitation assistance account shall be deposited in the account. The department may accept such gifts, grants, and endowments from public or private sources as may be made from time to time, in trust or otherwise, and shall deposit such funds in the account. Any moneys received from sponsor match payments shall be deposited in the account. The legislature may also appropriate moneys to the account. Moneys in the account shall be spent pursuant to appropriation and only for the purposes and in the manner provided in RCW 70.164.040. Any moneys appropriated that are not spent by the department shall return to the account.

(2) The purposes of the low-income weatherization and structural rehabilitation assistance account are to:

(a) Maximize the number of energy efficient residential structures in the state;

(b) Achieve the greatest possible expected monetary and energy savings by low-income households and other energy consumers over the longest period of time;

(c) Identify and correct, to the extent practicable, health and safety problems for residents of low-income households, including asbestos, lead, and mold hazards;

(d) Leverage the many available state and federal programs aimed at increasing the quality and energy efficiency of low-income residences in the state;

(e) Create family-wage jobs that may lead to careers in the construction trades or in the energy efficiency sectors; and

(f) Leverage, to the extent feasible, sustainable technologies, practices, and designs, including renewable energy systems. [2010 c 287 § 3; 1991 sp.s. c 13 § 62; 1987 c 36 § 3.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**70.164.040 Proposals for low-income weatherization programs—Matching funds.** (1) The department shall solicit proposals for low-income weatherization programs from potential sponsors. A proposal shall state the amount of the sponsor match, the amount requested, the name of the weatherizing agency, and any other information required by the department.

(2)(a) A sponsor may use its own moneys, including corporate or ratepayer moneys, or moneys provided by landlords, charitable groups, government programs, the Bonneville power administration, or other sources to pay the sponsor match.

(b) Moneys provided by a sponsor pursuant to requirements in this section shall be in addition to and shall not supplant any funding for low-income weatherization that would

otherwise have been provided by the sponsor or any other entity enumerated in (a) of this subsection.

(c) No proposal may require any contribution as a condition of weatherization from any household whose residence is weatherized under the proposal.

(d) Proposals shall provide that full levels of all cost-effective, structurally feasible, sustainable residential weatherization materials, measures, and practices, as determined by the department, shall be installed when a low-income residence is weatherized.

(3)(a) The department may in its discretion accept, accept in part, or reject proposals submitted.

(b) The department shall prioritize allocating funds from the low-income weatherization and [structural] rehabilitation [assistance] account to projects that maximize energy efficiency and extend the usable life of an affordable home by: (i) Installing energy efficiency measures; and (ii) providing structural rehabilitation and repairs, so that funding from federal energy efficiency programs such as the weatherization assistance program, the energy efficiency and conservation block grant program, residential energy efficiency components of the state energy program, and the retrofit ramp-up program is distributed expeditiously.

(c) When allocating funds from the low-income weatherization and [structural] rehabilitation [assistance] account, the department shall, to the extent feasible, consider local and state benefits including pledged sponsor match, available energy efficiency, repair, and rehabilitation funds from other sources, the preservation of affordable housing, and balance of participation in proportion to population among low-income households for: (i) Geographic regions in the state; (ii) types of fuel used for heating, except that the department shall encourage the use of energy efficient sustainable technologies; (iii) owner-occupied and rental residences; and (iv) single-family and multifamily dwellings.

(d) The department shall then allocate funds appropriated from the low-income weatherization and structural rehabilitation assistance account for energy efficiency and repair activities among proposals accepted or accepted in part.

(e) The department shall develop policies to ensure prudent, cost-effective investments are made in homes and buildings requiring energy efficiency, repair, and rehabilitation improvements that will maximize energy savings and extend the life of a home.

(f) The department shall give priority to the structural rehabilitation and weatherization of dwelling units occupied by low-income households with incomes at or below one hundred twenty-five percent of the federally established poverty level.

(g) The department may allocate funds to a nonutility sponsor without requiring a sponsor match if the department determines that such an allocation is necessary to provide the greatest benefits to low-income residents of the state.

(h) The department shall require weatherizing agencies to employ individuals trained from workforce training and apprentice programs established under chapter 536, Laws of 2009 if these workers are available, pay prevailing wages under chapter 39.12 RCW, hire from the community in which the program is located, and create employment opportunities for veterans, members of the national guard, and low-income and disadvantaged populations.

(4)(a) A sponsor may elect to: (i) Pay a sponsor match as a lump sum at the time of structural rehabilitation or weatherization; or (ii) make yearly payments to the low-income weatherization and structural rehabilitation assistance account over a period not to exceed ten years. If a sponsor elects to make yearly payments, the value of the payments shall not be less than the value of the lump sum payment that would have been made under (a)(i) of this subsection.

(b) The department may permit a sponsor to meet its match requirement in whole or in part through providing labor, materials, or other in-kind expenditures.

(5) Service providers receiving funding under this section must report to the department at least quarterly, or in alignment with federal reporting, whichever is the greater frequency, the project costs, and the number of dwelling units repaired, rehabilitated, and weatherized, the number of jobs created or maintained, and the number of individuals trained through workforce training and apprentice programs. The director of the department shall review the accuracy of these reports.

(6) The department shall adopt rules to carry out this section. [2010 c 287 § 4; 2009 c 379 § 202; 1987 c 36 § 4.]

**Finding—Intent—Effective date—2009 c 379:** See notes following RCW 70.260.010.

**70.164.050 Program compliance with laws and rules—Energy audit required.** (1) The department is responsible for ensuring that sponsors and weatherizing agencies comply with the state laws, the department's rules, and the sponsor's proposal in carrying out proposals.

(2) Before a residence is weatherized, the department shall require that an energy audit be conducted.

(3) To the greatest extent practicable and allowable under federal rules and regulations, the department shall maximize available federal low-income home energy assistance program funding for weatherization projects. [2009 c 379 § 203; 1987 c 36 § 5.]

**Finding—Intent—Effective date—2009 c 379:** See notes following RCW 70.260.010.

**70.164.060 Weatherization of leased or rented residences—Limitations.** Before a leased or rented residence is weatherized, written permission shall be obtained from the owner of the residence for the weatherization. The department shall adopt rules to ensure that: (1) The benefits of weatherization assistance, including utility bill reduction and preservation of affordable housing stock, accrue primarily to low-income tenants occupying a leased or rented residence; (2) as a result of weatherization provided under this chapter, the rent on the residence is not increased and the tenant is not evicted; and (3) as a result of weatherization provided under this chapter, no undue or excessive enhancement occurs in the value of the residence. This section is in the public interest and any violation by a landlord of the rules adopted under this section shall be an act in trade or commerce violating chapter 19.86 RCW, the consumer protection act. [2009 c 379 § 204; 1987 c 36 § 6.]

**Finding—Intent—Effective date—2009 c 379:** See notes following RCW 70.260.010.

**70.164.070 Payments to low-income weatherization and structural rehabilitation assistance account.** Payments to the low-income weatherization and structural rehabilitation assistance account shall be treated, for purposes of state law, as payments for energy conservation and shall be eligible for any tax credits or deductions, equity returns, or other benefits for which conservation investments are eligible. [2010 c 287 § 5; 1987 c 36 § 7.]

**70.164.900 Severability—1987 c 36.** If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1987 c 36 § 9.]

### Chapter 70.168 RCW

#### STATEWIDE TRAUMA CARE SYSTEM

##### Sections

70.168.010	Legislative finding.
70.168.015	Definitions.
70.168.020	Steering committee—Composition—Appointment.
70.168.030	Analysis of state's trauma system—Plan.
70.168.040	Emergency medical services and trauma care system trust account.
70.168.050	Emergency medical services and trauma care system—Department to establish—Rule making—Gifts.
70.168.060	Department duties—Timelines.
70.168.070	Provision of trauma care service—Designation.
70.168.080	Prehospital trauma care service—Verification—Compliance—Variance.
70.168.090	Statewide data registry—Quality assurance program—Confidentiality.
70.168.100	Regional emergency medical services and trauma care councils.
70.168.110	Planning and service regions.
70.168.120	Local and regional emergency medical services and trauma care councils—Power and duties.
70.168.130	Disbursement of funds to regional emergency medical services and trauma care councils—Grants to nonprofit agencies—Purposes.
70.168.135	Grant program for designated trauma care services—Rules.
70.168.140	Prehospital provider liability.
70.168.150	Emergency cardiac and stroke care system—Voluntary hospital participation.
70.168.160	Report to the legislature.
70.168.900	Short title.
70.168.901	Severability—1990 c 269.

**70.168.010 Legislative finding.** The legislature finds and declares that:

(1) Trauma is a severe health problem in the state of Washington and a major cause of death;

(2) Presently, trauma care is very limited in many parts of the state, and health care in rural areas is in transition with the danger that some communities will be without emergency medical care;

(3) It is in the best interest of the citizens of Washington state to establish an efficient and well-coordinated statewide emergency medical services and trauma care system to reduce costs and incidence of inappropriate and inadequate trauma care and emergency medical service and minimize the human suffering and costs associated with preventable mortality and morbidity;

(4) The goals and objectives of an emergency medical services and trauma care system are to: (a) Pursue trauma prevention activities to decrease the incidence of trauma; (b) provide optimal care for the trauma victim; (c) prevent

unnecessary death and disability from trauma and emergency illness; and (d) contain costs of trauma care and trauma system implementation; and

(5) In other parts of the United States where trauma care systems have failed and trauma care centers have closed, there is a direct relationship between such failures and closures and a lack of commitment to fair and equitable reimbursement for trauma care participating providers and system overhead costs. [1990 c 269 § 1; 1988 c 183 § 1.]

**70.168.015 Definitions.** As used in this chapter, the following terms have the meanings indicated unless the context clearly requires otherwise.

(1) "Cardiac" means acute coronary syndrome, an umbrella term used to cover any group of clinical symptoms compatible with acute myocardial ischemia, which is chest discomfort or other symptoms due to insufficient blood supply to the heart muscle resulting from coronary artery disease. "Cardiac" also includes out-of-hospital cardiac arrest, which is the cessation of mechanical heart activity as assessed by emergency medical services personnel, or other acute heart conditions.

(2) "Communications system" means a radio and land-line network which provides rapid public access, coordinated central dispatching of services, and coordination of personnel, equipment, and facilities in an emergency medical services and trauma care system.

(3) "Department" means the department of health.

(4) "Designated trauma care service" means a level I, II, III, IV, or V trauma care service or level I, II, or III pediatric trauma care service or level I, I-pediatric, II, or III trauma-related rehabilitative service.

(5) "Designation" means a formal determination by the department that hospitals or health care facilities are capable of providing designated trauma care services as authorized in RCW 70.168.070.

(6) "Emergency medical service" means medical treatment and care that may be rendered at the scene of any medical emergency or while transporting any patient in an ambulance to an appropriate medical facility, including ambulance transportation between medical facilities.

(7) "Emergency medical services and trauma care planning and service regions" means geographic areas established by the department under this chapter.

(8) "Emergency medical services and trauma care system plan" means a statewide plan that identifies statewide emergency medical services and trauma care objectives and priorities and identifies equipment, facility, personnel, training, and other needs required to create and maintain a statewide emergency medical services and trauma care system. The plan also includes a plan of implementation that identifies the state, regional, and local activities that will create, operate, maintain, and enhance the system. The plan is formulated by incorporating the regional emergency medical services and trauma care plans required under this chapter. The plan shall be updated every two years and shall be made available to the state board of health in sufficient time to be considered in preparation of the biennial state health report required in RCW 43.20.050.

(9) "Emergency medical services medical program director" means a person who is an approved program director as defined by RCW 18.71.205(4).

(10) "Facility patient care protocols" means the written procedures adopted by the medical staff that direct the care of the patient. These procedures shall be based upon the assessment of the patients' medical needs. The procedures shall follow minimum statewide standards for trauma care services.

(11) "Hospital" means a facility licensed under chapter 70.41 RCW, or comparable health care facility operated by the federal government or located and licensed in another state.

(12) "Level I-pediatric rehabilitative services" means rehabilitative services as established in RCW 70.168.060. Facilities providing level I-pediatric rehabilitative services provide the same services as facilities authorized to provide level I rehabilitative services except these services are exclusively for children under the age of fifteen years.

(13) "Level I pediatric trauma care services" means pediatric trauma care services as established in RCW 70.168.060. Hospitals providing level I services shall provide definitive, comprehensive, specialized care for pediatric trauma patients and shall also provide ongoing research and health care professional education in pediatric trauma care.

(14) "Level I rehabilitative services" means rehabilitative services as established in RCW 70.168.060. Facilities providing level I rehabilitative services provide rehabilitative treatment to patients with traumatic brain injuries, spinal cord injuries, complicated amputations, and other diagnoses resulting in functional impairment, with moderate to severe impairment or complexity. These facilities serve as referral facilities for facilities authorized to provide level II and III rehabilitative services.

(15) "Level I trauma care services" means trauma care services as established in RCW 70.168.060. Hospitals providing level I services shall have specialized trauma care teams and provide ongoing research and health care professional education in trauma care.

(16) "Level II pediatric trauma care services" means pediatric trauma care services as established in RCW 70.168.060. Hospitals providing level II services shall provide initial stabilization and evaluation of pediatric trauma patients and provide comprehensive general medicine and surgical care to pediatric patients who can be maintained in a stable or improving condition without the specialized care available in the level I hospital. Complex surgeries and research and health care professional education in pediatric trauma care activities are not required.

(17) "Level II rehabilitative services" means rehabilitative services as established in RCW 70.168.060. Facilities providing level II rehabilitative services treat individuals with musculoskeletal trauma, peripheral nerve lesions, lower extremity amputations, and other diagnoses resulting in functional impairment in more than one functional area, with moderate to severe impairment or complexity.

(18) "Level II trauma care services" means trauma care services as established in RCW 70.168.060. Hospitals providing level II services shall be similar to those provided by level I hospitals, although complex surgeries and research

and health care professional education activities are not required to be provided.

(19) "Level III pediatric trauma care services" means pediatric trauma care services as established in RCW 70.168.060. Hospitals providing level III services shall provide initial evaluation and stabilization of patients. The range of pediatric trauma care services provided in level III hospitals are not as comprehensive as level I and II hospitals.

(20) "Level III rehabilitative services" means rehabilitative services as established in RCW 70.168.060. Facilities providing level III rehabilitative services provide treatment to individuals with musculoskeletal injuries, peripheral nerve injuries, uncomplicated lower extremity amputations, and other diagnoses resulting in functional impairment in more than one functional area but with minimal to moderate impairment or complexity.

(21) "Level III trauma care services" means trauma care services as established in RCW 70.168.060. The range of trauma care services provided by level III hospitals are not as comprehensive as level I and II hospitals.

(22) "Level IV trauma care services" means trauma care services as established in RCW 70.168.060.

(23) "Level V trauma care services" means trauma care services as established in RCW 70.168.060. Facilities providing level V services shall provide stabilization and transfer of all patients with potentially life-threatening injuries.

(24) "Patient care procedures" means written operating guidelines adopted by the regional emergency medical services and trauma care council, in consultation with local emergency medical services and trauma care councils, emergency communication centers, and the emergency medical services medical program director, in accordance with minimum statewide standards. The patient care procedures shall identify the level of medical care personnel to be dispatched to an emergency scene, procedures for triage of patients, the level of trauma care facility to first receive the patient, and the name and location of other trauma care facilities to receive the patient should an interfacility transfer be necessary. Procedures on interfacility transfer of patients shall be consistent with the transfer procedures required in chapter 70.170 RCW.

(25) "Pediatric trauma patient" means trauma patients known or estimated to be less than fifteen years of age.

(26) "Prehospital" means emergency medical care or transportation rendered to patients prior to hospital admission or during interfacility transfer by licensed ambulance or aid service under chapter 18.73 RCW, by personnel certified to provide emergency medical care under chapters 18.71 and 18.73 RCW, or by facilities providing level V trauma care services as provided for in this chapter.

(27) "Prehospital patient care protocols" means the written procedures adopted by the emergency medical services medical program director that direct the out-of-hospital emergency care of the emergency patient which includes the trauma patient. These procedures shall be based upon the assessment of the patients' medical needs and the treatment to be provided for serious conditions. The procedures shall meet or exceed statewide minimum standards for trauma and other prehospital care services.

(28) "Rehabilitative services" means a formal program of multidisciplinary, coordinated, and integrated services for

evaluation, treatment, education, and training to help individuals with disabling impairments achieve and maintain optimal functional independence in physical, psychosocial, social, vocational, and avocational realms. Rehabilitation is indicated for the trauma patient who has sustained neurologic or musculoskeletal injury and who needs physical or cognitive intervention to return to home, work, or society.

(29) "Secretary" means the secretary of the department of health.

(30) "Trauma" means a major single or multisystem injury requiring immediate medical or surgical intervention or treatment to prevent death or permanent disability.

(31) "Trauma care system" means an organized approach to providing care to trauma patients that provides personnel, facilities, and equipment for effective and coordinated trauma care. The trauma care system shall: Identify facilities with specific capabilities to provide care, triage trauma victims at the scene, and require that all trauma victims be sent to an appropriate trauma facility. The trauma care system includes prevention, prehospital care, hospital care, and rehabilitation.

(32) "Triage" means the sorting of patients in terms of disposition, destination, or priority. Triage of prehospital trauma victims requires identifying injury severity so that the appropriate care level can be readily assessed according to patient care guidelines.

(33) "Verification" means the identification of prehospital providers who are capable of providing verified trauma care services and shall be a part of the licensure process required in chapter 18.73 RCW.

(34) "Verified trauma care service" means prehospital service as provided for in RCW 70.168.080, and identified in the regional emergency medical services and trauma care plan as required by RCW 70.168.100. [2010 c 52 § 2; 1990 c 269 § 4.]

**Reviser's note:** The definitions in this section have been alphabetized pursuant to RCW 1.08.015(2)(k).

**Findings—Intent—2010 c 52:** "(1) The legislature finds that:

(a) In 2006, the governor's emergency medical services and trauma care steering committee charged the emergency cardiac and stroke work group with assessing the burden of acute coronary syndrome, otherwise known as heart attack, cardiac arrest, and stroke and the care that people receive for these acute cardiovascular events in Washington.

(b) The work group's report found that:

(i) Despite falling death rates, heart disease and stroke were still the second and third leading causes of death in 2005. All cardiovascular diseases accounted for thirty-four percent of deaths, surpassing all other causes of death.

(ii) Cardiovascular diseases have a substantial social and economic impact on individuals and families, as well as the state's health and long-term care systems. Although many people who survive acute cardiac and stroke events have significant physical and cognitive disability, early evidence-based treatments can help more people return to their productive lives.

(iii) Heart disease and stroke are among the most costly medical conditions at nearly four billion dollars per year for hospitalization and long-term care alone.

(iv) The age group at highest risk for heart disease or stroke, people sixty-five and older, is projected to double by 2030, potentially doubling the social and economic impact of heart disease and stroke in Washington. Early recognition is important, as Washington demographics indicate a significant occurrence of acute coronary syndromes by the age of fifty-five.

(c) The assessment of emergency cardiac and stroke care found:

(i) Many cardiac and stroke patients are not receiving evidence-based treatments;

(ii) Access to diagnostic and treatment resources varies greatly, especially for rural parts of the state;

(iii) Training, protocols, procedures, and resources in dispatch ser-

vices, emergency medical services, and hospitals vary significantly;

(iv) Cardiac mortality rates vary widely depending on hospital and regional resources; and

(v) Advances in technology and streamlined approaches to care can significantly improve emergency cardiac and stroke care, but many people do not get the benefit of these treatments.

(d) Time is critical throughout the chain of survival, from dispatch of emergency medical services, to transport, to the emergency room, for emergency cardiac and stroke patients. The minutes after the onset of heart attack, cardiac arrest, and stroke are as important as the "golden hour" in trauma. When treatment is delayed, more brain or heart tissue dies. Timely treatment can mean the difference between returning to work or becoming permanently disabled, living at home, or living in a nursing home. It can be the difference between life and death. Ensuring most patients will get life saving care in time requires preplanning and an organized system of care.

(e) Many other states have improved systems of care to respond to and treat acute cardiac and stroke events, similar to improvements in trauma care in Washington.

(f) Some areas of Washington have deployed local systems to respond to and treat acute cardiac and stroke events.

(2) It is the intent of the legislature to support efforts to improve emergency cardiac and stroke care in Washington through an evidence-based coordinated system of care." [2010 c 52 § 1.]

#### **70.168.020 Steering committee—Composition—Appointment.**

(1) There is hereby created an emergency medical services and trauma care steering committee composed of representatives of individuals knowledgeable in emergency medical services and trauma care, including emergency medical providers such as physicians, nurses, hospital personnel, emergency medical technicians, paramedics, ambulance services, a member of the emergency medical services licensing and certification advisory committee, local government officials, state officials, consumers, and persons affiliated professionally with health science schools. The governor shall appoint members of the steering committee. Members shall be appointed for a period of three years. The department shall provide administrative support to the committee. All appointive members of the committee, in the performance of their duties, may be entitled to receive travel expenses as provided in RCW 43.03.050 and 43.03.060. The governor may remove members from the committee who have three unexcused absences from committee meetings. The governor shall fill any vacancies of the committee in a timely manner. The terms of those members representing the same field shall not expire at the same time.

The committee shall elect a chair and a vice-chair whose terms of office shall be for one year each. The chair shall be ineligible for reelection after serving four consecutive terms.

The committee shall meet on call by the governor, the secretary, or the chair.

(2) The emergency medical services and trauma care steering committee shall:

(a) Advise the department regarding emergency medical services and trauma care needs throughout the state.

(b) Review the regional emergency medical services and trauma care plans and recommend changes to the department before the department adopts the plans.

(c) Review proposed departmental rules for emergency medical services and trauma care.

(d) Recommend modifications in rules regarding emergency medical services and trauma care. [2000 c 93 § 20; 1990 c 269 § 5; 1988 c 183 § 2.]

**70.168.030 Analysis of state's trauma system—Plan.**

(1) Upon the recommendation of the steering committee, the director of the office of financial management shall contract with an independent party for an analysis of the state's trauma system.

(2) The analysis shall contain at a minimum, the following:

(a) The identification of components of a functional statewide trauma care system, including standards; and

(b) An assessment of the current trauma care program compared with the functional statewide model identified in subsection (a) of this section, including an analysis of deficiencies and reasons for the deficiencies.

(3) The analysis shall provide a design for a statewide trauma care system based on the findings of the committee under subsection (2) of this section, with a plan for phased-in implementation. The plan shall include, at a minimum, the following:

(a) Responsibility for implementation;

(b) Administrative authority at the state, regional, and local levels;

(c) Facility, equipment, and personnel standards;

(d) Triage and care criteria;

(e) Data collection and use;

(f) Cost containment strategies;

(g) System evaluation; and

(h) Projected costs. [1998 c 245 § 117; 1988 c 183 § 3.]

**70.168.040 Emergency medical services and trauma care system trust account. (Effective until July 1, 2011.)**

The emergency medical services and trauma care system trust account is hereby created in the state treasury. Moneys shall be transferred to the emergency medical services and trauma care system trust account from the public safety education account or other sources as appropriated, and as collected under RCW \*46.63.110(6) and 46.12.042. Disbursements shall be made by the department subject to legislative appropriation. Expenditures may be made only for the purposes of the state trauma care system under this chapter, including emergency medical services, trauma care services, rehabilitative services, and the planning and development of related services under this chapter and for reimbursement by the department of social and health services for trauma care services provided by designated trauma centers. During the 2001-2003 fiscal biennium, the legislature may transfer from the emergency medical services and trauma care system trust account to the state general fund such amounts as reflect the excess fund balance of the account. [2002 c 371 § 922; 1997 c 331 § 2; 1990 c 269 § 17; 1988 c 183 § 4.]

\*Reviser's note: RCW 46.63.110 was amended by 2002 c 279 § 15, changing subsection (6) to subsection (7).

**Severability—Effective date—2002 c 371:** See notes following RCW 9.46.100.

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**70.168.040 Emergency medical services and trauma care system trust account. (Effective July 1, 2011.)**

The emergency medical services and trauma care system trust account is hereby created in the state treasury. Moneys shall be transferred to the emergency medical services and trauma care system trust account from the public safety education

(2010 Ed.)

account or other sources as appropriated, and as collected under RCW 46.63.110(7) and 46.68.440. Disbursements shall be made by the department subject to legislative appropriation. Expenditures may be made only for the purposes of the state trauma care system under this chapter, including emergency medical services, trauma care services, rehabilitative services, and the planning and development of related services under this chapter and for reimbursement by the department of social and health services for trauma care services provided by designated trauma centers. [2010 c 161 § 1158; 2002 c 371 § 922; 1997 c 331 § 2; 1990 c 269 § 17; 1988 c 183 § 4.]

**Effective date—Intent—Legislation to reconcile chapter 161, Laws of 2010 and other amendments made during the 2010 legislative session—2010 c 161:** See notes following RCW 46.04.013.

**Severability—Effective date—2002 c 371:** See notes following RCW 9.46.100.

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**70.168.050 Emergency medical services and trauma care system—Department to establish—Rule making—Gifts.**

(1) The department, in consultation with, and having solicited the advice of, the emergency medical services and trauma care steering committee, shall establish the Washington state emergency medical services and trauma care system.

(2) The department shall adopt rules consistent with this chapter to carry out the purpose of this chapter. All rules shall be adopted in accordance with chapter 34.05 RCW. All rules and procedures adopted by the department shall minimize paperwork and compliance requirements for facilities and other participants. The department shall assure an opportunity for consultation, review, and comment by the public and providers of emergency medical services and trauma care before adoption of rules. When developing rules to implement this chapter the department shall consider the report of the Washington state trauma project established under chapter 183, Laws of 1988. Nothing in this chapter requires the department to follow any specific recommendation in that report except as it may also be included in this chapter.

(3) The department may apply for, receive, and accept gifts and other payments, including property and service, from any governmental or other public or private entity or person, and may make arrangements as to the use of these receipts, including any activities related to the design, maintenance, or enhancements of the emergency medical services and trauma care system in the state. The department shall make available upon request to the appropriate legislative committees information concerning the source, amount, and use of such gifts or payments. [1990 c 269 § 3.]

**70.168.060 Department duties—Timelines.** The department, in consultation with and having solicited the advice of the emergency medical services and trauma care steering committee, shall:

(1) Establish the following on a statewide basis:

(a) By September 1990, minimum standards for facility, equipment, and personnel for level I, II, III, IV, and V trauma care services;

(b) By September 1990, minimum standards for facility, equipment, and personnel for level I, I-pediatric, II, and III trauma-related rehabilitative services;

(c) By September 1990, minimum standards for facility, equipment, and personnel for level I, II, and III pediatric trauma care services;

(d) By September 1990, minimum standards required for verified prehospital trauma care services, including equipment and personnel;

(e) Personnel training requirements and programs for providers of trauma care. The department shall design programs which are accessible to rural providers including on-site training;

(f) Statewide emergency medical services and trauma care system objectives and priorities;

(g) Minimum standards for the development of facility patient care protocols and prehospital patient care protocols and patient care procedures;

(h) By July 1991, minimum standards for an effective emergency medical communication system;

(i) Minimum standards for an effective emergency medical services transportation system; and

(j) By July 1991, establish a program for emergency medical services and trauma care research and development;

(2) Establish statewide standards, personnel training requirements and programs, system objectives and priorities, protocols and guidelines as required in subsection (1) of this section, by utilizing those standards adopted in the report of the Washington trauma advisory committee as authorized by chapter 183, Laws of 1988. In establishing standards for level IV or V trauma care services the department may adopt similar standards adopted for services provided in rural health care facilities authorized in chapter 70.175 RCW. The department may modify standards, personnel training requirements and programs, system objectives and priorities, and guidelines in rule if the department determines that such modifications are necessary to meet federal and other state requirements or are essential to allow the department and others to establish the system or should it determine that public health considerations or efficiencies in the delivery of emergency medical services and trauma care warrant such modifications;

(3) Designate emergency medical services and trauma care planning and service regions as provided for in this chapter;

(4) By July 1, 1992, establish the minimum and maximum number of hospitals and health care facilities in the state and within each emergency medical services and trauma care planning and service region that may provide designated trauma care services based upon approved regional emergency medical services and trauma care plans;

(5) By July 1, 1991, establish the minimum and maximum number of prehospital providers in the state and within each emergency medical services and trauma care planning and service region that may provide verified trauma care services based upon approved regional emergency medical services and trauma care plans;

(6) By July 1993, begin the designation of hospitals and health care facilities to provide designated trauma care services in accordance with needs identified in the statewide emergency medical services and trauma care plan;

(7) By July 1990, adopt a format for submission of the regional plans to the department;

(8) By July 1991, begin the review and approval of regional emergency medical services and trauma care plans;

(9) By July 1992, prepare regional plans for those regions that do not submit a regional plan to the department that meets the requirements of this chapter;

(10) By October 1992, prepare and implement the statewide emergency medical services and trauma care system plan incorporating the regional plans;

(11) Coordinate the statewide emergency medical services and trauma care system to assure integration and smooth operation between the regions;

(12) Facilitate coordination between the emergency medical services and trauma care steering committee and the emergency medical services licensing and certification advisory committee;

(13) Monitor the statewide emergency medical services and trauma care system;

(14) Conduct a study of all costs, charges, expenses, and levels of reimbursement associated with providers of trauma care services, and provide its findings and any recommendations regarding adequate and equitable reimbursement to trauma care providers to the legislature by July 1, 1991;

(15) Monitor the level of public and private payments made on behalf of trauma care patients to determine whether health care providers have been adequately reimbursed for the costs of care rendered such persons;

(16) By July 1991, design and establish the statewide trauma care registry as authorized in RCW 70.168.090 to (a) assess the effectiveness of emergency medical services and trauma care delivery, and (b) modify standards and other system requirements to improve the provision of emergency medical services and trauma care;

(17) By July 1991, develop patient outcome measures to assess the effectiveness of emergency medical services and trauma care in the system;

(18) By July 1993, develop standards for regional emergency medical services and trauma care quality assurance programs required in RCW 70.168.090;

(19) Administer funding allocated to the department for the purpose of creating, maintaining, or enhancing the statewide emergency medical services and trauma care system; and

(20) By October 1990, begin coordination and development of trauma prevention and education programs. [1990 c 269 § 8.]

**70.168.070 Provision of trauma care service—Designation.** Any hospital or health care facility that desires to be authorized to provide a designated trauma care service shall request designation from the department. Designation involves a contractual relationship between the state and a hospital or health care facility whereby each agrees to maintain a level of commitment and resources sufficient to meet responsibilities and standards required by the statewide emergency medical services and trauma care system plan. By January 1992, the department shall determine by rule the manner and form of such requests. Upon receiving a request, the department shall review the request to determine whether the hospital or health care facility is in compliance with stan-

dards for the trauma care service or services for which designation is desired. If requests are received from more than one hospital or health care facility within the same emergency medical planning and trauma care planning and service region, the department shall select the most qualified applicant or applicants to be selected through a competitive process. Any applicant not designated may request a hearing to review the decision.

Designations are valid for a period of three years and are renewable upon receipt of a request for renewal prior to expiration from the hospital or health care facility. When an authorization for designation is due for renewal other hospitals and health care facilities in the area may also apply and compete for designation. Regional emergency medical and trauma care councils shall be notified promptly of designated hospitals and health care facilities in their region so they may incorporate them into the regional plan as required by this chapter. The department may revoke or suspend the designation should it determine that the hospital or health care facility is substantially out of compliance with the standards and has refused or been unable to comply after a reasonable period of time has elapsed. The department shall promptly notify the regional emergency medical and trauma care planning and service region of suspensions or revocations. Any facility whose designation has been revoked or suspended may request a hearing to review the action by the department as provided for in chapter 34.05 RCW.

As a part of the process to designate and renew the designation of hospitals authorized to provide level I, II, or III trauma care services or level I, II, and III pediatric trauma care services, the department shall contract for on-site reviews of such hospitals to determine compliance with required standards. The department may contract for on-site reviews of hospitals and health care facilities authorized to provide level IV or V trauma care services or level I, I-pediatric, II, or III trauma-related rehabilitative services to determine compliance with required standards. Members of on-site review teams and staff included in site visits are exempt from chapter 42.56 RCW. They may not divulge and cannot be subpoenaed to divulge information obtained or reports written pursuant to this section in any civil action, except, after in camera review, pursuant to a court order which provides for the protection of sensitive information of interested parties including the department: (1) In actions arising out of the department's designation of a hospital or health care facility pursuant to this section; (2) in actions arising out of the department's revocation or suspension of designation status of a hospital or health care facility under this section; or (3) in actions arising out of the restriction or revocation of the clinical or staff privileges of a health care provider as defined in RCW 7.70.020 (1) and (2), subject to any further restrictions on disclosure in RCW 4.24.250 that may apply. Information that identifies individual patients shall not be publicly disclosed without the patient's consent. When a facility requests designation for more than one service, the department may coordinate the joint consideration of such requests.

The department may establish fees to help defray the costs of this section, though such fees shall not be assessed to health care facilities authorized to provide level IV and V trauma care services.

This section shall not restrict the authority of a hospital or a health care provider licensed under Title 18 RCW to provide services which it has been authorized to provide by state law. [2005 c 274 § 343; 1990 c 269 § 9.]

**Part headings not law—Effective date—2005 c 274:** See RCW 42.56.901 and 42.56.902.

**70.168.080 Prehospital trauma care service—Verification—Compliance—Variance.** (1) Any provider desiring to provide a verified prehospital trauma care service shall indicate on the licensing application how they meet the standards required for verification as a provider of this service. The department shall notify the regional emergency medical services and trauma care councils of the providers of verified trauma care services in their regions. The department may conduct on-site reviews of prehospital providers to assess compliance with the applicable standards.

(2) Should the department determine that a prehospital provider is substantially out of compliance with the standards, the department shall notify the regional emergency medical services and trauma care council. If the failure of a prehospital provider to comply with the applicable standards results in the region being out of compliance with its regional plan, the council shall take such steps necessary to assure the region is brought into compliance within a reasonable period of time. The council may seek assistance and funding from the department and others to provide training or grants necessary to bring a prehospital provider into compliance. The council may appeal to the department for modification of the regional plan if it is unable to assure continued compliance with the regional plan. The department may authorize modification of the plan if such modifications meet the requirements of this chapter. The department may suspend or revoke the authorization of a prehospital provider to provide a verified prehospital service if the provider has refused or been unable to comply after a reasonable period of time has elapsed. The council shall be notified promptly of any revocations or suspensions. Any prehospital provider whose verification has been suspended or revoked may request a hearing to review the action by the department as provided for in chapter 34.05 RCW.

(3) The department may grant a variance from provisions of this section if the department determines: (a) That no detriment to public health and safety will result from the variance, and (b) compliance with provisions of this section will cause a reduction or loss of existing prehospital services. Variances may be granted for a period not to exceed one year. A variance may be renewed by the department. If a renewal is granted, a plan of compliance shall be prepared specifying steps necessary to bring a provider or region into compliance and expected date of compliance.

(4) This section shall not restrict the authority of a provider licensed under Title 18 RCW to provide services which it has been authorized to provide by state law. [1990 c 269 § 10.]

**70.168.090 Statewide data registry—Quality assurance program—Confidentiality.** (1) By July 1991, the department shall establish a statewide data registry to collect and analyze data on the incidence, severity, and causes of trauma, including traumatic brain injury. The department

shall collect additional data on traumatic brain injury should additional data requirements be enacted by the legislature. The registry shall be used to improve the availability and delivery of prehospital and hospital trauma care services. Specific data elements of the registry shall be defined by rule by the department. To the extent possible, the department shall coordinate data collection from hospitals for the trauma registry with the health care data system authorized in chapter 70.170 RCW. Every hospital, facility, or health care provider authorized to provide level I, II, III, IV, or V trauma care services, level I, II, or III pediatric trauma care services, level I, level I-pediatric, II, or III trauma-related rehabilitative services, and prehospital trauma-related services in the state shall furnish data to the registry. All other hospitals and prehospital providers shall furnish trauma data as required by the department by rule.

The department may respond to requests for data and other information from the registry for special studies and analysis consistent with requirements for confidentiality of patient and quality assurance records. The department may require requestors to pay any or all of the reasonable costs associated with such requests that might be approved.

(2) In each emergency medical services and trauma care planning and service region, a regional emergency medical services and trauma care systems quality assurance program shall be established by those facilities authorized to provide levels I, II, and III trauma care services. The systems quality assurance program shall evaluate trauma care delivery, patient care outcomes, and compliance with the requirements of this chapter. The systems quality assurance program may also evaluate emergency cardiac and stroke care delivery. The emergency medical services medical program director and all other health care providers and facilities who provide trauma and emergency cardiac and stroke care services within the region shall be invited to participate in the regional emergency medical services and trauma care quality assurance program.

(3) Data elements related to the identification of individual patient's, provider's and facility's care outcomes shall be confidential, shall be exempt from RCW 42.56.030 through 42.56.570 and \*42.17.350 through 42.17.450, and shall not be subject to discovery by subpoena or admissible as evidence.

(4) Patient care quality assurance proceedings, records, and reports developed pursuant to this section are confidential, exempt from chapter 42.56 RCW, and are not subject to discovery by subpoena or admissible as evidence. In any civil action, except, after in camera review, pursuant to a court order which provides for the protection of sensitive information of interested parties including the department: (a) In actions arising out of the department's designation of a hospital or health care facility pursuant to RCW 70.168.070; (b) in actions arising out of the department's revocation or suspension of designation status of a hospital or health care facility under RCW 70.168.070; or (c) in actions arising out of the restriction or revocation of the clinical or staff privileges of a health care provider as defined in RCW 7.70.020 (1) and (2), subject to any further restrictions on disclosure in RCW 4.24.250 that may apply. Information that identifies individual patients shall not be publicly disclosed without the

patient's consent. [2010 c 52 § 5; 2005 c 274 § 344; 1990 c 269 § 11.]

\*Reviser's note: RCW 42.17.350 through 42.17.450 were recodified and repealed by chapter 204, Laws of 2010.

Findings—Intent—2010 c 52: See note following RCW 70.168.015.

Part headings not law—Effective date—2005 c 274: See RCW 42.56.901 and 42.56.902.

**70.168.100 Regional emergency medical services and trauma care councils.** Regional emergency medical services and trauma care councils are established. The councils shall:

(1) By June 1990, begin the development of regional emergency medical services and trauma care plans to:

(a) Assess and analyze regional emergency medical services and trauma care needs;

(b) Identify personnel, agencies, facilities, equipment, training, and education to meet regional and local needs;

(c) Identify specific activities necessary to meet statewide standards and patient care outcomes and develop a plan of implementation for regional compliance;

(d) Establish and review agreements with regional providers necessary to meet state standards;

(e) Establish agreements with providers outside the region to facilitate patient transfer;

(f) Include a regional budget;

(g) Establish the number and level of facilities to be designated which are consistent with state standards and based upon availability of resources and the distribution of trauma within the region;

(h) Identify the need for and recommend distribution and level of care of prehospital services to assure adequate availability and avoid inefficient duplication and lack of coordination of prehospital services within the region; and

(i) Include other specific elements defined by the department;

(2) By June 1991, begin the submission of the regional emergency services and trauma care plan to the department;

(3) Advise the department on matters relating to the delivery of emergency medical services and trauma care within the region;

(4) Provide data required by the department to assess the effectiveness of the emergency medical services and trauma care system;

(5) May apply for, receive, and accept gifts and other payments, including property and service, from any governmental or other public or private entity or person, and may make arrangements as to the use of these receipts, including any activities related to the design, maintenance, or enhancements of the emergency medical services and trauma care system in the region. The councils shall report in the regional budget the amount, source, and purpose of all gifts and payments. [1990 c 269 § 13.]

**70.168.110 Planning and service regions.** The department shall designate at least eight emergency medical services and trauma care planning and service regions so that all parts of the state are within such an area. These regional designations are to be made on the basis of efficiency of delivery of needed emergency medical services and trauma care.

[1990 c 269 § 14; 1987 c 214 § 4; 1973 1st ex.s. c 208 § 6. Formerly RCW 18.73.060.]

**70.168.120 Local and regional emergency medical services and trauma care councils—Power and duties.** (1) A county or group of counties may create a local emergency medical services and trauma care council composed of representatives of hospital and prehospital trauma care and emergency medical services providers, local elected officials, consumers, local law enforcement officials, and local government agencies involved in the delivery of emergency medical services and trauma care.

(2) The department shall establish regional emergency medical services and trauma care councils and shall appoint members to be comprised of a balance of hospital and prehospital trauma care and emergency medical services providers, local elected officials, consumers, local law enforcement representatives, and local government agencies involved in the delivery of trauma care and emergency medical services recommended by the local emergency medical services and trauma care councils within the region.

(3) Local emergency medical services and trauma care councils shall review, evaluate, and provide recommendations to the regional emergency medical services and trauma care council regarding the provision of emergency medical services and trauma care in the region, and provide recommendations to the regional emergency medical services and trauma care councils on the plan for emergency medical services and trauma care. [1990 c 269 § 15; 1987 c 214 § 6; 1983 c 112 § 8. Formerly RCW 18.73.073.]

**70.168.130 Disbursement of funds to regional emergency medical services and trauma care councils—Grants to nonprofit agencies—Purposes.** (1) The department, with the assistance of the emergency medical services and trauma care steering committee, shall adopt a program for the disbursement of funds for the development, implementation, and enhancement of the emergency medical services and trauma care system. Under the program, the department shall disburse funds to each emergency medical services and trauma care regional council, or their chosen fiscal agent or agents, which shall be city or county governments, stipulating the purpose for which the funds shall be expended. The regional emergency medical services and trauma care council shall use such funds to make available matching grants in an amount not to exceed fifty percent of the cost of the proposal for which the grant is made; provided, the department may waive or modify the matching requirement if it determines insufficient local funding exists and the public health and safety would be jeopardized if the proposal were not funded. Grants shall be made to any public or private nonprofit agency which, in the judgment of the regional emergency medical services and trauma care council, will best fulfill the purpose of the grant.

(2) Grants may be awarded for any of the following purposes:

(a) Establishment and initial development of an emergency medical services and trauma care system;

(b) Expansion and improvement of an emergency medical services and trauma care system;

(c) Purchase of equipment for the operation of an emergency medical services and trauma care system;

(d) Training and continuing education of emergency medical and trauma care personnel; and

(e) Department approved research and development activities pertaining to emergency medical services and trauma care.

(3) Any emergency medical services agency or trauma care provider which receives a grant shall stipulate that it will:

(a) Operate in accordance with applicable provisions and standards required under this chapter;

(b) Provide, without prior inquiry as to ability to pay, emergency medical and trauma care to all patients requiring such care; and

(c) Be consistent with applicable provisions of the regional emergency medical services and trauma care plan and the statewide emergency medical services and trauma care system plan. [1990 c 269 § 16; 1987 c 214 § 8; 1979 ex.s. c 261 § 8. Formerly RCW 18.73.085.]

**70.168.135 Grant program for designated trauma care services—Rules.** The department shall establish by rule a grant program for designated trauma care services. The grants shall be made from the emergency medical services and trauma care system trust account and shall require regional matching funds. The trust account funds and regional match shall be in a seventy-five to twenty-five percent ratio. [1997 c 331 § 1.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**70.168.140 Prehospital provider liability.** (1) No act or omission of any prehospital provider done or omitted in good faith while rendering emergency medical services in accordance with the approved regional plan shall impose any liability upon that provider.

(2) This section does not apply to the commission or omission of an act which is not within the field of the medical expertise of the provider.

(3) This section does not relieve a provider of any duty otherwise imposed by law.

(4) This section does not apply to any act or omission which constitutes gross negligence or willful or wanton misconduct.

(5) This section applies in addition to provisions already established in RCW 18.71.210. [1990 c 269 § 26.]

**70.168.150 Emergency cardiac and stroke care system—Voluntary hospital participation.** (1) By January 1, 2011, the department shall endeavor to enhance and support an emergency cardiac and stroke care system through:

(a) Encouraging hospitals to voluntarily self-identify cardiac and stroke capabilities, indicating which level of cardiac and stroke service the facility provides. Hospital levels must be defined by the previous work of the emergency cardiac and stroke technical advisory committee and must follow the guiding principles and recommendations of the emergency cardiac and stroke work group report;

(b) Giving a hospital "deemed status" and designating it as a primary stroke center if it has received a certification of

distinction for primary stroke centers issued by the nonprofit organization known as the joint commission. When available, a hospital shall demonstrate its cardiac or stroke level through external, national certifying organizations, including, but not limited to, primary stroke center certification by the joint commission; and

(c) Within the current authority of the department, adopting cardiac and stroke prehospital patient care protocols, patient care procedures, and triage tools, consistent with the guiding principles and recommendations of the emergency cardiac and stroke work group report.

(2) A hospital that voluntarily participates in the system:

(a) Shall participate in internal, as well as regional, quality improvement activities;

(b) Shall participate in a national, state, or local data collection system that measures cardiac and stroke system performance from patient onset of symptoms to treatment or intervention, and includes, at a minimum, the nationally recognized consensus measures for stroke; and

(c) May advertise participation in the system, but may not claim a verified certification level unless verified by an external, nationally recognized, evidence-based certifying body as provided in subsection (1)(b) of this section. [2010 c 52 § 3.]

**Findings—Intent—2010 c 52:** See note following RCW 70.168.015.

**70.168.160 Report to the legislature.** By December 1, 2012, the department shall share with the legislature the department’s report, which was funded by the centers for disease control and prevention, concerning emergency cardiac and stroke care. [2010 c 52 § 4.]

**Findings—Intent—2010 c 52:** See note following RCW 70.168.015.

**70.168.900 Short title.** This chapter shall be known and cited as the "statewide emergency medical services and trauma care system act." [1990 c 269 § 2.]

**70.168.901 Severability—1990 c 269.** If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1990 c 269 § 30.]

**Chapter 70.170 RCW**

**HEALTH DATA AND CHARITY CARE**

Sections

- 70.170.010 Intent.
- 70.170.020 Definitions.
- 70.170.050 Requested studies—Costs.
- 70.170.060 Charity care—Prohibited and required hospital practices and policies—Rules—Department to monitor and report.
- 70.170.070 Penalties.
- 70.170.080 Assessments—Costs.
- 70.170.090 Confidentiality.
- 70.170.900 Effective date—1989 1st ex.s. c 9.
- 70.170.905 Severability—1989 1st ex.s. c 9.

*Hospital discharge data—Financial reports—Data retrieval—American Indian health data: RCW 43.70.052.*

**70.170.010 Intent.** (1) The legislature finds and declares that there is a need for health care information that

helps the general public understand health care issues and how they can be better consumers and that is useful to purchasers, payers, and providers in making health care choices and negotiating payments. It is the purpose and intent of this chapter to establish a hospital data collection, storage, and retrieval system which supports these data needs and which also provides public officials and others engaged in the development of state health policy the information necessary for the analysis of health care issues.

(2) The legislature finds that rising health care costs and access to health care services are of vital concern to the people of this state. It is, therefore, essential that strategies be explored that moderate health care costs and promote access to health care services.

(3) The legislature further finds that access to health care is among the state’s goals and the provision of such care should be among the purposes of health care providers and facilities. Therefore, the legislature intends that charity care requirements and related enforcement provisions for hospitals be explicitly established.

(4) The lack of reliable statistical information about the delivery of charity care is a particular concern that should be addressed. It is the purpose and intent of this chapter to require hospitals to provide, and report to the state, charity care to persons with acute care needs, and to have a state agency both monitor and report on the relative commitment of hospitals to the delivery of charity care services, as well as the relative commitment of public and private purchasers or payers to charity care funding. [1989 1st ex.s. c 9 § 501.]

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

(1) "Department" means department of health.

(2) "Hospital" means any health care institution which is required to qualify for a license under \*RCW 70.41.020(2); or as a psychiatric hospital under chapter 71.12 RCW.

(3) "Secretary" means secretary of health.

(4) "Charity care" means necessary hospital health care rendered to indigent persons, to the extent that the persons are unable to pay for the care or to pay deductibles or co-insurance amounts required by a third-party payer, as determined by the department.

(5) "Sliding fee schedule" means a hospital-determined, publicly available schedule of discounts to charges for persons deemed eligible for charity care; such schedules shall be established after consideration of guidelines developed by the department.

(6) "Special studies" means studies which have not been funded through the department’s biennial or other legislative appropriations. [1995 c 269 § 2203; 1989 1st ex.s. c 9 § 502.]

\***Reviser’s note:** RCW 70.41.020 was amended by 2002 c 116 § 2, changing subsection (2) to subsection (4).

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**70.170.050 Requested studies—Costs.** The department shall have the authority to respond to requests of others for special studies or analysis. The department may require such sponsors to pay any or all of the reasonable costs associated with such requests that might be approved, but in no event may costs directly associated with any such special study be charged against the funds generated by the assess-

ment authorized under RCW 70.170.080. [1989 1st ex.s. c 9 § 505.]

**70.170.060 Charity care—Prohibited and required hospital practices and policies—Rules—Department to monitor and report.** (1) No hospital or its medical staff shall adopt or maintain admission practices or policies which result in:

(a) A significant reduction in the proportion of patients who have no third-party coverage and who are unable to pay for hospital services;

(b) A significant reduction in the proportion of individuals admitted for inpatient hospital services for which payment is, or is likely to be, less than the anticipated charges for or costs of such services; or

(c) The refusal to admit patients who would be expected to require unusually costly or prolonged treatment for reasons other than those related to the appropriateness of the care available at the hospital.

(2) No hospital shall adopt or maintain practices or policies which would deny access to emergency care based on ability to pay. No hospital which maintains an emergency department shall transfer a patient with an emergency medical condition or who is in active labor unless the transfer is performed at the request of the patient or is due to the limited medical resources of the transferring hospital. Hospitals must follow reasonable procedures in making transfers to other hospitals including confirmation of acceptance of the transfer by the receiving hospital.

(3) The department shall develop definitions by rule, as appropriate, for subsection (1) of this section and, with reference to federal requirements, subsection (2) of this section. The department shall monitor hospital compliance with subsections (1) and (2) of this section. The department shall report individual instances of possible noncompliance to the state attorney general or the appropriate federal agency.

(4) The department shall establish and maintain by rule, consistent with the definition of charity care in RCW 70.170.020, the following:

(a) Uniform procedures, data requirements, and criteria for identifying patients receiving charity care;

(b) A definition of residual bad debt including reasonable and uniform standards for collection procedures to be used in efforts to collect the unpaid portions of hospital charges that are the patient's responsibility.

(5) For the purpose of providing charity care, each hospital shall develop, implement, and maintain a charity care policy which, consistent with subsection (1) of this section, shall enable people below the federal poverty level access to appropriate hospital-based medical services, and a sliding fee schedule for determination of discounts from charges for persons who qualify for such discounts by January 1, 1990. The department shall develop specific guidelines to assist hospitals in setting sliding fee schedules required by this section. All persons with family income below one hundred percent of the federal poverty standard shall be deemed charity care patients for the full amount of hospital charges, provided that such persons are not eligible for other private or public health coverage sponsorship. Persons who may be eligible for charity care shall be notified by the hospital.

(6) Each hospital shall make every reasonable effort to determine the existence or nonexistence of private or public sponsorship which might cover in full or part the charges for care rendered by the hospital to a patient; the family income of the patient as classified under federal poverty income guidelines; and the eligibility of the patient for charity care as defined in this chapter and in accordance with hospital policy. An initial determination of sponsorship status shall precede collection efforts directed at the patient.

(7) The department shall monitor the distribution of charity care among hospitals, with reference to factors such as relative need for charity care in hospital service areas and trends in private and public health coverage. The department shall prepare reports that identify any problems in distribution which are in contradiction of the intent of this chapter. The report shall include an assessment of the effects of the provisions of this chapter on access to hospital and health care services, as well as an evaluation of the contribution of all purchasers of care to hospital charity care.

(8) The department shall issue a report on the subjects addressed in this section at least annually, with the first report due on July 1, 1990. [1998 c 245 § 118; 1989 1st ex.s. c 9 § 506.]

**70.170.070 Penalties.** (1) Every person who shall violate or knowingly aid and abet the violation of RCW 70.170.060 (5) or (6), 70.170.080, or \*70.170.100, or any valid orders or rules adopted pursuant to these sections, or who fails to perform any act which it is herein made his or her duty to perform, shall be guilty of a misdemeanor. Following official notice to the accused by the department of the existence of an alleged violation, each day of noncompliance upon which a violation occurs shall constitute a separate violation. Any person violating the provisions of this chapter may be enjoined from continuing such violation. The department has authority to levy civil penalties not exceeding one thousand dollars for violations of this chapter and determined pursuant to this section.

(2) Every person who shall violate or knowingly aid and abet the violation of RCW 70.170.060 (1) or (2), or any valid orders or rules adopted pursuant to such section, or who fails to perform any act which it is herein made his or her duty to perform, shall be subject to the following criminal and civil penalties:

(a) For any initial violations: The violating person shall be guilty of a misdemeanor, and the department may impose a civil penalty not to exceed one thousand dollars as determined pursuant to this section.

(b) For a subsequent violation of RCW 70.170.060 (1) or (2) within five years following a conviction: The violating person shall be guilty of a misdemeanor, and the department may impose a penalty not to exceed three thousand dollars as determined pursuant to this section.

(c) For a subsequent violation with intent to violate RCW 70.170.060 (1) or (2) within five years following a conviction: The criminal and civil penalties enumerated in (a) of this subsection; plus up to a three-year prohibition against the issuance of tax exempt bonds under the authority of the Washington health care facilities authority; and up to a three-year prohibition from applying for and receiving a certificate of need.

(d) For a violation of RCW 70.170.060 (1) or (2) within five years of a conviction under (c) of this subsection: The criminal and civil penalties and prohibition enumerated in (a) and (b) of this subsection; plus up to a one-year prohibition from participation in the state medical assistance or medical care services authorized under chapter 74.09 RCW.

(3) The provisions of chapter 34.05 RCW shall apply to all noncriminal actions undertaken by the department of health, the department of social and health services, and the Washington health care facilities authority pursuant to chapter 9, Laws of 1989 1st ex. sess. [1989 1st ex.s. c 9 § 507.]

**\*Reviser's note:** RCW 70.170.100 was repealed by 1995 c 265 § 27 and by 1995 c 267 § 12, effective July 1, 1995.

**70.170.080 Assessments—Costs.** The basic expenses for the hospital data collection and reporting activities of this chapter shall be financed by an assessment against hospitals of no more than four one-hundredths of one percent of each hospital's gross operating costs, to be levied and collected from and after that date, upon which the similar assessment levied under \*chapter 70.39 RCW is terminated, for the provision of hospital services for its last fiscal year ending on or before June 30th of the preceding calendar year. Budgetary requirements in excess of that limit must be financed by a general fund appropriation by the legislature. All moneys collected under this section shall be deposited by the state treasurer in the hospital data collection account which is hereby created in the state treasury. The department may also charge, receive, and dispense funds or authorize any contractor or outside sponsor to charge for and reimburse the costs associated with special studies as specified in RCW 70.170.050.

During the 1993-1995 fiscal biennium, moneys in the hospital data collection account may be expended, pursuant to appropriation, for hospital data analysis and the administration of the health information program.

Any amounts raised by the collection of assessments from hospitals provided for in this section which are not required to meet appropriations in the budget act for the current fiscal year shall be available to the department in succeeding years. [1993 sp.s. c 24 § 925; 1991 sp.s. c 13 § 71; 1989 1st ex.s. c 9 § 508.]

**\*Reviser's note:** Chapter 70.39 RCW was repealed by 1982 c 223 § 10, effective June 30, 1990.

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**70.170.090 Confidentiality.** The department and any of its contractors or agents shall maintain the confidentiality of any information which may, in any manner, identify individual patients. [1989 1st ex.s. c 9 § 509.]

**70.170.900 Effective date—1989 1st ex.s. c 9.** See RCW 43.70.910.

**70.170.905 Severability—1989 1st ex.s. c 9.** See RCW 43.70.920.

[Title 70 RCW—page 506]

## Chapter 70.175 RCW

### RURAL HEALTH SYSTEM PROJECT

#### Sections

70.175.010	Legislative findings.
70.175.020	Definitions.
70.175.030	Project established—Implementation.
70.175.040	Rules.
70.175.050	Secretary's powers and duties.
70.175.060	Duties and responsibilities of participating communities.
70.175.070	Cooperation of state agencies.
70.175.080	Powers and duties of secretary—Contracting.
70.175.090	Participants authorized to contract—Penalty—Secretary and state exempt from liability.
70.175.100	Licensure—Rules.
70.175.110	Licensure—Rules—Duties of department.
70.175.120	Rural health care facility not a hospital.
70.175.130	Rural health care plan.
70.175.140	Consultative advice for licensees or applicants.
70.175.900	Effective date—1989 1st ex.s. c 9.
70.175.910	Severability—1989 1st ex.s. c 9.

*Rural health access account:* RCW 43.70.325.

*Rural hospitals:* RCW 70.38.105, 70.38.111, 70.41.090.

*Rural public hospital districts:* RCW 70.44.450.

**70.175.010 Legislative findings.** (1) The legislature declares that availability of health services to rural citizens is an issue on which a state policy is needed.

The legislature finds that changes in the demand for health care, in reimbursement policies of public and private purchasers, [and] in the economic and demographic conditions in rural areas threaten the availability of care services.

In addition, many factors inhibit needed changes in the delivery of health care services to rural areas which include inappropriate and outdated regulatory laws, aging and inefficient health care facilities, the absence of local planning and coordination of rural health care services, the lack of community understanding of the real costs and benefits of supporting rural hospitals, the lack of regional systems to assure access to care that cannot be provided in every community, and the absence of state health care policy objectives.

The legislature further finds that the creation of effective health care delivery systems that assure access to health care services provided in an affordable manner will depend on active local community involvement. It further finds that it is the duty of the state to create a regulatory environment and health care payment policy that promotes innovation at the local level to provide such care.

It further declares that it is the responsibility of the state to develop policy that provides direction to local communities with regard to such factors as a definition of health care services, identification of statewide health status outcomes, clarification of state, regional, [and] community responsibilities and interrelationships for assuring access to affordable health care and continued assurances that quality health care services are provided.

(2) The legislature further finds that many rural communities do not operate hospitals in a cost-efficient manner. The cost of operating the rural hospital often exceeds the revenues generated. Some of these hospitals face closure, which may result in the loss of health care services for the community. Many communities are struggling to retain health care services by operating a cost-efficient facility located in the community. Current regulatory laws do not provide for the facilities licensure option that is appropriate for rural areas. A

major barrier to the development of an appropriate rural licensure model is federal medicare approval to guarantee reimbursement for the costs of providing care and operating the facility. Medicare certification typically elaborates upon state licensure requirements. Medicare approval of reimbursement is more likely if the state has developed legal criteria for a rural-appropriate health facility. Medicare has begun negotiations with other states facing similar problems to develop exceptions with the goal of allowing reimbursement of rural alternative health care facilities. It is in the best interests of rural citizens for Washington state to begin negotiations with the federal government with the objective of designing a medicare eligible rural health care facility structured to meet the health care needs of rural Washington and be eligible for federal and state financial support for its development and operation. [1989 1st ex.s. c 9 § 701.]

**70.175.020 Definitions.** Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Administrative structure" means a system of contracts or formal agreements between organizations and persons providing health services in an area that establishes the roles and responsibilities each will assume in providing the services of the rural health care facility.

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

(3) "Health care delivery system" means services and personnel involved in providing health care to a population in a geographic area.

(4) "Health care facility" means any land, structure, system, machinery, equipment, or other real or personal property or appurtenances useful for or associated with delivery of inpatient or outpatient health care service or support for such care or any combination thereof which is operated or undertaken in connection with a hospital, clinic, health maintenance organization, diagnostic or treatment center, extended care facility, or any facility providing or designed to provide therapeutic, convalescent or preventive health care services.

(5) "Health care system strategic plan" means a plan developed by the participant and includes identification of health care service needs of the participant, services and personnel necessary to meet health care service needs, identification of health status outcomes and outcome measures, identification of funding sources, and strategies to meet health care needs including measures of effectiveness.

(6) "Institutions of higher education" means educational institutions as defined in RCW 28B.10.016.

(7) "Local administrator" means an individual or organization representing the participant who may enter into legal agreements on behalf of the participant.

(8) "Participant" means communities, counties, and regions that serve as a health care catchment area where the project site is located.

(9) "Project" means the Washington rural health system project.

(10) "Project site" means a site selected to participate in the project.

(11) "Rural health care facility" means a facility, group, or other formal organization or arrangement of facilities, equipment, and personnel capable of providing or assuring availability of health services in a rural area. The services to

be provided by the rural health care facility may be delivered in a single location or may be geographically dispersed in the community health service catchment area so long as they are organized under a common administrative structure or through a mechanism that provides appropriate referral, treatment, and follow-up.

(12) "Secretary" means the secretary of health. [1989 1st ex.s. c 9 § 702.]

**70.175.030 Project established—Implementation.**

(1) The department shall establish the Washington rural health system project to provide financial and technical assistance to participants. The goal of the project is to help assure access to affordable health care services to citizens in the rural areas of Washington state.

(2) Administrative costs necessary to implement this project shall be kept at a minimum to insure the maximum availability of funds for participants.

(3) The secretary may contract with third parties for services necessary to carry out activities to implement this chapter where this will promote economy, avoid duplication of effort, and make the best use of available expertise.

(4) The secretary may apply for, receive, and accept gifts and other payments, including property and service, from any governmental or other public or private entity or person, and may make arrangements as to the use of these receipts, including the undertaking of special studies and other projects related to the delivery of health care in rural areas.

(5) In designing and implementing the project the secretary shall consider the report of the Washington rural health care commission established under chapter 207, Laws of 1988. Nothing in this chapter requires the secretary to follow any specific recommendation contained in that report except as it may also be included in this chapter. [1994 sp.s. c 9 § 806; 1989 1st ex.s. c 9 § 703.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**70.175.040 Rules.** The department shall adopt rules consistent with this chapter to carry out the purpose of this chapter. All rules shall be adopted in accordance with chapter 34.05 RCW. All rules and procedures adopted by the department shall minimize paperwork and compliance requirements for participants and should not be complex in nature so as to serve as a barrier or disincentive for prospective participants applying for the project. [1989 1st ex.s. c 9 § 704.]

**70.175.050 Secretary's powers and duties.** The secretary shall have the following powers and duties:

(1) To design the project application and selection process, including a program to advertise the project to rural communities and encourage prospective applicants to apply. Project sites that receive seed grant funding may hire consultants and shall perform other activities necessary to meet participant requirements defined in this chapter. In considering selection of participants eligible for seed grant funding, the secretary should consider project sites where (a) existing access to health care is severely inadequate, (b) where a financially vulnerable health care facility is present, (c) where a financially vulnerable health care facility is present and an adjoining community in the same catchment area has

a competing facility, or (d) where improvements in the delivery of primary care services, including preventive care services, is needed.

The department may obtain technical assistance support for project sites that are not selected to be funded sites. The secretary shall select these assisted project sites based upon merit and to the extent possible, based upon the desire to address specific health status outcomes;

(2) To design acceptable outcome measures which are based upon health status outcomes and are to be part of the community plan, to work with communities to set acceptable local outcome targets in the health care delivery system strategic plan, and to serve as a general resource to participants in the planning, administration, and evaluation of project sites;

(3) To assess and approve community strategic plans developed by participants, including an assessment of the technical and financial feasibility of implementing the plan and whether adequate local support for the plan is demonstrated;

(4) To define health care catchment areas, identify financially vulnerable health care facilities, and to identify rural populations which are not receiving adequate health care services;

(5) To identify existing private and public resources which may serve as eligible consultants, identify technical assistance resources for communities in the project, create a register of public and private technical resource services available and provide the register to participants. The secretary shall screen consultants to determine their qualifications prior to including them on the register;

(6) To work with other state agencies, institutions of higher education, and other public and private organizations to coordinate technical assistance services for participants;

(7) To administer available funds for community use while participating in the project and establish procedures to assure accountability in the use of seed grant funds by participants;

(8) To define data and other minimum requirements for adequate evaluation of projects and to develop and implement an overall monitoring and evaluation mechanism for the projects;

(9) To act as facilitator for multiple applicants and entrants to the project;

(10) To report to the appropriate legislative committees and others from time to time on the progress of the projects including the identification of statutory and regulatory barriers to successful completion of rural health care delivery goals and an ongoing evaluation of the project. [1991 c 224 § 1; 1989 1st ex.s. c 9 § 705.]

**70.175.060 Duties and responsibilities of participating communities.** The duties and responsibilities of participating communities shall include:

(1) To involve major health care providers, businesses, public officials, and other community leaders in project design, administration, and oversight;

(2) To identify an individual or organization to serve as the local administrator of the project. The secretary may require the local administrator to maintain acceptable accountability of seed grant funding;

(3) To coordinate and avoid duplication of public health and other health care services;

(4) To assess and analyze community health care needs;

(5) To identify services and providers necessary to meet needs;

(6) To develop outcome measures to assess the long-term effectiveness of modifications initiated through the project;

(7) To write a health care delivery system strategic plan including to the extent possible, identification of outcome measures needed to achieve health status outcomes identified in the plan. New organizational structures created should integrate existing programs and activities of local health providers so as to maximize the efficient planning and delivery of health care by local providers and promote more accessible and affordable health care services to rural citizens. Participants should create health care delivery system strategic plans which promote health care services which the participant can financially sustain;

(8) To screen and contract with consultants for technical assistance if the project site was selected to receive funding and assistance is needed;

(9) To monitor and evaluate the project in an ongoing manner;

(10) To implement necessary changes as defined in the plans such as converting existing facilities, developing or modifying services, recruiting providers, or obtaining agreements with other communities to provide some or all health care services; and

(11) To provide data and comply with other requirements of the administrator that are intended to evaluate the effectiveness of the projects. [1989 1st ex.s. c 9 § 706.]

**70.175.070 Cooperation of state agencies.** (1) The secretary may call upon other agencies of the state to provide available information to assist the secretary in meeting the responsibilities under this chapter. This information shall be supplied as promptly as circumstances permit.

(2) The secretary may call upon other state agencies including institutions of higher education as authorized under Title 28B RCW to identify and coordinate the delivery of technical assistance services to participants in meeting the responsibilities of this chapter. The state agencies and institutions of higher education shall cooperate and provide technical assistance to the secretary to the extent that current funding for these agencies and institutions of higher education permits. [1989 1st ex.s. c 9 § 707.]

**70.175.080 Powers and duties of secretary—Contracting.** In addition to the powers and duties specified in RCW 70.175.050 the secretary has the power to enter into contracts for the following functions and services:

(1) With public or private agencies, to assist the secretary in the secretary's duties to design or revise the health status outcomes, or to monitor or evaluate the performance of participants.

(2) With public or private agencies, to provide technical or professional assistance to project participants. [1989 1st ex.s. c 9 § 708.]

**70.175.090 Participants authorized to contract—Penalty—Secretary and state exempt from liability.** (1) Participants are authorized to use funding granted to them by the secretary for the purpose of contracting for technical assistance services. Participants shall use only consultants identified by the secretary for consulting services unless the participant can show that an alternative consultant is qualified to provide technical assistance and is approved by the secretary. Adequate records shall be kept by the participant showing project site expenditures from grant moneys. Inappropriate use of grant funding shall be a gross misdemeanor.

(2) In providing a list of qualified consultants the secretary and the state shall not be held responsible for assuring qualifications of consultants and shall be held harmless for the actions of consultants. Furthermore, the secretary and the state shall not be held liable for the failure of participants to meet contractual obligations established in connection with project participation. [1989 1st ex.s. c 9 § 709.]

**70.175.100 Licensure—Rules.** (1) The department shall establish and adopt such standards and rules pertaining to the construction, maintenance, and operation of a rural health care facility and the scope of health care services, and rescind, amend, or modify the rules from time to time as necessary in the public interest. In developing the rules, the department shall consult with representatives of rural hospitals, community mental health centers, public health departments, community and migrant health clinics, and other providers of health care in rural communities. The department shall also consult with third-party payers, consumers, local officials, and others to ensure broad participation in defining regulatory standards and requirements that are appropriate for a rural health care facility.

(2) When developing the rural health care facility licensure rules, the department shall consider the report of the Washington rural health care commission established under chapter 207, Laws of 1988. Nothing in this chapter requires the department to follow any specific recommendation contained in that report except as it may also be included in this chapter.

(3) Upon developing rules, the department shall enter into negotiations with appropriate federal officials to seek medicare approval of the facility and financial participation of medicare and other federal programs in developing and operating the rural health care facility. [1998 c 245 § 119; 1989 1st ex.s. c 9 § 710.]

**70.175.110 Licensure—Rules—Duties of department.** In developing the rural health care facility licensure regulations, the department shall:

- (1) Minimize regulatory requirements to permit local flexibility and innovation in providing services;
- (2) Promote the cost-efficient delivery of health care and other social services as is appropriate for the particular local community;
- (3) Promote the delivery of services in a coordinated and nonduplicative manner;
- (4) Maximize the use of existing health care facilities in the community;
- (5) Permit regionalization of health care services when appropriate;

(2010 Ed.)

(6) Provide for linkages with hospitals, tertiary care centers, and other health care facilities to provide services not available in the facility; and

(7) Achieve health care outcomes defined by the community through a community planning process. [1989 1st ex.s. c 9 § 711.]

**70.175.120 Rural health care facility not a hospital.** The rural health care facility is not considered a hospital for building occupancy purposes. [1989 1st ex.s. c 9 § 712.]

**70.175.130 Rural health care plan.** The department may develop and implement a rural health care plan and may approve hospital and rural health care facility requests to be designated as essential access community hospitals or rural primary care hospitals so that such facilities may form rural health networks to preserve health care services in rural areas and thereby be eligible for federal program funding and enhanced medicare reimbursement. The department may monitor any rural health care plan and designated facilities to assure continued compliance with the rural health care plan. [1992 c 27 § 4; 1990 c 271 § 18.]

**70.175.140 Consultative advice for licensees or applicants.** Any licensee or applicant desiring to make alterations or additions to its facilities or to construct new facilities may contact the department for consultative advice before commencing such alteration, addition, or new construction. [1992 c 27 § 5.]

**70.175.900 Effective date—1989 1st ex.s. c 9.** See RCW 43.70.910.

**70.175.910 Severability—1989 1st ex.s. c 9.** See RCW 43.70.920.

## Chapter 70.180 RCW RURAL HEALTH CARE

### Sections

70.180.005	Finding—Health care professionals.
70.180.009	Finding—Rural training opportunities.
70.180.011	Definitions.
70.180.020	Health professional temporary substitute resource pool.
70.180.030	Registry of health care professionals available to rural communities—Conditions of participation.
70.180.040	Request procedure—Acceptance of gifts.
70.180.110	Rural training opportunities—Plan development.
70.180.120	Midwifery—Statewide plan.
70.180.130	Expenditures, funding.

*Rural health access account:* RCW 43.70.325.

*Rural public hospital districts:* RCW 70.44.450.

**70.180.005 Finding—Health care professionals.** The legislature finds that a health care access problem exists in rural areas of the state because rural health care providers are unable to leave the community for short-term periods of time to attend required continuing education training or for personal matters because their absence would leave the community without adequate medical care coverage. The lack of adequate medical coverage in geographically remote rural

communities constitutes a threat to the health and safety of the people in those communities.

The legislature declares that it is in the public interest to recruit and maintain a pool of physicians, physician assistants, pharmacists, and advanced registered nurse practitioners willing and able on short notice to practice in rural communities on a short-term basis to meet the medical needs of the community. [1991 c 332 § 27; 1990 c 271 § 1.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**70.180.009 Finding—Rural training opportunities.**

The legislature finds that a shortage of physicians, nurses, pharmacists, and physician assistants exists in rural areas of the state. In addition, many education programs to train these health care providers do not include options for practical training experience in rural settings. As a result, many health care providers find their current training does not prepare them for the unique demands of rural practice.

The legislature declares that the availability of rural training opportunities as a part of professional medical, nursing, pharmacist, and physician assistant education would provide needed practical experience, serve to attract providers to rural areas, and help address the current shortage of these providers in rural Washington. [1990 c 271 § 14.]

**70.180.011 Definitions.** Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Department" means the department of health.

(2) "Rural areas" means a rural area in the state of Washington as identified by the department. [1991 c 332 § 29.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**70.180.020 Health professional temporary substitute resource pool.** The department shall establish or contract for a health professional temporary substitute resource pool. The purpose of the pool is to provide short-term physician, physician assistant, pharmacist, and advanced registered nurse practitioner personnel to rural communities where these health care providers:

(1) Are unavailable due to provider shortages;

(2) Need time off from practice to attend continuing education and other training programs; and

(3) Need time off from practice to attend to personal matters or recover from illness.

The health professional temporary substitute resource pool is intended to provide short-term assistance and should complement active health provider recruitment efforts by rural communities where shortages exist. [1994 c 103 § 1; 1990 c 271 § 2.]

**70.180.030 Registry of health care professionals available to rural communities—Conditions of participation.** (1) The department, in cooperation with the University of Washington school of medicine, the state's registered nursing programs, the state's pharmacy programs, and other appropriate public and private agencies and associations, shall develop and keep current a register of physicians, physician assistants, pharmacists, and advanced registered nurse practitioners who are available to practice on a short-term

basis in rural communities of the state. The department shall list only individuals who have a valid license to practice. The register shall be compiled and made available to all rural hospitals, public health departments and districts, rural pharmacies, and other appropriate public and private agencies and associations.

(2) Eligible health care professionals are those licensed under chapters 18.57, 18.57A, 18.64, 18.71, and 18.71A RCW and advanced registered nurse practitioners licensed under chapter 18.79 RCW.

(3) Participating sites may:

(a) Receive reimbursement for substitute provider travel to and from the rural community and for lodging at a rate determined under RCW 43.03.050 and 43.03.060; and

(b) Receive reimbursement for the cost of malpractice insurance if the services provided are not covered by the substitute provider's or local provider's existing medical malpractice insurance. Reimbursement for malpractice insurance shall only be made available to sites that incur additional costs for substitute provider coverage.

(4) The department may require rural communities to participate in health professional recruitment programs as a condition for providing a temporary substitute health care professional if the community does not have adequate permanent health care personnel. To the extent deemed appropriate and subject to funding, the department may also require communities to participate in other programs or projects, such as the rural health system project authorized in chapter 70.175 RCW, that are designed to assist communities to reorganize the delivery of rural health care services.

(5) A participating site may receive reimbursement for substitute provider assistance as provided for in subsection (3) of this section for up to ninety days during any twelve-month period. The department may modify or waive this limitation should it determine that the health and safety of the community warrants a waiver or modification.

(6) Participating sites shall:

(a) Be responsible for all salary expenses for the temporary substitute provider.

(b) Provide the temporary substitute provider with referral and back-up coverage information. [1994 sp.s. c 9 § 746; 1994 c 103 § 2; 1990 c 271 § 3.]

**Reviser's note:** This section was amended by 1994 c 103 § 2 and by 1994 sp.s. c 9 § 746, each without reference to the other. Both amendments are incorporated in the publication of this section pursuant to RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**70.180.040 Request procedure—Acceptance of gifts.**

(1) Requests for a temporary substitute health care professional may be made to the department by the certified health plan, local rural hospital, public health department or district, community health clinic, local practicing physician, physician assistant, pharmacist, or advanced registered nurse practitioner, or local city or county government.

(2) The department may provide directly or contract for services to:

(a) Establish a manner and form for receiving requests;

(b) Minimize paperwork and compliance requirements for participant health care professionals and entities requesting assistance; and

(c) Respond promptly to all requests for assistance.

(3) The department may apply for, receive, and accept gifts and other payments, including property and services, from any governmental or other public or private entity or person, and may make arrangements as to the use of these receipts to operate the pool. The department shall make available upon request to the appropriate legislative committees information concerning the source, amount, and use of such gifts or payments. [1994 c 103 § 3; 1990 c 271 § 4.]

**70.180.110 Rural training opportunities—Plan development.** (1) The department, in consultation with at least the higher education coordinating board, the state board for community and technical colleges, the superintendent of public instruction, and state-supported education programs in medicine, pharmacy, and nursing, shall develop a plan for increasing rural training opportunities for students in medicine, pharmacy, and nursing. The plan shall provide for direct exposure to rural health professional practice conditions for students planning careers in medicine, pharmacy, and nursing.

(2) The department and the medical, pharmacy, and nurse education programs shall:

(a) Inventory existing rural-based clinical experience programs, including internships, clerkships, residencies, and other training opportunities available to students pursuing degrees in nursing, pharmacy, and medicine;

(b) Identify where training opportunities do not currently exist and are needed;

(c) Develop recommendations for improving the availability of rural training opportunities;

(d) Develop recommendations on establishing agreements between education programs to assure that all students in medical, pharmacist, and nurse education programs in the state have access to rural training opportunities; and

(e) Review private and public funding sources to finance rural-based training opportunities. [1998 c 245 § 120; 1990 c 271 § 15.]

**70.180.120 Midwifery—Statewide plan.** The department, in consultation with training programs that lead to licensure in midwifery and certification as a certified nurse midwife, and other appropriate private and public groups, shall develop a statewide plan to address access to midwifery services.

The plan shall include at least the following: (1) Identification of maternity service shortage areas in the state where midwives could reduce the shortage of services; (2) an inventory of current training programs and preceptorship activities available to train licensed and certified nurse midwives; (3) identification of gaps in the availability of training due to such factors as geographic or economic conditions that prevent individuals from seeking training; (4) identification of other barriers to utilizing midwives; (5) identification of strategies to train future midwives such as developing training programs at community colleges and universities, using innovative telecommunications for training in rural areas, and establishing preceptorship programs accessible to prospective midwives in shortage areas; (6) development of

(2010 Ed.)

recruitment strategies; and (7) estimates of expected costs associated in recruitment and training.

The plan shall identify the most expeditious and cost-efficient manner to recruit and train midwives to meet the current shortages. Plan development and implementation shall be coordinated with other state policy efforts directed toward, but not limited to, maternity care access, rural health care system organization, and provider recruitment for shortage and medically underserved areas of the state. [1998 c 245 § 121; 1990 c 271 § 16.]

**70.180.130 Expenditures, funding.** Any additional expenditures incurred by the University of Washington from provisions of chapter 271, Laws of 1990 shall be funded from existing financial resources. [1990 c 271 § 28.]

## Chapter 70.185 RCW

### RURAL AND UNDERSERVED AREAS— HEALTH CARE PROFESSIONAL RECRUITMENT AND RETENTION

#### Sections

70.185.010	Definitions.
70.185.020	Statewide recruitment and retention clearinghouse.
70.185.030	Community-based recruitment and retention projects—Duties of department.
70.185.040	Rules.
70.185.050	Secretary's powers and duties.
70.185.060	Duties and responsibilities of participating communities.
70.185.070	Cooperation of state agencies.
70.185.080	Participants authorized to contract—Penalty—Secretary and state exempt from liability.
70.185.090	Community contracted student educational positions.
70.185.100	Contracts with area health education centers.
70.185.900	Application to scope of practice—Captions not law—1991 c 332.

*Rural public hospital districts: RCW 70.44.450.*

**70.185.010 Definitions.** Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Department" means the department of health.

(2) "Health care professional recruitment and retention strategic plan" means a plan developed by the participant and includes identification of health care personnel needs of the community, how these professionals will be recruited and retained in the community following recruitment.

(3) "Institutions of higher education" means educational institutions as defined in RCW 28B.10.016.

(4) "Local administrator" means an individual or organization representing the participant who may enter into legal agreements on behalf of the participant.

(5) "Participant" means communities, counties, and regions that serve as a health care catchment area where the project site is located.

(6) "Project" means the community-based retention and recruitment project.

(7) "Project site" means a site selected to participate in the project.

(8) "Secretary" means the secretary of health. [1991 c 332 § 7.]

**70.185.020 Statewide recruitment and retention clearinghouse.** The department, in consultation with appro-

appropriate private and public entities, shall establish a health professional recruitment and retention clearinghouse. The clearinghouse shall:

- (1) Inventory and classify the current public and private health professional recruitment and retention efforts;
- (2) Identify recruitment and retention program models having the greatest success rates;
- (3) Identify recruitment and retention program gaps;
- (4) Work with existing recruitment and retention programs to better coordinate statewide activities and to make such services more widely known and broadly available;
- (5) Provide general information to communities, health care facilities, and others about existing available programs;
- (6) Work in cooperation with private and public entities to develop new recruitment and retention programs;
- (7) Identify needed recruitment and retention programming for state institutions, county public health departments and districts, county human service agencies, and other entities serving substantial numbers of public pay and charity care patients, and may provide to these entities when they have been selected as participants necessary recruitment and retention assistance including:
  - (a) Assistance in establishing or enhancing recruitment of health care professionals;
  - (b) Recruitment on behalf of sites unable to establish their own recruitment program; and
  - (c) Assistance with retention activities when practitioners of the health professional loan repayment and scholarship program authorized by \*chapter 18.150 RCW are present in the practice setting. [1991 c 332 § 8.]

\*Reviser's note: Chapter 18.150 RCW was recodified as chapter 28B.115 RCW by 1991 c 332 § 36.

**70.185.030 Community-based recruitment and retention projects—Duties of department.** (1) The department may, subject to funding, establish community-based recruitment and retention project sites to provide financial and technical assistance to participating communities. The goal of the project is to help assure the availability of health care providers in rural and underserved urban areas of Washington state.

(2) Administrative costs necessary to implement this project shall be kept at a minimum to insure the maximum availability of funds for participants.

(3) The secretary may contract with third parties for services necessary to carry out activities to implement this chapter where this will promote economy, avoid duplication of effort, and make the best use of available expertise.

(4) The secretary may apply for, receive, and accept gifts and other payments, including property and service, from any governmental or other public or private entity or person, and may make arrangements as to the use of these receipts, including the undertaking of special studies and other projects related to the delivery of health care in rural areas.

(5) In designing and implementing the project the secretary shall coordinate and avoid duplication with similar federal programs and with the Washington rural health system project as authorized under chapter 70.175 RCW to consolidate administrative duties and reduce costs. [1993 c 492 § 273; 1991 c 332 § 9.]

**Finding—1993 c 492:** See note following RCW 28B.115.080.

**Findings—Intent—1993 c 492:** See notes following RCW 43.20.050.

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**70.185.040 Rules.** The department shall adopt rules consistent with this chapter to carry out the purpose of this chapter. All rules shall be adopted in accordance with chapter 34.05 RCW. All rules and procedures adopted by the department shall minimize paperwork and compliance requirements for participants and should not be complex in nature so as to serve as a barrier or disincentive for prospective participants applying for the project. [1991 c 332 § 10.]

**70.185.050 Secretary's powers and duties.** The secretary shall have the following powers and duties:

(1) To design the project application and selection process, including a program to advertise the project to rural communities and encourage prospective applicants to apply. Subject to funding, project sites shall be selected that are eligible to receive funding. Funding shall be used to hire consultants and perform other activities necessary to meet participant requirements under this chapter. The secretary shall require at least fifty percent matching funds or in-kind contributions from participants. In considering selection of participants eligible for seed grant funding, the secretary should consider project sites where (a) existing access to health care is severely inadequate, (b) recruitment and retention problems have been chronic, (c) the community is in need of primary care practitioners, or (d) the community has unmet health care needs for specific target populations;

(2) To design acceptable health care professional recruitment and retention strategic plans, and to serve as a general resource to participants in the planning, administration, and evaluation of project sites;

(3) To assess and approve strategic plans developed by participants, including an assessment of the technical and financial feasibility of implementing the plan and whether adequate local support for the plan is demonstrated;

(4) To identify existing private and public resources that may serve as eligible consultants, identify technical assistance resources for communities in the project, create a register of public and private technical resource services available, and provide the register to participants. The secretary shall screen consultants to determine their qualifications prior to including them on the register;

(5) To work with other state agencies, institutions of higher education, and other public and private organizations to coordinate technical assistance services for participants;

(6) To administer available funds for community use while participating in the project and establish procedures to assure accountability in the use of seed grant funds by participants;

(7) To define data and other minimum requirements for adequate evaluation of projects and to develop and implement an overall monitoring and evaluation mechanism for the projects;

(8) To act as facilitator for multiple applicants and entrants to the project;

(9) To report to the appropriate legislative committees and others from time to time on the progress of the projects including the identification of statutory and regulatory barriers to successful completion of rural health care delivery

goals and an ongoing evaluation of the project. [1991 c 332 § 11.]

**70.185.060 Duties and responsibilities of participating communities.** The duties and responsibilities of participating communities shall include:

(1) To involve major health care providers, businesses, public officials, and other community leaders in project design, administration, and oversight;

(2) To identify an individual or organization to serve as the local administrator of the project. The secretary may require the local administrator to maintain acceptable accountability of seed grant funding;

(3) To coordinate and avoid duplication of public health and other health care services;

(4) To assess and analyze community health care professional needs;

(5) To write a health care professional recruitment and retention strategic plan;

(6) To screen and contract with consultants for technical assistance if the project site was selected to receive funding and assistance is needed;

(7) To monitor and evaluate the project in an ongoing manner;

(8) To provide data and comply with other requirements of the administrator that are intended to evaluate the effectiveness of the projects;

(9) To assure that specific populations with unmet health care needs have access to services. [1991 c 332 § 12.]

**70.185.070 Cooperation of state agencies.** (1) The secretary may call upon other agencies of the state to provide available information to assist the secretary in meeting the responsibilities under this chapter. This information shall be supplied as promptly as circumstances permit.

(2) The secretary may call upon other state agencies including institutions of higher education as authorized under Titles 28A and 28B RCW to identify and coordinate the delivery of technical assistance services to participants in meeting the responsibilities of this chapter. The state agencies, vocational-technical institutions, and institutions of higher education shall cooperate and provide technical assistance to the secretary to the extent that current funding for these entities permits. [1991 c 332 § 13.]

**70.185.080 Participants authorized to contract—Penalty—Secretary and state exempt from liability.** (1)

Participants are authorized to use funding granted to them by the secretary for the purpose of contracting for technical assistance services. Participants shall use only consultants identified by the secretary for consulting services unless the participant can show that an alternative consultant is qualified to provide technical assistance and is approved by the secretary. Adequate records shall be kept by the participant showing project site expenditures from grant moneys. Inappropriate use of grant funding is a gross misdemeanor and shall incur the penalties under chapter 9A.20 RCW.

(2) In providing a list of qualified consultants the secretary and the state shall not be held responsible for assuring qualifications of consultants and shall be held harmless for

(2010 Ed.)

the actions of consultants. Furthermore, the secretary and the state shall not be held liable for the failure of participants to meet contractual obligations established in connection with project participation. [1991 c 332 § 14.]

**70.185.090 Community contracted student educational positions.** (1) The department may develop a mechanism for underserved rural or urban communities to contract with education and training programs for student positions above the full time equivalent lids. The goal of this program is to provide additional capacity, educating students who will practice in underserved communities.

(2) Eligible education and training programs are those programs approved by the department that lead to eligibility for a credential as a credentialed health care professional. Eligible professions are those licensed under chapters 18.36A, 18.57, 18.57A, 18.71, and 18.71A RCW and advanced registered nurse practitioners and certified nurse midwives licensed under \*chapter 18.88 RCW, and may include other providers identified as needed in the health personnel resource plan.

(3) Students participating in the community contracted educational positions shall meet all applicable educational program requirements and provide assurances, acceptable to the community, that they will practice in the sponsoring community following completion of education and necessary licensure.

(4) Participants in the program incur an obligation to repay any contracted funds with interest set by state law, unless they serve at least three years in the sponsoring community.

(5) The department may provide funds to communities for use in contracting. [1993 c 492 § 274.]

*\*Reviser's note:* Chapter 18.88 RCW was repealed by 1994 sp.s. c 9 § 433, effective July 1, 1994.

**Finding—1993 c 492:** See note following RCW 28B.115.080.

**Findings—Intent—1993 c 492:** See notes following RCW 43.20.050.

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**70.185.100 Contracts with area health education centers.** The secretary may establish and contract with area health education centers in the eastern and western parts of the state. Consistent with the recruitment and retention objectives of this chapter, the centers shall provide or facilitate the provision of health professional educational and continuing education programs that strengthen the delivery of primary health care services in rural and medically underserved urban areas of the state. The center shall assist in the development and operation of health personnel recruitment and retention programs that are consistent with activities authorized under this chapter. The centers shall further provide technical expertise in the development of well managed health care delivery systems in rural Washington consistent with the goals and objectives of chapter 492, Laws of 1993. [1993 c 492 § 275.]

**Finding—1993 c 492:** See note following RCW 28B.115.080.

**Findings—Intent—1993 c 492:** See notes following RCW 43.20.050.

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**70.185.900 Application to scope of practice—Captions not law—1991 c 332.** See notes following RCW 18.130.010.

**Chapter 70.190 RCW**  
**FAMILY POLICY COUNCIL**

Sections

70.190.005	Purpose.
70.190.010	Definitions.
70.190.020	Consolidate efforts of existing entities.
70.190.030	Proposals to facilitate services at the community level.
70.190.040	Finding—Grants to improve readiness to learn.
70.190.050	Community networks—Outcome evaluation.
70.190.060	Community networks—Legislative intent—Membership—Open meetings.
70.190.065	Member's authorization of expenditures—Limitation.
70.190.070	Community networks—Duties.
70.190.075	Lead fiscal agent.
70.190.080	Community networks—Programs and plans.
70.190.085	Community networks—Sexual abstinence and activity campaign.
70.190.090	Community networks—Planning grants and contracts—Distribution of funds—Reports.
70.190.100	Duties of council.
70.190.110	Program review.
70.190.120	Interagency agreement.
70.190.130	Comprehensive plan—Approval process—Network expenditures—Penalty for noncompliance with chapter.
70.190.150	Federal restrictions on funds transfers, waivers.
70.190.160	Community networks—Implementation in federal and state plans.
70.190.170	Transfer of funds and programs to state agency.
70.190.180	Community network—Grants for use of school facilities.
70.190.190	Network members immune from civil liability—Network assets not subject to attachment or execution.
70.190.910	Severability—1992 c 198.
70.190.920	Effective date—1992 c 198.
70.190.930	Construction—Chapter applicable to state registered domestic partnerships—2009 c 521.

**70.190.005 Purpose.** The legislature finds that a primary goal of public involvement in the lives of children has been to strengthen the family unit.

However, the legislature recognizes that traditional two-parent families with one parent routinely at home are now in the minority. In addition, extended family and natural community supports have eroded drastically. The legislature recognizes that public policy assumptions must be altered to account for this new social reality. Public effort must be redirected to expand, support, strengthen, and help reconstruct family and community networks to assist in meeting the needs of children.

The legislature finds that a broad variety of services for children and families has been independently designed over the years and that the coordination and cost-effectiveness of these services will be enhanced through the adoption of an approach that allows communities to prioritize and coordinate services to meet their local needs. The legislature further finds that the most successful programs for reaching and working with at-risk families and children treat individuals' problems in the context of the family, offer a broad spectrum of services, are flexible in the use of program resources, and use staff who are trained in crossing traditional program categories in order to broker services necessary to fully meet a family's needs.

The legislature further finds that eligibility criteria, expenditure restrictions, and reporting requirements of state and federal categorical programs often create barriers toward

the effective use of resources for addressing the multiple problems of at-risk families and children.

The purposes of this chapter are (1) to modify public policy and programs to empower communities to support and respond to the needs of individual families and children and (2) to improve the responsiveness of services for children and families at risk by facilitating greater coordination and flexibility in the use of funds by state and local service agencies. [1994 sp.s. c 7 § 301; 1992 c 198 § 1.]

**Finding—Intent—Severability—1994 sp.s. c 7:** See notes following RCW 43.70.540.

**70.190.010 Definitions.** Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Administrative costs" means the costs associated with procurement; payroll processing; personnel functions; management; maintenance and operation of space and property; data processing and computer services; accounting; budgeting; auditing; indirect costs; and organizational planning, consultation, coordination, and training.

(2) "Assessment" has the same meaning as provided in RCW 43.70.010.

(3) "At-risk behaviors" means violent delinquent acts, teen substance abuse, teen pregnancy and male parentage, teen suicide attempts, dropping out of school, child abuse or neglect, and domestic violence.

(4) "At-risk" children are children who engage in or are victims of at-risk behaviors.

(5) "Community public health and safety networks" or "networks" means the organizations authorized under RCW 70.190.060.

(6) "Comprehensive plan" means a two-year plan that examines available resources and unmet needs for a county or multicounty area, barriers that limit the effective use of resources, and a plan to address these issues that is broadly supported by local residents.

(7) "Family policy council" or "council" means the superintendent of public instruction, the secretary of social and health services, the secretary of health, the commissioner of the employment security department, and the director of the department of commerce or their designees, one legislator from each caucus of the senate and house of representatives, and one representative of the governor.

(8) "Fiduciary interest" means (a) the right to compensation from a health, educational, social service, or justice system organization that receives public funds, or (b) budgetary or policy-making authority for an organization listed in (a) of this subsection. A person who acts solely in an advisory capacity and receives no compensation from a health, educational, social service, or justice system organization, and who has no budgetary or policy-making authority is deemed to have no fiduciary interest in the organization.

(9) "Matching funds" means an amount no less than twenty-five percent of the amount budgeted for a network. The network's matching funds may be in-kind goods and services. Funding sources allowable for match include appropriate federal or local levy funds, private charitable funding, and other charitable giving. Basic education funds or state general funds shall not be used as a match.

(10) "Outcome" or "outcome based" means defined and measurable outcomes used to evaluate progress in reducing the rate of at-risk children and youth through reducing risk factors and increasing protective factors.

(11) "Participating state agencies" means the office of the superintendent of public instruction, the department of social and health services, the department of health, the employment security department, the department of commerce, and such other departments as may be specifically designated by the governor.

(12) "Policy development" has the same meaning as provided in RCW 43.70.010.

(13) "Protective factors" means those factors determined by the department of health to be empirically associated with behaviors that contribute to socially acceptable and healthy nonviolent behaviors. Protective factors include promulgation, identification, and acceptance of community norms regarding appropriate behaviors in the area of delinquency, early sexual activity, alcohol and substance abuse, educational opportunities, employment opportunities, and absence of crime.

(14) "Risk factors" means those factors determined by the department of health to be empirically associated with at-risk behaviors that contribute to violence. [2009 c 565 § 52; 2009 c 479 § 58; 1996 c 132 § 2; 1995 c 399 § 200; 1992 c 198 § 3.]

**Reviser's note:** (1) The definitions in this section have been alphabetized pursuant to RCW 1.08.015(2)(k).

(2) This section was amended by 2009 c 479 § 58 and by 2009 c 565 § 52, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

**Effective date—2009 c 479:** See note following RCW 2.56.030.

**Intent—Construction—1996 c 132:** "It is the intent of this act only to make minimal clarifying, technical, and administrative revisions to the laws concerning community public health and safety networks and to the related agencies responsible for implementation of the networks. This act is not intended to change the scope of the duties or responsibilities, nor to undermine the underlying policies, set forth in chapter 7, Laws of 1994 sp. sess." [1996 c 132 § 1.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**70.190.020 Consolidate efforts of existing entities.** To the extent that any power or duty of the council may duplicate efforts of existing councils, commissions, advisory committees, or other entities, the governor is authorized to take necessary actions to eliminate such duplication. This shall include authority to consolidate similar councils or activities in a manner consistent with the goals of this chapter. [1994 sp.s. c 7 § 315; 1992 c 198 § 4.]

**Finding—Intent—Severability—1994 sp.s. c 7:** See notes following RCW 43.70.540.

**70.190.030 Proposals to facilitate services at the community level.** The council shall annually solicit from community networks proposals to facilitate greater flexibility, coordination, and responsiveness of services at the community level. The council shall consider such proposals only if:

(1) A comprehensive plan has been prepared by the community networks;

(2) The community network has identified and agreed to contribute matching funds as specified in RCW 70.190.010;

(2010 Ed.)

(3) An interagency agreement has been prepared by the council and the participating local service and support agencies that governs the use of funds, specifies the relationship of the project to the principles listed in RCW 74.14A.025, and identifies specific outcomes and indicators; and

(4) The community network has designed into its comprehensive plan standards for accountability. Accountability standards include, but are not limited to, the public hearing process eliciting public comment about the appropriateness of the proposed comprehensive plan. The community network must submit reports to the council outlining the public response regarding the appropriateness and effectiveness of the comprehensive plan. [1994 sp.s. c 7 § 316; 1992 c 198 § 5.]

**Finding—Intent—Severability—1994 sp.s. c 7:** See notes following RCW 43.70.540.

**70.190.040 Finding—Grants to improve readiness to learn.** (1) The legislature finds that helping children to arrive at school ready to learn is an important part of improving student learning.

(2) To the extent funds are appropriated, the family policy council shall award grants to community-based consortiums that submit comprehensive plans that include strategies to improve readiness to learn. [1993 c 336 § 901.]

**Findings—Intent—Part headings not law—1993 c 336:** See notes following RCW 28A.150.210.

**Findings—1993 c 336:** See note following RCW 28A.150.210.

**70.190.050 Community networks—Outcome evaluation.** (1) The Washington state institute for public policy shall conduct or contract for monitoring and tracking of the implementation of chapter 7, Laws of 1994 sp. sess. to determine whether these efforts result in a measurable reduction of violence. The institute shall also conduct or contract for an evaluation of the effectiveness of the community public health and safety networks in reducing the rate of at-risk youth through reducing risk factors and increasing protective factors. The evaluation plan shall result in statistically valid evaluation at both statewide and community levels.

(2) Starting five years after the initial grant to a community network, if the community network fails to meet the outcome standards and goals in any two consecutive years, the institute shall make recommendations to the legislature concerning whether the funds received by that community network should revert back to the originating agency. In making this determination, the institute shall consider the adequacy of the level of intervention relative to the risk factors in the community and any external events having a significant impact on risk factors or outcomes.

(3) The outcomes required under this chapter and social development standards and measures established by the department of health under RCW 43.70.555 shall be used in conducting the outcome evaluation of the community networks. [1998 c 245 § 122; 1994 sp.s. c 7 § 207.]

**Finding—Intent—Severability—1994 sp.s. c 7:** See notes following RCW 43.70.540.

**70.190.060 Community networks—Legislative intent—Membership—Open meetings.** (1) The legislature authorizes community public health and safety networks to

reconnect parents and other citizens with children, youth, families, and community institutions which support health and safety. The networks have only those powers and duties expressly authorized under this chapter. The networks should empower parents and other citizens by being a means of expressing their attitudes, spirit, and perspectives regarding safe and healthy family and community life. The legislature intends that parent and other citizen perspectives exercise a controlling influence over policy and program operations of professional organizations concerned with children and family issues within networks in a manner consistent with the Constitution and state law. It is not the intent of the legislature that health, social service, or educational professionals dominate community public health and safety network processes or programs, but rather that these professionals use their skills to lend support to parents and other citizens in expressing their values as parents and other citizens identify community needs and establish community priorities. To this end, the legislature intends full participation of parents and other citizens in community public health and safety networks. The intent is that local community values are reflected in the operations of the network.

(2) A group of persons described in subsection (3) of this section may apply to be a community public health and safety network.

(3) Each community public health and safety network shall be composed of twenty-three people, thirteen of whom shall be citizens who live within the network boundary with no fiduciary interest. In selecting these members, first priority shall be given to members of community mobilization advisory boards, city or county children's services commissions, human services advisory boards, or other such organizations. The thirteen persons shall be selected as follows: Three by chambers of commerce, three by school board members, three by county legislative authorities, three by city legislative authorities, and one high school student, selected by student organizations. The remaining ten members shall live or work within the network boundary and shall include local representation selected by the following groups and entities: Cities; counties; federally recognized Indian tribes; parks and recreation programs; law enforcement agencies; state children's service workers; employment assistance workers; private social service providers, broad-based non-secular organizations, or health service providers; and public education.

(4) Each of the twenty-three people who are members of each community public health and safety network must sign an annual declaration under penalty of perjury or a notarized statement that clearly, in plain and understandable language, states whether or not he or she has a fiduciary interest. If a member has a fiduciary interest, the nature of that interest must be made clear, in plain understandable language, on the signed statement.

(5) Members of the network shall serve terms of three years.

The terms of the initial members of each network shall be as follows: (a) One-third shall serve for one year; (b) one-third shall serve for two years; and (c) one-third shall serve for three years. Initial members may agree which shall serve fewer than three years or the decision may be made by lot.

Any vacancy occurring during the term may be filled by the chair for the balance of the unexpired term.

(6) Not less than sixty days before the expiration of a network member's term, the chair shall submit the name of a nominee to the network for its approval. The network shall comply with subsection (3) of this section.

(7) Networks are subject to the open public meetings act under chapter 42.30 RCW and the public records provisions of chapter 42.56 RCW. [2005 c 274 § 345; 1998 c 314 § 12; 1996 c 132 § 3; 1994 sp.s. c 7 § 303.]

**Part headings not law—Effective date—2005 c 274:** See RCW 42.56.901 and 42.56.902.

**Intent—Construction—Severability—1996 c 132:** See notes following RCW 70.190.010.

**Finding—Intent—Severability—1994 sp.s. c 7:** See notes following RCW 43.70.540.

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**70.190.065 Member's authorization of expenditures—Limitation.** No network member may vote to authorize, or attempt to influence the authorization of, any expenditure in which the member's immediate family has a fiduciary interest. For the purpose of this section "immediate family" means a spouse, parent, grandparent, adult child, brother, or sister. [1996 c 132 § 5.]

**Intent—Construction—Severability—1996 c 132:** See notes following RCW 70.190.010.

**70.190.070 Community networks—Duties.** The community public health and safety networks shall:

(1) Review state and local public health data and analysis relating to risk factors, protective factors, and at-risk children and youth;

(2) Prioritize the risk factors and protective factors to reduce the likelihood of their children and youth being at risk. The priorities shall be based upon public health data and assessment and policy development standards provided by the department of health under RCW 43.70.555;

(3) Develop long-term comprehensive plans to reduce the rate of at-risk children and youth; set definitive, measurable goals, based upon the department of health standards; and project their desired outcomes;

(4) Distribute funds to local programs that reflect the locally established priorities and as provided in \*RCW 70.190.140;

(5) Comply with outcome-based standards;

(6) Cooperate with the department of health and local boards of health to provide data and determine outcomes; and

(7) Coordinate its efforts with anti-drug use efforts and organizations and maintain a high priority for combatting drug use by at-risk youth. [1994 sp.s. c 7 § 304.]

\*Reviser's note: RCW 70.190.140 expired June 30, 1995.

**Finding—Intent—Severability—1994 sp.s. c 7:** See notes following RCW 43.70.540.

**70.190.075 Lead fiscal agent.** (1) Each network shall contract with a public entity as its lead fiscal agent. The contract shall grant the agent authority to perform fiscal, accounting, contract administration, legal, and other administrative duties, including the provision of liability insurance. Any contract under this subsection shall be submitted to the

council by the network for approval prior to its execution. The council shall review the contract to determine whether the administrative costs will be held to no more than ten percent.

(2) The lead agent shall maintain a system of accounting for network funds consistent with the budgeting, accounting, and reporting systems and standards adopted or approved by the state auditor.

(3) The lead agent may contract with another public or private entity to perform duties other than fiscal or accounting duties. [1996 c 132 § 4.]

**Intent—Construction—Severability—1996 c 132:** See notes following RCW 70.190.010.

**70.190.080 Community networks—Programs and plans.** (1) The community network's plan may include a program to provide postsecondary scholarships to at-risk students who: (a) Are community role models under criteria established by the community network; (b) successfully complete high school; and (c) maintain at least a 2.5 grade point average throughout high school. Funding for the scholarships may include public and private sources.

(2) The community network's plan may also include funding of community-based home visitor programs which are designed to reduce the incidence of child abuse and neglect within the network. Parents shall sign a voluntary authorization for services, which may be withdrawn at any time. The program may provide parents with education and support either in parents' homes or in other locations comfortable for parents, beginning with the birth of their first baby. The program may make the following services available to the families:

(a) Visits for all expectant or new parents, either at the parent's home or another location with which the parent is comfortable;

(b) Screening before or soon after the birth of a child to assess the family's strengths and goals and define areas of concern in consultation with the family;

(c) Parenting education and skills development;

(d) Parenting and family support information and referral;

(e) Parent support groups; and

(f) Service coordination for individual families, and assistance with accessing services, provided in a manner that ensures that individual families have only one individual or agency to which they look for service coordination. Where appropriate for a family, service coordination may be conducted through interdisciplinary or interagency teams.

These programs are intended to be voluntary for the parents involved.

(3) In developing long-term comprehensive plans to reduce the rate of at-risk children and youth, the community networks shall consider increasing employment and job training opportunities in recognition that they constitute an effective network strategy and strong protective factor. The networks shall consider and may include funding of:

(a) At-risk youth job placement and training programs. The programs shall:

(i) Identify and recruit at-risk youth for local job opportunities;

(ii) Provide skills and needs assessments for each youth recruited;

(iii) Provide career and occupational counseling to each youth recruited;

(iv) Identify businesses willing to provide employment and training opportunities for at-risk youth;

(v) Match each youth recruited with a business that meets his or her skills and training needs;

(vi) Provide employment and training opportunities that prepare the individual for demand occupations; and

(vii) Include, to the extent possible, collaboration of business, labor, education and training, community organizations, and local government;

(b) Employment assistance, including job development, school-to-work placement, employment readiness training, basic skills, apprenticeships, job mentoring, and private sector and community service employment;

(c) Education assistance, including tutoring, mentoring, interactions with role models, entrepreneurial education and projects, violence prevention training, safe school strategies, and employment reentry assistance services.

(4) The community network may include funding of:

(a) Peer-to-peer, group, and individual counseling, including crisis intervention, for at-risk youth and their parents;

(b) Youth coalitions that provide opportunities to develop leadership skills and gain appropriate respect, recognition, and rewards for their positive contribution to their community;

(c) Technical assistance to applicants to increase their organizational capacity and to improve the likelihood of a successful application; and

(d) Technical assistance and training resources to successful applicants. [1996 c 132 § 6; 1994 sp.s. c 7 § 305.]

**Intent—Construction—Severability—1996 c 132:** See notes following RCW 70.190.010.

**Finding—Intent—Severability—1994 sp.s. c 7:** See notes following RCW 43.70.540.

**70.190.085 Community networks—Sexual abstinence and activity campaign.** The community network's plan may include funding for a student designed media and community campaign promoting sexual abstinence and addressing the importance of delaying sexual activity and pregnancy or male parenting until individuals are ready to nurture and support their children. Under the campaign, which shall be substantially designed and produced by students, the same messages shall be distributed in schools, through the media, and in the community where the campaign is targeted. The campaign shall require local private sector matching funds equal to state funds. Local private sector funds may include in-kind contributions of technical or other assistance from consultants or firms involved in public relations, advertising, broadcasting, and graphics or video production or other related fields. The campaign shall be evaluated using the outcomes required of community networks under this chapter, in particular reductions in the number or rate of teen pregnancies and teen male parentage over a three to five year period. [1994 c 299 § 5.]

**Intent—Finding—Severability—Conflict with federal requirements—1994 c 299:** See notes following RCW 74.12.400.

**70.190.090 Community networks—Planning grants and contracts—Distribution of funds—Reports.** (1) A network shall, upon application to the council, be eligible to receive planning grants and technical assistance from the council. However, during the 1999-01 fiscal biennium, a network that has not finalized its membership shall be eligible to receive such grants and assistance. Planning grants may be funded through available federal funds for family preservation services. After receiving the planning grant the network has up to one year to submit the long-term comprehensive plan.

(2) The council shall enter into biennial contracts with networks as part of the grant process. The contracts shall be consistent with available resources, and shall be distributed in accordance with the distribution formula developed pursuant to RCW 43.41.195, subject to the applicable matching fund requirement.

(3) No later than February 1 of each odd-numbered year following the initial contract between the council and a network, the council shall request from the network its plan for the upcoming biennial contract period.

(4) The council shall notify the networks of their allocation of available resources at least sixty days prior to the start of a new biennial contract period.

(5) The networks shall, by contract, distribute funds (a) appropriated for plan implementation by the legislature, and (b) obtained from nonstate or federal sources. In distributing funds, the networks shall ensure that administrative costs are held to a maximum of ten percent. However, during the 1999-01 fiscal biennium, administrative costs shall be held to a maximum of ten percent or twenty thousand dollars, whichever is greater, exclusive of costs associated with procurement, payroll processing, personnel functions, management, maintenance and operation of space and property, data processing and computer services, indirect costs, and organizational planning, consultation, coordination, and training.

(6) A network shall not provide services or operate programs.

(7) A network shall file a report with the council by May 1 of each year that includes but is not limited to the following information: Detailed expenditures, programs under way, progress on contracted services and programs, and successes and problems in achieving the outcomes required by RCW 70.190.130(1)(h) related to reducing the rate of state-funded out-of-home placements and the other three at-risk behaviors covered by the comprehensive plan and approved by the council. [1999 c 309 § 918; 1996 c 132 § 7; 1994 sp.s. c 7 § 306.]

**Intent—Construction—Severability—1996 c 132:** See notes following RCW 70.190.010.

**Finding—Intent—Severability—1994 sp.s. c 7:** See notes following RCW 43.70.540.

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**70.190.100 Duties of council.** The family policy council shall:

(1) Establish network boundaries no later than July 1, 1994. There is a presumption that no county may be divided between two or more community networks and no network shall have fewer than forty thousand population. When approving multicounty networks, considering dividing a

county between networks, or creating a network with a population of less than forty thousand, the council must consider: (a) Common economic, geographic, and social interests; (b) historical and existing shared governance; and (c) the size and location of population centers. Individuals and groups within any area shall be given ample opportunity to propose network boundaries in a manner designed to assure full consideration of their expressed wishes;

(2) Develop a technical assistance and training program to assist communities in creating and developing community networks and comprehensive plans;

(3) Approve the structure, purpose, goals, plan, and performance measurements of each community network;

(4) Identify all prevention and early intervention programs and funds, including all programs set forth in RCW 70.190.110, which could be transferred, in all or part, to the community networks, and report their findings and recommendations to the governor and the legislature regarding any appropriate program transfers by January 1 of each year;

(5) Reward community networks that show exceptional success as provided in RCW 43.41.195;

(6) Seek every opportunity to maximize federal and other funding that is consistent with the plans approved by the council for the purpose and goals of this chapter;

(7) Review the state-funded out-of-home placement rate before the end of each contract to determine whether the region has sufficiently reduced the rate. If the council determines that there has not been a sufficient reduction in the rate, it may reduce the immediately succeeding grant to the network;

(8)(a) The council shall monitor the implementation of programs contracted by participating state agencies by reviewing periodic reports on the extent to which services were delivered to intended populations, the quality of services, and the extent to which service outcomes were achieved at the conclusion of service interventions. This monitoring shall include provision for periodic feedback to community networks;

(b) The legislature intends that this monitoring be used by the Washington state institute for public policy, together with public health data on at-risk behaviors and risk and protective factors, to produce an external evaluation of the effectiveness of the networks and their programs. For this reason, and to conserve public funds, the council shall not conduct or contract for the conduct of control group studies, quasi-experimental design studies, or other analysis efforts to attempt to determine the impact of network programs on at-risk behaviors or risk and protective factors; and

(9) Review the implementation of chapter 7, Laws of 1994 sp. sess. The report shall use measurable performance standards to evaluate the implementation. [2009 c 479 § 59; 1998 c 245 § 123; 1994 sp.s. c 7 § 307.]

**Effective date—2009 c 479:** See note following RCW 2.56.030.

**Finding—Intent—Severability—1994 sp.s. c 7:** See notes following RCW 43.70.540.

**70.190.110 Program review.** (1) The council, and each network, shall biennially review all state and federal funded programs serving individuals, families, or communities to determine whether a network may be better able to integrate and coordinate these services within the community.

(2) The council, and each network, shall specifically review the feasibility and desirability of decategorizing and granting, all or part of, the following program funds to the networks:

- (a) Consolidated juvenile services;
  - (b) Family preservation and support services;
  - (c) Readiness to learn;
  - (d) Community mobilization;
  - (e) Violence prevention;
  - (f) Community-police partnership;
  - (g) Child care;
  - (h) Early intervention and educational services, including but not limited to, birth to three, birth to six, early childhood education and assistance, and headstart;
  - (i) Crisis residential care;
  - (j) Victims' assistance;
  - (k) Foster care;
  - (l) Adoption support;
  - (m) Continuum of care; and
  - (n) Drug and alcohol abuse prevention and early intervention in schools.
- (3) In determining the desirability of decategorizing these programs the report shall analyze whether:
- (a) The program is an integral part of the comprehensive plan without decategorization;
  - (b) The program is already adequately integrated and coordinated with other programs that are, or will be, funded by the network;
  - (c) The network could develop the capacity to provide the program's services;
  - (d) The program goals might receive greater community support and reinforcement through the network;
  - (e) The program presently ensures that adequate follow-up efforts are utilized, and whether the network could improve on those efforts through decategorization of the funds;
  - (f) The decategorization would benefit the community; and
  - (g) The decategorization would assist the network in achieving its goals.

(4) If the council or a network determines that a program should not be decategorized, the council or network shall make recommendations regarding programmatic changes that are necessary to improve the coordination and integration of services and programs, regardless of the funding source for those programs. [1998 c 245 § 124; 1994 sp.s. c 7 § 308.]

**Finding—Intent—Severability—1994 sp.s. c 7:** See notes following RCW 43.70.540.

*Office of financial management, recommended legislation: RCW 43.41.190.*

**70.190.120 Interagency agreement.** (1) The participating state agencies shall execute an interagency agreement to ensure the coordination of their local program efforts regarding children. This agreement shall recognize and give specific planning, coordination, and program administration responsibilities to community networks, after the approval under RCW 70.190.130 of their comprehensive plans. The community networks shall encourage the development of integrated, regionally based children, youth, and family activities and services with adequate local flexibility to

(2010 Ed.)

accomplish the purposes stated in section 101, chapter 7, Laws of 1994 sp. sess. and RCW 74.14A.020.

(2) The community networks shall exercise the planning, coordinating, and program administration functions specified by the state interagency agreement in addition to other activities required by law, and shall participate in the planning process required by chapter 71.36 RCW.

(3) Any state or federal funds identified for contracts with community networks shall be transferred with no reductions. [1994 sp.s. c 7 § 309.]

**Finding—Intent—Severability—1994 sp.s. c 7:** See notes following RCW 43.70.540.

**70.190.130 Comprehensive plan—Approval process—Network expenditures—Penalty for noncompliance with chapter.** (1) The council shall only disburse funds to a network after a comprehensive plan has been prepared by the network and approved by the council. In approving the plan the council shall consider whether the network:

- (a) Promoted input from the widest practical range of agencies and affected parties, including public hearings;
- (b) Reviewed the indicators of violence data compiled by the local public health departments and incorporated a response to those indicators in the plan;
- (c) Obtained a declaration by the largest health department within the network boundary, indicating whether the plan meets minimum standards for assessment and policy development relating to social development according to RCW 43.70.555;
- (d) Included a specific mechanism of data collection and transmission based on the rules established under RCW 43.70.555;
- (e) Considered all relevant causes of violence in its community and did not isolate only one or a few of the elements to the exclusion of others and demonstrated evidence of building community capacity through effective neighborhood and community development;
- (f) Considered youth employment and job training programs outlined in this chapter as a strategy to reduce the rate of at-risk children and youth;
- (g) Integrated local programs that met the network's priorities and were deemed successful by the network;
- (h) Committed to make measurable reductions in the rate of at-risk children and youth by reducing the rate of state-funded out-of-home placements and make reductions in at least three of the following rates of youth: Violent criminal acts, substance abuse, pregnancy and male parentage, suicide attempts, dropping out of school, child abuse or neglect, and domestic violence; and
- (i) Held a public hearing on its proposed comprehensive plan and submitted to the council all of the written comments received at the hearing and a copy of the minutes taken at the hearing.

(2) The council may establish a maximum amount to be expended by a network for purposes of planning and administrative duties, that shall not, in total, exceed ten percent of funds available to a network. The council shall make recommendations to the legislature regarding the specific maximum amounts that can be spent by a network or group of networks on planning and administrative duties. The recommendation may provide differing percentages, considering the

size of the budgets of each network and giving consideration to whether there should be a higher percentage for administrative and planning purposes in budgets for smaller networks and a smaller percentage of the budgets for administration and planning purposes in larger networks.

(3) The council may determine that a network is not in compliance with this chapter if it fails to comply with statutory requirements. Upon a determination of noncompliance, the council may suspend or revoke a network's status or contract and specify a process and deadline for the network's compliance. [1998 c 314 § 13; 1996 c 132 § 8; 1994 sp.s. c 7 § 310.]

**Intent—Construction—Severability—1996 c 132:** See notes following RCW 70.190.010.

**Finding—Intent—Severability—1994 sp.s. c 7:** See notes following RCW 43.70.540.

*Office of financial management, fund distribution formula: RCW 43.41.195.*  
Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**70.190.150 Federal restrictions on funds transfers, waivers.** If there exist any federal restrictions against the transfer of funds, for the programs enumerated in RCW 70.190.110, to the community networks, the council shall assist the governor in immediately applying to the federal government for waivers of the federal restrictions. The council shall also assist the governor in coordinating efforts to make any changes in federal law necessary to meet the purpose and intent of chapter 7, Laws of 1994 sp. sess. [1994 sp.s. c 7 § 312.]

**Finding—Intent—Severability—1994 sp.s. c 7:** See notes following RCW 43.70.540.

**70.190.160 Community networks—Implementation in federal and state plans.** The implementation of community networks shall be included in all federal and state plans affecting the state's children, youth, and families. The plans shall be consistent with the intent and requirements of this chapter. [1994 sp.s. c 7 § 314.]

**Finding—Intent—Severability—1994 sp.s. c 7:** See notes following RCW 43.70.540.

**70.190.170 Transfer of funds and programs to state agency.** If a community network is unable or unwilling to assume powers and duties authorized under this chapter by June 30, 1998, or the Washington state institute for public policy makes a recommendation under RCW 70.190.050, the governor may transfer all funds and programs available to a community network to a single state agency whose statutory purpose, mission, goals, and operating philosophy most closely supports the principles and purposes of section 101, chapter 7, Laws of 1994 sp. sess. and RCW 74.14A.020, for the purpose of integrating the programs and services. [1994 sp.s. c 7 § 320.]

**Finding—Intent—Severability—1994 sp.s. c 7:** See notes following RCW 43.70.540.

**70.190.180 Community network—Grants for use of school facilities.** A community public health and safety network, based on rules adopted by the department of health, may include in its comprehensive community plans procedures for providing matching grants to school districts to sup-

port expanded use of school facilities for after-hours recreational opportunities and day care as authorized under chapter 28A.215 RCW and RCW 28A.620.010. [1994 sp.s. c 7 § 604.]

**Finding—Intent—Severability—1994 sp.s. c 7:** See notes following RCW 43.70.540.

**70.190.190 Network members immune from civil liability—Network assets not subject to attachment or execution.** (1) The network members are immune from all civil liability arising from their actions done in their decision-making capacity as a network member, except for their intentional tortious acts or acts of official misconduct.

(2) The assets of a network are not subject to attachment or execution in satisfaction of a judgment for the tortious acts or official misconduct of any network member or for the acts of any agency or program to which it provides funds. [1996 c 132 § 9.]

**Intent—Construction—Severability—1996 c 132:** See notes following RCW 70.190.010.

**70.190.910 Severability—1992 c 198.** If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1992 c 198 § 20.]

**70.190.920 Effective date—1992 c 198.** Sections 1 through 13 of this act shall take effect July 1, 1992. [1992 c 198 § 21.]

**70.190.930 Construction—Chapter applicable to state registered domestic partnerships—2009 c 521.** For the purposes of this chapter, the terms spouse, marriage, marital, husband, wife, widow, widower, next of kin, and family shall be interpreted as applying equally to state registered domestic partnerships or individuals in state registered domestic partnerships as well as to marital relationships and married persons, and references to dissolution of marriage shall apply equally to state registered domestic partnerships that have been terminated, dissolved, or invalidated, to the extent that such interpretation does not conflict with federal law. Where necessary to implement chapter 521, Laws of 2009, gender-specific terms such as husband and wife used in any statute, rule, or other law shall be construed to be gender neutral, and applicable to individuals in state registered domestic partnerships. [2009 c 521 § 156.]

## Chapter 70.195 RCW

### EARLY INTERVENTION SERVICES— BIRTH TO SIX

#### Sections

- 70.195.005 Findings.
- 70.195.010 Birth-to-six interagency coordinating council—Early intervention services—Conditions and limitations.
- 70.195.020 Birth-to-six interagency coordinating council—Coordination with counties and communities.
- 70.195.030 Early intervention services—Interagency agreements.
- 70.195.900 Severability—1992 c 198.

**70.195.005 Findings.** The legislature finds that there is an urgent and substantial need to:

(1) Enhance the development of infants and toddlers with disabilities in the state of Washington in order to minimize developmental delay and maximize individual potential and enhance the capability of families to meet the needs of their infants and toddlers with disabilities and maintain family integrity;

(2) Coordinate and enhance the state's existing early intervention services to ensure a statewide, community-based, coordinated, interagency program of early intervention services for infants and toddlers with disabilities and their families; and

(3) Facilitate the coordination of payment for early intervention services from federal, state, local, and private sources including public and private insurance coverage. [1992 c 198 § 14.]

**70.195.010 Birth-to-six interagency coordinating council—Early intervention services—Conditions and limitations.** For the purposes of implementing this chapter, the governor shall appoint a state birth-to-six interagency coordinating council and ensure that state agencies involved in the provision of, or payment for, early intervention services to infants and toddlers with disabilities and their families shall coordinate and collaborate in the planning and delivery of such services.

No state or local agency currently providing early intervention services to infants and toddlers with disabilities may use funds appropriated for early intervention services for infants and toddlers with disabilities to supplant funds from other sources.

All state and local agencies shall ensure that the implementation of this chapter will not cause any interruption in existing early intervention services for infants and toddlers with disabilities.

Nothing in this chapter shall be construed to permit the restriction or reduction of eligibility under Title V of the Social Security Act, P.L. 90-248, relating to maternal and child health or Title XIX of the Social Security Act, P.L. 89-97, relating to medicaid for infants and toddlers with disabilities. [1998 c 245 § 125; 1992 c 198 § 15.]

**70.195.020 Birth-to-six interagency coordinating council—Coordination with counties and communities.** The state birth-to-six interagency coordinating council shall identify and work with county early childhood interagency coordinating councils to coordinate and enhance existing early intervention services and assist each community to meet the needs of infants and toddlers with disabilities and their families. [1992 c 198 § 17.]

**70.195.030 Early intervention services—Interagency agreements.** State agencies providing or paying for early intervention services shall enter into formal interagency agreements with each other and where appropriate, with school districts, counties, and other providers, to define their relationships and financial and service responsibilities. Local agencies or entities, including local school districts, counties, and service providers receiving public money for providing or paying for early intervention services shall enter into for-

(2010 Ed.)

mal interagency agreements with each other that define their relationships and financial responsibilities to provide services within each county. In establishing priorities, school districts, counties, and other service providers shall give due regard to the needs of children birth to three years of age and shall ensure that they continue to participate in providing services and collaborate with each other. The interagency agreements shall include procedures for resolving disputes, provisions for establishing maintenance requirements, and all additional components necessary to ensure collaboration and coordination. [1992 c 198 § 16.]

**70.195.900 Severability—1992 c 198.** See RCW 70.190.910.

## Chapter 70.198 RCW EARLY INTERVENTION SERVICES— HEARING LOSS

### Sections

70.198.010	Findings.
70.198.020	Advisory council—Membership.
70.198.030	Development of early intervention service standards.
70.198.040	Hearing loss pamphlet.

**70.198.010 Findings.** (1) The legislature finds that children who are deaf or hard of hearing and their families have unique needs specific to the hearing loss. These unique needs reflect the challenges children with hearing loss and their families encounter related to their lack of full access to auditory communication.

(2) The legislature further finds that early detection of hearing loss in a child and early intervention and treatment have been demonstrated to be highly effective in facilitating a child's healthy development in a manner consistent with the child's age and cognitive ability.

(3) These combined factors support the need for early intervention services providers with specialized training and expertise, spanning the spectrum of available approaches and educational options, who can address the unique characteristics and needs of each child who is deaf or hard of hearing and that child's family. [2004 c 47 § 1.]

**70.198.020 Advisory council—Membership.** (1) There is established an advisory council in the department of social and health services for the purpose of advancing the development of a comprehensive and effective statewide system to provide prompt and effective early interventions for children in the state who are deaf or hard of hearing and their families.

(2) Members of the advisory council shall have training, experience, or interest in hearing loss in children. Membership shall include, but not be limited to, the following: Pediatricians; audiologists; teachers of the deaf and hard of hearing; parents of children who are deaf or hard of hearing; a representative from the Washington state center for childhood deafness and hearing loss; and representatives of the early support for infants and toddlers program in the department of early learning, the department of health, and the office of the superintendent of public instruction. [2010 c 233 § 2; 2009 c 381 § 33; 2004 c 47 § 2.]

**Effective date—2010 c 233:** See note following RCW 43.215.020.

**Findings—Intent—2009 c 381:** See note following RCW 72.40.015.

**70.198.030 Development of early intervention service standards.** (1) The advisory council shall develop statewide standards for early intervention services and early intervention services providers specifically related to children who are deaf or hard of hearing.

(2) The advisory council shall develop these standards by January 1, 2005. [2004 c 47 § 3.]

**70.198.040 Hearing loss pamphlet.** (1) The advisory council shall create a pamphlet to be provided to the parents of a child in the state who is diagnosed with hearing loss by their child's pediatrician or audiologist, as appropriate, upon diagnosis of hearing loss. The pamphlet shall contain, at minimum, information on the following: The variety of interventions and treatments available for children who are deaf or hard of hearing; and resources for parent support, counseling, financing, and education related to hearing loss in children.

(2) The pamphlet shall be available for distribution by July 1, 2005. [2004 c 47 § 4.]

### Chapter 70.200 RCW

#### DONATIONS FOR CHILDREN

##### Sections

70.200.010	Definitions.
70.200.020	Immunity from liability.
70.200.030	Construction—Liability, penalty.
70.200.900	Severability—1994 c 25.

**70.200.010 Definitions.** Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Distributing organization" means a charitable nonprofit organization under 26 U.S.C. Sec. 501(c) of the federal internal revenue code, or a public health agency acting on behalf of or in conjunction with a charitable nonprofit organization, which distributes children's items to needy persons free of charge and includes any nonprofit organization that distributes children's items free of charge to other nonprofit organizations or the public. A public health agency shall not otherwise be considered a distributing organization for purposes of this chapter when it is carrying out other functions and responsibilities under Title 70 RCW.

(2) "Donor" means a person, corporation, association, or other organization that donates children's items to a distributing organization or a person, corporation, association, or other organization that repairs or updates such donated items to current standards. Donor also includes any person, corporation, association, or other organization which donates any space in which storage or distribution of children's items takes place.

(3) "Children's items" include, but are not limited to, clothes, diapers, food, baby formula, cribs, playpens, car seat restraints, toys, high chairs, and books. [1997 c 40 § 1; 1994 c 25 § 1.]

**70.200.020 Immunity from liability.** Donors and distributing organizations are not liable for civil damages or criminal penalties resulting from the nature, age, condition, or packaging of the donated children's items unless a donor or distributing organization acts with gross negligence or intentional misconduct. [1994 c 25 § 2.]

**70.200.030 Construction—Liability, penalty.** Nothing in this chapter may be construed to create any liability of, or penalty against a donor or distributing organization except as provided in RCW 70.200.020. [1994 c 25 § 3.]

**70.200.900 Severability—1994 c 25.** If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1994 c 25 § 4.]

### Chapter 70.210 RCW

#### INVESTING IN INNOVATION GRANTS PROGRAM

##### Sections

70.210.010	Intent.
70.210.020	Definitions.
70.210.030	Assessments.
70.210.040	Grant award criteria.
70.210.050	Peer review committee—Support of research commercialization opportunities—Grant awards, priority, eligibility.
70.210.060	Performance benchmarks, review, report.
70.210.070	Administration.

**70.210.010 Intent.** It is the intent of the legislature to promote growth in the technology sectors of our state's economy and to particularly focus support on the creation and commercialization of intellectual property in the technology, energy, and telecommunications industries. [2003 c 403 § 1.]

**70.210.020 Definitions.** The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Center" means the Washington technology center established under RCW 28B.20.283 through 28B.20.295.

(2) "Board" means the board of directors for the center. [2003 c 403 § 2.]

**70.210.030 Assessments.** (1) The investing in innovation grants program is established.

(2) The center shall periodically make strategic assessments of the types of state investments in research and technology in this state that would likely create jobs and business opportunities and produce the most beneficial long-term improvements to the lives and health of the citizens of the state. The assessments shall be available to the public and shall be used to guide decisions on awarding grants under this chapter. [2003 c 403 § 4.]

**70.210.040 Grant award criteria.** The board shall:

(1) Develop criteria for the awarding of grants to qualifying universities, institutions, businesses, or individuals;

(2) Make decisions regarding distribution of grant funds and make grant awards; and

(3) In making grant awards, seek to provide a balance between research grant awards and commercialization grant awards. [2003 c 403 § 5.]

**70.210.050 Peer review committee—Support of research commercialization opportunities—Grant awards, priority, eligibility.** (1) The board may accept grant proposals and establish a competitive process for the awarding of grants.

(2) The board shall establish a peer review committee to include board members, scientists, engineers, and individuals with specific recognized expertise. The peer review committee shall provide to the board an independent peer review of all proposals determined to be competitive for a grant award that are submitted to the board.

(3) In the awarding of grants, priority shall be given to proposals that leverage additional private and public funding resources.

(4) Up to fifty percent of available funds from the \*investing in innovation account may be used to support commercialization opportunities for research in Washington state through an organization with commercialization expertise such as the Spokane intercollegiate research and technology institute.

(5) The center may not be a direct recipient of grant awards under chapter 403, Laws of 2003. [2003 c 403 § 6.]

**\*Reviser's note:** The section creating the investing in innovation account, 2003 c 403 § 3, was vetoed by the governor.

**70.210.060 Performance benchmarks, review, report.** The board shall establish performance benchmarks against which the program will be evaluated. The grants program shall be reviewed periodically by the board. The board shall report annually to the appropriate standing committees of the legislature on grants awarded and as appropriate on program reviews conducted by the board. [2003 c 403 § 7.]

**70.210.070 Administration.** (1) The center shall administer the investing in innovation grants program.

(2) Not more than one percent of the available funds from the \*investing in innovation account may be used for administrative costs of the program. [2003 c 403 § 8.]

**\*Reviser's note:** The section creating the investing in innovation account, 2003 c 403 § 3, was vetoed by the governor.

## Chapter 70.220 RCW

### WASHINGTON ACADEMY OF SCIENCES

#### Sections

70.220.010	Finding—Purpose.
70.220.020	Washington academy of sciences to assist governor, legislature—Duty of state scientists not diminished.
70.220.030	Organizing committee, staff support—Organizational structure.
70.220.040	Duties—Review panels—Funding.
70.220.050	Additional services permitted.
70.220.060	Funding report required by April 30, 2007.

**70.220.010 Finding—Purpose.** The legislature finds that public policies and programs will be improved when informed by independent scientific analysis and communication with state and local policymakers. Throughout the state

there are highly qualified persons in a wide range of scientific disciplines who are willing to contribute their time and expertise in such reviews, but that presently there is lacking an organizational structure in which the entire scientific community may most effectively respond to requests for assessments of complex public policy questions. Therefore it is the purpose of chapter 305, Laws of 2005 to authorize the creation of the Washington academy of sciences as a nonprofit entity independent of government, whose principal mission will be the provision of scientific analysis and recommendations on questions referred to the academy by the governor, the governor's designee, or the legislature. [2005 c 305 § 1.]

**70.220.020 Washington academy of sciences to assist governor, legislature—Duty of state scientists not diminished.** The Washington academy of sciences authorized to be formed under RCW 70.220.030 shall serve as a principal source of scientific investigation, examination, and reporting on scientific questions referred to the academy by the governor or the legislature under the provisions of RCW 70.220.040. Nothing in this section or this chapter supersedes or diminishes the responsibilities performed by scientists employed by the state or its political subdivisions. [2005 c 305 § 2.]

**70.220.030 Organizing committee, staff support—Organizational structure.** (1) The presidents of the University of Washington and Washington State University shall jointly form and serve as the cochairs of an organizing committee for the purpose of creating the Washington academy of sciences as an independent entity to carry out the purposes of this chapter. The committee should be representative of appropriate disciplines from the academic, private, governmental, and research sectors.

(2) Staff from the University of Washington and Washington State University, and from other available entities, shall provide support to the organizing committee under the direction of the cochairs.

(3)(a) The committee shall investigate organizational structures that will ensure the participation or membership in the academy of scientists and experts with distinction in their fields, and that will ensure broad participation among the several disciplines that may be called upon in the investigation, examination, and reporting upon questions referred to the academy by the governor or the legislature.

(b) The organizational structure shall include a process by which the academy responds to inquiries from the governor or the legislature, including but not limited to the identification of research projects, past or present, at Washington or other research institutions and the findings of such research projects.

(4) The committee cochairs shall use their best efforts to form the committee by January 1, 2006, and to complete the committee's review by April 30, 2007. By April 30, 2007, the committee, or such individuals as the committee selects, shall file articles of incorporation to create the academy as a Washington independent organizational entity. The articles shall expressly recognize the power and responsibility of the academy to provide services as described in RCW 70.220.040 upon request of the governor, the governor's des-

ignee, or the legislature. The articles shall also provide for a board of directors of the academy that includes distinguished scientists from the range of disciplines that may be called upon to provide such services to the state and its political subdivisions, and provide a balance of representation from the academic, private, governmental, and research sectors.

(5) The articles shall provide for all such powers as may be appropriate or necessary to carry out the academy's purposes under this chapter, to the full extent allowable under the proposed organizational structure. [2005 c 305 § 3.]

**70.220.040 Duties—Review panels—Funding.** (1) The academy shall investigate, examine, and report on any subject of science requested by the governor, the governor's designee, or the legislature. The procedures for selecting panels of experts to respond to such requests shall be set forth in the bylaws or other appropriate operating guidelines. In forming review panels, the academy shall endeavor to assure that the panel members have no conflicts of interest and that proposed panelists first disclose any advocacy positions or financial interest related to the questions to be addressed by the panel that the candidate has held within the past ten years.

(2) The governor shall provide funding to the academy for the actual expense of such investigation, examination, and reports. Such funding shall be in addition to state funding assistance to the academy in its initial years of operation as described in RCW 70.220.060. [2005 c 305 § 4.]

**70.220.050 Additional services permitted.** The academy may carry out functions or provide services to its members and the public in addition to the services provided under RCW 70.220.040, such as public education programs, newsletters, web sites, science fairs, and research assistance. [2005 c 305 § 5.]

**70.220.060 Funding report required by April 30, 2007.** The organizational committee shall recommend procedures and funding requirements for receiving and disbursing funding in support of the academy's programs and services in a report to the governor and the appropriate committees of the senate and house of representatives no later than April 30, 2007. [2005 c 305 § 6.]

## Chapter 70.225 RCW

### PRESCRIPTION MONITORING PROGRAM

#### Sections

70.225.010	Definitions.
70.225.020	Prescription monitoring program—Subject to funding—Duties of dispensers.
70.225.025	Rules.
70.225.030	Enhancement of program—Feasibility study.
70.225.040	Confidentiality of prescription information—Procedures—Immunity when acting in good faith.
70.225.050	Department may contract for operation of program.
70.225.060	Violations—Penalties—Disclosure exemption for health care providers.
70.225.900	Severability—Subheadings not law—2007 c 259.

**70.225.010 Definitions.** The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Controlled substance" has the meaning provided in RCW 69.50.101.

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

(3) "Patient" means the person or animal who is the ultimate user of a drug for whom a prescription is issued or for whom a drug is dispensed.

(4) "Dispenser" means a practitioner or pharmacy that delivers a Schedule II, III, IV, or V controlled substance to the ultimate user, but does not include:

(a) A practitioner or other authorized person who administers, as defined in RCW 69.41.010, a controlled substance; or

(b) A licensed wholesale distributor or manufacturer, as defined in chapter 18.64 RCW, of a controlled substance. [2007 c 259 § 42.]

**70.225.020 Prescription monitoring program—Subject to funding—Duties of dispensers.** (1) When sufficient funding is provided for such purpose through federal or private grants, or is appropriated by the legislature, the department shall establish and maintain a prescription monitoring program to monitor the prescribing and dispensing of all Schedules II, III, IV, and V controlled substances and any additional drugs identified by the board of pharmacy as demonstrating a potential for abuse by all professionals licensed to prescribe or dispense such substances in this state. The program shall be designed to improve health care quality and effectiveness by reducing abuse of controlled substances, reducing duplicative prescribing and overprescribing of controlled substances, and improving controlled substance prescribing practices with the intent of eventually establishing an electronic database available in real time to dispensers and prescribers of control [controlled] substances. As much as possible, the department should establish a common database with other states.

(2) Except as provided in subsection (4) of this section, each dispenser shall submit to the department by electronic means information regarding each prescription dispensed for a drug included under subsection (1) of this section. Drug prescriptions for more than immediate one day use should be reported. The information submitted for each prescription shall include, but not be limited to:

- Patient identifier;
- Drug dispensed;
- Date of dispensing;
- Quantity dispensed;
- Prescriber; and
- Dispenser.

(3) Each dispenser shall submit the information in accordance with transmission methods established by the department.

(4) The data submission requirements of this section do not apply to:

(a) Medications provided to patients receiving inpatient services provided at hospitals licensed under chapter 70.41 RCW; or patients of such hospitals receiving services at the clinics, day surgery areas, or other settings within the hospital's license where the medications are administered in single doses; or

(b) Pharmacies operated by the department of corrections for the purpose of providing medications to offenders in

department of corrections institutions who are receiving pharmaceutical services from a department of corrections pharmacy, except that the department of corrections must submit data related to each offender's current prescriptions for controlled substances upon the offender's release from a department of corrections institution.

(5) The department shall seek federal grants to support the activities described in chapter 259, Laws of 2007. The department may not require a practitioner or a pharmacist to pay a fee or tax specifically dedicated to the operation of the system. [2007 c 259 § 43.]

**70.225.025 Rules.** The department shall adopt rules to implement this chapter. [2007 c 259 § 47.]

**70.225.030 Enhancement of program—Feasibility study.** To the extent that funding is provided for such purpose through federal or private grants, or is appropriated by the legislature, the health care authority shall study the feasibility of enhancing the prescription monitoring program established in RCW 70.225.020 in order to improve the quality of state purchased health services by reducing legend drug abuse, reducing duplicative and overprescribing of legend drugs, and improving legend drug prescribing practices. The study shall address the steps necessary to expand the program to allow those who prescribe or dispense prescription drugs to perform a web-based inquiry and obtain real time information regarding the legend drug utilization history of persons for whom they are providing medical or pharmaceutical care when such persons are receiving health services through state purchased health care programs. [2007 c 259 § 44.]

**70.225.040 Confidentiality of prescription information—Procedures—Immunity when acting in good faith.**

(1) Prescription information submitted to the department shall be confidential, in compliance with chapter 70.02 RCW and federal health care information privacy requirements and not subject to disclosure, except as provided in subsections (3) and (4) of this section.

(2) The department shall maintain procedures to ensure that the privacy and confidentiality of patients and patient information collected, recorded, transmitted, and maintained is not disclosed to persons except as in subsections (3) and (4) of this section.

(3) The department may provide data in the prescription monitoring program to the following persons:

(a) Persons authorized to prescribe or dispense controlled substances, for the purpose of providing medical or pharmaceutical care for their patients;

(b) An individual who requests the individual's own prescription monitoring information;

(c) Health professional licensing, certification, or regulatory agency or entity;

(d) Appropriate local, state, and federal law enforcement or prosecutorial officials who are engaged in a bona fide specific investigation involving a designated person;

(e) Authorized practitioners of the department of social and health services regarding medicaid program recipients;

(2010 Ed.)

(f) The director or director's designee within the department of labor and industries regarding workers' compensation claimants;

(g) The director or the director's designee within the department of corrections regarding offenders committed to the department of corrections;

(h) Other entities under grand jury subpoena or court order; and

(i) Personnel of the department for purposes of administration and enforcement of this chapter or chapter 69.50 RCW.

(4) The department may provide data to public or private entities for statistical, research, or educational purposes after removing information that could be used to identify individual patients, dispensers, prescribers, and persons who received prescriptions from dispensers.

(5) A dispenser or practitioner acting in good faith is immune from any civil, criminal, or administrative liability that might otherwise be incurred or imposed for requesting, receiving, or using information from the program. [2007 c 259 § 45.]

**70.225.050 Department may contract for operation of program.** The department may contract with another agency of this state or with a private vendor, as necessary, to ensure the effective operation of the prescription monitoring program. Any contractor is bound to comply with the provisions regarding confidentiality of prescription information in RCW 70.225.040 and is subject to the penalties specified in RCW 70.225.060 for unlawful acts. [2007 c 259 § 46.]

**70.225.060 Violations—Penalties—Disclosure exemption for health care providers.**

(1) A dispenser who knowingly fails to submit prescription monitoring information to the department as required by this chapter or knowingly submits incorrect prescription information is subject to disciplinary action under chapter 18.130 RCW.

(2) A person authorized to have prescription monitoring information under this chapter who knowingly discloses such information in violation of this chapter is subject to civil penalty.

(3) A person authorized to have prescription monitoring information under this chapter who uses such information in a manner or for a purpose in violation of this chapter is subject to civil penalty.

(4) In accordance with chapter 70.02 RCW and federal health care information privacy requirements, any physician or pharmacist authorized to access a patient's prescription monitoring may discuss or release that information to other health care providers involved with the patient in order to provide safe and appropriate care coordination. [2007 c 259 § 48.]

**70.225.900 Severability—Subheadings not law—2007 c 259.** See notes following RCW 41.05.033.

## Chapter 70.230 RCW

## AMBULATORY SURGICAL FACILITIES

## Sections

70.230.010	Definitions.
70.230.020	Duties of secretary—Rules.
70.230.030	Operating without a license.
70.230.040	Exclusions from chapter.
70.230.050	Licenses—Applicants—Renewal.
70.230.060	Facility safety and emergency training.
70.230.070	Denial, suspension, or revocation of license—Investigating complaints—Penalties.
70.230.080	Coordinated quality improvement—Rules.
70.230.090	Ambulatory surgical facilities—Construction, maintenance, and operation—Minimum standards and rules.
70.230.100	Ambulatory surgical facilities—Surveys.
70.230.110	Ambulatory surgical facilities—Submission of data related to the quality of patient care.
70.230.120	Reports—Discipline of a health care provider for unprofessional conduct—Penalties.
70.230.130	Written records—Decisions to restrict or terminate privileges of practitioners—Penalties.
70.230.140	Information concerning practitioners—Disclosure.
70.230.150	Unanticipated outcomes—Notification.
70.230.160	Complaint toll-free telephone number—Notice.
70.230.170	Information received by department—Disclosure.
70.230.180	Ambulatory surgical facility account.
70.230.900	Effective date—2007 c 273.
70.230.901	Implementation—2007 c 273.

**70.230.010 Definitions.** The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Ambulatory surgical facility" means any distinct entity that operates for the primary purpose of providing specialty or multispecialty outpatient surgical services in which patients are admitted to and discharged from the facility within twenty-four hours and do not require inpatient hospitalization, whether or not the facility is certified under Title XVIII of the federal social security act.

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

(3) "General anesthesia" means a state of unconsciousness intentionally produced by anesthetic agents, with absence of pain sensation over the entire body, in which the patient is without protective reflexes and is unable to maintain an airway.

(4) "Person" means an individual, firm, partnership, corporation, company, association, joint stock association, and the legal successor thereof.

(5) "Practitioner" means any physician or surgeon licensed under chapter 18.71 RCW, an osteopathic physician or surgeon licensed under chapter 18.57 RCW, or a podiatric physician or surgeon licensed under chapter 18.22 RCW.

(6) "Secretary" means the secretary of health.

(7) "Surgical services" means invasive medical procedures that:

(a) Utilize a knife, laser, cautery, cryogenics, or chemicals; and

(b) Remove, correct, or facilitate the diagnosis or cure of a disease, process, or injury through that branch of medicine that treats diseases, injuries, and deformities by manual or operative methods by a practitioner. [2007 c 273 § 1.]

**70.230.020 Duties of secretary—Rules.** The secretary shall:

(1) Issue a license to any ambulatory surgical facility that:

(a) Submits payment of the fee established in \*section 7, chapter 273, Laws of 2007;

(b) Submits a completed application that demonstrates the ability to comply with the standards established for operating and maintaining an ambulatory surgical facility in statute and rule. An ambulatory surgical facility shall be deemed to have met the standards if it submits proof of certification as a medicare ambulatory surgical facility or accreditation by an organization that the secretary has determined to have substantially equivalent standards to those of the department; and

(c) Successfully completes the survey requirements established in RCW 70.230.100;

(2) Develop an application form for applicants for a license to operate an ambulatory surgical facility;

(3) Initiate investigations and enforcement actions for complaints or other information regarding failure to comply with this chapter or the standards and rules adopted under this chapter;

(4) Conduct surveys of facilities, including reviews of medical records and documents required to be maintained under this chapter or rules adopted under this chapter;

(5) By March 1, 2008, determine which accreditation organizations have substantially equivalent standards for purposes of deeming specific licensing requirements required in statute and rule as having met the state's standards; and

(6) Adopt any rules necessary to implement this chapter. [2007 c 273 § 2.]

**\*Reviser's note:** Section 7, chapter 273, Laws of 2007 requires identification of, and a report on, a reasonable fee schedule for licenses and renewal licenses.

**70.230.030 Operating without a license.** Except as provided in RCW 70.230.040, after June 30, 2009, no person or governmental unit of the state of Washington, acting separately or jointly with any other person or governmental unit, shall establish, maintain, or conduct an ambulatory surgical facility in this state or advertise by using the term "ambulatory surgical facility," "day surgery center," "licensed surgical center," or other words conveying similar meaning without a license issued by the department under this chapter. [2007 c 273 § 3.]

**70.230.040 Exclusions from chapter.** Nothing in this chapter:

(1) Applies to an ambulatory surgical facility that is maintained and operated by a hospital licensed under chapter 70.41 RCW;

(2) Applies to an office maintained for the practice of dentistry;

(3) Applies to outpatient specialty or multispecialty surgical services routinely and customarily performed in the office of a practitioner in an individual or group practice that do not require general anesthesia; or

(4) Limits an ambulatory surgical facility to performing only surgical services. [2007 c 273 § 4.]

**70.230.050 Licenses—Applicants—Renewal.** (1) An applicant for a license to operate an ambulatory surgical facility must demonstrate the ability to comply with the standards

established for operating and maintaining an ambulatory surgical facility in statute and rule, including:

(a) Submitting a written application to the department providing all necessary information on a form provided by the department, including a list of surgical specialties offered;

(b) Submitting building plans for review and approval by the department for new construction, alterations other than minor alterations, and additions to existing facilities, prior to obtaining a license and occupying the building;

(c) Demonstrating the ability to comply with this chapter and any rules adopted under this chapter;

(d) Cooperating with the department during on-site surveys prior to obtaining an initial license or renewing an existing license;

(e) Providing such proof as the department may require concerning the ownership and management of the ambulatory surgical facility, including information about the organization and governance of the facility and the identity of the applicant, officers, directors, partners, managing employees, or owners of ten percent or more of the applicant's assets;

(f) Submitting proof of operation of a coordinated quality improvement program in accordance with RCW 70.230.080;

(g) Submitting a copy of the facility safety and emergency training program established under RCW 70.230.060;

(h) Paying any fees established under \*section 7, chapter 273, Laws of 2007; and

(i) Providing any other information that the department may reasonably require.

(2) A license is valid for three years, after which an ambulatory surgical facility must submit an application for renewal of license upon forms provided by the department and the renewal fee as established in \*section 7, chapter 273, Laws of 2007. The applicant must demonstrate the ability to comply with the standards established for operating and maintaining an ambulatory surgical facility in statutes, standards, and rules. The applicant must submit the license renewal document no later than thirty days prior to the date of expiration of the license.

(3) The applicant may demonstrate compliance with any of the requirements of subsection (1) of this section by providing satisfactory documentation to the secretary that it has met the standards of an accreditation organization or federal agency that the secretary has determined to have substantially equivalent standards as the statutes and rules of this state. [2007 c 273 § 5.]

**\*Reviser's note:** Section 7, chapter 273, Laws of 2007 requires identification of, and a report on, a reasonable fee schedule for licenses and renewal licenses.

#### **70.230.060 Facility safety and emergency training.**

An ambulatory surgical facility shall have a facility safety and emergency training program. The program shall include:

(1) On-site equipment, medication, and trained personnel to facilitate handling of services sought or provided and to facilitate the management of any medical emergency that may arise in connection with services sought or provided;

(2) Written transfer agreements with local hospitals licensed under chapter 70.41 RCW, approved by the ambulatory surgical facility's medical staff; and

(3) A procedural plan for handling medical emergencies that shall be available for review during surveys and inspections. [2007 c 273 § 6.]

#### **70.230.070 Denial, suspension, or revocation of license—Investigating complaints—Penalties.**

(1) The secretary may deny, suspend, or revoke the license of any ambulatory surgical facility in any case in which he or she finds the applicant or registered entity knowingly made a false statement of material fact in the application for the license or any supporting data in any record required by this chapter or matter under investigation by the department.

(2) The secretary shall investigate complaints concerning operation of an ambulatory surgical facility without a license. The secretary may issue a notice of intention to issue a cease and desist order to any person whom the secretary has reason to believe is engaged in the unlicensed operation of an ambulatory surgical facility. If the secretary makes a written finding of fact that the public interest will be irreparably harmed by delay in issuing an order, the secretary may issue a temporary cease and desist order. The person receiving a temporary cease and desist order shall be provided an opportunity for a prompt hearing. The temporary cease and desist order shall remain in effect until further order of the secretary. Any person operating an ambulatory surgical facility under this chapter without a license is guilty of a misdemeanor, and each day of operation of an unlicensed ambulatory surgical facility constitutes a separate offense.

(3) The secretary is authorized to deny, suspend, revoke, or modify a license or provisional license in any case in which it finds that there has been a failure or refusal to comply with the requirements of this chapter or the standards or rules adopted under this chapter. RCW 43.70.115 governs notice of a license denial, revocation, suspension, or modification and provides the right to an adjudicative proceeding.

(4) Pursuant to chapter 34.05 RCW, the secretary may assess monetary penalties of a civil nature not to exceed one thousand dollars per violation. [2007 c 273 § 8.]

#### **70.230.080 Coordinated quality improvement—**

**Rules.** (1) Every ambulatory surgical facility shall maintain a coordinated quality improvement program for the improvement of the quality of health care services rendered to patients and the identification and prevention of medical malpractice. The program shall include at least the following:

(a) The establishment of a quality improvement committee with the responsibility to review the services rendered in the ambulatory surgical facility, both retrospectively and prospectively, in order to improve the quality of medical care of patients and to prevent medical malpractice. The committee shall oversee and coordinate the quality improvement and medical malpractice prevention program and shall ensure that information gathered pursuant to the program is used to review and to revise the policies and procedures of the ambulatory surgical facility;

(b) A medical staff privileges sanction procedure through which credentials, physical and mental capacity, and competence in delivering health care services are periodically reviewed as part of an evaluation of staff privileges;

(c) The periodic review of the credentials, physical and mental capacity, and competence in delivering health care services of all persons who are employed or associated with the ambulatory surgical facility;

(d) A procedure for the prompt resolution of grievances by patients or their representatives related to accidents, injuries, treatment, and other events that may result in claims of medical malpractice;

(e) The maintenance and continuous collection of information concerning the ambulatory surgical facility's experience with negative health care outcomes and incidents injurious to patients, patient grievances, professional liability premiums, settlements, awards, costs incurred by the ambulatory surgical facility for patient injury prevention, and safety improvement activities;

(f) The maintenance of relevant and appropriate information gathered pursuant to (a) through (e) of this subsection concerning individual practitioners within the practitioner's personnel or credential file maintained by the ambulatory surgical facility;

(g) Education programs dealing with quality improvement, patient safety, medication errors, injury prevention, staff responsibility to report professional misconduct, the legal aspects of patient care, improved communication with patients, and causes of malpractice claims for staff personnel engaged in patient care activities; and

(h) Policies to ensure compliance with the reporting requirements of this section.

(2) Any person who, in substantial good faith, provides information to further the purposes of the quality improvement and medical malpractice prevention program or who, in substantial good faith, participates on the quality improvement committee is not subject to an action for civil damages or other relief as a result of such activity. Any person or entity participating in a coordinated quality improvement program that, in substantial good faith, shares information or documents with one or more other programs, committees, or boards under subsection (8) of this section is not subject to an action for civil damages or other relief as a result of the activity. For the purposes of this section, sharing information is presumed to be in substantial good faith. However, the presumption may be rebutted upon a showing of clear, cogent, and convincing evidence that the information shared was knowingly false or deliberately misleading.

(3) Information and documents, including complaints and incident reports, created specifically for, and collected and maintained by, a quality improvement committee are not subject to review or disclosure, except as provided in this section, or discovery or introduction into evidence in any civil action, and no person who was in attendance at a meeting of such committee or who participated in the creation, collection, or maintenance of information or documents specifically for the committee shall be permitted or required to testify in any civil action as to the content of such proceedings or the documents and information prepared specifically for the committee. This subsection does not preclude: (a) In any civil action, the discovery of the identity of persons involved in the medical care that is the basis of the civil action whose involvement was independent of any quality improvement activity; (b) in any civil action, the testimony of any person concerning the facts which form the basis for the institution

of such proceedings of which the person had personal knowledge acquired independently of such proceedings; (c) in any civil action by a health care provider regarding the restriction or revocation of that individual's clinical or staff privileges, introduction into evidence of information collected and maintained by quality improvement committees regarding such health care provider; (d) in any civil action, disclosure of the fact that staff privileges were terminated or restricted, including the specific restrictions imposed, if any, and the reasons for the restrictions; or (e) in any civil action, discovery and introduction into evidence of the patient's medical records required by rule of the department to be made regarding the care and treatment received.

(4) Each quality improvement committee shall, on at least a semiannual basis, report to the management of the ambulatory surgical facility, as identified in the facility's application, in which the committee is located. The report shall review the quality improvement activities conducted by the committee, and any actions taken as a result of those activities.

(5) The department shall adopt such rules as are deemed appropriate to effectuate the purposes of this section.

(6) The medical quality assurance commission, the board of osteopathic medicine and surgery, or the podiatric medical board, as appropriate, may review and audit the records of committee decisions in which a practitioner's privileges are terminated or restricted. Each ambulatory surgical facility shall produce and make accessible to the commission or board the appropriate records and otherwise facilitate the review and audit. Information so gained is not subject to the discovery process and confidentiality shall be respected as required by subsection (3) of this section. Failure of an ambulatory surgical facility to comply with this subsection is punishable by a civil penalty not to exceed two hundred fifty dollars.

(7) The department and any accrediting organization may review and audit the records of a quality improvement committee or peer review committee in connection with their inspection and review of the ambulatory surgical facility. Information so obtained is not subject to the discovery process, and confidentiality shall be respected as required by subsection (3) of this section. Each ambulatory surgical facility shall produce and make accessible to the department the appropriate records and otherwise facilitate the review and audit.

(8) A coordinated quality improvement program may share information and documents, including complaints and incident reports, created specifically for, and collected and maintained by, a quality improvement committee or a peer review committee under RCW 4.24.250 with one or more other coordinated quality improvement programs maintained in accordance with this section or RCW 43.70.510 or 70.41.200, a quality assurance committee maintained in accordance with RCW 18.20.390 or 74.42.640, or a peer review committee under RCW 4.24.250, for the improvement of the quality of health care services rendered to patients and the identification and prevention of medical malpractice. The privacy protections of chapter 70.02 RCW and the federal health insurance portability and accountability act of 1996 and its implementing regulations apply to the sharing of individually identifiable patient information held by a

coordinated quality improvement program. Any rules necessary to implement this section shall meet the requirements of applicable federal and state privacy laws. Information and documents disclosed by one coordinated quality improvement program to another coordinated quality improvement program or a peer review committee under RCW 4.24.250 and any information and documents created or maintained as a result of the sharing of information and documents are not subject to the discovery process and confidentiality shall be respected as required by subsection (3) of this section, RCW 18.20.390 (6) and (8), 70.41.200(3), 74.42.640 (7) and (9), and 4.24.250.

(9) An ambulatory surgical facility that participates in a coordinated quality improvement program under RCW 43.70.510 shall be deemed to have met the requirements of this section.

(10) Violation of this section shall not be considered negligence per se. [2007 c 273 § 9.]

**70.230.090 Ambulatory surgical facilities—Construction, maintenance, and operation—Minimum standards and rules.** The department shall establish and adopt such minimum standards and rules pertaining to the construction, maintenance, and operation of ambulatory surgical facilities and rescind, amend, or modify such rules, as are necessary in the public interest, and particularly for the establishment and maintenance of standards of patient care required for the safe and adequate care and treatment of patients. In establishing the format and content of these standards and rules, the department shall give consideration to maintaining consistency with such minimum standards and rules applicable to ambulatory surgical facilities in the survey standards of accrediting organizations or federal agencies that the secretary has determined to have substantially equivalent standards as the statutes and rules of this state. [2007 c 273 § 10.]

**70.230.100 Ambulatory surgical facilities—Surveys.**

(1) The department shall make or cause to be made a survey of all ambulatory surgical facilities every eighteen months. Every survey of an ambulatory surgical facility may include an inspection of every part of the surgical facility. The department may make an examination of all phases of the ambulatory surgical facility operation necessary to determine compliance with all applicable statutes, rules, and regulations. In the event that the department is unable to make a survey or cause a survey to be made during the three years of the term of the license, the license of the ambulatory surgical facility shall remain in effect until the state conducts a survey or a substitute survey is performed if the ambulatory surgical facility is in compliance with all other licensing requirements.

(2) An ambulatory surgical facility shall be deemed to have met the survey standards of this section if it submits proof of certification as a medicare ambulatory surgical facility or accreditation by an organization that the secretary has determined to have substantially equivalent survey standards to those of the department. A survey performed pursuant to medicare certification or by an approved accrediting organization may substitute for a survey by the department if:

(a) The ambulatory surgical facility has satisfactorily completed a survey by the department in the previous eighteen months; and

(b) Within thirty days of learning the result of a survey, the ambulatory surgical facility provides the department with documentary evidence that the ambulatory surgical facility has been certified or accredited as a result of a survey and the date of the survey.

(3) Ambulatory surgical facilities shall make the written reports of surveys conducted pursuant to medicare certification procedures or by an approved accrediting organization available to department surveyors during any department surveys, upon request. [2007 c 273 § 11.]

**70.230.110 Ambulatory surgical facilities—Submission of data related to the quality of patient care.** The department shall require ambulatory surgical facilities to submit data related to the quality of patient care for review by the department. The data shall be submitted every eighteen months. The department shall consider the reporting standards of other public and private organizations that measure quality in order to maintain consistency in reporting and minimize the burden on the ambulatory surgical facility. The department shall review the data to determine the maintenance of quality patient care at the facility. If the department determines that the care offered at the facility may present a risk to the health and safety of patients, the department may conduct an inspection of the facility and initiate appropriate actions to protect the public. Information submitted to the department pursuant to this section shall be exempt from disclosure under chapter 42.56 RCW. [2007 c 273 § 12.]

**70.230.120 Reports—Discipline of a health care provider for unprofessional conduct—Penalties.** (1) The chief administrator or executive officer of an ambulatory surgical facility shall report to the department when the practice of a health care provider licensed by a disciplining authority under RCW 18.130.040 is restricted, suspended, limited, or terminated based upon a conviction, determination, or finding by the ambulatory surgical facility that the provider has committed an action defined as unprofessional conduct under RCW 18.130.180. The chief administrator or executive officer shall also report any voluntary restriction or termination of the practice of a health care provider licensed by a disciplining authority under RCW 18.130.040 while the provider is under investigation or the subject of a proceeding by the ambulatory surgical facility regarding unprofessional conduct, or in return for the ambulatory surgical facility not conducting such an investigation or proceeding or not taking action. The department shall forward the report to the appropriate disciplining authority.

(2) Reports made under subsection (1) of this section must be made within fifteen days of the date of: (a) A conviction, determination, or finding by the ambulatory surgical facility that the health care provider has committed an action defined as unprofessional conduct under RCW 18.130.180; or (b) acceptance by the ambulatory surgical facility of the voluntary restriction or termination of the practice of a health care provider, including his or her voluntary resignation,

while under investigation or the subject of proceedings regarding unprofessional conduct under RCW 18.130.180.

(3) Failure of an ambulatory surgical facility to comply with this section is punishable by a civil penalty not to exceed two hundred fifty dollars.

(4) An ambulatory surgical facility, its chief administrator, or its executive officer who files a report under this section is immune from suit, whether direct or derivative, in any civil action related to the filing or contents of the report, unless the conviction, determination, or finding on which the report and its content are based is proven to not have been made in good faith. The prevailing party in any action brought alleging that the conviction, determination, finding, or report was not made in good faith is entitled to recover the costs of litigation, including reasonable attorneys' fees.

(5) The department shall forward reports made under subsection (1) of this section to the appropriate disciplining authority designated under Title 18 RCW within fifteen days of the date the report is received by the department. The department shall notify an ambulatory surgical facility that has made a report under subsection (1) of this section of the results of the disciplining authority's case disposition decision within fifteen days after the case disposition. Case disposition is the decision whether to issue a statement of charges, take informal action, or close the complaint without action against a provider. In its biennial report to the legislature under RCW 18.130.310, the department shall specifically identify the case dispositions of reports made by ambulatory surgical facilities under subsection (1) of this section. [2007 c 273 § 13.]

**70.230.130 Written records—Decisions to restrict or terminate privileges of practitioners—Penalties.** Each ambulatory surgical facility shall keep written records of decisions to restrict or terminate privileges of practitioners. Copies of such records shall be made available to the medical quality assurance commission, the board of osteopathic medicine and surgery, or the podiatric medical board, within thirty days of a request, and all information so gained remains confidential in accordance with RCW 70.230.080 and 70.230.120 and is protected from the discovery process. Failure of an ambulatory surgical facility to comply with this section is punishable by a civil penalty not to exceed two hundred fifty dollars. [2007 c 273 § 14.]

**70.230.140 Information concerning practitioners—Disclosure.** (1) Prior to granting or renewing clinical privileges or association of any practitioner or hiring a practitioner, an ambulatory surgical facility approved pursuant to this chapter shall request from the practitioner and the practitioner shall provide the following information:

(a) The name of any hospital, ambulatory surgical facility, or other facility with or at which the practitioner had or has any association, employment, privileges, or practice;

(b) If such association, employment, privilege, or practice was discontinued, the reasons for its discontinuation;

(c) Any pending professional medical misconduct proceedings or any pending medical malpractice actions in this state or another state, the substance of the allegations in the proceedings or actions, and any additional information con-

cerning the proceedings or actions as the practitioner deems appropriate;

(d) The substance of the findings in the actions or proceedings and any additional information concerning the actions or proceedings as the practitioner deems appropriate;

(e) A waiver by the practitioner of any confidentiality provisions concerning the information required to be provided to ambulatory surgical facilities pursuant to this subsection; and

(f) A verification by the practitioner that the information provided by the practitioner is accurate and complete.

(2) Prior to granting privileges or association to any practitioner or hiring a practitioner, an ambulatory surgical facility approved under this chapter shall request from any hospital or ambulatory surgical facility with or at which the practitioner had or has privileges, was associated, or was employed, the following information concerning the practitioner:

(a) Any pending professional medical misconduct proceedings or any pending medical malpractice actions, in this state or another state;

(b) Any judgment or settlement of a medical malpractice action and any finding of professional misconduct in this state or another state by a licensing or disciplinary board; and

(c) Any information required to be reported by hospitals or ambulatory surgical facilities pursuant to RCW 18.130.070.

(3) The medical quality assurance commission, board of osteopathic medicine and surgery, podiatric medical board, or dental quality assurance commission, as appropriate, shall be advised within thirty days of the name of any practitioner denied staff privileges, association, or employment on the basis of adverse findings under subsection (1) of this section.

(4) A hospital, ambulatory surgical facility, or other facility that receives a request for information from another hospital, ambulatory surgical facility, or other facility pursuant to subsections (1) and (2) of this section shall provide such information concerning the physician in question to the extent such information is known to the hospital, ambulatory surgical facility, or other facility receiving such a request, including the reasons for suspension, termination, or curtailment of employment or privileges at the hospital, ambulatory surgical facility, or facility. A hospital, ambulatory surgical facility, other facility, or other person providing such information in good faith is not liable in any civil action for the release of such information.

(5) Information and documents, including complaints and incident reports, created specifically for, and collected and maintained by, a quality improvement committee are not subject to discovery or introduction into evidence in any civil action, and no person who was in attendance at a meeting of such committee or who participated in the creation, collection, or maintenance of information or documents specifically for the committee shall be permitted or required to testify in any civil action as to the content of such proceedings or the documents and information prepared specifically for the committee. This subsection does not preclude: (a) In any civil action, the discovery of the identity of persons involved in the medical care that is the basis of the civil action whose involvement was independent of any quality improvement activity; (b) in any civil action, the testimony of any person

concerning the facts which form the basis for the institution of such proceedings of which the person had personal knowledge acquired independently of such proceedings; (c) in any civil action by a health care provider regarding the restriction or revocation of that individual's clinical or staff privileges, introduction into evidence information collected and maintained by quality improvement committees regarding such health care provider; (d) in any civil action, disclosure of the fact that staff privileges were terminated or restricted, including the specific restrictions imposed, if any, and the reasons for the restrictions; or (e) in any civil action, discovery and introduction into evidence of the patient's medical records required by rule of the department to be made regarding the care and treatment received.

(6) Ambulatory surgical facilities shall be granted access to information held by the medical quality assurance commission, board of osteopathic medicine and surgery, or podiatric medical board pertinent to decisions of the ambulatory surgical facility regarding credentialing and recredentialing of practitioners.

(7) Violation of this section shall not be considered negligence per se. [2007 c 273 § 15.]

#### **70.230.150 Unanticipated outcomes—Notification.**

Ambulatory surgical facilities shall have in place policies to assure that, when appropriate, information about unanticipated outcomes is provided to patients or their families or any surrogate decision makers identified pursuant to RCW 7.70.065. Notifications of unanticipated outcomes under this section do not constitute an acknowledgement or admission of liability, nor may the fact of notification, the content disclosed, or any and all statements, affirmations, gestures, or conduct expressing apology be introduced as evidence in a civil action. [2007 c 273 § 16.]

#### **70.230.160 Complaint toll-free telephone number—**

**Notice.** Every ambulatory surgical facility shall post in conspicuous locations a notice of the department's ambulatory surgical facility complaint toll-free telephone number. The form of the notice shall be approved by the department. [2007 c 273 § 17.]

#### **70.230.170 Information received by department—**

**Disclosure.** Information received by the department through filed reports, inspection, or as otherwise authorized under this chapter may be disclosed publicly, as permitted under chapter 42.56 RCW, subject to the following provisions:

(1) Licensing inspections, or complaint investigations regardless of findings, shall, as requested, be disclosed no sooner than three business days after the ambulatory surgical facility has received the resulting assessment report;

(2) Information regarding administrative action against the license [licensee] shall, as requested, be disclosed after the ambulatory surgical facility has received the documents initiating the administrative action;

(3) Information about complaints that did not warrant an investigation shall not be disclosed except to notify the ambulatory surgical facility and the complainant that the complaint did not warrant an investigation; and

(4) Information disclosed under this section shall not disclose individual names. [2007 c 273 § 18.]

#### **70.230.180 Ambulatory surgical facility account.**

The ambulatory surgical facility account is created in the custody of the state treasurer. All receipts from fees and penalties imposed under this chapter must be deposited into the account. Expenditures from the account may be used only for administration of this chapter. Only the secretary or the secretary's designee may authorize expenditures from the account. The account is subject to allotment procedures under chapter 43.88 RCW, but an appropriation is not required for expenditures. [2007 c 273 § 19.]

**70.230.900 Effective date—2007 c 273.** Except for section 7 of this act, this act takes effect July 1, 2009. [2007 c 273 § 29.]

**70.230.901 Implementation—2007 c 273.** The secretary of health may take the necessary steps to ensure that this act is implemented on its effective date. [2007 c 273 § 30.]

### **Chapter 70.235 RCW**

#### **LIMITING GREENHOUSE GAS EMISSIONS**

##### Sections

70.235.005	Findings—Intent.
70.235.010	Definitions.
70.235.020	Greenhouse gas emissions reductions—Reporting requirements.
70.235.030	Development of a design for a regional multisector market-based system to limit and reduce emissions of greenhouse gas—Information required to be submitted to the legislature.
70.235.040	Consultation with climate impacts group at the University of Washington—Report to the legislature.
70.235.050	Greenhouse gas emission limits for state agencies—Timeline—Reports—Strategy—Point of accountability employee for energy and climate change initiatives.
70.235.060	Emissions calculator for estimating aggregate emissions—Reports.
70.235.070	Distribution of funds for infrastructure and capital development projects—Prerequisites.
70.235.900	Scope of chapter 14, Laws of 2008.
70.235.901	Severability—2008 c 14.

**70.235.005 Findings—Intent.** (1) The legislature finds that Washington has long been a national and international leader on energy conservation and environmental stewardship, including air quality protection, renewable energy development and generation, emission standards for fossil-fuel based energy generation, energy efficiency programs, natural resource conservation, vehicle emission standards, and the use of biofuels. Washington is also unique among most states in that in addition to its commitment to reduce emissions of greenhouse gases, it has established goals to grow the clean energy sector and reduce the state's expenditures on imported fuels.

(2) The legislature further finds that Washington should continue its leadership on climate change policy by creating accountability for achieving the emission reductions established in RCW 70.235.020, participating in the design of a regional multisector market-based system to help achieve those emission reductions, assessing other market strategies to reduce emissions of greenhouse gases, and ensuring the state has a well trained workforce for our clean energy future.

(3) It is the intent of the legislature that the state will: (a) Limit and reduce emissions of greenhouse gas consistent with the emission reductions established in RCW 70.235.020; (b) minimize the potential to export pollution, jobs, and economic opportunities; and (c) reduce emissions at the lowest cost to Washington's economy, consumers, and businesses.

(4) In the event the state elects to participate in a regional multisector market-based system, it is the intent of the legislature that the system will become effective by January 1, 2012, after authority is provided to the department for its implementation. By acting now, Washington businesses and citizens will have adequate time and opportunities to be well positioned to take advantage of the low-carbon economy and to make necessary investments in low-carbon technology.

(5) It is also the intent of the legislature that the regional multisector market-based system recognize Washington's unique emissions portfolio, including the state's hydroelectric system, the opportunities presented by Washington's abundant forest resources and agriculture land, and the state's leadership in energy efficiency and the actions it has already taken that have reduced its generation of greenhouse gas emissions and that entities receive appropriate credit for early actions to reduce greenhouse gases.

(6) If any revenues that accrue to the state are created by a market system, they must be used to further the state's efforts to achieve the goals established in RCW 70.235.020, address the impacts of global warming on affected habitats, species, and communities, and increase investment in the clean energy economy particularly for communities and workers that have suffered from heavy job losses and chronic unemployment and underemployment. [2008 c 14 § 1.]

**70.235.010 Definitions.** The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Carbon dioxide equivalents" means a metric measure used to compare the emissions from various greenhouse gases based upon their global warming potential.

(2) "Climate advisory team" means the stakeholder group formed in response to executive order 07-02.

(3) "Climate impacts group" means the University of Washington's climate impacts group.

(4) "Department" means the department of ecology.

(5) "Director" means the director of the department.

(6) "Greenhouse gas" and "greenhouse gases" includes carbon dioxide, methane, nitrous oxide, hydrofluorocarbons, perfluorocarbons, sulfur hexafluoride, and any other gas or gases designated by the department by rule.

(7) "Person" means an individual, partnership, franchise holder, association, corporation, a state, a city, a county, or any subdivision or instrumentality of the state.

(8) "Program" means the department's climate change program.

(9) "Western climate initiative" means the collaboration of states, Canadian provinces, Mexican states, and tribes to design a multisector market-based mechanism as directed under the western regional climate action initiative signed by the governor on February 22, 2007. [2010 c 146 § 1; 2008 c 14 § 2.]

**70.235.020 Greenhouse gas emissions reductions—Reporting requirements.** (1)(a) The state shall limit emissions of greenhouse gases to achieve the following emission reductions for Washington state:

(i) By 2020, reduce overall emissions of greenhouse gases in the state to 1990 levels;

(ii) By 2035, reduce overall emissions of greenhouse gases in the state to twenty-five percent below 1990 levels;

(iii) By 2050, the state will do its part to reach global climate stabilization levels by reducing overall emissions to fifty percent below 1990 levels, or seventy percent below the state's expected emissions that year.

(b) By December 1, 2008, the department shall submit a greenhouse gas reduction plan for review and approval to the legislature, describing those actions necessary to achieve the emission reductions in (a) of this subsection by using existing statutory authority and any additional authority granted by the legislature. Actions taken using existing statutory authority may proceed prior to approval of the greenhouse gas reduction plan.

(c) Except where explicitly stated otherwise, nothing in chapter 14, Laws of 2008 limits any state agency authorities as they existed prior to June 12, 2008.

(d) Consistent with this directive, the department shall take the following actions:

(i) Develop and implement a system for monitoring and reporting emissions of greenhouse gases as required under RCW 70.94.151; and

(ii) Track progress toward meeting the emission reductions established in this subsection, including the results from policies currently in effect that have been previously adopted by the state and policies adopted in the future, and report on that progress.

(2) By December 31st of each even-numbered year beginning in 2010, the department and the \*department of community, trade, and economic development shall report to the governor and the appropriate committees of the senate and house of representatives the total emissions of greenhouse gases for the preceding two years, and totals in each major source sector. The department shall ensure the reporting rules adopted under RCW 70.94.151 allow it to develop a comprehensive inventory of emissions of greenhouse gases from all significant sectors of the Washington economy.

(3) Except for purposes of reporting, emissions of carbon dioxide from industrial combustion of biomass in the form of fuel wood, wood waste, wood by-products, and wood residuals shall not be considered a greenhouse gas as long as the region's silvicultural sequestration capacity is maintained or increased. [2008 c 14 § 3.]

**\*Reviser's note:** The "department of community, trade, and economic development" was renamed the "department of commerce" by 2009 c 565.

**70.235.030 Development of a design for a regional multisector market-based system to limit and reduce emissions of greenhouse gas—Information required to be submitted to the legislature.** (1)(a) The director shall develop, in coordination with the western climate initiative, a design for a regional multisector market-based system to limit and reduce emissions of greenhouse gas consistent with the emission reductions established in RCW 70.235.020(1).

(b) By December 1, 2008, the director and the director of the \*department of community, trade, and economic development shall deliver to the legislature specific recommendations for approval and request for authority to implement the preferred design of a regional multisector market-based system in (a) of this subsection. These recommendations must include:

(i) Proposed legislation, necessary funding, and the schedule necessary to implement the preferred design by January 1, 2012;

(ii) Any changes determined necessary to the reporting requirements established under RCW 70.94.151; and

(iii) Actions that the state should take to prevent manipulation of the multisector market-based system designed under this section.

(2) In developing the design for the regional multisector market-based system under subsection (1) of this section, the department shall consult with the affected state agencies, and provide opportunity for public review and comment.

(3) In addition to the information required under subsection (1)(b) of this section, the director and the director of the \*department of community, trade, and economic development shall submit the following to the legislature by December 1, 2008:

(a) Information on progress to date in achieving the requirements of chapter 14, Laws of 2008;

(b) The final recommendations of the climate advisory team, including recommended most promising actions to reduce emissions of greenhouse gases or otherwise respond to climate change. These recommendations must include strategies to reduce the quantity of emissions of greenhouse gases per distance traveled in the transportation sector;

(c) A request for additional resources and statutory authority needed to limit and reduce emissions of greenhouse gas consistent with chapter 14, Laws of 2008 including implementation of the most promising recommendations of the climate advisory team;

(d) Recommendations on how projects funded by the green energy incentive account in RCW 43.325.040 may be used to expand the electrical transmission infrastructure into urban and rural areas of the state for purposes of allowing the recharging of plug-in hybrid electric vehicles;

(e) Recommendations on how local governments could participate in the multisector market-based system designed under subsection (1) of this section;

(f) Recommendations regarding the circumstances under which generation of electricity or alternative fuel from land-fill gas and gas from anaerobic digesters may receive an offset or credit in the regional multisector market-based system or other strategies developed by the department; and

(g) Recommendations developed in consultation with the department of natural resources and the department of agriculture with the climate advisory team, the college of forest resources at the University of Washington, and the Washington State University, and a nonprofit consortium involved in research on renewable industrial materials, regarding how forestry and agricultural lands and practices may participate voluntarily as an offset or other credit program in the regional multisector market-based system. The recommendations must ensure that the baseline for this offset or credit program

(2010 Ed.)

does not disadvantage this state in relation to another state or states. These recommendations shall address:

(i) Commercial and other working forests, including accounting for site-class specific forest management practices;

(ii) Agricultural and forest products, including accounting for substitution of wood for fossil intensive substitutes;

(iii) Agricultural land and practices;

(iv) Forest and agricultural lands set aside or managed for conservation as of, or after, June 12, 2008; and

(v) Reforestation and afforestation projects. [2008 c 14 § 4.]

\*Reviser's note: The "department of community, trade, and economic development" was renamed the "department of commerce" by 2009 c 565.

**70.235.040 Consultation with climate impacts group at the University of Washington—Report to the legislature.** Within eighteen months of the next and each successive global or national assessment of climate change science, the department shall consult with the climate impacts group at the University of Washington regarding the science on human-caused climate change and provide a report to the legislature summarizing that science and make recommendations regarding whether the greenhouse gas emissions reductions required under RCW 70.235.020 need to be updated. [2008 c 14 § 7.]

**70.235.050 Greenhouse gas emission limits for state agencies—Timeline—Reports—Strategy—Point of accountability employee for energy and climate change initiatives.** (1) All state agencies shall meet the statewide greenhouse gas emission limits established in RCW 70.235.020 to achieve the following, using the estimates and strategy established in subsections (2) and (3) of this section:

(a) By July 1, 2020, reduce emissions by fifteen percent from 2005 emission levels;

(b) By 2035, reduce emissions to thirty-six percent below 2005 levels; and

(c) By 2050, reduce emissions to the greater reduction of fifty-seven and one-half percent below 2005 levels, or seventy percent below the expected state government emissions that year.

(2)(a) By June 30, 2010, all state agencies shall report estimates of emissions for 2005 to the department, including 2009 levels of emissions, and projected emissions through 2035.

(b) State agencies required to report under RCW 70.94.151 must estimate emissions from methodologies recommended by the department and must be based on actual operation of those agencies. Agencies not required to report under RCW 70.94.151 shall derive emissions estimates using an emissions calculator provided by the department.

(3) By June 30, 2011, each state agency shall submit to the department a strategy to meet the requirements in subsection (1) of this section. The strategy must address employee travel activities, teleconferencing alternatives, and include existing and proposed actions, a timeline for reductions, and recommendations for budgetary and other incentives to reduce emissions, especially from employee business travel.

(4) By October 1st of each even-numbered year beginning in 2012, each state agency shall report to the department

the actions taken to meet the emission reduction targets under the strategy for the preceding fiscal biennium. The department may authorize the department of general administration to report on behalf of any state agency having fewer than five hundred full-time equivalent employees at any time during the reporting period. The department shall cooperate with the department of general administration and the \*department of community, trade, and economic development to develop consolidated reporting methodologies that incorporate emission reduction actions taken across all or substantially all state agencies.

(5) All state agencies shall cooperate in providing information to the department, the department of general administration, and the \*department of community, trade, and economic development for the purposes of this section.

(6) The governor shall designate a person as the single point of accountability for all energy and climate change initiatives within state agencies. This position must be funded from current full-time equivalent allocations without increasing budgets or staffing levels. If duties must be shifted within an agency, they must be shifted among current full-time equivalent allocations. All agencies, councils, or work groups with energy or climate change initiatives shall coordinate with this designee. [2009 c 519 § 2.]

\*Reviser's note: The "department of community, trade, and economic development" was renamed the "department of commerce" by 2009 c 565.

Findings—2009 c 519: See RCW 43.21M.900.

**70.235.060 Emissions calculator for estimating aggregate emissions—Reports.** (1) The department shall develop an emissions calculator to assist state agencies in estimating aggregate emissions as well as in estimating the relative emissions from different ways in carrying out activities.

(2) The department may use data such as totals of building space occupied, energy purchases and generation, motor vehicle fuel purchases and total mileage driven, and other reasonable sources of data to make these estimates. The estimates may be derived from a single methodology using these or other factors, except that for the top ten state agencies in occupied building space and vehicle miles driven, the estimates must be based upon the actual and projected operations of those agencies. The estimates may be adjusted, and reasonable estimates derived, when agencies have been created since 1990 or functions reorganized among state agencies since 1990. The estimates may incorporate projected emissions reductions that also affect state agencies under the program authorized in RCW 70.235.020 and other existing policies that will result in emissions reductions.

(3) By December 31st of each even-numbered year beginning in 2010, the department shall report to the governor and to the appropriate committees of the senate and house of representatives the total state agencies' emissions of greenhouse gases for 2005 and the preceding two years and actions taken to meet the emissions reduction targets. [2009 c 519 § 5.]

Findings—2009 c 519: See RCW 43.21M.900.

**70.235.070 Distribution of funds for infrastructure and capital development projects—Prerequisites.** Begin-

[Title 70 RCW—page 534]

ning in 2010, when distributing capital funds through competitive programs for infrastructure and economic development projects, all state agencies must consider whether the entity receiving the funds has adopted policies to reduce greenhouse gas emissions. Agencies also must consider whether the project is consistent with:

(1) The state's limits on the emissions of greenhouse gases established in RCW 70.235.020;

(2) Statewide goals to reduce annual per capita vehicle miles traveled by 2050, in accordance with RCW 47.01.440, except that the agency shall consider whether project locations in rural counties, as defined in RCW 43.160.020, will maximize the reduction of vehicle miles traveled; and

(3) Applicable federal emissions reduction requirements. [2009 c 519 § 9.]

Findings—2009 c 519: See RCW 43.21M.900.

**70.235.900 Scope of chapter 14, Laws of 2008.** Except where explicitly stated otherwise, nothing in chapter 14, Laws of 2008 alters or limits any authorities of the department as they existed prior to June 12, 2008. [2008 c 14 § 11.]

**70.235.901 Severability—2008 c 14.** If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [2008 c 14 § 12.]

## Chapter 70.240 RCW

### CHILDREN'S SAFE PRODUCTS

#### Sections

70.240.010	Definitions.
70.240.020	Prohibition on the manufacturing and sale of children's products containing lead, cadmium, or phthalates.
70.240.030	Identification of high priority chemicals—Report.
70.240.040	Notice that a children's product contains a high priority chemical.
70.240.050	Manufacturers of restricted products—Notice to sellers and distributors—Civil penalty.
70.240.060	Adoption of rules.

**70.240.010 Definitions.** The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Children's cosmetics" means cosmetics that are made for, marketed for use by, or marketed to children under the age of twelve. "Children's cosmetics" includes cosmetics that meet any of the following conditions:

(a) Represented in its packaging, display, or advertising as appropriate for use by children;

(b) Sold in conjunction with, attached to, or packaged together with other products that are packaged, displayed, or advertised as appropriate for use by children; or

(c) Sold in any of the following:

(i) Retail store, catalogue, or online web site, in which a person exclusively offers for sale products that are packaged, displayed, or advertised as appropriate for use by children; or

(ii) A discrete portion of a retail store, catalogue, or online web site, in which a person offers for sale products that are packaged, displayed, or advertised as appropriate for use by children.

(2) "Children's jewelry" means jewelry that is made for, marketed for use by, or marketed to children under the age of twelve. "Children's jewelry" includes jewelry that meets any of the following conditions:

(a) Represented in its packaging, display, or advertising as appropriate for use by children under the age of twelve;

(b) Sold in conjunction with, attached to, or packaged together with other products that are packaged, displayed, or advertised as appropriate for use by children;

(c) Sized for children and not intended for use by adults; or

(d) Sold in any of the following:

(i) A vending machine;

(ii) Retail store, catalogue, or online web site, in which a person exclusively offers for sale products that are packaged, displayed, or advertised as appropriate for use by children; or

(iii) A discrete portion of a retail store, catalogue, or online web site, in which a person offers for sale products that are packaged, displayed, or advertised as appropriate for use by children.

(3)(a) "Children's product" includes any of the following:

(i) Toys;

(ii) Children's cosmetics;

(iii) Children's jewelry;

(iv) A product designed or intended by the manufacturer to help a child with sucking or teething, to facilitate sleep, relaxation, or the feeding of a child, or to be worn as clothing by children; or

(v) Child car seats.

(b) "Children's product" does not include the following:

(i) Batteries;

(ii) Slings and catapults;

(iii) Sets of darts with metallic points;

(iv) Toy steam engines;

(v) Bicycles and tricycles;

(vi) Video toys that can be connected to a video screen and are operated at a nominal voltage exceeding twenty-four volts;

(vii) Chemistry sets;

(viii) Consumer electronic products, including but not limited to personal computers, audio and video equipment, calculators, wireless phones, game consoles, and handheld devices incorporating a video screen, used to access interactive software and their associated peripherals;

(ix) Interactive software, intended for leisure and entertainment, such as computer games, and their storage media, such as compact disks;

(x) BB guns, pellet guns, and air rifles;

(xi) Snow sporting equipment, including skis, poles, boots, snow boards, sleds, and bindings;

(xii) Sporting equipment, including, but not limited to bats, balls, gloves, sticks, pucks, and pads;

(xiii) Roller skates;

(xiv) Scooters;

(xv) Model rockets;

(xvi) Athletic shoes with cleats or spikes; and

(xvii) Pocket knives and multitools.

(4) "Cosmetics" includes articles intended to be rubbed, poured, sprinkled, or sprayed on, introduced into, or otherwise applied to the human body or any part thereof for

cleansing, beautifying, promoting attractiveness, or altering the appearance, and articles intended for use as a component of such an article. "Cosmetics" does not include soap, dietary supplements, or food and drugs approved by the United States food and drug administration.

(5) "Department" means the department of ecology.

(6) "High priority chemical" means a chemical identified by a state agency, federal agency, or accredited research university, or other scientific evidence deemed authoritative by the department on the basis of credible scientific evidence as known to do one or more of the following:

(a) Harm the normal development of a fetus or child or cause other developmental toxicity;

(b) Cause cancer, genetic damage, or reproductive harm;

(c) Disrupt the endocrine system;

(d) Damage the nervous system, immune system, or organs or cause other systemic toxicity;

(e) Be persistent, bioaccumulative, and toxic; or

(f) Be very persistent and very bioaccumulative.

(7) "Manufacturer" includes any person, firm, association, partnership, corporation, governmental entity, organization, or joint venture that produces a children's product or an importer or domestic distributor of a children's product. For the purposes of this subsection, "importer" means the owner of the children's product.

(8) "Phthalates" means di-(2-ethylhexyl) phthalate (DEHP), dibutyl phthalate (DBP), benzyl butyl phthalate (BBP), diisonoyl phthalate (DINP), diisodecyl phthalate (DIDP), or di-n-octyl phthalate (DnOP).

(9) "Toy" means a product designed or intended by the manufacturer to be used by a child at play.

(10) "Trade association" means a membership organization of persons engaging in a similar or related line of commerce, organized to promote and improve business conditions in that line of commerce and not to engage in a regular business of a kind ordinarily carried on for profit.

(11) "Very bioaccumulative" means having a bioconcentration factor or bioaccumulation factor greater than or equal to five thousand, or if neither are available, having a log Kow greater than 5.0.

(12) "Very persistent" means having a half-life greater than or equal to one of the following:

(a) A half-life in soil or sediment of greater than one hundred eighty days;

(b) A half-life greater than or equal to sixty days in water or evidence of long-range transport. [2008 c 288 § 2.]

**70.240.020 Prohibition on the manufacturing and sale of children's products containing lead, cadmium, or phthalates.** (1) Beginning July 1, 2009, no manufacturer, wholesaler, or retailer may manufacture, knowingly sell, offer for sale, distribute for sale, or distribute for use in this state a children's product or product component containing the following:

(a) Except as provided in subsection (2) of this section, lead at more than .009 percent by weight (ninety parts per million);

(b) Cadmium at more than .004 percent by weight (forty parts per million); or

(c) Phthalates, individually or in combination, at more than 0.10 percent by weight (one thousand parts per million).

(2) If determined feasible for manufacturers to achieve and necessary to protect children's health, the department, in consultation with the department of health, may by rule require that no manufacturer, wholesaler, or retailer may manufacture, knowingly sell, offer for sale, distribute for sale, or distribute for use in this state a children's product or product component containing lead at more than .004 percent by weight (forty parts per million). [2008 c 288 § 3.]

**70.240.030 Identification of high priority chemicals—Report.** (1) By January 1, 2009, the department, in consultation with the department of health, shall identify high priority chemicals that are of high concern for children after considering a child's or developing fetus's potential for exposure to each chemical. In identifying the chemicals, the department shall include chemicals that meet one or more of the following criteria:

(a) The chemical has been found through biomonitoring studies that demonstrate the presence of the chemical in human umbilical cord blood, human breast milk, human urine, or other bodily tissues or fluids;

(b) The chemical has been found through sampling and analysis to be present in household dust, indoor air, drinking water, or elsewhere in the home environment; or

(c) The chemical has been added to or is present in a consumer product used or present in the home.

(2) By January 1, 2009, the department shall identify children's products or product categories that may contain chemicals identified under subsection (1) of this section.

(3) By January 1, 2009, the department shall submit a report on the chemicals of high concern to children and the children's products or product categories they identify to the appropriate standing committees of the legislature. The report shall include policy options for addressing children's products that contain chemicals of high concern for children, including recommendations for additional ways to inform consumers about toxic chemicals in products, such as labeling. [2008 c 288 § 4.]

**70.240.040 Notice that a children's product contains a high priority chemical.** Beginning six months after the department has adopted rules under \*section 8(5) of this act, a manufacturer of a children's product, or a trade organization on behalf of its member manufacturers, shall provide notice to the department that the manufacturer's product contains a high priority chemical. The notice must be filed annually with the department and must include the following information:

(1) The name of the chemical used or produced and its chemical abstracts service registry number;

(2) A brief description of the product or product component containing the substance;

(3) A description of the function of the chemical in the product;

(4) The amount of the chemical used in each unit of the product or product component. The amount may be reported in ranges, rather than the exact amount;

(5) The name and address of the manufacturer and the name, address, and phone number of a contact person for the manufacturer; and

(6) Any other information the manufacturer deems relevant to the appropriate use of the product. [2008 c 288 § 5.]

\*Reviser's note: Section 8 of this act was vetoed by the governor.

**70.240.050 Manufacturers of restricted products—Notice to sellers and distributors—Civil penalty.** (1) A manufacturer of products that are restricted under this chapter must notify persons that sell the manufacturer's products in this state about the provisions of this chapter no less than ninety days prior to the effective date of the restrictions.

(2) A manufacturer that produces, sells, or distributes a product prohibited from manufacture, sale, or distribution in this state under this chapter shall recall the product and reimburse the retailer or any other purchaser for the product.

(3) A manufacturer of children's products in violation of this chapter is subject to a civil penalty not to exceed five thousand dollars for each violation in the case of a first offense. Manufacturers who are repeat violators are subject to a civil penalty not to exceed ten thousand dollars for each repeat offense. Penalties collected under this section must be deposited in the state toxics control account created in RCW 70.105D.070.

(4) Retailers who unknowingly sell products that are restricted from sale under this chapter are not liable under this chapter. [2008 c 288 § 7.]

**70.240.060 Adoption of rules.** The department may adopt rules as necessary for the purpose of implementing, administering, and enforcing this chapter. [2008 c 288 § 9.]

## Chapter 70.245 RCW

### THE WASHINGTON DEATH WITH DIGNITY ACT

#### Sections

70.245.010	Definitions.
70.245.020	Written request for medication.
70.245.030	Form of the written request.
70.245.040	Attending physician responsibilities.
70.245.050	Consulting physician confirmation.
70.245.060	Counseling referral.
70.245.070	Informed decision.
70.245.080	Notification of next of kin.
70.245.090	Written and oral requests.
70.245.100	Right to rescind request.
70.245.110	Waiting periods.
70.245.120	Medical record documentation requirements.
70.245.130	Residency requirement.
70.245.140	Disposal of unused medications.
70.245.150	Reporting of information to the department of health—Adoption of rules—Information collected not a public record—Annual statistical report.
70.245.160	Effect on construction of wills, contracts, and statutes.
70.245.170	Insurance or annuity policies.
70.245.180	Authority of chapter—References to practices under this chapter—Applicable standard of care.
70.245.190	Immunities—Basis for prohibiting health care provider from participation—Notification—Permissible sanctions.
70.245.200	Willful alteration/forgery—Coercion or undue influence—Penalties—Civil damages—Other penalties not precluded.
70.245.210	Claims by governmental entity for costs incurred.
70.245.220	Form of the request.
70.245.901	Short title—2009 c 1 (Initiative Measure No. 1000).
70.245.902	Severability—2009 c 1 (Initiative Measure No. 1000).
70.245.903	Effective dates—2009 c 1 (Initiative Measure No. 1000).
70.245.904	Captions, part headings, and subpart headings not law—2009 c 1 (Initiative Measure No. 1000).

**70.245.010 Definitions.** The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Adult" means an individual who is eighteen years of age or older.

(2) "Attending physician" means the physician who has primary responsibility for the care of the patient and treatment of the patient's terminal disease.

(3) "Competent" means that, in the opinion of a court or in the opinion of the patient's attending physician or consulting physician, psychiatrist, or psychologist, a patient has the ability to make and communicate an informed decision to health care providers, including communication through persons familiar with the patient's manner of communicating if those persons are available.

(4) "Consulting physician" means a physician who is qualified by specialty or experience to make a professional diagnosis and prognosis regarding the patient's disease.

(5) "Counseling" means one or more consultations as necessary between a state licensed psychiatrist or psychologist and a patient for the purpose of determining that the patient is competent and not suffering from a psychiatric or psychological disorder or depression causing impaired judgment.

(6) "Health care provider" means a person licensed, certified, or otherwise authorized or permitted by law to administer health care or dispense medication in the ordinary course of business or practice of a profession, and includes a health care facility.

(7) "Informed decision" means a decision by a qualified patient, to request and obtain a prescription for medication that the qualified patient may self-administer to end his or her life in a humane and dignified manner, that is based on an appreciation of the relevant facts and after being fully informed by the attending physician of:

- (a) His or her medical diagnosis;
- (b) His or her prognosis;
- (c) The potential risks associated with taking the medication to be prescribed;
- (d) The probable result of taking the medication to be prescribed; and
- (e) The feasible alternatives including, but not limited to, comfort care, hospice care, and pain control.

(8) "Medically confirmed" means the medical opinion of the attending physician has been confirmed by a consulting physician who has examined the patient and the patient's relevant medical records.

(9) "Patient" means a person who is under the care of a physician.

(10) "Physician" means a doctor of medicine or osteopathy licensed to practice medicine in the state of Washington.

(11) "Qualified patient" means a competent adult who is a resident of Washington state and has satisfied the requirements of this chapter in order to obtain a prescription for medication that the qualified patient may self-administer to end his or her life in a humane and dignified manner.

(12) "Self-administer" means a qualified patient's act of ingesting medication to end his or her life in a humane and dignified manner.

(13) "Terminal disease" means an incurable and irreversible disease that has been medically confirmed and will,

within reasonable medical judgment, produce death within six months. [2009 c 1 § 1 (Initiative Measure No. 1000, approved November 4, 2008).]

**70.245.020 Written request for medication.** (1) An adult who is competent, is a resident of Washington state, and has been determined by the attending physician and consulting physician to be suffering from a terminal disease, and who has voluntarily expressed his or her wish to die, may make a written request for medication that the patient may self-administer to end his or her life in a humane and dignified manner in accordance with this chapter.

(2) A person does not qualify under this chapter solely because of age or disability. [2009 c 1 § 2 (Initiative Measure No. 1000, approved November 4, 2008).]

**70.245.030 Form of the written request.** (1) A valid request for medication under this chapter shall be in substantially the form described in RCW 70.245.220, signed and dated by the patient and witnessed by at least two individuals who, in the presence of the patient, attest that to the best of their knowledge and belief the patient is competent, acting voluntarily, and is not being coerced to sign the request.

(2) One of the witnesses shall be a person who is not:

(a) A relative of the patient by blood, marriage, or adoption;

(b) A person who at the time the request is signed would be entitled to any portion of the estate of the qualified patient upon death under any will or by operation of law; or

(c) An owner, operator, or employee of a health care facility where the qualified patient is receiving medical treatment or is a resident.

(3) The patient's attending physician at the time the request is signed shall not be a witness.

(4) If the patient is a patient in a long-term care facility at the time the written request is made, one of the witnesses shall be an individual designated by the facility and having the qualifications specified by the department of health by rule. [2009 c 1 § 3 (Initiative Measure No. 1000, approved November 4, 2008).]

**70.245.040 Attending physician responsibilities.** (1) The attending physician shall:

(a) Make the initial determination of whether a patient has a terminal disease, is competent, and has made the request voluntarily;

(b) Request that the patient demonstrate Washington state residency under RCW 70.245.130;

(c) To ensure that the patient is making an informed decision, inform the patient of:

(i) His or her medical diagnosis;

(ii) His or her prognosis;

(iii) The potential risks associated with taking the medication to be prescribed;

(iv) The probable result of taking the medication to be prescribed; and

(v) The feasible alternatives including, but not limited to, comfort care, hospice care, and pain control;

(d) Refer the patient to a consulting physician for medical confirmation of the diagnosis, and for a determination that the patient is competent and acting voluntarily;

(e) Refer the patient for counseling if appropriate under RCW 70.245.060;

(f) Recommend that the patient notify next of kin;

(g) Counsel the patient about the importance of having another person present when the patient takes the medication prescribed under this chapter and of not taking the medication in a public place;

(h) Inform the patient that he or she has an opportunity to rescind the request at any time and in any manner, and offer the patient an opportunity to rescind at the end of the fifteen-day waiting period under RCW 70.245.090;

(i) Verify, immediately before writing the prescription for medication under this chapter, that the patient is making an informed decision;

(j) Fulfill the medical record documentation requirements of RCW 70.245.120;

(k) Ensure that all appropriate steps are carried out in accordance with this chapter before writing a prescription for medication to enable a qualified patient to end his or her life in a humane and dignified manner; and

(l)(i) Dispense medications directly, including ancillary medications intended to facilitate the desired effect to minimize the patient's discomfort, if the attending physician is authorized under statute and rule to dispense and has a current drug enforcement administration certificate; or

(ii) With the patient's written consent:

(A) Contact a pharmacist and inform the pharmacist of the prescription; and

(B) Deliver the written prescription personally, by mail or facsimile to the pharmacist, who will dispense the medications directly to either the patient, the attending physician, or an expressly identified agent of the patient. Medications dispensed pursuant to this subsection shall not be dispensed by mail or other form of courier.

(2) The attending physician may sign the patient's death certificate which shall list the underlying terminal disease as the cause of death. [2009 c 1 § 4 (Initiative Measure No. 1000, approved November 4, 2008).]

**70.245.050 Consulting physician confirmation.** Before a patient is qualified under this chapter, a consulting physician shall examine the patient and his or her relevant medical records and confirm, in writing, the attending physician's diagnosis that the patient is suffering from a terminal disease, and verify that the patient is competent, is acting voluntarily, and has made an informed decision. [2009 c 1 § 5 (Initiative Measure No. 1000, approved November 4, 2008).]

**70.245.060 Counseling referral.** If, in the opinion of the attending physician or the consulting physician, a patient may be suffering from a psychiatric or psychological disorder or depression causing impaired judgment, either physician shall refer the patient for counseling. Medication to end a patient's life in a humane and dignified manner shall not be prescribed until the person performing the counseling determines that the patient is not suffering from a psychiatric or psychological disorder or depression causing impaired judgment.

ment. [2009 c 1 § 6 (Initiative Measure No. 1000, approved November 4, 2008).]

**70.245.070 Informed decision.** A person shall not receive a prescription for medication to end his or her life in a humane and dignified manner unless he or she has made an informed decision. Immediately before writing a prescription for medication under this chapter, the attending physician shall verify that the qualified patient is making an informed decision. [2009 c 1 § 7 (Initiative Measure No. 1000, approved November 4, 2008).]

**70.245.080 Notification of next of kin.** The attending physician shall recommend that the patient notify the next of kin of his or her request for medication under this chapter. A patient who declines or is unable to notify next of kin shall not have his or her request denied for that reason. [2009 c 1 § 8 (Initiative Measure No. 1000, approved November 4, 2008).]

**70.245.090 Written and oral requests.** To receive a prescription for medication that the qualified patient may self-administer to end his or her life in a humane and dignified manner, a qualified patient shall have made an oral request and a written request, and reiterate the oral request to his or her attending physician at least fifteen days after making the initial oral request. At the time the qualified patient makes his or her second oral request, the attending physician shall offer the qualified patient an opportunity to rescind the request. [2009 c 1 § 9 (Initiative Measure No. 1000, approved November 4, 2008).]

**70.245.100 Right to rescind request.** A patient may rescind his or her request at any time and in any manner without regard to his or her mental state. No prescription for medication under this chapter may be written without the attending physician offering the qualified patient an opportunity to rescind the request. [2009 c 1 § 10 (Initiative Measure No. 1000, approved November 4, 2008).]

**70.245.110 Waiting periods.** (1) At least fifteen days shall elapse between the patient's initial oral request and the writing of a prescription under this chapter.

(2) At least forty-eight hours shall elapse between the date the patient signs the written request and the writing of a prescription under this chapter. [2009 c 1 § 11 (Initiative Measure No. 1000, approved November 4, 2008).]

**70.245.120 Medical record documentation requirements.** The following shall be documented or filed in the patient's medical record:

(1) All oral requests by a patient for medication to end his or her life in a humane and dignified manner;

(2) All written requests by a patient for medication to end his or her life in a humane and dignified manner;

(3) The attending physician's diagnosis and prognosis, and determination that the patient is competent, is acting voluntarily, and has made an informed decision;

(4) The consulting physician's diagnosis and prognosis, and verification that the patient is competent, is acting voluntarily, and has made an informed decision;

(5) A report of the outcome and determinations made during counseling, if performed;

(6) The attending physician's offer to the patient to rescind his or her request at the time of the patient's second oral request under RCW 70.245.090; and

(7) A note by the attending physician indicating that all requirements under this chapter have been met and indicating the steps taken to carry out the request, including a notation of the medication prescribed. [2009 c 1 § 12 (Initiative Measure No. 1000, approved November 4, 2008).]

**70.245.130 Residency requirement.** Only requests made by Washington state residents under this chapter may be granted. Factors demonstrating Washington state residency include but are not limited to:

(1) Possession of a Washington state driver's license;

(2) Registration to vote in Washington state; or

(3) Evidence that the person owns or leases property in Washington state. [2009 c 1 § 13 (Initiative Measure No. 1000, approved November 4, 2008).]

**70.245.140 Disposal of unused medications.** Any medication dispensed under this chapter that was not self-administered shall be disposed of by lawful means. [2009 c 1 § 14 (Initiative Measure No. 1000, approved November 4, 2008).]

**70.245.150 Reporting of information to the department of health—Adoption of rules—Information collected not a public record—Annual statistical report.**

(1)(a) The department of health shall annually review all records maintained under this chapter.

(b) The department of health shall require any health care provider upon writing a prescription or dispensing medication under this chapter to file a copy of the dispensing record and such other administratively required documentation with the department. All administratively required documentation shall be mailed or otherwise transmitted as allowed by department of health rule to the department no later than thirty calendar days after the writing of a prescription and dispensing of medication under this chapter, except that all documents required to be filed with the department by the prescribing physician after the death of the patient shall be mailed no later than thirty calendar days after the date of death of the patient. In the event that anyone required under this chapter to report information to the department of health provides an inadequate or incomplete report, the department shall contact the person to request a complete report.

(2) The department of health shall adopt rules to facilitate the collection of information regarding compliance with this chapter. Except as otherwise required by law, the information collected is not a public record and may not be made available for inspection by the public.

(3) The department of health shall generate and make available to the public an annual statistical report of information collected under subsection (2) of this section. [2009 c 1

(2010 Ed.)

§ 15 (Initiative Measure No. 1000, approved November 4, 2008).]

**70.245.160 Effect on construction of wills, contracts, and statutes.** (1) Any provision in a contract, will, or other agreement, whether written or oral, to the extent the provision would affect whether a person may make or rescind a request for medication to end his or her life in a humane and dignified manner, is not valid.

(2) Any obligation owing under any currently existing contract shall not be conditioned or affected by the making or rescinding of a request, by a person, for medication to end his or her life in a humane and dignified manner. [2009 c 1 § 16 (Initiative Measure No. 1000, approved November 4, 2008).]

**70.245.170 Insurance or annuity policies.** The sale, procurement, or issuance of any life, health, or accident insurance or annuity policy or the rate charged for any policy shall not be conditioned upon or affected by the making or rescinding of a request, by a person, for medication that the patient may self-administer to end his or her life in a humane and dignified manner. A qualified patient's act of ingesting medication to end his or her life in a humane and dignified manner shall not have an effect upon a life, health, or accident insurance or annuity policy. [2009 c 1 § 17 (Initiative Measure No. 1000, approved November 4, 2008).]

**70.245.180 Authority of chapter—References to practices under this chapter—Applicable standard of care.**

(1) Nothing in this chapter authorizes a physician or any other person to end a patient's life by lethal injection, mercy killing, or active euthanasia. Actions taken in accordance with this chapter do not, for any purpose, constitute suicide, assisted suicide, mercy killing, or homicide, under the law. State reports shall not refer to practice under this chapter as "suicide" or "assisted suicide." Consistent with RCW 70.245.010 (7), (11), and (12), 70.245.020(1), 70.245.040(1)(k), 70.245.060, 70.245.070, 70.245.090, 70.245.120 (1) and (2), 70.245.160 (1) and (2), 70.245.170, 70.245.190(1) (a) and (d), and 70.245.200(2), state reports shall refer to practice under this chapter as obtaining and self-administering life-ending medication.

(2) Nothing contained in this chapter shall be interpreted to lower the applicable standard of care for the attending physician, consulting physician, psychiatrist or psychologist, or other health care provider participating under this chapter. [2009 c 1 § 18 (Initiative Measure No. 1000, approved November 4, 2008).]

**70.245.190 Immunities—Basis for prohibiting health care provider from participation—Notification—Permissible sanctions.** (1) Except as provided in RCW 70.245.200 and subsection (2) of this section:

(a) A person shall not be subject to civil or criminal liability or professional disciplinary action for participating in good faith compliance with this chapter. This includes being present when a qualified patient takes the prescribed medication to end his or her life in a humane and dignified manner;

(b) A professional organization or association, or health care provider, may not subject a person to censure, discipline,

suspension, loss of license, loss of privileges, loss of membership, or other penalty for participating or refusing to participate in good faith compliance with this chapter;

(c) A patient's request for or provision by an attending physician of medication in good faith compliance with this chapter does not constitute neglect for any purpose of law or provide the sole basis for the appointment of a guardian or conservator; and

(d) Only willing health care providers shall participate in the provision to a qualified patient of medication to end his or her life in a humane and dignified manner. If a health care provider is unable or unwilling to carry out a patient's request under this chapter, and the patient transfers his or her care to a new health care provider, the prior health care provider shall transfer, upon request, a copy of the patient's relevant medical records to the new health care provider.

(2)(a) A health care provider may prohibit another health care provider from participating under chapter 1, Laws of 2009 on the premises of the prohibiting provider if the prohibiting provider has given notice to all health care providers with privileges to practice on the premises and to the general public of the prohibiting provider's policy regarding participating under chapter 1, Laws of 2009. This subsection does not prevent a health care provider from providing health care services to a patient that do not constitute participation under chapter 1, Laws of 2009.

(b) A health care provider may subject another health care provider to the sanctions stated in this subsection if the sanctioning health care provider has notified the sanctioned provider before participation in chapter 1, Laws of 2009 that it prohibits participation in chapter 1, Laws of 2009:

(i) Loss of privileges, loss of membership, or other sanctions provided under the medical staff bylaws, policies, and procedures of the sanctioning health care provider if the sanctioned provider is a member of the sanctioning provider's medical staff and participates in chapter 1, Laws of 2009 while on the health care facility premises of the sanctioning health care provider, but not including the private medical office of a physician or other provider;

(ii) Termination of a lease or other property contract or other nonmonetary remedies provided by a lease contract, not including loss or restriction of medical staff privileges or exclusion from a provider panel, if the sanctioned provider participates in chapter 1, Laws of 2009 while on the premises of the sanctioning health care provider or on property that is owned by or under the direct control of the sanctioning health care provider; or

(iii) Termination of a contract or other nonmonetary remedies provided by contract if the sanctioned provider participates in chapter 1, Laws of 2009 while acting in the course and scope of the sanctioned provider's capacity as an employee or independent contractor of the sanctioning health care provider. Nothing in this subsection (2)(b)(iii) prevents:

(A) A health care provider from participating in chapter 1, Laws of 2009 while acting outside the course and scope of the provider's capacity as an employee or independent contractor; or

(B) A patient from contracting with his or her attending physician and consulting physician to act outside the course and scope of the provider's capacity as an employee or independent contractor of the sanctioning health care provider.

(c) A health care provider that imposes sanctions under (b) of this subsection shall follow all due process and other procedures the sanctioning health care provider may have that are related to the imposition of sanctions on another health care provider.

(d) For the purposes of this subsection:

(i) "Notify" means a separate statement in writing to the health care provider specifically informing the health care provider before the provider's participation in chapter 1, Laws of 2009 of the sanctioning health care provider's policy about participation in activities covered by this chapter.

(ii) "Participate in chapter 1, Laws of 2009" means to perform the duties of an attending physician under RCW 70.245.040, the consulting physician function under RCW 70.245.050, or the counseling function under RCW 70.245.060. "Participate in chapter 1, Laws of 2009" does not include:

(A) Making an initial determination that a patient has a terminal disease and informing the patient of the medical prognosis;

(B) Providing information about the Washington death with dignity act to a patient upon the request of the patient;

(C) Providing a patient, upon the request of the patient, with a referral to another physician; or

(D) A patient contracting with his or her attending physician and consulting physician to act outside of the course and scope of the provider's capacity as an employee or independent contractor of the sanctioning health care provider.

(3) Suspension or termination of staff membership or privileges under subsection (2) of this section is not reportable under RCW 18.130.070. Action taken under RCW 70.245.030, 70.245.040, 70.245.050, or 70.245.060 may not be the sole basis for a report of unprofessional conduct under RCW 18.130.180.

(4) References to "good faith" in subsection (1)(a), (b), and (c) of this section do not allow a lower standard of care for health care providers in the state of Washington. [2009 c 1 § 19 (Initiative Measure No. 1000, approved November 4, 2008).]

**70.245.200 Willful alteration/forgery—Coercion or undue influence—Penalties—Civil damages—Other penalties not precluded.** (1) A person who without authorization of the patient willfully alters or forges a request for medication or conceals or destroys a rescission of that request with the intent or effect of causing the patient's death is guilty of a class A felony.

(2) A person who coerces or exerts undue influence on a patient to request medication to end the patient's life, or to destroy a rescission of a request, is guilty of a class A felony.

(3) This chapter does not limit further liability for civil damages resulting from other negligent conduct or intentional misconduct by any person.

(4) The penalties in this chapter do not preclude criminal penalties applicable under other law for conduct that is inconsistent with this chapter. [2009 c 1 § 20 (Initiative Measure No. 1000, approved November 4, 2008).]

70.245.210 Claims by governmental entity for costs incurred. Any governmental entity that incurs costs resulting from a person terminating his or her life under this chapter in a public place has a claim against the estate of the person to recover such costs and reasonable attorneys' fees related to enforcing the claim. [2009 c 1 § 21 (Initiative Measure No. 1000, approved November 4, 2008).]

70.245.220 Form of the request. A request for a medication as authorized by this chapter shall be in substantially the following form:

REQUEST FOR MEDICATION TO END MY LIFE IN A HUMAN [HUMANE] AND DIGNIFIED MANNER

I, . . . . ., am an adult of sound mind.

I am suffering from . . . . ., which my attending physician has determined is a terminal disease and which has been medically confirmed by a consulting physician.

I have been fully informed of my diagnosis, prognosis, the nature of medication to be prescribed and potential associated risks, the expected result, and the feasible alternatives, including comfort care, hospice care, and pain control.

I request that my attending physician prescribe medication that I may self-administer to end my life in a humane and dignified manner and to contact any pharmacist to fill the prescription.

INITIAL ONE:

. . . . . I have informed my family of my decision and taken their opinions into consideration.

. . . . . I have decided not to inform my family of my decision.

. . . . . I have no family to inform of my decision.

I understand that I have the right to rescind this request at any time.

I understand the full import of this request and I expect to die when I take the medication to be prescribed. I further understand that although most deaths occur within three hours, my death may take longer and my physician has counseled me about this possibility.

I make this request voluntarily and without reservation, and I accept full moral responsibility for my actions.

Signed: . . . . .

Dated: . . . . .

DECLARATION OF WITNESSES

By initialing and signing below on or after the date the person named above signs, we declare that the person making and signing the above request:

Witness 1    Witness 2
Initials    Initials

- 1. Is personally known to us or has provided proof of identity;
2. Signed this request in our presence on the date of the person's signature;

- 3. Appears to be of sound mind and not under duress, fraud, or undue influence;
4. Is not a patient for whom either of us is the attending physician.

Printed Name of Witness 1: . . . . .

Signature of Witness 1/Date: . . . . .

Printed Name of Witness 2: . . . . .

Signature of Witness 2/Date: . . . . .

NOTE: One witness shall not be a relative by blood, marriage, or adoption of the person signing this request, shall not be entitled to any portion of the person's estate upon death, and shall not own, operate, or be employed at a health care facility where the person is a patient or resident. If the patient is an inpatient at a health care facility, one of the witnesses shall be an individual designated by the facility. [2009 c 1 § 22 (Initiative Measure No. 1000, approved November 4, 2008).]

70.245.901 Short title—2009 c 1 (Initiative Measure No. 1000). This act may be known and cited as the Washington death with dignity act. [2009 c 1 § 26 (Initiative Measure No. 1000, approved November 4, 2008).]

70.245.902 Severability—2009 c 1 (Initiative Measure No. 1000). If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [2009 c 1 § 27 (Initiative Measure No. 1000, approved November 4, 2008).]

70.245.903 Effective dates—2009 c 1 (Initiative Measure No. 1000). This act takes effect one hundred twenty days after the election at which it is approved [March 5, 2009], except for section 24 of this act which takes effect July 1, 2009. [2009 c 1 § 28 (Initiative Measure No. 1000, approved November 4, 2008).]

70.245.904 Captions, part headings, and subpart headings not law—2009 c 1 (Initiative Measure No. 1000). Captions, part headings, and subpart headings used in this act are not any part of the law. [2009 c 1 § 30 (Initiative Measure No. 1000, approved November 4, 2008).]

Chapter 70.250 RCW

ADVANCED DIAGNOSTIC IMAGING WORK GROUP

Sections
70.250.010 Definitions.
70.250.020 Work group—Members—Duties—Report—Expiration of work group.
70.250.030 Implementation of evidence-based best practice guidelines or protocols.
70.250.040 Application of section 135(a) of the medicare improvements for patients and providers act of 2008.
70.250.900 Effective date—2009 c 258.

**70.250.010 Definitions.** The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Advanced diagnostic imaging services" means magnetic resonance imaging services, computed tomography services, positron emission tomography services, cardiac nuclear medicine services, and similar new imaging services.

(2) "Authority" means the Washington state health care authority.

(3) "Payor" means public purchasers and carriers licensed under chapters 48.21, 48.41, 48.44, 48.46, and 48.62 RCW.

(4) "Public purchaser" means the department of social and health services, the department of health, the department of labor and industries, the authority, and the Washington state health insurance pool.

(5) "State purchased health care" has the same meaning as in RCW 41.05.011. [2009 c 258 § 1.]

**70.250.020 Work group—Members—Duties—Report—Expiration of work group.** (1) Consistent with the authority granted in RCW 41.05.013, the authority shall convene a work group to analyze and identify evidence-based best practice guidelines or protocols applicable to advanced diagnostic imaging services and any decision support tools available to implement the guidelines or protocols.

(2) The administrator of the authority shall appoint work group members, including at least:

(a) One member of the authority's health technology clinical committee;

(b) One representative of the Washington state medical association;

(c) One representative of the Washington state radiological society;

(d) One representative of the Puget Sound health alliance;

(e) One representative of the Washington health care forum;

(f) One representative of the Washington state hospital association;

(g) One representative of health carriers as defined in chapter 48.43 RCW; and

(h) One representative of each public purchaser.

(3) The work group shall:

(a) No later than July 1, 2009, identify evidence-based best practice guidelines or protocols and decision support tools applicable to advanced diagnostic imaging services to be implemented by all state purchased health care programs, except for state purchased health care services that are purchased from or through health carriers as defined in RCW 48.43.005. When identifying the guidelines or protocols, the work group may consult with organizations such as the Minnesota institute for clinical systems improvement; and

(b) Explore the feasibility of using the guidelines or protocols for state purchased health care services that are purchased from or through health carriers and all payors in the state by January 1, 2011, for the reimbursement of advanced diagnostic imaging services.

(4) The work group may solicit such federal or private funds and in-kind contributions as may be necessary to com-

plete its work in a timely fashion. However, no member of the work group shall be compensated for his or her service.

(5) The work group shall report its findings and recommendations to the governor and the appropriate committees of the legislature no later than July 1, 2009.

(6) The work group shall cease to exist on July 1, 2010. [2009 c 258 § 2.]

**70.250.030 Implementation of evidence-based best practice guidelines or protocols.** No later than September 1, 2009, all state purchased health care programs shall, except for state purchased health care services that are purchased from or through health carriers as defined in RCW 48.43.005, implement evidence-based best practice guidelines or protocols applicable to advanced diagnostic imaging services, and the decision support tools to implement the guidelines or protocols, identified under RCW 70.250.020. [2009 c 258 § 3.]

**70.250.040 Application of section 135(a) of the medicare improvements for patients and providers act of 2008.** Any current or future time frames, procedures, rules, regulations, or guidance regarding accreditation requirements for advanced diagnostic imaging services established in, or promulgated pursuant to, section 135(a) of the medicare improvements for patients and providers act of 2008, shall also be applicable to any person or entity in this state not already subject to its provisions that receives payment for the furnishing of the technical component of advanced diagnostic imaging services as defined under that act. [2009 c 258 § 4.]

**70.250.900 Effective date—2009 c 258.** This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [April 28, 2009]. [2009 c 258 § 5.]

## Chapter 70.255 RCW NOVELTY LIGHTERS

### Sections

70.255.010	Definitions.
70.255.020	Prohibition on the distribution or offer to sell novelty lighters.
70.255.030	Civil penalty—Jurisdiction.
70.255.040	Manufacturers must cease sale or distribution.

**70.255.010 Definitions.** The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Authority having jurisdiction" means the local organization, office, or individual responsible for enforcing the requirements of the state fire code.

(2) "Director" means the director of fire protection appointed under RCW 43.43.938.

(3) "Distribute" means to do any of the following:

(a) Sell novelty lighters or deliver novelty lighters for sale by another person to consumers;

(b) Sell or accept orders for novelty lighters that are to be transported from a point outside this state to a consumer within this state;

(c) Buy novelty lighters directly from a manufacturer or wholesale dealer for resale in this state;

(d) Give novelty lighters as a sample, prize, gift, or other promotion.

(4) "Manufacturer" means:

(a) An entity that produces, or causes the production of, novelty lighters for sale in this state;

(b) An importer or first purchaser of novelty lighters that intends to resell within this state novelty lighters that were produced for sale outside this state; or

(c) A successor to an entity, importer, or first purchaser described in (a) or (b) of this subsection.

(5)(a) "Novelty lighter" means a lighter that can operate on any fuel, including butane or liquid fuel. Novelty lighters have features that are attractive to children, including but not limited to visual effects, flashing lights, musical sounds, and toylike designs. The term considers the shape of the lighter to be the most important characteristic when determining whether a lighter can be considered a novelty lighter.

(b) "Novelty lighter" does not include disposable cigarette lighters or lighters that are printed or decorated with logos, decals, artwork, or heat shrinkable sleeves.

(6) "Retail dealer" means an entity at one location, other than a manufacturer or wholesale dealer, that engages in distributing novelty lighters.

(7) "Sell" means to transfer, or agree to transfer, title or possession for a monetary or nonmonetary consideration.

(8) "Wholesale dealer" means an entity that distributes novelty lighters to a retail dealer or other person for resale. [2009 c 273 § 1.]

**70.255.020 Prohibition on the distribution or offer to sell novelty lighters.** (1) A person may not distribute or offer to sell a novelty lighter within this state if the director determines the novelty lighter is prohibited for sale or distribution under this chapter.

(2) This section does not apply if the novelty lighters are in interstate commerce and not intended for distribution in this state.

(3) The authority having jurisdiction shall enforce the provisions of this chapter. [2009 c 273 § 2.]

**70.255.030 Civil penalty—Jurisdiction.** (1) The authority having jurisdiction may impose a civil penalty for a violation of this chapter. The civil penalty may not exceed:

(a) For a wholesale dealer that distributes or offers to sell novelty lighters to retail dealers or consumers, a written warning for the first violation and a monetary penalty of five hundred dollars for each subsequent violation.

(b) For a retail dealer that distributes or offers to sell novelty lighters to consumers, a written warning for the first violation and a monetary penalty of two hundred fifty dollars for each subsequent violation.

(2) The authority having jurisdiction may bring an action seeking:

(a) Injunctive relief to prevent or end a violation of this chapter;

(b) To recover civil penalties imposed under subsection (1) of this section; or

(c) To recover attorneys' fees and other enforcement costs and disbursements.

(3) Penalties under this section must be deposited in an account designated by the authority having jurisdiction.

(4) A district court has jurisdiction over all proceedings brought under this section. [2009 c 273 § 3.]

**70.255.040 Manufacturers must cease sale or distribution.** (1) On July 26, 2009, manufacturers must immediately cease the sale or distribution of novelty lighters in this state.

(2) On July 26, 2009, wholesalers and retail dealers have a maximum of ninety days to reduce their current inventory of novelty lighters. In no instance may wholesalers and retail dealers sell or distribute a novelty lighter in this state after ninety days from July 26, 2009. [2009 c 273 § 4.]

## Chapter 70.260 RCW

### ENERGY EFFICIENCY IMPROVEMENTS

#### Sections

70.260.010 Definitions.

70.260.020 Grants for pilot programs providing urban residential and commercial energy efficiency upgrades—Requirements of pilot programs—Report to the governor and legislature.

70.260.030 Farm energy efficiency improvements.

**70.260.010 Definitions.** The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Customers" means residents, businesses, and building owners.

(2) "Direct outreach" means:

(a) The use of door-to-door contact, community events, and other methods of direct interaction with customers to inform them of energy efficiency and weatherization opportunities; and

(b) The performance of energy audits.

(3) "Energy audit" means an assessment of building energy efficiency opportunities, from measures that require very little investment and without any disruption to building operation, normally involving general building operational measures, to low or relatively higher cost investment, such as installing timers to turn off equipment, replacing light bulbs, installing insulation, replacing equipment and appliances with higher efficiency equipment and appliances, and similar measures. The term includes an assessment of alternatives for generation of heat and power from renewable energy resources, including installation of solar water heating and equipment for photovoltaic electricity generation.

(4) "Energy efficiency and conservation block grant program" means the federal program created under the energy independence and security act of 2007 (P.L. 110-140).

(5) "Energy efficiency services" means energy audits, weatherization, energy efficiency retrofits, energy management systems as defined in RCW 39.35.030, and other activities to reduce a customer's energy consumption, and includes assistance with paperwork, arranging for financing, program design and development, and other postenergy audit assistance and education to help customers meet their energy savings goals.

(6) "Low-income individual" means an individual whose annual household income does not exceed eighty percent of

the area median income for the metropolitan, micropolitan, or combined statistical area in which that individual resides as determined annually by the United States department of housing and urban development.

(7) "Sponsor" means any entity or group of entities that submits a proposal under RCW 70.260.020, including but not limited to any nongovernmental nonprofit organization, local community action agency, tribal nation, community service agency, public service company, county, municipality, publicly owned electric, or natural gas utility.

(8) "Sponsor match" means the share, if any, of the cost of efficiency improvements to be paid by the sponsor.

(9) "Weatherization" means making energy and resource conservation and energy efficiency improvements. [2009 c 379 § 101.]

**Finding—Intent—2009 c 379:** "(1) The legislature finds that improving energy efficiency in structures is one of the most cost-effective means to meet energy requirements, and that while there have been significant efficiency savings achieved in the state over the past quarter century, there remains enormous potential to achieve even greater savings. Increased weatherization and more extensive efficiency improvements in residential, commercial, and public buildings achieves many benefits, including reducing energy bills, avoiding the construction of new electricity generating facilities with associated climate change impacts, and creation of family-wage jobs in performing energy audits and improvements.

(2) It is the intent of the legislature that financial and technical assistance programs be expanded to direct municipal, state, and federal funds, as well as electric and natural gas utility funding, toward greater achievement of energy efficiency improvements. To this end, the legislature establishes a policy goal of assisting in weatherizing twenty thousand homes and businesses in the state in each of the next five years. The legislature also intends to attain this goal in part through supporting programs that rely on community organizations and that there be maximum family-wage job creation in fields related to energy efficiency." [2009 c 379 § 1.]

**Effective date—2009 c 379:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [May 7, 2009]." [2009 c 379 § 405.]

**70.260.020 Grants for pilot programs providing urban residential and commercial energy efficiency upgrades—Requirements of pilot programs—Report to the governor and legislature.** The Washington State University extension energy program is authorized to implement grants for pilot programs providing community-wide urban residential and commercial energy efficiency upgrades. The Washington State University extension energy program must coordinate and collaborate with the \*department of community, trade, and economic development on the design, administration, and implementation elements of the pilot program.

(1) There must be at least three grants for pilot programs, awarded on a competitive basis to sponsors for conducting direct outreach and delivering energy efficiency services that, to the extent feasible, ensure a balance of participation for: (a) Geographic regions in the state; (b) types of fuel used for heating; (c) owner-occupied and rental residences; (d) small commercial buildings; and (e) single-family and multifamily dwellings.

(2) The pilot programs must:

(a) Provide assistance for energy audits and energy efficiency-related improvements to structures owned by or used for residential, commercial, or nonprofit purposes in specified urban neighborhoods where the objective is to achieve a high rate of participation among building owners within the pilot area;

(b) Utilize volunteer support to reach out to potential customers through the use of community-based institutions;

(c) Employ qualified energy auditors and energy efficiency service providers to perform the energy audits using recognized energy efficiency and weatherization services that are cost-effective;

(d) Select and provide oversight of contractors to perform energy efficiency services. Sponsors shall require contractors to participate in quality control and efficiency training, use workers trained from workforce training and apprentice programs established under chapter 536, Laws of 2009 if these workers are available, pay prevailing wages under chapter 39.12 RCW, hire from the community in which the program is located, and create employment opportunities for veterans, members of the national guard, and low-income and disadvantaged populations; and

(e) Work with customers to secure financing for their portion of the project and apply for and administer utility, public, and charitable funding provided for energy audits and retrofits.

(3) The Washington State University extension energy program must give priority to sponsors that can secure a sponsor match of at least one dollar for each dollar awarded.

(a) A sponsor may use its own moneys, including corporate or ratepayer moneys, or moneys provided by landlords, charitable groups, government programs, the Bonneville power administration, or other sources to pay the sponsor match.

(b) A sponsor may meet its match requirement in whole or in part through providing labor, materials, or other in-kind expenditures.

(4)(a) Pilot programs receiving funding must report compliance with performance metrics for each sponsor receiving a grant award. The performance metrics include:

(i) Monetary and energy savings achieved;

(ii) Savings-to-investment ratio achieved for customers;

(iii) Wage levels of jobs created;

(iv) Utilization of preapprentice and apprenticeship programs; and

(v) Efficiency and speed of delivery of services.

(b) Pilot programs receiving funding under this section are required to report to the Washington State University extension [extension energy] program on compliance with the performance metrics every six months following the receipt of grants, with the last report submitted six months after program completion.

(c) The Washington State University extension energy program shall review the accuracy of these reports and provide a progress report on all grant pilot programs to the appropriate committees of the legislature by December 1st of each year.

(5)(a) By December 1, 2009, the Washington State University extension energy program shall provide a report to the governor and appropriate legislative committees on the: Number of grants awarded; number of jobs created or maintained; number and type of individuals trained through workforce training and apprentice programs; number of veterans, members of the national guard, and individuals of low-income and disadvantaged populations employed by pilot programs; and amount of funding provided through the grants as established in subsection (1) of this section and the

performance metrics established in subsection (4) of this section.

(b) By December 1, 2010, the Washington State University extension energy program shall provide a final report to the governor and appropriate legislative committees on the: Number of grants awarded; number of jobs created or maintained; number and type of individuals trained through workforce training and apprentice programs; number of veterans, members of the national guard, and individuals of low-income and disadvantaged populations employed by pilot programs; and amount of funding provided through the grants as established in subsection (1) of this section and the performance metrics established in subsection (4) of this section. [2009 c 379 § 102.]

**\*Reviser's note:** The "department of community, trade, and economic development" was renamed the "department of commerce" by 2009 c 565.

**Finding—Intent—Effective date—2009 c 379:** See notes following RCW 70.260.010.

### 70.260.030 Farm energy efficiency improvements.

(1) The legislature finds that increasing energy costs put farm viability and competitiveness at risk and that energy efficiency improvements on the farm are the most cost-effective way to manage these costs. The legislature further finds that current on-farm energy efficiency programs often miss opportunities to evaluate and conserve all types of energy, including fuels and fertilizers.

(2) The Washington State University extension energy program, in consultation with the department of agriculture, shall form an interdisciplinary team of agricultural and energy extension agencies to develop and offer new methods to help agricultural producers assess their opportunities to increase energy efficiency in all aspects of their operations. The interdisciplinary team must develop and deploy:

(a) Online energy self-assessment software tools to allow agricultural producers to assess whole-farm energy use and to identify the most cost-effective efficiency opportunities;

(b) Energy auditor training curricula specific to the agricultural sector and designed for use by agricultural producers, conservation districts, agricultural extensions, and commodity groups;

(c) An effective infrastructure of trained energy auditors available to assist agricultural producers with on-farm energy audits and identify cost-share assistance for efficiency improvements; and

(d) Measurement systems for cost savings, energy savings, and carbon emission reduction benefits resulting from efficiency improvements identified by the interdisciplinary team.

(3) The Washington State University extension energy program shall seek to obtain additional resources for this section from federal and state agricultural assistance programs and from other sources.

(4) The Washington State University extension energy program shall provide technical assistance for farm energy assessment activities as specified in this section. [2009 c 379 § 103.]

**Finding—Intent—Effective date—2009 c 379:** See notes following RCW 70.260.010.

(2010 Ed.)

## Chapter 70.265 RCW

### PUBLIC HOSPITAL CAPITAL FACILITY AREAS

#### Sections

70.265.010	Finding.
70.265.020	Definitions.
70.265.030	Establishing a public hospital capital facility area—Process.
70.265.040	Petition for formation of a public hospital capital facility area less than the entire county—Process.
70.265.050	Governing body.
70.265.060	Authority to construct, acquire, purchase, maintain, add to, and remodel facilities—Interlocal agreements—Legal title.
70.265.070	Financing—Bonds authorized.
70.265.080	Dissolution of public hospital capital facility area.
70.265.090	Limitations on legal challenges.
70.265.100	Treasurer—Duties—Funds—Surety bonds.
70.265.110	Contracting with other entities to provide hospital facilities or hospital services.
70.265.900	Severability—2009 c 481.
70.265.901	Captions not law—2009 c 481.

**70.265.010 Finding.** The legislature finds that it is in the interests of the people of the state of Washington to be able to establish public hospital capital facility areas as quasi-municipal corporations and independent taxing units existing within the boundaries of counties composed entirely of islands that receive medical services from an existing public hospital district but are not annexed to an existing public hospital district for the purpose of financing the construction, additions, or betterments of capital hospital facilities or other capital health care facilities. [2009 c 481 § 1.]

**70.265.020 Definitions.** (1) "Hospital capital facilities" include both real and personal property including land, buildings, site improvements, equipment, furnishings, collections, and all necessary costs related to acquisition, financing, design, construction, equipping, and remodeling.

(2) "Other capital health care facilities" means nursing home, extended care, long-term care, outpatient and rehabilitative facilities, ambulances, and such other facilities as are appropriate to the health needs of the population served.

(3) "Public hospital capital facility area" means a quasi-municipal corporation and independent taxing authority within the meaning of Article VII, section 1 of the state Constitution, and a taxing district within the meaning of Article VII, section 2 of the state Constitution, created by a county legislative authority of a county composed entirely of islands that receives medical services from a hospital district, but is prevented by geography and the absence of contiguous boundaries from annexing to that district. A public hospital capital facility area may include all or a portion of a city or town. [2009 c 481 § 2.]

**Reviser's note:** The definitions in this section have been alphabetized pursuant to RCW 1.08.015(2)(k).

**70.265.030 Establishing a public hospital capital facility area—Process.** (1)(a) Upon receipt of a completed petition to both establish a public hospital capital facility area and submit a ballot proposition under RCW 70.265.070 to finance public hospital capital facilities and other capital health care facilities, the legislative authority of the county in which a proposed public hospital capital facility area is to be established shall submit separate ballot propositions to voters to authorize establishing the proposed public hospital capital facility area and authorizing the public hospital capital facility

ity area, if established, to finance public hospital capital facilities or other capital health care facilities by issuing general indebtedness and imposing excess levies to retire the indebtedness. A petition submitted under this section must be accompanied by a written request to establish a public hospital capital facility area that is signed by a majority of the commissioners of the public hospital district serving the proposed area.

(b) The ballot propositions must be submitted to voters of the proposed public hospital capital facility area at a general or special election. If the proposed election date is not a general election, the county legislative authority is encouraged to request an election when another unit of local government with territory located in the proposed public hospital capital facility area is already holding a special election under RCW 29A.04.330. Approval of the ballot proposition to create a public hospital capital facility area requires a simple majority vote by the voters participating in the election.

(2) A completed petition submitted under this section must include:

(a) A description of the boundaries of the public hospital capital facility area; and

(b) A copy of a resolution of the legislative authority of each city, town, and hospital district with territory in the proposed public hospital capital facility area indicating both: (i) Approval of the creation of the proposed public hospital capital facility area; and (ii) agreement on how election costs will be paid for ballot propositions to voters that authorize the public hospital capital facility area to incur general indebtedness and impose excess levies to retire the general indebtedness. [2009 c 481 § 3.]

**70.265.040 Petition for formation of a public hospital capital facility area less than the entire county—Process.**

Any petition for the formation of a public hospital capital facility area may describe an area less than the entire county in which the petition is filed, the boundaries of which must follow the then existing precinct boundaries and not divide any voting precinct; and in the event that a petition is filed containing not less than ten percent of the voters of the proposed public hospital capital facility area who voted at the last general election, certified by the auditor in like manner as for a countywide district, the board of county commissioners shall fix a date for a hearing on the petition, and shall publish the petition, without the signatures thereto appended, for two weeks prior to the date of the hearing, together with a notice stating the time of the meeting when the petition will be heard. Publications required by this chapter must be in a newspaper published in the proposed public hospital capital facility area, or, if there be no such newspaper, then in a newspaper published in the county in which the public hospital capital facility area is situated, and of general circulation in that county. The hearing on the petition may be adjourned from time to time, not exceeding four weeks in all. If upon the final hearing the board of county commissioners finds that any lands have been unjustly or improperly included within the proposed public hospital capital facility area the board shall change and fix the boundary lines in such manner as it deems reasonable and just and conducive to the welfare and convenience, and make and enter an order establishing and defining the boundary lines of the proposed public hospital

tal capital facility area: PROVIDED, That no lands may be included within the boundaries so fixed lying outside the boundaries described in the petition, except upon the written request of the owners of those lands. [2009 c 481 § 4.]

**70.265.050 Governing body.** The governing body of the public hospital capital facility area must consist of three members of the county legislative authority from each county in which the public hospital capital facility area is located. In counties that have more than three members of their legislative body, the three members who serve on the governing body of the public hospital capital facility area must be chosen by the full membership of the county legislative authority. [2009 c 481 § 5.]

**70.265.060 Authority to construct, acquire, purchase, maintain, add to, and remodel facilities—Interlocal agreements—Legal title.**

A public hospital capital facility area may construct, acquire, purchase, maintain, add to, and remodel public hospital capital facilities, and the governing body of the public hospital capital facility area may, by interlocal agreement or otherwise, contract with a county, city, town, or public hospital district to design, administer the construction of, operate, or maintain a public hospital capital facility or other capital health care facility financed pursuant to this chapter. Legal title to public hospital capital facilities or other capital health care facilities acquired or constructed pursuant to this chapter may be transferred, acquired, or held by the public hospital capital facility area or by a county, city, town, or public hospital district in which the facility is located and receives service. [2009 c 481 § 6.]

**70.265.070 Financing—Bonds authorized.**

(1) A public hospital capital facility area may contract indebtedness or borrow money to finance public hospital capital facilities and other capital health care facilities and may issue general obligation bonds for such purpose not exceeding an amount, together with any existing indebtedness of the public hospital capital facility area, equal to one and one-quarter percent of the value of the taxable property in the public hospital capital facility area and impose excess property tax levies to retire the general indebtedness as provided in RCW 39.36.050 if a ballot proposition authorizing both the indebtedness and excess levies is approved by at least three-fifths of the voters of the public hospital capital facility area voting on the proposition, and the total number of voters voting on the proposition constitutes not less than forty percent of the total number of voters in the public hospital capital facility area voting at the last preceding general election. The term "value of the taxable property" has the meaning set forth in RCW 39.36.015. The proposition must be submitted to voters at a general or special election and may be submitted to voters at the same election as the election when the ballot proposition authorizing the establishing of the public hospital capital facility area is submitted. If the proposed election date is not a general election, the county legislative authority is encouraged to request an election when another unit of local government with territory located in the proposed public hospital capital facility area is already holding a special election under RCW 29A.04.330.

(2) A public hospital capital facility area may accept gifts or grants of money or property of any kind for the same purposes for which it is authorized to borrow money in subsection (1) of this section. [2009 c 481 § 7.]

**70.265.080 Dissolution of public hospital capital facility area.** (1) A public hospital capital facility area may be dissolved by a majority vote of the governing body when all obligations under any general obligation bonds issued by the public hospital capital facility area have been discharged and any other contractual obligations of the public hospital capital facility area have either been discharged or assumed by another governmental entity.

(2) A public hospital capital facility area must be dissolved by the governing body if the first two ballot propositions under RCW 70.265.070 that are submitted to voters are not approved. [2009 c 481 § 8.]

**70.265.090 Limitations on legal challenges.** Unless commenced within thirty days after the date of the filing of the certificate of the canvass of an election on the proposition of creating a new public hospital capital facility area pursuant to this chapter, no lawsuit whatever may be maintained challenging in any way the legal existence of the public hospital capital facility area or the validity of the proceedings had for the organization and creation thereof. If the creation of a public hospital capital facility area is not challenged within the period specified in this section, the public hospital capital facility area conclusively must be deemed duly and regularly organized under the laws of this state. [2009 c 481 § 9.]

**70.265.100 Treasurer—Duties—Funds—Surety bonds.** (1) The treasurer of the county in which a public hospital capital facility area is located shall be treasurer of the public hospital capital facility area, except that the commission of the public hospital district in which the facility area is located by resolution may designate some other person having experience in financial or fiscal matters as treasurer of the public hospital capital facility area. If the treasurer is not the county treasurer, the commission shall require a bond, with a surety company authorized to do business in the state of Washington, in an amount and under the terms and conditions which the commission by resolution from time to time finds will protect the public hospital capital facility area against loss. The premium on any such bond must be paid by the public hospital capital facility area.

(2) All public hospital capital facility area funds must be paid to the treasurer and must be disbursed by him or her only on warrants issued by an auditor appointed by the commission, upon orders or vouchers approved by it. The treasurer shall establish a public hospital capital facility area fund, into which all public hospital capital facility area funds must be paid, and he or she shall maintain such special funds as may be created by the commission, into which he or she shall place all money as the commission may, by resolution, direct.

(3) If the treasurer of the district is the treasurer of the county all public hospital capital facility area funds must be deposited with the county depositories under the same restrictions, contracts, and security as provided for county depositories. If the treasurer of the public hospital capital facility

area is some other person, all funds must be deposited in a bank or banks authorized to do business in this state as the commission by resolution designates, and with surety bond to the public hospital capital facility area or securities in lieu thereof of the kind, no less in amount, for deposit of county funds. The surety bond or securities in lieu thereof must be filed or deposited with the treasurer of the public hospital capital facility area, and approved by resolution of the commission.

(4) All interest collected on public hospital capital facility area funds belong to the public hospital capital facility area and [must] be deposited to its credit in the proper public hospital capital facility area funds.

(5) A public hospital capital facility area may provide and require a reasonable bond of any other person handling moneys or securities of the public hospital capital facility area. The public hospital capital facility area may pay the premium on the bond. [2009 c 481 § 10.]

**70.265.110 Contracting with other entities to provide hospital facilities or hospital services.** Any public hospital capital facility area may contract or join with any public hospital district, publicly owned hospital, nonprofit hospital, legal entity, or individual to acquire, own, operate, manage, or provide any hospital or other health care facilities or hospital services or other health care services to be used by individuals, districts, hospitals, or others, including providing health maintenance services. If a public hospital capital facility area chooses to contract or join with another party or parties pursuant to the provisions of this chapter, it may do so through establishing a nonprofit corporation, partnership, limited liability company, or other legal entity of its choosing in which the public hospital capital facility area and the other party or parties participate. The governing body of the legal entity must include representatives of the public hospital capital facility area, which representatives may include members of the public hospital district's board of commissioners. A public hospital capital facility area contracting or joining with another party pursuant to the provisions of this chapter may appropriate funds and may sell, lease, or otherwise provide property, personnel, and services to the legal entity established to carry out the contract or joint activity. [2009 c 481 § 11.]

**70.265.900 Severability—2009 c 481.** If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [2009 c 481 § 14.]

**70.265.901 Captions not law—2009 c 481.** Captions used in this act are not any part of the law. [2009 c 481 § 13.]

## Chapter 70.270 RCW

### REPLACEMENT OF LEAD WHEEL WEIGHTS

#### Sections

70.270.010	Findings.
70.270.020	Definitions.
70.270.030	Replacement of lead wheel weights with environmentally preferred wheel weights—Failure to comply.

- 70.270.040 Department's duties—Enforcement sequence.  
 70.270.050 Penalties.  
 70.270.060 Adoption of rules.  
 70.270.900 Severability—2009 c 243.

**70.270.010 Findings.** The legislature finds that:

(1) Environmental health hazards associated with lead wheel weights are a preventable problem. People are exposed to lead fragments and dust when lead wheel weights fall from motor vehicles onto Washington roadways and are then abraded and pulverized by traffic. Lead wheel weights on and alongside roadways can contribute to soil, surface, and groundwater contamination and pose hazards to downstream aquatic life.

(2) Lead negatively affects every bodily system. While it is injurious to people of all ages, lead is especially harmful to fetuses, children, and adults of childbearing age. Effects of lead on a child's cognitive, behavioral, and developmental abilities may necessitate large expenditures of public funds for health care and special education. Irreversible damage to children and subsequent expenditures could be avoided if exposure to lead is reduced.

(3) There are no federal regulatory controls governing use of lead wheel weights. The legislature recognizes the state's need to protect the public from exposure to lead hazards. [2009 c 243 § 1.]

**70.270.020 Definitions.** The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Department" means the department of ecology.

(2) "Environmentally preferred wheel weight" means any wheel weight used for balancing motor vehicle wheels that do not include more than 0.5 percent by weight of any chemical, group of chemicals, or metal of concern identified by rule under chapter 173-333 WAC.

(3) "Lead wheel weight" means any externally affixed or attached wheel weight used for balancing motor vehicle wheels and composed of greater than 0.1 percent lead by weight.

(4) "Person" includes any individual, firm, association, partnership, corporation, governmental entity, organization, or joint venture.

(5) "Vehicle" means any motor vehicle registered in Washington with a wheel diameter of less than 19.5 inches or a gross vehicle weight of fourteen thousand pounds or less. [2009 c 243 § 2.]

**70.270.030 Replacement of lead wheel weights with environmentally preferred wheel weights—Failure to comply.** (1) On and after January 1, 2011, a person who replaces or balances motor vehicle tires must replace lead wheel weights with environmentally preferred wheel weights on all vehicles when they replace or balance tires in Washington. However, the person may use alternatives to lead wheel weights that are determined by the department to not qualify as environmentally preferred wheel weights for up to two years following the date of that determination, but must thereafter use environmentally preferred wheel weights.

(2) A person who is subject to the requirement in subsection (1) of this section must recycle the lead wheel weights that they remove.

(3) A person who fails to comply with subsection (1) of this section is subject to penalties prescribed in RCW 70.270.050. A violation of subsection (1) of this section occurs with respect to each vehicle for which lead wheel weights are not replaced in compliance with subsection (1) of this section.

(4) An owner of a vehicle is not subject to any requirement in this section. [2009 c 243 § 3.]

**70.270.040 Department's duties—Enforcement sequence.** (1) The department shall achieve compliance with RCW 70.270.030 through the enforcement sequence specified in this section.

(2) To provide assistance in identifying environmentally preferred wheel weights, the department shall, by October 1, 2010, prepare and distribute information regarding this chapter to the maximum extent practicable to:

(a) Persons that replace or balance motor vehicle tires in Washington; and

(b) Persons generally in the motor vehicle tire and wheel weight manufacturing, distribution, wholesale, and retail industries.

(3) The department shall issue a warning letter to a person who fails to comply with RCW 70.270.030 and offer information or other appropriate assistance. If the person does not comply with RCW 70.270.030(1) within one year of the department's issuance of the warning letter, the department may assess civil penalties under RCW 70.270.050. [2009 c 243 § 4.]

**70.270.050 Penalties.** (1) An initial violation of RCW 70.270.030(1) is punishable by a civil penalty not to exceed five hundred dollars. Subsequent violations of RCW 70.270.030(1) are punishable by civil penalties not to exceed one thousand dollars for each violation.

(2) Penalties collected under this section must be deposited in the state toxics control account created in RCW 70.105D.070. [2009 c 243 § 5.]

**70.270.060 Adoption of rules.** The department may adopt rules to fully implement this chapter. [2009 c 243 § 6.]

**70.270.900 Severability—2009 c 243.** If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [2009 c 243 § 7.]

## Chapter 70.275 RCW

### MERCURY-CONTAINING LIGHTS— PROPER DISPOSAL

#### Sections

- 70.275.010 Findings—Purpose.  
 70.275.020 Definitions.  
 70.275.030 Product stewardship program.

- 70.275.040 Submission of proposed product stewardship plans—Department to establish rules—Public review—Plan update—Annual report.
- 70.275.050 Financing the mercury-containing light recycling program.
- 70.275.060 Collection and management of mercury.
- 70.275.070 Collectors of unwanted mercury-containing lights—Duties.
- 70.275.080 Requirement to recycle end-of-life mercury-containing lights.
- 70.275.090 Producers must participate in an approved product stewardship program.
- 70.275.100 Written warning—Penalty—Appeal.
- 70.275.110 Department's web site to list producers participating in product stewardship plan—Required participation in a product stewardship plan—Written warning—Penalty—Rules—Exemptions.
- 70.275.120 Producers must pay annual fees.
- 70.275.130 Product stewardship programs account.
- 70.275.140 Adoption of rules—Report to the legislature—Invitation to entities to comment on issues—Estimate of statewide recycling rate for mercury-containing lights—Mercury vapor barrier packaging.
- 70.275.150 Application of chapter to the Washington utilities and transportation commission.
- 70.275.160 Application of chapter to entities regulated under chapter 70.105 RCW.
- 70.275.900 Chapter liberally construed.
- 70.275.901 Severability—2010 c 130.

**70.275.010 Findings—Purpose.** The legislature finds that:

(1) Mercury is an essential component of many energy efficient lights. Improper disposal methods will lead to mercury releases that threaten the environment and harm human health. Spent mercury lighting is a hard to collect waste product that is appropriate for product stewardship;

(2) Convenient and environmentally sound product stewardship programs for mercury-containing lights that include collecting, transporting, and recycling mercury-containing lights will help protect Washington's environment and the health of state residents;

(3) The purpose of chapter 130, Laws of 2010 is to achieve a statewide goal of recycling all end-of-life mercury-containing lights by 2020 through expanded public education, a uniform statewide requirement to recycle all mercury-containing lights, and the development of a comprehensive, safe, and convenient collection system that includes use of residential curbside collection programs, mail-back containers, increased support for household hazardous waste facilities, and a network of additional collection locations;

(4) Product producers must play a significant role in financing no-cost collection and processing programs for mercury-containing lights; and

(5) Providers of premium collection services such as residential curbside and mail-back programs may charge a fee to cover the collection costs for these more convenient forms of collection. [2010 c 130 § 1.]

**70.275.020 Definitions.** The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Brand" means a name, symbol, word, or mark that identifies a product, rather than its components, and attributes the product to the owner of the brand as the producer.

(2) "Collection" or "collect" means, except for persons involved in mail-back programs:

(a) The activity of accumulating any amount of mercury-containing lights at a location other than the location where the lights are used by covered entities, and includes curbside

(2010 Ed.)

collection activities, household hazardous waste facilities, and other registered drop-off locations; and

(b) The activity of transporting mercury-containing lights in the state, where the transporter is not a generator of unwanted mercury-containing lights, to a location for purposes of accumulation.

(3) "Covered entities" means:

(a) A single-family or a multifamily household generator and persons that deliver no more than fifteen mercury-containing lights to registered collectors for a product stewardship program during a ninety-day period; and

(b) A single-family or a multifamily household generator and persons that utilize a registered residential curbside collection program or a mail-back program for collection of mercury-containing lights and that discards no more than fifteen mercury-containing lights into those programs during a ninety-day period.

(4) "Department" means the department of ecology.

(5) "Final disposition" means the point beyond which no further processing takes place and materials from mercury-containing lights have been transformed for direct use as a feedstock in producing new products, or disposed of or managed in permitted facilities.

(6) "Hazardous substances" or "hazardous materials" means those substances or materials identified by rules adopted under chapter 70.105 RCW.

(7) "Mail-back program" means the use of a prepaid postage container with mercury vapor barrier packaging that is used for the collection and recycling of mercury-containing lights from covered entities as part of a product stewardship program and is transported by the United States postal service or a common carrier.

(8) "Mercury-containing lights" means lamps, bulbs, tubes, or other devices that contain mercury and provide functional illumination in homes, businesses, and outdoor stationary fixtures.

(9) "Mercury vapor barrier packaging" means sealable containers that are specifically designed for the storage, handling, and transport of mercury-containing lights in order to prevent the escape of mercury into the environment by volatilization or any other means, and that meet the requirements for transporting by the United States postal service or a common carrier.

(10) "Orphan product" means a mercury-containing light that lacks a producer's brand, or for which the producer is no longer in business and has no successor in interest, or that bears a brand for which the department cannot identify an owner.

(11) "Person" means a sole proprietorship, partnership, corporation, nonprofit corporation or organization, limited liability company, firm, association, cooperative, or other legal entity located within or outside Washington state.

(12) "Processing" means recovering materials from unwanted products for use as feedstock in new products. Processing must occur at permitted facilities.

(13) "Producer" means a person that:

(a) Has or had legal ownership of the brand, brand name, or cobrand of a mercury-containing light sold in or into Washington state, except for persons whose primary business is retail sales;

(b) Imports or has imported mercury-containing lights branded by a producer that meets the requirements of (a) of this subsection and where that producer has no physical presence in the United States;

(c) If (a) and (b) of this subsection do not apply, makes or made an unbranded mercury-containing light that is sold or has been sold in or into Washington state; or

(d)(i) Sells or sold at wholesale or retail a mercury-containing light; (ii) does not have legal ownership of the brand; and (iii) elects to fulfill the responsibilities of the producer for that product.

(14) "Product stewardship" means a requirement for a producer of mercury-containing lights to manage and reduce adverse safety, health, and environmental impacts of the product throughout its life cycle, including financing and providing for the collection, transporting, reusing, recycling, processing, and final disposition of their products.

(15) "Product stewardship plan" or "plan" means a detailed plan describing the manner in which a product stewardship program will be implemented.

(16) "Product stewardship program" or "program" means the methods, systems, and services financed and provided by producers of mercury-containing lights generated by covered entities that addresses product stewardship and includes collecting, transporting, reusing, recycling, processing, and final disposition of unwanted mercury-containing lights, including a fair share of orphan products.

(17) "Recovery" means the collection and transportation of unwanted mercury-containing lights under this chapter.

(18)(a) "Recycling" means transforming or remanufacturing unwanted products into usable or marketable materials for use other than landfill disposal or incineration.

(b) "Recycling" does not include energy recovery or energy generation by means of combusting unwanted products with or without other waste.

(19) "Reporting period" means the period commencing January 1st and ending December 31st in the same calendar year.

(20) "Residuals" means nonrecyclable materials left over from processing an unwanted product.

(21) "Retailer" means a person who offers mercury-containing lights for sale at retail through any means including, but not limited to, remote offerings such as sales outlets, catalogs, or the internet, but does not include a sale that is a wholesale transaction with a distributor or a retailer.

(22)(a) "Reuse" means a change in ownership of a mercury-containing light or its components, parts, packaging, or shipping materials for use in the same manner and purpose for which it was originally purchased, or for use again, as in shipping materials, by the generator of the shipping materials.

(b) "Reuse" does not include dismantling of products for the purpose of recycling.

(23) "Stakeholder" means a person who may have an interest in or be affected by a product stewardship program.

(24) "Stewardship organization" means an organization designated by a producer or group of producers to act as an agent on behalf of each producer to operate a product stewardship program.

(25) "Unwanted product" means a mercury-containing light no longer wanted by its owner or that has been abandoned, discarded, or is intended to be discarded by its owner.

[2010 c 130 § 2.]

**Reviser's note:** The definitions in this section have been alphabetized pursuant to RCW 1.08.015(2)(k).

**70.275.030 Product stewardship program.** (1) Every producer of mercury-containing lights sold in or into Washington state for residential use must fully finance and participate in a product stewardship program for that product, including the department's costs for administering and enforcing this chapter.

(2) Every producer must:

(a) Participate in a product stewardship program approved by the department and operated by a product stewardship organization contracted by the department. All producers must finance and participate in the plan operated by the product stewardship organization, unless the producer obtains department approval for an independent plan as described in (b) of this subsection; or

(b) Finance and operate, either individually or jointly with other producers, a product stewardship program approved by the department.

(3) A producer, group of producers, or product stewardship organization funded by producers must pay all administrative and operational costs associated with their program or programs, except for the collection costs associated with curbside and mail-back collection programs. For curbside and mail-back programs, a producer, group of producers, or product stewardship organization shall finance the costs of transporting mercury-containing lights from accumulation points and for processing mercury-containing lights collected by curbside and mail-back programs. For collection locations, including household hazardous waste facilities, charities, retailers, government recycling sites, or other suitable locations, a producer, group of producers, or product stewardship organization shall finance the costs of collection, transportation, and processing of mercury-containing lights collected at the collection locations.

(4) Product stewardship programs shall collect unwanted mercury-containing lights delivered from covered entities for reuse, recycling, processing, or final disposition, and not charge a fee when lights are dropped off or delivered into the program.

(5) Product stewardship programs shall provide, at a minimum, no cost services in all cities in the state with populations greater than ten thousand and all counties of the state on an ongoing, year-round basis.

(6) All product stewardship programs operated under approved plans must recover their fair share of unwanted covered products as determined by the department.

(7) The department or its designee may inspect, audit, or review audits of processing and disposal facilities used to fulfill the requirements of a product stewardship program.

(8) No product stewardship program required under this chapter may use federal or state prison labor for processing unwanted products.

(9) Product stewardship programs for mercury-containing lights must be fully implemented by January 1, 2013. [2010 c 130 § 3.]

**70.275.040 Submission of proposed product stewardship plans—Department to establish rules—Public review—Plan update—Annual report.** (1) A producer, group of producers, or product stewardship program submitting a proposed product stewardship plan under RCW 70.275.030(2)(b) must submit that plan by January 1st of the year prior to the planned implementation.

(2) The department shall establish rules for plan content. Plans must include but are not limited to:

(a) All necessary information to inform the department about the plan operator and participating producers and their brands;

(b) The management and organization of the product stewardship program that will oversee the collection, transportation, and processing services;

(c) The identity of collection, transportation, and processing service providers, including a description of the consideration given to existing residential curbside collection infrastructure and mail-back systems as an appropriate collection mechanism;

(d) How the product stewardship program will seek to use businesses within the state, including transportation services, retailers, collection sites and services, existing curbside collection services, existing mail-back services, and processing facilities;

(e) A description of how the public will be informed about the recycling program;

(f) A description of the financing system required under RCW 70.275.050;

(g) How mercury and other hazardous substances will be handled for collection through final disposition;

(h) A public review and comment process; and

(i) Any other information deemed necessary by the department to ensure an effective mercury light product stewardship program that is in compliance with all applicable laws and rules.

(3) All plans submitted to the department must be made available for public review on the department's web site and at the department's headquarters.

(4) At least two years from the start of the product stewardship program and once every four years thereafter, a producer, group of producers, or product stewardship organization operating a product stewardship program must update its product stewardship plan and submit the updated plan to the department for review and approval according to rules adopted by the department.

(5) Each product stewardship program shall submit an annual report to the department describing the results of implementing their plan for the prior year. The department may adopt rules for reporting requirements. All reports submitted to the department must be made available for public review on the department's web site and at the department's headquarters. [2010 c 130 § 4.]

**70.275.050 Financing the mercury-containing light recycling program.** (1) All producers that sell mercury-containing lights in or into the state of Washington are responsible for financing the mercury-containing light recycling program required by RCW 70.275.030.

(2) Each producer shall pay fifteen thousand dollars to the department to contract for a product stewardship program

(2010 Ed.)

to be operated by a product stewardship organization. The department shall retain five thousand dollars of the fifteen thousand dollars for administration and enforcement costs.

(3) A producer or producers participating in an independent plan, as permitted under RCW 70.275.030(2)(b), must pay the full cost of operation. Each producer participating in an approved independent plan shall pay an annual fee of five thousand dollars to the department for administration and enforcement costs. [2010 c 130 § 5.]

**70.275.060 Collection and management of mercury.**

(1) All mercury-containing lights collected in the state by product stewardship programs or other collection programs must be recycled and any process residuals must be managed in compliance with applicable laws.

(2) Mercury recovered from retorting must be recycled or placed in a properly permitted hazardous waste landfill, or placed in a properly permitted mercury repository. [2010 c 130 § 6.]

**70.275.070 Collectors of unwanted mercury-containing lights—Duties.**

(1) Except for persons involved in registered mail-back programs, a person who collects unwanted mercury-containing lights in the state, receives funding through a product stewardship program for mercury-containing lights, and who is not a generator of unwanted mercury-containing lights must:

(a) Register with the department as a collector of unwanted mercury-containing lights. Until the department adopts rules for collectors, the collector must provide to the department the legal name of the person or entity owning and operating the collection location, the address and phone number of the collection location, and the name, address, and phone number of the individual responsible for operating the collection location and update any changes in this information within thirty days of the change;

(b) Maintain a spill and release response plan at the collection location that describes the materials, equipment, and procedures that will be used to respond to any mercury release from an unwanted mercury-containing light;

(c) Maintain a worker safety plan at the collection location that describes the handling of the unwanted mercury-containing lights at the collection location and measures that will be taken to protect worker health and safety; and

(d) Use packaging and shipping material that will minimize the release of mercury into the environment and minimize breakage and use mercury vapor barrier packaging if mercury-containing lights are transported by the United States postal service or a common carrier.

(2) A person who operates a curbside collection program or owns or operates a mail-back business participating in a product stewardship program for mercury-containing lights and uses the United States postal service or a common carrier for transport must register with the department and use mercury vapor barrier packaging for curbside collection and mail-back containers. [2010 c 130 § 7.]

**70.275.080 Requirement to recycle end-of-life mercury-containing lights.** Effective January 1, 2013:

(1) All persons, residents, government, commercial, industrial, and retail facilities and office buildings must recycle their end-of-life mercury-containing lights.

(2) No mercury-containing lights may knowingly be placed in waste containers for disposal at incinerators, waste to energy facilities, or landfills.

(3) No mercury-containing lights may knowingly be placed in a container for mixed recyclables unless there is a separate location or compartment for the mercury-containing lights that complies with local government collection standards or guidelines.

(4) No owner or operator of a solid waste facility may be found in violation of this section if the facility has posted in a conspicuous location a sign stating that mercury-containing lights must be recycled and are not accepted for disposal.

(5) No solid waste collector may be found in violation of this section for mercury-containing lights placed in a disposal container by the generator of the mercury-containing light. [2010 c 130 § 8.]

**70.275.090 Producers must participate in an approved product stewardship program.** As of January 1, 2013, no producer, wholesaler, retailer, electric utility, or other person may distribute, sell, or offer for sale mercury-containing lights for residential use to any person in this state unless the producer is participating in a product stewardship program under a plan approved by the department. [2010 c 130 § 9.]

**70.275.100 Written warning—Penalty—Appeal.** (1) The department shall send a written warning and a copy of this chapter and any rules adopted to implement this chapter to a producer who is not participating in a product stewardship program approved by the department and whose mercury-containing lights are being sold in or into the state.

(2) A producer not participating in a product stewardship program approved by the department whose mercury-containing lights continue to be sold in or into the state sixty days after receiving a written warning from the department shall be assessed a penalty of up to one thousand dollars for each violation. A violation is one day of sales.

(3) If any producer fails to implement its approved plan, the department shall assess a penalty of up to five thousand dollars for the first violation along with notification that the producer must implement its plan within thirty days of the violation. After thirty days, any producer failing to implement their approved plan must be assessed a penalty of up to ten thousand dollars for the second and each subsequent violation. A subsequent violation occurs each thirty-day period that the producer fails to implement the approved plan.

(4) The department shall send a written warning to a producer that fails to submit a product stewardship plan, update or change the plan when required, or submit an annual report as required under this chapter. The written warning must include compliance requirements and notification that the requirements must be met within sixty days. If requirements are not met within sixty days, the producer will be assessed a ten thousand dollar penalty per day of noncompliance starting with the first day of notice of noncompliance.

(5) Penalties prescribed under this section must be reduced by fifty percent if the producer complies within thirty days of the second violation notice.

(6) A producer may appeal penalties prescribed under this section to the pollution control hearings board created under chapter 43.21B RCW. [2010 c 130 § 10.]

**70.275.110 Department's web site to list producers participating in product stewardship plan—Required participation in a product stewardship plan—Written warning—Penalty—Rules—Exemptions.** (1) The department shall provide on its web site a list of all producers participating in a product stewardship plan that the department has approved and a list of all producers the department has identified as noncompliant with this chapter and any rules adopted to implement this chapter.

(2) Product wholesalers, retailers, distributors, and electric utilities must check the department's web site or producer-provided written verification to determine if producers of products they are selling in or into the state are in compliance with this chapter.

(3) No one may distribute or sell mercury-containing lights in or into the state from producers who are not participating in a product stewardship program or who are not in compliance with this chapter and rules adopted under this chapter.

(4) The department shall serve, or send with delivery confirmation, a written warning explaining the violation to any person known to be distributing or selling mercury-containing lights in or into the state from producers who are not participating in a product stewardship program or who are not in compliance with this chapter and rules adopted under this chapter.

(5) Any person who continues to distribute or sell mercury-containing lights from a producer that is not participating in an approved product stewardship program sixty days after receiving a written warning from the department may be assessed a penalty two times the value of the products sold in violation of this chapter or five hundred dollars, whichever is greater. The penalty must be waived if the person verifies that the person has discontinued distribution or sales of mercury-containing lights within thirty days of the date the penalty is assessed. A retailer may appeal penalties to the pollution control hearings board.

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

(7) A sale or purchase of mercury-containing lights as a casual or isolated sale as defined in RCW 82.04.040 is not subject to the provisions of this section.

(8) A person primarily engaged in the business of reuse and resale of a used mercury-containing light is not subject to the provisions of this section when selling used working mercury-containing lights, for use in the same manner and purpose for which it was originally purchased.

(9) In-state distributors, wholesalers, and retailers in possession of mercury-containing lights on the date that restrictions on the sale of the product become effective may exhaust their existing stock through sales to the public. [2010 c 130 § 11.]

**70.275.120 Producers must pay annual fees.** All producers shall pay the department annual fees to cover the cost of administering and enforcing this chapter. The department may prioritize the work to implement this chapter if fees are not adequate to fund all costs of the program. [2010 c 130 § 12.]

**70.275.130 Product stewardship programs account.** The product stewardship programs account is created in the custody of the state treasurer. All funds received from producers under this chapter and penalties collected under this chapter must be deposited in the account. Expenditures from the account may be used only for administering this chapter. Only the director of the department or the director's designee may authorize expenditures from the account. The account is subject to the allotment procedures under chapter 43.88 RCW, but an appropriation is not required for expenditures. [2010 c 130 § 13.]

**70.275.140 Adoption of rules—Report to the legislature—Invitation to entities to comment on issues—Estimate of statewide recycling rate for mercury-containing lights—Mercury vapor barrier packaging.** (1) The department may adopt rules necessary to implement, administer, and enforce this chapter.

(2) The department may adopt rules to establish performance standards for product stewardship programs and may establish administrative penalties for failure to meet the standards.

(3) By December 31, 2010, and annually thereafter until December 31, 2014, the department shall report to the appropriate committees of the legislature concerning the status of the product stewardship program and recommendations for changes to the provisions of this chapter.

(4) Beginning October 1, 2014, the department shall annually invite comments from local governments, communities, and citizens to report their satisfaction with services provided by product stewardship programs. This information must be used by the department to determine if the plan operator is meeting convenience requirements and in reviewing proposed updates or changes to product stewardship plans.

(5) Beginning October 1, 2014, the department shall annually invite comments from retailers, consumer groups, electric utilities, the Northwest power and conservation council, and other interested parties regarding the impacts of the requirements of this chapter on the availability or purchase of energy efficient lighting within the state. If the department determines that evidence shows the requirements of this chapter have resulted in negative impacts on the availability or purchase of energy efficient lighting in the state, the department shall report this information by December 31st of each year to the appropriate committees of the legislature with recommendations for changes to the provisions of this chapter.

(6) Beginning October 1, 2014, the department shall annually invite comments from retailers, consumer groups, electric utilities, the Northwest power and conservation council, and other interested parties regarding the availability of energy efficient nonmercury lighting to replace mercury-containing lighting within the state. If the department determines that evidence shows that energy efficient nonmercury-con-

(2010 Ed.)

taining lighting is available and achieves similar energy savings as mercury lighting at similar cost, the department shall report this information by December 31st of each year to the appropriate committees of the legislature with recommendations for legislative changes to reduce mercury use in lighting.

(7) Beginning October 1, 2014, the department shall annually estimate the overall statewide recycling rate for mercury-containing lights and calculate that portion of the recycling rate attributable to the product stewardship program.

(8) The department may require submission of independent performance evaluations and report evaluations documenting the effectiveness of mercury vapor barrier packaging in preventing the escape of mercury into the environment. The department may restrict the use of packaging for which adequate documentation has not been provided. Restricted packaging may not be used in any product stewardship program required under this chapter. [2010 c 130 § 14.]

**70.275.150 Application of chapter to the Washington utilities and transportation commission.** Nothing in this chapter changes or limits the authority of the Washington utilities and transportation commission to regulate collection of solid waste, including curbside collection of residential recyclable materials, nor does this chapter change or limit the authority of a city or town to provide such service itself or by contract under RCW 81.77.020. [2010 c 130 § 15.]

**70.275.160 Application of chapter to entities regulated under chapter 70.105 RCW.** Nothing in this chapter changes the requirements of any entity regulated under chapter 70.105 RCW to comply with the requirements under that chapter. [2010 c 130 § 16.]

**70.275.900 Chapter liberally construed.** This chapter must be liberally construed to carry out its purposes and objectives. [2010 c 130 § 17.]

**70.275.901 Severability—2010 c 130.** If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [2010 c 130 § 21.]

## Chapter 70.280 RCW

### BISPHENOL A—RESTRICTIONS ON SALE

#### Sections

70.280.010	Definitions.
70.280.020	Prohibiting the sale or distribution of certain products containing bisphenol A.
70.280.030	Notification—Recall of products.
70.280.040	Penalties.
70.280.050	Expenses to cover cost of administering chapter.
70.280.060	Rules.

**70.280.010 Definitions.** The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Department" means the department of ecology.

(2) "Metal can" means a single walled container that is manufactured from metal substrate designed to hold or pack food or beverages and sealed by can ends manufactured from metal substrate. The metal substrate for the can and the can ends must be equal to or thinner than 0.0149 inch.

(3) "Sports bottle" means a resealable, reusable container, sixty-four ounces or less in size, that is designed or intended primarily to be filled with a liquid or beverage for consumption from the container, and is sold or distributed at retail without containing any liquid or beverage. [2010 c 140 § 1.]

**70.280.020 Prohibiting the sale or distribution of certain products containing bisphenol A.** (1) Beginning July 1, 2011, no manufacturer, wholesaler, or retailer may manufacture, knowingly sell, offer for sale, distribute for sale, or distribute for use in this state, any bottle, cup, or other container, except a metal can, that contains bisphenol A if that container is designed or intended to be filled with any liquid, food, or beverage primarily for consumption from that container by children three years of age or younger and is sold or distributed at retail without containing any liquid, food, or beverage.

(2) Beginning July 1, 2012, no manufacturer, wholesaler, or retailer may manufacture, knowingly sell, offer for sale, distribute for sale, or distribute for use in this state, sports bottles that contain bisphenol A. [2010 c 140 § 2.]

**70.280.030 Notification—Recall of products.** (1) A manufacturer of products that are restricted under this chapter must notify persons that sell the manufacturer's products in this state about the provisions of this chapter no less than ninety days prior to the effective date of the restrictions.

(2) A manufacturer that produces, sells, or distributes a product prohibited from manufacture, sale, or distribution in this state under this chapter shall recall the product and reimburse the retailer or any other purchaser for the product. [2010 c 140 § 3.]

**70.280.040 Penalties.** (1) A manufacturer, wholesaler, or retailer that manufactures [manufactures], knowingly sells, or distributes products in violation of this chapter is subject to a civil penalty not to exceed five thousand dollars for each violation in the case of a first offense. Manufacturers, wholesalers, or retailers who are repeat violators are subject to a civil penalty not to exceed ten thousand dollars for each repeat offense. Penalties collected under this section must be deposited in the state toxics control account created in RCW 70.105D.070.

(2) Retailers who unknowingly sell products that are restricted from sale under this chapter are not subject to the civil penalties under this chapter. [2010 c 140 § 4.]

**70.280.050 Expenses to cover cost of administering chapter.** Expenses to cover the cost of administering this chapter shall be paid from the [state] toxics control account under RCW 70.105D.070. [2010 c 140 § 5.]

**70.280.060 Rules.** The department may adopt rules as necessary for the purpose of implementing, administering, and enforcing this chapter. [2010 c 140 § 6.]

### Chapter 70.285 RCW

#### BRAKE FRICTION MATERIAL

##### Sections

70.285.010	Findings.
70.285.020	Definitions.
70.285.030	Prohibition on the sale of certain brake friction material—Exemptions.
70.285.040	Brake friction material advisory committee—Members—Duties.
70.285.050	Finding that alternative brake friction material is available—Report—Rules.
70.285.060	Application for exemption from chapter.
70.285.070	Manufacturers of brake friction material must provide certain data to the department—Department's duties.
70.285.080	Compliance with chapter—Proof of compliance.
70.285.090	Enforcement of chapter—Violations—Penalties.
70.285.100	Adoption of rules.
70.285.900	Severability—2010 c 147.

**70.285.010 Findings.** The legislature finds that:

(1) Brake friction material is an essential component of motor vehicle brakes and is critically important to transportation safety and public safety in general;

(2) Debris from brake friction material containing copper and its compounds is generated and released to the environment during normal operation of motor vehicle brakes;

(3) Thousands of pounds of copper and other substances released from brake friction material enter Washington state's streams, rivers, and marine environment every year; and

(4) Copper is toxic to many aquatic organisms, including salmon. [2010 c 147 § 1.]

**70.285.020 Definitions.** The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Accredited laboratory" means a laboratory that is:

(a) Qualified and equipped for testing of products, materials, equipment, and installations in accordance with national or international standards; and

(b) Accredited by a third-party organization approved by the department to accredit laboratories for purposes of this chapter.

(2) "Alternative brake friction material" means brake friction material that:

(a) Does not contain:

(i) More than 0.5 percent copper or its compounds by weight;

(ii) The constituents identified in RCW 70.285.030 at or above the concentrations specified; and

(iii) Other materials determined by the department to be more harmful to human health or the environment than existing brake friction material;

(b) Enables motor vehicle brakes to meet applicable federal safety standards, or if no federal safety standard exists, a widely accepted industry standard;

(c) Is available at a cost and quantity that does not cause significant financial hardship across the majority of brake friction material and vehicle manufacturing industries; and

(d) Is available to enable brake friction material and vehicle manufacturers to produce viable products meeting consumer expectations regarding braking noise, shuddering, and durability.

(3) "Brake friction material" means that part of a motor vehicle brake designed to retard or stop the movement of a motor vehicle through friction against a rotor made of more durable material.

(4) "Committee" means the brake friction material advisory committee.

(5) "Department" means the department of ecology.

(6)(a) "Motor vehicle" has the same meaning as defined in RCW 46.04.320 that are subject to licensing requirements under \*RCW 46.16.010.

(b) "Motor vehicle" does not include:

(i) Motorcycles as defined in RCW 46.04.330;

(ii) Motor vehicles employing internal closed oil immersed motor vehicle brakes or similar brake systems that are fully contained and emit no debris or fluid under normal operating conditions;

(iii) Military combat vehicles;

(iv) Race cars, dual-sport vehicles, or track day vehicles, whose primary use is for off-road purposes and are permitted under \*\*RCW 46.16.160; or

(v) Collector vehicles, as defined in RCW 46.04.126.

(7)(a) "Motor vehicle brake" means an energy conversion mechanism used to retard or stop the movement of a motor vehicle.

(b) "Motor vehicle brake" does not include brakes designed primarily to hold motor vehicles stationary and not for use while motor vehicles are in motion.

(8) "Original equipment service" means brake friction material provided as service parts originally designed for and using the same brake friction material formulation sold with a new motor vehicle.

(9) "Small volume motor vehicle manufacturer" means a manufacturer of motor vehicles with Washington annual sales of less than one thousand new passenger cars, light-duty trucks, medium-duty vehicles, heavy-duty vehicles, and heavy-duty engines based on the average number of vehicles sold for the three previous consecutive model years. [2010 c 147 § 2.]

**Reviser's note:** \*(1) RCW 46.16.010 was recodified as RCW 46.16A.030 pursuant to 2010 c 161 § 1215, effective July 1, 2011.

\*\*\*(2) RCW 46.16.160 was recodified as RCW 46.16A.320 pursuant to 2010 c 161 § 1216, effective July 1, 2011.

**70.285.030 Prohibition on the sale of certain brake friction material—Exemptions.** (1) Beginning January 1, 2014, no manufacturer, wholesaler, retailer, or distributor may sell or offer for sale brake friction material in Washington state containing any of the following constituents in an amount exceeding the specified concentrations:

(a) Asbestiform fibers, 0.1 percent by weight.

(b) Cadmium and its compounds, 0.01 percent by weight.

(c) Chromium(VI)-salts, 0.1 percent by weight.

(d) Lead and its compounds, 0.1 percent by weight.

(e) Mercury and its compounds, 0.1 percent by weight.

(2) Beginning January 1, 2021, no manufacturer, wholesaler, retailer, or distributor may sell or offer for sale brake

(2010 Ed.)

friction material in Washington state containing more than five percent copper and its compounds by weight.

(3) Brake friction material manufactured prior to 2015 is exempt from subsection (1) of this section for the purposes of clearing inventory. This exemption expires January 1, 2025.

(4) Brake friction material manufactured prior to 2021 is exempt from subsection (2) of this section for the purposes of clearing inventory. This exemption expires January 1, 2031.

(5) Brake friction material manufactured as part of an original equipment service contract for vehicles manufactured prior to January 1, 2015, is exempt from subsection (1) of this section.

(6) Brake friction material manufactured as part of an original equipment service contract for vehicles manufactured prior to January 1, 2021, is exempt from subsection (2) of this section. [2010 c 147 § 3.]

**70.285.040 Brake friction material advisory committee—Members—Duties.** (1) By December 1, 2015, the department shall review risk assessments, scientific studies, and other relevant analyses regarding alternative brake friction material and determine whether the material may be available. The department shall consider any new science with regard to the bioavailability and toxicity of copper.

(2) If the department finds that alternative brake friction material may be available, it shall convene a brake friction material advisory committee. The committee shall include, but is not limited to:

(a) A representative of the department, who will chair the committee;

(b) The chief of the Washington state patrol, or the chief's designee;

(c) A representative of manufacturers of brake friction material;

(d) A representative of manufacturers of motor vehicles;

(e) A representative of a nongovernmental organization concerned with motor vehicle safety;

(f) A representative of the national highway traffic safety administration; and

(g) A representative of a nongovernmental organization concerned with the environment.

(3) If convened pursuant to subsection (2) of this section, the committee shall separately assess alternative brake friction material for passenger vehicles, light-duty vehicles, and heavy-duty vehicles. The committee shall make different recommendations to the department as to whether alternative brake friction material is available or unavailable for passenger vehicles, light-duty vehicles, and heavy-duty vehicles. For purposes of this section, "heavy-duty vehicle" means a vehicle used for commercial purposes with a gross vehicle weight rating above twenty-six thousand pounds. The committee shall also consider appropriate exemptions including original equipment service and brake friction material manufactured prior to the dates specified in RCW 70.285.050. The department shall consider the committee's recommendations and make a finding as to whether alternative brake friction material is available or unavailable.

(4) If, pursuant to subsection (3) of this section, the department finds that alternative brake friction material:

(a) Is available, it shall comply with RCW 70.285.050;

(b) Is not available, it shall periodically evaluate the finding and, if it determines that alternative brake friction material may be available, comply with subsections (2) and (3) of this section. If the department finds that alternative brake friction material is available, it shall comply with RCW 70.285.050. [2010 c 147 § 4.]

**70.285.050 Finding that alternative brake friction material is available—Report—Rules.** If, pursuant to RCW 70.285.040, the department finds that alternative brake friction material is available:

(1)(a) By December 31st of the year in which the finding is made, the department shall publish the information required by RCW 70.285.040 in the Washington State Register and present it in a report to the appropriate committees of the legislature; and

(b) The report must include recommendations for exemptions on original equipment service and brake friction material manufactured prior to dates specified in this section and may include recommendations for other exemptions.

(2) Beginning eight years after the report in subsection (1) of this section is published in the Washington State Register, no manufacturer, wholesaler, retailer, or distributor may sell or offer for sale brake friction material in Washington state containing more than 0.5 percent copper and its compounds by weight, as specified in the report.

(3) The department shall adopt rules to implement this section. [2010 c 147 § 5.]

**70.285.060 Application for exemption from chapter.** Any motor vehicle manufacturer or brake friction material manufacturer may apply to the department for an exemption from this chapter for brake friction material intended for a specific motor vehicle model or class of motor vehicles based on special needs or characteristics of the motor vehicles for which the brake friction material is intended. Exemptions may only be issued for small volume motor vehicle manufacturers, specific motor vehicle models, or special classes of vehicles, such as fire trucks, police cars, and heavy or wide-load equipment hauling, provided the manufacturer can demonstrate that complying with the requirements of this chapter is not feasible, does not allow compliance with safety standards, or causes significant financial hardship. Exemptions are valid for no less than one year and may be renewed automatically as needed or the exemption may be permanent for as long as the vehicle is used in the manner described in the application. [2010 c 147 § 6.]

**70.285.070 Manufacturers of brake friction material must provide certain data to the department—Department's duties.** (1) By January 1, 2013, and at least every three years thereafter, manufacturers of brake friction material sold or offered for sale in Washington state shall provide data to the department adequate to enable the department to determine concentrations of antimony, copper, nickel, and zinc and their compounds in brake friction material sold or offered for sale in Washington state.

(2) Using data provided pursuant to subsection (1) of this section and other data as needed, and in consultation with the

brake friction material manufacturing industry, the department must:

(a) By July 1, 2013, establish baseline concentration levels for constituents identified in subsection (1) of this section in brake friction material; and

(b) Track progress toward reducing the use of copper and its compounds and ensure that concentration levels of antimony, nickel, or zinc and their compounds do not increase by more than fifty percent above baseline concentration levels.

(3) If concentration levels of antimony, nickel, or zinc and their compounds in brake friction material increase by more than fifty percent above baseline concentration levels, the department shall review scientific studies to determine the potential impact of the constituent on human health and the environment. If scientific studies demonstrate the need for controlling the use of the constituent in brake friction material, the department may consider recommending limits on concentration levels of the constituent in the material.

(4) Confidential business information otherwise protected under RCW 43.21A.160 or chapter 42.56 RCW is exempt from public disclosure. [2010 c 147 § 7.]

**70.285.080 Compliance with chapter—Proof of compliance.** (1) Manufacturers of brake friction material offered for sale in Washington state must certify compliance with the requirements of this chapter and mark proof of certification on the brake friction material in accordance with criteria developed under this section.

(2) By December 1, 2012, the department must, after consulting with interested parties, develop compliance criteria to meet the requirements of this chapter. Compliance criteria includes, but is not limited to:

(a) Self-certification of compliance by brake friction material manufacturers using accredited laboratories; and

(b) Marked proof of certification, including manufacture date, on brake friction material and product packaging. Marked proof of certification must appear by January 1, 2015. Brake friction material manufactured or packaged prior to January 1, 2015, is exempt from this subsection (2)(b).

(3) Beginning January 1, 2021, manufacturers of new motor vehicles offered for sale in Washington state must ensure that motor vehicles are equipped with brake friction material certified to be compliant with the requirements of this chapter. [2010 c 147 § 8.]

**70.285.090 Enforcement of chapter—Violations—Penalties.** (1) The department shall enforce this chapter. The department may periodically purchase and test brake friction material sold or offered for sale in Washington state to verify that the material complies with this chapter.

(2) Enforcement of this chapter by the department must rely on notification and information exchange between the department and manufacturers, distributors, and retailers. The department shall issue one warning letter by certified mail to a manufacturer, distributor, or retailer that sells or offers to sell brake friction material in violation of this chapter, and offer information or other appropriate assistance regarding compliance with this chapter. Once a warning letter has been issued to a distributor or retailer for violations

under subsections (3) and (5) of this section, the department need not provide warning letters for subsequent violations by that distributor or retailer. For the purposes of subsection (6) of this section, a warning letter serves as notice of the violation. If compliance is not achieved, the department may assess penalties under this section.

(3) A brake friction material distributor or retailer that violates this chapter is subject to a civil penalty not to exceed ten thousand dollars for each violation. Brake friction material distributors or retailers that sell brake friction material that is packaged consistent with RCW 70.285.080(2)(b) are not in violation of this chapter. However, if the department conclusively proves that the brake friction material distributor or retailer was aware that the brake friction material being sold violates RCW 70.285.030 or 70.285.050, the brake friction material distributor or retailer is subject to civil penalties according to this section.

(4) A brake friction material manufacturer that knowingly violates this chapter shall recall the brake friction material and reimburse the brake friction distributor, retailer, or any other purchaser for the material and any applicable shipping and handling charges for returning the material. A brake friction material manufacturer that violates this chapter is subject to a civil penalty not to exceed ten thousand dollars for each violation.

(5) A motor vehicle distributor or retailer that violates this chapter is subject to a civil penalty not to exceed ten thousand dollars for each violation. A motor vehicle distributor or retailer is not in violation of this chapter for selling a vehicle that was previously sold at retail and that contains brake friction material failing to meet the requirements of this chapter. However, if the department conclusively proves that the motor vehicle distributor or retailer installed brake friction material that violates RCW 70.285.030, 70.285.050, or 70.285.080(2)(b) on the vehicle being sold and was aware that the brake friction material violates RCW 70.285.030, 70.285.050, or 70.285.080(2)(b), the motor vehicle distributor or retailer is subject to civil penalties under this section.

(6) A motor vehicle manufacturer that violates this chapter must notify the registered owner of the vehicle within six months of knowledge of the violation and must replace at no cost to the owner the noncompliant brake friction material with brake friction material that complies with this chapter. A motor vehicle manufacturer that fails to provide the required notification to registered owners of the affected vehicles within six months of knowledge of the violation is subject to a civil penalty not to exceed one hundred thousand dollars. A motor vehicle manufacturer that fails to provide the required notification to registered owners of the affected vehicles after twelve months of knowledge of the violation is subject to a civil penalty not to exceed ten thousand dollars per vehicle. For purposes of this section, "motor vehicle manufacturer" does not include a vehicle dealer defined under RCW 46.70.011 and required to be licensed as a vehicle dealer under chapter 46.70 RCW.

(7) Before the effective date of the prohibitions in RCW 70.285.030 or 70.285.050, the department shall prepare and distribute information about the prohibitions to manufacturers, distributors, and retailers to the maximum extent practicable.

(8) All penalties collected under this chapter must be deposited in the state toxics control account created in RCW 70.105D.070. [2010 c 147 § 9.]

**70.285.100 Adoption of rules.** The department may adopt rules necessary to implement this chapter. [2010 c 147 § 10.]

**70.285.900 Severability—2010 c 147.** If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [2010 c 147 § 12.]

## Chapter 70.290 RCW

### WASHINGTON VACCINE ASSOCIATION

#### Sections

70.290.010	Definitions.
70.290.020	Washington vaccine association—Creation.
70.290.030	Composition of association—Board of directors—Duties.
70.290.040	Estimate of program cost for upcoming year—Assessment collection—Surplus assessments—Start-up funding.
70.290.050	Selection of vaccines to be purchased—Committee.
70.290.060	Additional duties and powers of the association and secretary—Penalty—Rules.
70.290.070	Board shall submit financial report to the secretary.
70.290.080	Limitation of liability.
70.290.090	Vote to recommend termination of the association—Disposition of funds.
70.290.100	Physicians and clinics ordering state supplied vaccine—Tracking of vaccine delivered—Documentation.
70.290.110	Judicial invalidation of program's funding—Termination of program.
70.290.900	Effective date—2010 c 174.

**70.290.010 Definitions.** The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Association" means the Washington vaccine association.

(2) "Covered lives" means all persons under the age of nineteen in Washington state who are:

(a) Covered under an individual or group health benefit plan issued or delivered in Washington state or an individual or group health benefit plan that otherwise provides benefits to Washington residents; or

(b) Enrolled in a group health benefit plan administered by a third-party administrator. Persons under the age of nineteen for whom federal funding is used to purchase vaccines or who are enrolled in state purchased health care programs covering low-income children including, but not limited to, apple health for kids under RCW 74.09.470 and the basic health plan under chapter 70.47 RCW are not considered "covered lives" under this chapter.

(3) "Estimated vaccine cost" means the estimated cost to the state over the course of a state fiscal year for the purchase and distribution of vaccines purchased at the federal discount rate by the department of health.

(4) "Health benefit plan" has the same meaning as defined in RCW 48.43.005 and also includes health benefit plans administered by a third-party administrator.

(5) "Health carrier" has the same meaning as defined in RCW 48.43.005.

(6) "Secretary" means the secretary of the department of health.

(7) "State supplied vaccine" means vaccine purchased by the state department of health for covered lives for whom the state is purchasing vaccine using state funds raised via assessments on health carriers and third-party administrators as provided in this chapter.

(8) "Third-party administrator" means any person or entity who, on behalf of a health insurer or health care purchaser, receives or collects charges, contributions, or premiums for, or adjusts or settles claims on or for, residents of Washington state or Washington health care providers and facilities.

(9) "Total nonfederal program cost" means the estimated vaccine cost less the amount of federal revenue available to the state for the purchase and distribution of vaccines.

(10) "Vaccine" means a preparation of killed or attenuated living microorganisms, or fraction thereof, that upon administration stimulates immunity that protects against disease and is approved by the federal food and drug administration as safe and effective and recommended by the advisory committee on immunization practices of the centers for disease control and prevention for administration to children under the age of nineteen years. [2010 c 174 § 1.]

**70.290.020 Washington vaccine association—Creation.** There is created a nonprofit corporation to be known as the Washington vaccine association. The association is formed for the purpose of collecting and remitting adequate funds from health carriers and third-party administrators for the cost of vaccines provided to certain children in Washington state. [2010 c 174 § 2.]

**70.290.030 Composition of association—Board of directors—Duties.** (1) The association is comprised of all health carriers issuing or renewing health benefit plans in Washington state and all third-party administrators conducting business on behalf of residents of Washington state or Washington health care providers and facilities. Third-party administrators are subject to registration under RCW 43.24.160.

(2) The association is a nonprofit corporation under chapter 24.03 RCW and has the powers granted under that chapter.

(3) The board of directors includes the following voting members:

(a) Four members, selected from health carriers or third-party administrators, excluding health maintenance organizations, that have the most fully insured and self-funded covered lives in Washington state. The count of total covered lives includes enrollment in all companies included in their holding company system. Each health carrier or third-party administrator is entitled to no more than a single position on the board to represent all entities under common ownership or control.

(b) One member selected from the health maintenance organization having the most fully insured and self-insured covered lives in Washington state. The count of total lives includes enrollment in all companies included in its holding company system. Each health maintenance organization is

entitled to no more than a single position on the board to represent all entities under common ownership or control.

(c) One member, representing health carriers not otherwise represented on the board under (a) or (b) of this subsection, who is elected from among the health carrier members not designated under (a) or (b) of this subsection.

(d) One member, representing Taft Hartley plans, appointed by the secretary from a list of nominees submitted by the Northwest administrators association.

(e) One member representing Washington state employers offering self-funded health coverage, appointed by the secretary from a list of nominees submitted by the Puget Sound health alliance.

(f) Two physician members appointed by the secretary, including at least one board certified pediatrician.

(g) The secretary, or a designee of the secretary with expertise in childhood immunization purchasing and distribution.

(4) The directors' terms and appointments must be specified in the plan of operation adopted by the association.

(5) The board of directors of the association shall:

(a) Prepare and adopt articles of association and bylaws;

(b) Prepare and adopt a plan of operation. The plan of operation shall include a dispute mechanism through which a carrier or third-party administrator can challenge an assessment determination by the board under RCW 70.290.040. The board shall include a means to bring unresolved disputes to an impartial decision maker as a component of the dispute mechanism;

(c) Submit the plan of operation to the secretary for approval;

(d) Conduct all activities in accordance with the approved plan of operation;

(e) Enter into contracts as necessary or proper to collect and disburse the assessment;

(f) Enter into contracts as necessary or proper to administer the plan of operation;

(g) Sue or be sued, including taking any legal action necessary or proper for the recovery of any assessment for, on behalf of, or against members of the association or other participating person;

(h) Appoint, from among its directors, committees as necessary to provide technical assistance in the operation of the association, including the hiring of independent consultants as necessary;

(i) Obtain such liability and other insurance coverage for the benefit of the association, its directors, officers, employees, and agents as may in the judgment of the board of directors be helpful or necessary for the operation of the association;

(j) By May 1, 2010, establish the estimated amount of the assessment needed for the period of May 1, 2010, through December 31, 2010, based upon the estimate provided to the association under RCW 70.290.040(1); and notify, in writing, each health carrier and third-party administrator of the health carrier's or third-party administrator's total assessment for this period by May 15, 2010;

(k) On an annual basis, beginning no later than November 1, 2010, and by November 1st of each year thereafter, establish the estimated amount of the assessment;

(l) Notify, in writing, each health carrier and third-party administrator of the health carrier's or third-party administrator's estimated total assessment by November 15th of each year;

(m) Submit a periodic report to the secretary listing those health carriers or third-party administrators that failed to remit their assessments and audit health carrier and third-party administrator books and records for accuracy of assessment payment submission;

(n) Allow each health carrier or third-party administrator no more than ninety days after the notification required by (l) of this subsection to remit any amounts in arrears or submit a payment plan, subject to approval by the association and initial payment under an approved payment plan;

(o) Deposit annual assessments collected by the association, less the association's administrative costs, with the state treasurer to the credit of the universal vaccine purchase account established in RCW 43.70.720;

(p) Borrow and repay such working capital, reserve, or other funds as, in the judgment of the board of directors, may be helpful or necessary for the operation of the association; and

(q) Perform any other functions as may be necessary or proper to carry out the plan of operation and to affect any or all of the purposes for which the association is organized.

(6) The secretary shall convene the initial meeting of the association board of directors. [2010 c 174 § 3.]

**70.290.040 Estimate of program cost for upcoming year—Assessment collection—Surplus assessments—Start-up funding.**

(1) The secretary shall estimate the total nonfederal program cost for the upcoming calendar year by October 1, 2010, and October 1st of each year thereafter. Additionally, the secretary shall subtract any amounts needed to serve children enrolled in state purchased health care programs covering low-income children for whom federal vaccine funding is not available, and report the final amount to the association. In addition, the secretary shall perform such calculation for the period of May 1st through December 31st, 2010, as soon as feasible but in no event later than April 1, 2010. The estimates shall be timely communicated to the association.

(2) The board of directors of the association shall determine the method and timing of assessment collection in consultation with the department of health. The board shall use a formula designed by the board to ensure the total anticipated nonfederal program cost, minus costs for other children served through state-purchased health care programs covering low-income children, calculated under subsection (1) of this section, is collected and transmitted to the universal vaccine purchase account created in RCW 43.70.720 in order to ensure adequacy of state funds to order state-supplied vaccine from federal centers for disease control and prevention.

(3) Each licensed health carrier and each third-party administrator on behalf of its clients' health benefit plans must be assessed and is required to timely remit payment for its share of the total amount needed to fund nonfederal program costs calculated by the department of health. Such an assessment includes additional funds as determined necessary by the board to cover the reasonable costs for the association's administration. The board shall determine the assess-

(2010 Ed.)

ment methodology, with the intent of ensuring that the non-federal costs are based on actual usage of vaccine for a health carrier or third-party administrator's covered lives. State and local governments and school districts must pay their portion of vaccine expense for covered lives under this chapter.

(4) The board of the association shall develop a mechanism through which the number and cost of doses of vaccine purchased under this chapter that have been administered to children covered by each health carrier, and each third-party administrator's clients health benefit plans, are attributed to each such health carrier and third-party administrator. Except as otherwise permitted by the board, this mechanism must include at least the following: Date of service; patient name; vaccine received; and health benefit plan eligibility. The data must be collected and maintained in a manner consistent with applicable state and federal health information privacy laws. Beginning November 1, 2011, and each November 1st thereafter, the board shall factor the results of this mechanism for the previous year into the determination of the appropriate assessment amount for each health carrier and third-party administrator for the upcoming year.

(5) For any year in which the total calculated cost to be received from association members through assessments is less than the total nonfederal program cost, the association must pay the difference to the state for deposit into the universal vaccine purchase account established in RCW 43.70.720. The board may assess, and the health carrier and third-party administrators are obligated to pay, their proportionate share of such costs and appropriate reserves as determined by the board.

(6) The aggregate amount to be raised by the association in any year may be reduced by any surpluses remaining from prior years.

(7) In order to generate sufficient start-up funding, the association may accept prepayment from member health carriers and third-party administrators, subject to offset of future amounts otherwise owing or other repayment method as determined by the board. The initial deposit of start-up funding must be deposited into the universal vaccine purchase account on or before April 30, 2010. [2010 c 174 § 4.]

**70.290.050 Selection of vaccines to be purchased—**

**Committee.** (1) The board of the association shall establish a committee for the purposes of developing recommendations to the board regarding selection of vaccines to be purchased in each upcoming year by the department. The committee must be composed of at least five voting board members, including at least three health carrier or third-party administrator members, one physician, and the secretary or the secretary's designee. The committee must also include a representative of vaccine manufacturers, who is a nonvoting member of the committee. The representative of vaccine manufacturers must be chosen by the secretary from a list of three nominees submitted collectively by vaccine manufacturers on an annual basis.

(2) In selecting vaccines to purchase, the following factors should be strongly considered by the committee: Patient safety and clinical efficacy, public health and purchaser value, compliance with RCW 70.95M.115, patient and provider choice, and stability of vaccine supply. [2010 c 174 § 5.]

**70.290.060 Additional duties and powers of the association and secretary—Penalty—Rules.** In addition to the duties and powers enumerated elsewhere in this chapter:

(1) The association may, pursuant to either vote of its board of directors or request of the secretary, audit compliance with reporting obligations established under the association's plan of operation. Upon failure of any entity that has been audited to reimburse the costs of such audit as certified by vote of the association's board of directors within forty-five days of notice of such vote, the secretary shall assess a civil penalty of one hundred fifty percent of the amount of such costs.

(2) The association may establish an interest charge for late payment of any assessment under this chapter. The secretary shall assess a civil penalty against any health carrier or third-party administrator that fails to pay an assessment within three months of notification under RCW 70.290.030. The civil penalty under this subsection is one hundred fifty percent of such assessment.

(3) The secretary and the association are authorized to file liens and seek judgment to recover amounts in arrears and civil penalties, and recover reasonable collection costs, including reasonable attorneys' fees and costs. Civil penalties so levied must be deposited in the universal vaccine purchase account created in RCW 43.70.720.

(4) The secretary may adopt rules under chapter 34.05 RCW as necessary to carry out the purposes of this section. [2010 c 174 § 6.]

**70.290.070 Board shall submit financial report to the secretary.** The board of directors of the association shall submit to the secretary, no later than one hundred twenty days after the close of the association's fiscal year, a financial report in a form approved by the secretary. [2010 c 174 § 7.]

**70.290.080 Limitation of liability.** No liability on the part of, and no cause of action of any nature, shall arise against any member of the board of the association, against an employee or agent of the association, or against any health care provider for any lawful action taken by them in the performance of their duties or required activities under this chapter. [2010 c 174 § 8.]

**70.290.090 Vote to recommend termination of the association—Disposition of funds.** (1) The association board may, on or after June 30, 2015, vote to recommend termination of the association if it finds that the original intent of its formation and operation, which is to ensure more cost-effective purchase and distribution of vaccine than if provided through uncoordinated purchase by health care providers, has not been achieved. The association board shall provide notice of the recommendation to the relevant policy and fiscal committees of the legislature within thirty days of the vote being taken by the association board. If the legislature has not acted by the last day of the next regular legislative session to reject the board's recommendation, the board may vote to permanently dissolve the association.

(2) In the event of a voluntary or involuntary dissolution of the association, funds remaining in the universal purchase vaccine account created in RCW 43.70.720 that were collected under this chapter must be returned to the member

health carrier and third-party administrators in proportion to their previous year's contribution, from any balance remaining following the repayment of any prepayments for start-up funding not previously recouped by such member. [2010 c 174 § 12.]

**70.290.100 Physicians and clinics ordering state supplied vaccine—Tracking of vaccine delivered—Documentation.** Physicians and clinics ordering state supplied vaccine must ensure they have billing mechanisms and practices in place that enable the association to accurately track vaccine delivered to association members' covered lives and must submit documentation in such a form as may be prescribed by the board in consultation with state physician organizations. Physicians and other persons providing childhood immunization are strongly encouraged to use state supplied vaccine whenever possible. Nothing in this chapter prohibits health carriers and third-party administrators from denying claims for vaccine serum costs when the serum or serums providing similar protection are provided or available via state supplied vaccine. [2010 c 174 § 13.]

**70.290.110 Judicial invalidation of program's funding—Termination of program.** If the requirement that any segment of health carriers, third-party administrators, or state or local governmental entities provide funding for the program established in this chapter is invalidated by a court of competent jurisdiction, the board of the association may terminate the program one hundred twenty days following a final judicial determination on the matter. [2010 c 174 § 14.]

**70.290.900 Effective date—2010 c 174.** This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [March 23, 2010]. [2010 c 174 § 17.]

# Title 71

## MENTAL ILLNESS

### Chapters

- 71.02 Mental illness—Reimbursement of costs for treatment.**
- 71.05 Mental illness.**
- 71.06 Sexual psychopaths.**
- 71.09 Sexually violent predators.**
- 71.12 Private establishments.**
- 71.20 Local funds for community services.**
- 71.24 Community mental health services act.**
- 71.28 Mental health and developmental disabilities services—Interstate contracts.**
- 71.32 Mental health advance directives.**
- 71.34 Mental health services for minors.**
- 71.36 Coordination of children’s mental health services.**
- 71.98 Construction.**

*Alcoholism, intoxication, and drug addiction treatment: Chapters 70.96 and 70.96A RCW.*

*Center for research and training in intellectual and developmental disabilities: RCW 28B.20.410 through 28B.20.414.*

*County hospitals: Chapter 36.62 RCW.*

*Harrison Memorial Hospital: RCW 72.29.010.*

*Interstate compact on mental health: Chapter 72.27 RCW.*

*Jurisdiction over Indians concerning mental illness: Chapter 37.12 RCW.*

*Mental health: Chapter 72.06 RCW.*

*Nonresident individuals with mental illness, sexual psychopaths, and psychopathic delinquents: Chapter 72.25 RCW.*

*State hospitals for individuals with mental illness: Chapter 72.23 RCW.*

### Chapter 71.02 RCW

#### MENTAL ILLNESS—REIMBURSEMENT OF COSTS FOR TREATMENT

##### Sections

- 71.02.490 Authority over patient—Federal agencies, private establishments.
- 71.02.900 Construction and purpose—1959 c 25.

*Commitment to veterans’ administration or other federal agency: RCW 73.36.165.*

*Criminally insane—Procedures, rights, and responsibilities: Chapter 10.77 RCW.*

*Guardianship of estate or person: Chapters 11.88 and 11.92 RCW.*

*Mental illness: Chapter 71.05 RCW.*

*State hospitals for individuals with mental illness: Chapter 72.23 RCW.*

*Voluntary patients: RCW 72.23.080 through 72.23.120.*

**71.02.490 Authority over patient—Federal agencies, private establishments.** The United States veterans’ administration, or other United States government agency, or the chief officer of a private facility shall have the same powers as are conferred upon the superintendent of a state hospital with reference to retention, transfer, parole, or discharge of mentally ill persons ordered hospitalized in their facilities. [1959 c 25 § 71.02.490. Prior: 1951 c 139 § 26.]

(2010 Ed.)

*Commitment to veterans’ administration or other federal agency: RCW 73.36.165.*

**71.02.900 Construction and purpose—1959 c 25.** The provisions of this chapter shall be liberally construed so that persons who are in need of care and treatment for mental illness shall receive humane care and treatment and be restored to normal mental condition as rapidly as possible with an avoidance of loss of civil rights where not necessary, and with as little formality as possible, still preserving all rights and all privileges of the person as guaranteed by the Constitution. [1959 c 25 § 71.02.900. Prior: 1951 c 139 § 1; 1949 c 198 § 1; Rem. Supp. 1949 § 6953-1.]

### Chapter 71.05 RCW

#### MENTAL ILLNESS

##### Sections

- 71.05.010 Legislative intent.
- 71.05.012 Legislative intent and finding.
- 71.05.020 Definitions.
- 71.05.025 Integration with chapter 71.24 RCW—Regional support networks.
- 71.05.026 Regional support networks contracts—Limitation on state liability.
- 71.05.027 Integrated comprehensive screening and assessment for chemical dependency and mental disorders.
- 71.05.030 Commitment laws applicable.
- 71.05.032 Joinder of petitions for commitment.
- 71.05.040 Detention or judicial commitment of persons with developmental disabilities, impaired by chronic alcoholism or drug abuse, or suffering from dementia.
- 71.05.050 Voluntary application for mental health services—Rights—Review of condition and status—Detention—Person refusing voluntary admission, temporary detention.
- 71.05.100 Financial responsibility.
- 71.05.110 Compensation of appointed counsel.
- 71.05.120 Exemptions from liability.
- 71.05.130 Duties of prosecuting attorney and attorney general.
- 71.05.132 Court-ordered treatment—Required notifications.
- 71.05.135 Mental health commissioners—Appointment.
- 71.05.137 Mental health commissioners—Authority.
- 71.05.140 Records maintained.
- 71.05.145 Offenders with mental illness who are believed to be dangerous—Less restrictive alternative.
- 71.05.150 Detention of persons with mental disorders for evaluation and treatment—Procedure.
- 71.05.153 Emergent detention of persons with mental disorders—Procedure.
- 71.05.157 Evaluation by designated mental health professional—When required—Required notifications.
- 71.05.160 Petition for initial detention.
- 71.05.170 Acceptance of petition—Notice—Duty of state hospital.
- 71.05.180 Detention period for evaluation and treatment.
- 71.05.190 Persons not admitted—Transportation—Detention of arrested person pending return to custody.
- 71.05.195 Not guilty by reason of insanity—Detention of persons who have fled from state of origin—Probable cause hearing.
- 71.05.210 Evaluation—Treatment and care—Release or other disposition.
- 71.05.212 Evaluation—Consideration of information and records.
- 71.05.214 Protocols—Development—Submission to governor and legislature.
- 71.05.215 Right to refuse antipsychotic medicine—Rules.
- 71.05.217 Rights—Posting of list.
- 71.05.220 Property of committed person.

[Title 71 RCW—page 1]

71.05.230 Procedures for additional treatment.  
 71.05.232 Discharge reviews—Consultations, notifications required.  
 71.05.235 Examination, evaluation of criminal defendant—Hearing.  
 71.05.237 Judicial proceedings—Court to enter findings when recommendations of professional person not followed.  
 71.05.240 Petition for involuntary treatment or alternative treatment—Probable cause hearing.  
 71.05.245 Determination of likelihood of serious harm—Use of recent history evidence.  
 71.05.260 Release from involuntary intensive treatment—Exception.  
 71.05.270 Temporary release.  
 71.05.280 Additional confinement—Grounds.  
 71.05.285 Additional confinement—Prior history evidence.  
 71.05.290 Petition for additional confinement—Affidavit.  
 71.05.300 Filing of petition—Appearance—Notice—Advice as to rights—Appointment of attorney, expert, or professional person.  
 71.05.310 Time for hearing—Due process—Jury trial—Continuation of treatment.  
 71.05.320 Remand for additional treatment—Less restrictive alternatives—Duration—Grounds—Hearing.  
 71.05.325 Release—Authorized leave—Notice to prosecuting attorney.  
 71.05.330 Early release—Notice to court and prosecuting attorney—Petition for hearing.  
 71.05.335 Modification of order for inpatient treatment—Intervention by prosecuting attorney.  
 71.05.340 Outpatient treatment or care—Conditional release—Procedures for revocation.  
 71.05.350 Assistance to released persons.  
 71.05.360 Rights of involuntarily detained persons.  
 71.05.380 Rights of voluntarily committed persons.  
 71.05.385 Information subject to disclosure to authorized persons—Restrictions.  
 71.05.390 Confidential information and records—Disclosure.  
 71.05.420 Records of disclosure.  
 71.05.425 Persons committed following dismissal of sex, violent, or felony harassment offense—Notification of conditional release, final release, leave, transfer, or escape—To whom given—Definitions.  
 71.05.427 Persons committed following dismissal of sex offense—Release of information authorized.  
 71.05.435 Discharge of person from evaluation and treatment facility or state hospital—Notice to designated mental health professional office.  
 71.05.440 Action for unauthorized release of confidential information—Liquidated damages—Treble damages—Injunction.  
 71.05.445 Court-ordered mental health treatment of persons subject to department of corrections supervision—Initial assessment inquiry—Required notifications—Rules.  
 71.05.500 Liability of applicant.  
 71.05.510 Damages for excessive detention.  
 71.05.520 Protection of rights—Staff.  
 71.05.525 Transfer of person committed to juvenile correction institution to institution or facility for juveniles with mental illnesses.  
 71.05.530 Facilities part of comprehensive mental health program.  
 71.05.560 Adoption of rules.  
 71.05.5601 Rule making—Medicaid—Secretary of corrections—Secretary of social and health services.  
 71.05.5602 Rule making—Chapter 214, Laws of 1999—Secretary of corrections—Secretary of social and health services.  
 71.05.570 Rules of court.  
 71.05.575 Less restrictive alternative treatment—Consideration by court.  
 71.05.620 Court files and records closed—Exceptions.  
 71.05.630 Treatment records—Confidential—Release (*as amended by 2009 c 217*).  
 71.05.630 Treatment records—Confidential—Release (*as amended by 2009 c 320*).  
 71.05.630 Treatment records—Confidential—Release (*as amended by 2009 c 398*).  
 71.05.640 Treatment records—Access procedures.  
 71.05.660 Treatment records—Privileged communications unaffected.  
 71.05.680 Treatment records—Access under false pretenses, penalty.  
 71.05.690 Treatment records—Rules.  
 71.05.700 Home visit by designated mental health professional or crisis intervention worker—Accompaniment by second trained individual.  
 71.05.705 Provider of designated mental health professional or crisis outreach services—Policy for home visits.  
 71.05.710 Home visit by mental health professional—Wireless telephone to be provided.  
 71.05.715 Crisis visit by mental health professional—Access to information.  
 71.05.720 Training for community mental health employees.

71.05.801 Persons with developmental disabilities—Service plans—Habilitation services.  
 71.05.900 Severability—1973 1st ex.s. c 142.  
 71.05.910 Construction—1973 1st ex.s. c 142.  
 71.05.920 Section headings not part of the law.  
 71.05.930 Effective date—1973 1st ex.s. c 142.  
 71.05.940 Equal application of 1989 c 420—Evaluation for developmental disability.  
 71.05.950 Construction—Chapter applicable to state registered domestic partnerships—2009 c 521.

**Rules of court:** *Cf. Superior Court Mental Proceedings Rules (MPR).*

**Reviser's note:** The department of social and health services filed an emergency order, WSR 89-20-030, effective October 1, 1989, establishing rules for the recognition and certification of regional support networks. A final order was filed on January 24, 1990, effective January 25, 1990.

*Council for children and families: Chapter 43.121 RCW.*

*Implementation of chapter through regional support networks: RCW 71.24.310.*

*Minors—Mental health services, commitment: Chapter 71.34 RCW.*

**71.05.010 Legislative intent.** The provisions of this chapter are intended by the legislature:

- (1) To prevent inappropriate, indefinite commitment of mentally disordered persons and to eliminate legal disabilities that arise from such commitment;
- (2) To provide prompt evaluation and timely and appropriate treatment of persons with serious mental disorders;
- (3) To safeguard individual rights;
- (4) To provide continuity of care for persons with serious mental disorders;
- (5) To encourage the full use of all existing agencies, professional personnel, and public funds to prevent duplication of services and unnecessary expenditures;
- (6) To encourage, whenever appropriate, that services be provided within the community;
- (7) To protect the public safety. [1998 c 297 § 2; 1997 c 112 § 2; 1989 c 120 § 1; 1973 1st ex.s. c 142 § 6.]

**Intent—1998 c 297:** "It is the intent of the legislature to: (1) Clarify that it is the nature of a person's current conduct, current mental condition, history, and likelihood of committing future acts that pose a threat to public safety or himself or herself, rather than simple categorization of offenses, that should determine treatment procedures and level; (2) improve and clarify the sharing of information between the mental health and criminal justice systems; and (3) provide additional opportunities for mental health treatment for persons whose conduct threatens himself or herself or threatens public safety and has led to contact with the criminal justice system.

The legislature recognizes that a person can be incompetent to stand trial, but may not be gravely disabled or may not present a likelihood of serious harm. The legislature does not intend to create a presumption that a person who is found incompetent to stand trial is gravely disabled or presents a likelihood of serious harm requiring civil commitment." [1998 c 297 § 1.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**71.05.012 Legislative intent and finding.** It is the intent of the legislature to enhance continuity of care for persons with serious mental disorders that can be controlled or stabilized in a less restrictive alternative commitment. Within the guidelines stated in *In Re LaBelle* 107 Wn. 2d 196 (1986), the legislature intends to encourage appropriate interventions at a point when there is the best opportunity to restore the person to or maintain satisfactory functioning.

For persons with a prior history or pattern of repeated hospitalizations or law enforcement interventions due to decompensation, the consideration of prior mental history is particularly relevant in determining whether the person would

receive, if released, such care as is essential for his or her health or safety.

Therefore, the legislature finds that for persons who are currently under a commitment order, a prior history of decompensation leading to repeated hospitalizations or law enforcement interventions should be given great weight in determining whether a new less restrictive alternative commitment should be ordered. [1997 c 112 § 1.]

**71.05.020 Definitions.** The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Admission" or "admit" means a decision by a physician or psychiatric advanced registered nurse practitioner that a person should be examined or treated as a patient in a hospital;

(2) "Antipsychotic medications" means that class of drugs primarily used to treat serious manifestations of mental illness associated with thought disorders, which includes, but is not limited to atypical antipsychotic medications;

(3) "Attending staff" means any person on the staff of a public or private agency having responsibility for the care and treatment of a patient;

(4) "Commitment" means the determination by a court that a person should be detained for a period of either evaluation or treatment, or both, in an inpatient or a less restrictive setting;

(5) "Conditional release" means a revocable modification of a commitment, which may be revoked upon violation of any of its terms;

(6) "Crisis stabilization unit" means a short-term facility or a portion of a facility licensed by the department of health and certified by the department of social and health services under RCW 71.24.035, such as an evaluation and treatment facility or a hospital, which has been designed to assess, diagnose, and treat individuals experiencing an acute crisis without the use of long-term hospitalization;

(7) "Custody" means involuntary detention under the provisions of this chapter or chapter 10.77 RCW, uninterrupted by any period of unconditional release from commitment from a facility providing involuntary care and treatment;

(8) "Department" means the department of social and health services;

(9) "Designated chemical dependency specialist" means a person designated by the county alcoholism and other drug addiction program coordinator designated under RCW 70.96A.310 to perform the commitment duties described in chapters 70.96A and 70.96B RCW;

(10) "Designated crisis responder" means a mental health professional appointed by the county or the regional support network to perform the duties specified in this chapter;

(11) "Designated mental health professional" means a mental health professional designated by the county or other authority authorized in rule to perform the duties specified in this chapter;

(12) "Detention" or "detain" means the lawful confinement of a person, under the provisions of this chapter;

(13) "Developmental disabilities professional" means a person who has specialized training and three years of experience

in directly treating or working with persons with developmental disabilities and is a psychiatrist, psychologist, psychiatric advanced registered nurse practitioner, or social worker, and such other developmental disabilities professionals as may be defined by rules adopted by the secretary;

(14) "Developmental disability" means that condition defined in RCW 71A.10.020(3);

(15) "Discharge" means the termination of hospital medical authority. The commitment may remain in place, be terminated, or be amended by court order;

(16) "Evaluation and treatment facility" means any facility which can provide directly, or by direct arrangement with other public or private agencies, emergency evaluation and treatment, outpatient care, and timely and appropriate inpatient care to persons suffering from a mental disorder, and which is certified as such by the department. A physically separate and separately operated portion of a state hospital may be designated as an evaluation and treatment facility. A facility which is part of, or operated by, the department or any federal agency will not require certification. No correctional institution or facility, or jail, shall be an evaluation and treatment facility within the meaning of this chapter;

(17) "Gravely disabled" means a condition in which a person, as a result of a mental disorder: (a) Is in danger of serious physical harm resulting from a failure to provide for his or her essential human needs of health or safety; or (b) manifests severe deterioration in routine functioning evidenced by repeated and escalating loss of cognitive or volitional control over his or her actions and is not receiving such care as is essential for his or her health or safety;

(18) "Habilitative services" means those services provided by program personnel to assist persons in acquiring and maintaining life skills and in raising their levels of physical, mental, social, and vocational functioning. Habilitative services include education, training for employment, and therapy. The habilitative process shall be undertaken with recognition of the risk to the public safety presented by the person being assisted as manifested by prior charged criminal conduct;

(19) "History of one or more violent acts" refers to the period of time ten years prior to the filing of a petition under this chapter, excluding any time spent, but not any violent acts committed, in a mental health facility or in confinement as a result of a criminal conviction;

(20) "Imminent" means the state or condition of being likely to occur at any moment or near at hand, rather than distant or remote;

(21) "Individualized service plan" means a plan prepared by a developmental disabilities professional with other professionals as a team, for a person with developmental disabilities, which shall state:

(a) The nature of the person's specific problems, prior charged criminal behavior, and habilitation needs;

(b) The conditions and strategies necessary to achieve the purposes of habilitation;

(c) The intermediate and long-range goals of the habilitation program, with a projected timetable for the attainment;

(d) The rationale for using this plan of habilitation to achieve those intermediate and long-range goals;

(e) The staff responsible for carrying out the plan;

(f) Where relevant in light of past criminal behavior and due consideration for public safety, the criteria for proposed movement to less-restrictive settings, criteria for proposed eventual discharge or release, and a projected possible date for discharge or release; and

(g) The type of residence immediately anticipated for the person and possible future types of residences;

(22) "Information related to mental health services" means all information and records compiled, obtained, or maintained in the course of providing services to either voluntary or involuntary recipients of services by a mental health service provider. This may include documents of legal proceedings under this chapter or chapter 71.34 or 10.77 RCW, or somatic health care information;

(23) "Judicial commitment" means a commitment by a court pursuant to the provisions of this chapter;

(24) "Legal counsel" means attorneys and staff employed by county prosecutor offices or the state attorney general acting in their capacity as legal representatives of public mental health service providers under RCW 71.05.130;

(25) "Likelihood of serious harm" means:

(a) A substantial risk that: (i) Physical harm will be inflicted by a person upon his or her own person, as evidenced by threats or attempts to commit suicide or inflict physical harm on oneself; (ii) physical harm will be inflicted by a person upon another, as evidenced by behavior which has caused such harm or which places another person or persons in reasonable fear of sustaining such harm; or (iii) physical harm will be inflicted by a person upon the property of others, as evidenced by behavior which has caused substantial loss or damage to the property of others; or

(b) The person has threatened the physical safety of another and has a history of one or more violent acts;

(26) "Mental disorder" means any organic, mental, or emotional impairment which has substantial adverse effects on a person's cognitive or volitional functions;

(27) "Mental health professional" means a psychiatrist, psychologist, psychiatric advanced registered nurse practitioner, psychiatric nurse, or social worker, and such other mental health professionals as may be defined by rules adopted by the secretary pursuant to the provisions of this chapter;

(28) "Mental health service provider" means a public or private agency that provides mental health services to persons with mental disorders as defined under this section and receives funding from public sources. This includes, but is not limited to, hospitals licensed under chapter 70.41 RCW, evaluation and treatment facilities as defined in this section, community mental health service delivery systems or community mental health programs as defined in RCW 71.24.025, facilities conducting competency evaluations and restoration under chapter 10.77 RCW, and correctional facilities operated by state and local governments;

(29) "Peace officer" means a law enforcement official of a public agency or governmental unit, and includes persons specifically given peace officer powers by any state law, local ordinance, or judicial order of appointment;

(30) "Private agency" means any person, partnership, corporation, or association that is not a public agency, whether or not financed in whole or in part by public funds, which constitutes an evaluation and treatment facility or pri-

vate institution, or hospital, which is conducted for, or includes a department or ward conducted for, the care and treatment of persons who are mentally ill;

(31) "Professional person" means a mental health professional and shall also mean a physician, psychiatric advanced registered nurse practitioner, registered nurse, and such others as may be defined by rules adopted by the secretary pursuant to the provisions of this chapter;

(32) "Psychiatric advanced registered nurse practitioner" means a person who is licensed as an advanced registered nurse practitioner pursuant to chapter 18.79 RCW; and who is board certified in advanced practice psychiatric and mental health nursing;

(33) "Psychiatrist" means a person having a license as a physician and surgeon in this state who has in addition completed three years of graduate training in psychiatry in a program approved by the American medical association or the American osteopathic association and is certified or eligible to be certified by the American board of psychiatry and neurology;

(34) "Psychologist" means a person who has been licensed as a psychologist pursuant to chapter 18.83 RCW;

(35) "Public agency" means any evaluation and treatment facility or institution, or hospital which is conducted for, or includes a department or ward conducted for, the care and treatment of persons with mental illness, if the agency is operated directly by, federal, state, county, or municipal government, or a combination of such governments;

(36) "Registration records" include all the records of the department, regional support networks, treatment facilities, and other persons providing services to the department, county departments, or facilities which identify persons who are receiving or who at any time have received services for mental illness;

(37) "Release" means legal termination of the commitment under the provisions of this chapter;

(38) "Resource management services" has the meaning given in chapter 71.24 RCW;

(39) "Secretary" means the secretary of the department of social and health services, or his or her designee;

(40) "Serious violent offense" has the same meaning as provided in RCW 9.94A.030;

(41) "Social worker" means a person with a master's or further advanced degree from an accredited school of social work or a degree deemed equivalent under rules adopted by the secretary;

(42) "Therapeutic court personnel" means the staff of a mental health court or other therapeutic court which has jurisdiction over defendants who are dually diagnosed with mental disorders, including court personnel, probation officers, a court monitor, prosecuting attorney, or defense counsel acting within the scope of therapeutic court duties;

(43) "Treatment records" include registration and all other records concerning persons who are receiving or who at any time have received services for mental illness, which are maintained by the department, by regional support networks and their staffs, and by treatment facilities. Treatment records include mental health information contained in a medical bill including but not limited to mental health drugs, a mental health diagnosis, provider name, and dates of service stemming from a medical service. Treatment records do

not include notes or records maintained for personal use by a person providing treatment services for the department, regional support networks, or a treatment facility if the notes or records are not available to others;

(44) "Violent act" means behavior that resulted in homicide, attempted suicide, nonfatal injuries, or substantial damage to property. [2009 c 320 § 1; 2009 c 217 § 20; 2008 c 156 § 1. Prior: 2007 c 375 § 6; 2007 c 191 § 2; 2005 c 504 § 104; 2000 c 94 § 1; 1999 c 13 § 5; 1998 c 297 § 3; 1997 c 112 § 3; prior: 1989 c 420 § 13; 1989 c 205 § 8; 1989 c 120 § 2; 1979 ex.s. c 215 § 5; 1973 1st ex.s. c 142 § 7.]

**Reviser's note:** This section was amended by 2009 c 217 § 20 and by 2009 c 320 § 1, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

**Conflict with federal requirements—2009 c 320:** "If any part of this act is found to be in conflict with federal requirements that are a prescribed condition to the allocation of federal funds to the state, the conflicting part of this act is inoperative solely to the extent of the conflict and with respect to the agencies directly affected, and this finding does not affect the operation of the remainder of this act in its application to the agencies concerned. Rules adopted under this act must meet federal requirements that are a necessary condition to the receipt of federal funds by the state." [2009 c 320 § 6.]

**Findings—Purpose—Construction—Severability—2007 c 375:** See notes following RCW 10.31.110.

**Alphabetization—Correction of references—2005 c 504:** "(1) The code reviser shall alphabetize and renumber the definitions, and correct any internal references affected by this act.

(2) The code reviser shall replace all references to "county designated mental health professional" with "designated mental health professional" in the Revised Code of Washington." [2005 c 504 § 811.]

**Findings—Intent—Severability—Application—Construction—Captions, part headings, subheadings not law—Adoption of rules—Effective dates—2005 c 504:** See notes following RCW 71.05.027.

**Purpose—Construction—1999 c 13:** See note following RCW 10.77.010.

**Effective dates—Severability—Intent—1998 c 297:** See notes following RCW 71.05.010.

**71.05.025 Integration with chapter 71.24 RCW—Regional support networks.** The legislature intends that the procedures and services authorized in this chapter be integrated with those in chapter 71.24 RCW to the maximum extent necessary to assure a continuum of care to persons who are mentally ill or who have mental disorders, as defined in either or both this chapter and chapter 71.24 RCW. To this end, regional support networks established in accordance with chapter 71.24 RCW shall institute procedures which require timely consultation with resource management services by \*county-designated mental health professionals and evaluation and treatment facilities to assure that determinations to admit, detain, commit, treat, discharge, or release persons with mental disorders under this chapter are made only after appropriate information regarding such person's treatment history and current treatment plan has been sought from resource management services. [2000 c 94 § 2; 1989 c 205 § 9.]

**\*Reviser's note:** The term "county designated mental health professional" as defined in RCW 71.05.020 was changed to "designated mental health professional" by 2005 c 504 § 104.

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

(2010 Ed.)

**71.05.026 Regional support networks contracts—Limitation on state liability.** (1) Except for monetary damage claims which have been reduced to final judgment by a superior court, this section applies to all claims against the state, state agencies, state officials, or state employees that exist on or arise after March 29, 2006.

(2) Except as expressly provided in contracts entered into between the department and the regional support networks after March 29, 2006, the entities identified in subsection (3) of this section shall have no claim for declaratory relief, injunctive relief, judicial review under chapter 34.05 RCW, or civil liability against the state or state agencies for actions or inactions performed pursuant to the administration of this chapter with regard to the following: (a) The allocation or payment of federal or state funds; (b) the use or allocation of state hospital beds; or (c) financial responsibility for the provision of inpatient mental health care.

(3) This section applies to counties, regional support networks, and entities which contract to provide regional support network services and their subcontractors, agents, or employees. [2006 c 333 § 301.]

**Finding—Purpose—Intent—Severability—Part headings not law—Effective dates—2006 c 333:** See notes following RCW 71.24.016.

**71.05.027 Integrated comprehensive screening and assessment for chemical dependency and mental disorders.** (1) Not later than January 1, 2007, all persons providing treatment under this chapter shall also implement the integrated comprehensive screening and assessment process for chemical dependency and mental disorders adopted pursuant to RCW 70.96C.010 and shall document the numbers of clients with co-occurring mental and substance abuse disorders based on a quadrant system of low and high needs.

(2) Treatment providers and regional support networks who fail to implement the integrated comprehensive screening and assessment process for chemical dependency and mental disorders by July 1, 2007, shall be subject to contractual penalties established under RCW 70.96C.010. [2005 c 504 § 103.]

**Findings—Intent—2005 c 504:** "The legislature finds that persons with mental disorders, chemical dependency disorders, or co-occurring mental and substance abuse disorders are disproportionately more likely to be confined in a correctional institution, become homeless, become involved with child protective services or involved in a dependency proceeding, or lose those state and federal benefits to which they may be entitled as a result of their disorders. The legislature finds that prior state policy of addressing mental health and chemical dependency in isolation from each other has not been cost-effective and has often resulted in longer-term, more costly treatment that may be less effective over time. The legislature finds that a substantial number of persons have co-occurring mental and substance abuse disorders and that identification and integrated treatment of co-occurring disorders is critical to successful outcomes and recovery. Consequently, the legislature intends, to the extent of available funding, to:

(1) Establish a process for determining which persons with mental disorders and substance abuse disorders have co-occurring disorders;

(2) Reduce the gap between available chemical dependency treatment and the documented need for treatment;

(3) Improve treatment outcomes by shifting treatment, where possible, to evidence-based, research-based, and consensus-based treatment practices and by removing barriers to the use of those practices;

(4) Expand the authority for and use of therapeutic courts including drug courts, mental health courts, and therapeutic courts for dependency proceedings;

(5) Improve access to treatment for persons who are not enrolled in medicaid by improving and creating consistency in the application processes, and by minimizing the numbers of eligible confined persons who

leave confinement without medical assistance;

(6) Improve access to inpatient treatment by creating expanded services facilities for persons needing intensive treatment in a secure setting who do not need inpatient care, but are unable to access treatment under current licensing restrictions in other settings;

(7) Establish secure detoxification centers for persons involuntarily detained as gravely disabled or presenting a likelihood of serious harm due to chemical dependency and authorize combined crisis responders for both mental disorders and chemical dependency disorders on a pilot basis and study the outcomes;

(8) Slow or stop the loss of inpatient and intensive residential beds and children's long-term inpatient placements and refine the balance of state hospital and community inpatient and residential beds;

(9) Improve cross-system collaboration including collaboration with first responders and hospital emergency rooms, schools, primary care, developmental disabilities, law enforcement and corrections, and federally funded and licensed programs;

(10) Following the receipt of outcomes from the pilot programs in Part II of this act, if directed by future legislative enactment, implement a single, comprehensive, involuntary treatment act with a unified set of standards, rights, obligations, and procedures for adults and children with mental disorders, chemical dependency disorders, and co-occurring disorders; and

(11) Amend existing state law to address organizational and structural barriers to effective use of state funds for treating persons with mental and substance abuse disorders, minimize internal inconsistencies, clarify policy and requirements, and maximize the opportunity for effective and cost-effective outcomes." [2005 c 504 § 101.]

**Severability—2005 c 504:** "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [2005 c 504 § 807.]

**Application—Construction—2005 c 504:** "This act shall be so applied and construed as to effectuate its general purpose to make uniform the law with respect to the subject of this act among those states which enact it." [2005 c 504 § 808.]

**Captions, part headings, subheadings not law—2005 c 504:** "Captions, part headings, and subheadings used in this act are not part of the law." [2005 c 504 § 809.]

**Adoption of rules—2005 c 504:** "(1) The secretary of the department of social and health services may adopt rules as necessary to implement the provisions of this act.

(2) The secretary of corrections may adopt rules as necessary to implement the provisions of this act." [2005 c 504 § 812.]

**Effective dates—2005 c 504:** "(1) Except for section 503 of this act, this act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 2005.

(2) Section 503 of this act takes effect July 1, 2006." [2005 c 504 § 813.]

**Alphabetization—Correction of references—2005 c 504:** See note following RCW 71.05.020.

**71.05.030 Commitment laws applicable.** Persons suffering from a mental disorder may not be involuntarily committed for treatment of such disorder except pursuant to provisions of this chapter, chapter 10.77 RCW, chapter 71.06 RCW, chapter 71.34 RCW, transfer pursuant to RCW 72.68.031 through 72.68.037, or pursuant to court ordered evaluation and treatment not to exceed ninety days pending a criminal trial or sentencing. [1998 c 297 § 4; 1985 c 354 § 31; 1983 c 3 § 179; 1974 ex.s. c 145 § 4; 1973 2nd ex.s. c 24 § 2; 1973 1st ex.s. c 142 § 8.]

**Effective dates—Severability—Intent—1998 c 297:** See notes following RCW 71.05.010.

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**71.05.032 Joinder of petitions for commitment.** A petition for commitment under this chapter may be joined

with a petition for commitment under chapter 70.96A RCW. [2005 c 504 § 115.]

**Findings—Intent—Severability—Application—Construction—Captions, part headings, subheadings not law—Adoption of rules—Effective dates—2005 c 504:** See notes following RCW 71.05.027.

**Alphabetization—Correction of references—2005 c 504:** See note following RCW 71.05.020.

**71.05.040 Detention or judicial commitment of persons with developmental disabilities, impaired by chronic alcoholism or drug abuse, or suffering from dementia.** Persons who are developmentally disabled, impaired by chronic alcoholism or drug abuse, or suffering from dementia shall not be detained for evaluation and treatment or judicially committed solely by reason of that condition unless such condition causes a person to be gravely disabled or as a result of a mental disorder such condition exists that constitutes a likelihood of serious harm: Provided however, That persons who are developmentally disabled, impaired by chronic alcoholism or drug abuse, or suffering from dementia and who otherwise meet the criteria for detention or judicial commitment are not ineligible for detention or commitment based on this condition alone. [2004 c 166 § 2; 1997 c 112 § 4; 1987 c 439 § 1; 1977 ex.s. c 80 § 41; 1975 1st ex.s. c 199 § 1; 1974 ex.s. c 145 § 5; 1973 1st ex.s. c 142 § 9.]

**Severability—2004 c 166:** "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [2004 c 166 § 23.]

**Effective dates—2004 c 166:** "This act takes effect July 1, 2004, except for sections 6, 20, and 22 of this act, which are necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and take effect immediately [March 26, 2004]." [2004 c 166 § 24.]

**Purpose—Intent—Severability—1977 ex.s. c 80:** See notes following RCW 4.16.190.

**71.05.050 Voluntary application for mental health services—Rights—Review of condition and status—Detention—Person refusing voluntary admission, temporary detention.** Nothing in this chapter shall be construed to limit the right of any person to apply voluntarily to any public or private agency or practitioner for treatment of a mental disorder, either by direct application or by referral. Any person voluntarily admitted for inpatient treatment to any public or private agency shall be released immediately upon his or her request. Any person voluntarily admitted for inpatient treatment to any public or private agency shall orally be advised of the right to immediate discharge, and further advised of such rights in writing as are secured to them pursuant to this chapter and their rights of access to attorneys, courts, and other legal redress. Their condition and status shall be reviewed at least once each one hundred eighty days for evaluation as to the need for further treatment or possible discharge, at which time they shall again be advised of their right to discharge upon request: PROVIDED HOWEVER, That if the professional staff of any public or private agency or hospital regards a person voluntarily admitted who requests discharge as presenting, as a result of a mental disorder, an imminent likelihood of serious harm, or is gravely disabled, they may detain such person for sufficient time to notify the \*county designated mental health professional of

such person's condition to enable the \*county designated mental health professional to authorize such person being further held in custody or transported to an evaluation and treatment center pursuant to the provisions of this chapter, which shall in ordinary circumstances be no later than the next judicial day: PROVIDED FURTHER, That if a person is brought to the emergency room of a public or private agency or hospital for observation or treatment, the person refuses voluntary admission, and the professional staff of the public or private agency or hospital regard such person as presenting as a result of a mental disorder an imminent likelihood of serious harm, or as presenting an imminent danger because of grave disability, they may detain such person for sufficient time to notify the \*county designated mental health professional of such person's condition to enable the \*county designated mental health professional to authorize such person being further held in custody or transported to an evaluation treatment center pursuant to the conditions in this chapter, but which time shall be no more than six hours from the time the professional staff determine that an evaluation by the \*county designated mental health professional is necessary. [2000 c 94 § 3; 1998 c 297 § 6; 1997 c 112 § 5; 1979 ex.s. c 215 § 6; 1975 1st ex.s. c 199 § 2; 1974 ex.s. c 145 § 6; 1973 1st ex.s. c 142 § 10.]

**\*Reviser's note:** The term "county designated mental health professional" as defined in RCW 71.05.020 was changed to "designated mental health professional" by 2005 c 504 § 104.

**Effective dates—Severability—Intent—1998 c 297:** See notes following RCW 71.05.010.

**71.05.100 Financial responsibility.** In addition to the responsibility provided for by RCW 43.20B.330, any person, or his or her estate, or his or her spouse, or the parents of a minor person who is involuntarily detained pursuant to this chapter for the purpose of treatment and evaluation outside of a facility maintained and operated by the department shall be responsible for the cost of such care and treatment. In the event that an individual is unable to pay for such treatment or in the event payment would result in a substantial hardship upon the individual or his or her family, then the county of residence of such person shall be responsible for such costs. If it is not possible to determine the county of residence of the person, the cost shall be borne by the county where the person was originally detained. The department shall, pursuant to chapter 34.05 RCW, adopt standards as to (1) inability to pay in whole or in part, (2) a definition of substantial hardship, and (3) appropriate payment schedules. Such standards shall be applicable to all county mental health administrative boards. Financial responsibility with respect to department services and facilities shall continue to be as provided in RCW 43.20B.320 through 43.20B.360 and 43.20B.370. [1997 c 112 § 6; 1987 c 75 § 18; 1973 2nd ex.s. c 24 § 4; 1973 1st ex.s. c 142 § 15.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**71.05.110 Compensation of appointed counsel.** Attorneys appointed for persons pursuant to this chapter shall be compensated for their services as follows: (1) The person for whom an attorney is appointed shall, if he or she is financially able pursuant to standards as to financial capability and indigency set by the superior court of the county in which the pro-

(2010 Ed.)

ceeding is held, bear the costs of such legal services; (2) if such person is indigent pursuant to such standards, the costs of such services shall be borne by the county in which the proceeding is held, subject however to the responsibility for costs provided in \*RCW 71.05.320(2). [1997 c 112 § 7; 1973 1st ex.s. c 142 § 16.]

**\*Reviser's note:** RCW 71.05.320 was amended by 2006 c 333 § 304, changing subsection (2) to subsection (3).

**71.05.120 Exemptions from liability.** (1) No officer of a public or private agency, nor the superintendent, professional person in charge, his or her professional designee, or attending staff of any such agency, nor any public official performing functions necessary to the administration of this chapter, nor peace officer responsible for detaining a person pursuant to this chapter, nor any \*county designated mental health professional, nor the state, a unit of local government, or an evaluation and treatment facility shall be civilly or criminally liable for performing duties pursuant to this chapter with regard to the decision of whether to admit, discharge, release, administer antipsychotic medications, or detain a person for evaluation and treatment: PROVIDED, That such duties were performed in good faith and without gross negligence.

(2) This section does not relieve a person from giving the required notices under RCW 71.05.330(2) or 71.05.340(1)(b), or the duty to warn or to take reasonable precautions to provide protection from violent behavior where the patient has communicated an actual threat of physical violence against a reasonably identifiable victim or victims. The duty to warn or to take reasonable precautions to provide protection from violent behavior is discharged if reasonable efforts are made to communicate the threat to the victim or victims and to law enforcement personnel. [2000 c 94 § 4; 1991 c 105 § 2; 1989 c 120 § 3; 1987 c 212 § 301; 1979 ex.s. c 215 § 7; 1974 ex.s. c 145 § 7; 1973 2nd ex.s. c 24 § 5; 1973 1st ex.s. c 142 § 17.]

**\*Reviser's note:** The term "county designated mental health professional" as defined in RCW 71.05.020 was changed to "designated mental health professional" by 2005 c 504 § 104.

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**71.05.130 Duties of prosecuting attorney and attorney general.** In any judicial proceeding for involuntary commitment or detention, or in any proceeding challenging such commitment or detention, the prosecuting attorney for the county in which the proceeding was initiated shall represent the individuals or agencies petitioning for commitment or detention and shall defend all challenges to such commitment or detention: PROVIDED, That the attorney general shall represent and provide legal services and advice to state hospitals or institutions with regard to all provisions of and proceedings under this chapter except in proceedings initiated by such hospitals and institutions seeking fourteen day detention. [1998 c 297 § 7; 1991 c 105 § 3; 1989 c 120 § 4; 1979 ex.s. c 215 § 8; 1973 1st ex.s. c 142 § 18.]

**Effective dates—Severability—Intent—1998 c 297:** See notes following RCW 71.05.010.

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**71.05.132 Court-ordered treatment—Required notifications.** When any court orders a person to receive treatment under this chapter, the order shall include a statement that if the person is, or becomes, subject to supervision by the department of corrections, the person must notify the treatment provider and the person's mental health treatment information must be shared with the department of corrections for the duration of the offender's incarceration and supervision, under RCW 71.05.445. Upon a petition by a person who does not have a history of one or more violent acts, the court may, for good cause, find that public safety would not be enhanced by the sharing of this person's information. [2004 c 166 § 12.]

**Severability—Effective dates—2004 c 166:** See notes following RCW 71.05.040.

**71.05.135 Mental health commissioners—Appointment.** In each county the superior court may appoint the following persons to assist the superior court in disposing of its business: PROVIDED, That such positions may not be created without prior consent of the county legislative authority:

(1) One or more attorneys to act as mental health commissioners; and

(2) Such investigators, stenographers, and clerks as the court shall find necessary to carry on the work of the mental health commissioners.

The appointments provided for in this section shall be made by a majority vote of the judges of the superior court of the county and may be in addition to all other appointments of commissioners and other judicial attaches otherwise authorized by law. Mental health commissioners and investigators shall serve at the pleasure of the judges appointing them and shall receive such compensation as the county legislative authority shall determine. The appointments may be full or part-time positions. A person appointed as a mental health commissioner may also be appointed to any other commissioner position authorized by law. [1993 c 15 § 2; 1991 c 363 § 146; 1989 c 174 § 1.]

**Purpose—Captions not law—1991 c 363:** See notes following RCW 2.32.180.

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**71.05.137 Mental health commissioners—Authority.** The judges of the superior court of the county by majority vote may authorize mental health commissioners, appointed pursuant to RCW 71.05.135, to perform any or all of the following duties:

(1) Receive all applications, petitions, and proceedings filed in the superior court for the purpose of disposing of them pursuant to this chapter;

(2) Investigate the facts upon which to base warrants, subpoenas, orders to directions in actions, or proceedings filed pursuant to this chapter;

(3) For the purpose of this chapter, exercise all powers and perform all the duties of a court commissioner appointed pursuant to RCW 2.24.010;

(4) Hold hearings in proceedings under this chapter and make written reports of all proceedings under this chapter which shall become a part of the record of superior court;

(5) Provide such supervision in connection with the exercise of its jurisdiction as may be ordered by the presiding judge; and

(6) Cause the orders and findings to be entered in the same manner as orders and findings are entered in cases in the superior court. [1989 c 174 § 2.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**71.05.140 Records maintained.** A record of all applications, petitions, and proceedings under this chapter shall be maintained by the county clerk in which the application, petition, or proceeding was initiated. [1973 1st ex.s. c 142 § 19.]

**71.05.145 Offenders with mental illness who are believed to be dangerous—Less restrictive alternative.** The legislature intends that, when evaluating a person who is identified under RCW 72.09.370(7), the professional person at the evaluation and treatment facility shall, when appropriate after consideration of the person's mental condition and relevant public safety concerns, file a petition for a ninety-day less restrictive alternative in lieu of a petition for a fourteen-day commitment. [1999 c 214 § 4.]

**Intent—Effective date—1999 c 214:** See notes following RCW 72.09.370.

**71.05.150 Detention of persons with mental disorders for evaluation and treatment—Procedure.** (1) When a designated mental health professional receives information alleging that a person, as a result of a mental disorder: (i) Presents a likelihood of serious harm; or (ii) is gravely disabled; the designated mental health professional may, after investigation and evaluation of the specific facts alleged and of the reliability and credibility of any person providing information to initiate detention, if satisfied that the allegations are true and that the person will not voluntarily seek appropriate treatment, file a petition for initial detention. Before filing the petition, the designated mental health professional must personally interview the person, unless the person refuses an interview, and determine whether the person will voluntarily receive appropriate evaluation and treatment at an evaluation and treatment facility or in a crisis stabilization unit.

(2)(a) An order to detain to a designated evaluation and treatment facility for not more than a seventy-two-hour evaluation and treatment period may be issued by a judge of the superior court upon request of a designated mental health professional, whenever it appears to the satisfaction of a judge of the superior court:

(i) That there is probable cause to support the petition; and

(ii) That the person has refused or failed to accept appropriate evaluation and treatment voluntarily.

(b) The petition for initial detention, signed under penalty of perjury, or sworn telephonic testimony may be considered by the court in determining whether there are sufficient grounds for issuing the order.

(c) The order shall designate retained counsel or, if counsel is appointed from a list provided by the court, the name, business address, and telephone number of the attorney appointed to represent the person.

(3) The designated mental health professional shall then serve or cause to be served on such person, his or her guardian, and conservator, if any, a copy of the order together with a notice of rights, and a petition for initial detention. After service on such person the designated mental health professional shall file the return of service in court and provide copies of all papers in the court file to the evaluation and treatment facility and the designated attorney. The designated mental health professional shall notify the court and the prosecuting attorney that a probable cause hearing will be held within seventy-two hours of the date and time of outpatient evaluation or admission to the evaluation and treatment facility. The person shall be permitted to be accompanied by one or more of his or her relatives, friends, an attorney, a personal physician, or other professional or religious advisor to the place of evaluation. An attorney accompanying the person to the place of evaluation shall be permitted to be present during the admission evaluation. Any other individual accompanying the person may be present during the admission evaluation. The facility may exclude the individual if his or her presence would present a safety risk, delay the proceedings, or otherwise interfere with the evaluation.

(4) The designated mental health professional may notify a peace officer to take such person or cause such person to be taken into custody and placed in an evaluation and treatment facility. At the time such person is taken into custody there shall commence to be served on such person, his or her guardian, and conservator, if any, a copy of the original order together with a notice of rights and a petition for initial detention. [2007 c 375 § 7; 1998 c 297 § 8; 1997 c 112 § 8; 1984 c 233 § 1; 1979 ex.s. c 215 § 9; 1975 1st ex.s. c 199 § 3; 1974 ex.s. c 145 § 8; 1973 1st ex.s. c 142 § 20.]

**Findings—Purpose—Construction—Severability—2007 c 375:** See notes following RCW 10.31.110.

**Captions not law—2007 c 375:** See note following RCW 10.77.084.

**Effective dates—Severability—Intent—1998 c 297:** See notes following RCW 71.05.010.

**71.05.153 Emergent detention of persons with mental disorders—Procedure.** (1) When a designated mental health professional receives information alleging that a person, as the result of a mental disorder, presents an imminent likelihood of serious harm, or is in imminent danger because of being gravely disabled, after investigation and evaluation of the specific facts alleged and of the reliability and credibility of the person or persons providing the information if any, the designated mental health professional may take such person, or cause by oral or written order such person to be taken into emergency custody in an evaluation and treatment facility for not more than seventy-two hours as described in RCW 71.05.180.

(2) A peace officer may take or cause such person to be taken into custody and immediately delivered to a crisis stabilization unit, an evaluation and treatment facility, or the emergency department of a local hospital under the following circumstances:

- (a) Pursuant to subsection (1) of this section; or
- (b) When he or she has reasonable cause to believe that such person is suffering from a mental disorder and presents an imminent likelihood of serious harm or is in imminent danger because of being gravely disabled.

(2010 Ed.)

(3) Persons delivered to a crisis stabilization unit, evaluation and treatment facility, or the emergency department of a local hospital by peace officers pursuant to subsection (2) of this section may be held by the facility for a period of up to twelve hours: PROVIDED, That they are examined by a mental health professional within three hours of their arrival. Within twelve hours of their arrival, the designated mental health professional must determine whether the individual meets detention criteria. If the individual is detained, the designated mental health professional shall file a petition for detention or a supplemental petition as appropriate and commence service on the designated attorney for the detained person. [2007 c 375 § 8.]

**Findings—Purpose—Construction—Severability—2007 c 375:** See notes following RCW 10.31.110.

**Captions not law—2007 c 375:** See note following RCW 10.77.084.

**71.05.157 Evaluation by designated mental health professional—When required—Required notifications.**

(1) When a designated mental health professional is notified by a jail that a defendant or offender who was subject to a discharge review under RCW 71.05.232 is to be released to the community, the designated mental health professional shall evaluate the person within seventy-two hours of release.

(2) When an offender is under court-ordered treatment in the community and the supervision of the department of corrections, and the treatment provider becomes aware that the person is in violation of the terms of the court order, the treatment provider shall notify the designated mental health professional and the department of corrections of the violation and request an evaluation for purposes of revocation of the less restrictive alternative.

(3) When a designated mental health professional becomes aware that an offender who is under court-ordered treatment in the community and the supervision of the department of corrections is in violation of a treatment order or a condition of supervision that relates to public safety, or the designated mental health professional detains a person under this chapter, the designated mental health professional shall notify the person's treatment provider and the department of corrections.

(4) When an offender who is confined in a state correctional facility or is under supervision of the department of corrections in the community is subject to a petition for involuntary treatment under this chapter, the petitioner shall notify the department of corrections and the department of corrections shall provide documentation of its risk assessment or other concerns to the petitioner and the court if the department of corrections classified the offender as a high risk or high needs offender.

(5) Nothing in this section creates a duty on any treatment provider or designated mental health professional to provide offender supervision.

(6) No jail or state correctional facility may be considered a less restrictive alternative to an evaluation and treatment facility. [2007 c 375 § 9; 2005 c 504 § 507; 2004 c 166 § 16.]

**Findings—Purpose—Construction—Severability—2007 c 375:** See notes following RCW 10.31.110.

**Findings—Intent—Severability—Application—Construction—Captions, part headings, subheadings not law—Adoption of rules—Effective dates—2005 c 504:** See notes following RCW 71.05.027.

**Alphabetization—Correction of references—2005 c 504:** See note following RCW 71.05.020.

**Severability—Effective dates—2004 c 166:** See notes following RCW 71.05.040.

**71.05.160 Petition for initial detention.** Any facility receiving a person pursuant to RCW 71.05.150 or 71.05.153 shall require the designated mental health professional to prepare a petition for initial detention stating the circumstances under which the person's condition was made known and stating that there is evidence, as a result of his or her personal observation or investigation, that the actions of the person for which application is made constitute a likelihood of serious harm, or that he or she is gravely disabled, and stating the specific facts known to him or her as a result of his or her personal observation or investigation, upon which he or she bases the belief that such person should be detained for the purposes and under the authority of this chapter.

If a person is involuntarily placed in an evaluation and treatment facility pursuant to RCW 71.05.150 or 71.05.153, on the next judicial day following the initial detention, the designated mental health professional shall file with the court and serve the designated attorney of the detained person the petition or supplemental petition for initial detention, proof of service of notice, and a copy of a notice of emergency detention. [2007 c 375 § 13; 1998 c 297 § 9; 1997 c 112 § 10; 1974 ex.s. c 145 § 9; 1973 1st ex.s. c 142 § 21.]

**Findings—Purpose—Construction—Severability—2007 c 375:** See notes following RCW 10.31.110.

**Effective dates—Severability—Intent—1998 c 297:** See notes following RCW 71.05.010.

**71.05.170 Acceptance of petition—Notice—Duty of state hospital.** Whenever the \*county designated mental health professional petitions for detention of a person whose actions constitute a likelihood of serious harm, or who is gravely disabled, the facility providing seventy-two hour evaluation and treatment must immediately accept on a provisional basis the petition and the person. The facility shall then evaluate the person's condition and admit, detain, transfer, or discharge such person in accordance with RCW 71.05.210. The facility shall notify in writing the court and the \*county designated mental health professional of the date and time of the initial detention of each person involuntarily detained in order that a probable cause hearing shall be held no later than seventy-two hours after detention.

The duty of a state hospital to accept persons for evaluation and treatment under this section shall be limited by chapter 71.24 RCW. [2000 c 94 § 5; 1998 c 297 § 10; 1997 c 112 § 11; 1989 c 205 § 10; 1974 ex.s. c 145 § 10; 1973 1st ex.s. c 142 § 22.]

**\*Reviser's note:** The term "county designated mental health professional" as defined in RCW 71.05.020 was changed to "designated mental health professional" by 2005 c 504 § 104.

**Effective dates—Severability—Intent—1998 c 297:** See notes following RCW 71.05.010.

**71.05.180 Detention period for evaluation and treatment.** If the evaluation and treatment facility admits the per-

son, it may detain him or her for evaluation and treatment for a period not to exceed seventy-two hours from the time of acceptance as set forth in RCW 71.05.170. The computation of such seventy-two hour period shall exclude Saturdays, Sundays and holidays. [1997 c 112 § 12; 1979 ex.s. c 215 § 11; 1974 ex.s. c 145 § 11; 1973 1st ex.s. c 142 § 23.]

**71.05.190 Persons not admitted—Transportation—Detention of arrested person pending return to custody.** If the person is not approved for admission by a facility providing seventy-two hour evaluation and treatment, and the individual has not been arrested, the facility shall furnish transportation, if not otherwise available, for the person to his or her place of residence or other appropriate place. If the individual has been arrested, the evaluation and treatment facility shall detain the individual for not more than eight hours at the request of the peace officer in order to enable a peace officer to return to the facility and take the individual back into custody. [1997 c 112 § 13; 1979 ex.s. c 215 § 12; 1974 ex.s. c 145 § 12; 1973 1st ex.s. c 142 § 24.]

**71.05.195 Not guilty by reason of insanity—Detention of persons who have fled from state of origin—Probable cause hearing.** (1) A civil commitment may be initiated under the procedures described in RCW 71.05.150 or 71.05.153 for a person who has been found not guilty by reason of insanity in a state other than Washington and who has fled from detention, commitment, or conditional release in that state, on the basis of a request by the state in which the person was found not guilty by reason of insanity for the person to be detained and transferred back to the custody or care of the requesting state. A finding of likelihood of serious harm or grave disability is not required for a commitment under this section. The detention may occur at either an evaluation and treatment facility or a state hospital. The petition for seventy-two hour detention filed by the designated mental health professional must be accompanied by the following documents:

(a) A copy of an order for detention, commitment, or conditional release of the person in a state other than Washington on the basis of a judgment of not guilty by reason of insanity;

(b) A warrant issued by a magistrate in the state in which the person was found not guilty by reason of insanity indicating that the person has fled from detention, commitment, or conditional release in that state and authorizing the detention of the person within the state in which the person was found not guilty by reason of insanity;

(c) A statement from the executive authority of the state in which the person was found not guilty by reason of insanity requesting that the person be returned to the requesting state and agreeing to facilitate the transfer of the person to the requesting state.

(2) The person shall be entitled to a probable cause hearing within the time limits applicable to other detentions under this chapter and shall be afforded the rights described in this chapter including the right to counsel. At the probable cause hearing, the court shall determine the identity of the person and whether the other requirements of this section are met. If the court so finds, the court may order continued detention in

a treatment facility for up to thirty days for the purpose of the transfer of the person to the custody or care of the requesting state. The court may order a less restrictive alternative to detention only under conditions which ensure the person's safe transfer to the custody or care of the requesting state within thirty days without undue risk to the safety of the person or others.

(3) For the purposes of this section, "not guilty by reason of insanity" shall be construed to include any provision of law which is generally equivalent to a finding of criminal insanity within the state of Washington; and "state" shall be construed to mean any state, district, or territory of the United States. [2010 c 208 § 1.]

**71.05.210 Evaluation—Treatment and care—Release or other disposition.** Each person involuntarily detained and accepted or admitted at an evaluation and treatment facility (1) shall, within twenty-four hours of his or her admission or acceptance at the facility, be examined and evaluated by (a) a licensed physician who may be assisted by a physician assistant according to chapter 18.71A RCW and a mental health professional, (b) an advanced registered nurse practitioner according to chapter 18.79 RCW and a mental health professional, or (c) a licensed physician and a psychiatric advanced registered nurse practitioner and (2) shall receive such treatment and care as his or her condition requires including treatment on an outpatient basis for the period that he or she is detained, except that, beginning twenty-four hours prior to a trial or hearing pursuant to RCW 71.05.215, 71.05.240, 71.05.310, 71.05.320, 71.05.340, or 71.05.217, the individual may refuse psychiatric medications, but may not refuse: (a) Any other medication previously prescribed by a person licensed under Title 18 RCW; or (b) emergency lifesaving treatment, and the individual shall be informed at an appropriate time of his or her right of such refusal. The person shall be detained up to seventy-two hours, if, in the opinion of the professional person in charge of the facility, or his or her professional designee, the person presents a likelihood of serious harm, or is gravely disabled. A person who has been detained for seventy-two hours shall no later than the end of such period be released, unless referred for further care on a voluntary basis, or detained pursuant to court order for further treatment as provided in this chapter.

If, after examination and evaluation, the mental health professional and licensed physician or psychiatric advanced registered nurse practitioner determine that the initial needs of the person would be better served by placement in a chemical dependency treatment facility, then the person shall be referred to an approved treatment program defined under RCW 70.96A.020.

An evaluation and treatment center admitting or accepting any person pursuant to this chapter whose physical condition reveals the need for hospitalization shall assure that such person is transferred to an appropriate hospital for evaluation or admission for treatment. Notice of such fact shall be given to the court, the designated attorney, and the designated mental health professional and the court shall order such continuance in proceedings under this chapter as may be necessary, but in no event may this continuance be more than fourteen days. [2009 c 217 § 1; 2000 c 94 § 6; 1998 c 297 § 12; 1997

(2010 Ed.)

c 112 § 15; 1994 sp.s. c 9 § 747. Prior: 1991 c 364 § 11; 1991 c 105 § 4; 1989 c 120 § 6; 1987 c 439 § 2; 1975 1st ex.s. c 199 § 4; 1974 ex.s. c 145 § 14; 1973 1st ex.s. c 142 § 26.]

**Effective dates—Severability—Intent—1998 c 297:** See notes following RCW 71.05.010.

**Findings—Construction—Conflict with federal requirements—1991 c 364:** See notes following RCW 70.96A.020.

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**71.05.212 Evaluation—Consideration of information and records. (Effective until January 1, 2012.)** Whenever a \*county designated mental health professional or professional person is conducting an evaluation under this chapter, consideration shall include all reasonably available information and records regarding: (1) Prior recommendations for evaluation of the need for civil commitments when the recommendation is made pursuant to an evaluation conducted under chapter 10.77 RCW; (2) history of one or more violent acts; (3) prior determinations of incompetency or insanity under chapter 10.77 RCW; and (4) prior commitments under this chapter.

In addition, when conducting an evaluation for offenders identified under RCW 72.09.370, the \*county designated mental health professional or professional person shall consider an offender's history of judicially required or administratively ordered antipsychotic medication while in confinement. [1999 c 214 § 5; 1998 c 297 § 19.]

**\*Reviser's note:** The term "county designated mental health professional" as defined in RCW 71.05.020 was changed to "designated mental health professional" by 2005 c 504 § 104.

**Intent—Effective date—1999 c 214:** See notes following RCW 72.09.370.

**Effective dates—Severability—Intent—1998 c 297:** See notes following RCW 71.05.010.

**71.05.212 Evaluation—Consideration of information and records. (Effective January 1, 2012.)** (1) Whenever a designated mental health professional or professional person is conducting an evaluation under this chapter, consideration shall include all reasonably available information from credible witnesses and records regarding:

(a) Prior recommendations for evaluation of the need for civil commitments when the recommendation is made pursuant to an evaluation conducted under chapter 10.77 RCW;

(b) Historical behavior, including history of one or more violent acts;

(c) Prior determinations of incompetency or insanity under chapter 10.77 RCW; and

(d) Prior commitments under this chapter.

(2) Credible witnesses may include family members, landlords, neighbors, or others with significant contact and history of involvement with the person. If the designated mental health professional relies upon information from a credible witness in reaching his or her decision to detain the individual, then he or she must provide contact information for any such witness to the prosecutor. The designated mental health professional or prosecutor shall provide notice of the date, time, and location of the probable cause hearing to such a witness.

(3) Symptoms and behavior of the respondent which standing alone would not justify civil commitment may sup-

port a finding of grave disability or likelihood of serious harm when:

(a) Such symptoms or behavior are closely associated with symptoms or behavior which preceded and led to a past incident of involuntary hospitalization, severe deterioration, or one or more violent acts;

(b) These symptoms or behavior represent a marked and concerning change in the baseline behavior of the respondent; and

(c) Without treatment, the continued deterioration of the respondent is probable.

(4) When conducting an evaluation for offenders identified under RCW 72.09.370, the designated mental health professional or professional person shall consider an offender's history of judicially required or administratively ordered antipsychotic medication while in confinement. [2010 c 280 § 2; 1999 c 214 § 5; 1998 c 297 § 19.]

**Effective date—2010 c 280 §§ 2 and 3:** "Sections 2 and 3 of this act take effect January 1, 2012." [2010 c 280 § 5.]

**Intent—Effective date—1999 c 214:** See notes following RCW 72.09.370.

**Effective dates—Severability—Intent—1998 c 297:** See notes following RCW 71.05.010.

**71.05.214 Protocols—Development—Submission to governor and legislature.** The department shall develop statewide protocols to be utilized by professional persons and \*county designated mental health professionals in administration of this chapter and chapter 10.77 RCW. The protocols shall be updated at least every three years. The protocols shall provide uniform development and application of criteria in evaluation and commitment recommendations, of persons who have, or are alleged to have, mental disorders and are subject to this chapter.

The initial protocols shall be developed not later than September 1, 1999. The department shall develop and update the protocols in consultation with representatives of \*county designated mental health professionals, local government, law enforcement, county and city prosecutors, public defenders, and groups concerned with mental illness. The protocols shall be submitted to the governor and legislature upon adoption by the department. [1998 c 297 § 26.]

**\*Reviser's note:** The term "county designated mental health professional" as defined in RCW 71.05.020 was changed to "designated mental health professional" by 2005 c 504 § 104.

**Effective dates—Severability—Intent—1998 c 297:** See notes following RCW 71.05.010.

**71.05.215 Right to refuse antipsychotic medicine—Rules.** (1) A person found to be gravely disabled or presents a likelihood of serious harm as a result of a mental disorder has a right to refuse antipsychotic medication unless it is determined that the failure to medicate may result in a likelihood of serious harm or substantial deterioration or substantially prolong the length of involuntary commitment and there is no less intrusive course of treatment than medication in the best interest of that person.

(2) The department shall adopt rules to carry out the purposes of this chapter. These rules shall include:

(a) An attempt to obtain the informed consent of the person prior to administration of antipsychotic medication.

(b) For short-term treatment up to thirty days, the right to refuse antipsychotic medications unless there is an additional concurring medical opinion approving medication by a psychiatrist, psychiatric advanced registered nurse practitioner, or physician in consultation with a mental health professional with prescriptive authority.

(c) For continued treatment beyond thirty days through the hearing on any petition filed under RCW 71.05.217, the right to periodic review of the decision to medicate by the medical director or designee.

(d) Administration of antipsychotic medication in an emergency and review of this decision within twenty-four hours. An emergency exists if the person presents an imminent likelihood of serious harm, and medically acceptable alternatives to administration of antipsychotic medications are not available or are unlikely to be successful; and in the opinion of the physician or psychiatric advanced registered nurse practitioner, the person's condition constitutes an emergency requiring the treatment be instituted prior to obtaining a second medical opinion.

(e) Documentation in the medical record of the attempt by the physician or psychiatric advanced registered nurse practitioner to obtain informed consent and the reasons why antipsychotic medication is being administered over the person's objection or lack of consent. [2008 c 156 § 2; 1997 c 112 § 16; 1991 c 105 § 1.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**71.05.217 Rights—Posting of list.** Insofar as danger to the individual or others is not created, each person involuntarily detained, treated in a less restrictive alternative course of treatment, or committed for treatment and evaluation pursuant to this chapter shall have, in addition to other rights not specifically withheld by law, the following rights, a list of which shall be prominently posted in all facilities, institutions, and hospitals providing such services:

(1) To wear his or her own clothes and to keep and use his or her own personal possessions, except when deprivation of same is essential to protect the safety of the resident or other persons;

(2) To keep and be allowed to spend a reasonable sum of his or her own money for canteen expenses and small purchases;

(3) To have access to individual storage space for his or her private use;

(4) To have visitors at reasonable times;

(5) To have reasonable access to a telephone, both to make and receive confidential calls;

(6) To have ready access to letter writing materials, including stamps, and to send and receive uncensored correspondence through the mails;

(7) Not to consent to the administration of antipsychotic medications beyond the hearing conducted pursuant to RCW 71.05.320(3) or the performance of electroconvulsant therapy or surgery, except emergency life-saving surgery, unless ordered by a court of competent jurisdiction pursuant to the following standards and procedures:

(a) The administration of antipsychotic medication or electroconvulsant therapy shall not be ordered unless the petitioning party proves by clear, cogent, and convincing evi-

dence that there exists a compelling state interest that justifies overriding the patient's lack of consent to the administration of antipsychotic medications or electroconvulsant therapy, that the proposed treatment is necessary and effective, and that medically acceptable alternative forms of treatment are not available, have not been successful, or are not likely to be effective.

(b) The court shall make specific findings of fact concerning: (i) The existence of one or more compelling state interests; (ii) the necessity and effectiveness of the treatment; and (iii) the person's desires regarding the proposed treatment. If the patient is unable to make a rational and informed decision about consenting to or refusing the proposed treatment, the court shall make a substituted judgment for the patient as if he or she were competent to make such a determination.

(c) The person shall be present at any hearing on a request to administer antipsychotic medication or electroconvulsant therapy filed pursuant to this subsection. The person has the right: (i) To be represented by an attorney; (ii) to present evidence; (iii) to cross-examine witnesses; (iv) to have the rules of evidence enforced; (v) to remain silent; (vi) to view and copy all petitions and reports in the court file; and (vii) to be given reasonable notice and an opportunity to prepare for the hearing. The court may appoint a psychiatrist, psychiatric advanced registered nurse practitioner, psychologist within their scope of practice, or physician to examine and testify on behalf of such person. The court shall appoint a psychiatrist, psychiatric advanced registered nurse practitioner, psychologist within their scope of practice, or physician designated by such person or the person's counsel to testify on behalf of the person in cases where an order for electroconvulsant therapy is sought.

(d) An order for the administration of antipsychotic medications entered following a hearing conducted pursuant to this section shall be effective for the period of the current involuntary treatment order, and any interim period during which the person is awaiting trial or hearing on a new petition for involuntary treatment or involuntary medication.

(e) Any person detained pursuant to RCW 71.05.320(3), who subsequently refuses antipsychotic medication, shall be entitled to the procedures set forth in this subsection.

(f) Antipsychotic medication may be administered to a nonconsenting person detained or committed pursuant to this chapter without a court order pursuant to RCW 71.05.215(2) or under the following circumstances:

(i) A person presents an imminent likelihood of serious harm;

(ii) Medically acceptable alternatives to administration of antipsychotic medications are not available, have not been successful, or are not likely to be effective; and

(iii) In the opinion of the physician or psychiatric advanced registered nurse practitioner with responsibility for treatment of the person, or his or her designee, the person's condition constitutes an emergency requiring the treatment be instituted before a judicial hearing as authorized pursuant to this section can be held.

If antipsychotic medications are administered over a person's lack of consent pursuant to this subsection, a petition for an order authorizing the administration of antipsychotic medications shall be filed on the next judicial day. The hear-

ing shall be held within two judicial days. If deemed necessary by the physician or psychiatric advanced registered nurse practitioner with responsibility for the treatment of the person, administration of antipsychotic medications may continue until the hearing is held;

(8) To dispose of property and sign contracts unless such person has been adjudicated an incompetent in a court proceeding directed to that particular issue;

(9) Not to have psychosurgery performed on him or her under any circumstances. [2008 c 156 § 3; 1997 c 112 § 31; 1991 c 105 § 5; 1989 c 120 § 8; 1974 ex.s. c 145 § 26; 1973 1st ex.s. c 142 § 42. Formerly RCW 71.05.370.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**71.05.220 Property of committed person.** At the time a person is involuntarily admitted to an evaluation and treatment facility, the professional person in charge or his or her designee shall take reasonable precautions to inventory and safeguard the personal property of the person detained. A copy of the inventory, signed by the staff member making it, shall be given to the person detained and shall, in addition, be open to inspection to any responsible relative, subject to limitations, if any, specifically imposed by the detained person. For purposes of this section, "responsible relative" includes the guardian, conservator, attorney, spouse, parent, adult child, or adult brother or sister of the person. The facility shall not disclose the contents of the inventory to any other person without the consent of the patient or order of the court. [1997 c 112 § 17; 1973 1st ex.s. c 142 § 27.]

**71.05.230 Procedures for additional treatment.** A person detained for seventy-two hour evaluation and treatment may be detained for not more than fourteen additional days of involuntary intensive treatment or ninety additional days of a less restrictive alternative to involuntary intensive treatment. There shall be no fee for filing petitions for fourteen days of involuntary intensive treatment. A petition may only be filed if the following conditions are met:

(1) The professional staff of the agency or facility providing evaluation services has analyzed the person's condition and finds that the condition is caused by mental disorder and either results in a likelihood of serious harm, or results in the detained person being gravely disabled and are prepared to testify those conditions are met; and

(2) The person has been advised of the need for voluntary treatment and the professional staff of the facility has evidence that he or she has not in good faith volunteered; and

(3) The facility providing intensive treatment is certified to provide such treatment by the department; and

(4) The professional staff of the agency or facility or the designated mental health professional has filed a petition for fourteen day involuntary detention or a ninety day less restrictive alternative with the court. The petition must be signed either by:

(a) Two physicians;

(b) One physician and a mental health professional;

(c) Two psychiatric advanced registered nurse practitioners;

(d) One psychiatric advanced registered nurse practitioner and a mental health professional; or

(e) A physician and a psychiatric advanced registered nurse practitioner. The persons signing the petition must have examined the person. If involuntary detention is sought the petition shall state facts that support the finding that such person, as a result of mental disorder, presents a likelihood of serious harm, or is gravely disabled and that there are no less restrictive alternatives to detention in the best interest of such person or others. The petition shall state specifically that less restrictive alternative treatment was considered and specify why treatment less restrictive than detention is not appropriate. If an involuntary less restrictive alternative is sought, the petition shall state facts that support the finding that such person, as a result of mental disorder, presents a likelihood of serious harm, or is gravely disabled and shall set forth the less restrictive alternative proposed by the facility; and

(5) A copy of the petition has been served on the detained person, his or her attorney and his or her guardian or conservator, if any, prior to the probable cause hearing; and

(6) The court at the time the petition was filed and before the probable cause hearing has appointed counsel to represent such person if no other counsel has appeared; and

(7) The petition reflects that the person was informed of the loss of firearm rights if involuntarily committed; and

(8) At the conclusion of the initial commitment period, the professional staff of the agency or facility or the designated mental health professional may petition for an additional period of either ninety days of less restrictive alternative treatment or ninety days of involuntary intensive treatment as provided in RCW 71.05.290; and

(9) If the hospital or facility designated to provide outpatient treatment is other than the facility providing involuntary treatment, the outpatient facility so designated has agreed to assume such responsibility. [2009 c 293 § 3; 2009 c 217 § 2; 2006 c 333 § 302; 1998 c 297 § 13; 1997 c 112 § 18; 1987 c 439 § 3; 1975 1st ex.s. c 199 § 5; 1974 ex.s. c 145 § 15; 1973 1st ex.s. c 142 § 28.]

**Reviser's note:** This section was amended by 2009 c 217 § 2 and by 2009 c 293 § 3, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

**Finding—Purpose—Intent—Severability—Part headings not law—Effective dates—2006 c 333:** See notes following RCW 71.24.016.

**Effective dates—Severability—Intent—1998 c 297:** See notes following RCW 71.05.010.

**71.05.232 Discharge reviews—Consultations, notifications required.** (1) When a state hospital admits a person for evaluation or treatment under this chapter who has a history of one or more violent acts and:

(a) Has been transferred from a correctional facility; or

(b) Is or has been under the authority of the department of corrections or the indeterminate sentence review board, the state hospital shall consult with the appropriate corrections and chemical dependency personnel and the appropriate forensic staff at the state hospital to conduct a discharge review to determine whether the person presents a likelihood of serious harm and whether the person is appropriate for release to a less restrictive alternative.

(2) When a state hospital returns a person who was reviewed under subsection (1) of this section to a correctional facility, the hospital shall notify the correctional facility that

the person was subject to a discharge review pursuant to this section. [2004 c 166 § 18.]

**Severability—Effective dates—2004 c 166:** See notes following RCW 71.05.040.

**71.05.235 Examination, evaluation of criminal defendant—Hearing.** (1) If an individual is referred to a designated mental health professional under RCW 10.77.088(1)(b)(i), the designated mental health professional shall examine the individual within forty-eight hours. If the designated mental health professional determines it is not appropriate to detain the individual or petition for a ninety-day less restrictive alternative under RCW 71.05.230(4), that decision shall be immediately presented to the superior court for hearing. The court shall hold a hearing to consider the decision of the designated mental health professional not later than the next judicial day. At the hearing the superior court shall review the determination of the designated mental health professional and determine whether an order should be entered requiring the person to be evaluated at an evaluation and treatment facility. No person referred to an evaluation and treatment facility may be held at the facility longer than seventy-two hours.

(2) If an individual is placed in an evaluation and treatment facility under RCW 10.77.088(1)(b)(ii), a professional person shall evaluate the individual for purposes of determining whether to file a ninety-day inpatient or outpatient petition under chapter 71.05 RCW. Before expiration of the seventy-two hour evaluation period authorized under RCW 10.77.088(1)(b)(ii), the professional person shall file a petition or, if the recommendation of the professional person is to release the individual, present his or her recommendation to the superior court of the county in which the criminal charge was dismissed. The superior court shall review the recommendation not later than forty-eight hours, excluding Saturdays, Sundays, and holidays, after the recommendation is presented. If the court rejects the recommendation to unconditionally release the individual, the court may order the individual detained at a designated evaluation and treatment facility for not more than a seventy-two hour evaluation and treatment period and direct the individual to appear at a surety hearing before that court within seventy-two hours, or the court may release the individual but direct the individual to appear at a surety hearing set before that court within eleven days, at which time the prosecutor may file a petition under this chapter for ninety-day inpatient or outpatient treatment. If a petition is filed by the prosecutor, the court may order that the person named in the petition be detained at the evaluation and treatment facility that performed the evaluation under this subsection or order the respondent to be in outpatient treatment. If a petition is filed but the individual fails to appear in court for the surety hearing, the court shall order that a mental health professional or peace officer shall take such person or cause such person to be taken into custody and placed in an evaluation and treatment facility to be brought before the court the next judicial day after detention. Upon the individual's first appearance in court after a petition has been filed, proceedings under RCW 71.05.310 and 71.05.320 shall commence. For an individual subject to this subsection, the prosecutor or professional person may directly file a petition for ninety-day inpatient or outpatient

treatment and no petition for initial detention or fourteen-day detention is required before such a petition may be filed.

The court shall conduct the hearing on the petition filed under this subsection within five judicial days of the date the petition is filed. The court may continue the hearing upon the written request of the person named in the petition or the person's attorney, for good cause shown, which continuance shall not exceed five additional judicial days. If the person named in the petition requests a jury trial, the trial shall commence within ten judicial days of the date of the filing of the petition. The burden of proof shall be by clear, cogent, and convincing evidence and shall be upon the petitioner. The person shall be present at such proceeding, which shall in all respects accord with the constitutional guarantees of due process of law and the rules of evidence pursuant to RCW 71.05.360 (8) and (9).

During the proceeding the person named in the petition shall continue to be detained and treated until released by order of the court. If no order has been made within thirty days after the filing of the petition, not including any extensions of time requested by the detained person or his or her attorney, the detained person shall be released.

(3) If a designated mental health professional or the professional person and prosecuting attorney for the county in which the criminal charge was dismissed or attorney general, as appropriate, stipulate that the individual does not present a likelihood of serious harm or is not gravely disabled, the hearing under this section is not required and the individual, if in custody, shall be released.

(4) The individual shall have the rights specified in RCW 71.05.360 (8) and (9). [2008 c 213 § 5; 2005 c 504 § 708; 2000 c 74 § 6; 1999 c 11 § 1; 1998 c 297 § 18.]

**Findings—Intent—Severability—Application—Construction—Captions, part headings, subheadings not law—Adoption of rules—Effective dates—2005 c 504:** See notes following RCW 71.05.027.

**Alphabetization—Correction of references—2005 c 504:** See note following RCW 71.05.020.

**Severability—2000 c 74:** See note following RCW 10.77.060.

**Effective dates—Severability—Intent—1998 c 297:** See notes following RCW 71.05.010.

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**71.05.237 Judicial proceedings—Court to enter findings when recommendations of professional person not followed.** In any judicial proceeding in which a professional person has made a recommendation regarding whether an individual should be committed for treatment under this chapter, and the court does not follow the recommendation, the court shall enter findings that state with particularity its reasoning, including a finding whether the state met its burden of proof in showing whether the person presents a likelihood of serious harm. [1998 c 297 § 25.]

**Effective dates—Severability—Intent—1998 c 297:** See notes following RCW 71.05.010.

**71.05.240 Petition for involuntary treatment or alternative treatment—Probable cause hearing.** (1) If a petition is filed for fourteen day involuntary treatment or ninety days of less restrictive alternative treatment, the court shall hold a probable cause hearing within seventy-two hours of the initial detention of such person as determined in RCW

(2010 Ed.)

71.05.180. If requested by the detained person or his or her attorney, the hearing may be postponed for a period not to exceed forty-eight hours. The hearing may also be continued subject to the conditions set forth in RCW 71.05.210 or subject to the petitioner's showing of good cause for a period not to exceed twenty-four hours.

(2) The court at the time of the probable cause hearing and before an order of commitment is entered shall inform the person both orally and in writing that the failure to make a good faith effort to seek voluntary treatment as provided in RCW 71.05.230 will result in the loss of his or her firearm rights if the person is subsequently detained for involuntary treatment under this section.

(3) At the conclusion of the probable cause hearing, if the court finds by a preponderance of the evidence that such person, as the result of mental disorder, presents a likelihood of serious harm, or is gravely disabled, and, after considering less restrictive alternatives to involuntary detention and treatment, finds that no such alternatives are in the best interests of such person or others, the court shall order that such person be detained for involuntary treatment not to exceed fourteen days in a facility certified to provide treatment by the department. If the court finds that such person, as the result of a mental disorder, presents a likelihood of serious harm, or is gravely disabled, but that treatment in a less restrictive setting than detention is in the best interest of such person or others, the court shall order an appropriate less restrictive course of treatment for not to exceed ninety days.

(4) The court shall specifically state to such person and give such person notice in writing that if involuntary treatment beyond the fourteen day period or beyond the ninety days of less restrictive treatment is to be sought, such person will have the right to a full hearing or jury trial as required by RCW 71.05.310. The court shall also state to the person and provide written notice that the person is barred from the possession of firearms and that the prohibition remains in effect until a court restores his or her right to possess a firearm under RCW 9.41.047. [2009 c 293 § 4; 1997 c 112 § 19; 1992 c 168 § 3; 1987 c 439 § 5; 1979 ex.s. c 215 § 13; 1974 ex.s. c 145 § 16; 1973 1st ex.s. c 142 § 29.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**71.05.245 Determination of likelihood of serious harm—Use of recent history evidence.** (*Effective until January 1, 2012.*) In making a determination of whether there is a likelihood of serious harm in a hearing conducted under RCW 71.05.240 or 71.05.320, the court shall give great weight to any evidence before the court regarding whether the person has: (1) A recent history of one or more violent acts; or (2) a recent history of one or more commitments under this chapter or its equivalent provisions under the laws of another state which were based on a likelihood of serious harm. The existence of prior violent acts or commitments under this chapter or its equivalent shall not be the sole basis for determining whether a person presents a likelihood of serious harm.

For the purposes of this section "recent" refers to the period of time not exceeding three years prior to the current hearing. [1999 c 13 § 6; 1998 c 297 § 14.]

**Purpose—Construction—1999 c 13:** See note following RCW 10.77.010.

**Effective dates—Severability—Intent—1998 c 297:** See notes following RCW 71.05.010.

**71.05.245 Determination of grave disability or likelihood of serious harm—Use of recent history evidence. (Effective January 1, 2012.)** (1) In making a determination of whether a person is gravely disabled or presents a likelihood of serious harm in a hearing conducted under RCW 71.05.240 or 71.05.320, the court must consider the symptoms and behavior of the respondent in light of all available evidence concerning the respondent's historical behavior.

(2) Symptoms or behavior which standing alone would not justify civil commitment may support a finding of grave disability or likelihood of serious harm when: (a) Such symptoms or behavior are closely associated with symptoms or behavior which preceded and led to a past incident of involuntary hospitalization, severe deterioration, or one or more violent acts; (b) these symptoms or behavior represent a marked and concerning change in the baseline behavior of the respondent; and (c) without treatment, the continued deterioration of the respondent is probable.

(3) In making a determination of whether there is a likelihood of serious harm in a hearing conducted under RCW 71.05.240 or 71.05.320, the court shall give great weight to any evidence before the court regarding whether the person has: (a) A recent history of one or more violent acts; or (b) a recent history of one or more commitments under this chapter or its equivalent provisions under the laws of another state which were based on a likelihood of serious harm. The existence of prior violent acts or commitments under this chapter or its equivalent shall not be the sole basis for determining whether a person presents a likelihood of serious harm.

For the purposes of this subsection "recent" refers to the period of time not exceeding three years prior to the current hearing. [2010 c 280 § 3; 1999 c 13 § 6; 1998 c 297 § 14.]

**Effective date—2010 c 280 §§ 2 and 3:** See note following RCW 71.05.212.

**Purpose—Construction—1999 c 13:** See note following RCW 10.77.010.

**Effective dates—Severability—Intent—1998 c 297:** See notes following RCW 71.05.010.

**71.05.260 Release from involuntary intensive treatment—Exception.** (1) Involuntary intensive treatment ordered at the time of the probable cause hearing shall be for no more than fourteen days, and shall terminate sooner when, in the opinion of the professional person in charge of the facility or his or her professional designee, (a) the person no longer constitutes a likelihood of serious harm, or (b) no longer is gravely disabled, or (c) is prepared to accept voluntary treatment upon referral, or (d) is to remain in the facility providing intensive treatment on a voluntary basis.

(2) A person who has been detained for fourteen days of intensive treatment shall be released at the end of the fourteen days unless one of the following applies: (a) Such person agrees to receive further treatment on a voluntary basis; or (b) such person is a patient to whom RCW 71.05.280 is applicable. [1997 c 112 § 20; 1987 c 439 § 7; 1974 ex.s. c 145 § 18; 1973 1st ex.s. c 142 § 31.]

**71.05.270 Temporary release.** Nothing in this chapter shall prohibit the professional person in charge of a treatment facility, or his or her professional designee, from permitting a person detained for intensive treatment to leave the facility for prescribed periods during the term of the person's detention, under such conditions as may be appropriate. [1997 c 112 § 21; 1973 1st ex.s. c 142 § 32.]

**71.05.280 Additional confinement—Grounds.** At the expiration of the fourteen-day period of intensive treatment, a person may be confined for further treatment pursuant to RCW 71.05.320 if:

(1) Such person after having been taken into custody for evaluation and treatment has threatened, attempted, or inflicted: (a) Physical harm upon the person of another or himself or herself, or substantial damage upon the property of another, and (b) as a result of mental disorder presents a likelihood of serious harm; or

(2) Such person was taken into custody as a result of conduct in which he or she attempted or inflicted physical harm upon the person of another or himself or herself, or substantial damage upon the property of others, and continues to present, as a result of mental disorder, a likelihood of serious harm; or

(3) Such person has been determined to be incompetent and criminal charges have been dismissed pursuant to RCW 10.77.086(4), and has committed acts constituting a felony, and as a result of a mental disorder, presents a substantial likelihood of repeating similar acts. In any proceeding pursuant to this subsection it shall not be necessary to show intent, willfulness, or state of mind as an element of the crime; or

(4) Such person is gravely disabled. [2008 c 213 § 6; 1998 c 297 § 15; 1997 c 112 § 22; 1986 c 67 § 3; 1979 ex.s. c 215 § 14; 1974 ex.s. c 145 § 19; 1973 1st ex.s. c 142 § 33.]

**Effective dates—Severability—Intent—1998 c 297:** See notes following RCW 71.05.010.

**71.05.285 Additional confinement—Prior history evidence.** In determining whether an inpatient or less restrictive alternative commitment under the process provided in RCW 71.05.280 and \*71.05.320(2) is appropriate, great weight shall be given to evidence of a prior history or pattern of decompensation and discontinuation of treatment resulting in: (1) Repeated hospitalizations; or (2) repeated peace officer interventions resulting in juvenile offenses, criminal charges, diversion programs, or jail admissions. Such evidence may be used to provide a factual basis for concluding that the individual would not receive, if released, such care as is essential for his or her health or safety. [2001 c 12 § 1; 1997 c 112 § 23.]

**\*Reviser's note:** RCW 71.05.320 was amended by 2006 c 333 § 304, changing subsection (2) to subsection (3).

**71.05.290 Petition for additional confinement—Affidavit.** (1) At any time during a person's fourteen day intensive treatment period, the professional person in charge of a treatment facility or his or her professional designee or the designated mental health professional may petition the superior court for an order requiring such person to undergo an additional period of treatment. Such petition must be based on one or more of the grounds set forth in RCW 71.05.280.

(2) The petition shall summarize the facts which support the need for further confinement and shall be supported by affidavits signed by:

- (a) Two examining physicians;
- (b) One examining physician and examining mental health professional;
- (c) Two psychiatric advanced registered nurse practitioners;
- (d) One psychiatric advanced registered nurse practitioner and a mental health professional; or

(e) An examining physician and an examining psychiatric advanced registered nurse practitioner. The affidavits shall describe in detail the behavior of the detained person which supports the petition and shall explain what, if any, less restrictive treatments which are alternatives to detention are available to such person, and shall state the willingness of the affiant to testify to such facts in subsequent judicial proceedings under this chapter.

(3) If a person has been determined to be incompetent pursuant to RCW 10.77.086(4), then the professional person in charge of the treatment facility or his or her professional designee or the designated mental health professional may directly file a petition for one hundred eighty day treatment under RCW 71.05.280(3). No petition for initial detention or fourteen day detention is required before such a petition may be filed. [2009 c 217 § 3; 2008 c 213 § 7; 1998 c 297 § 16; 1997 c 112 § 24; 1986 c 67 § 4; 1975 1st ex.s. c 199 § 6; 1974 ex.s. c 145 § 20; 1973 1st ex.s. c 142 § 34.]

**Effective dates—Severability—Intent—1998 c 297:** See notes following RCW 71.05.010.

**71.05.300 Filing of petition—Appearance—Notice—Advice as to rights—Appointment of attorney, expert, or professional person.** (1) The petition for ninety day treatment shall be filed with the clerk of the superior court at least three days before expiration of the fourteen-day period of intensive treatment. At the time of filing such petition, the clerk shall set a time for the person to come before the court on the next judicial day after the day of filing unless such appearance is waived by the person's attorney, and the clerk shall notify the designated mental health professional. The designated mental health professional shall immediately notify the person detained, his or her attorney, if any, and his or her guardian or conservator, if any, the prosecuting attorney, and the regional support network administrator, and provide a copy of the petition to such persons as soon as possible. The regional support network administrator or designee may review the petition and may appear and testify at the full hearing on the petition.

(2) At the time set for appearance the detained person shall be brought before the court, unless such appearance has been waived and the court shall advise him or her of his or her right to be represented by an attorney, his or her right to a jury trial, and his or her loss of firearm rights if involuntarily committed. If the detained person is not represented by an attorney, or is indigent or is unwilling to retain an attorney, the court shall immediately appoint an attorney to represent him or her. The court shall, if requested, appoint a reasonably available licensed physician, psychiatric advanced registered nurse practitioner, psychologist, or psychiatrist, designated

(2010 Ed.)

by the detained person to examine and testify on behalf of the detained person.

(3) The court may, if requested, also appoint a professional person as defined in RCW 71.05.020 to seek less restrictive alternative courses of treatment and to testify on behalf of the detained person. In the case of a person with a developmental disability who has been determined to be incompetent pursuant to RCW 10.77.086(4), then the appointed professional person under this section shall be a developmental disabilities professional.

(4) The court shall also set a date for a full hearing on the petition as provided in RCW 71.05.310. [2009 c 293 § 5; 2009 c 217 § 4; 2008 c 213 § 8; 2006 c 333 § 303; 1998 c 297 § 17; 1997 c 112 § 25; 1989 c 420 § 14; 1987 c 439 § 8; 1975 1st ex.s. c 199 § 7; 1974 ex.s. c 145 § 21; 1973 1st ex.s. c 142 § 35.]

**Reviser's note:** This section was amended by 2009 c 217 § 4 and by 2009 c 293 § 5, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

**Finding—Purpose—Intent—Severability—Part headings not law—Effective dates—2006 c 333:** See notes following RCW 71.24.016.

**Effective dates—Severability—Intent—1998 c 297:** See notes following RCW 71.05.010.

**71.05.310 Time for hearing—Due process—Jury trial—Continuation of treatment.** The court shall conduct a hearing on the petition for ninety day treatment within five judicial days of the first court appearance after the probable cause hearing. The court may continue the hearing upon the written request of the person named in the petition or the person's attorney, for good cause shown, which continuance shall not exceed five additional judicial days. If the person named in the petition requests a jury trial, the trial shall commence within ten judicial days of the first court appearance after the probable cause hearing. The burden of proof shall be by clear, cogent, and convincing evidence and shall be upon the petitioner. The person shall be present at such proceeding, which shall in all respects accord with the constitutional guarantees of due process of law and the rules of evidence pursuant to RCW 71.05.360 (8) and (9).

During the proceeding, the person named in the petition shall continue to be treated until released by order of the superior court. If no order has been made within thirty days after the filing of the petition, not including extensions of time requested by the detained person or his or her attorney, the detained person shall be released. [2005 c 504 § 709; 1987 c 439 § 9; 1975 1st ex.s. c 199 § 8; 1974 ex.s. c 145 § 22; 1973 1st ex.s. c 142 § 36.]

**Findings—Intent—Severability—Application—Construction—Captions, part headings, subheadings not law—Adoption of rules—Effective dates—2005 c 504:** See notes following RCW 71.05.027.

**Alphabetization—Correction of references—2005 c 504:** See note following RCW 71.05.020.

**71.05.320 Remand for additional treatment—Less restrictive alternatives—Duration—Grounds—Hearing.** (1) If the court or jury finds that grounds set forth in RCW 71.05.280 have been proven and that the best interests of the person or others will not be served by a less restrictive treatment which is an alternative to detention, the court shall remand him or her to the custody of the department or to a

facility certified for ninety day treatment by the department for a further period of intensive treatment not to exceed ninety days from the date of judgment. If the grounds set forth in RCW 71.05.280(3) are the basis of commitment, then the period of treatment may be up to but not exceed one hundred eighty days from the date of judgment in a facility certified for one hundred eighty day treatment by the department.

(2) If the court or jury finds that grounds set forth in RCW 71.05.280 have been proven, but finds that treatment less restrictive than detention will be in the best interest of the person or others, then the court shall remand him or her to the custody of the department or to a facility certified for ninety day treatment by the department or to a less restrictive alternative for a further period of less restrictive treatment not to exceed ninety days from the date of judgment. If the grounds set forth in RCW 71.05.280(3) are the basis of commitment, then the period of treatment may be up to but not exceed one hundred eighty days from the date of judgment.

(3) The person shall be released from involuntary treatment at the expiration of the period of commitment imposed under subsection (1) or (2) of this section unless the superintendent or professional person in charge of the facility in which he or she is confined, or in the event of a less restrictive alternative, the designated mental health professional, files a new petition for involuntary treatment on the grounds that the committed person:

(a) During the current period of court ordered treatment: (i) Has threatened, attempted, or inflicted physical harm upon the person of another, or substantial damage upon the property of another, and (ii) as a result of mental disorder or developmental disability presents a likelihood of serious harm; or

(b) Was taken into custody as a result of conduct in which he or she attempted or inflicted serious physical harm upon the person of another, and continues to present, as a result of mental disorder or developmental disability a likelihood of serious harm; or

(c) Is in custody pursuant to RCW 71.05.280(3) and as a result of mental disorder or developmental disability presents a substantial likelihood of repeating similar acts considering the charged criminal behavior, life history, progress in treatment, and the public safety; or

(d) Continues to be gravely disabled.

If the conduct required to be proven in (b) and (c) of this subsection was found by a judge or jury in a prior trial under this chapter, it shall not be necessary to prove such conduct again.

(4) For a person committed under subsection (2) of this section who has been remanded to a period of less restrictive treatment, in addition to the grounds specified in subsection (3) of this section, the designated mental health professional may file a new petition for continued less restrictive treatment if:

(a) The person was previously committed by a court to detention for involuntary mental health treatment during the thirty-six months that preceded the person's initial detention date during the current involuntary commitment cycle, excluding any time spent in a mental health facility or in confinement as a result of a criminal conviction;

(b) In view of the person's treatment history or current behavior, the person is unlikely to voluntarily participate in

outpatient treatment without an order for less restrictive treatment; and

(c) Outpatient treatment that would be provided under a less restrictive treatment order is necessary to prevent a relapse, decompensation, or deterioration that is likely to result in the person presenting a likelihood of serious harm or the person becoming gravely disabled within a reasonably short period of time.

(5) A new petition for involuntary treatment filed under subsection (3) or (4) of this section shall be filed and heard in the superior court of the county of the facility which is filing the new petition for involuntary treatment unless good cause is shown for a change of venue. The cost of the proceedings shall be borne by the state.

(6) The hearing shall be held as provided in RCW 71.05.310, and if the court or jury finds that the grounds for additional confinement as set forth in this section are present, the court may order the committed person returned for an additional period of treatment not to exceed one hundred eighty days from the date of judgment. At the end of the one hundred eighty day period of commitment, the committed person shall be released unless a petition for another one hundred eighty day period of continued treatment is filed and heard in the same manner as provided in this section. Successive one hundred eighty day commitments are permissible on the same grounds and pursuant to the same procedures as the original one hundred eighty day commitment. However, a commitment is not permissible under subsection (4) of this section if thirty-six months have passed since the last date of discharge from detention for inpatient treatment that preceded the current less restrictive alternative order, nor shall a commitment under subsection (4) of this section be permissible if the likelihood of serious harm in subsection (4)(c) of this section is based solely on harm to the property of others.

(7) No person committed as provided in this section may be detained unless a valid order of commitment is in effect. No order of commitment can exceed one hundred eighty days in length. [2009 c 323 § 2; 2008 c 213 § 9; 2006 c 333 § 304; 1999 c 13 § 7; 1997 c 112 § 26; 1989 c 420 § 15; 1986 c 67 § 5; 1979 ex.s. c 215 § 15; 1975 1st ex.s. c 199 § 9; 1974 ex.s. c 145 § 23; 1973 1st ex.s. c 142 § 37.]

**Findings—Intent—2009 c 323:** "(1) The legislature finds that many persons who are released from involuntary mental health treatment in an inpatient setting would benefit from an order for less restrictive treatment in order to provide the structure and support necessary to facilitate long-term stability and success in the community.

(2) The legislature intends to make it easier to renew orders for less restrictive treatment following a period of inpatient commitment in cases in which a person has been involuntarily committed more than once and is likely to benefit from a renewed order for less restrictive treatment.

(3) The legislature finds that public safety is enhanced when a designated mental health professional is able to file a petition to revoke an order for less restrictive treatment under RCW 71.05.340 before a person who is the subject of the petition becomes ill enough to present a likelihood of serious harm." [2009 c 323 § 1.]

**Finding—Purpose—Intent—Severability—Part headings not law—Effective dates—2006 c 333:** See notes following RCW 71.24.016.

**Purpose—Construction—1999 c 13:** See note following RCW 10.77.010.

**71.05.325 Release—Authorized leave—Notice to prosecuting attorney.** (1) Before a person committed under grounds set forth in RCW 71.05.280(3) is released because a

new petition for involuntary treatment has not been filed under \*RCW 71.05.320(2), the superintendent, professional person, or designated mental health professional responsible for the decision whether to file a new petition shall in writing notify the prosecuting attorney of the county in which the criminal charges against the committed person were dismissed, of the decision not to file a new petition for involuntary treatment. Notice shall be provided at least forty-five days before the period of commitment expires.

(2)(a) Before a person committed under grounds set forth in RCW 71.05.280(3) is permitted temporarily to leave a treatment facility pursuant to RCW 71.05.270 for any period of time without constant accompaniment by facility staff, the superintendent, professional person in charge of a treatment facility, or his or her professional designee shall in writing notify the prosecuting attorney of any county of the person's destination and the prosecuting attorney of the county in which the criminal charges against the committed person were dismissed. The notice shall be provided at least forty-five days before the anticipated leave and shall describe the conditions under which the leave is to occur.

(b) The provisions of RCW 71.05.330(2) apply to proposed leaves, and either or both prosecuting attorneys receiving notice under this subsection may petition the court under RCW 71.05.330(2).

(3) Nothing in this section shall be construed to authorize detention of a person unless a valid order of commitment is in effect.

(4) The existence of the notice requirements in this section will not require any extension of the leave date in the event the leave plan changes after notification.

(5) The notice requirements contained in this section shall not apply to emergency medical transfers.

(6) The notice provisions of this section are in addition to those provided in RCW 71.05.425. [2000 c 94 § 7; 1994 c 129 § 8; 1990 c 3 § 111; 1989 c 401 § 1; 1986 c 67 § 2.]

**\*Reviser's note:** RCW 71.05.320 was amended by 2006 c 333 § 304, changing subsection (2) to subsection (3).

**Findings—Intent—1994 c 129:** See note following RCW 4.24.550.

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**71.05.330 Early release—Notice to court and prosecuting attorney—Petition for hearing.** (1) Nothing in this chapter shall prohibit the superintendent or professional person in charge of the hospital or facility in which the person is being involuntarily treated from releasing him or her prior to the expiration of the commitment period when, in the opinion of the superintendent or professional person in charge, the person being involuntarily treated no longer presents a likelihood of serious harm.

Whenever the superintendent or professional person in charge of a hospital or facility providing involuntary treatment pursuant to this chapter releases a person prior to the expiration of the period of commitment, the superintendent or professional person in charge shall in writing notify the court which committed the person for treatment.

(2) Before a person committed under grounds set forth in RCW 71.05.280(3) or \*71.05.320(2)(c) is released under this section, the superintendent or professional person in charge shall in writing notify the prosecuting attorney of the county in which the criminal charges against the committed person

were dismissed, of the release date. Notice shall be provided at least thirty days before the release date. Within twenty days after receiving notice, the prosecuting attorney may petition the court in the county in which the person is being involuntarily treated for a hearing to determine whether the person is to be released. The prosecuting attorney shall provide a copy of the petition to the superintendent or professional person in charge of the hospital or facility providing involuntary treatment, the attorney, if any, and the guardian or conservator of the committed person. The court shall conduct a hearing on the petition within ten days of filing the petition. The committed person shall have the same rights with respect to notice, hearing, and counsel as for an involuntary treatment proceeding, except as set forth in this subsection and except that there shall be no right to jury trial. The issue to be determined at the hearing is whether or not the person may be released without substantial danger to other persons, or substantial likelihood of committing criminal acts jeopardizing public safety or security. If the court disapproves of the release, it may do so only on the basis of substantial evidence. Pursuant to the determination of the court upon the hearing, the committed person shall be released or shall be returned for involuntary treatment subject to release at the end of the period for which he or she was committed, or otherwise in accordance with the provisions of this chapter. [1998 c 297 § 20; 1997 c 112 § 27; 1986 c 67 § 1; 1973 1st ex.s. c 142 § 38.]

**\*Reviser's note:** RCW 71.05.320 was amended by 2006 c 333 § 304, changing subsection (2) to subsection (3).

**Effective dates—Severability—Intent—1998 c 297:** See notes following RCW 71.05.010.

**71.05.335 Modification of order for inpatient treatment—Intervention by prosecuting attorney.** In any proceeding under this chapter to modify a commitment order of a person committed to inpatient treatment under grounds set forth in RCW 71.05.280(3) or \*71.05.320(2)(c) in which the requested relief includes treatment less restrictive than detention, the prosecuting attorney shall be entitled to intervene. The party initiating the motion to modify the commitment order shall serve the prosecuting attorney of the county in which the criminal charges against the committed person were dismissed with written notice and copies of the initiating papers. [1986 c 67 § 7.]

**\*Reviser's note:** RCW 71.05.320 was amended by 2006 c 333 § 304, changing subsection (2) to subsection (3).

**71.05.340 Outpatient treatment or care—Conditional release—Procedures for revocation.** (1)(a) When, in the opinion of the superintendent or the professional person in charge of the hospital or facility providing involuntary treatment, the committed person can be appropriately served by outpatient treatment prior to or at the expiration of the period of commitment, then such outpatient care may be required as a term of conditional release for a period which, when added to the inpatient treatment period, shall not exceed the period of commitment. If the hospital or facility designated to provide outpatient treatment is other than the facility providing involuntary treatment, the outpatient facility so designated must agree in writing to assume such responsibility. A copy of the terms of conditional release

shall be given to the patient, the designated mental health professional in the county in which the patient is to receive outpatient treatment, and to the court of original commitment.

(b) Before a person committed under grounds set forth in RCW 71.05.280(3) or 71.05.320(3)(c) is conditionally released under (a) of this subsection, the superintendent or professional person in charge of the hospital or facility providing involuntary treatment shall in writing notify the prosecuting attorney of the county in which the criminal charges against the committed person were dismissed, of the decision to conditionally release the person. Notice and a copy of the terms of conditional release shall be provided at least thirty days before the person is released from inpatient care. Within twenty days after receiving notice, the prosecuting attorney may petition the court in the county that issued the commitment order to hold a hearing to determine whether the person may be conditionally released and the terms of the conditional release. The prosecuting attorney shall provide a copy of the petition to the superintendent or professional person in charge of the hospital or facility providing involuntary treatment, the attorney, if any, and guardian or conservator of the committed person, and the court of original commitment. If the county in which the committed person is to receive outpatient treatment is the same county in which the criminal charges against the committed person were dismissed, then the court shall, upon the motion of the prosecuting attorney, transfer the proceeding to the court in that county. The court shall conduct a hearing on the petition within ten days of the filing of the petition. The committed person shall have the same rights with respect to notice, hearing, and counsel as for an involuntary treatment proceeding, except as set forth in this subsection and except that there shall be no right to jury trial. The issue to be determined at the hearing is whether or not the person may be conditionally released without substantial danger to other persons, or substantial likelihood of committing criminal acts jeopardizing public safety or security. If the court disapproves of the conditional release, it may do so only on the basis of substantial evidence. Pursuant to the determination of the court upon the hearing, the conditional release of the person shall be approved by the court on the same or modified conditions or the person shall be returned for involuntary treatment on an inpatient basis subject to release at the end of the period for which he or she was committed, or otherwise in accordance with the provisions of this chapter.

(2) The hospital or facility designated to provide outpatient care or the secretary may modify the conditions for continued release when such modification is in the best interest of the person. Notification of such changes shall be sent to all persons receiving a copy of the original conditions.

(3)(a) If the hospital or facility designated to provide outpatient care, the designated mental health professional, or the secretary determines that:

(i) A conditionally released person is failing to adhere to the terms and conditions of his or her release;

(ii) Substantial deterioration in a conditionally released person's functioning has occurred;

(iii) There is evidence of substantial decompensation with a reasonable probability that the decompensation can be reversed by further inpatient treatment; or

(iv) The person poses a likelihood of serious harm.

Upon notification by the hospital or facility designated to provide outpatient care, or on his or her own motion, the designated mental health professional or the secretary may order that the conditionally released person be apprehended and taken into custody and temporarily detained in an evaluation and treatment facility in or near the county in which he or she is receiving outpatient treatment.

(b) The hospital or facility designated to provide outpatient treatment shall notify the secretary or designated mental health professional when a conditionally released person fails to adhere to terms and conditions of his or her conditional release or experiences substantial deterioration in his or her condition and, as a result, presents an increased likelihood of serious harm. The designated mental health professional or secretary shall order the person apprehended and temporarily detained in an evaluation and treatment facility in or near the county in which he or she is receiving outpatient treatment.

(c) A person detained under this subsection (3) shall be held until such time, not exceeding five days, as a hearing can be scheduled to determine whether or not the person should be returned to the hospital or facility from which he or she had been conditionally released. The designated mental health professional or the secretary may modify or rescind such order at any time prior to commencement of the court hearing.

(d) The court that originally ordered commitment shall be notified within two judicial days of a person's detention under the provisions of this section, and the designated mental health professional or the secretary shall file his or her petition and order of apprehension and detention with the court that originally ordered commitment or with the court in the county in which the person is detained and serve them upon the person detained. His or her attorney, if any, and his or her guardian or conservator, if any, shall receive a copy of such papers as soon as possible. Such person shall have the same rights with respect to notice, hearing, and counsel as for an involuntary treatment proceeding, except as specifically set forth in this section and except that there shall be no right to jury trial. The venue for proceedings regarding a petition for modification or revocation of an order for conditional release shall be in the county in which the petition was filed. The issues to be determined shall be: (i) Whether the conditionally released person did or did not adhere to the terms and conditions of his or her conditional release; (ii) that substantial deterioration in the person's functioning has occurred; (iii) there is evidence of substantial decompensation with a reasonable probability that the decompensation can be reversed by further inpatient treatment; or (iv) there is a likelihood of serious harm; and, if any of the conditions listed in this subsection (3)(d) have occurred, whether the terms of conditional release should be modified or the person should be returned to the facility.

(e) Pursuant to the determination of the court upon such hearing, the conditionally released person shall either continue to be conditionally released on the same or modified conditions or shall be returned for involuntary treatment on an inpatient basis subject to release at the end of the period for which he or she was committed for involuntary treatment, or otherwise in accordance with the provisions of this chapter. Such hearing may be waived by the person and his or her

counsel and his or her guardian or conservator, if any, but shall not be waivable unless all such persons agree to waive, and upon such waiver the person may be returned for involuntary treatment or continued on conditional release on the same or modified conditions.

(4) The proceedings set forth in subsection (3) of this section may be initiated by the designated mental health professional or the secretary on the same basis set forth therein without requiring or ordering the apprehension and detention of the conditionally released person, in which case the court hearing shall take place in not less than five days from the date of service of the petition upon the conditionally released person. The petition may be filed in the court that originally ordered commitment or with the court in the county in which the person is present. The venue for the proceedings regarding the petition for modification or revocation of an order for conditional release shall be in the county in which the petition was filed.

Upon expiration of the period of commitment, or when the person is released from outpatient care, notice in writing to the court which committed the person for treatment shall be provided.

(5) The grounds and procedures for revocation of less restrictive alternative treatment shall be the same as those set forth in this section for conditional releases.

(6) In the event of a revocation of a conditional release, the subsequent treatment period may be for no longer than the actual period authorized in the original court order. [2009 c 322 § 1; 2000 c 94 § 8; 1998 c 297 § 21; 1997 c 112 § 28; 1987 c 439 § 10; 1986 c 67 § 6; 1979 ex.s. c 215 § 16; 1974 ex.s. c 145 § 24; 1973 1st ex.s. c 142 § 39.]

**Effective dates—Severability—Intent—1998 c 297:** See notes following RCW 71.05.010.

**71.05.350 Assistance to released persons.** No indigent patient shall be conditionally released or discharged from involuntary treatment without suitable clothing, and the superintendent of a state hospital shall furnish the same, together with such sum of money as he or she deems necessary for the immediate welfare of the patient. Such sum of money shall be the same as the amount required by RCW 72.02.100 to be provided to persons in need being released from correctional institutions. As funds are available, the secretary may provide payment to indigent persons conditionally released pursuant to this chapter consistent with the optional provisions of RCW 72.02.100 and 72.02.110, and may adopt rules and regulations to do so. [1997 c 112 § 29; 1973 1st ex.s. c 142 § 40.]

**71.05.360 Rights of involuntarily detained persons.** (1)(a) Every person involuntarily detained or committed under the provisions of this chapter shall be entitled to all the rights set forth in this chapter, which shall be prominently posted in the facility, and shall retain all rights not denied him or her under this chapter except as chapter 9.41 RCW may limit the right of a person to purchase or possess a firearm or to qualify for a concealed pistol license.

(b) No person shall be presumed incompetent as a consequence of receiving an evaluation or voluntary or involuntary treatment for a mental disorder, under this chapter or any prior laws of this state dealing with mental illness. Compe-

tency shall not be determined or withdrawn except under the provisions of chapter 10.77 or 11.88 RCW.

(c) Any person who leaves a public or private agency following evaluation or treatment for mental disorder shall be given a written statement setting forth the substance of this section.

(2) Each person involuntarily detained or committed pursuant to this chapter shall have the right to adequate care and individualized treatment.

(3) The provisions of this chapter shall not be construed to deny to any person treatment by spiritual means through prayer in accordance with the tenets and practices of a church or religious denomination.

(4) Persons receiving evaluation or treatment under this chapter shall be given a reasonable choice of an available physician, psychiatric advanced registered nurse practitioner, or other professional person qualified to provide such services.

(5) Whenever any person is detained for evaluation and treatment pursuant to this chapter, both the person and, if possible, a responsible member of his or her immediate family, personal representative, guardian, or conservator, if any, shall be advised as soon as possible in writing or orally, by the officer or person taking him or her into custody or by personnel of the evaluation and treatment facility where the person is detained that unless the person is released or voluntarily admits himself or herself for treatment within seventy-two hours of the initial detention:

(a) A judicial hearing in a superior court, either by a judge or court commissioner thereof, shall be held not more than seventy-two hours after the initial detention to determine whether there is probable cause to detain the person after the seventy-two hours have expired for up to an additional fourteen days without further automatic hearing for the reason that the person is a person whose mental disorder presents a likelihood of serious harm or that the person is gravely disabled;

(b) The person has a right to communicate immediately with an attorney; has a right to have an attorney appointed to represent him or her before and at the probable cause hearing if he or she is indigent; and has the right to be told the name and address of the attorney that the mental health professional has designated pursuant to this chapter;

(c) The person has the right to remain silent and that any statement he or she makes may be used against him or her;

(d) The person has the right to present evidence and to cross-examine witnesses who testify against him or her at the probable cause hearing; and

(e) The person has the right to refuse psychiatric medications, including antipsychotic medication beginning twenty-four hours prior to the probable cause hearing.

(6) When proceedings are initiated under RCW 71.05.153, no later than twelve hours after such person is admitted to the evaluation and treatment facility the personnel of the evaluation and treatment facility or the designated mental health professional shall serve on such person a copy of the petition for initial detention and the name, business address, and phone number of the designated attorney and shall forthwith commence service of a copy of the petition for initial detention on the designated attorney.

(7) The judicial hearing described in subsection (5) of this section is hereby authorized, and shall be held according to the provisions of subsection (5) of this section and rules promulgated by the supreme court.

(8) At the probable cause hearing the detained person shall have the following rights in addition to the rights previously specified:

- (a) To present evidence on his or her behalf;
- (b) To cross-examine witnesses who testify against him or her;
- (c) To be proceeded against by the rules of evidence;
- (d) To remain silent;
- (e) To view and copy all petitions and reports in the court file.

(9) Privileges between patients and physicians, psychologists, or psychiatric advanced registered nurse practitioners are deemed waived in proceedings under this chapter relating to the administration of antipsychotic medications. As to other proceedings under this chapter, the privileges shall be waived when a court of competent jurisdiction in its discretion determines that such waiver is necessary to protect either the detained person or the public.

The waiver of a privilege under this section is limited to records or testimony relevant to evaluation of the detained person for purposes of a proceeding under this chapter. Upon motion by the detained person or on its own motion, the court shall examine a record or testimony sought by a petitioner to determine whether it is within the scope of the waiver.

The record maker shall not be required to testify in order to introduce medical or psychological records of the detained person so long as the requirements of RCW 5.45.020 are met except that portions of the record which contain opinions as to the detained person's mental state must be deleted from such records unless the person making such conclusions is available for cross-examination.

(10) Insofar as danger to the person or others is not created, each person involuntarily detained, treated in a less restrictive alternative course of treatment, or committed for treatment and evaluation pursuant to this chapter shall have, in addition to other rights not specifically withheld by law, the following rights:

- (a) To wear his or her own clothes and to keep and use his or her own personal possessions, except when deprivation of same is essential to protect the safety of the resident or other persons;
- (b) To keep and be allowed to spend a reasonable sum of his or her own money for canteen expenses and small purchases;
- (c) To have access to individual storage space for his or her private use;
- (d) To have visitors at reasonable times;
- (e) To have reasonable access to a telephone, both to make and receive confidential calls, consistent with an effective treatment program;
- (f) To have ready access to letter writing materials, including stamps, and to send and receive uncensored correspondence through the mails;
- (g) To discuss treatment plans and decisions with professional persons;
- (h) Not to consent to the administration of antipsychotic medications and not to thereafter be administered antipsy-

chotic medications unless ordered by a court under RCW 71.05.217 or pursuant to an administrative hearing under RCW 71.05.215;

(i) Not to consent to the performance of electroconvulsive therapy or surgery, except emergency life-saving surgery, unless ordered by a court under RCW 71.05.217;

(j) Not to have psychosurgery performed on him or her under any circumstances;

(k) To dispose of property and sign contracts unless such person has been adjudicated an incompetent in a court proceeding directed to that particular issue.

(11) Every person involuntarily detained shall immediately be informed of his or her right to a hearing to review the legality of his or her detention and of his or her right to counsel, by the professional person in charge of the facility providing evaluation and treatment, or his or her designee, and, when appropriate, by the court. If the person so elects, the court shall immediately appoint an attorney to assist him or her.

(12) A person challenging his or her detention or his or her attorney shall have the right to designate and have the court appoint a reasonably available independent physician, psychiatric advanced registered nurse practitioner, or licensed mental health professional to examine the person detained, the results of which examination may be used in the proceeding. The person shall, if he or she is financially able, bear the cost of such expert examination, otherwise such expert examination shall be at public expense.

(13) Nothing contained in this chapter shall prohibit the patient from petitioning by writ of habeas corpus for release.

(14) Nothing in this chapter shall prohibit a person committed on or prior to January 1, 1974, from exercising a right available to him or her at or prior to January 1, 1974, for obtaining release from confinement.

(15) Nothing in this section permits any person to knowingly violate a no-contact order or a condition of an active judgment and sentence or an active condition of supervision by the department of corrections. [2009 c 217 § 5; 2007 c 375 § 14; 2005 c 504 § 107; 1997 c 112 § 30; 1974 ex.s. c 145 § 25; 1973 1st ex.s. c 142 § 41.]

**Findings—Purpose—Construction—Severability—2007 c 375:** See notes following RCW 10.31.110.

**Findings—Intent—Severability—Application—Construction—Captions, part headings, subheadings not law—Adoption of rules—Effective dates—2005 c 504:** See notes following RCW 71.05.027.

**Alphabetization—Correction of references—2005 c 504:** See note following RCW 71.05.020.

#### **71.05.380 Rights of voluntarily committed persons.**

All persons voluntarily entering or remaining in any facility, institution, or hospital providing evaluation and treatment for mental disorder shall have no less than all rights secured to involuntarily detained persons by RCW 71.05.360 and \*71.05.370. [1973 1st ex.s. c 142 § 43.]

\*Reviser's note: RCW 71.05.370 was recodified as RCW 71.05.217 pursuant to 2005 c 504 § 108, effective July 1, 2005.

**71.05.385 Information subject to disclosure to authorized persons—Restrictions.** (1) A mental health service provider shall release to the persons authorized under subsection (2) of this section, upon request:

(a) The fact, place, and date of an involuntary commitment, the fact and date of discharge or release, and the last known address of a person who has been committed under this chapter.

(b) Information related to mental health services, in the format determined under subsection (9) of this section, concerning a person who:

(i) Is currently committed to the custody or supervision of the department of corrections or the indeterminate sentence review board under chapter 9.94A or 9.95 RCW;

(ii) Has been convicted or found not guilty by reason of insanity of a serious violent offense; or

(iii) Was charged with a serious violent offense and such charges were dismissed under RCW 10.77.086.

Legal counsel may release such information to the persons authorized under subsection (2) of this section on behalf of the mental health service provider, provided that nothing in this subsection shall require the disclosure of attorney work product or attorney-client privileged information.

(2) The information subject to release under subsection (1) of this section shall be released to law enforcement officers, personnel of a county or city jail, designated mental health professionals, public health officers, therapeutic court personnel, personnel of the department of corrections, or personnel of the indeterminate sentence review board, when such information is requested during the course of business and for the purpose of carrying out the responsibilities of the requesting person's office. No mental health service provider or person employed by a mental health service provider, or its legal counsel, shall be liable for information released to or used under the provisions of this section or rules adopted under this section except under RCW 71.05.440.

(3) A person who requests information under subsection (1)(b) of this section must comply with the following restrictions:

(a) Information must be requested only for the purposes permitted by this subsection and for the purpose of carrying out the responsibilities of the requesting person's office. Appropriate purposes for requesting information under this section include:

(i) Completing presentence investigations or risk assessment reports;

(ii) Assessing a person's risk to the community;

(iii) Assessing a person's risk of harm to self or others when confined in a city or county jail;

(iv) Planning for and provision of supervision of an offender, including decisions related to sanctions for violations of conditions of community supervision; and

(v) Responding to an offender's failure to report for department of corrections supervision.

(b) Information shall not be requested under this section unless the requesting person has reasonable suspicion that the individual who is the subject of the information:

(i) Has engaged in activity indicating that a crime or a violation of community custody or parole has been committed or, based upon his or her current or recent past behavior, is likely to be committed in the near future; or

(ii) Is exhibiting signs of a deterioration in mental functioning which may make the individual appropriate for civil commitment under this chapter.

(c) Any information received under this section shall be held confidential and subject to the limitations on disclosure outlined in this chapter, except:

(i) Such information may be shared with other persons who have the right to request similar information under subsection (2) of this section, solely for the purpose of coordinating activities related to the individual who is the subject of the information in a manner consistent with the official responsibilities of the persons involved;

(ii) Such information may be shared with a prosecuting attorney acting in an advisory capacity for a person who receives information under this section. A prosecuting attorney under this subsection shall be subject to the same restrictions and confidentiality limitations as the person who requested the information; and

(iii) As provided in RCW 72.09.585.

(4) A request for information related to mental health services under this section shall not require the consent of the subject of the records. Such request shall be provided in writing, except to the extent authorized in subsection (5) of this section. A written request may include requests made by e-mail or facsimile so long as the requesting person is clearly identified. The request must specify the information being requested.

(5) In the event of an emergency situation that poses a significant risk to the public or the offender, a mental health service provider, or its legal counsel, shall release information related to mental health services delivered to the offender and, if known, information regarding where the offender is likely to be found to the department of corrections or law enforcement upon request. The initial request may be written or oral. All oral requests must be subsequently confirmed in writing. Information released in response to an oral request is limited to a statement as to whether the offender is or is not being treated by the mental health service provider and the address or information about the location or whereabouts of the offender.

(6) Disclosure under this section to state or local law enforcement authorities is mandatory for the purposes of the health insurance portability and accountability act.

(7) Whenever federal law or federal regulations restrict the release of information contained in the treatment records of any patient who receives treatment for alcoholism or drug dependency, the release of the information may be restricted as necessary to comply with federal law and regulations.

(8) This section does not modify the terms and conditions of disclosure of information related to sexually transmitted diseases under chapter 70.24 RCW.

(9) In collaboration with interested organizations, the department shall develop a standard form for requests for information related to mental health services made under this section and a standard format for information provided in response to such requests. Consistent with the goals of the health information privacy provisions of the federal health insurance portability and accountability act, in developing the standard form for responsive information, the department shall design the form in such a way that the information disclosed is limited to the minimum necessary to serve the purpose for which the information is requested. [2009 c 320 § 2.]

**Conflict with federal requirements—2009 c 320:** See note following RCW 71.05.020.

**71.05.390 Confidential information and records—Disclosure.** Except as provided in this section, RCW 71.05.445, 71.05.630, 70.96A.150, 71.05.385, or pursuant to a valid release under RCW 70.02.030, the fact of admission and all information and records compiled, obtained, or maintained in the course of providing services to either voluntary or involuntary recipients of services at public or private agencies shall be confidential.

Information and records may be disclosed only:

(1) In communications between qualified professional persons to meet the requirements of this chapter, in the provision of services or appropriate referrals, or in the course of guardianship proceedings. The consent of the person, or his or her personal representative or guardian, shall be obtained before information or records may be disclosed by a professional person employed by a facility unless provided to a professional person:

- (a) Employed by the facility;
- (b) Who has medical responsibility for the patient’s care;
- (c) Who is a designated mental health professional;
- (d) Who is providing services under chapter 71.24 RCW;
- (e) Who is employed by a state or local correctional facility where the person is confined or supervised; or
- (f) Who is providing evaluation, treatment, or follow-up services under chapter 10.77 RCW.

(2) When the communications regard the special needs of a patient and the necessary circumstances giving rise to such needs and the disclosure is made by a facility providing services to the operator of a facility in which the patient resides or will reside.

(3)(a) When the person receiving services, or his or her guardian, designates persons to whom information or records may be released, or if the person is a minor, when his or her parents make such designation.

(b) A public or private agency shall release to a person’s next of kin, attorney, personal representative, guardian, or conservator, if any:

- (i) The information that the person is presently a patient in the facility or that the person is seriously physically ill;
- (ii) A statement evaluating the mental and physical condition of the patient, and a statement of the probable duration of the patient’s confinement, if such information is requested by the next of kin, attorney, personal representative, guardian, or conservator; and
- (iii) Such other information requested by the next of kin or attorney as may be necessary to decide whether or not proceedings should be instituted to appoint a guardian or conservator.

(4) To the extent necessary for a recipient to make a claim, or for a claim to be made on behalf of a recipient for aid, insurance, or medical assistance to which he or she may be entitled.

(5)(a) For either program evaluation or research, or both: PROVIDED, That the secretary adopts rules for the conduct of the evaluation or research, or both. Such rules shall include, but need not be limited to, the requirement that all evaluators and researchers must sign an oath of confidentiality substantially as follows:

"As a condition of conducting evaluation or research concerning persons who have received services from (fill in the facility, agency, or person) I, . . . . ., agree not to divulge, publish, or otherwise make known to unauthorized persons or the public any information obtained in the course of such evaluation or research regarding persons who have received services such that the person who received such services is identifiable.

I recognize that unauthorized release of confidential information may subject me to civil liability under the provisions of state law.

/s/ . . . . . "

(b) Nothing in this chapter shall be construed to prohibit the compilation and publication of statistical data for use by government or researchers under standards, including standards to assure maintenance of confidentiality, set forth by the secretary.

(6)(a) To the courts as necessary to the administration of this chapter or to a court ordering an evaluation or treatment under chapter 10.77 RCW solely for the purpose of preventing the entry of any evaluation or treatment order that is inconsistent with any order entered under this chapter.

(b) To a court or its designee in which a motion under chapter 10.77 RCW has been made for involuntary medication of a defendant for the purpose of competency restoration.

(c) Disclosure under this subsection is mandatory for the purpose of the health insurance portability and accountability act.

(7)(a) When a mental health professional is requested by a representative of a law enforcement or corrections agency, including a police officer, sheriff, community corrections officer, a municipal attorney, or prosecuting attorney to undertake an investigation or provide treatment under RCW 71.05.150, 10.31.110, or 71.05.153, the mental health professional shall, if requested to do so, advise the representative in writing of the results of the investigation including a statement of reasons for the decision to detain or release the person investigated. Such written report shall be submitted within seventy-two hours of the completion of the investigation or the request from the law enforcement or corrections representative, whichever occurs later.

(b) Disclosure under this subsection is mandatory for the purposes of the health insurance portability and accountability act.

(8) To the attorney of the detained person.

(9) To the prosecuting attorney as necessary to carry out the responsibilities of the office under RCW 71.05.330(2) and 71.05.340(1)(b) and 71.05.335. The prosecutor shall be provided access to records regarding the committed person’s treatment and prognosis, medication, behavior problems, and other records relevant to the issue of whether treatment less restrictive than inpatient treatment is in the best interest of the committed person or others. Information shall be disclosed only after giving notice to the committed person and the person’s counsel.

(10)(a) To appropriate law enforcement agencies and to a person, when the identity of the person is known to the public or private agency, whose health and safety has been threatened, or who is known to have been repeatedly harassed, by the patient. The person may designate a repre-

sentative to receive the disclosure. The disclosure shall be made by the professional person in charge of the public or private agency or his or her designee and shall include the dates of commitment, admission, discharge, or release, authorized or unauthorized absence from the agency's facility, and only such other information that is pertinent to the threat or harassment. The decision to disclose or not shall not result in civil liability for the agency or its employees so long as the decision was reached in good faith and without gross negligence.

(b) Disclosure under this subsection is mandatory for the purposes of the health insurance portability and accountability act.

(11)(a) To appropriate corrections and law enforcement agencies all necessary and relevant information in the event of a crisis or emergent situation that poses a significant and imminent risk to the public. The decision to disclose or not shall not result in civil liability for the mental health service provider or its employees so long as the decision was reached in good faith and without gross negligence.

(b) Disclosure under this subsection is mandatory for the purposes of the health insurance portability and accountability act.

(12) To the persons designated in RCW 71.05.425 and 71.05.385 for the purposes described in those sections.

(13) Civil liability and immunity for the release of information about a particular person who is committed to the department under RCW 71.05.280(3) and 71.05.320(3)(c) after dismissal of a sex offense as defined in RCW 9.94A.030, is governed by RCW 4.24.550.

(14) Upon the death of a person, his or her next of kin, personal representative, guardian, or conservator, if any, shall be notified.

Next of kin who are of legal age and competent shall be notified under this section in the following order: Spouse, parents, children, brothers and sisters, and other relatives according to the degree of relation. Access to all records and information compiled, obtained, or maintained in the course of providing services to a deceased patient shall be governed by RCW 70.02.140.

(15) To the department of health for the purposes of determining compliance with state or federal licensure, certification, or registration rules or laws. However, the information and records obtained under this subsection are exempt from public inspection and copying pursuant to chapter 42.56 RCW.

(16) To mark headstones or otherwise memorialize patients interred at state hospital cemeteries. The department of social and health services shall make available the name, date of birth, and date of death of patients buried in state hospital cemeteries fifty years after the death of a patient.

(17) To law enforcement officers and to prosecuting attorneys as are necessary to enforce RCW 9.41.040(2)(a)(ii). The extent of information that may be released is limited as follows:

(a) Only the fact, place, and date of involuntary commitment, an official copy of any order or orders of commitment, and an official copy of any written or oral notice of ineligibility to possess a firearm that was provided to the person pursuant to RCW 9.41.047(1), shall be disclosed upon request;

(b) The law enforcement and prosecuting attorneys may only release the information obtained to the person's attorney as required by court rule and to a jury or judge, if a jury is waived, that presides over any trial at which the person is charged with violating RCW 9.41.040(2)(a)(ii);

(c) Disclosure under this subsection is mandatory for the purposes of the health insurance portability and accountability act.

(18) When a patient would otherwise be subject to the provisions of this section and disclosure is necessary for the protection of the patient or others due to his or her unauthorized disappearance from the facility, and his or her whereabouts is unknown, notice of such disappearance, along with relevant information, may be made to relatives, the department of corrections when the person is under the supervision of the department, and governmental law enforcement agencies designated by the physician or psychiatric advanced registered nurse practitioner in charge of the patient or the professional person in charge of the facility, or his or her professional designee.

Except as otherwise provided in this chapter, the uniform health care information act, chapter 70.02 RCW, applies to all records and information compiled, obtained, or maintained in the course of providing services.

(19) The fact of admission, as well as all records, files, evidence, findings, or orders made, prepared, collected, or maintained pursuant to this chapter shall not be admissible as evidence in any legal proceeding outside this chapter without the written consent of the person who was the subject of the proceeding except as provided in RCW 71.05.385, in a subsequent criminal prosecution of a person committed pursuant to RCW 71.05.280(3) or 71.05.320(3)(c) on charges that were dismissed pursuant to chapter 10.77 RCW due to incompetency to stand trial, in a civil commitment proceeding pursuant to chapter 71.09 RCW, or, in the case of a minor, a guardianship or dependency proceeding. The records and files maintained in any court proceeding pursuant to this chapter shall be confidential and available subsequent to such proceedings only to the person who was the subject of the proceeding or his or her attorney. In addition, the court may order the subsequent release or use of such records or files only upon good cause shown if the court finds that appropriate safeguards for strict confidentiality are and will be maintained. [2009 c 320 § 3; 2009 c 217 § 6; 2007 c 375 § 15. Prior: 2005 c 504 § 109; 2005 c 453 § 5; 2005 c 274 § 346; prior: 2004 c 166 § 6; 2004 c 157 § 5; 2004 c 33 § 2; prior: 2000 c 94 § 9; 2000 c 75 § 6; 2000 c 74 § 7; 1999 c 12 § 1; 1998 c 297 § 22; 1993 c 448 § 6; 1990 c 3 § 112; 1986 c 67 § 8; 1985 c 207 § 1; 1983 c 196 § 4; 1979 ex.s. c 215 § 17; 1975 1st ex.s. c 199 § 10; 1974 ex.s. c 145 § 27; 1973 1st ex.s. c 142 § 44.]

**Reviser's note:** This section was amended by 2009 c 217 § 6 and by 2009 c 320 § 3, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

**Conflict with federal requirements—2009 c 320:** See note following RCW 71.05.020.

**Findings—Purpose—Construction—Severability—2007 c 375:** See notes following RCW 10.31.110.

**Findings—Intent—Severability—Application—Construction—Captions, part headings, subheadings not law—Adoption of rules—Effective dates—2005 c 504:** See notes following RCW 71.05.027.

**Alphabetization—Correction of references—2005 c 504:** See note following RCW 71.05.020.

**Severability—2005 c 453:** See note following RCW 9.41.040.

**Part headings not law—Effective date—2005 c 274:** See RCW 42.56.901 and 42.56.902.

**Severability—Effective dates—2004 c 166:** See notes following RCW 71.05.040.

**Findings—Intent—Severability—Effective date—2004 c 157:** See notes following RCW 10.77.010.

**Finding—Intent—2004 c 33:** "The legislature finds that social stigmas surrounding mental illness have prevented patients buried in the state hospital cemeteries from being properly memorialized. From 1887 to 1953, the state buried many of the patients who died while in residence at the three state hospitals on hospital grounds. In order to honor these patients, the legislature intends that the state be allowed to release records necessary to appropriately mark their resting place." [2004 c 33 § 1.]

**Intent—2000 c 75:** See note following RCW 71.05.445.

**Severability—2000 c 74:** See note following RCW 10.77.060.

**Effective dates—Severability—Intent—1998 c 297:** See notes following RCW 71.05.010.

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**71.05.420 Records of disclosure.** Except as provided in RCW 71.05.425, when any disclosure of information or records is made as authorized by RCW 71.05.390, the physician or psychiatric advanced registered nurse practitioner in charge of the patient or the professional person in charge of the facility shall promptly cause to be entered into the patient's medical record the date and circumstances under which said disclosure was made, the names and relationships to the patient, if any, of the persons or agencies to whom such disclosure was made, and the information disclosed. [2009 c 217 § 7; 2005 c 504 § 110; 1990 c 3 § 113; 1973 1st ex.s. c 142 § 47.]

**Findings—Intent—Severability—Application—Construction—Captions, part headings, subheadings not law—Adoption of rules—Effective dates—2005 c 504:** See notes following RCW 71.05.027.

**Alphabetization—Correction of references—2005 c 504:** See note following RCW 71.05.020.

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**71.05.425 Persons committed following dismissal of sex, violent, or felony harassment offense—Notification of conditional release, final release, leave, transfer, or escape—To whom given—Definitions.** (1)(a) Except as provided in subsection (2) of this section, at the earliest possible date, and in no event later than thirty days before conditional release, final release, authorized leave under RCW 71.05.325(2), or transfer to a facility other than a state mental hospital, the superintendent shall send written notice of conditional release, release, authorized leave, or transfer of a person committed under RCW 71.05.280(3) or 71.05.320(3)(c) following dismissal of a sex, violent, or felony harassment offense pursuant to RCW 10.77.086(4) to the following:

(i) The chief of police of the city, if any, in which the person will reside; and

(ii) The sheriff of the county in which the person will reside.

(b) The same notice as required by (a) of this subsection shall be sent to the following, if such notice has been requested in writing about a specific person committed under RCW 71.05.280(3) or 71.05.320(3)(c) following dismissal of

a sex, violent, or felony harassment offense pursuant to RCW 10.77.086(4):

(i) The victim of the sex, violent, or felony harassment offense that was dismissed pursuant to RCW 10.77.086(4) preceding commitment under RCW 71.05.280(3) or 71.05.320(3)(c) or the victim's next of kin if the crime was a homicide;

(ii) Any witnesses who testified against the person in any court proceedings; and

(iii) Any person specified in writing by the prosecuting attorney.

Information regarding victims, next of kin, or witnesses requesting the notice, information regarding any other person specified in writing by the prosecuting attorney to receive the notice, and the notice are confidential and shall not be available to the person committed under this chapter.

(c) The thirty-day notice requirements contained in this subsection shall not apply to emergency medical transfers.

(d) The existence of the notice requirements in this subsection will not require any extension of the release date in the event the release plan changes after notification.

(2) If a person committed under RCW 71.05.280(3) or 71.05.320(3)(c) following dismissal of a sex, violent, or felony harassment offense pursuant to RCW 10.77.086(4) escapes, the superintendent shall immediately notify, by the most reasonable and expedient means available, the chief of police of the city and the sheriff of the county in which the person resided immediately before the person's arrest. If previously requested, the superintendent shall also notify the witnesses and the victim of the sex, violent, or felony harassment offense that was dismissed pursuant to RCW 10.77.086(4) preceding commitment under RCW 71.05.280(3) or 71.05.320(3) or the victim's next of kin if the crime was a homicide. In addition, the secretary shall also notify appropriate parties pursuant to RCW 71.05.390(18). If the person is recaptured, the superintendent shall send notice to the persons designated in this subsection as soon as possible but in no event later than two working days after the department learns of such recapture.

(3) If the victim, the victim's next of kin, or any witness is under the age of sixteen, the notice required by this section shall be sent to the parent or legal guardian of the child.

(4) The superintendent shall send the notices required by this chapter to the last address provided to the department by the requesting party. The requesting party shall furnish the department with a current address.

(5) For purposes of this section the following terms have the following meanings:

(a) "Violent offense" means a violent offense under RCW 9.94A.030;

(b) "Sex offense" means a sex offense under RCW 9.94A.030;

(c) "Next of kin" means a person's spouse, state registered domestic partner, parents, siblings, and children;

(d) "Felony harassment offense" means a crime of harassment as defined in RCW 9A.46.060 that is a felony. [2009 c 521 § 158; 2008 c 213 § 10; 2005 c 504 § 710; 2000 c 94 § 10; 1999 c 13 § 8; 1994 c 129 § 9; 1992 c 186 § 9; 1990 c 3 § 109.]

**Findings—Intent—Severability—Application—Construction—Captions, part headings, subheadings not law—Adoption of rules—Effective dates—2005 c 504:** See notes following RCW 71.05.027.

**Alphabetization—Correction of references—2005 c 504:** See note following RCW 71.05.020.

**Purpose—Construction—1999 c 13:** See note following RCW 10.77.010.

**Findings—Intent—1994 c 129:** See note following RCW 4.24.550.

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**71.05.427 Persons committed following dismissal of sex offense—Release of information authorized.** In addition to any other information required to be released under this chapter, the department is authorized, pursuant to RCW 4.24.550, to release relevant information that is necessary to protect the public, concerning a specific person committed under RCW 71.05.280(3) or \*71.05.320(2)(c) following dismissal of a sex offense as defined in RCW 9.94A.030. [1990 c 3 § 110.]

**\*Reviser's note:** RCW 71.05.320 was amended by 2006 c 333 § 304, changing subsection (2) to subsection (3).

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**71.05.435 Discharge of person from evaluation and treatment facility or state hospital—Notice to designated mental health professional office.** (1) Whenever a person who is the subject of an involuntary commitment order under this chapter is discharged from an evaluation and treatment facility or state hospital, the evaluation and treatment facility or state hospital shall provide notice of the person's discharge to the designated mental health professional office responsible for the initial commitment and the designated mental health professional office that serves the county in which the person is expected to reside. The evaluation and treatment facility or state hospital must also provide these offices with a copy of any less restrictive order or conditional release order entered in conjunction with the discharge of the person, unless the evaluation and treatment facility or state hospital has entered into a memorandum of understanding obligating another entity to provide these documents.

(2) The notice and documents referred to in subsection (1) of this section shall be provided as soon as possible and no later than one business day following the discharge of the person. Notice is not required under this section if the discharge is for the purpose of transferring the person for continued detention and treatment under this chapter at another treatment facility.

(3) The department shall maintain and make available an updated list of contact information for designated mental health professional offices around the state. [2010 c 280 § 4.]

**71.05.440 Action for unauthorized release of confidential information—Liquidated damages—Treble damages—Injunction.** Except as provided in RCW 4.24.550, any person may bring an action against an individual who has willfully released confidential information or records concerning him or her in violation of the provisions of this chapter, for the greater of the following amounts:

(1) One thousand dollars; or

(2) Three times the amount of actual damages sustained, if any. It shall not be a prerequisite to recovery under this sec-

(2010 Ed.)

tion that the plaintiff shall have suffered or be threatened with special, as contrasted with general, damages.

Any person may bring an action to enjoin the release of confidential information or records concerning him or her or his or her ward, in violation of the provisions of this chapter, and may in the same action seek damages as provided in this section.

The court may award to the plaintiff, should he or she prevail in an action authorized by this section, reasonable attorney fees in addition to those otherwise provided by law. [1990 c 3 § 114; 1974 ex.s. c 145 § 28; 1973 1st ex.s. c 142 § 49.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**71.05.445 Court-ordered mental health treatment of persons subject to department of corrections supervision—Initial assessment inquiry—Required notifications—Rules.** (1)(a) When a mental health service provider conducts its initial assessment for a person receiving court-ordered treatment, the service provider shall inquire and shall be told by the offender whether he or she is subject to supervision by the department of corrections.

(b) When a person receiving court-ordered treatment or treatment ordered by the department of corrections discloses to his or her mental health service provider that he or she is subject to supervision by the department of corrections, the mental health service provider shall notify the department of corrections that he or she is treating the offender and shall notify the offender that his or her community corrections officer will be notified of the treatment, provided that if the offender has received relief from disclosure pursuant to RCW 9.94A.562, 70.96A.155, or 71.05.132 and the offender has provided the mental health service provider with a copy of the order granting relief from disclosure pursuant to RCW 9.94A.562, 70.96A.155, or 71.05.132, the mental health service provider is not required to notify the department of corrections that the mental health service provider is treating the offender. The notification may be written or oral and shall not require the consent of the offender. If an oral notification is made, it must be confirmed by a written notification. For purposes of this section, a written notification includes notification by e-mail or facsimile, so long as the notifying mental health service provider is clearly identified.

(2) The information to be released to the department of corrections shall include all relevant records and reports, as defined by rule, necessary for the department of corrections to carry out its duties.

(3) The department and the department of corrections, in consultation with regional support networks, mental health service providers as defined in RCW 71.05.020, mental health consumers, and advocates for persons with mental illness, shall adopt rules to implement the provisions of this section related to the type and scope of information to be released. These rules shall:

(a) Enhance and facilitate the ability of the department of corrections to carry out its responsibility of planning and ensuring community protection with respect to persons subject to sentencing under chapter 9.94A or 9.95 RCW, including accessing and releasing or disclosing information of persons who received mental health services as a minor; and

(b) Establish requirements for the notification of persons under the supervision of the department of corrections regarding the provisions of this section.

(4) The information received by the department of corrections under this section shall remain confidential and subject to the limitations on disclosure outlined in chapter 71.05 RCW, except as provided in RCW 72.09.585.

(5) No mental health service provider or individual employed by a mental health service provider shall be held responsible for information released to or used by the department of corrections under the provisions of this section or rules adopted under this section except under RCW 71.05.440.

(6) Whenever federal law or federal regulations restrict the release of information contained in the treatment records of any patient who receives treatment for alcoholism or drug dependency, the release of the information may be restricted as necessary to comply with federal law and regulations.

(7) This section does not modify the terms and conditions of disclosure of information related to sexually transmitted diseases under chapter 70.24 RCW.

(8) The department shall, subject to available resources, electronically, or by the most cost-effective means available, provide the department of corrections with the names, last dates of services, and addresses of specific regional support networks and mental health service providers that delivered mental health services to a person subject to chapter 9.94A or 9.95 RCW pursuant to an agreement between the departments. [2009 c 320 § 4; 2005 c 504 § 711; 2004 c 166 § 4; 2002 c 39 § 2; 2000 c 75 § 3.]

**Conflict with federal requirements—2009 c 320:** See note following RCW 71.05.020.

**Findings—Intent—Severability—Application—Construction—Captions, part headings, subheadings not law—Adoption of rules—Effective dates—2005 c 504:** See notes following RCW 71.05.027.

**Alphabetization—Correction of references—2005 c 504:** See note following RCW 71.05.020.

**Severability—Effective dates—2004 c 166:** See notes following RCW 71.05.040.

**Intent—2000 c 75:** "It is the intent of the legislature to enhance and facilitate the ability of the department of corrections to carry out its responsibility of planning and ensuring community protection with respect to persons subject to sentencing under chapter 9.94A RCW by authorizing access to, and release or disclosure of, necessary information related to mental health services. This includes accessing and releasing or disclosing information of persons who received mental health services as a minor. The legislature does not intend this act to readdress access to information and records regarding continuity of care.

The legislature recognizes that persons with mental illness have a right to the confidentiality of information related to mental health services, including the fact of their receiving such services, unless there is a state interest that supersedes this right. It is the intent of the legislature to balance that right of the individual with the state interest to enhance public safety." [2000 c 75 § 1.]

**71.05.500 Liability of applicant.** Any person making or filing an application alleging that a person should be involuntarily detained, certified, committed, treated, or evaluated pursuant to this chapter shall not be rendered civilly or criminally liable where the making and filing of such application was in good faith. [1973 1st ex.s. c 142 § 55.]

**71.05.510 Damages for excessive detention.** Any individual who knowingly, wilfully or through gross negligence

violates the provisions of this chapter by detaining a person for more than the allowable number of days shall be liable to the person detained in civil damages. It shall not be a prerequisite to an action under this section that the plaintiff shall have suffered or be threatened with special, as contrasted with general damages. [1974 ex.s. c 145 § 30; 1973 1st ex.s. c 142 § 56.]

**71.05.520 Protection of rights—Staff.** The department of social and health services shall have the responsibility to determine whether all rights of individuals recognized and guaranteed by the provisions of this chapter and the Constitutions of the state of Washington and the United States are in fact protected and effectively secured. To this end, the department shall assign appropriate staff who shall from time to time as may be necessary have authority to examine records, inspect facilities, attend proceedings, and do whatever is necessary to monitor, evaluate, and assure adherence to such rights. Such persons shall also recommend such additional safeguards or procedures as may be appropriate to secure individual rights set forth in this chapter and as guaranteed by the state and federal Constitutions. [1973 1st ex.s. c 142 § 57.]

**71.05.525 Transfer of person committed to juvenile correction institution or facility for juveniles with mental illnesses.** When, in the judgment of the department, the welfare of any person committed to or confined in any state juvenile correctional institution or facility necessitates that such a person be transferred or moved for observation, diagnosis or treatment to any state institution or facility for the care of mentally ill juveniles the secretary, or his or her designee, is authorized to order and effect such move or transfer: PROVIDED, HOWEVER, That the secretary shall adopt and implement procedures to assure that persons so transferred shall, while detained or confined in such institution or facility for the care of mentally ill juveniles, be provided with substantially similar opportunities for parole or early release evaluation and determination as persons detained or confined in state juvenile correctional institutions or facilities: PROVIDED, FURTHER, That the secretary shall notify the original committing court of such transfer. [1997 c 112 § 36; 1975 1st ex.s. c 199 § 12.]

**71.05.530 Facilities part of comprehensive mental health program.** Evaluation and treatment facilities authorized pursuant to this chapter may be part of the comprehensive community mental health services program conducted in counties pursuant to chapter 71.24 RCW, and may receive funding pursuant to the provisions thereof. [1998 c 297 § 23; 1973 1st ex.s. c 142 § 58.]

**Effective dates—Severability—Intent—1998 c 297:** See notes following RCW 71.05.010.

**71.05.560 Adoption of rules.** The department shall adopt such rules as may be necessary to effectuate the intent and purposes of this chapter, which shall include but not be limited to evaluation of the quality of the program and facilities operating pursuant to this chapter, evaluation of the effectiveness and cost effectiveness of such programs and

facilities, and procedures and standards for certification and other action relevant to evaluation and treatment facilities. [1998 c 297 § 24; 1973 1st ex.s. c 142 § 61.]

**Effective dates—Severability—Intent—1998 c 297:** See notes following RCW 71.05.010.

**71.05.5601 Rule making—Medicaid—Secretary of corrections—Secretary of social and health services.** See RCW 72.09.380.

**71.05.5602 Rule making—Chapter 214, Laws of 1999—Secretary of corrections—Secretary of social and health services.** See RCW 72.09.381.

**71.05.570 Rules of court.** The supreme court of the state of Washington shall adopt such rules as it shall deem necessary with respect to the court procedures and proceedings provided for by this chapter. [1973 1st ex.s. c 142 § 62.]

**71.05.575 Less restrictive alternative treatment—Consideration by court.** (1) When making a decision under this chapter whether to require a less restrictive alternative treatment, the court shall consider whether it is appropriate to include or exclude time spent in confinement when determining whether the person has committed a recent overt act.

(2) When determining whether an offender is a danger to himself or herself or others under this chapter, a court shall give great weight to any evidence submitted to the court regarding an offender's recent history of judicially required or administratively ordered involuntary antipsychotic medication while in confinement. [1999 c 214 § 6.]

**Intent—Effective date—1999 c 214:** See notes following RCW 72.09.370.

**71.05.620 Court files and records closed—Exceptions.** The files and records of court proceedings under this chapter and chapters 70.96A, 71.34, and 70.96B RCW shall be closed but shall be accessible to any person who is the subject of a petition and to the person's attorney, guardian ad litem, resource management services, or service providers authorized to receive such information by resource management services. [2005 c 504 § 111; 1989 c 205 § 12.]

**Findings—Intent—Severability—Application—Construction—Captions, part headings, subheadings not law—Adoption of rules—Effective dates—2005 c 504:** See notes following RCW 71.05.027.

**Alphabetization—Correction of references—2005 c 504:** See note following RCW 71.05.020.

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**71.05.630 Treatment records—Confidential—Release (as amended by 2009 c 217).** (1) Except as otherwise provided by law, all treatment records shall remain confidential and may be released only to the persons designated in this section, or to other persons designated in an informed written consent of the patient.

(2) Treatment records of a person may be released without informed written consent in the following circumstances:

(a) To a person, organization, or agency as necessary for management or financial audits, or program monitoring and evaluation. Information obtained under this subsection shall remain confidential and may not be used in a manner that discloses the name or other identifying information about the person whose records are being released.

(b) To the department, the director of regional support networks, or a qualified staff member designated by the director only when necessary to be

(2010 Ed.)

used for billing or collection purposes. The information shall remain confidential.

(c) For purposes of research as permitted in chapter 42.48 RCW.

(d) Pursuant to lawful order of a court.

(e) To qualified staff members of the department, to the director of regional support networks, to resource management services responsible for serving a patient, or to service providers designated by resource management services as necessary to determine the progress and adequacy of treatment and to determine whether the person should be transferred to a less restrictive or more appropriate treatment modality or facility. The information shall remain confidential.

(f) Within the treatment facility where the patient is receiving treatment, confidential information may be disclosed to persons employed, serving in bona fide training programs, or participating in supervised volunteer programs, at the facility when it is necessary to perform their duties.

(g) Within the department as necessary to coordinate treatment for mental illness, developmental disabilities, alcoholism, or drug abuse of persons who are under the supervision of the department.

(h) To a licensed physician or psychiatric advanced registered nurse practitioner who has determined that the life or health of the person is in danger and that treatment without the information contained in the treatment records could be injurious to the patient's health. Disclosure shall be limited to the portions of the records necessary to meet the medical emergency.

(i) To a facility that is to receive a person who is involuntarily committed under chapter 71.05 RCW, or upon transfer of the person from one treatment facility to another. The release of records under this subsection shall be limited to the treatment records required by law, a record or summary of all somatic treatments, and a discharge summary. The discharge summary may include a statement of the patient's problem, the treatment goals, the type of treatment which has been provided, and recommendation for future treatment, but may not include the patient's complete treatment record.

(j) Notwithstanding the provisions of RCW 71.05.390(7), to a correctional facility or a corrections officer who is responsible for the supervision of a person who is receiving inpatient or outpatient evaluation or treatment. Except as provided in RCW 71.05.445 and 71.34.345, release of records under this section is limited to:

(i) An evaluation report provided pursuant to a written supervision plan.

(ii) The discharge summary, including a record or summary of all somatic treatments, at the termination of any treatment provided as part of the supervision plan.

(iii) When a person is returned from a treatment facility to a correctional facility, the information provided under (j)(iv) of this subsection.

(iv) Any information necessary to establish or implement changes in the person's treatment plan or the level or kind of supervision as determined by resource management services. In cases involving a person transferred back to a correctional facility, disclosure shall be made to clinical staff only.

(k) To the person's counsel or guardian ad litem, without modification, at any time in order to prepare for involuntary commitment or recommitment proceedings, reexaminations, appeals, or other actions relating to detention, admission, commitment, or patient's rights under chapter 71.05 RCW.

(l) To staff members of the protection and advocacy agency or to staff members of a private, nonprofit corporation for the purpose of protecting and advocating the rights of persons with mental disorders or developmental disabilities. Resource management services may limit the release of information to the name, birthdate, and county of residence of the patient, information regarding whether the patient was voluntarily admitted, or involuntarily committed, the date and place of admission, placement, or commitment, the name and address of a guardian of the patient, and the date and place of the guardian's appointment. Any staff member who wishes to obtain additional information shall notify the patient's resource management services in writing of the request and of the resource management services' right to object. The staff member shall send the notice by mail to the guardian's address. If the guardian does not object in writing within fifteen days after the notice is mailed, the staff member may obtain the additional information. If the guardian objects in writing within fifteen days after the notice is mailed, the staff member may not obtain the additional information.

(m) For purposes of coordinating health care, the department may release without informed written consent of the patient, information acquired for billing and collection purposes as described in (b) of this subsection to all current treating providers of the patient with prescriptive authority who have written a prescription for the patient within the last twelve months. The department shall notify the patient that billing and collection information has been released to named providers, and provide the substance of the information released and the dates of such release. The department shall not release

counseling, inpatient psychiatric hospitalization, or drug and alcohol treatment information without a signed written release from the client.

(3) Whenever federal law or federal regulations restrict the release of information contained in the treatment records of any patient who receives treatment for chemical dependency, the department may restrict the release of the information as necessary to comply with federal law and regulations. [2009 c 217 § 8; 2007 c 191 § 1; 2005 c 504 § 112; 2000 c 75 § 5; 1989 c 205 § 13.]

**71.05.630 Treatment records—Confidential—Release (as amended by 2009 c 320).** (1) Except as otherwise provided by law, all treatment records shall remain confidential and may be released only to the persons designated in this section, or to other persons designated in an informed written consent of the patient.

(2) Treatment records of a person may be released without informed written consent in the following circumstances:

(a) To a person, organization, or agency as necessary for management or financial audits, or program monitoring and evaluation. Information obtained under this subsection shall remain confidential and may not be used in a manner that discloses the name or other identifying information about the person whose records are being released.

(b) To the department, the director of regional support networks, or a qualified staff member designated by the director only when necessary to be used for billing or collection purposes. The information shall remain confidential.

(c) For purposes of research as permitted in chapter 42.48 RCW.

(d) Pursuant to lawful order of a court.

(e) To qualified staff members of the department, to the director of regional support networks, to resource management services responsible for serving a patient, or to service providers designated by resource management services as necessary to determine the progress and adequacy of treatment and to determine whether the person should be transferred to a less restrictive or more appropriate treatment modality or facility. The information shall remain confidential.

(f) Within the treatment facility where the patient is receiving treatment, confidential information may be disclosed to persons employed, serving in bona fide training programs, or participating in supervised volunteer programs, at the facility when it is necessary to perform their duties.

(g) Within the department as necessary to coordinate treatment for mental illness, developmental disabilities, alcoholism, or drug abuse of persons who are under the supervision of the department.

(h) To a licensed physician who has determined that the life or health of the person is in danger and that treatment without the information contained in the treatment records could be injurious to the patient's health. Disclosure shall be limited to the portions of the records necessary to meet the medical emergency.

(i) To a facility that is to receive a person who is involuntarily committed under chapter 71.05 RCW, or upon transfer of the person from one treatment facility to another. The release of records under this subsection shall be limited to the treatment records required by law, a record or summary of all somatic treatments, and a discharge summary. The discharge summary may include a statement of the patient's problem, the treatment goals, the type of treatment which has been provided, and recommendation for future treatment, but may not include the patient's complete treatment record.

(j) ~~((Notwithstanding the provisions of RCW 71.05.390(7), to a correctional facility or a corrections officer who is responsible for the supervision of a person who is receiving inpatient or outpatient evaluation or treatment. Except as provided in RCW 71.05.445 and 71.34.345, release of records under this section is limited to:~~

~~(i) An evaluation report provided pursuant to a written supervision plan;~~

~~(ii) The discharge summary, including a record or summary of all somatic treatments, at the termination of any treatment provided as part of the supervision plan;~~

~~(iii) When a person is returned from a treatment facility to a correctional facility, the information provided under (j)(iv) of this subsection;~~

~~(iv) Any information necessary to establish or implement changes in the person's treatment plan or the level or kind of supervision as determined by resource management services. In cases involving a person transferred back to a correctional facility, disclosure shall be made to clinical staff only.~~

~~((k)) To the person's counsel or guardian ad litem, without modification, at any time in order to prepare for involuntary commitment or commitment proceedings, reexaminations, appeals, or other actions relating to detention, admission, commitment, or patient's rights under chapter 71.05 RCW.~~

~~((H))~~ ~~((k))~~ To staff members of the protection and advocacy agency or to staff members of a private, nonprofit corporation for the purpose of protecting and advocating the rights of persons with mental disorders or developmental disabilities. Resource management services may limit the release of information to the name, birthdate, and county of residence of the patient, information regarding whether the patient was voluntarily admitted, or involuntarily committed, the date and place of admission, placement, or commitment, the name and address of a guardian of the patient, and the date and place of the guardian's appointment. Any staff member who wishes to obtain additional information shall notify the patient's resource management services in writing of the request and of the resource management services' right to object. The staff member shall send the notice by mail to the guardian's address. If the guardian does not object in writing within fifteen days after the notice is mailed, the staff member may obtain the additional information. If the guardian objects in writing within fifteen days after the notice is mailed, the staff member may not obtain the additional information.

~~((M))~~ ~~((l))~~ For purposes of coordinating health care, the department may release without informed written consent of the patient, information acquired for billing and collection purposes as described in (b) of this subsection to all current treating providers of the patient with prescriptive authority who have written a prescription for the patient within the last twelve months. The department shall notify the patient that billing and collection information has been released to named providers, and provide the substance of the information released and the dates of such release. The department shall not release counseling, inpatient psychiatric hospitalization, or drug and alcohol treatment information without a signed written release from the client.

(3) Whenever federal law or federal regulations restrict the release of information contained in the treatment records of any patient who receives treatment for chemical dependency, the department may restrict the release of the information as necessary to comply with federal law and regulations. [2009 c 320 § 5; 2007 c 191 § 1; 2005 c 504 § 112; 2000 c 75 § 5; 1989 c 205 § 13.]

**Conflict with federal requirements—2009 c 320:** See note following RCW 71.05.020.

**71.05.630 Treatment records—Confidential—Release (as amended by 2009 c 398).** (1) Except as otherwise provided by law, all treatment records shall remain confidential and may be released only to the persons designated in this section, or to other persons designated in an informed written consent of the patient.

(2) Treatment records of a person may be released without informed written consent in the following circumstances:

(a) To a person, organization, or agency as necessary for management or financial audits, or program monitoring and evaluation. Information obtained under this subsection shall remain confidential and may not be used in a manner that discloses the name or other identifying information about the person whose records are being released.

(b) To the department, the director of regional support networks, or a qualified staff member designated by the director only when necessary to be used for billing or collection purposes. The information shall remain confidential.

(c) For purposes of research as permitted in chapter 42.48 RCW.

(d) Pursuant to lawful order of a court.

(e) To qualified staff members of the department, to the director of regional support networks, to resource management services responsible for serving a patient, or to service providers designated by resource management services as necessary to determine the progress and adequacy of treatment and to determine whether the person should be transferred to a less restrictive or more appropriate treatment modality or facility. The information shall remain confidential.

(f) Within the treatment facility where the patient is receiving treatment, confidential information may be disclosed to persons employed, serving in bona fide training programs, or participating in supervised volunteer programs, at the facility when it is necessary to perform their duties.

(g) Within the department as necessary to coordinate treatment for mental illness, developmental disabilities, alcoholism, or drug abuse of persons who are under the supervision of the department.

(h) To a licensed physician who has determined that the life or health of the person is in danger and that treatment without the information contained in the treatment records could be injurious to the patient's health. Disclosure shall be limited to the portions of the records necessary to meet the medical emergency.

~~(i) Consistent with the requirements of the health information portability and accountability act, to a licensed mental health professional, as defined~~

in RCW 71.05.020, or a health care professional licensed under chapter 18.71, 18.71A, 18.57, 18.57A, 18.79, or 18.36A RCW who is providing care to a person, or to whom a person has been referred for evaluation or treatment, to assure coordinated care and treatment of that person. Psychotherapy notes, as defined in 45 C.F.R. Sec. 164.501, may not be released without authorization of the person who is the subject of the request for release of information.

(j) To administrative and office support staff designated to obtain medical records for those licensed professionals listed in (i) of this subsection.

(k) To a facility that is to receive a person who is involuntarily committed under chapter 71.05 RCW, or upon transfer of the person from one treatment facility to another. The release of records under this subsection shall be limited to the treatment records required by law, a record or summary of all somatic treatments, and a discharge summary. The discharge summary may include a statement of the patient's problem, the treatment goals, the type of treatment which has been provided, and recommendation for future treatment, but may not include the patient's complete treatment record.

((+)) (l) Notwithstanding the provisions of RCW 71.05.390(7), to a correctional facility or a corrections officer who is responsible for the supervision of a person who is receiving inpatient or outpatient evaluation or treatment. Except as provided in RCW 71.05.445 and 71.34.345, release of records under this section is limited to:

(i) An evaluation report provided pursuant to a written supervision plan.

(ii) The discharge summary, including a record or summary of all somatic treatments, at the termination of any treatment provided as part of the supervision plan.

(iii) When a person is returned from a treatment facility to a correctional facility, the information provided under ((+)) (l)(iv) of this subsection.

(iv) Any information necessary to establish or implement changes in the person's treatment plan or the level or kind of supervision as determined by resource management services. In cases involving a person transferred back to a correctional facility, disclosure shall be made to clinical staff only.

((+)) (m) To the person's counsel or guardian ad litem, without modification, at any time in order to prepare for involuntary commitment or recommitment proceedings, reexaminations, appeals, or other actions relating to detention, admission, commitment, or patient's rights under chapter 71.05 RCW.

((+)) (n) To staff members of the protection and advocacy agency or to staff members of a private, nonprofit corporation for the purpose of protecting and advocating the rights of persons with mental disorders or developmental disabilities. Resource management services may limit the release of information to the name, birthdate, and county of residence of the patient, information regarding whether the patient was voluntarily admitted, or involuntarily committed, the date and place of admission, placement, or commitment, the name and address of a guardian of the patient, and the date and place of the guardian's appointment. Any staff member who wishes to obtain additional information shall notify the patient's resource management services in writing of the request and of the resource management services' right to object. The staff member shall send the notice by mail to the guardian's address. If the guardian does not object in writing within fifteen days after the notice is mailed, the staff member may obtain the additional information. If the guardian objects in writing within fifteen days after the notice is mailed, the staff member may not obtain the additional information.

((+)) (o) For purposes of coordinating health care, the department may release without informed written consent of the patient, information acquired for billing and collection purposes as described in (b) of this subsection to all current treating providers of the patient with prescriptive authority who have written a prescription for the patient within the last twelve months. The department shall notify the patient that billing and collection information has been released to named providers, and provide the substance of the information released and the dates of such release. The department shall not release counseling, inpatient psychiatric hospitalization, or drug and alcohol treatment information without a signed written release from the client.

(3) Whenever federal law or federal regulations restrict the release of information contained in the treatment records of any patient who receives treatment for chemical dependency, the department may restrict the release of the information as necessary to comply with federal law and regulations. [2009 c 398 § 1; 2007 c 191 § 1; 2005 c 504 § 112; 2000 c 75 § 5; 1989 c 205 § 13.]

**Reviser's note:** RCW 71.05.630 was amended three times during the 2009 legislative session, each without reference to the other. For rule of construction concerning sections amended more than once during the same legislative session, see RCW 1.12.025.

(2010 Ed.)

**Findings—Intent—Severability—Application—Construction—Captions, part headings, subheadings not law—Adoption of rules—Effective dates—2005 c 504:** See notes following RCW 71.05.027.

**Alphabetization—Correction of references—2005 c 504:** See note following RCW 71.05.020.

**Intent—2000 c 75:** See note following RCW 71.05.445.

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

#### **71.05.640 Treatment records—Access procedures.**

(1) Procedures shall be established by resource management services to provide reasonable and timely access to individual treatment records. However, access may not be denied at any time to records of all medications and somatic treatments received by the person.

(2) Following discharge, the person shall have a right to a complete record of all medications and somatic treatments prescribed during evaluation, admission, or commitment and to a copy of the discharge summary prepared at the time of his or her discharge. A reasonable and uniform charge for reproduction may be assessed.

(3) Treatment records may be modified prior to inspection to protect the confidentiality of other patients or the names of any other persons referred to in the record who gave information on the condition that his or her identity remain confidential. Entire documents may not be withheld to protect such confidentiality.

(4) At the time of discharge all persons shall be informed by resource management services of their rights as provided in RCW 71.05.390 and 71.05.620 through 71.05.690. [2005 c 504 § 712; 2005 c 504 § 113; 2000 c 94 § 11; 1999 c 13 § 9. Prior: 1989 c 205 § 14.]

**Reviser's note:** This section was amended by 2005 c 504 § 113 and by 2005 c 504 § 712, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

**Findings—Intent—Severability—Application—Construction—Captions, part headings, subheadings not law—Adoption of rules—Effective dates—2005 c 504:** See notes following RCW 71.05.027.

**Alphabetization—Correction of references—2005 c 504:** See note following RCW 71.05.020.

**Purpose—Construction—1999 c 13:** See note following RCW 10.77.010.

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**71.05.660 Treatment records—Privileged communications unaffected.** Nothing in this chapter or chapter 70.96A, 71.05, 71.34, or 70.96B RCW shall be construed to interfere with communications between physicians, psychiatric advanced registered nurse practitioners, or psychologists and patients and attorneys and clients. [2009 c 217 § 9; 2005 c 504 § 114; 1989 c 205 § 16.]

**Findings—Intent—Severability—Application—Construction—Captions, part headings, subheadings not law—Adoption of rules—Effective dates—2005 c 504:** See notes following RCW 71.05.027.

**Alphabetization—Correction of references—2005 c 504:** See note following RCW 71.05.020.

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**71.05.680 Treatment records—Access under false pretenses, penalty.** Any person who requests or obtains confidential information pursuant to RCW 71.05.620 through 71.05.690 under false pretenses shall be guilty of a gross mis-

demeanor. [2005 c 504 § 713; 1999 c 13 § 11. Prior: 1989 c 205 § 18.]

**Findings—Intent—Severability—Application—Construction—Captions, part headings, subheadings not law—Adoption of rules—Effective dates—2005 c 504:** See notes following RCW 71.05.027.

**Alphabetization—Correction of references—2005 c 504:** See note following RCW 71.05.020.

**Purpose—Construction—1999 c 13:** See note following RCW 10.77.010.

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**71.05.690 Treatment records—Rules.** The department shall adopt rules to implement RCW 71.05.620 through 71.05.680. [2005 c 504 § 714; 1999 c 13 § 12. Prior: 1989 c 205 § 19.]

**Findings—Intent—Severability—Application—Construction—Captions, part headings, subheadings not law—Adoption of rules—Effective dates—2005 c 504:** See notes following RCW 71.05.027.

**Alphabetization—Correction of references—2005 c 504:** See note following RCW 71.05.020.

**Purpose—Construction—1999 c 13:** See note following RCW 10.77.010.

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**71.05.700 Home visit by designated mental health professional or crisis intervention worker—Accompaniment by second trained individual.** No designated mental health professional or crisis intervention worker shall be required to respond to a private home or other private location to stabilize or treat a person in crisis, or to evaluate a person for potential detention under the state's involuntary treatment act, unless a second trained individual, determined by the clinical team supervisor, on-call supervisor, or individual professional acting alone based on a risk assessment for potential violence, accompanies them. The second individual may be a law enforcement officer, a mental health professional, a mental health paraprofessional who has received training under RCW 71.05.715, or other first responder, such as fire or ambulance personnel. No retaliation may be taken against a worker who, following consultation with the clinical team, refuses to go on a home visit alone. [2007 c 360 § 2.]

**Findings—2007 c 360:** "The legislature finds that designated mental health professionals go out into the community to evaluate people for potential detention under the state's involuntary treatment act. Also, designated mental health professionals and other mental health workers do crisis intervention work intended to stabilize a person in crisis and provide immediate treatment and intervention in communities throughout Washington state. In many cases, the presence of a second trained individual on outreach to a person's private home or other private location will enhance safety for consumers, families, and mental health professionals and will advance the legislature's interest in quality mental health care services." [2007 c 360 § 1.]

**Short title—2007 c 360:** "This act may be known and cited as the Marty Smith law." [2007 c 360 § 7.]

**71.05.705 Provider of designated mental health professional or crisis outreach services—Policy for home visits.** Each provider of designated mental health professional or crisis outreach services shall maintain a written policy that, at a minimum, describes the organization's plan for training, staff back-up, information sharing, and communication for crisis outreach staff who respond to private homes or non-public settings. [2007 c 360 § 3.]

[Title 71 RCW—page 32]

**Findings—Short title—2007 c 360:** See notes following RCW 71.05.700.

**71.05.710 Home visit by mental health professional—Wireless telephone to be provided.** Any mental health professional who engages in home visits to clients shall be provided by their employer with a wireless telephone or comparable device for the purpose of emergency communication. [2007 c 360 § 4.]

**Findings—Short title—2007 c 360:** See notes following RCW 71.05.700.

**71.05.715 Crisis visit by mental health professional—Access to information.** Any mental health professional who is dispatched on a crisis visit, as described in RCW 71.05.700, shall have prompt access to information about any history of dangerousness or potential dangerousness on the client they are being sent to evaluate that is documented in crisis plans or commitment records and is available without unduly delaying a crisis response. [2007 c 360 § 5.]

**Findings—Short title—2007 c 360:** See notes following RCW 71.05.700.

**71.05.720 Training for community mental health employees.** Annually, all community mental health employees who work directly with clients shall be provided with training on safety and violence prevention topics described in RCW 49.19.030. The curriculum for the training shall be developed collaboratively among the department of social and health services, contracted mental health providers, and employee organizations that represent community mental health workers. [2007 c 360 § 6.]

**Findings—Short title—2007 c 360:** See notes following RCW 71.05.700.

**71.05.801 Persons with developmental disabilities—Service plans—Habilitation services.** When appropriate and subject to available funds, the treatment and training of a person with a developmental disability who is committed to the custody of the department or to a facility certified for ninety day treatment by the department for a further period of intensive treatment under RCW 71.05.320 must be provided in a program specifically reserved for the treatment and training of persons with developmental disabilities. A person so committed shall receive habilitation services pursuant to an individualized service plan specifically developed to treat the behavior which was the subject of the criminal proceedings. The treatment program shall be administered by developmental disabilities professionals and others trained specifically in the needs of persons with developmental disabilities. The department may limit admissions to this specialized program in order to ensure that expenditures for services do not exceed amounts appropriated by the legislature and allocated by the department for such services. The department may establish admission priorities in the event that the number of eligible persons exceeds the limits set by the department. [2009 c 323 § 3.]

**Findings—Intent—2009 c 323:** See note following RCW 71.05.320.

**71.05.900 Severability—1973 1st ex.s. c 142.** If any provision of this 1973 amendatory act, or its application to

any person or circumstance is held invalid, the remainder of this act, or the application of the provision to other persons or circumstances is not affected. [1973 1st ex.s. c 142 § 63.]

**71.05.910 Construction—1973 1st ex.s. c 142.** Sections 6 through 63 of this 1973 amendatory act shall constitute a new chapter in Title 71 RCW, and shall be considered the successor to those sections of chapter 71.02 RCW repealed by this 1973 amendatory act. [1973 1st ex.s. c 142 § 64.]

**71.05.920 Section headings not part of the law.** Section headings as used in sections 6 through 63 of this 1973 amendatory act shall not constitute any part of law. [1973 1st ex.s. c 142 § 65.]

**71.05.930 Effective date—1973 1st ex.s. c 142.** This 1973 amendatory act shall take effect on January 1, 1974. [1973 1st ex.s. c 142 § 67.]

**71.05.940 Equal application of 1989 c 420—Evaluation for developmental disability.** The provisions of chapter 420, Laws of 1989 shall apply equally to persons in the custody of the department on May 13, 1989, who were found by a court to be not guilty by reason of insanity or incompetent to stand trial, or who have been found to have committed acts constituting a felony pursuant to RCW 71.05.280(3) and present a substantial likelihood of repeating similar acts, and the secretary shall cause such persons to be evaluated to ascertain if such persons are developmentally disabled for placement in a program specifically reserved for the treatment and training of persons with developmental disabilities. [1999 c 13 § 13; 1989 c 420 § 18.]

**Purpose—Construction—1999 c 13:** See note following RCW 10.77.010.

**71.05.950 Construction—Chapter applicable to state registered domestic partnerships—2009 c 521.** For the purposes of this chapter, the terms spouse, marriage, marital, husband, wife, widow, widower, next of kin, and family shall be interpreted as applying equally to state registered domestic partnerships or individuals in state registered domestic partnerships as well as to marital relationships and married persons, and references to dissolution of marriage shall apply equally to state registered domestic partnerships that have been terminated, dissolved, or invalidated, to the extent that such interpretation does not conflict with federal law. Where necessary to implement chapter 521, Laws of 2009, gender-specific terms such as husband and wife used in any statute, rule, or other law shall be construed to be gender neutral, and applicable to individuals in state registered domestic partnerships. [2009 c 521 § 157.]

## Chapter 71.06 RCW SEXUAL PSYCHOPATHS

### Sections

71.06.005	Application of chapter.
71.06.010	Definitions.
71.06.020	Sexual psychopaths—Petition.
71.06.030	Procedure on petition—Effect of acquittal on criminal charge.

(2010 Ed.)

71.06.040	Preliminary hearing—Evidence—Detention in hospital for observation.
71.06.050	Preliminary hearing—Report of findings.
71.06.060	Preliminary hearing—Commitment, or other disposition of charge.
71.06.070	Preliminary hearing—Jury trial.
71.06.080	Preliminary hearing—Construction of chapter—Trial, evidence, law relating to criminally insane.
71.06.091	Postcommitment proceedings, releases, and further dispositions.
71.06.100	Postcommitment proceedings, releases, and further dispositions—Hospital record to be furnished court, board of prison terms and paroles.
71.06.120	Credit for time served in hospital.
71.06.130	Discharge pursuant to conditional release.
71.06.135	Sexual psychopaths—Release of information authorized.
71.06.140	State hospitals for care of sexual psychopaths—Transfers to correctional institutions—Examinations, reports.
71.06.260	Hospitalization costs—Sexual psychopaths—Financial responsibility.
71.06.270	Availability of records.

*Council for children and families: Chapter 43.121 RCW.*

*Nonresident sexual psychopaths and psychopathic delinquents: Chapter 72.25 RCW.*

*Telephone calls soliciting immoral acts: RCW 9.61.230 through 9.61.250.*

**71.06.005 Application of chapter.** With respect to sexual psychopaths, this chapter applies only to crimes or offenses committed before July 1, 1984. [1984 c 209 § 27.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**71.06.010 Definitions.** As used in this chapter, the following terms shall have the following meanings:

"Psychopathic personality" means the existence in any person of such hereditary, congenital or acquired condition affecting the emotional or volitional rather than the intellectual field and manifested by anomalies of such character as to render satisfactory social adjustment of such person difficult or impossible.

"Sexual psychopath" means any person who is affected in a form of psychoneurosis or in a form of psychopathic personality, which form predisposes such person to the commission of sexual offenses in a degree constituting him a menace to the health or safety of others.

"Sex offense" means one or more of the following: Abduction, incest, rape, assault with intent to commit rape, indecent assault, contributing to the delinquency of a minor involving sexual misconduct, sodomy, indecent exposure, indecent liberties with children, carnal knowledge of children, soliciting or enticing or otherwise communicating with a child for immoral purposes, vagrancy involving immoral or sexual misconduct, or an attempt to commit any of the said offenses.

"Minor" means any person under eighteen years of age.

"Department" means department of social and health services.

"Court" means the superior court of the state of Washington.

"Superintendent" means the superintendent of a state institution designated for the custody, care and treatment of sexual psychopaths or psychopathic delinquents. [1985 c 354 § 32; 1977 ex.s. c 80 § 42; 1971 ex.s. c 292 § 65; 1961 c 65 § 1; 1959 c 25 § 71.06.010. Prior: 1957 c 184 § 1; 1951 c 223 § 2; 1949 c 198 §§ 25 and 40; Rem. Supp. 1949 §§ 6953-25 and 6953-40.]

**Purpose—Intent—Severability—1977 ex.s. c 80:** See notes following RCW 4.16.190.

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**71.06.020 Sexual psychopaths—Petition.** Where any person is charged in the superior court in this state with a sex offense and it appears that such person is a sexual psychopath, the prosecuting attorney may file a petition in the criminal proceeding, alleging that the defendant is a sexual psychopath and stating sufficient facts to support such allegation. Such petition must be filed and served on the defendant or his attorney at least ten days prior to hearing on the criminal charge. [1959 c 25 § 71.06.020. Prior: 1951 c 223 § 3; 1949 c 198 § 26; Rem. Supp. 1949 § 6953-26.]

**71.06.030 Procedure on petition—Effect of acquittal on criminal charge.** The court shall proceed to hear the criminal charge. If the defendant is convicted or has previously pleaded guilty to such charge, judgment shall be pronounced, but the execution of the sentence may be deferred or suspended, as in other criminal cases, and the court shall then proceed to hear and determine the allegation of sexual psychopathy. Acquittal on the criminal charge shall not operate to suspend the hearing on the allegation of sexual psychopathy: PROVIDED, That the provisions of RCW 71.06.140 authorizing transfer of a committed sexual psychopath to a correctional institution shall not apply to the committed sexual psychopath who has been acquitted on the criminal charge. [1967 c 104 § 1; 1959 c 25 § 71.06.030. Prior: 1951 c 223 § 4.]

**71.06.040 Preliminary hearing—Evidence—Detention in hospital for observation.** At a preliminary hearing upon the charge of sexual psychopathy, the court may require the testimony of two duly licensed physicians or psychiatric advanced registered nurse practitioners who have examined the defendant. If the court finds that there are reasonable grounds to believe the defendant is a sexual psychopath, the court shall order said defendant confined at the nearest state hospital for observation as to the existence of sexual psychopathy. Such observation shall be for a period of not to exceed ninety days. The defendant shall be detained in the county jail or other county facilities pending execution of such observation order by the department. [2009 c 217 § 10; 1959 c 25 § 71.06.040. Prior: 1951 c 223 § 5.]

**71.06.050 Preliminary hearing—Report of findings.** Upon completion of said observation period the superintendent of the state hospital shall return the defendant to the court, together with a written report of his findings as to whether or not the defendant is a sexual psychopath and the facts upon which his opinion is based. [1959 c 25 § 71.06.050. Prior: 1951 c 223 § 6.]

**71.06.060 Preliminary hearing—Commitment, or other disposition of charge.** After the superintendent's report has been filed, the court shall determine whether or not the defendant is a sexual psychopath. If said defendant is found to be a sexual psychopath, the court shall commit him to the secretary of social and health services for designation

of the facility for detention, care, and treatment of the sexual psychopath. If the defendant is found not to be a sexual psychopath, the court shall order the sentence to be executed, or may discharge the defendant as the case may merit. [1979 c 141 § 129; 1967 c 104 § 2; 1959 c 25 § 71.06.060. Prior: 1951 c 223 § 7.]

**71.06.070 Preliminary hearing—Jury trial.** A jury may be demanded to determine the question of sexual psychopathy upon hearing after return of the superintendent's report. Such demand must be in writing and filed with the court within ten days after filing of the petition alleging the defendant to be a sexual psychopath. [1959 c 25 § 71.06.070. Prior: 1951 c 223 § 14; 1949 c 198 § 38; Rem. Supp. 1949 § 6953-38.]

**71.06.080 Preliminary hearing—Construction of chapter—Trial, evidence, law relating to criminally insane.** Nothing in this chapter shall be construed as to affect the procedure for the ordinary conduct of criminal trials as otherwise set up by law. Nothing in this chapter shall be construed to prevent the defendant, his attorney or the court of its own motion, from producing evidence and witnesses at the hearing on the probable existence of sexual psychopathy or at the hearing after the return of the superintendent's report. Nothing in this chapter shall be construed as affecting the laws relating to the criminally insane or the insane criminal, nor shall this chapter be construed as preventing the defendant from raising the defense of insanity as in other criminal cases. [1959 c 25 § 71.06.080. Prior: 1951 c 223 § 15.]

*Criminally insane: Chapter 10.77 RCW.*

**71.06.091 Postcommitment proceedings, releases, and further dispositions.** A sexual psychopath committed pursuant to RCW 71.06.060 shall be retained by the superintendent of the institution involved until in the superintendent's opinion he is safe to be at large, or until he has received the maximum benefit of treatment, or is not amenable to treatment, but the superintendent is unable to render an opinion that he is safe to be at large. Thereupon, the superintendent of the institution involved shall so inform whatever court committed the sexual psychopath. The court then may order such further examination and investigation of such person as seems necessary, and may at its discretion, summon such person before it for further hearing, together with any witnesses whose testimony may be pertinent, and together with any relevant documents and other evidence. On the basis of such reports, investigation, and possible hearing, the court shall determine whether the person before it shall be released unconditionally from custody as a sexual psychopath, released conditionally, returned to the custody of the institution as a sexual psychopath, or transferred to the department of corrections to serve the original sentence imposed upon him. The power of the court to grant conditional release for any such person before it shall be the same as its power to grant, amend and revoke probation as provided by chapter 9.95 RCW. When the sexual psychopath has entered upon the conditional release, the state \*board of prison terms and paroles shall supervise such person pursuant to the terms and conditions of the conditional release, as set by the court:

PROVIDED, That the superintendent of the institution involved shall never release the sexual psychopath from custody without a court release as herein set forth. [1981 c 136 § 64; 1979 c 141 § 130; 1967 c 104 § 3.]

**\*Reviser's note:** The "board of prison terms and paroles" was redesignated the "indeterminate sentence review board" by 1986 c 224, effective July 1, 1986.

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**71.06.100 Post commitment proceedings, releases, and further dispositions—Hospital record to be furnished court, board of prison terms and paroles.** Where under RCW 71.06.091 the superintendent renders his opinion to the committing court, he shall provide the committing court, and, in the event of conditional release, the Washington state \*board of prison terms and paroles, with a copy of the hospital medical record concerning the sexual psychopath. [1967 c 104 § 4; 1959 c 25 § 71.06.100. Prior: 1951 c 223 § 10.]

**\*Reviser's note:** The "board of prison terms and paroles" was redesignated the "indeterminate sentence review board" by 1986 c 224, effective July 1, 1986.

**71.06.120 Credit for time served in hospital.** Time served by a sexual psychopath in a state hospital shall count as part of his sentence whether such sentence is pronounced before or after adjudication of his sexual psychopathy. [1959 c 25 § 71.06.120. Prior: 1951 c 223 § 13.]

**71.06.130 Discharge pursuant to conditional release.** Where a sexual psychopath has been conditionally released by the committing court, as provided by RCW 71.06.091 for a period of five years, the court shall review his record and when the court is satisfied that the sexual psychopath is safe to be at large, said sexual psychopath shall be discharged. [1967 c 104 § 5; 1959 c 25 § 71.06.130. Prior: 1951 c 223 § 12; 1949 c 198 § 28, part; Rem. Supp. 1949 § 6953-28, part.]

**71.06.135 Sexual psychopaths—Release of information authorized.** In addition to any other information required to be released under this chapter, the department is authorized, pursuant to RCW 4.24.550, to release relevant information that is necessary to protect the public, concerning a specific sexual psychopath committed under this chapter. [1990 c 3 § 120.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**71.06.140 State hospitals for care of sexual psychopaths—Transfers to correctional institutions—Examinations, reports.** The department may designate one or more state hospitals for the care and treatment of sexual psychopaths: PROVIDED, That a committed sexual psychopath who has been determined by the superintendent of such mental hospital to be a custodial risk, or a hazard to other patients may be transferred by the secretary of social and health services, with the consent of the secretary of corrections, to one of the correctional institutions within the department of corrections which has psychiatric care facilities. A committed sexual psychopath who has been transferred to a correctional institution shall be observed and treated at the psychiatric facilities provided by the correctional institution. A complete psychiatric examination shall be given to each sexual psycho-

(2010 Ed.)

path so transferred at least twice annually. The examinations may be conducted at the correctional institution or at one of the mental hospitals. The examiners shall report in writing the results of said examinations, including recommendations as to future treatment and custody, to the superintendent of the mental hospital from which the sexual psychopath was transferred, and to the committing court, with copies of such reports and recommendations to the superintendent of the correctional institution. [1981 c 136 § 65; 1979 c 141 § 131; 1967 c 104 § 6; 1959 c 25 § 71.06.140. Prior: 1951 c 223 § 11; 1949 c 198 § 37; Rem. Supp. 1949 § 6953-37.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**71.06.260 Hospitalization costs—Sexual psychopaths—Financial responsibility.** At any time any person is committed as a sexual psychopath the court shall, after reasonable notice of the time, place and purpose of the hearing has been given to persons subject to liability under this section, inquire into and determine the financial ability of said person, or his parents if he is a minor, or other relatives to pay the cost of care, meals and lodging during his period of hospitalization. Such cost shall be determined by the department of social and health services. Findings of fact shall be made relative to the ability to pay such cost and a judgment entered against the person or persons found to be financially responsible and directing the payment of said cost or such part thereof as the court may direct. The person committed, or his parents or relatives, may apply for modification of said judgment, or the order last entered by the court, if a proper showing of equitable grounds is made therefor. [1985 c 354 § 33; 1979 c 141 § 132; 1959 c 25 § 71.06.260. Prior: 1957 c 26 § 1; 1951 c 223 § 27.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**71.06.270 Availability of records.** The records, files, and other written information prepared by the department of social and health services for individuals committed under this chapter shall be made available upon request to the department of corrections or the \*board of prison terms and paroles for persons who are the subject of the records who are committed to the custody of the department of corrections or the board of prison terms and paroles. [1983 c 196 § 5.]

**\*Reviser's note:** The "board of prison terms and paroles" was redesignated the "indeterminate sentence review board" by 1986 c 224, effective July 1, 1986.

## Chapter 71.09 RCW

### SEXUALLY VIOLENT PREDATORS

#### Sections

71.09.010	Findings.
71.09.015	Finding—Intent—Clarification.
71.09.020	Definitions.
71.09.025	Notice to prosecuting attorney prior to release.
71.09.030	Sexually violent predator petition—Filing.
71.09.040	Sexually violent predator petition—Probable cause hearing—Judicial determination—Transfer for evaluation.
71.09.050	Trial—Rights of parties.
71.09.060	Trial—Determination—Commitment procedures.
71.09.070	Annual examinations of persons committed under chapter.
71.09.080	Rights of persons committed under this chapter—Use of personal computers regulated.
71.09.085	Medical care—Contracts for services.

- 71.09.090 Petition for conditional release to less restrictive alternative or unconditional discharge—Procedures.
- 71.09.092 Conditional release to less restrictive alternative—Findings.
- 71.09.094 Conditional release to less restrictive alternative—Verdict.
- 71.09.096 Conditional release to less restrictive alternative—Judgment—Conditions—Annual review.
- 71.09.098 Revoking or modifying terms of conditional release to less restrictive alternative—Hearing—Custody pending hearing on revocation or modification.
- 71.09.110 Department of social and health services—Duties—Reimbursement.
- 71.09.111 Department of social and health services—Disclosures to the prosecuting agency.
- 71.09.112 Department of social and health services—Jurisdiction and revocation of conditional release after criminal conviction—Exception.
- 71.09.115 Record check required for employees of secure facility.
- 71.09.120 Release of information authorized.
- 71.09.130 Notice of escape or disappearance.
- 71.09.135 McNeil Island—Escape planning, response.
- 71.09.140 Notice of conditional release or unconditional discharge—Notice of escape and recapture.
- 71.09.200 Escorted leave—Definitions.
- 71.09.210 Escorted leave—Conditions.
- 71.09.220 Escorted leave—Notice.
- 71.09.230 Escorted leave—Rules.
- 71.09.250 Transition facility—Siting.
- 71.09.252 Transition facilities—Agreements for regional facilities.
- 71.09.255 Transition facilities—Incentive grants and payments.
- 71.09.260 Transition facilities not limited to residential neighborhoods.
- 71.09.265 Transition facilities—Distribution of impact.
- 71.09.275 Transition facility—Transportation of residents.
- 71.09.280 Transition facility—Release to less restrictive placement.
- 71.09.285 Transition facility—Siting policy guidelines.
- 71.09.290 Other transition facilities—Siting policy guidelines.
- 71.09.295 Transition facilities—Security systems.
- 71.09.300 Transition facilities—Staffing.
- 71.09.305 Transition facility residents—Monitoring, escorting.
- 71.09.310 Transition facility residents—Mandatory escorts.
- 71.09.315 Transition facilities—Public notice, review, and comment.
- 71.09.320 Transition facilities—Operational advisory boards.
- 71.09.325 Transition facilities—Conditional release—Reports—Violations.
- 71.09.330 Transition facilities—Contracted operation—Enforcement remedies.
- 71.09.335 Conditional release from total confinement—Community notification.
- 71.09.340 Conditionally released persons—Employment, educational notification.
- 71.09.341 Transition facilities—Authority of department—Effect of local regulations.
- 71.09.342 Transition facilities—Siting—Local regulations preempted, when—Consideration of public safety measures.
- 71.09.343 Transition facilities—Contract between state and local governments.
- 71.09.344 Transition facilities—Mitigation agreements.
- 71.09.345 Alternative placement—Authority of court.
- 71.09.350 Examination and treatment only by certified providers—Exceptions.
- 71.09.800 Rules.
- 71.09.900 Index, part headings not law—1990 c 3.
- 71.09.901 Severability—1990 c 3.
- 71.09.902 Effective dates—Application—1990 c 3.
- 71.09.903 Construction—Chapter applicable to state registered domestic partnerships—2009 c 521.

**71.09.010 Findings.** The legislature finds that a small but extremely dangerous group of sexually violent predators exist who do not have a mental disease or defect that renders them appropriate for the existing involuntary treatment act, chapter 71.05 RCW, which is intended to be a short-term civil commitment system that is primarily designed to provide short-term treatment to individuals with serious mental disorders and then return them to the community. In contrast to persons appropriate for civil commitment under chapter 71.05 RCW, sexually violent predators generally have personality disorders and/or mental abnormalities which are unamenable to existing mental illness treatment modalities and those conditions render them likely to engage in sexually

violent behavior. The legislature further finds that sex offenders' likelihood of engaging in repeat acts of predatory sexual violence is high. The existing involuntary commitment act, chapter 71.05 RCW, is inadequate to address the risk to reoffend because during confinement these offenders do not have access to potential victims and therefore they will not engage in an overt act during confinement as required by the involuntary treatment act for continued confinement. The legislature further finds that the prognosis for curing sexually violent offenders is poor, the treatment needs of this population are very long term, and the treatment modalities for this population are very different than the traditional treatment modalities for people appropriate for commitment under the involuntary treatment act. [2001 c 286 § 3; 1990 c 3 § 1001.]

**Recommendations—Application—Effective date—2001 c 286:** See notes following RCW 71.09.015.

**71.09.015 Finding—Intent—Clarification.** The legislature finds that presentation of evidence related to conditions of a less restrictive alternative that are beyond the authority of the court to order, and that would not exist in the absence of a court order, reduces the public respect for the rule of law and for the authority of the courts. Consequently, the legislature finds that the decision in *In re the Detention of Casper Ross*, 102 Wn. App 108 (2000), is contrary to the legislature's intent. The legislature hereby clarifies that it intends, and has always intended, in any proceeding under this chapter that the court and jury be presented only with conditions that would exist or that the court would have the authority to order in the absence of a finding that the person is a sexually violent predator. [2001 c 286 § 1.]

**Recommendations—2001 c 286:** "The department of social and health services shall, in consultation with interested stakeholders, develop recommendations for improving the procedures used to notify victims when a sexually violent predator is conditionally released to a less restrictive alternative under chapter 71.09 RCW, while at the same time maintaining the confidentiality of victim information." [2001 c 286 § 10.]

**Application—2001 c 286:** "This act applies to all individuals currently committed or awaiting commitment under chapter 71.09 RCW either on, before, or after May 14, 2001, whether confined in a secure facility or on conditional release." [2001 c 286 § 14.]

**Effective date—2001 c 286:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [May 14, 2001]." [2001 c 286 § 15.]

**71.09.020 Definitions.** Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Department" means the department of social and health services.

(2) "Health care facility" means any hospital, hospice care center, licensed or certified health care facility, health maintenance organization regulated under chapter 48.46 RCW, federally qualified health maintenance organization, federally approved renal dialysis center or facility, or federally approved blood bank.

(3) "Health care practitioner" means an individual or firm licensed or certified to engage actively in a regulated health profession.

(4) "Health care services" means those services provided by health professionals licensed pursuant to RCW 18.120.020(4).

(5) "Health profession" means those licensed or regulated professions set forth in RCW 18.120.020(4).

(6) "Less restrictive alternative" means court-ordered treatment in a setting less restrictive than total confinement which satisfies the conditions set forth in RCW 71.09.092. A less restrictive alternative may not include placement in the community protection program as pursuant to RCW 71A.12.230.

(7) "Likely to engage in predatory acts of sexual violence if not confined in a secure facility" means that the person more probably than not will engage in such acts if released unconditionally from detention on the sexually violent predator petition. Such likelihood must be evidenced by a recent overt act if the person is not totally confined at the time the petition is filed under RCW 71.09.030.

(8) "Mental abnormality" means a congenital or acquired condition affecting the emotional or volitional capacity which predisposes the person to the commission of criminal sexual acts in a degree constituting such person a menace to the health and safety of others.

(9) "Personality disorder" means an enduring pattern of inner experience and behavior that deviates markedly from the expectations of the individual's culture, is pervasive and inflexible, has onset in adolescence or early adulthood, is stable over time and leads to distress or impairment. Purported evidence of a personality disorder must be supported by testimony of a licensed forensic psychologist or psychiatrist.

(10) "Predatory" means acts directed towards: (a) Strangers; (b) individuals with whom a relationship has been established or promoted for the primary purpose of victimization; or (c) persons of casual acquaintance with whom no substantial personal relationship exists.

(11) "Prosecuting agency" means the prosecuting attorney of the county where the person was convicted or charged or the attorney general if requested by the prosecuting attorney, as provided in RCW 71.09.030.

(12) "Recent overt act" means any act, threat, or combination thereof that has either caused harm of a sexually violent nature or creates a reasonable apprehension of such harm in the mind of an objective person who knows of the history and mental condition of the person engaging in the act or behaviors.

(13) "Risk potential activity" or "risk potential facility" means an activity or facility that provides a higher incidence of risk to the public from persons conditionally released from the special commitment center. Risk potential activities and facilities include: Public and private schools, school bus stops, licensed day care and licensed preschool facilities, public parks, publicly dedicated trails, sports fields, playgrounds, recreational and community centers, churches, synagogues, temples, mosques, public libraries, public and private youth camps, and others identified by the department following the hearings on a potential site required in RCW 71.09.315. For purposes of this chapter, "school bus stops" does not include bus stops established primarily for public transit.

(14) "Secretary" means the secretary of social and health services or the secretary's designee.

(15) "Secure facility" means a residential facility for persons civilly confined under the provisions of this chapter that includes security measures sufficient to protect the commu-

nity. Such facilities include total confinement facilities, secure community transition facilities, and any residence used as a court-ordered placement under RCW 71.09.096.

(16) "Secure community transition facility" means a residential facility for persons civilly committed and conditionally released to a less restrictive alternative under this chapter. A secure community transition facility has supervision and security, and either provides or ensures the provision of sex offender treatment services. Secure community transition facilities include but are not limited to the facility established pursuant to RCW 71.09.250(1)(a)(i) and any community-based facilities established under this chapter and operated by the secretary or under contract with the secretary.

(17) "Sexually violent offense" means an act committed on, before, or after July 1, 1990, that is: (a) An act defined in Title 9A RCW as rape in the first degree, rape in the second degree by forcible compulsion, rape of a child in the first or second degree, statutory rape in the first or second degree, indecent liberties by forcible compulsion, indecent liberties against a child under age fourteen, incest against a child under age fourteen, or child molestation in the first or second degree; (b) a felony offense in effect at any time prior to July 1, 1990, that is comparable to a sexually violent offense as defined in (a) of this subsection, or any federal or out-of-state conviction for a felony offense that under the laws of this state would be a sexually violent offense as defined in this subsection; (c) an act of murder in the first or second degree, assault in the first or second degree, assault of a child in the first or second degree, kidnapping in the first or second degree, burglary in the first degree, residential burglary, or unlawful imprisonment, which act, either at the time of sentencing for the offense or subsequently during civil commitment proceedings pursuant to this chapter, has been determined beyond a reasonable doubt to have been sexually motivated, as that term is defined in RCW 9.94A.030; or (d) an act as described in chapter 9A.28 RCW, that is an attempt, criminal solicitation, or criminal conspiracy to commit one of the felonies designated in (a), (b), or (c) of this subsection.

(18) "Sexually violent predator" means any person who has been convicted of or charged with a crime of sexual violence and who suffers from a mental abnormality or personality disorder which makes the person likely to engage in predatory acts of sexual violence if not confined in a secure facility.

(19) "Total confinement facility" means a secure facility that provides supervision and sex offender treatment services in a total confinement setting. Total confinement facilities include the special commitment center and any similar facility designated as a total confinement facility by the secretary. [2009 c 409 § 1; 2006 c 303 § 10. Prior: 2003 c 216 § 2; 2003 c 50 § 1; 2002 c 68 § 4; 2002 c 58 § 2; 2001 2nd sp.s. c 12 § 102; 2001 c 286 § 4; 1995 c 216 § 1; 1992 c 145 § 17; 1990 1st ex.s. c 12 § 2; 1990 c 3 § 1002.]

**Application—2009 c 409:** "This act applies to all persons currently committed or awaiting commitment under chapter 71.09 RCW either on, before, or after May 7, 2009, whether confined in a secure facility or on conditional release." [2009 c 409 § 15.]

**Effective date—2009 c 409:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [May 7, 2009]." [2009 c 409 § 16.]

**Severability—Effective date—2003 c 216:** See notes following RCW 71.09.300.

**Application—2003 c 50:** "This act applies prospectively only and not retroactively and does not apply to development regulations adopted or amended prior to April 17, 2003." [2003 c 50 § 3.]

**Effective date—2003 c 50:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [April 17, 2003]." [2003 c 50 § 4.]

**Purpose—Severability—Effective date—2002 c 68:** See notes following RCW 36.70A.200.

**Effective date—2002 c 58:** See note following RCW 71.09.085.

**Intent—Severability—Effective dates—2001 2nd sp.s. c 12:** See notes following RCW 71.09.250.

**Recommendations—Application—Effective date—2001 c 286:** See notes following RCW 71.09.015.

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**71.09.025 Notice to prosecuting attorney prior to release.** (1)(a) When it appears that a person may meet the criteria of a sexually violent predator as defined in \*RCW 71.09.020(16), the agency with jurisdiction shall refer the person in writing to the prosecuting attorney of the county in which an action under this chapter may be filed pursuant to RCW 71.09.030 and the attorney general, three months prior to:

- (i) The anticipated release from total confinement of a person who has been convicted of a sexually violent offense;
- (ii) The anticipated release from total confinement of a person found to have committed a sexually violent offense as a juvenile;
- (iii) Release of a person who has been charged with a sexually violent offense and who has been determined to be incompetent to stand trial pursuant to RCW 10.77.086(4); or
- (iv) Release of a person who has been found not guilty by reason of insanity of a sexually violent offense pursuant to \*\*RCW 10.77.020(3).

(b) The agency shall provide the prosecuting agency with all relevant information including but not limited to the following information:

- (i) A complete copy of the institutional records compiled by the department of corrections relating to the person, and any such out-of-state department of corrections' records, if available;
- (ii) A complete copy, if applicable, of any file compiled by the indeterminate sentence review board relating to the person;
- (iii) All records relating to the psychological or psychiatric evaluation and/or treatment of the person;
- (iv) A current record of all prior arrests and convictions, and full police case reports relating to those arrests and convictions; and
- (v) A current mental health evaluation or mental health records review.

(c) The prosecuting agency has the authority, consistent with RCW 72.09.345(3), to obtain all records relating to the person if the prosecuting agency deems such records are necessary to fulfill its duties under this chapter. The prosecuting agency may only disclose such records in the course of performing its duties pursuant to this chapter, unless otherwise authorized by law.

(d) The prosecuting agency has the authority to utilize the inquiry judge procedures of chapter 10.27 RCW prior to the filing of any action under this chapter to seek the issuance of compulsory process for the production of any records necessary for a determination of whether to seek the civil commitment of a person under this chapter. Any records obtained pursuant to this process may only be disclosed by the prosecuting agency in the course of performing its duties pursuant to this chapter, or unless otherwise authorized by law.

(2) The agency, its employees, and officials shall be immune from liability for any good-faith conduct under this section.

(3) As used in this section, "agency with jurisdiction" means that agency with the authority to direct the release of a person serving a sentence or term of confinement and includes the department of corrections, the indeterminate sentence review board, and the department of social and health services. [2009 c 409 § 2; 2008 c 213 § 11; 2001 c 286 § 5; 1995 c 216 § 2; 1992 c 45 § 3.]

**Reviser's note:** \*(1) RCW 71.09.020 was amended by 2009 c 409 § 1, changing subsection (16) to subsection (18).

\*\*\*(2) RCW 10.77.020 was amended by 1998 c 297 § 30, deleting subsection (3).

**Application—Effective date—2009 c 409:** See notes following RCW 71.09.020.

**Recommendations—Application—Effective date—2001 c 286:** See notes following RCW 71.09.015.

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

#### **71.09.030 Sexually violent predator petition—Filing.**

(1) A petition may be filed alleging that a person is a sexually violent predator and stating sufficient facts to support such allegation when it appears that: (a) A person who at any time previously has been convicted of a sexually violent offense is about to be released from total confinement; (b) a person found to have committed a sexually violent offense as a juvenile is about to be released from total confinement; (c) a person who has been charged with a sexually violent offense and who has been determined to be incompetent to stand trial is about to be released, or has been released, pursuant to RCW 10.77.086(4); (d) a person who has been found not guilty by reason of insanity of a sexually violent offense is about to be released, or has been released, pursuant to RCW \*10.77.020(3), 10.77.110 (1) or (3), or 10.77.150; or (e) a person who at any time previously has been convicted of a sexually violent offense and has since been released from total confinement and has committed a recent overt act.

(2) The petition may be filed by:

(a) The prosecuting attorney of a county in which:

- (i) The person has been charged or convicted with a sexually violent offense;
- (ii) A recent overt act occurred involving a person covered under subsection (1)(e) of this section; or
- (iii) The person committed a recent overt act, or was charged or convicted of a criminal offense that would qualify as a recent overt act, if the only sexually violent offense charge or conviction occurred in a jurisdiction other than Washington; or

(b) The attorney general, if requested by the county prosecuting attorney identified in (a) of this subsection. If the county prosecuting attorney requests that the attorney general

file and prosecute a case under this chapter, then the county shall charge the attorney general only the fees, including filing and jury fees, that would be charged and paid by the county prosecuting attorney, if the county prosecuting attorney retained the case. [2009 c 409 § 3; 2008 c 213 § 12; 1995 c 216 § 3; 1992 c 45 § 4; 1990 1st ex.s. c 12 § 3; 1990 c 3 § 1003.]

\*Reviser's note: RCW 10.77.020 was amended by 1998 c 297 § 30, deleting subsection (3).

**Application—Effective date—2009 c 409:** See notes following RCW 71.09.020.

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**71.09.040 Sexually violent predator petition—Probable cause hearing—Judicial determination—Transfer for evaluation.** (1) Upon the filing of a petition under RCW 71.09.030, the judge shall determine whether probable cause exists to believe that the person named in the petition is a sexually violent predator. If such determination is made the judge shall direct that the person be taken into custody.

(2) Within seventy-two hours after a person is taken into custody pursuant to subsection (1) of this section, the court shall provide the person with notice of, and an opportunity to appear in person at, a hearing to contest probable cause as to whether the person is a sexually violent predator. In order to assist the person at the hearing, within twenty-four hours of service of the petition, the prosecuting agency shall provide to the person or his or her counsel a copy of all materials provided to the prosecuting agency by the referring agency pursuant to RCW 71.09.025, or obtained by the prosecuting agency pursuant to RCW 71.09.025(1) (c) and (d). At this hearing, the court shall (a) verify the person's identity, and (b) determine whether probable cause exists to believe that the person is a sexually violent predator. At the probable cause hearing, the state may rely upon the petition and certification for determination of probable cause filed pursuant to RCW 71.09.030. The state may supplement this with additional documentary evidence or live testimony. The person may be held in total confinement at the county jail until the trial court renders a decision after the conclusion of the seventy-two hour probable cause hearing. The county shall be entitled to reimbursement for the cost of housing and transporting the person pursuant to rules adopted by the secretary.

(3) At the probable cause hearing, the person shall have the following rights in addition to the rights previously specified: (a) To be represented by counsel; (b) to present evidence on his or her behalf; (c) to cross-examine witnesses who testify against him or her; (d) to view and copy all petitions and reports in the court file. The court must permit a witness called by either party to testify by telephone. Because this is a special proceeding, discovery pursuant to the civil rules shall not occur until after the hearing has been held and the court has issued its decision.

(4) If the probable cause determination is made, the judge shall direct that the person be transferred to an appropriate facility for an evaluation as to whether the person is a sexually violent predator. The evaluation shall be conducted by a person deemed to be professionally qualified to conduct such an examination pursuant to rules developed by the department of social and health services. In adopting such rules, the department of social and health services shall con-

sult with the department of health and the department of corrections. In no event shall the person be released from confinement prior to trial. A witness called by either party shall be permitted to testify by telephone. [2009 c 409 § 4; 2001 c 286 § 6; 1995 c 216 § 4; 1990 c 3 § 1004.]

**Application—Effective date—2009 c 409:** See notes following RCW 71.09.020.

**Recommendations—Application—Effective date—2001 c 286:** See notes following RCW 71.09.015.

**71.09.050 Trial—Rights of parties.** (1) Within forty-five days after the completion of any hearing held pursuant to RCW 71.09.040, the court shall conduct a trial to determine whether the person is a sexually violent predator. The trial may be continued upon the request of either party and a showing of good cause, or by the court on its own motion in the due administration of justice, and when the respondent will not be substantially prejudiced. The department is responsible for the cost of one expert or professional person to conduct an evaluation on the prosecuting agency's behalf. At all stages of the proceedings under this chapter, any person subject to this chapter shall be entitled to the assistance of counsel, and if the person is indigent, the court shall appoint counsel to assist him or her. The person shall be confined in a secure facility for the duration of the trial.

(2) Whenever any person is subjected to an evaluation under this chapter, the department is responsible for the cost of one expert or professional person to conduct an evaluation on the person's behalf. When the person wishes to be evaluated by a qualified expert or professional person of his or her own choice, the expert or professional person must be permitted to have reasonable access to the person for the purpose of such evaluation, as well as to all relevant medical and psychological records and reports. In the case of a person who is indigent, the court shall, upon the person's request, assist the person in obtaining an expert or professional person to perform an evaluation or participate in the trial on the person's behalf. Nothing in this chapter precludes the person from paying for additional expert services at his or her own expense.

(3) The person, the prosecuting agency, or the judge shall have the right to demand that the trial be before a twelve-person jury. If no demand is made, the trial shall be before the court. [2010 1st sp.s. c 28 § 1; 2009 c 409 § 5; 1995 c 216 § 5; 1990 c 3 § 1005.]

**Application—Effective date—2009 c 409:** See notes following RCW 71.09.020.

**71.09.060 Trial—Determination—Commitment procedures.** (1) The court or jury shall determine whether, beyond a reasonable doubt, the person is a sexually violent predator. In determining whether or not the person would be likely to engage in predatory acts of sexual violence if not confined in a secure facility, the fact finder may consider only placement conditions and voluntary treatment options that would exist for the person if unconditionally released from detention on the sexually violent predator petition. The community protection program under RCW 71A.12.230 may not be considered as a placement condition or treatment option available to the person if unconditionally released from detention on a sexually violent predator petition. When

the determination is made by a jury, the verdict must be unanimous.

If, on the date that the petition is filed, the person was living in the community after release from custody, the state must also prove beyond a reasonable doubt that the person had committed a recent overt act. If the state alleges that the prior sexually violent offense that forms the basis for the petition for commitment was an act that was sexually motivated as provided in \*RCW 71.09.020(15)(c), the state must prove beyond a reasonable doubt that the alleged sexually violent act was sexually motivated as defined in RCW 9.94A.030.

If the court or jury determines that the person is a sexually violent predator, the person shall be committed to the custody of the department of social and health services for placement in a secure facility operated by the department of social and health services for control, care, and treatment until such time as: (a) The person's condition has so changed that the person no longer meets the definition of a sexually violent predator; or (b) conditional release to a less restrictive alternative as set forth in RCW 71.09.092 is in the best interest of the person and conditions can be imposed that would adequately protect the community.

If the court or unanimous jury decides that the state has not met its burden of proving that the person is a sexually violent predator, the court shall direct the person's release.

If the jury is unable to reach a unanimous verdict, the court shall declare a mistrial and set a retrial within forty-five days of the date of the mistrial unless the prosecuting agency earlier moves to dismiss the petition. The retrial may be continued upon the request of either party accompanied by a showing of good cause, or by the court on its own motion in the due administration of justice provided that the respondent will not be substantially prejudiced. In no event may the person be released from confinement prior to retrial or dismissal of the case.

(2) If the person charged with a sexually violent offense has been found incompetent to stand trial, and is about to be or has been released pursuant to RCW 10.77.086(4), and his or her commitment is sought pursuant to subsection (1) of this section, the court shall first hear evidence and determine whether the person did commit the act or acts charged if the court did not enter a finding prior to dismissal under RCW 10.77.086(4) that the person committed the act or acts charged. The hearing on this issue must comply with all the procedures specified in this section. In addition, the rules of evidence applicable in criminal cases shall apply, and all constitutional rights available to defendants at criminal trials, other than the right not to be tried while incompetent, shall apply. After hearing evidence on this issue, the court shall make specific findings on whether the person did commit the act or acts charged, the extent to which the person's incompetence or developmental disability affected the outcome of the hearing, including its effect on the person's ability to consult with and assist counsel and to testify on his or her own behalf, the extent to which the evidence could be reconstructed without the assistance of the person, and the strength of the prosecution's case. If, after the conclusion of the hearing on this issue, the court finds, beyond a reasonable doubt, that the person did commit the act or acts charged, it shall enter a final order, appealable by the person, on that issue, and may pro-

ceed to consider whether the person should be committed pursuant to this section.

(3) Except as otherwise provided in this chapter, the state shall comply with RCW 10.77.220 while confining the person. During all court proceedings where the person is present, the person shall be detained in a secure facility. If the proceedings last more than one day, the person may be held in the county jail for the duration of the proceedings, except the person may be returned to the department's custody on weekends and court holidays if the court deems such a transfer feasible. The county shall be entitled to reimbursement for the cost of housing and transporting the person pursuant to rules adopted by the secretary. The department shall not place the person, even temporarily, in a facility on the grounds of any state mental facility or regional habilitation center because these institutions are insufficiently secure for this population.

(4) A court has jurisdiction to order a less restrictive alternative placement only after a hearing ordered pursuant to RCW 71.09.090 following initial commitment under this section and in accord with the provisions of this chapter. [2009 c 409 § 6; 2008 c 213 § 13; 2006 c 303 § 11; 2001 c 286 § 7; 1998 c 146 § 1; 1995 c 216 § 6; 1990 1st ex.s. c 12 § 4; 1990 c 3 § 1006.]

\*Reviser's note: RCW 71.09.020 was amended by 2009 c 409 § 1, changing subsection (15) to subsection (17).

**Application—Effective date—2009 c 409:** See notes following RCW 71.09.020.

**Recommendations—Application—Effective date—2001 c 286:** See notes following RCW 71.09.015.

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**71.09.070 Annual examinations of persons committed under chapter.** Each person committed under this chapter shall have a current examination of his or her mental condition made by the department of social and health services at least once every year. The annual report shall include consideration of whether the committed person currently meets the definition of a sexually violent predator and whether conditional release to a less restrictive alternative is in the best interest of the person and conditions can be imposed that would adequately protect the community. The department of social and health services shall file this periodic report with the court that committed the person under this chapter. The report shall be in the form of a declaration or certification in compliance with the requirements of RCW 9A.72.085 and shall be prepared by a professionally qualified person as defined by rules adopted by the secretary. A copy of the report shall be served on the prosecuting agency involved in the initial commitment and upon the committed person and his or her counsel. The committed person may retain, or if he or she is indigent and so requests, the court may appoint a qualified expert or a professional person to examine him or her, and such expert or professional person shall have access to all records concerning the person. [2001 c 286 § 8; 1995 c 216 § 7; 1990 c 3 § 1007.]

**Recommendations—Application—Effective date—2001 c 286:** See notes following RCW 71.09.015.

**71.09.080 Rights of persons committed under this chapter—Use of personal computers regulated.** (1) Any

person subjected to restricted liberty as a sexually violent predator pursuant to this chapter shall not forfeit any legal right or suffer any legal disability as a consequence of any actions taken or orders made, other than as specifically provided in this chapter, or as otherwise authorized by law.

(2)(a) Any person committed or detained pursuant to this chapter shall be prohibited from possessing or accessing a personal computer if the resident's individualized treatment plan states that access to a computer is harmful to bringing about a positive response to a specific and certain phase or course of treatment.

(b) A person who is prohibited from possessing or accessing a personal computer under (a) of this subsection shall be permitted to access a limited functioning personal computer capable of word processing and limited data storage on the computer only that does not have: (i) Internet access capability; (ii) an optical drive, external drive, universal serial bus port, or similar drive capability; or (iii) the capability to display photographs, images, videos, or motion pictures, or similar display capability from any drive or port capability listed under (b)(ii) of this subsection.

(3) Any person committed pursuant to this chapter has the right to adequate care and individualized treatment. The department of social and health services shall keep records detailing all medical, expert, and professional care and treatment received by a committed person, and shall keep copies of all reports of periodic examinations made pursuant to this chapter. All such records and reports shall be made available upon request only to: The committed person, his or her attorney, the prosecuting attorney, the court, the protection and advocacy agency, or another expert or professional person who, upon proper showing, demonstrates a need for access to such records.

(4) At the time a person is taken into custody or transferred into a facility pursuant to a petition under this chapter, the professional person in charge of such facility or his or her designee shall take reasonable precautions to inventory and safeguard the personal property of the persons detained or transferred. A copy of the inventory, signed by the staff member making it, shall be given to the person detained and shall, in addition, be open to inspection to any responsible relative, subject to limitations, if any, specifically imposed by the detained person. For purposes of this subsection, "responsible relative" includes the guardian, conservator, attorney, spouse, parent, adult child, or adult brother or sister of the person. The facility shall not disclose the contents of the inventory to any other person without consent of the patient or order of the court.

(5) Nothing in this chapter prohibits a person presently committed from exercising a right presently available to him or her for the purpose of obtaining release from confinement, including the right to petition for a writ of habeas corpus.

(6) No indigent person may be conditionally released or unconditionally discharged under this chapter without suitable clothing, and the secretary shall furnish the person with such sum of money as is required by RCW 72.02.100 for persons without ample funds who are released from correctional institutions. As funds are available, the secretary may provide payment to the indigent persons conditionally released pursuant to this chapter consistent with the optional provi-

(2010 Ed.)

sions of RCW 72.02.100 and 72.02.110, and may adopt rules to do so.

(7) If a civil commitment petition is dismissed, or a trier of fact determines that a person does not meet civil commitment criteria, the person shall be released within twenty-four hours of service of the release order on the superintendent of the special commitment center, or later by agreement of the person who is the subject of the petition. [2010 c 218 § 2; 2009 c 409 § 7; 1995 c 216 § 8; 1990 c 3 § 1008.]

**Findings—2010 c 218:** "The legislature finds that there have been ongoing, egregious examples of certain residents of the special commitment center having illegal child pornography, other prohibited pornography, and other banned materials on their computers. The legislature also finds that activities at the special commitment center must be designed and implemented to meet the treatment goals of the special commitment center, and proper and appropriate computer usage is one such activity. The legislature also finds that by linking computer usage to treatment plans, residents are less likely to have prohibited materials on their computers and are more likely to successfully complete their treatment plans. Therefore, the legislature finds that residents' computer usage in compliance with conditions placed on computer usage is essential to achieving their therapeutic goals. If residents' usage of computers is not in compliance or is not related to meeting their treatment goals, computer usage will be limited in order to prevent or reduce residents' access to prohibited materials." [2010 c 218 § 1.]

**Application—Effective date—2009 c 409:** See notes following RCW 71.09.020.

**71.09.085 Medical care—Contracts for services.** (1) Notwithstanding any other provisions of law, the secretary may enter into contracts with health care practitioners, health care facilities, and other entities or agents as may be necessary to provide basic medical care to residents. The contracts shall not cause the termination of classified employees of the department rendering the services at the time the contract is executed.

(2) In contracting for services, the secretary is authorized to provide for indemnification of health care practitioners who cannot obtain professional liability insurance through reasonable effort, from liability on any action, claim, or proceeding instituted against them arising out of the good faith performance or failure of performance of services on behalf of the department. The contracts may provide that for the purposes of chapter 4.92 RCW only, those health care practitioners with whom the department has contracted shall be considered state employees. [2002 c 58 § 1.]

**Effective date—2002 c 58:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [March 21, 2002]." [2002 c 58 § 3.]

**71.09.090 Petition for conditional release to less restrictive alternative or unconditional discharge—Procedures.** (1) If the secretary determines that the person's condition has so changed that either: (a) The person no longer meets the definition of a sexually violent predator; or (b) conditional release to a less restrictive alternative is in the best interest of the person and conditions can be imposed that adequately protect the community, the secretary shall authorize the person to petition the court for conditional release to a less restrictive alternative or unconditional discharge. The petition shall be filed with the court and served upon the prosecuting agency responsible for the initial commitment. The court, upon receipt of the petition for conditional release to a

less restrictive alternative or unconditional discharge, shall within forty-five days order a hearing.

(2)(a) Nothing contained in this chapter shall prohibit the person from otherwise petitioning the court for conditional release to a less restrictive alternative or unconditional discharge without the secretary's approval. The secretary shall provide the committed person with an annual written notice of the person's right to petition the court for conditional release to a less restrictive alternative or unconditional discharge over the secretary's objection. The notice shall contain a waiver of rights. The secretary shall file the notice and waiver form and the annual report with the court. If the person does not affirmatively waive the right to petition, the court shall set a show cause hearing to determine whether probable cause exists to warrant a hearing on whether the person's condition has so changed that: (i) He or she no longer meets the definition of a sexually violent predator; or (ii) conditional release to a proposed less restrictive alternative would be in the best interest of the person and conditions can be imposed that would adequately protect the community.

(b) The committed person shall have a right to have an attorney represent him or her at the show cause hearing, which may be conducted solely on the basis of affidavits or declarations, but the person is not entitled to be present at the show cause hearing. At the show cause hearing, the prosecuting attorney or attorney general shall present prima facie evidence establishing that the committed person continues to meet the definition of a sexually violent predator and that a less restrictive alternative is not in the best interest of the person and conditions cannot be imposed that adequately protect the community. In making this showing, the state may rely exclusively upon the annual report prepared pursuant to RCW 71.09.070. The committed person may present responsive affidavits or declarations to which the state may reply.

(c) If the court at the show cause hearing determines that either: (i) The state has failed to present prima facie evidence that the committed person continues to meet the definition of a sexually violent predator and that no proposed less restrictive alternative is in the best interest of the person and conditions cannot be imposed that would adequately protect the community; or (ii) probable cause exists to believe that the person's condition has so changed that: (A) The person no longer meets the definition of a sexually violent predator; or (B) release to a proposed less restrictive alternative would be in the best interest of the person and conditions can be imposed that would adequately protect the community, then the court shall set a hearing on either or both issues.

(d) If the court has not previously considered the issue of release to a less restrictive alternative, either through a trial on the merits or through the procedures set forth in RCW 71.09.094(1), the court shall consider whether release to a less restrictive alternative would be in the best interests of the person and conditions can be imposed that would adequately protect the community, without considering whether the person's condition has changed. The court may not find probable cause for a trial addressing less restrictive alternatives unless a proposed less restrictive alternative placement meeting the conditions of RCW 71.09.092 is presented to the court at the show cause hearing.

(3)(a) At the hearing resulting from subsection (1) or (2) of this section, the committed person shall be entitled to be

present and to the benefit of all constitutional protections that were afforded to the person at the initial commitment proceeding. The prosecuting agency shall represent the state and shall have a right to a jury trial and to have the committed person evaluated by experts chosen by the state. The department is responsible for the cost of one expert or professional person to conduct an evaluation on the prosecuting agency's behalf. The committed person shall also have the right to a jury trial and the right to have experts evaluate him or her on his or her behalf and the court shall appoint an expert if the person is indigent and requests an appointment.

(b) Whenever any person is subjected to an evaluation under (a) of this subsection, the department is responsible for the cost of one expert or professional person conducting an evaluation on the person's behalf. When the person wishes to be evaluated by a qualified expert or professional person of his or her own choice, such expert or professional person must be permitted to have reasonable access to the person for the purpose of such evaluation, as well as to all relevant medical and psychological records and reports. In the case of a person who is indigent, the court shall, upon the person's request, assist the person in obtaining an expert or professional person to perform an evaluation or participate in the hearing on the person's behalf. Nothing in this chapter precludes the person from paying for additional expert services at his or her own expense.

(c) If the issue at the hearing is whether the person should be unconditionally discharged, the burden of proof shall be upon the state to prove beyond a reasonable doubt that the committed person's condition remains such that the person continues to meet the definition of a sexually violent predator. Evidence of the prior commitment trial and disposition is admissible. The recommitment proceeding shall otherwise proceed as set forth in RCW 71.09.050 and 71.09.060.

(d) If the issue at the hearing is whether the person should be conditionally released to a less restrictive alternative, the burden of proof at the hearing shall be upon the state to prove beyond a reasonable doubt that conditional release to any proposed less restrictive alternative either: (i) Is not in the best interest of the committed person; or (ii) does not include conditions that would adequately protect the community. Evidence of the prior commitment trial and disposition is admissible.

(4)(a) Probable cause exists to believe that a person's condition has "so changed," under subsection (2) of this section, only when evidence exists, since the person's last commitment trial, or less restrictive alternative revocation proceeding, of a substantial change in the person's physical or mental condition such that the person either no longer meets the definition of a sexually violent predator or that a conditional release to a less restrictive alternative is in the person's best interest and conditions can be imposed to adequately protect the community.

(b) A new trial proceeding under subsection (3) of this section may be ordered, or a trial proceeding may be held, only when there is current evidence from a licensed professional of one of the following and the evidence presents a change in condition since the person's last commitment trial proceeding:

(i) An identified physiological change to the person, such as paralysis, stroke, or dementia, that renders the com-

mitted person unable to commit a sexually violent act and this change is permanent; or

(ii) A change in the person's mental condition brought about through positive response to continuing participation in treatment which indicates that the person meets the standard for conditional release to a less restrictive alternative or that the person would be safe to be at large if unconditionally released from commitment.

(c) For purposes of this section, a change in a single demographic factor, without more, does not establish probable cause for a new trial proceeding under subsection (3) of this section. As used in this section, a single demographic factor includes, but is not limited to, a change in the chronological age, marital status, or gender of the committed person.

(5) The jurisdiction of the court over a person civilly committed pursuant to this chapter continues until such time as the person is unconditionally discharged. [2010 1st sp.s. c 28 § 2; 2009 c 409 § 8; 2005 c 344 § 2; 2001 c 286 § 9; 1995 c 216 § 9; 1992 c 45 § 7; 1990 c 3 § 1009.]

**Application—Effective date—2009 c 409:** See notes following RCW 71.09.020.

**Findings—Intent—2005 c 344:** "The legislature finds that the decisions in *In re Young*, 120 Wn. App. 753, *review denied*, 152 Wn.2d 1007 (2004) and *In re Ward*, 125 Wn. App. 381 (2005) illustrate an unintended consequence of language in chapter 71.09 RCW.

The *Young* and *Ward* decisions are contrary to the legislature's intent set forth in RCW 71.09.010 that civil commitment pursuant to chapter 71.09 RCW address the "very long-term" needs of the sexually violent predator population for treatment and the equally long-term needs of the community for protection from these offenders. The legislature finds that the mental abnormalities and personality disorders that make a person subject to commitment under chapter 71.09 RCW are severe and chronic and do not remit due solely to advancing age or changes in other demographic factors.

The legislature finds, although severe medical conditions like stroke, paralysis, and some types of dementia can leave a person unable to commit further sexually violent acts, that a mere advance in age or a change in gender or some other demographic factor after the time of commitment does not merit a new trial proceeding under RCW 71.09.090. To the contrary, the legislature finds that a new trial ordered under the circumstances set forth in *Young* and *Ward* subverts the statutory focus on treatment and reduces community safety by removing all incentive for successful treatment participation in favor of passive aging and distracting committed persons from fully engaging in sex offender treatment.

The *Young* and *Ward* decisions are contrary to the legislature's intent that the risk posed by persons committed under chapter 71.09 RCW will generally require prolonged treatment in a secure facility followed by intensive community supervision in the cases where positive treatment gains are sufficient for community safety. The legislature has, under the guidance of the federal court, provided avenues through which committed persons who successfully progress in treatment will be supported by the state in a conditional release to a less restrictive alternative that is in the best interest of the committed person and provides adequate safeguards to the community and is the appropriate next step in the person's treatment.

The legislature also finds that, in some cases, a committed person may appropriately challenge whether he or she continues to meet the criteria for commitment. Because of this, the legislature enacted RCW 71.09.070 and 71.09.090, requiring a regular review of a committed person's status and permitting the person the opportunity to present evidence of a relevant change in condition from the time of the last commitment trial proceeding. These provisions are intended only to provide a method of revisiting the indefinite commitment due to a relevant change in the person's condition, not an alternate method of collaterally attacking a person's indefinite commitment for reasons unrelated to a change in condition. Where necessary, other existing statutes and court rules provide ample opportunity to resolve any concerns about prior commitment trials. Therefore, the legislature intends to clarify the "so changed" standard." [2005 c 344 § 1.]

**Severability—2005 c 344:** "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [2005 c 344 § 3.]

(2010 Ed.)

**Effective date—2005 c 344:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [May 9, 2005]." [2005 c 344 § 4.]

**Recommendations—Application—Effective date—2001 c 286:** See notes following RCW 71.09.015.

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**71.09.092 Conditional release to less restrictive alternative—Findings.** Before the court may enter an order directing conditional release to a less restrictive alternative, it must find the following: (1) The person will be treated by a treatment provider who is qualified to provide such treatment in the state of Washington under chapter 18.155 RCW; (2) the treatment provider has presented a specific course of treatment and has agreed to assume responsibility for such treatment and will report progress to the court on a regular basis, and will report violations immediately to the court, the prosecutor, the supervising community corrections officer, and the superintendent of the special commitment center; (3) housing exists in Washington that is sufficiently secure to protect the community, and the person or agency providing housing to the conditionally released person has agreed in writing to accept the person, to provide the level of security required by the court, and immediately to report to the court, the prosecutor, the supervising community corrections officer, and the superintendent of the special commitment center if the person leaves the housing to which he or she has been assigned without authorization; (4) the person is willing to comply with the treatment provider and all requirements imposed by the treatment provider and by the court; and (5) the person will be under the supervision of the department of corrections and is willing to comply with supervision requirements imposed by the department of corrections. [2009 c 409 § 9; 1995 c 216 § 10.]

**Application—Effective date—2009 c 409:** See notes following RCW 71.09.020.

**71.09.094 Conditional release to less restrictive alternative—Verdict.** (1) Upon the conclusion of the evidence in a hearing held pursuant to RCW 71.09.090 or through summary judgment proceedings prior to such a hearing, if the court finds that there is no legally sufficient evidentiary basis for a reasonable jury to find that the conditions set forth in RCW 71.09.092 have been met, the court shall grant a motion by the state for a judgment as a matter of law on the issue of conditional release to a less restrictive alternative.

(2) Whenever the issue of conditional release to a less restrictive alternative is submitted to the jury, the court shall instruct the jury to return a verdict in substantially the following form: Has the state proved beyond a reasonable doubt that either: (a) The proposed less restrictive alternative is not in the best interests of respondent; or (b) does not include conditions that would adequately protect the community? Answer: Yes or No. [2001 c 286 § 11; 1995 c 216 § 11.]

**Recommendations—Application—Effective date—2001 c 286:** See notes following RCW 71.09.015.

**71.09.096 Conditional release to less restrictive alternative—Judgment—Conditions—Annual review.** (1) If the court or jury determines that conditional release to a less

restrictive alternative is in the best interest of the person and includes conditions that would adequately protect the community, and the court determines that the minimum conditions set forth in RCW 71.09.092 and in this section are met, the court shall enter judgment and direct a conditional release.

(2) The court shall impose any additional conditions necessary to ensure compliance with treatment and to protect the community. If the court finds that conditions do not exist that will both ensure the person's compliance with treatment and protect the community, then the person shall be remanded to the custody of the department of social and health services for control, care, and treatment in a secure facility as designated in RCW 71.09.060(1).

(3) If the service provider designated by the court to provide inpatient or outpatient treatment or to monitor or supervise any other terms and conditions of a person's placement in a less restrictive alternative is other than the department of social and health services or the department of corrections, then the service provider so designated must agree in writing to provide such treatment, monitoring, or supervision in accord with this section. Any person providing or agreeing to provide treatment, monitoring, or supervision services pursuant to this chapter may be compelled to testify and any privilege with regard to such person's testimony is deemed waived.

(4) Prior to authorizing any release to a less restrictive alternative, the court shall impose such conditions upon the person as are necessary to ensure the safety of the community. The court shall order the department of corrections to investigate the less restrictive alternative and recommend any additional conditions to the court. These conditions shall include, but are not limited to the following: Specification of residence, prohibition of contact with potential or past victims, prohibition of alcohol and other drug use, participation in a specific course of inpatient or outpatient treatment that may include monitoring by the use of polygraph and plethysmograph, monitoring through the use of global positioning satellite technology, supervision by a department of corrections community corrections officer, a requirement that the person remain within the state unless the person receives prior authorization by the court, and any other conditions that the court determines are in the best interest of the person or others. A copy of the conditions of release shall be given to the person and to any designated service providers.

(5) Any service provider designated to provide inpatient or outpatient treatment shall monthly, or as otherwise directed by the court, submit to the court, to the department of social and health services facility from which the person was released, to the prosecuting agency, and to the supervising community corrections officer, a report stating whether the person is complying with the terms and conditions of the conditional release to a less restrictive alternative.

(6) Each person released to a less restrictive alternative shall have his or her case reviewed by the court that released him or her no later than one year after such release and annually thereafter until the person is unconditionally discharged. Review may occur in a shorter time or more frequently, if the court, in its discretion on its own motion, or on motion of the person, the secretary, or the prosecuting agency so determines. The sole question to be determined by the court is

whether the person shall continue to be conditionally released to a less restrictive alternative. The court in making its determination shall be aided by the periodic reports filed pursuant to subsection (5) of this section and the opinions of the secretary and other experts or professional persons. [2009 c 409 § 10; 2001 c 286 § 12; 1995 c 216 § 12.]

**Application—Effective date—2009 c 409:** See notes following RCW 71.09.020.

**Recommendations—Application—Effective date—2001 c 286:** See notes following RCW 71.09.015.

**71.09.098 Revoking or modifying terms of conditional release to less restrictive alternative—Hearing—Custody pending hearing on revocation or modification.**

(1) Any service provider submitting reports pursuant to RCW 71.09.096(6), the supervising community corrections officer, the prosecuting agency, or the secretary's designee may petition the court for an immediate hearing for the purpose of revoking or modifying the terms of the person's conditional release to a less restrictive alternative if the petitioner believes the released person: (a) Violated or is in violation of the terms and conditions of the court's conditional release order; or (b) is in need of additional care, monitoring, supervision, or treatment.

(2) The community corrections officer or the secretary's designee may restrict the person's movement in the community until the petition is determined by the court. The person may be taken into custody if:

(a) The supervising community corrections officer, the secretary's designee, or a law enforcement officer reasonably believes the person has violated or is in violation of the court's conditional release order; or

(b) The supervising community corrections officer or the secretary's designee reasonably believes that the person is in need of additional care, monitoring, supervision, or treatment because the person presents a danger to himself or herself or others if his or her conditional release under the conditions imposed by the court's release order continues.

(3)(a) Persons taken into custody pursuant to subsection (2) of this section shall:

(i) Not be released until such time as a hearing is held to determine whether to revoke or modify the person's conditional release order and the court has issued its decision; and

(ii) Be held in the county jail, at a secure community transition facility, or at the total confinement facility, at the discretion of the secretary's designee.

(b) The court shall be notified before the close of the next judicial day that the person has been taken into custody and shall promptly schedule a hearing.

(4) Before any hearing to revoke or modify the person's conditional release order, both the prosecuting agency and the released person shall have the right to request an immediate mental examination of the released person. If the conditionally released person is indigent, the court shall, upon request, assist him or her in obtaining a qualified expert or professional person to conduct the examination.

(5) At any hearing to revoke or modify the conditional release order:

(a) The prosecuting agency shall represent the state, including determining whether to proceed with revocation or modification of the conditional release order;

(b) Hearsay evidence is admissible if the court finds that it is otherwise reliable; and

(c) The state shall bear the burden of proving by a preponderance of the evidence that the person has violated or is in violation of the court's conditional release order or that the person is in need of additional care, monitoring, supervision, or treatment.

(6)(a) If the court determines that the state has met its burden referenced in subsection (5)(c) of this section, and the issue before the court is revocation of the court's conditional release order, the court shall consider the evidence presented by the parties and the following factors relevant to whether continuing the person's conditional release is in the person's best interests or adequate to protect the community:

(i) The nature of the condition that was violated by the person or that the person was in violation of in the context of the person's criminal history and underlying mental conditions;

(ii) The degree to which the violation was intentional or grossly negligent;

(iii) The ability and willingness of the released person to strictly comply with the conditional release order;

(iv) The degree of progress made by the person in community-based treatment; and

(v) The risk to the public or particular persons if the conditional release continues under the conditional release order that was violated.

(b) Any factor alone, or in combination, shall support the court's determination to revoke the conditional release order.

(7) If the court determines the state has met its burden referenced in subsection (5)(c) of this section, and the issue before the court is modification of the court's conditional release order, the court shall modify the conditional release order by adding conditions if the court determines that the person is in need of additional care, monitoring, supervision, or treatment. The court has authority to modify its conditional release order by substituting a new treatment provider, requiring new housing for the person, or imposing such additional supervision conditions as the court deems appropriate.

(8) A person whose conditional release has been revoked shall be remanded to the custody of the secretary for control, care, and treatment in a total confinement facility as designated in RCW 71.09.060(1). The person is thereafter eligible for conditional release only in accord with the provisions of RCW 71.09.090 and related statutes. [2009 c 409 § 11; 2006 c 282 § 1; 2001 c 286 § 13; 1995 c 216 § 13.]

**Application—Effective date—2009 c 409:** See notes following RCW 71.09.020.

**Recommendations—Application—Effective date—2001 c 286:** See notes following RCW 71.09.015.

**71.09.110 Department of social and health services—Duties—Reimbursement.** The department of social and health services shall be responsible for all costs relating to the evaluation and treatment of persons committed to their custody whether in a secure facility or under a less restrictive alternative under any provision of this chapter. The secretary shall adopt rules to contain costs relating to reimbursement for evaluation services. Reimbursement may be obtained by the department for the cost of care and treatment of persons committed to its custody whether in a secure facility or under

(2010 Ed.)

a less restrictive alternative pursuant to RCW 43.20B.330 through 43.20B.370. [2010 1st sp.s. c 28 § 3; 1995 c 216 § 14; 1990 c 3 § 1011.]

**71.09.111 Department of social and health services—Disclosures to the prosecuting agency.** The department of social and health services shall provide to the prosecuting agency a copy of all reports made by the department to law enforcement in which a person detained or committed under this chapter is named or listed as a suspect, witness, or victim, as well as a copy of all reports received from law enforcement. [2009 c 409 § 12.]

**Application—Effective date—2009 c 409:** See notes following RCW 71.09.020.

**71.09.112 Department of social and health services—Jurisdiction and revocation of conditional release after criminal conviction—Exception.** A person subject to court order under the provisions of this chapter who is thereafter convicted of a criminal offense remains under the jurisdiction of the department and shall be returned to the custody of the department following: (1) Completion of the criminal sentence; or (2) release from confinement in a state, federal, or local correctional facility. Any conditional release order shall be immediately revoked upon conviction for a criminal offense.

This section does not apply to persons subject to a court order under the provisions of this chapter who are thereafter sentenced to life without the possibility of release. [2009 c 409 § 13; 2002 c 19 § 1.]

**Application—Effective date—2009 c 409:** See notes following RCW 71.09.020.

**71.09.115 Record check required for employees of secure facility.** (1) The safety and security needs of the secure facility operated by the department of social and health services pursuant to RCW 71.09.060(1) make it vital that employees working in the facility meet necessary character, suitability, and competency qualifications. The secretary shall require a record check through the Washington state patrol criminal identification system under chapter 10.97 RCW and through the federal bureau of investigation. The record check must include a fingerprint check using a complete Washington state criminal identification fingerprint card. The criminal history record checks shall be at the expense of the department. The secretary shall use the information only in making the initial employment or engagement decision, except as provided in subsection (2) of this section. Further dissemination or use of the record is prohibited.

(2) This section applies to all current employees hired prior to June 6, 1996, who have not previously submitted to a department of social and health services criminal history records check. The secretary shall use the information only in determining whether the current employee meets the necessary character, suitability, and competency requirements for employment or engagement. [1996 c 27 § 1.]

**71.09.120 Release of information authorized.** In addition to any other information required to be released under this chapter, the department is authorized, pursuant to RCW 4.24.550, to release relevant information that is necessary to

protect the public, concerning a specific sexually violent predator committed under this chapter. [1990 c 3 § 1012.]

**71.09.130 Notice of escape or disappearance.** In the event of an escape by a person committed under this chapter from a state institution or the disappearance of such a person while on conditional release, the superintendent or community corrections officer shall notify the following as appropriate: Local law enforcement officers, other governmental agencies, the person's relatives, and any other appropriate persons about information necessary for the public safety or to assist in the apprehension of the person. [1995 c 216 § 16.]

**71.09.135 McNeil Island—Escape planning, response.** The emergency response team for McNeil Island shall plan, coordinate, and respond in the event of an escape from the special commitment center or the secure community transition facility. [2003 c 216 § 6.]

**Severability—Effective date—2003 c 216:** See notes following RCW 71.09.300.

**71.09.140 Notice of conditional release or unconditional discharge—Notice of escape and recapture.** (1) At the earliest possible date, and in no event later than thirty days before conditional release or unconditional discharge, except in the event of escape, the department of social and health services shall send written notice of conditional release, unconditional discharge, or escape, to the following:

(a) The chief of police of the city, if any, in which the person will reside or in which placement will be made under a less restrictive alternative;

(b) The sheriff of the county in which the person will reside or in which placement will be made under a less restrictive alternative; and

(c) The sheriff of the county where the person was last convicted of a sexually violent offense, if the department does not know where the person will reside.

The department shall notify the state patrol of the release of all sexually violent predators and that information shall be placed in the Washington crime information center for dissemination to all law enforcement.

(2) The same notice as required by subsection (1) of this section shall be sent to the following if such notice has been requested in writing about a specific person found to be a sexually violent predator under this chapter:

(a) The victim or victims of any sexually violent offenses for which the person was convicted in the past or the victim's next of kin if the crime was a homicide. "Next of kin" as used in this section means a person's spouse, parents, siblings, and children;

(b) Any witnesses who testified against the person in his or her commitment trial under RCW 71.09.060; and

(c) Any person specified in writing by the prosecuting attorney.

Information regarding victims, next of kin, or witnesses requesting the notice, information regarding any other person specified in writing by the prosecuting attorney to receive the notice, and the notice are confidential and shall not be available to the committed person.

(3) If a person committed as a sexually violent predator under this chapter escapes from a department of social and health services facility, the department shall immediately notify, by the most reasonable and expedient means available, the chief of police of the city and the sheriff of the county in which the committed person resided immediately before his or her commitment as a sexually violent predator, or immediately before his or her incarceration for his or her most recent offense. If previously requested, the department shall also notify the witnesses and the victims of the sexually violent offenses for which the person was convicted in the past or the victim's next of kin if the crime was a homicide. If the person is recaptured, the department shall send notice to the persons designated in this subsection as soon as possible but in no event later than two working days after the department learns of such recapture.

(4) If the victim or victims of any sexually violent offenses for which the person was convicted in the past or the victim's next of kin, or any witness is under the age of sixteen, the notice required by this section shall be sent to the parents or legal guardian of the child.

(5) The department of social and health services shall send the notices required by this chapter to the last address provided to the department by the requesting party. The requesting party shall furnish the department with a current address.

(6) Nothing in this section shall impose any liability upon a chief of police of a city or sheriff of a county for failing to request in writing a notice as provided in subsection (1) of this section. [1995 c 216 § 17.]

**71.09.200 Escorted leave—Definitions.** For purposes of RCW 71.09.210 through 71.09.230:

(1) "Escorted leave" means a leave of absence from a facility housing persons detained or committed pursuant to this chapter under the continuous supervision of an escort.

(2) "Escort" means a correctional officer or other person approved by the superintendent or the superintendent's designee to accompany a resident on a leave of absence and be in visual or auditory contact with the resident at all times.

(3) "Resident" means a person detained or committed pursuant to this chapter. [1995 c 216 § 18.]

**71.09.210 Escorted leave—Conditions.** The superintendent of any facility housing persons detained or committed pursuant to this chapter may, subject to the approval of the secretary, grant escorted leaves of absence to residents confined in such institutions to:

(1) Go to the bedside of the resident's wife, husband, child, mother or father, or other member of the resident's immediate family who is seriously ill;

(2) Attend the funeral of a member of the resident's immediate family listed in subsection (1) of this section; and

(3) Receive necessary medical or dental care which is not available in the institution. [1995 c 216 § 19.]

**71.09.220 Escorted leave—Notice.** A resident shall not be allowed to start a leave of absence under RCW 71.09.210 until the secretary, or the secretary's designee, has notified any county and city law enforcement agency having

jurisdiction in the area of the resident's destination. [1995 c 216 § 20.]

**71.09.230 Escorted leave—Rules.** (1) The secretary is authorized to adopt rules providing for the conditions under which residents will be granted leaves of absence and providing for safeguards to prevent escapes while on leaves of absence. Leaves of absence granted to residents under RCW 71.09.210, however, shall not allow or permit any resident to go beyond the boundaries of this state.

(2) The secretary shall adopt rules requiring reimbursement of the state from the resident granted leave of absence, or the resident's family, for the actual costs incurred arising from any leave of absence granted under the authority of RCW 71.09.210 (1) and (2). No state funds shall be expended in connection with leaves of absence granted under RCW 71.09.210 (1) and (2) unless the resident and the resident's immediate family are indigent and without resources sufficient to reimburse the state for the expenses of such leaves of absence. [1995 c 216 § 21.]

**71.09.250 Transition facility—Siting.** (1)(a) The secretary is authorized to site, construct, occupy, and operate (i) a secure community transition facility on McNeil Island for persons authorized to petition for a less restrictive alternative under RCW 71.09.090(1) and who are conditionally released; and (ii) a special commitment center on McNeil Island with up to four hundred four beds as a total confinement facility under this chapter, subject to appropriated funding for those purposes. The secure community transition facility shall be authorized for the number of beds needed to ensure compliance with the orders of the superior courts under this chapter and the federal district court for the western district of Washington. The total number of beds in the secure community transition facility shall be limited to twenty-four, consisting of up to fifteen transitional beds and up to nine pretransitional beds. The residents occupying the transitional beds shall be the only residents eligible for transitional services occurring in Pierce county. In no event shall more than fifteen residents of the secure community transition facility be participating in off-island transitional, educational, or employment activity at the same time in Pierce county. The department shall provide the Pierce county sheriff, or his or her designee, with a list of the fifteen residents so designated, along with their photographs and physical descriptions, and the list shall be immediately updated whenever a residential change occurs. The Pierce county sheriff, or his or her designee, shall be provided an opportunity to confirm the residential status of each resident leaving McNeil Island.

(b) For purposes of this subsection, "transitional beds" means beds only for residents who are judged by a qualified expert to be suitable to leave the island for treatment, education, and employment.

(2)(a) The secretary is authorized to site, either within the secure community transition facility established pursuant to subsection (1)(a)(i) of this section, or within the special commitment center, up to nine pretransitional beds.

(b) Residents assigned to pretransitional beds shall not be permitted to leave McNeil Island for education, employment, treatment, or community activities in Pierce county.

(c) For purposes of this subsection, "pretransitional beds" means beds for residents whose progress toward a less secure residential environment and transition into more complete community involvement is projected to take substantially longer than a typical resident of the special commitment center.

(3) Notwithstanding RCW 36.70A.103 or any other law, this statute preempts and supersedes local plans, development regulations, permitting requirements, inspection requirements, and all other laws as necessary to enable the secretary to site, construct, occupy, and operate a secure community transition facility on McNeil Island and a total confinement facility on McNeil Island.

(4) To the greatest extent possible, until June 30, 2003, persons who were not civilly committed from the county in which the secure community transition facility established pursuant to subsection (1) of this section is located may not be conditionally released to a setting in that same county less restrictive than that facility.

(5) As of June 26, 2001, the state shall immediately cease any efforts in effect on such date to site secure community transition facilities, other than the facility authorized by subsection (1) of this section, and shall instead site such facilities in accordance with the provisions of this section.

(6) The department must:

(a) Identify the minimum and maximum number of secure community transition facility beds in addition to the facility established under subsection (1) of this section that may be necessary for the period of May 2004 through May 2007 and provide notice of these numbers to all counties by August 31, 2001; and

(b) Develop and publish policy guidelines for the siting and operation of secure community transition facilities.

(7)(a) The total number of secure community transition facility beds that may be required to be sited in a county between June 26, 2001, and June 30, 2008, may be no greater than the total number of persons civilly committed from that county, or detained at the special commitment center under a pending civil commitment petition from that county where a finding of probable cause had been made on April 1, 2001. The total number of secure community transition facility beds required to be sited in each county between July 1, 2008, and June 30, 2015, may be no greater than the total number of persons civilly committed from that county or detained at the special commitment center under a pending civil commitment petition from that county where a finding of probable cause had been made as of July 1, 2008.

(b) Counties and cities that provide secure community transition facility beds above the maximum number that they could be required to site under this subsection are eligible for a bonus grant under the incentive provisions in RCW 71.09.255. The county where the special commitment center is located shall receive this bonus grant for the number of beds in the facility established in subsection (1) of this section in excess of the maximum number established by this subsection.

(c) No secure community transition facilities in addition to the one established in subsection (1) of this section may be required to be sited in the county where the special commitment center is located until after June 30, 2008, provided however, that the county and its cities may elect to site addi-

tional secure community transition facilities and shall be eligible under the incentive provisions of RCW 71.09.255 for any additional facilities meeting the requirements of that section.

(8) In identifying potential sites within a county for the location of a secure community transition facility, the department shall work with and assist local governments to provide for the equitable distribution of such facilities. In coordinating and deciding upon the siting of secure community transition facilities, great weight shall be given by the county and cities within the county to:

(a) The number and location of existing residential facility beds operated by the department of corrections or the mental health division of the department of social and health services in each jurisdiction in the county; and

(b) The number of registered sex offenders classified as level II or level III and the number of sex offenders registered as homeless residing in each jurisdiction in the county.

(9)(a) "Equitable distribution" means siting or locating secure community transition facilities in a manner that will not cause a disproportionate grouping of similar facilities either in any one county, or in any one jurisdiction or community within a county, as relevant; and

(b) "Jurisdiction" means a city, town, or geographic area of a county in which distinct political or judicial authority may be exercised. [2003 c 216 § 3; 2001 2nd sp.s. c 12 § 201.]

**Severability—Effective date—2003 c 216:** See notes following RCW 71.09.300.

**Intent—2001 2nd sp.s. c 12:** "The legislature intends the following omnibus bill to address the management of sex offenders in the civil commitment and criminal justice systems for purposes of public health, safety, and welfare. Provisions address siting of and continued operation of facilities for persons civilly committed under chapter 71.09 RCW and sentencing of persons who have committed sex offenses. Other provisions address the need for sex offender treatment providers with specific credentials. Additional provisions address the continued operation or authorized expansion of criminal justice facilities at McNeil Island, because these facilities are impacted by the civil facilities on McNeil Island for persons committed under chapter 71.09 RCW." [2001 2nd sp.s. c 12 § 101.]

**Severability—2001 2nd sp.s. c 12:** "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [2001 2nd sp.s. c 12 § 504.]

**Effective dates—2001 2nd sp.s. c 12:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [June 26, 2001], except for sections 301 through 363, 501, and 503 of this act which take effect September 1, 2001." [2001 2nd sp.s. c 12 § 505.]

**71.09.252 Transition facilities—Agreements for regional facilities.** (1) To encourage economies of scale in the siting and operation of secure community transition facilities, the department may enter into an agreement with two or more counties to create a regional secure community transition facility. The agreement must clearly identify the number of beds from each county that will be contained in the regional secure community transition facility. The agreement must specify which county must contain the regional secure community transition facility and the facility must be sited accordingly. No county may withdraw from an agreement under this section unless it has provided an alternative acceptable secure community transition facility to house any

displaced residents that meets the criteria established for such facilities in this chapter and the guidelines established by the department.

(2) A regional secure community transition facility must meet the criteria established for secure community transition facilities in this chapter and the guidelines established by the department.

(3) The department shall count the beds identified for each participating county in a regional secure community transition facility against the maximum number of beds that could be required for each county under RCW 71.09.250(7)(a).

(4) An agreement for a regional secure community transition facility does not alter the maximum number of beds for purposes of the incentive grants under RCW 71.09.255 for the county containing the regional facility. [2002 c 68 § 18.]

**Purpose—Severability—Effective date—2002 c 68:** See notes following RCW 36.70A.200.

**71.09.255 Transition facilities—Incentive grants and payments.** (1) Upon receiving the notification required by RCW 71.09.250, counties must promptly notify the cities within the county of the maximum number of secure community transition facility beds that may be required and the projected number of beds to be needed in that county.

(2) The incentive grants and payments provided under this section are subject to the following provisions:

(a) Counties and the cities within the county must notify each other of siting plans to promote the establishment and equitable distribution of secure community transition facilities;

(b) Development regulations, ordinances, plans, laws, and criteria established for siting must be consistent with statutory requirements and rules applicable to siting and operating secure community transition facilities;

(c) The minimum size for any facility is three beds; and

(d) The department must approve any sites selected.

(3) Any county or city that makes a commitment to initiate the process to site one or more secure community transition facilities by one hundred twenty days after March 21, 2002, shall receive a planning grant as proposed and approved by the \*department of community, trade, and economic development.

(4) Any county or city that has issued all necessary permits by May 1, 2003, for one or more secure community transition facilities that comply with the requirements of this section shall receive an incentive grant in the amount of fifty thousand dollars for each bed sited.

(5) To encourage the rapid permitting of sites, any county or city that has issued all necessary permits by January 1, 2003, for one or more secure community transition facilities that comply with the requirements of this section shall receive a bonus in the amount of twenty percent of the amount provided under subsection (4) of this section.

(6) Any county or city that establishes secure community transition facility beds in excess of the maximum number that could be required to be sited in that county shall receive a bonus payment of one hundred thousand dollars for each bed established in excess of the maximum requirement.

(7) No payment shall be made under subsection (4), (5), or (6) of this section until all necessary permits have been issued.

(8) The funds available to counties and cities under this section are contingent upon funds being appropriated by the legislature. [2002 c 68 § 8; 2001 2nd sp.s. c 12 § 204.]

**\*Reviser's note:** The "department of community, trade, and economic development" was renamed the "department of commerce" by 2009 c 565.

**Purpose—Severability—Effective date—2002 c 68:** See notes following RCW 36.70A.200.

**Intent—Severability—Effective dates—2001 2nd sp.s. c 12:** See notes following RCW 71.09.250.

**71.09.260 Transition facilities not limited to residential neighborhoods.** The provisions of chapter 12, Laws of 2001 2nd sp. sess. shall not be construed to limit siting of secure community transition facilities to residential neighborhoods. [2001 2nd sp.s. c 12 § 206.]

**Intent—Severability—Effective dates—2001 2nd sp.s. c 12:** See notes following RCW 71.09.250.

**71.09.265 Transition facilities—Distribution of impact.** (1) The department shall make reasonable efforts to distribute the impact of the employment, education, and social services needs of the residents of the secure community transition facility established pursuant to RCW 71.09.250(1) among the adjoining counties and not to concentrate the residents' use of resources in any one community.

(2) The department shall develop policies to ensure that, to the extent possible, placement of persons eligible in the future for conditional release to a setting less restrictive than the facility established pursuant to RCW 71.09.250(1) will be equitably distributed among the counties and within jurisdictions in the county. [2001 2nd sp.s. c 12 § 208.]

**Intent—Severability—Effective dates—2001 2nd sp.s. c 12:** See notes following RCW 71.09.250.

**71.09.275 Transition facility—Transportation of residents.** (1) If the department does not provide a separate vessel for transporting residents of the secure community transition facility established in RCW 71.09.250(1) between McNeil Island and the mainland, the department shall:

(a) Separate residents from minors and vulnerable adults, except vulnerable adults who have been found to be sexually violent predators.

(b) Not transport residents during times when children are normally coming to and from the mainland for school.

(2) The department shall designate a separate waiting area at the points of debarkation, and residents shall be required to remain in this area while awaiting transportation.

(3) The department shall provide law enforcement agencies in the counties and cities in which residents of the secure community transition facility established pursuant to RCW 71.09.250(1)(a)(i) regularly participate in employment, education, or social services, or through which these persons are regularly transported, with a copy of the court's order of conditional release with respect to these persons. [2003 c 216 § 4; 2001 2nd sp.s. c 12 § 211.]

**Severability—Effective date—2003 c 216:** See notes following RCW 71.09.300.

(2010 Ed.)

**Intent—Severability—Effective dates—2001 2nd sp.s. c 12:** See notes following RCW 71.09.250.

**71.09.280 Transition facility—Release to less restrictive placement.** When considering whether a person civilly committed under this chapter and conditionally released to a secure community transition facility is appropriate for release to a placement that is less restrictive than that facility, the court shall comply with the procedures set forth in RCW 71.09.090 through 71.09.096. In addition, the court shall consider whether the person has progressed in treatment to the point that a significant change in the person's routine, including but not limited to a change of employment, education, residence, or sex offender treatment provider will not cause the person to regress to the point that the person presents a greater risk to the community than can reasonably be addressed in the proposed placement. [2001 2nd sp.s. c 12 § 212.]

**Intent—Severability—Effective dates—2001 2nd sp.s. c 12:** See notes following RCW 71.09.250.

**71.09.285 Transition facility—Siting policy guidelines.** (1) Except with respect to the secure community transition facility established pursuant to RCW 71.09.250, the secretary shall develop policy guidelines that balance the average response time of emergency services to the general area of a proposed secure community transition facility against the proximity of the proposed site to risk potential activities and facilities in existence at the time the site is listed for consideration.

(2) In no case shall the policy guidelines permit location of a facility adjacent to, immediately across a street or parking lot from, or within the line of sight of a risk potential activity or facility in existence at the time a site is listed for consideration. "Within the line of sight" means that it is possible to reasonably visually distinguish and recognize individuals.

(3) The policy guidelines shall require that great weight be given to sites that are the farthest removed from any risk potential activity.

(4) The policy guidelines shall specify how distance from the location is measured and any variations in the measurement based on the size of the property within which a proposed facility is to be located.

(5) The policy guidelines shall establish a method to analyze and compare the criteria for each site in terms of public safety and security, site characteristics, and program components. In making a decision regarding a site following the analysis and comparison, the secretary shall give priority to public safety and security considerations. The analysis and comparison of the criteria are to be documented and made available at the public hearings prescribed in RCW 71.09.315.

(6) Policy guidelines adopted by the secretary under this section shall be considered by counties and cities when providing for the siting of secure community transition facilities as required under RCW 36.70A.200. [2002 c 68 § 5; 2001 2nd sp.s. c 12 § 213.]

**Purpose—Severability—Effective date—2002 c 68:** See notes following RCW 36.70A.200.

**Intent—Severability—Effective dates—2001 2nd sp.s. c 12:** See notes following RCW 71.09.250.

**71.09.290 Other transition facilities—Siting policy guidelines.** The secretary shall establish policy guidelines for the siting of secure community transition facilities, other than the secure community transition facility established pursuant to RCW 71.09.250(1)(a)(i), which shall include at least the following minimum requirements:

(1) The following criteria must be considered prior to any real property being listed for consideration for the location of or use as a secure community transition facility:

(a) The proximity and response time criteria established under RCW 71.09.285;

(b) The site or building is available for lease for the anticipated use period or for purchase;

(c) Security monitoring services and appropriate back-up systems are available and reliable;

(d) Appropriate mental health and sex offender treatment providers must be available within a reasonable commute; and

(e) Appropriate permitting for a secure community transition facility must be possible under the zoning code of the local jurisdiction.

(2) For sites which meet the criteria of subsection (1) of this section, the department shall analyze and compare the criteria in subsections (3) through (5) of this section using the method established in RCW 71.09.285.

(3) Public safety and security criteria shall include at least the following:

(a) Whether limited visibility between the facility and adjacent properties can be achieved prior to placement of any person;

(b) The distance from, and number of, risk potential activities and facilities, as measured using the policies adopted under RCW 71.09.285;

(c) The existence of or ability to establish barriers between the site and the risk potential facilities and activities;

(d) Suitability of the buildings to be used for the secure community transition facility with regard to existing or feasibly modified features; and

(e) The availability of electronic monitoring that allows a resident's location to be determined with specificity.

(4) Site characteristics criteria shall include at least the following:

(a) Reasonableness of rental, lease, or sale terms including length and renewability of a lease or rental agreement;

(b) Traffic and access patterns associated with the real property;

(c) Feasibility of complying with zoning requirements within the necessary time frame; and

(d) A contractor or contractors are available to install, monitor, and repair the necessary security and alarm systems.

(5) Program characteristics criteria shall include at least the following:

(a) Reasonable proximity to available medical, mental health, sex offender, and chemical dependency treatment providers and facilities;

(b) Suitability of the location for programming, staffing, and support considerations;

(c) Proximity to employment, educational, vocational, and other treatment plan components.

(6) For purposes of this section "available" or "availability" of qualified treatment providers includes provider qualifications and willingness to provide services, average commute time, and cost of services. [2003 c 216 § 5; 2001 2nd sp.s. c 12 § 214.]

**Severability—Effective date—2003 c 216:** See notes following RCW 71.09.300.

**Intent—Severability—Effective dates—2001 2nd sp.s. c 12:** See notes following RCW 71.09.250.

**71.09.295 Transition facilities—Security systems.** (1) Security systems for all secure community transition facilities shall meet the following minimum qualifications:

(a) The security panel must be a commercial grade panel with tamper-proof switches and a key-lock to prevent unauthorized access.

(b) There must be an emergency electrical supply system which shall include a battery back-up system and a generator.

(c) The system must include personal panic devices for all staff.

(d) The security system must be capable of being monitored and signaled either by telephone through either a land or cellular telephone system or by private radio network in the event of a total dial-tone failure or through equivalent technologies.

(e) The department shall issue photo-identification badges to all staff which must be worn at all times.

(2) Security systems for the secure community transition facility established pursuant to RCW 71.09.250(1) shall also include a fence and provide the maximum protection appropriate in a civil facility for persons in less than total confinement. [2001 2nd sp.s. c 12 § 215.]

**Intent—Severability—Effective dates—2001 2nd sp.s. c 12:** See notes following RCW 71.09.250.

**71.09.300 Transition facilities—Staffing.** Secure community transition facilities shall meet the following minimum staffing requirements:

(1)(a) At any time the census of a facility that accepts its first resident before July 1, 2003, is six or fewer residents, the facility shall maintain a minimum staffing ratio of one staff per three residents during normal waking hours and one awake staff per four residents during normal sleeping hours. In no case shall the staffing ratio permit less than two staff per housing unit.

(b) At any time the census of a facility that accepts its first resident on or after July 1, 2003, is six or fewer residents, the facility shall maintain a minimum staffing ratio of one staff per resident during normal waking hours and two awake staff per three residents during normal sleeping hours. In no case shall the staffing ratio permit less than two staff per housing unit.

(2) At any time the census of a facility is six or fewer residents, all staff shall be classified as residential rehabilitation counselor II or have a classification that indicates an equivalent or higher level of skill, experience, and training.

(3) Before being assigned to a facility, all staff shall have training in sex offender issues, self-defense, and crisis de-escalation skills in addition to departmental orientation and,

as appropriate, management training. All staff with resident treatment or care duties must participate in ongoing in-ser-vice training.

(4) All staff must pass a departmental background check and the check is not subject to the limitations in chapter 9.96A RCW. A person who has been convicted of a felony, or any sex offense, may not be employed at the secure community transition facility or be approved as an escort for a resident of the facility. [2003 c 216 § 1; 2001 2nd sp.s. c 12 § 216.]

**Severability—2003 c 216:** "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [2003 c 216 § 8.]

**Effective date—2003 c 216:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 2003." [2003 c 216 § 9.]

**Intent—Severability—Effective dates—2001 2nd sp.s. c 12:** See notes following RCW 71.09.250.

**71.09.305 Transition facility residents—Monitoring, escorting.** (1) Unless otherwise ordered by the court:

(a) Residents of a secure community transition facility shall wear electronic monitoring devices at all times. To the extent that electronic monitoring devices that employ global positioning system technology are available and funds for this purpose are appropriated by the legislature, the department shall use these devices.

(b) At least one staff member, or other court-authorized and department-approved person must escort each resident when the resident leaves the secure community transition facility for appointments, employment, or other approved activities. Escorting persons must supervise the resident closely and maintain close proximity to the resident. The escort must immediately notify the department of any serious violation, as defined in RCW 71.09.325, by the resident and must immediately notify law enforcement of any violation of law by the resident. The escort may not be a relative of the resident or a person with whom the resident has, or has had, a dating relationship as defined in RCW 26.50.010.

(2) Staff members of the special commitment center and any other total confinement facility and any secure community transition facility must be trained in self-defense and appropriate crisis responses including incident de-escalation. Prior to escorting a person outside of a facility, staff members must also have training in the offense pattern of the offender they are escorting.

(3) Any escort must carry a cellular telephone or a similar device at all times when escorting a resident of a secure community transition facility.

(4) The department shall require training in offender pattern, self-defense, and incident response for all court-authorized escorts who are not employed by the department or the department of corrections. [2002 c 68 § 6; 2001 2nd sp.s. c 12 § 217.]

**Purpose—Severability—Effective date—2002 c 68:** See notes following RCW 36.70A.200.

**Intent—Severability—Effective dates—2001 2nd sp.s. c 12:** See notes following RCW 71.09.250.

(2010 Ed.)

**71.09.310 Transition facility residents—Mandatory escorts.** Notwithstanding the provisions of RCW 71.09.305, residents of the secure community transition facility established pursuant to RCW 71.09.250(1) must be escorted at any time the resident leaves the facility. [2001 2nd sp.s. c 12 § 218.]

**Intent—Severability—Effective dates—2001 2nd sp.s. c 12:** See notes following RCW 71.09.250.

**71.09.315 Transition facilities—Public notice, review, and comment.** (1) Whenever the department operates, or the secretary enters into a contract to operate, a secure community transition facility except the secure community transition facility established pursuant to RCW 71.09.250(1), the secure community transition facility may be operated only after the public notification and opportunities for review and comment as required by this section.

(2) The secretary shall establish a process for early and continuous public participation in establishing or relocating secure community transition facilities. The process shall include, at a minimum, public meetings in the local communities affected, as well as opportunities for written and oral comments, in the following manner:

(a) If there are more than three sites initially selected as potential locations and the selection process by the secretary or a service provider reduces the number of possible sites for a secure community transition facility to no fewer than three, the secretary or the chief operating officer of the service provider shall notify the public of the possible siting and hold at least two public hearings in each community where a secure community transition facility may be sited.

(b) When the secretary or service provider has determined the secure community transition facility's location, the secretary or the chief operating officer of the service provider shall hold at least one additional public hearing in the community where the secure community transition facility will be sited.

(c) When the secretary has entered negotiations with a service provider and only one site is under consideration, then at least two public hearings shall be held.

(d) To provide adequate notice of, and opportunity for interested persons to comment on, a proposed location, the secretary or the chief operating officer of the service provider shall provide at least fourteen days' advance notice of the meeting to all newspapers of general circulation in the community, all radio and television stations generally available to persons in the community, any school district in which the secure community transition facility would be sited or whose boundary is within two miles of a proposed secure community transition facility, any library district in which the secure community transition facility would be sited, local business or fraternal organizations that request notification from the secretary or agency, and any person or property owner within a one-half mile radius of the proposed secure community transition facility. Before initiating this process, the department of social and health services shall contact local government planning agencies in the communities containing the proposed secure community transition facility. The department of social and health services shall coordinate with local government agencies to ensure that opportunities are pro-

vided for effective citizen input and to reduce the duplication of notice and meetings.

(3) If local government land use regulations require that a special use or conditional use permit be submitted and approved before a secure community transition facility can be sited, and the process for obtaining such a permit includes public notice and hearing requirements similar to those required under this section, the requirements of this section shall not apply to the extent they would duplicate requirements under the local land use regulations.

(4) This section applies only to secure community transition facilities sited after June 26, 2001. [2001 2nd sp.s. c 12 § 219.]

**Intent—Severability—Effective dates—2001 2nd sp.s. c 12:** See notes following RCW 71.09.250.

**71.09.320 Transition facilities—Operational advisory boards.** (1) The secretary shall develop a process with local governments that allows each community in which a secure community transition facility is located to establish operational advisory boards of at least seven persons for the secure community transition facilities. The department may conduct community awareness activities to publicize this opportunity. The operational advisory boards developed under this section shall be implemented following the decision to locate a secure community transition facility in a particular community.

(2) The operational advisory boards may review and make recommendations regarding the security and operations of the secure community transition facility and conditions or modifications necessary with relation to any person who the secretary proposes to place in the secure community transition facility.

(3) The facility management must consider the recommendations of the community advisory boards. Where the facility management does not implement an operational advisory board recommendation, the management must provide a written response to the operational advisory board stating its reasons for its decision not to implement the recommendation.

(4) The operational advisory boards, their members, and any agency represented by a member shall not be liable in any cause of action as a result of its recommendations unless the advisory board acts with gross negligence or bad faith in making a recommendation. [2001 2nd sp.s. c 12 § 220.]

**Intent—Severability—Effective dates—2001 2nd sp.s. c 12:** See notes following RCW 71.09.250.

**71.09.325 Transition facilities—Conditional release—Reports—Violations.** (1) The secretary shall adopt a violation reporting policy for persons conditionally released to less restrictive alternative placements. The policy shall require written documentation by the department and service providers of all violations of conditions set by the department, the department of corrections, or the court and establish criteria for returning a violator to the special commitment center or a secure community transition facility with a higher degree of security. Any conditionally released person who commits a serious violation of conditions shall be returned to the special commitment center, unless arrested by a law enforcement officer, and the court shall be notified

immediately and shall initiate proceedings under RCW 71.09.098 to revoke or modify the less restrictive alternative placement. Nothing in this section limits the authority of the department to return a person to the special commitment center based on a violation that is not a serious violation as defined in this section. For the purposes of this section, "serious violation" includes but is not limited to:

(a) The commission of any criminal offense;

(b) Any unlawful use or possession of a controlled substance; and

(c) Any violation of conditions targeted to address the person's documented pattern of offense that increases the risk to public safety.

(2) When a person is conditionally released to a less restrictive alternative under this chapter and is under the supervision of the department of corrections, notice of any violation of the person's conditions of release must also be made to the department of corrections.

(3) Whenever the secretary contracts with a service provider to operate a secure community transition facility, the contract shall include a requirement that the service provider must report to the department of social and health services any known violation of conditions committed by any resident of the secure community transition facility.

(4) The secretary shall document in writing all violations, penalties, actions by the department of social and health services to remove persons from a secure community transition facility, and contract terminations. The secretary shall compile this information and submit it to the appropriate committees of the legislature on an annual basis. The secretary shall give great weight to a service provider's record of violations, penalties, actions by the department of social and health services or the department of corrections to remove persons from a secure community transition facility, and contract terminations in determining whether to execute, renew, or renegotiate a contract with a service provider. [2001 2nd sp.s. c 12 § 221.]

**Intent—Severability—Effective dates—2001 2nd sp.s. c 12:** See notes following RCW 71.09.250.

**71.09.330 Transition facilities—Contracted operation—Enforcement remedies.** Whenever the secretary contracts with a provider to operate a secure community transition facility, the secretary shall include in the contract provisions establishing intermediate contract enforcement remedies. [2001 2nd sp.s. c 12 § 222.]

**Intent—Severability—Effective dates—2001 2nd sp.s. c 12:** See notes following RCW 71.09.250.

**71.09.335 Conditional release from total confinement—Community notification.** A conditional release from a total confinement facility to a less restrictive alternative is a release that subjects the conditionally released person to the registration requirements specified in RCW 9A.44.130 and to community notification under RCW 4.24.550.

When a person is conditionally released to the secure community transition facility established pursuant to RCW 71.09.250(1), the sheriff must provide each household on McNeil Island with the community notification information

provided for under RCW 4.24.550. [2001 2nd sp.s. c 12 § 223.]

**Intent—Severability—Effective dates—2001 2nd sp.s. c 12:** See notes following RCW 71.09.250.

**71.09.340 Conditionally released persons—Employment, educational notification.** An employer who hires a person who has been conditionally released to a less restrictive alternative must notify all other employees of the conditionally released person's status. Notification for conditionally released persons who enroll in an institution of higher education shall be made pursuant to the provisions of RCW 9A.44.130 related to sex offenders enrolled in institutions of higher education and RCW 4.24.550. This section applies only to conditionally released persons whose court-approved treatment plan includes permission or a requirement for the person to obtain education or employment and to employment positions or educational programs that meet the requirements of the court-approved treatment plan. [2001 2nd sp.s. c 12 § 224.]

**Intent—Severability—Effective dates—2001 2nd sp.s. c 12:** See notes following RCW 71.09.250.

**71.09.341 Transition facilities—Authority of department—Effect of local regulations.** The minimum requirements set out in RCW 71.09.285 through 71.09.340 are minimum requirements to be applied by the department. Nothing in this section is intended to prevent a city or county from adopting development regulations, as defined in RCW 36.70A.030, unless the proposed regulation imposes requirements more restrictive than those specifically addressed in RCW 71.09.285 through 71.09.340. Regulations that impose requirements more restrictive than those specifically addressed in these sections are void. Nothing in these sections prevents the department from adding requirements to enhance public safety. [2002 c 68 § 7.]

**Purpose—Severability—Effective date—2002 c 68:** See notes following RCW 36.70A.200.

**71.09.342 Transition facilities—Siting—Local regulations preempted, when—Consideration of public safety measures.** (1) After October 1, 2002, notwithstanding RCW 36.70A.103 or any other law, this section preempts and supersedes local plans, development regulations, permitting requirements, inspection requirements, and all other laws as necessary to enable the department to site, construct, renovate, occupy, and operate secure community transition facilities within the borders of the following:

(a) Any county that had five or more persons civilly committed from that county, or detained at the special commitment center under a pending civil commitment petition from that county where a finding of probable cause has been made, on April 1, 2001, if the department determines that the county has not met the requirements of RCW 36.70A.200 with respect to secure community transition facilities. This subsection does not apply to the county in which the secure community transition facility authorized under RCW 71.09.250(1) is located; and

(b) Any city located within a county listed in (a) of this subsection that the department determines has not met the

requirements of RCW 36.70A.200 with respect to secure community transition facilities.

(2) The department's determination under subsection (1)(a) or (b) of this section is final and is not subject to appeal under chapter 34.05 or 36.70A RCW.

(3) When siting a facility in a county or city that has been preempted under this section, the department shall consider the policy guidelines established under RCW 71.09.285 and 71.09.290 and shall hold the hearings required in RCW 71.09.315.

(4) Nothing in this section prohibits the department from:

(a) Siting a secure community transition facility in a city or county that has complied with the requirements of RCW 36.70A.200 with respect to secure community transition facilities, including a city that is located within a county that has been preempted. If the department sites a secure community transition facility in such a city or county, the department shall use the process established by the city or county for siting such facilities; or

(b) Consulting with a city or county that has been preempted under this section regarding the siting of a secure community transition facility.

(5)(a) A preempted city or county may propose public safety measures specific to any finalist site to the department. The measures must be consistent with the location of the facility at that finalist site. The proposal must be made in writing by the date of:

(i) The second hearing under RCW 71.09.315(2)(a) when there are three finalist sites; or

(ii) The first hearing under RCW 71.09.315(2)(b) when there is only one site under consideration.

(b) The department shall respond to the city or county in writing within fifteen business days of receiving the proposed measures. The response shall address all proposed measures.

(c) If the city or county finds that the department's response is inadequate, the city or county may notify the department in writing within fifteen business days of the specific items which it finds inadequate. If the city or county does not notify the department of a finding that the response is inadequate within fifteen business days, the department's response shall be final.

(d) If the city or county notifies the department that it finds the response inadequate and the department does not revise its response to the satisfaction of the city or county within seven business days, the city or county may petition the governor to designate a person with law enforcement expertise to review the response under RCW 34.05.479.

(e) The governor's designee shall hear a petition filed under this subsection and shall make a determination within thirty days of hearing the petition. The governor's designee shall consider the department's response, and the effectiveness and cost of the proposed measures, in relation to the purposes of this chapter. The determination by the governor's designee shall be final and may not be the basis for any cause of action in civil court.

(f) The city or county shall bear the cost of the petition to the governor's designee. If the city or county prevails on all issues, the department shall reimburse the city or county costs incurred, as provided under chapter 34.05 RCW.

(g) Neither the department's consideration and response to public safety conditions proposed by a city or county nor the decision of the governor's designee shall affect the pre-emption under this section or the department's authority to site, construct, renovate, occupy, and operate the secure community transition facility at that finalist site or at any finalist site.

(6) Until June 30, 2009, the secretary shall site, construct, occupy, and operate a secure community transition facility sited under this section in an environmentally responsible manner that is consistent with the substantive objectives of chapter 43.21C RCW, and shall consult with the department of ecology as appropriate in carrying out the planning, construction, and operations of the facility. The secretary shall make a threshold determination of whether a secure community transition facility sited under this section would have a probable significant, adverse environmental impact. If the secretary determines that the secure community transition facility has such an impact, the secretary shall prepare an environmental impact statement that meets the requirements of RCW 43.21C.030 and 43.21C.031 and the rules promulgated by the department of ecology relating to such statements. Nothing in this subsection shall be the basis for any civil cause of action or administrative appeal.

(7) In no case may a secure community transition facility be sited adjacent to, immediately across a street or parking lot from, or within the line of sight of a risk potential activity or facility in existence at the time a site is listed for consideration unless the site that the department has chosen in a particular county or city was identified pursuant to a process for siting secure community transition facilities adopted by that county or city in compliance with RCW 36.70A.200. "Within the line of sight" means that it is possible to reasonably visually distinguish and recognize individuals.

(8) This section does not apply to the secure community transition facility established pursuant to RCW 71.09.250(1). [2003 c 50 § 2; 2002 c 68 § 9.]

**Application—Effective date—2003 c 50:** See notes following RCW 71.09.020.

**Purpose—Severability—Effective date—2002 c 68:** See notes following RCW 36.70A.200.

**71.09.343 Transition facilities—Contract between state and local governments.** (1) At the request of the local government of the city or county in which a secure community transition facility is initially sited after January 1, 2002, the department shall enter into a long-term contract memorializing the agreements between the state and the city or county for the operation of the facility. This contract shall be separate from any contract regarding mitigation due to the facility. The contract shall include a clause that states:

(a) The contract does not obligate the state to continue operating any aspect of the civil commitment program under this chapter;

(b) The operation of any secure community transition facility is contingent upon sufficient appropriation by the legislature. If sufficient funds are not appropriated, the department is not obligated to operate the secure community transition facility and may close it; and

(c) This contract does not obligate the city or county to operate a secure community transition facility.

(2) Any city or county may, at their option, contract with the department to operate a secure community transition facility. [2002 c 68 § 16.]

**Purpose—Severability—Effective date—2002 c 68:** See notes following RCW 36.70A.200.

**71.09.344 Transition facilities—Mitigation agreements.** (1) Subject to funds appropriated by the legislature, the department may enter into negotiation for a mitigation agreement with:

(a) The county and/or city in which a secure community transition facility sited after January 1, 2002, is located;

(b) Each community in which the persons from those facilities will reside or regularly spend time, pursuant to court orders, for regular work or education, or to receive social services, or through which the person or persons will regularly be transported to reach other communities; and

(c) Educational institutions in the communities identified in (a) and (b) of this subsection.

(2) Mitigation agreements are limited to the following:

(a) One-time training for local law enforcement and administrative staff, upon the establishment of a secure community transition facility.

(i) Training between local government staff and the department includes training in coordination, emergency procedures, program and facility information, legal requirements, and resident profiles.

(ii) Reimbursement for training under this subsection is limited to:

(A) The salaries or hourly wages and benefits of those persons who receive training directly from the department; and

(B) Costs associated with preparation for, and delivery of, training to the department or its contracted staff by local government staff or contractors;

(b) Information coordination:

(i) Information coordination includes database infrastructure establishment and programming for the dissemination of information among law enforcement and the department related to facility residents.

(ii) Reimbursement for information coordination is limited to start-up costs;

(c) One-time capital costs:

(i) One-time capital costs are off-site costs associated with the need for increased security in specific locations.

(ii) Reimbursement for one-time capital costs is limited to actual costs; and

(d) Incident response:

(i) Incident response costs are law enforcement and criminal justice costs associated with violations of conditions of release or crimes by residents of the secure community transition facility.

(ii) Reimbursement for incident response does not include private causes of action. [2002 c 68 § 17.]

**Purpose—Severability—Effective date—2002 c 68:** See notes following RCW 36.70A.200.

**71.09.345 Alternative placement—Authority of court.** Nothing in chapter 12, Laws of 2001 2nd sp. sess. shall operate to restrict a court's authority to make less restrictive alternative placements to a committed person's

individual residence or to a setting less restrictive than a secure community transition facility. A court-ordered less restrictive alternative placement to a committed person's individual residence is not a less restrictive alternative placement to a secure community transition facility. [2001 2nd sp.s. c 12 § 226.]

**Intent—Severability—Effective dates—2001 2nd sp.s. c 12:** See notes following RCW 71.09.250.

**71.09.350 Examination and treatment only by certified providers—Exceptions.** (1) Examinations and treatment of sexually violent predators who are conditionally released to a less restrictive alternative under this chapter shall be conducted only by certified sex offender treatment providers or certified affiliate sex offender treatment providers under chapter 18.155 RCW unless the court or the department of social and health services finds that: (a) The treatment provider is employed by the department; or (b)(i) all certified sex offender treatment providers or certified affiliate sex offender treatment providers become unavailable to provide treatment within a reasonable geographic distance of the person's home, as determined in rules adopted by the department of social and health services; and (ii) the evaluation and treatment plan comply with the rules adopted by the department of social and health services.

A treatment provider approved by the department of social and health services under (b) of this subsection, who is not certified by the department of health, shall consult with a certified sex offender treatment provider during the person's period of treatment to ensure compliance with the rules adopted by the department of health. The frequency and content of the consultation shall be based on the recommendation of the certified sex offender treatment provider.

(2) A treatment provider, whether or not he or she is employed or approved by the department of social and health services under subsection (1) of this section or otherwise certified, may not perform or provide treatment of sexually violent predators under this section if the treatment provider has been:

(a) Convicted of a sex offense, as defined in RCW 9.94A.030;

(b) Convicted in any other jurisdiction of an offense that under the laws of this state would be classified as a sex offense as defined in RCW 9.94A.030; or

(c) Suspended or otherwise restricted from practicing any health care profession by competent authority in any state, federal, or foreign jurisdiction.

(3) Nothing in this section prohibits a qualified expert from examining or evaluating a sexually violent predator who has been conditionally released for purposes of presenting an opinion in court proceedings. [2009 c 409 § 14; 2004 c 38 § 14; 2001 2nd sp.s. c 12 § 404.]

**Application—Effective date—2009 c 409:** See notes following RCW 71.09.020.

**Effective date—2004 c 38:** See note following RCW 18.155.075.

**Intent—Severability—Effective dates—2001 2nd sp.s. c 12:** See notes following RCW 71.09.250.

**71.09.800 Rules.** The secretary shall adopt rules under the administrative procedure act, chapter 34.05 RCW, for the oversight and operation of the program established pursuant (2010 Ed.)

to this chapter. Such rules shall include provisions for an annual inspection of the special commitment center and requirements for treatment plans and the retention of records. [2000 c 44 § 1.]

**Effective date—2000 c 44:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [March 22, 2000]." [2000 c 44 § 2.]

**71.09.900 Index, part headings not law—1990 c 3.** See RCW 18.155.900.

**71.09.901 Severability—1990 c 3.** See RCW 18.155.901.

**71.09.902 Effective dates—Application—1990 c 3.** See RCW 18.155.902.

**71.09.903 Construction—Chapter applicable to state registered domestic partnerships—2009 c 521.** For the purposes of this chapter, the terms spouse, marriage, marital, husband, wife, widow, widower, next of kin, and family shall be interpreted as applying equally to state registered domestic partnerships or individuals in state registered domestic partnerships as well as to marital relationships and married persons, and references to dissolution of marriage shall apply equally to state registered domestic partnerships that have been terminated, dissolved, or invalidated, to the extent that such interpretation does not conflict with federal law. Where necessary to implement chapter 521, Laws of 2009, gender-specific terms such as husband and wife used in any statute, rule, or other law shall be construed to be gender neutral, and applicable to individuals in state registered domestic partnerships. [2009 c 521 § 159.]

## Chapter 71.12 RCW PRIVATE ESTABLISHMENTS

### Sections

71.12.455	Definitions.
71.12.460	License to be obtained—Penalty.
71.12.470	License application—Fees.
71.12.480	Examination of operation of establishment and premises before granting license.
71.12.485	Fire protection—Duties of chief of the Washington state patrol.
71.12.490	Expiration and renewal of license.
71.12.500	Examination of premises as to compliance with the chapter, rules, and license—License changes.
71.12.510	Examination and visitation in general.
71.12.520	Scope of examination.
71.12.530	Conference with management—Improvement.
71.12.540	Recommendations to be kept on file—Records of inmates.
71.12.550	Local authorities may also prescribe standards.
71.12.560	Voluntary patients—Receipt authorized—Application—Report.
71.12.570	Communications by patients—Rights.
71.12.590	Revocation of license for noncompliance—Exemption as to Christian Science establishments.
71.12.595	Suspension of license—Noncompliance with support order—Reissuance.
71.12.640	Prosecuting attorney shall prosecute violations.
71.12.670	Licensing, operation, inspection—Adoption of rules.
71.12.900	Construction—Chapter applicable to state registered domestic partnerships—2009 c 521.

*Alcoholism, intoxication, and drug addiction treatment: Chapter 70.96A RCW.*

*Cost of services, disclosure:* RCW 70.41.250.

*Individuals with mental illness, commitment procedures, rights, etc.:* Chapter 71.05 RCW.

*Minors—Mental health services, commitment:* Chapter 71.34 RCW.

*State hospitals for individuals with mental illness:* Chapter 72.23 RCW.

**71.12.455 Definitions.** As used in this chapter, "establishment" and "institution" mean and include every private or county or municipal hospital, including public hospital districts, sanitarium, home, or other place receiving or caring for any mentally ill, mentally incompetent person, or chemically dependent person. [2001 c 254 § 1; 2000 c 93 § 21; 1977 ex.s. c 80 § 43; 1959 c 25 § 71.12.455. Prior: 1949 c 198 § 53; Rem. Supp. 1949 § 6953-52a. Formerly RCW 71.12.010, part.]

**Purpose—Intent—Severability—1977 ex.s. c 80:** See notes following RCW 4.16.190.

**71.12.460 License to be obtained—Penalty.** No person, association, county, municipality, public hospital district, or corporation, shall establish or keep, for compensation or hire, an establishment as defined in this chapter without first having obtained a license therefor from the department of health, complied with rules adopted under this chapter, and paid the license fee provided in this chapter. Any person who carries on, conducts, or attempts to carry on or conduct an establishment as defined in this chapter without first having obtained a license from the department of health, as in this chapter provided, is guilty of a misdemeanor and on conviction thereof shall be punished by imprisonment in a county jail not exceeding six months, or by a fine not exceeding one thousand dollars, or by both such fine and imprisonment. The managing and executive officers of any corporation violating the provisions of this chapter shall be liable under the provisions of this chapter in the same manner and to the same effect as a private individual violating the same. [2001 c 254 § 2; 2000 c 93 § 22; 1989 1st ex.s. c 9 § 226; 1979 c 141 § 133; 1959 c 25 § 71.12.460. Prior: 1949 c 198 § 54; Rem. Supp. 1949 § 6953-53.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**71.12.470 License application—Fees.** Every application for a license shall be accompanied by a plan of the premises proposed to be occupied, describing the capacities of the buildings for the uses intended, the extent and location of grounds appurtenant thereto, and the number of patients proposed to be received therein, with such other information, and in such form, as the department of health requires. The application shall be accompanied by the proper license fee. The amount of the license fee shall be established by the department of health under RCW 43.70.110. [2000 c 93 § 23; 1987 c 75 § 19; 1982 c 201 § 14; 1959 c 25 § 71.12.470. Prior: 1949 c 198 § 56; Rem. Supp. 1949 § 6953-55.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**71.12.480 Examination of operation of establishment and premises before granting license.** The department of health shall not grant any such license until it has made an examination of all phases of the operation of the establishment necessary to determine compliance with rules adopted

under this chapter including the premises proposed to be licensed and is satisfied that the premises are substantially as described, and are otherwise fit and suitable for the purposes for which they are designed to be used, and that such license should be granted. [2000 c 93 § 24; 1989 1st ex.s. c 9 § 227; 1979 c 141 § 134; 1959 c 25 § 71.12.480. Prior: 1949 c 198 § 57; Rem. Supp. 1949 § 6953-56.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**71.12.485 Fire protection—Duties of chief of the Washington state patrol.** Standards for fire protection and the enforcement thereof, with respect to all establishments to be licensed hereunder, shall be the responsibility of the chief of the Washington state patrol, through the director of fire protection, who shall adopt such recognized standards as may be applicable to such establishments for the protection of life against the cause and spread of fire and fire hazards. The department of health, upon receipt of an application for a license, or renewal of a license, shall submit to the chief of the Washington state patrol, through the director of fire protection, in writing, a request for an inspection, giving the applicant's name and the location of the premises to be licensed. Upon receipt of such a request, the chief of the Washington state patrol, through the director of fire protection, or his or her deputy shall make an inspection of the establishment to be licensed, and if it is found that the premises do not comply with the required safety standards and fire regulations as promulgated by the chief of the Washington state patrol, through the director of fire protection, he or she shall promptly make a written report to the establishment and the department of health as to the manner and time allowed in which the premises must qualify for a license and set forth the conditions to be remedied with respect to fire regulations. The department of health, applicant or licensee shall notify the chief of the Washington state patrol, through the director of fire protection, upon completion of any requirements made by him or her, and the director of fire protection or his or her deputy shall make a reinspection of such premises. Whenever the establishment to be licensed meets with the approval of the chief of the Washington state patrol, through the director of fire protection, he or she shall submit to the department of health a written report approving same with respect to fire protection before a full license can be issued. The chief of the Washington state patrol, through the director of fire protection, shall make or cause to be made inspections of such establishments at least annually. The department of health shall not license or continue the license of any establishment unless and until it shall be approved by the chief of the Washington state patrol, through the director of fire protection, as herein provided.

In cities which have in force a comprehensive building code, the provisions of which are determined by the chief of the Washington state patrol, through the director of fire protection, to be equal to the minimum standards of the chief of the Washington state patrol, through the director of fire protection, for such establishments, the chief of the fire department, provided the latter is a paid chief of a paid fire department, shall make the inspection with the chief of the Washington state patrol, through the director of fire protection, or his or her deputy, and they shall jointly approve the premises

before a full license can be issued. [1995 c 369 § 61; 1989 1st ex.s. c 9 § 228; 1986 c 266 § 122; 1979 c 141 § 135; 1959 c 224 § 1.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**71.12.490 Expiration and renewal of license.** All licenses issued under the provisions of this chapter shall expire on a date to be set by the department of health. No license issued pursuant to this chapter shall exceed thirty-six months in duration. Application for renewal of the license, accompanied by the necessary fee as established by the department of health under RCW 43.70.110, shall be filed with that department, not less than thirty days prior to its expiration and if application is not so filed, the license shall be automatically canceled. [1989 1st ex.s. c 9 § 229; 1987 c 75 § 20; 1982 c 201 § 15; 1971 ex.s. c 247 § 4; 1959 c 25 § 71.12.490. Prior: 1949 c 198 § 59; Rem. Supp. 1949 § 6953-58.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**71.12.500 Examination of premises as to compliance with the chapter, rules, and license—License changes.** The department of health may at any time examine and ascertain how far a licensed establishment is conducted in compliance with this chapter, the rules adopted under this chapter, and the requirements of the license therefor. If the interests of the patients of the establishment so demand, the department may, for just and reasonable cause, suspend, modify, or revoke any such license. RCW 43.70.115 governs notice of a license denial, revocation, suspension, or modification and provides the right to an adjudicative proceeding. [2000 c 93 § 25. Prior: 1989 1st ex.s. c 9 § 230; 1989 c 175 § 137; 1979 c 141 § 136; 1959 c 25 § 71.12.500; prior: 1949 c 198 § 58; Rem. Supp. 1949 § 6953-57.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**71.12.510 Examination and visitation in general.** The department of health may at any time cause any establishment as defined in this chapter to be visited and examined. [2000 c 93 § 26; 1959 c 25 § 71.12.510. Prior: 1949 c 198 § 60; Rem. Supp. 1949 § 6953-59.]

**71.12.520 Scope of examination.** Each such visit may include an inspection of every part of each establishment. The representatives of the department of health may make an examination of all records, methods of administration, the general and special dietary, the stores and methods of supply, and may cause an examination and diagnosis to be made of any person confined therein. The representatives of the department of health may examine to determine their fitness for their duties the officers, attendants, and other employees, and may talk with any of the patients apart from the officers and attendants. [2000 c 93 § 27; 1989 1st ex.s. c 9 § 231; 1979 c 141 § 137; 1959 c 25 § 71.12.520. Prior: 1949 c 198 § 61; Rem. Supp. 1949 § 6953-60.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**71.12.530 Conference with management—Improvement.** The representatives of the department of health may, from time to time, at times and places designated by the

department, meet the managers or responsible authorities of such establishments in conference, and consider in detail all questions of management and improvement of the establishments, and may send to them, from time to time, written recommendations in regard thereto. [1989 1st ex.s. c 9 § 232; 1979 c 141 § 138; 1959 c 25 § 71.12.530. Prior: 1949 c 198 § 62; Rem. Supp. 1949 § 6953-61.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**71.12.540 Recommendations to be kept on file—Records of inmates.** The authorities of each establishment as defined in this chapter shall place on file in the office of the establishment the recommendations made by the department of health as a result of such visits, for the purpose of consultation by such authorities, and for reference by the department representatives upon their visits. Every such establishment shall keep records of every person admitted thereto as follows and shall furnish to the department, when required, the following data: Name, age, sex, marital status, date of admission, voluntary or other commitment, name of physician or psychiatric advanced registered nurse practitioner, diagnosis, and date of discharge. [2009 c 217 § 11; 1989 1st ex.s. c 9 § 233; 1979 c 141 § 139; 1959 c 25 § 71.12.540. Prior: 1949 c 198 § 63; Rem. Supp. 1949 § 6953-62.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**71.12.550 Local authorities may also prescribe standards.** This chapter shall not prevent local authorities of any city, or city and county, within the reasonable exercise of the police power, from adopting rules and regulations, by ordinance or resolution, prescribing standards of sanitation, health and hygiene for establishments as defined in this chapter, which are not in conflict with the provisions of this chapter, and requiring a certificate by the local health officer, that the local health, sanitation and hygiene laws have been complied with before maintaining or conducting any such institution within such city or city and county. [1959 c 25 § 71.12.550. Prior: 1949 c 198 § 64; Rem. Supp. 1949 § 6953-63.]

**71.12.560 Voluntary patients—Receipt authorized—Application—Report.** The person in charge of any private institution, hospital, or sanitarium which is conducted for, or includes a department or ward conducted for, the care and treatment of persons who are mentally ill or deranged may receive therein as a voluntary patient any person suffering from mental illness or derangement who is a suitable person for care and treatment in the institution, hospital, or sanitarium, who voluntarily makes a written application to the person in charge for admission into the institution, hospital or sanitarium. At the expiration of fourteen continuous days of treatment of a patient voluntarily committed in a private institution, hospital, or sanitarium, if the period of voluntary commitment is to continue, the person in charge shall forward to the office of the department of social and health services a record of the voluntary patient showing the name, residence, date of birth, sex, place of birth, occupation, social security number, marital status, date of admission to the institution, hospital, or sanitarium, and such other information as may be required by rule of the department of social and health ser-

vices. [1994 sp.s. c 7 § 441; 1974 ex.s. c 145 § 1; 1973 1st ex.s. c 142 § 1; 1959 c 25 § 71.12.560. Prior: 1949 c 198 § 65; Rem. Supp. 1949 § 6953-64.]

**Finding—Intent—Severability—1994 sp.s. c 7:** See notes following RCW 43.70.540.

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**71.12.570 Communications by patients—Rights.** No person in an establishment as defined in this chapter shall be restrained from sending written communications of the fact of his detention in such establishment to a friend, relative, or other person. The physician in charge of such person and the person in charge of such establishment shall send each such communication to the person to whom it is addressed. All persons in an establishment as defined by chapter 71.12 RCW shall have no less than all rights secured to involuntarily detained persons by RCW 71.05.360 and \*71.05.370 and to voluntarily admitted or committed persons pursuant to RCW 71.05.050 and 71.05.380. [1973 1st ex.s. c 142 § 2; 1959 c 25 § 71.12.570. Prior: 1949 c 198 § 66; Rem. Supp. 1949 § 6953-65.]

**\*Reviser's note:** RCW 71.05.370 was recodified as RCW 71.05.217 pursuant to 2005 c 504 § 108, effective July 1, 2005.

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**71.12.590 Revocation of license for noncompliance—Exemption as to Christian Science establishments.** Failure to comply with any of the provisions of RCW 71.12.550 through 71.12.570 shall constitute grounds for revocation of license: PROVIDED, HOWEVER, That nothing in this chapter or the rules and regulations adopted pursuant thereto shall be construed as authorizing the supervision, regulation, or control of the remedial care or treatment of residents or patients in any establishment, as defined in this chapter conducted in accordance with the practice and principles of the body known as Church of Christ, Scientist. [1983 c 3 § 180; 1959 c 25 § 71.12.590. Prior: 1949 c 198 § 68; Rem. Supp. 1949 § 6953-67.]

**71.12.595 Suspension of license—Noncompliance with support order—Reissuance.** The department of health shall immediately suspend the license or certificate of a person who has been certified pursuant to RCW 74.20A.320 by the department of social and health services as a person who is not in compliance with a support order or a \*residential or visitation order. If the person has continued to meet all other requirements for reinstatement during the suspension, reissuance of the license or certificate shall be automatic upon the department of health's receipt of a release issued by the department of social and health services stating that the licensee is in compliance with the order. [1997 c 58 § 860.]

**\*Reviser's note:** 1997 c 58 § 886 requiring a court to order certification of noncompliance with residential provisions of a court-ordered parenting plan was vetoed. Provisions ordering the department of social and health services to certify a responsible parent based on a court order to certify for non-compliance with residential provisions of a parenting plan were vetoed. See RCW 74.20A.320.

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

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**71.12.640 Prosecuting attorney shall prosecute violations.** The prosecuting attorney of every county shall, upon application by the department of social and health services, the department of health, or its authorized representatives, institute and conduct the prosecution of any action brought for the violation within his county of any of the provisions of this chapter. [1989 1st ex.s. c 9 § 234; 1979 c 141 § 140; 1959 c 25 § 71.12.640. Prior: 1949 c 198 § 55; Rem. Supp. 1949 § 6953-54.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**71.12.670 Licensing, operation, inspection—Adoption of rules.** The department of health shall adopt rules for the licensing, operation, and inspections of establishments and institutions and the enforcement thereof. [2000 c 93 § 28.]

**71.12.900 Construction—Chapter applicable to state registered domestic partnerships—2009 c 521.** For the purposes of this chapter, the terms spouse, marriage, marital, husband, wife, widow, widower, next of kin, and family shall be interpreted as applying equally to state registered domestic partnerships or individuals in state registered domestic partnerships as well as to marital relationships and married persons, and references to dissolution of marriage shall apply equally to state registered domestic partnerships that have been terminated, dissolved, or invalidated, to the extent that such interpretation does not conflict with federal law. Where necessary to implement chapter 521, Laws of 2009, gender-specific terms such as husband and wife used in any statute, rule, or other law shall be construed to be gender neutral, and applicable to individuals in state registered domestic partnerships. [2009 c 521 § 160.]

## Chapter 71.20 RCW

### LOCAL FUNDS FOR COMMUNITY SERVICES

#### Sections

71.20.100	Expenditures of county funds subject to county fiscal laws.
71.20.110	Tax levy directed—Allocation of funds for federal matching funds purposes.

**71.20.100 Expenditures of county funds subject to county fiscal laws.** Expenditures of county funds under this chapter shall be subject to the provisions of chapter 36.40 RCW and other statutes relating to expenditures by counties. [1967 ex.s. c 110 § 10.]

**71.20.110 Tax levy directed—Allocation of funds for federal matching funds purposes.** In order to provide additional funds for the coordination and provision of community services for persons with developmental disabilities or mental health services, the county governing authority of each county in the state shall budget and levy annually a tax in a sum equal to the amount which would be raised by a levy of two and one-half cents per thousand dollars of assessed value against the taxable property in the county to be used for such purposes: PROVIDED, That all or part of the funds collected from the tax levied for the purposes of this section may be transferred to the state of Washington, department of social and health services, for the purpose of obtaining federal

matching funds to provide and coordinate community services for persons with developmental disabilities and mental health services. In the event a county elects to transfer such tax funds to the state for this purpose, the state shall grant these moneys and the additional funds received as matching funds to service-providing community agencies or community boards in the county which has made such transfer, pursuant to the plan approved by the county, as provided by chapters 71.24 and 71.28 RCW and by chapter 71A.14 RCW, all as now or hereafter amended.

The amount of a levy allocated to the purposes specified in this section may be reduced in the same proportion as the regular property tax levy of the county is reduced by chapter 84.55 RCW. [1988 c 176 § 910; 1983 c 3 § 183; 1980 c 155 § 5; 1974 ex.s. c 71 § 8; 1973 1st ex.s. c 195 § 85; 1971 ex.s. c 84 § 1; 1970 ex.s. c 47 § 8; 1967 ex.s. c 110 § 16.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

### Chapter 71.24 RCW

#### COMMUNITY MENTAL HEALTH SERVICES ACT

##### Sections

71.24.011	Short title.
71.24.015	Legislative intent and policy.
71.24.016	Intent—Regional support networks programs.
71.24.025	Definitions.
71.24.030	Grants, purchasing of services, for community mental health programs.
71.24.035	Secretary's powers and duties as state mental health authority—Secretary designated as regional support network, when.
71.24.037	Licensed service providers, residential services, community support services—Minimum standards.
71.24.045	Regional support network powers and duties.
71.24.049	Identification by regional support network—Children's mental health services.
71.24.055	Regional support network services—Children's access to care standards and benefit package—Recommendations to legislature.
71.24.061	Children's mental health providers—Children's mental health evidence-based practice institute—Pilot program.
71.24.065	Wraparound model of integrated children's mental health services delivery—Contracts—Evaluation—Report.
71.24.100	Joint agreements of county authorities—Required provisions.
71.24.110	Joint agreements of county authorities—Permissive provisions.
71.24.155	Grants to regional support networks—Accounting.
71.24.160	Proof as to uses made of state funds.
71.24.200	Expenditures of county funds subject to county fiscal laws.
71.24.215	Clients to be charged for services.
71.24.220	Reimbursement may be withheld for noncompliance with chapter or related rules.
71.24.240	County program plans to be approved by secretary prior to submittal to federal agency.
71.24.250	Regional support network may accept and expend gifts and grants.
71.24.260	Waiver of postgraduate educational requirements.
71.24.300	Regional support networks—Inclusion of tribal authorities—Roles and responsibilities.
71.24.310	Administration of chapters 71.05 and 71.24 RCW through regional support networks—Implementation of chapter 71.05 RCW (as amended by 2009 c 564).
71.24.310	Administration of chapters 71.05 and 71.24 RCW through regional support networks—Implementation of chapter 71.05 RCW (as amended by 2009 c 564).
71.24.320	Regional support networks—Procurement process—Penalty for voluntary termination or refusal to renew contract.
71.24.330	Regional support networks—Contracts with department—Requirements.
71.24.340	Regional support networks—Eligibility for medical assistance upon release from confinement—Interlocal agreements.
71.24.350	Mental health ombudsman office.
71.24.360	Establishment of new regional support networks.
71.24.370	Regional support networks contracts—Limitation on state liability.

71.24.400	Streamlining delivery system—Finding.
71.24.405	Streamlining delivery system.
71.24.415	Streamlining delivery system—Department duties to achieve outcomes.
71.24.420	Expenditure of federal funds.
71.24.430	Collaborative service delivery.
71.24.450	Offenders with mental illnesses—Findings and intent.
71.24.455	Offenders with mental illnesses—Contracts for specialized access and services.
71.24.460	Offenders with mental illnesses—Report to legislature—Contingent termination of program.
71.24.470	Offenders with mental illness who are believed to be dangerous—Contract for case management—Use of appropriated funds.
71.24.480	Offenders with mental illness who are believed to be dangerous—Limitation on liability due to treatment—Reporting requirements.
71.24.805	Mental health system review—Performance audit recommendations affirmed.
71.24.810	Mental health system review—Implementation of performance audit recommendations.
71.24.840	Mental health system review—Study of long-term outcomes.
71.24.900	Effective date—1967 ex.s. c 111.
71.24.901	Severability—1982 c 204.
71.24.902	Construction.

**Reviser's note:** The department of social and health services filed an emergency order, WSR 89-20-030, effective October 1, 1989, establishing rules for the recognition and certification of regional support networks. A final order was filed on January 24, 1990, effective January 25, 1990.

*Comprehensive community health centers: Chapter 70.10 RCW.*

*Funding: RCW 43.79.201 and 79.02.410.*

**71.24.011 Short title.** This chapter may be known and cited as the community mental health services act. [1982 c 204 § 1.]

**71.24.015 Legislative intent and policy.** It is the intent of the legislature to establish a community mental health program which shall help people experiencing mental illness to retain a respected and productive position in the community. This will be accomplished through programs that focus on resilience and recovery, and practices that are evidence-based, research-based, consensus-based, or, where these do not exist, promising or emerging best practices, which provide for:

(1) Access to mental health services for adults of the state who are acutely mentally ill, chronically mentally ill, or seriously disturbed and children of the state who are acutely mentally ill, severely emotionally disturbed, or seriously disturbed, which services recognize the special needs of underserved populations, including minorities, children, the elderly, disabled, and low-income persons. Access to mental health services shall not be limited by a person's history of confinement in a state, federal, or local correctional facility. It is also the purpose of this chapter to promote the early identification of mentally ill children and to ensure that they receive the mental health care and treatment which is appropriate to their developmental level. This care should improve home, school, and community functioning, maintain children in a safe and nurturing home environment, and should enable treatment decisions to be made in response to clinical needs in accordance with sound professional judgment while also recognizing parents' rights to participate in treatment decisions for their children;

(2) The involvement of persons with mental illness, their family members, and advocates in designing and implementing mental health services that reduce unnecessary hospitalization and incarceration and promote the recovery and

employment of persons with mental illness. To improve the quality of services available and promote the rehabilitation, recovery, and reintegration of persons with mental illness, consumer and advocate participation in mental health services is an integral part of the community mental health system and shall be supported;

(3) Accountability of efficient and effective services through state-of-the-art outcome and performance measures and statewide standards for monitoring client and system outcomes, performance, and reporting of client and system outcome information. These processes shall be designed so as to maximize the use of available resources for direct care of people with a mental illness and to assure uniform data collection across the state;

(4) Minimum service delivery standards;

(5) Priorities for the use of available resources for the care of the mentally ill consistent with the priorities defined in the statute;

(6) Coordination of services within the department, including those divisions within the department that provide services to children, between the department and the office of the superintendent of public instruction, and among state mental hospitals, county authorities, regional support networks, community mental health services, and other support services, which shall to the maximum extent feasible also include the families of the mentally ill, and other service providers; and

(7) Coordination of services aimed at reducing duplication in service delivery and promoting complementary services among all entities that provide mental health services to adults and children.

It is the policy of the state to encourage the provision of a full range of treatment and rehabilitation services in the state for mental disorders including services operated by consumers and advocates. The legislature intends to encourage the development of regional mental health services with adequate local flexibility to assure eligible people in need of care access to the least-restrictive treatment alternative appropriate to their needs, and the availability of treatment components to assure continuity of care. To this end, counties are encouraged to enter into joint operating agreements with other counties to form regional systems of care. Regional systems of care, whether operated by a county, group of counties, or another entity shall integrate planning, administration, and service delivery duties under chapters 71.05 and 71.24 RCW to consolidate administration, reduce administrative layering, and reduce administrative costs. The legislature hereby finds and declares that sound fiscal management requires vigilance to ensure that funds appropriated by the legislature for the provision of needed community mental health programs and services are ultimately expended solely for the purpose for which they were appropriated, and not for any other purpose.

It is further the intent of the legislature to integrate the provision of services to provide continuity of care through all phases of treatment. To this end the legislature intends to promote active engagement with mentally ill persons and collaboration between families and service providers. [2005 c 503 § 1. Prior: 2001 c 334 § 6; 2001 c 323 § 1; 1999 c 214 § 7; 1991 c 306 § 1; 1989 c 205 § 1; 1986 c 274 § 1; 1982 c 204 § 2.]

**Correction of references—2005 c 503:** "The code reviser shall replace all references to "county designated mental health professional" with "designated mental health professional" in the Revised Code of Washington." [2005 c 503 § 16.]

**Savings—2005 c 503:** "This act does not affect any existing right acquired or liability or obligation incurred under the sections amended or repealed in this act or under any rule or order adopted under those sections, nor does it affect any proceeding instituted under those sections." [2005 c 503 § 17.]

**Severability—2005 c 503:** "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [2005 c 503 § 18.]

**Effective date—2001 c 334:** See note following RCW 71.24.805.

**Intent—Effective date—1999 c 214:** See notes following RCW 72.09.370.

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**71.24.016 Intent—Regional support networks programs.** (1) The legislature intends that eastern and western state hospitals shall operate as clinical centers for handling the most complicated long-term care needs of patients with a primary diagnosis of mental disorder. It is further the intent of the legislature that the community mental health service delivery system focus on maintaining mentally ill individuals in the community. The program shall be evaluated and managed through a limited number of performance measures designed to hold each regional support network accountable for program success.

(2) The legislature intends to address the needs of people with mental disorders with a targeted, coordinated, and comprehensive set of evidence-based practices that are effective in serving individuals in their community and will reduce the need for placements in state mental hospitals. The legislature further intends to explicitly hold regional support networks accountable for serving people with mental disorders within their geographic boundaries and for not exceeding their allocation of state hospital beds. Within funds appropriated by the legislature for this purpose, regional support networks shall develop the means to serve the needs of people with mental disorders within their geographic boundaries. Elements of the program may include:

- (a) Crisis triage;
- (b) Evaluation and treatment and community hospital beds;
- (c) Residential beds;
- (d) Programs for community treatment teams; and
- (e) Outpatient services.

(3) The regional support network shall have the flexibility, within the funds appropriated by the legislature for this purpose, to design the mix of services that will be most effective within their service area of meeting the needs of people with mental disorders and avoiding placement of such individuals at the state mental hospital. Regional support networks are encouraged to maximize the use of evidence-based practices and alternative resources with the goal of substantially reducing and potentially eliminating the use of institutions for mental diseases. [2006 c 333 § 102; 2001 c 323 § 4.]

**Finding—Purpose—Intent—2006 c 333:** "(1) The legislature finds that ambiguities have been identified regarding the appropriation and allocation of federal and state funds, and the responsibilities of the department of social and health services and the regional support networks with regard to the provision of inpatient mental health services under the community mental health services act, chapter 71.24 RCW, and the involuntary treatment

act, chapter 71.05 RCW. The purpose of this 2006 act is to make retroactive, remedial, curative, and technical amendments in order to resolve such ambiguities.

(2) In enacting the community mental health services act, the legislature intended the relationship between the state and the regional support networks to be governed solely by the terms of the regional support network contracts and did not intend these relationships to create statutory causes of action not expressly provided for in the contracts. Therefore, the legislature's intent is that, except to the extent expressly provided in contracts entered after March 29, 2006, the department of social and health services and regional support networks shall resolve existing and future disagreements regarding the subject matter identified in sections 103 and 301 of this act through nonjudicial means." [2006 c 333 § 101.]

**Severability—2006 c 333:** "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [2006 c 333 § 402.]

**Part headings not law—2006 c 333:** "Part headings used in this act are not part of the law." [2006 c 333 § 403.]

**Effective dates—2006 c 333:** "This act takes effect July 1, 2006, except that sections 101 through 103, 107, 202, and 301 of this act are necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and take effect immediately [March 29, 2006]." [2006 c 333 § 404.]

**71.24.025 Definitions.** Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Acutely mentally ill" means a condition which is limited to a short-term severe crisis episode of:

(a) A mental disorder as defined in RCW 71.05.020 or, in the case of a child, as defined in RCW 71.34.020;

(b) Being gravely disabled as defined in RCW 71.05.020 or, in the case of a child, a gravely disabled minor as defined in RCW 71.34.020; or

(c) Presenting a likelihood of serious harm as defined in RCW 71.05.020 or, in the case of a child, as defined in RCW 71.34.020.

(2) "Available resources" means funds appropriated for the purpose of providing community mental health programs, federal funds, except those provided according to Title XIX of the Social Security Act, and state funds appropriated under this chapter or chapter 71.05 RCW by the legislature during any biennium for the purpose of providing residential services, resource management services, community support services, and other mental health services. This does not include funds appropriated for the purpose of operating and administering the state psychiatric hospitals.

(3) "Child" means a person under the age of eighteen years.

(4) "Chronically mentally ill adult" or "adult who is chronically mentally ill" means an adult who has a mental disorder and meets at least one of the following criteria:

(a) Has undergone two or more episodes of hospital care for a mental disorder within the preceding two years; or

(b) Has experienced a continuous psychiatric hospitalization or residential treatment exceeding six months' duration within the preceding year; or

(c) Has been unable to engage in any substantial gainful activity by reason of any mental disorder which has lasted for a continuous period of not less than twelve months. "Substantial gainful activity" shall be defined by the department by rule consistent with Public Law 92-603, as amended.

(2010 Ed.)

(5) "Clubhouse" means a community-based program that provides rehabilitation services and is certified by the department of social and health services.

(6) "Community mental health program" means all mental health services, activities, or programs using available resources.

(7) "Community mental health service delivery system" means public or private agencies that provide services specifically to persons with mental disorders as defined under RCW 71.05.020 and receive funding from public sources.

(8) "Community support services" means services authorized, planned, and coordinated through resource management services including, at a minimum, assessment, diagnosis, emergency crisis intervention available twenty-four hours, seven days a week, prescreening determinations for persons who are mentally ill being considered for placement in nursing homes as required by federal law, screening for patients being considered for admission to residential services, diagnosis and treatment for children who are acutely mentally ill or severely emotionally disturbed discovered under screening through the federal Title XIX early and periodic screening, diagnosis, and treatment program, investigation, legal, and other nonresidential services under chapter 71.05 RCW, case management services, psychiatric treatment including medication supervision, counseling, psychotherapy, assuring transfer of relevant patient information between service providers, recovery services, and other services determined by regional support networks.

(9) "Consensus-based" means a program or practice that has general support among treatment providers and experts, based on experience or professional literature, and may have anecdotal or case study support, or that is agreed but not possible to perform studies with random assignment and controlled groups.

(10) "County authority" means the board of county commissioners, county council, or county executive having authority to establish a community mental health program, or two or more of the county authorities specified in this subsection which have entered into an agreement to provide a community mental health program.

(11) "Department" means the department of social and health services.

(12) "Designated mental health professional" means a mental health professional designated by the county or other authority authorized in rule to perform the duties specified in this chapter.

(13) "Emerging best practice" or "promising practice" means a practice that presents, based on preliminary information, potential for becoming a research-based or consensus-based practice.

(14) "Evidence-based" means a program or practice that has had multiple site random controlled trials across heterogeneous populations demonstrating that the program or practice is effective for the population.

(15) "Licensed service provider" means an entity licensed according to this chapter or chapter 71.05 RCW or an entity deemed to meet state minimum standards as a result of accreditation by a recognized behavioral health accrediting body recognized and having a current agreement with the department, that meets state minimum standards or persons licensed under chapter 18.57, 18.71, 18.83, or 18.79 RCW, as

[Title 71 RCW—page 61]

it applies to registered nurses and advanced registered nurse practitioners.

(16) "Long-term inpatient care" means inpatient services for persons committed for, or voluntarily receiving intensive treatment for, periods of ninety days or greater under chapter 71.05 RCW. "Long-term inpatient care" as used in this chapter does not include: (a) Services for individuals committed under chapter 71.05 RCW who are receiving services pursuant to a conditional release or a court-ordered less restrictive alternative to detention; or (b) services for individuals voluntarily receiving less restrictive alternative treatment on the grounds of the state hospital.

(17) "Mental health services" means all services provided by regional support networks and other services provided by the state for persons who are mentally ill.

(18) "Mentally ill persons," "persons who are mentally ill," and "the mentally ill" mean persons and conditions defined in subsections (1), (4), (27), and (28) of this section.

(19) "Recovery" means the process in which people are able to live, work, learn, and participate fully in their communities.

(20) "Regional support network" means a county authority or group of county authorities or other entity recognized by the secretary in contract in a defined region.

(21) "Registration records" include all the records of the department, regional support networks, treatment facilities, and other persons providing services to the department, county departments, or facilities which identify persons who are receiving or who at any time have received services for mental illness.

(22) "Research-based" means a program or practice that has some research demonstrating effectiveness, but that does not yet meet the standard of evidence-based practices.

(23) "Residential services" means a complete range of residences and supports authorized by resource management services and which may involve a facility, a distinct part thereof, or services which support community living, for persons who are acutely mentally ill, adults who are chronically mentally ill, children who are severely emotionally disturbed, or adults who are seriously disturbed and determined by the regional support network to be at risk of becoming acutely or chronically mentally ill. The services shall include at least evaluation and treatment services as defined in chapter 71.05 RCW, acute crisis respite care, long-term adaptive and rehabilitative care, and supervised and supported living services, and shall also include any residential services developed to service persons who are mentally ill in nursing homes, boarding homes, and adult family homes, and may include outpatient services provided as an element in a package of services in a supported housing model. Residential services for children in out-of-home placements related to their mental disorder shall not include the costs of food and shelter, except for children's long-term residential facilities existing prior to January 1, 1991.

(24) "Resilience" means the personal and community qualities that enable individuals to rebound from adversity, trauma, tragedy, threats, or other stresses, and to live productive lives.

(25) "Resource management services" mean the planning, coordination, and authorization of residential services and community support services administered pursuant to an

individual service plan for: (a) Adults and children who are acutely mentally ill; (b) adults who are chronically mentally ill; (c) children who are severely emotionally disturbed; or (d) adults who are seriously disturbed and determined solely by a regional support network to be at risk of becoming acutely or chronically mentally ill. Such planning, coordination, and authorization shall include mental health screening for children eligible under the federal Title XIX early and periodic screening, diagnosis, and treatment program. Resource management services include seven day a week, twenty-four hour a day availability of information regarding enrollment of adults and children who are mentally ill in services and their individual service plan to designated mental health professionals, evaluation and treatment facilities, and others as determined by the regional support network.

(26) "Secretary" means the secretary of social and health services.

(27) "Seriously disturbed person" means a person who:

(a) Is gravely disabled or presents a likelihood of serious harm to himself or herself or others, or to the property of others, as a result of a mental disorder as defined in chapter 71.05 RCW;

(b) Has been on conditional release status, or under a less restrictive alternative order, at some time during the preceding two years from an evaluation and treatment facility or a state mental health hospital;

(c) Has a mental disorder which causes major impairment in several areas of daily living;

(d) Exhibits suicidal preoccupation or attempts; or

(e) Is a child diagnosed by a mental health professional, as defined in chapter 71.34 RCW, as experiencing a mental disorder which is clearly interfering with the child's functioning in family or school or with peers or is clearly interfering with the child's personality development and learning.

(28) "Severely emotionally disturbed child" or "child who is severely emotionally disturbed" means a child who has been determined by the regional support network to be experiencing a mental disorder as defined in chapter 71.34 RCW, including those mental disorders that result in a behavioral or conduct disorder, that is clearly interfering with the child's functioning in family or school or with peers and who meets at least one of the following criteria:

(a) Has undergone inpatient treatment or placement outside of the home related to a mental disorder within the last two years;

(b) Has undergone involuntary treatment under chapter 71.34 RCW within the last two years;

(c) Is currently served by at least one of the following child-serving systems: Juvenile justice, child-protection/welfare, special education, or developmental disabilities;

(d) Is at risk of escalating maladjustment due to:

(i) Chronic family dysfunction involving a caretaker who is mentally ill or inadequate;

(ii) Changes in custodial adult;

(iii) Going to, residing in, or returning from any placement outside of the home, for example, psychiatric hospital, short-term inpatient, residential treatment, group or foster home, or a correctional facility;

(iv) Subject to repeated physical abuse or neglect;

(v) Drug or alcohol abuse; or

(vi) Homelessness.

(29) "State minimum standards" means minimum requirements established by rules adopted by the secretary and necessary to implement this chapter for: (a) Delivery of mental health services; (b) licensed service providers for the provision of mental health services; (c) residential services; and (d) community support services and resource management services.

(30) "Treatment records" include registration and all other records concerning persons who are receiving or who at any time have received services for mental illness, which are maintained by the department, by regional support networks and their staffs, and by treatment facilities. Treatment records do not include notes or records maintained for personal use by a person providing treatment services for the department, regional support networks, or a treatment facility if the notes or records are not available to others.

(31) "Tribal authority," for the purposes of this section and RCW 71.24.300 only, means: The federally recognized Indian tribes and the major Indian organizations recognized by the secretary insofar as these organizations do not have a financial relationship with any regional support network that would present a conflict of interest. [2008 c 261 § 2; 2007 c 414 § 1; 2006 c 333 § 104. Prior: 2005 c 504 § 105; 2005 c 503 § 2; 2001 c 323 § 8; 1999 c 10 § 2; 1997 c 112 § 38; 1995 c 96 § 4; prior: 1994 sp.s. c 9 § 748; 1994 c 204 § 1; 1991 c 306 § 2; 1989 c 205 § 2; 1986 c 274 § 2; 1982 c 204 § 3.]

**Intent—Findings—2008 c 261:** See note following RCW 71.24.320.

**Finding—Purpose—Intent—Severability—Part headings not law—Effective dates—2006 c 333:** See notes following RCW 71.24.016.

**Findings—Intent—Severability—Application—Construction—Captions, part headings, subheadings not law—Adoption of rules—Effective dates—2005 c 504:** See notes following RCW 71.05.027.

**Alphabetization—Correction of references—2005 c 504:** See note following RCW 71.05.020.

**Correction of references—Savings—Severability—2005 c 503:** See notes following RCW 71.24.015.

**Purpose—Intent—1999 c 10:** "The purpose of this act is to eliminate dates and provisions in chapter 71.24 RCW which are no longer needed. The legislature does not intend this act to make, and no provision of this act shall be construed as, a substantive change in the service delivery system or funding of the community mental health services law." [1999 c 10 § 1.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**71.24.030 Grants, purchasing of services, for community mental health programs.** The secretary is authorized to make grants and/or purchase services from counties, combinations of counties, or other entities, to establish and operate community mental health programs. [2005 c 503 § 3; 2001 c 323 § 9; 1999 c 10 § 3; 1982 c 204 § 6; 1973 1st ex.s. c 155 § 5; 1972 ex.s. c 122 § 30; 1971 ex.s. c 304 § 7; 1967 ex.s. c 111 § 3.]

**Correction of references—Savings—Severability—2005 c 503:** See notes following RCW 71.24.015.

**Purpose—Intent—1999 c 10:** See note following RCW 71.24.025.

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**71.24.035 Secretary's powers and duties as state mental health authority—Secretary designated as regional support network, when.** (1) The department is designated as the state mental health authority.

(2) The secretary shall provide for public, client, and licensed service provider participation in developing the state

mental health program, developing contracts with regional support networks, and any waiver request to the federal government under medicaid.

(3) The secretary shall provide for participation in developing the state mental health program for children and other underserved populations, by including representatives on any committee established to provide oversight to the state mental health program.

(4) The secretary shall be designated as the regional support network if the regional support network fails to meet state minimum standards or refuses to exercise responsibilities under RCW 71.24.045, until such time as a new regional support network is designated under RCW 71.24.320.

(5) The secretary shall:

(a) Develop a biennial state mental health program that incorporates regional biennial needs assessments and regional mental health service plans and state services for adults and children with mental illness. The secretary shall also develop a six-year state mental health plan;

(b) Assure that any regional or county community mental health program provides access to treatment for the region's residents, including parents who are respondents in dependency cases, in the following order of priority: (i) Persons with acute mental illness; (ii) adults with chronic mental illness and children who are severely emotionally disturbed; and (iii) persons who are seriously disturbed. Such programs shall provide:

(A) Outpatient services;

(B) Emergency care services for twenty-four hours per day;

(C) Day treatment for persons with mental illness which includes training in basic living and social skills, supported work, vocational rehabilitation, and day activities. Such services may include therapeutic treatment. In the case of a child, day treatment includes age-appropriate basic living and social skills, educational and prevocational services, day activities, and therapeutic treatment;

(D) Screening for patients being considered for admission to state mental health facilities to determine the appropriateness of admission;

(E) Employment services, which may include supported employment, transitional work, placement in competitive employment, and other work-related services, that result in persons with mental illness becoming engaged in meaningful and gainful full or part-time work. Other sources of funding such as the division of vocational rehabilitation may be utilized by the secretary to maximize federal funding and provide for integration of services;

(F) Consultation and education services; and

(G) Community support services;

(c) Develop and adopt rules establishing state minimum standards for the delivery of mental health services pursuant to RCW 71.24.037 including, but not limited to:

(i) Licensed service providers. These rules shall permit a county-operated mental health program to be licensed as a service provider subject to compliance with applicable statutes and rules. The secretary shall provide for deeming of compliance with state minimum standards for those entities accredited by recognized behavioral health accrediting bodies recognized and having a current agreement with the department;

- (ii) Regional support networks; and
  - (iii) Inpatient services, evaluation and treatment services and facilities under chapter 71.05 RCW, resource management services, and community support services;
  - (d) Assure that the special needs of persons who are minorities, elderly, disabled, children, low-income, and parents who are respondents in dependency cases are met within the priorities established in this section;
  - (e) Establish a standard contract or contracts, consistent with state minimum standards, RCW 71.24.320 and 71.24.330, which shall be used in contracting with regional support networks. The standard contract shall include a maximum fund balance, which shall be consistent with that required by federal regulations or waiver stipulations;
  - (f) Establish, to the extent possible, a standardized auditing procedure which minimizes paperwork requirements of regional support networks and licensed service providers. The audit procedure shall focus on the outcomes of service and not the processes for accomplishing them;
  - (g) Develop and maintain an information system to be used by the state and regional support networks that includes a tracking method which allows the department and regional support networks to identify mental health clients' participation in any mental health service or public program on an immediate basis. The information system shall not include individual patient's case history files. Confidentiality of client information and records shall be maintained as provided in this chapter and in RCW 71.05.390, 71.05.420, and 71.05.440;
  - (h) License service providers who meet state minimum standards;
  - (i) Certify regional support networks that meet state minimum standards;
  - (j) Periodically monitor the compliance of certified regional support networks and their network of licensed service providers for compliance with the contract between the department, the regional support network, and federal and state rules at reasonable times and in a reasonable manner;
  - (k) Fix fees to be paid by evaluation and treatment centers to the secretary for the required inspections;
  - (l) Monitor and audit regional support networks and licensed service providers as needed to assure compliance with contractual agreements authorized by this chapter;
  - (m) Adopt such rules as are necessary to implement the department's responsibilities under this chapter;
  - (n) Assure the availability of an appropriate amount, as determined by the legislature in the operating budget by amounts appropriated for this specific purpose, of community-based, geographically distributed residential services;
  - (o) Certify crisis stabilization units that meet state minimum standards; and
  - (p) Certify clubhouses that meet state minimum standards.
- (6) The secretary shall use available resources only for regional support networks, except to the extent authorized, and in accordance with any priorities or conditions specified, in the biennial appropriations act.
- (7) Each certified regional support network and licensed service provider shall file with the secretary, on request, such data, statistics, schedules, and information as the secretary reasonably requires. A certified regional support network or

licensed service provider which, without good cause, fails to furnish any data, statistics, schedules, or information as requested, or files fraudulent reports thereof, may have its certification or license revoked or suspended.

(8) The secretary may suspend, revoke, limit, or restrict a certification or license, or refuse to grant a certification or license for failure to conform to: (a) The law; (b) applicable rules and regulations; (c) applicable standards; or (d) state minimum standards.

(9) The superior court may restrain any regional support network or service provider from operating without certification or a license or any other violation of this section. The court may also review, pursuant to procedures contained in chapter 34.05 RCW, any denial, suspension, limitation, restriction, or revocation of certification or license, and grant other relief required to enforce the provisions of this chapter.

(10) Upon petition by the secretary, and after hearing held upon reasonable notice to the facility, the superior court may issue a warrant to an officer or employee of the secretary authorizing him or her to enter at reasonable times, and examine the records, books, and accounts of any regional support network or service provider refusing to consent to inspection or examination by the authority.

(11) Notwithstanding the existence or pursuit of any other remedy, the secretary may file an action for an injunction or other process against any person or governmental unit to restrain or prevent the establishment, conduct, or operation of a regional support network or service provider without certification or a license under this chapter.

(12) The standards for certification of evaluation and treatment facilities shall include standards relating to maintenance of good physical and mental health and other services to be afforded persons pursuant to this chapter and chapters 71.05 and 71.34 RCW, and shall otherwise assure the effectuation of the purposes of these chapters.

(13) The standards for certification of crisis stabilization units shall include standards that:

(a) Permit location of the units at a jail facility if the unit is physically separate from the general population of the jail;

(b) Require administration of the unit by mental health professionals who direct the stabilization and rehabilitation efforts; and

(c) Provide an environment affording security appropriate with the alleged criminal behavior and necessary to protect the public safety.

(14) The standards for certification of a clubhouse shall at a minimum include:

(a) The facilities may be peer-operated and must be recovery-focused;

(b) Members and employees must work together;

(c) Members must have the opportunity to participate in all the work of the clubhouse, including administration, research, intake and orientation, outreach, hiring, training and evaluation of staff, public relations, advocacy, and evaluation of clubhouse effectiveness;

(d) Members and staff and ultimately the clubhouse director must be responsible for the operation of the clubhouse, central to this responsibility is the engagement of members and staff in all aspects of clubhouse operations;

(e) Clubhouse programs must be comprised of structured activities including but not limited to social skills training,

vocational rehabilitation, employment training and job placement, and community resource development;

(f) Clubhouse programs must provide in-house educational programs that significantly utilize the teaching and tutoring skills of members and assist members by helping them to take advantage of adult education opportunities in the community;

(g) Clubhouse programs must focus on strengths, talents, and abilities of its members;

(h) The work-ordered day may not include medication clinics, day treatment, or other therapy programs within the clubhouse.

(15) The department shall distribute appropriated state and federal funds in accordance with any priorities, terms, or conditions specified in the appropriations act.

(16) The secretary shall assume all duties assigned to the nonparticipating regional support networks under chapters 71.05, 71.34, and 71.24 RCW. Such responsibilities shall include those which would have been assigned to the nonparticipating counties in regions where there are not participating regional support networks.

The regional support networks, or the secretary's assumption of all responsibilities under chapters 71.05, 71.34, and 71.24 RCW, shall be included in all state and federal plans affecting the state mental health program including at least those required by this chapter, the medicaid program, and P.L. 99-660. Nothing in these plans shall be inconsistent with the intent and requirements of this chapter.

(17) The secretary shall:

(a) Disburse funds for the regional support networks within sixty days of approval of the biennial contract. The department must either approve or reject the biennial contract within sixty days of receipt.

(b) Enter into biennial contracts with regional support networks. The contracts shall be consistent with available resources. No contract shall be approved that does not include progress toward meeting the goals of this chapter by taking responsibility for: (i) Short-term commitments; (ii) residential care; and (iii) emergency response systems.

(c) Notify regional support networks of their allocation of available resources at least sixty days prior to the start of a new biennial contract period.

(d) Deny all or part of the funding allocations to regional support networks based solely upon formal findings of non-compliance with the terms of the regional support network's contract with the department. Regional support networks disputing the decision of the secretary to withhold funding allocations are limited to the remedies provided in the department's contracts with the regional support networks.

(18) The department, in cooperation with the state congressional delegation, shall actively seek waivers of federal requirements and such modifications of federal regulations as are necessary to allow federal medicaid reimbursement for services provided by freestanding evaluation and treatment facilities certified under chapter 71.05 RCW. The department shall periodically report its efforts to the appropriate committees of the senate and the house of representatives. [2008 c 267 § 5; 2008 c 261 § 3. Prior: 2007 c 414 § 2; 2007 c 410 § 8; 2007 c 375 § 12; 2006 c 333 § 201; prior: 2005 c 504 § 715; 2005 c 503 § 7; prior: 2001 c 334 § 7; 2001 c 323 § 10; 1999 c 10 § 4; 1998 c 245 § 137; prior: 1991 c 306 § 3;

(2010 Ed.)

1991 c 262 § 1; 1991 c 29 § 1; 1990 1st ex.s. c 8 § 1; 1989 c 205 § 3; 1987 c 105 § 1; 1986 c 274 § 3; 1982 c 204 § 4.]

**Reviser's note:** This section was amended by 2008 c 261 § 3 and by 2008 c 267 § 5, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

**Intent—Findings—2008 c 261:** See note following RCW 71.24.320.

**Short title—2007 c 410:** See note following RCW 13.34.138.

**Findings—Purpose—Construction—Severability—2007 c 375:** See notes following RCW 10.31.110.

**Finding—Purpose—Intent—Severability—Part headings not law—Effective dates—2006 c 333:** See notes following RCW 71.24.016.

**Findings—Intent—Severability—Application—Construction—Captions, part headings, subheadings not law—Adoption of rules—Effective dates—2005 c 504:** See notes following RCW 71.05.027.

**Alphabetization—Correction of references—2005 c 504:** See note following RCW 71.05.020.

**Correction of references—Savings—Severability—2005 c 503:** See notes following RCW 71.24.015.

**Effective date—2001 c 334:** See note following RCW 71.24.805.

**Purpose—Intent—1999 c 10:** See note following RCW 71.24.025.

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**71.24.037 Licensed service providers, residential services, community support services—Minimum standards.** (1) The secretary shall by rule establish state minimum standards for licensed service providers and services.

(2) Minimum standards for licensed service providers shall, at a minimum, establish: Qualifications for staff providing services directly to mentally ill persons, the intended result of each service, and the rights and responsibilities of persons receiving mental health services pursuant to this chapter. The secretary shall provide for deeming of licensed service providers as meeting state minimum standards as a result of accreditation by a recognized behavioral health accrediting body recognized and having a current agreement with the department.

(3) Minimum standards for community support services and resource management services shall include at least qualifications for resource management services, client tracking systems, and the transfer of patient information between service providers. [2001 c 323 § 11; 1999 c 10 § 5.]

**Purpose—Intent—1999 c 10:** See note following RCW 71.24.025.

**71.24.045 Regional support network powers and duties.** The regional support network shall:

(1) Contract as needed with licensed service providers. The regional support network may, in the absence of a licensed service provider entity, become a licensed service provider entity pursuant to minimum standards required for licensing by the department for the purpose of providing services not available from licensed service providers;

(2) Operate as a licensed service provider if it deems that doing so is more efficient and cost effective than contracting for services. When doing so, the regional support network shall comply with rules promulgated by the secretary that shall provide measurements to determine when a regional support network provided service is more efficient and cost effective;

(3) Monitor and perform biennial fiscal audits of licensed service providers who have contracted with the

regional support network to provide services required by this chapter. The monitoring and audits shall be performed by means of a formal process which insures that the licensed service providers and professionals designated in this subsection meet the terms of their contracts;

(4) Assure that the special needs of minorities, the elderly, disabled, children, and low-income persons are met within the priorities established in this chapter;

(5) Maintain patient tracking information in a central location as required for resource management services and the department's information system;

(6) Collaborate to ensure that policies do not result in an adverse shift of mentally ill persons into state and local correctional facilities;

(7) Work with the department to expedite the enrollment or re-enrollment of eligible persons leaving state or local correctional facilities and institutions for mental diseases;

(8) If a regional support network is not operated by the county, work closely with the county designated mental health professional or county designated crisis responder to maximize appropriate placement of persons into community services; and

(9) Coordinate services for individuals who have received services through the community mental health system and who become patients at a state mental hospital to ensure they are transitioned into the community in accordance with mutually agreed upon discharge plans and upon determination by the medical director of the state mental hospital that they no longer need intensive inpatient care. [2006 c 333 § 105; 2005 c 503 § 8; 2001 c 323 § 12; 1992 c 230 § 5. Prior: 1991 c 363 § 147; 1991 c 306 § 5; 1991 c 29 § 2; 1989 c 205 § 4; 1986 c 274 § 5; 1982 c 204 § 5.]

**Finding—Purpose—Intent—Severability—Part headings not law—Effective dates—2006 c 333:** See notes following RCW 71.24.016.

**Correction of references—Savings—Severability—2005 c 503:** See notes following RCW 71.24.015.

**Intent—1992 c 230:** See note following RCW 72.23.025.

**Purpose—Captions not law—1991 c 363:** See notes following RCW 2.32.180.

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**71.24.049 Identification by regional support network—Children's mental health services.** By January 1st of each odd-numbered year, the regional support network shall identify: (1) The number of children in each priority group, as defined by this chapter, who are receiving mental health services funded in part or in whole under this chapter, (2) the amount of funds under this chapter used for children's mental health services, (3) an estimate of the number of unserved children in each priority group, and (4) the estimated cost of serving these additional children and their families. [2001 c 323 § 13; 1999 c 10 § 6; 1986 c 274 § 6.]

**Purpose—Intent—1999 c 10:** See note following RCW 71.24.025.

**71.24.055 Regional support network services—Children's access to care standards and benefit package—Recommendations to legislature.** As part of the system transformation initiative, the department of social and health services shall undertake the following activities related specifically to children's mental health services:

(1) The development of recommended revisions to the access to care standards for children. The recommended revisions shall reflect the policies and principles set out in RCW 71.36.005, 71.36.010, and 71.36.025, and recognize that early identification, intervention and prevention services, and brief intervention services may be provided outside of the regional support network system. Revised access to care standards shall assess a child's need for mental health services based upon the child's diagnosis and its negative impact upon his or her persistent impaired functioning in family, school, or the community, and should not solely condition the receipt of services upon a determination that a child is engaged in high risk behavior or is in imminent need of hospitalization or out-of-home placement. Assessment and diagnosis for children under five years of age shall be determined using a nationally accepted assessment tool designed specifically for children of that age. The recommendations shall also address whether amendments to RCW \*71.24.025 (26) and (27) and 71.24.035(5) are necessary to implement revised access to care standards;

(2) Development of a revised children's mental health benefit package. The department shall ensure that services included in the children's mental health benefit package reflect the policies and principles included in RCW 71.36.005 and 71.36.025, to the extent allowable under medicaid, Title XIX of the federal social security act. Strong consideration shall be given to developmentally appropriate evidence-based and research-based practices, family-based interventions, the use of natural and peer supports, and community support services. This effort shall include a review of other states' efforts to fund family-centered children's mental health services through their medicaid programs;

(3) Consistent with the timeline developed for the system transformation initiative, recommendations for revisions to the children's access to care standards and the children's mental health services benefits package shall be presented to the legislature by January 1, 2009. [2007 c 359 § 4.]

**\*Reviser's note:** RCW 71.24.025 was amended by 2007 c 414 § 1, changing subsections (26) and (27) to subsections (27) and (28).

**Captions not law—2007 c 359:** See note following RCW 71.36.005.

**71.24.061 Children's mental health providers—Children's mental health evidence-based practice institute—Pilot program.**

(1) The department shall provide flexibility in provider contracting to regional support networks for children's mental health services. Beginning with 2007-2009 biennium contracts, regional support network contracts shall authorize regional support networks to allow and encourage licensed community mental health centers to subcontract with individual licensed mental health professionals when necessary to meet the need for an adequate, culturally competent, and qualified children's mental health provider network.

(2) To the extent that funds are specifically appropriated for this purpose or that nonstate funds are available, a children's mental health evidence-based practice institute shall be established at the University of Washington division of public behavioral health and justice policy. The institute shall closely collaborate with entities currently engaged in evaluating and promoting the use of evidence-based, research-based, promising, or consensus-based practices in children's mental health treatment, including but not limited

to the University of Washington department of psychiatry and behavioral sciences, children's hospital and regional medical center, the University of Washington school of nursing, the University of Washington school of social work, and the Washington state institute for public policy. To ensure that funds appropriated are used to the greatest extent possible for their intended purpose, the University of Washington's indirect costs of administration shall not exceed ten percent of appropriated funding. The institute shall:

(a) Improve the implementation of evidence-based and research-based practices by providing sustained and effective training and consultation to licensed children's mental health providers and child-serving agencies who are implementing evidence-based or researched-based practices for treatment of children's emotional or behavioral disorders, or who are interested in adapting these practices to better serve ethnically or culturally diverse children. Efforts under this subsection should include a focus on appropriate oversight of implementation of evidence-based practices to ensure fidelity to these practices and thereby achieve positive outcomes;

(b) Continue the successful implementation of the "partnerships for success" model by consulting with communities so they may select, implement, and continually evaluate the success of evidence-based practices that are relevant to the needs of children, youth, and families in their community;

(c) Partner with youth, family members, family advocacy, and culturally competent provider organizations to develop a series of information sessions, literature, and online resources for families to become informed and engaged in evidence-based and research-based practices;

(d) Participate in the identification of outcome-based performance measures under RCW 71.36.025(2) and partner in a statewide effort to implement statewide outcomes monitoring and quality improvement processes; and

(e) Serve as a statewide resource to the department and other entities on child and adolescent evidence-based, research-based, promising, or consensus-based practices for children's mental health treatment, maintaining a working knowledge through ongoing review of academic and professional literature, and knowledge of other evidence-based practice implementation efforts in Washington and other states.

(3) To the extent that funds are specifically appropriated for this purpose, the department in collaboration with the evidence-based practice institute shall implement a pilot program to support primary care providers in the assessment and provision of appropriate diagnosis and treatment of children with mental and behavioral health disorders and track outcomes of this program. The program shall be designed to promote more accurate diagnoses and treatment through timely case consultation between primary care providers and child psychiatric specialists, and focused educational learning collaboratives with primary care providers. [2007 c 359 § 7.]

**Captions not law—2007 c 359:** See note following RCW 71.36.005.

**71.24.065 Wraparound model of integrated children's mental health services delivery—Contracts—Evaluation—Report.** To the extent funds are specifically appropriated for this purpose, the department of social and

(2010 Ed.)

health services shall contract for implementation of a wraparound model of integrated children's mental health services delivery in up to four regional support network regions in Washington state in which wraparound programs are not currently operating, and in up to two regional support network regions in which wraparound programs are currently operating. Contracts in regions with existing wraparound programs shall be for the purpose of expanding the number of children served.

(1) Funding provided may be expended for: Costs associated with a request for proposal and contracting process; administrative costs associated with successful bidders' operation of the wraparound model; the evaluation under subsection (5) of this section; and funding for services needed by children enrolled in wraparound model sites that are not otherwise covered under existing state programs. The services provided through the wraparound model sites shall include, but not be limited to, services covered under the medicaid and other existing state-funded programs as a funding source. However, state funds provided may be used to develop a broader service package to meet needs identified in a child's care plan. Amounts provided shall supplement, and not supplant, state, local, or other funding for services that a child being served through a wraparound site would otherwise be eligible to receive.

(2) The wraparound model sites shall serve children with serious emotional or behavioral disturbances who are at high risk of residential or correctional placement or psychiatric hospitalization, and who have been referred for services from the department, a county juvenile court, a tribal court, a school, or a licensed mental health provider or agency.

(3) Through a request for proposal process, the department shall contract, with regional support networks, alone or in partnership with either educational service districts or entities licensed to provide mental health services to children with serious emotional or behavioral disturbances, to operate the wraparound model sites. The contractor shall provide care coordination and facilitate the delivery of services and other supports to families using a strength-based, highly individualized wraparound process. The request for proposal shall require that:

(a) The regional support network agree to use its medicaid revenues to fund services included in the existing regional support network's benefit package that a medicaid-eligible child participating in the wraparound model site is determined to need;

(b) The contractor provide evidence of commitments from at least the following entities to participate in wraparound care plan development and service provision when appropriate: Community mental health agencies, schools, the department of social and health services children's administration, juvenile courts, the department of social and health services juvenile rehabilitation administration, and managed health care systems contracting with the department under RCW 74.09.522; and

(c) The contractor will operate the wraparound model site in a manner that maintains fidelity to the wraparound process as defined in RCW 71.36.010.

(4) Contracts for operation of the wraparound model sites shall be executed on or before April 1, 2008, with enroll-

ment and service delivery beginning on or before July 1, 2008.

(5) The evidence-based practice institute established in RCW 71.24.061 shall evaluate the wraparound model sites, measuring outcomes for children served. Outcomes measured shall include, but are not limited to: Decreased out-of-home placement, including residential, group, and foster care, and increased stability of such placements, school attendance, school performance, recidivism, emergency room utilization, involvement with the juvenile justice system, decreased use of psychotropic medication, and decreased hospitalization.

(6) The evidence-based practice institute shall provide a report and recommendations to the appropriate committees of the legislature by December 1, 2010. [2007 c 359 § 10.]

**Captions not law—2007 c 359:** See note following RCW 71.36.005.

**71.24.100 Joint agreements of county authorities—Required provisions.** A county authority or a group of county authorities may enter into a joint operating agreement to form a regional support network. Any agreement between two or more county authorities for the establishment of a regional support network shall provide:

(1) That each county shall bear a share of the cost of mental health services; and

(2) That the treasurer of one participating county shall be the custodian of funds made available for the purposes of such mental health services, and that the treasurer may make payments from such funds upon audit by the appropriate auditing officer of the county for which he is treasurer. [2005 c 503 § 9; 1982 c 204 § 7; 1967 ex.s. c 111 § 10.]

**Correction of references—Savings—Severability—2005 c 503:** See notes following RCW 71.24.015.

**71.24.110 Joint agreements of county authorities—Permissive provisions.** An agreement for the establishment of a community mental health program under RCW 71.24.100 may also provide:

(1) For the joint supervision or operation of services and facilities, or for the supervision or operation of service and facilities by one participating county under contract for the other participating counties; and

(2) For such other matters as are necessary or proper to effectuate the purposes of this chapter. [1999 c 10 § 7; 1982 c 204 § 8; 1967 ex.s. c 111 § 11.]

**Purpose—Intent—1999 c 10:** See note following RCW 71.24.025.

**71.24.155 Grants to regional support networks—Accounting.** Grants shall be made by the department to regional support networks for community mental health programs totaling not less than ninety-five percent of available resources. The department may use up to forty percent of the remaining five percent to provide community demonstration projects, including early intervention or primary prevention programs for children, and the remainder shall be for emergency needs and technical assistance under this chapter. [2001 c 323 § 14; 1987 c 505 § 65; 1986 c 274 § 9; 1982 c 204 § 9.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**71.24.160 Proof as to uses made of state funds.** The regional support networks shall make satisfactory showing to the secretary that state funds shall in no case be used to replace local funds from any source being used to finance mental health services prior to January 1, 1990. [2001 c 323 § 15; 1989 c 205 § 7; 1982 c 204 § 10; 1967 ex.s. c 111 § 16.]

**71.24.200 Expenditures of county funds subject to county fiscal laws.** Expenditures of county funds under this chapter shall be subject to the provisions of chapter 36.40 RCW and other statutes relating to expenditures by counties. [1967 ex.s. c 111 § 20.]

**71.24.215 Clients to be charged for services.** Clients receiving mental health services funded by available resources shall be charged a fee under sliding-scale fee schedules, based on ability to pay, approved by the department. Fees shall not exceed the actual cost of care. [1982 c 204 § 11.]

**71.24.220 Reimbursement may be withheld for non-compliance with chapter or related rules.** The secretary may withhold state grants in whole or in part for any community mental health program in the event of a failure to comply with this chapter or the related rules adopted by the department. [1999 c 10 § 8; 1982 c 204 § 12; 1967 ex.s. c 111 § 22.]

**Purpose—Intent—1999 c 10:** See note following RCW 71.24.025.

**71.24.240 County program plans to be approved by secretary prior to submittal to federal agency.** In order to establish eligibility for funding under this chapter, any regional support network seeking to obtain federal funds for the support of any aspect of a community mental health program as defined in this chapter shall submit program plans to the secretary for prior review and approval before such plans are submitted to any federal agency. [2005 c 503 § 10; 1982 c 204 § 13; 1967 ex.s. c 111 § 24.]

**Correction of references—Savings—Severability—2005 c 503:** See notes following RCW 71.24.015.

**71.24.250 Regional support network may accept and expend gifts and grants.** The regional support network may accept and expend gifts and grants received from private, county, state, and federal sources. [2001 c 323 § 16; 1982 c 204 § 14; 1967 ex.s. c 111 § 25.]

**71.24.260 Waiver of postgraduate educational requirements.** The department shall waive postgraduate educational requirements applicable to mental health professionals under this chapter for those persons who have a bachelor's degree and on June 11, 1986:

(1) Are employed by an agency subject to licensure under this chapter, the community mental health services act, in a capacity involving the treatment of mental illness; and

(2) Have at least ten years of full-time experience in the treatment of mental illness. [1986 c 274 § 10.]

**71.24.300 Regional support networks—Inclusion of tribal authorities—Roles and responsibilities.** (1) Upon the request of a tribal authority or authorities within a

regional support network the joint operating agreement or the county authority shall allow for the inclusion of the tribal authority to be represented as a party to the regional support network.

(2) The roles and responsibilities of the county and tribal authorities shall be determined by the terms of that agreement including a determination of membership on the governing board and advisory committees, the number of tribal representatives to be party to the agreement, and the provisions of law and shall assure the provision of culturally competent services to the tribes served.

(3) The state mental health authority may not determine the roles and responsibilities of county authorities as to each other under regional support networks by rule, except to assure that all duties required of regional support networks are assigned and that counties and the regional support network do not duplicate functions and that a single authority has final responsibility for all available resources and performance under the regional support network's contract with the secretary.

(4) If a regional support network is a private entity, the department shall allow for the inclusion of the tribal authority to be represented as a party to the regional support network.

(5) The roles and responsibilities of the private entity and the tribal authorities shall be determined by the department, through negotiation with the tribal authority.

(6) Regional support networks shall submit an overall six-year operating and capital plan, timeline, and budget and submit progress reports and an updated two-year plan biennially thereafter, to assume within available resources all of the following duties:

(a) Administer and provide for the availability of all resource management services, residential services, and community support services.

(b) Administer and provide for the availability of all investigation, transportation, court-related, and other services provided by the state or counties pursuant to chapter 71.05 RCW.

(c) Provide within the boundaries of each regional support network evaluation and treatment services for at least ninety percent of persons detained or committed for periods up to seventeen days according to chapter 71.05 RCW. Regional support networks may contract to purchase evaluation and treatment services from other networks if they are unable to provide for appropriate resources within their boundaries. Insofar as the original intent of serving persons in the community is maintained, the secretary is authorized to approve exceptions on a case-by-case basis to the requirement to provide evaluation and treatment services within the boundaries of each regional support network. Such exceptions are limited to:

(i) Contracts with neighboring or contiguous regions; or

(ii) Individuals detained or committed for periods up to seventeen days at the state hospitals at the discretion of the secretary.

(d) Administer and provide for the availability of all other mental health services, which shall include patient counseling, day treatment, consultation, education services, employment services as defined in RCW 71.24.035, and mental health services to children.

(e) Establish standards and procedures for reviewing individual service plans and determining when that person may be discharged from resource management services.

(7) A regional support network may request that any state-owned land, building, facility, or other capital asset which was ever purchased, deeded, given, or placed in trust for the care of the persons with mental illness and which is within the boundaries of a regional support network be made available to support the operations of the regional support network. State agencies managing such capital assets shall give first priority to requests for their use pursuant to this chapter.

(8) Each regional support network shall appoint a mental health advisory board which shall review and provide comments on plans and policies developed under this chapter, provide local oversight regarding the activities of the regional support network, and work with the regional support network to resolve significant concerns regarding service delivery and outcomes. The department shall establish statewide procedures for the operation of regional advisory committees including mechanisms for advisory board feedback to the department regarding regional support network performance. The composition of the board shall be broadly representative of the demographic character of the region and shall include, but not be limited to, representatives of consumers and families, law enforcement, and where the county is not the regional support network, county elected officials. Composition and length of terms of board members may differ between regional support networks but shall be included in each regional support network's contract and approved by the secretary.

(9) Regional support networks shall assume all duties specified in their plans and joint operating agreements through biennial contractual agreements with the secretary.

(10) Regional support networks may receive technical assistance from the housing trust fund and may identify and submit projects for housing and housing support services to the housing trust fund established under chapter 43.185 RCW. Projects identified or submitted under this subsection must be fully integrated with the regional support network six-year operating and capital plan, timeline, and budget required by subsection (6) of this section. [2008 c 261 § 4; 2006 c 333 § 106; 2005 c 503 § 11; 2001 c 323 § 17. Prior: 1999 c 214 § 8; 1999 c 10 § 9; 1994 c 204 § 2; 1992 c 230 § 6; prior: 1991 c 295 § 3; 1991 c 262 § 2; 1991 c 29 § 3; 1989 c 205 § 5.]

**Intent—Findings—2008 c 261:** See note following RCW 71.24.320.

**Finding—Purpose—Intent—Severability—Part headings not law—Effective dates—2006 c 333:** See notes following RCW 71.24.016.

**Correction of references—Savings—Severability—2005 c 503:** See notes following RCW 71.24.015.

**Intent—Effective date—1999 c 214:** See notes following RCW 72.09.370.

**Purpose—Intent—1999 c 10:** See note following RCW 71.24.025.

**Intent—1992 c 230:** See note following RCW 72.23.025.

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**71.24.310 Administration of chapters 71.05 and 71.24 RCW through regional support networks—Implementation of chapter 71.05 RCW (as amended by 2009 c 564).** The legislature finds that administration of chapter 71.05 RCW and this chapter can be most efficiently and effec-

tively implemented as part of the regional support network defined in RCW 71.24.025. For this reason, the legislature intends that the department and the regional support networks shall work together to implement chapter 71.05 RCW as follows:

(1) By June 1, 2006, regional support networks shall recommend to the department the number of state hospital beds that should be allocated for use by each regional support network. The statewide total allocation shall not exceed the number of state hospital beds offering long-term inpatient care, as defined in this chapter, for which funding is provided in the biennial appropriations act.

(2) If there is consensus among the regional support networks regarding the number of state hospital beds that should be allocated for use by each regional support network, the department shall contract with each regional support network accordingly.

(3) If there is not consensus among the regional support networks regarding the number of beds that should be allocated for use by each regional support network, the department shall establish by emergency rule the number of state hospital beds that are available for use by each regional support network. The emergency rule shall be effective September 1, 2006. The primary factor used in the allocation shall be the estimated number of ~~((acutely and chronically mentally ill))~~ adults with acute and chronic mental illness in each regional support network area, based upon population-adjusted incidence and utilization.

(4) The allocation formula shall be updated at least every three years to reflect demographic changes, and new evidence regarding the incidence of acute and chronic mental illness and the need for long-term inpatient care. In the updates, the statewide total allocation shall include (a) all state hospital beds offering long-term inpatient care for which funding is provided in the biennial appropriations act; plus (b) the estimated equivalent number of beds or comparable diversion services contracted in accordance with subsection (5) of this section.

(5) The department is encouraged to enter performance-based contracts with regional support networks to provide some or all of the regional support network's allocated long-term inpatient treatment capacity in the community, rather than in the state hospital. The performance contracts shall specify the number of patient days of care available for use by the regional support network in the state hospital.

(6) If a regional support network uses more state hospital patient days of care than it has been allocated under subsection (3) or (4) of this section, or than it has contracted to use under subsection (5) of this section, whichever is less, it shall reimburse the department for that care. The reimbursement rate per day shall be the hospital's total annual budget for long-term inpatient care, divided by the total patient days of care assumed in development of that budget.

(7) One-half of any reimbursements received pursuant to subsection (6) of this section shall be used to support the cost of operating the state hospital and, during calendar year 2009, implementing new services that will enable a regional support network to reduce its utilization of the state hospital. The department shall distribute the remaining half of such reimbursements among regional support networks that have used less than their allocated or contracted patient days of care at that hospital, proportional to the number of patient days of care not used. [2009 c 564 § 952; 2006 c 333 § 107; 1989 c 205 § 6.]

**Effective date—2009 c 564:** See note following RCW 2.68.020.

**71.24.310 Administration of chapters 71.05 and 71.24 RCW through regional support networks—Implementation of chapter 71.05 RCW (as amended by 2009 c 564).** The legislature finds that administration of chapter 71.05 RCW and this chapter can be most efficiently and effectively implemented as part of the regional support network defined in RCW 71.24.025. For this reason, the legislature intends that the department and the regional support networks shall work together to implement chapter 71.05 RCW as follows:

(1) By June 1, 2006, regional support networks shall recommend to the department the number of state hospital beds that should be allocated for use by each regional support network. The statewide total allocation shall not exceed the number of state hospital beds offering long-term inpatient care, as defined in this chapter, for which funding is provided in the biennial appropriations act.

(2) If there is consensus among the regional support networks regarding the number of state hospital beds that should be allocated for use by each regional support network, the department shall contract with each regional support network accordingly.

(3) If there is not consensus among the regional support networks regarding the number of beds that should be allocated for use by each

regional support network, the department shall establish by emergency rule the number of state hospital beds that are available for use by each regional support network. The emergency rule shall be effective September 1, 2006. The primary factor used in the allocation shall be the estimated number of ~~((acutely and chronically mentally ill))~~ adults with acute and chronic mental illness in each regional support network area, based upon population-adjusted incidence and utilization.

(4) The allocation formula shall be updated at least every three years to reflect demographic changes, and new evidence regarding the incidence of acute and chronic mental illness and the need for long-term inpatient care. In the updates, the statewide total allocation shall include (a) all state hospital beds offering long-term inpatient care for which funding is provided in the biennial appropriations act; plus (b) the estimated equivalent number of beds or comparable diversion services contracted in accordance with subsection (5) of this section.

(5) The department is encouraged to enter performance-based contracts with regional support networks to provide some or all of the regional support network's allocated long-term inpatient treatment capacity in the community, rather than in the state hospital. The performance contracts shall specify the number of patient days of care available for use by the regional support network in the state hospital.

(6) If a regional support network uses more state hospital patient days of care than it has been allocated under subsection (3) or (4) of this section, or than it has contracted to use under subsection (5) of this section, whichever is less, it shall reimburse the department for that care. The reimbursement rate per day shall be the hospital's total annual budget for long-term inpatient care, divided by the total patient days of care assumed in development of that budget.

(7) One-half of any reimbursements received pursuant to subsection (6) of this section shall be used to support the cost of operating the state hospital and, during the 2007-2009 fiscal biennium, implementing new services that will enable a regional support network to reduce its utilization of the state hospital. The department shall distribute the remaining half of such reimbursements among regional support networks that have used less than their allocated or contracted patient days of care at that hospital, proportional to the number of patient days of care not used. [2009 c 564 § 1810; 2006 c 333 § 107; 1989 c 205 § 6.]

**Reviser's note:** RCW 71.24.310 was amended twice during the 2009 legislative session, each without reference to the other. For rule of construction concerning sections amended more than once during the same legislative session, see RCW 1.12.025.

**Effective date—2009 c 564:** See note following RCW 2.68.020.

**Finding—Purpose—Intent—Severability—Part headings not law—Effective dates—2006 c 333:** See notes following RCW 71.24.016.

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**71.24.320 Regional support networks—Procurement process—Penalty for voluntary termination or refusal to renew contract.** (1) If an existing regional support network chooses not to respond to a request for qualifications, or is unable to substantially meet the requirements of a request for qualifications, or notifies the department of social and health services it will no longer serve as a regional support network, the department shall utilize a procurement process in which other entities recognized by the secretary may bid to serve as the regional support network.

(a) The request for proposal shall include a scoring factor for proposals that include additional financial resources beyond that provided by state appropriation or allocation.

(b) The department shall provide detailed briefings to all bidders in accordance with department and state procurement policies.

(c) The request for proposal shall also include a scoring factor for proposals submitted by nonprofit entities that include a component to maximize the utilization of state provided resources and the leverage of other funds for the support of mental health services to persons with mental illness.

(2) A regional support network that voluntarily terminates, refuses to renew, or refuses to sign a mandatory amendment to its contract to act as a regional support network is prohibited from responding to a procurement under this section or serving as a regional support network for five years from the date that the department signs a contract with the entity that will serve as the regional support network. [2008 c 261 § 5; 2006 c 333 § 202; 2005 c 503 § 4.]

**Intent—Findings—2008 c 261:** "In the event that an existing regional support network will no longer be contracting to provide services, it is the intent of the legislature to provide flexibility to the department to facilitate a stable transition which avoids disruption of services to consumers and families, maximizes efficiency and public safety, and maintains the integrity of the public mental health system. By granting this authority and flexibility, the legislature finds that the department will be able to maximize purchasing power within allocated resources and attract high quality organizations with optimal infrastructure to perform regional support network functions through competitive procurement processes. The legislature intends for the department of social and health services to partner with political subdivisions and other entities to provide quality, coordinated, and integrated services to address the needs of individuals with behavioral health needs." [2008 c 261 § 1.]

**Retroactive application—2008 c 261 § 5:** "Section 5 of this act applies retroactively to July 1, 2007." [2008 c 261 § 7.]

**Finding—Purpose—Intent—Severability—Part headings not law—Effective dates—2006 c 333:** See notes following RCW 71.24.016.

**Effective date—2005 c 503 § 4:** "Section 4 of this act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [May 17, 2005]." [2005 c 503 § 19.]

**Correction of references—Savings—Severability—2005 c 503:** See notes following RCW 71.24.015.

**71.24.330 Regional support networks—Contracts with department—Requirements.** (1) Contracts between a regional support network and the department shall include mechanisms for monitoring performance under the contract and remedies for failure to substantially comply with the requirements of the contract including, but not limited to, financial penalties, termination of the contract, and reprourement of the contract.

(2) The regional support network procurement processes shall encourage the preservation of infrastructure previously purchased by the community mental health service delivery system, the maintenance of linkages between other services and delivery systems, and maximization of the use of available funds for services versus profits. However, a regional support network selected through the procurement process is not required to contract for services with any county-owned or operated facility. The regional support network procurement process shall provide that public funds appropriated by the legislature shall not be used to promote or deter, encourage, or discourage employees from exercising their rights under Title 29, chapter 7, subchapter II, United States Code or chapter 41.56 RCW.

(3) In addition to the requirements of RCW 71.24.035, contracts shall:

(a) Define administrative costs and ensure that the regional support network does not exceed an administrative cost of ten percent of available funds;

(b) Require effective collaboration with law enforcement, criminal justice agencies, and the chemical dependency treatment system;

(2010 Ed.)

(c) Require substantial implementation of department adopted integrated screening and assessment process and matrix of best practices;

(d) Maintain the decision-making independence of designated mental health professionals;

(e) Except at the discretion of the secretary or as specified in the biennial budget, require regional support networks to pay the state for the costs associated with individuals who are being served on the grounds of the state hospitals and who are not receiving long-term inpatient care as defined in RCW 71.24.025;

(f) Include a negotiated alternative dispute resolution clause; and

(g) Include a provision requiring either party to provide one hundred eighty days' notice of any issue that may cause either party to voluntarily terminate, refuse to renew, or refuse to sign a mandatory amendment to the contract to act as a regional support network. If either party decides to voluntarily terminate, refuse to renew, or refuse to sign a mandatory amendment to the contract to serve as a regional support network they shall provide ninety days' advance notice in writing to the other party. [2008 c 261 § 6; 2006 c 333 § 203; 2005 c 503 § 6.]

**Intent—Findings—2008 c 261:** See note following RCW 71.24.320.

**Finding—Purpose—Intent—Severability—Part headings not law—Effective dates—2006 c 333:** See notes following RCW 71.24.016.

**Correction of references—Savings—Severability—2005 c 503:** See notes following RCW 71.24.015.

**71.24.340 Regional support networks—Eligibility for medical assistance upon release from confinement—Interlocal agreements.** The secretary shall require the regional support networks to develop interlocal agreements pursuant to RCW 74.09.555. To this end, the regional support networks shall accept referrals for enrollment on behalf of a confined person, prior to the person's release. [2005 c 503 § 13.]

**Correction of references—Savings—Severability—2005 c 503:** See notes following RCW 71.24.015.

**71.24.350 Mental health ombudsman office.** The department shall require each regional support network to provide for a separately funded mental health ombudsman office in each regional support network that is independent of the regional support network. The ombudsman office shall maximize the use of consumer advocates. [2005 c 504 § 803.]

**Findings—Intent—Severability—Application—Construction—Captions, part headings, subheadings not law—Adoption of rules—Effective dates—2005 c 504:** See notes following RCW 71.05.027.

**Alphabetization—Correction of references—2005 c 504:** See note following RCW 71.05.020.

**71.24.360 Establishment of new regional support networks.** The department may establish new regional support network boundaries in any part of the state where more than one network chooses not to respond to, or is unable to substantially meet the requirements of, the request for qualifications under section 4, chapter 503, Laws of 2005 or where a regional support network is subject to reprourement under section 6, chapter 503, Laws of 2005. The department may

establish no fewer than eight and no more than fourteen regional support networks under this chapter. No entity shall be responsible for more than three regional support networks. [2005 c 504 § 805.]

**Findings—Intent—Severability—Application—Construction—Captions, part headings, subheadings not law—Adoption of rules—Effective dates—2005 c 504:** See notes following RCW 71.05.027.

**Alphabetization—Correction of references—2005 c 504:** See note following RCW 71.05.020.

**71.24.370 Regional support networks contracts—Limitation on state liability.** (1) Except for monetary damage claims which have been reduced to final judgment by a superior court, this section applies to all claims against the state, state agencies, state officials, or state employees that exist on or arise after March 29, 2006.

(2) Except as expressly provided in contracts entered into between the department and the regional support networks after March 29, 2006, the entities identified in subsection (3) of this section shall have no claim for declaratory relief, injunctive relief, judicial review under chapter 34.05 RCW, or civil liability against the state or state agencies for actions or inactions performed pursuant to the administration of this chapter with regard to the following: (a) The allocation or payment of federal or state funds; (b) the use or allocation of state hospital beds; or (c) financial responsibility for the provision of inpatient mental health care.

(3) This section applies to counties, regional support networks, and entities which contract to provide regional support network services and their subcontractors, agents, or employees. [2006 c 333 § 103.]

**Finding—Purpose—Intent—Severability—Part headings not law—Effective dates—2006 c 333:** See notes following RCW 71.24.016.

**71.24.400 Streamlining delivery system—Finding.** The legislature finds that the current complex set of federal, state, and local rules and regulations, audited and administered at multiple levels, which affect the community mental health service delivery system, focus primarily on the process of providing mental health services and do not sufficiently address consumer and system outcomes. The legislature finds that the department and the community mental health service delivery system must make ongoing efforts to achieve the purposes set forth in RCW 71.24.015 related to reduced administrative layering, duplication, elimination of process measures not specifically required by the federal government for the receipt of federal funds, and reduced administrative costs. [2001 c 323 § 18; 1999 c 10 § 10; 1995 c 96 § 1; 1994 c 259 § 1.]

**Purpose—Intent—1999 c 10:** See note following RCW 71.24.025.

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**71.24.405 Streamlining delivery system.** The department shall establish a comprehensive and collaborative effort within regional support networks and with local mental health service providers aimed at creating innovative and streamlined community mental health service delivery systems, in order to carry out the purposes set forth in RCW 71.24.400 and to capture the diversity of the community mental health service delivery system.

The department must accomplish the following:

(1) Identification, review, and cataloging of all rules, regulations, duplicative administrative and monitoring functions, and other requirements that currently lead to inefficiencies in the community mental health service delivery system and, if possible, eliminate the requirements;

(2) The systematic and incremental development of a single system of accountability for all federal, state, and local funds provided to the community mental health service delivery system. Systematic efforts should be made to include federal and local funds into the single system of accountability;

(3) The elimination of process regulations and related contract and reporting requirements. In place of the regulations and requirements, a set of outcomes for mental health adult and children clients according to chapter 71.24 RCW must be used to measure the performance of mental health service providers and regional support networks. Such outcomes shall focus on stabilizing out-of-home and hospital care, increasing stable community living, increasing age-appropriate activities, achieving family and consumer satisfaction with services, and system efficiencies;

(4) Evaluation of the feasibility of contractual agreements between the department of social and health services and regional support networks and mental health service providers that link financial incentives to the success or failure of mental health service providers and regional support networks to meet outcomes established for mental health service clients;

(5) The involvement of mental health consumers and their representatives. Mental health consumers and their representatives will be involved in the development of outcome standards for mental health clients under \*section 5 of this act; and

(6) An independent evaluation component to measure the success of the department in fully implementing the provisions of RCW 71.24.400 and this section. [2001 c 323 § 19; 1999 c 10 § 11; 1995 c 96 § 2; 1994 c 259 § 2.]

\*Reviser's note: Section 5 of this act was vetoed by the governor.

**Purpose—Intent—1999 c 10:** See note following RCW 71.24.025.

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**71.24.415 Streamlining delivery system—Department duties to achieve outcomes.** To carry out the purposes specified in RCW 71.24.400, the department is encouraged to utilize its authority to eliminate any unnecessary rules, regulations, standards, or contracts, to immediately eliminate duplication of audits or any other unnecessarily duplicated functions, and to seek any waivers of federal or state rules or regulations necessary to achieve the purpose of streamlining the community mental health service delivery system and infusing it with incentives that reward efficiency, positive outcomes for clients, and quality services. [1999 c 10 § 12; 1995 c 96 § 3; 1994 c 259 § 4.]

**Purpose—Intent—1999 c 10:** See note following RCW 71.24.025.

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**71.24.420 Expenditure of federal funds.** The department shall operate the community mental health service delivery system authorized under this chapter within the following constraints:

(1) The full amount of federal funds for mental health services, plus qualifying state expenditures as appropriated in the biennial operating budget, shall be appropriated to the department each year in the biennial appropriations act to carry out the provisions of the community mental health service delivery system authorized in this chapter.

(2) The department may expend funds defined in subsection (1) of this section in any manner that will effectively accomplish the outcome measures defined in \*section 5 of this act.

(3) The department shall implement strategies that accomplish the outcome measures identified in \*section 5 of this act that are within the funding constraints in this section.

(4) The department shall monitor expenditures against the appropriation levels provided for in subsection (1) of this section. [2001 c 323 § 2.]

\*Reviser's note: Section 5 of this act was vetoed by the governor.

**71.24.430 Collaborative service delivery.** (1) The department shall ensure the coordination of allied services for mental health clients. The department shall implement strategies for resolving organizational, regulatory, and funding issues at all levels of the system, including the state, the regional support networks, and local service providers.

(2) The department shall propose, in operating budget requests, transfers of funding among programs to support collaborative service delivery to persons who require services from multiple department programs. The department shall report annually to the appropriate committees of the senate and house of representatives on actions and projects it has taken to promote collaborative service delivery. [2001 c 323 § 3.]

**71.24.450 Offenders with mental illnesses—Findings and intent.** (1) Many acute and chronically mentally ill offenders are delayed in their release from Washington correctional facilities due to their inability to access reasonable treatment and living accommodations prior to the maximum expiration of their sentences. Often the offender reaches the end of his or her sentence and is released without any follow-up care, funds, or housing. These delays are costly to the state, often lead to psychiatric relapse, and result in unnecessary risk to the public.

These offenders rarely possess the skills or emotional stability to maintain employment or even complete applications to receive entitlement funding. Nationwide only five percent of diagnosed schizophrenics are able to maintain part-time or full-time employment. Housing and appropriate treatment are difficult to obtain.

This lack of resources, funding, treatment, and housing creates additional stress for the mentally ill offender, impairing self-control and judgment. When the mental illness is instrumental in the offender's patterns of crime, such stresses may lead to a worsening of his or her illness, reoffending, and a threat to public safety.

(2) It is the intent of the legislature to create a pilot program to provide for postrelease mental health care and housing for a select group of mentally ill offenders entering community living, in order to reduce incarceration costs, increase

(2010 Ed.)

public safety, and enhance the offender's quality of life. [1997 c 342 § 1.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**71.24.455 Offenders with mental illnesses—Contracts for specialized access and services.** (1) The secretary shall select and contract with a regional support network or private provider to provide specialized access and services to mentally ill offenders upon release from total confinement within the department of corrections who have been identified by the department of corrections and selected by the regional support network or private provider as high-priority clients for services and who meet service program entrance criteria. The program shall enroll no more than twenty-five offenders at any one time, or a number of offenders that can be accommodated within the appropriated funding level, and shall seek to fill any vacancies that occur.

(2) Criteria shall include a determination by department of corrections staff that:

(a) The offender suffers from a major mental illness and needs continued mental health treatment;

(b) The offender's previous crime or crimes have been determined by either the court or department of corrections staff to have been substantially influenced by the offender's mental illness;

(c) It is believed the offender will be less likely to commit further criminal acts if provided ongoing mental health care;

(d) The offender is unable or unlikely to obtain housing and/or treatment from other sources for any reason; and

(e) The offender has at least one year remaining before his or her sentence expires but is within six months of release to community housing and is currently housed within a work release facility or any department of corrections' division of prisons facility.

(3) The regional support network or private provider shall provide specialized access and services to the selected offenders. The services shall be aimed at lowering the risk of recidivism. An oversight committee composed of a representative of the department, a representative of the selected regional support network or private provider, and a representative of the department of corrections shall develop policies to guide the pilot program, provide dispute resolution including making determinations as to when entrance criteria or required services may be waived in individual cases, advise the department of corrections and the regional support network or private provider on the selection of eligible offenders, and set minimum requirements for service contracts. The selected regional support network or private provider shall implement the policies and service contracts. The following services shall be provided:

(a) Intensive case management to include a full range of intensive community support and treatment in client-to-staff ratios of not more than ten offenders per case manager including: (i) A minimum of weekly group and weekly individual counseling; (ii) home visits by the program manager at least two times per month; and (iii) counseling focusing on relapse prevention and past, current, or future behavior of the offender.

(b) The case manager shall attempt to locate and procure housing appropriate to the living and clinical needs of the offender and as needed to maintain the psychiatric stability of the offender. The entire range of emergency, transitional, and permanent housing and involuntary hospitalization must be considered as available housing options. A housing subsidy may be provided to offenders to defray housing costs up to a maximum of six thousand six hundred dollars per offender per year and be administered by the case manager. Additional funding sources may be used to offset these costs when available.

(c) The case manager shall collaborate with the assigned prison, work release, or community corrections staff during release planning, prior to discharge, and in ongoing supervision of the offender while under the authority of the department of corrections.

(d) Medications including the full range of psychotropic medications including atypical antipsychotic medications may be required as a condition of the program. Medication prescription, medication monitoring, and counseling to support offender understanding, acceptance, and compliance with prescribed medication regimens must be included.

(e) A systematic effort to engage offenders to continuously involve themselves in current and long-term treatment and appropriate rehabilitative activities shall be made.

(f) Classes appropriate to the clinical and living needs of the offender and appropriate to his or her level of understanding.

(g) The case manager shall assist the offender in the application and qualification for entitlement funding, including medicaid, state assistance, and other available government and private assistance at any point that the offender is qualified and resources are available.

(h) The offender shall be provided access to daily activities such as drop-in centers, prevocational and vocational training and jobs, and volunteer activities.

(4) Once an offender has been selected into the pilot program, the offender shall remain in the program until the end of his or her sentence or unless the offender is released from the pilot program earlier by the department of corrections.

(5) Specialized training in the management and supervision of high-crime risk mentally ill offenders shall be provided to all participating mental health providers by the department and the department of corrections prior to their participation in the program and as requested thereafter.

(6) The pilot program provided for in this section must be providing services by July 1, 1998. [1997 c 342 § 2.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**71.24.460 Offenders with mental illnesses—Report to legislature—Contingent termination of program.** The department, in collaboration with the department of corrections and the oversight committee created in RCW 71.24.455, shall track outcomes and submit to the legislature annual reports regarding services and outcomes. The reports shall include the following: (1) A statistical analysis regarding the reoffense and reinstitutionalization rate by the enrollees in the program set forth in RCW 71.24.455; (2) a quantitative description of the services provided in the program set forth in RCW 71.24.455; and (3) recommendations for any needed

modifications in the services and funding levels to increase the effectiveness of the program set forth in RCW 71.24.455. By December 1, 2003, the department shall certify the reoffense rate for enrollees in the program authorized by RCW 71.24.455 to the office of financial management and the appropriate legislative committees. If the reoffense rate exceeds fifteen percent, the authorization for the department to conduct the program under RCW 71.24.455 is terminated on January 1, 2004. [1999 c 10 § 13; 1997 c 342 § 4.]

**Purpose—Intent—1999 c 10:** See note following RCW 71.24.025.

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**71.24.470 Offenders with mental illness who are believed to be dangerous—Contract for case management—Use of appropriated funds.** (1) The secretary shall contract, to the extent that funds are appropriated for this purpose, for case management services and such other services as the secretary deems necessary to assist offenders identified under RCW 72.09.370 for participation in the offender reentry community safety program. The contracts may be with regional support networks or any other qualified and appropriate entities.

(2) The case manager has the authority to assist these offenders in obtaining the services, as set forth in the plan created under RCW 72.09.370(2), for up to five years. The services may include coordination of mental health services, assistance with unfunded medical expenses, obtaining chemical dependency treatment, housing, employment services, educational or vocational training, independent living skills, parenting education, anger management services, and such other services as the case manager deems necessary.

(3) The legislature intends that funds appropriated for the purposes of RCW 72.09.370, 71.05.145, and 71.05.212, and this section and distributed to the regional support networks are to supplement and not to supplant general funding. Funds appropriated to implement RCW 72.09.370, 71.05.145, and 71.05.212, and this section are not to be considered available resources as defined in RCW 71.24.025 and are not subject to the priorities, terms, or conditions in the appropriations act established pursuant to RCW 71.24.035.

(4) The offender reentry community safety program was formerly known as the community integration assistance program. [2009 c 319 § 1; 1999 c 214 § 9.]

**Intent—Effective date—1999 c 214:** See notes following RCW 72.09.370.

**71.24.480 Offenders with mental illness who are believed to be dangerous—Limitation on liability due to treatment—Reporting requirements.** (1) A licensed service provider or regional support network, acting in the course of the provider's or network's duties under this chapter, is not liable for civil damages resulting from the injury or death of another caused by a participant in the offender reentry community safety program who is a client of the provider or network, unless the act or omission of the provider or network constitutes:

- (a) Gross negligence;
- (b) Willful or wanton misconduct; or
- (c) A breach of the duty to warn of and protect from a client's threatened violent behavior if the client has communi-

cated a serious threat of physical violence against a reasonably ascertainable victim or victims.

(2) In addition to any other requirements to report violations, the licensed service provider and regional support network shall report an offender's expressions of intent to harm or other predatory behavior, regardless of whether there is an ascertainable victim, in progress reports and other established processes that enable courts and supervising entities to assess and address the progress and appropriateness of treatment.

(3) A licensed service provider's or regional support network's mere act of treating a participant in the offender reentry community safety program is not negligence. Nothing in this subsection alters the licensed service provider's or regional support network's normal duty of care with regard to the client.

(4) The limited liability provided by this section applies only to the conduct of licensed service providers and regional support networks and does not apply to conduct of the state.

(5) For purposes of this section, "participant in the offender reentry community safety program" means a person who has been identified under RCW 72.09.370 as an offender who: (a) Is reasonably believed to be dangerous to himself or herself or others; and (b) has a mental disorder. [2009 c 319 § 2; 2002 c 173 § 1.]

**71.24.805 Mental health system review—Performance audit recommendations affirmed.** The legislature affirms its support for those recommendations of the performance audit of the public mental health system conducted by the joint legislative audit and review committee relating to: Improving the coordination of services for clients with multiple needs; improving the consistency of client, service, and fiscal data collected by the mental health division; replacing process-oriented accountability activities with a uniform statewide outcome measurement system; and using outcome information to identify and provide incentives for best practices in the provision of public mental health services. [2001 c 334 § 1.]

**Effective date—2001 c 334:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [May 15, 2001]." [2001 c 334 § 10.]

**71.24.810 Mental health system review—Implementation of performance audit recommendations.** The legislature supports recommendations 1 through 10 and 12 through 14 of the mental health system performance audit conducted by the joint legislative audit and review committee. The legislature expects the department of social and health services to work diligently within available funds to implement these recommendations. [2001 c 334 § 2.]

**Effective date—2001 c 334:** See note following RCW 71.24.805.

**71.24.840 Mental health system review—Study of long-term outcomes.** The Washington institute for public policy shall conduct a longitudinal study of long-term client outcomes to assess any changes in client status at two, five, and ten years. The measures tracked shall include client change as a result of services, employment and/or education, housing stability, criminal justice involvement, and level of services needed. The institute shall report these long-term

(2010 Ed.)

outcomes to the appropriate policy and fiscal committee of the legislature annually beginning not later than December 31, 2005. [2001 c 334 § 5.]

**Effective date—2001 c 334:** See note following RCW 71.24.805.

**71.24.900 Effective date—1967 ex.s. c 111.** This act shall take effect on July 1, 1967. [1967 ex.s. c 111 § 26.]

**71.24.901 Severability—1982 c 204.** If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1982 c 204 § 28.]

**71.24.902 Construction.** Nothing in this chapter shall be construed as prohibiting the secretary from consolidating within the department children's mental health services with other departmental services related to children. [1986 c 274 § 7.]

## Chapter 71.28 RCW

### MENTAL HEALTH AND DEVELOPMENTAL DISABILITIES SERVICES— INTERSTATE CONTRACTS

#### Sections

71.28.010 Contracts by boundary counties or cities therein.

*Council for children and families: Chapter 43.121 RCW.*

**71.28.010 Contracts by boundary counties or cities therein.** Any county, or city within a county which is situated on the state boundaries is authorized to contract for mental health services with a county situated in either the states of Oregon or Idaho, located on the boundaries of such states with the state of Washington. [1988 c 176 § 911; 1977 ex.s. c 80 § 44; 1967 c 84 § 1.]

**Purpose—Intent—Severability—1977 ex.s. c 80:** See notes following RCW 4.16.190.

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

## Chapter 71.32 RCW

### MENTAL HEALTH ADVANCE DIRECTIVES

#### Sections

71.32.010 Legislative declaration—Findings.  
71.32.020 Definitions.  
71.32.030 Construction of definitions.  
71.32.040 Adult presumed to have capacity.  
71.32.050 Execution of directive—Scope.  
71.32.060 Execution of directive—Elements—Effective date—Expiration.  
71.32.070 Prohibited elements.  
71.32.080 Revocation—Waiver.  
71.32.090 Witnesses.  
71.32.100 Appointment of agent.  
71.32.110 Determination of capacity.  
71.32.120 Action to contest directive.  
71.32.130 Determination of capacity—Reevaluations of capacity.  
71.32.140 Refusal of admission to inpatient treatment—Effect of directive.  
71.32.150 Compliance with directive—Conditions for noncompliance.  
71.32.160 Electroconvulsive therapy.  
71.32.170 Providers—Immunity from liability—Conditions.  
71.32.180 Multiple directives, agents—Effect—Disclosure of court orders.

71.32.190	Preexisting, foreign directives—Validity.
71.32.200	Fraud, duress, undue influence—Appointment of guardian.
71.32.210	Execution of directive not evidence of mental disorder or lack of capacity.
71.32.220	Requiring directive prohibited.
71.32.230	Coercion, threats prohibited.
71.32.240	Other authority not limited.
71.32.250	Long-term care facility residents—Readmission after inpatient mental health treatment—Evaluation, report to legislature.
71.32.260	Form.
71.32.900	Severability—2003 c 283.
71.32.901	Part headings not law—2003 c 283.
71.32.902	Construction—Chapter applicable to state registered domestic partnerships—2009 c 521.

**71.32.010 Legislative declaration—Findings.** (1) The legislature declares that an individual with capacity has the ability to control decisions relating to his or her own mental health care. The legislature finds that:

(a) Some mental illnesses cause individuals to fluctuate between capacity and incapacity;

(b) During periods when an individual's capacity is unclear, the individual may be unable to access needed treatment because the individual may be unable to give informed consent;

(c) Early treatment may prevent an individual from becoming so ill that involuntary treatment is necessary; and

(d) Mentally ill individuals need some method of expressing their instructions and preferences for treatment and providing advance consent to or refusal of treatment.

The legislature recognizes that a mental health advance directive can be an essential tool for an individual to express his or her choices at a time when the effects of mental illness have not deprived him or her of the power to express his or her instructions or preferences.

(2) The legislature further finds that:

(a) A mental health advance directive must provide the individual with a full range of choices;

(b) Mentally ill individuals have varying perspectives on whether they want to be able to revoke a directive during periods of incapacity;

(c) For a mental health advance directive to be an effective tool, individuals must be able to choose how they want their directives treated during periods of incapacity; and

(d) There must be clear standards so that treatment providers can readily discern an individual's treatment choices.

Consequently, the legislature affirms that, pursuant to other provisions of law, a validly executed mental health advance directive is to be respected by agents, guardians, and other surrogate decision makers, health care providers, professional persons, and health care facilities. [2003 c 283 § 1.]

**71.32.020 Definitions.** The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Adult" means any individual who has attained the age of majority or is an emancipated minor.

(2) "Agent" has the same meaning as an attorney-in-fact or agent as provided in chapter 11.94 RCW.

(3) "Capacity" means that an adult has not been found to be incapacitated pursuant to this chapter or RCW 11.88.010(1)(e).

(4) "Court" means a superior court under chapter 2.08 RCW.

(5) "Health care facility" means a hospital, as defined in RCW 70.41.020; an institution, as defined in RCW 71.12.455; a state hospital, as defined in RCW 72.23.010; a nursing home, as defined in RCW 18.51.010; or a clinic that is part of a community mental health service delivery system, as defined in RCW 71.24.025.

(6) "Health care provider" means an osteopathic physician or osteopathic physician's assistant licensed under chapter 18.57 or 18.57A RCW, a physician or physician's assistant licensed under chapter 18.71 or 18.71A RCW, or an advanced registered nurse practitioner licensed under RCW 18.79.050.

(7) "Incapacitated" means an adult who: (a) Is unable to understand the nature, character, and anticipated results of proposed treatment or alternatives; understand the recognized serious possible risks, complications, and anticipated benefits in treatments and alternatives, including nontreatment; or communicate his or her understanding or treatment decisions; or (b) has been found to be incompetent pursuant to RCW 11.88.010(1)(e).

(8) "Informed consent" means consent that is given after the person: (a) Is provided with a description of the nature, character, and anticipated results of proposed treatments and alternatives, and the recognized serious possible risks, complications, and anticipated benefits in the treatments and alternatives, including nontreatment, in language that the person can reasonably be expected to understand; or (b) elects not to be given the information included in (a) of this subsection.

(9) "Long-term care facility" has the same meaning as defined in RCW 43.190.020.

(10) "Mental disorder" means any organic, mental, or emotional impairment which has substantial adverse effects on an individual's cognitive or volitional functions.

(11) "Mental health advance directive" or "directive" means a written document in which the principal makes a declaration of instructions or preferences or appoints an agent to make decisions on behalf of the principal regarding the principal's mental health treatment, or both, and that is consistent with the provisions of this chapter.

(12) "Mental health professional" means a psychiatrist, psychologist, psychiatric nurse, or social worker, and such other mental health professionals as may be defined by rules adopted by the secretary pursuant to the provisions of chapter 71.05 RCW.

(13) "Principal" means an adult who has executed a mental health advance directive.

(14) "Professional person" means a mental health professional and shall also mean a physician, registered nurse, and such others as may be defined by rules adopted by the secretary pursuant to the provisions of chapter 71.05 RCW. [2003 c 283 § 2.]

**71.32.030 Construction of definitions.** (1) The definition of informed consent is to be construed to be consistent with that term as it is used in chapter 7.70 RCW.

(2) The definitions of mental disorder, mental health professional, and professional person are to be construed to be consistent with those terms as they are defined in RCW 71.05.020. [2003 c 283 § 3.]

**71.32.040 Adult presumed to have capacity.** For the purposes of this chapter, an adult is presumed to have capacity. [2003 c 283 § 4.]

**71.32.050 Execution of directive—Scope.** (1) An adult with capacity may execute a mental health advance directive.

(2) A directive executed in accordance with this chapter is presumed to be valid. The inability to honor one or more provisions of a directive does not affect the validity of the remaining provisions.

(3) A directive may include any provision relating to mental health treatment or the care of the principal or the principal's personal affairs. Without limitation, a directive may include:

(a) The principal's preferences and instructions for mental health treatment;

(b) Consent to specific types of mental health treatment;

(c) Refusal to consent to specific types of mental health treatment;

(d) Consent to admission to and retention in a facility for mental health treatment for up to fourteen days;

(e) Descriptions of situations that may cause the principal to experience a mental health crisis;

(f) Suggested alternative responses that may supplement or be in lieu of direct mental health treatment, such as treatment approaches from other providers;

(g) Appointment of an agent pursuant to chapter 11.94 RCW to make mental health treatment decisions on the principal's behalf, including authorizing the agent to provide consent on the principal's behalf to voluntary admission to inpatient mental health treatment; and

(h) The principal's nomination of a guardian or limited guardian as provided in RCW 11.94.010 for consideration by the court if guardianship proceedings are commenced.

(4) A directive may be combined with or be independent of a nomination of a guardian or other durable power of attorney under chapter 11.94 RCW, so long as the processes for each are executed in accordance with its own statutes. [2003 c 283 § 5.]

**71.32.060 Execution of directive—Elements—Effective date—Expiration.** (1) A directive shall:

(a) Be in writing;

(b) Contain language that clearly indicates that the principal intends to create a directive;

(c) Be dated and signed by the principal or at the principal's direction in the principal's presence if the principal is unable to sign;

(d) Designate whether the principal wishes to be able to revoke the directive during any period of incapacity or wishes to be unable to revoke the directive during any period of incapacity; and

(e) Be witnessed in writing by at least two adults, each of whom shall declare that he or she personally knows the principal, was present when the principal dated and signed the directive, and that the principal did not appear to be incapacitated or acting under fraud, undue influence, or duress.

(2) A directive that includes the appointment of an agent under chapter 11.94 RCW shall contain the words "This power of attorney shall not be affected by the incapacity of

(2010 Ed.)

the principal," or "This power of attorney shall become effective upon the incapacity of the principal," or similar words showing the principal's intent that the authority conferred shall be exercisable notwithstanding the principal's incapacity.

(3) A directive is valid upon execution, but all or part of the directive may take effect at a later time as designated by the principal in the directive.

(4) A directive may:

(a) Be revoked, in whole or in part, pursuant to the provisions of RCW 71.32.080; or

(b) Expire under its own terms. [2003 c 283 § 6.]

**71.32.070 Prohibited elements.** A directive may not:

(1) Create an entitlement to mental health or medical treatment or supersede a determination of medical necessity;

(2) Obligate any health care provider, professional person, or health care facility to pay the costs associated with the treatment requested;

(3) Obligate any health care provider, professional person, or health care facility to be responsible for the nontreatment personal care of the principal or the principal's personal affairs outside the scope of services the facility normally provides;

(4) Replace or supersede the provisions of any will or testamentary document or supersede the provisions of intestate succession;

(5) Be revoked by an incapacitated principal unless that principal selected the option to permit revocation while incapacitated at the time his or her directive was executed; or

(6) Be used as the authority for inpatient admission for more than fourteen days in any twenty-one day period. [2003 c 283 § 7.]

**71.32.080 Revocation—Waiver.** (1)(a) A principal with capacity may, by written statement by the principal or at the principal's direction in the principal's presence, revoke a directive in whole or in part.

(b) An incapacitated principal may revoke a directive only if he or she elected at the time of executing the directive to be able to revoke when incapacitated.

(2) The revocation need not follow any specific form so long as it is written and the intent of the principal can be discerned. In the case of a directive that is stored in the health care declarations registry created by RCW 70.122.130, the revocation may be by an online method established by the department of health. Failure to use the online method of revocation for a directive that is stored in the registry does not invalidate a revocation that is made by another method described under this section.

(3) The principal shall provide a copy of his or her written statement of revocation to his or her agent, if any, and to each health care provider, professional person, or health care facility that received a copy of the directive from the principal.

(4) The written statement of revocation is effective:

(a) As to a health care provider, professional person, or health care facility, upon receipt. The professional person, health care provider, or health care facility, or persons acting

under their direction shall make the statement of revocation part of the principal's medical record; and

(b) As to the principal's agent, upon receipt. The principal's agent shall notify the principal's health care provider, professional person, or health care facility of the revocation and provide them with a copy of the written statement of revocation.

(5) A directive also may:

(a) Be revoked, in whole or in part, expressly or to the extent of any inconsistency, by a subsequent directive; or

(b) Be superseded or revoked by a court order, including any order entered in a criminal matter. A directive may be superseded by a court order regardless of whether the order contains an explicit reference to the directive. To the extent a directive is not in conflict with a court order, the directive remains effective, subject to the provisions of RCW 71.32.150. A directive shall not be interpreted in a manner that interferes with: (i) Incarceration or detention by the department of corrections, in a city or county jail, or by the department of social and health services; or (ii) treatment of a principal who is subject to involuntary treatment pursuant to chapter 10.77, 70.96A, 71.05, 71.09, or 71.34 RCW.

(6) A directive that would have otherwise expired but is effective because the principal is incapacitated remains effective until the principal is no longer incapacitated unless the principal has elected to be able to revoke while incapacitated and has revoked the directive.

(7) When a principal with capacity consents to treatment that differs from, or refuses treatment consented to in, the provisions of his or her directive, the consent or refusal constitutes a waiver of that provision and does not constitute a revocation of the provision or directive unless the principal also revokes the directive or provision. [2006 c 108 § 5; 2003 c 283 § 8.]

**Finding—Intent—2006 c 108:** See note following RCW 70.122.130.

**71.32.090 Witnesses.** A witness may not be any of the following:

(1) A person designated to make health care decisions on the principal's behalf;

(2) A health care provider or professional person directly involved with the provision of care to the principal at the time the directive is executed;

(3) An owner, operator, employee, or relative of an owner or operator of a health care facility or long-term care facility in which the principal is a patient or resident;

(4) A person who is related by blood, marriage, or adoption to the person or with whom the principal has a dating relationship, as defined in RCW 26.50.010;

(5) A person who is declared to be an incapacitated person; or

(6) A person who would benefit financially if the principal making the directive undergoes mental health treatment. [2003 c 283 § 9.]

**71.32.100 Appointment of agent.** (1) If a directive authorizes the appointment of an agent, the provisions of chapter 11.94 RCW and RCW 7.70.065 shall apply unless otherwise stated in this chapter.

(2) The principal who appoints an agent must notify the agent in writing of the appointment.

(3) An agent must act in good faith.

(4) An agent may make decisions on behalf of the principal. Unless the principal has revoked the directive, the decisions must be consistent with the instructions and preferences the principal has expressed in the directive, or if not expressed, as otherwise known to the agent. If the principal's instructions or preferences are not known, the agent shall make a decision he or she determines is in the best interest of the principal.

(5) Except to the extent the right is limited by the appointment or any federal or state law, the agent has the same right as the principal to receive, review, and authorize the use and disclosure of the principal's health care information when the agent is acting on behalf of the principal and to the extent required for the agent to carry out his or her duties. This subsection shall be construed to be consistent with chapters 70.02, 70.24, 70.96A, 71.05, and 71.34 RCW, and with federal law regarding health care information.

(6) Unless otherwise provided in the appointment and agreed to in writing by the agent, the agent is not, as a result of acting in the capacity of agent, personally liable for the cost of treatment provided to the principal.

(7) An agent may resign or withdraw at any time by giving written notice to the principal. The agent must also give written notice to any health care provider, professional person, or health care facility providing treatment to the principal. The resignation or withdrawal is effective upon receipt unless otherwise specified in the resignation or withdrawal.

(8) If the directive gives the agent authority to act while the principal has capacity, the decisions of the principal supersede those of the agent at any time the principal has capacity.

(9) Unless otherwise provided in the durable power of attorney, the principal may revoke the agent's appointment as provided under other state law. [2003 c 283 § 10.]

**71.32.110 Determination of capacity.** (1) For the purposes of this chapter, a principal, agent, professional person, or health care provider may seek a determination whether the principal is incapacitated or has regained capacity.

(2)(a) For the purposes of this chapter, no adult may be declared an incapacitated person except by:

(i) A court, if the request is made by the principal or the principal's agent;

(ii) One mental health professional and one health care provider; or

(iii) Two health care providers.

(b) One of the persons making the determination under (a)(ii) or (iii) of this subsection must be a psychiatrist, psychologist, or a psychiatric advanced registered nurse practitioner.

(3) When a professional person or health care provider requests a capacity determination, he or she shall promptly inform the principal that:

(a) A request for capacity determination has been made; and

(b) The principal may request that the determination be made by a court.

(4) At least one mental health professional or health care provider must personally examine the principal prior to making a capacity determination.

(5)(a) When a court makes a determination whether a principal has capacity, the court shall, at a minimum, be informed by the testimony of one mental health professional familiar with the principal and shall, except for good cause, give the principal an opportunity to appear in court prior to the court making its determination.

(b) To the extent that local court rules permit, any party or witness may testify telephonically.

(6) When a court has made a determination regarding a principal's capacity and there is a subsequent change in the principal's condition, subsequent determinations whether the principal is incapacitated may be made in accordance with any of the provisions of subsection (2) of this section. [2003 c 283 § 11.]

**71.32.120 Action to contest directive.** A principal may bring an action to contest the validity of his or her directive. If an action under this section is commenced while an action to determine the principal's capacity is pending, the court shall consolidate the actions and decide the issues simultaneously. [2003 c 283 § 12.]

**71.32.130 Determination of capacity—Reevaluations of capacity.** (1) An initial determination of capacity must be completed within forty-eight hours of a request made by a person authorized in RCW 71.32.110. During the period between the request for an initial determination of the principal's capacity and completion of that determination, the principal may not be treated unless he or she consents at the time or treatment is otherwise authorized by state or federal law.

(2)(a)(i) When an incapacitated principal is admitted to inpatient treatment pursuant to the provisions of his or her directive, his or her capacity must be reevaluated within seventy-two hours or when there has been a change in the principal's condition that indicates that he or she appears to have regained capacity, whichever occurs first.

(ii) When an incapacitated principal has been admitted to and remains in inpatient treatment for more than seventy-two hours pursuant to the provisions of his or her directive, the principal's capacity must be reevaluated when there has been a change in his or her condition that indicates that he or she appears to have regained capacity.

(iii) When a principal who is being treated on an inpatient basis and has been determined to be incapacitated requests, or his or her agent requests, a redetermination of the principal's capacity the redetermination must be made within seventy-two hours.

(b) When a principal who has been determined to be incapacitated is being treated on an outpatient basis and there is a request for a redetermination of his or her capacity, the redetermination must be made within five days of the first request following a determination.

(3)(a) When a principal who has appointed an agent for mental health treatment decisions requests a determination or redetermination of capacity, the agent must make reasonable efforts to obtain the determination or redetermination.

(b) When a principal who does not have an agent for mental health treatment decisions is being treated in an inpatient facility and requests a determination or redetermination of capacity, the mental health professional or health care provider must complete the determination or, if the principal is seeking a determination from a court, must make reasonable efforts to notify the person authorized to make decisions for the principal under RCW 7.70.065 of the principal's request.

(c) When a principal who does not have an agent for mental health treatment decisions is being treated on an outpatient basis, the person requesting a capacity determination must arrange for the determination.

(4) If no determination has been made within the time frames established in subsection (1) or (2) of this section, the principal shall be considered to have capacity.

(5) When an incapacitated principal is being treated pursuant to his or her directive, a request for a redetermination of capacity does not prevent treatment. [2003 c 283 § 13.]

**71.32.140 Refusal of admission to inpatient treatment—Effect of directive.** (1) A principal who:

(a) Chose not to be able to revoke his or her directive during any period of incapacity;

(b) Consented to voluntary admission to inpatient mental health treatment, or authorized an agent to consent on the principal's behalf; and

(c) At the time of admission to inpatient treatment, refuses to be admitted, may only be admitted into inpatient mental health treatment under subsection (2) of this section.

(2) A principal may only be admitted to inpatient mental health treatment under his or her directive if, prior to admission, a member of the treating facility's professional staff who is a physician or psychiatric advanced registered nurse practitioner:

(a) Evaluates the principal's mental condition, including a review of reasonably available psychiatric and psychological history, diagnosis, and treatment needs, and determines, in conjunction with another health care provider or mental health professional, that the principal is incapacitated;

(b) Obtains the informed consent of the agent, if any, designated in the directive;

(c) Makes a written determination that the principal needs an inpatient evaluation or is in need of inpatient treatment and that the evaluation or treatment cannot be accomplished in a less restrictive setting; and

(d) Documents in the principal's medical record a summary of the physician's or psychiatric advanced registered nurse practitioner's findings and recommendations for treatment or evaluation.

(3) In the event the admitting physician is not a psychiatrist, or the advanced registered nurse practitioner is not a psychiatric advanced registered nurse practitioner, the principal shall receive a complete psychological assessment by a mental health professional within twenty-four hours of admission to determine the continued need for inpatient evaluation or treatment.

(4)(a) If it is determined that the principal has capacity, then the principal may only be admitted to, or remain in, inpatient treatment if he or she consents at the time or is

detained under the involuntary treatment provisions of chapter 70.96A, 71.05, or 71.34 RCW.

(b) If a principal who is determined by two health care providers or one mental health professional and one health care provider to be incapacitated continues to refuse inpatient treatment, the principal may immediately seek injunctive relief for release from the facility.

(5) If, at the end of the period of time that the principal or the principal's agent, if any, has consented to voluntary inpatient treatment, but no more than fourteen days after admission, the principal has not regained capacity or has regained capacity but refuses to consent to remain for additional treatment, the principal must be released during reasonable daylight hours, unless detained under chapter 70.96A, 71.05, or 71.34 RCW.

(6)(a) Except as provided in (b) of this subsection, any principal who is voluntarily admitted to inpatient mental health treatment under this chapter shall have all the rights provided to individuals who are voluntarily admitted to inpatient treatment under chapter 71.05, 71.34, or 72.23 RCW.

(b) Notwithstanding RCW 71.05.050 regarding consent to inpatient treatment for a specified length of time, the choices an incapacitated principal expressed in his or her directive shall control, provided, however, that a principal who takes action demonstrating a desire to be discharged, in addition to making statements requesting to be discharged, shall be discharged, and no principal shall be restrained in any way in order to prevent his or her discharge. Nothing in this subsection shall be construed to prevent detention and evaluation for civil commitment under chapter 71.05 RCW.

(7) Consent to inpatient admission in a directive is effective only while the professional person, health care provider, and health care facility are in substantial compliance with the material provisions of the directive related to inpatient treatment. [2009 c 217 § 12; 2004 c 39 § 2; 2003 c 283 § 14.]

**Finding—Intent—2004 c 39:** "Questions have been raised about the intent of the legislature in cross-referencing RCW 71.05.050 without further clarification in RCW 71.32.140. The legislature finds that because RCW 71.05.050 pertains to a variety of rights as well as the procedures for detaining a voluntary patient for evaluation for civil commitment, and the legislature intended only to address the right of release upon request, there is ambiguity as to whether an incapacitated person admitted pursuant to his or her mental health advance directive and seeking release can be held for evaluation for civil commitment under chapter 71.05 RCW. The legislature therefore intends to clarify the ambiguity without making any change to its intended policy as laid out in chapter 71.32 RCW." [2004 c 39 § 1.]

**71.32.150 Compliance with directive—Conditions for noncompliance.** (1) Upon receiving a directive, a health care provider, professional person, or health care facility providing treatment to the principal, or persons acting under the direction of the health care provider, professional person, or health care facility, shall make the directive a part of the principal's medical record and shall be deemed to have actual knowledge of the directive's contents.

(2) When acting under authority of a directive, a health care provider, professional person, or health care facility shall act in accordance with the provisions of the directive to the fullest extent possible, unless in the determination of the health care provider, professional person, or health care facility:

(a) Compliance with the provision would violate the accepted standard of care established in RCW 7.70.040;

(b) The requested treatment is not available;

(c) Compliance with the provision would violate applicable law; or

(d) It is an emergency situation and compliance would endanger any person's life or health.

(3)(a) In the case of a principal committed or detained under the involuntary treatment provisions of chapter 10.77, 70.96A, 71.05, 71.09, or 71.34 RCW, those provisions of a principal's directive that, in the determination of the health care provider, professional person, or health care facility, are inconsistent with the purpose of the commitment or with any order of the court relating to the commitment are invalid during the commitment.

(b) Remaining provisions of a principal's directive are advisory while the principal is committed or detained.

The treatment provider is encouraged to follow the remaining provisions of the directive, except as provided in (a) of this subsection or subsection (2) of this section.

(4) In the case of a principal who is incarcerated or committed in a state or local correctional facility, provisions of the principal's directive that are inconsistent with reasonable penological objectives or administrative hearings regarding involuntary medication are invalid during the period of incarceration or commitment. In addition, treatment may be given despite refusal of the principal or the provisions of the directive: (a) For any reason under subsection (2) of this section; or (b) if, without the benefit of the specific treatment measure, there is a significant possibility that the person will harm self or others before an improvement of the person's condition occurs.

(5)(a) If the health care provider, professional person, or health care facility is, at the time of receiving the directive, unable or unwilling to comply with any part or parts of the directive for any reason, the health care provider, professional person, or health care facility shall promptly notify the principal and, if applicable, his or her agent and shall document the reason in the principal's medical record.

(b) If the health care provider, professional person, or health care facility is acting under authority of a directive and is unable to comply with any part or parts of the directive for the reasons listed in subsection (2) or (3) of this section, the health care provider, professional person, or health care facility shall promptly notify the principal and if applicable, his or her agent, and shall document the reason in the principal's medical record.

(6) In the event that one or more parts of the directive are not followed because of one or more of the reasons set forth in subsection (2) or (4) of this section, all other parts of the directive shall be followed.

(7) If no provider-patient relationship has previously been established, nothing in this chapter requires the establishment of a provider-patient relationship. [2003 c 283 § 15.]

**71.32.160 Electroconvulsive therapy.** Where a principal consents in a directive to electroconvulsive therapy, the health care provider, professional person, or health care facility, or persons acting under the direction of the health care provider, professional person, or health care facility, shall

document the therapy and the reason it was used in the principal's medical record. [2003 c 283 § 16.]

**71.32.170 Providers—Immunity from liability—Conditions.** (1) For the purposes of this section, "provider" means a private or public agency, government entity, health care provider, professional person, health care facility, or person acting under the direction of a health care provider or professional person, health care facility, or long-term care facility.

(2) A provider is not subject to civil liability or sanctions for unprofessional conduct under the uniform disciplinary act, chapter 18.130 RCW, when in good faith and without negligence:

(a) The provider provides treatment to a principal in the absence of actual knowledge of the existence of a directive, or provides treatment pursuant to a directive in the absence of actual knowledge of the revocation of the directive;

(b) A health care provider or mental health professional determines that the principal is or is not incapacitated for the purpose of deciding whether to proceed according to a directive, and acts upon that determination;

(c) The provider administers or does not administer mental health treatment according to the principal's directive in good faith reliance upon the validity of the directive and the directive is subsequently found to be invalid;

(d) The provider does not provide treatment according to the directive for one of the reasons authorized under RCW 71.32.150; or

(e) The provider provides treatment according to the principal's directive. [2003 c 283 § 17.]

**71.32.180 Multiple directives, agents—Effect—Disclosure of court orders.** (1) Where an incapacitated principal has executed more than one valid directive and has not revoked any of the directives:

(a) The directive most recently created shall be treated as the principal's mental health treatment preferences and instructions as to any inconsistent or conflicting provisions, unless provided otherwise in either document.

(b) Where a directive executed under this chapter is inconsistent with a directive executed under any other chapter, the most recently created directive controls as to the inconsistent provisions.

(2) Where an incapacitated principal has appointed more than one agent under chapter 11.94 RCW with authority to make mental health treatment decisions, RCW 11.94.010 controls.

(3) The treatment provider shall inquire of a principal whether the principal is subject to any court orders that would affect the implementation of his or her directive. [2003 c 283 § 18.]

**71.32.190 Preexisting, foreign directives—Validity.** (1) Directives validly executed before July 27, 2003, shall be given full force and effect until revoked, superseded, or expired.

(2) A directive validly executed in another political jurisdiction is valid to the extent permitted by Washington state law. [2003 c 283 § 19.]

(2010 Ed.)

**71.32.200 Fraud, duress, undue influence—Appointment of guardian.** Any person with reasonable cause to believe that a directive has been created or revoked under circumstances amounting to fraud, duress, or undue influence may petition the court for appointment of a guardian for the person or to review the actions of the agent or person alleged to be involved in improper conduct under RCW 11.94.090 or 74.34.110. [2003 c 283 § 20.]

**71.32.210 Execution of directive not evidence of mental disorder or lack of capacity.** The fact that a person has executed a directive does not constitute an indication of mental disorder or that the person is not capable of providing informed consent. [2003 c 283 § 21.]

**71.32.220 Requiring directive prohibited.** A person shall not be required to execute or to refrain from executing a directive, nor shall the existence of a directive be used as a criterion for insurance, as a condition for receiving mental or physical health services, or as a condition of admission to or discharge from a health care facility or long-term care facility. [2003 c 283 § 22.]

**71.32.230 Coercion, threats prohibited.** No person or health care facility may use or threaten abuse, neglect, financial exploitation, or abandonment of the principal, as those terms are defined in RCW 74.34.020, to carry out the directive. [2003 c 283 § 23.]

**71.32.240 Other authority not limited.** A directive does not limit any authority otherwise provided in Title 10, 70, or 71 RCW, or any other applicable state or federal laws to detain a person, take a person into custody, or to admit, retain, or treat a person in a health care facility. [2003 c 283 § 24.]

**71.32.250 Long-term care facility residents—Readmission after inpatient mental health treatment—Evaluation, report to legislature.** (1) If a principal who is a resident of a long-term care facility is admitted to inpatient mental health treatment pursuant to his or her directive, the principal shall be allowed to be readmitted to the same long-term care facility as if his or her inpatient admission had been for a physical condition on the same basis that the principal would be readmitted under state or federal statute or rule when:

(a) The treating facility's professional staff determine that inpatient mental health treatment is no longer medically necessary for the resident. The determination shall be made in writing by a psychiatrist, psychiatric advanced registered nurse practitioner, or a mental health professional and either (i) a physician or (ii) psychiatric advanced registered nurse practitioner; or

(b) The person's consent to admission in his or her directive has expired.

(2)(a) If the long-term care facility does not have a bed available at the time of discharge, the treating facility may discharge the resident, in consultation with the resident and agent if any, and in accordance with a medically appropriate discharge plan, to another long-term care facility.

(b) This section shall apply to inpatient mental health treatment admission of long-term care facility residents, regardless of whether the admission is directly from a facility, hospital emergency room, or other location.

(c) This section does not restrict the right of the resident to an earlier release from the inpatient treatment facility. This section does not restrict the right of a long-term care facility to initiate transfer or discharge of a resident who is readmitted pursuant to this section, provided that the facility

has complied with the laws governing the transfer or discharge of a resident.

(3) The joint legislative audit and review committee shall conduct an evaluation of the operation and impact of this section. The committee shall report its findings to the appropriate committees of the legislature by December 1, 2004. [2009 c 217 § 13; 2003 c 283 § 25.]

**71.32.260 Form.** The directive shall be in substantially the following form:

Mental Health Advance Directive  
**NOTICE TO PERSONS  
CREATING A MENTAL HEALTH ADVANCE DIRECTIVE**

This is an important legal document. It creates an advance directive for mental health treatment. Before signing this document you should know these important facts:

(1) This document is called an advance directive and allows you to make decisions in advance about your mental health treatment, including medications, short-term admission to inpatient treatment and electroconvulsive therapy.

**YOU DO NOT HAVE TO FILL OUT OR SIGN THIS FORM.  
IF YOU DO NOT SIGN THIS FORM, IT WILL NOT TAKE EFFECT.**

If you choose to complete and sign this document, you may still decide to leave some items blank.

(2) You have the right to appoint a person as your agent to make treatment decisions for you. You must notify your agent that you have appointed him or her as an agent. The person you appoint has a duty to act consistently with your wishes made known by you. If your agent does not know what your wishes are, he or she has a duty to act in your best interest. Your agent has the right to withdraw from the appointment at any time.

(3) The instructions you include with this advance directive and the authority you give your agent to act will only become effective under the conditions you select in this document. You may choose to limit this directive and your agent's authority to times when you are incapacitated or to times when you are exhibiting symptoms or behavior that you specify. You may also make this directive effective immediately. No matter when you choose to make this directive effective, your treatment providers must still seek your informed consent at all times that you have capacity to give informed consent.

(4) You have the right to revoke this document in writing at any time you have capacity.

**YOU MAY NOT REVOKE THIS DIRECTIVE WHEN YOU HAVE BEEN FOUND TO BE  
INCAPACITATED UNLESS YOU HAVE SPECIFICALLY STATED IN THIS DIRECTIVE THAT  
YOU WANT IT TO BE REVOCABLE WHEN YOU ARE INCAPACITATED.**

(5) This directive will stay in effect until you revoke it unless you specify an expiration date. If you specify an expiration date and you are incapacitated at the time it expires, it will remain in effect until you have capacity to make treatment decisions again unless you chose to be able to revoke it while you are incapacitated and you revoke the directive.

(6) You cannot use your advance directive to consent to civil commitment. The procedures that apply to your advance directive are different than those provided for in the Involuntary Treatment Act. Involuntary treatment is a different process.

(7) If there is anything in this directive that you do not understand, you should ask a lawyer to explain it to you.

(8) You should be aware that there are some circumstances where your provider may not have to follow your directive.

(9) You should discuss any treatment decisions in your directive with your provider.

(10) You may ask the court to rule on the validity of your directive.

**PART I.  
STATEMENT OF INTENT TO CREATE A  
MENTAL HEALTH ADVANCE DIRECTIVE**

I, . . . . . being a person with capacity, willfully and voluntarily execute this mental health advance directive so that my choices regarding my mental health care will be carried out in circumstances when I am unable to express my instructions and preferences regarding my mental health care. If a guardian is appointed by a court to make mental health decisions for me, I intend this document to take precedence over all other means of ascertaining my intent.

The fact that I may have left blanks in this directive does not affect its validity in any way. I intend that all completed sections be followed. If I have not expressed a choice, my agent should make the decision that he or she determines is in my best interest. I intend this directive to take precedence over any other directives I have previously executed, to the extent that they are inconsistent with this document, or unless I expressly state otherwise in either document.

I understand that I may revoke this directive in whole or in part if I am a person with capacity. I understand that I cannot revoke this directive if a court, two health care providers, or one mental health professional and one health care provider find that I am an incapacitated person, unless, when I executed this directive, I chose to be able to revoke this directive while incapacitated.

I understand that, except as otherwise provided in law, revocation must be in writing. I understand that nothing in this directive, or in my refusal of treatment to which I consent in this directive, authorizes any health care provider, professional person, health care facility, or agent appointed in this directive to use or threaten to use abuse, neglect, financial exploitation, or abandonment to carry out my directive.

I understand that there are some circumstances where my provider may not have to follow my directive.

**PART II.**

**WHEN THIS DIRECTIVE IS EFFECTIVE**

*YOU MUST COMPLETE THIS PART FOR YOUR DIRECTIVE TO BE VALID.*

I intend that this directive become effective (*YOU MUST CHOOSE ONLY ONE*):

- ..... Immediately upon my signing of this directive.
- ..... If I become incapacitated.
- ..... When the following circumstances, symptoms, or behaviors occur: .....
- .....
- .....

**PART III.**

**DURATION OF THIS DIRECTIVE**

*YOU MUST COMPLETE THIS PART FOR YOUR DIRECTIVE TO BE VALID.*

I want this directive to (*YOU MUST CHOOSE ONLY ONE*):

- ..... Remain valid and in effect for an indefinite period of time.
- ..... Automatically expire ..... years from the date it was created.

**PART IV.**

**WHEN I MAY REVOKE THIS DIRECTIVE**

*YOU MUST COMPLETE THIS PART FOR THIS DIRECTIVE TO BE VALID.*

I intend that I be able to revoke this directive (*YOU MUST CHOOSE ONLY ONE*):

- ..... Only when I have capacity.  
I understand that choosing this option means I may only revoke this directive if I have capacity. I further understand that if I choose this option and become incapacitated while this directive is in effect, I may receive treatment that I specify in this directive, even if I object at the time.
- ..... Even if I am incapacitated.  
I understand that choosing this option means that I may revoke this directive even if I am incapacitated. I further understand that if I choose this option and revoke this directive while I am incapacitated I may not receive treatment that I specify in this directive, even if I want the treatment.

**PART V.**

**PREFERENCES AND INSTRUCTIONS ABOUT TREATMENT, FACILITIES, AND PHYSICIANS OR PSYCHIATRIC ADVANCED REGISTERED NURSE PRACTITIONERS**

**A. Preferences and Instructions About Physician(s) or Psychiatric Advanced Registered Nurse Practitioner(s) to be Involved in My Treatment**

I would like the physician(s) or psychiatric advanced registered nurse practitioner(s) named below to be involved in my treatment decisions:

- Dr. or PARNP ..... Contact information: .....
- Dr. or PARNP ..... Contact information: .....
- I do not wish to be treated by Dr. or PARNP .....

**B. Preferences and Instructions About Other Providers**

I am receiving other treatment or care from providers who I feel have an impact on my mental health care. I would like the following treatment provider(s) to be contacted when this directive is effective:

- Name ..... Profession ..... Contact information. ....
- Name ..... Profession ..... Contact information. ....

**C. Preferences and Instructions About Medications for Psychiatric Treatment** *(initial and complete all that apply)*

- ..... I consent, and authorize my agent (if appointed) to consent, to the following medications: .....
- ..... I do not consent, and I do not authorize my agent (if appointed) to consent, to the administration of the following medications: .....
- ..... I am willing to take the medications excluded above if my only reason for excluding them is the side effects which include..... and these side effects can be eliminated by dosage adjustment or other means
- ..... I am willing to try any other medication the hospital doctor or psychiatric advanced registered nurse practitioner recommends
- ..... I am willing to try any other medications my outpatient doctor or psychiatric advanced registered nurse practitioner recommends
- ..... I do not want to try any other medications.

**Medication Allergies**

I have allergies to, or severe side effects from, the following: .....

**Other Medication Preferences or Instructions**

..... I have the following other preferences or instructions about medications .....

**D. Preferences and Instructions About Hospitalization and Alternatives**

*(initial all that apply and, if desired, rank "1" for first choice, "2" for second choice, and so on)*

- ..... In the event my psychiatric condition is serious enough to require 24-hour care and I have no physical conditions that require immediate access to emergency medical care, I prefer to receive this care in programs/facilities designed as alternatives to psychiatric hospitalizations.
- ..... I would also like the interventions below to be tried before hospitalization is considered:
  - ..... Calling someone or having someone call me when needed.
    - Name: ..... Telephone: .....
  - ..... Staying overnight with someone
    - Name: ..... Telephone: .....
  - ..... Having a mental health service provider come to see me
  - ..... Going to a crisis triage center or emergency room
  - ..... Staying overnight at a crisis respite (temporary) bed
  - ..... Seeing a service provider for help with psychiatric medications
  - ..... Other, specify: .....

**Authority to Consent to Inpatient Treatment**

I consent, and authorize my agent (if appointed) to consent, to voluntary admission to inpatient mental health treatment for ..... days *(not to exceed 14 days)*

(Sign one):

..... If deemed appropriate by my agent (if appointed) and treating physician or psychiatric advanced registered nurse practitioner

.....  
(Signature)

or

..... Under the following circumstances (specify symptoms, behaviors, or circumstances that indicate the need for hospitalization) .....

.....  
(Signature)

..... I do **not** consent, or authorize my agent (if appointed) to consent, to inpatient treatment

.....  
(Signature)

**Hospital Preferences and Instructions**

If hospitalization is required, I prefer the following hospitals: .....

I do not consent to be admitted to the following hospitals: .....

**E. Preferences and Instructions About Preemergency**

I would like the interventions below to be tried before use of seclusion or restraint is considered (initial all that apply):

- ..... "Talk me down" one-on-one
- ..... More medication
- ..... Time out/privacy
- ..... Show of authority/force
- ..... Shift my attention to something else
- ..... Set firm limits on my behavior
- ..... Help me to discuss/vent feelings
- ..... Decrease stimulation
- ..... Offer to have neutral person settle dispute
- ..... Other, specify .....

**F. Preferences and Instructions About Seclusion, Restraint, and Emergency Medications**

If it is determined that I am engaging in behavior that requires seclusion, physical restraint, and/or emergency use of medication, I prefer these interventions in the order I have chosen (choose "1" for first choice, "2" for second choice, and so on):

- ..... Seclusion
- ..... Seclusion and physical restraint (combined)
- ..... Medication by injection
- ..... Medication in pill or liquid form

In the event that my attending physician or psychiatric advanced registered nurse practitioner decides to use medication in response to an emergency situation after due consideration of my preferences and instructions for emergency treatments stated above, I expect the choice of medication to reflect any preferences and instructions I have expressed in Part III C of this form. The preferences and instructions I express in this section regarding medication in emergency situations do not constitute consent to use of the medication for nonemergency treatment.

**G. Preferences and Instructions About Electroconvulsive Therapy (ECT or Shock Therapy)**

My wishes regarding electroconvulsive therapy are (sign one):

- ..... I do not consent, nor authorize my agent (if appointed) to consent, to the administration of electroconvulsive therapy  
.....  
(Signature)
- ..... I consent, and authorize my agent (if appointed) to consent, to the administration of electroconvulsive therapy  
.....  
(Signature)
- ..... I consent, and authorize my agent (if appointed) to consent, to the administration of electroconvulsive therapy, but only under the following conditions: .....
- .....  
(Signature)

**H. Preferences and Instructions About Who is Permitted to Visit**

If I have been admitted to a mental health treatment facility, the following people are not permitted to visit me there:

- Name: .....
- Name: .....
- Name: .....

I understand that persons not listed above may be permitted to visit me.

**I. Additional Instructions About My Mental Health Care**

Other instructions about my mental health care: .....

In case of emergency, please contact:

Name: ..... Address: .....

Work telephone: ..... Home telephone: .....

Physician or Psychiatric Advanced Registered Nurse Practitioner: ..... Address: .....

Telephone: .....

The following may help me to avoid a hospitalization: .....

I generally react to being hospitalized as follows: .....

Staff of the hospital or crisis unit can help me by doing the following: .....

**J. Refusal of Treatment**

I do not consent to any mental health treatment.

.....  
(Signature)

**PART VI.  
DURABLE POWER OF ATTORNEY (APPOINTMENT OF MY AGENT)**

*(Fill out this part only if you wish to appoint an agent or nominate a guardian.)*

I authorize an agent to make mental health treatment decisions on my behalf. The authority granted to my agent includes the right to consent, refuse consent, or withdraw consent to any mental health care, treatment, service, or procedure, consistent with any instructions and/or limitations I have set forth in this directive. I intend that those decisions should be made in accordance with my expressed wishes as set forth in this document. If I have not expressed a choice in this document **and my agent does not otherwise know my wishes**, I authorize my agent to make the decision that my agent determines is in my best interest. This agency shall not be affected by my incapacity. Unless I state otherwise in this durable power of attorney, I may revoke it unless prohibited by other state law.

**A. Designation of an Agent**

I appoint the following person as my agent to make mental health treatment decisions for me as authorized in this document and request that this person be notified immediately when this directive becomes effective:

Name: ..... Address: .....

Work telephone: ..... Home telephone: .....

Relationship: .....

**B. Designation of Alternate Agent**

If the person named above is unavailable, unable, or refuses to serve as my agent, or I revoke that person's authority to serve as my agent, I hereby appoint the following person as my alternate agent and request that this person be notified immediately when this directive becomes effective or when my original agent is no longer my agent:

Name: ..... Address: .....

Work telephone: ..... Home telephone: .....

Relationship: .....

**C. When My Spouse is My Agent (initial if desired)**

..... If my spouse is my agent, that person shall remain my agent even if we become legally separated or our marriage is dissolved, unless there is a court order to the contrary or I have remarried.

**D. Limitations on My Agent's Authority**

I do not grant my agent the authority to consent on my behalf to the following:

.....  
.....

**E. Limitations on My Ability to Revoke this Durable Power of Attorney**

I choose to limit my ability to revoke this durable power of attorney as follows:

.....  
.....

**F. Preference as to Court-Appointed Guardian**

In the event a court appoints a guardian who will make decisions regarding my mental health treatment, I **nominate** the following person **as my guardian**:

Name: ..... Address: .....  
Work telephone: ..... Home telephone: .....  
Relationship: .....

The appointment of a guardian of my estate or my person or any other decision maker shall not give the guardian or decision maker the power to revoke, suspend, or terminate this directive or the powers of my agent, except as authorized by law.

.....  
(Signature required if nomination is made)

**PART VII.  
OTHER DOCUMENTS**

*(Initial all that apply)*

I have executed the following documents that include the power to make decisions regarding health care services for myself:

- ..... Health care power of attorney (chapter 11.94 RCW)
- ..... "Living will" (Health care directive; chapter 70.122 RCW)
- ..... I have appointed more than one agent. I understand that the most recently appointed agent controls except as stated below:

**PART VIII.  
NOTIFICATION OF OTHERS AND CARE OF PERSONAL AFFAIRS**

*(Fill out this part only if you wish to provide nontreatment instructions.)*

I understand the preferences and instructions in this part are **NOT** the responsibility of my treatment provider and that no treatment provider is required to act on them.

**A. Who Should Be Notified**

I desire my agent to notify the following individuals as soon as possible when this directive becomes effective:

Name: ..... Address: .....  
Day telephone: ..... Evening telephone: .....  
Name: ..... Address: .....  
Day telephone: ..... Evening telephone: .....

**B. Preferences or Instructions About Personal Affairs**

I have the following preferences or instructions about my personal affairs (e.g., care of dependents, pets, household) if I am admitted to a mental health treatment facility:

.....  
.....

**C. Additional Preferences and Instructions:**

.....  
.....  
.....

**PART IX.  
SIGNATURE**

By signing here, I indicate that I understand the purpose and effect of this document and that I am giving my informed consent to the treatments and/or admission to which I have consented or authorized my agent to consent in this directive. I intend that my consent in this directive be construed as being consistent with the elements of informed consent under chapter 7.70 RCW.

Signature: ..... Date: .....  
Printed Name: .....

This directive was signed and declared by the "Principal," to be his or her directive, in our presence who, at his or her request, have signed our names below as witnesses. We declare that, at the time of the creation of this instrument, the Principal is personally known to us, and, according to our best knowledge and belief, has capacity at this time and does not appear to be acting under duress, undue influence, or fraud. We further declare that none of us is:

- (A) A person designated to make medical decisions on the principal's behalf;
- (B) A health care provider or professional person directly involved with the provision of care to the principal at the time the directive is executed;
- (C) An owner, operator, employee, or relative of an owner or operator of a health care facility or long-term care facility in which the principal is a patient or resident;
- (D) A person who is related by blood, marriage, or adoption to the person, or with whom the principal has a dating relationship as defined in RCW 26.50.010;
- (E) An incapacitated person;
- (F) A person who would benefit financially if the principal undergoes mental health treatment; or
- (G) A minor.

Witness 1: Signature: ..... Date: .....  
 Printed Name: .....  
 Telephone: ..... Address: .....

Witness 2: Signature: ..... Date: .....  
 Printed Name: .....  
 Telephone: ..... Address: .....

**PART X.  
RECORD OF DIRECTIVE**

I have given a copy of this directive to the following persons: .....

DO NOT FILL OUT PART XI UNLESS YOU INTEND TO REVOKE THIS DIRECTIVE IN PART OR IN WHOLE

**PART XI.  
REVOCAION OF THIS DIRECTIVE**

(Initial any that apply):

..... I am revoking the following part(s) of this directive (specify): .....

..... I am revoking all of this directive.

By signing here, I indicate that I understand the purpose and effect of my revocation and that no person is bound by any revoked provision(s). I intend this revocation to be interpreted as if I had never completed the revoked provision(s).

Signature: ..... Date: .....  
 Printed Name: .....

**DO NOT SIGN THIS PART UNLESS YOU INTEND TO REVOKE THIS DIRECTIVE IN PART OR IN WHOLE**

[2009 c 217 § 14; 2003 c 283 § 26.]

**71.32.900 Severability—2003 c 283.** If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [2003 c 283 § 35.]

**71.32.901 Part headings not law—2003 c 283.** Part headings used in this act are not any part of the law. [2003 c 283 § 38.]

**71.32.902 Construction—Chapter applicable to state registered domestic partnerships—2009 c 521.** For the purposes of this chapter, the terms spouse, marriage, marital,

husband, wife, widow, widower, next of kin, and family shall be interpreted as applying equally to state registered domestic partnerships or individuals in state registered domestic partnerships as well as to marital relationships and married persons, and references to dissolution of marriage shall apply equally to state registered domestic partnerships that have been terminated, dissolved, or invalidated, to the extent that such interpretation does not conflict with federal law. Where necessary to implement chapter 521, Laws of 2009, gender-specific terms such as husband and wife used in any statute, rule, or other law shall be construed to be gender neutral, and applicable to individuals in state registered domestic partnerships. [2009 c 521 § 161.]

## Chapter 71.34 RCW

## MENTAL HEALTH SERVICES FOR MINORS

## Sections

- 71.34.010 Purpose—Parental participation in treatment decisions—  
Parental control of minor children during treatment.
- 71.34.020 Definitions.
- GENERAL
- 71.34.300 Responsibility of counties for evaluation and treatment ser-  
vices for minors.
- 71.34.305 Notice to parents, school contacts for referring students to  
inpatient treatment.
- 71.34.310 Jurisdiction over proceedings under chapter—Venue.
- 71.34.315 Mental health commissioners—Authority.
- 71.34.320 Transfer of superior court proceedings to juvenile department.
- 71.34.325 Court proceedings under chapter subject to rules of state  
supreme court.
- 71.34.330 Attorneys appointed for minors—Compensation.
- 71.34.335 Court records and files confidential—Availability.
- 71.34.340 Information concerning treatment of minors confidential—  
Disclosure—Admissible as evidence with written consent.
- 71.34.345 Mental health services information—Release to department of  
corrections—Rules.
- 71.34.350 Disclosure of information or records—Required entries in  
minor's clinical record.
- 71.34.355 Rights of minors undergoing treatment—Posting.
- 71.34.360 No detention of minors after eighteenth birthday—Exceptions.
- 71.34.365 Release of minor—Requirements.
- 71.34.370 Antipsychotic medication and shock treatment.
- 71.34.375 Parent-initiated treatment—Notice to parents of available  
treatment options.
- 71.34.380 Department to adopt rules to effectuate chapter.
- 71.34.385 Uniform application of chapter—Training for county-desig-  
nated mental health professionals.
- 71.34.390 Redirection of Title XIX funds to fund placements within the  
state.
- 71.34.395 Availability of treatment does not create right to obtain public  
funds.
- 71.34.400 Eligibility for medical assistance under chapter 74.09 RCW—  
Payment by department.
- 71.34.405 Liability for costs of minor's treatment and care—Rules.
- 71.34.410 Liability for performance of duties under this chapter limited.
- MINOR-INITIATED TREATMENT
- 71.34.500 Minor thirteen or older may be admitted for inpatient mental  
treatment without parental consent—Professional person in  
charge must concur—Written renewal of consent required.
- 71.34.510 Notice to parents when minor admitted to inpatient treatment  
without parental consent.
- 71.34.520 Minor voluntarily admitted may give notice to leave at any  
time.
- 71.34.530 Age of consent—Outpatient treatment of minors.
- PARENT-INITIATED TREATMENT
- 71.34.600 Parent may request determination whether minor has mental  
disorder requiring inpatient treatment—Minor consent not  
required—Duties and obligations of professional person and  
facility.
- 71.34.610 Review of admission and inpatient treatment of minors—  
Determination of medical necessity—Department review—  
Minor declines necessary treatment—At-risk youth peti-  
tion—Costs—Public funds.
- 71.34.620 Minor may petition court for release from facility.
- 71.34.630 Minor not released by petition under RCW 71.34.620—  
Release within thirty days—Professional may initiate pro-  
ceedings to stop release.
- 71.34.640 Evaluation of treatment of minors.
- 71.34.650 Parent may request determination whether minor has mental  
disorder requiring outpatient treatment—Consent of minor  
not required—Discharge of minor.
- 71.34.660 Limitation on liability for admitting or accepting minor child.
- INVOLUNTARY COMMITMENT
- 71.34.700 Evaluation of minor thirteen or older brought for immediate  
mental health services—Temporary detention.
- 71.34.710 Minor thirteen or older who presents likelihood of serious  
harm or is gravely disabled—Transport to inpatient facil-  
ity—Petition for initial detention—Notice of commitment  
hearing—Facility to evaluate and admit or release minor.

- 71.34.720 Examination and evaluation of minor approved for inpatient  
admission—Referral to chemical dependency treatment pro-  
gram—Right to communication, exception—Evaluation and  
treatment period.
- 71.34.730 Petition for fourteen-day commitment—Requirements.
- 71.34.740 Commitment hearing—Requirements—Findings by court—  
Commitment—Release.
- 71.34.750 Petition for one hundred eighty-day commitment—Hearing—  
Requirements—Findings by court—Commitment order—  
Release—Successive commitments.
- 71.34.760 Placement of minor in state evaluation and treatment facility—  
Placement committee—Facility to report to committee.
- 71.34.770 Release of minor—Conditional release—Discharge.
- 71.34.780 Minor's failure to adhere to outpatient conditions—Deterioration  
of minor's functioning—Transport to inpatient facil-  
ity—Order of apprehension and detention—Revocation of  
alternative treatment or conditional release—Hearings.
- 71.34.790 Transportation for minors committed to state facility for one  
hundred eighty-day treatment.
- 71.34.795 Transferring or moving persons from juvenile correctional  
institutions or facilities to evaluation and treatment facilities.
- 71.34.900 Severability—1985 c 354.
- 71.34.901 Effective date—1985 c 354.

*Court files and records closed—Exceptions: RCW 71.05.620.*

**71.34.010 Purpose—Parental participation in treatment decisions—Parental control of minor children during treatment.** It is the purpose of this chapter to assure that minors in need of mental health care and treatment receive an appropriate continuum of culturally relevant care and treatment, including prevention and early intervention, self-directed care, parent-directed care, and involuntary treatment. To facilitate the continuum of care and treatment to minors in out-of-home placements, all divisions of the department that provide mental health services to minors shall jointly plan and deliver those services.

It is also the purpose of this chapter to protect the rights of minors against needless hospitalization and deprivations of liberty and to enable treatment decisions to be made in response to clinical needs in accordance with sound professional judgment. The mental health care and treatment providers shall encourage the use of voluntary services and, whenever clinically appropriate, the providers shall offer less restrictive alternatives to inpatient treatment. Additionally, all mental health care and treatment providers shall assure that minors' parents are given an opportunity to participate in the treatment decisions for their minor children. The mental health care and treatment providers shall, to the extent possible, offer services that involve minors' parents or family.

It is also the purpose of this chapter to assure the ability of parents to exercise reasonable, compassionate care and control of their minor children when there is a medical necessity for treatment and without the requirement of filing a petition under this chapter. [1998 c 296 § 7; 1992 c 205 § 302; 1985 c 354 § 1.]

**Findings—Intent—Part headings not law—Short title—1998 c 296:**  
See notes following RCW 74.13.025.

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**71.34.020 Definitions.** Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Child psychiatrist" means a person having a license as a physician and surgeon in this state, who has had graduate training in child psychiatry in a program approved by the American Medical Association or the American Osteopathic

Association, and who is board eligible or board certified in child psychiatry.

(2) "Children's mental health specialist" means:

(a) A mental health professional who has completed a minimum of one hundred actual hours, not quarter or semester hours, of specialized training devoted to the study of child development and the treatment of children; and

(b) A mental health professional who has the equivalent of one year of full-time experience in the treatment of children under the supervision of a children's mental health specialist.

(3) "Commitment" means a determination by a judge or court commissioner, made after a commitment hearing, that the minor is in need of inpatient diagnosis, evaluation, or treatment or that the minor is in need of less restrictive alternative treatment.

(4) "Department" means the department of social and health services.

(5) "Designated mental health professional" means a mental health professional designated by one or more counties to perform the functions of a designated mental health professional described in this chapter.

(6) "Evaluation and treatment facility" means a public or private facility or unit that is certified by the department to provide emergency, inpatient, residential, or outpatient mental health evaluation and treatment services for minors. A physically separate and separately-operated portion of a state hospital may be designated as an evaluation and treatment facility for minors. A facility which is part of or operated by the department or federal agency does not require certification. No correctional institution or facility, juvenile court detention facility, or jail may be an evaluation and treatment facility within the meaning of this chapter.

(7) "Evaluation and treatment program" means the total system of services and facilities coordinated and approved by a county or combination of counties for the evaluation and treatment of minors under this chapter.

(8) "Gravely disabled minor" means a minor who, as a result of a mental disorder, is in danger of serious physical harm resulting from a failure to provide for his or her essential human needs of health or safety, or manifests severe deterioration in routine functioning evidenced by repeated and escalating loss of cognitive or volitional control over his or her actions and is not receiving such care as is essential for his or her health or safety.

(9) "Inpatient treatment" means twenty-four-hour-per-day mental health care provided within a general hospital, psychiatric hospital, or residential treatment facility certified by the department as an evaluation and treatment facility for minors.

(10) "Less restrictive alternative" or "less restrictive setting" means outpatient treatment provided to a minor who is not residing in a facility providing inpatient treatment as defined in this chapter.

(11) "Likelihood of serious harm" means either: (a) A substantial risk that physical harm will be inflicted by an individual upon his or her own person, as evidenced by threats or attempts to commit suicide or inflict physical harm on oneself; (b) a substantial risk that physical harm will be inflicted by an individual upon another, as evidenced by behavior which has caused such harm or which places another person

or persons in reasonable fear of sustaining such harm; or (c) a substantial risk that physical harm will be inflicted by an individual upon the property of others, as evidenced by behavior which has caused substantial loss or damage to the property of others.

(12) "Medical necessity" for inpatient care means a requested service which is reasonably calculated to: (a) Diagnose, correct, cure, or alleviate a mental disorder; or (b) prevent the worsening of mental conditions that endanger life or cause suffering and pain, or result in illness or infirmity or threaten to cause or aggravate a handicap, or cause physical deformity or malfunction, and there is no adequate less restrictive alternative available.

(13) "Mental disorder" means any organic, mental, or emotional impairment that has substantial adverse effects on an individual's cognitive or volitional functions. The presence of alcohol abuse, drug abuse, juvenile criminal history, antisocial behavior, or intellectual disabilities alone is insufficient to justify a finding of "mental disorder" within the meaning of this section.

(14) "Mental health professional" means a psychiatrist, psychologist, psychiatric nurse, or social worker, and such other mental health professionals as may be defined by rules adopted by the secretary under this chapter.

(15) "Minor" means any person under the age of eighteen years.

(16) "Outpatient treatment" means any of the nonresidential services mandated under chapter 71.24 RCW and provided by licensed services providers as identified by RCW 71.24.025.

(17) "Parent" means:

(a) A biological or adoptive parent who has legal custody of the child, including either parent if custody is shared under a joint custody agreement; or

(b) A person or agency judicially appointed as legal guardian or custodian of the child.

(18) "Professional person in charge" or "professional person" means a physician or other mental health professional empowered by an evaluation and treatment facility with authority to make admission and discharge decisions on behalf of that facility.

(19) "Psychiatric nurse" means a registered nurse who has a bachelor's degree from an accredited college or university, and who has had, in addition, at least two years' experience in the direct treatment of persons who have a mental illness or who are emotionally disturbed, such experience gained under the supervision of a mental health professional. "Psychiatric nurse" shall also mean any other registered nurse who has three years of such experience.

(20) "Psychiatrist" means a person having a license as a physician in this state who has completed residency training in psychiatry in a program approved by the American Medical Association or the American Osteopathic Association, and is board eligible or board certified in psychiatry.

(21) "Psychologist" means a person licensed as a psychologist under chapter 18.83 RCW.

(22) "Responsible other" means the minor, the minor's parent or estate, or any other person legally responsible for support of the minor.

(23) "Secretary" means the secretary of the department or secretary's designee.

(24) "Start of initial detention" means the time of arrival of the minor at the first evaluation and treatment facility offering inpatient treatment if the minor is being involuntarily detained at the time. With regard to voluntary patients, "start of initial detention" means the time at which the minor gives notice of intent to leave under the provisions of this chapter. [2010 c 94 § 20; 2006 c 93 § 2; 1998 c 296 § 8; 1985 c 354 § 2.]

**Purpose—2010 c 94:** See note following RCW 44.04.280.

**Findings—Intent—Part headings not law—Short title—1998 c 296:** See notes following RCW 74.13.025.

## GENERAL

**71.34.300 Responsibility of counties for evaluation and treatment services for minors.** (1) The county or combination of counties is responsible for development and coordination of the evaluation and treatment program for minors, for incorporating the program into the county mental health plan, and for coordination of evaluation and treatment services and resources with the community mental health program required under chapter 71.24 RCW.

(2) The county shall be responsible for maintaining its support of involuntary treatment services for minors at its 1984 level, adjusted for inflation, with the department responsible for additional costs to the county resulting from this chapter. [1985 c 354 § 14. Formerly RCW 71.34.140.]

**71.34.305 Notice to parents, school contacts for referring students to inpatient treatment.** School district personnel who contact a mental health inpatient treatment program or provider for the purpose of referring a student to inpatient treatment shall provide the parents with notice of the contact within forty-eight hours. [1996 c 133 § 6. Formerly RCW 71.34.032.]

**Findings—Short title—Intent—Construction—1996 c 133:** See notes following RCW 13.32A.197.

**71.34.310 Jurisdiction over proceedings under chapter—Venue.** (1) The superior court has jurisdiction over proceedings under this chapter.

(2) A record of all petitions and proceedings under this chapter shall be maintained by the clerk of the superior court in the county in which the petition or proceedings was initiated.

(3) Petitions for commitment shall be filed and venue for hearings under this chapter shall be in the county in which the minor is being detained. The court may, for good cause, transfer the proceeding to the county of the minor's residence, or to the county in which the alleged conduct evidencing need for commitment occurred. If the county of detention is changed, subsequent petitions may be filed in the county in which the minor is detained without the necessity of a change of venue. [1985 c 354 § 26. Formerly RCW 71.34.250.]

**71.34.315 Mental health commissioners—Authority.** The judges of the superior court of the county by majority vote may authorize mental health commissioners, appointed pursuant to RCW 71.05.135, to perform any or all of the following duties:

(2010 Ed.)

(1) Receive all applications, petitions, and proceedings filed in the superior court for the purpose of disposing of them pursuant to this chapter;

(2) Investigate the facts upon which to base warrants, subpoenas, orders to directions in actions, or proceedings filed pursuant to this chapter;

(3) For the purpose of this chapter, exercise all powers and perform all the duties of a court commissioner appointed pursuant to RCW 2.24.010;

(4) Hold hearings in proceedings under this chapter and make written reports of all proceedings under this chapter which shall become a part of the record of superior court;

(5) Provide such supervision in connection with the exercise of its jurisdiction as may be ordered by the presiding judge; and

(6) Cause the orders and findings to be entered in the same manner as orders and findings are entered in cases in the superior court. [1989 c 174 § 3. Formerly RCW 71.34.280.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**71.34.320 Transfer of superior court proceedings to juvenile department.** For purposes of this chapter, a superior court may transfer proceedings under this chapter to its juvenile department. [1985 c 354 § 28. Formerly RCW 71.34.260.]

**71.34.325 Court proceedings under chapter subject to rules of state supreme court.** Court procedures and proceedings provided for in this chapter shall be in accordance with rules adopted by the supreme court of the state of Washington. [1985 c 354 § 24. Formerly RCW 71.34.240.]

**71.34.330 Attorneys appointed for minors—Compensation.** Attorneys appointed for minors under this chapter shall be compensated for their services as follows:

(1) Responsible others shall bear the costs of such legal services if financially able according to standards set by the court of the county in which the proceeding is held.

(2) If all responsible others are indigent as determined by these standards, the costs of these legal services shall be borne by the county in which the proceeding is held. [1985 c 354 § 23. Formerly RCW 71.34.230.]

**71.34.335 Court records and files confidential—Availability.** The records and files maintained in any court proceeding under this chapter are confidential and available only to the minor, the minor's parent, and the minor's attorney. In addition, the court may order the subsequent release or use of these records or files only upon good cause shown if the court finds that appropriate safeguards for strict confidentiality will be maintained. [1985 c 354 § 21. Formerly RCW 71.34.210.]

**71.34.340 Information concerning treatment of minors confidential—Disclosure—Admissible as evidence with written consent.** The fact of admission and all information obtained through treatment under this chapter is confidential. Confidential information may be disclosed only:

(1) In communications between mental health professionals to meet the requirements of this chapter, in the provision of services to the minor, or in making appropriate referrals;

(2) In the course of guardianship or dependency proceedings;

(3) To persons with medical responsibility for the minor's care;

(4) To the minor, the minor's parent, and the minor's attorney, subject to RCW 13.50.100;

(5) When the minor or the minor's parent designates in writing the persons to whom information or records may be released;

(6) To the extent necessary to make a claim for financial aid, insurance, or medical assistance to which the minor may be entitled or for the collection of fees or costs due to providers for services rendered under this chapter;

(7) To the courts as necessary to the administration of this chapter;

(8) To law enforcement officers or public health officers as necessary to carry out the responsibilities of their office. However, only the fact and date of admission, and the date of discharge, the name and address of the treatment provider, if any, and the last known address shall be disclosed upon request;

(9) To law enforcement officers, public health officers, relatives, and other governmental law enforcement agencies, if a minor has escaped from custody, disappeared from an evaluation and treatment facility, violated conditions of a less restrictive treatment order, or failed to return from an authorized leave, and then only such information as may be necessary to provide for public safety or to assist in the apprehension of the minor. The officers are obligated to keep the information confidential in accordance with this chapter;

(10) To the secretary for assistance in data collection and program evaluation or research, provided that the secretary adopts rules for the conduct of such evaluation and research. The rules shall include, but need not be limited to, the requirement that all evaluators and researchers sign an oath of confidentiality substantially as follows:

"As a condition of conducting evaluation or research concerning persons who have received services from (fill in the facility, agency, or person) I, . . . . ., agree not to divulge, publish, or otherwise make known to unauthorized persons or the public any information obtained in the course of such evaluation or research regarding minors who have received services in a manner such that the minor is identifiable.

I recognize that unauthorized release of confidential information may subject me to civil liability under state law.

/s/ . . . . . "

(11) To appropriate law enforcement agencies, upon request, all necessary and relevant information in the event of a crisis or emergent situation that poses a significant and imminent risk to the public. The decision to disclose or not shall not result in civil liability for the mental health service provider or its employees so long as the decision was reached in good faith and without gross negligence;

(12) To appropriate law enforcement agencies and to a person, when the identity of the person is known to the public

or private agency, whose health and safety has been threatened, or who is known to have been repeatedly harassed, by the patient. The person may designate a representative to receive the disclosure. The disclosure shall be made by the professional person in charge of the public or private agency or his or her designee and shall include the dates of admission, discharge, authorized or unauthorized absence from the agency's facility, and only such other information that is pertinent to the threat or harassment. The decision to disclose or not shall not result in civil liability for the agency or its employees so long as the decision was reached in good faith and without gross negligence;

(13) To a minor's next of kin, attorney, guardian, or conservator, if any, the information that the minor is presently in the facility or that the minor is seriously physically ill and a statement evaluating the mental and physical condition of the minor as well as a statement of the probable duration of the minor's confinement;

(14) Upon the death of a minor, to the minor's next of kin;

(15) To a facility in which the minor resides or will reside;

(16) To law enforcement officers and to prosecuting attorneys as are necessary to enforce RCW 9.41.040(2)(a)(ii). The extent of information that may be released is limited as follows:

(a) Only the fact, place, and date of involuntary commitment, an official copy of any order or orders of commitment, and an official copy of any written or oral notice of ineligibility to possess a firearm that was provided to the person pursuant to RCW 9.41.047(1), shall be disclosed upon request;

(b) The law enforcement and prosecuting attorneys may only release the information obtained to the person's attorney as required by court rule and to a jury or judge, if a jury is waived, that presides over any trial at which the person is charged with violating RCW 9.41.040(2)(a)(ii);

(c) Disclosure under this subsection is mandatory for the purposes of the health insurance portability and accountability act.

This section shall not be construed to prohibit the compilation and publication of statistical data for use by government or researchers under standards, including standards to assure maintenance of confidentiality, set forth by the secretary. The fact of admission and all information obtained pursuant to this chapter are not admissible as evidence in any legal proceeding outside this chapter, except guardianship or dependency, without the written consent of the minor or the minor's parent. [2005 c 453 § 6; 2000 c 75 § 7; 1985 c 354 § 18. Formerly RCW 71.34.200.]

**Severability—2005 c 453:** See note following RCW 9.41.040.

**Intent—2000 c 75:** See note following RCW 71.05.445.

**71.34.345 Mental health services information—Release to department of corrections—Rules.** (1) The definitions in this subsection apply throughout this section unless the context clearly requires otherwise.

(a) "Information related to mental health services" means all information and records compiled, obtained, or maintained in the course of providing services to either voluntary or involuntary recipients of services by a mental health ser-

vice provider. This may include documents of legal proceedings under this chapter or chapter 71.05 or 10.77 RCW, or somatic health care information.

(b) "Mental health service provider" means a public or private agency that provides services to persons with mental disorders as defined under RCW 71.34.020 and receives funding from public sources. This includes evaluation and treatment facilities as defined in RCW 71.34.020, community mental health service delivery systems, or community mental health programs, as defined in RCW 71.24.025, and facilities conducting competency evaluations and restoration under chapter 10.77 RCW.

(2) Information related to mental health services delivered to a person subject to chapter 9.94A or 9.95 RCW shall be released, upon request, by a mental health service provider to department of corrections personnel for whom the information is necessary to carry out the responsibilities of their office. The information must be provided only for the purpose of completing presentence investigations, supervision of an incarcerated person, planning for and provision of supervision of a person, or assessment of a person's risk to the community. The request shall be in writing and shall not require the consent of the subject of the records.

(3) The information to be released to the department of corrections shall include all relevant records and reports, as defined by rule, necessary for the department of corrections to carry out its duties, including those records and reports identified in subsection (2) of this section.

(4) The department shall, subject to available resources, electronically, or by the most cost-effective means available, provide the department of corrections with the names, last dates of services, and addresses of specific regional support networks and mental health service providers that delivered mental health services to a person subject to chapter 9.94A or 9.95 RCW pursuant to an agreement between the departments.

(5) The department and the department of corrections, in consultation with regional support networks, mental health service providers as defined in subsection (1) of this section, mental health consumers, and advocates for persons with mental illness, shall adopt rules to implement the provisions of this section related to the type and scope of information to be released. These rules shall:

(a) Enhance and facilitate the ability of the department of corrections to carry out its responsibility of planning and ensuring community protection with respect to persons subject to sentencing under chapter 9.94A or 9.95 RCW, including accessing and releasing or disclosing information of persons who received mental health services as a minor; and

(b) Establish requirements for the notification of persons under the supervision of the department of corrections regarding the provisions of this section.

(6) The information received by the department of corrections under this section shall remain confidential and subject to the limitations on disclosure outlined in RCW 71.34.340, except as provided in RCW 72.09.585.

(7) No mental health service provider or individual employed by a mental health service provider shall be held responsible for information released to or used by the department of corrections under the provisions of this section or rules adopted under this section.

(8) Whenever federal law or federal regulations restrict the release of information contained in the treatment records of any patient who receives treatment for alcoholism or drug dependency, the release of the information may be restricted as necessary to comply with federal law and regulations.

(9) This section does not modify the terms and conditions of disclosure of information related to sexually transmitted diseases under chapter 70.24 RCW. [2004 c 166 § 8; 2002 c 39 § 1; 2000 c 75 § 2. Formerly RCW 71.34.225.]

**Severability—Effective dates—2004 c 166:** See notes following RCW 71.05.040.

**Intent—2000 c 75:** See note following RCW 71.05.445.

**71.34.350 Disclosure of information or records—Required entries in minor's clinical record.** When disclosure of information or records is made, the date and circumstances under which the disclosure was made, the name or names of the persons or agencies to whom such disclosure was made and their relationship if any, to the minor, and the information disclosed shall be entered promptly in the minor's clinical record. [1985 c 354 § 22. Formerly RCW 71.34.220.]

**71.34.355 Rights of minors undergoing treatment—Posting.** Absent a risk to self or others, minors treated under this chapter have the following rights, which shall be prominently posted in the evaluation and treatment facility:

(1) To wear their own clothes and to keep and use personal possessions;

(2) To keep and be allowed to spend a reasonable sum of their own money for canteen expenses and small purchases;

(3) To have individual storage space for private use;

(4) To have visitors at reasonable times;

(5) To have reasonable access to a telephone, both to make and receive confidential calls;

(6) To have ready access to letter-writing materials, including stamps, and to send and receive uncensored correspondence through the mails;

(7) To discuss treatment plans and decisions with mental health professionals;

(8) To have the right to adequate care and individualized treatment;

(9) Not to consent to the performance of electro-convulsive treatment or surgery, except emergency life-saving surgery, upon him or her, and not to have electro-convulsive treatment or nonemergency surgery in such circumstance unless ordered by a court pursuant to a judicial hearing in which the minor is present and represented by counsel, and the court shall appoint a psychiatrist, psychologist, psychiatric advanced registered nurse practitioner, or physician designated by the minor or the minor's counsel to testify on behalf of the minor. The minor's parent may exercise this right on the minor's behalf, and must be informed of any impending treatment;

(10) Not to have psychosurgery performed on him or her under any circumstances. [2009 c 217 § 15; 1985 c 354 § 16. Formerly RCW 71.34.160.]

**71.34.360 No detention of minors after eighteenth birthday—Exceptions.** No minor received as a voluntary

patient or committed under this chapter may be detained after his or her eighteenth birthday unless the person, upon reaching eighteen years of age, has applied for admission to an appropriate evaluation and treatment facility or unless involuntary commitment proceedings under chapter 71.05 RCW have been initiated: PROVIDED, That a minor may be detained after his or her eighteenth birthday for purposes of completing the fourteen-day diagnosis, evaluation, and treatment. [1985 c 354 § 20. Formerly RCW 71.34.190.]

**71.34.365 Release of minor—Requirements.** (1) If a minor is not accepted for admission or is released by an inpatient evaluation and treatment facility, the facility shall release the minor to the custody of the minor's parent or other responsible person. If not otherwise available, the facility shall furnish transportation for the minor to the minor's residence or other appropriate place.

(2) If the minor is released to someone other than the minor's parent, the facility shall make every effort to notify the minor's parent of the release as soon as possible.

(3) No indigent minor may be released to less restrictive alternative treatment or setting or discharged from inpatient treatment without suitable clothing, and the department shall furnish this clothing. As funds are available, the secretary may provide necessary funds for the immediate welfare of indigent minors upon discharge or release to less restrictive alternative treatment. [1985 c 354 § 17. Formerly RCW 71.34.170.]

**71.34.370 Antipsychotic medication and shock treatment.** For the purposes of administration of antipsychotic medication and shock treatment, the provisions of chapter 120, Laws of 1989 apply to minors pursuant to chapter 71.34 RCW. [1989 c 120 § 9. Formerly RCW 71.34.290.]

**71.34.375 Parent-initiated treatment—Notice to parents of available treatment options.** (1) The evaluation and treatment facility is required to promptly provide written and verbal notice of all statutorily available treatment options contained in this chapter to every parent or guardian of a minor child when the parent or guardian seeks to have his or her minor child treated at an evaluation and treatment facility.

(2) The notice must contain the following information:

(a) All current statutorily available treatment options including but not limited to those provided in this chapter; and

(b) The procedures to be followed to utilize the treatment options described in this chapter.

(3) The department shall produce, and make available, the written notification that must include, at a minimum, the information contained in subsection (2) of this section. [2003 c 107 § 1. Formerly RCW 71.34.056.]

**71.34.380 Department to adopt rules to effectuate chapter.** The department shall adopt such rules pursuant to chapter 34.05 RCW as may be necessary to effectuate the intent and purposes of this chapter, which shall include but not be limited to evaluation of the quality, effectiveness, efficiency, and use of services and facilities operating under this chapter, procedures and standards for commitment, and other

action relevant to evaluation and treatment facilities, and establishment of criteria and procedures for placement and transfer of committed minors. [1985 c 354 § 25. Formerly RCW 71.34.800.]

**71.34.385 Uniform application of chapter—Training for \*county-designated mental health professionals.** The department shall ensure that the provisions of this chapter are applied by the counties in a consistent and uniform manner. The department shall also ensure that, to the extent possible within available funds, the \*county-designated mental health professionals are specifically trained in adolescent mental health issues, the mental health civil commitment laws, and the criteria for civil commitment. [1992 c 205 § 304. Formerly RCW 71.34.805.]

**\*Reviser's note:** The term "county-designated mental health professional" as defined in RCW 71.34.020 was changed to "designated mental health professional" by 2006 c 93 § 2.

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**71.34.390 Redirection of Title XIX funds to fund placements within the state.** For the purpose of encouraging the expansion of existing evaluation and treatment facilities and the creation of new facilities, the department shall endeavor to redirect federal Title XIX funds which are expended on out-of-state placements to fund placements within the state. [1992 c 205 § 303. Formerly RCW 71.34.810.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**71.34.395 Availability of treatment does not create right to obtain public funds.** The ability of a parent to bring his or her minor child to a certified evaluation and treatment program for evaluation and treatment does not create a right to obtain or benefit from any funds or resources of the state. The state may provide services for indigent minors to the extent that funds are available. [1998 c 296 § 21. Formerly RCW 71.34.015.]

**Findings—Intent—Part headings not law—Short title—1998 c 296:** See notes following RCW 74.13.025.

**71.34.400 Eligibility for medical assistance under chapter 74.09 RCW—Payment by department.** For purposes of eligibility for medical assistance under chapter 74.09 RCW, minors in inpatient mental health treatment shall be considered to be part of their parent's or legal guardian's household, unless the minor has been assessed by the department or its designee as likely to require such treatment for at least ninety consecutive days, or is in out-of-home care in accordance with chapter 13.34 RCW, or the parents are found to not be exercising responsibility for care and control of the minor. Payment for such care by the department shall be made only in accordance with rules, guidelines, and clinical criteria applicable to inpatient treatment of minors established by the department. [1998 c 296 § 11. Formerly RCW 71.34.027.]

**Findings—Intent—Part headings not law—Short title—1998 c 296:** See notes following RCW 74.13.025.

**71.34.405 Liability for costs of minor's treatment and care—Rules.** (1) A minor receiving treatment under the

provisions of this chapter and responsible others shall be liable for the costs of treatment, care, and transportation to the extent of available resources and ability to pay.

(2) The secretary shall establish rules to implement this section and to define income, resources, and exemptions to determine the responsible person's or persons' ability to pay. [1985 c 354 § 13. Formerly RCW 71.34.130.]

**71.34.410 Liability for performance of duties under this chapter limited.** No public or private agency or governmental entity, nor officer of a public or private agency, nor the superintendent, or professional person in charge, his or her professional designee or attending staff of any such agency, nor any public official performing functions necessary to the administration of this chapter, nor peace officer responsible for detaining a person under this chapter, nor any \*county designated mental health professional, nor professional person, nor evaluation and treatment facility, shall be civilly or criminally liable for performing actions authorized in this chapter with regard to the decision of whether to admit, release, or detain a person for evaluation and treatment: PROVIDED, That such duties were performed in good faith and without gross negligence. [2005 c 371 § 5; 1985 c 354 § 27. Formerly RCW 71.34.270.]

**\*Reviser's note:** The term "county-designated mental health professional" as defined in RCW 71.34.020 was changed to "designated mental health professional" by 2006 c 93 § 2.

**Finding—Intent—Severability—2005 c 371:** See notes following RCW 71.34.600.

#### MINOR-INITIATED TREATMENT

**71.34.500 Minor thirteen or older may be admitted for inpatient mental treatment without parental consent—Professional person in charge must concur—Written renewal of consent required.** (1) A minor thirteen years or older may admit himself or herself to an evaluation and treatment facility for inpatient mental treatment, without parental consent. The admission shall occur only if the professional person in charge of the facility concurs with the need for inpatient treatment. Parental authorization, or authorization from a person who may consent on behalf of the minor pursuant to RCW 7.70.065, is required for inpatient treatment of a minor under the age of thirteen.

(2) When, in the judgment of the professional person in charge of an evaluation and treatment facility, there is reason to believe that a minor is in need of inpatient treatment because of a mental disorder, and the facility provides the type of evaluation and treatment needed by the minor, and it is not feasible to treat the minor in any less restrictive setting or the minor's home, the minor may be admitted to an evaluation and treatment facility.

(3) Written renewal of voluntary consent must be obtained from the applicant no less than once every twelve months. The minor's need for continued inpatient treatments shall be reviewed and documented no less than every one hundred eighty days. [2006 c 93 § 3; 2005 c 371 § 2; 1998 c 296 § 14. Formerly RCW 71.34.042.]

**Finding—Intent—Severability—2005 c 371:** See notes following RCW 71.34.600.

(2010 Ed.)

**Findings—Intent—Part headings not law—Short title—1998 c 296:** See notes following RCW 74.13.025.

**71.34.510 Notice to parents when minor admitted to inpatient treatment without parental consent.** The administrator of the treatment facility shall provide notice to the parents of a minor when the minor is voluntarily admitted to inpatient treatment under RCW 71.34.500. The notice shall be in the form most likely to reach the parent within twenty-four hours of the minor's voluntary admission and shall advise the parent: (1) That the minor has been admitted to inpatient treatment; (2) of the location and telephone number of the facility providing such treatment; (3) of the name of a professional person on the staff of the facility providing treatment who is designated to discuss the minor's need for inpatient treatment with the parent; and (4) of the medical necessity for admission. [1998 c 296 § 15. Formerly RCW 71.34.044.]

**Findings—Intent—Part headings not law—Short title—1998 c 296:** See notes following RCW 74.13.025.

**71.34.520 Minor voluntarily admitted may give notice to leave at any time.** (1) Any minor thirteen years or older voluntarily admitted to an evaluation and treatment facility under RCW 71.34.500 may give notice of intent to leave at any time. The notice need not follow any specific form so long as it is written and the intent of the minor can be discerned.

(2) The staff member receiving the notice shall date it immediately, record its existence in the minor's clinical record, and send copies of it to the minor's attorney, if any, the \*county-designated mental health professional, and the parent.

(3) The professional person shall discharge the minor, thirteen years or older, from the facility by the second judicial day following receipt of the minor's notice of intent to leave. [2003 c 106 § 1; 1998 c 296 § 16. Formerly RCW 71.34.046.]

**\*Reviser's note:** The term "county-designated mental health professional" as defined in RCW 71.34.020 was changed to "designated mental health professional" by 2006 c 93 § 2.

**Findings—Intent—Part headings not law—Short title—1998 c 296:** See notes following RCW 74.13.025.

**71.34.530 Age of consent—Outpatient treatment of minors.** Any minor thirteen years or older may request and receive outpatient treatment without the consent of the minor's parent. Parental authorization, or authorization from a person who may consent on behalf of the minor pursuant to RCW 7.70.065, is required for outpatient treatment of a minor under the age of thirteen. [2006 c 93 § 4; 1998 c 296 § 12; 1995 c 312 § 52; 1985 c 354 § 3. Formerly RCW 71.34.030.]

**Findings—Intent—Part headings not law—Short title—1998 c 296:** See notes following RCW 74.13.025.

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

#### PARENT-INITIATED TREATMENT

**71.34.600 Parent may request determination whether minor has mental disorder requiring inpatient**

[Title 71 RCW—page 95]

**treatment—Minor consent not required—Duties and obligations of professional person and facility.** (1) A parent may bring, or authorize the bringing of, his or her minor child to an evaluation and treatment facility or an inpatient facility licensed under chapter 70.41, 71.12, or 72.23 RCW and request that the professional person examine the minor to determine whether the minor has a mental disorder and is in need of inpatient treatment.

(2) The consent of the minor is not required for admission, evaluation, and treatment if the parent brings the minor to the facility.

(3) An appropriately trained professional person may evaluate whether the minor has a mental disorder. The evaluation shall be completed within twenty-four hours of the time the minor was brought to the facility, unless the professional person determines that the condition of the minor necessitates additional time for evaluation. In no event shall a minor be held longer than seventy-two hours for evaluation. If, in the judgment of the professional person, it is determined it is a medical necessity for the minor to receive inpatient treatment, the minor may be held for treatment. The facility shall limit treatment to that which the professional person determines is medically necessary to stabilize the minor's condition until the evaluation has been completed. Within twenty-four hours of completion of the evaluation, the professional person shall notify the department if the child is held for treatment and of the date of admission.

(4) No provider is obligated to provide treatment to a minor under the provisions of this section except that no provider may refuse to treat a minor under the provisions of this section solely on the basis that the minor has not consented to the treatment. No provider may admit a minor to treatment under this section unless it is medically necessary.

(5) No minor receiving inpatient treatment under this section may be discharged from the facility based solely on his or her request.

(6) Prior to the review conducted under RCW 71.34.610, the professional person shall notify the minor of his or her right to petition superior court for release from the facility.

(7) For the purposes of this section "professional person" means "professional person" as defined in RCW 71.05.020. [2007 c 375 § 11; 2005 c 371 § 4; 1998 c 296 § 17. Formerly RCW 71.34.052.]

**Findings—Purpose—Construction—Severability—2007 c 375:** See notes following RCW 10.31.110.

**Finding—Intent—2005 c 371:** "The legislature finds that, despite explicit statements in statute that the consent of a minor child is not required for a parent-initiated admission to inpatient or outpatient mental health treatment, treatment providers consistently refuse to accept a minor aged thirteen or over if the minor does not also consent to treatment. The legislature intends that the parent-initiated treatment provisions, with their accompanying due process provisions for the minor, be made fully available to parents." [2005 c 371 § 1.]

**Severability—2005 c 371:** "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [2005 c 371 § 7.]

**Findings—Intent—Part headings not law—Short title—1998 c 296:** See notes following RCW 74.13.025.

**71.34.610 Review of admission and inpatient treatment of minors—Determination of medical necessity—Department review—Minor declines necessary treat-**

**ment—At-risk youth petition—Costs—Public funds.** (1) The department shall assure that, for any minor admitted to inpatient treatment under RCW 71.34.600, a review is conducted by a physician or other mental health professional who is employed by the department, or an agency under contract with the department, and who neither has a financial interest in continued inpatient treatment of the minor nor is affiliated with the facility providing the treatment. The physician or other mental health professional shall conduct the review not less than seven nor more than fourteen days following the date the minor was brought to the facility under RCW 71.34.600 to determine whether it is a medical necessity to continue the minor's treatment on an inpatient basis.

(2) In making a determination under subsection (1) of this section, the department shall consider the opinion of the treatment provider, the safety of the minor, and the likelihood the minor's mental health will deteriorate if released from inpatient treatment. The department shall consult with the parent in advance of making its determination.

(3) If, after any review conducted by the department under this section, the department determines it is no longer a medical necessity for a minor to receive inpatient treatment, the department shall immediately notify the parents and the facility. The facility shall release the minor to the parents within twenty-four hours of receiving notice. If the professional person in charge and the parent believe that it is a medical necessity for the minor to remain in inpatient treatment, the minor shall be released to the parent on the second judicial day following the department's determination in order to allow the parent time to file an at-risk youth petition under chapter 13.32A RCW. If the department determines it is a medical necessity for the minor to receive outpatient treatment and the minor declines to obtain such treatment, such refusal shall be grounds for the parent to file an at-risk youth petition.

(4) If the evaluation conducted under RCW 71.34.600 is done by the department, the reviews required by subsection (1) of this section shall be done by contract with an independent agency.

(5) The department may, subject to available funds, contract with other governmental agencies to conduct the reviews under this section. The department may seek reimbursement from the parents, their insurance, or medicaid for the expense of any review conducted by an agency under contract.

(6) In addition to the review required under this section, the department may periodically determine and redetermine the medical necessity of treatment for purposes of payment with public funds. [1998 c 296 § 9; 1995 c 312 § 56. Formerly RCW 71.34.025.]

**Findings—Intent—Part headings not law—Short title—1998 c 296:** See notes following RCW 74.13.025.

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**71.34.620 Minor may petition court for release from facility.** Following the review conducted under RCW 71.34.610, a minor child may petition the superior court for his or her release from the facility. The petition may be filed not sooner than five days following the review. The court shall release the minor unless it finds, upon a preponderance of the evidence, that it is a medical necessity for the minor to

remain at the facility. [1998 c 296 § 19. Formerly RCW 71.34.162.]

**Findings—Intent—Part headings not law—Short title—1998 c 296:** See notes following RCW 74.13.025.

**71.34.630 Minor not released by petition under RCW 71.34.620—Release within thirty days—Professional may initiate proceedings to stop release.** If the minor is not released as a result of the petition filed under RCW 71.34.620, he or she shall be released not later than thirty days following the later of: (1) The date of the department's determination under RCW 71.34.610(2); or (2) the filing of a petition for judicial review under RCW 71.34.620, unless a professional person or the \*county designated mental health professional initiates proceedings under this chapter. [1998 c 296 § 20. Formerly RCW 71.34.164.]

**\*Reviser's note:** The term "county-designated mental health professional" as defined in RCW 71.34.020 was changed to "designated mental health professional" by 2006 c 93 § 2.

**Findings—Intent—Part headings not law—Short title—1998 c 296:** See notes following RCW 74.13.025.

**71.34.640 Evaluation of treatment of minors.** The department shall randomly select and review the information on children who are admitted to inpatient treatment on application of the child's parent regardless of the source of payment, if any. The review shall determine whether the children reviewed were appropriately admitted into treatment based on an objective evaluation of the child's condition and the outcome of the child's treatment. [1996 c 133 § 36; 1995 c 312 § 58. Formerly RCW 71.34.035.]

**Findings—Short title—Intent—Construction—1996 c 133:** See notes following RCW 13.32A.197.

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**71.34.650 Parent may request determination whether minor has mental disorder requiring outpatient treatment—Consent of minor not required—Discharge of minor.** (1) A parent may bring, or authorize the bringing of, his or her minor child to a provider of outpatient mental health treatment and request that an appropriately trained professional person examine the minor to determine whether the minor has a mental disorder and is in need of outpatient treatment.

(2) The consent of the minor is not required for evaluation if the parent brings the minor to the provider.

(3) The professional person may evaluate whether the minor has a mental disorder and is in need of outpatient treatment.

(4) Any minor admitted to inpatient treatment under RCW 71.34.500 or 71.34.600 shall be discharged immediately from inpatient treatment upon written request of the parent. [1998 c 296 § 18. Formerly RCW 71.34.054.]

**Findings—Intent—Part headings not law—Short title—1998 c 296:** See notes following RCW 74.13.025.

**71.34.660 Limitation on liability for admitting or accepting minor child.** A minor child shall have no cause of action against an evaluation and treatment facility, inpatient facility, or provider of outpatient mental health treatment for admitting or accepting the minor in good faith for evaluation

or treatment under RCW 71.34.600 or 71.34.650 based solely upon the fact that the minor did not consent to evaluation or treatment if the minor's parent has consented to the evaluation or treatment. [2005 c 371 § 3.]

**Finding—Intent—Severability—2005 c 371:** See notes following RCW 71.34.600.

## INVOLUNTARY COMMITMENT

**71.34.700 Evaluation of minor thirteen or older brought for immediate mental health services—Temporary detention.** If a minor, thirteen years or older, is brought to an evaluation and treatment facility or hospital emergency room for immediate mental health services, the professional person in charge of the facility shall evaluate the minor's mental condition, determine whether the minor suffers from a mental disorder, and whether the minor is in need of immediate inpatient treatment. If it is determined that the minor suffers from a mental disorder, inpatient treatment is required, the minor is unwilling to consent to voluntary admission, and the professional person believes that the minor meets the criteria for initial detention set forth herein, the facility may detain or arrange for the detention of the minor for up to twelve hours in order to enable a \*county-designated mental health professional to evaluate the minor and commence initial detention proceedings under the provisions of this chapter. [1985 c 354 § 4. Formerly RCW 71.34.040.]

**\*Reviser's note:** The term "county-designated mental health professional" as defined in RCW 71.34.020 was changed to "designated mental health professional" by 2006 c 93 § 2.

**71.34.710 Minor thirteen or older who presents likelihood of serious harm or is gravely disabled—Transport to inpatient facility—Petition for initial detention—Notice of commitment hearing—Facility to evaluate and admit or release minor.** (1) When a \*county-designated mental health professional receives information that a minor, thirteen years or older, as a result of a mental disorder presents a likelihood of serious harm or is gravely disabled, has investigated the specific facts alleged and of the credibility of the person or persons providing the information, and has determined that voluntary admission for inpatient treatment is not possible, the \*county-designated mental health professional may take the minor, or cause the minor to be taken, into custody and transported to an evaluation and treatment facility providing inpatient treatment.

If the minor is not taken into custody for evaluation and treatment, the parent who has custody of the minor may seek review of that decision made by the \*county designated mental health professional in court. The parent shall file notice with the court and provide a copy of the \*county designated mental health professional's report or notes.

(2) Within twelve hours of the minor's arrival at the evaluation and treatment facility, the \*county-designated mental health professional shall serve on the minor a copy of the petition for initial detention, notice of initial detention, and statement of rights. The \*county-designated mental health professional shall file with the court on the next judicial day following the initial detention the original petition for initial detention, notice of initial detention, and statement of rights along with an affidavit of service. The \*county-des-

igned mental health professional shall commence service of the petition for initial detention and notice of the initial detention on the minor's parent and the minor's attorney as soon as possible following the initial detention.

(3) At the time of initial detention, the \*county-designated mental health professional shall advise the minor both orally and in writing that if admitted to the evaluation and treatment facility for inpatient treatment, a commitment hearing shall be held within seventy-two hours of the minor's provisional acceptance to determine whether probable cause exists to commit the minor for further mental health treatment.

The minor shall be advised that he or she has a right to communicate immediately with an attorney and that he or she has a right to have an attorney appointed to represent him or her before and at the hearing if the minor is indigent.

(4) Whenever the \*county designated mental health professional petitions for detention of a minor under this chapter, an evaluation and treatment facility providing seventy-two hour evaluation and treatment must immediately accept on a provisional basis the petition and the person. Within twenty-four hours of the minor's arrival, the facility must evaluate the minor's condition and either admit or release the minor in accordance with this chapter.

(5) If a minor is not approved for admission by the inpatient evaluation and treatment facility, the facility shall make such recommendations and referrals for further care and treatment of the minor as necessary. [1995 c 312 § 53; 1985 c 354 § 5. Formerly RCW 71.34.050.]

**\*Reviser's note:** The term "county-designated mental health professional" as defined in RCW 71.34.020 was changed to "designated mental health professional" by 2006 c 93 § 2.

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**71.34.720 Examination and evaluation of minor approved for inpatient admission—Referral to chemical dependency treatment program—Right to communication, exception—Evaluation and treatment period.** (1) Each minor approved by the facility for inpatient admission shall be examined and evaluated by a children's mental health specialist as to the child's mental condition and by a physician or psychiatric advanced registered nurse practitioner as to the child's physical condition within twenty-four hours of admission. Reasonable measures shall be taken to ensure medical treatment is provided for any condition requiring immediate medical attention.

(2) If, after examination and evaluation, the children's mental health specialist and the physician or psychiatric advanced registered nurse practitioner determine that the initial needs of the minor would be better served by placement in a chemical dependency treatment facility, then the minor shall be referred to an approved treatment program defined under RCW 70.96A.020.

(3) The admitting facility shall take reasonable steps to notify immediately the minor's parent of the admission.

(4) During the initial seventy-two hour treatment period, the minor has a right to associate or receive communications from parents or others unless the professional person in charge determines that such communication would be seriously detrimental to the minor's condition or treatment and so indicates in the minor's clinical record, and notifies the

minor's parents of this determination. In no event may the minor be denied the opportunity to consult an attorney.

(5) If the evaluation and treatment facility admits the minor, it may detain the minor for evaluation and treatment for a period not to exceed seventy-two hours from the time of provisional acceptance. The computation of such seventy-two hour period shall exclude Saturdays, Sundays, and holidays. This initial treatment period shall not exceed seventy-two hours except when an application for voluntary inpatient treatment is received or a petition for fourteen-day commitment is filed.

(6) Within twelve hours of the admission, the facility shall advise the minor of his or her rights as set forth in this chapter. [2009 c 217 § 16; 1991 c 364 § 12; 1985 c 354 § 6. Formerly RCW 71.34.060.]

**Findings—Construction—Conflict with federal requirements—1991 c 364:** See notes following RCW 70.96A.020.

**71.34.730 Petition for fourteen-day commitment—Requirements.** (1) The professional person in charge of an evaluation and treatment facility where a minor has been admitted involuntarily for the initial seventy-two hour treatment period under this chapter may petition to have a minor committed to an evaluation and treatment facility for fourteen-day diagnosis, evaluation, and treatment.

If the professional person in charge of the treatment and evaluation facility does not petition to have the minor committed, the parent who has custody of the minor may seek review of that decision in court. The parent shall file notice with the court and provide a copy of the treatment and evaluation facility's report.

(2) A petition for commitment of a minor under this section shall be filed with the superior court in the county where the minor is residing or being detained.

(a) A petition for a fourteen-day commitment shall be signed by (i) two physicians, (ii) two psychiatric advanced registered nurse practitioners, (iii) a mental health professional and either a physician or a psychiatric advanced registered nurse practitioner, or (iv) a physician and a psychiatric advanced registered nurse practitioner. The person signing the petition must have examined the minor, and the petition must contain the following:

(A) The name and address of the petitioner;

(B) The name of the minor alleged to meet the criteria for fourteen-day commitment;

(C) The name, telephone number, and address if known of every person believed by the petitioner to be legally responsible for the minor;

(D) A statement that the petitioner has examined the minor and finds that the minor's condition meets required criteria for fourteen-day commitment and the supporting facts therefor;

(E) A statement that the minor has been advised of the need for voluntary treatment but has been unwilling or unable to consent to necessary treatment;

(F) A statement that the minor has been advised of the loss of firearm rights if involuntarily committed;

(G) A statement recommending the appropriate facility or facilities to provide the necessary treatment; and

(H) A statement concerning whether a less restrictive alternative to inpatient treatment is in the best interests of the minor.

(b) A copy of the petition shall be personally delivered to the minor by the petitioner or petitioner's designee. A copy of the petition shall be sent to the minor's attorney and the minor's parent. [2009 c 293 § 6; 2009 c 217 § 17; 1995 c 312 § 54; 1985 c 354 § 7. Formerly RCW 71.34.070.]

**Reviser's note:** This section was amended by 2009 c 217 § 17 and by 2009 c 293 § 6, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**71.34.740 Commitment hearing—Requirements—Findings by court—Commitment—Release.** (1) A commitment hearing shall be held within seventy-two hours of the minor's admission, excluding Saturday, Sunday, and holidays, unless a continuance is requested by the minor or the minor's attorney.

(2) The commitment hearing shall be conducted at the superior court or an appropriate place at the facility in which the minor is being detained.

(3) At the commitment hearing, the evidence in support of the petition shall be presented by the county prosecutor.

(4) The minor shall be present at the commitment hearing unless the minor, with the assistance of the minor's attorney, waives the right to be present at the hearing.

(5) If the parents are opposed to the petition, they may be represented at the hearing and shall be entitled to court-appointed counsel if they are indigent.

(6) At the commitment hearing, the minor shall have the following rights:

- (a) To be represented by an attorney;
- (b) To present evidence on his or her own behalf;
- (c) To question persons testifying in support of the petition.

(7) The court at the time of the commitment hearing and before an order of commitment is entered shall inform the minor both orally and in writing that the failure to make a good faith effort to seek voluntary treatment as provided in RCW 71.34.730 will result in the loss of his or her firearm rights if the minor is subsequently detained for involuntary treatment under this section.

(8) If the minor has received medication within twenty-four hours of the hearing, the court shall be informed of that fact and of the probable effects of the medication.

(9) Rules of evidence shall not apply in fourteen-day commitment hearings.

(10) For a fourteen-day commitment, the court must find by a preponderance of the evidence that:

(a) The minor has a mental disorder and presents a "likelihood of serious harm" or is "gravely disabled";

(b) The minor is in need of evaluation and treatment of the type provided by the inpatient evaluation and treatment facility to which continued inpatient care is sought or is in need of less restrictive alternative treatment found to be in the best interests of the minor; and

(c) The minor is unwilling or unable in good faith to consent to voluntary treatment.

(11) If the court finds that the minor meets the criteria for a fourteen-day commitment, the court shall either authorize commitment of the minor for inpatient treatment or for less restrictive alternative treatment upon such conditions as are necessary. If the court determines that the minor does not meet the criteria for a fourteen-day commitment, the minor shall be released.

(12) Nothing in this section prohibits the professional person in charge of the evaluation and treatment facility from releasing the minor at any time, when, in the opinion of the professional person in charge of the facility, further inpatient treatment is no longer necessary. The release may be subject to reasonable conditions if appropriate.

Whenever a minor is released under this section, the professional person in charge shall within three days, notify the court in writing of the release.

(13) A minor who has been committed for fourteen days shall be released at the end of that period unless a petition for one hundred eighty-day commitment is pending before the court. [2009 c 293 § 7; 1985 c 354 § 8. Formerly RCW 71.34.080.]

**71.34.750 Petition for one hundred eighty-day commitment—Hearing—Requirements—Findings by court—Commitment order—Release—Successive commitments.** (1) At any time during the minor's period of fourteen-day commitment, the professional person in charge may petition the court for an order requiring the minor to undergo an additional one hundred eighty-day period of treatment. The evidence in support of the petition shall be presented by the county prosecutor unless the petition is filed by the professional person in charge of a state-operated facility in which case the evidence shall be presented by the attorney general.

(2) The petition for one hundred eighty-day commitment shall contain the following:

- (a) The name and address of the petitioner or petitioners;
- (b) The name of the minor alleged to meet the criteria for one hundred eighty-day commitment;
- (c) A statement that the petitioner is the professional person in charge of the evaluation and treatment facility responsible for the treatment of the minor;
- (d) The date of the fourteen-day commitment order; and
- (e) A summary of the facts supporting the petition.

(3) The petition shall be supported by accompanying affidavits signed by (a) two examining physicians, one of whom shall be a child psychiatrist, or two psychiatric advanced registered nurse practitioners, one of whom shall be a child and adolescent or family psychiatric advanced registered nurse practitioner, (b) one children's mental health specialist and either an examining physician or a psychiatric advanced registered nurse practitioner, or (c) an examining physician and a psychiatric advanced registered nurse practitioner, one of which needs to be a child psychiatrist or a child and adolescent psychiatric nurse practitioner. The affidavits shall describe in detail the behavior of the detained minor which supports the petition and shall state whether a less restrictive alternative to inpatient treatment is in the best interests of the minor.

(4) The petition for one hundred eighty-day commitment shall be filed with the clerk of the court at least three days

before the expiration of the fourteen-day commitment period. The petitioner or the petitioner's designee shall within twenty-four hours of filing serve a copy of the petition on the minor and notify the minor's attorney and the minor's parent. A copy of the petition shall be provided to such persons at least twenty-four hours prior to the hearing.

(5) At the time of filing, the court shall set a date within seven days for the hearing on the petition. The court may continue the hearing upon the written request of the minor or the minor's attorney for not more than ten days. The minor or the parents shall be afforded the same rights as in a fourteen-day commitment hearing. Treatment of the minor shall continue pending the proceeding.

(6) For one hundred eighty-day commitment, the court must find by clear, cogent, and convincing evidence that the minor:

- (a) Is suffering from a mental disorder;
- (b) Presents a likelihood of serious harm or is gravely disabled; and
- (c) Is in need of further treatment that only can be provided in a one hundred eighty-day commitment.

(7) If the court finds that the criteria for commitment are met and that less restrictive treatment in a community setting is not appropriate or available, the court shall order the minor committed for further inpatient treatment to the custody of the secretary or to a private treatment and evaluation facility if the minor's parents have assumed responsibility for payment for the treatment. If the court finds that a less restrictive alternative is in the best interest of the minor, the court shall order less restrictive alternative treatment upon such conditions as necessary.

If the court determines that the minor does not meet the criteria for one hundred eighty-day commitment, the minor shall be released.

(8) Successive one hundred eighty-day commitments are permissible on the same grounds and under the same procedures as the original one hundred eighty-day commitment. Such petitions shall be filed at least five days prior to the expiration of the previous one hundred eighty-day commitment order. [2009 c 217 § 18; 1985 c 354 § 9. Formerly RCW 71.34.090.]

**71.34.760 Placement of minor in state evaluation and treatment facility—Placement committee—Facility to report to committee.** (1) If a minor is committed for one hundred eighty-day inpatient treatment and is to be placed in a state-supported program, the secretary shall accept immediately and place the minor in a state-funded long-term evaluation and treatment facility.

(2) The secretary's placement authority shall be exercised through a designated placement committee appointed by the secretary and composed of children's mental health specialists, including at least one child psychiatrist who represents the state-funded, long-term, evaluation and treatment facility for minors. The responsibility of the placement committee will be to:

(a) Make the long-term placement of the minor in the most appropriate, available state-funded evaluation and treatment facility, having carefully considered factors including the treatment needs of the minor, the most appropriate facility able to respond to the minor's identified treatment needs, the

geographic proximity of the facility to the minor's family, the immediate availability of bed space, and the probable impact of the placement on other residents of the facility;

(b) Approve or deny requests from treatment facilities for transfer of a minor to another facility;

(c) Receive and monitor reports required under this section;

(d) Receive and monitor reports of all discharges.

(3) The secretary may authorize transfer of minors among treatment facilities if the transfer is in the best interests of the minor or due to treatment priorities.

(4) The responsible state-funded evaluation and treatment facility shall submit a report to the department's designated placement committee within ninety days of admission and no less than every one hundred eighty days thereafter, setting forth such facts as the department requires, including the minor's individual treatment plan and progress, recommendations for future treatment, and possible less restrictive treatment. [1985 c 354 § 10. Formerly RCW 71.34.100.]

**71.34.770 Release of minor—Conditional release—Discharge.** (1) The professional person in charge of the inpatient treatment facility may authorize release for the minor under such conditions as appropriate. Conditional release may be revoked pursuant to RCW 71.34.780 if leave conditions are not met or the minor's functioning substantially deteriorates.

(2) Minors may be discharged prior to expiration of the commitment period if the treating physician, psychiatric advanced registered nurse practitioner, or professional person in charge concludes that the minor no longer meets commitment criteria. [2009 c 217 § 19; 1985 c 354 § 12. Formerly RCW 71.34.120.]

**71.34.780 Minor's failure to adhere to outpatient conditions—Deterioration of minor's functioning—Transport to inpatient facility—Order of apprehension and detention—Revocation of alternative treatment or conditional release—Hearings.** (1) If the professional person in charge of an outpatient treatment program, a \*county-designated mental health professional, or the secretary determines that a minor is failing to adhere to the conditions of the court order for less restrictive alternative treatment or the conditions for the conditional release, or that substantial deterioration in the minor's functioning has occurred, the \*county-designated mental health professional, or the secretary may order that the minor be taken into custody and transported to an inpatient evaluation and treatment facility.

(2) The \*county-designated mental health professional or the secretary shall file the order of apprehension and detention and serve it upon the minor and notify the minor's parent and the minor's attorney, if any, of the detention within two days of return. At the time of service the minor shall be informed of the right to a hearing and to representation by an attorney. The \*county-designated mental health professional or the secretary may modify or rescind the order of apprehension and detention at any time prior to the hearing.

(3) A petition for revocation of less restrictive alternative treatment shall be filed by the \*county-designated mental health professional or the secretary with the court in the

county ordering the less restrictive alternative treatment. The court shall conduct the hearing in that county. A petition for revocation of conditional release may be filed with the court in the county ordering inpatient treatment or the county where the minor on conditional release is residing. A petition shall describe the behavior of the minor indicating violation of the conditions or deterioration of routine functioning and a dispositional recommendation. Upon motion for good cause, the hearing may be transferred to the county of the minor's residence or to the county in which the alleged violations occurred. The hearing shall be held within seven days of the minor's return. The issues to be determined are whether the minor did or did not adhere to the conditions of the less restrictive alternative treatment or conditional release, or whether the minor's routine functioning has substantially deteriorated, and, if so, whether the conditions of less restrictive alternative treatment or conditional release should be modified or whether the minor should be returned to inpatient treatment. Pursuant to the determination of the court, the minor shall be returned to less restrictive alternative treatment or conditional release on the same or modified conditions or shall be returned to inpatient treatment. If the minor is returned to inpatient treatment, RCW 71.34.760 regarding the secretary's placement responsibility shall apply. The hearing may be waived by the minor and the minor returned to inpatient treatment or to less restrictive alternative treatment or conditional release on the same or modified conditions. [1985 c 354 § 11. Formerly RCW 71.34.110.]

**\*Reviser's note:** The term "county-designated mental health professional" as defined in RCW 71.34.020 was changed to "designated mental health professional" by 2006 c 93 § 2.

**71.34.790 Transportation for minors committed to state facility for one hundred eighty-day treatment.** Necessary transportation for minors committed to the secretary under this chapter for one hundred eighty-day treatment shall be provided by the department in the most appropriate and cost-effective means. [1985 c 354 § 15. Formerly RCW 71.34.150.]

**71.34.795 Transferring or moving persons from juvenile correctional institutions or facilities to evaluation and treatment facilities.** When in the judgment of the department the welfare of any person committed to or confined in any state juvenile correctional institution or facility necessitates that the person be transferred or moved for observation, diagnosis, or treatment to an evaluation and treatment facility, the secretary or the secretary's designee is authorized to order and effect such move or transfer for a period of up to fourteen days, provided that the secretary notifies the original committing court of the transfer and the evaluation and treatment facility is in agreement with the transfer. No person committed to or confined in any state juvenile correctional institution or facility may be transferred to an evaluation and treatment facility for more than fourteen days unless that person has been admitted as a voluntary patient or committed for one hundred eighty-day treatment under this chapter or ninety-day treatment under chapter 71.05 RCW if eighteen years of age or older. Underlying jurisdiction of minors transferred or committed under this section remains with the state correctional institution. A vol-

untary admitted minor or minors committed under this section and no longer meeting the criteria for one hundred eighty-day commitment shall be returned to the state correctional institution to serve the remaining time of the underlying dispositional order or sentence. The time spent by the minor at the evaluation and treatment facility shall be credited towards the minor's juvenile court sentence. [1985 c 354 § 19. Formerly RCW 71.34.180.]

**71.34.900 Severability—1985 c 354.** If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1985 c 354 § 37.]

**71.34.901 Effective date—1985 c 354.** This act shall take effect January 1, 1986. [1985 c 354 § 38.]

**Chapter 71.36 RCW**  
**COORDINATION OF CHILDREN'S**  
**MENTAL HEALTH SERVICES**

Sections

71.36.005	Intent.
71.36.010	Definitions.
71.36.025	Elements of a children's mental health system.
71.36.040	Issue identification, data collection, plan revision—Coordination with other state agencies.
71.36.060	Medicaid eligible children in temporary juvenile detention.
71.36.900	Part headings not law—1991 c 326.
71.36.901	Severability—1991 c 326.

**71.36.005 Intent.** The legislature intends to substantially improve the delivery of children's mental health services in Washington state through the development and implementation of a children's mental health system that:

- (1) Values early identification, intervention, and prevention;
- (2) Coordinates existing categorical children's mental health programs and funding, through efforts that include elimination of duplicative care plans and case management;
- (3) Treats each child in the context of his or her family, and provides services and supports needed to maintain a child with his or her family and community;
- (4) Integrates families into treatment through choice of treatment, participation in treatment, and provision of peer support;
- (5) Focuses on resiliency and recovery;
- (6) Relies to a greater extent on evidence-based practices;
- (7) Is sensitive to the unique cultural circumstances of children of color and children in families whose primary language is not English;
- (8) Integrates educational support services that address students' diverse learning styles; and
- (9) To the greatest extent possible, blends categorical funding to offer more service and support options to each child. [2007 c 359 § 1; 1991 c 326 § 11.]

**Captions not law—2007 c 359:** "Captions used in this act are not part of the law." [2007 c 359 § 14.]

**71.36.010 Definitions.** Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Agency" means a state, tribal, or local governmental entity or a private not-for-profit organization.

(2) "Child" means a person under eighteen years of age, except as expressly provided otherwise in state or federal law.

(3) "Consensus-based" means a program or practice that has general support among treatment providers and experts, based on experience or professional literature, and may have anecdotal or case study support, or that is agreed but not possible to perform studies with random assignment and controlled groups.

(4) "County authority" means the board of county commissioners or county executive.

(5) "Department" means the department of social and health services.

(6) "Early periodic screening, diagnosis, and treatment" means the component of the federal medicaid program established pursuant to 42 U.S.C. Sec. 1396d(r), as amended.

(7) "Evidence-based" means a program or practice that has had multiple site random controlled trials across heterogeneous populations demonstrating that the program or practice is effective for the population.

(8) "Family" means a child's biological parents, adoptive parents, foster parents, guardian, legal custodian authorized pursuant to Title 26 RCW, a relative with whom a child has been placed by the department of social and health services, or a tribe.

(9) "Promising practice" or "emerging best practice" means a practice that presents, based upon preliminary information, potential for becoming a research-based or consensus-based practice.

(10) "Regional support network" means a county authority or group of county authorities or other nonprofit entity that has entered into contracts with the secretary pursuant to chapter 71.24 RCW.

(11) "Research-based" means a program or practice that has some research demonstrating effectiveness, but that does not yet meet the standard of evidence-based practices.

(12) "Secretary" means the secretary of social and health services.

(13) "Wraparound process" means a family driven planning process designed to address the needs of children and youth by the formation of a team that empowers families to make key decisions regarding the care of the child or youth in partnership with professionals and the family's natural community supports. The team produces a community-based and culturally competent intervention plan which identifies the strengths and needs of the child or youth and family and defines goals that the team collaborates on achieving with respect for the unique cultural values of the family. The "wraparound process" shall emphasize principles of persistence and outcome-based measurements of success. [2007 c 359 § 2; 1991 c 326 § 12.]

**Captions not law—2007 c 359:** See note following RCW 71.36.005.

**71.36.025 Elements of a children's mental health system.** (1) It is the goal of the legislature that, by 2012, the chil-

dren's mental health system in Washington state include the following elements:

(a) A continuum of services from early identification, intervention, and prevention through crisis intervention and inpatient treatment, including peer support and parent mentoring services;

(b) Equity in access to services for similarly situated children, including children with co-occurring disorders;

(c) Developmentally appropriate, high quality, and culturally competent services available statewide;

(d) Treatment of each child in the context of his or her family and other persons that are a source of support and stability in his or her life;

(e) A sufficient supply of qualified and culturally competent children's mental health providers;

(f) Use of developmentally appropriate evidence-based and research-based practices;

(g) Integrated and flexible services to meet the needs of children who, due to mental illness or emotional or behavioral disturbance, are at risk of out-of-home placement or involved with multiple child-serving systems.

(2) The effectiveness of the children's mental health system shall be determined through the use of outcome-based performance measures. The department and the evidence-based practice institute established in RCW 71.24.061, in consultation with parents, caregivers, youth, regional support networks, mental health services providers, health plans, primary care providers, tribes, and others, shall develop outcome-based performance measures such as:

(a) Decreased emergency room utilization;

(b) Decreased psychiatric hospitalization;

(c) Lessening of symptoms, as measured by commonly used assessment tools;

(d) Decreased out-of-home placement, including residential, group, and foster care, and increased stability of such placements, when necessary;

(e) Decreased runaways from home or residential placements;

(f) Decreased rates of chemical dependency;

(g) Decreased involvement with the juvenile justice system;

(h) Improved school attendance and performance;

(i) Reductions in school or child care suspensions or expulsions;

(j) Reductions in use of prescribed medication where cognitive behavioral therapies are indicated;

(k) Improved rates of high school graduation and employment; and

(l) Decreased use of mental health services upon reaching adulthood for mental disorders other than those that require ongoing treatment to maintain stability.

Performance measure reporting for children's mental health services should be integrated into existing performance measurement and reporting systems developed and implemented under chapter 71.24 RCW. [2007 c 359 § 3.]

**Captions not law—2007 c 359:** See note following RCW 71.36.005.

**71.36.040 Issue identification, data collection, plan revision—Coordination with other state agencies.** (1) The legislature supports recommendations made in the August

2002 study of the public mental health system for children conducted by the joint legislative audit and review committee.

(2) The department shall, within available funds:

(a) Identify internal business operation issues that limit the agency's ability to meet legislative intent to coordinate existing categorical children's mental health programs and funding;

(b) Collect reliable mental health cost, service, and outcome data specific to children. This information must be used to identify best practices and methods of improving fiscal management;

(c) Revise the early periodic screening diagnosis and treatment plan to reflect the mental health system structure in place on July 27, 2003, and thereafter revise the plan as necessary to conform to subsequent changes in the structure.

(3) The department and the office of the superintendent of public instruction shall jointly identify school districts where mental health and education systems coordinate services and resources to provide public mental health care for children. The department and the office of the superintendent of public instruction shall work together to share information about these approaches with other school districts, regional support networks, and state agencies. [2003 c 281 § 2.]

**Legislative support affirmed—2003 c 281:** "The legislature affirms its support for: Improving field-level cross-program collaboration and efficiency; collecting reliable mental health cost, service, and outcome data specific to children; revising the early periodic screening diagnosis and treatment plan to reflect the current mental health system structure; and identifying and promulgating the approaches used in school districts where mental health and education systems coordinate services and resources to provide public mental health care for children." [2003 c 281 § 1.]

**71.36.060 Medicaid eligible children in temporary juvenile detention.** The department shall explore the feasibility of obtaining a medicaid state plan amendment to allow the state to receive medicaid matching funds for health services provided to medicaid enrolled youth who are temporarily placed in a juvenile detention facility. Temporary placement shall be defined as until adjudication or up to sixty continuous days, whichever occurs first. [2007 c 359 § 6.]

**Captions not law—2007 c 359:** See note following RCW 71.36.005.

**71.36.900 Part headings not law—1991 c 326.** Part headings used in this act do not constitute any part of the law. [1991 c 326 § 17.]

**71.36.901 Severability—1991 c 326.** If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1991 c 326 § 19.]

## Chapter 71.98 RCW CONSTRUCTION

### Sections

71.98.010	Continuation of existing law.
71.98.020	Title, chapter, section headings not part of law.
71.98.030	Invalidity of part of title not to affect remainder.
71.98.040	Repeals and saving.
71.98.050	Emergency—1959 c 25.

(2010 Ed.)

**71.98.010 Continuation of existing law.** The provisions of this title insofar as they are substantially the same as statutory provisions repealed by this chapter and relating to the same subject matter, shall be construed as restatements and continuations, and not as new enactments. [1959 c 25 § 71.98.010.]

**71.98.020 Title, chapter, section headings not part of law.** Title headings, chapter headings, and section or subsection headings, as used in this title do not constitute any part of the law. [1959 c 25 § 71.98.020.]

**71.98.030 Invalidity of part of title not to affect remainder.** If any provision of this title, or its application to any person or circumstance is held invalid, the remainder of the title, or the application of the provision to other persons or circumstances is not affected. [1959 c 25 § 71.98.030.]

**71.98.040 Repeals and saving.** See 1959 c 25 § 71.98.040.

**71.98.050 Emergency—1959 c 25.** This act is necessary for the immediate preservation of the public peace, health and safety, the support of the state government and its existing public institutions, and shall take effect immediately. [1959 c 25 § 71.98.050.]



# Title 71A

## DEVELOPMENTAL DISABILITIES

### Chapters

- 71A.10** General provisions.
- 71A.12** State services.
- 71A.14** Local services.
- 71A.16** Eligibility for services.
- 71A.18** Service delivery.
- 71A.20** Residential habilitation centers.
- 71A.22** Training centers and homes.
- 71A.24** Intensive behavior support services.

### Chapter 71A.10 RCW GENERAL PROVISIONS

#### Sections

- 71A.10.010 Legislative finding—Intent—1988 c 176.
- 71A.10.011 Intent—1995 c 383.
- 71A.10.015 Declaration of policy.
- 71A.10.020 Definitions.
- 71A.10.030 Civil and parental rights not affected.
- 71A.10.040 Protection from discrimination.
- 71A.10.050 Appeal of department actions—Right to.
- 71A.10.060 Notice by secretary.
- 71A.10.070 Secretary's duty to consult.
- 71A.10.080 Governor to designate an agency to implement a program for protection and advocacy of the rights of persons with developmental disabilities and mentally ill persons—Authority of designated agency—Liaison with state agencies.
- 71A.10.800 Application of Title 71A RCW to matters pending as of June 9, 1988.
- 71A.10.805 Headings in Title 71A RCW not part of law.
- 71A.10.900 Severability—1988 c 176.
- 71A.10.901 Saving—1988 c 176.
- 71A.10.902 Continuation of existing law—1988 c 176.

#### **71A.10.010 Legislative finding—Intent—1988 c 176.**

The legislature finds that the statutory authority for the programs, policies, and services of the department of social and health services for persons with developmental disabilities often lack[s] clarity and contain[s] internal inconsistencies. In addition, existing authority is in several chapters of the code and frequently contains obsolete language not reflecting current use. The legislature declares that it is in the public interest to unify and update statutes for programs, policies, and services provided to persons with developmental disabilities.

The legislature intends to recodify the authority for the programs, policies, and services for persons with developmental disabilities. This recodification is not intended to affect existing programs, policies, and services, nor to establish any new program, policies, or services not otherwise authorized before June 9, 1988. The legislature intends to provide only those services authorized under state law before June 9, 1988, and only to the extent funds are provided by the legislature. [1988 c 176 § 1.]

**71A.10.011 Intent—1995 c 383.** The legislature recognizes that the emphasis of state developmental disability services is shifting from institutional-based care to community

services in an effort to increase the personal and social independence and fulfillment of persons with developmental disabilities, consistent with state policy as expressed in RCW 71A.10.015. It is the intent of the legislature that financial savings achieved from program reductions and efficiencies within the developmental disabilities program shall be redirected within the program to provide public or private community-based services for eligible persons who would otherwise be unidentified or unserved. [1995 c 383 § 1.]

**71A.10.015 Declaration of policy.** The legislature recognizes the capacity of all persons, including those with developmental disabilities, to be personally and socially productive. The legislature further recognizes the state's obligation to provide aid to persons with developmental disabilities through a uniform, coordinated system of services to enable them to achieve a greater measure of independence and fulfillment and to enjoy all rights and privileges under the Constitution and laws of the United States and the state of Washington. [1988 c 176 § 101.]

**71A.10.020 Definitions.** As used in this title, the following terms have the meanings indicated unless the context clearly requires otherwise.

(1) "Community residential support services," or "community support services," and "in-home services" means one or more of the services listed in RCW 71A.12.040.

(2) "Department" means the department of social and health services.

(3) "Developmental disability" means a disability attributable to intellectual disability, cerebral palsy, epilepsy, autism, or another neurological or other condition of an individual found by the secretary to be closely related to an intellectual disability or to require treatment similar to that required for individuals with intellectual disabilities, which disability originates before the individual attains age eighteen, which has continued or can be expected to continue indefinitely, and which constitutes a substantial limitation to the individual. By January 1, 1989, the department shall promulgate rules which define neurological or other conditions in a way that is not limited to intelligence quotient scores as the sole determinant of these conditions, and notify the legislature of this action.

(4) "Eligible person" means a person who has been found by the secretary under RCW 71A.16.040 to be eligible for services.

(5) "Habilitative services" means those services provided by program personnel to assist persons in acquiring and maintaining life skills and to raise their levels of physical, mental, social, and vocational functioning. Habilitative services include education, training for employment, and therapy.

(6) "Legal representative" means a parent of a person who is under eighteen years of age, a person's legal guardian, a person's limited guardian when the subject matter is within the scope of the limited guardianship, a person's attorney-at-law, a person's attorney-in-fact, or any other person who is authorized by law to act for another person.

(7) "Notice" or "notification" of an action of the secretary means notice in compliance with RCW 71A.10.060.

(8) "Residential habilitation center" means a state-operated facility for persons with developmental disabilities governed by chapter 71A.20 RCW.

(9) "Secretary" means the secretary of social and health services or the secretary's designee.

(10) "Service" or "services" means services provided by state or local government to carry out this title.

(11) "Vacancy" means an opening at a residential habilitation center, which when filled, would not require the center to exceed its biennially budgeted capacity. [2010 c 94 § 21; 1998 c 216 § 2; 1988 c 176 § 102.]

**Purpose—2010 c 94:** See note following RCW 44.04.280.

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

#### **71A.10.030 Civil and parental rights not affected.** (1)

The existence of developmental disabilities does not affect the civil rights of the person with the developmental disability except as otherwise provided by law.

(2) The secretary's determination under RCW 71A.16.040 that a person is eligible for services under this title shall not deprive the person of any civil rights or privileges. The secretary's determination alone shall not constitute cause to declare the person to be legally incompetent.

(3) This title shall not be construed to deprive the parent or parents of any parental rights with relation to a child residing in a residential habilitation center, except as provided in this title for the orderly operation of such residential habilitation centers. [1988 c 176 § 103.]

**71A.10.040 Protection from discrimination.** Persons are protected from discrimination because of a developmental disability as well as other mental or physical handicaps by the law against discrimination, chapter 49.60 RCW, by other state and federal statutes, rules, and regulations, and by local ordinances, when the persons qualify as handicapped under those statutes, rules, regulations, and ordinances. [1988 c 176 § 104.]

#### **71A.10.050 Appeal of department actions—Right to.**

(1) An applicant or recipient or former recipient of a developmental disabilities service under this title from the department of social and health services has the right to appeal the following department actions:

(a) A denial of an application for eligibility under RCW 71A.16.040;

(b) An unreasonable delay in acting on an application for eligibility, for a service, or for an alternative service under RCW 71A.18.040;

(c) A denial, reduction, or termination of a service;

(d) A claim that the person owes a debt to the state for an overpayment;

(e) A disagreement with an action of the secretary under RCW 71A.10.060 or 71A.10.070;

(f) A decision to return a resident of an [a] habilitation center to the community; and

(g) A decision to change a person's placement from one category of residential services to a different category of residential services.

The adjudicative proceeding is governed by the Administrative Procedure Act, chapter 34.05 RCW.

(2) This subsection applies only to an adjudicative proceeding in which the department action appealed is a decision to return a resident of a habilitation center to the community. The resident or his or her representative may appeal on the basis of whether the specific placement decision is in the best interests of the resident. When the resident or his or her representative files an application for an adjudicative proceeding under this section the department has the burden of proving that the specific placement decision is in the best interests of the resident.

(3) When the department takes any action described in subsection (1) of this section it shall give notice as provided by RCW 71A.10.060. The notice must include a statement advising the recipient of the right to an adjudicative proceeding and the time limits for filing an adjudicative proceeding. Notice of a decision to return a resident of a habilitation center to the community under RCW 71A.20.080 must also include a statement advising the recipient of the right to file a petition for judicial review of an adverse adjudicative order as provided in chapter 34.05 RCW. [1989 c 175 § 138; 1988 c 176 § 105.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**71A.10.060 Notice by secretary.** (1) Whenever this title requires the secretary to give notice, the secretary shall give notice to the person with a developmental disability and, except as provided in subsection (3) of this section, to at least one other person. The other person shall be the first person known to the secretary in the following order of priority:

(a) A legal representative of the person with a developmental disability;

(b) A parent of a person with a developmental disability who is eighteen years of age or older;

(c) Other kin of the person with a developmental disability, with preference to persons with the closest kinship;

(d) The Washington protection and advocacy system for the rights of persons with developmental disabilities, appointed in compliance with 42 U.S.C. Sec. 6042; or

(e) A person who is not an employee of the department or of a person who contracts with the department under this title who, in the opinion of the secretary, will be concerned with the welfare of the person.

(2) Notice to a person with a developmental disability shall be given in a way that the person is best able to understand. This can include reading or explaining the materials to the person.

(3) A person with a developmental disability may in writing request the secretary to give notice only to that person. The secretary shall comply with that direction unless the secretary denies the request because the person may be at risk of losing rights if the secretary complies with the request. The

secretary shall give notice as provided in subsections (1) and (2) of this section. On filing an application with the secretary within thirty days of receipt of the notice, the person who made the request has the right to an adjudicative proceeding under RCW 71A.10.050 on the secretary's decision.

(4) The giving of notice to a person under this title does not empower the person who is given notice to take any action or give any consent. [1989 c 175 § 139; 1988 c 176 § 106.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**71A.10.070 Secretary's duty to consult.** (1) Whenever this title places on the secretary the duty to consult, the secretary shall carry out that duty by consulting with the person with a developmental disability and, except as provided in subsection (2) of this section, with at least one other person. The other person shall be in order of priority:

(a) A legal representative of the person with a developmental disability;

(b) A parent of a person with a developmental disability who is eighteen years of age or older;

(c) Other kin of the person with a developmental disability, with preference to persons with the closest kinship;

(d) The Washington protection and advocacy system for the rights of persons with developmental disabilities, appointed in compliance with 42 U.S.C. Sec. 6042; or

(e) Any other person who is not an employee of the department or of a person who contracts with the department under this title who, in the opinion of the secretary, will be concerned with the welfare of the person.

(2) A person with a developmental disability may in writing request the secretary to consult only with that person. The secretary shall comply with that direction unless the secretary denies the request because the person may be at risk of losing rights if the secretary complies with the request. The secretary shall give notice as provided in RCW 71A.10.060 when a request is denied. On filing an application with the secretary within thirty days of receipt of the notice, the person who made the request has the right to an adjudicative proceeding under RCW 71A.10.050 on the secretary's decision.

(3) Consultation with a person under this section does not authorize the person who is consulted to take any action or give any consent. [1989 c 175 § 140; 1988 c 176 § 107.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**71A.10.080 Governor to designate an agency to implement a program for protection and advocacy of the rights of persons with developmental disabilities and mentally ill persons—Authority of designated agency—Liaison with state agencies.** (1) The governor shall designate an agency to implement a program for the protection and advocacy of the rights of persons with developmental disabilities pursuant to the developmentally disabled assistance and bill of rights act, 89 Stat. 486; 42 U.S.C. Secs. 6000-6083 (1975), (as amended). The designated agency shall have the authority to pursue legal, administrative, and other appropriate remedies to protect the rights of the developmentally disabled and to investigate allegations of abuse and neglect. The designated agency shall be independent of any state agency

(2010 Ed.)

that provides treatment or services other than advocacy services to persons with developmental disabilities.

(2) The agency designated under subsection (1) of this section shall implement a program for the protection and advocacy of the rights of mentally ill persons pursuant to the protection and advocacy for mentally ill individuals act of 1986, 100 Stat. 478; 42 U.S.C. Secs. 10801-10851 (1986), (as amended). The designated agency shall have the authority to pursue legal, administrative, and other appropriate remedies to protect the rights of mentally ill persons and to investigate allegations of abuse or neglect of mentally ill persons. The designated agency shall be independent of any state agency that provides treatment or services other than advocacy services to mentally ill persons.

(3) The governor shall designate an appropriate state official to serve as liaison between the agency designated to implement the protection and advocacy programs and the state departments and agencies that provide services to persons with developmental disabilities and mentally ill persons. [1991 c 333 § 1.]

**71A.10.800 Application of Title 71A RCW to matters pending as of June 9, 1988.** Except as provided in RCW 71A.10.901, this title shall govern:

(1) The continued provision of services to persons with developmental disabilities who are receiving services on June 9, 1988.

(2) The disposition of hearings, lawsuits, or appeals that are pending on June 9, 1988.

(3) All other questions or matters covered by this title, from June 9, 1988. [1988 c 176 § 1008.]

**71A.10.805 Headings in Title 71A RCW not part of law.** Title headings, chapter headings, and section headings used in this title do not constitute any part of the law. [1988 c 176 § 1002.]

**71A.10.900 Severability—1988 c 176.** If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1988 c 176 § 1003.]

**71A.10.901 Saving—1988 c 176.** The repeals made by sections 1005 through 1007, chapter 176, Laws of 1988, shall not be construed as affecting any existing right, status, or eligibility for services acquired under the provisions of the statutes repealed, nor as affecting the validity of any rule or order promulgated under the prior statutes, nor as affecting the status of any person appointed or employed under the prior statutes. [1988 c 176 § 1004.]

**71A.10.902 Continuation of existing law—1988 c 176.** Insofar as provisions of this title are substantially the same as provisions of the statutes repealed by sections 1005, 1006, and 1007, chapter 176, Laws of 1988, the provisions of this title shall be construed as restatements and continuations of the prior law, and not as new enactments. [1988 c 176 § 1001.]

**Chapter 71A.12 RCW**  
**STATE SERVICES**

## Sections

71A.12.010	State and local program—Coordination—Continuum.
71A.12.020	Objectives of program.
71A.12.025	Persons with developmental disabilities who commit crimes—Findings.
71A.12.030	General authority of secretary—Rule adoption.
71A.12.040	Authorized services.
71A.12.050	Payments for nonresidential services.
71A.12.060	Payment authorized for residents in community residential programs.
71A.12.070	Payments under RCW 71A.12.060 supplemental to payments from other resources—Direct payments.
71A.12.080	Rules.
71A.12.090	Eligibility of parent for services.
71A.12.100	Other services.
71A.12.110	Authority to contract for services.
71A.12.120	Authority to participate in federal programs.
71A.12.130	Gifts—Acceptance, use, record.
71A.12.140	Duties of state agencies generally.
71A.12.150	Contracts with United States and other states for developmental disability services.
71A.12.161	Individual and family services program—Rules.
71A.12.200	Community protection program—Legislative approval.
71A.12.210	Community protection program—Application.
71A.12.220	Community protection program—Definitions.
71A.12.230	Community protection program—Risk assessment—Written notification—Written determination.
71A.12.240	Community protection program—Appeals—Rules—Notice.
71A.12.250	Community protection program—Services—Reviews—Rules.
71A.12.260	Community protection program—Less restrictive residential placement.
71A.12.270	Community protection program—Enforcement actions.
71A.12.280	Community protection program—Rules, guidelines, and policy manuals.

**71A.12.010 State and local program—Coordination—Continuum.** It is declared to be the policy of the state to authorize the secretary to develop and coordinate state services for persons with developmental disabilities; to encourage research and staff training for state and local personnel working with persons with developmental disabilities; and to cooperate with communities to encourage the establishment and development of services to persons with developmental disabilities through locally administered and locally controlled programs.

The complexities of developmental disabilities require the services of many state departments as well as those of the community. Services should be planned and provided as a part of a continuum. A pattern of facilities and services should be established, within appropriations designated for this purpose, which is sufficiently complete to meet the needs of each person with a developmental disability regardless of age or degree of handicap, and at each stage of the person's development. [1988 c 176 § 201.]

**71A.12.020 Objectives of program.** (1) To the extent that state, federal, or other funds designated for services to persons with developmental disabilities are available, the secretary shall provide every eligible person with habilitative services suited to the person's needs, regardless of age or degree of developmental disability.

(2) The secretary shall provide persons who receive services with the opportunity for integration with nonhandicapped and less handicapped persons to the greatest extent possible.

(3) The secretary shall establish minimum standards for habilitative services. Consumers, advocates, service providers, appropriate professionals, and local government agencies shall be involved in the development of the standards. [1988 c 176 § 202.]

**71A.12.025 Persons with developmental disabilities who commit crimes—Findings.** The legislature finds that among those persons who endanger the safety of others by committing crimes are a small number of persons with developmental disabilities. While their conduct is not typical of the vast majority of persons with developmental disabilities who are responsible citizens, for their own welfare and for the safety of others the state may need to exercise control over those few dangerous individuals who are developmentally disabled, have been charged with crimes that involve a threat to public safety or security, and have been found either incompetent to stand trial or not guilty by reason of insanity.

The legislature finds, however, that the use of civil commitment procedures under chapter 71.05 RCW to effect state control over dangerous developmentally disabled persons has resulted in their commitment to institutions for the mentally ill. The legislature finds that existing programs in mental institutions may be inappropriate for persons who are developmentally disabled because the services provided in mental institutions are oriented to persons with mental illness, a condition not necessarily associated with developmental disabilities.

Therefore, the legislature believes that, where appropriate, and subject to available funds, persons with developmental disabilities who have been charged with crimes that involve a threat to public safety or security and have been found incompetent to stand trial or not guilty by reason of insanity should receive state services addressing their needs, that such services must be provided in conformance with an individual habilitation plan, and that their initial treatment should be separate and discrete from treatment for persons involved in any other treatment or habilitation program in a manner consistent with the needs of public safety. [1998 c 297 § 5; 1989 c 420 § 2. Formerly RCW 71.05.035.]

**Effective dates—Severability—Intent—1998 c 297:** See notes following RCW 71.05.010.

**71A.12.030 General authority of secretary—Rule adoption.** The secretary is authorized to provide, or arrange with others to provide, all services and facilities that are necessary or appropriate to accomplish the purposes of this title, and to take all actions that are necessary or appropriate to accomplish the purposes of this title. The secretary shall adopt rules under the administrative procedure act, chapter 34.05 RCW, as are appropriate to carry out this title. [1988 c 176 § 203.]

**71A.12.040 Authorized services.** Services that the secretary may provide or arrange with others to provide under this title include, but are not limited to:

- (1) Architectural services;
- (2) Case management services;
- (3) Early childhood intervention;
- (4) Employment services;

- (5) Family counseling;
- (6) Family support;
- (7) Information and referral;
- (8) Health services and equipment;
- (9) Legal services;
- (10) Residential services and support;
- (11) Respite care;
- (12) Therapy services and equipment;
- (13) Transportation services; and
- (14) Vocational services. [1988 c 176 § 204.]

**71A.12.050 Payments for nonresidential services.**

The secretary may make payments for nonresidential services which exceed the cost of caring for an average individual at home, and which are reasonably necessary for the care, treatment, maintenance, support, and training of persons with developmental disabilities, upon application pursuant to RCW 71A.18.050. The secretary shall adopt rules determining the extent and type of care and training for which the department will pay all or a portion of the costs. [1988 c 176 § 205.]

**71A.12.060 Payment authorized for residents in community residential programs.** The secretary is authorized to pay for all or a portion of the costs of care, support, and training of residents of a residential habilitation center who are placed in community residential programs under this section and RCW 71A.12.070 and 71A.12.080. [1988 c 176 § 206.]

**71A.12.070 Payments under RCW 71A.12.060 supplemental to payments from other resources—Direct payments.** All payments made by the secretary under RCW 71A.12.060 shall, insofar as reasonably possible, be supplementary to payments to be made for the costs of care, support, and training in a community residential program by the estate of such resident of the residential habilitation center, or from any resource which such resident may have, or become entitled to, from any public, federal, or state agency. Payments by the secretary under this title may, in the secretary's discretion, be paid directly to community residential programs, or to counties having created developmental disability boards under chapter 71A.14 RCW. [1988 c 176 § 207.]

**71A.12.080 Rules.** (1) The secretary shall adopt rules concerning the eligibility of residents of residential habilitation centers for placement in community residential programs under this title; determination of ability of such persons or their estates to pay all or a portion of the cost of care, support, and training; the manner and method of licensing or certification and inspection and approval of such community residential programs for placement under this title; and procedures for the payment of costs of care, maintenance, and training in community residential programs. The rules shall include standards for care, maintenance, and training to be met by such community residential programs.

(2) The secretary shall coordinate state activities and resources relating to placement in community residential programs to help efficiently expend state and local resources and, to the extent designated funds are available, create an

effective community residential program. [1988 c 176 § 208.]

**71A.12.090 Eligibility of parent for services.** If a person with developmental disabilities is the parent of a child who is about to be placed for adoption or foster care by the secretary, the parent shall be eligible to receive services in order to promote the integrity of the family unit. [1988 c 176 § 209.]

**71A.12.100 Other services.** Consistent with the general powers of the secretary and whether or not a particular person with a developmental disability is involved, the secretary may:

- (1) Provide information to the public on developmental disabilities and available services;
- (2) Engage in research concerning developmental disabilities and the habilitation of persons with developmental disabilities, and cooperate with others who do such research;
- (3) Provide consultant services to public and private agencies to promote and coordinate services to persons with developmental disabilities;
- (4) Provide training for persons in state or local governmental agencies or with private entities who come in contact with persons with developmental disabilities or who have a role in the care or habilitation of persons with developmental disabilities. [1988 c 176 § 210.]

**71A.12.110 Authority to contract for services.** (1) The secretary may enter into agreements with any person, corporation, or governmental entity to pay the contracting party to perform services that the secretary is authorized to provide under this title, except for operation of residential habilitation centers under chapter 71A.20 RCW.

(2) The secretary by contract or by rule may impose standards for services contracted for by the secretary. [1988 c 176 § 211.]

**71A.12.120 Authority to participate in federal programs.** (1) The governor may take whatever action is necessary to enable the state to participate in the manner set forth in this title in any programs provided by any federal law and to designate state agencies authorized to administer within this state the several federal acts providing federal moneys to assist in providing services and training at the state or local level for persons with developmental disabilities and for persons who work with persons with developmental disabilities.

(2) Designated state agencies may apply for and accept and disburse federal grants, matching funds, or other funds or gifts or donations from any source available for use by the state or by local government to provide more adequate services for and habilitation of persons with developmental disabilities. [1988 c 176 § 212.]

**71A.12.130 Gifts—Acceptance, use, record.** The secretary may receive and accept from any person, organization, or estate gifts of money or personal property on behalf of a residential habilitation center, or the residents therein, or on behalf of the entire program for persons with developmental disabilities, or any part of the program, and to use the gifts for

the purposes specified by the donor where such use is consistent with law. In the absence of a specified purpose, the secretary shall use such money or personal property for the general benefit of persons with developmental disabilities. The secretary shall keep an accurate record of the amount or kind of gift, the date received, manner expended, and the name and address of the donor. Any increase resulting from such gift may be used for the same purpose as the original gift. [1988 c 176 § 213.]

**71A.12.140 Duties of state agencies generally.** Each state agency that administers federal or state funds for services to persons with developmental disabilities, or for research or staff training in the field of developmental disabilities, shall:

(1) Investigate and determine the nature and extent of services within its legal authority that are presently available to persons with developmental disabilities in this state;

(2) Develop and prepare any state plan or application which may be necessary to establish the eligibility of the state or any community to participate in any program established by the federal government relating to persons with developmental disabilities;

(3) Cooperate with other state agencies providing services to persons with developmental disabilities to determine the availability of services and facilities within the state, and to coordinate state and local services in order to maximize services to persons with developmental disabilities and their families;

(4) Review and approve any proposed plans that local governments are required to submit for the expenditure of funds by local governments for services to persons with developmental disabilities; and

(5) Provide consultant and staff training for state and local personnel working in the field of developmental disability. [1988 c 176 § 214.]

**71A.12.150 Contracts with United States and other states for developmental disability services.** The secretary shall have the authority, in the name of the state, to enter into contracts with any duly authorized representative of the United States of America, or its territories, or other states for the provision of services under this title at the expense of the United States, its territories, or other states. The contracts may provide for the separate or joint maintenance, care, treatment, training, or education of persons. The contracts shall provide that all payments due to the state of Washington from the United States, its territories, or other states for services rendered under the contracts shall be paid to the department and transmitted to the state treasurer for deposit in the general fund. [1988 c 176 § 215.]

**71A.12.161 Individual and family services program—Rules.** (1) The individual and family services program for individuals eligible to receive services under this title is established. This program replaces family support opportunities, traditional family support, and the flexible family support pilot program. The department shall transfer funding associated with these existing family support programs to the individual and family services program and shall

operate the program within available funding. The services provided under the individual and family services program shall be funded by state funding without benefit of federal match.

(2) The department shall adopt rules to implement this section. The rules shall provide:

(a) That eligibility to receive services in the individual and family services program be determined solely by an assessment of individual need;

(b) For service priority levels to be developed that specify a maximum amount of dollars for each person per level per year;

(c) That the dollar caps for each service priority level be adjusted by the vendor rate increases authorized by the legislature; and

(d) That the following services be available under the program:

(i) Respite care;

(ii) Therapies;

(iii) Architectural and vehicular modifications;

(iv) Equipment and supplies;

(v) Specialized nutrition and clothing;

(vi) Excess medical costs not covered by another source;

(vii) Copays for medical and therapeutic services;

(viii) Transportation;

(ix) Training;

(x) Counseling;

(xi) Behavior management;

(xii) Parent/sibling education;

(xiii) Recreational opportunities; and

(xiv) Community services grants.

(3) In addition to services provided for the service priority levels under subsections (1) and (2) of this section, the department shall provide for:

(a) One-time exceptional needs and emergency needs for individuals and families not receiving individual and family services annual grants to assist individuals and families who experience a short-term crisis; and

(b) Respite services based on the department's assessment for:

(i) A parent who provides personal care in the home to his or her adult son or daughter with developmental disabilities; or

(ii) A family member who replaces the parent as the primary caregiver, resides with, and provides personal care in the home for the adult with developmental disabilities.

(4) If a person has more complex needs, a family is experiencing a more prolonged crisis, or it is determined a person needs additional services, the department shall assess the individual to determine if placement in a waiver program would be appropriate. [2009 c 312 § 1; 2007 c 283 § 2.]

**Findings—Intent—2007 c 283:** "(1) The legislature finds that:

(a) A developmental disability is a natural part of human life, and the presence of a developmental disability in the life of a person does not diminish the person's rights or opportunity to participate fully in the life of the local community;

(b) Investing in family members who have children and adults living in the family home preserves a valuable natural support system for the individual with a developmental disability and is also cost-effective for the state of Washington;

(c) Providing support services to families can help maintain the well-being of the family and stabilize the family unit.

(2) It is the intent of the legislature:

(a) To partner with families as care providers for children with developmental disabilities and adults who choose to live in the family home;

(b) That individual and family services be centered on the needs of the person with a developmental disability and the family;

(c) That, to the maximum extent possible, individuals and families must be given choice of services and exercise control over the resources available to them." [2007 c 283 § 1.]

**Short title—2007 c 283:** "This act may be known and cited as the Lance Morehouse, Jr. memorial individual and family services act." [2007 c 283 § 3.]

**Construction—2007 c 283:** "Nothing in this act shall be construed to create an entitlement to services or to create judicial authority to order the provision of services to any person or family if the services are unavailable or unsuitable, the child or family is not eligible for such services, or sufficient funding has not been appropriated for this program." [2007 c 283 § 4.]

**71A.12.200 Community protection program—Legislative approval.** The department of social and health services is providing a structured, therapeutic environment for persons who are eligible for placement in the community protection program in order for them to live safely and successfully in the community while minimizing the risk to public safety.

The legislature approves of steps already taken by the department to create a community protection program within the division of developmental disabilities. [2006 c 303 § 1.]

**71A.12.210 Community protection program—Application.** RCW 71A.12.220 through 71A.12.280 apply to a person:

(1)(a) Who has been charged with or convicted of a crime and meets the following criteria:

(i) Has been convicted of one of the following:

(A) A crime of sexual violence as defined in chapter 9A.44 or 71.09 RCW including, but not limited to, rape, rape of a child, and child molestation;

(B) Sexual acts directed toward strangers, individuals with whom a relationship has been established or promoted for the primary purpose of victimization, or persons of casual acquaintance with whom no substantial personal relationship exists; or

(C) One or more violent offenses, as defined by RCW 9.94A.030; and

(ii) Constitutes a current risk to others as determined by a qualified professional. Charges or crimes that resulted in acquittal must be excluded; or

(b) Who has not been charged with and/or convicted of a crime, but meets the following criteria:

(i) Has a history of stalking, violent, sexually violent, predatory, and/or opportunistic behavior which demonstrates a likelihood to commit a violent, sexually violent, and/or predatory act; and

(ii) Constitutes a current risk to others as determined by a qualified professional; and

(2) Who has been determined to have a developmental disability as defined by RCW 71A.10.020(3). [2006 c 303 § 2.]

**71A.12.220 Community protection program—Definitions.** The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Assessment" means the written opinion of a qualified professional stating, at a minimum:

(a) Whether a person meets the criteria established in RCW 71A.12.210;

(b) What restrictions are necessary.

(2) "Certified community protection program intensive supported living services" means access to twenty-four-hour supervision, instruction, and support services as identified in the person's plan of care.

(3) "Community protection program" means services specifically designed to support persons who meet the criteria of RCW 71A.12.210.

(4) "Constitutes a risk to others" means a determination of a person's risk and/or dangerousness based upon a thorough assessment by a qualified professional.

(5) "Department" means the department of social and health services.

(6) "Developmental disability" means that condition defined in RCW 71A.10.020(3).

(7) "Disclosure" means providing copies of professional assessments, incident reports, legal documents, and other information pertaining to community protection issues to ensure the provider has all relevant information. Polygraph and plethysmograph reports are excluded from disclosure.

(8) "Division" means the division of developmental disabilities.

(9) "Managed successfully" means that a person supported by a community protection program does not engage in the behavior identified in RCW 71A.12.210.

(10) "Opportunistic behavior" means an act committed on impulse, which is not premeditated.

(11) "Predatory" means acts directed toward strangers, individuals with whom a relationship has been established or promoted for the primary purpose of victimization, or casual acquaintances with whom no substantial personal relationship exists. Predatory behavior may be characterized by planning and/or rehearsing the act, stalking, and/or grooming the victim.

(12) "Qualified professional" means a person with at least three years' prior experience working with individuals with developmental disabilities, and: (a) If the person being assessed has demonstrated sexually aggressive or sexually violent behavior, that person must be assessed by a qualified professional who is a certified sex offender treatment provider, or affiliate sex offender treatment provider working under the supervision of a certified sex offender treatment provider; or (b) if the person being assessed has demonstrated violent, dangerous, or aggressive behavior, that person must be assessed by a licensed psychologist or psychiatrist who has received specialized training in the treatment of or has at least three years' prior experience treating violent or aggressive behavior.

(13) "Treatment team" means the program participant and the group of people responsible for the development, implementation, and monitoring of the person's individualized supports and services. This group may include, but is not limited to, the case resource manager, therapist, residential provider, employment/day program provider, and the person's legal representative and/or family, provided the person consents to the family member's involvement.

(14) "Violent offense" means any felony defined as a violent offense in RCW 9.94A.030.

(15) "Waiver" means the community-based funding under section 1915 of Title XIX of the federal social security act. [2006 c 303 § 3.]

**71A.12.230 Community protection program—Risk assessment—Written notification—Written determination.** (1) Prior to receiving services through the community protection program, a person must first receive an assessment of risk and/or dangerousness by a qualified professional. The assessment must be consistent with the guidelines for risk assessments and psychosexual evaluations developed by the department. The person requesting services and the person's legal representative have the right to choose the qualified professional who will perform the assessment from a list of state contracted qualified professionals. The assessment must contain, at a minimum, a determination by the qualified professional whether the person can be managed successfully in the community with reasonably available safeguards and that lesser restrictive residential placement alternatives have been considered and would not be reasonable for the person seeking services. The department may request an additional evaluation by a qualified professional evaluator who is contracted with the state.

(2) Any person being considered for placement in the community protection program and his or her legal representative must be informed in writing of the following: (a) Limitations regarding the services that will be available due to the person's community protection issues; (b) disclosure requirements as a condition of receiving services other than case management; (c) the requirement to engage in therapeutic treatment may be a condition of receiving certain services; (d) anticipated restrictions that may be provided including, but not limited to intensive supervision, limited access to television viewing, reading material, videos; (e) the right to accept or decline services; (f) the anticipated consequences of declining services such as the loss of existing services and removal from waiver services; (g) the right to an administrative fair hearing in accordance with department and division policy; (h) the requirement to sign a preplacement agreement as a condition of receiving community protection intensive supported living services; (i) the right to retain current services during the pendency of any challenge to the department's decision; (j) the right to refuse to participate in the program.

(3)(a) If the department determines that a person is appropriate for placement in the community protection program, the individual and his or her legal representative shall receive in writing a determination by the department that the person meets the criteria for placement within the community protection program.

(b) If the department determines that a person cannot be managed successfully in the community protection program with reasonably available safeguards, the department must notify the person and his or her legal representative in writing. [2006 c 303 § 4.]

**71A.12.240 Community protection program—Appeals—Rules—Notice.** (1) Individuals receiving services through the department's community protection waiver retain all appeal rights provided for in RCW 71A.10.050. In

addition, such individuals have a right to an administrative hearing pursuant to chapter 34.05 RCW to appeal the following decisions by the department:

(a) Termination of community protection waiver eligibility;

(b) Assignment of the applicant to the community protection waiver;

(c) Denial of a request for less restrictive community residential placement.

(2) Final administrative decisions may be appealed pursuant to the provisions of RCW 34.05.510.

(3) The secretary shall adopt rules concerning the procedure applicable to requests for hearings under this section and governing the conduct thereof.

(4) When the department takes any action described in subsection (1) of this section it shall give notice as provided by RCW 71A.10.060. The notice must include a statement advising the person enrolled on the community protection waiver of the right to an adjudicative proceeding and the time limits for filing an application for an adjudicative proceeding. Notice must also include a statement advising the recipient of the right to file a petition for judicial review of a final administrative decision as provided in chapter 34.05 RCW.

(5) Nothing in this section creates an entitlement to placement on the community protection waiver nor does it create a right to an administrative hearing on department decisions denying placement on the community protection waiver. [2006 c 303 § 5.]

**71A.12.250 Community protection program—Services—Reviews—Rules.** (1) Community protection program participants shall have appropriate opportunities to receive services in the least restrictive manner and in the least restrictive environments possible.

(2) There must be a review by the treatment team every ninety days to assess each participant's progress, evaluate use of less restrictive measures, and make changes in the participant's program as necessary. The team must review all restrictions and recommend reductions if appropriate. The therapist must write a report annually evaluating the participant's risk of offense and/or risk of behaviors that are dangerous to self or others. The department shall have rules in place describing this process. If a treatment team member has reason to be concerned that circumstances have changed significantly, the team member may request that a complete reassessment be conducted at any time. [2006 c 303 § 6.]

**71A.12.260 Community protection program—Less restrictive residential placement.** A participant who demonstrates success in complying with reduced restrictions and remains free of offenses that may indicate a relapse for at least twelve months, may be considered for placement in a less restrictive community residential setting.

The process to move a participant to a less restrictive residential placement shall include, at a minimum:

(1) Written verification of the person's treatment progress, compliance with reduced restrictions, an assessment of low risk of reoffense, and a recommendation as to suitable placement by the treatment team;

(2) Development of a gradual phase out plan by the treatment team, projected over a reasonable period of time and includes specific criteria for evaluating reductions in restrictions, especially supervision;

(3) The absence of any incidents that may indicate relapse for a minimum of twelve months;

(4) A written plan that details what supports and services, including the level of supervision the person will receive from the division upon exiting the community protection program;

(5) An assessment consistent with the guidelines for risk assessments and psychosexual evaluations developed by the division, conducted by a qualified professional. At a minimum, the assessment shall include:

(a) An evaluation of the participant's risk of reoffense and/or dangerousness; and

(b) An opinion as to whether or not the person can be managed successfully in a less restrictive community residential setting;

(6) Recommendation by the treatment team that the participant is ready to move to a less restrictive community residential placement. [2006 c 303 § 7.]

**71A.12.270 Community protection program—Enforcement actions.** (1) The department is authorized to take one or more of the enforcement actions listed in subsection (2) of this section when the department finds that a provider of residential services and support with whom the department entered into an agreement under this chapter has:

(a) Failed or refused to comply with the requirements of this chapter or the rules adopted under it;

(b) Failed or refused to cooperate with the certification process;

(c) Prevented or interfered with a certification, inspection, or investigation by the department;

(d) Failed to comply with any applicable requirements regarding vulnerable adults under chapter 74.34 RCW; or

(e) Knowingly, or with reason to know, made a false statement of material fact related to certification or contracting with the department, or in any matter under investigation by the department.

(2) The department may:

(a) Decertify or refuse to renew the certification of a provider;

(b) Impose conditions on a provider's certification status;

(c) Suspend department referrals to the provider; or

(d) Require a provider to implement a plan of correction developed by the department and to cooperate with subsequent monitoring of the provider's progress. In the event a provider fails to implement the plan of correction or fails to cooperate with subsequent monitoring, the department may impose civil penalties of not more than one hundred fifty dollars per day per violation. Each day during which the same or similar action or inaction occurs constitutes a separate violation.

(3) When determining the appropriate enforcement action or actions under subsection (2) of this section, the department must select actions commensurate with the seriousness of the harm or threat of harm to the persons being served by the provider. Further, the department may take

(2010 Ed.)

enforcement actions that are more severe for violations that are uncorrected, repeated, pervasive, or which present a serious threat of harm to the health, safety, or welfare of persons served by the provider. The department shall by rule develop criteria for the selection and implementation of enforcement actions authorized in subsection (2) of this section. Rules adopted under this section shall include a process for an informal review upon request by a provider.

(4) The provisions of chapter 34.05 RCW apply to enforcement actions under this section. Except for the imposition of civil penalties, the effective date of enforcement actions shall not be delayed or suspended pending any hearing or informal review.

(5) The enforcement actions and penalties authorized in this section are not exclusive or exhaustive and nothing in this section prohibits the department from taking any other action authorized in statute or rule or under the terms of a contract with the provider. [2006 c 303 § 8.]

**71A.12.280 Community protection program—Rules, guidelines, and policy manuals.** The department shall develop and maintain rules, guidelines, or policy manuals, as appropriate, for implementing and maintaining the community protection program under this chapter. [2006 c 303 § 9.]

## Chapter 71A.14 RCW

### LOCAL SERVICES

#### Sections

71A.14.010	Coordinated and comprehensive state and local program.
71A.14.020	County developmental disability boards—Composition—Expenses.
71A.14.030	County authorities—State fund eligibility—Rules—Application.
71A.14.040	Applications for state funds—Review—Approval—Rules.
71A.14.050	Services to community may be required.
71A.14.060	Local authority to provide services.
71A.14.070	Confidentiality of information—Oath.
71A.14.080	Local authority to receive and spend funds.
71A.14.090	Local authority to participate in federal programs.
71A.14.100	Funds from tax levy under RCW 71.20.110.
71A.14.110	Contracts by boundary counties or cities in boundary counties.

**71A.14.010 Coordinated and comprehensive state and local program.** The legislative policy to provide a coordinated and comprehensive state and local program of services for persons with developmental disability is expressed in RCW 71A.12.010. [1988 c 176 § 301.]

**71A.14.020 County developmental disability boards—Composition—Expenses.** (1) The county governing authority of any county may appoint a developmental disability board to plan services for persons with developmental disabilities, to provide directly or indirectly a continuum of care and services to persons with developmental disabilities within the county or counties served by the community board. The governing authorities of more than one county by joint action may appoint a single developmental disability board. Nothing in this section shall prohibit a county or counties from combining the developmental disability board with another county board, such as a mental health board.

(2) Members appointed to the board shall include but not be limited to representatives of public, private, or voluntary

agencies, representatives of local governmental units, and citizens knowledgeable about developmental disabilities or interested in services to persons with developmental disabilities in the community.

(3) The board shall consist of not less than nine nor more than fifteen members.

(4) Members shall be appointed for terms of three years and until their successors are appointed and qualified.

(5) The members of the developmental disability board shall not be compensated for the performance of their duties as members of the board, but may be paid subsistence rates and mileage in the amounts prescribed by RCW 42.24.090. [1988 c 176 § 302.]

**71A.14.030 County authorities—State fund eligibility—Rules—Application.** Pursuant to RCW 71A.14.040 the secretary shall work with the county governing authorities and developmental disability boards who apply for state funds to coordinate and provide local services for persons with developmental disabilities and their families. The secretary is authorized to promulgate rules establishing the eligibility of each county and the developmental disability board for state funds to be used for the work of the board in coordinating and providing services to persons with developmental disabilities and their families. An application for state funds shall be made by the board with the approval of the county governing authority, or by the county governing authority on behalf of the board. [1988 c 176 § 303.]

**71A.14.040 Applications for state funds—Review—Approval—Rules.** The secretary shall review the applications from the county governing authority made under RCW 71A.14.030. The secretary may approve an application if it meets the requirements of this chapter and the rules promulgated by the secretary. The secretary shall promulgate rules to assist in determining the amount of the grant. In promulgating the rules, the secretary shall consider the population of the area served, the needs of the area, and the ability of the community to provide funds for the developmental disability program provided in this title. [1988 c 176 § 304.]

**71A.14.050 Services to community may be required.** The department may require by rule that in order to be eligible for state funds, the county and the developmental disability board shall provide the following indirect services to the community:

(1) Serve as an informational and referral agency within the community for persons with developmental disabilities and their families;

(2) Coordinate all local services for persons with developmental disabilities and their families to insure the maximum utilization of all available services;

(3) Prepare comprehensive plans for present and future development of services and for reasonable progress toward the coordination of all local services to persons with developmental disabilities. [1988 c 176 § 305.]

**71A.14.060 Local authority to provide services.** The secretary by rule may authorize the county and the developmental disability board to provide any service for persons

with developmental disabilities that the department is authorized to provide, except for operating residential habilitation centers under chapter 71A.20 RCW. [1988 c 176 § 306.]

**71A.14.070 Confidentiality of information—Oath.**

In order for the developmental disability board to plan, coordinate, and provide required services for persons with developmental disabilities, the county governing authority and the board shall be eligible to obtain such confidential information from public or private schools and the department as is necessary to accomplish the purposes of this chapter. Such information shall be kept in accordance with state law and rules promulgated by the secretary under chapter 34.05 RCW to permit the use of the information to coordinate and plan services. All persons permitted to have access to or to use such information shall sign an oath of confidentiality, substantially as follows:

"As a condition of obtaining information from (fill in facility, agency, or person) I, . . . . ., agree not to divulge, publish, or otherwise make known to unauthorized persons or the public any information obtained in the course of using such confidential information, where release of such information may possibly make the person who received such services identifiable. I recognize that unauthorized release of confidential information may subject me to civil liability under state law."

[1988 c 176 § 307.]

**71A.14.080 Local authority to receive and spend funds.** The county governing authority and the developmental disability board created under RCW 71A.14.020 are authorized to receive and spend funds received from the state under this chapter, or any federal funds received through any state agency, or any gifts or donations received by it for the benefit of persons with developmental disabilities. [1988 c 176 § 308.]

**71A.14.090 Local authority to participate in federal programs.** RCW 71A.12.120 authorizes local governments to participate in federal programs for persons with developmental disabilities. [1988 c 176 § 309.]

**71A.14.100 Funds from tax levy under RCW 71.20.110.** Counties are authorized by RCW 71.20.110 to fund county activities under this chapter. Expenditures of county funds under this chapter shall be subject to the provisions of chapter 36.40 RCW and other statutes relating to expenditures by counties. [1988 c 176 § 310.]

**71A.14.110 Contracts by boundary counties or cities in boundary counties.** Any county or city within a county either of which is situated on the state boundaries is authorized to contract for developmental disability services with a county situated in either the states of Oregon or Idaho, which county is located on boundaries with the state of Washington. [1988 c 176 § 311.]

## Chapter 71A.16 RCW

## ELIGIBILITY FOR SERVICES

## Sections

71A.16.010	Referral for services—Admittance to residential habilitation centers—Expiration of subsections.
71A.16.020	Eligibility for services—Rules.
71A.16.030	Outreach program—Determination of eligibility for services—Application.
71A.16.040	Determination of eligibility—Notice—Rules for redetermination.
71A.16.050	Determination of eligibility—Effect—Determination of appropriate services.

**71A.16.010 Referral for services—Admittance to residential habilitation centers—Expiration of subsections.** (1) It is the intention of the legislature in this chapter to establish a single point of referral for persons with developmental disabilities and their families so that they may have a place of entry and continuing contact for services authorized under this title to persons with developmental disabilities. Eligible persons with developmental disabilities, whether they live in the community or residential habilitation centers, should have the opportunity to choose where they live.

(2) Until June 30, 2003, and subject to subsection (3) of this section, if there is a vacancy in a residential habilitation center, the department shall offer admittance to the center to any eligible adult, or eligible adolescent on an exceptional case-by-case basis, with developmental disabilities if his or her assessed needs require the funded level of resources that are provided by the center.

(3) The department shall not offer a person admittance to a residential habilitation center under subsection (2) of this section unless the department also offers the person appropriate community support services listed in RCW 71A.12.040.

(4) Community support services offered under subsection (3) of this section may only be offered using funds specifically designated for this purpose in the state operating budget. When these funds are exhausted, the department may not offer admittance to a residential habilitation center, or community support services under this section.

(5) Nothing in this section shall be construed to create an entitlement to state services for persons with developmental disabilities.

(6) Subsections (2) through (6) of this section expire June 30, 2003. [1998 c 216 § 3; 1988 c 176 § 401.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**71A.16.020 Eligibility for services—Rules.** (1) A person is eligible for services under this title if the secretary finds that the person has a developmental disability as defined in \*RCW 71A.10.020(2).

(2) The secretary may adopt rules further defining and implementing the criteria in the definition of "developmental disability" under \*RCW 71A.10.020(2). [1988 c 176 § 402.]

\*Reviser's note: RCW 71A.10.020 was amended by 1998 c 216 § 2, changing subsection (2) to subsection (3).

**71A.16.030 Outreach program—Determination of eligibility for services—Application.** (1) The department will develop an outreach program to ensure that any eligible person with developmental disabilities services in homes, the

community, and residential habilitation centers will be made aware of these services. This subsection (1) expires June 30, 2003.

(2) The secretary shall establish a single procedure for persons to apply for a determination of eligibility for services provided to persons with developmental disabilities.

(3) Until June 30, 2003, the procedure set out under subsection (1) of this section must require that all applicants and all persons with developmental disabilities currently receiving services from the division of developmental disabilities within the department be given notice of the existence and availability of residential habilitation center and community support services. For genuine choice to exist, people must know what the options are. Available options must be clearly explained, with services customized to fit the unique needs and circumstances of developmentally disabled clients and their families. Choice of providers and design of services and supports will be determined by the individual in conjunction with the department. When the person cannot make these choices, the person's legal guardian may make them, consistent with chapter 11.88 or 11.92 RCW. This subsection expires June 30, 2003.

(4) An application may be submitted by a person with a developmental disability, by the legal representative of a person with a developmental disability, or by any other person who is authorized by rule of the secretary to submit an application. [1998 c 216 § 4; 1988 c 176 § 403.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**71A.16.040 Determination of eligibility—Notice—Rules for redetermination.** (1) On receipt of an application for services submitted under RCW 71A.16.030, the secretary in a timely manner shall make a written determination as to whether the applicant is eligible for services provided under this title for persons with developmental disabilities.

(2) The secretary shall give notice of the secretary's determination on eligibility to the person who submitted the application and to the applicant, if the applicant is a person other than the person who submitted the application for services. The notice shall also include a statement advising the recipient of the right to an adjudicative proceeding under RCW 71A.10.050 and the right to judicial review of the secretary's final decision.

(3) The secretary may establish rules for redetermination of eligibility for services under this title. [1989 c 175 § 141; 1988 c 176 § 404.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**71A.16.050 Determination of eligibility—Effect—Determination of appropriate services.** The determination made under this chapter is only as to whether a person is eligible for services. After the secretary has determined under this chapter that a person is eligible for services, the secretary shall make a determination as to what services are appropriate for the person. [1988 c 176 § 405.]

**Chapter 71A.18 RCW**  
**SERVICE DELIVERY**

## Sections

- 71A.18.010 Individual service plans.  
71A.18.020 Services provided if funds available.  
71A.18.030 Rejection of service.  
71A.18.040 Alternative service—Application—Determination—Reauthorization—Notice.  
71A.18.050 Discontinuance of a service.

**71A.18.010 Individual service plans.** The secretary may produce and maintain an individual service plan for each eligible person. An individual service plan is a plan that identifies the needs of a person for services and determines what services will be in the best interests of the person and will meet the person's needs. [1988 c 176 § 501.]

**71A.18.020 Services provided if funds available.** The secretary may provide a service to a person eligible under this title if funds are available. If there is an individual service plan, the secretary shall consider the need for services as provided in that plan. [1988 c 176 § 601.]

**71A.18.030 Rejection of service.** An eligible person or the person's legal representative may reject an authorized service. Rejection of an authorized service shall not affect the person's eligibility for services and shall not eliminate the person from consideration for other services or for the same service at a different time or under different circumstances. [1988 c 176 § 602.]

**71A.18.040 Alternative service—Application—Determination—Reauthorization—Notice.** (1) A person who is receiving a service under this title or the person's legal representative may request the secretary to authorize a service that is available under this title in place of a service that the person is presently receiving.

(2) The secretary upon receiving a request for change of service shall consult in the manner provided in RCW 71A.10.070 and within ninety days shall determine whether the following criteria are met:

- (a) The alternative plan proposes a less dependent program than the person is participating in under current service;
- (b) The alternative service is appropriate under the goals and objectives of the person's individual service plan;
- (c) The alternative service is not in violation of applicable state and federal law; and
- (d) The service can reasonably be made available.

(3) If the requested alternative service meets all of the criteria of subsection (2) of this section, the service shall be authorized as soon as reasonable, but not later than one hundred twenty days after completion of the determination process, unless the secretary determines that:

- (a) The alternative plan is more costly than the current plan;
- (b) Current appropriations are not sufficient to implement the alternative service without reducing services to existing clients; or
- (c) Providing alternative service would take precedence over other priorities for delivery of service.

(4) The secretary shall give notice as provided in RCW 71A.10.060 of the grant of a request for a change of service. The secretary shall give notice as provided in RCW 71A.10.060 of denial of a request for change of service and of the right to an adjudicative proceeding.

(5) When the secretary has changed service from a residential habilitation center to a setting other than a residential habilitation center, the secretary shall reauthorize service at the residential habilitation center if the secretary in reevaluating the needs of the person finds that the person needs service in a residential habilitation center.

(6) If the secretary determines that current appropriations are sufficient to deliver additional services without reducing services to persons who are presently receiving services, the secretary is authorized to give persons notice under RCW 71A.10.060 that they may request the services as new services or as changes of services under this section. [1989 c 175 § 142; 1988 c 176 § 603.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**71A.18.050 Discontinuance of a service.** (1) When considering the discontinuance of a service that is being provided to a person, the secretary shall consult as required in RCW 71A.10.070.

(2) The discontinuance of a service under this section does not affect the person's eligibility for services. Other services may be provided or the same service may be restored when it is again available or when it is again needed.

(3) Except when the service is discontinued at the request of the person receiving the service or that person's legal representative, the secretary shall give notice as required in RCW 71A.10.060. [1988 c 176 § 604.]

**Chapter 71A.20 RCW**

**RESIDENTIAL HABILITATION CENTERS**

## Sections

- 71A.20.010 Scope of chapter.  
71A.20.020 Residential habilitation centers.  
71A.20.030 Facilities for Interlake School.  
71A.20.040 Use of Harrison Memorial Hospital property.  
71A.20.050 Superintendents—Secretary's custody of residents.  
71A.20.060 Work programs for residents.  
71A.20.070 Educational programs.  
71A.20.080 Return of resident to community—Notice—Adjudicative proceeding—Judicial review—Effect of appeal.  
71A.20.090 Secretary to determine capacity of residential quarters.  
71A.20.100 Personal property of resident—Secretary as custodian—Limitations—Judicial proceedings to recover.  
71A.20.110 Clothing for residents—Cost.  
71A.20.120 Financial responsibility.  
71A.20.130 Death of resident, payment of funeral expenses—Limitation.  
71A.20.140 Resident desiring to leave center—Authority to hold resident limited.  
71A.20.150 Admission to residential habilitation center for observation.  
71A.20.170 Developmental disabilities community trust account—Creation—Required deposits—Permitted withdrawals.  
71A.20.800 Chapter to be liberally construed.  
71A.20.900 Construction—Chapter applicable to state registered domestic partnerships—2009 c 521.

**71A.20.010 Scope of chapter.** This chapter covers the operation of residential habilitation centers. The selection of persons to be served at the centers is governed by chapters 71A.16 and 71A.18 RCW. The purposes of this chapter are: To provide for those children and adults who are exceptional

in their needs for care, treatment, and education by reason of developmental disabilities, residential care designed to develop their individual capacities to their optimum; to provide for admittance, withdrawal and discharge from state residential habilitation centers upon application; and to insure a comprehensive program for the education, guidance, care, treatment, and rehabilitation of all persons admitted to residential habilitation centers. [1988 c 176 § 701.]

**71A.20.020 Residential habilitation centers.** The following residential habilitation centers are permanently established to provide services to persons with developmental disabilities: Lakeland Village, located at Medical Lake, Spokane county; Rainier School, located at Buckley, Pierce county; Yakima Valley School, located at Selah, Yakima county; Fircrest School, located at Seattle, King county; and Frances Haddon Morgan Children's Center, located at Bremerton, Kitsap county. [1994 c 215 § 1; 1988 c 176 § 702.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**71A.20.030 Facilities for Interlake School.** (1) The secretary may use surplus physical facilities at Eastern State Hospital as a residential habilitation center, which shall be known as the "Interlake School."

(2) The secretary may designate and select such buildings and facilities and tracts of land at Eastern State Hospital that are surplus to the needs of the department for mentally ill persons and that are reasonably necessary and adequate for services for persons with developmental disabilities. The secretary shall also designate those buildings, equipment, and facilities which are to be used jointly and mutually by both Eastern State Hospital and Interlake School. [1988 c 176 § 703.]

**71A.20.040 Use of Harrison Memorial Hospital property.** The secretary may under RCW 72.29.010 use the Harrison Memorial Hospital property at Bremerton, Kitsap county, for services to persons with developmental disabilities. [1988 c 176 § 704.]

**71A.20.050 Superintendents—Secretary's custody of residents.** (1) The secretary shall appoint a superintendent for each residential habilitation center. The superintendent of a residential habilitation center shall have a demonstrated history of knowledge, understanding, and compassion for the needs, treatment, and training of persons with developmental disabilities.

(2) The secretary shall have custody of all residents of the residential habilitation centers and control of the medical, educational, therapeutic, and dietetic treatment of all residents, except that the school district that conducts the program of education provided pursuant to RCW 28A.190.030 through 28A.190.050 shall have control of and joint custody of residents while they are participating in the program. The secretary shall cause surgery to be performed on any resident only upon gaining the consent of a parent, guardian, or limited guardian as authorized, except, if after reasonable effort to locate the parents, guardian, or limited guardian as authorized, and the health of the resident is certified by the attend-

ing physician to be jeopardized unless such surgery is performed, the required consent shall not be necessary. [1990 c 33 § 589; 1988 c 176 § 705.]

**Purpose—Statutory references—Severability—1990 c 33:** See RCW 28A.900.100 through 28A.900.102.

**71A.20.060 Work programs for residents.** The secretary shall have authority to engage the residents of a residential habilitation center in beneficial work programs, but the secretary shall not engage residents in excessive hours of work or work for disciplinary purposes. [1988 c 176 § 706.]

**71A.20.070 Educational programs.** (1) An educational program shall be created and maintained for each residential habilitation center pursuant to RCW 28A.190.030 through 28A.190.050. The educational program shall provide a comprehensive program of academic, vocational, recreational, and other educational services best adapted to meet the needs and capabilities of each resident.

(2) The superintendent of public instruction shall assist the secretary in all feasible ways, including financial aid, so that the educational programs maintained within the residential habilitation centers are comparable to the programs advocated by the superintendent of public instruction for children with similar aptitudes in local school districts.

(3) Within available resources, the secretary shall, upon request from a local school district, provide such clinical, counseling, and evaluating services as may assist the local district lacking such professional resources in determining the needs of its exceptional children. [1990 c 33 § 590; 1988 c 176 § 707.]

**Purpose—Statutory references—Severability—1990 c 33:** See RCW 28A.900.100 through 28A.900.102.

**71A.20.080 Return of resident to community—Notice—Adjudicative proceeding—Judicial review—Effect of appeal.** Whenever in the judgment of the secretary, the treatment and training of any resident of a residential habilitation center has progressed to the point that it is deemed advisable to return such resident to the community, the secretary may grant placement on such terms and conditions as the secretary may deem advisable after consultation in the manner provided in RCW 71A.10.070. The secretary shall give written notice of the decision to return a resident to the community as provided in RCW 71A.10.060. The notice must include a statement advising the recipient of the right to an adjudicative proceeding under RCW 71A.10.050 and the time limits for filing an application for an adjudicative proceeding. The notice must also include a statement advising the recipient of the right to judicial review of an adverse adjudicative order as provided in chapter 34.05 RCW.

A placement decision shall not be implemented at any level during any period during which an appeal can be taken or while an appeal is pending and undecided, unless authorized by court order so long as the appeal is being diligently pursued.

The department of social and health services shall periodically evaluate at reasonable intervals the adjustment of the resident to the specific placement to determine whether the resident should be continued in the placement or returned to

the institution or given a different placement. [1989 c 175 § 143; 1988 c 176 § 708.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**71A.20.090 Secretary to determine capacity of residential quarters.** The secretary shall determine by the application of proper criteria the maximum number of persons to reside in the residential quarters of each residential habilitation center. The secretary in authorizing service at a residential habilitation center shall not exceed the maximum population for the residential habilitation center unless the secretary makes a written finding of reasons for exceeding the rated capacity. [1988 c 176 § 709.]

**71A.20.100 Personal property of resident—Secretary as custodian—Limitations—Judicial proceedings to recover.** The secretary shall serve as custodian without compensation of personal property of a resident of a residential habilitation center that is located at the residential habilitation center, including moneys deposited with the secretary for the benefit of the resident. As custodian, the secretary shall have authority to disburse moneys from the resident's fund for the following purposes and subject to the following limitations:

(1) Subject to specific instructions by a donor of money to the secretary for the benefit of a resident, the secretary may disburse any of the funds belonging to a resident for such personal needs of the resident as the secretary may deem proper and necessary.

(2) The secretary may pay to the department as reimbursement for the costs of care, support, maintenance, treatment, hospitalization, medical care, and habilitation of a resident from the resident's fund when such fund exceeds a sum as established by rule of the department, to the extent of any notice and finding of financial responsibility served upon the secretary after such findings shall have become final. If the resident does not have a guardian, parent, spouse, or other person acting in a representative capacity, upon whom notice and findings of financial responsibility have been served, then the secretary shall not make payments to the department as provided in this subsection, until a guardian has been appointed by the court, and the time for the appeal of findings of financial responsibility as provided in RCW 43.20B.430 shall not commence to run until the appointment of such guardian and the service upon the guardian of notice and findings of financial responsibility.

(3) When services to a person are changed from a residential center to another setting, the secretary shall deliver to the person, or to the parent, guardian, or agency legally responsible for the person, all or such portion of the funds of which the secretary is custodian as defined in this section, or other property belonging to the person, as the secretary may deem necessary to the person's welfare, and the secretary may deliver to the person such additional property or funds belonging to the person as the secretary may from time to time deem proper, so long as the person continues to receive service under this title. When the resident no longer receives any services under this title, the secretary shall deliver to the person, or to the parent, person, or agency legally responsible for the person, all funds or other property belonging to the person remaining in the secretary's possession as custodian.

(4) All funds held by the secretary as custodian may be deposited in a single fund, the receipts and expenditures from the fund to be accurately accounted for by the secretary. All interest accruing from, or as a result of the deposit of such moneys in a single fund shall be credited to the personal accounts of the residents. All expenditures under this section shall be subject to the duty of accounting provided for in this section.

(5) The appointment of a guardian for the estate of a resident shall terminate the secretary's authority as custodian of any funds of the resident which may be subject to the control of the guardianship, upon receipt by the secretary of a certified copy of letters of guardianship. Upon the guardian's request, the secretary shall immediately forward to the guardian any funds subject to the control of the guardianship or other property of the resident remaining in the secretary's possession, together with a full and final accounting of all receipts and expenditures made.

(6) Upon receipt of a written request from the secretary stating that a designated individual is a resident of the residential habilitation center and that such resident has no legally appointed guardian of his or her estate, any person, bank, corporation, or agency having possession of any money, bank accounts, or choses in action owned by such resident, shall, if the amount does not exceed two hundred dollars, deliver the same to the secretary as custodian and mail written notice of the delivery to such resident at the residential habilitation center. The receipt by the secretary shall constitute full and complete acquittance for such payment and the person, bank, corporation, or agency making such payment shall not be liable to the resident or his or her legal representative. All funds so received by the secretary shall be duly deposited by the secretary as custodian in the resident's fund to the personal account of the resident. If any proceeding is brought in any court to recover property so delivered, the attorney general shall defend the lawsuit without cost to the person, bank, corporation, or agency that delivered the property to the secretary, and the state shall indemnify such person, bank, corporation, or agency against any judgment rendered as a result of such proceeding. [1988 c 176 § 710.]

**71A.20.110 Clothing for residents—Cost.** When clothing for a resident of a residential habilitation center is not otherwise provided, the secretary shall provide a resident with suitable clothing, the actual cost of which shall be a charge against the parents, guardian, or estate of the resident. If such parent or guardian is unable to provide or pay for the clothing, or the estate of the resident is insufficient to provide or pay for the clothing, the clothing shall be provided by the state. [1988 c 176 § 711.]

**71A.20.120 Financial responsibility.** The subject of financial responsibility for the provision of services to persons in residential habilitation centers is covered by RCW 43.20B.410 through 43.20B.455. [1988 c 176 § 712.]

**71A.20.130 Death of resident, payment of funeral expenses—Limitation.** Upon the death of a resident of a residential habilitation center, the secretary may supplement such funds as were in the resident's account at the time of the

person's death to provide funeral and burial expense for the deceased resident. These expenses shall not exceed funeral and burial expenses allowed under \*RCW 74.08.120. [1988 c 176 § 713.]

\*Reviser's note: RCW 74.08.120 was repealed by 1997 c 58 § 1002.

**71A.20.140 Resident desiring to leave center— Authority to hold resident limited.** (1) If a resident of a residential habilitation center desires to leave the center and the secretary believes that departures may be harmful to the resident, the secretary may hold the resident at the residential habilitation center for a period not to exceed forty-eight hours in order to consult with the person's legal representative as provided in RCW 71A.10.070 as to the best interests of the resident.

(2) The secretary shall adopt rules to provide for the application of subsection (1) of this section in a manner that protects the constitutional rights of the resident.

(3) Neither the secretary nor any person taking action under this section shall be civilly or criminally liable for performing duties under this section if such duties were performed in good faith and without gross negligence. [1988 c 176 § 714.]

**71A.20.150 Admission to residential habilitation center for observation.** Without committing the department to continued provision of service, the secretary may admit a person eligible for services under this chapter to a residential habilitation center for a period not to exceed thirty days for observation prior to determination of needed services, where such observation is necessary to determine the extent and necessity of services to be provided. [1988 c 176 § 715.]

**71A.20.170 Developmental disabilities community trust account—Creation—Required deposits—Permitted withdrawals.** (1) The developmental disabilities community trust account is created in the state treasury. All net proceeds from the use of excess property identified in the 2002 joint legislative audit and review committee capital study or other studies of the division of developmental disabilities residential habilitation centers at Lakeland Village, Yakima Valley school, Francis Haddon Morgan Center, and Rainier school that would not impact current residential habilitation center operations must be deposited into the account.

(2) Proceeds may come from the lease of the land, conservation easements, sale of timber, or other activities short of sale of the property.

(3) "Excess property" includes that portion of the property at Rainier school previously under the cognizance and control of Washington State University for use as a dairy/forage research facility.

(4) Only investment income from the principal of the proceeds deposited into the trust account may be spent from the account. For purposes of this section, "investment income" includes lease payments, rent payments, or other periodic payments deposited into the trust account. For purposes of this section, "principal" is the actual excess land from which proceeds are assigned to the trust account.

(5) Moneys in the account may be spent only after appropriation. Expenditures from the account shall be used exclu-

(2010 Ed.)

sively to provide family support and/or employment/day services to eligible persons with developmental disabilities who can be served by community-based developmental disability services. It is the intent of the legislature that the account should not be used to replace, supplant, or reduce existing appropriations.

(6) The account shall be known as the Dan Thompson memorial developmental disabilities community trust account. [2008 c 265 § 1; 2005 c 353 § 1.]

**Effective dates—2005 c 353:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [May 10, 2005], except for section 3 of this act which takes effect July 1, 2005, and section 4 of this act which takes effect July 1, 2006." [2005 c 353 § 7.]

**71A.20.800 Chapter to be liberally construed.** The provisions of this chapter shall be liberally construed to accomplish its purposes. [1988 c 176 § 716.]

**71A.20.900 Construction—Chapter applicable to state registered domestic partnerships—2009 c 521.** For the purposes of this chapter, the terms spouse, marriage, marital, husband, wife, widow, widower, next of kin, and family shall be interpreted as applying equally to state registered domestic partnerships or individuals in state registered domestic partnerships as well as to marital relationships and married persons, and references to dissolution of marriage shall apply equally to state registered domestic partnerships that have been terminated, dissolved, or invalidated, to the extent that such interpretation does not conflict with federal law. Where necessary to implement chapter 521, Laws of 2009, gender-specific terms such as husband and wife used in any statute, rule, or other law shall be construed to be gender neutral, and applicable to individuals in state registered domestic partnerships. [2009 c 521 § 162.]

**Chapter 71A.22 RCW**

**TRAINING CENTERS AND HOMES**

Sections

- 71A.22.010 Contracts for services authorized.
- 71A.22.020 Definitions.
- 71A.22.030 Payments by secretary under this chapter supplemental—Limitation.
- 71A.22.040 Certification of facility as day training center or group training home.
- 71A.22.050 Services in day training center or group training home—Application for payment.
- 71A.22.060 Facilities to be nonsectarian.

**71A.22.010 Contracts for services authorized.** The secretary may enter into agreements with any person or with any person, corporation, or association operating a day training center or group training home or a combination day training center and group training home approved by the department, for the payment of all, or a portion, of the cost of the care, treatment, maintenance, support, and training of persons with developmental disabilities. [1988 c 176 § 801.]

**71A.22.020 Definitions.** As used in this chapter:

(1) "Day training center" means a facility equipped, supervised, managed, and operated at least three days per

week by any person, association, or corporation on a non-profit basis for the day-care, treatment, training, and maintenance of persons with developmental disabilities, and approved under this chapter and the standards under rules adopted by the secretary.

(2) "Group training home" means a facility equipped, supervised, managed, and operated on a full-time basis by any person, association, or corporation on a nonprofit basis for the full-time care, treatment, training, and maintenance of persons with developmental disabilities, and approved under this chapter and the standards under the rules adopted by the secretary. [1988 c 176 § 802.]

**71A.22.030 Payments by secretary under this chapter supplemental—Limitation.** All payments made by the secretary under this chapter, shall be, insofar as possible, supplementary to payments to be made to a day training center or group training home, or a combination of both, by the persons with developmental disabilities resident in the home or center. Payments made by the secretary under this chapter shall not exceed actual costs for the care, treatment, support, maintenance, and training of any person with a developmental disability whether at a day training center or group training home or combination of both. [1988 c 176 § 803.]

**71A.22.040 Certification of facility as day training center or group training home.** Any person, corporation, or association may apply to the secretary for approval and certification of the applicant's facility as a day training center or a group training home for persons with developmental disabilities, or a combination of both. The secretary may either grant or deny certification or revoke certification previously granted after investigation of the applicant's facilities, to ascertain whether or not such facilities are adequate for the care, treatment, maintenance, training, and support of persons with developmental disabilities, under standards in rules adopted by the secretary. Day training centers and group training homes must meet local health and safety standards as may be required by local health and fire-safety authorities. [1989 c 329 § 2; 1988 c 176 § 804.]

**71A.22.050 Services in day training center or group training home—Application for payment.** (1) Except as otherwise provided in this section, the provisions of this title govern applications for payment by the state for services in a day training center or group training home approved by the secretary under this chapter.

(2) In determining eligibility and the amount of payment, the secretary shall make special provision for group training homes where parents are actively involved as a member of the administrative board of the group training home and who may provide for some of the services required by a resident therein. The special provisions shall include establishing eligibility requirements for a person placed in such a group training home to have a parent able and willing to attend administrative board meetings and participate insofar as possible in carrying out special activities deemed by the board to contribute to the well being of the residents.

(3) If the secretary determines that a person is eligible for services in a day training center or group training home, the

secretary shall determine the extent and type of services to be provided and the amount that the department will pay, based upon the needs of the person and the ability of the parent or the guardian to pay or contribute to the payment of the monthly cost of the services.

(4) The secretary may, upon application of the person who is receiving services or the person's legal representative, after investigation of the ability or inability of such persons to pay, or without application being made, modify the amount of the monthly payments to be paid by the secretary for services at a day training center or group training home or combination of both. [1988 c 176 § 805.]

**71A.22.060 Facilities to be nonsectarian.** A day training center and a group training home under this chapter shall be a nonsectarian training center and a nonsectarian group training home. [1988 c 176 § 806.]

## Chapter 71A.24 RCW

### INTENSIVE BEHAVIOR SUPPORT SERVICES

#### Sections

- 71A.24.005 Intent.
- 71A.24.010 Role of department—Eligibility.
- 71A.24.020 Intensive behavior support services—Core team.

**71A.24.005 Intent.** The legislature recognizes that the number of children who have developmental disabilities along with intense behaviors is increasing, and more families are seeking out-of-home placement for their children.

The legislature intends to create services and to develop supports for these children, family members, and others involved in the children's lives to avoid disruption to families and eliminate the need for out-of-home placement.

The legislature directs the department to maintain a federal waiver through which services may be provided to allow children with developmental disabilities and intense behaviors to maintain permanent and stable familial relationships. The legislature intends for these services to be locally based and offered as early as possible to avoid family disruption and out-of-home placement. [2009 c 194 § 1.]

**71A.24.010 Role of department—Eligibility.** (1) To the extent funding is appropriated for this purpose, intensive behavior support services may be provided by the department, directly or by contract, to children who have developmental disabilities and intense behaviors and to their families.

(2) The department shall be the lead administrative agency for children's intensive behavior support services and shall:

- (a) Collaborate with appropriate parties to develop and implement the intensive in-home support services program within the division of developmental disabilities;
- (b) Use best practices and evidence-based practices;
- (c) Provide coordination and planning for the implementation and expansion of intensive in-home services;
- (d) Contract for the provision of intensive in-home and planned out-of-home services;
- (e) Monitor and evaluate services to determine whether the program meets standards identified in the service contracts;

- (f) Collect data regarding the number of families served, and costs and outcomes of the program;
  - (g) Adopt appropriate rules to implement the program;
  - (h) License out-of-home respite placements on a timely basis; and
  - (i) Maintain an appropriate staff-to-client ratio.
- (3) A child may receive intensive behavior support services when the department has determined that:
- (a) The child is under the age of twenty-one;
  - (b) The child has a developmental disability and has been determined eligible for these services;
  - (c) The child/family acuity scores are high enough in the assessment conducted by the division of developmental disabilities to indicate the child's behavior puts the child or family at significant risk or is very likely to require an out-of-home placement;
  - (d) The child meets eligibility for the home and community-based care waiver;
  - (e) The child resides in his or her family home or is temporarily in an out-of-home placement with a plan to return home;
  - (f) The family agrees to participate in the program and complete the care and support steps outlined in the completed individual support plan; and
  - (g) The family is not subject to an unresolved child protective services referral. [2009 c 194 § 2.]

- with the child in all domains, including the school and individualized education plan team; and
- (i) Coordination and planning. [2009 c 194 § 3.]

#### **71A.24.020 Intensive behavior support services—**

**Core team.** (1) Intensive behavior support services under the program authorized in RCW 71A.24.010 shall be provided through a core team of highly trained individuals, either directly or by contract.

(2) The intensive behavior support services shall be designed to enhance the child's and parent's skills to manage behaviors, increase family and personal self-sufficiency, improve functioning of the family, reduce stress on children and families, and assist the family to locate and use other community services.

(3) The core team shall have the following characteristics and responsibilities:

- (a) Expertise in behavior management, therapies, and children's crisis intervention, or the ability to access such specialized expertise;
- (b) Ability to coordinate the array of services and supports needed to stabilize the family;
- (c) Ability to conduct transition planning as an individual and the individual's family leave the program; and
- (d) Ability to authorize and coordinate the services in the family's home and other environments, such as schools and neighborhoods.

(4) The following types of services constitute intensive behavior support services:

- (a) Behavior management and consultation;
- (b) Environmental adaptations;
- (c) Motor vehicle adaptations;
- (d) Therapy equipment and supplies;
- (e) Personal care;
- (f) Specialized diet goods and services;
- (g) In-home respite and planned out-of-home respite;
- (h) Intensive training to intervene effectively with the child for families and other individuals and partners working



# Title 72

## STATE INSTITUTIONS

### Chapters

- 72.01 Administration.**
- 72.02 Adult corrections.**
- 72.04A Probation and parole.**
- 72.05 Children and youth services.**
- 72.06 Mental health.**
- 72.09 Department of corrections.**
- 72.10 Health care services—Department of corrections.**
- 72.11 Offenders' responsibility for legal financial obligations.**
- 72.16 Green Hill school.**
- 72.19 Juvenile correctional institution in King county.**
- 72.20 Maple Lane school.**
- 72.23 Public and private facilities for mentally ill.**
- 72.25 Nonresident mentally ill, sexual psychopaths, and psychopathic delinquents—Deportation, transportation.**
- 72.27 Interstate compact on mental health.**
- 72.29 Multi-use facilities for the mentally or physically handicapped or the mentally ill.**
- 72.36 Soldiers' and veterans' homes and veterans' cemetery.**
- 72.40 State schools for blind, deaf, sensory handicapped.**
- 72.41 Board of trustees—School for the blind.**
- 72.42 Board of trustees—Center for childhood deafness and hearing loss.**
- 72.49 Narcotic or dangerous drugs—Treatment and rehabilitation.**
- 72.60 Correctional industries.**
- 72.62 Vocational education programs.**
- 72.63 Prison work programs—Fish and game.**
- 72.64 Labor and employment of prisoners.**
- 72.65 Work release program.**
- 72.66 Furloughs for prisoners.**
- 72.68 Transfer, removal, transportation—Detention contracts.**
- 72.70 Western interstate corrections compact.**
- 72.72 Criminal behavior of residents of institutions.**
- 72.74 Interstate Corrections Compact.**
- 72.76 Intrastate Corrections Compact.**
- 72.78 Community transition coordination networks.**
- 72.98 Construction.**

*Alcoholism, intoxication, and drug addiction treatment: Chapter 70.96A RCW.*

*Central stores: RCW 43.19.1921, 43.19.1923.*

*County hospitals: Chapter 36.62 RCW.*

*Educational programs for residential school residents: RCW 28A.190.020 through 28A.190.060.*

*Jurisdiction over Indians concerning mental illness: Chapter 37.12 RCW.*

*Mental illness—Financial responsibility: Chapter 71.02 RCW.*

*Public bodies may retain collection agencies to collect public debts—Fees: RCW 19.16.500.*

*Rehabilitation services for individuals with disabilities: Chapter 74.29 RCW.*

*State institutions: State Constitution Art. 13.*

*Uniform interstate compact on juveniles: Chapter 13.24 RCW.*

*Veterans affairs, powers and duties concerning transferred to department of veterans affairs: RCW 43.60A.020.*

*Youth development and conservation corps: Chapter 79A.05 RCW.*

### Chapter 72.01 RCW ADMINISTRATION

#### Sections

- 72.01.010 Powers and duties apply to department of social and health services and department of corrections—Joint exercise authorized.
- 72.01.042 Hours of labor for full time employees—Compensatory time—Premium pay.
- 72.01.043 Hours of labor for full time employees—Certain personnel excepted.
- 72.01.045 Assaults to employees—Reimbursement for costs.
- 72.01.050 Secretary's powers and duties—Management of public institutions and correctional facilities.
- 72.01.060 Chief executive officers—Appointment—Salaries—Assistants.
- 72.01.090 Rules and regulations.
- 72.01.110 Construction or repair of buildings—Contracts or inmate labor.
- 72.01.120 Construction or repair of buildings—Award of contracts.
- 72.01.130 Destruction of buildings—Reconstruction.
- 72.01.140 Agricultural and farm activities.
- 72.01.150 Industrial activities.
- 72.01.180 Dietitian—Duties—Travel expenses.
- 72.01.190 Fire protection.
- 72.01.200 Employment of teachers—Exceptions.
- 72.01.210 Institutional chaplains—Appointment—Qualifications.
- 72.01.212 Institutional chaplains—Liability insurance—Representation by attorney general in civil lawsuits.
- 72.01.220 Institutional chaplains—Duties.
- 72.01.230 Institutional chaplains—Offices, chapels, supplies.
- 72.01.240 Supervisor of chaplains.
- 72.01.260 Outside ministers not excluded.
- 72.01.270 Gifts, acceptance of.
- 72.01.280 Quarters for personnel—Charges.
- 72.01.282 Quarters for personnel—Deposit of receipts.
- 72.01.290 Record of patients and inmates.
- 72.01.300 Accounting systems.
- 72.01.310 Political influence forbidden.
- 72.01.320 Examination of conditions and needs—Report.
- 72.01.365 Escorted leaves of absence for inmates—Definitions.
- 72.01.370 Escorted leaves of absence for inmates—Grounds.
- 72.01.375 Escorted leaves of absence for inmates—Notification of local law enforcement agencies.
- 72.01.380 Leaves of absence for inmates—Rules—Restrictions—Costs.
- 72.01.410 Child under eighteen convicted of crime amounting to felony—Placement—Segregation from adult offenders.
- 72.01.415 Offender under eighteen confined to a jail—Segregation from adult offenders.
- 72.01.430 Transfer of equipment, supplies, livestock between institutions—Notice—Conditions.
- 72.01.450 Use of facilities, equipment and personnel by school districts and institutions of higher learning authorized.
- 72.01.452 Use of facilities, equipment and personnel by state agencies, counties, cities or political subdivisions.
- 72.01.454 Use of facilities by counties, community service organizations, nonprofit associations, etc.
- 72.01.458 Use of files and records for courses of education, instruction and training at institutions.
- 72.01.460 Lease of lands with outdoor recreation potential—Restrictions—Unlawful to use posted lands.
- 72.01.480 Agreements with nonprofit organizations to provide services for persons admitted or committed to institutions.

- 72.01.490 Authority of superintendents, business managers and officers of correctional institutions to take acknowledgments and administer oaths—Procedure.
- 72.01.900 Construction—Chapter applicable to state registered domestic partnerships—2009 c 521.

*Center for research and training in intellectual and developmental disabilities, director as member of advisory committee: RCW 28B.20.412.*

*Counties may engage in probation and parole services: RCW 36.01.070.*

*Disposition of property of deceased inmate of state institution: RCW 11.08.101, 11.08.111, and 11.08.120.*

*Employment of dental hygienist without supervision of dentist authorized: RCW 18.29.056.*

*Out-of-state physicians, conditional license to practice in conjunction with institutions: RCW 18.71.095.*

*Public purchase preferences: Chapter 39.24 RCW.*

*Social security benefits, payment to survivors or department of social and health services: RCW 11.66.010.*

*State administrative departments and agencies: Chapter 43.17 RCW.*

**72.01.010 Powers and duties apply to department of social and health services and department of corrections—Joint exercise authorized.** As used in this chapter:

"Department" means the departments of social and health services and corrections; and

"Secretary" means the secretaries of social and health services and corrections.

The powers and duties granted and imposed in this chapter, when applicable, apply to both the departments of social and health services and corrections and the secretaries of social and health services and corrections for institutions under their control. A power or duty may be exercised or fulfilled jointly if joint action is more efficient, as determined by the secretaries. [1981 c 136 § 66; 1979 c 141 § 142; 1970 ex.s. c 18 § 56; 1959 c 28 § 72.01.010. Prior: 1907 c 166 § 10; RRS § 10919. Formerly RCW 72.04.010.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**72.01.042 Hours of labor for full time employees—Compensatory time—Premium pay.** The hours of labor for each full time employee shall be a maximum of eight hours in any workday and forty hours in any work week.

Employees required to work in excess of the eight-hour maximum per day or the forty-hour maximum per week shall be compensated by not less than equal hours of compensatory time off or, in lieu thereof, a premium rate of pay per hour equal to not less than one-one hundred and seventy-sixth of the employee's gross monthly salary: PROVIDED, That in the event that an employee is granted compensatory time off, such time off should be given within the calendar year and in the event that such an arrangement is not possible the employee shall be given a premium rate of pay: PROVIDED FURTHER, That compensatory time and/or payment thereof shall be allowed only for overtime as is duly authorized and accounted for under rules and regulations established by the secretary. [1981 c 136 § 67; 1979 c 141 § 143; 1970 ex.s. c 18 § 60; 1953 c 169 § 1. Formerly RCW 43.19.255.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**72.01.043 Hours of labor for full time employees—Certain personnel excepted.** RCW 72.01.042 shall not be applicable to the following designated personnel: Administrative officers of the department; institutional superintendents,

medical staff other than nurses, and business managers; and such professional, administrative and supervisory personnel as designated prior to July 1, 1970 by the department of social and health services with the concurrence of the merit system board having jurisdiction. [1979 c 141 § 144; 1970 ex.s. c 18 § 61; 1953 c 169 § 2. Formerly RCW 43.19.256.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**72.01.045 Assaults to employees—Reimbursement for costs.** (1) For purposes of this section only, "assault" means an unauthorized touching of an employee by a resident, patient, or juvenile offender resulting in physical injury to the employee.

(2) In recognition of the hazardous nature of employment in state institutions, the legislature hereby provides a supplementary program to reimburse employees of the department of social and health services, the department of natural resources, and the department of veterans affairs for some of their costs attributable to their being the victims of assault by residents, patients, or juvenile offenders. This program shall be limited to the reimbursement provided in this section.

(3) An employee is only entitled to receive the reimbursement provided in this section if the secretary of social and health services, the commissioner of public lands, or the director of the department of veterans affairs, or the secretary's, commissioner's, or director's designee, finds that each of the following has occurred:

(a) A resident or patient has assaulted the employee and as a result thereof the employee has sustained demonstrated physical injuries which have required the employee to miss days of work;

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

(c) The department of labor and industries has approved the employee's workers' compensation application pursuant to chapter 51.32 RCW.

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

(a) The employee's accumulated sick leave days shall not be reduced for the workdays missed;

(b) For each workday missed for which the employee is not eligible to receive compensation under chapter 51.32 RCW, the employee shall receive full pay; and

(c) In respect to workdays missed for which the employee will receive or has received compensation under chapter 51.32 RCW, the employee shall be reimbursed in an amount which, when added to that compensation, will result in the employee receiving full pay for the workdays missed.

(5) Reimbursement under this section may not last longer than three hundred sixty-five consecutive days after the date of the injury.

(6) The employee shall not be entitled to the reimbursement provided in subsection (4) of this section for any workday for which the secretary, commissioner, director, or applicable designee, finds that the employee has not diligently pursued his or her compensation remedies under chapter 51.32 RCW.

(7) The reimbursement shall only be made for absences which the secretary, commissioner, director, or applicable designee believes are justified.

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

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

(10) Should the legislature revoke the reimbursement authorized under this section or repeal this section, no affected employee is entitled thereafter to receive the reimbursement as a matter of contractual right. [2002 c 77 § 1; 1990 c 153 § 1; 1987 c 102 § 1; 1986 c 269 § 4.]

**72.01.050 Secretary's powers and duties—Management of public institutions and correctional facilities.** (1) The secretary of social and health services shall have full power to manage and govern the following public institutions: The western state hospital, the eastern state hospital, the northern state hospital, the state training school, the state school for girls, Lakeland Village, the Rainier school, and such other institutions as authorized by law, subject only to the limitations contained in laws relating to the management of such institutions.

(2) The secretary of corrections shall have full power to manage, govern, and name all state correctional facilities, subject only to the limitations contained in laws relating to the management of such institutions.

(3) If any state correctional facility is fully or partially destroyed by natural causes or otherwise, the secretary of corrections may, with the approval of the governor, provide for the establishment and operation of additional residential correctional facilities to place those inmates displaced by such destruction. However, such additional facilities may not be established if there are existing residential correctional facilities to which all of the displaced inmates can be appropriately placed. The establishment and operation of any additional facility shall be on a temporary basis, and the facility may not be operated beyond July 1 of the year following the year in which it was partially or fully destroyed. [1992 c 7 § 51; 1988 c 143 § 1. Prior: 1985 c 378 § 8; 1985 c 350 § 1; 1981 c 136 § 68; 1979 c 141 § 145; 1977 c 31 § 1; 1959 c 28 § 72.01.050; prior: 1955 c 195 § 4(1); 1915 c 107 § 1, part; 1907 c 166 § 2, part; 1901 c 119 § 3, part; RRS § 10899, part. Formerly RCW 43.28.020, part.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**72.01.060 Chief executive officers—Appointment—Salaries—Assistants.** The secretary shall appoint the chief executive officers necessary to manage one or more of the public facilities operated by the department. This section, however, shall not apply to RCW 72.40.020.

Except as otherwise provided in this title, the chief executive officer of each institution may appoint all assistants and employees required for the management of the institution

(2010 Ed.)

placed in his charge, the number of such assistants and employees to be determined and fixed by the secretary. The chief executive officer of any institution may, at his pleasure, discharge any person therein employed. The secretary shall investigate all complaints made against the chief executive officer of any institution and also any complaint against any other officer or employee thereof, if it has not been investigated and reported upon by the chief executive officer.

The secretary may, after investigation, for good and sufficient reasons, order the discharge of any subordinate officer or employee of an institution.

Each chief executive officer shall receive such salary as is fixed by the secretary, who shall also fix the compensation of other officers and the employees of each institution. Such latter compensation shall be fixed on or before the first day of April of each year and no change shall be made in the compensation, so fixed, during the twelve month period commencing April 1st. [1983 1st ex.s. c 41 § 26; 1979 c 141 § 146; 1959 c 28 § 72.01.060. Prior: 1907 c 166 § 5; 1901 c 119 § 6; RRS § 10902. Formerly RCW 72.04.020.]

*Authority to appoint a single executive officer for multiple institutions—Exception: RCW 43.20A.607.*

*Juvenile correctional institution in King county, appointment of superintendent: RCW 72.19.030.*

*Maple Lane School, appointment of superintendent and subordinate officers and employees: RCW 72.20.020.*

*State hospitals for individuals with mental illness—Superintendents: RCW 72.23.030.*

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**72.01.090 Rules and regulations.** The department is authorized to make its own rules for the proper execution of its powers. It shall also have the power to adopt rules and regulations for the government of the public institutions placed under its control, and shall therein prescribe, in a manner consistent with the provisions of this title, the duties of the persons connected with the management of such public institutions. [1959 c 28 § 72.01.090. Prior: 1907 c 166 § 7; 1901 c 119 § 9; RRS § 10905. Formerly RCW 72.04.060.]

**72.01.110 Construction or repair of buildings—Contracts or inmate labor.** The department may employ the services of competent architects for the preparation of plans and specifications for new buildings, or for repairs, changes, or additions to buildings already constructed, employ competent persons to superintend the construction of new buildings or repairs, changes, or additions to buildings already constructed and call for bids and award contracts for the erection of new buildings, or for repairs, changes, or additions to buildings already constructed: PROVIDED, That the department may proceed with the erecting of any new building, or repairs, changes, or additions to any buildings already constructed, employing thereon the labor of the inmates of the institution, when in its judgment the improvements can be made in as satisfactory a manner and at a less cost to the state by so doing. [1959 c 28 § 72.01.110. Prior: 1901 c 119 § 12; RRS § 10909. Formerly RCW 72.04.100.]

*Public works: Chapter 39.04 RCW.*

**72.01.120 Construction or repair of buildings—Award of contracts.** When improvements are to be made

under contract, notice of the call for the same shall be published in at least two newspapers of general circulation in the state for two weeks prior to the award being made. The contract shall be awarded to the lowest responsible bidder. The secretary is authorized to require such security as he may deem proper to accompany the bids submitted, and shall also fix the amount of the bond or other security that shall be furnished by the person or firm to whom the contract is awarded. The secretary shall have the power to reject any or all bids submitted, if for any reason it is deemed for the best interest of the state to do so, and to readvertise in accordance with the provisions hereof. The secretary shall also have the power to reject the bid of any person or firm who has had a prior contract, and who did not, in the opinion of the secretary, faithfully comply with the same. [1979 c 141 § 148; 1959 c 28 § 72.01.120. Prior: 1901 c 119 § 10, part; RRS § 10906.]

**72.01.130 Destruction of buildings—Reconstruction.**

If any of the shops or buildings in which convicts are employed are destroyed in any way, or injured by fire or otherwise, they may be rebuilt or repaired immediately under the direction of the department, by and with the advice and consent of the governor, and the expenses thereof shall be paid out of any unexpended funds appropriated to the department for any purpose, not to exceed one hundred thousand dollars: PROVIDED, That if a specific appropriation for a particular project has been made by the legislature, only such funds exceeding the cost of such project may be expended for the purposes of this section. [1959 c 28 § 72.01.130. Prior: 1957 c 25 § 1; 1891 c 147 § 29; RRS § 10908. Formerly RCW 72.04.090.]

**72.01.140 Agricultural and farm activities.** The secretary shall:

(1) Make a survey, investigation, and classification of the lands connected with the state institutions under his control, and determine which thereof are of such character as to be most profitably used for agricultural, horticultural, dairying, and stock raising purposes, taking into consideration the costs of making them ready for cultivation, the character of the soil, its depth and fertility, the number of kinds of crops to which it is adapted, the local climatic conditions, the local annual rainfall, the water supply upon the land or available, the needs of all state institutions for the food products that can be grown or produced, and the amount and character of the available labor of inmates at the several institutions;

(2) Establish and carry on suitable farming operations at the several institutions under his control;

(3) Supply the several institutions with the necessary food products produced thereat;

(4) Exchange with, or furnish to, other institutions, food products at the cost of production;

(5) Sell and dispose of surplus food products produced. [2005 c 353 § 5; 1981 c 238 § 1; 1979 c 141 § 149; 1959 c 28 § 72.01.140. Prior: 1955 c 195 § 4(7), (8), (9), (10), and (11); 1921 c 7 § 39; RRS § 10797. Formerly RCW 43.28.020, part.]

**Effective dates—2005 c 353:** See note following RCW 71A.20.170.

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**72.01.150 Industrial activities.** The secretary shall:

(1) Establish, install and operate, at the several state institutions under his control, such industries and industrial plants as may be most suitable and beneficial to the inmates thereof, and as can be operated at the least relative cost and the greatest relative benefit to the state, taking into consideration the needs of the state institutions for industrial products, and the amount and character of labor of inmates available at the several institutions;

(2) Supply the several institutions with the necessary industrial products produced thereat;

(3) Exchange with, or furnish to, other state institutions industrial products at prices to be fixed by the department, not to exceed in any case the price of such products in the open market;

(4) Sell and dispose of surplus industrial products produced, to such persons and under such rules, regulations, terms, and prices as may be in his judgment for the best interest of the state;

(5) Sell products of the plate mill to any department, to any state, county, or other public institution and to any governmental agency, of this or any other state under such rules, regulations, terms, and prices as may be in his judgment for the best interests of the state. [1979 c 141 § 150; 1959 c 28 § 72.01.150. Prior: 1955 c 195 § 4(12), (13), (14), (15), and (16); 1923 c 101 § 1; 1921 c 7 § 40; RRS § 10798. Formerly RCW 43.28.020, part.]

*Correctional industries: Chapter 72.60 RCW.*

**72.01.180 Dietitian—Duties—Travel expenses.** The secretary shall have the power to select a member of the faculty of the University of Washington, or the Washington State University, skilled in scientific food analysis and dietetics, to be known as the state dietitian, who shall make and furnish to the department food analyses showing the relative food value, in respect to cost, of food products, and advise the department as to the quantity, comparative cost, and food values, of proper diets for the inmates of the state institutions under the control of the department. The state dietitian shall receive travel expenses while engaged in the performance of his duties in accordance with RCW 43.03.050 and 43.03.060 as now existing or hereafter amended. [1979 c 141 § 152; 1975-'76 2nd ex.s. c 34 § 166; 1959 c 28 § 72.01.180. Prior: 1921 c 7 § 32; RRS § 10790. Formerly RCW 43.19.150.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**72.01.190 Fire protection.** The secretary may enter into an agreement with a city or town adjacent to any state institution for fire protection for such institution. [1979 c 141 § 153; 1959 c 28 § 72.01.190. Prior: 1947 c 188 § 1; Rem. Supp. 1947 § 10898a. Formerly RCW 72.04.140.]

**72.01.200 Employment of teachers—Exceptions.** State correctional facilities may employ certificated teachers to carry on their educational work, except for the educational programs provided pursuant to RCW 28A.190.030 through 28A.190.050 and all such teachers so employed shall be eligible to membership in the state teachers' retirement fund. [1992 c 7 § 52; 1990 c 33 § 591; 1979 ex.s. c 217 § 6; 1959 c

28 § 72.01.200. Prior: 1947 c 211 § 1; Rem. Supp. 1947 § 10319-1. Formerly RCW 72.04.130.]

**Purpose—Statutory references—Severability—1990 c 33:** See RCW 28A.900.100 through 28A.900.102.

*Teachers' qualifications at state schools for the deaf and blind:* RCW 72.40.028.

*Teachers' retirement:* Chapter 41.32 RCW.

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**72.01.210 Institutional chaplains—Appointment—Qualifications.** (1) The secretary of corrections shall appoint institutional chaplains for the state correctional institutions for convicted felons. Institutional chaplains shall be appointed as employees of the department of corrections. The secretary of corrections may further contract with chaplains to be employed as is necessary to meet the religious needs of those inmates whose religious denominations are not represented by institutional chaplains and where volunteer chaplains are not available.

(2) Institutional chaplains appointed by the department of corrections under this section shall have qualifications necessary to function as religious program coordinators for all faith groups represented within the department. Every chaplain so appointed or contracted with shall have qualifications consistent with community standards of the given faith group to which the chaplain belongs and shall not be required to violate the tenets of his or her faith when acting in an ecclesiastical role.

(3) The secretary of social and health services shall appoint chaplains for the correctional institutions for juveniles found delinquent by the juvenile courts; and the secretary of corrections and the secretary of social and health services shall appoint one or more chaplains for other custodial, correctional, and mental institutions under their control.

(4) Except as provided in this section, the chaplains so appointed under this section shall have the qualifications and shall be compensated in an amount as recommended by the appointing department and approved by the Washington personnel resources board. [2008 c 104 § 3; 1993 c 281 § 62; 1981 c 136 § 69; 1979 c 141 § 154; 1967 c 58 § 1; 1959 c 33 § 1; 1959 c 28 § 72.01.210. Prior: 1955 c 248 § 1. Formerly RCW 72.04.160.]

**Finding—2008 c 104:** "The legislature finds that men and women who are incarcerated have the need to develop prosocial behaviors. These behaviors will better enable these men and women to fully participate in society and adhere to law-abiding behaviors, such as continuing treatment that is undertaken in prison, once the person is released in the community.

Living in an environment where foundational skills are modeled and encouraged fosters positive outcomes for people who have been convicted and sentenced for their crimes. Basic skills include positive decision making, personal responsibility, building a healthy community, religious tolerance and understanding, ethics and morality, conflict management, family life relationships, leadership, managing emotions, restorative justice, transitional issues, and spirituality. Learning and practicing how to overcome minor and significant obstacles in a positive way will prepare offenders who are returning to our communities to begin their new crime-free lives." [2008 c 104 § 1.]

*Housing allowance for state-employed chaplains:* RCW 41.04.360.

*Washington personnel resources board:* RCW 41.06.110.

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**72.01.212 Institutional chaplains—Liability insurance—Representation by attorney general in civil law-**

(2010 Ed.)

**suits.** Regardless of whether the services are voluntary or provided by employment or contract with the department of corrections, a chaplain who provides the services authorized by RCW 72.01.220:

(1) May not be compelled to carry personal liability insurance as a condition of providing those services; and

(2) May request that the attorney general authorize the defense of an action or proceeding for damages instituted against the chaplain arising out of the course of his or her duties in accordance with RCW 4.92.060, 4.92.070, and 4.92.075. [2008 c 104 § 4.]

**Finding—2008 c 104:** See note following RCW 72.01.210.

**72.01.220 Institutional chaplains—Duties.** It shall be the duty of the chaplains at the respective institutions mentioned in RCW 72.01.210, under the direction of the department, to conduct religious services and to give religious and moral instruction to the inmates of the institutions, and to attend to their spiritual wants. They shall counsel with and interview the inmates concerning their social and family problems, and shall give assistance to the inmates and their families in regard to such problems. [1959 c 28 § 72.01.220. Prior: 1955 c 248 § 2. Formerly RCW 72.04.170.]

**72.01.230 Institutional chaplains—Offices, chapels, supplies.** The chaplains at the respective institutions mentioned in RCW 72.01.210 shall be provided with the offices and chapels at their institutions, and such supplies as may be necessary for the carrying out of their duties. [1959 c 28 § 72.01.230. Prior: 1955 c 248 § 3. Formerly RCW 72.04.180.]

**72.01.240 Supervisor of chaplains.** Each secretary is hereby empowered to appoint one of the chaplains, authorized by RCW 72.01.210, to act as supervisor of chaplains for his department, in addition to his duties at one of the institutions designated in RCW 72.01.210. [1981 c 136 § 70; 1979 c 141 § 155; 1959 c 28 § 72.01.240. Prior: 1955 c 248 § 4. Formerly RCW 72.04.190.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**72.01.260 Outside ministers not excluded.** Nothing contained in RCW 72.01.210 through 72.01.240 shall be so construed as to exclude ministers of any denomination from giving gratuitous religious or moral instruction to prisoners under such reasonable rules and regulations as the secretary may prescribe. [1983 c 3 § 184; 1979 c 141 § 156; 1959 c 28 § 72.01.260. Prior: 1929 c 59 § 2; Code 1881 § 3297; RRS § 10236-1. Formerly RCW 72.08.210.]

**72.01.270 Gifts, acceptance of.** The secretary shall have the power to receive, hold and manage all real and personal property made over to the department by gift, devise or bequest, and the proceeds and increase thereof shall be used for the benefit of the institution for which it is received. [1979 c 141 § 157; 1959 c 28 § 72.01.270. Prior: 1901 c 119 § 8; RRS § 10904. Formerly RCW 72.04.050.]

**72.01.280 Quarters for personnel—Charges.** The superintendent of each public institution and the assistant physicians, steward, accountant and chief engineer of each

hospital for the mentally ill may be furnished with quarters, household furniture, board, fuel, and lights for themselves and their families, and the secretary may, when in his opinion any public institution would be benefited by so doing, extend this privilege to any officer at any of the public institutions under his control. The words "family" or "families" used in this section shall be construed to mean only the spouse and dependent children of an officer. Employees may be furnished with quarters and board for themselves. The secretary shall charge and collect from such officers and employees the full cost of the items so furnished, including an appropriate charge for depreciation of capital items. [1979 c 141 § 158; 1959 c 39 § 3; 1959 c 28 § 72.01.280. Prior: 1957 c 188 § 1; 1907 c 166 § 6; 1901 c 119 § 6; RRS § 10903. Formerly RCW 72.04.040.]

**72.01.282 Quarters for personnel—Deposit of receipts.** All moneys received by the secretary from charges made pursuant to RCW 72.01.280 shall be deposited by him in the state general fund. [1981 c 136 § 71; 1979 c 141 § 159; 1959 c 210 § 1.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**72.01.290 Record of patients and inmates.** The department shall keep at its office, accessible only to the secretary and to proper officers and employees, and to other persons authorized by the secretary, a record showing the residence, sex, age, nativity, occupation, civil condition and date of entrance, or commitment of every person, patient, inmate or convict, in the several public institutions governed by the department, the date of discharge of every person from the institution, and whether such discharge is final: PROVIDED, That in addition to this information the superintendents for the hospitals for the mentally ill shall also state the condition of the person at the time of leaving the institution. The record shall also state if the person is transferred from one institution to another and to what institution; and if dead the date and cause of death. This information shall be furnished to the department by the several institutions, and also such other obtainable facts as the department may from time to time require, not later than the fifth day of each month for the month preceding, by the chief executive officer of each public institution, upon blank forms which the department may prescribe. [1979 c 141 § 160; 1959 c 28 § 72.01.290. Prior: 1907 c 166 § 9; 1901 c 119 § 13; RRS § 10910. Formerly RCW 72.04.110.]

*Record as to patients or inmates for purposes of vital statistics: RCW 70.58.270.*

**72.01.300 Accounting systems.** The secretary shall have the power, and it shall be his duty, to install and maintain in the department a proper cost accounting system of accounts for each of the institutions under the control of the department, for the purpose of detecting and avoiding unprofitable expenditures and operations. [1979 c 141 § 161; 1959 c 28 § 72.01.300. Prior: 1921 c 7 § 43; RRS § 10801. Formerly RCW 43.19.160.]

**72.01.310 Political influence forbidden.** Any officer, including the secretary, or employee of the department or of

the institutions under the control of the department, who, by solicitation or otherwise, exercises his influence, directly or indirectly, to influence other officers or employees of the state to adopt his political views or to favor any particular person or candidate for office, shall be removed from his office or position by the proper authority. [1979 c 141 § 162; 1959 c 28 § 72.01.310. Prior: 1901 c 119 § 15; RRS § 10917. Formerly RCW 72.04.150.]

**72.01.320 Examination of conditions and needs—Report.** The secretary shall examine into the conditions and needs of the several state institutions under the secretary's control and report in writing to the governor the condition of each institution. [1987 c 505 § 66; 1979 c 141 § 163; 1977 c 75 § 84; 1959 c 28 § 72.01.320. Prior: 1955 c 195 § 5. (i) 1901 c 119 § 14; RRS § 10915. (ii) 1915 c 107 § 1, part; 1907 c 166 § 2, part; 1901 c 119 § 3, part; RRS § 10899, part. Formerly RCW 43.28.030.]

**72.01.365 Escorted leaves of absence for inmates—Definitions.** As used in RCW 72.01.370 and 72.01.375:

"Escorted leave" means a leave of absence from a correctional facility under the continuous supervision of an escort.

"Escort" means a correctional officer or other person approved by the superintendent or the superintendent's designee to accompany an inmate on a leave of absence and be in visual or auditory contact with the inmate at all times.

"Nonviolent offender" means an inmate under confinement for an offense other than a violent offense defined by RCW 9.94A.030. [1983 c 255 § 2.]

*Prisoner furloughs: Chapter 72.66 RCW.*

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**72.01.370 Escorted leaves of absence for inmates—Grounds.** The superintendent of any state correctional facility may, subject to the approval of the secretary and under RCW 72.01.375, grant escorted leaves of absence to inmates confined in such institutions to:

- (1) Go to the bedside of the inmate's wife, husband, child, mother or father, or other member of the inmate's immediate family who is seriously ill;
- (2) Attend the funeral of a member of the inmate's immediate family listed in subsection (1) of this section;
- (3) Participate in athletic contests;
- (4) Perform work in connection with the industrial, educational, or agricultural programs of the department;
- (5) Receive necessary medical or dental care which is not available in the institution; and
- (6) Participate as a volunteer in community service work projects which are approved by the superintendent, but only inmates who are nonviolent offenders may participate in these projects. Such community service work projects shall only be instigated at the request of a local community. [1992 c 7 § 53; 1983 c 255 § 3; 1981 c 136 § 72; 1979 c 141 § 164; 1959 c 40 § 1.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**72.01.375 Escorted leaves of absence for inmates—Notification of local law enforcement agencies.** An inmate

shall not be allowed to start a leave of absence under RCW 72.01.370 until the secretary, or the secretary's designee, has notified any county and city law enforcement agency having jurisdiction in the area of the inmate's destination. [1983 c 255 § 4.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**72.01.380 Leaves of absence for inmates—Rules—Restrictions—Costs.** The secretary is authorized to make rules and regulations providing for the conditions under which inmates will be granted leaves of absence, and providing for safeguards to prevent escapes while on leave of absence: PROVIDED, That leaves of absence granted to inmates under RCW 72.01.370 shall not allow or permit any inmate to go beyond the boundaries of this state. The secretary shall also make rules and regulations requiring the reimbursement of the state from the inmate granted leave of absence, or his family, for the actual costs incurred arising from any leave of absence granted under the authority of RCW 72.01.370, subsections (1) and (2): PROVIDED FURTHER, That no state funds shall be expended in connection with leaves of absence granted under RCW 72.01.370, subsections (1) and (2), unless such inmate and his immediate family are indigent and without resources sufficient to reimburse the state for the expenses of such leaves of absence. [1981 c 136 § 73; 1979 c 141 § 165; 1959 c 40 § 2.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**72.01.410 Child under eighteen convicted of crime amounting to felony—Placement—Segregation from adult offenders.** (1) Whenever any child under the age of eighteen is convicted in the courts of this state of a crime amounting to a felony, and is committed for a term of confinement in a correctional institution wherein adults are confined, the secretary of corrections, after making an independent assessment and evaluation of the child and determining that the needs and correctional goals for the child could better be met by the programs and housing environment provided by the juvenile correctional institution, with the consent of the secretary of social and health services, may transfer such child to a juvenile correctional institution, or to such other institution as is now, or may hereafter be authorized by law to receive such child, until such time as the child arrives at the age of twenty-one years, whereupon the child shall be returned to the institution of original commitment. Retention within a juvenile detention facility or return to an adult correctional facility shall regularly be reviewed by the secretary of corrections and the secretary of social and health services with a determination made based on the level of maturity and sophistication of the individual, the behavior and progress while within the juvenile detention facility, security needs, and the program/treatment alternatives which would best prepare the individual for a successful return to the community. Notice of such transfers shall be given to the clerk of the committing court and the parents, guardian, or next of kin of such child, if known.

(2)(a) Except as provided in (b) and (c) of this subsection, an offender under the age of eighteen who is convicted in adult criminal court and who is committed to a term of confinement at the department of corrections must be placed in a

housing unit, or a portion of a housing unit, that is separated from offenders eighteen years of age or older, until the offender reaches the age of eighteen.

(b) An offender who reaches eighteen years of age may remain in a housing unit for offenders under the age of eighteen if the secretary of corrections determines that: (i) The offender's needs and the correctional goals for the offender could continue to be better met by the programs and housing environment that is separate from offenders eighteen years of age and older; and (ii) the programs or housing environment for offenders under the age of eighteen will not be substantially affected by the continued placement of the offender in that environment. The offender may remain placed in a housing unit for offenders under the age of eighteen until such time as the secretary of corrections determines that the offender's needs and correctional goals are no longer better met in that environment but in no case past the offender's twenty-first birthday.

(c) An offender under the age of eighteen may be housed in an intensive management unit or administrative segregation unit containing offenders eighteen years of age or older if it is necessary for the safety or security of the offender or staff. In these cases, the offender shall be kept physically separate from other offenders at all times. [2002 c 171 § 1; 1997 c 338 § 41; 1994 c 220 § 1; 1981 c 136 § 74; 1979 c 141 § 166; 1959 c 140 § 1.]

**Effective date—2002 c 171:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [March 27, 2002]." [2002 c 171 § 3.]

**Finding—Evaluation—Report—1997 c 338:** See note following RCW 13.40.0357.

*Juvenile not to be confined with adult inmates: RCW 13.04.116.*

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**72.01.415 Offender under eighteen confined to a jail—Segregation from adult offenders.** An offender under the age of eighteen who is convicted in adult criminal court of a crime and who is committed for a term of confinement in a jail as defined in RCW 70.48.020, must be housed in a jail cell that does not contain adult offenders, until the offender reaches the age of eighteen. [1997 c 338 § 42.]

**Finding—Evaluation—Report—1997 c 338:** See note following RCW 13.40.0357.

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**72.01.430 Transfer of equipment, supplies, livestock between institutions—Notice—Conditions.** The secretary, notwithstanding any provision of law to the contrary, is hereby authorized to transfer equipment, livestock and supplies between the several institutions within the department without reimbursement to the transferring institution excepting, however, any such equipment donated by organizations for the sole use of such transferring institutions. Whenever transfers of capital items are made between institutions of the department, notice thereof shall be given to the director of the department of general administration accompanied by a full description of such items with inventory numbers, if any. [1981 c 136 § 75; 1979 c 141 § 167; 1967 c 23 § 1; 1961 c 193 § 1.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**72.01.450 Use of facilities, equipment and personnel by school districts and institutions of higher learning authorized.** The secretary is authorized to enter into agreements with any school district or any institution of higher learning for the use of the facilities, equipment and personnel of any state institution of the department, for the purpose of conducting courses of education, instruction or training in the professions and skills utilized by one or more of the institutions, at such times and under such circumstances and with such terms and conditions as may be deemed appropriate. [1981 c 136 § 76; 1979 c 141 § 168; 1970 ex.s. c 50 § 2; 1967 c 46 § 1.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**72.01.452 Use of facilities, equipment and personnel by state agencies, counties, cities or political subdivisions.** The secretary is authorized to enter into an agreement with any agency of the state, a county, city or political subdivision of the state for the use of the facilities, equipment and personnel of any institution of the department for the purpose of conducting courses of education, instruction or training in any professional skill having a relationship to one or more of the functions or programs of the department. [1979 c 141 § 169; 1970 ex.s. c 50 § 3.]

**72.01.454 Use of facilities by counties, community service organizations, nonprofit associations, etc.** (1) The secretary may permit the use of the facilities of any state institution by any community service organization, nonprofit corporation, group or association for the purpose of conducting a program of education, training, entertainment or other purpose, for the residents of such institutions, if determined by the secretary to be beneficial to such residents or a portion thereof.

(2) The secretary may permit the nonresidential use of the facilities of any state institution by any county, community service organization, nonprofit corporation, group or association for the purpose of conducting programs under RCW 72.06.070. [1982 c 204 § 15; 1979 c 141 § 170; 1970 ex.s. c 50 § 5.]

**72.01.458 Use of files and records for courses of education, instruction and training at institutions.** In any course of education, instruction or training conducted in any state institution of the department use may be made of selected files and records of such institution, notwithstanding the provisions of any statute to the contrary. [1970 ex.s. c 50 § 4.]

**72.01.460 Lease of lands with outdoor recreation potential—Restrictions—Unlawful to use posted lands.** (1) Any lease of public lands with outdoor recreation potential authorized by the department shall be open and available to the public for compatible recreational use unless the department determines that the leased land should be closed in order to prevent damage to crops or other land cover, to improvements on the land, to the lessee, or to the general public or is necessary to avoid undue interference with carrying forward a departmental program. Any lessee may file an application with the department to close the leased land to

any public use. The department shall cause written notice of the impending closure to be posted in a conspicuous place in the department's Olympia office, at the principal office of the institution administering the land, and in the office of the county auditor in which the land is located thirty days prior to the public hearing. This notice shall state the parcel or parcels involved and shall indicate the time and place of the public hearing. Upon a determination by the department that posting is not necessary, the lessee shall desist from posting. Upon a determination by the department that posting is necessary, the lessee shall post his leased premises so as to prohibit recreational uses thereon. In the event any such lands are so posted, it shall be unlawful for any person to hunt or fish, or for any person other than the lessee or his immediate family to use any such posted land for recreational purposes.

(2) The department may insert the provisions of subsection (1) of this section in all leases hereafter issued. [1981 c 136 § 77; 1979 c 141 § 171; 1969 ex.s. c 46 § 2.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**72.01.480 Agreements with nonprofit organizations to provide services for persons admitted or committed to institutions.** The secretary is authorized to enter into agreements with any nonprofit corporation or association for the purpose of providing and coordinating voluntary and community based services for the treatment or rehabilitation of persons admitted or committed to any institution under the supervision of the department. [1981 c 136 § 78; 1979 c 141 § 172; 1970 ex.s. c 50 § 1.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**72.01.490 Authority of superintendents, business managers and officers of correctional institutions to take acknowledgments and administer oaths—Procedure.** See RCW 64.08.090.

**72.01.900 Construction—Chapter applicable to state registered domestic partnerships—2009 c 521.** For the purposes of this chapter, the terms spouse, marriage, marital, husband, wife, widow, widower, next of kin, and family shall be interpreted as applying equally to state registered domestic partnerships or individuals in state registered domestic partnerships as well as to marital relationships and married persons, and references to dissolution of marriage shall apply equally to state registered domestic partnerships that have been terminated, dissolved, or invalidated, to the extent that such interpretation does not conflict with federal law. Where necessary to implement chapter 521, Laws of 2009, gender-specific terms such as husband and wife used in any statute, rule, or other law shall be construed to be gender neutral, and applicable to individuals in state registered domestic partnerships. [2009 c 521 § 163.]

## Chapter 72.02 RCW ADULT CORRECTIONS

### Sections

72.02.015	Powers of court or judge not impaired.
72.02.040	Secretary acting for department exercises powers and duties.
72.02.045	Superintendent's authority.
72.02.055	Appointment of associate superintendents.

- 72.02.100 Earnings, clothing, transportation and subsistence payments upon release of certain prisoners.
- 72.02.110 Weekly payments to certain released prisoners.
- 72.02.150 Disturbances at state penal facilities—Development of contingency plans—Scope—Local participation.
- 72.02.160 Disturbances at state penal facilities—Utilization of outside law enforcement personnel—Scope.
- 72.02.200 Reception and classification units.
- 72.02.210 Sentence—Commitment to reception units.
- 72.02.220 Cooperation with reception units by state agencies.
- 72.02.230 Persons to be received for classification and placement.
- 72.02.240 Secretary to determine placement—What laws govern confinement, parole and discharge.
- 72.02.250 Commitment of convicted female persons—Procedure as to death sentences.
- 72.02.260 Letters of inmates may be withheld.
- 72.02.270 Abused victims—Murder of abuser—Notice of provisions for reduction in sentence.
- 72.02.280 Motion pictures.

**72.02.015 Powers of court or judge not impaired.**

Nothing in this chapter shall be construed to restrict or impair the power of any court or judge having jurisdiction to pronounce sentence upon a person to whom this chapter applies, to fix the term of imprisonment and to order commitment, according to law, nor to deny the right of any such court or judge to sentence to imprisonment; nor to deny the right of any such court or judge to suspend sentence or the execution of judgment thereon or to make any other disposition of the case pursuant to law. [1988 c 143 § 9; 1959 c 214 § 13. Formerly RCW 72.13.130.]

**72.02.040 Secretary acting for department exercises powers and duties.** The secretary of corrections acting for the department of corrections shall exercise all powers and perform all duties prescribed by law with respect to the administration of any adult correctional program by the department of corrections. [1981 c 136 § 79; 1970 ex.s. c 18 § 57; 1959 c 28 § 72.02.040. Prior: 1957 c 272 § 16. Formerly RCW 43.28.110.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**72.02.045 Superintendent’s authority.** The superintendent of each institution has the powers, duties, and responsibilities specified in this section.

(1) Subject to the rules of the department, the superintendent is responsible for the supervision and management of the institution, the grounds and buildings, the subordinate officers and employees, and the prisoners committed, admitted, or transferred to the institution.

(2) Subject to the rules of the department and the director of the division of prisons or his or her designee and the Washington personnel resources board, the superintendent shall appoint all subordinate officers and employees.

(3) The superintendent, subject to approval by the secretary, has the authority to determine the types and amounts of property that convicted persons may possess in department facilities. This authority includes the authority to determine the types and amounts that the department will transport at the department’s expense whenever a convicted person is transferred between department institutions or to other jurisdictions. Convicted persons are responsible for the costs of transporting their excess property. If a convicted person fails to pay the costs of transporting any excess property within ninety days from the date of transfer, such property shall be presumed abandoned and may be disposed of in the manner

allowed by RCW 63.42.040 (1) through (3). The superintendent shall be the custodian of all funds and valuable personal property of convicted persons as may be in their possession upon admission to the institution, or which may be sent or brought in to such persons, or earned by them while in custody, or which shall be forwarded to the superintendent on behalf of convicted persons. All such funds shall be deposited in the personal account of the convicted person and the superintendent shall have authority to disburse moneys from such person’s personal account for the personal and incidental needs of the convicted person as may be deemed reasonably necessary. When convicted persons are released from the custody of the department either on parole, community placement, community custody, community supervision, or discharge, all funds and valuable personal property in the possession of the superintendent belonging to such convicted persons shall be delivered to them. In no case shall the state of Washington, or any state officer, including state elected officials, employees, or volunteers, be liable for the loss of such personal property, except upon a showing that the loss was occasioned by the intentional act, gross negligence, or negligence of the officer, official, employee, or volunteer, and that the actions or omissions occurred while the person was performing, or in good faith purporting to perform, his or her official duties. Recovery of damages for loss of personal property while in the custody of the superintendent under this subsection shall be limited to the lesser of the market value of the item lost at the time of the loss, or the original purchase price of the item or, in the case of hand-made goods, the materials used in fabricating the item.

(4) The superintendent, subject to the approval of the director of the division of prisons and the secretary, shall make, amend, and repeal rules for the administration, supervision, discipline, and security of the institution.

(5) When in the superintendent’s opinion an emergency exists, the superintendent may promulgate temporary rules for the governance of the institution, which shall remain in effect until terminated by the director of the division of prisons or the secretary.

(6) The superintendent shall perform such other duties as may be prescribed. [2005 c 382 § 1; 1993 c 281 § 63; 1988 c 143 § 2.]

**Effective date—2005 c 382:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [May 10, 2005]." [2005 c 382 § 2.]

*Health care:* RCW 41.05.280.

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**72.02.055 Appointment of associate superintendents.**

The superintendent, subject to the approval of the director of the division of prisons and the secretary, shall appoint such associate superintendents as shall be deemed necessary, who shall have such qualifications as shall be determined by the secretary. In the event the superintendent is absent from the institution, or during periods of illness or other situations incapacitating the superintendent from properly performing his or her duties, one of the associate superintendents of such institution as may be designated by the director of the division of prisons and the secretary shall act as superintendent. [1988 c 143 § 3.]

**72.02.100 Earnings, clothing, transportation and subsistence payments upon release of certain prisoners.**

Any person serving a sentence for a term of confinement in a state correctional facility for convicted felons, pursuant to court commitment, who is thereafter released upon an order of parole of the \*indeterminate sentencing review board, or who is discharged from custody upon expiration of sentence, or who is ordered discharged from custody by a court of appropriate jurisdiction, shall be entitled to retain his earnings from labor or employment while in confinement and shall be supplied by the superintendent of the state correctional facility with suitable and presentable clothing, the sum of forty dollars for subsistence, and transportation by the least expensive method of public transportation not to exceed the cost of one hundred dollars to his place of residence or the place designated in his parole plan, or to the place from which committed if such person is being discharged on expiration of sentence, or discharged from custody by a court of appropriate jurisdiction: PROVIDED, That up to sixty additional dollars may be made available to the parolee for necessary personal and living expenses upon application to and approval by such person's community corrections officer. If in the opinion of the superintendent suitable arrangements have been made to provide the person to be released with suitable clothing and/or the expenses of transportation, the superintendent may consent to such arrangement. If the superintendent has reasonable cause to believe that the person to be released has ample funds, with the exception of earnings from labor or employment while in confinement, to assume the expenses of clothing, transportation, or the expenses for which payments made pursuant to RCW 72.02.100 or 72.02.110 or any one or more of such expenses, the person released shall be required to assume such expenses. [1988 c 143 § 5; 1971 ex.s. c 171 § 1.]

**\*Reviser's note:** The "indeterminate sentencing review board" should be referred to as the "indeterminate sentence review board." See RCW 9.95.001.

**72.02.110 Weekly payments to certain released prisoners.** As state, federal or other funds are available, the secretary of corrections or his designee is authorized, in his discretion, not to provide the forty dollars subsistence money or the optional sixty dollars to a person or persons released as described in RCW 72.02.100, and instead to utilize the authorization and procedure contained in this section relative to such person or persons.

Any person designated by the secretary serving a sentence for a term of confinement in a state correctional facility for convicted felons, pursuant to court commitment, who is thereafter released upon an order of parole of the \*indeterminate sentencing review board, or is discharged from custody upon expiration of sentence, or is ordered discharged from custody by a court of appropriate jurisdiction, shall receive the sum of fifty-five dollars per week for a period of up to six weeks. The initial weekly payment shall be made to such person upon his release or parole by the superintendent of the institution. Subsequent weekly payments shall be made to such person by the community corrections officer at the office of such officer. In addition to the initial six weekly payments provided for in this section, a community corrections officer and his supervisor may, at their discretion, con-

tinue such payments up to a maximum of twenty additional weeks when they are satisfied that such person is actively seeking employment and that such payments are necessary to continue the efforts of such person to gain employment: PROVIDED, That if, at the time of release or parole, in the opinion of the superintendent funds are otherwise available to such person, with the exception of earnings from labor or employment while in confinement, such weekly sums of money or part thereof shall not be provided to such person.

When a person receiving such payments provided for in this section becomes employed, he may continue to receive payments for two weeks after the date he becomes employed but payments made after he becomes employed shall be discontinued as of the date he is first paid for such employment: PROVIDED, That no person shall receive payments for a period exceeding the twenty-six week maximum as established in this section.

The secretary of corrections may annually adjust the amount of weekly payment provided for in this section to reflect changes in the cost of living and the purchasing power of the sum set for the previous year. [1988 c 143 § 6; 1981 c 136 § 80; 1971 ex.s. c 171 § 2.]

**\*Reviser's note:** The "indeterminate sentencing review board" should be referred to as the "indeterminate sentence review board." See RCW 9.95.001.

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**72.02.150 Disturbances at state penal facilities—Development of contingency plans—Scope—Local participation.** The secretary or the secretary's designee shall be responsible for the preparation of contingency plans for dealing with disturbances at state penal facilities. The plans shall be developed or revised in cooperation with representatives of state and local agencies at least annually. Contingency plans developed shall encompass contingencies of varying levels of severity, specific contributions of personnel and material from participating agencies, and a unified chain of command. Agencies providing personnel under the plan shall provide commanders for the personnel who will be included in the unified chain of command. [1982 c 49 § 1.]

**72.02.160 Disturbances at state penal facilities—Utilization of outside law enforcement personnel—Scope.** Whenever the secretary or the secretary's designee determines that due to a disturbance at a state penal facility within the jurisdiction of the department that the assistance of law enforcement officers in addition to department of corrections' personnel is required, the secretary may notify the Washington state patrol, the chief law enforcement officer of any nearby county and the county in which the facility is located, and the chief law enforcement officer of any municipality near the facility or in which the facility is located. These law enforcement agencies may provide such assistance as expressed in the contingency plan or plans, or as is deemed necessary by the secretary, or the secretary's designee, to restore order at the facility, consistent with the resources available to the law enforcement agencies and the law enforcement agencies' other statutory obligations. While on the grounds of a penal facility and acting under this section, all law enforcement officials shall be under the immediate control of their respective supervisors who shall be respon-

sive to the secretary, or the secretary's designee, which designee need not be an employee of the department of corrections. [1982 c 49 § 2.]

*Reimbursement for local support at prison disturbances:* RCW 72.72.050, 72.72.060.

**72.02.200 Reception and classification units.** There shall be units known as reception and classification centers which, subject to the rules and regulations of the department, shall be charged with the function of receiving and classifying all persons committed or transferred to the institution, taking into consideration age, type of crime for which committed, physical condition, behavior, attitude and prospects for reformation for the purposes of confinement and treatment of offenders convicted of offenses punishable by imprisonment, except offenders convicted of crime and sentenced to death. [1988 c 143 § 7; 1959 c 214 § 11. Formerly RCW 72.13.110.]

**72.02.210 Sentence—Commitment to reception units.** Any offender convicted of an offense punishable by imprisonment, except an offender sentenced to death, shall, notwithstanding any inconsistent provision of law, be sentenced to imprisonment in a penal institution under the jurisdiction of the department without designating the name of such institution, and be committed to the reception units for classification, confinement and placement in such correctional facility under the supervision of the department as the secretary shall deem appropriate. [1988 c 143 § 8; 1981 c 136 § 95; 1979 c 141 § 206; 1959 c 214 § 12. Formerly RCW 72.13.120.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**72.02.220 Cooperation with reception units by state agencies.** The indeterminate sentence review board and other state agencies shall cooperate with the department in obtaining necessary investigative materials concerning offenders committed to the reception unit and supply the reception unit with necessary information regarding social histories and community background. [1988 c 143 § 10; 1979 c 141 § 207; 1959 c 214 § 14. Formerly RCW 72.13.140.]

*Indeterminate sentences:* Chapter 9.95 RCW.

**72.02.230 Persons to be received for classification and placement.** The division of prisons shall receive all persons convicted of a felony by the superior court and committed by the superior court to the reception units for classification and placement in such facility as the secretary shall designate. The superintendent of these institutions shall only receive prisoners for classification and study in the institution upon presentation of certified copies of a judgment, sentence, and order of commitment of the superior court and the statement of the prosecuting attorney, along with other reports as may have been made in reference to each individual prisoner. [1988 c 143 § 11; 1984 c 114 § 4; 1979 c 141 § 208; 1959 c 214 § 15. Formerly RCW 72.13.150.]

**72.02.240 Secretary to determine placement—What laws govern confinement, parole and discharge.** The sec-

(2010 Ed.)

retary shall determine the state correctional institution in which the offender shall be confined during the term of imprisonment. The confinement of any offender shall be governed by the laws applicable to the institution to which the offender is certified for confinement, but parole and discharge shall be governed by the laws applicable to the sentence imposed by the court. [1988 c 143 § 12; 1979 c 141 § 209; 1959 c 214 § 16. Formerly RCW 72.13.160.]

**72.02.250 Commitment of convicted female persons—Procedure as to death sentences.** All female persons convicted in the superior courts of a felony and sentenced to a term of confinement, shall be committed to the Washington correctional institution for women. Female persons sentenced to death shall be committed to the Washington correctional institution for women, notwithstanding the provisions of RCW 10.95.170, except that the death warrant shall provide for the execution of such death sentence at the Washington state penitentiary as provided by RCW 10.95.160, and the secretary of corrections shall transfer to the Washington state penitentiary any female offender sentenced to death not later than seventy-two hours prior to the date fixed in the death warrant for the execution of the death sentence. The provisions of this section shall not become effective until the secretary of corrections certifies to the chief justice of the supreme court, the chief judge of each division of the court of appeals, the superior courts and the prosecuting attorney of each county that the facilities and personnel for the implementation of commitments are ready to receive persons committed to the Washington correctional institution for women under the provisions of this section. [1983 c 3 § 185; 1981 c 136 § 97; 1971 c 81 § 134; 1967 ex.s. c 122 § 8. Formerly RCW 72.15.060.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**72.02.260 Letters of inmates may be withheld.** Whenever the superintendent of an institution withholds from mailing letters written by inmates of such institution, the superintendent shall forward such letters to the secretary of corrections or the secretary's designee for study and the inmate shall be forthwith notified that such letter has been withheld from mailing and the reason for so doing. Letters forwarded to the secretary for study shall either be mailed within seven days to the addressee or, if deemed objectionable by the secretary, retained in a separate file for two years and then destroyed. [1988 c 143 § 13; 1981 c 136 § 87; 1979 c 141 § 192; 1959 c 28 § 72.08.380. Prior: 1957 c 61 § 1. Formerly RCW 72.08.380.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**72.02.270 Abused victims—Murder of abuser—Notice of provisions for reduction in sentence.** The department shall advise all inmates in the department's custody who were convicted of a murder that the inmate committed prior to July 23, 1989, about the provisions in RCW 9.95.045, 9.95.047, and 9.94A.890. The department shall advise the inmates of the method and deadline for submitting petitions to the indeterminate sentence review board for review of the inmate's sentence. The department shall issue the notice to the inmates no later than July 1, 1993. [1993 c 144 § 6.]

[Title 72 RCW—page 11]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**72.02.280 Motion pictures.** Motion pictures unrated after November 1968 or rated X or NC-17 by the motion picture association of America shall not be shown in adult correctional facilities. [1994 sp.s. c 7 § 808.]

**Finding—Intent—Severability—1994 sp.s. c 7:** See notes following RCW 43.70.540.

## Chapter 72.04A RCW PROBATION AND PAROLE

### Sections

- 72.04A.050 Transfer of certain powers and duties of board of prison terms and paroles to secretary of corrections.
- 72.04A.070 Plans and recommendations for conditions of supervision of parolees.
- 72.04A.080 Parolees subject to supervision of department—Progress reports.
- 72.04A.090 Violations of parole or probation—Revision of parole conditions—Detention.
- 72.04A.120 Parolee assessments.
- 72.04A.900 RCW 72.04A.050 through 72.04A.090 inapplicable to felonies committed after July 1, 1984.

*Counties may provide probation and parole services:* RCW 36.01.070.

*Indeterminate sentence review board:* Chapter 9.95 RCW.

*Siting of community-based facilities:* RCW 72.65.220.

*Victims of crimes, reimbursement by convicted person as condition of work release or parole:* RCW 7.68.120.

**72.04A.050 Transfer of certain powers and duties of board of prison terms and paroles to secretary of corrections.** The powers and duties of the state \*board of prison terms and paroles, relating to (1) the supervision of parolees of any of the state penal institutions, (2) the supervision of persons placed on probation by the courts, and (3) duties with respect to persons conditionally pardoned by the governor, are transferred to the secretary of corrections.

This section shall not be construed as affecting any of the remaining powers and duties of the \*board of prison terms and paroles including, but not limited to, the following:

(1) The fixing of minimum terms of confinement of convicted persons, or the reconsideration of its determination of minimum terms of confinement;

(2) Determining when and under what conditions a convicted person may be released from custody on parole, and the revocation or suspension of parole or the modification or revision of the conditions of the parole, of any convicted person. [1981 c 136 § 81; 1979 c 141 § 173; 1967 c 134 § 7.]

**\*Reviser's note:** The "board of prison terms and paroles" was redesignated the "indeterminate sentence review board" by 1986 c 224, effective July 1, 1986.

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**72.04A.070 Plans and recommendations for conditions of supervision of parolees.** The secretary of corrections shall cause to be prepared plans and recommendations for the conditions of supervision under which each inmate of any state penal institutions who is eligible for parole may be released from custody. Such plans and recommendations shall be submitted to the \*board of prison terms and paroles which may, at its discretion, approve, reject, or revise or amend such plans and recommendations for the conditions of

supervision of release of inmates on parole, and, in addition, the board may stipulate any special conditions of supervision to be carried out by a probation and parole officer. [1981 c 136 § 82; 1979 c 141 § 174; 1967 c 134 § 9.]

**\*Reviser's note:** The "board of prison terms and paroles" was redesignated the "indeterminate sentence review board" by 1986 c 224, effective July 1, 1986.

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**72.04A.080 Parolees subject to supervision of department—Progress reports.** Each inmate hereafter released on parole shall be subject to the supervision of the department of corrections, and the probation and parole officers of the department shall be charged with the preparation of progress reports of parolees and to give guidance and supervision to such parolees within the conditions of a parolee's release from custody. Copies of all progress reports prepared by the probation and parole officers shall be supplied to the \*board of prison terms and paroles for their files and records. [1981 c 136 § 83; 1979 c 141 § 175; 1967 c 134 § 10.]

**\*Reviser's note:** The "board of prison terms and paroles" was redesignated the "indeterminate sentence review board" by 1986 c 224, effective July 1, 1986.

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**72.04A.090 Violations of parole or probation—Revision of parole conditions—Detention.** Whenever a parolee breaches a condition or conditions under which he was granted parole, or violates any law of the state or rules and regulations of the \*board of prison terms and paroles, any probation and parole officer may arrest, or cause the arrest and suspension of parole of, such parolee without a warrant, pending a determination by the board. The facts and circumstances of such conduct of the parolee shall be reported by the probation and parole officer, with recommendations, to the \*board of prison terms and paroles, who may order the revocation or suspension of parole, revise or modify the conditions of parole or take such other action as may be deemed appropriate in accordance with RCW 9.95.120. The \*board of prison terms and paroles, after consultation with the secretary of corrections, shall make all rules and regulations concerning procedural matters, which shall include the time when state probation and parole officers shall file with the board reports required by this section, procedures pertaining thereto and the filing of such information as may be necessary to enable the \*board of prison terms and paroles to perform its functions under this section.

The probation and parole officers shall have like authority and power regarding the arrest and detention of a probationer who has breached a condition or conditions under which he was granted probation by the superior court, or violates any law of the state, pending a determination by the superior court.

In the event a probation and parole officer shall arrest or cause the arrest and suspension of parole of a parolee or probationer in accordance with the provisions of this section, such parolee or probationer shall be confined and detained in the county jail of the county in which the parolee or probationer was taken into custody, and the sheriff of such county shall receive and keep in the county jail, where room is available, all prisoners delivered thereto by the probation and

parole officer, and such parolees shall not be released from custody on bail or personal recognizance, except upon approval of the \*board of prison terms and paroles and the issuance by the board of an order of reinstatement on parole on the same or modified conditions of parole. [1981 c 136 § 84; 1979 c 141 § 176; 1969 c 98 § 1; 1967 c 134 § 11.]

**\*Reviser's note:** The "board of prison terms and paroles" was redesignated the "indeterminate sentence review board" by 1986 c 224, effective July 1, 1986.

*Suspension, revision of parole, retaking violators, community corrections officers, etc.:* RCW 9.95.120.

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**72.04A.120 Parolee assessments.** (1) Any person placed on parole shall be required to pay the monthly assessment, prescribed under subsection (2) of this section, which shall be for the duration of the parole and which shall be considered as payment or part payment of the cost of providing parole supervision to the parolee. The department may exempt a person from the payment of all or any part of the assessment based upon any of the following factors:

(a) The offender has diligently attempted but has been unable to obtain employment which provides the offender sufficient income to make such payments.

(b) The offender is a student in a school, college, university, or a course of vocational or technical training designed to fit the student for gainful employment.

(c) The offender has an employment handicap, as determined by an examination acceptable to or ordered by the department.

(d) The offender's age prevents him from obtaining employment.

(e) The offender is responsible for the support of dependents and the payment of the assessment constitutes an undue hardship on the offender.

(f) Other extenuating circumstances as determined by the department.

(2) The department of corrections shall adopt a rule prescribing the amount of the assessment. The department may, if it finds it appropriate, prescribe a schedule of assessments which shall vary in accordance with the intensity or cost of the supervision. The department may not prescribe any assessment which is less than ten dollars nor more than fifty dollars.

(3) Payment of the assessed amount shall constitute a condition of parole for purposes of the application of RCW 72.04A.090.

(4) All amounts required to be paid under this section shall be collected by the department of corrections and deposited by the department in the dedicated fund established pursuant to RCW 72.11.040.

(5) This section shall not apply to parole services provided under an interstate compact pursuant to chapter 9.95 RCW or to parole services provided for offenders paroled before June 10, 1982. [1991 c 104 § 2; 1989 c 252 § 20; 1982 c 207 § 1.]

**Purpose—Prospective application—Effective dates—Severability—1989 c 252:** See notes following RCW 9.94A.030.

**72.04A.900 RCW 72.04A.050 through 72.04A.090 inapplicable to felonies committed after July 1, 1984.** The

(2010 Ed.)

following sections of law do not apply to any felony offense committed on or after July 1, 1984: RCW 72.04A.050, 72.04A.070, 72.04A.080, and 72.04A.090. [1981 c 137 § 34.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**Chapter 72.05 RCW**

**CHILDREN AND YOUTH SERVICES**

Sections

- 72.05.010 Declaration of purpose.
- 72.05.020 Definitions.
- 72.05.130 Powers and duties of department—"Close security" institutions designated.
- 72.05.150 "Minimum security" institutions.
- 72.05.152 Juvenile forest camps—Industrial insurance benefits prohibited—Exceptions.
- 72.05.154 Juvenile forest camps—Industrial insurance—Eligibility for benefits—Exceptions.
- 72.05.160 Contracts with other divisions, agencies authorized.
- 72.05.170 Counseling and consultative services.
- 72.05.200 Parental right to provide treatment preserved.
- 72.05.210 Juvenile court law—Applicability—Synonymous terms.
- 72.05.300 Parental schools—Leases, purchases—Powers of school district.
- 72.05.310 Parental schools—Personnel.
- 72.05.400 Operation of community facility—Establishing or relocating—Public participation required—Secretary's duties.
- 72.05.405 Juveniles in community facility—Infraction policy—Return to institution upon serious violation—Definitions by rule.
- 72.05.410 Violations by juveniles in community facility—Toll-free hotline for reporting.
- 72.05.415 Establishing community placement oversight committees—Review and recommendations—Liability—Travel expenses—Notice to law enforcement of placement decisions.
- 72.05.420 Placement in community facility—Necessary conditions and actions—Department's duties.
- 72.05.425 Student records and information—Necessary for risk assessment, security classification, and proper placement—Rules.
- 72.05.430 Placement and supervision of juveniles in community facility—Monitoring requirements—Copies of agreements.
- 72.05.435 Common use of residential group homes for juvenile offenders—Placement of juvenile convicted of a class A felony.
- 72.05.440 Eligibility for employment or volunteer position with juveniles—Must report convictions—Rules.
- 72.05.450 Use of restraints on pregnant youth in custody—Allowed in extraordinary circumstances.
- 72.05.451 Use of restraints on pregnant youth in custody—Provision of information to staff and pregnant youth in custody.

*Child under eighteen convicted of crime amounting to felony—Placement—Segregation from adult offenders:* RCW 72.01.410.

*Children with disabilities, parental responsibility, order of commitment:* Chapter 26.40 RCW.

*Council for children and families:* Chapter 43.121 RCW.

*Educational programs for residential school residents:* RCW 28A.190.020 through 28A.190.060.

*Employment of dental hygienist without supervision of dentist authorized:* RCW 18.29.056.

*Financial responsibility for cost of detention of minor:* RCW 13.16.085.

*Minors—Mental health services, commitment:* Chapter 71.34 RCW.

*Uniform interstate compact on juveniles:* Chapter 13.24 RCW.

**72.05.010 Declaration of purpose.** The purposes of RCW 72.05.010 through 72.05.210 are: To provide for every child with behavior problems, mentally and physically handicapped persons, and hearing and visually impaired children, within the purview of RCW 72.05.010 through 72.05.210, as now or hereafter amended, such care, guidance and instruction, control and treatment as will best serve the welfare of the child or person and society; to insure nonpolitical and

qualified operation, supervision, management, and control of the Green Hill school, the Maple Lane school, the Naselle Youth Camp, the Mission Creek Youth Camp, Echo Glen, the Cascadia Diagnostic Center, Lakeland Village, Rainier school, the Yakima Valley school, Interlake school, Fircrest school, the Francis Haddon Morgan Center, the Child Study and Treatment Center and Secondary School of Western State Hospital, and like residential state schools, camps and centers hereafter established, and to place them under the department of social and health services except where specified otherwise; and to provide for the persons committed or admitted to those schools that type of care, instruction, and treatment most likely to accomplish their rehabilitation and restoration to normal citizenship. [1985 c 378 § 9; 1980 c 167 § 7; 1979 ex.s. c 217 § 7; 1979 c 141 § 177; 1959 c 28 § 72.05.010. Prior: 1951 c 234 § 1.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**72.05.020 Definitions.** As used in this chapter, unless the context requires otherwise:

(1) "Community facility" means a group care facility operated for the care of juveniles committed to the department under RCW 13.40.185. A county detention facility that houses juveniles committed to the department under RCW 13.40.185 pursuant to a contract with the department is not a community facility.

(2) "Department" means the department of social and health services.

(3) "Juvenile" means a person under the age of twenty-one who has been sentenced to a term of confinement under the supervision of the department under RCW 13.40.185.

(4) "Labor" means the period of time before a birth during which contractions are of sufficient frequency, intensity, and duration to bring about effacement and progressive dilation of the cervix.

(5) "Physical restraint" means the use of any bodily force or physical intervention to control an offender or limit a juvenile offender's freedom of movement in a way that does not involve a mechanical restraint. Physical restraint does not include momentary periods of minimal physical restriction by direct person-to-person contact, without the aid of mechanical restraint, accomplished with limited force and designed to:

(a) Prevent a juvenile offender from completing an act that would result in potential bodily harm to self or others or damage property;

(b) Remove a disruptive juvenile offender who is unwilling to leave the area voluntarily; or

(c) Guide a juvenile offender from one location to another.

(6) "Postpartum recovery" means (a) the entire period a youth is in the hospital, birthing center, or clinic after giving birth and (b) an additional time period, if any, a treating physician determines is necessary for healing after the youth leaves the hospital, birthing center, or clinic.

(7) "Restraints" means anything used to control the movement of a person's body or limbs and includes:

(a) Physical restraint; or

(b) Mechanical device including but not limited to: Metal handcuffs, plastic ties, ankle restraints, leather cuffs, other hospital-type restraints, tasers, or batons.

(8) "Service provider" means the entity that operates a community facility.

(9) "Transportation" means the conveying, by any means, of an incarcerated pregnant woman or youth from the institution or community facility to another location from the moment she leaves the institution or community facility to the time of arrival at the other location, and includes the escorting of the pregnant incarcerated woman or youth from the institution or community facility to a transport vehicle and from the vehicle to the other location. [2010 c 181 § 7; 1998 c 269 § 2; 1979 c 141 § 178; 1970 ex.s. c 18 § 58; 1959 c 28 § 72.05.020. Prior: 1951 c 234 § 2. Formerly RCW 43.19.260.]

**Intent—Finding—1998 c 269:** "It is the intent of the legislature to:

(1) Enhance public safety and maximize the rehabilitative potential of juvenile offenders through modifications to licensed community residential placements for juveniles;

(2) Ensure community support for community facilities by enabling community participation in decisions involving these facilities and assuring the safety of communities in which community facilities for juvenile offenders are located; and

(3) Improve public safety by strengthening the safeguards in placement, oversight, and monitoring of the juvenile offenders placed in the community, and by establishing minimum standards for operation of licensed residential community facilities. The legislature finds that community support and participation is vital to the success of community programming." [1998 c 269 § 1.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**72.05.130 Powers and duties of department—"Close security" institutions designated.** The department shall establish, maintain, operate and administer a comprehensive program for the custody, care, education, treatment, instruction, guidance, control and rehabilitation of all persons who may be committed or admitted to institutions, schools, or other facilities controlled and operated by the department, except for the programs of education provided pursuant to RCW 28A.190.030 through 28A.190.050 which shall be established, operated and administered by the school district conducting the program, and in order to accomplish these purposes, the powers and duties of the secretary shall include the following:

(1) The assembling, analyzing, tabulating, and reproduction in report form, of statistics and other data with respect to children with behavior problems in the state of Washington, including, but not limited to, the extent, kind, and causes of such behavior problems in the different areas and population centers of the state. Such reports shall not be open to public inspection, but shall be open to the inspection of the governor and to the superior court judges of the state of Washington.

(2) The establishment and supervision of diagnostic facilities and services in connection with the custody, care, and treatment of mentally and physically handicapped, and behavior problem children who may be committed or admitted to any of the institutions, schools, or facilities controlled and operated by the department, or who may be referred for such diagnosis and treatment by any superior court of this state. Such diagnostic services may be established in connection with, or apart from, any other state institution under the supervision and direction of the secretary. Such diagnostic

services shall be available to the superior courts of the state for persons referred for such services by them prior to commitment, or admission to, any school, institution, or other facility. Such diagnostic services shall also be available to other departments of the state. When the secretary determines it necessary, the secretary may create waiting lists and set priorities for use of diagnostic services for juvenile offenders on the basis of those most severely in need.

(3) The supervision of all persons committed or admitted to any institution, school, or other facility operated by the department, and the transfer of such persons from any such institution, school, or facility to any other such school, institution, or facility: PROVIDED, That where a person has been committed to a minimum security institution, school, or facility by any of the superior courts of this state, a transfer to a close security institution shall be made only with the consent and approval of such court.

(4) The supervision of parole, discharge, or other release, and the post-institutional placement of all persons committed to Green Hill school and Maple Lane school, or such as may be assigned, paroled, or transferred therefrom to other facilities operated by the department. Green Hill school and Maple Lane school are hereby designated as "close security" institutions to which shall be given the custody of children with the most serious behavior problems. [1990 c 33 § 592; 1985 c 378 § 10; 1983 c 191 § 12; 1979 ex.s. c 217 § 8; 1979 c 141 § 179; 1959 c 28 § 72.05.130. Prior: 1951 c 234 § 13. Formerly RCW 43.19.370.]

**Purpose—Statutory references—Severability—1990 c 33:** See RCW 28A.900.100 through 28A.900.102.

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**72.05.150 "Minimum security" institutions.** The department shall have power to acquire, establish, maintain, and operate "minimum security" facilities for the care, custody, education, and treatment of children with less serious behavior problems. Such facilities may include parental schools or homes, farm units, and forest camps. Admission to such minimum security facilities shall be by juvenile court commitment or by transfer as herein otherwise provided. In carrying out the purposes of this section, the department may establish or acquire the use of such facilities by gift, purchase, lease, contract, or other arrangement with existing public entities, and to that end the secretary may execute necessary leases, contracts, or other agreements. In establishing forest camps, the department may contract with other divisions of the state and the federal government; including, but not limited to, the department of natural resources, the state parks and recreation commission, the U.S. forest service, and the national park service, on a basis whereby such camps may be made as nearly as possible self-sustaining. Under any such arrangement the contracting agency shall reimburse the department for the value of services which may be rendered by the inmates of a camp. [1979 ex.s. c 67 § 6; 1979 c 141 § 181; 1959 c 28 § 72.05.150. Prior: 1951 c 234 § 15. Formerly RCW 43.19.390.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**72.05.152 Juvenile forest camps—Industrial insurance benefits prohibited—Exceptions.** No inmate of a

juvenile forest camp who is affected by this chapter or receives benefits pursuant to RCW 72.05.152 and 72.05.154 shall be considered as an employee or to be employed by the state or the department of social and health services or the department of natural resources, nor shall any such inmate, except those provided for in RCW 72.05.154, come within any of the provisions of the workers' compensation act, or be entitled to any benefits thereunder, whether on behalf of himself or any other person. All moneys paid to inmates shall be considered a gratuity. [1987 c 185 § 37; 1973 c 68 § 1.]

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

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**72.05.154 Juvenile forest camps—Industrial insurance—Eligibility for benefits—Exceptions.** From and after July 1, 1973, any inmate working in a juvenile forest camp established and operated pursuant to RCW 72.05.150, pursuant to an agreement between the department of social and health services and the department of natural resources shall be eligible for the benefits provided by Title 51 RCW, as now or hereafter amended, relating to industrial insurance, with the exceptions provided by this section.

No inmate as described in RCW 72.05.152, until released upon an order of parole by the department of social and health services, or discharged from custody upon expiration of sentence, or discharged from custody by order of a court of appropriate jurisdiction, or his dependents or beneficiaries, shall be entitled to any payment for temporary disability or permanent total disability as provided for in RCW 51.32.090 or 51.32.060 respectively, as now or hereafter amended, or to the benefits of chapter 51.36 RCW relating to medical aid: PROVIDED, That RCW 72.05.152 and 72.05.154 shall not affect the eligibility, payment or distribution of benefits for any industrial injury to the inmate which occurred prior to his existing commitment to the department of social and health services.

Any and all premiums or assessments as may arise under this section pursuant to the provisions of Title 51 RCW shall be the obligation of and be paid by the state department of natural resources. [1973 c 68 § 2.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**72.05.160 Contracts with other divisions, agencies authorized.** In carrying out the provisions of RCW 72.05.010 through 72.05.210, the department shall have power to contract with other divisions or departments of the state or its political subdivisions, with any agency of the federal government, or with any private social agency. [1979 c 141 § 182; 1959 c 28 § 72.05.160. Prior: 1951 c 234 § 16. Formerly RCW 43.19.400.]

**72.05.170 Counseling and consultative services.** The department may provide professional counseling services to delinquent children and their parents, consultative services to communities dealing with problems of children and youth, and may give assistance to law enforcement agencies by means of juvenile control officers who may be selected from the field of police work. [1977 ex.s. c 80 § 45; 1959 c 28 § 72.05.170. Prior: 1955 c 240 § 1. Formerly RCW 43.19.405.]

**Purpose—Intent—Severability—1977 ex.s. c 80:** See notes following RCW 4.16.190.

**72.05.200 Parental right to provide treatment preserved.** Nothing in RCW 72.05.010 through 72.05.210 shall be construed as limiting the right of a parent, guardian or person standing in loco parentis in providing any medical or other remedial treatment recognized or permitted under the laws of this state. [1959 c 28 § 72.05.200. Prior: 1951 c 234 § 19. Formerly RCW 43.19.410.]

**72.05.210 Juvenile court law—Applicability—Synonymous terms.** RCW 72.05.010 through 72.05.210 shall be construed in connection with and supplemental to the juvenile court law as embraced in chapter 13.04 RCW. Process, procedure, probation by the court prior to commitment, and commitment shall be as provided therein. The terms "delinquency", "delinquent" and "delinquent children" as used and applied in the juvenile court law and the terms "behavior problems" and "children with behavior problems" as used in RCW 72.05.010 through 72.05.210 are synonymous and interchangeable. [1959 c 28 § 72.05.210. Prior: 1951 c 234 § 20. Formerly RCW 43.19.420.]

**72.05.300 Parental schools—Leases, purchases—Powers of school district.** The department may execute leases, with options to purchase, of parental school facilities now or hereafter owned and operated by school districts, and such leases with options to purchase shall include such terms and conditions as the secretary of social and health services deems reasonable and necessary to acquire such facilities. Notwithstanding any provisions of the law to the contrary, the board of directors of each school district now or hereafter owning and operating parental school facilities may, without submission for approval to the voters of the school district, execute leases, with options to purchase, of such parental school facilities, and such leases with options to purchase shall include such terms and conditions as the board of directors deems reasonable and necessary to dispose of such facilities in a manner beneficial to the school district. The department if it enters into a lease, with an option to purchase, of parental school facilities, may exercise its option and purchase such parental school facilities; and a school district may, if it enters into a lease, with an option to purchase, of parental school facilities, upon exercise of the option to purchase by the department, sell such parental school facilities and such sale may be accomplished without first obtaining a vote of approval from the electorate of the school district. [1979 c 141 § 183; 1959 c 28 § 72.05.300. Prior: 1957 c 297 § 2. Formerly RCW 43.28.160.]

**72.05.310 Parental schools—Personnel.** The department may employ personnel, including but not limited to, superintendents and all other officers, agents, and teachers necessary to the operation of parental schools. [1979 c 141 § 184; 1959 c 28 § 72.05.310. Prior: 1957 c 297 § 3. Formerly RCW 43.28.170.]

**72.05.400 Operation of community facility—Establishing or relocating—Public participation required—Secretary's duties.** (1) Whenever the department operates,

or the secretary enters a contract to operate, a community facility, the community facility may be operated only after the public notification and opportunities for review and comment as required by this section.

(2) The secretary shall establish a process for early and continuous public participation in establishing or relocating community facilities. The process shall include, at a minimum, public meetings in the local communities affected, as well as opportunities for written and oral comments, in the following manner:

(a) If there are more than three sites initially selected as potential locations and the selection process by the secretary or a service provider reduces the number of possible sites for a community facility to no fewer than three, the secretary or the chief operating officer of the service provider shall notify the public of the possible siting and hold at least two public hearings in each community where a community facility may be sited.

(b) When the secretary or service provider has determined the community facility's location, the secretary or the chief operating officer of the service provider shall hold at least one additional public hearing in the community where the community facility will be sited.

(c) When the secretary has entered negotiations with a service provider and only one site is under consideration, then at least two public hearings shall be held.

(d) To provide adequate notice of, and opportunity for interested persons to comment on, a proposed location, the secretary or the chief operating officer of the service provider shall provide at least fourteen days' advance notice of the meeting to all newspapers of general circulation in the community, all radio and television stations generally available to persons in the community, any school district in which the community facility would be sited or whose boundary is within two miles of a proposed community facility, any library district in which the community facility would be sited, local business or fraternal organizations that request notification from the secretary or agency, and any person or property owner within a one-half mile radius of the proposed community facility. Before initiating this process, the department shall contact local government planning agencies in the communities containing the proposed community facility. The department shall coordinate with local government agencies to ensure that opportunities are provided for effective citizen input and to reduce the duplication of notice and meetings.

(3) The secretary shall not issue a license to any service provider until the service provider submits proof that the requirements of this section have been met.

(4) This section shall apply only to community facilities sited after September 1, 1998. [1998 c 269 § 5.]

**Intent—Finding—Effective date—1998 c 269:** See notes following RCW 72.05.020.

**72.05.405 Juveniles in community facility—Infraction policy—Return to institution upon serious violation—Definitions by rule.** The department shall adopt an infraction policy for juveniles placed in community facilities. The policy shall require written documentation by the department and service providers of all infractions and violations by juveniles of conditions set by the department. Any juve-

nile who commits a serious infraction or a serious violation of conditions set by the department shall be returned to an institution. The secretary shall not return a juvenile to a community facility until a new risk assessment has been completed and the secretary reasonably believes that the juvenile can adhere to the conditions set by the department. The department shall define the terms "serious infraction" and "serious violation" in rule and shall include but not necessarily [be] limited to the commission of any criminal offense, any unlawful use or possession of a controlled substance, and any use or possession of an alcoholic beverage. [1998 c 269 § 6.]

**Intent—Finding—Effective date—1998 c 269:** See notes following RCW 72.05.020.

**72.05.410 Violations by juveniles in community facility—Toll-free hotline for reporting.** (1) The department shall publish and operate a staffed, toll-free twenty-four-hour hotline for the purpose of receiving reports of violation of conditions set for juveniles who are placed in community facilities.

(2) The department shall include the phone number on all documents distributed to the juvenile and the juvenile's employer, school, parents, and treatment providers.

(3) The department shall include the phone number in every contract it executes with any service provider after September 1, 1998. [1998 c 269 § 8.]

**Intent—Finding—Effective date—1998 c 269:** See notes following RCW 72.05.020.

**72.05.415 Establishing community placement oversight committees—Review and recommendations—Liability—Travel expenses—Notice to law enforcement of placement decisions.** (1) Promptly following the report due under section 17, chapter 269, Laws of 1998, the secretary shall develop a process with local governments that allows each community to establish a community placement oversight committee. The department may conduct community awareness activities. The community placement oversight committees developed pursuant to this section shall be implemented no later than September 1, 1999.

(2) The community placement oversight committees may review and make recommendations regarding the placement of any juvenile who the secretary proposes to place in the community facility.

(3) The community placement oversight committees, their members, and any agency represented by a member shall not be liable in any cause of action as a result of its decision in regard to a proposed placement of a juvenile unless the committee acts with gross negligence or bad faith in making a placement decision.

(4) Members of the committee shall be reimbursed for travel expenses as provided in RCW 43.03.050 and 43.03.060.

(5) Except as provided in RCW 13.40.215, at least seventy-two hours prior to placing a juvenile in a community facility the secretary shall provide to the chief law enforcement officer of the jurisdiction in which the community facility is sited: (a) The name of the juvenile; (b) the juvenile's criminal history; and (c) such other relevant and disclosable information as the law enforcement officer may require. [1998 c 269 § 9.]

(2010 Ed.)

**Intent—Finding—Effective date—1998 c 269:** See notes following RCW 72.05.020.

**72.05.420 Placement in community facility—Necessary conditions and actions—Department's duties.** (1) The department shall not initially place an offender in a community facility unless:

(a) The department has conducted a risk assessment, including a determination of drug and alcohol abuse, and the results indicate the juvenile will pose not more than a minimum risk to public safety; and

(b) The offender has spent at least ten percent of his or her sentence, but in no event less than thirty days, in a secure institution operated by, or under contract with, the department.

The risk assessment must include consideration of all prior convictions and all available nonconviction data released upon request under RCW 10.97.050, and any serious infractions or serious violations while under the jurisdiction of the secretary or the courts.

(2) No juvenile offender may be placed in a community facility until the juvenile's student records and information have been received and the department has reviewed them in conjunction with all other information used for risk assessment, security classification, and placement of the juvenile.

(3) A juvenile offender shall not be placed in a community facility until the department's risk assessment and security classification is complete and local law enforcement has been properly notified. [1998 c 269 § 10.]

**Intent—Finding—Effective date—1998 c 269:** See notes following RCW 72.05.020.

**72.05.425 Student records and information—Necessary for risk assessment, security classification, and proper placement—Rules.** (1) The department shall establish by rule, in consultation with the office of the superintendent of public instruction, those student records and information necessary to conduct a risk assessment, make a security classification, and ensure proper placement. Those records shall include at least:

(a) Any history of placement in special education programs;

(b) Any past, current, or pending disciplinary action;

(c) Any history of violent, aggressive, or disruptive behavior, or gang membership, or behavior listed in RCW 13.04.155;

(d) Any use of weapons that is illegal or in violation of school policy;

(e) Any history of truancy;

(f) Any drug or alcohol abuse;

(g) Any health conditions affecting the juvenile's placement needs; and

(h) Any other relevant information.

(2) For purposes of this section "gang" has the meaning defined in RCW 28A.225.225. [1998 c 269 § 13.]

**Intent—Finding—Effective date—1998 c 269:** See notes following RCW 72.05.020.

**72.05.430 Placement and supervision of juveniles in community facility—Monitoring requirements—Copies of agreements.** (1) Whenever the department operates, or

[Title 72 RCW—page 17]

the secretary enters a contract to operate, a community facility, the placement and supervision of juveniles must be accomplished in accordance with this section.

(2) The secretary shall require that any juvenile placed in a community facility and who is employed or assigned as a volunteer be subject to monitoring for compliance with requirements for attendance at his or her job or assignment. The monitoring requirements shall be included in a written agreement between the employer or supervisor, the secretary or chief operating officer of the contracting agency, and the juvenile. The requirements shall include, at a minimum, the following:

- (a) Acknowledgment of the juvenile's offender status;
- (b) The name, address, and telephone number of the community facility at which the juvenile resides;
- (c) The twenty-four-hour telephone number required under RCW 72.05.410;
- (d) The name and work telephone number of all persons responsible for the supervision of the juvenile;
- (e) A prohibition on the juvenile's departure from the work or volunteer site without prior approval of the person in charge of the community facility;
- (f) A prohibition on personal telephone calls except to the community facility;
- (g) A prohibition on receiving compensation in any form other than a negotiable instrument;
- (h) A requirement that rest breaks during work hours be taken only in those areas at the location which are designated for such breaks;
- (i) A prohibition on visits from persons not approved in advance by the person in charge of the community facility;
- (j) A requirement that any unexcused absence, tardiness, or departure by the juvenile be reported immediately upon discovery to the person in charge of the community facility;
- (k) A requirement that any notice from the juvenile that he or she will not report to the work or volunteer site be verified as legitimate by contacting the person in charge of the community facility; and
- (l) An agreement that the community facility will conduct and document random visits to determine compliance by the juvenile with the terms of this section.

(3) The secretary shall require that any juvenile placed in a community facility and who is enrolled in a public or private school be subject to monitoring for compliance with requirements for attendance at his or her school. The monitoring requirements shall be included in a written agreement between the school district or appropriate administrative officer, the secretary or chief operating officer of the contracting agency, and the juvenile. The requirements shall include, at a minimum, the following:

- (a) Acknowledgment of the juvenile's offender status;
- (b) The name, address, and telephone number of the community facility at which the juvenile resides;
- (c) The twenty-four-hour telephone number required under RCW 72.05.410;
- (d) The name and work telephone number of at least two persons at the school to contact if issues arise concerning the juvenile's compliance with the terms of his or her attendance at school;

(e) A prohibition on the juvenile's departure from the school without prior approval of the appropriate person at the school;

(f) A prohibition on personal telephone calls except to the community facility;

(g) A requirement that the juvenile remain on school grounds except for authorized and supervised school activities;

(h) A prohibition on visits from persons not approved in advance by the person in charge of the community facility;

(i) A requirement that any unexcused absence or departure by the juvenile be reported immediately upon discovery to the person in charge of the community facility;

(j) A requirement that any notice from the juvenile that he or she will not attend school be verified as legitimate by contacting the person in charge of the community facility; and

(k) An agreement that the community facility will conduct and document random visits to determine compliance by the juvenile with the terms of this section.

(4) The secretary shall require that when any juvenile placed in a community facility is employed, assigned as a volunteer, or enrolled in a public or private school:

(a) Program staff members shall make and document periodic and random accountability checks while the juvenile is at the school or work facility;

(b) A program counselor assigned to the juvenile shall contact the juvenile's employer, teacher, or school counselor regularly to discuss school or job performance-related issues.

(5) The department shall maintain a copy of all agreements executed under this section. The department shall also provide each affected juvenile with a copy of every agreement to which he or she is a party. The service provider shall maintain a copy of every agreement it executes under this section. [1998 c 269 § 14.]

**Intent—Finding—Effective date—1998 c 269:** See notes following RCW 72.05.020.

**72.05.435 Common use of residential group homes for juvenile offenders—Placement of juvenile convicted of a class A felony.** (1) The department shall establish by rule a policy for the common use of residential group homes for juvenile offenders under the jurisdiction of the juvenile rehabilitation administration and the children's administration.

(2) A juvenile confined under the jurisdiction of the juvenile rehabilitation administration who is convicted of a class A felony is not eligible for placement in a community facility operated by children's administration that houses juveniles who are not under the jurisdiction of juvenile rehabilitation administration unless:

(a) The juvenile is housed in a separate living unit solely for juvenile offenders;

(b) The community facility is a specialized treatment program and the youth is not assessed as sexually aggressive under RCW 13.40.470; or

(c) The community facility is a specialized treatment program that houses one or more sexually aggressive youth and the juvenile is not assessed as sexually vulnerable under RCW 13.40.470. [1998 c 269 § 15.]

**Intent—Finding—Effective date—1998 c 269:** See notes following RCW 72.05.020.

**72.05.440 Eligibility for employment or volunteer position with juveniles—Must report convictions—Rules.**

(1) A person shall not be eligible for an employed or volunteer position within the juvenile rehabilitation administration or any agency with which it contracts in which the person may have regular access to juveniles under the jurisdiction of the department of social and health services or the department of corrections if the person has been convicted of one or more of the following:

- (a) Any felony sex offense;
- (b) Any violent offense, as defined in RCW 9.94A.030.

(2) Subsection (1) of this section applies only to persons hired by the department or any of its contracting agencies after September 1, 1998.

(3) Any person employed by the juvenile rehabilitation administration, or by any contracting agency, who may have regular access to juveniles under the jurisdiction of the department or the department of corrections and who is convicted of an offense set forth in this section after September 1, 1998, shall report the conviction to his or her supervisor. The report must be made within seven days of conviction. Failure to report within seven days of conviction constitutes misconduct under Title 50 RCW.

(4) For purposes of this section "may have regular access to juveniles" means access for more than a nominal amount of time.

(5) The department shall adopt rules to implement this section. [1998 c 269 § 16.]

**Intent—Finding—Effective date—1998 c 269:** See notes following RCW 72.05.020.

**72.05.450 Use of restraints on pregnant youth in custody—Allowed in extraordinary circumstances.**

(1) Except in extraordinary circumstances no restraints of any kind may be used on any pregnant youth in an institution or a community facility covered by this chapter during transportation to and from visits to medical providers and court proceedings during the third trimester of her pregnancy, or during postpartum recovery. For purposes of this section, "extraordinary circumstances" exist where an employee of an institution or community facility covered by this chapter makes an individualized determination that restraints are necessary to prevent an incarcerated pregnant youth from escaping, or from injuring herself, medical or correctional personnel, or others. In the event an employee of an institution or community facility covered by this chapter determines that extraordinary circumstances exist and restraints are used, the corrections officer or employee must fully document in writing the reasons that he or she determined such extraordinary circumstances existed such that restraints were used. As part of this documentation, the employee of an institution or community facility covered by this chapter must also include the kind of restraints used and the reasons those restraints were considered the least restrictive available and the most reasonable under the circumstances.

(2) While the pregnant youth is in labor or in childbirth no restraints of any kind may be used. Nothing in this section affects the use of hospital restraints requested for the medical

(2010 Ed.)

safety of a patient by treating physicians licensed under Title 18 RCW.

(3) Anytime restraints are permitted to be used on a pregnant youth, the restraints must be the least restrictive available and the most reasonable under the circumstances, but in no case shall leg irons or waist chains be used on any youth known to be pregnant.

(4) No employee of the institution or community facility shall be present in the room during the pregnant youth's labor or childbirth, unless specifically requested by medical personnel. If the employee's presence is requested by medical personnel, the employee should be female, if practicable.

(5) If the doctor, nurse, or other health professional treating the pregnant youth requests that restraints not be used, the employee accompanying the pregnant youth shall immediately remove all restraints. [2010 c 181 § 8.]

**72.05.451 Use of restraints on pregnant youth in custody—Provision of information to staff and pregnant youth in custody.**

(1) The secretary shall provide an informational packet about the requirements of chapter 181, Laws of 2010 to all medical staff and nonmedical staff of the institution or community facility who are involved in the transportation of youth who are pregnant, as well as such other staff as the secretary deems appropriate. The informational packet provided to staff under this section shall be developed as provided in RCW 70.48.800.

(2) The secretary shall cause the requirements of chapter 181, Laws of 2010 to be provided to all youth who are pregnant, at the time the secretary assumes custody of the person. In addition, the secretary shall cause a notice containing the requirements of chapter 181, Laws of 2010 to be posted in conspicuous locations in the institutions or community facilities, including but not limited to the locations in which medical care is provided within the facilities. [2010 c 181 § 9.]

**Chapter 72.06 RCW**

**MENTAL HEALTH**

Sections

- 72.06.010 "Department" defined.
- 72.06.050 Mental health—Dissemination of information and advice by department.
- 72.06.060 Mental health—Psychiatric outpatient clinics.
- 72.06.070 Mental health—Cooperation of department and state hospitals with local programs.

**Reviser's note:** 1979 ex.s. c 108, which was to be added to this chapter, has been codified as chapter 72.72 RCW.

*Alcoholism, intoxication, and drug addiction treatment: Chapter 70.96A RCW.*

*Minors—Mental health services, commitment: Chapter 71.34 RCW.*

*State hospitals for individuals with mental illness: Chapter 72.23 RCW.*

**72.06.010 "Department" defined.** "Department" for the purposes of this chapter shall mean the department of social and health services. [1970 ex.s. c 18 § 59; 1959 c 28 § 72.06.010. Prior: 1957 c 272 § 9. Formerly RCW 43.28.040.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**72.06.050 Mental health—Dissemination of information and advice by department.** The department shall coop-

erate with other departments of state government and its political subdivisions in the following manner:

(1) By disseminating educational information relating to the prevention, diagnosis and treatment of mental illness.

(2) Upon request therefor, by advising public officers, organizations and agencies interested in the mental health of the people of the state. [1977 ex.s. c 80 § 46; 1959 c 28 § 72.06.050. Prior: 1955 c 136 § 2. Formerly RCW 43.28.600.]

**Purpose—Intent—Severability—1977 ex.s. c 80:** See notes following RCW 4.16.190.

**72.06.060 Mental health—Psychiatric outpatient clinics.** The department is hereby authorized to establish and maintain psychiatric outpatient clinics at such of the several state mental institutions as the secretary shall designate for the prevention, diagnosis and treatment of mental illnesses, and the services of such clinics shall be available to any citizen of the state in need thereof, when determined by a physician that such services are not otherwise available, subject to the rules of the department. [1979 c 141 § 185; 1977 ex.s. c 80 § 47; 1959 c 28 § 72.06.060. Prior: 1955 c 136 § 3. Formerly RCW 43.28.610.]

**Purpose—Intent—Severability—1977 ex.s. c 80:** See notes following RCW 4.16.190.

**72.06.070 Mental health—Cooperation of department and state hospitals with local programs.** The department and the several state hospitals for the mentally ill shall cooperate with local mental health programs by providing necessary information, recommendations relating to proper after care for patients paroled or discharged from such institutions and shall also supply the services of psychiatrists, psychologists and other persons specialized in mental illness as they are available. [1959 c 28 § 72.06.070. Prior: 1955 c 136 § 4. Formerly RCW 43.28.620.]

## Chapter 72.09 RCW

### DEPARTMENT OF CORRECTIONS

#### Sections

72.09.010	Legislative intent.
72.09.015	Definitions.
72.09.030	Department created—Secretary.
72.09.040	Transfer of functions from department of social and health services.
72.09.050	Powers and duties of secretary.
72.09.055	Affordable housing—Inventory of suitable property.
72.09.057	Fees for reproduction, shipment, and certification of documents and records.
72.09.060	Organization of department—Program for public involvement and volunteers.
72.09.070	Correctional industries board of directors—Duties.
72.09.080	Correctional industries board of directors—Appointment of members, chair—Compensation—Support.
72.09.090	Correctional industries account—Expenditure—Profits—Appropriations.
72.09.095	Transfer of funds to department of labor and industries for crime victims' compensation.
72.09.100	Inmate work program—Classes of work programs—Participation—Benefits.
72.09.101	Inmate work program—Administrators' duty.
72.09.104	Prison work programs to operate automated data input and retrieval systems.
72.09.106	Subcontracting of data input and microfilm capacities.
72.09.110	Inmates' wages—Supporting cost of corrections—Crime victims' compensation and family support.
72.09.111	Inmate wages—Deductions—Availability of savings—Recovery of cost of incarceration.

72.09.115	Proposed new class I correctional industries work program—Threshold analysis—Business impact analysis—Public hearing—Finding.
72.09.116	Information obtained under RCW 72.09.115 exempt from public disclosure.
72.09.120	Distribution of list of inmate job opportunities.
72.09.130	Incentive system for participation in education and work programs—Rules—Dissemination.
72.09.135	Adoption of standards for correctional facilities.
72.09.190	Legal services for inmates.
72.09.200	Transfer of files, property, and appropriations.
72.09.210	Transfer of employees.
72.09.220	Employee rights under collective bargaining.
72.09.225	Sexual misconduct by state employees, contractors.
72.09.230	Duties continued during transition.
72.09.240	Reimbursement of employees for offender assaults.
72.09.251	Communicable disease prevention guidelines.
72.09.260	Litter cleanup programs—Requirements.
72.09.270	Individual reentry plan.
72.09.280	Community justice centers.
72.09.290	Correctional facility siting list.
72.09.300	Local law and justice council—Rules.
72.09.310	Community custody violator.
72.09.311	Confinement of community custody violators.
72.09.315	Court-ordered treatment—Violations—Required notifications.
72.09.320	Community placement—Liability.
72.09.330	Sex offenders and kidnapping offenders—Registration—Notice to persons convicted of sex offenses and kidnapping offenses.
72.09.333	Sex offenders—Facilities on McNeil Island.
72.09.335	Sex offenders—Treatment opportunity.
72.09.337	Sex offenders—Rules regarding.
72.09.340	Supervision of sex offenders—Public safety—Policy for release plan evaluation and approval—Implementation, publicizing, notice—Rejection of residence locations of felony sex offenders of minor victims—Supervised visitation considerations.
72.09.345	Sex offenders—Release of information to protect public—End-of-sentence review committee—Assessment—Records access—Review, classification, referral of offenders—Issuance of narrative notices.
72.09.350	Corrections mental health center—Collaborative arrangement with University of Washington—Services for mentally ill offenders—Annual report to the legislature.
72.09.370	Offenders with mental illness who are believed to be dangerous—Plan for postrelease treatment and support services—Rules.
72.09.380	Rule making—Medicaid—Secretary of corrections—Secretary of social and health services.
72.09.381	Rule making—Chapter 214, Laws of 1999—Secretary of corrections—Secretary of social and health services.
72.09.400	Work ethic camp program—Findings—Intent.
72.09.410	Work ethic camp program—Generally.
72.09.450	Limitation on denial of access to services and supplies—Recoupment of assessments—Collections.
72.09.460	Inmate participation in education and work programs—Legislative intent—Priorities—Rules—Payment of costs.
72.09.465	Postsecondary education degree programs.
72.09.470	Inmate contributions for cost of privileges—Standards.
72.09.480	Inmate funds subject to deductions—Definitions—Exceptions—Child support collection actions.
72.09.490	Policy on extended family visitation.
72.09.495	Incarcerated parents—Policies to encourage family contact and engagement.
72.09.500	Prohibition on weight-lifting.
72.09.510	Limitation on purchasing recreational equipment and dietary supplements that increase muscle mass.
72.09.520	Limitation on purchase of televisions.
72.09.530	Prohibition on receipt or possession of contraband—Rules.
72.09.540	Inmate name change—Limitations on use—Penalty.
72.09.560	Camp for alien offenders.
72.09.580	Offender records and reports.
72.09.585	Mental health services information—Required inquiries and disclosures—Release to court, individuals, indeterminate sentence review board, state and local agencies.
72.09.590	Community safety.
72.09.600	Rules—Chapter 196, Laws of 1999.
72.09.610	Community custody study.
72.09.620	Extraordinary medical placement—Reports.
72.09.630	Custodial sexual misconduct—Investigation of allegations.
72.09.650	Use of force by limited authority Washington peace officers—Detention of persons.

- 72.09.651 Use of restraints on pregnant women or youth in custody—Allowed in extraordinary circumstances.
- 72.09.652 Use of restraints on pregnant women or youth in custody—Provision of information to staff and pregnant women and youth in custody.
- 72.09.670 Gang involvement among incarcerated offenders—Intervention programs—Study.
- 72.09.710 Drug offenders—Notice of release or escape.
- 72.09.712 Prisoner escape, parole, release, community custody or work release placement, or furlough—Notification procedures.
- 72.09.713 Prisoner escape, parole, release, community custody or work release placement, or furlough—Notice of work release placement.
- 72.09.714 Prisoner escape, release, or furlough—Homicide, violent, and sex offenses—Rights of victims and witnesses.
- 72.09.716 Prisoner escape, release, or furlough—Requests for notification.
- 72.09.718 Prisoner escape, release, or furlough—Notification as additional requirement.
- 72.09.720 Prisoner escape, release, or furlough—Consequences of failure to notify.
- 72.09.900 Effective date—1981 c 136.
- 72.09.901 Short title.
- 72.09.902 Construction—1981 c 136.
- 72.09.903 Savings—1981 c 136.
- 72.09.904 Construction—1999 c 196.
- 72.09.905 Short title—1999 c 196.
- 72.09.906 Construction—Chapter applicable to state registered domestic partnerships—2009 c 521.

*Data provided for statewide automated victim information and notification system, when required: RCW 36.28A.0402.*

*Disturbances at state penal facilities development of contingency plans—Scope—Local participation: RCW 72.02.150.*  
*reimbursement to cities and counties for certain expenses incurred: RCW 72.72.050, 72.72.060.*  
*utilization of outside law enforcement personnel—Scope: RCW 72.02.160.*

*Interagency agreement on fetal alcohol exposure programs: RCW 70.96A.510.*

*Rule-making authority: RCW 70.24.107.*

**72.09.010 Legislative intent.** It is the intent of the legislature to establish a comprehensive system of corrections for convicted law violators within the state of Washington to accomplish the following objectives.

(1) The system should ensure the public safety. The system should be designed and managed to provide the maximum feasible safety for the persons and property of the general public, the staff, and the inmates.

(2) The system should punish the offender for violating the laws of the state of Washington. This punishment should generally be limited to the denial of liberty of the offender.

(3) The system should positively impact offenders by stressing personal responsibility and accountability and by discouraging recidivism.

(4) The system should treat all offenders fairly and equitably without regard to race, religion, sex, national origin, residence, or social condition.

(5) The system, as much as possible, should reflect the values of the community including:

(a) Avoiding idleness. Idleness is not only wasteful but destructive to the individual and to the community.

(b) Adoption of the work ethic. It is the community expectation that all individuals should work and through their efforts benefit both themselves and the community.

(c) Providing opportunities for self improvement. All individuals should have opportunities to grow and expand their skills and abilities so as to fulfill their role in the community.

(2010 Ed.)

(d) Linking the receipt or denial of privileges to responsible behavior and accomplishments. The individual who works to improve himself or herself and the community should be rewarded for these efforts. As a corollary, there should be no rewards for no effort.

(e) Sharing in the obligations of the community. All citizens, the public and inmates alike, have a personal and fiscal obligation in the corrections system. All communities must share in the responsibility of the corrections system.

(6) The system should provide for prudent management of resources. The avoidance of unnecessary or inefficient public expenditures on the part of offenders and the department is essential. Offenders must be accountable to the department, and the department to the public and the legislature. The human and fiscal resources of the community are limited. The management and use of these resources can be enhanced by wise investment, productive programs, the reduction of duplication and waste, and the joining together of all involved parties in a common endeavor. Since most offenders return to the community, it is wise for the state and the communities to make an investment in effective rehabilitation programs for offenders and the wise use of resources.

(7) The system should provide for restitution. Those who have damaged others, persons or property, have a responsibility to make restitution for these damages.

(8) The system should be accountable to the citizens of the state. In return, the individual citizens and local units of government must meet their responsibilities to make the corrections system effective.

(9) The system should meet those national standards which the state determines to be appropriate. [1995 1st sp.s. c 19 § 2; 1981 c 136 § 2.]

**Findings—Purpose—Short title—Severability—Effective date—1995 1st sp.s. c 19:** See notes following RCW 72.09.450.

**72.09.015 Definitions.** The definitions in this section apply throughout this chapter.

(1) "Adult basic education" means education or instruction designed to achieve general competence of skills in reading, writing, and oral communication, including English as a second language and preparation and testing services for obtaining a high school diploma or a general equivalency diploma.

(2) "Base level of correctional services" means the minimum level of field services the department of corrections is required by statute to provide for the supervision and monitoring of offenders.

(3) "Community custody" has the same meaning as that provided in RCW 9.94A.030 and also includes community placement and community supervision as defined in RCW 9.94B.020.

(4) "Contraband" means any object or communication the secretary determines shall not be allowed to be: (a) Brought into; (b) possessed while on the grounds of; or (c) sent from any institution under the control of the secretary.

(5) "Correctional facility" means a facility or institution operated directly or by contract by the secretary for the purposes of incarcerating adults in total or partial confinement, as defined in RCW 9.94A.030.

(6) "County" means a county or combination of counties.

(7) "Department" means the department of corrections.

(8) "Earned early release" means earned release as authorized by \*RCW 9.94A.728.

(9) "Evidence-based" means a program or practice that has had multiple-site random controlled trials across heterogeneous populations demonstrating that the program or practice is effective in reducing recidivism for the population.

(10) "Extended family visit" means an authorized visit between an inmate and a member of his or her immediate family that occurs in a private visiting unit located at the correctional facility where the inmate is confined.

(11) "Good conduct" means compliance with department rules and policies.

(12) "Good performance" means successful completion of a program required by the department, including an education, work, or other program.

(13) "Immediate family" means the inmate's children, stepchildren, grandchildren, great grandchildren, parents, stepparents, grandparents, great grandparents, siblings, and a person legally married to or in a state registered domestic partnership with an inmate. "Immediate family" does not include an inmate adopted by another inmate or the immediate family of the adopted or adopting inmate.

(14) "Indigent inmate," "indigent," and "indigency" mean an inmate who has less than a ten-dollar balance of disposable income in his or her institutional account on the day a request is made to utilize funds and during the thirty days previous to the request.

(15) "Individual reentry plan" means the plan to prepare an offender for release into the community. It should be developed collaboratively between the department and the offender and based on an assessment of the offender using a standardized and comprehensive tool to identify the offender's risks and needs. The individual reentry plan describes actions that should occur to prepare individual offenders for release from prison or jail, specifies the supervision and services they will experience in the community, and describes an offender's eventual discharge to aftercare upon successful completion of supervision. An individual reentry plan is updated throughout the period of an offender's incarceration and supervision to be relevant to the offender's current needs and risks.

(16) "Inmate" means a person committed to the custody of the department, including but not limited to persons residing in a correctional institution or facility and persons released from such facility on furlough, work release, or community custody, and persons received from another state, state agency, county, or federal jurisdiction.

(17) "Labor" means the period of time before a birth during which contractions are of sufficient frequency, intensity, and duration to bring about effacement and progressive dilation of the cervix.

(18) "Physical restraint" means the use of any bodily force or physical intervention to control an offender or limit an offender's freedom of movement in a way that does not involve a mechanical restraint. Physical restraint does not include momentary periods of minimal physical restriction by direct person-to-person contact, without the aid of mechanical restraint, accomplished with limited force and designed to:

(a) Prevent an offender from completing an act that would result in potential bodily harm to self or others or damage property;

(b) Remove a disruptive offender who is unwilling to leave the area voluntarily; or

(c) Guide an offender from one location to another.

(19) "Postpartum recovery" means (a) the entire period a woman or youth is in the hospital, birthing center, or clinic after giving birth and (b) an additional time period, if any, a treating physician determines is necessary for healing after the woman or youth leaves the hospital, birthing center, or clinic.

(20) "Privilege" means any goods or services, education or work programs, or earned early release days, the receipt of which are directly linked to an inmate's (a) good conduct; and (b) good performance. Privileges do not include any goods or services the department is required to provide under the state or federal Constitution or under state or federal law.

(21) "Promising practice" means a practice that presents, based on preliminary information, potential for becoming a research-based or consensus-based practice.

(22) "Research-based" means a program or practice that has some research demonstrating effectiveness, but that does not yet meet the standard of evidence-based practices.

(23) "Restraints" means anything used to control the movement of a person's body or limbs and includes:

(a) Physical restraint; or

(b) Mechanical device including but not limited to: Metal handcuffs, plastic ties, ankle restraints, leather cuffs, other hospital-type restraints, tasers, or batons.

(24) "Secretary" means the secretary of corrections or his or her designee.

(25) "Significant expansion" includes any expansion into a new product line or service to the class I business that results from an increase in benefits provided by the department, including a decrease in labor costs, rent, or utility rates (for water, sewer, electricity, and disposal), an increase in work program space, tax advantages, or other overhead costs.

(26) "Superintendent" means the superintendent of a correctional facility under the jurisdiction of the Washington state department of corrections, or his or her designee.

(27) "Transportation" means the conveying, by any means, of an incarcerated pregnant woman or youth from the correctional facility to another location from the moment she leaves the correctional facility to the time of arrival at the other location, and includes the escorting of the pregnant incarcerated woman or youth from the correctional facility to a transport vehicle and from the vehicle to the other location.

(28) "Unfair competition" means any net competitive advantage that a business may acquire as a result of a correctional industries contract, including labor costs, rent, tax advantages, utility rates (water, sewer, electricity, and disposal), and other overhead costs. To determine net competitive advantage, the correctional industries board shall review and quantify any expenses unique to operating a for-profit business inside a prison.

(29) "Vocational training" or "vocational education" means "vocational education" as defined in RCW 72.62.020.

(30) "Washington business" means an in-state manufacturer or service provider subject to chapter 82.04 RCW existing on June 10, 2004.

(31) "Work programs" means all classes of correctional industries jobs authorized under RCW 72.09.100. [2010 c 181 § 1; 2009 c 521 § 165; 2008 c 231 § 47; 2007 c 483 § 202; 2004 c 167 § 6; 1995 1st sp.s. c 19 § 3; 1987 c 312 § 2.]

**\*Reviser's note:** RCW 9.94A.728 was amended by 2009 c 399 § 1, 2009 c 441 § 1, and 2009 c 455 §§ 1 and 2 without reference to each other. 2009 c 455 §§ 1 and 2 delete language concerning "earned early release" and refer to § 3 (RCW 9.94A.729) as authorizing earned early release time.

**Effective dates—2009 c 521 §§ 5-8, 79, 87-103, 107, 151, 165, 166, 173-175, and 190-192:** See note following RCW 2.10.900.

**Intent—Application—Application of repealers—Effective date—2008 c 231:** See notes following RCW 9.94A.701.

**Severability—2008 c 231:** See note following RCW 9.94A.500.

**Intent—2007 c 483:** See note following RCW 72.09.270.

**Findings—Part headings not law—Severability—2007 c 483:** See RCW 72.78.005, 72.78.900, and 72.78.901.

**Findings—Purpose—Short title—Severability—Effective date—1995 1st sp.s. c 19:** See notes following RCW 72.09.450.

**72.09.030 Department created—Secretary.** There is created a department of state government to be known as the department of corrections. The executive head of the department shall be the secretary of corrections who shall be appointed by the governor with the consent of the senate. The secretary shall serve at the pleasure of the governor and shall receive a salary to be fixed under RCW 43.03.040. [1981 c 136 § 3.]

**72.09.040 Transfer of functions from department of social and health services.** All powers, duties, and functions assigned to the secretary of social and health services and to the department of social and health services relating to adult correctional programs and institutions are hereby transferred to the secretary of corrections and to the department of corrections. Except as may be specifically provided, all functions of the department of social and health services relating to juvenile rehabilitation and the juvenile justice system shall remain in the department of social and health services. Where functions of the department of social and health services and the department of corrections overlap in the juvenile rehabilitation and/or juvenile justice area, the governor may allocate such functions between these departments. [1998 c 245 § 139; 1981 c 136 § 4.]

**72.09.050 Powers and duties of secretary.** The secretary shall manage the department of corrections and shall be responsible for the administration of adult correctional programs, including but not limited to the operation of all state correctional institutions or facilities used for the confinement of convicted felons. In addition, the secretary shall have broad powers to enter into agreements with any federal agency, or any other state, or any Washington state agency or local government providing for the operation of any correctional facility or program for persons convicted of felonies or misdemeanors or for juvenile offenders. Such agreements for counties with local law and justice councils shall be required in the local law and justice plan pursuant to RCW 72.09.300. The agreements may provide for joint operation or operation by the department of corrections, alone, for by any of the other governmental entities, alone. Beginning February 1, 1999, the secretary may expend funds appropriated for the

1997-1999 biennium to enter into agreements with any local government or private organization in any other state, providing for the operation of any correctional facility or program for persons convicted of felonies. Between July 1, 1999, and June 30, 2001, the secretary may expend funds appropriated for the 1999-01 biennium to enter into agreements with any local government or private organization in any other state, providing for the operation of any correctional facility or program for persons convicted of felonies. The secretary may employ persons to aid in performing the functions and duties of the department. The secretary may delegate any of his or her functions or duties to department employees, including the authority to certify and maintain custody of records and documents on file with the department. The secretary is authorized to promulgate standards for the department of corrections within appropriation levels authorized by the legislature.

Pursuant to the authority granted in chapter 34.05 RCW, the secretary shall adopt rules providing for inmate restitution when restitution is determined appropriate as a result of a disciplinary action. [1999 c 309 § 1902; 1999 c 309 § 924; 1995 c 189 § 1; 1991 c 363 § 149; 1987 c 312 § 4; 1986 c 19 § 1; 1981 c 136 § 5.]

**Reviser's note:** This section was amended by 1999 c 309 § 924 and by 1999 c 309 § 1902, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

**Purpose—Captions not law—1991 c 363:** See notes following RCW 2.32.180.

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**72.09.055 Affordable housing—Inventory of suitable property.** (1) The department shall identify and catalog real property that is no longer required for department purposes and is suitable for the development of affordable housing for very low-income, low-income, and moderate-income households as defined in RCW 43.63A.510. The inventory shall include the location, approximate size, and current zoning classification of the property. The department shall provide a copy of the inventory to the \*department of community, trade, and economic development by November 1, 1993, and every November 1 thereafter.

(2) By November 1 of each year, beginning in 1994, the department shall purge the inventory of real property of sites that are no longer available for the development of affordable housing. The department shall include an updated listing of real property that has become available since the last update. As used in this section, "real property" means buildings, land, or buildings and land. [1995 c 399 § 202; 1993 c 461 § 12.]

**\*Reviser's note:** The "department of community, trade, and economic development" was renamed the "department of commerce" by 2009 c 565.

**Finding—1993 c 461:** See note following RCW 43.63A.510.

**72.09.057 Fees for reproduction, shipment, and certification of documents and records.** The department may charge reasonable fees for the reproduction, shipment, and certification of documents, records, and other materials in the files of the department. [1995 c 189 § 2.]

**72.09.060 Organization of department—Program for public involvement and volunteers.** The department of

corrections may be organized into such divisions or offices as the secretary may determine, but shall include divisions for (1) correctional industries, (2) prisons and other custodial institutions and (3) probation, parole, community restitution, restitution, and other nonincarcerative sanctions. The secretary shall have at least one person on his or her staff who shall have the responsibility for developing a program which encourages the use of volunteers, for citizen advisory groups, and for similar public involvement programs in the corrections area. Minimum qualification for staff assigned to public involvement responsibilities shall include previous experience in working with volunteers or volunteer agencies. [2002 c 175 § 48; 1989 c 185 § 3; 1981 c 136 § 6.]

**Effective date—2002 c 175:** See note following RCW 7.80.130.

**72.09.070 Correctional industries board of directors—Duties.** (1) There is created a correctional industries board of directors which shall have the composition provided in RCW 72.09.080.

(2) Consistent with general department of corrections policies and procedures pertaining to the general administration of correctional facilities, the board shall establish and implement policy for correctional industries programs designed to:

(a) Offer inmates meaningful employment, work experience, and training in vocations that are specifically designed to reduce recidivism and thereby enhance public safety by providing opportunities for legitimate means of livelihood upon their release from custody;

(b) Provide industries which will reduce the tax burden of corrections and save taxpayers money through production of goods and services for sale and use;

(c) Operate correctional work programs in an effective and efficient manner which are as similar as possible to those provided by the private sector;

(d) Encourage the development of and provide for selection of, contracting for, and supervision of work programs with participating private enterprise firms;

(e) Develop and select correctional industries work programs that do not unfairly compete with Washington businesses;

(f) Invest available funds in correctional industries enterprises and meaningful work programs that minimize the impact on in-state jobs and businesses.

(3) The board of directors shall at least annually review the work performance of the director of correctional industries division with the secretary.

(4) The director of correctional industries division shall review and evaluate the productivity, funding, and appropriateness of all correctional work programs and report on their effectiveness to the board and to the secretary.

(5) The board of directors shall have the authority to identify and establish trade advisory or apprenticeship committees to advise them on correctional industries work programs. The secretary shall appoint the members of the committees.

Where a labor management trade advisory and apprenticeship committee has already been established by the department pursuant to RCW 72.62.050 the existing committee shall also advise the board of directors.

(6) The board shall develop a strategic yearly marketing plan that shall be consistent with and work towards achieving the goals established in the six-year phased expansion of class I and class II correctional industries established in RCW 72.09.111. This marketing plan shall be presented to the appropriate committees of the legislature by January 17 of each calendar year until the goals set forth in RCW 72.09.111 are achieved. [2004 c 167 § 1; 1994 sp.s. c 7 § 535; 1993 sp.s. c 20 § 3; 1989 c 185 § 4; 1981 c 136 § 8.]

**Finding—Intent—Severability—1994 sp.s. c 7:** See notes following RCW 43.70.540.

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**72.09.080 Correctional industries board of directors—Appointment of members, chair—Compensation—Support.** (1) The correctional industries board of directors shall consist of nine voting members, appointed by the governor. Each member shall serve a three-year staggered term. Initially, the governor shall appoint three members to one-year terms, three members to two-year terms, and three members to three-year terms. The speaker of the house of representatives and the president of the senate shall each appoint one member from each of the two largest caucuses in their respective houses. The legislators so appointed shall be nonvoting members and shall serve two-year terms, or until they cease to be members of the house from which they were appointed, whichever occurs first. The nine members appointed by the governor shall include three representatives from labor, three representatives from business representing cross-sections of industries and all sizes of employers, and three members from the general public.

(2) The board of directors shall elect a chair and such other officers as it deems appropriate from among the voting members.

(3) The voting members of the board of directors shall serve with compensation pursuant to RCW 43.03.240 and shall be reimbursed by the department for travel expenses and per diem under RCW 43.03.050 and 43.03.060, as now or hereafter amended. Legislative members shall be reimbursed under RCW 44.04.120, as now or hereafter amended.

(4) The secretary shall provide such staff services, facilities, and equipment as the board shall require to carry out its duties. [1993 sp.s. c 20 § 4; 1989 c 185 § 5; 1981 c 136 § 9.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**72.09.090 Correctional industries account—Expenditure—Profits—Appropriations.** The correctional industries account is established in the state treasury. The department of corrections shall deposit in the account all moneys collected and all profits that accrue from the industrial and agricultural operations of the department and any moneys appropriated to the account. Moneys in the account may be spent only for expenses arising in the correctional industries operations.

The division's net profits from correctional industries' sales and contracts shall be reinvested, without appropriation, in the expansion and improvement of correctional industries. However, the board of directors shall annually recommend that some portion of the profits from correctional industries be returned to the state general fund.

The board and secretary shall request appropriations or increased appropriations whenever it appears that additional money is needed to provide for the establishment and operation of a comprehensive correctional industries program. [1989 c 185 § 6; 1987 c 7 § 203; 1981 c 136 § 10.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**72.09.095 Transfer of funds to department of labor and industries for crime victims' compensation.** Each year the department shall transfer twenty-five percent of the total annual revenues and receipts received in each institutional betterment fund subaccount to the department of labor and industries for the purpose of providing direct benefits to crime victims through the crime victims' compensation program as outlined in chapter 7.68 RCW. This transfer takes priority over any expenditure of betterment funds and shall be reflected on the monthly financial statements of each institution's betterment fund subaccount.

Any funds so transferred to the department of labor and industries shall be in addition to the crime victims' compensation amount provided in an omnibus appropriation bill. It is the intent of the legislature that the funds forecasted or transferred pursuant to this section shall not reduce the funding levels provided by appropriation. [1995 c 234 § 2.]

**Finding—1995 c 234:** "The legislature finds that the responsibility for criminal activity should fall squarely on the criminal. To the greatest extent possible society should not be expected to have to pay the price for crimes twice, once for the criminal activity and again by feeding, clothing, and housing the criminal. The corrections system should be the first place criminals are given the opportunity to be responsible for paying for their criminal act, not just through the loss of their personal freedom, but by making financial contributions to alleviate the pain and suffering of victims of crime." [1995 c 234 § 1.]

**72.09.100 Inmate work program—Classes of work programs—Participation—Benefits.** It is the intent of the legislature to vest in the department the power to provide for a comprehensive inmate work program and to remove statutory and other restrictions which have limited work programs in the past. It is also the intent of the legislature to ensure that the correctional industries board of directors, in developing and selecting correctional industries work programs, does not encourage the development of, or provide for selection of or contracting for, or the significant expansion of, any new or existing class I correctional industries work programs that unfairly compete with Washington businesses. The legislature intends that the requirements relating to fair competition in the correctional industries work programs be liberally construed by the correctional industries board of directors to protect Washington businesses from unfair competition. For purposes of establishing such a comprehensive program, the legislature recommends that the department consider adopting any or all, or any variation of, the following classes of work programs:

(1) CLASS I: FREE VENTURE INDUSTRIES.

(a) The employer model industries in this class shall be operated and managed in total or in part by any profit or non-profit organization pursuant to an agreement between the organization and the department. The organization shall produce goods or services for sale to both the public and private sector.

(b) The customer model industries in this class shall be operated and managed by the department to provide Washington state manufacturers or businesses with products or services currently produced or provided by out-of-state or foreign suppliers.

(c) The correctional industries board of directors shall review these proposed industries, including any potential new class I industries work program or the significant expansion of an existing class I industries work program, before the department contracts to provide such products or services. The review shall include the analysis required under RCW 72.09.115 to determine if the proposed correctional industries work program will compete with any Washington business. An agreement for a new class I correctional industries work program, or an agreement for a significant expansion of an existing class I correctional industries work program, that unfairly competes with any Washington business is prohibited.

(d) The department of corrections shall supply appropriate security and custody services without charge to the participating firms.

(e) Inmates who work in free venture industries shall do so at their own choice. They shall be paid a wage comparable to the wage paid for work of a similar nature in the locality in which the industry is located, as determined by the director of correctional industries. If the director cannot reasonably determine the comparable wage, then the pay shall not be less than the federal minimum wage.

(f) An inmate who is employed in the class I program of correctional industries shall not be eligible for unemployment compensation benefits pursuant to any of the provisions of Title 50 RCW until released on parole or discharged.

(2) CLASS II: TAX REDUCTION INDUSTRIES.

(a) Industries in this class shall be state-owned and operated enterprises designed primarily to reduce the costs for goods and services for tax-supported agencies and for non-profit organizations.

(b)(i) The industries selected for development within this class shall, as much as possible, match the available pool of inmate work skills and aptitudes with the work opportunities in the free community. The industries shall be closely patterned after private sector industries but with the objective of reducing public support costs rather than making a profit.

(ii) The products and services of this industry, including purchased products and services necessary for a complete product line, may be sold to the following:

(A) Public agencies;

(B) Nonprofit organizations;

(C) Private contractors when the goods purchased will be ultimately used by a public agency or a nonprofit organization;

(D) An employee and immediate family members of an employee of the department of corrections; and

(E) A person under the supervision of the department of corrections and his or her immediate family members.

(iii) The correctional industries board of directors shall authorize the type and quantity of items that may be purchased and sold under (b)(ii)(D) and (E) of this subsection.

(iv) It is prohibited to purchase any item purchased under (b)(ii)(D) and (E) of this subsection for the purpose of resale.

(v) Clothing manufactured by an industry in this class may be donated to nonprofit organizations that provide clothing free of charge to low-income persons.

(c)(i) Class II correctional industries products and services shall be reviewed by the correctional industries board of directors before offering such products and services for sale to private contractors.

(ii) The board of directors shall conduct a yearly marketing review of the products and services offered under this subsection. Such review shall include an analysis of the potential impact of the proposed products and services on the Washington state business community. To avoid waste or spoilage and consequent loss to the state, when there is no public sector market for such goods, by-products and surpluses of timber, agricultural, and animal husbandry enterprises may be sold to private persons, at private sale. Surplus by-products and surpluses of timber, agricultural and animal husbandry enterprises that cannot be sold to public agencies or to private persons may be donated to nonprofit organizations. All sales of surplus products shall be carried out in accordance with rules prescribed by the secretary.

(d) Security and custody services shall be provided without charge by the department of corrections.

(e) Inmates working in this class of industries shall do so at their own choice and shall be paid for their work on a gratuity scale which shall not exceed the wage paid for work of a similar nature in the locality in which the industry is located and which is approved by the director of correctional industries.

(f) Subject to approval of the correctional industries board, provisions of RCW 41.06.142 shall not apply to contracts with Washington state businesses entered into by the department of corrections through class II industries.

**(3) CLASS III: INSTITUTIONAL SUPPORT INDUSTRIES.**

(a) Industries in this class shall be operated by the department of corrections. They shall be designed and managed to accomplish the following objectives:

(i) Whenever possible, to provide basic work training and experience so that the inmate will be able to qualify for better work both within correctional industries and the free community. It is not intended that an inmate's work within this class of industries should be his or her final and total work experience as an inmate.

(ii) Whenever possible, to provide forty hours of work or work training per week.

(iii) Whenever possible, to offset tax and other public support costs.

(b) Class III correctional industries shall be reviewed by the correctional industries board of directors to set policy for work crews. The department shall present to the board of directors quarterly detail statements showing where work crews worked, what correctional industry class, and the hours worked. The board of directors may review any class III program at its discretion.

(c) Supervising, management, and custody staff shall be employees of the department.

(d) All able and eligible inmates who are assigned work and who are not working in other classes of industries shall work in this class.

(e) Except for inmates who work in work training programs, inmates in this class shall be paid for their work in accordance with an inmate gratuity scale. The scale shall be adopted by the secretary of corrections.

**(4) CLASS IV: COMMUNITY WORK INDUSTRIES.**

(a) Industries in this class shall be operated by the department of corrections. They shall be designed and managed to provide services in the inmate's resident community at a reduced cost. The services shall be provided to public agencies, to persons who are poor or infirm, or to nonprofit organizations.

(b) Class IV correctional industries shall be reviewed by the correctional industries board of directors to set policy for work crews. The department shall present to the board of directors quarterly detail statements showing where work crews worked, what correctional industry class, and the hours worked. The board of directors may review any class IV program at its discretion. Class IV correctional industries operated in work camps established pursuant to RCW 72.64.050 are exempt from the requirements of this subsection (4)(b).

(c) Inmates in this program shall reside in facilities owned by, contracted for, or licensed by the department of corrections. A unit of local government shall provide work supervision services without charge to the state and shall pay the inmate's wage.

(d) The department of corrections shall reimburse participating units of local government for liability and workers compensation insurance costs.

(e) Inmates who work in this class of industries shall do so at their own choice and shall receive a gratuity which shall not exceed the wage paid for work of a similar nature in the locality in which the industry is located.

**(5) CLASS V: COMMUNITY RESTITUTION PROGRAMS.**

(a) Programs in this class shall be subject to supervision by the department of corrections. The purpose of this class of industries is to enable an inmate, placed on community supervision, to work off all or part of a community restitution order as ordered by the sentencing court.

(b) Employment shall be in a community restitution program operated by the state, local units of government, or a nonprofit agency.

(c) To the extent that funds are specifically made available for such purposes, the department of corrections shall reimburse nonprofit agencies for workers compensation insurance costs. [2005 c 346 § 1; 2004 c 167 § 3; (2004 c 167 § 2 expired July 1, 2005). Prior: 2002 c 354 § 238; 2002 c 175 § 49; 1995 1st sp.s. c 19 § 33; 1994 c 224 § 1; 1992 c 123 § 1; 1990 c 22 § 1; 1989 c 185 § 7; 1986 c 193 § 2; 1985 c 151 § 1; 1983 c 255 § 5; 1981 c 136 § 11.]

**Effective date—2004 c 167 § 3:** "Section 3 of this act takes effect July 1, 2005." [2004 c 167 § 12.]

**Expiration date—2004 c 167 § 2:** "Section 2 of this act expires July 1, 2005." [2004 c 167 § 13.]

**Short title—Headings, captions not law—Severability—Effective dates—2002 c 354:** See RCW 41.80.907 through 41.80.910.

**Effective date—2002 c 175:** See note following RCW 7.80.130.

**Findings—Purpose—Short title—Severability—Effective date—1995 1st sp.s. c 19:** See notes following RCW 72.09.450.

*Fish and game projects in prison work programs subject to RCW 72.09.100: RCW 72.63.020.*

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**72.09.101 Inmate work program—Administrators' duty.** Administrators of work programs described in RCW 72.09.100 shall ensure that no inmate convicted of a sex offense as defined in chapter 9A.44 RCW obtains access to names, addresses, or telephone numbers of private individuals while performing his or her duties in an inmate work program. [1998 c 83 § 1.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**72.09.104 Prison work programs to operate automated data input and retrieval systems.** The department of general administration and the department of corrections shall implement prison work programs to operate automated data input and retrieval systems for appropriate departments of state government. [1983 c 296 § 3.]

**Findings—1983 c 296:** "The legislature finds and declares that the costs of state government automated data input and retrieval are escalating. The legislature further finds and declares that new record conversion technologies offer a promising means for coping with current records management problems." [1983 c 296 § 1.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**72.09.106 Subcontracting of data input and microfilm capacities.** Class II correctional industries may subcontract its data input and microfilm capacities to firms from the private sector. Inmates employed under these subcontracts will be paid in accordance with the Class I free venture industries procedures and wage scale. [1989 c 185 § 8; 1983 c 296 § 4.]

**Findings—Policy—1983 c 296:** See notes following RCW 72.09.104.

**72.09.110 Inmates' wages—Supporting cost of corrections—Crime victims' compensation and family support.** All inmates working in prison industries shall participate in the cost of corrections, including costs to develop and implement correctional industries programs, by means of deductions from their gross wages. The secretary may direct the state treasurer to deposit a portion of these moneys in the crime victims compensation account. The secretary shall direct that all moneys received by an inmate for testifying in any judicial proceeding shall be deposited into the crime victims compensation account.

When the secretary finds it appropriate and not unduly destructive of the work incentive, the secretary may also provide deductions for savings and family support. [1993 sp.s. c 20 § 5; 1991 c 133 § 1; 1989 c 185 § 9; 1986 c 162 § 1; 1981 c 136 § 12.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**72.09.111 Inmate wages—Deductions—Availability of savings—Recovery of cost of incarceration.** (1) The secretary shall deduct taxes and legal financial obligations from the gross wages, gratuities, or workers' compensation benefits payable directly to the inmate under chapter 51.32 RCW, of each inmate working in correctional industries work programs, or otherwise receiving such wages, gratuities, or benefits. The secretary shall also deduct child support payments from the gratuities of each inmate working in class II through class IV correctional industries work programs. The

secretary shall develop a formula for the distribution of offender wages, gratuities, and benefits. The formula shall not reduce the inmate account below the indigency level, as defined in RCW 72.09.015.

(a) The formula shall include the following minimum deductions from class I gross wages and from all others earning at least minimum wage:

(i) Five percent to the crime victims' compensation account provided in RCW 7.68.045;

(ii) Ten percent to a department personal inmate savings account;

(iii) Twenty percent to the department to contribute to the cost of incarceration; and

(iv) Twenty percent for payment of legal financial obligations for all inmates who have legal financial obligations owing in any Washington state superior court.

(b) The formula shall include the following minimum deductions from class II gross gratuities:

(i) Five percent to the crime victims' compensation account provided in RCW 7.68.045;

(ii) Ten percent to a department personal inmate savings account;

(iii) Fifteen percent to the department to contribute to the cost of incarceration;

(iv) Twenty percent for payment of legal financial obligations for all inmates who have legal financial obligations owing in any Washington state superior court; and

(v) Fifteen percent for any child support owed under a support order.

(c) The formula shall include the following minimum deductions from any workers' compensation benefits paid pursuant to RCW 51.32.080:

(i) Five percent to the crime victims' compensation account provided in RCW 7.68.045;

(ii) Ten percent to a department personal inmate savings account;

(iii) Twenty percent to the department to contribute to the cost of incarceration; and

(iv) An amount equal to any legal financial obligations owed by the inmate established by an order of any Washington state superior court up to the total amount of the award.

(d) The formula shall include the following minimum deductions from class III gratuities:

(i) Five percent for the crime victims' compensation account provided in RCW 7.68.045; and

(ii) Fifteen percent for any child support owed under a support order.

(e) The formula shall include the following minimum deduction from class IV gross gratuities:

(i) Five percent to the department to contribute to the cost of incarceration; and

(ii) Fifteen percent for any child support owed under a support order.

(2) Any person sentenced to life imprisonment without possibility of release or parole under chapter 10.95 RCW or sentenced to death shall be exempt from the requirement under subsection (1)(a)(ii), (b)(ii), or (c)(ii).

(3)(a) The department personal inmate savings account, together with any accrued interest, may be made available to an inmate at the following times:

(i) During confinement to pay for accredited postsecondary educational expenses;

(ii) Prior to the release from confinement to pay for department-approved reentry activities that promote successful community reintegration; or

(iii) When the secretary determines that an emergency exists for the inmate.

(b) The secretary shall establish guidelines for the release of funds pursuant to (a) of this subsection, giving consideration to the inmate's need for resources at the time of his or her release from confinement.

(c) Any funds remaining in an offender's personal inmate savings account shall be made available to the offender at the time of his or her release from confinement.

(4) The management of classes I, II, and IV correctional industries may establish an incentive payment for offender workers based on productivity criteria. This incentive shall be paid separately from the hourly wage/gratuity rate and shall not be subject to the specified deduction for cost of incarceration.

(5) In the event that the offender worker's wages, gratuity, or workers' compensation benefit is subject to garnishment for support enforcement, the crime victims' compensation account, savings, and cost of incarceration deductions shall be calculated on the net wages after taxes, legal financial obligations, and garnishment.

(6) The department shall explore other methods of recovering a portion of the cost of the inmate's incarceration and for encouraging participation in work programs, including development of incentive programs that offer inmates benefits and amenities paid for only from wages earned while working in a correctional industries work program.

(7) The department shall develop the necessary administrative structure to recover inmates' wages and keep records of the amount inmates pay for the costs of incarceration and amenities. All funds deducted from inmate wages under subsection (1) of this section for the purpose of contributions to the cost of incarceration shall be deposited in a dedicated fund with the department and shall be used only for the purpose of enhancing and maintaining correctional industries work programs.

(8) It shall be in the discretion of the secretary to apportion the inmates between class I and class II depending on available contracts and resources.

(9) Nothing in this section shall limit the authority of the department of social and health services division of child support from taking collection action against an inmate's moneys, assets, or property pursuant to chapter 26.23, 74.20, or 74.20A RCW. [2010 c 122 § 5; 2010 c 116 § 1; 2009 c 479 § 60; 2007 c 483 § 605; 2004 c 167 § 7. Prior: 2003 c 379 § 25; 2003 c 271 § 2; 2002 c 126 § 2; 1999 c 325 § 2; 1994 sp.s. c 7 § 534; 1993 sp.s. c 20 § 2.]

**Reviser's note:** This section was amended by 2010 c 116 § 1 and by 2010 c 122 § 5, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

**Effective date—2010 c 116:** "This act takes effect July 1, 2010." [2010 c 116 § 2.]

**Effective date—2009 c 479:** See note following RCW 2.56.030.

**Finding—Intent—2007 c 483:** See note following RCW 35.82.340.

**Findings—Part headings not law—Severability—2007 c 483:** See RCW 72.78.005, 72.78.900, and 72.78.901.

**Severability—Effective dates—2003 c 379:** See notes following RCW 9.94A.728.

**Intent—Purpose—2003 c 379 §§ 13-27:** See note following RCW 9.94A.760.

**Finding—Intent—Severability—1994 sp.s. c 7:** See notes following RCW 43.70.540.

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**72.09.115 Proposed new class I correctional industries work program—Threshold analysis—Business impact analysis—Public hearing—Finding.** (1) The department must prepare a threshold analysis for any proposed new class I correctional industries work program or the significant expansion of an existing class I correctional industries work program before the department enters into an agreement to provide such products or services. The analysis must state whether the proposed new or expanded program will impact any Washington business and must be based on information sufficient to evaluate the impact on Washington business.

(2) If the threshold analysis determines that a proposed new or expanded class I correctional industries work program will impact a Washington business, the department must complete a business impact analysis before the department enters into an agreement to provide such products or services. The business impact analysis must include:

(a) A detailed statement identifying the scope and types of impacts caused by the proposed new or expanded correctional industries work program on Washington businesses; and

(b) A detailed statement of the business costs of the proposed correctional industries work program compared to the business costs of the Washington businesses that may be impacted by the proposed class I correctional industries work program. Business costs of the proposed correctional industries work program include rent, water, sewer, electricity, disposal, labor costs, and any other quantifiable expense unique to operating in a prison. Business costs of the impacted Washington business include rent, water, sewer, electricity, disposal, property taxes, and labor costs including employee taxes, unemployment insurance, and workers' compensation.

(3) The completed threshold analysis and any completed business impact analysis with all supporting documents must be shared in a meaningful and timely manner with local chambers of commerce, trade or business associations, local and state labor union organizations, and government entities before a finding required under subsection (4) of this section is made on the proposed new or expanded class I correctional industries work program.

(4) If a business impact analysis is completed, the department must conduct a public hearing to take public testimony on the business impact analysis. The department must, at a minimum, establish a publicly accessible web site containing information reasonably calculated to provide notice to each Washington business assigned the same three-digit standard industrial classification code, or the corresponding North American industry classification system code, as the organization seeking the class I correctional industries work program agreement of the date, time, and place of the hearing.

Notice of the hearing shall be posted at least thirty days prior to the hearing.

(5) Following the public hearing, the department shall adopt a finding that the proposed new or expanded class I correctional industries work program: (a) Will not compete with any Washington business; (b) will not compete unfairly with any Washington business; or (c) will compete unfairly with any Washington business and is therefore prohibited under chapter 167, Laws of 2004. [2004 c 167 § 4.]

**72.09.116 Information obtained under RCW 72.09.115 exempt from public disclosure.** All records, documents, data, and other materials obtained under the requirements of RCW 72.09.115 from an existing correctional industries class I work program participant or an applicant for a proposed new or expanded class I correctional industries work program are exempt from public disclosure under chapter 42.56 RCW. [2005 c 274 § 347; 2004 c 167 § 8.]

**Part headings not law—Effective date—2005 c 274:** See RCW 42.56.901 and 42.56.902.

**72.09.120 Distribution of list of inmate job opportunities.** In order to assist inmates in finding work within prison industries, the department shall periodically prepare and distribute a list of prison industries' job opportunities, which shall include job descriptions and the educational and skill requirements for each job. [1981 c 136 § 16.]

**72.09.130 Incentive system for participation in education and work programs—Rules—Dissemination.** (1) The department shall adopt, by rule, a system that clearly links an inmate's behavior and participation in available education and work programs with the receipt or denial of earned early release days and other privileges. The system shall include increases or decreases in the degree of liberty granted the inmate within the programs operated by the department, access to or withholding of privileges available within correctional institutions, and recommended increases or decreases in the number of earned early release days that an inmate can earn for good conduct and good performance.

(2) Earned early release days shall be recommended by the department as a reward for accomplishment. The system shall be fair, measurable, and understandable to offenders, staff, and the public. At least once in each twelve-month period, the department shall inform the offender in writing as to his or her conduct and performance. This written evaluation shall include reasons for awarding or not awarding recommended earned early release days for good conduct and good performance. An inmate is not eligible to receive earned early release days during any time in which he or she refuses to participate in an available education or work program into which he or she has been placed under RCW 72.09.460.

(3) The department shall provide each offender in its custody a written description of the system created under this section. [1995 1st sp.s. c 19 § 6; 1981 c 136 § 17.]

**Findings—Purpose—Short title—Severability—Effective date—1995 1st sp.s. c 19:** See notes following RCW 72.09.450.

**72.09.135 Adoption of standards for correctional facilities.** The department of corrections shall, no later than July 1, 1987, adopt standards for the operation of state adult

(2010 Ed.)

correctional facilities. These standards shall be the minimums necessary to meet federal and state constitutional requirements relating to health, safety, and welfare of inmates and staff, and specific state and federal statutory requirements, and to provide for the public's health, safety, and welfare. The need for each standard shall be documented. [1987 c 462 § 15.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**72.09.190 Legal services for inmates.** (1) It is the intent of the legislature that reasonable legal services be provided to persons committed to the custody of the department of corrections. The department shall contract with persons or organizations to provide legal services. The secretary shall adopt procedures designed to minimize any conflict of interest, or appearance thereof, in respect to the provision of legal services and the department's administration of such contracts.

(2) Persons who contract to provide legal services are expressly forbidden to solicit plaintiffs or promote litigation which has not been pursued initially by a person entitled to such services under this section.

(3) Persons who contract to provide legal services shall exhaust all informal means of resolving a legal complaint or dispute prior to the filing of any court proceeding.

(4) Nothing in this section forbids the secretary to supplement contracted legal services with any of the following: (a) Law libraries, (b) law student interns, and (c) volunteer attorneys.

(5) The total due a contractor as compensation, fees, or reimbursement under the terms of the contract shall be reduced by the total of any other compensation, fees, or reimbursement received by or due the contractor for the performance of any legal service to inmates during the contract period. Any amount received by a contractor under contract which is not due under this section shall be immediately returned by the contractor. [1981 c 136 § 23.]

**72.09.200 Transfer of files, property, and appropriations.** All reports, documents, surveys, books, records, files, papers, and other writings in the possession of the department of social and health services pertaining to the functions transferred by RCW 72.09.040 shall be delivered to the custody of the department of corrections. All cabinets, furniture, office equipment, motor vehicles, and other tangible property employed exclusively in carrying out the powers and duties transferred by RCW 72.09.040 shall be made available to the department of corrections. All funds, credits, or other assets held in connection with the functions transferred by RCW 72.09.040 shall be assigned to the department of corrections.

Any appropriations made to the department of social and health services for the purpose of carrying out the powers, duties, and functions transferred by RCW 72.09.040 shall on July 1, 1981, be transferred and credited to the department of corrections for the purpose of carrying out the transferred powers, duties, and functions.

Whenever any question arises as to the transfer of any funds including unexpended balances within any accounts, books, documents, records, papers, files, equipment, or other tangible property used or held in the exercise of the powers

and the performance of the duties and functions transferred under RCW 72.09.040, the director of financial management shall make a determination as to the proper allocation and certify the same to the state agencies concerned.

If apportionments of budgeted funds are required because of the transfers authorized in this section, the director of financial management shall certify the apportionments to the agencies affected, the state auditor, and the state treasurer. Each of these shall make the appropriate transfer and adjustments in funds and appropriation accounts and equipment records in accordance with the certification. [1981 c 136 § 31.]

**72.09.210 Transfer of employees.** All employees of the department of social and health services who are directly employed in connection with the exercise of the powers and performance of the duties and functions transferred to the department of corrections by RCW 72.09.040 shall be transferred on July 1, 1981, to the jurisdiction of the department of corrections.

All such employees classified under chapter 41.06 RCW, the state civil service law, shall be assigned to the department of corrections. Except as otherwise provided, such employees shall be assigned without any loss of rights, subject to any action that may be appropriate thereafter in accordance with the laws and rules governing the state civil service law. [1981 c 136 § 32.]

**72.09.220 Employee rights under collective bargaining.** Nothing contained in RCW 72.09.010 through 72.09.190, 72.09.901, and section 13, chapter 136, Laws of 1981 may be construed to downgrade any rights of any employee under any existing collective bargaining unit or the provisions of any existing collective bargaining agreement until the agreement has expired or until the bargaining unit has been modified by action of the Washington personnel resources board as provided by law. [1993 c 281 § 64; 1981 c 136 § 33.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**72.09.225 Sexual misconduct by state employees, contractors.** (1) When the secretary has reasonable cause to believe that sexual intercourse or sexual contact between an employee and an inmate has occurred, notwithstanding any rule adopted under chapter 41.06 RCW the secretary shall immediately suspend the employee.

(2) The secretary shall immediately institute proceedings to terminate the employment of any person:

(a) Who is found by the department, based on a preponderance of the evidence, to have had sexual intercourse or sexual contact with the inmate; or

(b) Upon a guilty plea or conviction for any crime specified in chapter 9A.44 RCW when the victim was an inmate.

(3) When the secretary has reasonable cause to believe that sexual intercourse or sexual contact between the employee of a contractor and an inmate has occurred, the secretary shall require the employee of a contractor to be immediately removed from any employment position which would permit the employee to have any access to any inmate.

(4) The secretary shall disqualify for employment with a contractor in any position with access to an inmate, any person:

(a) Who is found by the department, based on a preponderance of the evidence, to have had sexual intercourse or sexual contact with the inmate; or

(b) Upon a guilty plea or conviction for any crime specified in chapter 9A.44 RCW when the victim was an inmate.

(5) The secretary, when considering the renewal of a contract with a contractor who has taken action under subsection (3) or (4) of this section, shall require the contractor to demonstrate that there has been significant progress made in reducing the likelihood that any of its employees will have sexual intercourse or sexual contact with an inmate. The secretary shall examine whether the contractor has taken steps to improve hiring, training, and monitoring practices and whether the employee remains with the contractor. The secretary shall not renew a contract unless he or she determines that significant progress has been made.

(6)(a) For the purposes of RCW 50.20.060, a person terminated under this section shall be considered discharged for misconduct.

(b)(i) The department may, within its discretion or upon request of any member of the public, release information to an individual or to the public regarding any person or contract terminated under this section.

(ii) An appointed or elected public official, public employee, or public agency as defined in RCW 4.24.470 is immune from civil liability for damages for any discretionary release of relevant and necessary information, unless it is shown that the official, employee, or agency acted with gross negligence or in bad faith. The immunity provided under this section applies to the release of relevant and necessary information to other public officials, public employees, or public agencies, and to the public.

(iii) Except as provided in chapter 42.56 RCW, or elsewhere, nothing in this section shall impose any liability upon a public official, public employee, or public agency for failing to release information authorized under this section. Nothing in this section implies that information regarding persons designated in subsection (2) of this section is confidential except as may otherwise be provided by law.

(7) The department shall adopt rules to implement this section. The rules shall reflect the legislative intent that this section prohibits individuals who are employed by the department or a contractor of the department from having sexual intercourse or sexual contact with inmates. The rules shall also reflect the legislative intent that when a person is employed by the department or a contractor of the department, and has sexual intercourse or sexual contact with an inmate against the employed person's will, the termination provisions of this section shall not be invoked.

(8) As used in this section:

(a) "Contractor" includes all subcontractors of a contractor;

(b) "Inmate" means an inmate as defined in RCW 72.09.015 or a person under the supervision of the department; and

(c) "Sexual intercourse" and "sexual contact" have the meanings provided in RCW 9A.44.010. [2005 c 274 § 348; 1999 c 72 § 2.]

**Part headings not law—Effective date—2005 c 274:** See RCW 42.56.901 and 42.56.902.

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**72.09.230 Duties continued during transition.** All state officials required to maintain contact with or provide services to the department or secretary of social and health services relating to adult corrections shall continue to perform the services for the department of corrections.

In order to ease the transition of adult corrections to the department of corrections, the governor may require an inter-agency agreement between the department and the department of social and health services under which the department of social and health services would, on a temporary basis, continue to perform all or part of any specified function of the department of corrections. [1981 c 136 § 34.]

**72.09.240 Reimbursement of employees for offender assaults.** (1) In recognition of prison overcrowding and the hazardous nature of employment in state correctional institutions and offices, the legislature hereby provides a supplementary program to reimburse employees of the department of corrections and the department of natural resources for some of their costs attributable to their being the victims of offender assaults. This program shall be limited to the reimbursement provided in this section.

(2) An employee is only entitled to receive the reimbursement provided in this section if the secretary of corrections or the commissioner of public lands, or the secretary's or commissioner's designee, finds that each of the following has occurred:

(a) An offender has assaulted the employee while the employee is performing the employee's official duties and as a result thereof the employee has sustained injuries which have required the employee to miss days of work; and

(b) The assault cannot be attributable to any extent to the employee's negligence, misconduct, or failure to comply with any rules or conditions of employment.

(3) The reimbursement authorized under this section shall be as follows:

(a) The employee's accumulated sick leave days shall not be reduced for the workdays missed;

(b) For each workday missed for which the employee is not eligible to receive compensation under chapter 51.32 RCW, the employee shall receive full pay; and

(c) In respect to workdays missed for which the employee will receive or has received compensation under chapter 51.32 RCW, the employee shall be reimbursed in an amount which, when added to that compensation, will result in the employee receiving full pay for the workdays missed.

(4) Reimbursement under this section may not last longer than three hundred sixty-five consecutive days after the date of the injury.

(5) The employee shall not be entitled to the reimbursement provided in subsection (3) of this section for any workday for which the secretary or the commissioner of public lands, or the secretary's or commissioner's designee, finds that the employee has not diligently pursued his or her compensation remedies under chapter 51.32 RCW.

(6) The reimbursement shall only be made for absences which the secretary or the commissioner of public lands, or

the secretary's or commissioner's designee, believes are justified.

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

(8) All reimbursement payments required to be made to employees under this section shall be made by the department of corrections or the department of natural resources. The payments shall be considered as a salary or wage expense and shall be paid by the department of corrections or the department of natural resources in the same manner and from the same appropriations as other salary and wage expenses of the department of corrections or the department of natural resources.

(9) Should the legislature revoke the reimbursement authorized under this section or repeal this section, no affected employee is entitled thereafter to receive the reimbursement as a matter of contractual right.

(10) For the purposes of this section, "offender" means: (a) Offender as defined in RCW 9.94A.030; and (b) any other person in the custody of or subject to the jurisdiction of the department of corrections. [2002 c 77 § 2; 1988 c 149 § 1; 1984 c 246 § 9.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**72.09.251 Communicable disease prevention guidelines.** (1) The department shall develop and implement policies and procedures for the uniform distribution of communicable disease prevention guidelines to all corrections staff who, in the course of their regularly assigned job responsibilities, may come within close physical proximity to offenders with communicable diseases.

(2) The guidelines shall identify special precautions necessary to reduce the risk of transmission of communicable diseases.

(3) For the purposes of this section, "communicable disease" means sexually transmitted diseases, as defined in RCW 70.24.017, diseases caused by bloodborne pathogens, or any other illness caused by an infectious agent that can be transmitted from one person, animal, or object to another person by direct or indirect means including transmission via an intermediate host or vector, food, water, or air. [1997 c 345 § 4.]

**Findings—Intent—1997 c 345:** See note following RCW 70.24.105.

**72.09.260 Litter cleanup programs—Requirements.** (1) The department shall assist local units of government in establishing community restitution programs for litter cleanup. Community restitution litter cleanup programs must include the following: (a) Procedures for documenting the number of community restitution hours worked in litter cleanup by each offender; (b) plans to coordinate litter cleanup activities with local governmental entities responsible for roadside and park maintenance; (c) insurance coverage for offenders during litter cleanup activities pursuant to RCW 51.12.045; (d) provision of adequate safety equipment and, if needed, weather protection gear; and (e) provision for including felons and misdemeanants in the program.

(2) Community restitution programs established under this section shall involve, but not be limited to, persons convicted of nonviolent, drug-related offenses.

(3) Nothing in this section shall diminish the department's authority to place offenders in community restitution programs or to determine the suitability of offenders for specific programs.

(4) As used in this section, "litter cleanup" includes cleanup and removal of solid waste that is illegally dumped. [2002 c 175 § 50; 1990 c 66 § 2.]

**Effective date—2002 c 175:** See note following RCW 7.80.130.

**Findings—Intent—1990 c 66:** "The legislature finds that the amount of litter along the state's roadways is increasing at an alarming rate and that local governments often lack the human and fiscal resources to remove litter from public roads. The legislature also finds that persons committing nonviolent, drug-related offenses can often be productively engaged through programs to remove litter from county and municipal roads. It is therefore the intent of the legislature to assist local units of government in establishing community restitution programs for litter cleanup and to establish a funding source for such programs." [2002 c 175 § 51; 1990 c 66 § 1.]

**72.09.270 Individual reentry plan.** (1) The department of corrections shall develop an individual reentry plan as defined in RCW 72.09.015 for every offender who is committed to the jurisdiction of the department except:

(a) Offenders who are sentenced to life without the possibility of release or sentenced to death under chapter 10.95 RCW; and

(b) Offenders who are subject to the provisions of 8 U.S.C. Sec. 1227.

(2) The individual reentry plan may be one document, or may be a series of individual plans that combine to meet the requirements of this section.

(3) In developing individual reentry plans, the department shall assess all offenders using standardized and comprehensive tools to identify the criminogenic risks, programmatic needs, and educational and vocational skill levels for each offender. The assessment tool should take into account demographic biases, such as culture, age, and gender, as well as the needs of the offender, including any learning disabilities, substance abuse or mental health issues, and social or behavior deficits.

(4)(a) The initial assessment shall be conducted as early as sentencing, but, whenever possible, no later than forty-five days of being sentenced to the jurisdiction of the department of corrections.

(b) The offender's individual reentry plan shall be developed as soon as possible after the initial assessment is conducted, but, whenever possible, no later than sixty days after completion of the assessment, and shall be periodically reviewed and updated as appropriate.

(5) The individual reentry plan shall, at a minimum, include:

(a) A plan to maintain contact with the inmate's children and family, if appropriate. The plan should determine whether parenting classes, or other services, are appropriate to facilitate successful reunification with the offender's children and family;

(b) An individualized portfolio for each offender that includes the offender's education achievements, certifications, employment, work experience, skills, and any training received prior to and during incarceration; and

(c) A plan for the offender during the period of incarceration through reentry into the community that addresses the needs of the offender including education, employment, substance abuse treatment, mental health treatment, family reunification, and other areas which are needed to facilitate a successful reintegration into the community.

(6)(a) Prior to discharge of any offender, the department shall:

(i) Evaluate the offender's needs and, to the extent possible, connect the offender with existing services and resources that meet those needs; and

(ii) Connect the offender with a community justice center and/or community transition coordination network in the area in which the offender will be residing once released from the correctional system if one exists.

(b) If the department recommends partial confinement in an offender's individual reentry plan, the department shall maximize the period of partial confinement for the offender as allowed pursuant to RCW 9.94A.728 to facilitate the offender's transition to the community.

(7) The department shall establish mechanisms for sharing information from individual reentry plans to those persons involved with the offender's treatment, programming, and reentry, when deemed appropriate. When feasible, this information shall be shared electronically.

(8)(a) In determining the county of discharge for an offender released to community custody, the department may not approve a residence location that is not in the offender's county of origin unless it is determined by the department that the offender's return to his or her county of origin would be inappropriate considering any court-ordered condition of the offender's sentence, victim safety concerns, negative influences on the offender in the community, or the location of family or other sponsoring persons or organizations that will support the offender.

(b) If the offender is not returned to his or her county of origin, the department shall provide the law and justice council of the county in which the offender is placed with a written explanation.

(c) For purposes of this section, the offender's county of origin means the county of the offender's first felony conviction in Washington.

(9) Nothing in this section creates a vested right in programming, education, or other services. [2008 c 231 § 48; 2007 c 483 § 203.]

**Intent—Application—Application of repealers—Effective date—2008 c 231:** See notes following RCW 9.94A.701.

**Severability—2008 c 231:** See note following RCW 9.94A.500.

**Intent—2007 c 483:** "Individual reentry plans are intended to be a tool for the department of corrections to identify the needs of an offender. Individual reentry plans are meant to assist the department in targeting programming and services to offenders with the greatest need and to the extent that those services are funded and available. The state cannot meet every need that may have contributed to every offender's criminal proclivities. Further, an individual reentry plan, and the programming resulting from that plan, are not a guarantee that an offender will not recidivate. Rather, the legislature intends that by identifying offender needs and offering programs that have been proven to reduce the likelihood of reoffense, the state will benefit by an overall reduction in recidivism." [2007 c 483 § 201.]

**Findings—Part headings not law—Severability—2007 c 483:** See RCW 72.78.005, 72.78.900, and 72.78.901.

**72.09.280 Community justice centers.** (1) The department shall continue to establish community justice centers throughout the state for the purpose of providing comprehensive services and monitoring for offenders who are reentering the community.

(2) For the purposes of this chapter, "community justice center" is defined as a nonresidential facility staffed primarily by the department in which recently released offenders may access services necessary to improve their successful reentry into the community. Such services may include but are not limited to, those listed in the individual reentry plan, mental health, chemical dependency, sex offender treatment, anger management, parenting education, financial literacy, housing assistance, and employment assistance.

(3) At a minimum, the community justice center shall include:

(a) A violator program to allow the department to utilize a range of available sanctions for offenders who violate conditions of their supervision;

(b) An employment opportunity program to assist an offender in finding employment; and

(c) Resources for connecting offenders with services such as treatment, transportation, training, family reunification, and community services.

(4) In addition to any other programs or services offered by a community justice center, the department shall designate a transition coordinator to facilitate connections between the former offender and the community. The department may designate transition coordination services to be provided by a community transition coordination network pursuant to RCW 72.78.030 if one has been established in the community where the community justice center is located and the department has entered into a memorandum of understanding with the county to share resources.

(5) The transition coordinator shall provide information to former offenders regarding services available to them in the community regardless of the length of time since the offender's release from the correctional facility. The transition coordinator shall, at a minimum, be responsible for the following:

(a) Gathering and maintaining information regarding services currently existing within the community that are available to offenders including, but not limited to:

(i) Programs offered through the department of social and health services, the department of health, the department of licensing, housing authorities, local community and technical colleges, other state or federal entities which provide public benefits, and nonprofit entities;

(ii) Services such as housing assistance, employment assistance, education, vocational training, parent education, financial literacy, treatment for substance abuse, mental health, anger management, and any other service or program that will assist the former offender to successfully transition into the community;

(b) Coordinating access to the existing services with the community providers and provide offenders with information regarding how to access the various type of services and resources that are available in the community.

(6)(a) A minimum of six community justice centers shall be operational by December 1, 2009. The six community justice centers include those in operation on July 22, 2007.

(b) By December 1, 2011, the department shall establish a minimum of three additional community justice centers within the state.

(7) In locating new centers, the department shall:

(a) Give priority to the counties with the largest population of offenders who were under the jurisdiction of the department of corrections and that do not already have a community justice center;

(b) Ensure that at least two centers are operational in eastern Washington; and

(c) Comply with RCW 72.09.290 and all applicable zoning laws and regulations.

(8) Before beginning the siting or opening of the new community justice center, the department shall:

(a) Notify the city, if applicable, and the county within which the community justice center is proposed. Such notice shall occur at least sixty days prior to selecting a specific location to provide the services listed in this section;

(b) Consult with the community providers listed in subsection (5) of this section to determine if they have the capacity to provide services to offenders through the community justice center; and

(c) Give due consideration to all comments received in response to the notice of the start of site selection and consultation with community providers.

(9) The department shall make efforts to enter into memoranda of understanding or agreements with the local community policing and supervision programs as defined in RCW 72.78.010 in which the community justice center is located to address:

(a) Efficiencies that may be gained by sharing space or resources in the provision of reentry services to offenders, including services provided through a community transition coordination network established pursuant to RCW 72.78.030 if a network has been established in the county;

(b) Mechanisms for communication of information about offenders, including the feasibility of shared access to databases;

(c) Partnerships to establish neighborhood corrections initiatives between the department of corrections and local police to supervise offenders.

(i) A neighborhood corrections initiative includes shared mechanisms to facilitate supervision of offenders which may include activities such as joint emphasis patrols to monitor high-risk offenders, service of bench and secretary warrants and detainers, joint field visits, connecting offenders with services, and, where appropriate, directing offenders into sanction alternatives in lieu of incarceration.

(ii) The agreement must address:

(A) The roles and responsibilities of police officers and corrections staff participating in the partnership; and

(B) The amount of corrections staff and police officer time that will be dedicated to partnership efforts. [2007 c 483 § 302.]

**Findings—Part headings not law—Severability—2007 c 483:** See RCW 72.78.005, 72.78.900, and 72.78.901.

**72.09.290 Correctional facility siting list.** (1) No later than July 1, 2007, and every biennium thereafter starting with the biennium beginning July 1, 2009, the department shall prepare a list of counties and rural multicounty geographic

areas in which work release facilities, community justice centers and other community-based correctional facilities are anticipated to be sited during the next three fiscal years and transmit the list to the office of financial management and the counties on the list. The list may be updated as needed.

(2) In preparing the list, the department shall make substantial efforts to provide for the equitable distribution of work release, community justice centers, or other community-based correctional facilities among counties. The department shall give great weight to the following factors in determining equitable distribution:

(a) The locations of existing residential facilities owned or operated by, or operated under contract with, the department in each county;

(b) The number and proportion of adult offenders sentenced to the custody or supervision of the department by the courts of the county or rural multicounty geographic area; and

(c) The number of adult registered sex offenders classified as level II or III and adult sex offenders registered per thousand persons residing in the county.

(3) For purposes of this section, "equitable distribution" means siting or locating work release, community justice centers, or other community-based correctional facilities in a manner that reasonably reflects the proportion of offenders sentenced to the custody or supervision of the department by the courts of each county or rural multicounty geographic area designated by the department, and, to the extent practicable, the proportion of offenders residing in particular jurisdictions or communities within such counties or rural multicounty geographic areas. Equitable distribution is a policy goal, not a basis for any legal challenge to the siting, construction, occupancy, or operation of any facility anywhere in the state. [2007 c 483 § 303.]

**Findings—Part headings not law—Severability—2007 c 483:** See RCW 72.78.005, 72.78.900, and 72.78.901.

**72.09.300 Local law and justice council—Rules.** (1) Every county legislative authority shall by resolution or ordinance establish a local law and justice council. The county legislative authority shall determine the size and composition of the council, which shall include the county sheriff and a representative of the municipal police departments within the county, the county prosecutor and a representative of the municipal prosecutors within the county, a representative of the city legislative authorities within the county, a representative of the county's superior, juvenile, district, and municipal courts, the county jail administrator, the county clerk, the county risk manager, and the secretary of corrections and his or her designees. Officials designated may appoint representatives.

(2) A combination of counties may establish a local law and justice council by intergovernmental agreement. The agreement shall comply with the requirements of this section.

(3) The local law and justice council may address issues related to:

(a) Maximizing local resources including personnel and facilities, reducing duplication of services, and sharing resources between local and state government in order to accomplish local efficiencies without diminishing effectiveness;

(b) Jail management;

(c) Mechanisms for communication of information about offenders, including the feasibility of shared access to databases; and

(d) Partnerships between the department and local community policing and supervision programs to facilitate supervision of offenders under the respective jurisdictions of each and timely response to an offender's failure to comply with the terms of supervision.

(4) The county legislative authority may request technical assistance in coordinating services with other units or agencies of state or local government, which shall include the department, the office of financial management, and the Washington association of sheriffs and police chiefs.

(5) Upon receiving a request for assistance from a county, the department may provide the requested assistance.

(6) The secretary may adopt rules for the submittal, review, and approval of all requests for assistance made to the department. [2007 c 483 § 108; 1996 c 232 § 7; 1994 sp.s. c 7 § 542; 1993 sp.s. c 21 § 8; 1991 c 363 § 148; 1987 c 312 § 3.]

**Findings—Part headings not law—Severability—2007 c 483:** See RCW 72.78.005, 72.78.900, and 72.78.901.

**Finding—Intent—Severability—1994 sp.s. c 7:** See notes following RCW 43.70.540.

**Purpose—Captions not law—1991 c 363:** See notes following RCW 2.32.180.

**Purpose—1987 c 312 § 3:** "It is the purpose of RCW 72.09.300 to encourage local and state government to join in partnerships for the sharing of resources regarding the management of offenders in the correctional system. The formation of partnerships between local and state government is intended to reduce duplication while assuring better accountability and offender management through the most efficient use of resources at both the local and state level." [1987 c 312 § 1.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**72.09.310 Community custody violator.** An inmate in community custody who willfully discontinues making himself or herself available to the department for supervision by making his or her whereabouts unknown or by failing to maintain contact with the department as directed by the community corrections officer shall be deemed an escapee and fugitive from justice, and upon conviction shall be guilty of a class C felony under chapter 9A.20 RCW. [1992 c 75 § 6; 1988 c 153 § 6.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**72.09.311 Confinement of community custody violators.** (1) The department of corrections shall conduct an analysis of the necessary capacity throughout the state to appropriately confine offenders who violate community custody and formulate recommendations for future capacity. In conducting its analysis, the department must consider:

(a) The need to decrease reliance on local correctional facilities to house violators; and

(b) The costs and benefits of developing a violator treatment center to provide inpatient treatment, therapies, and counseling.

(2) If the department recommends locating or colocating new violator facilities, for jurisdictions planning under RCW 36.70A.040, the department shall work within the local jurisdiction's comprehensive plan process for identifying and sit-

ing an essential public facility under RCW 36.70A.200. For jurisdictions not planning under RCW 36.70A.040, the department shall apply the local jurisdiction's zoning or applicable land use code.

(3) The department shall report the results of its analysis to the governor and the appropriate committees of the legislature by November 15, 2008.

(4) To the extent possible within existing funds, the department is authorized to proceed with the conversion of existing facilities that are appropriate to house violators. [2008 c 30 § 1.]

**72.09.315 Court-ordered treatment—Violations—Required notifications.** (1) When an offender is under court-ordered mental health or chemical dependency treatment in the community and the supervision of the department of corrections, and the community corrections officer becomes aware that the person is in violation of the terms of the court's treatment order, the community corrections officer shall notify the \*county designated mental health professional or the designated chemical dependency specialist, as appropriate, of the violation and request an evaluation for purposes of revocation of the less restrictive alternative or conditional release.

(2) When a \*county designated mental health professional or the designated chemical dependency specialist notifies the department that an offender in a state correctional facility is the subject of a petition for involuntary treatment under chapter 71.05 or 70.96A RCW, the department shall provide documentation of its risk assessment or other concerns to the petitioner and the court if the department classified the offender as a high risk or high needs offender. [2004 c 166 § 17.]

**\*Reviser's note:** The term "county designated mental health professional" as defined in RCW 71.05.020 was changed to "designated mental health professional" by 2005 c 504 § 104.

**Severability—Effective dates—2004 c 166:** See notes following RCW 71.05.040.

**72.09.320 Community placement—Liability.** The state of Washington, the department and its employees, community corrections officers, their staff, and volunteers who assist community corrections officers in the community placement program are not liable for civil damages resulting from any act or omission in the rendering of community placement activities unless the act or omission constitutes gross negligence. For purposes of this section, "volunteers" is defined according to RCW 51.12.035. [1988 c 153 § 10.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**72.09.330 Sex offenders and kidnapping offenders—Registration—Notice to persons convicted of sex offenses and kidnapping offenses.** (1) The department shall provide written notification to an inmate convicted of a sex offense or kidnapping offense of the registration requirements of RCW 9A.44.130 at the time of the inmate's release from confinement and shall receive and retain a signed acknowledgement of receipt.

(2) The department shall provide written notification to an individual convicted of a sex offense or kidnapping offense from another state of the registration requirements of

RCW 9A.44.130 at the time the department accepts supervision and has legal authority of the individual under the terms and conditions of the interstate compact agreement under RCW 9.95.270. [1997 c 113 § 8; 1990 c 3 § 405.]

**Reviser's note:** The definitions in RCW 9A.44.128 apply to this section.

**Findings—1997 c 113:** See note following RCW 4.24.550.

*Sex offense and kidnapping offense defined: RCW 9A.44.128.*

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**72.09.333 Sex offenders—Facilities on McNeil Island.** The secretary is authorized to operate a correctional facility on McNeil Island for the confinement of sex offenders and other offenders sentenced by the courts, and to make necessary repairs, renovations, additions, and improvements to state property for that purpose, notwithstanding any local comprehensive plans, development regulations, permitting requirements, or any other local laws. Operation of the correctional facility and other state facilities authorized by this section and other law includes access to adequate docking facilities on state-owned tidelands at the town of Steilacoom. [2001 2nd sp.s. c 12 § 202.]

**Intent—Severability—Effective dates—2001 2nd sp.s. c 12:** See notes following RCW 71.09.250.

**72.09.335 Sex offenders—Treatment opportunity.** The department shall provide offenders sentenced under RCW 9.94A.507 with the opportunity for sex offender treatment during incarceration. [2009 c 28 § 34; 2001 2nd sp.s. c 12 § 305.]

**Effective date—2009 c 28:** See note following RCW 2.24.040.

**Intent—Severability—Effective dates—2001 2nd sp.s. c 12:** See notes following RCW 71.09.250.

**Application—2001 2nd sp.s. c 12 §§ 301-363:** See note following RCW 9.94A.030.

**72.09.337 Sex offenders—Rules regarding.** The secretary of corrections, the secretary of social and health services, and the indeterminate sentence review board may adopt rules to implement chapter 12, Laws of 2001 2nd sp. sess. [2001 2nd sp.s. c 12 § 502.]

**Intent—Severability—Effective dates—2001 2nd sp.s. c 12:** See notes following RCW 71.09.250.

**72.09.340 Supervision of sex offenders—Public safety—Policy for release plan evaluation and approval—Implementation, publicizing, notice—Rejection of residence locations of felony sex offenders of minor victims—Supervised visitation considerations.** (1) In making all discretionary decisions regarding release plans for and supervision of sex offenders, the department shall set priorities and make decisions based on an assessment of public safety risks.

(2) The department shall, no later than September 1, 1996, implement a policy governing the department's evaluation and approval of release plans for sex offenders. The policy shall include, at a minimum, a formal process by which victims, witnesses, and other interested people may provide information and comments to the department on potential safety risks to specific individuals or classes of individuals posed by a specific sex offender. The department shall make all reasonable efforts to publicize the availability

of this process through currently existing mechanisms and shall seek the assistance of courts, prosecutors, law enforcement, and victims' advocacy groups in doing so. Notice of an offender's proposed residence shall be provided to all people registered to receive notice of an offender's release under RCW 72.09.712(2), except that in no case may this notification requirement be construed to require an extension of an offender's release date.

(3)(a) For any offender convicted of a felony sex offense against a minor victim after June 6, 1996, the department shall not approve a residence location if the proposed residence: (i) Includes a minor victim or child of similar age or circumstance as a previous victim who the department determines may be put at substantial risk of harm by the offender's residence in the household; or (ii) is within close proximity of the current residence of a minor victim, unless the whereabouts of the minor victim cannot be determined or unless such a restriction would impede family reunification efforts ordered by the court or directed by the department of social and health services. The department is further authorized to reject a residence location if the proposed residence is within close proximity to schools, child care centers, playgrounds, or other grounds or facilities where children of similar age or circumstance as a previous victim are present who the department determines may be put at substantial risk of harm by the sex offender's residence at that location.

(b) In addition, for any offender prohibited from living in a community protection zone under RCW 9.94A.703(1)(c), the department may not approve a residence location if the proposed residence is in a community protection zone.

(4) When the department requires supervised visitation as a term or condition of a sex offender's community placement under RCW 9.94B.050(6), the department shall, prior to approving a supervisor, consider the following:

(a) The relationships between the proposed supervisor, the offender, and the minor; (b) the proposed supervisor's acknowledgment and understanding of the offender's prior criminal conduct, general knowledge of the dynamics of child sexual abuse, and willingness and ability to protect the minor from the potential risks posed by contact with the offender; and (c) recommendations made by the department of social and health services about the best interests of the child. [2009 c 28 § 35; 2005 c 436 § 3; 1996 c 215 § 3; 1990 c 3 § 708.]

**Reviser's note:** 2005 c 436 § 6 (an expiration date section) was repealed by 2006 c 131 § 2.

**Effective date—2009 c 28:** See note following RCW 2.24.040.

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**72.09.345 Sex offenders—Release of information to protect public—End-of-sentence review committee—Assessment—Records access—Review, classification, referral of offenders—Issuance of narrative notices.** (1) In addition to any other information required to be released under this chapter, the department is authorized, pursuant to RCW 4.24.550, to release relevant information that is necessary to protect the public concerning offenders convicted of sex offenses.

(2) In order for public agencies to have the information necessary to notify the public as authorized in RCW 4.24.550, the secretary shall establish and administer an end-

of-sentence review committee for the purposes of assigning risk levels, reviewing available release plans, and making appropriate referrals for sex offenders. The committee shall assess, on a case-by-case basis, the public risk posed by sex offenders who are: (a) Preparing for their release from confinement for sex offenses committed on or after July 1, 1984; and (b) accepted from another state under a reciprocal agreement under the interstate compact authorized in chapter 72.74 RCW.

(3) Notwithstanding any other provision of law, the committee shall have access to all relevant records and information in the possession of public agencies relating to the offenders under review, including police reports; prosecutors' statements of probable cause; presentence investigations and reports; complete judgments and sentences; current classification referrals; criminal history summaries; violation and disciplinary reports; all psychological evaluations and psychiatric hospital reports; sex offender treatment program reports; and juvenile records. Records and information obtained under this subsection shall not be disclosed outside the committee unless otherwise authorized by law.

(4) The committee shall review each sex offender under its authority before the offender's release from confinement or start of the offender's term of community custody in order to: (a) Classify the offender into a risk level for the purposes of public notification under RCW 4.24.550; (b) where available, review the offender's proposed release plan in accordance with the requirements of RCW 72.09.340; and (c) make appropriate referrals.

(5) The committee shall classify as risk level I those sex offenders whose risk assessments indicate a low risk of reoffense within the community at large. The committee shall classify as risk level II those offenders whose risk assessments indicate a moderate risk of reoffense within the community at large. The committee shall classify as risk level III those offenders whose risk assessments indicate a high risk of reoffense within the community at large.

(6) The committee shall issue to appropriate law enforcement agencies, for their use in making public notifications under RCW 4.24.550, narrative notices regarding the pending release of sex offenders from the department's facilities. The narrative notices shall, at a minimum, describe the identity and criminal history behavior of the offender and shall include the department's risk level classification for the offender. For sex offenders classified as either risk level II or III, the narrative notices shall also include the reasons underlying the classification. [2008 c 231 § 49; 1997 c 364 § 4.]

**Intent—Application—Application of repealers—Effective date—2008 c 231:** See notes following RCW 9.94A.701.

**Severability—2008 c 231:** See note following RCW 9.94A.500.

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**72.09.350 Corrections mental health center—Collaborative arrangement with University of Washington—Services for mentally ill offenders—Annual report to the legislature.** (1) The department of corrections and the University of Washington may enter into a collaborative arrangement to provide improved services for mentally ill offenders with a focus on prevention, treatment, and reintegration into society. The participants in the collaborative arrangement may develop a strategic plan within sixty days after May 17,

1993, to address the management of mentally ill offenders within the correctional system, facilitating their reentry into the community and the mental health system, and preventing the inappropriate incarceration of mentally ill individuals. The collaborative arrangement may also specify the establishment and maintenance of a corrections mental health center located at McNeil Island corrections center. The collaborative arrangement shall require that an advisory panel of key stakeholders be established and consulted throughout the development and implementation of the center. The stakeholders advisory panel shall include a broad array of interest groups drawn from representatives of mental health, criminal justice, and correctional systems. The stakeholders advisory panel shall include, but is not limited to, membership from: The department of corrections, the department of social and health services mental health division and division of juvenile rehabilitation, regional support networks, local and regional law enforcement agencies, the sentencing guidelines commission, county and city jails, mental health advocacy groups for the mentally ill, developmentally disabled, and traumatically brain-injured, and the general public. The center established by the department of corrections and University of Washington, in consultation with the stakeholder advisory groups, shall have the authority to:

- (a) Develop new and innovative treatment approaches for corrections mental health clients;
- (b) Improve the quality of mental health services within the department and throughout the corrections system;
- (c) Facilitate mental health staff recruitment and training to meet departmental, county, and municipal needs;
- (d) Expand research activities within the department in the area of treatment services, the design of delivery systems, the development of organizational models, and training for corrections mental health care professionals;
- (e) Improve the work environment for correctional employees by developing the skills, knowledge, and understanding of how to work with offenders with special chronic mental health challenges;
- (f) Establish a more positive rehabilitative environment for offenders;
- (g) Strengthen multidisciplinary mental health collaboration between the University of Washington, other groups committed to the intent of this section, and the department of corrections;
- (h) Strengthen department linkages between institutions of higher education, public sector mental health systems, and county and municipal corrections;
- (i) Assist in the continued formulation of corrections mental health policies;
- (j) Develop innovative and effective recruitment and training programs for correctional personnel working with mentally ill offenders;
- (k) Assist in the development of a coordinated continuum of mental health care capable of providing services from corrections entry to community return; and
- (l) Evaluate all current and innovative approaches developed within this center in terms of their effective and efficient achievement of improved mental health of inmates, development and utilization of personnel, the impact of these approaches on the functioning of correctional institutions, and the relationship of the corrections system to mental

health and criminal justice systems. Specific attention should be paid to evaluating the effects of programs on the reintegration of mentally ill offenders into the community and the prevention of inappropriate incarceration of mentally ill persons.

(2) The corrections mental health center may conduct research, training, and treatment activities for the mentally ill offender within selected sites operated by the department. The department shall provide support services for the center such as food services, maintenance, perimeter security, classification, offender supervision, and living unit functions. The University of Washington may develop, implement, and evaluate the clinical, treatment, research, and evaluation components of the mentally ill offender center. The institute of [for] public policy and management may be consulted regarding the development of the center and in the recommendations regarding public policy. As resources permit, training within the center shall be available to state, county, and municipal agencies requiring the services. Other state colleges, state universities, and mental health providers may be involved in activities as required on a subcontract basis. Community mental health organizations, research groups, and community advocacy groups may be critical components of the center's operations and involved as appropriate to annual objectives. Mentally ill clients may be drawn from throughout the department's population and transferred to the center as clinical need, available services, and department jurisdiction permits.

(3) The department shall prepare a report of the center's progress toward the attainment of stated goals and provide the report to the legislature annually. [1993 c 459 § 1.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**72.09.370 Offenders with mental illness who are believed to be dangerous—Plan for postrelease treatment and support services—Rules.**

(1) The offender reentry community safety program is established to provide intensive services to offenders identified under this subsection and to thereby promote public safety. The secretary shall identify offenders in confinement or partial confinement who: (a) Are reasonably believed to be dangerous to themselves or others; and (b) have a mental disorder. In determining an offender's dangerousness, the secretary shall consider behavior known to the department and factors, based on research, that are linked to an increased risk for dangerousness of offenders with mental illnesses and shall include consideration of an offender's chemical dependency or abuse.

(2) Prior to release of an offender identified under this section, a team consisting of representatives of the department of corrections, the division of mental health, and, as necessary, the indeterminate sentence review board, other divisions or administrations within the department of social and health services, specifically including the division of alcohol and substance abuse and the division of developmental disabilities, the appropriate regional support network, and the providers, as appropriate, shall develop a plan, as determined necessary by the team, for delivery of treatment and support services to the offender upon release. In developing the plan, the offender shall be offered assistance in executing a mental health directive under chapter 71.32 RCW, after being fully informed of the benefits, scope, and purposes of

such directive. The team may include a school district representative for offenders under the age of twenty-one. The team shall consult with the offender's counsel, if any, and, as appropriate, the offender's family and community. The team shall notify the crime victim/witness program, which shall provide notice to all people registered to receive notice under RCW 72.09.712 of the proposed release plan developed by the team. Victims, witnesses, and other interested people notified by the department may provide information and comments to the department on potential safety risk to specific individuals or classes of individuals posed by the specific offender. The team may recommend: (a) That the offender be evaluated by the designated mental health professional, as defined in chapter 71.05 RCW; (b) department-supervised community treatment; or (c) voluntary community mental health or chemical dependency or abuse treatment.

(3) Prior to release of an offender identified under this section, the team shall determine whether or not an evaluation by a designated mental health professional is needed. If an evaluation is recommended, the supporting documentation shall be immediately forwarded to the appropriate designated mental health professional. The supporting documentation shall include the offender's criminal history, history of judicially required or administratively ordered involuntary antipsychotic medication while in confinement, and any known history of involuntary civil commitment.

(4) If an evaluation by a designated mental health professional is recommended by the team, such evaluation shall occur not more than ten days, nor less than five days, prior to release.

(5) A second evaluation by a designated mental health professional shall occur on the day of release if requested by the team, based upon new information or a change in the offender's mental condition, and the initial evaluation did not result in an emergency detention or a summons under chapter 71.05 RCW.

(6) If the designated mental health professional determines an emergency detention under chapter 71.05 RCW is necessary, the department shall release the offender only to a state hospital or to a consenting evaluation and treatment facility. The department shall arrange transportation of the offender to the hospital or facility.

(7) If the designated mental health professional believes that a less restrictive alternative treatment is appropriate, he or she shall seek a summons, pursuant to the provisions of chapter 71.05 RCW, to require the offender to appear at an evaluation and treatment facility. If a summons is issued, the offender shall remain within the corrections facility until completion of his or her term of confinement and be transported, by corrections personnel on the day of completion, directly to the identified evaluation and treatment facility.

(8) The secretary shall adopt rules to implement this section. [2009 c 319 § 3; 2009 c 28 § 36; 2001 2nd sp.s. c 12 § 362; 1999 c 214 § 2.]

**Reviser's note:** This section was amended by 2009 c 28 § 36 and by 2009 c 319 § 3, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

**Effective date—2009 c 28:** See note following RCW 2.24.040.

**Intent—Severability—Effective dates—2001 2nd sp.s. c 12:** See notes following RCW 71.09.250.

**Application—2001 2nd sp.s. c 12 §§ 301-363:** See note following RCW 9.94A.030.

**Intent—1999 c 214:** "The legislature intends to improve the process of identifying, and providing additional mental health treatment for, persons: (1) Determined to be dangerous to themselves or others as a result of a mental disorder or a combination of a mental disorder and chemical dependency or abuse; and (2) under, or being released from, confinement or partial confinement of the department of corrections.

The legislature does not create a presumption that any person subject to the provisions of this act is dangerous as a result of a mental disorder or chemical dependency or abuse. The legislature intends that every person subject to the provisions of this act retain the amount of liberty consistent with his or her condition, behavior, and legal status and that any restraint of liberty be done solely on the basis of forensic and clinical practices and standards." [1999 c 214 § 1.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**72.09.380 Rule making—Medicaid—Secretary of corrections—Secretary of social and health services.** The secretaries of the department of corrections and the department of social and health services shall adopt rules and develop working agreements which will ensure that offenders identified under RCW 72.09.370(1) will be assisted in making application for medicaid to facilitate a decision regarding their eligibility for such entitlements prior to the end of their term of confinement in a correctional facility. [1999 c 214 § 3.]

**Intent—1999 c 214:** See note following RCW 72.09.370.

**72.09.381 Rule making—Chapter 214, Laws of 1999—Secretary of corrections—Secretary of social and health services.** The secretary of the department of corrections and the secretary of the department of social and health services shall, in consultation with the regional support networks and provider representatives, each adopt rules as necessary to implement chapter 214, Laws of 1999. [1999 c 214 § 11.]

**Intent—1999 c 214:** See note following RCW 72.09.370.

**72.09.400 Work ethic camp program—Findings—Intent.** The legislature finds that high crime rates and a heightened sense of vulnerability have led to increased public pressure on criminal justice officials to increase offender punishment and remove the most dangerous criminals from the streets. As a result, there is unprecedented growth in the corrections populations and overcrowding of prisons and local jails. Skyrocketing costs and high rates of recidivism have become issues of major public concern. Attention must be directed towards implementing a long-range corrections strategy that focuses on inmate responsibility through intensive work ethic training.

The legislature finds that many offenders lack basic life skills and have been largely unaffected by traditional correctional philosophies and programs. In addition, many first-time offenders who enter the prison system learn more about how to be criminals than the important qualities, values, and skills needed to successfully adapt to a life without crime.

The legislature finds that opportunities for offenders to improve themselves are extremely limited and there has not been adequate emphasis on alternatives to total confinement for nonviolent offenders.

The legislature finds that the explosion of drug crimes since the inception of the sentencing reform act and the response of the criminal justice system have resulted in a much higher proportion of substance abuse-affected offenders in the state's prisons and jails. The needs of this population differ from those of other offenders and present a great challenge to the system. The problems are exacerbated by the shortage of drug treatment and counseling programs both in and outside of prisons.

The legislature finds that the concept of a work ethic camp that requires the offender to complete an appropriate and balanced combination of highly structured and goal-oriented work programs such as correctional industries based work camps and/or class I and class II work projects, drug rehabilitation, and intensive life management work ethic training, can successfully reduce offender recidivism and lower the overall cost of incarceration.

It is the purpose and intent of RCW 72.09.400 through \*72.09.420, 9.94A.690, and \*\*section 5, chapter 338, Laws of 1993 to implement a regimented work ethic camp that is designed to directly address the high rate of recidivism, reduce upwardly spiraling prison costs, preserve scarce and high cost prison space for the most dangerous offenders, and provide judges with a tough and sound alternative to traditional incarceration without compromising public safety. [1993 c 338 § 1.]

**Reviser's note:** \*(1) RCW 72.09.420 was repealed by 1998 c 273 § 1.  
\*\*(2) 1993 c 338 § 5 was vetoed by the governor.

*Sentencing: RCW 9.94A.690.*

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

#### **72.09.410 Work ethic camp program—Generally.**

The department of corrections shall establish one work ethic camp. The secretary shall locate the work ethic camp within an already existing department compound or facility, or in a facility that is scheduled to come on line within the initial implementation date outlined in this section. The facility selected for the camp shall appropriately accommodate the logistical and cost-effective objectives contained in RCW 72.09.400 through \*72.09.420, 9.94A.690, and \*\*section 5, chapter 338, Laws of 1993. The department shall be ready to assign inmates to the camp one hundred twenty days after July 1, 1993. The department shall establish the work ethic camp program cycle to last from one hundred twenty to one hundred eighty days. The department shall develop all aspects of the work ethic camp program including, but not limited to, program standards, conduct standards, educational components including general education development test achievement, offender incentives, drug rehabilitation program parameters, individual and team work goals, techniques for improving the offender's self-esteem, citizenship skills for successful living in the community, measures to hold the offender accountable for his or her behavior, and the successful completion of the work ethic camp program granted to the offender based on successful attendance, participation, and performance as defined by the secretary. The work ethic camp shall be designed and implemented so that offenders are continually engaged in meaningful activities and unstructured time is kept to a minimum. In addition, the department is encouraged to explore the integration and overlay of a military style approach to the work ethic camp. [1993 c 338 § 3.]

(2010 Ed.)

**Reviser's note:** \*(1) RCW 72.09.420 was repealed by 1998 c 273 § 1.  
\*\*(2) 1993 c 338 § 5 was vetoed by the governor.

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

#### **72.09.450 Limitation on denial of access to services and supplies—Recoupment of assessments—Collections.**

(1) An inmate shall not be denied access to services or supplies required by state or federal law solely on the basis of his or her inability to pay for them.

(2) The department shall record all lawfully authorized assessments for services or supplies as a debt to the department. The department shall recoup the assessments when the inmate's institutional account exceeds the indigency standard, and may pursue other remedies to recoup the assessments after the period of incarceration.

(3) The department shall record as a debt any costs assessed by a court against an inmate plaintiff where the state is providing defense pursuant to chapter 4.92 RCW. The department shall recoup the debt when the inmate's institutional account exceeds the indigency standard and may pursue other remedies to recoup the debt after the period of incarceration.

(4) In order to maximize the cost-efficient collection of unpaid offender debt existing after the period of an offender's incarceration, the department is authorized to use the following nonexclusive options: (a) Use the collection services available through the department of general administration, or (b) notwithstanding any provision of chapter 41.06 RCW, contract with collection agencies for collection of the debts. The costs for general administration or collection agency services shall be paid by the debtor. Any contract with a collection agency shall only be awarded after competitive bidding. Factors the department shall consider in awarding a collection contract include but are not limited to a collection agency's history and reputation in the community; and the agency's access to a local database that may increase the efficiency of its collections. The servicing of an unpaid obligation to the department does not constitute assignment of a debt, and no contract with a collection agency may remove the department's control over unpaid obligations owed to the department. [1996 c 277 § 1; 1995 1st sp.s. c 19 § 4.]

**Findings—Purpose—1995 1st sp.s. c 19:** "The legislature finds the increasing number of inmates incarcerated in state correctional institutions, and the expenses associated with their incarceration, require expanded efforts to contain corrections costs. Cost containment requires improved planning and oversight, and increased accountability and responsibility on the part of inmates and the department.

The legislature further finds motivating inmates to participate in meaningful education and work programs in order to learn transferable skills and earn basic privileges is an effective and efficient way to meet the penological objectives of the corrections system.

The purpose of this act is to assure that the department fulfills its mission to reduce offender recidivism, to mirror the values of the community by clearly linking inmate behavior to receipt of privileges, and to prudently manage the resources it receives through tax dollars. This purpose is accomplished through the implementation of specific cost-control measures and creation of a planning and oversight process that will improve the department's effectiveness and efficiencies." [1995 1st sp.s. c 19 § 1.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**72.09.460 Inmate participation in education and work programs—Legislative intent—Priorities—Rules—Payment of costs.** (1) The legislature intends that all inmates be required to participate in department-approved education

programs, work programs, or both, unless exempted as specifically provided in this section. Eligible inmates who refuse to participate in available education or work programs available at no charge to the inmates shall lose privileges according to the system established under RCW 72.09.130. Eligible inmates who are required to contribute financially to an education or work program and refuse to contribute shall be placed in another work program. Refusal to contribute shall not result in a loss of privileges.

(2) The legislature recognizes more inmates may agree to participate in education and work programs than are available. The department must make every effort to achieve maximum public benefit by placing inmates in available and appropriate education and work programs.

(3)(a) The department shall, to the extent possible and considering all available funds, prioritize its resources to meet the following goals for inmates in the order listed:

(i) Achievement of basic academic skills through obtaining a high school diploma or its equivalent;

(ii) Achievement of vocational skills necessary for purposes of work programs and for an inmate to qualify for work upon release;

(iii) Additional work and education programs necessary for compliance with an offender's individual reentry plan under RCW 72.09.270 with the exception of postsecondary education degree programs as provided in RCW 72.09.465; and

(iv) Other appropriate vocational, work, or education programs that are not necessary for compliance with an offender's individual reentry plan under RCW 72.09.270 with the exception of postsecondary education degree programs as provided in RCW 72.09.465.

(b) If programming is provided pursuant to (a)(i) through (iii) of this subsection, the department shall pay the cost of such programming, including but not limited to books, materials, supplies, and postage costs related to correspondence courses.

(c) If programming is provided pursuant to (a)(iv) of this subsection, inmates shall be required to pay all or a portion of the costs, including books, fees, and tuition, for participation in any vocational, work, or education program as provided in department policies. Department policies shall include a formula for determining how much an offender shall be required to pay. The formula shall include steps which correlate to an offender average monthly income or average available balance in a personal inmate savings account and which are correlated to a prorated portion or percent of the per credit fee for tuition, books, or other ancillary costs. The formula shall be reviewed every two years. A third party may pay directly to the department all or a portion of costs and tuition for any programming provided pursuant to (a)(iv) of this subsection on behalf of an inmate. Such payments shall not be subject to any of the deductions as provided in this chapter.

(d) The department may accept any and all donations and grants of money, equipment, supplies, materials, and services from any third party, including but not limited to nonprofit entities, and may receive, utilize, and dispose of same to complete the purposes of this section.

(e) Any funds collected by the department under (c) and (d) of this subsection and subsections (8) and (9) of this sec-

tion shall be used solely for the creation, maintenance, or expansion of inmate educational and vocational programs.

(4) The department shall provide access to a program of education to all offenders who are under the age of eighteen and who have not met high school graduation or general equivalency diploma requirements in accordance with chapter 28A.193 RCW. The program of education established by the department and education provider under RCW 28A.193.020 for offenders under the age of eighteen must provide each offender a choice of curriculum that will assist the inmate in achieving a high school diploma or general equivalency diploma. The program of education may include but not be limited to basic education, prevocational training, work ethic skills, conflict resolution counseling, substance abuse intervention, and anger management counseling. The curriculum may balance these and other rehabilitation, work, and training components.

(5)(a) In addition to the policies set forth in this section, the department shall consider the following factors in establishing criteria for assessing the inclusion of education and work programs in an inmate's individual reentry plan and in placing inmates in education and work programs:

(i) An inmate's release date and custody level. An inmate shall not be precluded from participating in an education or work program solely on the basis of his or her release date, except that inmates with a release date of more than one hundred twenty months in the future shall not comprise more than ten percent of inmates participating in a new class I correctional industry not in existence on June 10, 2004;

(ii) An inmate's education history and basic academic skills;

(iii) An inmate's work history and vocational or work skills;

(iv) An inmate's economic circumstances, including but not limited to an inmate's family support obligations; and

(v) Where applicable, an inmate's prior performance in department-approved education or work programs;

(b) The department shall establish, and periodically review, inmate behavior standards and program goals for all education and work programs. Inmates shall be notified of applicable behavior standards and program goals prior to placement in an education or work program and shall be removed from the education or work program if they consistently fail to meet the standards or goals.

(6) Eligible inmates who refuse to participate in available education or work programs available at no charge to the inmates shall lose privileges according to the system established under RCW 72.09.130. Eligible inmates who are required to contribute financially to an education or work program and refuse to contribute shall be placed in another work program. Refusal to contribute shall not result in a loss of privileges.

(7) The department shall establish, by rule, objective medical standards to determine when an inmate is physically or mentally unable to participate in available education or work programs. When the department determines an inmate is permanently unable to participate in any available education or work program due to a health condition, the inmate is exempt from the requirement under subsection (1) of this section. When the department determines an inmate is temporarily unable to participate in an education or work program

due to a medical condition, the inmate is exempt from the requirement of subsection (1) of this section for the period of time he or she is temporarily disabled. The department shall periodically review the medical condition of all inmates with temporary disabilities to ensure the earliest possible entry or reentry by inmates into available programming.

(8) The department shall establish policies requiring an offender to pay all or a portion of the costs and tuition for any vocational training or postsecondary education program if the offender previously abandoned coursework related to education or vocational training without excuse as defined in rule by the department. Department policies shall include a formula for determining how much an offender shall be required to pay. The formula shall include steps which correlate to an offender average monthly income or average available balance in a personal inmate savings account and which are correlated to a prorated portion or percent of the per credit fee for tuition, books, or other ancillary costs. The formula shall be reviewed every two years. A third party may pay directly to the department all or a portion of costs and tuition for any program on behalf of an inmate under this subsection. Such payments shall not be subject to any of the deductions as provided in this chapter.

(9) Notwithstanding any other provision in this section, an inmate sentenced to life without the possibility of release, sentenced to death under chapter 10.95 RCW, or subject to the provisions of 8 U.S.C. Sec. 1227:

(a) Shall not be required to participate in education programming except as may be necessary for the maintenance of discipline and security;

(b) May receive not more than one postsecondary academic degree in a program offered by the department or its contracted providers;

(c) May participate in prevocational or vocational training that may be necessary to participate in a work program;

(d) Shall be subject to the applicable provisions of this chapter relating to inmate financial responsibility for programming. [2007 c 483 § 402; 2004 c 167 § 5; 1998 c 244 § 10; 1997 c 338 § 43; 1995 1st sp.s. c 19 § 5.]

**Findings—Intent—2007 c 483:** "Research and practice show that long-term success in helping offenders prepare for economic self-sufficiency requires strategies that address their education and employment needs. Recent research suggests that a solid academic foundation and employment- and career-focused programs can be cost-effective in reducing the likelihood of reoffense. To this end, the legislature intends that the state strive to provide every inmate with basic academic skills as well as educational and vocational training designed to meet the assessed needs of the offender.

Nonetheless, it is vital that offenders engaged in educational or vocational training contribute to their own success. An offender should financially contribute to his or her education, particularly postsecondary educational pursuits. The legislature intends to provide more flexibility for offenders in obtaining postsecondary education by allowing third parties to make contributions to the offender's education without mandatory deductions. In developing the loan program, the department is encouraged to adopt rules and standards similar to those that apply to students in noninstitutional settings for issues such as applying for a loan, maintaining accountability, and accruing interest on the loan obligation." [2007 c 483 § 401.]

**Findings—Part headings not law—Severability—2007 c 483:** See RCW 72.78.005, 72.78.900, and 72.78.901.

**Finding—Evaluation—Report—1997 c 338:** See note following RCW 13.40.0357.

**Findings—Purpose—Short title—Severability—Effective date—1995 1st sp.s. c 19:** See notes following RCW 72.09.450.

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**72.09.465 Postsecondary education degree programs.** (1) The department shall, if funds are appropriated for the specific purpose, implement postsecondary education degree programs within state correctional institutions, including the state correctional institution with the largest population of female inmates. The department shall consider for inclusion in any postsecondary education degree program, any postsecondary education degree program from an accredited community college, college, or university that is part of an associate of arts, baccalaureate, masters of arts, or other graduate degree program.

(2) Except as provided in subsection (3) of this section, inmates shall be required to pay the costs for participation in any postsecondary education degree programs established under this subsection [section], including books, fees, tuition, or any other appropriate ancillary costs, by one or more of the following means:

(a) The inmate who is participating in the postsecondary education degree program shall, during confinement, provide the required payment or payments to the department; or

(b) A third party shall provide the required payment or payments directly to the department on behalf of an inmate, and such payments shall not be subject to any of the deductions as provided in this chapter.

(3) The department may accept any and all donations and grants of money, equipment, supplies, materials, and services from any third party, including but not limited to nonprofit entities, and may receive, utilize, and dispose of same to provide postsecondary education to inmates.

(4) Any funds collected by the department under this section and \*RCW 72.09.450(4) shall be used solely for the creation, maintenance, or expansion of inmate postsecondary education degree programs. [2007 c 483 § 403.]

**\*Reviser's note:** The reference to RCW 72.09.450(4) appears to be a reference to an amendment to that section contained in an early version of ESSB 6157. RCW 72.09.450 was not amended in the final version of ESSB 6157, as amended by the house.

**Findings—Intent—2007 c 483:** See note following RCW 72.09.460.

**Findings—Part headings not law—Severability—2007 c 483:** See RCW 72.78.005, 72.78.900, and 72.78.901.

**72.09.470 Inmate contributions for cost of privileges—Standards.** To the greatest extent practical, all inmates shall contribute to the cost of privileges. The department shall establish standards by which inmates shall contribute a portion of the department's capital costs of providing privileges, including television cable access, extended family visitation, weight lifting, and other recreational sports equipment and supplies. The standards shall also require inmates to contribute a significant portion of the department's operating costs directly associated with providing privileges, including staff and supplies. Inmate contributions may be in the form of individual user fees assessed against an inmate's institution account, deductions from an inmate's gross wages or gratuities, or inmates' collective contributions to the institutional welfare/betterment fund. The department shall make every effort to maximize individual inmate contributions to payment for privileges. The department shall not limit inmates' financial support for privileges to contributions from the institutional welfare/betterment fund. The standards shall consider the assets available to the inmates,

the cost of administering compliance with the contribution requirements, and shall promote a responsible work ethic. [1995 1st sp.s. c 19 § 7.]

**Findings—Purpose—Short title—Severability—Effective date—1995 1st sp.s. c 19:** See notes following RCW 72.09.450.

**72.09.480 Inmate funds subject to deductions—Definitions—Exceptions—Child support collection actions.**

(1) Unless the context clearly requires otherwise, the definitions in this section apply to this section.

(a) "Cost of incarceration" means the cost of providing an inmate with shelter, food, clothing, transportation, supervision, and other services and supplies as may be necessary for the maintenance and support of the inmate while in the custody of the department, based on the average per inmate costs established by the department and the office of financial management.

(b) "Minimum term of confinement" means the minimum amount of time an inmate will be confined in the custody of the department, considering the sentence imposed and adjusted for the total potential earned early release time available to the inmate.

(c) "Program" means any series of courses or classes necessary to achieve a proficiency standard, certificate, or postsecondary degree.

(2) When an inmate, except as provided in subsections (4) and (8) of this section, receives any funds in addition to his or her wages or gratuities, except settlements or awards resulting from legal action, the additional funds shall be subject to the following deductions and the priorities established in chapter 72.11 RCW:

(a) Five percent to the crime victims' compensation account provided in RCW 7.68.045;

(b) Ten percent to a department personal inmate savings account;

(c) Twenty percent for payment of legal financial obligations for all inmates who have legal financial obligations owing in any Washington state superior court;

(d) Twenty percent for any child support owed under a support order; and

(e) Twenty percent to the department to contribute to the cost of incarceration.

(3) When an inmate, except as provided in subsection (8) of this section, receives any funds from a settlement or award resulting from a legal action, the additional funds shall be subject to the deductions in RCW 72.09.111(1)(a) and the priorities established in chapter 72.11 RCW.

(4) When an inmate who is subject to a child support order receives funds from an inheritance, the deduction required under subsection (2)(e) of this section shall only apply after the child support obligation has been paid in full.

(5) The amount deducted from an inmate's funds under subsection (2) of this section shall not exceed the department's total cost of incarceration for the inmate incurred during the inmate's minimum or actual term of confinement, whichever is longer.

(6)(a) The deductions required under subsection (2) of this section shall not apply to funds received by the department from an offender or from a third party on behalf of an offender for payment of education or vocational programs or

postsecondary education degree programs as provided in RCW 72.09.460 and 72.09.465.

(b) The deductions required under subsection (2) of this section shall not apply to funds received by the department from a third party, including but not limited to a nonprofit entity on behalf of the department's education, vocation, or postsecondary education degree programs.

(7) The deductions required under subsection (2) of this section shall not apply to any money received by the department, on behalf of an inmate, from family or other outside sources for the payment of postage expenses. Money received under this subsection may only be used for the payment of postage expenses and may not be transferred to any other account or purpose. Money that remains unused in the inmate's postage fund at the time of release shall be subject to the deductions outlined in subsection (2) of this section.

(8) When an inmate sentenced to life imprisonment without possibility of release or sentenced to death under chapter 10.95 RCW receives funds, deductions are required under subsection (2) of this section, with the exception of a personal inmate savings account under subsection (2)(b) of this section.

(9) The secretary of the department of corrections, or his or her designee, may exempt an inmate from a personal inmate savings account under subsection (2)(b) of this section if the inmate's earliest release date is beyond the inmate's life expectancy.

(10) The interest earned on an inmate savings account created as a result of the \*plan in section 4, chapter 325, Laws of 1999 shall be exempt from the mandatory deductions under this section and RCW 72.09.111.

(11) Nothing in this section shall limit the authority of the department of social and health services division of child support, the county clerk, or a restitution recipient from taking collection action against an inmate's moneys, assets, or property pursuant to chapter 9.94A, 26.23, 74.20, or 74.20A RCW including, but not limited to, the collection of moneys received by the inmate from settlements or awards resulting from legal action. [2010 c 122 § 6; 2009 c 479 § 61. Prior: 2007 c 483 § 404; 2007 c 365 § 1; 2007 c 91 § 1; 2003 c 271 § 3; 1999 c 325 § 1; 1998 c 261 § 2; 1997 c 165 § 1; 1995 1st sp.s. c 19 § 8.]

**\*Reviser's note:** 1999 c 325 § 4 requires the secretary of corrections to prepare and submit a plan to the governor and legislature by December 1, 1999.

**Effective date—2009 c 479:** See note following RCW 2.56.030.

**Findings—Intent—2007 c 483:** See note following RCW 72.09.460.

**Findings—Part headings not law—Severability—2007 c 483:** See RCW 72.78.005, 72.78.900, and 72.78.901.

**Findings—Purpose—Short title—Severability—Effective date—1995 1st sp.s. c 19:** See notes following RCW 72.09.450.

**72.09.490 Policy on extended family visitation.** (1) The department shall establish a uniform policy on the privilege of extended family visitation. Not fewer than sixty days before making any changes in any policy on extended family visitation, the department shall: (a) Notify the appropriate legislative committees of the proposed change; and (b) notify the committee created under \*RCW 72.09.570 of the proposed change. The department shall seek the advice of the committee established under \*RCW 72.09.570 and other

appropriate committees on all proposed changes and shall, before the effective date of any change, offer the committees an opportunity to provide input on proposed changes.

(2) In addition to its duties under chapter 34.05 RCW, the department shall provide the committee established under \*RCW 72.09.570 and other appropriate committees of the legislature a written copy of any proposed adoption, revision, or repeal of any rule relating to extended family visitation. Except for adoption, revision, or repeal of a rule on an emergency basis, the copy shall be provided not fewer than thirty days before any public hearing scheduled on the rule. [1995 1st sp.s. c 19 § 9.]

\*Reviser's note: RCW 72.09.570 expired July 1, 1997.

**Findings—Purpose—Short title—Severability—Effective date—1995 1st sp.s. c 19:** See notes following RCW 72.09.450.

**72.09.495 Incarcerated parents—Policies to encourage family contact and engagement.** (1) The secretary of corrections shall review current department policies and assess the following:

(a) The impact of existing policies on the ability of offenders to maintain familial contact and engagement between inmates and children; and

(b) The adequacy and availability of programs targeted at inmates with children.

(2) The secretary shall adopt policies that encourage familial contact and engagement between inmates and their children with the goal of reducing recidivism and intergenerational incarceration. Programs and policies should take into consideration the children's need to maintain contact with his or her parent and the inmate's ability to develop plans to financially support their children, assist in reunification when appropriate, and encourage the improvement of parenting skills where needed.

(3) The department shall conduct the following activities to assist in implementing the requirements of subsection (1) of this section:

(a) Gather information and data on the families of inmates, particularly the children of incarcerated parents;

(b) Evaluate data to determine the impact on recidivism and intergenerational incarceration; and

(c) Participate in the children of incarcerated parents advisory committee and report information obtained under this section to the advisory committee. [2007 c 384 § 2.]

**Intent—Finding—2007 c 384:** "The legislature recognizes the significant impact on the lives and well-being of children and families when a parent is incarcerated. It is the intent of the legislature to support children and families, and maintain familial connections when appropriate, during the period a parent is incarcerated. Further, the legislature finds that there must be a greater emphasis placed on identifying state policies and programs impacting children with incarcerated parents. Additionally, greater effort must be made to ensure that the policies and programs of the state are supportive of the children, and meet their needs during the time the parent is incarcerated.

According to the final report of the children of incarcerated parents oversight committee, helping offenders build durable family relationships may reduce the likelihood that their children will go to prison later in life. Additionally, the report indicates that offenders who reconnect with their families in sustaining ways are less likely to reoffend. In all efforts to help offenders build these relationships with their children, the safety of the children will be paramount." [2007 c 384 § 1.]

**72.09.500 Prohibition on weight-lifting.** An inmate found by the superintendent in the institution in which the

inmate is incarcerated to have committed an aggravated assault against another person, under rules adopted by the department, is prohibited from participating in weight lifting for a period of two years from the date the finding is made. At the conclusion of the two-year period the superintendent shall review the inmate's infraction record to determine if additional weight-lifting prohibitions are appropriate. If, based on the review, it is determined by the superintendent that the inmate poses a threat to the safety of others or the order of the facility, or otherwise does not meet requirements for the weight-lifting privilege, the superintendent may impose an additional reasonable restriction period. [1995 1st sp.s. c 19 § 10.]

**Findings—Purpose—Short title—Severability—Effective date—1995 1st sp.s. c 19:** See notes following RCW 72.09.450.

**72.09.510 Limitation on purchasing recreational equipment and dietary supplements that increase muscle mass.** Purchases of recreational equipment following June 15, 1995, shall be cost-effective and, to the extent possible, minimize an inmate's ability to substantially increase muscle mass. Dietary supplements made for the sole purpose of increasing muscle mass shall not be available for purchase by inmates unless prescribed by a physician for medical purposes or for inmates officially competing in department-sanctioned competitive weight lifting. [1995 1st sp.s. c 19 § 11.]

**Findings—Purpose—Short title—Severability—Effective date—1995 1st sp.s. c 19:** See notes following RCW 72.09.450.

**72.09.520 Limitation on purchase of televisions.** No inmate may acquire or possess a television for personal use for at least sixty days following completion of his or her intake and evaluation process at the Washington Corrections Center or the Washington Corrections Center for Women. [1995 1st sp.s. c 19 § 12.]

**Findings—Purpose—Short title—Severability—Effective date—1995 1st sp.s. c 19:** See notes following RCW 72.09.450.

**72.09.530 Prohibition on receipt or possession of contraband—Rules.** The secretary shall, in consultation with the attorney general, adopt by rule a uniform policy that prohibits receipt or possession of anything that is determined to be contraband. The rule shall provide consistent maximum protection of legitimate penological interests, including prison security and order and deterrence of criminal activity. The rule shall protect the legitimate interests of the public and inmates in the exchange of ideas. The secretary shall establish a method of reviewing all incoming and outgoing material, consistent with constitutional constraints, for the purpose of confiscating anything determined to be contraband. The secretary shall consult regularly with the committee created under \*RCW 72.09.570 on the development of the policy and implementation of the rule. [1995 1st sp.s. c 19 § 13.]

\*Reviser's note: RCW 72.09.570 expired July 1, 1997.

**Findings—Purpose—Short title—Severability—Effective date—1995 1st sp.s. c 19:** See notes following RCW 72.09.450.

**72.09.540 Inmate name change—Limitations on use—Penalty.** The department may require an offender who obtains an order under RCW 4.24.130 to use the name under which he or she was committed to the department during all

official communications with department personnel and in all matters relating to the offender's incarceration or community supervision. An offender officially communicating with the department may also use his or her new name in addition to the name under which he or she was committed. Violation of this section is a misdemeanor. [1995 1st sp.s. c 19 § 15.]

**Findings—Purpose—Short title—Severability—Effective date—1995 1st sp.s. c 19:** See notes following RCW 72.09.450.

**72.09.560 Camp for alien offenders.** The department is authorized to establish a camp for alien offenders and shall be ready to assign offenders to the camp not later than January 1, 1997. The secretary shall locate the camp within the boundaries of an existing department facility. [1998 c 245 § 140; 1995 1st sp.s. c 19 § 21.]

**Findings—Purpose—Short title—Severability—Effective date—1995 1st sp.s. c 19:** See notes following RCW 72.09.450.

**72.09.580 Offender records and reports.** Except as specifically prohibited by other law, and for purposes of determining, modifying, or monitoring compliance with conditions of community custody, the department:

(1) Shall have access to all relevant records and information in the possession of public agencies relating to offenders, including police reports, prosecutors' statements of probable cause, complete criminal history information, psychological evaluations and psychiatric hospital reports, sex offender treatment program reports, and juvenile records; and

(2) May require periodic reports from providers of treatment or other services required by the court or the department, including progress reports, evaluations and assessments, and reports of violations of conditions imposed by the court or the department. [2008 c 231 § 50; 1999 c 196 § 12.]

**Intent—Application—Application of repealers—Effective date—2008 c 231:** See notes following RCW 9.94A.701.

**Severability—2008 c 231:** See note following RCW 9.94A.500.

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**72.09.585 Mental health services information—Required inquiries and disclosures—Release to court, individuals, indeterminate sentence review board, state and local agencies.** (1) When the department is determining an offender's risk management level, the department shall inquire of the offender and shall be told whether the offender is subject to court-ordered treatment for mental health services or chemical dependency services. The department shall request and the offender shall provide an authorization to release information form that meets applicable state and federal requirements and shall provide the offender with written notice that the department will request the offender's mental health and substance abuse treatment information. An offender's failure to inform the department of court-ordered treatment is a violation of the conditions of supervision if the offender is in the community and an infraction if the offender is in confinement, and the violation or infraction is subject to sanctions.

(2) When an offender discloses that he or she is subject to court-ordered mental health services or chemical dependency treatment, the department shall provide the mental health services provider or chemical dependency treatment provider with a written request for information and any nec-

essary authorization to release information forms. The written request shall comply with rules adopted by the department of social and health services or protocols developed jointly by the department and the department of social and health services. A single request shall be valid for the duration of the offender's supervision in the community. Disclosures of information related to mental health services made pursuant to a department request shall not require consent of the offender.

(3) The information received by the department under RCW 71.05.445 or \*71.34.225 may be released to the indeterminate sentence review board as relevant to carry out its responsibility of planning and ensuring community protection with respect to persons under its jurisdiction. Further disclosure by the indeterminate sentence review board is subject to the limitations set forth in subsections (5) and (6) of this section and must be consistent with the written policy of the indeterminate sentence review board. The decision to disclose or not shall not result in civil liability for the indeterminate sentence review board or its employees provided that the decision was reached in good faith and without gross negligence.

(4) The information received by the department under RCW 71.05.445 or \*71.34.225 may be used to meet the statutory duties of the department to provide evidence or report to the court. Disclosure to the public of information provided to the court by the department related to mental health services shall be limited in accordance with RCW 9.94A.500 or this section.

(5) The information received by the department under RCW 71.05.445 or \*71.34.225 may be disclosed by the department to other state and local agencies as relevant to plan for and provide offenders transition, treatment, and supervision services, or as relevant and necessary to protect the public and counteract the danger created by a particular offender, and in a manner consistent with the written policy established by the secretary. The decision to disclose or not shall not result in civil liability for the department or its employees so long as the decision was reached in good faith and without gross negligence. The information received by a state or local agency from the department shall remain confidential and subject to the limitations on disclosure set forth in chapters 70.02, 71.05, and 71.34 RCW and, subject to these limitations, may be released only as relevant and necessary to counteract the danger created by a particular offender.

(6) The information received by the department under RCW 71.05.445 or \*71.34.225 may be disclosed by the department to individuals only with respect to offenders who have been determined by the department to have a high risk of reoffending by a risk assessment, as defined in RCW 9.94A.030, only as relevant and necessary for those individuals to take reasonable steps for the purpose of self-protection, or as provided in RCW 72.09.370(2). The information may not be disclosed for the purpose of engaging the public in a system of supervision, monitoring, and reporting offender behavior to the department. The department must limit the disclosure of information related to mental health services to the public to descriptions of an offender's behavior, risk he or she may present to the community, and need for mental health treatment, including medications, and shall not disclose or release to the public copies of treatment documents

or records, except as otherwise provided by law. All disclosure of information to the public must be done in a manner consistent with the written policy established by the secretary. The decision to disclose or not shall not result in civil liability for the department or its employees so long as the decision was reached in good faith and without gross negligence. Nothing in this subsection prevents any person from reporting to law enforcement or the department behavior that he or she believes creates a public safety risk. [2004 c 166 § 5; 2000 c 75 § 4.]

**\*Reviser's note:** RCW 71.34.225 was recodified as RCW 71.34.345 pursuant to 2005 c 371 § 6.

**Severability—Effective dates—2004 c 166:** See notes following RCW 71.05.040.

**Intent—2000 c 75:** See note following RCW 71.05.445.

**72.09.590 Community safety.** To the extent practicable, the department shall deploy community corrections staff on the basis of geographic areas in which offenders under the department's jurisdiction are located, and shall establish a systematic means of assessing risk to the safety of those communities. [1999 c 196 § 13.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**72.09.600 Rules—Chapter 196, Laws of 1999.** The secretary of corrections may adopt rules to implement sections 1 through 13, chapter 196, Laws of 1999. [1999 c 196 § 14.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**72.09.610 Community custody study. (Expires December 31, 2010.)** (1) The Washington state institute for public policy shall conduct a study of the effect of the use of community custody under chapter 196, Laws of 1999. The study shall include the effect of chapter 196, Laws of 1999 on recidivism and other outcomes. In its study the institute shall consider:

(a) Recidivism, according to the definition adopted by the institute pursuant to section 59, chapter 338, Laws of 1997;

(b) The number and seriousness level of violations of conditions;

(c) The application of the graduated sanctions by the department;

(d) Unauthorized absences from supervision;

(e) Payment of legal financial obligations;

(f) Unlawful use of controlled substances;

(g) Use of alcohol when abstention or treatment for alcoholism is a condition of supervision;

(h) Effects on the number of offenders who are employed or participate in vocational rehabilitation;

(i) Participation in vocational and education programs; and

(j) Impact on the receipt of public assistance.

(2) By January 1, 2000, the institute shall report to the legislature on the design for the study. By January 1st of each year thereafter, the institute shall report to the legislature on the progress and findings of the study and make recommendations based on its findings. By January 1, 2010, the insti-

(2010 Ed.)

tute shall provide to the legislature a final report on the findings of the study.

(3) Subsections (1) and (2) of this section expire December 31, 2010. [1999 c 196 § 16.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**72.09.620 Extraordinary medical placement—Reports.** The secretary shall report annually to the legislature on the number of offenders considered for an extraordinary medical placement, the number of offenders who were granted such a placement, the number of offenders who were denied such a placement, the length of time between initial consideration and the placement decision for each offender who was granted an extraordinary medical placement, the number of offenders granted an extraordinary medical placement who were later returned to total confinement, and the cost savings realized by the state. [1999 c 324 § 7.]

**72.09.630 Custodial sexual misconduct—Investigation of allegations.** The department shall investigate any alleged violations of RCW 9A.44.160 or 9A.44.170 that are alleged to have been committed by an employee or contract personnel of the department, to determine whether there is probable cause to believe that the allegation is true before reporting the alleged violation to a prosecuting attorney. [1999 c 45 § 7.]

**72.09.650 Use of force by limited authority Washington peace officers—Detention of persons.** (1) An employee of the department who is a limited authority Washington peace officer under RCW 10.93.020 may use reasonable force to detain, search, or remove persons who enter or remain without permission within a correctional facility or institutional grounds or whenever, upon probable cause, it appears to such employee that a person has committed or is attempting to commit a crime, or possesses contraband within a correctional facility or institutional grounds. Should any person be detained, the department shall immediately notify a local law enforcement agency having jurisdiction over the correctional facility or institutional grounds of the detainment. The department is authorized to detain the person for a reasonable time to search the person and confiscate any contraband, and until custody of the person and any illegal contraband can be transferred to a law enforcement officer when appropriate. An employee of the department who is a limited authority Washington peace officer under RCW 10.93.020 may use that force necessary in the protection of persons and properties located within the confines of the correctional facility or institutional grounds.

(2) The rights granted in subsection (1) of this section are in addition to any others that may exist by law including, but not limited to, the rights granted in RCW 9A.16.020. [2001 c 11 § 1.]

**Effective date—2001 c 11:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [April 13, 2001]." [2001 c 11 § 2.]

**72.09.651 Use of restraints on pregnant women or youth in custody—Allowed in extraordinary circumstances.** (1) Except in extraordinary circumstances, no

[Title 72 RCW—page 45]

restraints of any kind may be used on any pregnant woman or youth incarcerated in a correctional facility during transportation to and from visits to medical providers and court proceedings during the third trimester of her pregnancy, or during postpartum recovery. For purposes of this section, "extraordinary circumstances" exist where a corrections officer makes an individualized determination that restraints are necessary to prevent an incarcerated pregnant woman or youth from escaping, or from injuring herself, medical or correctional personnel, or others. In the event the corrections officer determines that extraordinary circumstances exist and restraints are used, the corrections officer must fully document in writing the reasons that he or she determined such extraordinary circumstances existed such that restraints were used. As part of this documentation, the corrections officer must also include the kind of restraints used and the reasons those restraints were considered the least restrictive available and the most reasonable under the circumstances.

(2) While the pregnant woman or youth is in labor or in childbirth no restraints of any kind may be used. Nothing in this section affects the use of hospital restraints requested for the medical safety of a patient by treating physicians licensed under Title 18 RCW.

(3) Anytime restraints are permitted to be used on a pregnant woman or youth, the restraints must be the least restrictive available and the most reasonable under the circumstances, but in no case shall leg irons or waist chains be used on any woman or youth known to be pregnant.

(4) No correctional personnel shall be present in the room during the pregnant woman's or youth's labor or childbirth, unless specifically requested by medical personnel. If the employee's presence is requested by medical personnel, the employee should be female, if practicable.

(5) If the doctor, nurse, or other health professional treating the pregnant woman or youth requests that restraints not be used, the corrections officer accompanying the pregnant woman or youth shall immediately remove all restraints. [2010 c 181 § 2.]

**72.09.652 Use of restraints on pregnant women or youth in custody—Provision of information to staff and pregnant women and youth in custody.** (1) The secretary shall provide an informational packet about the requirements of chapter 181, Laws of 2010 to all medical staff and non-medical staff who are involved in the transportation of women and youth who are pregnant, as well as such other staff as the secretary deems appropriate. The informational packet provided to staff under this section shall be developed as provided in RCW 70.48.800.

(2) The secretary shall cause the requirements of chapter 181, Laws of 2010 to be provided to all women or youth who are pregnant, at the time the department assumes custody of the person. In addition, the secretary shall cause a notice containing the requirements of chapter 181, Laws of 2010 to be posted in conspicuous locations in the correctional facilities, including but not limited to the locations in which medical care is provided within the facilities. [2010 c 181 § 3.]

**72.09.670 Gang involvement among incarcerated offenders—Intervention programs—Study.** (1) The

department shall study and establish best practices to reduce gang involvement and recruitment among incarcerated offenders. The department shall study and make recommendations regarding the establishment of:

(a) Intervention programs within the institutions of the department for offenders who are seeking to opt out of gangs. The intervention programs shall include, but are not limited to, tattoo removal, anger management, GED, and other interventions; and

(b) An intervention program to assist gang members with successful reentry into the community.

(2) The department shall report to the legislature on its findings and recommendations by January 1, 2009. [2008 c 276 § 601.]

**Severability—Part headings, subheadings not law—2008 c 276:** See notes following RCW 36.28A.200.

**72.09.710 Drug offenders—Notice of release or escape.** (1) At the earliest possible date, and in no event later than ten days before release except in the event of escape or emergency furloughs as defined in RCW 72.66.010, the department of corrections shall send written notice of parole, community custody, work release placement, furlough, or escape about a specific inmate convicted of a serious drug offense to the following if such notice has been requested in writing about a specific inmate convicted of a serious drug offense:

(a) Any witnesses who testified against the inmate in any court proceedings involving the serious drug offense; and

(b) Any person specified in writing by the prosecuting attorney.

Information regarding witnesses requesting the notice, information regarding any other person specified in writing by the prosecuting attorney to receive the notice, and the notice are confidential and shall not be available to the inmate.

(2) If an inmate convicted of a serious drug offense escapes from a correctional facility, the department of corrections shall immediately notify, by the most reasonable and expedient means available, the chief of police of the city and the sheriff of the county in which the inmate resided immediately before the inmate's arrest and conviction. If previously requested, the department shall also notify the witnesses who are entitled to notice under this section. If the inmate is recaptured, the department shall send notice to the persons designated in this subsection as soon as possible but in no event later than two working days after the department learns of such recapture.

(3) If any witness is under the age of sixteen, the notice required by this section shall be sent to the parents or legal guardian of the child.

(4) The department of corrections shall send the notices required by this section to the last address provided to the department by the requesting party. The requesting party shall furnish the department with a current address.

(5) For purposes of this section, "serious drug offense" means an offense under RCW 69.50.401(2) (a) or (b) or 69.50.4011(2) (a) or (b). [2008 c 231 § 26; 2003 c 53 § 61; 1996 c 205 § 4; 1991 c 147 § 1. Formerly RCW 9.94A.610, 9.94A.154.]

**Intent—Application—Application of repealers—Effective date—2008 c 231:** See notes following RCW 9.94A.701.

**Severability—2008 c 231:** See note following RCW 9.94A.500.

**Intent—Effective date—2003 c 53:** See notes following RCW 2.48.180.

**72.09.712 Prisoner escape, parole, release, community custody or work release placement, or furlough—Notification procedures.** (1) At the earliest possible date, and in no event later than thirty days before release except in the event of escape or emergency furloughs as defined in RCW 72.66.010, the department of corrections shall send written notice of parole, release, community custody, work release placement, furlough, or escape about a specific inmate convicted of a violent offense, a sex offense as defined by RCW 9.94A.030, a domestic violence court order violation pursuant to RCW 10.99.040, 10.99.050, 26.09.300, 26.10.220, 26.26.138, 26.50.110, 26.52.070, or 74.34.145, or a felony harassment offense as defined by RCW 9A.46.060 or 9A.46.110, to the following:

(a) The chief of police of the city, if any, in which the inmate will reside or in which placement will be made in a work release program; and

(b) The sheriff of the county in which the inmate will reside or in which placement will be made in a work release program.

The sheriff of the county where the offender was convicted shall be notified if the department does not know where the offender will reside. The department shall notify the state patrol of the release of all sex offenders, and that information shall be placed in the Washington crime information center for dissemination to all law enforcement.

(2) The same notice as required by subsection (1) of this section shall be sent to the following if such notice has been requested in writing about a specific inmate convicted of a violent offense, a sex offense as defined by RCW 9.94A.030, a domestic violence court order violation pursuant to RCW 10.99.040, 10.99.050, 26.09.300, 26.10.220, 26.26.138, 26.50.110, 26.52.070, or 74.34.145, or a felony harassment offense as defined by RCW 9A.46.060 or 9A.46.110:

(a) The victim of the crime for which the inmate was convicted or the victim's next of kin if the crime was a homicide;

(b) Any witnesses who testified against the inmate in any court proceedings involving the violent offense;

(c) Any person specified in writing by the prosecuting attorney; and

(d) Any person who requests such notice about a specific inmate convicted of a sex offense as defined by RCW 9.94A.030 from the department of corrections at least sixty days prior to the expected release date of the offender.

Information regarding victims, next of kin, or witnesses requesting the notice, information regarding any other person specified in writing by the prosecuting attorney to receive the notice, and the notice are confidential and shall not be available to the inmate. Whenever the department of corrections mails notice pursuant to this subsection and the notice is returned as undeliverable, the department shall attempt alternative methods of notification, including a telephone call to the person's last known telephone number.

(3) The existence of the notice requirements contained in subsections (1) and (2) of this section shall not require an

(2010 Ed.)

extension of the release date in the event that the release plan changes after notification.

(4) If an inmate convicted of a violent offense, a sex offense as defined by RCW 9.94A.030, a domestic violence court order violation pursuant to RCW 10.99.040, 10.99.050, 26.09.300, 26.10.220, 26.26.138, 26.50.110, 26.52.070, or 74.34.145, or a felony harassment offense as defined by RCW 9A.46.060 or 9A.46.110, escapes from a correctional facility, the department of corrections shall immediately notify, by the most reasonable and expedient means available, the chief of police of the city and the sheriff of the county in which the inmate resided immediately before the inmate's arrest and conviction. If previously requested, the department shall also notify the witnesses and the victim of the crime for which the inmate was convicted or the victim's next of kin if the crime was a homicide. If the inmate is recaptured, the department shall send notice to the persons designated in this subsection as soon as possible but in no event later than two working days after the department learns of such recapture.

(5) If the victim, the victim's next of kin, or any witness is under the age of sixteen, the notice required by this section shall be sent to the parents or legal guardian of the child.

(6) The department of corrections shall send the notices required by this chapter to the last address provided to the department by the requesting party. The requesting party shall furnish the department with a current address.

(7) The department of corrections shall keep, for a minimum of two years following the release of an inmate, the following:

(a) A document signed by an individual as proof that that person is registered in the victim or witness notification program; and

(b) A receipt showing that an individual registered in the victim or witness notification program was mailed a notice, at the individual's last known address, upon the release or movement of an inmate.

(8) For purposes of this section the following terms have the following meanings:

(a) "Violent offense" means a violent offense under RCW 9.94A.030;

(b) "Next of kin" means a person's spouse, state registered domestic partner, parents, siblings and children.

(9) Nothing in this section shall impose any liability upon a chief of police of a city or sheriff of a county for failing to request in writing a notice as provided in subsection (1) of this section. [2009 c 521 § 166; 2009 c 400 § 1; 2008 c 231 § 27; 1996 c 215 § 4. Prior: 1994 c 129 § 3; 1994 c 77 § 1; prior: 1992 c 186 § 7; 1992 c 45 § 2; 1990 c 3 § 121; 1989 c 30 § 1; 1985 c 346 § 1. Formerly RCW 9.94A.612, 9.94A.155.]

**Reviser's note:** This section was amended by 2009 c 400 § 1 and by 2009 c 521 § 166, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

**Effective date—2009 c 521 §§ 5-8, 79, 87-103, 107, 151, 165, 166, 173-175, and 190-192:** See note following RCW 2.10.900.

**Effective date—2009 c 400:** "This act takes effect August 1, 2009." [2009 c 400 § 3.]

**Intent—Application—Application of repealers—Effective date—2008 c 231:** See notes following RCW 9.94A.701.

**Severability—2008 c 231:** See note following RCW 9.94A.500.

**Findings—Intent—1994 c 129:** See note following RCW 4.24.550.

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**72.09.713 Prisoner escape, parole, release, community custody or work release placement, or furlough—Notice of work release placement.** (1) When a victim of a crime or the victim's next of kin requests notice under RCW 72.09.712 regarding a specific inmate, the department shall advise the requester in writing of the possibility that part of the sentence may be served by the inmate in a work release facility and instruct the requester on how to submit input to the department regarding the inmate's work release placement.

(2) When the department notifies a victim or the victim's next of kin under RCW 72.09.712 of an offender's placement in work release, the department shall also provide instruction on how to submit input regarding the offender's work release placement.

(3) The department shall consider any input received from a victim or the victim's next of kin under subsection (1) or (2) of this section if the input is received at least seven days prior to the offender's placement in work release. The department may consider any input from a victim or the victim's next of kin under subsection (1) or (2) of this section if the input is received less than seven days prior to the offender's placement in work release. The department may alter its placement decision based on any input considered under this subsection. [2009 c 69 § 1.]

**Effective date—2009 c 69 § 1:** "Section 1 of this act takes effect August 1, 2009." [2009 c 69 § 2.]

**72.09.714 Prisoner escape, release, or furlough—Homicide, violent, and sex offenses—Rights of victims and witnesses.** The department of corrections shall provide the victims, witnesses, and next of kin in the case of a homicide and victims and witnesses involved in violent offense cases, sex offenses as defined by RCW 9.94A.030, a domestic violence court order violation pursuant to RCW 10.99.040, 10.99.050, 26.09.300, 26.10.220, 26.26.138, 26.50.110, 26.52.070, or 74.34.145, or a felony harassment pursuant to RCW 9A.46.060 or 9A.46.110, a statement of the rights of victims and witnesses to request and receive notification under RCW 72.09.712 and 72.09.716. [2009 c 400 § 2; 2009 c 28 § 37; 1989 c 30 § 2; 1985 c 346 § 2. Formerly RCW 9.94A.614, 9.94A.156.]

**Reviser's note:** This section was amended by 2009 c 28 § 37 and by 2009 c 400 § 2, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

**Effective date—2009 c 400:** See note following RCW 72.09.712.

**Effective date—2009 c 28:** See note following RCW 2.24.040.

**72.09.716 Prisoner escape, release, or furlough—Requests for notification.** Requests for notification under RCW 72.09.712 shall be made by sending a written request by certified mail directly to the department of corrections and giving the defendant's name, the name of the county in which the trial took place, and the month of the trial. Notification information and necessary forms shall be available through the department of corrections, county prosecutors' offices, and other agencies as deemed appropriate by the department

of corrections. [2009 c 28 § 38; 1985 c 346 § 3. Formerly RCW 9.94A.616, 9.94A.157.]

**Effective date—2009 c 28:** See note following RCW 2.24.040.

**72.09.718 Prisoner escape, release, or furlough—Notification as additional requirement.** The notification requirements of RCW 72.09.712 are in addition to any requirements in RCW 43.43.745 or other law. [2009 c 28 § 39; 1985 c 346 § 4. Formerly RCW 9.94A.618, 9.94A.158.]

**Effective date—2009 c 28:** See note following RCW 2.24.040.

**72.09.720 Prisoner escape, release, or furlough—Consequences of failure to notify.** Civil liability shall not result from failure to provide notice required under RCW 72.09.712 through 72.09.718, 9.94A.030, and 43.43.745 unless the failure is the result of gross negligence. [2009 c 28 § 40; 1985 c 346 § 7. Formerly RCW 9.94A.620, 9.94A.159.]

**Effective date—2009 c 28:** See note following RCW 2.24.040.

**72.09.900 Effective date—1981 c 136.** This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect July 1, 1981. [1981 c 136 § 124.]

**72.09.901 Short title.** This chapter may be known and cited as the corrections reform act of 1981. [1981 c 136 § 1.]

**72.09.902 Construction—1981 c 136.** All references to the department or secretary of social and health services in other chapters of the Revised Code of Washington shall be construed as meaning the department or secretary of corrections when referring to the functions established by this chapter. [1981 c 136 § 29.]

**72.09.903 Savings—1981 c 136.** All rules and all pending business before the secretary of social and health services and the department of social and health services pertaining to matters transferred by RCW 72.09.040 shall be continued and acted upon by the department of corrections.

All existing contracts and obligations pertaining to the powers, duties, and functions transferred shall remain in full force and effect and shall be performed by the department of corrections.

The transfer of powers, duties, and functions under RCW 72.09.040 shall not affect the validity of any act performed prior to July 1, 1981, by the department of social and health services or its secretary and, except as otherwise specifically provided, shall not affect the validity of any rights existing on July 1, 1981.

If questions arise regarding whether any sort of obligation is properly that of the department of social and health services or the department of corrections, such questions shall be resolved by the director of financial management. [1981 c 136 § 30.]

**72.09.904 Construction—1999 c 196.** Nothing in chapter 196, Laws of 1999 shall be construed to create an immunity or defense from liability for personal injury or

wrongful death based solely on availability of funds. [1999 c 196 § 17.]

**72.09.905 Short title—1999 c 196.** This act may be known and cited as the offender accountability act. [1999 c 196 § 18.]

**72.09.906 Construction—Chapter applicable to state registered domestic partnerships—2009 c 521.** For the purposes of this chapter, the terms spouse, marriage, marital, husband, wife, widow, widower, next of kin, and family shall be interpreted as applying equally to state registered domestic partnerships or individuals in state registered domestic partnerships as well as to marital relationships and married persons, and references to dissolution of marriage shall apply equally to state registered domestic partnerships that have been terminated, dissolved, or invalidated, to the extent that such interpretation does not conflict with federal law. Where necessary to implement chapter 521, Laws of 2009, gender-specific terms such as husband and wife used in any statute, rule, or other law shall be construed to be gender neutral, and applicable to individuals in state registered domestic partnerships. [2009 c 521 § 164.]

**Chapter 72.10 RCW**

**HEALTH CARE SERVICES—  
DEPARTMENT OF CORRECTIONS**

Sections

72.10.005	Intent—Application.
72.10.010	Definitions.
72.10.020	Health services delivery plan—Reports to the legislature— Policy for distribution of personal hygiene items—Expira- tion of subsection.
72.10.030	Contracts for services.
72.10.040	Rules.
72.10.050	Rules to implement RCW 72.10.020.
72.10.060	Inmates who have received mental health treatment—Notifi- cation to treatment provider at time of release.

**72.10.005 Intent—Application.** It is the intent of the legislature that inmates in the custody of the department of corrections receive such basic medical services as may be mandated by the federal Constitution and the Constitution of the state of Washington. Notwithstanding any other laws, it is the further intent of the legislature that the department of corrections may contract directly with any persons, firms, agencies, or corporations qualified to provide such services. Nothing in this chapter is to be construed to authorize a reduction in state employment in service component areas presently rendering such services or to preclude work typically and historically performed by department employees. [1989 c 157 § 1.]

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

- (1) "Department" means the department of corrections.
- (2) "Health care practitioner" means an individual or firm licensed or certified to actively engage in a regulated health profession.
- (3) "Health profession" means those licensed or regulated professions set forth in RCW 18.120.020(4).

(4) "Health care facility" means any hospital, hospice care center, licensed or certified health care facility, health maintenance organization regulated under chapter 48.46 RCW, federally qualified health maintenance organization, federally approved renal dialysis center or facility, or federally approved blood bank.

(5) "Health care services" means medical, dental, and mental health care services.

(6) "Secretary" means the secretary of the department.

(7) "Superintendent" means the superintendent of a correctional facility under the jurisdiction of the department, or his or her designee. [1995 1st sp.s. c 19 § 16; 1989 c 157 § 2.]

**Findings—Purpose—Short title—Severability—Effective date—1995 1st sp.s. c 19:** See notes following RCW 72.09.450.

**72.10.020 Health services delivery plan—Reports to the legislature—Policy for distribution of personal hygiene items—Expiration of subsection.** (1) Upon entry into the correctional system, offenders shall receive an initial medical examination. The department shall prepare a health profile for each offender that includes at least the following information: (a) An identification of the offender's serious medical and dental needs; (b) an evaluation of the offender's capacity for work and recreation; and (c) a financial assessment of the offender's ability to pay for all or a portion of his or her health care services from personal resources or private insurance.

(2)(a) The department may develop and implement a plan for the delivery of health care services and personal hygiene items to offenders in the department's correctional facilities, at the discretion of the secretary, and in conformity with federal law.

(b) To discourage unwarranted use of health care services caused by unnecessary visits to health care providers, offenders shall participate in the costs of their health care services by paying a nominal amount of no less than three dollars per visit, as determined by the secretary. Under the authority granted in RCW 72.01.050(2), the secretary may authorize the superintendent to collect this amount directly from an offender's institution account. All copayments collected from offenders' institution accounts shall be deposited into the general fund.

(c) Offenders are required to make copayments for initial health care visits that are offender initiated and, by rule adopted by the department, may be charged a copayment for subsequent visits related to the medical condition which caused the initial visit. Offenders are not required to pay for emergency treatment or for visits initiated by health care staff or treatment of those conditions that constitute a serious health care need.

(d) No offender may be refused any health care service because of indigence.

(e) At no time shall the withdrawal of funds for the payment of a medical service copayment result in reducing an offender's institution account to an amount less than the level of indigency as defined in chapter 72.09 RCW.

(3)(a) The department shall report annually to the legislature the following information for the fiscal year preceding the report: (i) The total number of health care visits made by offenders; (ii) the total number of copayments assessed; (iii) the total dollar amount of copayments collected; (iv) the total

number of copayments not collected due to an offender's indigency; and (v) the total number of copayments not assessed due to the serious or emergent nature of the health care treatment or because the health care visit was not offender initiated.

(b) The first report required under this section shall be submitted not later than October 1, 1996, and shall include, at a minimum, all available information collected through the second half of fiscal year 1996. This subsection (3)(b) shall expire December 1, 1996.

(4)(a) The secretary shall adopt, by rule, a uniform policy relating to the distribution and replenishment of personal hygiene items for inmates incarcerated in all department institutions. The policy shall provide for the initial distribution of adequate personal hygiene items to inmates upon their arrival at an institution.

(b) The acquisition of replenishment personal hygiene items is the responsibility of inmates, except that indigent inmates shall not be denied adequate personal hygiene items based on their inability to pay for them.

(c) The policy shall provide that the replenishment personal hygiene items be distributed to inmates only in authorized quantities and at intervals that reflect prudent use and customary wear and consumption of the items.

(5) The following become a debt and are subject to RCW 72.09.450:

(a) All copayments under subsection (2) of this section that are not collected when the visit occurs; and

(b) All charges for replenishment personal hygiene items that are not collected when the item is distributed. [1995 1st sp.s. c 19 § 17; 1989 c 157 § 3.]

**Findings—Purpose—Short title—Severability—Effective date—1995 1st sp.s. c 19:** See notes following RCW 72.09.450.

**72.10.030 Contracts for services.** (1) Notwithstanding any other provisions of law, the secretary may enter into contracts with health care practitioners, health care facilities, and other entities or agents as may be necessary to provide basic medical care to inmates. The contracts shall not cause the termination of classified employees of the department rendering the services at the time the contract is executed.

(2) In contracting for services, the secretary is authorized to provide for indemnification of health care practitioners who cannot obtain professional liability insurance through reasonable effort, from liability on any action, claim, or proceeding instituted against them arising out of the good faith performance or failure of performance of services on behalf of the department. The contracts may provide that for the purposes of chapter 4.92 RCW only, those health care practitioners with whom the department has contracted shall be considered state employees. [1989 c 157 § 4.]

**72.10.040 Rules.** The secretary shall have the power to make rules necessary to carry out the intent of this chapter. [1989 c 157 § 5.]

**72.10.050 Rules to implement RCW 72.10.020.** The department shall adopt rules to implement RCW 72.10.020. [1995 1st sp.s. c 19 § 18.]

**Findings—Purpose—Short title—Severability—Effective date—1995 1st sp.s. c 19:** See notes following RCW 72.09.450.

**72.10.060 Inmates who have received mental health treatment—Notification to treatment provider at time of release.** The secretary shall, for any person committed to a state correctional facility after July 1, 1998, inquire at the time of commitment whether the person had received outpatient mental health treatment within the two years preceding confinement and the name of the person providing the treatment.

The secretary shall inquire of the treatment provider if he or she wishes to be notified of the release of the person from confinement, for purposes of offering treatment upon the inmate's release. If the treatment provider wishes to be notified of the inmate's release, the secretary shall attempt to provide such notice at least seven days prior to release.

At the time of an inmate's release if the secretary is unable to locate the treatment provider, the secretary shall notify the regional support network in the county the inmate will most likely reside following release.

If the secretary has, prior to the release from the facility, evaluated the inmate and determined he or she requires post-release mental health treatment, a copy of relevant records and reports relating to the inmate's mental health treatment or status shall be promptly made available to the offender's present or future treatment provider. The secretary shall determine which records and reports are relevant and may provide a summary in lieu of copies of the records. [1998 c 297 § 48.]

**Effective dates—Severability—Intent—1998 c 297:** See notes following RCW 71.05.010.

## Chapter 72.11 RCW

### OFFENDERS' RESPONSIBILITY FOR LEGAL FINANCIAL OBLIGATIONS

#### Sections

72.11.010	Definitions.
72.11.020	Inmate funds—Legal financial obligations—Disbursal by secretary.
72.11.030	Inmate accounts—Legal financial obligations—Priority—Deductions.
72.11.040	Cost of supervision fund.

**72.11.010 Definitions.** Unless a different meaning is plainly required by the context, the following words and phrases as hereafter used in this chapter shall have the following meanings:

(1) "Court-ordered legal financial obligation" means a sum of money that is ordered by a superior court of the state of Washington for payment of restitution to a victim, statutorily imposed crime victims compensation fee, court costs, a county or interlocal drug fund, court-appointed attorneys' fees and costs of defense, fines, and any other legal financial obligation that is assessed as a result of a felony conviction.

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

(3) "Offender" means an individual who is currently under the jurisdiction of the Washington state department of corrections, and who also has a court-ordered legal financial obligation as a result of a felony conviction.

(4) "Secretary" means the secretary of the department of corrections or the secretary's designee.

(5) "Superintendent" means the superintendent of a correctional facility under the jurisdiction of the Washington state department of corrections. [1989 c 252 § 22.]

**Purpose—Prospective application—Effective dates—Severability—1989 c 252:** See notes following RCW 9.94A.030.

**72.11.020 Inmate funds—Legal financial obligations—Disbursal by secretary.** The secretary shall be custodian of all funds of a convicted person that are in his or her possession upon admission to a state institution, or that are sent or brought to the person, or earned by the person while in custody, or that are forwarded to the superintendent on behalf of a convicted person. All such funds shall be deposited in the personal account of the convicted person within the institutional resident deposit account as established by the office of financial management pursuant to RCW 43.88.195, and the secretary shall have authority to disburse money from such person's personal account for the purposes of satisfying a court-ordered legal financial obligation to the court. Legal financial obligation deductions shall be made as stated in RCW 72.09.111(1) and 72.65.050 without exception. Unless specifically granted authority herein, at no time shall the withdrawal of funds for the payment of a legal financial obligation result in reducing the inmate's account to an amount less than the defined level of indigency to be determined by the department.

Further, unless specifically altered herein, court-ordered legal financial obligations shall be paid. [2002 c 126 § 1; 1989 c 252 § 23.]

**Purpose—Prospective application—Effective dates—Severability—1989 c 252:** See notes following RCW 9.94A.030.

**72.11.030 Inmate accounts—Legal financial obligations—Priority—Deductions.** (1) Except as otherwise provided herein, all court-ordered legal financial obligations shall take priority over any other statutorily imposed mandatory withdrawals from inmate's accounts.

(2) For those inmates who are on work release pursuant to chapter 72.65 RCW, before any legal financial obligations are withdrawn from the inmate's account, the inmate is entitled to payroll deductions that are required by law, or such payroll deductions as may reasonably be required by the nature of the employment unless any such amount which his or her work release plan specifies should be retained to help meet the inmate's needs, including costs necessary for his or her participation in the work release plan such as travel, meals, clothing, tools, and other incidentals.

(3) Before the payment of any court-ordered legal financial obligation is required, the department is entitled to reimbursement for any expenses advanced for vocational training pursuant to RCW 72.65.020(2), for expenses incident to a work release plan pursuant to RCW 72.65.090, payments for board and room charges for the work release participant, and payments that are necessary for the support of the work release participant's dependents, if any. [1989 c 252 § 24.]

**Purpose—Prospective application—Effective dates—Severability—1989 c 252:** See notes following RCW 9.94A.030.

**72.11.040 Cost of supervision fund.** The cost of supervision fund is created in the custody of the state treasurer. All receipts from assessments made under RCW 9.94A.780 and

(2010 Ed.)

72.04A.120 shall be deposited into the fund. Expenditures from the fund may be used only to support the collection of legal financial obligations. During the 2005-2007 biennium, funds from the account may also be used for costs associated with the department's supervision of the offenders in the community. Only the secretary of the department of corrections or the secretary's designee may authorize expenditures from the fund. The fund is subject to allotment procedures under chapter 43.88 RCW, but no appropriation is required for expenditures. [2005 c 518 § 943; 2003 1st sp.s. c 25 § 936; 2001 2nd sp.s. c 7 § 919; 2000 2nd sp.s. c 1 § 914; 1999 c 309 § 921; 1989 c 252 § 26.]

**Severability—Effective date—2005 c 518:** See notes following RCW 28A.500.030.

**Severability—Effective date—2003 1st sp.s. c 25:** See notes following RCW 19.28.351.

**Severability—Effective date—2001 2nd sp.s. c 7:** See notes following RCW 43.320.110.

**Severability—Effective date—2000 2nd sp.s. c 1:** See notes following RCW 41.05.143.

**Purpose—Prospective application—Effective dates—Severability—1989 c 252:** See notes following RCW 9.94A.030.

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

## Chapter 72.16 RCW GREEN HILL SCHOOL

### Sections

72.16.010 School established.  
72.16.020 Purpose of school.

*Basic juvenile court act:* Chapter 13.04 RCW.

*Child under eighteen convicted of crime amounting to felony—Placement—Segregation from adult offenders:* RCW 72.01.410.

*Commitment:* Chapter 13.04 RCW.

*Disposition of property of deceased inmate of state institution:* RCW 11.08.101, 11.08.111, 11.08.120.

*Disturbances at state penal facilities*

*development of contingency plans—Scope—Local participation:* RCW 72.02.150.

*reimbursement to cities and counties for certain expenses incurred:* RCW 72.72.050, 72.72.060.

*utilization of outside law enforcement personnel—Scope:* RCW 72.02.160.

*Educational programs for residential school residents:* RCW 28A.190.020 through 28A.190.060.

*Financial responsibility for cost of detention of minor:* RCW 13.16.085.

*Fugitives of this state:* Chapter 10.34 RCW.

*Record as to patients or inmates for purposes of vital statistics:* RCW 70.58.270.

**72.16.010 School established.** There is established at Chehalis, Lewis county, an institution which shall be known as the Green Hill school. [1959 c 28 § 72.16.010. Prior: 1955 c 230 § 1. (i) 1909 c 97 p 256 § 1; RRS § 4624. (ii) 1907 c 90 § 1; 1890 p 271 § 1; RRS § 10299.]

**72.16.020 Purpose of school.** The said school shall be for the keeping and training of all boys between the ages of eight and eighteen years who are residents of the state of Washington and who are lawfully committed to said institution. [1959 c 28 § 72.16.020. Prior: (i) 1909 c 97 p 256 § 2; RRS § 4625. (ii) 1890 p 272 § 2; RRS § 10300.]

## Chapter 72.19 RCW

JUVENILE CORRECTIONAL INSTITUTION  
IN KING COUNTY

## Sections

72.19.010	Institution established—Location.
72.19.020	Rules and regulations.
72.19.030	Superintendent—Appointment.
72.19.040	Associate superintendents—Appointment—Acting superintendent.
72.19.050	Powers and duties of superintendent.
72.19.060	Male, female, juveniles—Residential housing, separation—Correctional programs, separation, combination.
72.19.070	General obligation bond issue to provide buildings—Authorized—Form, terms, etc.
72.19.100	General obligation bond issue to provide buildings—Bond redemption fund—Payment from sales tax.
72.19.110	General obligation bond issue to provide buildings—Legislature may provide additional means of revenue.
72.19.120	General obligation bond issue to provide buildings—Bonds legal investment for state and municipal corporation funds.
72.19.130	Referral to electorate.

*Disturbances at state penal facilities*

*development of contingency plans—Scope—Local participation: RCW 72.02.150.*

*reimbursement to cities and counties for certain expenses incurred: RCW 72.72.050, 72.72.060.*

*utilization of outside law enforcement personnel—Scope: RCW 72.02.160.*

*Educational programs for residential school residents: RCW 28A.190.020 through 28A.190.060.*

**72.19.010 Institution established—Location.** There is hereby established under the supervision and control of the secretary of social and health services a correctional institution for the confinement and rehabilitation of juveniles committed by the juvenile courts to the department of social and health services. Such institution shall be situated upon publicly owned lands within King county, under the supervision of the department of natural resources, which land is located in the vicinity of Echo Lake and more particularly situated in Section 34, Township 24 North, Range 7 East W.M. and that portion of Section 3, Township 23 North, Range 7 East W.M. lying north of U.S. Highway 10, together with necessary access routes thereto, all of which tract is leased by the department of natural resources to the department of social and health services for the establishment and construction of the correctional institution authorized and provided for in this chapter. [1979 c 141 § 222; 1963 c 165 § 1; 1961 c 183 § 1.]

**72.19.020 Rules and regulations.** The secretary may make, amend and repeal rules and regulations for the administration of the juvenile correctional institution established by this chapter in furtherance of the provisions of this chapter and not inconsistent with law. [1979 c 141 § 223; 1961 c 183 § 4.]

**72.19.030 Superintendent—Appointment.** The superintendent of the correctional institution established by this chapter shall be appointed by the secretary. [1983 1st ex.s. c 41 § 27; 1979 c 141 § 224; 1963 c 165 § 3.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**72.19.040 Associate superintendents—Appointment—Acting superintendent.** The superintendent, subject to the approval of the secretary, shall appoint such associate

superintendents as shall be deemed necessary. In the event the superintendent shall be absent from the institution, or during periods of illness or other situations incapacitating the superintendent from properly performing his duties, one of the associate superintendents of such institution shall act as superintendent during such period of absence, illness or incapacity as may be designated by the secretary. [1979 c 141 § 225; 1963 c 165 § 4.]

**72.19.050 Powers and duties of superintendent.** The superintendent shall have the following powers, duties and responsibilities:

(1) Subject to the rules of the department, the superintendent shall have the supervision and management of the institution, of the grounds and buildings, the subordinate officers and employees, and of the juveniles received at such institution and the custody of such persons until released or transferred as provided by law.

(2) Subject to the rules of the department and the Washington personnel resources board, appoint all subordinate officers and employees.

(3) The superintendent shall be the custodian of the personal property of all juveniles in the institution and shall make rules governing the accounting and disposition of all moneys received by such juveniles, not inconsistent with the law, and subject to the approval of the secretary. [1993 c 281 § 65; 1979 c 141 § 226; 1963 c 165 § 5.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**72.19.060 Male, female, juveniles—Residential housing, separation—Correctional programs, separation, combination.** The plans and construction of the juvenile correctional institution established by this chapter shall provide for adequate separation of the residential housing of the male juvenile from the female juvenile. In all other respects, the juvenile correctional programs for both boys and girls may be combined or separated as the secretary deems most reasonable and effective to accomplish the reformation, training and rehabilitation of the juvenile offender, realizing all possible economies from the lack of necessity for duplication of facilities. [1979 c 141 § 227; 1963 c 165 § 7.]

**72.19.070 General obligation bond issue to provide buildings—Authorized—Form, terms, etc.** For the purpose of providing needful buildings at the correctional institution for the confinement and rehabilitation of juveniles situated in King county in the vicinity of Echo Lake which institution was established by the provisions of this chapter, the state finance committee is hereby authorized to issue, at any time prior to January 1, 1970, general obligation bonds of the state of Washington in the sum of four million six hundred thousand dollars, or so much thereof as shall be required to finance the program above set forth, to be paid and discharged within twenty years of the date of issuance.

The state finance committee is authorized to prescribe the form of such bonds, and the time of sale of all or any portion or portions of such bonds, and the conditions of sale and issuance thereof: PROVIDED, That none of the bonds herein authorized shall be sold for less than the par value thereof,

nor shall they bear interest at a rate in excess of four percent per annum.

The bonds shall pledge the full faith and credit of the state of Washington and contain an unconditional promise to pay the principal and interest when due. The committee may provide that the bonds, or any of them, may be called prior to the due date thereof under such terms and conditions as it may determine. The state finance committee may authorize the use of facsimile signatures in the issuance of the bonds. [1963 ex.s. c 27 § 1.]

**72.19.100 General obligation bond issue to provide buildings—Bond redemption fund—Payment from sales tax.** The juvenile correctional institution building bond redemption fund is hereby created in the state treasury, which fund shall be exclusively devoted to the payment of interest on and retirement of the bonds authorized by RCW 72.19.070 through 72.19.130. The state finance committee shall, on or before June 30th of each year, certify to the state treasurer the amount needed in the ensuing twelve months to meet bond retirement and interest requirements and the state treasurer shall thereupon deposit such amount in said juvenile correctional institution building bond redemption fund from moneys transmitted to the state treasurer by the department of revenue and certified by the department of revenue to be sales tax collections and such amount certified by the state finance committee to the state treasurer shall be a prior charge against all retail sales tax revenues of the state of Washington, except that portion thereof heretofore pledged for the payment of bond principal and interest.

The owner and holder of each of said bonds or the trustee for any of the bonds may by mandamus or other appropriate proceeding require and compel the transfer and payment of funds as directed herein. [1975 1st ex.s. c 278 § 35; 1963 ex.s. c 27 § 4.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**72.19.110 General obligation bond issue to provide buildings—Legislature may provide additional means of revenue.** The legislature may provide additional means for raising moneys for the payment of the interest and principal of the bonds authorized herein and RCW 72.19.070 through 72.19.130 shall not be deemed to provide an exclusive method for such payment. [1963 ex.s. c 27 § 5.]

**72.19.120 General obligation bond issue to provide buildings—Bonds legal investment for state and municipal corporation funds.** The bonds herein authorized shall be a legal investment for all state funds or for funds under state control and all funds of municipal corporations. [1963 ex.s. c 27 § 6.]

**72.19.130 Referral to electorate.** This act shall be submitted to the people for their adoption and ratification, or rejection, at the general election to be held in this state on the Tuesday next succeeding the first Monday in November, 1964, in accordance with the provisions of section 3, Article VIII of the state Constitution; and in accordance with the provisions of section 1, Article II of the state Constitution, as

(2010 Ed.)

amended, and the laws adopted to facilitate the operation thereof. [1963 ex.s. c 27 § 7.]

## Chapter 72.20 RCW MAPLE LANE SCHOOL

### Sections

72.20.001	Definitions.
72.20.010	School established.
72.20.020	Management—Superintendent.
72.20.040	Duties of superintendent.
72.20.050	Parole or discharge—Behavior credits.
72.20.060	Conditional parole—Apprehension on escape or violation of parole.
72.20.065	Intrusion—Enticement away of girls—Interference—Penalty.
72.20.070	Eligibility restricted.
72.20.090	Hiring out—Apprenticeships—Compensation.

*Basic juvenile court act: Chapter 13.04 RCW.*

*Child under eighteen convicted of crime amounting to felony—Placement—Segregation from adult offenders: RCW 72.01.410.*

*Commitment: Chapter 13.04 RCW.*

*Disposition of property of deceased inmate of state institution: RCW 11.08.101, 11.08.111, 11.08.120.*

*Disturbances at state penal facilities*

*development of contingency plans—Scope—Local participation: RCW 72.02.150.*

*reimbursement to cities and counties for certain expenses incurred: RCW 72.72.050, 72.72.060.*

*utilization of outside law enforcement personnel—Scope: RCW 72.02.160.*

*Educational programs for residential school residents: RCW 28A.190.020 through 28A.190.060.*

*Financial responsibility for cost of detention of minor: RCW 13.16.085.*

*Fugitives of this state: Chapter 10.34 RCW.*

*Record as to patients or inmates for purposes of vital statistics: RCW 70.58.270.*

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

"Department" means the department of social and health services; and

"Secretary" means the secretary of social and health services. [1981 c 136 § 98.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**72.20.010 School established.** There is established at Grand Mound, Thurston county, an institution which shall be known as the Maple Lane school. [1959 c 28 § 72.20.010. Prior: 1955 c 230 § 2; 1913 c 157 § 1; RRS § 4631.]

**72.20.020 Management—Superintendent.** The government, control and business management of such school shall be vested in the secretary. The secretary shall, with the approval of the governor, appoint a suitable superintendent of said school, and shall designate the number of subordinate officers and employees to be employed, and fix their respective salaries, and have power, with the like approval, to make and enforce all such rules and regulations for the administration, government and discipline of the school as the secretary may deem just and proper, not inconsistent with this chapter. [1979 c 141 § 228; 1959 c 39 § 1; 1959 c 28 § 72.20.020. Prior: 1913 c 157 § 3; RRS § 4633.]

*Appointment of chief executive officers and subordinate employees, general provisions: RCW 72.01.060.*

**72.20.040 Duties of superintendent.** The superintendent, subject to the direction and approval of the secretary shall:

(1) Have general supervision and control of the grounds and buildings of the institution, the subordinate officers and employees, and the inmates thereof, and all matters relating to their government and discipline.

(2) Make such rules, regulations and orders, not inconsistent with law or with the rules, regulations or directions of the secretary, as may seem to him proper or necessary for the government of such institution and for the employment, discipline and education of the inmates, except for the program of education provided pursuant to RCW 28A.190.030 through 28A.190.050 which shall be governed by the school district conducting the program.

(3) Exercise such other powers, and perform such other duties as the secretary may prescribe. [1990 c 33 § 593; 1979 ex.s. c 217 § 10; 1979 c 141 § 229; 1959 c 39 § 2; 1959 c 28 § 72.20.040. Prior: 1913 c 157 § 5; RRS § 4635.]

**Purpose—Statutory references—Severability—1990 c 33:** See RCW 28A.900.100 through 28A.900.102.

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**72.20.050 Parole or discharge—Behavior credits.** The department, acting with the superintendent, shall, under a system of marks, or otherwise, fix upon a uniform plan by which girls may be paroled or discharged from the school, which system shall be subject to revision from time to time. Each girl shall be credited for personal demeanor, diligence in labor or study and for the results accomplished, and charged for derelictions, negligence or offense. The standing of each girl shall be made known to her as often as once a month. [1959 c 28 § 72.20.050. Prior: 1913 c 157 § 8; RRS § 4638.]

**72.20.060 Conditional parole—Apprehension on escape or violation of parole.** Every girl shall be entitled to a trial on parole before reaching the age of twenty years, such parole to continue for at least one year unless violated. The superintendent and resident physician, with the approval of the secretary, shall determine whether such parole has been violated. Any girl committed to the school who shall escape therefrom, or who shall violate a parole, may be apprehended and returned to the school by any officer or citizen on written order or request of the superintendent. [1979 c 141 § 230; 1959 c 28 § 72.20.060. Prior: 1913 c 157 § 9, part; RRS § 4639, part.]

**72.20.065 Intrusion—Enticement away of girls—Interference—Penalty.** Any person who shall go upon the school grounds except on lawful business, or by consent of the superintendent, or who shall entice any girl away from the school, or who shall in any way interfere with its management or discipline, shall be guilty of a misdemeanor. [1959 c 28 § 72.20.065. Prior: 1913 c 157 § 9, part; RRS § 4639, part.]

**72.20.070 Eligibility restricted.** No girl shall be received in the Maple Lane school who is not of sound mind, or who is subject to epileptic or other fits, or is not possessed

of that degree of bodily health which should render her a fit subject for the discipline of the school. It shall be the duty of the court committing her to cause such girl to be examined by a reputable physician to be appointed by the court, who will certify to the above facts, which certificate shall be forwarded to the school with the commitment. Any girl who may have been committed to the school, not complying with the above requirements, may be returned by the superintendent to the court making the commitment, or to the officer or institution last having her in charge. The department shall arrange for the transportation of all girls to and from the school. [1959 c 28 § 72.20.070. Prior: 1913 c 157 § 10; RRS § 4640.]

**72.20.090 Hiring out—Apprenticeships—Compensation.** The superintendent shall have power to place any girl under the age of eighteen years at any employment for account of the institution or the girl employed, and receive and hold the whole or any part of her wages for the benefit of the girl less the amount necessary for her board and keep, and may also, with the consent of any girl over fourteen years of age, and the approval of the secretary endorsed thereon, execute indentures of apprenticeship, which shall be binding on all parties thereto. In case any girl so apprenticed shall prove untrustworthy or unsatisfactory, the superintendent may permit her to be returned to the school, and the indenture may thereupon be canceled. If such girl shall have an unsuitable employer, the superintendent may, with the approval of the secretary, take her back to the school, and cancel the indenture of apprenticeship. All indentures so made shall be filed and kept in the school. A system may also be established, providing for compensation to girls for services rendered, and payments may be made from time to time, not to exceed in the aggregate to any one girl the sum of twenty-five dollars for each year of service. [1979 c 141 § 232; 1959 c 28 § 72.20.090. Prior: 1913 c 157 § 12; RRS § 4642.]

## Chapter 72.23 RCW PUBLIC AND PRIVATE FACILITIES FOR MENTALLY ILL

### Sections

72.23.010	Definitions.
72.23.020	State hospitals designated.
72.23.025	Eastern and western state hospital boards established—Primary diagnosis of mental disorder—Duties—Institutes for the study and treatment of mental disorders established.
72.23.027	Integrated service delivery—Incentives to discourage inappropriate placement—Specialized care programs.
72.23.030	Superintendent—Powers—Direction of clinical care, exception.
72.23.035	Background checks of prospective employees.
72.23.040	Seal of hospital.
72.23.050	Superintendent as witness—Exemptions from military duty.
72.23.060	Gifts—Record—Use.
72.23.080	Voluntary patients—Legal competency—Record.
72.23.100	Voluntary patients—Policy—Duration.
72.23.110	Voluntary patients—Limitation as to number.
72.23.120	Voluntary patients—Charges for hospitalization.
72.23.125	Temporary residential observation and evaluation of persons requesting treatment.
72.23.130	History of patient.
72.23.160	Escape—Apprehension and return.
72.23.170	Escape of patient—Penalty for assisting.
72.23.180	Discharge, parole, death, escape—Notice—Certificate of discharge.
72.23.190	Death—Report to coroner.
72.23.200	Persons under eighteen—Confinement in adult wards.
72.23.210	Persons under eighteen—Special wards and attendants.

- 72.23.230 Patient's property—Superintendent as custodian—Management and accounting.
- 72.23.240 Patient's property—Delivery to superintendent as acquittance—Defense, indemnity.
- 72.23.250 Funds donated to patients.
- 72.23.260 Federal patients—Agreements authorized.
- 72.23.280 Nonresidents—Hospitalization.
- 72.23.290 Transfer of patients—Authority of transferee.
- 72.23.300 Bringing narcotics, intoxicating liquors, weapons, etc., into institution or its grounds prohibited—Penalty.
- 72.23.390 Safe patient handling.
- 72.23.400 Workplace safety plan.
- 72.23.410 Violence prevention training.
- 72.23.420 Record of violent acts.
- 72.23.430 Noncompliance—Citation under chapter 49.17 RCW.
- 72.23.440 Technical assistance and training.
- 72.23.451 Annual report to the legislature.
- 72.23.460 Provisions applicable to hospitals governed by chapter.
- 72.23.900 Construction—Purpose—1959 c 28.
- 72.23.910 Construction—Effect on laws relating to the criminally insane—"Insane" as used in other statutes.
- 72.23.920 Construction—Chapter applicable to state registered domestic partnerships—2009 c 521.

*Commitment to veterans' administration or other federal agency:* RCW 73.36.165.

*County hospitals:* Chapter 36.62 RCW.

*Division of mental health:* Chapter 43.20A RCW.

*Mental illness, commitment procedures, rights, etc.:* Chapter 71.05 RCW.

*Minors—Mental health services, commitment:* Chapter 71.34 RCW.

*Out-of-state physicians, conditional license to practice in conjunction with institutions:* RCW 18.71.095.

*Private mental establishments:* Chapter 71.12 RCW.

*Record as to patients or inmates for purposes of vital statistics:* RCW 70.58.270.

*Sexual psychopaths:* Chapter 71.06 RCW.

**72.23.010 Definitions.** The definitions in this section apply throughout this chapter, unless the context clearly requires otherwise.

(1) "Court" means the superior court of the state of Washington.

(2) "Department" means the department of social and health services.

(3) "Employee" means an employee as defined in RCW 49.17.020.

(4) "Licensed physician" means an individual permitted to practice as a physician under the laws of the state, or a medical officer, similarly qualified, of the government of the United States while in this state in performance of his or her official duties.

(5) "Mentally ill person" means any person who, pursuant to the definitions contained in RCW 71.05.020, as a result of a mental disorder presents a likelihood of serious harm to others or himself or herself or is gravely disabled.

(6) "Patient" means a person under observation, care, or treatment in a state hospital, or a person found mentally ill by the court, and not discharged from a state hospital, or other facility, to which such person had been ordered hospitalized.

(7) "Resident" means a resident of the state of Washington.

(8) "Secretary" means the secretary of social and health services.

(9) "State hospital" means any hospital, including a child study and treatment center, operated and maintained by the state of Washington for the care of the mentally ill.

(10) "Superintendent" means the superintendent of a state hospital.

(11) "Violence" or "violent act" means any physical assault or attempted physical assault against an employee or patient of a state hospital.

Wherever used in this chapter, the masculine shall include the feminine and the singular shall include the plural. [2000 c 22 § 2; 1981 c 136 § 99; 1974 ex.s. c 145 § 2; 1973 1st ex.s. c 142 § 3; 1959 c 28 § 72.23.010. Prior: 1951 c 139 § 2. Formerly RCW 71.02.010.]

**Findings—2000 c 22:** See note following RCW 72.23.400.

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**72.23.020 State hospitals designated.** There are hereby permanently located and established the following state hospitals: Western state hospital at Fort Steilacoom, Pierce county; eastern state hospital at Medical Lake, Spokane county; and northern state hospital near Sedro Woolley, Skagit county. [1959 c 28 § 72.23.020. Prior: 1951 c 139 § 6. Formerly RCW 71.02.440.]

**72.23.025 Eastern and western state hospital boards established—Primary diagnosis of mental disorder—Duties—Institutes for the study and treatment of mental disorders established.** (1) It is the intent of the legislature to improve the quality of service at state hospitals, eliminate overcrowding, and more specifically define the role of the state hospitals. The legislature intends that eastern and western state hospitals shall become clinical centers for handling the most complicated long-term care needs of patients with a primary diagnosis of mental disorder. To this end, the legislature intends that funds appropriated for mental health programs, including funds for regional support networks and the state hospitals be used for persons with primary diagnosis of mental disorder. The legislature finds that establishment of the eastern state hospital board, the western state hospital board, and institutes for the study and treatment of mental disorders at both eastern state hospital and western state hospital will be instrumental in implementing the legislative intent.

(2)(a) The eastern state hospital board and the western state hospital board are each established. Members of the boards shall be appointed by the governor with the consent of the senate. Each board shall include:

(i) The director of the institute for the study and treatment of mental disorders established at the hospital;

(ii) One family member of a current or recent hospital resident;

(iii) One consumer of services;

(iv) One community mental health service provider;

(v) Two citizens with no financial or professional interest in mental health services;

(vi) One representative of the regional support network in which the hospital is located;

(vii) One representative from the staff who is a physician;

(viii) One representative from the nursing staff;

(ix) One representative from the other professional staff;

(x) One representative from the nonprofessional staff; and

(xi) One representative of a minority community.

(b) At least one representative listed in (a)(viii), (ix), or (x) of this subsection shall be a union member.

(c) Members shall serve four-year terms. Members of the board shall be reimbursed for travel expenses as provided in RCW 43.03.050 and 43.03.060 and shall receive compensation as provided in RCW 43.03.240.

(3) The boards established under this section shall:

(a) Monitor the operation and activities of the hospital;

(b) Review and advise on the hospital budget;

(c) Make recommendations to the governor and the legislature for improving the quality of service provided by the hospital;

(d) Monitor and review the activities of the hospital in implementing the intent of the legislature set forth in this section; and

(e) Consult with the secretary regarding persons the secretary may select as the superintendent of the hospital whenever a vacancy occurs.

(4)(a) There is established at eastern state hospital and western state hospital, institutes for the study and treatment of mental disorders. The institutes shall be operated by joint operating agreements between state colleges and universities and the department of social and health services. The institutes are intended to conduct training, research, and clinical program development activities that will directly benefit mentally ill persons receiving treatment in Washington state by performing the following activities:

(i) Promote recruitment and retention of highly qualified professionals at the state hospitals and community mental health programs;

(ii) Improve clinical care by exploring new, innovative, and scientifically based treatment models for persons presenting particularly difficult and complicated clinical syndromes;

(iii) Provide expanded training opportunities for existing staff at the state hospitals and community mental health programs;

(iv) Promote bilateral understanding of treatment orientation, possibilities, and challenges between state hospital professionals and community mental health professionals.

(b) To accomplish these purposes the institutes may, within funds appropriated for this purpose:

(i) Enter joint operating agreements with state universities or other institutions of higher education to accomplish the placement and training of students and faculty in psychiatry, psychology, social work, occupational therapy, nursing, and other relevant professions at the state hospitals and community mental health programs;

(ii) Design and implement clinical research projects to improve the quality and effectiveness of state hospital services and operations;

(iii) Enter into agreements with community mental health service providers to accomplish the exchange of professional staff between the state hospitals and community mental health service providers;

(iv) Establish a student loan forgiveness and conditional scholarship program to retain qualified professionals at the state hospitals and community mental health providers when the secretary has determined a shortage of such professionals exists.

(c) Notwithstanding any other provisions of law to the contrary, the institutes may enter into agreements with the department or the state hospitals which may involve changes in staffing necessary to implement improved patient care programs contemplated by this section.

(d) The institutes are authorized to seek and accept public or private gifts, grants, contracts, or donations to accomplish their purposes under this section. [2006 c 333 § 204; 1998 c 245 § 141; 1992 c 230 § 1; 1989 c 205 § 21.]

**Finding—Purpose—Intent—Severability—Part headings not law—Effective dates—2006 c 333:** See notes following RCW 71.24.016.

**Intent—1992 c 230:** "It is the intent of this act to:

(1) Focus, restate, and emphasize the legislature's commitment to the mental health reform embodied in chapter 111 [205], Laws of 1989 (SB 5400);

(2) Eliminate, or schedule for repeal, statutes that are no longer relevant to the regulation of the state's mental health program; and

(3) Reaffirm the state's commitment to provide incentives that reduce reliance on inappropriate state hospital or other inpatient care." [1992 c 230 § 3.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**72.23.027 Integrated service delivery—Incentives to discourage inappropriate placement—Specialized care programs.** The secretary shall develop a system of more integrated service delivery, including incentives to discourage the inappropriate placement of persons with developmental disabilities, head injury, and substance abuse, at state mental hospitals and encourage their care in community settings. By December 1, 1992, the department shall submit an implementation strategy, including budget proposals, to the appropriate committees of the legislature for this system.

Under the system, state, local, or community agencies may be given financial or other incentives to develop appropriate crisis intervention and community care arrangements.

The secretary may establish specialized care programs for persons described in this section on the grounds of the state hospitals. Such programs may operate according to professional standards that do not conform to existing federal or private hospital accreditation standards. [1992 c 230 § 2.]

**Intent—1992 c 230:** See note following RCW 72.23.025.

**72.23.030 Superintendent—Powers—Direction of clinical care, exception.** The superintendent of a state hospital subject to rules of the department, shall have control of the internal government and economy of a state hospital and shall appoint and direct all subordinate officers and employees. If the superintendent is not a psychiatrist, clinical care shall be under the direction of a qualified psychiatrist. [1983 1st ex.s. c 41 § 28; 1969 c 56 § 2; 1959 c 28 § 72.23.030. Prior: 1951 c 139 § 7. Formerly RCW 71.02.510.]

*Appointment of chief executive officers: RCW 72.01.060.*

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**72.23.035 Background checks of prospective employees.** In consultation with law enforcement personnel, the secretary shall have the power and duty to investigate the conviction record and the protection proceeding record information under chapter 43.43 RCW of each prospective employee of a state hospital. [1989 c 334 § 12.]

**72.23.040 Seal of hospital.** The superintendent shall provide an official seal upon which shall be inscribed the statutory name of the hospital under his charge and the name of the state. He shall affix the seal of the hospital to any notice, order of discharge, or other paper required to be given by him or issued. [1959 c 28 § 72.23.040. Prior: 1951 c 139 § 8. Formerly RCW 71.02.540.]

**72.23.050 Superintendent as witness—Exemptions from military duty.** The superintendent shall not be required to attend any court as a witness in a civil or juvenile court proceedings, but parties desiring his testimony can take and use his deposition; nor shall he be required to attend as a witness in any criminal case, unless the court before which his testimony shall be desired shall, upon being satisfied of the materiality of his testimony require his attendance; and, in time of peace, he and all other persons employed at the hospital shall be exempt from performing military duty; and the certificate of the superintendent shall be evidence of such employment. [1979 ex.s. c 135 § 5; 1959 c 28 § 72.23.050. Prior: 1951 c 139 § 9. Formerly RCW 71.02.520.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**72.23.060 Gifts—Record—Use.** The superintendent is authorized to accept and receive from any person or organization gifts of money or personal property on behalf of the state hospital under his charge, or on behalf of the patients therein. The superintendent is authorized to use such money or personal property for the purposes specified by the donor where such purpose is consistent with law. In the absence of a specified use the superintendent may use such money or personal property for the benefit of the state hospital under his charge or for the general benefit of the patients therein. The superintendent shall keep an accurate record of the amount or kind of gift, the date received, and the name and address of the donor. The superintendent may deposit any money received as he sees fit upon the giving of adequate security. Any increase resulting from such gift may be used for the same purpose as the original gift. Gratuities received for services rendered by a state hospital staff in their official capacity shall be used for the purposes specified in this section. [1959 c 28 § 72.23.060. Prior: 1951 c 139 § 10. Formerly RCW 71.02.600.]

**72.23.080 Voluntary patients—Legal competency—Record.** Any person received and detained in a state hospital under chapter 71.34 RCW is deemed a voluntary patient and, except as chapter 9.41 RCW may limit the right of a person to purchase or possess a firearm or to qualify for a concealed pistol license, shall not suffer a loss of legal competency by reason of his or her application and admission. Upon the admission of a voluntary patient to a state hospital the superintendent shall immediately forward to the department the record of such patient showing the name, address, sex, date of birth, place of birth, occupation, social security number, date of admission, name of nearest relative, and such other information as the department may from time to time require. [1994 sp.s. c 7 § 442; 1959 c 28 § 72.23.080. Prior: 1951 c 139 § 12; 1949 c 198 § 19, part; Rem. Supp. 1949 § 6953-19, part. Formerly RCW 71.02.040.]

(2010 Ed.)

**Finding—Intent—Severability—1994 sp.s. c 7:** See notes following RCW 43.70.540.

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**72.23.100 Voluntary patients—Policy—Duration.** It shall be the policy of the department to permit liberal use of the foregoing sections for the admission of those cases that can be benefited by treatment and returned to normal life and mental condition, in the opinion of the superintendent, within a period of six months. No person shall be carried as a voluntary patient for a period of more than one year. [1973 1st ex.s. c 142 § 5; 1959 c 28 § 72.23.100. Prior: 1951 c 139 § 14; 1949 c 198 § 19, part; Rem. Supp. 1949 § 6953-19, part. Formerly RCW 71.02.060.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**72.23.110 Voluntary patients—Limitation as to number.** If it becomes necessary because of inadequate facilities or staff, the department may limit applicants for voluntary admission in accordance with such rules and regulations as it may establish. The department may refuse all applicants for voluntary admission where lack of adequate facilities or staff make such action necessary. [1959 c 28 § 72.23.110. Prior: 1951 c 139 § 15. Formerly RCW 71.02.070.]

**72.23.120 Voluntary patients—Charges for hospitalization.** Payment of hospitalization charges shall not be a necessary requirement for voluntary admission: PROVIDED, HOWEVER, The department may request payment of hospitalization charges, or any portion thereof, from the patient or relatives of the patient within the following classifications: Spouse, parents, or children. Where the patient or relatives within the above classifications refuse to make the payments requested, the department shall have the right to discharge such patient or initiate proceedings for involuntary hospitalization. The maximum charge shall be the same for voluntary and involuntary hospitalization. [1959 c 28 § 72.23.120. Prior: 1951 c 139 § 16. Formerly RCW 71.02.080.]

**72.23.125 Temporary residential observation and evaluation of persons requesting treatment.** The department is directed to establish at each state hospital a procedure, including the necessary resources, to provide temporary residential observation and evaluation of persons who request treatment, unless admitted under \*RCW 72.23.070. Temporary residential observation and evaluation under this section shall be for a period of not less than twenty-four hours nor more than forty-eight hours and may be provided informally without complying with the admission procedure set forth in \*RCW 72.23.070 or the rules and regulations established thereunder.

It is the intent of the legislature that temporary observation and evaluation as described in this section be provided in all cases except where an alternative such as: (1) Delivery to treatment outside the hospital, or (2) no need for treatment is clearly indicated. [1979 ex.s. c 215 § 18.]

**\*Reviser's note:** RCW 72.23.070 was repealed by 1985 c 354 § 34, effective January 1, 1986. Later enactment, see chapter 71.34 RCW.

**72.23.130 History of patient.** It shall be the duty of the superintendent to ascertain by diligent inquiry and correspondence, the history of each and every patient admitted to his hospital. [1959 c 28 § 72.23.130. Prior: 1951 c 139 § 40. Formerly RCW 71.02.530.]

**72.23.160 Escape—Apprehension and return.** If a patient shall escape from a state hospital the superintendent shall cause immediate search to be made for him and return him to said hospital wherever found. Notice of such escape shall be given to the committing court who may issue an order of apprehension and return directed to any peace officer within the state. Notice may be given to any sheriff or peace officer, who, when requested by the superintendent, may apprehend and detain such escapee or return him to the state hospital without warrant. [1959 c 28 § 72.23.160. Prior: 1951 c 139 § 43. Formerly RCW 71.02.630.]

**72.23.170 Escape of patient—Penalty for assisting.** Any person who procures the escape of any patient of any state hospital for the mentally ill, or institutions for psychopaths to which such patient has been lawfully committed, or who advises, connives at, aids, or assists in such escape or conceals any such escape, is guilty of a class C felony and shall be punished by imprisonment in a state correctional institution for a term of not more than five years or by a fine of not more than five hundred dollars or by both imprisonment and fine. [2003 c 53 § 364; 1959 c 28 § 72.23.170. Prior: 1957 c 225 § 1, part; 1949 c 198 § 20, part; Rem. Supp. 1949 § 6953-20, part. Formerly RCW 71.12.620, part.]

**Intent—Effective date—2003 c 53:** See notes following RCW 2.48.180.

**72.23.180 Discharge, parole, death, escape—Notice—Certificate of discharge.** Whenever a patient dies, escapes, or is paroled or discharged from a state hospital, the superintendent shall immediately notify the clerk of the court which ordered such patient's hospitalization. A copy of such notice shall be given to the next of kin or next friend of such patient if their names or addresses are known or can, with reasonable diligence, be ascertained. Whenever a patient is discharged the superintendent shall issue such patient a certificate of discharge. Such notice or certificate shall give the date of parole, discharge, or death of said patient, and shall state the reasons for parole or discharge, or the cause of death, and shall be signed by the superintendent. [1959 c 28 § 72.23.180. Prior: 1951 c 139 § 44. Formerly RCW 71.02.640.]

*Disposition of property of deceased inmate of state institution: RCW 11.08.101, 11.08.111, 11.08.120.*

**72.23.190 Death—Report to coroner.** In the event of the sudden or mysterious death of any patient at a state hospital, not on parole or escape therefrom, such fact shall be reported by the superintendent thereof to the coroner of the county in which the death occurs. [1959 c 28 § 72.23.190. Prior: 1951 c 139 § 45. Formerly RCW 71.02.660.]

**72.23.200 Persons under eighteen—Confinement in adult wards.** No mentally ill person under the age of sixteen years shall be regularly confined in any ward in any state hos-

pital which ward is designed and operated for the care of the mentally ill eighteen years of age or over. No person of the ages of sixteen and seventeen shall be placed in any such ward, when in the opinion of the superintendent such placement would be detrimental to the mental condition of such a person or would impede his recovery or treatment. [1971 ex.s. c 292 § 52; 1959 c 28 § 72.23.200. Prior: 1951 c 139 § 46; 1949 c 198 § 17; Rem. Supp. 1949 § 6953-17. Formerly RCW 71.02.550.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**72.23.210 Persons under eighteen—Special wards and attendants.** The department may designate one or more wards at one or more state hospitals as may be deemed necessary for the sole care and treatment of persons under eighteen years of age admitted thereto. Nurses and attendants for such ward or wards shall be selected for their special aptitude and sympathy with such young people, and occupational therapy and recreation shall be provided as may be deemed necessary for their particular age requirements and mental improvement. [1971 ex.s. c 292 § 53; 1959 c 28 § 72.23.210. Prior: 1951 c 139 § 47; 1949 c 198 § 18; Rem. Supp. 1949 § 6953-18. Formerly RCW 71.02.560.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**72.23.230 Patient's property—Superintendent as custodian—Management and accounting.** The superintendent of a state hospital shall be the custodian without compensation of such personal property of a patient involuntarily hospitalized therein as may come into the superintendent's possession while the patient is under the jurisdiction of the hospital. As such custodian, the superintendent shall have authority to disburse moneys from the patients' funds for the following purposes only and subject to the following limitations:

(1) The superintendent may disburse any of the funds in his possession belonging to a patient for such personal needs of that patient as may be deemed necessary by the superintendent; and

(2) Whenever the funds belonging to any one patient exceed the sum of one thousand dollars or a greater sum as established by rules and regulations of the department, the superintendent may apply the excess to reimbursement for state hospitalization and/or outpatient charges of such patient to the extent of a notice and finding of responsibility issued under RCW 43.20B.340; and

(3) When a patient is paroled, the superintendent shall deliver unto the said patient all or such portion of the funds or other property belonging to the patient as the superintendent may deem necessary and proper in the interests of the patient's welfare, and the superintendent may during the parole period deliver to the patient such additional property or funds belonging to the patient as the superintendent may from time to time determine necessary and proper. When a patient is discharged from the jurisdiction of the hospital, the superintendent shall deliver to such patient all funds or other property belonging to the patient, subject to the conditions of subsection (2) of this section.

All funds held by the superintendent as custodian may be deposited in a single fund. Annual reports of receipts and

expenditures shall be forwarded to the department, and shall be open to inspection by interested parties: PROVIDED, That all interest accruing from, or as a result of the deposit of such moneys in a single fund shall be used by the superintendent for the general welfare of all the patients of such institution: PROVIDED, FURTHER, That when the personal accounts of patients exceed three hundred dollars, the interest accruing from such excess shall be credited to the personal accounts of such patients. All such expenditures shall be accounted for by the superintendent.

The appointment of a guardian for the estate of such patient shall terminate the superintendent's authority to pay state hospitalization charges from funds subject to the control of the guardianship upon the superintendent's receipt of a certified copy of letters of guardianship. Upon the guardian's request, the superintendent shall forward to such guardian any funds subject to the control of the guardianship or other property of the patient remaining in the superintendent's possession, together with a final accounting of receipts and expenditures. [1987 c 75 § 21; 1985 c 245 § 4; 1971 c 82 § 1; 1959 c 60 § 1; 1959 c 28 § 72.23.230. Prior: 1953 c 217 § 2; 1951 c 139 § 49. Formerly RCW 71.02.570.]

*Guardianship of estate: Chapters 11.88 and 11.92 RCW.*

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**72.23.240 Patient's property—Delivery to superintendent as acquittance—Defense, indemnity.** Upon receipt of a written request signed by the superintendent stating that a designated patient of such hospital is involuntarily hospitalized therein, and that no guardian of his estate has been appointed, any person, bank, firm or corporation having possession of any money, bank accounts, or choses in action owned by such patient, may, if the balance due does not exceed one thousand dollars, deliver the same to the superintendent and mail written notice thereof to such patient at such hospital. The receipt of the superintendent shall be full and complete acquittance for such payment and the person, bank, firm or corporation making such payment shall not be liable to the patient or his legal representatives. All funds so received by the superintendent shall be deposited in such patient's personal account at such hospital and be administered in accordance with this chapter.

If any proceeding is brought in any court to recover property so delivered, the attorney general shall defend the same without cost to the person, bank, firm or corporation effecting such delivery, and the state shall indemnify such person, bank, firm or corporation against any judgment rendered as a result of such proceeding. [1959 c 28 § 72.23.240. Prior: 1953 c 217 § 1. Formerly RCW 71.02.575.]

**72.23.250 Funds donated to patients.** The superintendent shall also have authority to receive funds for the benefit of individual patients and may disburse such funds according to the instructions of the donor of such funds. [1959 c 28 § 72.23.250. Prior: 1951 c 139 § 50. Formerly RCW 71.02.580.]

**72.23.260 Federal patients—Agreements authorized.** The department shall have the power, in the name of the state, to enter into contracts with any duly authorized representa-

tive of the United States government, providing for the admission to, and the separate or joint observation, maintenance, care, treatment and custody in, state hospitals of persons entitled to or requiring the same, at the expense of the United States, and contracts providing for the separate or joint maintenance, care, treatment or custody of such persons hospitalized in the manner provided by law, and to perform such contracts, which contracts shall provide that all payments due the state of Washington from the United States for services rendered under said contracts shall be paid to the department. [1959 c 28 § 72.23.260. Prior: 1951 c 139 § 65. Formerly RCW 71.02.460.]

**72.23.280 Nonresidents—Hospitalization.** Nonresidents of this state conveyed or coming herein while mentally ill shall not be hospitalized in a state hospital, but this prohibition shall not prevent the hospitalization and temporary care in said hospitals of such persons stricken with mental illness while traveling or temporarily sojourning in this state, or sailors attacked with mental illness upon the high seas and first arriving thereafter in some port within this state. [1959 c 28 § 72.23.280. Prior: 1951 c 139 § 67. Formerly RCW 71.02.470.]

**72.23.290 Transfer of patients—Authority of transferee.** Whenever it appears to be to the best interests of the patients concerned, the department shall have the authority to transfer such patients among the various state hospitals pursuant to rules and regulations established by said department. The superintendent of a state hospital shall also have authority to transfer patients eligible for treatment to the veterans administration or other United States government agency where such transfer is satisfactory to such agency. Such agency shall possess the same authority over such patients as the superintendent would have possessed had the patient remained in a state hospital. [1959 c 28 § 72.23.290. Prior: 1951 c 139 § 68. Formerly RCW 71.02.480.]

*Commitment to veterans' administration or other federal agency: RCW 73.36.165.*

**72.23.300 Bringing narcotics, intoxicating liquors, weapons, etc., into institution or its grounds prohibited—Penalty.** Any person not authorized by law so to do, who brings into any state institution for the care and treatment of mental illness or within the grounds thereof, any opium, morphine, cocaine or other narcotic, or any intoxicating liquor of any kind whatever, except for medicinal or mechanical purposes, or any firearms, weapons, or explosives of any kind is guilty of a class B felony punishable according to chapter 9A.20 RCW. [2003 c 53 § 365; 1959 c 28 § 72.23.300. Prior: 1949 c 198 § 52; Rem. Supp. 1949 § 6932-52. Formerly RCW 71.12.630.]

**Intent—Effective date—2003 c 53:** See notes following RCW 2.48.180.

*Uniform controlled substances act: Chapter 69.50 RCW.*

**72.23.390 Safe patient handling.** (1) The definitions in this subsection apply throughout this section unless the context clearly requires otherwise.

(a) "Lift team" means hospital employees specially trained to conduct patient lifts, transfers, and repositioning using lifting equipment when appropriate.

(b) "Safe patient handling" means the use of engineering controls, lifting and transfer aids, or assistive devices, by lift teams or other staff, instead of manual lifting to perform the acts of lifting, transferring, and repositioning health care patients and residents.

(c) "Musculoskeletal disorders" means conditions that involve the nerves, tendons, muscles, and supporting structures of the body.

(2) By February 1, 2007, each hospital must establish a safe patient handling committee either by creating a new committee or assigning the functions of a safe patient handling committee to an existing committee. The purpose of the committee is to design and recommend the process for implementing a safe patient handling program. At least half of the members of the safe patient handling committee shall be frontline nonmanagerial employees who provide direct care to patients unless doing so will adversely affect patient care.

(3) By December 1, 2007, each hospital must establish a safe patient handling program. As part of this program, a hospital must:

(a) Implement a safe patient handling policy for all shifts and units of the hospital. Implementation of the safe patient handling policy may be phased-in with the acquisition of equipment under subsection (4) of this section;

(b) Conduct a patient handling hazard assessment. This assessment should consider such variables as patient-handling tasks, types of nursing units, patient populations, and the physical environment of patient care areas;

(c) Develop a process to identify the appropriate use of the safe patient handling policy based on the patient's physical and medical condition and the availability of lifting equipment or lift teams;

(d) Conduct an annual performance evaluation of the program to determine its effectiveness, with the results of the evaluation reported to the safe patient handling committee. The evaluation shall determine the extent to which implementation of the program has resulted in a reduction in musculoskeletal disorder claims and days of lost work attributable to musculoskeletal disorder caused by patient handling, and include recommendations to increase the program's effectiveness; and

(e) When developing architectural plans for constructing or remodeling a hospital or a unit of a hospital in which patient handling and movement occurs, consider the feasibility of incorporating patient handling equipment or the physical space and construction design needed to incorporate that equipment at a later date.

(4) By January 30, 2010, hospitals must complete acquisition of their choice of: (a) One readily available lift per acute care unit on the same floor, unless the safe patient handling committee determines a lift is unnecessary in the unit; (b) one lift for every ten acute care available inpatient beds; or (c) equipment for use by lift teams. Hospitals must train staff on policies, equipment, and devices at least annually.

(5) Nothing in this section precludes lift team members from performing other duties as assigned during their shift.

(6) A hospital shall develop procedures for hospital employees to refuse to perform or be involved in patient handling or movement that the hospital employee believes in good faith will expose a patient or a hospital employee to an unacceptable risk of injury. A hospital employee who in good faith follows the procedure developed by the hospital in accordance with this subsection shall not be the subject of disciplinary action by the hospital for the refusal to perform or be involved in the patient handling or movement. [2006 c 165 § 3.]

**Findings—2006 c 165:** See note following RCW 70.41.390.

**72.23.400 Workplace safety plan.** (1) By November 1, 2000, each state hospital shall develop a plan, for implementation by January 1, 2001, to reasonably prevent and protect employees from violence at the state hospital. The plan shall be developed with input from the state hospital's safety committee, which includes representation from management, unions, nursing, psychiatry, and key function staff as appropriate. The plan shall address security considerations related to the following items, as appropriate to the particular state hospital, based upon the hazards identified in the assessment required under subsection (2) of this section:

(a) The physical attributes of the state hospital including access control, egress control, door locks, lighting, and alarm systems;

(b) Staffing, including security staffing;

(c) Personnel policies;

(d) First aid and emergency procedures;

(e) Reporting violent acts, taking appropriate action in response to violent acts, and follow-up procedures after violent acts;

(f) Development of criteria for determining and reporting verbal threats;

(g) Employee education and training; and

(h) Clinical and patient policies and procedures including those related to smoking; activity, leisure, and therapeutic programs; communication between shifts; and restraint and seclusion.

(2) Before the development of the plan required under subsection (1) of this section, each state hospital shall conduct a security and safety assessment to identify existing or potential hazards for violence and determine the appropriate preventive action to be taken. The assessment shall include, but is not limited to analysis of data on violence and worker's compensation claims during at least the preceding year, input from staff and patients such as surveys, and information relevant to subsection (1)(a) through (h) of this section.

(3) In developing the plan required by subsection (1) of this section, the state hospital may consider any guidelines on violence in the workplace or in the state hospital issued by the department of health, the department of social and health services, the department of labor and industries, the federal occupational safety and health administration, medicare, and state hospital accrediting organizations.

(4) The plan must be evaluated, reviewed, and amended as necessary, at least annually. [2000 c 22 § 3.]

**Findings—2000 c 22:** "The legislature finds that:

(1) Workplace safety is of paramount importance in state hospitals for patients and the staff that treat them;

(2) Based on an analysis of workers' compensation claims, the depart-

ment of labor and industries reports that state hospital employees face high rates of workplace violence in Washington state;

(3) State hospital violence is often related to the nature of the patients served, people who are both mentally ill and too dangerous for treatment in their home community, and people whose behavior is driven by elements of mental illness including desperation, confusion, delusion, or hallucination;

(4) Patients and employees should be assured a reasonably safe and secure environment in state hospitals;

(5) The state hospitals have undertaken efforts to assure that patients and employees are safe from violence, but additional personnel training and appropriate safeguards may be needed to prevent workplace violence and minimize the risk and dangers affecting people in state hospitals; and

(6) Duplication and redundancy should be avoided so as to maximize resources available for patient care." [2000 c 22 § 1.]

**72.23.410 Violence prevention training.** By July 1, 2001, and at least annually thereafter, as set forth in the plan developed under RCW 72.23.400, each state hospital shall provide violence prevention training to all its affected employees as determined by the plan. Initial training shall occur prior to assignment to a patient unit, and in addition to his or her ongoing training as determined by the plan. The training may vary by the plan and may include, but is not limited to, classes, videotapes, brochures, verbal training, or other verbal or written training that is determined to be appropriate under the plan. The training shall address the following topics, as appropriate to the particular setting and to the duties and responsibilities of the particular employee being trained, based upon the hazards identified in the assessment required under RCW 72.23.400:

- (1) General safety procedures;
- (2) Personal safety procedures and equipment;
- (3) The violence escalation cycle;
- (4) Violence-predicting factors;
- (5) Obtaining patient history for patients with violent behavior or a history of violent acts;
- (6) Verbal and physical techniques to de-escalate and minimize violent behavior;
- (7) Strategies to avoid physical harm;
- (8) Restraining techniques;
- (9) Documenting and reporting incidents;
- (10) The process whereby employees affected by a violent act may debrief;
- (11) Any resources available to employees for coping with violence;
- (12) The state hospital's workplace violence prevention plan;
- (13) Use of the intershift reporting process to communicate between shifts regarding patients who are agitated; and
- (14) Use of the multidisciplinary treatment process or other methods for clinicians to communicate with staff regarding patient treatment plans and how they can collaborate to prevent violence. [2000 c 22 § 4.]

**Findings—2000 c 22:** See note following RCW 72.23.400.

**72.23.420 Record of violent acts.** Beginning no later than July 1, 2000, each state hospital shall keep a record of any violent act against an employee or a patient occurring at the state hospital. Each record shall be kept for at least five years following the act reported during which time it shall be available for inspection by the department of labor and industries upon request. At a minimum, the record shall include:

(2010 Ed.)

(1) Necessary information for the state hospital to comply with the requirements of chapter 49.17 RCW related to employees that may include:

- (a) A full description of the violent act;
- (b) When the violent act occurred;
- (c) Where the violent act occurred;
- (d) To whom the violent act occurred;
- (e) Who perpetrated the violent act;
- (f) The nature of the injury;
- (g) Weapons used;
- (h) Number of witnesses; and
- (i) Action taken by the state hospital in response to the violence; and

(2) Necessary information for the state hospital to comply with current and future expectations of the joint commission on hospital accreditation related to violence perpetrated upon patients which may include:

- (a) The nature of the violent act;
- (b) When the violent act occurred;
- (c) To whom it occurred; and
- (d) The nature and severity of any injury. [2000 c 22 § 5.]

**Findings—2000 c 22:** See note following RCW 72.23.400.

**72.23.430 Noncompliance—Citation under chapter 49.17 RCW.** Failure of a state hospital to comply with this chapter shall subject the hospital to citation under chapter 49.17 RCW. [2000 c 22 § 6.]

**Findings—2000 c 22:** See note following RCW 72.23.400.

**72.23.440 Technical assistance and training.** A state hospital needing assistance to comply with RCW 72.23.400 through 72.23.420 may contact the department of labor and industries for assistance. The state departments of labor and industries, social and health services, and health shall collaborate with representatives of state hospitals to develop technical assistance and training seminars on plan development and implementation, and shall coordinate their assistance to state hospitals. [2000 c 22 § 7.]

**Findings—2000 c 22:** See note following RCW 72.23.400.

**72.23.451 Annual report to the legislature.** By September 1st of each year, the department shall report to the house committee on commerce and labor and the senate committee on commerce and trade, or successor committees, on the department's efforts to reduce violence in the state hospitals. [2005 c 187 § 1.]

**72.23.460 Provisions applicable to hospitals governed by chapter.** The provisions of RCW 70.41.410 and 70.41.420 apply to hospitals governed by this chapter. [2008 c 47 § 4.]

**Findings—Intent—2008 c 47:** See note following RCW 70.41.410.

**72.23.900 Construction—Purpose—1959 c 28.** The provisions of this chapter shall be liberally construed so that persons who are in need of care and treatment for mental illness shall receive humane care and treatment and be restored to normal mental condition as rapidly as possible with an avoidance of loss of civil rights where not necessary, and

with as little formality as possible, still preserving all rights and all privileges of the person as guaranteed by the Constitution. [1959 c 28 § 72.23.900. Prior: 1951 c 139 § 1.]

*Civil rights*

*loss of: State Constitution Art. 6 § 3, RCW 29A.08.520.*

*restoration of: RCW 9.92.066, 9.94A.637, 9.94A.885, 9.95.260, chapter 9.96 RCW.*

**72.23.910 Construction—Effect on laws relating to the criminally insane—"Insane" as used in other statutes.** Nothing in this chapter shall be construed as affecting the laws of this state relating to the criminally insane or insane inmates of penal institutions. Where the term "insane" is used in other statutes of this state its meaning shall be synonymous with mental illness as defined in this chapter. [1959 c 28 § 72.23.910. Prior: 1951 c 139 § 4; 1949 c 198 § 15; Rem. Supp. 1949 § 6953-15. Formerly RCW 71.02.020.]

**72.23.920 Construction—Chapter applicable to state registered domestic partnerships—2009 c 521.** For the purposes of this chapter, the terms spouse, marriage, marital, husband, wife, widow, widower, next of kin, and family shall be interpreted as applying equally to state registered domestic partnerships or individuals in state registered domestic partnerships as well as to marital relationships and married persons, and references to dissolution of marriage shall apply equally to state registered domestic partnerships that have been terminated, dissolved, or invalidated, to the extent that such interpretation does not conflict with federal law. Where necessary to implement chapter 521, Laws of 2009, gender-specific terms such as husband and wife used in any statute, rule, or other law shall be construed to be gender neutral, and applicable to individuals in state registered domestic partnerships. [2009 c 521 § 167.]

### Chapter 72.25 RCW

#### NONRESIDENT MENTALLY ILL, SEXUAL PSYCHOPATHS, AND PSYCHOPATHIC DELINQUENTS— DEPORTATION, TRANSPORTATION

Sections

- 72.25.010 Deportation of aliens—Return of residents.  
72.25.020 Return of nonresidents—Reciprocity—Expense—Resident of this state defined.  
72.25.030 Assistance—Payment of expenses.

*Council for children and families: Chapter 43.121 RCW.*

**72.25.010 Deportation of aliens—Return of residents.** It shall be the duty of the secretary of the department of social and health services, in cooperation with the United States bureau of immigration and/or the United States department of the interior, to arrange for the deportation of all alien sexual psychopaths, psychopathic delinquents, or mentally ill persons who are now confined in, or who may hereafter be committed to, any state hospital for the sexual psychopath, psychopathic delinquent, or the mentally ill in this state; to transport such alien sexual psychopaths, psychopathic delinquents, or mentally ill persons to such point or points as may be designated by the United States bureau of immigration or by the United States department of the interior; and to give written permission for the return of any resident of Washing-

ton now or hereafter confined in a hospital for the sexual psychopath, psychopathic delinquent, or the mentally ill in a territory of the United States or in a foreign country. Mentally ill person for the purposes of this section shall be any person defined as mentally ill under RCW 72.23.010, as now or hereafter amended. [1977 ex.s. c 80 § 49; 1965 c 78 § 1; 1959 c 28 § 72.25.010. Prior: 1957 c 29 § 1; 1953 c 232 § 1. Formerly RCW 71.04.270.]

**Purpose—Intent—Severability—1977 ex.s. c 80:** See notes following RCW 4.16.190.

*Minors—Mental health services, commitment: Chapter 71.34 RCW.*

*Sexual psychopaths: Chapter 71.06 RCW.*

**72.25.020 Return of nonresidents—Reciprocity—Expense—Resident of this state defined.** The secretary shall also return all nonresident sexual psychopaths, psychopathic delinquents, or mentally ill persons who are now confined in or who may hereafter be committed to a state hospital for the sexual psychopath, psychopathic delinquent, or the mentally ill in this state to the states or state in which they may have a legal residence. For the purpose of facilitating the return of such persons the secretary may enter into a reciprocal agreement with any other state for the mutual exchange of sexual psychopaths, psychopathic delinquents, or mentally ill persons now confined in or hereafter committed to any hospital for the sexual psychopath, psychopathic delinquent, or the mentally ill in one state whose legal residence is in the other, and he may give written permission for the return of any resident of Washington now or hereafter confined in a hospital for the sexual psychopath, psychopathic delinquent, or the mentally ill in another state. Such residents may be returned directly to the proper Washington state institution without further court proceedings: PROVIDED, That if the superintendent of such institution is of the opinion that the returned person is not a sexual psychopath, a psychopathic delinquent, or mentally ill person he may discharge said patient: PROVIDED FURTHER, That if such superintendent deems such person a sexual psychopath, a psychopathic delinquent, or mentally ill person, he shall file an application for commitment within ninety days of arrival at the Washington institution.

A person shall be deemed to be a resident of this state within the meaning of this chapter who has maintained his domiciliary residence in this state for a period of one year preceding commitment to a state institution without receiving assistance from any tax supported organization and who has not subsequently acquired a domicile in another state: PROVIDED, That any period of time spent by such person while an inmate of a state hospital or state institution or while on parole, escape, or leave of absence therefrom shall not be counted in determining the time of residence in this or another state.

All expenses incurred in returning sexual psychopaths, psychopathic delinquents, or mentally ill persons from this to another state may be paid by this state, but the expense of returning residents of this state shall be borne by the state making the return. Mentally ill person for the purposes of this section shall be any person defined as mentally ill under RCW 72.23.010, as now or hereafter amended. [1977 ex.s. c 80 § 50; 1965 c 78 § 2; 1959 c 28 § 72.25.020. Prior: 1957 c 29 § 2; 1953 c 232 § 2. Formerly RCW 71.04.280.]

**Purpose—Intent—Severability—1977 ex.s. c 80:** See notes following RCW 4.16.190.

**72.25.030 Assistance—Payment of expenses.** For the purpose of carrying out the provisions of this chapter the secretary may employ all help necessary in arranging for and transporting such alien and nonresident sexual psychopaths, psychopathic delinquents, or mentally ill persons, and the cost and expense of providing such assistance, and all expenses incurred in effecting the transportation of such alien and nonresident sexual psychopaths, psychopathic delinquents, or mentally ill persons, shall be paid from the funds appropriated for that purpose upon vouchers approved by the department. Mentally ill person for the purposes of this section shall be any person defined as mentally ill under RCW 72.23.010, as now or hereafter amended. [1977 ex.s. c 80 § 51; 1965 c 78 § 3; 1959 c 28 § 72.25.030. Prior: 1957 c 29 § 3; 1953 c 232 § 3. Formerly RCW 71.04.290.]

**Purpose—Intent—Severability—1977 ex.s. c 80:** See notes following RCW 4.16.190.

**Chapter 72.27 RCW**

**INTERSTATE COMPACT ON MENTAL HEALTH**

Sections

- 72.27.010 Compact enacted.
- 72.27.020 Secretary is compact administrator—Rules and regulations—Cooperation with other agencies.
- 72.27.030 Supplementary agreements.
- 72.27.040 Financial arrangements.
- 72.27.050 Prerequisites for transfer of person to another party state—Release or return of residents, jurisdiction, laws applicable.
- 72.27.060 Transmittal of copies of chapter.
- 72.27.070 Right to deport aliens and return residents of nonparty states preserved.

**72.27.010 Compact enacted.** The Interstate Compact on Mental Health is hereby enacted into law and entered into by this state with all other states legally joining therein in the form substantially as follows:

The contracting states solemnly agree that:

**ARTICLE I**

The party states find that the proper and expeditious treatment of the mentally ill and mentally deficient can be facilitated by cooperative action, to the benefit of the patients, their families, and society as a whole. Further, the party states find that the necessity of and desirability for furnishing such care and treatment bears no primary relation to the residence or citizenship of the patient but that, on the contrary, the controlling factors of community safety and humanitarianism require that facilities and services be made available for all who are in need of them. Consequently, it is the purpose of this compact and of the party states to provide the necessary legal basis for the institutionalization or other appropriate care and treatment of the mentally ill and mentally deficient under a system that recognizes the paramount importance of patient welfare and to establish the responsibilities of the party states in terms of such welfare.

**ARTICLE II**

As used in this compact:

(a) "Sending state" shall mean a party state from which a patient is transported pursuant to the provisions of the compact or from which it is contemplated that a patient may be so sent.

(b) "Receiving state" shall mean a party state to which a patient is transported pursuant to the provisions of the compact or to which it is contemplated that a patient may be so sent.

(c) "Institution" shall mean any hospital or other facility maintained by a party state or political subdivision thereof for the care and treatment of mental illness or mental deficiency.

(d) "Patient" shall mean any person subject to or eligible as determined by the laws of the sending state, for institutionalization or other care, treatment, or supervision pursuant to the provisions of this compact.

(e) "After-care" shall mean care, treatment and services provided a patient, as defined herein, on convalescent status or conditional release.

(f) "Mental illness" shall mean mental disease to such extent that a person so afflicted requires care and treatment for his own welfare, or the welfare of others, or of the community.

(g) "Mental deficiency" shall mean mental deficiency as defined by appropriate clinical authorities to such extent that a person so afflicted is incapable of managing himself and his affairs, but shall not include mental illness as defined herein.

(h) "State" shall mean any state, territory or possession of the United States, the District of Columbia, and the Commonwealth of Puerto Rico.

**ARTICLE III**

(a) Whenever a person physically present in any party state shall be in need of institutionalization by reason of mental illness or mental deficiency, he shall be eligible for care and treatment in an institution in that state irrespective of his residence, settlement or citizenship qualifications.

(b) The provisions of paragraph (a) of this article to the contrary notwithstanding, any patient may be transferred to an institution in another state whenever there are factors based upon clinical determinations indicating that the care and treatment of said patient would be facilitated or improved thereby. Any such institutionalization may be for the entire period of care and treatment or for any portion or portions thereof. The factors referred to in this paragraph shall include the patient's full record with due regard for the location of the patient's family, character of the illness and probable duration thereof, and such other factors as shall be considered appropriate.

(c) No state shall be obliged to receive any patient pursuant to the provisions of paragraph (b) of this article unless the sending state has given advance notice of its intention to send the patient; furnished all available medical and other pertinent records concerning the patient; given the qualified medical or other appropriate clinical authorities of the receiving state an opportunity to examine the patient if said authorities so wish; and unless the receiving state shall agree to accept the patient.

(d) In the event that the laws of the receiving state establish a system of priorities for the admission of patients, an interstate patient under this compact shall receive the same priority as a local patient and shall be taken in the same order

and at the same time that he would be taken if he were a local patient.

(e) Pursuant to this compact, the determination as to the suitable place of institutionalization for a patient may be reviewed at any time and such further transfer of the patient may be made as seems likely to be in the best interest of the patient.

#### ARTICLE IV

(a) Whenever, pursuant to the laws of the state in which a patient is physically present, it shall be determined that the patient should receive after-care or supervision, such care or supervision may be provided in a receiving state. If the medical or other appropriate clinical authorities having responsibility for the care and treatment of the patient in the sending state shall have reason to believe that after-care in another state would be in the best interest of the patient and would not jeopardize the public safety, they shall request the appropriate authorities in the receiving state to investigate the desirability of affording the patient such after-care in said receiving state, and such investigation shall be made with all reasonable speed. The request for investigation shall be accompanied by complete information concerning the patient's intended place of residence and the identity of the person in whose charge it is proposed to place the patient, the complete medical history of the patient, and such other documents as may be pertinent.

(b) If the medical or other appropriate clinical authorities having responsibility for the care and treatment of the patient in the sending state and the appropriate authorities in the receiving state find that the best interest of the patient would be served thereby, and if the public safety would not be jeopardized thereby, the patient may receive after-care or supervision in the receiving state.

(c) In supervising, treating, or caring for a patient on after-care pursuant to the terms of this article, a receiving state shall employ the same standards of visitation, examination, care, and treatment that it employs for similar local patients.

#### ARTICLE V

Whenever a dangerous or potentially dangerous patient escapes from an institution in any party state, that state shall promptly notify all appropriate authorities within and without the jurisdiction of the escape in a manner reasonably calculated to facilitate the speedy apprehension of the escapee. Immediately upon the apprehension and identification of any such dangerous or potentially dangerous patient, he shall be detained in the state where found pending disposition in accordance with law.

#### ARTICLE VI

The duly accredited officers of any state party to this compact, upon the establishment of their authority and the identity of the patient, shall be permitted to transport any patient being moved pursuant to this compact through any and all states party to this compact, without interference.

#### ARTICLE VII

(a) No person shall be deemed a patient of more than one institution at any given time. Completion of transfer of any patient to an institution in a receiving state shall have the effect of making the person a patient of the institution in the receiving state.

(b) The sending state shall pay all costs of and incidental to the transportation of any patient pursuant to this compact, but any two or more party states may, by making a specific agreement for that purpose, arrange for a different allocation of costs as among themselves.

(c) No provision of this compact shall be construed to alter or affect any internal relationships among the departments, agencies and officers of and in the government of a party state, or between a party state and its subdivisions, as to the payment of costs, or responsibilities therefor.

(d) Nothing in this compact shall be construed to prevent any party state or subdivision thereof from asserting any right against any person, agency or other entity in regard to costs for which such party state or subdivision thereof may be responsible pursuant to any provision of this compact.

(e) Nothing in this compact shall be construed to invalidate any reciprocal agreement between a party state and a nonparty state relating to institutionalization, care or treatment of the mentally ill or mentally deficient, or any statutory authority pursuant to which such agreements may be made.

#### ARTICLE VIII

(a) Nothing in this compact shall be construed to abridge, diminish, or in any way impair the rights, duties, and responsibilities of any patient's guardian on his own behalf or in respect of any patient for whom he may serve, except that where the transfer of any patient to another jurisdiction makes advisable the appointment of a supplemental or substitute guardian, any court of competent jurisdiction in the receiving state may make such supplemental or substitute appointment and the court which appointed the previous guardian shall upon being duly advised of the new appointment, and upon the satisfactory completion of such accounting and other acts as such court may by law require, relieve the previous guardian of power and responsibility to whatever extent shall be appropriate in the circumstances: PROVIDED, HOWEVER, That in the case of any patient having settlement in the sending state, the court of competent jurisdiction in the sending state shall have the sole discretion to relieve a guardian appointed by it or continue his power and responsibility, whichever it shall deem advisable. The court in the receiving state may, in its discretion, confirm or reappoint the person or persons previously serving as guardian in the sending state in lieu of making a supplemental or substitute appointment.

(b) The term "guardian" as used in paragraph (a) of this article shall include any guardian, trustee, legal committee, conservator, or other person or agency however denominated who is charged by law with power to act for or responsibility for the person or property of a patient.

#### ARTICLE IX

(a) No provision of this compact except Article V shall apply to any person institutionalized while under sentence in

a penal or correctional institution or while subject to trial on a criminal charge, or whose institutionalization is due to the commission of an offense for which, in the absence of mental illness or mental deficiency, said person would be subject to incarceration in a penal or correctional institution.

(b) To every extent possible, it shall be the policy of states party to this compact that no patient shall be placed or detained in any prison, jail or lockup, but such patient shall, with all expedition, be taken to a suitable institutional facility for mental illness or mental deficiency.

#### ARTICLE X

(a) Each party state shall appoint a "compact administrator" who, on behalf of his state, shall act as general coordinator of activities under the compact in his state and who shall receive copies of all reports, correspondence, and other documents relating to any patient processed under the compact by his state either in the capacity of sending or receiving state. The compact administrator or his duly designated representative shall be the official with whom other party states shall deal in any matter relating to the compact or any patient processed thereunder.

(b) The compact administrators of the respective party states shall have power to promulgate reasonable rules and regulations to carry out more effectively the terms and provisions of this compact.

#### ARTICLE XI

The duly constituted administrative authorities of any two or more party states may enter into supplementary agreements for the provision of any service or facility or for the maintenance of any institution on a joint or cooperative basis whenever the states concerned shall find that such agreements will improve services, facilities, or institutional care and treatment in the fields of mental illness or mental deficiency. No such supplementary agreement shall be construed so as to relieve any party state of any obligation which it otherwise would have under other provisions of this compact.

#### ARTICLE XII

This compact shall enter into full force and effect as to any state when enacted by it into law and such state shall thereafter be a party thereto with any and all states legally joining therein.

#### ARTICLE XIII

(a) A state party to this compact may withdraw therefrom by enacting a statute repealing the same. Such withdrawal shall take effect one year after notice thereof has been communicated officially and in writing to the governors and compact administrators of all other party states. However, the withdrawal of any state shall not change the status of any patient who has been sent to said state or sent out of said state pursuant to the provisions of the compact.

(b) Withdrawal from any agreement permitted by Article VII(b) as to costs or from any supplementary agreement made pursuant to Article XI shall be in accordance with the terms of such agreement.

(2010 Ed.)

#### ARTICLE XIV

This compact shall be liberally construed so as to effectuate the purposes thereof. The provisions of this compact shall be severable and if any phrase, clause, sentence or provision of this compact is declared to be contrary to the constitution of any party state or of the United States or the applicability thereof to any government, agency, person or circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person or circumstance shall not be affected thereby. If this compact shall be held contrary to the constitution of any state party thereto, the compact shall remain in full force and effect as to the remaining states and in full force and effect as to the state affected as to all severable matters. [1965 ex.s. c 26 § 1.]

**Chapter added:** "The foregoing provisions of this act are added to chapter 28, Laws of 1959 and to Title 72 RCW, and shall constitute a new chapter therein." [1965 ex.s. c 26 § 8.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**72.27.020 Secretary is compact administrator—Rules and regulations—Cooperation with other agencies.** Pursuant to said compact provided in RCW 72.27.010, the secretary of social and health services shall be the compact administrator and who, acting jointly with like officers of other party states, shall have power to promulgate rules and regulations to carry out more effectively the terms of the compact. The compact administrator is hereby authorized, empowered and directed to cooperate with all departments, agencies and officers of and in the government of this state and its subdivisions in facilitating the proper administration of the compact or any supplementary agreement or agreements entered into by this state thereunder. [1979 c 141 § 233; 1965 ex.s. c 26 § 2.]

**72.27.030 Supplementary agreements.** The compact administrator is hereby authorized and empowered to enter into supplementary agreements with appropriate officials of other states pursuant to Articles VII and XI of the compact. In the event that such supplementary agreements shall require or contemplate the use of any institution or facility of this state or require or contemplate the provision of any service by this state, no such agreement shall have force or effect until approved by the head of the department or agency under whose jurisdiction said institution or facility is operated or whose department or agency will be charged with the rendering of such service. [1965 ex.s. c 26 § 3.]

**72.27.040 Financial arrangements.** The compact administrator, subject to the moneys available therefor, may make or arrange for any payments necessary to discharge any financial obligations imposed upon this state by the compact or by any supplementary agreement entered into thereunder. [1965 ex.s. c 26 § 4.]

**72.27.050 Prerequisites for transfer of person to another party state—Release or return of residents, jurisdiction, laws applicable.** No person shall be transferred to another party state pursuant to this chapter unless the compact administrator first shall have obtained either:

(a) The written consent to such transfer by the proposed transferee or by others on his behalf, which consent shall be executed in accordance with the requirements of \*RCW 72.23.070, and if such person was originally committed involuntarily, such consent also shall be approved by the committing court; or

(b) An order of the superior court approving such transfer, which order shall be obtained from the committing court, if such person was committed involuntarily, otherwise from the superior court of the county where such person resided at the time of such commitment; and such order shall be issued only after notice and hearing in the manner provided for the involuntary commitment of mentally ill or mentally deficient persons as the case may be.

The courts of this state shall have concurrent jurisdiction with the appropriate courts of other party states to hear and determine petitions seeking the release or return of residents of this state who have been transferred from this state under this chapter to the same extent as if such persons were hospitalized in this state; and the laws of this state relating to the release of such persons shall govern the disposition of any such proceeding. [1965 ex.s. c 26 § 5.]

\*Reviser's note: RCW 72.23.070 was repealed by 1985 c 354 § 34, effective January 1, 1986. Later enactment, see chapter 71.34 RCW.

**72.27.060 Transmittal of copies of chapter.** Duly authorized copies of this chapter shall, upon its approval be transmitted by the secretary of state to the governor of each state, the attorney general and the administrator of general services of the United States, and the council of state governments. [1965 ex.s. c 26 § 6.]

**72.27.070 Right to deport aliens and return residents of nonparty states preserved.** Nothing in this chapter shall affect the right of the secretary of social and health services to deport aliens and return residents of nonparty states as provided in chapter 72.25 RCW. [1979 c 141 § 234; 1965 ex.s. c 26 § 7.]

### Chapter 72.29 RCW

#### MULTI-USE FACILITIES FOR THE MENTALLY OR PHYSICALLY HANDICAPPED OR THE MENTALLY ILL

##### Sections

72.29.010 Multi-use facility for persons with mental or physical disabilities or mental illness—Harrison Memorial Hospital.

**72.29.010 Multi-use facility for persons with mental or physical disabilities or mental illness—Harrison Memorial Hospital.** After the acquisition of Harrison Memorial Hospital, the department of social and health services is authorized to enter into contracts for the repair or remodeling of the hospital to the extent they are necessary and reasonable, in order to establish a multi-use facility for persons with mental or physical disabilities or mental illness. The secretary of the department of social and health services is authorized to determine the most feasible and desirable use of the facility and to operate the facility in the manner he or she deems most beneficial to persons with mental or physical disabilities or mental illness, and is authorized, but not lim-

ited to programs for out-patient, diagnostic and referral, day care, vocational and educational services to the community which he or she determines are in the best interest of the state. [2010 c 94 § 32; 1977 ex.s. c 80 § 52; 1965 c 11 § 3.]

**Purpose—2010 c 94:** See note following RCW 44.04.280.

**Purpose—Intent—Severability—1977 ex.s. c 80:** See notes following RCW 4.16.190.

**Declaration of purpose—2010 c 94; 1965 c 11:** "The state facilities to provide community services to persons with mental or physical disabilities or mental illness are inadequate to meet the present demand. Great savings to the taxpayers can be achieved while helping to meet these worthwhile needs. It is therefore the purpose of this act to provide for acquisition or lease of Harrison Memorial Hospital property and facilities and the operation thereof as a multi-use facility for persons with mental or physical disabilities or mental illness." [2010 c 94 § 33; 1965 c 11 § 1.]

*Department created—Powers and duties transferred to:* RCW 43.20A.030.

*Use of Harrison Memorial Hospital property for services for persons with developmental disabilities:* RCW 71A.20.040.

### Chapter 72.36 RCW

#### SOLDIERS' AND VETERANS' HOMES AND VETERANS' CEMETERY

##### Sections

72.36.010 Establishment of soldiers' home—Long-term leases.  
 72.36.020 Superintendents—Licensed nursing home administrator.  
 72.36.030 Admission—Applicants must apply for federal and state benefits.  
 72.36.035 Definitions.  
 72.36.037 Resident rights.  
 72.36.040 Colony established—Who may be admitted.  
 72.36.045 State veterans' homes—Maintenance defined.  
 72.36.050 Regulations of home applicable—Rations, medical attendance, clothing.  
 72.36.055 Domiciliary and nursing care to be provided.  
 72.36.060 Federal funds.  
 72.36.070 Washington veterans' home.  
 72.36.075 Eastern Washington veterans' home.  
 72.36.077 Eastern Washington veterans' home—Funding—Intent.  
 72.36.090 Hobby promotion.  
 72.36.100 Purchase of equipment, materials for therapy, hobbies.  
 72.36.110 Burial of deceased member or deceased spouse or domestic partner.  
 72.36.115 Eastern Washington state veterans' cemetery.  
 72.36.120 Deposit of veteran income—Expenditures and revenue control.  
 72.36.140 Medicaid qualifying operations.  
 72.36.145 Reduction in allowable income—Certification of qualifying operations.  
 72.36.150 Resident council—Generally.  
 72.36.160 Personal needs allowance.  
 72.36.1601 Findings.  
 72.36.900 Construction—Chapter applicable to state registered domestic partnerships—2009 c 521.

*Charitable organizations—Application for registration—Contents—Fee:* RCW 19.09.075.

*Commitment to veterans administration or other federal agency:* RCW 73.36.165.

*Disposition of property of deceased inmate of state institution:* RCW 11.08.101, 11.08.111, 11.08.120.

*Employment of dental hygienist without supervision of dentist authorized in state institutions:* RCW 18.29.056.

*Record as to patients or inmates for purposes of vital statistics:* RCW 70.58.270.

**72.36.010 Establishment of soldiers' home—Long-term leases.** (1) There is established at Orting, Pierce county, an institution which shall be known as the Washington soldiers' home.

(2) The department is authorized to work with public or private entities on projects to make the best use of the soldiers' home property and facilities. These projects may include, but are not limited to, the renovation and long-term lease of the Garfield barracks building on the soldiers' home campus.

(3) All long-term leases of the soldiers' home property shall be subject to the requirements of RCW 43.82.010, except that such leases may run for up to seventy-five years. [2010 c 75 § 1; 1959 c 28 § 72.36.010. Prior: 1901 c 167 § 1; 1890 p 269 § 1; RRS § 10727.]

**72.36.020 Superintendents—Licensed nursing home administrator.** The director of the department of veterans affairs shall appoint a superintendent for each state veterans' home. The superintendent shall exercise management and control of the institution in accordance with either policies or procedures promulgated by the director of the department of veterans affairs, or both, and rules and regulations of the department. In accordance with chapter 18.52 RCW, the individual appointed as superintendent for either state veterans' home shall be a licensed nursing home administrator. The department may request a waiver to, or seek an alternate method of compliance with, the federal requirement for a licensed on-site administrator during a transition phase from July 1, 1993, to June 30, 1994. [1993 sp.s. c 3 § 4; 1977 c 31 § 2; 1959 c 28 § 72.36.020. Prior: 1890 p 271 § 7; RRS § 10728.]

**Findings—1993 sp.s. c 3:** See RCW 72.36.1601.

*Chief executive officers, general provisions:* RCW 72.01.060.

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**72.36.030 Admission—Applicants must apply for federal and state benefits.** All of the following persons who have been actual bona fide residents of this state at the time of their application, and who are indigent and unable to support themselves and their families may be admitted to a state veterans' home under rules as may be adopted by the director of the department, unless sufficient facilities and resources are not available to accommodate these people:

(1)(a) All honorably discharged veterans of a branch of the armed forces of the United States or merchant marines; (b) members of the state militia disabled while in the line of duty; (c) Filipino World War II veterans who swore an oath to American authority and who participated in military engagements with American soldiers; and (d) the spouses or the domestic partners of these veterans, merchant marines, and members of the state militia. However, it is required that the spouse was married to and living with the veteran, or that the domestic partner was in a domestic partnership and living with the veteran, three years prior to the date of application for admittance, or, if married to or in a domestic partnership with him or her since that date, was also a resident of a state veterans' home in this state or entitled to admission thereto;

(2)(a) The spouses or domestic partners of: (i) All honorably discharged veterans of the United States armed forces; (ii) merchant marines; and (iii) members of the state militia who were disabled while in the line of duty and who were residents of a state veterans' home in this state or were entitled to admission to one of this state's state veteran homes at the

time of death; (b) the spouses or domestic partners of: (i) All honorably discharged veterans of a branch of the United States armed forces; (ii) merchant marines; and (iii) members of the state militia who would have been entitled to admission to one of this state's state veterans' homes at the time of death, but for the fact that the spouse or domestic partner was not indigent, but has since become indigent and unable to support himself or herself and his or her family. However, the included spouse or included domestic partner shall be at least fifty years old and have been married to and living with their spouse, or in a domestic partnership and living with their domestic partner, for three years prior to the date of their application. The included spouse or included domestic partner shall not have been married since the death of his or her spouse or domestic partner to a person who is not a resident of one of this state's state veterans' homes or entitled to admission to one of this state's state veterans' homes; and

(3) All applicants for admission to a state veterans' home shall apply for all federal and state benefits for which they may be eligible, including medical assistance under chapter 74.09 RCW. [2008 c 6 § 503; 1998 c 322 § 49; 1993 sp.s. c 3 § 5; 1977 ex.s. c 186 § 1; 1975 c 13 § 1; 1959 c 28 § 72.36.030. Prior: 1915 c 106 § 1; 1911 c 124 § 1; 1905 c 152 § 1; 1901 c 167 § 2; 1890 p 270 § 2; RRS § 10729.]

**Part headings not law—Severability—2008 c 6:** See RCW 26.60.900 and 26.60.901.

**Findings—1993 sp.s. c 3:** See RCW 72.36.1601.

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**72.36.035 Definitions.** For purposes of this chapter, unless the context clearly indicates otherwise:

(1) "Actual bona fide residents of this state" means persons who have a domicile in the state of Washington immediately prior to application for admission to a state veterans' home.

(2) "Department" means the Washington state department of veterans affairs.

(3) "Domicile" means a person's true, fixed, and permanent home and place of habitation, and shall be the place where the person intends to remain, and to which the person expects to return when the person leaves without intending to establish a new domicile elsewhere.

(4) "State veterans' homes" means the Washington soldiers' home and colony in Orting, the Washington veterans' home in Retsil, and the eastern Washington veterans' home.

(5) "Veteran" has the same meaning established in RCW 41.04.007. [2002 c 292 § 5; 2001 2nd sp.s. c 4 § 2; 1993 sp.s. c 3 § 6; 1991 c 240 § 2; 1977 ex.s. c 186 § 11.]

**Findings—1993 sp.s. c 3:** See RCW 72.36.1601.

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**72.36.037 Resident rights.** Chapter 70.129 RCW applies to this chapter and persons regulated under this chapter. [1994 c 214 § 23.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**72.36.040 Colony established—Who may be admitted.** There is hereby established what shall be known as the "Colony of the State Soldiers' Home." All of the following persons who reside within the limits of Orting school district

and have been actual bona fide residents of this state at the time of their application and who have personal property of less than one thousand five hundred dollars and/or a monthly income insufficient to meet their needs outside of residence in such colony and soldiers' home as determined by standards of the department of veterans' affairs, may be admitted to membership in said colony under such rules and regulations as may be adopted by the department.

(1) All honorably discharged veterans who have served in the armed forces of the United States during wartime, members of the state militia disabled while in the line of duty, and their respective spouses or domestic partners with whom they have lived for three years prior to application for membership in said colony. Also, the spouse or domestic partner of any such veteran or disabled member of the state militia is eligible for membership in said colony, if such spouse or such domestic partner is the surviving spouse or surviving domestic partner of a veteran who was a member of a soldiers' home or colony in this state or entitled to admission thereto at the time of death: PROVIDED, That such veterans and members of the state militia shall, while they are members of said colony, be living with their said spouses or said domestic partners.

(2) The spouses or domestic partners of all veterans who were members of a soldiers' home or colony in this state or entitled to admission thereto at the time of death, and the spouses or domestic partners of all veterans who would have been entitled to admission to a soldiers' home or colony in this state at the time of death but for the fact that they were not indigent and unable to support themselves and families, which spouses or domestic partners have since the death of their said spouses or domestic partners become indigent and unable to earn a support for themselves: PROVIDED, That such spouses or such domestic partners are not less than fifty years of age and have not been married or in a domestic partnership since the decease of their said spouses or said domestic partners to any person not a member of a soldiers' home or colony in this state or entitled to admission thereto. Any resident of said colony may be admitted to the state soldiers' home for temporary care when requiring treatment. [2008 c 6 § 504; 1977 ex.s. c 186 § 2. Prior: 1973 1st ex.s. c 154 § 102; 1973 c 101 § 1; 1959 c 235 § 1; 1959 c 28 § 72.36.040; prior: 1947 c 190 § 1; 1925 ex.s. c 74 § 1; 1915 c 106 § 2; Rem. Supp. 1947 § 10730.]

**Part headings not law—Severability—2008 c 6:** See RCW 26.60.900 and 26.60.901.

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**72.36.045 State veterans' homes—Maintenance defined.** In the maintenance of the state veterans' homes by the state through the department of veterans' affairs, such maintenance shall include, but not be limited to, the provision of members' room and board, medical and dental care, physical and occupational therapy, and recreational activities, with the necessary implementing transportation, equipment, and personnel therefor. [2001 2nd sp.s. c 4 § 3; 1977 ex.s. c 186 § 10.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**72.36.050 Regulations of home applicable—Rations, medical attendance, clothing.** The members of the colony established in RCW 72.36.040 as now or hereafter amended shall, to all intents and purposes, be members of the state soldiers' home and subject to all the rules and regulations thereof, except the requirements of fatigue duty, and each member shall, in accordance with rules and regulations adopted by the director, be supplied with medical attendance and supplies from the home dispensary, rations, and clothing for a member and his or her spouse or domestic partner, or for a spouse or domestic partner admitted under RCW 72.36.040 as now or hereafter amended. The value of the supplies, rations, and clothing furnished such persons shall be determined by the director of veterans affairs and be included in the biennial budget. [2008 c 6 § 505; 1979 c 65 § 1; 1973 1st ex.s. c 154 § 103; 1967 c 112 § 1; 1959 c 28 § 72.36.050. Prior: 1947 c 190 § 2; 1939 c 161 § 1; 1927 c 276 § 1; 1925 ex.s. c 74 § 1; 1915 c 106 § 3; Rem. Supp. 1947 § 10731.]

**Part headings not law—Severability—2008 c 6:** See RCW 26.60.900 and 26.60.901.

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**72.36.055 Domiciliary and nursing care to be provided.** The state veterans' homes shall provide both domiciliary and nursing care. The level of domiciliary members shall remain consistent with the facilities available to accommodate those members: PROVIDED, That nothing in this section shall preclude the department from moving residents between nursing and domiciliary care in order to better utilize facilities and maintain the appropriate care for the members. [2001 2nd sp.s. c 4 § 4; 1977 ex.s. c 186 § 6.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**72.36.060 Federal funds.** The state treasurer is authorized to receive any and all moneys appropriated or paid by the United States under the act of congress entitled "An Act to provide aid to state or territorial homes for disabled soldiers and sailors of the United States," approved August 27, 1888, or under any other act or acts of congress for the benefit of such homes. Such moneys shall be deposited in the general fund and shall be expended for the maintenance of the state veterans' homes. [2001 2nd sp.s. c 4 § 5; 1977 ex.s. c 186 § 3; 1959 c 28 § 72.36.060. Prior: 1897 c 67 § 1; RRS § 10735.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**72.36.070 Washington veterans' home.** There shall be established and maintained in this state a branch of the state soldiers' home, under the name of the "Washington veterans' home," which branch shall be a home for honorably discharged veterans who have served the United States government in any of its wars, members of the state militia disabled while in the line of duty, and who are bona fide citizens of the state, and also the spouses or domestic partners of such veterans. [2008 c 6 § 506; 1977 ex.s. c 186 § 4; 1959 c 28 § 72.36.070. Prior: 1907 c 156 § 1; RRS § 10733.]

**Part headings not law—Severability—2008 c 6:** See RCW 26.60.900 and 26.60.901.

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**72.36.075 Eastern Washington veterans' home.**

There shall be established and maintained in this state a branch of the state soldiers' home, under the name of the "eastern Washington veterans' home," which branch shall be a home for veterans and their spouses who meet admission requirements contained in RCW 72.36.030. [2001 2nd sp.s. c 4 § 6.]

**72.36.077 Eastern Washington veterans' home—**

**Funding—Intent.** The department of veterans affairs indicates that it may acquire and staff an existing one-hundred-bed skilled nursing facility in Spokane and reopen it as an eastern Washington veterans' home by using a combination of funding sources. Funding sources include federal per diem payments, contributions from residents' incomes, and federal and state medicaid payments. In authorizing the establishment of an eastern Washington veterans' home, it is the intent of the legislature that the state general fund shall not provide support in future biennia for the eastern Washington veterans' home except for amounts required to pay the state share of medicaid costs. [2001 2nd sp.s. c 4 § 1.]

**72.36.090 Hobby promotion.** The superintendents of the state veterans' homes are hereby authorized to:

(1) Institute programs of hobby promotion designed to improve the general welfare and mental condition of the persons under their supervision;

(2) Provide for the financing of these programs by grants from funds in the superintendent's custody through operation of canteens and exchanges at such institutions;

(3) Limit the hobbies sponsored to projects which will, in their judgment, be self-liquidating or self-sustaining. [2001 2nd sp.s. c 4 § 8; 1977 ex.s. c 186 § 9; 1959 c 28 § 72.36.090. Prior: 1949 c 114 § 1; Rem. Supp. 1949 § 10736-1.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**72.36.100 Purchase of equipment, materials for therapy, hobbies.** The superintendent of each institution referred to in RCW 72.36.090 may purchase, from the appropriation to the institution, for operations, equipment or materials designed to initiate the programs authorized by RCW 72.36.090. [1959 c 28 § 72.36.100. Prior: 1949 c 114 § 2; Rem. Supp. 1949 § 10736-2.]

*Division of purchasing: RCW 43.19.190.*

**72.36.110 Burial of deceased member or deceased spouse or domestic partner.** The superintendent of the Washington veterans' home and the superintendent of the Washington soldiers' home and colony are hereby authorized to provide for the burial of deceased members in the cemeteries provided at the Washington veterans' home and Washington soldiers' home: PROVIDED, That this section shall not be construed to prevent any relative from assuming jurisdiction of such deceased persons: PROVIDED FURTHER, That the superintendent of the Washington soldiers' home and colony is hereby authorized to provide for the burial of spouses or domestic partners of members of the colony of the Washington soldiers' home. [2008 c 6 § 507; 1959 c 120 § 1; 1959 c 28 § 72.36.110. Prior: 1955 c 247 § 7.]

(2010 Ed.)

**Part headings not law—Severability—2008 c 6:** See RCW 26.60.900 and 26.60.901.

*Disposition of property of deceased inmate of state institution: RCW 11.08.101, 11.08.111, 11.08.120.*

**72.36.115 Eastern Washington state veterans' cemetery.** (1) The department shall establish and maintain in this state an eastern Washington state veterans' cemetery.

(2) All honorably discharged veterans, as defined by RCW 41.04.007, and their spouses or state registered domestic partners are eligible for interment in the eastern Washington state veterans' cemetery.

(3) The department shall collect all federal veterans' burial benefits and other available state or county resources.

(4) The department shall adopt rules defining the services available, eligibility, fees, and the general operations associated with the eastern Washington state veterans' cemetery. [2009 c 521 § 169; 2007 c 43 § 2.]

**Finding—2007 c 43:** "The legislature recognizes the unique sacrifices made by veterans and their family members. The legislature recognizes further that while all veterans are entitled to interment at the Tahoma national cemetery, veterans and families living in eastern Washington desire a veterans' cemetery location closer to their homes. The legislature requested and received the department of veterans affairs feasibility study and business plan outlining the need and feasibility and now intends to establish a state veterans' cemetery to honor veterans in their final resting place." [2007 c 43 § 1.]

**72.36.120 Deposit of veteran income—Expenditures and revenue control.** All income of residents of a state veterans' home, other than the personal needs allowance and income from therapeutic employment, shall be deposited in the state general fund—local and be available to apply against the cost of care provided by the state veterans' homes. The resident council created under RCW 72.36.150 may make recommendations on expenditures under this section. All expenditures and revenue control shall be subject to chapter 43.88 RCW. [1993 sp.s. c 3 § 7; 1977 ex.s. c 186 § 7.]

**Findings—1993 sp.s. c 3:** See RCW 72.36.1601.

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**72.36.140 Medicaid qualifying operations.** Qualifying operations at state veterans' homes operated by the department of veterans affairs, may be provided under the state's medicaid reimbursement system as administered by the department of social and health services.

The department of veterans affairs may contract with the department of social and health services under the authority of RCW 74.09.120 but shall be exempt from \*RCW 74.46.660(6), and the provisions of \*\*RCW 74.46.420 through 74.46.590 shall not apply to the medicaid rate-setting and reimbursement systems. The nursing care operations at the state veterans' homes shall be subject to inspection by the department of social and health services. This includes every part of the state veterans' home's premises, an examination of all records, including financial records, methods of administration, general and special dietary programs, the disbursement of drugs, methods of supply, and any other records the department of social and health services deems relevant. [1993 sp.s. c 3 § 2.]

**Reviser's note:** \*(1) RCW 74.46.660 was repealed by 2010 1st sp.s. c 34 § 21.

\*\*<sup>(2)</sup> RCW 74.46.420 through 74.46.590 were repealed by 1995 1st sp.s. c 18 § 98, effective June 30, 1998.

**Findings—1993 sp.s. c 3:** See RCW 72.36.1601.

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**72.36.145 Reduction in allowable income—Certification of qualifying operations.** No reduction in the allowable income provided for in current department rules may take effect until the effective date of certification of qualifying operations at state veterans’ homes for participation in the state’s medicaid reimbursement system. [1993 sp.s. c 3 § 10.]

**Findings—1993 sp.s. c 3:** See RCW 72.36.1601.

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**72.36.150 Resident council—Generally.** The department of veterans affairs shall provide by rule for the annual election of a resident council for each state veterans’ home. The council shall annually elect a chair from among its members, who shall call and preside at council meetings. The resident council shall serve in an advisory capacity to the director of the department of veterans affairs and to the superintendent in all matters related to policy and operational decisions affecting resident care and life in the home.

By October 31, 1993, the department shall adopt rules that provide for specific duties and procedures of the resident council which create an appropriate and effective relationship between residents and the administration. These rules shall be adopted after consultation with the resident councils and the state long-term care ombuds, and shall include, but not be limited to the following:

- (1) Provision of staff technical assistance to the councils;
- (2) Provision of an active role for residents in developing choices regarding activities, foods, living arrangements, personal care, and other aspects of resident life;
- (3) A procedure for resolving resident grievances; and
- (4) The role of the councils in assuring that resident rights are observed.

The development of these rules should include consultation with all residents through the use of both questionnaires and group discussions.

The resident council for each state veterans’ home shall annually review the proposed expenditures from the benefit fund that shall contain all private donations to the home, all bequeaths, and gifts. Disbursements from each benefit fund shall be for the benefit and welfare of the residents of the state veterans’ homes. Disbursements from the benefits funds shall be on the authorization of the superintendent or his or her authorized representative after approval has been received from the home’s resident council.

The superintendent or his or her designated representative shall meet with the resident council at least monthly. The director of the department of veterans affairs shall meet with each resident council at least three times each year. [1993 sp.s. c 3 § 3.]

**Findings—1993 sp.s. c 3:** See RCW 72.36.1601.

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**72.36.160 Personal needs allowance.** The legislature finds that to meet the objectives of RCW 72.36.1601, the per-

sonal needs allowance for all nursing care residents of the state veterans’ homes shall be an amount approved by the federal health care financing authority, but not less than ninety dollars or more than one hundred sixty dollars per month during periods of residency. For all domiciliary residents, the personal needs allowance shall be one hundred sixty dollars per month, or a higher amount defined in rules adopted by the department. [1993 sp.s. c 3 § 9.]

**Findings—1993 sp.s. c 3:** See RCW 72.36.1601.

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**72.36.1601 Findings.** The legislature finds that continued operation of state veterans’ homes is necessary to meet the needs of eligible veterans for shelter, personal and nursing care, and related services; that certain residents of veterans’ homes or services provided to them may be eligible for participation in the state’s medicaid reimbursement system; and that authorizing medicaid participation is appropriate to address the homes’ long-term funding needs. The legislature also finds that it is important to maintain the dignity and self-respect of residents of veterans’ homes, by providing for continued resident involvement in the homes’ operation, and through retention of current law guaranteeing a minimum amount of allowable personal income necessary to meet the greater costs for these residents of transportation, communication, and participation in family and community activities that are vitally important to their maintenance and rehabilitation. [1993 sp.s. c 3 § 1.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**72.36.900 Construction—Chapter applicable to state registered domestic partnerships—2009 c 521.** For the purposes of this chapter, the terms spouse, marriage, marital, husband, wife, widow, widower, next of kin, and family shall be interpreted as applying equally to state registered domestic partnerships or individuals in state registered domestic partnerships as well as to marital relationships and married persons, and references to dissolution of marriage shall apply equally to state registered domestic partnerships that have been terminated, dissolved, or invalidated, to the extent that such interpretation does not conflict with federal law. Where necessary to implement chapter 521, Laws of 2009, gender-specific terms such as husband and wife used in any statute, rule, or other law shall be construed to be gender neutral, and applicable to individuals in state registered domestic partnerships. [2009 c 521 § 168.]

**Chapter 72.40 RCW**

**STATE SCHOOLS FOR BLIND, DEAF, SENSORY HANDICAPPED**

Sections

- 72.40.010 Schools established—Purpose—Direction.
- 72.40.015 Center for childhood deafness and hearing loss—Functions.
- 72.40.019 Center for childhood deafness and hearing loss—Appointment of director—Qualifications.
- 72.40.0191 Center for childhood deafness and hearing loss—Director’s powers and duties.
- 72.40.020 State school for the blind—Appointment of superintendent—Qualifications.
- 72.40.022 Superintendent of the state school for the blind—Powers and duties.
- 72.40.024 Superintendents and director—Additional powers and duties.

72.40.028	Teachers' qualifications—Salaries—Provisional certification.
72.40.031	School year—School term—Legal holidays—Use of schools.
72.40.040	Who may be admitted.
72.40.050	Admission of nonresidents.
72.40.060	Duty of school districts.
72.40.070	Duty of educational service districts.
72.40.080	Duty of parents.
72.40.090	Weekend transportation—Expense.
72.40.100	Penalty.
72.40.110	Employees' hours of labor.
72.40.120	Center for childhood deafness and hearing loss—School for the blind—Appropriations.
72.40.200	Safety of students and protection from child abuse and neglect.
72.40.210	Reports to parents—Requirement.
72.40.220	Behavior management policies, procedures, and techniques.
72.40.230	Staff orientation and training.
72.40.240	Residential staffing requirement.
72.40.250	Protection from child abuse and neglect—Supervision of employees and volunteers—Procedures.
72.40.260	Protection from child abuse and neglect—Student instruction.
72.40.270	Protection from sexual victimization—Policy.
72.40.280	Monitoring of residential program by department of social and health services—Recommendations—Comprehensive child health and safety reviews—Access to records and documents—Safety standards.

*Children with disabilities, parental responsibility, commitment: Chapter 26.40 RCW.*

*Disposition of property of deceased inmate of state institution: RCW 11.08.101, 11.08.111, 11.08.120.*

*Employment of dental hygienist without supervision of dentist authorized in state institutions: RCW 18.29.056.*

*Record as to patients or inmates for purposes of vital statistics: RCW 70.58.270.*

*Teachers' qualifications at state schools for the deaf and blind: RCW 72.40.028.*

#### **72.40.010 Schools established—Purpose—Direction.**

There are established at Vancouver, Clark county, a school which shall be known as the state school for the blind, and a separate school which shall be known as the state school for the deaf. The primary purpose of the state school for the blind and the state school for the deaf is to educate and train hearing and visually impaired children.

The school for the blind shall be under the direction of the superintendent with the advice of the board of trustees. The school for the deaf shall be under the direction of the director of the center or the director's designee and the board of trustees. [2009 c 381 § 3; 2002 c 209 § 1; 1985 c 378 § 11; 1959 c 28 § 72.40.010. Prior: 1913 c 10 § 1; 1886 p 136 § 1; RRS § 4645.]

**Findings—Intent—Transfer of powers, duties, and property—Construction of statutory references—2009 c 381:** See notes following RCW 72.40.015.

**Effective date—2002 c 209:** See note following RCW 72.42.021.

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

#### **72.40.015 Center for childhood deafness and hearing loss—Functions.**

(1) The Washington state center for childhood deafness and hearing loss is established to provide statewide leadership for the coordination and delivery of educational services to children who are deaf or hard of hearing. The activities of the center shall be under the authority of the director and the board of trustees. The superintendent and board of trustees of the state school for the deaf as of July 26, 2009, shall be the director and board of trustees of the center.

(2) The center's primary functions are:

(a) Managing and directing the supervision of the state school for the deaf;

(b) Providing statewide leadership and support for the coordination of regionally delivered educational services in the full range of communication modalities, for children who are deaf or hard of hearing; and

(c) Collaborating with appropriate public and private partners for the training and professional development of educators serving children who are deaf or hard of hearing. [2009 c 381 § 2.]

**Findings—Intent—2009 c 381:** "The legislature finds that the education of children who are deaf presents unique challenges because deafness is a low-incidence disability significantly impacting the child's ability to access communication at home, at school, and in the community. The legislature further finds that over the past fifty years, there have been numerous advances in technology as well as a growing awareness about the importance of delivering services to children in a variety of communication modalities to support their early and continued access to communication. The legislature intends to enhance the coordination of regionally delivered educational services and supports for children who are deaf or hard of hearing and to promote the development of communication-rich learning environments for these children." [2009 c 381 § 1.]

**Transfer of powers, duties, and property—Construction of statutory references—2009 c 381:** "(1) The state school for the deaf is hereby abolished and its powers, duties, and functions are hereby transferred to the Washington state center for childhood deafness and hearing loss. All references to the superintendent or the state school for the deaf in the Revised Code of Washington shall be construed to mean the director or the Washington state center for childhood deafness and hearing loss.

(2)(a) All reports, documents, surveys, books, records, files, papers, or written material in the possession of the state school for the deaf shall be delivered to the custody of the Washington state center for childhood deafness and hearing loss. All cabinets, furniture, office equipment, motor vehicles, and other tangible property employed by the state school for the deaf shall be made available to the Washington state center for childhood deafness and hearing loss. All funds, credits, or other assets held by the state school for the deaf shall be assigned to the Washington state center for childhood deafness and hearing loss.

(b) Any appropriations made to the state school for the deaf shall, on July 26, 2009, be transferred and credited to the Washington state center for childhood deafness and hearing loss.

(c) If any question arises as to the transfer of any personnel, funds, books, documents, records, papers, files, equipment, or other tangible property used or held in the exercise of the powers and the performance of the duties and functions transferred, the director of financial management shall make a determination as to the proper allocation and certify the same to the state agencies concerned.

(3) All employees of the state school for the deaf are transferred to the jurisdiction of the Washington state center for childhood deafness and hearing loss. All employees classified under chapter 41.06 RCW, the state civil service law, are assigned to the Washington state center for childhood deafness and hearing loss to perform their usual duties upon the same terms as formerly, without any loss of rights, subject to any action that may be appropriate thereafter in accordance with the laws and rules governing state civil service.

(4) All rules and all pending business before the state school for the deaf shall be continued and acted upon by the Washington state center for childhood deafness and hearing loss. All existing contracts and obligations shall remain in full force and shall be performed by the Washington state center for childhood deafness and hearing loss.

(5) The transfer of the powers, duties, functions, and personnel of the state school for the deaf shall not affect the validity of any act performed before July 26, 2009.

(6) If apportionments of budgeted funds are required because of the transfers directed by this section, the director of financial management shall certify the apportionments to the agencies affected, the state auditor, and the state treasurer. Each of these shall make the appropriate transfer and adjustments in funds and appropriation accounts and equipment records in accordance with the certification.

(7) The existing bargaining units shall be transferred in their entirety without the merging of other bargaining units or the inclusion of employees from other bargaining units. Nothing contained in this section may be construed to alter any of the existing collective bargaining units unless the bargaining unit has been modified by action of the public employment relations commission as provided by law. Therefore, the certification of the existing

bargaining units shall remain. However, the commission may, upon request, amend the certification to reflect the name of the new agency. In addition, nothing in this section may be construed to alter the provisions of any existing collective bargaining agreement until the agreement has expired." [2009 c 381 § 11.]

**72.40.019 Center for childhood deafness and hearing loss—Appointment of director—Qualifications.** The governor shall appoint a director for the Washington state center for childhood deafness and hearing loss. The director shall have a master's or higher degree from an accredited college or university in school administration or deaf education, five or more years of experience teaching or providing habilitative services to deaf or hard of hearing students, and three or more years administrative or supervisory experience in programs for deaf or hard of hearing students. [2009 c 381 § 4; 1985 c 378 § 14.]

**Findings—Intent—Transfer of powers, duties, and property—Construction of statutory references—2009 c 381:** See notes following RCW 72.40.015.

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**72.40.0191 Center for childhood deafness and hearing loss—Director's powers and duties.** In addition to any other powers and duties prescribed by law, the director of the Washington state center for childhood deafness and hearing loss:

(1) Shall be responsible for the supervision and management of the center, including the state school for the deaf, and the property of various kinds. The director may designate an individual to oversee the day-to-day operation and supervision of students at the school;

(2) Shall employ members of the faculty, administrative officers, and other employees, who shall all be subject to chapter 41.06 RCW, the state civil service law, unless specifically exempted by other provisions of law;

(3) Shall provide technical assistance and support as appropriate to local and regional efforts to build critical mass and communication-rich networking opportunities for children who are deaf or hard of hearing and their families;

(4) Shall establish the course of study including vocational training, with the assistance of the faculty and the approval of the board of trustees;

(5) Shall, as approved by the board of trustees, control and authorize the use of the facilities for night school, summer school, public meetings, applied research and training for the instruction of students who are deaf or hard of hearing, outreach and support to families of children who are deaf or hard of hearing, or other purposes consistent with the purposes of the center;

(6) Shall purchase all supplies and lease or purchase equipment and other personal property needed for the operation or maintenance of the center;

(7) Shall prepare, submit to the board of trustees for approval, and administer the budget consistent with RCW 43.88.160 and the budget and accounting act, chapter 43.88 RCW generally, as applicable;

(8) Shall provide technical assistance and support to educational service districts for the regional delivery of a full range of educational services to students who are deaf or hard of hearing, including but not limited to services relying on

American Sign Language, auditory oral education, total communication, and signed exact English;

(9) As requested by educational service districts, shall recruit, employ, and deploy itinerant teachers to provide in-district services to children who are deaf or hard of hearing;

(10) May establish criteria, in addition to state certification, for the teachers at the school and employees of the center;

(11) May establish, with the approval of the board of trustees, new facilities as needs demand;

(12) May adopt rules, under chapter 34.05 RCW, as approved by the board of trustees and as deemed necessary for the governance, management, and operation of the center;

(13) May adopt rules, as approved by the board of trustees, for pedestrian and vehicular traffic on property owned, operated, and maintained by the center;

(14) Except as otherwise provided by law, may enter into contracts as the director deems essential to the purpose of the center;

(15) May receive gifts, grants, conveyances, devises, and bequests of real or personal property from whatever source, as may be made from time to time, in trust or otherwise, whenever the terms and conditions will aid in carrying out the programs of the center; sell, lease, or exchange, invest, or expend the same or the proceeds, rents, profits, and income thereof except as limited by the terms and conditions thereof; and adopt rules to govern the receipt and expenditure of the proceeds, rents, profits, and income thereof;

(16) May adopt rules, as approved by the board of trustees, providing for the transferability of employees between the center and the school for the blind consistent with collective bargaining agreements in effect; and

(17) May adopt rules under chapter 34.05 RCW, as approved by the board of trustees, and perform all other acts not forbidden by law as the director deems necessary or appropriate to the administration of the center. [2009 c 381 § 5.]

**Reviser's note:** 2009 c 381 § 5 directed that this section be codified in chapter 72.42 RCW, but codification in chapter 72.40 RCW appears to be more appropriate.

**Findings—Intent—Transfer of powers, duties, and property—Construction of statutory references—2009 c 381:** See notes following RCW 72.40.015.

**72.40.020 State school for the blind—Appointment of superintendent—Qualifications.** The governor shall appoint a superintendent for the state school for the blind. The superintendent shall have a master's degree from an accredited college or university in school administration or blind education, five years of experience teaching blind students in the classroom, and three years administrative or supervisory experience in programs for blind students. [1985 c 378 § 13; 1979 c 141 § 247; 1959 c 28 § 72.40.020. Prior: 1909 c 97 p 258 § 5; RRS § 4649.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**72.40.022 Superintendent of the state school for the blind—Powers and duties.** In addition to any other powers and duties prescribed by law, the superintendent of the state school for the blind:

(1) Shall have full control of the school and the property of various kinds.

(2) May establish criteria, in addition to state certification, for teachers at the school.

(3) Shall employ members of the faculty, administrative officers, and other employees, who shall all be subject to chapter 41.06 RCW, the state civil service law, unless specifically exempted by other provisions of law.

(4) Shall establish the course of study including vocational training, with the assistance of the faculty and the advice of the board of trustees.

(5) May establish new facilities as needs demand.

(6) May adopt rules, under chapter 34.05 RCW, as deemed necessary for the government, management, and operation of the housing facilities.

(7) Shall control the use of the facilities and authorize the use of the facilities for night school, summer school, public meetings, or other purposes consistent with the purposes of the school.

(8) May adopt rules for pedestrian and vehicular traffic on property owned, operated, and maintained by the school.

(9) Shall purchase all supplies and lease or purchase equipment and other personal property needed for the operation or maintenance of the school.

(10) Except as otherwise provided by law, may enter into contracts as the superintendent deems essential to the purpose of the school.

(11) May receive gifts, grants, conveyances, devises, and bequests of real or personal property from whatever source, as may be made from time to time, in trust or otherwise, whenever the terms and conditions will aid in carrying out the programs of the school; sell, lease or exchange, invest, or expend the same or the proceeds, rents, profits, and income thereof except as limited by the terms and conditions thereof; and adopt rules to govern the receipt and expenditure of the proceeds, rents, profits, and income thereof.

(12) May, except as otherwise provided by law, enter into contracts the superintendent deems essential for the operation of the school.

(13) May adopt rules providing for the transferability of employees between the \*school for the deaf and the school for the blind consistent with collective bargaining agreements in effect.

(14) Shall prepare and administer the school's budget consistent with RCW 43.88.160 and the budget and accounting act, chapter 43.88 RCW generally, as applicable.

(15) May adopt rules under chapter 34.05 RCW and perform all other acts not forbidden by law as the superintendent deems necessary or appropriate to the administration of the school. [2002 c 209 § 2; 1993 c 147 § 1; 1985 c 378 § 15.]

**\*Reviser's note:** References to the "state school for the deaf" must be construed as references to the "Washington state center for childhood deafness and hearing loss," pursuant to 2009 c 381 § 11.

**Effective date—2002 c 209:** See note following RCW 72.42.021.

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**72.40.024 Superintendents and director—Additional powers and duties.** In addition to the powers and duties under RCW 72.40.022 and 72.40.0191, the superintendent of the school for the blind and the director of the Washington

(2010 Ed.)

state center for childhood deafness and hearing loss, or the director's designee, shall:

(1) Monitor the location and educational placement of each student reported to the superintendent and the director, or the director's designee, by the educational service district superintendents;

(2) Provide information about educational programs, instructional techniques, materials, equipment, and resources available to students with visual or auditory impairments to the parent or guardian, educational service district superintendent, and the superintendent of the school district where the student resides; and

(3) Serve as a consultant to the office of the superintendent of public instruction, provide instructional leadership, and assist school districts in improving their instructional programs for students with visual or hearing impairments. [2009 c 381 § 6; 2002 c 209 § 4; 1993 c 147 § 2; 1985 c 378 § 17.]

**Findings—Intent—Transfer of powers, duties, and property—Construction of statutory references—2009 c 381:** See notes following RCW 72.40.015.

**Effective date—2002 c 209:** See notes following RCW 72.42.021.

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**72.40.028 Teachers' qualifications—Salaries—Provisional certification.** All teachers employed by the Washington state center for childhood deafness and hearing loss and the state school for the blind shall meet all certification requirements and the programs shall meet all accreditation requirements and conform to the standards defined by law or by rule of the Washington professional educator standards board or the office of the state superintendent of public instruction. The superintendent and the director, by rule, may adopt additional educational standards for their respective facilities. Salaries of all certificated employees shall be set so as to conform to and be contemporary with salaries paid to other certificated employees of similar background and experience in the school district in which the program or facility is located. The superintendent and the director may provide for provisional certification for teachers in their respective facilities including certification for emergency, temporary, substitute, or provisional duty. [2009 c 381 § 7; 2006 c 263 § 829; 1985 c 378 § 18.]

**Findings—Intent—Transfer of powers, duties, and property—Construction of statutory references—2009 c 381:** See notes following RCW 72.40.015.

**Findings—Purpose—Part headings not law—2006 c 263:** See notes following RCW 28A.150.230.

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**72.40.031 School year—School term—Legal holidays—Use of schools.** The school year for the state school for the blind and the state school for the deaf shall commence on the first day of July of each year and shall terminate on the 30th day of June of the succeeding year. The regular school term shall be for a period of nine months and shall commence as near as reasonably practical at the time of the commencement of regular terms in other public schools, with the equivalent number of days as are now required by law, and the regulations of the superintendent of public instruction as now or hereafter amended, during the school year in other public

schools. The school and the center shall observe all legal holidays, in the same manner as other agencies of state government, and will not be in session on such days and such other days as may be approved by the superintendent or the director. During the period when the schools are not in session during the regular school term, schools may be operated, subject to the approval of the superintendent or the director or the director's designee, for the instruction of students or for such other reasons which are in furtherance of the objects and purposes of the respective facilities. [2009 c 381 § 12; 1985 c 378 § 16; 1979 c 141 § 248; 1970 ex.s. c 50 § 6.]

**Findings—Intent—2009 c 381:** See note following RCW 72.40.015.

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**72.40.040 Who may be admitted.** (1) The schools shall be free to residents of the state between the ages of three and twenty-one years, who are blind/visually impaired or deaf/hearing impaired, or with other disabilities where a vision or hearing disability is the major need for services.

(2) The schools may provide nonresidential services to children ages birth through three who meet the eligibility criteria in this section, subject to available funding.

(3) Each school shall admit and retain students on a space available basis according to criteria developed and published by each school superintendent in consultation with each board of trustees and school faculty: PROVIDED, That students over the age of twenty-one years, who are otherwise qualified may be retained at the school, if in the discretion of the superintendent in consultation with the faculty they are proper persons to receive further training given at the school and the facilities are adequate for proper care, education, and training.

(4) The admission and retention criteria developed and published by each school superintendent shall contain a provision allowing the schools to refuse to admit or retain a student who is an adjudicated sex offender except that the schools shall not admit or retain a student who is an adjudicated level III sex offender as provided in RCW 13.40.217(3). [2000 c 125 § 8; 1993 c 147 § 3; 1985 c 378 § 19; 1984 c 160 § 4; 1977 ex.s. c 80 § 68; 1969 c 39 § 1; 1959 c 28 § 72.40.040. Prior: 1955 c 260 § 1; 1909 c 97 p 258 § 3; 1903 c 140 § 1; 1897 c 118 § 229; 1886 p 136 § 2; RRS § 4647.]

**Conflict with federal requirements—2000 c 125:** See note following RCW 72.40.200.

**Purpose—Intent—Severability—1977 ex.s. c 80:** See notes following RCW 4.16.190.

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**72.40.050 Admission of nonresidents.** (1) The superintendents may admit to their respective schools visually or hearing impaired children from other states as appropriate, but the parents or guardians of such children or other state will be required to pay annually or quarterly in advance a sufficient amount to cover the cost of maintaining and educating such children as set by the applicable superintendent.

(2) The admission and retention criteria developed and published by each school superintendent shall contain a provision allowing the schools to refuse to admit or retain a non-resident student who is an adjudicated sex offender, or the equivalent under the laws of the state in which the student

resides, except that the schools shall not admit or retain a nonresident student who is an adjudicated level III sex offender or the equivalent under the laws of the state in which the student resides. [2000 c 125 § 9; 1985 c 378 § 20; 1979 c 141 § 249; 1959 c 28 § 72.40.050. Prior: 1909 c 97 p 258 § 4; 1897 c 118 § 251; 1886 p 141 § 32; RRS § 4648.]

**Conflict with federal requirements—2000 c 125:** See note following RCW 72.40.200.

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**72.40.060 Duty of school districts.** It shall be the duty of all school districts in the state, to report to their respective educational service districts the names of all visually or hearing impaired youth residing within their respective school districts who are between the ages of three and twenty-one years. [1985 c 378 § 21; 1975 1st ex.s. c 275 § 151; 1969 ex.s. c 176 § 97; 1959 c 28 § 72.40.060. Prior: 1909 c 97 p 258 § 6; 1897 c 118 § 252; 1890 p 497 § 1; RRS § 4650.]

*Superintendent's duties: RCW 28A.400.030.*

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**72.40.070 Duty of educational service districts.** It shall be the duty of each educational service district to make a full and specific report of visually impaired or deaf or hard of hearing youth to the superintendent of the school for the blind or the director of the Washington state center for childhood deafness and hearing loss, or the director's designee, as the case may be and the superintendent of public instruction, annually. The superintendent of public instruction shall report about the deaf or hard of hearing or visually impaired youth to the school for the blind and the Washington state center for childhood deafness and hearing loss, as the case may be, annually. [2009 c 381 § 18; 1985 c 378 § 22; 1979 c 141 § 250; 1975 1st ex.s. c 275 § 152; 1969 ex.s. c 176 § 98; 1959 c 28 § 72.40.070. Prior: 1909 c 97 p 259 § 7; 1897 c 118 § 253; 1890 p 497 § 2; RRS § 4651.]

**Findings—Intent—2009 c 381:** See note following RCW 72.40.015.

*Educational service districts—Superintendents—Boards: Chapter 28A.310 RCW.*

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**72.40.080 Duty of parents.** It shall be the duty of the parents or the guardians of all such visually or hearing impaired youth to send them each year to the proper school. Full and due consideration shall be given to the parent's or guardian's preference as to which program the child should attend. The educational service district superintendent shall take all action necessary to enforce this section. [1993 c 147 § 4; 1985 c 378 § 23; 1975 1st ex.s. c 275 § 153; 1969 ex.s. c 176 § 99; 1959 c 28 § 72.40.080. Prior: 1909 c 97 p 259 § 8; 1897 c 118 § 254; 1890 p 498 § 3; RRS § 4652.]

*Children with disabilities, parental responsibility, commitment: Chapter 26.40 RCW.*

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**72.40.090 Weekend transportation—Expense.** Notwithstanding any other provision of law, the state school for the blind and the \*school for the deaf may arrange and provide for weekend transportation to and from schools. This transportation shall be at no cost to students and parents, as

allowed within the appropriations allocated to the schools. [1993 c 147 § 5; 1985 c 378 § 24; 1975 c 51 § 1; 1959 c 28 § 72.40.090. Prior: 1909 c 97 p 259 § 9; 1899 c 142 § 28; 1899 c 81 § 2; 1897 c 118 § 255; RRS § 4653.]

**\*Reviser's note:** References to the "state school for the deaf" must be construed as references to the "Washington state center for childhood deafness and hearing loss," pursuant to 2009 c 381 § 11.

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**72.40.100 Penalty.** Any parent, guardian, or educational service district superintendent who, without proper cause, fails to carry into effect the provisions of this chapter shall be guilty of a misdemeanor, and upon conviction thereof, upon the complaint of any officer or citizen of the county or state, before any district or superior court, shall be fined in any sum not less than fifty nor more than two hundred dollars. [1987 c 202 § 229; 1985 c 378 § 25; 1975 1st ex.s. c 275 § 154; 1969 ex.s. c 176 § 100; 1959 c 28 § 72.40.100. Prior: 1909 c 97 p 259 § 10; 1897 c 118 § 256; 1890 p 498 § 5; RRS § 4654.]

**Intent—1987 c 202:** See note following RCW 2.04.190.

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**72.40.110 Employees' hours of labor.** Employees' hours of labor shall follow all state merit rules as they pertain to various work classifications and current collective bargaining agreements. [1993 c 147 § 6; 1985 c 378 § 12.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**72.40.120 Center for childhood deafness and hearing loss—School for the blind—Appropriations.** Any appropriation for the Washington state center for childhood deafness and hearing loss or the school for the blind shall be made directly to the center or the school for the blind. [2009 c 381 § 8; 1991 c 65 § 1.]

**Findings—Intent—Transfer of powers, duties, and property—Construction of statutory references—2009 c 381:** See notes following RCW 72.40.015.

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**72.40.200 Safety of students and protection from child abuse and neglect.** The Washington state center for childhood deafness and hearing loss and the state school for the blind shall promote the personal safety of students and protect the children who attend from child abuse and neglect as defined in RCW 26.44.020. [2009 c 381 § 9; 2000 c 125 § 1.]

**Findings—Intent—Transfer of powers, duties, and property—Construction of statutory references—2009 c 381:** See notes following RCW 72.40.015.

**Conflict with federal requirements—2000 c 125:** "If any part of this act is found to be in conflict with federal requirements that are a prescribed condition to the allocation of federal funds to the state, the conflicting part of this act is inoperative solely to the extent of the conflict and with respect to the agencies directly affected, and this finding does not affect the operation of the remainder of this act in its application to the agencies concerned. Rules adopted under this act must meet federal requirements that are a necessary condition to the receipt of federal funds by the state." [2000 c 125 § 11.]

**72.40.210 Reports to parents—Requirement.** The director of the Washington state center for childhood deaf-

(2010 Ed.)

ness and hearing loss and the superintendent of the state school for the blind or their designees shall immediately report to the persons indicated the following events:

(1) To the child's parent, custodian, or guardian:

(a) The death of the child;

(b) Hospitalization of a child in attendance or residence at the facility;

(c) Allegations of child abuse or neglect in which the parent's child in attendance or residence at the facility is the alleged victim;

(d) Allegations of physical or sexual abuse in which the parent's child in attendance or residence at the facility is the alleged perpetrator;

(e) Life-threatening illness;

(f) The attendance at the facility of any child who is a registered sex offender under RCW 9A.44.130 as permitted by RCW 4.24.550.

(2) Notification to the parent shall be made by the means most likely to be received by the parent. If initial notification is made by telephone, such notification shall be followed by notification in writing within forty-eight hours after the initial verbal contact is made. [2009 c 381 § 10; 2000 c 125 § 2.]

**Findings—Intent—Transfer of powers, duties, and property—Construction of statutory references—2009 c 381:** See notes following RCW 72.40.015.

**Conflict with federal requirements—2000 c 125:** See note following RCW 72.40.200.

**72.40.220 Behavior management policies, procedures, and techniques.** (1) The director of the Washington state center for childhood deafness and hearing loss, or the director's designee, and the superintendent of the state school for the blind shall maintain in writing and implement behavior management policies and procedures that accomplish the following:

(a) Support the child's appropriate social behavior, self-control, and the rights of others;

(b) Foster dignity and self-respect for the child;

(c) Reflect the ages and developmental levels of children in care.

(2) The state school for the deaf and the state school for the blind shall use proactive, positive behavior support techniques to manage potential child behavior problems. These techniques shall include but not be limited to:

(a) Organization of the physical environment and staffing patterns to reduce factors leading to behavior incidents;

(b) Intervention before behavior becomes disruptive, in the least invasive and least restrictive manner available;

(c) Emphasis on verbal deescalation to calm the upset child;

(d) Redirection strategies to present the child with alternative resolution choices. [2009 c 381 § 19; 2000 c 125 § 3.]

**Findings—Intent—2009 c 381:** See note following RCW 72.40.015.

**Conflict with federal requirements—2000 c 125:** See note following RCW 72.40.200.

**72.40.230 Staff orientation and training.** (1) The \*state school for the deaf and the state school for the blind shall ensure that all staff, within two months of beginning employment, complete a minimum of fifteen hours of job orientation which shall include, but is not limited to, presenta-

tion of the standard operating procedures manual for each school, describing all policies and procedures specific to the school.

(2) The \*state school for the deaf and the state school for the blind shall ensure that all new staff receive thirty-two hours of job specific training within ninety days of employment which shall include, but is not limited to, promoting and protecting student personal safety. All staff shall receive thirty-two hours of ongoing training in these areas every two years. [2000 c 125 § 4.]

**\*Reviser's note:** References to the "state school for the deaf" must be construed as references to the "Washington state center for childhood deafness and hearing loss," pursuant to 2009 c 381 § 11.

**Conflict with federal requirements—2000 c 125:** See note following RCW 72.40.200.

**72.40.240 Residential staffing requirement.** The residential program at the \*state school for the deaf and the state school for the blind shall employ residential staff in sufficient numbers to ensure the physical and emotional needs of the residents are met. Residential staff shall be on duty in sufficient numbers to ensure the safety of the children residing there.

For purposes of this section, "residential staff" means staff in charge of supervising the day-to-day living situation of the children in the residential portion of the schools. [2000 c 125 § 5.]

**\*Reviser's note:** References to the "state school for the deaf" must be construed as references to the "Washington state center for childhood deafness and hearing loss," pursuant to 2009 c 381 § 11.

**Conflict with federal requirements—2000 c 125:** See note following RCW 72.40.200.

**72.40.250 Protection from child abuse and neglect—Supervision of employees and volunteers—Procedures.** In addition to the powers and duties under RCW 72.40.022 and 72.40.024, the director of the Washington state center for childhood deafness and hearing loss, or the director's designee, and the superintendent of the state school for the blind shall:

(1) Develop written procedures for the supervision of employees and volunteers who have the potential for contact with students. Such procedures shall be designed to prevent child abuse and neglect by providing for adequate supervision of such employees and volunteers, taking into consideration such factors as the student population served, architectural factors, and the size of the facility. Such procedures shall include, but need not be limited to, the following:

- (a) Staffing patterns and the rationale for such;
- (b) Responsibilities of supervisors;
- (c) The method by which staff and volunteers are made aware of the identity of all supervisors, including designated on-site supervisors;
- (d) Provision of written supervisory guidelines to employees and volunteers;
- (e) Periodic supervisory conferences for employees and volunteers; and
- (f) Written performance evaluations of staff to be conducted by supervisors in a manner consistent with applicable provisions of the civil service law.

(2) Develop written procedures for the protection of students when there is reason to believe an incident has occurred which would render a minor student an abused or neglected child within the meaning of RCW 26.44.020. Such procedures shall include, but need not be limited to, the following:

(a) Investigation. Immediately upon notification that a report of child abuse or neglect has been made to the department of social and health services or a law enforcement agency, the superintendent or the director, or the director's designee, shall:

(i) Preserve any potential evidence through such actions as securing the area where suspected abuse or neglect occurred;

(ii) Obtain proper and prompt medical evaluation and treatment, as needed, with documentation of any evidence of abuse or neglect; and

(iii) Provide necessary assistance to the department of social and health services and local law enforcement in their investigations;

(b) Safety. Upon notification that a report of suspected child abuse or neglect has been made to the department of social and health services or a law enforcement agency, the superintendent or the director or his or her designee, with consideration for causing as little disruption as possible to the daily routines of the students, shall evaluate the situation and immediately take appropriate action to assure the health and safety of the students involved in the report and of any other students similarly situated, and take such additional action as is necessary to prevent future acts of abuse or neglect. Such action may include:

(i) Consistent with federal and state law:

(A) Removing the alleged perpetrator from the school;

(B) Increasing the degree of supervision of the alleged perpetrator; and

(C) Initiating appropriate disciplinary action against the alleged perpetrator;

(ii) Provision of increased training and increased supervision to volunteers and staff pertinent to the prevention and remediation of abuse and neglect;

(iii) Temporary removal of the students from a program and reassignment of the students within the school, as an emergency measure, if it is determined that there is a risk to the health or safety of such students in remaining in that program. Whenever a student is removed, pursuant to this subsection (2)(b)(iii), from a special education program or service specified in his or her individualized education program, the action shall be reviewed in an individualized education program meeting; and

(iv) Provision of counseling to the students involved in the report or any other students, as appropriate;

(c) Corrective action plans. Upon receipt of the results of an investigation by the department of social and health services pursuant to a report of suspected child abuse or neglect, the superintendent or the director, or the director's designee, after consideration of any recommendations by the department of social and health services for preventive and remedial action, shall implement a written plan of action designed to assure the continued health and safety of students and to provide for the prevention of future acts of abuse or neglect. [2009 c 381 § 20; 2000 c 125 § 6.]

**Findings—Intent—2009 c 381:** See note following RCW 72.40.015.

**Conflict with federal requirements—2000 c 125:** See note following RCW 72.40.200.

**72.40.260 Protection from child abuse and neglect—Student instruction.** In consideration of the needs and circumstances of the program, the \*state school for the deaf and the state school for the blind shall provide instruction to all students in techniques and procedures which will enable the students to protect themselves from abuse and neglect. Such instruction shall be described in a written plan to be submitted to the board of trustees for review and approval, and shall be:

(1) Appropriate for the age, individual needs, and particular circumstances of students, including the existence of mental, physical, emotional, or sensory disabilities;

(2) Provided at different times throughout the year in a manner which will ensure that all students receive such instruction; and

(3) Provided by individuals who possess appropriate knowledge and training, documentation of which shall be maintained by the school. [2000 c 125 § 7.]

**\*Reviser's note:** References to the "state school for the deaf" must be construed as references to the "Washington state center for childhood deafness and hearing loss," pursuant to 2009 c 381 § 11.

**Conflict with federal requirements—2000 c 125:** See note following RCW 72.40.200.

**72.40.270 Protection from sexual victimization—Policy.** (1) The schools shall implement a policy for the children who reside at the schools protecting those who are vulnerable to sexual victimization by other children who are sexually aggressive and residing at the schools. The policy shall include, at a minimum, the following elements:

(a) Development and use of an assessment process for identifying children, within thirty days of beginning residence at the schools, who present a moderate or high risk of sexually aggressive behavior for the purposes of this section. The assessment process need not require that every child who is adjudicated or convicted of a sex offense as defined in RCW 9.94A.030 be determined to be sexually aggressive, nor shall a sex offense adjudication or conviction be required in order to determine a child is sexually aggressive. Instead, the assessment process shall consider the individual circumstances of the child, including his or her age, physical size, sexual abuse history, mental and emotional condition, and other factors relevant to sexual aggressiveness. The definition of "sexually aggressive youth" in RCW 74.13.075 does not apply to this section to the extent that it conflicts with this section;

(b) Development and use of an assessment process for identifying children, within thirty days of beginning residence at the schools, who may be vulnerable to victimization by children identified under (a) of this subsection as presenting a moderate or high risk of sexually aggressive behavior. The assessment process shall consider the individual circumstances of the child, including his or her age, physical size, sexual abuse history, mental and emotional condition, and other factors relevant to vulnerability;

(c) Development and use of placement criteria to avoid assigning children who present a moderate or high risk of sexually aggressive behavior to the same sleeping quarters as

(2010 Ed.)

children assessed as vulnerable to sexual victimization, except that they may be assigned to the same multiple-person sleeping quarters if those sleeping quarters are regularly monitored by visual surveillance equipment or staff checks;

(d) Development and use of procedures for minimizing, within available funds, unsupervised contact in the residential facilities of the schools between children presenting moderate to high risk of sexually aggressive behavior and children assessed as vulnerable to sexual victimization. The procedures shall include taking reasonable steps to prohibit any child residing at the schools who present a moderate to high risk of sexually aggressive behavior from entering any sleeping quarters other than the one to which they are assigned, unless accompanied by an authorized adult.

(2) For the purposes of this section, the following terms have the following meanings:

(a) "Sleeping quarters" means the bedrooms or other rooms within a residential facility where children are assigned to sleep.

(b) "Unsupervised contact" means contact occurring outside the sight or hearing of a responsible adult for more than a reasonable period of time under the circumstances. [2000 c 125 § 10.]

**Conflict with federal requirements—2000 c 125:** See note following RCW 72.40.200.

**72.40.280 Monitoring of residential program by department of social and health services—Recommendations—Comprehensive child health and safety reviews—Access to records and documents—Safety standards.** (1) The department of social and health services must periodically monitor the residential program at the state school for the deaf, including but not limited to examining the residential-related policies and procedures as well as the residential facilities. The department of social and health services must make recommendations to the director and the board of trustees of the center or its successor board on health and safety improvements related to child safety and well-being. The department of social and health services must conduct the monitoring reviews at least annually. The director or the director's designee may from time to time request technical assistance from the department of social and health services.

(2) The department of social and health services must conduct a comprehensive child health and safety review, as defined in rule, of the residential program at the state school for the deaf every three years.

(3) The state school for the deaf must provide the department of social and health services' staff with full and complete access to all records and documents that the department staff may request to carry out the requirements of this section. The department of social and health services must have full and complete access to all students and staff of the state school for the deaf to conduct interviews to carry out the requirements of this section.

(4) For the purposes of this section, the department of social and health services must use the safety standards established in this chapter when conducting the reviews. [2009 c 381 § 21; 2002 c 208 § 2.]

**Findings—Intent—2009 c 381:** See note following RCW 72.40.015.

## Chapter 72.41 RCW

## BOARD OF TRUSTEES—SCHOOL FOR THE BLIND

## Sections

72.41.010	Intention—Purpose.
72.41.015	"Superintendent" defined.
72.41.020	Board of trustees—Membership—Terms—Vacancies—Officers—Rules and regulations.
72.41.025	Membership, effect of creation of new congressional districts or boundaries.
72.41.030	Bylaws—Rules and regulations—Officers.
72.41.040	Powers and duties.
72.41.060	Travel expenses.
72.41.070	Meetings.

**72.41.010 Intention—Purpose.** It is the intention of the legislature in creating a board of trustees for the state school for the blind to perform the duties set forth in this chapter, that the board of trustees perform needed advisory services to the legislature and to the superintendent of the Washington state school for the blind, in the development of programs for the visually impaired, and in the operation of the Washington state school for the blind. [1985 c 378 § 28; 1973 c 118 § 1.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**72.41.015 "Superintendent" defined.** Unless the context clearly requires otherwise, as used in this chapter "superintendent" means superintendent of the state school for the blind. [1985 c 378 § 27.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**72.41.020 Board of trustees—Membership—Terms—Vacancies—Officers—Rules and regulations.** There is hereby created a board of trustees for the state school for the blind to be composed of a resident from each of the state's congressional districts now or hereafter existing. Trustees with voting privileges shall be appointed by the governor with the consent of the senate. A representative of the parent-teachers association of the Washington state school for the blind, a representative of the Washington council of the blind, a representative of the national federation of the blind of Washington, one representative designated by the teacher association of the Washington state school for the blind, and a representative of the classified staff designated by his or her exclusive bargaining representative shall each be ex officio and nonvoting members of the board of trustees and shall serve during their respective tenures in such positions.

Trustees shall be appointed by the governor to serve for a term of five years except that any person appointed to fill a vacancy occurring prior to the expiration of any term shall be appointed within sixty days of the vacancy and appointed only for the remainder of the term.

One trustee shall be a resident and qualified elector from each of the state's congressional districts. The board shall not be deemed to be unlawfully constituted and a trustee shall not be deemed ineligible to serve the remainder of the trustee's unexpired term on the board solely by reason of the establishment of new or revised boundaries for congressional districts. No voting trustee may be an employee of the state school for the blind, a member of the board of directors of any school district, a member of the governing board of any public or

private educational institution, a school district or educational service district administrator, appointed after July 1, 1986, or an elected officer or member of the legislative authority or any municipal corporation.

The board of trustees shall organize itself by electing a chairman from its members. The board shall adopt a seal and may adopt such bylaws, rules, and regulations as it deems necessary for its own government. A majority of the voting members of the board in office shall constitute a quorum, but a lesser number may convene from time to time and may compel the attendance of absent members in such manner as prescribed in its bylaws, rules, or regulations. The superintendent of the state school for the blind shall serve as, or may designate another person to serve as, the secretary of the board, who shall not be deemed to be a member of the board. [1993 c 147 § 7; 1985 c 378 § 29; 1982 1st ex.s. c 30 § 13; 1973 c 118 § 2.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**72.41.025 Membership, effect of creation of new congressional districts or boundaries.** The terms of office of trustees on the board for the state school for the blind who are appointed from the various congressional districts shall not be affected by the creation of either new boundaries for congressional districts or additional districts. In such an event, each trustee may continue to serve in office for the balance of the term for which he or she was appointed: PROVIDED, That the trustee continues to reside within the boundaries of the congressional district as they existed at the time of his or her appointment. Vacancies which occur in a trustee position during the balance of any such term shall be filled pursuant to RCW 72.41.020, as now or hereafter amended, by a successor who resides within the boundaries of the congressional district from which the member whose office was vacated was appointed as they existed at the time of his or her election. At the completion of such term, and thereafter, a successor shall be appointed from the congressional district which corresponds in number with the congressional district from which the incumbent was appointed. [1982 1st ex.s. c 30 § 14.]

**72.41.030 Bylaws—Rules and regulations—Officers.** Within thirty days of their appointment or July 1, 1973, whichever is sooner, the board of trustees shall organize, adopt bylaws for its own government, and make such rules and regulations not inconsistent with this chapter as they deem necessary. At such organizational meeting it shall elect from among its members a chairman and a vice chairman, each to serve for one year, and annually thereafter shall elect such officers to serve until their successors are appointed or qualified. [1973 c 118 § 3.]

**72.41.040 Powers and duties.** The board of trustees of the state school for the blind:

- (1) Shall monitor and inspect all existing facilities of the state school for the blind, and report its findings to the superintendent;
- (2) Shall study and recommend comprehensive programs of education and training and review the admission

policy as set forth in RCW 72.40.040 and 72.40.050, and make appropriate recommendations to the superintendent;

(3) Shall submit a list of three qualified candidates for superintendent to the governor and shall advise the superintendent about the criteria and policy to be used in the selection of members of the faculty and such other administrative officers and other employees, who shall with the exception of the superintendent all be subject to chapter 41.06 RCW, the state civil service law, unless specifically exempted by other provisions of law. All employees and personnel classified under chapter 41.06 RCW shall continue, after July 1, 1986, to perform their usual duties upon the same terms as formerly, without any loss of rights, subject to any action that may be appropriate thereafter in accordance with the laws and rules governing the state civil service law;

(4) Shall submit an evaluation of the superintendent to the governor by July 1 of each odd-numbered year and may recommend to the governor that the superintendent be removed for misfeasance, malfeasance, or wilful neglect of duty;

(5) May recommend to the superintendent the establishment of new facilities as needs demand;

(6) May recommend to the superintendent rules and regulations for the government, management, and operation of such housing facilities deemed necessary or advisable;

(7) May make recommendations to the superintendent concerning classrooms and other facilities to be used for summer or night schools, or for public meetings and for any other uses consistent with the use of such classrooms or facilities for the school for the blind;

(8) May make recommendations to the superintendent for adoption of rules and regulations for pedestrian and vehicular traffic on property owned, operated, or maintained by the school for the blind;

(9) Shall recommend to the superintendent, with the assistance of the faculty, the course of study including vocational training in the school for the blind, in accordance with other applicable provisions of law and rules and regulations;

(10) May grant to every student, upon graduation or completion of a program or course of study, a suitable diploma, nonbaccalaureate degree, or certificate;

(11) Shall participate in the development of, and monitor the enforcement of the rules and regulations pertaining to the school for the blind;

(12) Shall perform any other duties and responsibilities prescribed by the superintendent. [1985 c 378 § 30; 1973 c 118 § 4.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**72.41.060 Travel expenses.** Each member of the board of trustees shall receive travel expenses as provided in RCW 43.03.050 and 43.03.060 as now existing or hereafter amended, and such payments shall be a proper charge to any funds appropriated or allocated for the support of the state school for the blind. [1975-'76 2nd ex.s. c 34 § 167; 1973 c 118 § 6.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**72.41.070 Meetings.** The board of trustees shall meet at least quarterly. [1993 c 147 § 8; 1973 c 118 § 7.]

(2010 Ed.)

## Chapter 72.42 RCW

### BOARD OF TRUSTEES—CENTER FOR CHILDHOOD DEAFNESS AND HEARING LOSS

(Formerly: Board of trustees—School for the deaf)

#### Sections

72.42.010	Intention—Purpose.
72.42.015	"Director" defined.
72.42.016	Additional definitions.
72.42.021	Board of trustees—Membership—Terms—Effect of new or revised boundaries for congressional districts—Vacancies.
72.42.031	Bylaws—Rules—Officers—Quorum.
72.42.041	Powers and duties.
72.42.060	Travel expenses.
72.42.070	Meetings.

**72.42.010 Intention—Purpose.** It is the intention of the legislature, in creating a board of trustees for the Washington state center for childhood deafness and hearing loss to perform the duties set forth in this chapter, that the board of trustees perform needed oversight services to the governor and the legislature of the center in the development of programs for the hard of hearing, and in the operation of the center, including the school for the deaf. [2009 c 381 § 13; 2002 c 209 § 5; 1985 c 378 § 31; 1972 ex.s. c 96 § 1.]

**Findings—Intent—2009 c 381:** See note following RCW 72.40.015.

**Effective date—2002 c 209:** See note following RCW 72.42.021.

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**72.42.015 "Director" defined.** Unless the context clearly requires otherwise as used in this chapter "director" means the director of the Washington state center for childhood deafness and hearing loss. [2009 c 381 § 14; 1985 c 378 § 32.]

**Findings—Intent—2009 c 381:** See note following RCW 72.40.015.

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**72.42.016 Additional definitions.** Unless the context clearly requires otherwise, as used in this chapter:

(1) "Center" means the Washington state center for childhood deafness and hearing loss serving local school districts across the state; and

(2) "School" means the Washington state residential school for the deaf located in Vancouver, Washington. [2009 c 381 § 15; 2002 c 209 § 6.]

**Findings—Intent—2009 c 381:** See note following RCW 72.40.015.

**Effective date—2002 c 209:** See note following RCW 72.42.021.

**72.42.021 Board of trustees—Membership—Terms—Effect of new or revised boundaries for congressional districts—Vacancies.** (1) The governance of the center and the school shall be vested in a board of trustees. The board shall consist of nine members appointed by the governor, with the consent of the senate. The board shall be composed of a resident from each of the state's congressional districts and may include:

(a) One member who is deaf or hard of hearing;

(b) Two members who are experienced educational professionals;

(c) One member who is experienced in providing residential services to youth; and

(d) One member who is the parent of a child who is deaf or hard of hearing and who is receiving or has received edu-

cational services related to deafness or hearing impairment from a public educational institution.

(2) No voting trustee may be an employee of the school or the center, a member of the board of directors of any school district, a member of the governing board of any public or private educational institution or an elected officer or member of the legislative authority of any municipal corporation. No more than two voting trustees may be school district or educational service district administrators appointed after July 1, 1986.

(3) Trustees shall be appointed by the governor to serve a term of five years, except that any person appointed to fill a vacancy occurring prior to the expiration of a term shall be appointed within sixty days of the vacancy and appointed only for the remainder of the term. Of the initial members, three must be appointed for two-year terms, three must be appointed for three-year terms, and the remainder must be appointed for five-year terms.

(4) The board shall not be deemed unlawfully constituted and a trustee shall not be deemed ineligible to serve the remainder of the trustee's unexpired term on the board solely by reason of the establishment of new or revised boundaries for congressional districts. In such an event, each trustee may continue to serve in office for the balance of the term for which he or she was appointed so long as the trustee continues to reside within the boundaries of the congressional district as they existed at the time of his or her appointment. Vacancies which occur in a trustee position during the balance of any term shall be filled pursuant to subsection (3) of this section by a successor who resides within the boundaries of the congressional district from which the member whose office was vacated was appointed as they existed at the time of his or her appointment. At the completion of such term, and thereafter, a successor shall be appointed from the congressional district which corresponds in number with the congressional district from which the incumbent was appointed. [2009 c 381 § 16; 2002 c 209 § 7.]

**Findings—Intent—2009 c 381:** See note following RCW 72.40.015.

**Effective date—2002 c 209:** "This act takes effect July 1, 2002, except that the governor may appoint the members of the board of trustees under section 7 of this act prior to the beginning of their terms of office on July 1, 2002." [2002 c 209 § 12.]

**72.42.031 Bylaws—Rules—Officers—Quorum.** (1) The board of trustees shall organize, adopt bylaws for its own governance, and adopt rules not inconsistent with this chapter as they deem necessary. At such organizational meeting it shall elect from among its members a chairman and a vice-chairman, each to serve for one year, and annually thereafter shall elect such officers to serve until their successors are appointed or qualified.

(2) A majority of the voting members of the board in office constitutes a quorum, but a lesser number may adjourn from time to time and may compel the attendance of absent members in such manner as prescribed by its bylaws, rules, or regulations. [2002 c 209 § 9.]

**Effective date—2002 c 209:** See note following RCW 72.42.021.

**72.42.041 Powers and duties.** The board of trustees of the center:

(1) Shall adopt rules and regulations for its own governance;

(2) Shall direct the development of, approve, and monitor the enforcement of policies, rules, and regulations pertaining to the school and the center, including but not limited to:

(a) The use of classrooms and other facilities for summer or night schools or for public meetings and any other uses consistent with the mission of the center;

(b) Pedestrian and vehicular traffic on property owned, operated, or maintained by the center;

(c) Governance, management, and operation of the residential facilities;

(d) Transferability of employees between the center and the school for the blind consistent with collective bargaining agreements in effect; and

(e) Compliance with state and federal education civil rights laws at the school;

(3) Shall develop a process for recommending candidates for the position of director and upon a vacancy shall submit a list of three qualified candidates for director to the governor;

(4) Shall submit an evaluation of the director to the governor by July 1st of each odd-numbered year that includes a recommendation regarding the retention of the director;

(5) May recommend to the governor at any time that the director be removed for conduct deemed by the board to be detrimental to the interests of the center;

(6) Shall prepare and submit by July 1st of each even-numbered year a report to the governor and the appropriate committees of the legislature which contains a detailed summary of the center's progress on performance objectives and the center's work, facility conditions, and revenues and costs of the center for the previous year and which contains those recommendations it deems necessary and advisable for the governor and the legislature to act on;

(7) Shall approve the center's budget and all funding requests, both operating and capital, submitted to the governor;

(8) Shall direct and approve the development and implementation of comprehensive programs of education, training, and as needed residential living, such that students served by the school receive a challenging and quality education in a safe school environment;

(9) Shall direct, monitor, and approve the implementation of a comprehensive continuous quality improvement system for the center;

(10) Shall monitor and inspect all existing facilities of the center and report its findings in its biennial report to the governor and appropriate committees of the legislature; and

(11) May grant to every student of the school, upon graduation or completion of a program or course of study, a suitable diploma, nonbaccalaureate degree, or certificate. [2009 c 381 § 17; 2002 c 209 § 8.]

**Findings—Intent—2009 c 381:** See note following RCW 72.40.015.

**Effective date—2002 c 209:** See note following RCW 72.42.021.

**72.42.060 Travel expenses.** Each member of the board of trustees shall receive travel expenses as provided in RCW 43.03.050 and 43.03.060 as now existing or hereafter amended, and such payments shall be a proper charge to any

funds appropriated or allocated for the support of the Washington state center for childhood deafness and hearing loss. [2009 c 381 § 22; 1975-'76 2nd ex.s. c 34 § 168; 1972 ex.s. c 96 § 6.]

**Findings—Intent—2009 c 381:** See note following RCW 72.40.015.

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**72.42.070 Meetings.** The board of trustees shall meet at least quarterly but may meet more frequently at such times as the board by resolution determines or the bylaws of the board prescribe. [2002 c 209 § 10; 1993 c 147 § 10; 1972 ex.s. c 96 § 7.]

**Effective date—2002 c 209:** See note following RCW 72.42.021.

### Chapter 72.49 RCW

#### NARCOTIC OR DANGEROUS DRUGS— TREATMENT AND REHABILITATION

##### Sections

72.49.010	Purpose.
72.49.020	Treatment and rehabilitation programs authorized—Rules and regulations.

**72.49.010 Purpose.** The purpose of this chapter is to provide additional programs for the treatment and rehabilitation of persons suffering from narcotic and dangerous drug abuse. [1969 ex.s. c 123 § 1.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**72.49.020 Treatment and rehabilitation programs authorized—Rules and regulations.** There may be established at an institution, or portion thereof, to be designated by the secretary of the department of social and health services, programs for treatment and rehabilitation of persons in need of medical care and treatment due to narcotic abuse or dangerous drug abuse. Such programs may include facilities for both residential and outpatient treatment. The secretary of the department of social and health services shall promulgate rules and regulations governing the voluntary admission, treatment, and release of such patients, and all other matters incident to the proper administration of this section. [1975-'76 2nd ex.s. c 103 § 2; 1969 ex.s. c 123 § 2.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

### Chapter 72.60 RCW

#### CORRECTIONAL INDUSTRIES

(Formerly: Institutional industries)

##### Sections

72.60.100	Civil rights of inmates not restored—Other laws inapplicable.
72.60.102	Industrial insurance—Application to certain inmates.
72.60.110	Employment of inmates according to needs of state.
72.60.160	State agencies and subdivisions may purchase goods—Purchasing preference required of certain institutions.
72.60.220	List of goods to be supplied to all departments, institutions, agencies.
72.60.235	Implementation plan for prison industries.

*Correctional industries administered by department of corrections:* RCW 72.09.070 through 72.09.120.

**72.60.100 Civil rights of inmates not restored—Other laws inapplicable.** Nothing in this chapter is intended

(2010 Ed.)

to restore, in whole or in part, the civil rights of any inmate. No inmate compensated for work in correctional industries shall be considered as an employee or to be employed by the state or the department, nor shall any such inmate, except those provided for in RCW 72.60.102 and 72.64.065, come within any of the provisions of the workers' compensation act, or be entitled to any benefits thereunder whether on behalf of himself or of any other person. [1989 c 185 § 10; 1987 c 185 § 38; 1981 c 136 § 101; 1972 ex.s. c 40 § 1; 1959 c 28 § 72.60.100. Prior: 1955 c 314 § 10. Formerly RCW 43.95.090.]

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

*Restoration of civil rights:* Chapter 9.96 RCW.

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**72.60.102 Industrial insurance—Application to certain inmates.** From and after July 1, 1973, any inmate employed in classes I, II, and IV of correctional industries as defined in RCW 72.09.100 is eligible for industrial insurance benefits as provided by Title 51 RCW. However, eligibility for benefits for either the inmate or the inmate's dependents or beneficiaries for temporary disability or permanent total disability as provided in RCW 51.32.090 or 51.32.060, respectively, shall not take effect until the inmate is released pursuant to an order of parole by the indeterminate sentence review board, or discharged from custody upon expiration of the sentence, or discharged from custody by order of a court of appropriate jurisdiction. Nothing in this section shall be construed to confer eligibility for any industrial insurance benefits to any inmate who is employed in class III or V of correctional industries as defined in RCW 72.09.100. [1989 c 185 § 11; 1983 1st ex.s. c 52 § 7; 1981 c 136 § 102; 1979 ex.s. c 160 § 3; 1972 ex.s. c 40 § 2.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**72.60.110 Employment of inmates according to needs of state.** The department is hereby authorized and empowered to cause the inmates in the state institutions of this state to be employed in the rendering of such services and in the production and manufacture of such articles, materials, and supplies as are now, or may hereafter be, needed by the state, or any political subdivision thereof, or that may be needed by any public institution of the state or of any political subdivision thereof. [1959 c 28 § 72.60.110. Prior: 1955 c 314 § 11. Formerly RCW 43.95.100.]

**72.60.160 State agencies and subdivisions may purchase goods—Purchasing preference required of certain institutions.** All articles, materials, and supplies herein authorized to be produced or manufactured in correctional institutions may be purchased from the institution producing or manufacturing the same by any state agency or political subdivision of the state, and the secretary shall require those institutions under his direction to give preference to the purchasing of their needs of such articles as are so produced. [1981 c 136 § 103; 1979 c 141 § 260; 1959 c 28 § 72.60.160. Prior: 1955 c 314 § 16. Formerly RCW 43.95.150.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**72.60.220 List of goods to be supplied to all departments, institutions, agencies.** The department may cause to be prepared annually, at such times as it may determine, lists containing the descriptions of all articles and supplies manufactured and produced in state correctional institutions; copies of such list shall be sent to the supervisor of purchasing and to all departments, institutions and agencies of the state of Washington. [1981 c 136 § 105; 1959 c 28 § 72.60.220. Prior: 1957 c 30 § 6. Formerly RCW 43.95.210.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**72.60.235 Implementation plan for prison industries.**

(1) The department of corrections shall develop, in accordance with RCW 72.09.010, a site-specific implementation plan for prison industries space at Clallam Bay corrections center, McNeil Island corrections center, and the one thousand twenty-four bed medium security prison as appropriated for and authorized by the legislature.

(2) Each implementation plan shall include, but not be limited to, sufficient space and design elements that try to achieve a target of twenty-five percent of the total inmates in class I employment programs and twenty-five percent of the total inmates in class II employment programs or as much of the target as possible without jeopardizing the efficient and necessary day-to-day operation of the prison. The implementation plan shall also include educational opportunities and employment, wage, and other incentives. The department shall include in the implementation plans an incentive program based on wages, and the opportunity to contribute all or a portion of their wages towards an array of incentives. The funds recovered from the sale, lease, or rental of incentives should be considered as a possible source of revenue to cover the capitalized cost of the additional space necessary to accommodate the increased class I and class II industries programs.

(3) The incentive program shall be developed so that inmates can earn higher wages based on performance and production. Only those inmates employed in class I and class II jobs may participate in the incentive program. The department shall develop special program criteria for inmates with physical or mental handicaps so that they can participate in the incentive program.

(4) The department shall propose rules specifying that inmate wages, other than the amount an inmate owes for taxes, legal financial obligations, and to the victim restitution fund, shall be returned to the department to pay for the cost of prison operations, including room and board.

(5) The plan shall identify actual or potential legal or operational obstacles, or both, in implementing the components of the plan as specified in this section, and recommend strategies to remove the obstacles.

(6) The department shall submit the plan to the appropriate committees of the legislature and to the governor by October 1, 1991. [1991 c 256 § 2.]

**Finding—1991 c 256:** "The legislature finds that the rehabilitation process may be enhanced by participation in training, education, and employment-related incentive programs and may be a consideration in reducing time in confinement." [1991 c 256 § 1.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**Chapter 72.62 RCW**

**VOCATIONAL EDUCATION PROGRAMS**

Sections

72.62.010	Purpose.
72.62.020	"Vocational education" defined.
72.62.030	Sale of products—Recovery of costs.
72.62.040	Crediting of proceeds of sales.
72.62.050	Trade advisory and apprenticeship committees.

**72.62.010 Purpose.** The legislature declares that programs of vocational education are essential to the habilitation and rehabilitation of residents of state correctional institutions and facilities. It is the purpose of this chapter to provide for greater reality and relevance in the vocational education programs within the correctional institutions of the state. [1972 ex.s. c 7 § 1.]

**72.62.020 "Vocational education" defined.** When used in this chapter, unless the context otherwise requires:

The term "vocational education" means a planned series of learning experiences, the specific objective of which is to prepare individuals for gainful employment as semiskilled or skilled workers or technicians or subprofessionals in recognized occupations and in new and emerging occupations, but shall not mean programs the primary characteristic of which is repetitive work for the purpose of production, including the correctional industries program. Nothing in this section shall be construed to prohibit the correctional industries board of directors from identifying and establishing trade advisory or apprenticeship committees to advise them on correctional industries work programs. [1989 c 185 § 12; 1972 ex.s. c 7 § 2.]

**72.62.030 Sale of products—Recovery of costs.** Products goods, wares, articles, or merchandise manufactured or produced by residents of state correctional institutions or facilities within or in conjunction with vocational education programs for the training, habilitation, and rehabilitation of inmates may be sold on the open market. When services are performed by residents within or in conjunction with such vocational education programs, the cost of materials used and the value of depreciation of equipment used may be recovered. [1983 c 255 § 6; 1972 ex.s. c 7 § 3.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**72.62.040 Crediting of proceeds of sales.** The secretary of the department of social and health services or the secretary of corrections, as the case may be, shall credit the proceeds derived from the sale of such products, goods, wares, articles, or merchandise manufactured or produced by inmates of state correctional institutions within or in conjunction with vocational education programs to the institution where manufactured or produced to be deposited in a revolving fund to be expended for the purchase of supplies, materials and equipment for use in vocational education. [1981 c 136 § 107; 1972 ex.s. c 7 § 4.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**72.62.050 Trade advisory and apprenticeship committees.** Labor-management trade advisory and apprenticeship committees shall be constituted by the department for

each vocation taught within the vocational education programs in the state correctional system. [1972 ex.s. c 7 § 5.]

### Chapter 72.63 RCW

#### PRISON WORK PROGRAMS—FISH AND GAME

##### Sections

72.63.010	Legislative finding.
72.63.020	Prison work programs for fish and game projects.
72.63.030	Department of fish and wildlife to provide professional assistance—Identification of projects—Loan of facilities and property—Resources to be provided.
72.63.040	Available funds to support costs of implementation.

**72.63.010 Legislative finding.** The legislature finds and declares that the establishment of prison work programs that allow prisoners to undertake food fish, shellfish, and game fish rearing projects and game bird and game animal improvement, restoration, and protection projects is needed to reduce idleness, promote the growth of prison industries, and provide prisoners with skills necessary for their successful reentry into society. [1985 c 286 § 1.]

**72.63.020 Prison work programs for fish and game projects.** The departments of corrections and fish and wildlife shall establish at or near appropriate state institutions, as defined in RCW 72.65.010, prison work programs that use prisoners to undertake state food fish, shellfish, and game fish rearing projects and state game bird and game animal improvement, restoration, and protection projects and that meet the requirements of RCW 72.09.100.

The department of corrections shall seek to identify a group of prisoners at each appropriate state institution, as defined by RCW 72.65.010, that are interested in participating in prison work programs established by this chapter.

If the department of corrections is unable to identify a group of prisoners to participate in work programs authorized by this chapter, it may enter into an agreement with the department of fish and wildlife for the purpose of designing projects for any institution. Costs under this section shall be borne by the department of corrections.

The departments of corrections and fish and wildlife shall use prisoners, where appropriate, to perform work in state projects that may include the following types:

(1) Food fish, shellfish, and game fish rearing projects, including but not limited to egg planting, egg boxes, juvenile planting, pen rearing, pond rearing, raceway rearing, and egg taking;

(2) Game bird and game animal projects, including but not limited to habitat improvement and restoration, replanting and transplanting, nest box installation, pen rearing, game protection, and supplemental feeding: PROVIDED, That no project shall be established at the department of fish and wildlife's south Tacoma game farm;

(3) Manufacturing of equipment for use in fish and game volunteer cooperative projects permitted by the department of fish and wildlife, or for use in prison work programs with fish and game; and

(4) Maintenance, repair, restoration, and redevelopment of facilities operated by the department of fish and wildlife. [1994 c 264 § 43; 1988 c 36 § 29; 1985 c 286 § 2.]

(2010 Ed.)

**72.63.030 Department of fish and wildlife to provide professional assistance—Identification of projects—Loan of facilities and property—Resources to be provided.** (1) The department of fish and wildlife shall provide professional assistance from biologists, fish culturists, pathologists, engineers, habitat managers, and other departmental staff to assist the development and productivity of prison work programs under RCW 72.63.020, upon agreement with the department of corrections.

(2) The department of fish and wildlife shall identify and describe potential and pilot projects that are compatible with the goals of the various departments involved and that are particularly suitable for prison work programs.

(3) The department of fish and wildlife may make available surplus hatchery rearing space, net pens, egg boxes, portable rearing containers, incubators, and any other departmental facilities or property that are available for loan to the department of corrections to carry out prison work programs under RCW 72.63.020.

(4) The department of fish and wildlife shall provide live fish eggs, bird eggs, juvenile fish, game animals, or other appropriate seed stock, juveniles, or brood stock of acceptable disease history and genetic composition for the prison work projects at no cost to the department of corrections, to the extent that such resources are available. Fish food, bird food, or animal food may be provided by the department of fish and wildlife to the extent that funding is available.

(5) The department of natural resources shall assist in the implementation of the program where project sites are located on public beaches or state owned aquatic lands. [1994 c 264 § 44; 1988 c 36 § 30; 1985 c 286 § 3.]

**72.63.040 Available funds to support costs of implementation.** The costs of implementation of the projects prescribed by this chapter shall be supported to the extent that funds are available under the provisions of chapter 77.100 RCW, and from correctional industries funds. [2003 c 39 § 31; 1989 c 185 § 13; 1985 c 286 § 4.]

### Chapter 72.64 RCW

#### LABOR AND EMPLOYMENT OF PRISONERS

##### Sections

72.64.001	Definitions.
72.64.010	Useful employment of prisoners—Contract system barred.
72.64.020	Rules and regulations.
72.64.030	Prisoners required to work—Private benefit of enforcement officer prohibited.
72.64.040	Crediting of earnings—Payment.
72.64.050	Branch institutions—Work camps for certain purposes.
72.64.060	Labor camps authorized—Type of work permitted—Contracts.
72.64.065	Industrial insurance—Application to certain inmates—Payment of premiums and assessments.
72.64.070	Industrial insurance—Eligibility for employment—Procedure—Return.
72.64.080	Industrial insurance—Duties of employing agency—Costs—Supervision.
72.64.090	Industrial insurance—Department's jurisdiction.
72.64.100	Regional jail camps—Authorized—Purposes—Rules.
72.64.110	Contracts to furnish county prisoners confinement, care, and employment—Reimbursement by county—Sheriff's order—Return of prisoner.
72.64.150	Interstate forest fire suppression compact.
72.64.160	Inmate forest fire suppression crews—Classification.
72.64.900	Construction—Chapter applicable to state registered domestic partnerships—2009 c 521.

*Contract system barred: State Constitution Art. 2 § 29.*

*Correctional industries: Chapter 72.60 RCW.*

*Labor prescribed by the indeterminate sentence review board: RCW 9.95.090.*

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

"Department" means the department of corrections; and

"Secretary" means the secretary of corrections. [1981 c 136 § 108.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**72.64.010 Useful employment of prisoners—Contract system barred.** The secretary shall have the power and it shall be his duty to provide for the useful employment of prisoners in the adult correctional institutions: PROVIDED, That no prisoners shall be employed in what is known as the contract system of labor. [1979 c 141 § 265; 1959 c 28 § 72.64.010. Prior: 1943 c 175 § 1; Rem. Supp. 1943 § 10279-1. Formerly RCW 72.08.220.]

**72.64.020 Rules and regulations.** The secretary shall make the necessary rules and regulations governing the employment of prisoners, the conduct of all such operations, and the disposal of the products thereof, under such restrictions as provided by law. [1979 c 141 § 266; 1959 c 28 § 72.64.020. Prior: 1943 c 175 § 2; Rem. Supp. 1943 § 10279-2. Formerly RCW 72.08.230.]

**72.64.030 Prisoners required to work—Private benefit of enforcement officer prohibited.** Every prisoner in a state correctional facility shall be required to work in such manner as may be prescribed by the secretary, other than for the private financial benefit of any enforcement officer. [1992 c 7 § 54; 1979 c 141 § 267; 1961 c 171 § 1; 1959 c 28 § 72.64.030. Prior: 1927 c 305 § 1; RRS § 10223-1.]

**72.64.040 Crediting of earnings—Payment.** Where a prisoner is employed at any occupation for which pay is allowed or permitted, or at any gainful occupation from which the state derives an income, the department shall credit the prisoner with the total amount of his earnings.

The amount of earnings credited but unpaid to a prisoner may be paid to the prisoner's spouse, children, mother, father, brother, or sister as the inmate may direct upon approval of the superintendent. Upon release, parole, or discharge, all unpaid earnings of the prisoner shall be paid to him. [1973 1st ex.s. c 154 § 105; 1959 c 28 § 72.64.040. Prior: 1957 c 19 § 1; 1927 c 305 § 3; RRS § 10223-3. Formerly RCW 72.08.250.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**72.64.050 Branch institutions—Work camps for certain purposes.** The secretary shall also have the power to establish temporary branch institutions for state correctional facilities in the form of camps for the employment of prisoners therein in farming, reforestation, wood-cutting, land clearing, processing of foods in state canneries, forest fire-fighting, forest fire suppression and prevention, stream clearance, watershed improvement, development of parks and recreational areas, and other work to conserve the natural

resources and protect and improve the public domain and construction of water supply facilities to state institutions. [1992 c 7 § 55; 1979 c 141 § 268; 1961 c 171 § 2; 1959 c 28 § 72.64.050. Prior: 1943 c 175 § 3; Rem. Supp. 1943 § 10279-3. Formerly RCW 72.08.240.]

*Leaves of absence for inmates: RCW 72.01.365 through 72.01.380.*

**72.64.060 Labor camps authorized—Type of work permitted—Contracts.** Any department, division, bureau, commission, or other agency of the state of Washington or any agency of any political subdivision thereof or the federal government may use, or cause to be used, prisoners confined in state penal or correctional institutions to perform work necessary and proper, to be done by them at camps to be established pursuant to the authority granted by RCW 72.64.060 through 72.64.090: PROVIDED, That such prisoners shall not be authorized to perform work on any public road, other than access roads to forestry lands. The secretary may enter into contracts for the purposes of RCW 72.64.060 through 72.64.090. [1979 c 141 § 269; 1961 c 171 § 3; 1959 c 28 § 72.64.060. Prior: 1955 c 128 § 1. Formerly RCW 43.28.500.]

**72.64.065 Industrial insurance—Application to certain inmates—Payment of premiums and assessments.** From and after July 1, 1973, any inmate working in a department of natural resources adult honor camp established and operated pursuant to RCW 72.64.050, 72.64.060, and 72.64.100 shall be eligible for the benefits provided by Title 51 RCW, as now or hereafter amended, relating to industrial insurance, with the exceptions herein provided.

No inmate as herein described, until released upon an order of parole by the state \*board of prison terms and paroles, or discharged from custody upon expiration of sentence, or discharged from custody by order of a court of appropriate jurisdiction, or his dependents or beneficiaries, shall be entitled to any payment for temporary disability or permanent total disability as provided for in RCW 51.32.090 or 51.32.060 respectively, as now or hereafter enacted, or to the benefits of chapter 51.36 RCW relating to medical aid.

Any and all premiums or assessments as may arise under this section pursuant to the provisions of Title 51 RCW shall be the obligation of and be paid by the state department of natural resources. [1972 ex.s. c 40 § 3.]

**\*Reviser's note:** The "board of prison terms and paroles" was redesignated the "indeterminate sentence review board" by 1986 c 224, effective July 1, 1986.

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**72.64.070 Industrial insurance—Eligibility for employment—Procedure—Return.** The department shall determine which prisoners shall be eligible for employment under RCW 72.64.060, and shall establish and modify lists of prisoners eligible for such employment, upon the requisition of an agency mentioned in RCW 72.64.060. The secretary may send to the place, and at the time designated, the number of prisoners requisitioned, or such number thereof as have been determined to be eligible for such employment and are available. No prisoner shall be eligible or shall be released for such employment until his eligibility therefor has been determined by the department.

The secretary may return to prison any prisoner transferred to camp pursuant to this section, when the need for such prisoner's labor has ceased or when the prisoner is guilty of any violation of the rules and regulations of the prison or camp. [1979 c 141 § 270; 1959 c 28 § 72.64.070. Prior: 1955 c 128 § 2. Formerly RCW 43.28.510.]

**72.64.080 Industrial insurance—Duties of employing agency—Costs—Supervision.** The agency providing for prisoners under RCW 72.64.060 through 72.64.090 shall designate and supervise all work done under the provisions thereof. The agency shall provide, erect and maintain any necessary camps, except that where no funds are available to the agency, the department may provide, erect and maintain the necessary camps. The secretary shall supervise and manage the necessary camps and commissaries. [1979 c 141 § 271; 1959 c 28 § 72.64.080. Prior: 1955 c 128 § 3. Formerly RCW 43.28.520.]

**72.64.090 Industrial insurance—Department's jurisdiction.** The department shall have full jurisdiction at all times over the discipline and control of the prisoners performing work under RCW 72.64.060 through 72.64.090. [1959 c 28 § 72.64.090. Prior: 1955 c 128 § 4. Formerly RCW 43.28.530.]

**72.64.100 Regional jail camps—Authorized—Purposes—Rules.** The secretary is authorized to establish and operate regional jail camps for the confinement, treatment, and care of persons sentenced to jail terms in excess of thirty days, including persons so imprisoned as a condition of probation. The secretary shall make rules and regulations governing the eligibility for commitment or transfer to such camps and rules and regulations for the government of such camps. Subject to the rules and regulations of the secretary, and if there is in effect a contract entered into pursuant to RCW 72.64.110, a county prisoner may be committed to a regional jail camp in lieu of commitment to a county jail or other county detention facility. [1979 c 141 § 272; 1961 c 171 § 4.]

**72.64.110 Contracts to furnish county prisoners confinement, care, and employment—Reimbursement by county—Sheriff's order—Return of prisoner.** (1) The secretary may enter into a contract with any county of the state, upon the request of the sheriff thereof, wherein the secretary agrees to furnish confinement, care, treatment, and employment of county prisoners. The county shall reimburse the state for the cost of such services. Each county shall pay to the state treasurer the amounts found to be due.

(2) The secretary shall accept such county prisoner if he believes that the prisoner can be materially benefited by such confinement, care, treatment and employment, and if adequate facilities to provide such care are available. No such person shall be transported to any facility under the jurisdiction of the secretary until the secretary has notified the referring court of the place to which said person is to be transmitted and the time at which he can be received.

(3) The sheriff of the county in which such an order is made placing a misdemeanant in a jail camp pursuant to this

chapter, or any other peace officer designated by the court, shall execute an order placing such county prisoner in the jail camp or returning him therefrom to the court.

(4) The secretary may return to the committing authority, or to confinement according to his sentence, any person committed or transferred to a regional jail camp pursuant to this chapter when there is no suitable employment or when such person is guilty of any violation of rules and regulations of the regional jail camp. [1980 c 17 § 1. Prior: 1979 c 147 § 1; 1979 c 141 § 273; 1961 c 171 § 5.]

### **72.64.150 Interstate forest fire suppression compact.**

The Interstate Forest Fire Suppression Compact as set forth in this section is hereby enacted into law and entered into on behalf of this state with any and all other states legally joining therein in a form substantially as follows:

#### INTERSTATE FOREST FIRE SUPPRESSION COMPACT

##### ARTICLE I—Purpose

The purpose of this compact is to provide for the development and execution of programs to facilitate the use of offenders in the forest fire suppression efforts of the party states for the ultimate protection of life, property, and natural resources in the party states. The purpose of this compact is also to, in emergent situations, allow a sending state to cross state lines with an inmate when, due to weather or road conditions, it is necessary to cross state lines to facilitate the transport of an inmate.

##### ARTICLE II—Definitions

As used in this compact, unless the context clearly requires otherwise:

(a) "Sending state" means a state party to this compact from which a fire suppression unit is traveling.

(b) "Receiving state" means a state party to this compact to which a fire suppression unit is traveling.

(c) "Inmate" means a male or female offender who is under sentence to or confined in a prison or other correctional institution.

(d) "Institution" means any prison, reformatory, honor camp, or other correctional facility, except facilities for the mentally ill or mentally handicapped, in which inmates may lawfully be confined.

(e) "Fire suppression unit" means a group of inmates selected by the sending states, corrections personnel, and any other persons deemed necessary for the transportation, supervision, care, security, and discipline of inmates to be used in forest fire suppression efforts in the receiving state.

(f) "Forest fire" means any fire burning in any land designated by a party state or federal land management agencies as forest land.

##### ARTICLE III—Contracts

Each party state may make one or more contracts with any one or more of the other party states for the assistance of one or more fire suppression units in forest fire suppression efforts. Any such contract shall provide for matters as may be necessary and appropriate to fix the obligations, responsibilities, and rights of the sending and receiving state.

The terms and provisions of this compact shall be part of any contract entered into by the authority of, or pursuant to, this compact. Nothing in any such contract may be inconsistent with this compact.

#### ARTICLE IV—Procedures and Rights

(a) Each party state shall appoint a liaison for the coordination and deployment of the fire suppression units of each party state.

(b) Whenever the duly constituted judicial or administrative authorities in a state party to this compact that has entered into a contract pursuant to this compact decides that the assistance of a fire suppression unit of a party state is required for forest fire suppression efforts, such authorities may request the assistance of one or more fire suppression units of any state party to this compact through an appointed liaison.

(c) Inmates who are members of a fire suppression unit shall at all times be subject to the jurisdiction of the sending state, and at all times shall be under the ultimate custody of corrections officers duly accredited by the sending state.

(d) The receiving state shall make adequate arrangements for the confinement of inmates who are members of a fire suppression unit of a sending state in the event corrections officers duly accredited by the sending state make a discretionary determination that an inmate requires institutional confinement.

(e) Cooperative efforts shall be made by corrections officers and personnel of the receiving state located at a fire camp with the corrections officers and other personnel of the sending state in the establishment and maintenance of fire suppression unit base camps.

(f) All inmates who are members of a fire suppression unit of a sending state shall be cared for and treated equally with such similar inmates of the receiving state.

(g) Further, in emergent situations a sending state shall be granted authority and all the protections of this compact to cross state lines with an inmate when, due to weather or road conditions, it is necessary to facilitate the transport of an inmate.

#### ARTICLE V—Acts Not Reviewable in Receiving State; Extradition

(a) If while located within the territory of a receiving state there occurs against the inmate within such state any criminal charge or if the inmate is suspected of committing within such state a criminal offense, the inmate shall not be returned without the consent of the receiving state until discharged from prosecution or other form of proceeding, imprisonment, or detention for such offense. The duly accredited officers of the sending state shall be permitted to transport inmates pursuant to this compact through any and all states party to this compact without interference.

(b) An inmate member of a fire suppression unit of the sending state who is deemed to have escaped by a duly accredited corrections officer of a sending state shall be under the jurisdiction of both the sending state and the receiving state. Nothing contained in this compact shall be construed to prevent or affect the activities of officers and guards of any jurisdiction directed toward the apprehension and return of an escapee.

#### ARTICLE VI—Entry into Force

This compact shall enter into force and become effective and binding upon the states so acting when it has been enacted into law by any two states from among the states of Idaho, Oregon, and Washington.

#### ARTICLE VII—Withdrawal and Termination

This compact shall continue in force and remain binding upon a party state until it has enacted a statute repealing the same and providing for the sending of formal written notice of withdrawal from the compact to the appropriate officials of all other party states.

#### ARTICLE VIII—Other Arrangements Unaffected

Nothing contained in this compact may be construed to abrogate or impair any agreement that a party state may have with a nonparty state for the confinement, rehabilitation, or treatment of inmates nor to repeal any other laws of a party state authorizing the making of cooperative institutional arrangements.

#### ARTICLE IX—Construction and Severability

The provisions of this compact shall be liberally construed and shall be severable. If any phrase, clause, sentence, or provision of this compact is declared to be contrary to the constitution of any participating state or of the United States or the applicability thereof to any government, agency, person, or circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person, or circumstance shall not be affected thereby. If this compact shall be held contrary to the constitution of any state participating therein, the compact shall remain in full force and effect as to the remaining states and in full force and effect as to the state affected as to all severable matters. [1991 c 131 § 1.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**72.64.160 Inmate forest fire suppression crews—Classification.** For the purposes of RCW 72.64.150, inmate forest fire suppression crews may be considered a class I fire venture industry, as defined in RCW 72.09.100, when fighting fires on federal lands. [1991 c 131 § 2.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**72.64.900 Construction—Chapter applicable to state registered domestic partnerships—2009 c 521.** For the purposes of this chapter, the terms spouse, marriage, marital, husband, wife, widow, widower, next of kin, and family shall be interpreted as applying equally to state registered domestic partnerships or individuals in state registered domestic partnerships as well as to marital relationships and married persons, and references to dissolution of marriage shall apply equally to state registered domestic partnerships that have been terminated, dissolved, or invalidated, to the extent that such interpretation does not conflict with federal law. Where necessary to implement chapter 521, Laws of 2009, gender-specific terms such as husband and wife used in any statute, rule, or other law shall be construed to be gender neutral, and applicable to individuals in state registered domestic partnerships. [2009 c 521 § 170.]

## Chapter 72.65 RCW

## WORK RELEASE PROGRAM

## Sections

72.65.010	Definitions.
72.65.020	Places of confinement—Extension of limits authorized, conditions—Application of section.
72.65.030	Application of prisoner to participate in program, contents—Application of section.
72.65.040	Approval or denial of application—Adoption of work release plan—Terms and conditions—Revocation—Reapplication—Application of section.
72.65.050	Disposition of earnings.
72.65.060	Earnings not subject to legal process.
72.65.080	Contracts with authorities for payment of expenses for housing participants—Procurement of housing facilities.
72.65.090	Transportation, clothing, supplies for participants.
72.65.100	Powers and duties of secretary—Rules and regulations—Cooperation of other state agencies directed.
72.65.110	Earnings to be deposited in personal funds—Disbursements.
72.65.120	Participants not considered agents or employees of the state—Contracting with persons, companies, etc., for labor of participants prohibited—Employee benefits and privileges extended to.
72.65.130	Authority of board of prison terms and paroles not impaired.
72.65.200	Participation in work release plan or program must be authorized by sentence or RCW 9.94A.728.
72.65.210	Inmate participation eligibility standards—Department to conduct overall review of work release program.
72.65.220	Facility siting process.
72.65.900	Effective date—1967 c 17.

*Victims of crimes, reimbursement by convicted person as condition of work release or parole: RCW 7.68.120.*

**72.65.010 Definitions.** As used in this chapter, the following terms shall have the following meanings:

(1) "Department" shall mean the department of corrections.

(2) "Secretary" shall mean the secretary of corrections.

(3) "State correctional institutions" shall mean and include all state adult correctional facilities established pursuant to law under the jurisdiction of the department for the treatment of convicted felons sentenced to a term of confinement.

(4) "Prisoner" shall mean a person either male or female, convicted of a felony and sentenced by the superior court to a term of confinement and treatment in a state correctional institution under the jurisdiction of the department.

(5) "Superintendent" shall mean the superintendent of a state correctional institution, camp or other facility now or hereafter established under the jurisdiction of the department pursuant to law. [1992 c 7 § 56; 1985 c 350 § 4; 1981 c 136 § 110; 1979 c 141 § 274; 1967 c 17 § 1.]

*Administrative departments and agencies—General provisions: RCW 43.17.010, 43.17.020.*

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**72.65.020 Places of confinement—Extension of limits authorized, conditions—Application of section.** (1) The secretary is authorized to extend the limits of the place of confinement and treatment within the state of any prisoner convicted of a felony, sentenced to a term of confinement and treatment by the superior court, and serving such sentence in a state correctional institution under the jurisdiction of the department, by authorizing a work release plan for such prisoner, permitting him, under prescribed conditions, to do any of the following:

(a) Work at paid employment.

(2010 Ed.)

(b) Participate in a vocational training program: PROVIDED, That the tuition and other expenses of such a vocational training program shall be paid by the prisoner, by someone in his behalf, or by the department: PROVIDED FURTHER, That any expenses paid by the department shall be recovered by the department pursuant to the terms of RCW 72.65.050.

(c) Interview or make application to a prospective employer or employers, or enroll in a suitable vocational training program.

Such work release plan of any prison shall require that he be confined during the hours not reasonably necessary to implement the plan, in (1) a state correctional institution, (2) a county or city jail, which jail has been approved after inspection pursuant to \*RCW 70.48.050, or (3) any other appropriate, supervised facility, after an agreement has been entered into between the department and the appropriate authorities of the facility for the housing of work release prisoners.

(2) This section applies only to persons sentenced for crimes that were committed before July 1, 1984. [1984 c 209 § 28; 1979 ex.s. c 160 § 1; 1979 c 141 § 275; 1967 c 17 § 2.]

\*Reviser's note: RCW 70.48.050 was repealed by 1987 c 462 § 23, effective January 1, 1988.

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**72.65.030 Application of prisoner to participate in program, contents—Application of section.** (1) Any prisoner serving a sentence in a state correctional institution may make application to participate in the work release program to the superintendent of the institution in which he is confined. Such application shall set forth the name and address of his proposed employer or employers or shall specify the vocational training program, if any, in which he is enrolled. It shall include a statement to be executed by such prisoner that if his application be approved he agrees to abide faithfully by all terms and conditions of the particular work release plan adopted for him. It shall further set forth such additional information as the department or the secretary shall require.

(2) This section applies only to persons sentenced for crimes that were committed before July 1, 1984. [1984 c 209 § 29; 1979 c 141 § 276; 1967 c 17 § 3.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**72.65.040 Approval or denial of application—Adoption of work release plan—Terms and conditions—Revocation—Reapplication—Application of section.** (1) The superintendent of the state correctional institution in which a prisoner who has made application to participate in the work release program is confined, after careful study of the prisoner's conduct, attitude and behavior within the institutions under the jurisdiction of the department, his criminal history and all other pertinent case history material, shall determine whether or not there is reasonable cause to believe that the prisoner will honor his trust as a work release participant. After having made such determination, the superintendent, in his discretion, may deny the prisoner's application, or recommend to the secretary, or such officer of the department as the secretary may designate, that the prisoner be permitted to participate in the work release program. The secretary or his des-

ignee, may approve, reject, modify, or defer action on such recommendation. In the event of approval, the secretary or his designee, shall adopt a work release plan for the prisoner, which shall constitute an extension of the limits of confinement and treatment of the prisoner when released pursuant thereto, and which shall include such terms and conditions as may be deemed necessary and proper under the particular circumstances. The plan shall be signed by the prisoner under oath that he will faithfully abide by all terms and conditions thereof. Further, as a condition, the plan shall specify where such prisoner shall be confined when not released for the purpose of the work release plan. At any time after approval has been granted to any prisoner to participate in the work release program, such approval may be revoked, and if the prisoner has been released on a work release plan, he may be returned to a state correctional institution, or the plan may be modified, in the sole discretion of the secretary or his designee. Any prisoner who has been initially rejected either by the superintendent or the secretary or his designee, may reapply for permission to participate in a work release program after a period of time has elapsed from the date of such rejection. This period of time shall be determined by the secretary or his designee, according to the individual circumstances in each case.

(2) This section applies only to persons sentenced for crimes that were committed before July 1, 1984. [1984 c 209 § 30; 1979 c 141 § 277; 1967 c 17 § 4.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**72.65.050 Disposition of earnings.** A prisoner employed under a work release plan shall surrender to the secretary, or to the superintendent of such state correctional institution as shall be designated by the secretary in the plan, his or her total earnings, less payroll deductions required by law, or such payroll deductions as may reasonably be required by the nature of the employment and less such amount which his or her work release plan specifies he or she should retain to help meet his or her personal needs, including costs necessary for his or her participation in the work release plan such as expenses for travel, meals, clothing, tools and other incidentals. The secretary, or the superintendent of the state correctional institution designated in the work release plan shall deduct from such earnings, and make payments from such work release participant's earnings in the following order of priority:

(1) Reimbursement to the department for any expenses advanced for vocational training pursuant to RCW 72.65.020(2), or for expenses incident to a work release plan pursuant to RCW 72.65.090.

(2) Payment of board and room charges for the work release participant: PROVIDED, That if the participant is housed at a state correctional institution, the average daily per capita cost for the operation of such correctional institution, excluding capital outlay expenditures, shall be paid from the work release participant's earnings to the general fund of the state treasury: PROVIDED FURTHER, That if such work release participant is housed in another facility pursuant to agreement, then the charges agreed to between the department and the appropriate authorities of such facility shall be

paid from the participant's earnings to such appropriate authorities.

(3) Payments for the necessary support of the work release participant's dependents, if any.

(4) Ten percent for payment of legal financial obligations for all work release participants who have legal financial obligations owing in any Washington state superior court.

(5) Payments to creditors of the work release participant, which may be made at his or her discretion and request, upon proper proof of personal indebtedness.

(6) Payments to the work release participant himself or herself upon parole or discharge, or for deposit in his or her personal account if returned to a state correctional institution for confinement and treatment. [2002 c 126 § 3; 1979 c 141 § 278; 1967 c 17 § 5.]

**72.65.060 Earnings not subject to legal process.** The earnings of a work release participant shall not be subject to garnishment, attachment, or execution while such earnings are either in the possession of the employer or any state officer authorized to hold such funds, except for payment of a court-ordered legal financial obligation as that term is defined in RCW 72.11.010. [1989 c 252 § 21; 1967 c 17 § 6.]

**Purpose—Prospective application—Effective dates—Severability—1989 c 252:** See notes following RCW 9.94A.030.

**72.65.080 Contracts with authorities for payment of expenses for housing participants—Procurement of housing facilities.** The secretary may enter into contracts with the appropriate authorities for the payment of the cost of feeding and lodging and other expenses of housing work release participants. Such contracts may include any other terms and conditions as may be appropriate for the implementation of the work release program. In addition the secretary is authorized to acquire, by lease or contract, appropriate facilities for the housing of work release participants and providing for their subsistence and supervision. Such work release participants placed in leased or contracted facilities shall be required to reimburse the department the per capita cost of subsistence and lodging in accordance with the provisions and in the priority established by RCW 72.65.050(2). The location of such facilities shall be subject to the zoning laws of the city or county in which they may be situated. [1982 1st ex.s. c 48 § 18; 1981 c 136 § 111; 1979 c 141 § 279; 1969 c 109 § 1; 1967 c 17 § 8.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**72.65.090 Transportation, clothing, supplies for participants.** The department may provide transportation for work release participants to the designated places of housing under the work release plan, and may supply suitable clothing and such other equipment, supplies and other necessities as may be reasonably needed for the implementation of the plans adopted for such participation from the community services revolving fund as established in RCW 9.95.360: PROVIDED, That costs and expenditures incurred for this purpose may be deducted by the department from the earnings of the participants and deposited in the community services revolving fund. [1986 c 125 § 6; 1967 c 17 § 9.]

**72.65.100 Powers and duties of secretary—Rules and regulations—Cooperation of other state agencies directed.** The secretary is authorized to make rules and regulations for the administration of the provisions of this chapter to administer the work release program. In addition, the department shall:

- (1) Supervise and consult with work release participants;
- (2) Locate available employment or vocational training opportunities for qualified work release participants;
- (3) Effect placement of work release participants under the program;
- (4) Collect, account for and make disbursement from earnings of work release participants under the provisions of this chapter, including accounting for all inmate debt in the community services revolving fund. RCW 9.95.370 applies to inmates assigned to work/training release facilities who receive assistance as provided in RCW 9.95.310, 9.95.320, 72.65.050, and 72.65.090;
- (5) Promote public understanding and acceptance of the work release program.

All state agencies shall cooperate with the department in the administration of the work release program as provided by this chapter. [1986 c 125 § 7; 1981 c 136 § 112; 1979 c 141 § 280; 1967 c 17 § 10.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**72.65.110 Earnings to be deposited in personal funds—Disbursements.** All earnings of work release participants shall be deposited by the secretary, or the superintendent of a state correctional institution designated by the secretary in the work release plan, in personal funds. All disbursements from such funds shall be made only in accordance with the work release plans of such participants and in accordance with the provisions of this chapter. [1979 c 141 § 281; 1967 c 17 § 11.]

**72.65.120 Participants not considered agents or employees of the state—Contracting with persons, companies, etc., for labor of participants prohibited—Employee benefits and privileges extended to.** All participants who become engaged in employment or training under the work release program shall not be considered as agents, employees or involuntary servants of state and the department is prohibited from entering into a contract with any person, co-partnership, company or corporation for the labor of any participant under its jurisdiction: PROVIDED, That such work release participants shall be entitled to all benefits and privileges in their employment under the provisions of this chapter to the same extent as other employees of their employer, except that such work release participants shall not be eligible for unemployment compensation benefits pursuant to any of the provisions of Title 50 RCW until released on parole or discharged on expiration of their maximum sentences. [1967 c 17 § 12.]

**72.65.130 Authority of board of prison terms and paroles not impaired.** This chapter shall not be construed as affecting the authority of the \*board of prison terms and paroles pursuant to the provisions of chapter 9.95 RCW over (2010 Ed.)

any person who has been approved for participation in the work release program. [1971 ex.s. c 58 § 1; 1967 c 17 § 13.]

\*Reviser's note: The "board of prison terms and paroles" was redesignated the "indeterminate sentence review board" by 1986 c 224, effective July 1, 1986.

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**72.65.200 Participation in work release plan or program must be authorized by sentence or RCW 9.94A.728.** The secretary may permit a prisoner to participate in any work release plan or program but only if the participation is authorized pursuant to the prisoner's sentence or pursuant to RCW 9.94A.728. This section shall become effective July 1, 1984. [1981 c 137 § 35.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**72.65.210 Inmate participation eligibility standards—Department to conduct overall review of work release program.** (1) The department shall establish, by rule, inmate eligibility standards for participation in the work release program.

- (2) The department shall:
  - (a) Conduct an annual examination of each work release facility and its security procedures;
  - (b) Investigate and set standards for the inmate supervision policies of each work release facility;
  - (c) Establish physical standards for future work release structures to ensure the safety of inmates, employees, and the surrounding communities;
  - (d) Evaluate its recordkeeping of serious infractions to determine if infractions are properly and consistently assessed against inmates eligible for work release;
  - (e) The department shall establish a written treatment plan best suited to the inmate's needs, cost, and the relationship of community placement and community corrections officers to a system of case management;
  - (f) Adopt a policy to encourage businesses employing work release inmates to contact the appropriate work release facility whenever an inmate is absent from his or her work schedule. The department of corrections shall provide each employer with written information and instructions on who should be called if a work release employee is absent from work or leaves the job site without authorization; and
  - (g) Develop a siting policy, in conjunction with cities, counties, community groups, and the \*department of community, trade, and economic development for the establishment of additional work release facilities. Such policy shall include at least the following elements: (i) Guidelines for appropriate site selection of work-release facilities; (ii) notification requirements to local government and community groups of intent to site a work release facility; and (iii) guidelines for effective community relations by the work release program operator.

The department shall comply with the requirements of this section by July 1, 1990. [1998 c 245 § 142; 1995 c 399 § 203; 1989 c 89 § 1.]

\*Reviser's note: The "department of community, trade, and economic development" was renamed the "department of commerce" by 2009 c 565.

**72.65.220 Facility siting process.** (1) The department or a private or public entity under contract with the depart-

ment may establish or relocate for the operation of a work release or other community-based facility only after public notifications and local public meetings have been completed consistent with this section.

(2) The department and other state agencies responsible for siting department-owned, operated, or contracted facilities shall establish a process for early and continuous public participation in establishing or relocating work release or other community-based facilities. This process shall include public meetings in the local communities affected, opportunities for written and oral comments, and wide dissemination of proposals and alternatives, including at least the following:

(a) When the department or a private or public entity under contract with the department has selected three or fewer sites for final consideration of a department-owned, operated, or contracted work release or other community-based facility, the department or contracting organization shall make public notification and conduct public hearings in the local communities of the final three or fewer proposed sites. An additional public hearing after public notification shall also be conducted in the local community selected as the final proposed site.

(b) Notifications required under this section shall be provided to the following:

(i) All newspapers of general circulation in the local area and all local radio stations, television stations, and cable networks;

(ii) Appropriate school districts, private schools, kindergartens, city and county libraries, and all other local government offices within a one-half mile radius of the proposed site or sites;

(iii) The local chamber of commerce, local economic development agencies, and any other local organizations that request such notification from the department; and

(iv) In writing to all residents and/or property owners within a one-half mile radius of the proposed site or sites.

(3) When the department contracts for the operation of a work release or other community-based facility that is not owned or operated by the department, the department shall require as part of its contract that the contracting entity comply with all the public notification and public hearing requirements as provided in this section for each located and relocated work release or other community-based facility. [1997 c 348 § 1; 1994 c 271 § 1001.]

**Purpose—Severability—1994 c 271:** See notes following RCW 9A.28.020.

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**72.65.900 Effective date—1967 c 17.** This act shall become effective on July 1, 1967. [1967 c 17 § 14.]

## Chapter 72.66 RCW

### FURLOUGHS FOR PRISONERS

#### Sections

72.66.010	Definitions.
72.66.012	Granting of furloughs authorized.
72.66.014	Ineligibility.
72.66.016	Minimum time served requirement.
72.66.018	Grounds for granting furlough.
72.66.022	Application—Contents.
72.66.024	Sponsor.

72.66.026	Furlough terms and conditions.
72.66.028	Furlough order—Contents.
72.66.032	Furlough identification card.
72.66.034	Applicant's personality and conduct—Examination.
72.66.036	Furlough duration—Extension.
72.66.038	Furlough infractions—Reporting—Regaining custody.
72.66.042	Emergency furlough—Waiver of certain requirements.
72.66.044	Application proceeding not deemed adjudicative proceeding.
72.66.050	Revocation or modification of furlough plan—Reapplication.
72.66.070	Transportation, clothing and funds for furloughed prisoners.
72.66.080	Powers and duties of secretary—Certain agreements—Rules and regulations.
72.66.090	Violation or revocation of furlough—Authority of secretary to issue arrest warrants—Enforcement of warrants by law enforcement officers—Authority of probation and parole officer to suspend furlough.
72.66.900	Construction—Chapter applicable to state registered domestic partnerships—2009 c 521.

**Reviser's note:** Throughout this chapter "this act" has been changed to "this chapter." "This act" [1971 ex.s. c 58] consists of this chapter and the 1971 amendment to RCW 72.65.130.

*Leaves of absence for inmates: RCW 72.01.365 through 72.01.380.*

**72.66.010 Definitions.** As used in this chapter the following words shall have the following meanings:

(1) "Department" means the department of corrections.

(2) "Furlough" means an authorized leave of absence for an eligible resident, without any requirement that the resident be accompanied by, or be in the custody of, any law enforcement or corrections official while on such leave.

(3) "Emergency furlough" means a specially expedited furlough granted to a resident to enable him to meet an emergency situation, such as the death or critical illness of a member of his family.

(4) "Resident" means a person convicted of a felony and serving a sentence for a term of confinement in a state correctional institution or facility, or a state approved work or training release facility.

(5) "Secretary" means the secretary of corrections, or his designee or designees. [1981 c 136 § 113; 1973 c 20 § 2; 1971 ex.s. c 58 § 2.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**72.66.012 Granting of furloughs authorized.** The secretary may grant a furlough but only if not precluded from doing so under RCW 72.66.014, 72.66.016, 72.66.018, 72.66.024, 72.66.034, or 72.66.036. [1973 c 20 § 3.]

**72.66.014 Ineligibility.** A resident may apply for a furlough if he is not precluded from doing so under this section. A resident shall be ineligible to apply for a furlough if:

(1) He is not classified by the secretary as eligible for or on minimum security status; or

(2) His minimum term of imprisonment has not been set; or

(3) He has a valid detainer pending and the agency holding the detainer has not provided written approval for him to be placed on a furlough-eligible status. Such written approval may include either specific approval for a particular resident or general approval for a class or group of residents. [1973 c 20 § 4.]

**72.66.016 Minimum time served requirement.** (1) A furlough shall not be granted to a resident if the furlough

would commence prior to the time the resident has served the minimum amounts of time provided under this section:

(a) If his minimum term of imprisonment is longer than twelve months, he shall have served at least six months of the term;

(b) If his minimum term of imprisonment is less than twelve months, he shall have served at least ninety days and shall have no longer than six months left to serve on his minimum term;

(c) If he is serving a mandatory minimum term of confinement, he shall have served all but the last six months of such term.

(2) A person convicted and sentenced for a violent offense as defined in RCW 9.94A.030 is not eligible for furlough until the person has served at least one-half of the minimum term as established by the \*board of prison terms and paroles or the sentencing guidelines commission. [1983 c 255 § 8; 1973 c 20 § 5.]

**\*Reviser's note:** The "board of prison terms and paroles" was redesignated the "indefinite sentence review board" by 1986 c 224, effective July 1, 1986.

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**72.66.018 Grounds for granting furlough.** A furlough may only be granted to enable the resident:

(1) To meet an emergency situation, such as death or critical illness of a member of his family;

(2) To obtain medical care not available in a facility maintained by the department;

(3) To seek employment or training opportunities, but only when:

(a) There are scheduled specific work interviews to take place during the furlough;

(b) The resident has been approved for work or training release but his work or training placement has not occurred or been concluded; or

(c) When necessary for the resident to prepare a parole plan for a parole meeting scheduled to take place within one hundred and twenty days of the commencement of the furlough;

(4) To make residential plans for parole which require his personal appearance in the community;

(5) To care for business affairs in person when the inability to do so could deplete the assets or resources of the resident so seriously as to affect his family or his future economic security;

(6) To visit his family for the purpose of strengthening or preserving relationships, exercising parental responsibilities, or preventing family division or disintegration; or

(7) For any other purpose deemed to be consistent with plans for rehabilitation of the resident. [1973 c 20 § 6.]

**72.66.022 Application—Contents.** Each resident applying for a furlough shall include in his application for the furlough:

(1) A furlough plan which shall specify in detail the purpose of the furlough and how it is to be achieved, the address at which the applicant would reside, the names of all persons residing at such address and their relationships to the applicant;

(2010 Ed.)

(2) A statement from the applicant's proposed sponsor that he agrees to undertake the responsibilities provided in RCW 72.66.024; and

(3) Such other information as the secretary shall require in order to protect the public or further the rehabilitation of the applicant. [1973 c 20 § 7.]

**72.66.024 Sponsor.** No furlough shall be granted unless the applicant for the furlough has procured a person to act as his sponsor. No person shall qualify as a sponsor unless he satisfies the secretary that he knows the applicant's furlough plan, is familiar with the furlough conditions prescribed pursuant to RCW 72.66.026, and submits a statement that he agrees to:

(1) See to it that the furloughed person is provided with appropriate living quarters for the duration of the furlough;

(2) Notify the secretary immediately if the furloughed person does not appear as scheduled, departs from the furlough plan at any time, becomes involved in serious difficulty during the furlough, or experiences problems that affect his ability to function appropriately;

(3) Assist the furloughed person in other appropriate ways, such as discussing problems and providing transportation to job interviews; and

(4) Take reasonable measures to assist the resident to return from furlough. [1973 c 20 § 8.]

**72.66.026 Furlough terms and conditions.** The terms and conditions prescribed under this section shall apply to each furlough, and each resident granted a furlough shall agree to abide by them.

(1) The furloughed person shall abide by the terms of his furlough plan.

(2) Upon arrival at the destination indicated in his furlough plan, the furloughed person shall, when so required, report to a state probation and parole officer in accordance with instructions given by the secretary prior to release on furlough. He shall report as frequently as may be required by the state probation and parole officer.

(3) The furloughed person shall abide by all local, state and federal laws.

(4) With approval of the state probation and parole officer designated by the secretary, the furloughed person may accept temporary employment during a period of furlough.

(5) The furloughed person shall not leave the state at any time while on furlough.

(6) Other limitations on movement within the state may be imposed as a condition of furlough.

(7) The furloughed person shall not, in any public place, drink intoxicating beverages or be in an intoxicated condition. A furloughed person shall not enter any tavern, bar, or cocktail lounge.

(8) A furloughed person who drives a motor vehicle shall:

(a) have a valid Washington driver's license in his possession,

(b) have the owner's written permission to drive any vehicle not his own or his spouse's,

(c) have at least minimum personal injury and property damage liability coverage on the vehicle he is driving, and

(d) observe all traffic laws.

(9) Each furloughed person shall carry with him at all times while on furlough a copy of his furlough order prescribed pursuant to RCW 72.66.028 and a copy of the identification card issued to him pursuant to RCW 72.66.032.

(10) The furloughed person shall comply with any other terms or conditions which the secretary may prescribe. [1973 c 20 § 9.]

**72.66.028 Furlough order—Contents.** Whenever the secretary grants a furlough, he shall do so by a special order which order shall contain each condition and term of furlough prescribed pursuant to RCW 72.66.026 and each additional condition and term which the secretary may prescribe as being appropriate for the particular person to be furloughed. [1973 c 20 § 10.]

**72.66.032 Furlough identification card.** The secretary shall issue a furlough identification card to each resident granted a furlough. The card shall contain the name of the resident and shall disclose the fact that he has been granted a furlough and the time period covered by the furlough. [1973 c 20 § 11.]

**72.66.034 Applicant's personality and conduct—Examination.** Prior to the granting of any furlough, the secretary shall examine the applicant's personality and past conduct and determine whether or not he represents a satisfactory risk for furlough. The secretary shall not grant a furlough to any person whom he believes represents an unsatisfactory risk. [1973 c 20 § 12.]

**72.66.036 Furlough duration—Extension.** (1) The furlough or furloughs granted to any one resident, excluding furloughs for medical care, may not exceed thirty consecutive days or a total of sixty days during a calendar year.

(2) Absent unusual circumstances, each first furlough and each second furlough granted to a resident shall not exceed a period of five days and each emergency furlough shall not exceed forty-eight hours plus travel time.

(3) A furlough may be extended within the maximum time periods prescribed under this section. [1983 c 255 § 7; 1973 c 20 § 13.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**72.66.038 Furlough infractions—Reporting—Regaining custody.** Any employee of the department having knowledge of a furlough infraction shall report the facts to the secretary. Upon verification, the secretary shall cause the custody of the furloughed person to be regained, and for this purpose may cause a warrant to be issued. [1973 c 20 § 14.]

**72.66.042 Emergency furlough—Waiver of certain requirements.** In the event of an emergency furlough, the secretary may waive all or any portion of RCW 72.66.014(2), 72.66.016, 72.66.022, 72.66.024, and 72.66.026. [1973 c 20 § 15.]

**72.66.044 Application proceeding not deemed adjudicative proceeding.** Any proceeding involving an application for a furlough shall not be deemed an adjudicative proceeding under the provisions of chapter 34.05 RCW, the Administrative Procedure Act. [1989 c 175 § 144; 1973 c 20 § 16.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**72.66.050 Revocation or modification of furlough plan—Reapplication.** At any time after approval has been granted for a furlough to any prisoner, such approval or order of furlough may be revoked, and if the prisoner has been released on an order of furlough, he may be returned to a state correctional institution, or the plan may be modified, in the discretion of the secretary. Any prisoner whose furlough application is rejected may reapply for a furlough after such period of time has elapsed as shall be determined at the time of rejection by the superintendent or secretary, whichever person initially rejected the application for furlough, such time period being subject to modification. [1971 ex.s. c 58 § 6.]

**72.66.070 Transportation, clothing and funds for furloughed prisoners.** The department may provide or arrange for transportation for furloughed prisoners to the designated place of residence within the state and may, in addition, supply funds not to exceed forty dollars and suitable clothing, such clothing to be returned to the institution on the expiration of furlough. [1971 ex.s. c 58 § 8.]

**72.66.080 Powers and duties of secretary—Certain agreements—Rules and regulations.** The secretary may enter into agreements with any agency of the state, a county, a municipal corporation or any person, corporation or association for the purpose of implementing furlough plans, and, in addition, may make such rules and regulations in furtherance of this chapter as he may deem necessary. [1971 ex.s. c 58 § 9.]

**72.66.090 Violation or revocation of furlough—Authority of secretary to issue arrest warrants—Enforcement of warrants by law enforcement officers—Authority of probation and parole officer to suspend furlough.** The secretary may issue warrants for the arrest of any prisoner granted a furlough, at the time of the revocation of such furlough, or upon the failure of the prisoner to report as designated in the order of furlough. Such arrest warrants shall authorize any law enforcement, probation and parole or peace officer of this state, or any other state where such prisoner may be located, to arrest such prisoner and to place him in physical custody pending his return to confinement in a state correctional institution. Any state probation and parole officer, if he has reasonable cause to believe that a person granted a furlough has violated a condition of his furlough, may suspend such person's furlough and arrest or cause the arrest and detention in physical custody of the furloughed prisoner, pending the determination of the secretary whether the furlough should be revoked. The probation and parole officer shall report to the secretary all facts and circumstances and the reasons for the action of suspending such furlough.

Upon the basis of the report and such other information as the secretary may obtain, he may revoke, reinstate or modify the conditions of furlough, which shall be by written order of the secretary. If the furlough is revoked, the secretary shall issue a warrant for the arrest of the furloughed prisoner and his return to a state correctional institution. [1971 ex.s. c 58 § 10.]

**72.66.900 Construction—Chapter applicable to state registered domestic partnerships—2009 c 521.** For the purposes of this chapter, the terms spouse, marriage, marital, husband, wife, widow, widower, next of kin, and family shall be interpreted as applying equally to state registered domestic partnerships or individuals in state registered domestic partnerships as well as to marital relationships and married persons, and references to dissolution of marriage shall apply equally to state registered domestic partnerships that have been terminated, dissolved, or invalidated, to the extent that such interpretation does not conflict with federal law. Where necessary to implement chapter 521, Laws of 2009, gender-specific terms such as husband and wife used in any statute, rule, or other law shall be construed to be gender neutral, and applicable to individuals in state registered domestic partnerships. [2009 c 521 § 171.]

### Chapter 72.68 RCW

## TRANSFER, REMOVAL, TRANSPORTATION— DETENTION CONTRACTS

#### Sections

72.68.001	Definitions.
72.68.010	Transfer of prisoners.
72.68.012	Transfer to private institutions—Intent—Authority.
72.68.020	Transportation of prisoners.
72.68.031	Transfer or removal of person in correctional institution to institution for mentally ill.
72.68.032	Transfer or removal of person in institution for mentally ill to other institution.
72.68.035	Transfer or removal of committed or confined persons—State institution or facility for the care of the mentally ill, defined.
72.68.037	Transfer or removal of committed or confined persons—Record—Notice.
72.68.040	Contracts for detention of felons convicted in this state.
72.68.045	Transfer to out-of-state institution—Notice to victims.
72.68.050	Contracts with other governmental units for detention of felons convicted in this state—Notice of transfer of prisoner.
72.68.060	Contracts with other governmental units for detention of felons convicted in this state—Procedure when transferred prisoner's presence required in judicial proceedings.
72.68.070	Contracts with other governmental units for detention of felons convicted in this state—Procedure regarding prisoner when contract expires.
72.68.075	Contracts with other states or territories for care, confinement or rehabilitation of female prisoners.
72.68.080	Federal prisoners, or from other state—Authority to receive.
72.68.090	Federal prisoners, or from other state—Per diem rate for keep.
72.68.100	Federal prisoners, or from other state—Space must be available.

*Child under eighteen convicted of crime amounting to felony—Placement—Segregation from adult offenders: RCW 72.01.410.*

*Correctional employees: RCW 9.94.050.*

*Western interstate corrections compact: Chapter 72.70 RCW.*

**72.68.001 Definitions.** As used in this chapter:  
"Department" means the department of corrections; and  
"Secretary" means the secretary of corrections. [1981 c 136 § 114.]

(2010 Ed.)

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**72.68.010 Transfer of prisoners.** (1) Whenever in its judgment the best interests of the state or the welfare of any prisoner confined in any penal institution will be better served by his or her transfer to another institution or to a foreign country of which the prisoner is a citizen or national, the secretary may effect such transfer consistent with applicable federal laws and treaties. The secretary has the authority to transfer offenders out-of-state to private or governmental institutions if the secretary determines that transfer is in the best interest of the state or the offender. The determination of what is in the best interest of the state or offender may include but is not limited to considerations of overcrowding, emergency conditions, or hardship to the offender. In determining whether the transfer will impose a hardship on the offender, the secretary shall consider: (a) The location of the offender's family and whether the offender has maintained contact with members of his or her family; (b) whether, if the offender has maintained contact, the contact will be significantly disrupted by the transfer due to the family's inability to maintain the contact as a result of the transfer; and (c) whether the offender is enrolled in a vocational or educational program that cannot reasonably be resumed if the offender is returned to the state.

(2) If directed by the governor, the secretary shall, in carrying out this section and RCW 43.06.350, adopt rules under chapter 34.05 RCW to effect the transfer of prisoners requesting transfer to foreign countries. [2000 c 62 § 2; 1983 c 255 § 10; 1979 c 141 § 282; 1959 c 28 § 72.68.010. Prior: 1955 c 245 § 2; 1935 c 114 § 5; RRS § 10249-5. Formerly RCW 9.95.180.]

**Effective date—2000 c 62:** See note following RCW 72.68.012.

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**72.68.012 Transfer to private institutions—Intent—Authority.** The legislature has in the past allowed funding for transfer of convicted felons to a private institution in another state. It is the legislature's intent to clarify the law to reflect that the secretary of corrections has authority to contract with private corporations to house felons out-of-state and has had that authority since before February 1, 1999, when specific authority to expend funds during specified bienniums was granted under RCW 72.09.050. The secretary has the authority to expend funds between February 1, 1999, and June 30, 2001, for contracts with private corporations to house felons out-of-state. [2000 c 62 § 1.]

**Effective date—2000 c 62:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [March 22, 2000]." [2000 c 62 § 5.]

**72.68.020 Transportation of prisoners.** (1) The secretary shall transport prisoners under supervision:

(a) To and between state correctional facilities under the jurisdiction of the secretary;

(b) From a county, city, or municipal jail to an institution mentioned in (a) of this subsection and to a county, city, or municipal jail from an institution mentioned in (a) of this subsection.

(2) The secretary may employ necessary persons for such purpose. [1992 c 7 § 57; 1979 c 141 § 283; 1959 c 28 § 72.68.020. Prior: 1955 c 245 § 1. Formerly RCW 9.95.181.]

*Correctional employees: RCW 9.94.050.*

**72.68.031 Transfer or removal of person in correctional institution to institution for mentally ill.** When, in the judgment of the secretary, the welfare of any person committed to or confined in any state correctional institution or facility necessitates that such person be transferred or moved for observation, diagnosis or treatment to any state institution or facility for the care of the mentally ill, the secretary, with the consent of the secretary of social and health services, is authorized to order and effect such move or transfer: PROVIDED, That the sentence of such person shall continue to run as if he remained confined in a correctional institution or facility, and that such person shall not continue so detained or confined beyond the maximum term to which he was sentenced: PROVIDED, FURTHER, That the secretary and the \*board of prison terms and paroles shall adopt and implement procedures to assure that persons so transferred shall, while detained or confined at such institution or facility for the care of the mentally ill, be provided with substantially similar opportunities for parole or early release evaluation and determination as persons detained or confined in the state correctional institutions or facilities. [1981 c 136 § 115; 1972 ex.s. c 59 § 1.]

\*Reviser's note: The "board of prison terms and paroles" was redesignated the "indeterminate sentence review board" by 1986 c 224, effective July 1, 1986.

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**72.68.032 Transfer or removal of person in institution for mentally ill to other institution.** When, in the judgment of the secretary of the department of social and health services, the welfare of any person committed to or confined in any state institution or facility for the care of the mentally ill necessitates that such person be transferred or moved for observation, diagnosis, or treatment, or for different security status while being observed, diagnosed or treated to any other state institution or facility for the care of the mentally ill, the secretary of social and health services is authorized to order and effect such move or transfer. [1981 c 136 § 116; 1972 ex.s. c 59 § 2.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**72.68.035 Transfer or removal of committed or confined persons—State institution or facility for the care of the mentally ill, defined.** As used in RCW 72.68.031 and 72.68.032, the phrase "state institution or facility for the care of the mentally ill" shall mean any hospital, institution or facility operated and maintained by the state of Washington which has as its principal purpose the care of the mentally ill, whether such hospital, institution or facility is physically located within or outside the geographical or structural confines of a state correctional institution or facility: PROVIDED, That whether a state institution or facility for the care of the mentally ill be physically located within or outside the geographical or structural confines of a state correctional institution or facility, it shall be administered separately from

the state correctional institution or facility, and in conformity with its principal purpose. [1972 ex.s. c 59 § 3.]

**72.68.037 Transfer or removal of committed or confined persons—Record—Notice.** Whenever a move or transfer is made pursuant to RCW 72.68.031 or 72.68.032, a record shall be made and the relatives, attorney, if any, and guardian, if any, of the person moved shall be notified of the move or transfer. [1972 ex.s. c 59 § 4.]

**72.68.040 Contracts for detention of felons convicted in this state.** The secretary may contract with the authorities of the federal government, or the authorities of any state of the United States, private companies in other states, or any county or city in this state providing for the detention in an institution or jail operated by such entity, for prisoners convicted of a felony in the courts of this state and sentenced to a term of imprisonment therefor in a state correctional institution for convicted felons under the jurisdiction of the department. After the making of a contract under this section, prisoners sentenced to a term of imprisonment in a state correctional institution for convicted felons may be conveyed by the superintendent or his assistants to the institution or jail named in the contract. The prisoners shall be delivered to the authorities of the institution or jail, there to be confined until their sentences have expired or they are otherwise discharged by law, paroled or until they are returned to a state correctional institution for convicted felons for further confinement. [2000 c 62 § 3; 1981 c 136 § 117; 1979 c 141 § 284; 1967 c 60 § 1; 1959 c 47 § 1; 1959 c 28 § 72.68.040. Prior: 1957 c 27 § 1. Formerly RCW 9.95.184.]

**Effective date—2000 c 62:** See note following RCW 72.68.012.

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**72.68.045 Transfer to out-of-state institution—Notice to victims.** (1) If the secretary transfers any offender to an institution in another state after March 22, 2000, the secretary shall, prior to the transfer, review the records of victims registered with the department. If any registered victim of the offender resides: (a) In the state to which the offender is to be transferred; or (b) in close proximity to the institution to which the offender is to be transferred, the secretary shall notify the victim prior to the transfer and consider the victim's concerns about the transfer.

(2) Any victim notified under subsection (1) of this section shall also be notified of the return of the offender to a facility in Washington, prior to the return.

(3) The secretary shall develop a written policy to define "close proximity" for purposes of this section. [2000 c 62 § 4.]

**Effective date—2000 c 62:** See note following RCW 72.68.012.

**72.68.050 Contracts with other governmental units for detention of felons convicted in this state—Notice of transfer of prisoner.** Whenever a prisoner who is serving a sentence imposed by a court of this state is transferred from a state correctional institution for convicted felons under RCW 72.68.040 through 72.68.070, the superintendent shall send to the clerk of the court pursuant to whose order or judgment the prisoner was committed to a state correctional institution

for convicted felons a notice of transfer, disclosing the name of the prisoner transferred and giving the name and location of the institution to which the prisoner was transferred. The superintendent shall keep a copy of all notices of transfer on file as a public record open to inspection; and the clerk of the court shall file with the judgment roll in the appropriate case a copy of each notice of transfer which he receives from the superintendent. [1967 c 60 § 2; 1959 c 47 § 2; 1959 c 28 § 72.68.050. Prior: 1957 c 27 § 2. Formerly RCW 9.95.185.]

**72.68.060 Contracts with other governmental units for detention of felons convicted in this state—Procedure when transferred prisoner’s presence required in judicial proceedings.** Should the presence of any prisoner confined, under authority of RCW 72.68.040 through 72.68.070, in an institution of another state or the federal government or in a county or city jail, be required in any judicial proceeding of this state, the superintendent of a state correctional institution for convicted felons or his assistants shall, upon being so directed by the secretary, or upon the written order of any court of competent jurisdiction, or of a judge thereof, procure such prisoner, bring him to the place directed in such order and hold him in custody subject to the further order and direction of the secretary, or of the court or of a judge thereof, until he is lawfully discharged from such custody. The superintendent or his assistants may, by direction of the secretary or of the court, or a judge thereof, deliver such prisoner into the custody of the sheriff of the county in which he was convicted, or may, by like order, return such prisoner to a state correctional institution for convicted felons or the institution from which he was taken. [1979 c 141 § 285; 1967 c 60 § 3; 1959 c 47 § 3; 1959 c 28 § 72.68.060. Prior: 1957 c 27 § 3. Formerly RCW 9.95.186.]

**72.68.070 Contracts with other governmental units for detention of felons convicted in this state—Procedure regarding prisoner when contract expires.** Upon the expiration of any contract entered into under RCW 72.68.040 through 72.68.070, all prisoners of this state confined in such institution or jail shall be returned by the superintendent or his assistants to a state correctional institution for convicted felons of this state, or delivered to such other institution as the secretary has contracted with under RCW 72.68.040 through 72.68.070. [1979 c 141 § 286; 1967 c 60 § 4; 1959 c 47 § 4; 1959 c 28 § 72.68.070. Prior: 1957 c 27 § 4. Formerly RCW 9.95.187.]

**72.68.075 Contracts with other states or territories for care, confinement or rehabilitation of female prisoners.** The secretary is hereby authorized to contract for the care, confinement and rehabilitation of female prisoners of other states or territories of the United States, as more specifically provided in the Western Interstate Corrections Compact, as contained in chapter 72.70 RCW as now or hereafter amended. [1979 c 141 § 287; 1967 ex.s. c 122 § 12.]

**72.68.080 Federal prisoners, or from other state—Authority to receive.** All persons sentenced to prison by the authority of the United States or of any state or territory of the United States may be received by the department and impris-

oned in a state correctional institution as defined in RCW 72.65.010 in accordance with the sentence of the court by which they were tried. The prisoners so confined shall be subject in all respects to discipline and treatment as though committed under the laws of this state. [1983 c 255 § 11; 1967 ex.s. c 122 § 10; 1959 c 28 § 72.68.080. Prior: 1951 c 135 § 1. Formerly RCW 72.08.350.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**72.68.090 Federal prisoners, or from other state—Per diem rate for keep.** The secretary is authorized to enter into contracts with the proper officers or agencies of the United States and of other states and territories of the United States relative to the per diem rate to be paid the state of Washington for the conditions of the keep of each prisoner. [1979 c 141 § 288; 1959 c 28 § 72.68.090. Prior: 1951 c 135 § 2. Formerly RCW 72.08.360.]

**72.68.100 Federal prisoners, or from other state—Space must be available.** The secretary shall not enter into any contract for the care or commitment of any prisoner of the federal government or any other state unless there is vacant space and unused facilities in state correctional facilities. [1992 c 7 § 58; 1979 c 141 § 289; 1967 ex.s. c 122 § 11; 1959 c 28 § 72.68.100. Prior: 1951 c 135 § 3. Formerly RCW 72.08.370.]

## Chapter 72.70 RCW WESTERN INTERSTATE CORRECTIONS COMPACT

### Sections

72.70.010	Compact enacted—Provisions.
72.70.020	Secretary authorized to receive or transfer inmates pursuant to contract.
72.70.030	Responsibilities of courts, departments, agencies and officers.
72.70.040	Hearings.
72.70.050	Secretary may enter into contracts.
72.70.060	Secretary may provide clothing, etc., to inmate released in another state.
72.70.900	Severability—Liberal construction—1959 c 287.

*Compacts for out-of-state supervision of parolees or probationers: RCW 9.95.270.*

*Interstate compact on juveniles: Chapter 13.24 RCW.*

**72.70.010 Compact enacted—Provisions.** The Western Interstate Corrections Compact as contained herein is hereby enacted into law and entered into on behalf of this state with any and all other states legally joining therein in a form substantially as follows:

### WESTERN INTERSTATE CORRECTIONS COMPACT

#### ARTICLE I—Purpose and Policy

The party states, desiring by common action to improve their institutional facilities and provide programs of sufficiently high quality for the confinement, treatment and rehabilitation of various types of offenders, declare that it is the policy of each of the party states to provide such facilities and programs on a basis of cooperation with one another, thereby serving the best interests of such offenders and of society. The purpose of this compact is to provide for the develop-

ment and execution of such programs of cooperation for the confinement, treatment and rehabilitation of offenders.

#### ARTICLE II—Definitions

As used in this compact, unless the context clearly requires otherwise:

(a) "State" means a state of the United States, or, subject to the limitation contained in Article VII, Guam.

(b) "Sending state" means a state party to this compact in which conviction was had.

(c) "Receiving state" means a state party to this compact to which an inmate is sent for confinement other than a state in which conviction was had.

(d) "Inmate" means a male or female offender who is under sentence to or confined in a prison or other correctional institution.

(e) "Institution" means any prison, reformatory or other correctional facility except facilities for the mentally ill or mentally handicapped in which inmates may lawfully be confined.

#### ARTICLE III—Contracts

(a) Each party state may make one or more contracts with any one or more of the other party states for the confinement of inmates on behalf of a sending state in institutions situated within receiving states. Any such contract shall provide for:

1. Its duration.

2. Payments to be made to the receiving state by the sending state for inmate maintenance, extraordinary medical and dental expenses, and any participation in or receipt by inmates of rehabilitative or correctional services, facilities, programs or treatment not reasonably included as part of normal maintenance.

3. Participation in programs of inmate employment, if any; the disposition or crediting of any payments received by inmates on account thereof; and the crediting of proceeds from or disposal of any products resulting therefrom.

4. Delivery and retaking of inmates.

5. Such other matters as may be necessary and appropriate to fix the obligations, responsibilities and rights of the sending and receiving states.

(b) Prior to the construction or completion of construction of any institution or addition thereto by a party state, any other party state or states may contract therewith for the enlargement of the planned capacity of the institution or addition thereto, or for the inclusion therein of particular equipment or structures, and for the reservation of a specific percentage of the capacity of the institution to be kept available for use by inmates of the sending state or states so contracting. Any sending state so contracting may, to the extent that monies are legally available therefor, pay to the receiving state, a reasonable sum as consideration for such enlargement of capacity, or provision of equipment or structures, and reservation of capacity. Such payment may be in a lump sum or in installments as provided in the contract.

(c) The terms and provisions of this compact shall be a part of any contract entered into by the authority of or pursuant thereto, and nothing in any such contract shall be inconsistent therewith.

#### ARTICLE IV—Procedures and Rights

(a) Whenever the duly constituted judicial or administrative authorities in a state party to this compact, and which has entered into a contract pursuant to Article III, shall decide that confinement in, or transfer of an inmate to, an institution within the territory of another party state is necessary in order to provide adequate quarters and care or desirable in order to provide an appropriate program of rehabilitation or treatment, said officials may direct that the confinement be within an institution within the territory of said other party state, the receiving state to act in that regard solely as agent for the sending state.

(b) The appropriate officials of any state party to this compact shall have access, at all reasonable times, to any institution in which it has a contractual right to confine inmates for the purpose of inspecting the facilities thereof and visiting such of its inmates as may be confined in the institution.

(c) Inmates confined in an institution pursuant to the terms of this compact shall at all times be subject to the jurisdiction of the sending state and may at any time be removed therefrom for transfer to a prison or other institution within the sending state, for transfer to another institution in which the sending state may have a contractual or other right to confine inmates, for release on probation or parole, for discharge, or for any other purpose permitted by the laws of the sending state; provided that the sending state shall continue to be obligated to such payments as may be required pursuant to the terms of any contract entered into under the terms of Article III.

(d) Each receiving state shall provide regular reports to each sending state on the inmates of that sending state in institutions pursuant to this compact including a conduct record of each inmate and certify said record to the official designated by the sending state, in order that each inmate may have the benefit of his or her record in determining and altering the disposition of said inmate in accordance with the law which may obtain in the sending state and in order that the same may be a source of information for the sending state.

(e) All inmates who may be confined in an institution pursuant to the provisions of this compact shall be treated in a reasonable and humane manner and shall be cared for and treated equally with such similar inmates of the receiving state as may be confined in the same institution. The fact of confinement in a receiving state shall not deprive any inmate so confined of any legal rights which said inmate would have had if confined in an appropriate institution of the sending state.

(f) Any hearing or hearings to which an inmate confined pursuant to this compact may be entitled by the laws of the sending state may be had before the appropriate authorities of the sending state, or of the receiving state if authorized by the sending state. The receiving state shall provide adequate facilities for such hearings as may be conducted by the appropriate officials of a sending state. In the event such hearing or hearings are had before officials of the receiving state, the governing law shall be that of the sending state and a record of the hearing or hearings as prescribed by the sending state shall be made. Said record together with any recommendations of the hearing officials shall be transmitted forthwith to

the official or officials before whom the hearing would have been had if it had taken place in the sending state. In any and all proceedings had pursuant to the provisions of this subdivision, the officials of the receiving state shall act solely as agents of the sending state and no final determination shall be made in any matter except by the appropriate officials of the sending state. Costs of records made pursuant to this subdivision shall be borne by the sending state.

(g) Any inmate confined pursuant to this compact shall be released within the territory of the sending state unless the inmate, and the sending and receiving states, shall agree upon release in some other place. The sending state shall bear the cost of such return to its territory.

(h) Any inmate confined pursuant to the terms of this compact shall have any and all rights to participate in and derive any benefits or incur or be relieved of any obligations or have such obligations modified or his status changed on account of any action or proceeding in which he could have participated if confined in any appropriate institution of the sending state located within such state.

(i) The parent, guardian, trustee, or other person or persons entitled under the laws of the sending state to act for, advise, or otherwise function with respect to any inmate shall not be deprived of or restricted in his exercise of any power in respect of any inmate confined pursuant to the terms of this compact.

#### ARTICLE V—Acts Not Reviewable In Receiving State; Extradition

(a) Any decision of the sending state in respect of any matter over which it retains jurisdiction pursuant to this compact shall be conclusive upon and not reviewable within the receiving state, but if at the time the sending state seeks to remove an inmate from an institution in the receiving state there is pending against the inmate within such state any criminal charge or if the inmate is suspected of having committed within such state a criminal offense, the inmate shall not be returned without the consent of the receiving state until discharged from prosecution or other form of proceeding, imprisonment or detention for such offense. The duly accredited officers of the sending state shall be permitted to transport inmates pursuant to this compact through any and all states party to this compact without interference.

(b) An inmate who escapes from an institution in which he is confined pursuant to this compact shall be deemed a fugitive from the sending state and from the state in which the institution is situated. In the case of an escape to a jurisdiction other than the sending or receiving state, the responsibility for institution of extradition proceedings shall be that of the sending state, but nothing contained herein shall be construed to prevent or affect the activities of officers and agencies of any jurisdiction directed toward the apprehension and return of an escapee.

#### ARTICLE VI—Federal Aid

Any state party to this compact may accept federal aid for use in connection with an institution or program, the use of which is or may be affected by this compact or any contract pursuant thereto and any inmate in a receiving state pursuant to this compact may participate in any such federally aided program or activity for which the sending and receiving

states have made contractual provision; provided that if such program or activity is not part of the customary correctional regimen the express consent of the appropriate official of the sending state shall be required therefor.

#### ARTICLE VII—Entry Into Force

This compact shall enter into force and become effective and binding upon the states so acting when it has been enacted into law by any two contiguous states from among the states of Alaska, Arizona, California, Colorado, Hawaii, Idaho, Montana, Nebraska, Nevada, New Mexico, Oregon, Utah, Washington and Wyoming. For the purposes of this article, Alaska and Hawaii shall be deemed contiguous to each other; to any and all of the states of California, Oregon and Washington; and to Guam. Thereafter, this compact shall enter into force and become effective and binding as to any other of said states, or any other state contiguous to at least one party state upon similar action by such state. Guam may become party to this compact by taking action similar to that provided for joinder by any other eligible party state and upon the consent of Congress to such joinder. For the purposes of this article, Guam shall be deemed contiguous to Alaska, Hawaii, California, Oregon and Washington.

#### ARTICLE VIII—Withdrawal and Termination

This compact shall continue in force and remain binding upon a party state until it shall have enacted a statute repealing the same and providing for the sending of formal written notice of withdrawal from the compact to the appropriate officials of all other party states. An actual withdrawal shall not take effect until two years after the notices provided in said statute have been sent. Such withdrawal shall not relieve the withdrawing state from its obligations assumed hereunder prior to the effective date of withdrawal. Before the effective date of withdrawal, a withdrawing state shall remove to its territory, at its own expense, such inmates as it may have confined pursuant to the provisions of this compact.

#### ARTICLE IX—Other Arrangements Unaffected

Nothing contained in this compact shall be construed to abrogate or impair any agreement or other arrangement which a party state may have with a non-party state for the confinement, rehabilitation or treatment of inmates nor to repeal any other laws of a party state authorizing the making of cooperative institutional arrangements.

#### ARTICLE X—Construction and Severability

The provisions of this compact shall be liberally construed and shall be severable. If any phrase, clause, sentence or provision of this compact is declared to be contrary to the constitution of any participating state or of the United States or the applicability thereof to any government, agency, person or circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person or circumstance shall not be affected thereby. If this compact shall be held contrary to the constitution of any state participating therein, the compact shall remain in full force and effect as to the remaining states and in full force and effect as to the state affected as to all severable matters. [1977 ex.s. c 80 § 69; 1959 c 287 § 1.]

**Purpose—Intent—Severability—1977 ex.s. c 80:** See notes following RCW 4.16.190.

**72.70.020 Secretary authorized to receive or transfer inmates pursuant to contract.** The secretary of corrections is authorized to receive or transfer an inmate as defined in Article II(d) of the Western Interstate Corrections Compact to any institution as defined in Article II(e) of the Western Interstate Corrections Compact within this state or without this state, if this state has entered into a contract or contracts for the confinement of inmates in such institutions pursuant to Article III of the Western Interstate Corrections Compact. [1981 c 136 § 118; 1979 c 141 § 290; 1959 c 287 § 2.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**72.70.030 Responsibilities of courts, departments, agencies and officers.** The courts, departments, agencies and officers of this state and its subdivisions shall enforce this compact and shall do all things appropriate to the effectuation of its purposes and intent which may be within their respective jurisdictions including but not limited to the making and submission of such reports as are required by the compact. [1959 c 287 § 3.]

**72.70.040 Hearings.** The secretary and members of the \*board of prison terms and paroles are hereby authorized and directed to hold such hearings as may be requested by any other party state pursuant to Article IV(f) of the Western Interstate Corrections Compact. Additionally, the secretary and members of the \*board of prison terms and paroles may hold out-of-state hearings in connection with the case of any inmate of this state confined in an institution of another state party to the Western Interstate Corrections Compact. [1979 c 141 § 291; 1959 c 287 § 4.]

**\*Reviser's note:** The "board of prison terms and paroles" was redesignated the "indeterminate sentence review board" by 1986 c 224, effective July 1, 1986.

**72.70.050 Secretary may enter into contracts.** The secretary of corrections is hereby empowered to enter into such contracts on behalf of this state as may be appropriate to implement the participation of this state in the Western Interstate Corrections Compact pursuant to Article III thereof. No such contract shall be of any force or effect until approved by the attorney general. [1981 c 136 § 119; 1979 c 141 § 292; 1959 c 287 § 5.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**72.70.060 Secretary may provide clothing, etc., to inmate released in another state.** If any agreement between this state and any other state party to the Western Interstate Corrections Compact enables the release of an inmate of this state confined in an institution of another state to be released in such other state in accordance with Article IV(g) of this compact, then the secretary is authorized to provide clothing, transportation and funds to such inmate in accordance with the provisions of chapter 72.02 RCW. [1983 c 3 § 186; 1979 c 141 § 293; 1959 c 287 § 6.]

**72.70.900 Severability—Liberal construction—1959 c 287.** The provisions of this act shall be severable and if any

phrase, clause, sentence, or provision of this act is declared to be unconstitutional or the applicability thereof to any state, agency, person or circumstance is held invalid, the constitutionality of this act and the applicability thereof to any other state, agency, person or circumstance shall, with respect to all severable matters, not be affected thereby. It is the legislative intent that the provisions of this act be reasonably and liberally construed. [1959 c 287 § 7.]

## Chapter 72.72 RCW CRIMINAL BEHAVIOR OF RESIDENTS OF INSTITUTIONS

### Sections

72.72.010	Legislative intent.
72.72.020	Definitions.
72.72.030	Institutional impact account—Reimbursement to political subdivisions—Limitations.
72.72.040	Reimbursement—Rules.
72.72.050	Disturbances at state penal facilities—Reimbursement to cities and counties for certain expenses incurred—Funding.
72.72.060	Disturbances at state penal facilities—Reimbursement to cities and counties for physical injury benefit costs—Limitations.

**Reviser's note:** 1979 ex.s. c 108 was to be added to chapter 72.06 RCW but has been codified as chapter 72.72 RCW.

**72.72.010 Legislative intent.** The legislature finds that political subdivisions in which state institutions are located incur a disproportionate share of the criminal justice costs due to criminal behavior of the residents of such institutions. To redress this inequity, it shall be the policy of the state of Washington to reimburse political subdivisions which have incurred such costs. [1979 ex.s. c 108 § 1.]

**72.72.020 Definitions.** Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Political subdivisions" means counties, cities, and towns.

(2) "Institution" means any state institution for the confinement of adult offenders committed pursuant to chapters 10.64, 10.77, and 71.06 RCW or juvenile offenders committed pursuant to chapter 13.40 RCW. [1983 c 279 § 1; 1981 c 136 § 120; 1979 ex.s. c 108 § 2.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**72.72.030 Institutional impact account—Reimbursement to political subdivisions—Limitations.** (1) There is hereby created, in the state treasury, an institutional impact account. The secretary of social and health services may reimburse political subdivisions for criminal justice costs incurred directly as a result of crimes committed by offenders residing in an institution as defined herein under the jurisdiction of the secretary of social and health services. Such reimbursement shall be made to the extent funds are available from the institutional impact account. Reimbursements shall be limited to law enforcement, prosecutorial, judicial, and jail facilities costs which are documented to be strictly related to the criminal activities of the offender.

(2) The secretary of corrections may reimburse political subdivisions for criminal justice costs incurred directly as a result of crimes committed by offenders residing in an insti-

tution as defined herein under the jurisdiction of the secretary of corrections. Such reimbursement shall be made to the extent funds are available from the institutional impact account. Reimbursements shall be limited to law enforcement, prosecutorial, judicial, and jail facilities costs which are documented to be strictly related to the criminal activities of the offender. [1991 sp.s. c 13 § 10; 1985 c 57 § 71; 1983 c 279 § 2; 1979 ex.s. c 108 § 3.]

Additional notes found at [www.leg.wa.gov](http://www.leg.wa.gov)

**72.72.040 Reimbursement—Rules.** (1) The secretary of social and health services and the secretary of corrections shall each promulgate rules pursuant to chapter 34.05 RCW regarding the reimbursement process for their respective agencies.

(2) Reimbursement shall not be made if otherwise provided pursuant to other provisions of state law. [1983 c 279 § 3; 1979 ex.s. c 108 § 4.]

**72.72.050 Disturbances at state penal facilities—Reimbursement to cities and counties for certain expenses incurred—Funding.** The state shall reimburse cities and counties for their expenses incurred directly as a result of their providing personnel and material pursuant to a contingency plan adopted under RCW 72.02.150. Reimbursement to cities and counties shall be expended solely from the institutional impact account within funds available in that account. If the costs of reimbursements to cities and counties exceed available funds, the secretary of corrections shall request the legislature to appropriate sufficient funds to enable the secretary of corrections to make full reimbursement. [1983 c 279 § 4; 1982 c 49 § 3.]

**72.72.060 Disturbances at state penal facilities—Reimbursement to cities and counties for physical injury benefit costs—Limitations.** The state shall reimburse cities and counties for their costs incurred under chapter 41.26 RCW if the costs are the direct result of physical injuries sustained in the implementation of a contingency plan adopted under RCW 72.02.150 and if reimbursement is not precluded by the following provisions: If the secretary of corrections identifies in the contingency plan the prison walls or other perimeter of the secured area, then reimbursement will not be made unless the injuries occur within the walls or other perimeter of the secured area. If the secretary of corrections does not identify prison walls or other perimeter of the secured area, then reimbursement shall not be made unless the injuries result from providing assistance, requested by the secretary of corrections or the secretary's designee, which is beyond the description of the assistance contained in the contingency plan. In no case shall reimbursement be made when the injuries result from conduct which either is not requested by the secretary of corrections or the secretary's designee, or is in violation of orders by superiors of the local law enforcement agency. [1983 c 279 § 5; 1982 c 49 § 4.]

(2010 Ed.)

## Chapter 72.74 RCW

### INTERSTATE CORRECTIONS COMPACT

#### Sections

72.74.010	Short title.
72.74.020	Authority to execute, terms of compact.
72.74.030	Authority to receive or transfer inmates.
72.74.040	Enforcement.
72.74.050	Hearings.
72.74.060	Contracts for implementation.
72.74.070	Clothing, transportation, and funds for state inmates released in other states.
72.74.900	Severability—1983 c 255.

**72.74.010 Short title.** This chapter shall be known and may be cited as the Interstate Corrections Compact. [1983 c 255 § 12.]

**72.74.020 Authority to execute, terms of compact.** The secretary of the department of corrections is hereby authorized and requested to execute, on behalf of the state of Washington, with any other state or states legally joining therein a compact which shall be in form substantially as follows:

The contracting states solemnly agree that:

(1) The party states, desiring by common action to fully utilize and improve their institutional facilities and provide adequate programs for the confinement, treatment, and rehabilitation of various types of offenders, declare that it is the policy of each of the party states to provide such facilities and programs on a basis of cooperation with one another, and with the federal government, thereby serving the best interest of such offenders and of society and effecting economies in capital expenditures and operational costs. The purpose of this compact is to provide for the mutual development and execution of such programs of cooperation for the confinement, treatment, and rehabilitation of offenders with the most economical use of human and material resources.

(2) As used in this compact, unless the context clearly requires otherwise:

(a) "State" means a state of the United States; the United States of America; a territory or possession of the United States; the District of Columbia; and the Commonwealth of Puerto Rico.

(b) "Sending state" means a state party to this compact in which conviction or court commitment was had.

(c) "Receiving state" means a state party to this compact to which an inmate is sent for confinement other than a state in which conviction or court commitment was had.

(d) "Inmate" means a male or female offender who is committed, under sentence to, or confined in a penal or correctional institution.

(e) "Institution" means any penal or correctional facility, including but not limited to a facility for the mentally ill or mentally defective, in which inmates as defined in subsection (2)(d) of this section may lawfully be confined.

(3)(a) Each party state may make one or more contracts with any one or more of the other party states, or with the federal government, for the confinement of inmates on behalf of a sending state in institutions situated within receiving states. Any such contract shall provide for:

(i) Its duration;

(ii) Payments to be made to the receiving state or to the federal government, by the sending state for inmate maintenance, extraordinary medical and dental expenses, and any participation in or receipt by inmates of rehabilitative or correctional services, facilities, programs or treatment not reasonably included as part of normal maintenance;

(iii) Participation in programs of inmate employment, if any; the disposition or crediting of any payments received by inmates on account thereof; and the crediting of proceeds from or disposal of any products resulting therefrom;

(iv) Delivery and retaking of inmates;

(v) Such other matters as may be necessary and appropriate to fix the obligations, responsibilities and rights of the sending and receiving states.

(b) The terms and provisions of this compact shall be a part of any contract entered into by the authority of or pursuant thereto and nothing in any such contract shall be inconsistent therewith.

(4)(a) Whenever the duly constituted authorities in a state party to this compact, and which has entered into a contract pursuant to subsection (3)(a) of this section, shall decide that confinement in, or transfer of an inmate to, an institution within the territory of another party state is necessary or desirable in order to provide adequate quarters and care or an appropriate program of rehabilitation or treatment, said officials may direct that the confinement be within an institution within the territory of said other party state, the receiving state to act in that regard solely as agent for the sending state.

(b) The appropriate officials of any state party to this compact shall have access, at all reasonable times, to any institution in which it has a contractual right to confine inmates for the purpose of inspecting the facilities thereof and visiting such of its inmates as may be confined in the institution.

(c) Inmates confined in an institution pursuant to the terms of this compact shall at all times be subject to the jurisdiction of the sending state and may at any time be removed therefrom for transfer to a prison or other institution within the sending state, for transfer to another institution in which the sending state may have a contractual or other right to confine inmates, for release on probation or parole, for discharge, or for any other purpose permitted by the laws of the sending state, provided that the sending state shall continue to be obligated to such payments as may be required pursuant to the terms of any contract entered into under the terms of subsection (3)(a) of this section.

(d) Each receiving state shall provide regular reports to each sending state on the inmates of that sending state in institutions pursuant to this compact, including a conduct record of each inmate, and certify said record to the official designated by the sending state, in order that each inmate may have official review of his or her record in determining and altering the disposition of said inmate in accordance with the law which may obtain in the sending state and in order that the same may be a source of information for the sending state.

(e) All inmates who may be confined in an institution pursuant to the provisions of this compact shall be treated in a reasonable and humane manner and shall be treated equally with such similar inmates of the receiving state as may be confined in the same institution. The fact of confinement in a

receiving state shall not deprive any inmate so confined of any legal rights which said inmate would have had if confined in an appropriate institution of the sending state.

(f) Any hearing or hearings to which an inmate confined pursuant to this compact may be entitled by the laws of the sending state, or of the receiving state if authorized by the sending state. The receiving state shall provide adequate facilities for such hearings as may be conducted by the appropriate officials of a sending state. In the event such hearing or hearings are had before officials of the receiving state, the governing law shall be that of the sending state and a record of the hearing or hearings as prescribed by the sending state shall be made. Said record, together with any recommendations of the hearing officials, shall be transmitted forthwith to the official or officials before whom the hearing would have been had if it had taken place in the sending state. In any and all proceedings had pursuant to the provisions of this subdivision, the officials of the receiving state shall act solely as agents of the sending state and no final determination shall be made in any matter except by the appropriate officials of the sending state.

(g) Any inmate confined pursuant to this compact shall be released within the territory of the sending state unless the inmate, and the sending and receiving states, shall agree upon release in some other place. The sending state shall bear the cost of such return to its territory.

(h) Any inmate confined pursuant to the terms of this compact shall have any and all rights to participate in and derive any benefits or incur or be relieved of any obligations or have such obligations modified or his status changed on account of any action or proceeding in which he could have participated if confined in any appropriate institution of the sending state located within such state.

(i) The parents, guardian, trustee, or other person or persons entitled under the laws of the sending state to act for, advise or otherwise function with respect to any inmate shall not be deprived of or restricted in his exercise of any power in respect of any inmate confined pursuant to the terms of this compact.

(5)(a) Any decision of the sending state in respect to any matter over which it retains jurisdiction pursuant to this compact shall be conclusive upon and not reviewable within the receiving state, but if at the time the sending state seeks to remove an inmate from an institution in the receiving state there is pending against the inmate within such state any criminal charge or if the inmate is formally accused of having committed within such state a criminal offense, the inmate shall not be returned without the consent of the receiving state until discharge from prosecution or other form of proceeding, imprisonment or detention for such offense. The duly accredited officers of the sending state shall be permitted to transport inmates pursuant to this compact through any and all states party to this compact without interference.

(b) An inmate who escapes from an institution in which he is confined pursuant to this compact shall be deemed a fugitive from the sending state and from the state in which the institution is situated. In the case of an escape to a jurisdiction other than the sending or receiving state, the responsibility for institution of extradition or rendition proceedings shall be that of the sending state, but nothing contained herein shall be

construed to prevent or affect the activities of officers and agencies of any jurisdiction directed toward the apprehension and return of an escapee.

(6) Any state party to this compact may accept federal aid for use in connection with any institution or program, the use of which is or may be affected by this compact or any contract pursuant hereto; and any inmate in a receiving state pursuant to this compact may participate in any such federally-aided program or activity for which the sending and receiving states have made contractual provision, provided that if such program or activity is not part of the customary correctional regimen, the express consent of the appropriate official of the sending state shall be required therefor.

(7) This compact shall enter into force and become effective and binding upon the states so acting when it has been enacted into law by any two states. Thereafter, this compact shall enter into force and become effective and binding as to any other of said states upon similar action by such state.

(8) This compact shall continue in force and remain binding upon a party state until it shall have enacted a statute repealing the same and providing for the sending of formal written notice of withdrawal from the compact to the appropriate official of all other party states. An actual withdrawal shall not take effect until one year after the notice provided in said statute has been sent. Such withdrawal shall not relieve the withdrawing state from its obligations assumed hereunder prior to the effective date of withdrawal. Before effective date of withdrawal, a withdrawing state shall remove to its territory, at its own expense, such inmates as it may have confined pursuant to the provisions of this compact.

(9) Nothing contained in this compact shall be construed to abrogate or impair any agreement or other arrangement which a party state may have with a nonparty state for the confinement, rehabilitation or treatment of inmates nor to repeal any other laws of a party state authorizing the making of cooperative institutional arrangements.

(10) The provisions of this compact shall be liberally construed and shall be severable. If any phrase, clause, sentence or provision of this compact is declared to be contrary to the constitution of any participating state or of the United States or the applicability thereof to any government, agency, person or circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person or circumstance shall not be affected thereby. If this compact shall be held contrary to the constitution of any state participating therein, the compact shall remain in full force and effect as to the remaining states and in full force and effect as to the state affected as to all severable matters. [1983 c 255 § 13.]

**72.74.030 Authority to receive or transfer inmates.** The secretary of corrections is authorized to receive or transfer an inmate as defined in the Interstate Corrections Compact to any institution as defined in the Interstate Corrections Compact within this state or without this state, if this state has entered into a contract or contracts for the confinement of inmates in such institutions pursuant to subsection (3) of the Interstate Corrections Compact. [1983 c 255 § 14.]

(2010 Ed.)

**72.74.040 Enforcement.** The courts, departments, agencies, and officers of this state and its subdivisions shall enforce this compact and shall do all things appropriate to the effectuation of its purposes and intent which may be within their respective jurisdictions including but not limited to the making and submission of such reports as are required by the compact. [1983 c 255 § 15.]

**72.74.050 Hearings.** The secretary is authorized and directed to hold such hearings as may be requested by any other party state pursuant to subsection (4)(f) of the Interstate Corrections Compact. Additionally, the secretary may hold out-of-state hearings in connection with the case of any inmate of this state confined in an institution of another state party to the Interstate Corrections Compact. [1983 c 255 § 16.]

**72.74.060 Contracts for implementation.** The secretary of corrections is empowered to enter into such contracts on behalf of this state as may be appropriate to implement the participation of this state in the Interstate Corrections Compact pursuant to subsection (3) of the compact. No such contract shall be of any force or effect until approved by the attorney general. [1983 c 255 § 17.]

**72.74.070 Clothing, transportation, and funds for state inmates released in other states.** If any agreement between this state and any other state party to the Interstate Corrections Compact enables an inmate of this state confined in an institution of another state to be released in such other state in accordance with subsection (4)(g) of this compact, then the secretary is authorized to provide clothing, transportation, and funds to such inmate in accordance with RCW 72.02.100. [1983 c 255 § 18.]

**72.74.900 Severability—1983 c 255.** If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1983 c 255 § 20.]

**Chapter 72.76 RCW**

**INTRASTATE CORRECTIONS COMPACT**

Sections

72.76.005	Intent.
72.76.010	Compact enacted—Provisions.
72.76.020	Costs and accounting of offender days.
72.76.030	Contracts authorized for implementation of participation— Application of chapter.
72.76.040	Fiscal management.
72.76.900	Short title.

**72.76.005 Intent.** It is the intent of the legislature to enable and encourage a cooperative relationship between the department of corrections and the counties of the state of Washington, and to provide adequate facilities and programs for the confinement, care, treatment, and employment of offenders through the exchange or transfer of offenders. [1989 c 177 § 2.]

**72.76.010 Compact enacted—Provisions.** The Washington intrastate corrections compact is enacted and entered into on behalf of this state by the department with any and all counties of this state legally joining in a form substantially as follows:

WASHINGTON INTRASTATE  
CORRECTIONS COMPACT

A compact is entered into by and among the contracting counties and the department of corrections, signatories hereto, for the purpose of maximizing the use of existing resources and to provide adequate facilities and programs for the confinement, care, treatment, and employment of offenders.

The contracting counties and the department do solemnly agree that:

(1) As used in this compact, unless the context clearly requires otherwise:

(a) "Department" means the Washington state department of corrections.

(b) "Secretary" means the secretary of the department of corrections or designee.

(c) "Compact jurisdiction" means the department of corrections or any county of the state of Washington which has executed this compact.

(d) "Sending jurisdiction" means a county party to this agreement or the department of corrections to whom the courts have committed custody of the offender.

(e) "Receiving jurisdiction" means the department of corrections or a county party to this agreement to which an offender is sent for confinement.

(f) "Offender" means a person who has been charged with and/or convicted of an offense established by applicable statute or ordinance.

(g) "Convicted felony offender" means a person who has been convicted of a felony established by state law and is eighteen years of age or older, or who is less than eighteen years of age, but whose case has been transferred by the appropriate juvenile court to a criminal court pursuant to RCW 13.40.110 or has been tried in a criminal court pursuant to \*RCW 13.04.030(1)(e)(iv).

(h) An "offender day" includes the first day an offender is delivered to the receiving jurisdiction, but ends at midnight of the day immediately preceding the day of the offender's release or return to the custody of the sending jurisdiction.

(i) "Facility" means any state correctional institution, camp, or other unit established or authorized by law under the jurisdiction of the department of corrections; any jail, holding, detention, special detention, or correctional facility operated by the county for the housing of adult offenders; or any contract facility, operated on behalf of either the county or the state for the housing of adult offenders.

(j) "Extraordinary medical expense" means any medical expense beyond that which is normally provided by contract or other health care providers at the facility of the receiving jurisdiction.

(k) "Compact" means the Washington intrastate corrections compact.

(2)(a) Any county may make one or more contracts with one or more counties, the department, or both for the exchange or transfer of offenders pursuant to this compact.

Appropriate action by ordinance, resolution, or otherwise in accordance with the law of the governing bodies of the participating counties shall be necessary before the contract may take effect. The secretary is authorized and requested to execute the contracts on behalf of the department. Any such contract shall provide for:

(i) Its duration;

(ii) Payments to be made to the receiving jurisdiction by the sending jurisdiction for offender maintenance, extraordinary medical and dental expenses, and any participation in or receipt by offenders of rehabilitative or correctional services, facilities, programs, or treatment not reasonably included as part of normal maintenance;

(iii) Participation in programs of offender employment, if any; the disposition or crediting of any payments received by offenders on their accounts; and the crediting of proceeds from or the disposal of any products resulting from the employment;

(iv) Delivery and retaking of offenders;

(v) Such other matters as may be necessary and appropriate to fix the obligations, responsibilities and rights of the sending and receiving jurisdictions.

(b) The terms and provisions of this compact shall be a part of any contract entered into by the authority of or pursuant to the contract. Nothing in any contract may be inconsistent with the compact.

(3)(a) Whenever the duly constituted authorities of any compact jurisdiction decide that confinement in, or transfer of an offender to a facility of another compact jurisdiction is necessary or desirable in order to provide adequate housing and care or an appropriate program of rehabilitation or treatment, the officials may direct that the confinement be within a facility of the other compact jurisdiction, the receiving jurisdiction to act in that regard solely as agent for the sending jurisdiction.

(b) The receiving jurisdiction shall be responsible for the supervision of all offenders which it accepts into its custody.

(c) The receiving jurisdiction shall be responsible to establish screening criteria for offenders it will accept for transfer. The sending jurisdiction shall be responsible for ensuring that all transferred offenders meet the screening criteria of the receiving jurisdiction.

(d) The sending jurisdiction shall notify the sentencing courts of the name, charges, cause numbers, date, and place of transfer of any offender, prior to the transfer, on a form to be provided by the department. A copy of this form shall accompany the offender at the time of transfer.

(e) The receiving jurisdiction shall be responsible for providing an orientation to each offender who is transferred. The orientation shall be provided to offenders upon arrival and shall address the following conditions at the facility of the receiving jurisdiction:

(i) Requirements to work;

(ii) Facility rules and disciplinary procedures;

(iii) Medical care availability; and

(iv) Visiting.

(f) Delivery and retaking of inmates shall be the responsibility of the sending jurisdiction. The sending jurisdiction shall deliver offenders to the facility of the receiving jurisdiction where the offender will be housed, at the dates and times specified by the receiving jurisdiction. The receiving juris-

diction retains the right to refuse or return any offender. The sending jurisdiction shall be responsible to retake any transferred offender who does not meet the screening criteria of the receiving jurisdiction, or who is refused by the receiving jurisdiction. If the receiving jurisdiction has notified the sending jurisdiction to retake an offender, but the sending jurisdiction does not do so within a seven-day period, the receiving jurisdiction may return the offender to the sending jurisdiction at the expense of the sending jurisdiction.

(g) Offenders confined in a facility under the terms of this compact shall at all times be subject to the jurisdiction of the sending jurisdiction and may at any time be removed from the facility for transfer to another facility within the sending jurisdiction, for transfer to another facility in which the sending jurisdiction may have a contractual or other right to confine offenders, for release or discharge, or for any other purpose permitted by the laws of the state of Washington.

(h) Unless otherwise agreed, the sending jurisdiction shall provide at least one set of the offender's personal clothing at the time of transfer. The sending jurisdiction shall be responsible for searching the clothing to ensure that it is free of contraband. The receiving jurisdiction shall be responsible for providing work clothing and equipment appropriate to the offender's assignment.

(i) The sending jurisdiction shall remain responsible for the storage of the offender's personal property, unless prior arrangements are made with the receiving jurisdiction. The receiving jurisdiction shall provide a list of allowable items which may be transferred with the offender.

(j) Copies or summaries of records relating to medical needs, behavior, and classification of the offender shall be transferred by the sending jurisdiction to the receiving jurisdiction at the time of transfer. At a minimum, such records shall include:

(i) A copy of the commitment order or orders legally authorizing the confinement of the offender;

(ii) A copy of the form for the notification of the sentencing courts required by subsection (3)(d) of this section;

(iii) A brief summary of any known criminal history, medical needs, behavioral problems, and other information which may be relevant to the classification of the offender; and

(iv) A standard identification card which includes the fingerprints and at least one photograph of the offender. Disclosure of public records shall be the responsibility of the sending jurisdiction, except for those documents generated by the receiving jurisdiction.

(k) The receiving jurisdiction shall be responsible for providing regular medical care, including prescription medication, but extraordinary medical expenses shall be the responsibility of the sending jurisdiction. The costs of extraordinary medical care incurred by the receiving jurisdiction for transferred offenders shall be reimbursed by the sending jurisdiction. The receiving jurisdiction shall notify the sending jurisdiction as far in advance as practicable prior to incurring such costs. In the event emergency medical care is needed, the sending jurisdiction shall be advised as soon as practicable after the offender is treated. Offenders who are required by the medical authority of the sending jurisdiction to take prescription medication at the time of the transfer shall have at least a three-day supply of the medication trans-

ferred to the receiving jurisdiction with the offender, and at the expense of the sending jurisdiction. Costs of prescription medication incurred after the use of the supply shall be borne by the receiving jurisdiction.

(l) Convicted offenders transferred under this agreement may be required by the receiving jurisdiction to work. Transferred offenders participating in programs of offender employment shall receive the same reimbursement, if any, as other offenders performing similar work. The receiving jurisdiction shall be responsible for the disposition or crediting of any payments received by offenders, and for crediting the proceeds from or disposal of any products resulting from the employment. Other programs normally provided to offenders by the receiving jurisdiction such as education, mental health, or substance abuse treatment shall also be available to transferred offenders, provided that usual program screening criteria are met. No special or additional programs will be provided except by mutual agreement of the sending and receiving jurisdiction, with additional expenses, if any, to be borne by the sending jurisdiction.

(m) The receiving jurisdiction shall notify offenders upon arrival of the rules of the jurisdiction and the specific rules of the facility. Offenders will be required to follow all rules of the receiving jurisdiction. Disciplinary detention, if necessary, shall be provided at the discretion of the receiving jurisdiction. The receiving jurisdiction may require the sending jurisdiction to retake any offender found guilty of a serious infraction; similarly, the receiving jurisdiction may require the sending jurisdiction to retake any offender whose behavior requires segregated or protective housing.

(n) Good-time calculations and notification of each offender's release date shall be the responsibility of the sending jurisdiction. The sending jurisdiction shall provide the receiving jurisdiction with a formal notice of the date upon which each offender is to be released from custody. If the receiving jurisdiction finds an offender guilty of a violation of its disciplinary rules, it shall notify the sending jurisdiction of the date and nature of the violation. If the sending jurisdiction resets the release date according to its good-time policies, it shall provide the receiving jurisdiction with notice of the new release date.

(o) The sending jurisdiction shall retake the offender at the receiving jurisdiction's facility on or before his or her release date, unless the sending and receiving jurisdictions shall agree upon release in some other place. The sending jurisdiction shall bear the transportation costs of the return.

(p) Each receiving jurisdiction shall provide monthly reports to each sending jurisdiction on the number of offenders of that sending jurisdiction in its facilities pursuant to this compact.

(q) Each party jurisdiction shall notify the others of its coordinator who is responsible for administering the jurisdiction's responsibilities under the compact. The coordinators shall arrange for alternate contact persons in the event of an extended absence of the coordinator.

(r) Upon reasonable notice, representatives of any party to this compact shall be allowed to visit any facility in which another party has agreed to house its offenders, for the purpose of inspecting the facilities and visiting its offenders that may be confined in the institution.

(4) This compact shall enter into force and become effective and binding upon the participating parties when it has been executed by two or more parties. Upon request, each party county shall provide any other compact jurisdiction with a copy of a duly enacted resolution or ordinance authorizing entry into this compact.

(5) A party participating may withdraw from the compact by formal resolution and by written notice to all other parties then participating. The withdrawal shall become effective, as it pertains to the party wishing to withdraw, thirty days after written notice to the other parties. However, such withdrawal shall not relieve the withdrawing party from its obligations assumed prior to the effective date of withdrawal. Before the effective date of withdrawal, a withdrawing participant shall notify the other parties to retake the offenders it has housed in its facilities and shall remove to its facilities, at its own expense, offenders it has confined under the provisions of this compact.

(6) Legal costs relating to defending actions brought by an offender challenging his or her transfer to another jurisdiction under this compact shall be borne by the sending jurisdiction. Legal costs relating to defending actions arising from events which occur while the offender is in the custody of a receiving jurisdiction shall be borne by the receiving jurisdiction.

(7) The receiving jurisdiction shall not be responsible to provide legal services to offenders placed under this agreement. Requests for legal services shall be referred to the sending jurisdiction.

(8) The provisions of this compact shall be liberally construed and shall be severable. If any phrase, clause, sentence, or provision of this compact is declared to be contrary to the Constitution or laws of the state of Washington or is held invalid, the validity of the remainder of this compact and its applicability to any county or the department shall not be affected.

(9) Nothing contained in this compact shall be construed to abrogate or impair any agreement or other arrangement which a county or the department may have with each other or with a nonparty county for the confinement, rehabilitation, or treatment of offenders. [1994 sp.s. c 7 § 539; 1989 c 177 § 3.]

**\*Reviser's note:** RCW 13.04.030 was amended by 1997 c 341 § 3, changing subsection (1)(e)(iv) to subsection (1)(e)(v).

**Finding—Intent—Severability—1994 sp.s. c 7:** See notes following RCW 43.70.540.

**72.76.020 Costs and accounting of offender days.** (1)

The costs per offender day to the sending jurisdiction for the custody of offenders transferred according to the terms of this agreement shall be at the rate set by the state of Washington, office of financial management under RCW 70.48.440, unless the parties agree to another rate in a particular transfer. The costs may not include extraordinary medical costs, which shall be billed separately. Except in the case of prisoner exchanges, as described in subsection (2) of this section, the sending jurisdiction shall be billed on a monthly basis by the receiving jurisdiction. Payment shall be made within thirty days of receipt of the invoice.

(2) When two parties to this agreement transfer offenders to each other, there shall be an accounting of the number of

"offender days." If the number is exactly equal, no payment is necessary for the affected period. The payment by the jurisdiction with the higher net number of offender days may be reduced by the amount otherwise due for the number of offender days its offenders were held by the receiving jurisdiction. Billing and reimbursement shall remain on the monthly schedule, and shall be supported by the forms and procedures provided by applicable regulations. The accounting of offender days exchanged may be reconciled on a monthly basis, but shall be at least quarterly. [1989 c 177 § 4.]

**72.76.030 Contracts authorized for implementation of participation—Application of chapter.** The secretary is empowered to enter into contracts on behalf of this state on the terms and conditions as may be appropriate to implement the participation of the department in the Washington intrastate corrections compact under RCW 72.76.010(2). Nothing in this chapter is intended to create any right or entitlement in any offender transferred or housed under the authority granted in this chapter. The failure of the department or the county to comply with any provision of this chapter as to any particular offender or transfer shall not invalidate the transfer nor give rise to any right for such offender. [1989 c 177 § 5.]

**72.76.040 Fiscal management.** Notwithstanding any other provisions of law, payments received by the department pursuant to contracts entered into under the authority of this chapter shall be treated as nonappropriated funds and shall be exempt from the allotment controls established under chapter 43.88 RCW. The secretary may use such funds, in addition to appropriated funds, to provide institutional and community corrections programs. The secretary may, in his or her discretion and in lieu of direct fiscal payment, offset the obligation of any sending jurisdiction against any obligation the department may have to the sending jurisdiction. Outstanding obligations of the sending jurisdiction may be carried forward across state fiscal periods by the department as a credit against future obligations of the department to the sending jurisdiction. [1989 c 177 § 6.]

**72.76.900 Short title.** This chapter shall be known and may be cited as the Washington Intrastate Corrections Compact. [1989 c 177 § 1.]

**Chapter 72.78 RCW**

**COMMUNITY TRANSITION  
COORDINATION NETWORKS**

Sections

72.78.005	Findings—2007 c 483.
72.78.010	Definitions.
72.78.020	Inventory of services and resources by counties.
72.78.030	Pilot program established—Participation standards—Selection criteria.
72.78.040	Pilot program limitations—Individual reentry plan liability limited.
72.78.050	Funding—Requirements—Evaluation and report.
72.78.060	Community transition coordination network account.
72.78.070	Funding entitlement, obligation to maintain network not created.
72.78.900	Part headings not law—2007 c 483.
72.78.901	Severability—2007 c 483.

**72.78.005 Findings—2007 c 483.** The people of the state of Washington expect to live in safe communities in which the threat of crime is minimized. Attempting to keep communities safe by building more prisons and paying the costs of incarceration has proven to be expensive to taxpayers. Incarceration is a necessary consequence for some offenders, however, the vast majority of those offenders will eventually return to their communities. Many of these former offenders will not have had the opportunity to address the deficiencies that may have contributed to their criminal behavior. Persons who do not have basic literacy and job skills, or who are ill-equipped to make the behavioral changes necessary to successfully function in the community, have a high risk of reoffense. Recidivism represents serious costs to victims, both financial and nonmonetary in nature, and also burdens state and local governments with those offenders who recycle through the criminal justice system.

The legislature believes that recidivism can be reduced and a substantial cost savings can be realized by utilizing evidence-based, research-based, and promising programs to address offender deficits, developing and better coordinating the reentry efforts of state and local governments and local communities. Research shows that if quality assurances are adhered to, implementing an optimal portfolio of evidence-based programming options for offenders who are willing to take advantage of such programs can have a notable impact on recidivism.

While the legislature recognizes that recidivism cannot be eliminated and that a significant number of offenders are unwilling or unable to work to develop the tools necessary to successfully reintegrate into society, the interests of the public overall are better served by better preparing offenders while incarcerated, and continuing those efforts for those recently released from prison or jail, for successful, productive, and healthy transitions to their communities. Educational, employment, and treatment opportunities should be designed to address individual deficits and ideally give offenders the ability to function in society. In order to foster reintegration, chapter 483, Laws of 2007 recognizes the importance of a strong partnership between the department of corrections, local governments, law enforcement, social service providers, and interested members of communities across our state. [2007 c 483 § 1.]

**72.78.010 Definitions.** The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) A "community transition coordination network" is a system of coordination that facilitates partnerships between supervision and service providers. It is anticipated that an offender who is released to the community will be able to utilize a community transition coordination network to be connected directly to the supervision and/or services needed for successful reentry.

(2) "Evidence-based" means a program or practice that has had multiple-site random controlled trials across heterogeneous populations demonstrating that the program or practice is effective in reducing recidivism for the population.

(3) An "individual reentry plan" means the plan to prepare an offender for release into the community. A reentry plan is developed collaboratively between the supervising

authority and the offender and based on an assessment of the offender using a standardized and comprehensive tool to identify the offenders' risks and needs. An individual reentry plan describes actions that should occur to prepare individual offenders for release from jail or prison and specifies the supervision and/or services he or she will experience in the community, taking into account no contact provisions of the judgment and sentence. An individual reentry plan should be updated throughout the period of an offender's incarceration and supervision to be relevant to the offender's current needs and risks.

(4) "Local community policing and supervision programs" include probation, work release, jails, and other programs operated by local police, courts, or local correctional agencies.

(5) "Promising practice" means a practice that presents, based on preliminary information, potential for becoming a research-based or consensus-based practice.

(6) "Research-based" means a program or practice that has some research demonstrating effectiveness, but that does not yet meet the standard of evidence-based practices.

(7) "Supervising authority" means the agency or entity that has the responsibility for supervising an offender. [2007 c 483 § 101.]

**72.78.020 Inventory of services and resources by counties.** (1) Each county or group of counties shall conduct an inventory of the services and resources available in the county or group of counties to assist offenders in reentering the community.

(2) In conducting its inventory, the county or group of counties should consult with the following:

(a) The department of corrections, including community corrections officers;

(b) The department of social and health services in applicable program areas;

(c) Representatives from county human services departments and, where applicable, multicounty regional support networks;

(d) Local public health jurisdictions;

(e) City and county law enforcement;

(f) Local probation/supervision programs;

(g) Local community and technical colleges;

(h) The local workforce center operated under the state-wide workforce investment system;

(i) Faith-based and nonprofit organizations providing assistance to offenders;

(j) Housing providers;

(k) Crime victims service providers; and

(l) Other community stakeholders interested in reentry efforts.

(3) The inventory must include, but is not limited to:

(a) A list of programs available through the entities listed in subsection (2) of this section and services currently available in the community for offenders including, but not limited to, housing assistance, employment assistance, education, vocational training, parenting education, financial literacy, treatment for substance abuse, mental health, anger management, life skills training, specialized treatment programs such as batterers treatment and sex offender treatment,

and any other service or program that will assist the former offender to successfully transition into the community; and

(b) An indication of the availability of community representatives or volunteers to assist the offender with his or her transition.

(4) No later than January 1, 2008, each county or group of counties shall present its inventory to the policy advisory committee convened in \*RCW 72.78.030(8). [2007 c 483 § 102.]

\*Reviser's note: RCW 72.78.030 was amended by 2010 1st sp.s. c 7 § 12, deleting subsection (8).

**72.78.030 Pilot program established—Participation standards—Selection criteria. (Expires June 30, 2013.)**

(1) The department of commerce shall establish a community transition coordination network pilot program for the purpose of awarding grants to counties or groups of counties for implementing coordinated reentry efforts for offenders returning to the community. Grant awards are subject to the availability of amounts appropriated for this specific purpose.

(2) By September 1, 2007, the Washington state institute for public policy shall, in consultation with the department of commerce, develop criteria for the counties in conducting its evaluation as directed by subsection (6)(c) of this section.

(3) Effective February 1, 2008, any county or group of counties may apply for participation in the community transition coordination network pilot program by submitting a proposal for a community transition coordination network.

(4) A proposal for a community transition coordination network initiated under this section must be collaborative in nature and must seek locally appropriate evidence-based or research-based solutions and promising practices utilizing the participation of public and private entities or programs to support successful, community-based offender reentry.

(5) In developing a proposal for a community transition coordination network, counties or groups of counties and the department of corrections shall collaborate in addressing:

(a) Efficiencies that may be gained by sharing space or resources in the provision of reentry services to offenders;

(b) Mechanisms for communication of information about offenders, including the feasibility of shared access to databases;

(c) Partnerships to establish neighborhood corrections initiatives as defined in RCW 72.09.280.

(6) A proposal for a community transition coordination network must include:

(a) Descriptions of collaboration and coordination between local community policing and supervision programs and those agencies and entities identified in the inventory conducted pursuant to RCW 72.78.020 to address the risks and needs of offenders under a participating county or city misdemeanor probation or other supervision program including:

(i) A proposed method of assessing offenders to identify the offenders' risks and needs. Counties and cities are encouraged, where possible, to make use of assessment tools developed by the department of corrections in this regard;

(ii) A proposal for developing and/or maintaining an individual reentry plan for offenders;

(iii) Connecting offenders to services and resources that meet the offender's needs as identified in his or her individual

reentry plan including the identification of community representatives or volunteers that may assist the offender with his or her transition; and

(iv) The communication of assessment information, individual reentry plans, and service information between parties involved with the offender's reentry;

(b) Mechanisms to provide information to former offenders regarding services available to them in the community regardless of the length of time since the offender's release and regardless of whether the offender was released from prison or jail. Mechanisms shall, at a minimum, provide for:

(i) Maintenance of the information gathered in RCW 72.78.020 regarding services currently existing within the community that are available to offenders; and

(ii) Coordination of access to existing services with community providers and provision of information to offenders regarding how to access the various type of services and resources that are available in the community; and

(c) An evaluation of the county's or group of counties' readiness to implement a community transition coordination network including the social service needs of offenders in general, capacity of local facilities and resources to meet offenders' needs, and the cost to implement and maintain a community transition coordination network for the duration of the pilot project.

(7) The department of commerce shall review county applications for funding through the community transition coordination network pilot program and, no later than April 1, 2008, shall select up to four counties or groups of counties. In selecting pilot counties or regions, the department shall consider the extent to which the proposal:

(a) Addresses the requirements set out in subsection (6) of this section;

(b) Proposes effective partnerships and coordination between local community policing and supervision programs, social service and treatment providers, and the department of corrections' community justice center, if a center is located in the county or region;

(c) Focuses on measurable outcomes such as increased employment and income, treatment objectives, maintenance of stable housing, and reduced recidivism;

(d) Contributes to the diversity of pilot programs, considering factors such as geographic location, size of county or region, and reentry services currently available. The department shall ensure that a grant is awarded to at least one rural county or group of counties and at least one county or group of counties where a community justice center operated by the department of corrections is located; and

(e) Is feasible, given the evaluation of the social service needs of offenders, the existing capacity of local facilities and resources to meet offenders' needs, and the cost to implement a community transition coordination network in the county or group of counties.

(8) Pilot networks established under this section shall extend for a period of four fiscal years, beginning July 1, 2008, and ending June 30, 2012.

(9) This section expires June 30, 2013. [2010 1st sp.s. c 7 § 12; 2007 c 483 § 103.]

**Effective date—2010 1st sp.s. c 26; 2010 1st sp.s. c 7:** See note following RCW 43.03.027.

**72.78.040 Pilot program limitations—Individual reentry plan liability limited.** (1) Nothing in RCW 72.78.030 is intended to shift the supervising responsibility or sanctioning authority from one government entity to another or give a community transition coordination network oversight responsibility for those activities or allow imposition of civil liability where none existed previously.

(2) An individual reentry plan may not be used as the basis of liability against local government entities, or its officers or employees. [2007 c 483 § 104.]

**Intent—2007 c 483:** See note following RCW 72.09.270.

**72.78.050 Funding—Requirements—Evaluation and report. (Expires June 30, 2013.)** (1) It is the intent of the legislature to provide funding for this project.

(2) Counties receiving state funds must:

(a) Demonstrate the funds allocated pursuant to this section will be used only for those purposes in establishing and maintaining a community transition coordination network;

(b) Consult with the Washington state institute for public policy at the inception of the pilot project to refine appropriate outcome measures and data tracking systems;

(c) Submit to the advisory committee established in \*RCW 72.78.030(8) an annual progress report by June 30th of each year of the pilot project to report on identified outcome measures and identify evidence-based, research-based, or promising practices;

(d) Cooperate with the Washington state institute for public policy at the completion of the pilot project to conduct an evaluation of the project.

(3) The Washington state institute for public policy shall provide direction to counties in refining appropriate outcome measures for the pilot projects and establishing data tracking systems. At the completion of the pilot project, the institute shall conduct an evaluation of the projects including the benefit-cost ratio of service delivery through a community transition coordination network, associated reductions in recidivism, and identification of evidence-based, research-based, or promising practices. The institute shall report to the governor and the legislature with the results of its evaluation no later than December 31, 2012.

(4) This section expires June 30, 2013. [2007 c 483 § 105.]

**\*Reviser's note:** RCW 72.78.030 was amended by 2010 1st sp.s. c 7 § 12, deleting subsection (8).

**72.78.060 Community transition coordination network account. (Expires June 30, 2013.)** (1) The community transition coordination network account is created in the state treasury. The account may receive legislative appropriations, gifts, and grants. Moneys in the account may be spent only after appropriation. Expenditures from the account may be used only for the purposes of RCW 72.78.030.

(2) This section expires June 30, 2013. [2007 c 483 § 106.]

**72.78.070 Funding entitlement, obligation to maintain network not created.** Nothing in chapter 483, Laws of 2007 creates an entitlement for a county or group of counties to receive funding under the program created in RCW 72.78.030, nor an obligation for a county or group of counties

(2010 Ed.)

to maintain a community transition coordination network established pursuant to RCW 72.78.030 upon expiration of state funding. [2007 c 483 § 107.]

**72.78.900 Part headings not law—2007 c 483.** Part headings used in this act are not any part of the law. [2007 c 483 § 701.]

**72.78.901 Severability—2007 c 483.** If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [2007 c 483 § 702.]

## Chapter 72.98 RCW CONSTRUCTION

### Sections

72.98.010	Continuation of existing law.
72.98.020	Title, chapter, section headings not part of law.
72.98.030	Invalidity of part of title not to affect remainder.
72.98.040	Repeals and saving.
72.98.050	Bonding acts exempted.
72.98.060	Emergency—1959 c 28.

**72.98.010 Continuation of existing law.** The provisions of this title insofar as they are substantially the same as statutory provisions repealed by this chapter, and relating to the same subject matter, shall be construed as restatements and continuations, and not as new enactments. [1959 c 28 § 72.98.010.]

**72.98.020 Title, chapter, section headings not part of law.** Title headings, chapter headings, and section or subsection headings, as used in this title do not constitute any part of the law. [1959 c 28 § 72.98.020.]

**72.98.030 Invalidity of part of title not to affect remainder.** If any provision of this title, or its application to any person or circumstance is held invalid, the remainder of the title, or the application of the provision to other persons or circumstances is not affected. [1959 c 28 § 72.98.030.]

**72.98.040 Repeals and saving.** See 1959 c 28 § 72.98.040.

**72.98.050 Bonding acts exempted.** This act shall not repeal nor otherwise affect the provisions of the institutional bonding acts (chapter 230, Laws of 1949 and chapters 298 and 299, Laws of 1957). [1959 c 28 § 72.98.050.]

**72.98.060 Emergency—1959 c 28.** This act is necessary for the immediate preservation of the public peace, health and safety, the support of the state government and its existing public institutions, and shall take effect immediately, with the exception of RCW 72.01.280 the effective date of which section is July 1, 1959. [1959 c 28 § 72.98.060.]

